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PENSION FUNDS AND BRAZILIAN UNIONS

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ABSTRACT

Brazilian corporatism is evaluated in its current and historical aspects emphasizing unionism, reflecting paradigms and other influential models especially in connection with Italian corporatism. This paper discusses the influence of corporatism in Brazil's union system, with the aim of shedding some light on controversial issues and suggest possible alternatives. Specifically, we target the fact that the capacity to promote freedom of association and protection of the rights of self-organization is prevalent in countries of mature economies, but not in Brazil, where well-established strategies to raise funds are not employed.

Keywords: Corporativism, Syndicates, Labor, Pension Funds.

I. Introduction

Despite a plethora of attempts to modernize and adapt regulations to local circumstances, Brazil's labor and employment laws remain deeply connected to its inspiring Body of Knowledge: Mussolini's system of corporations and, specifically, one of his most famous pieces of legislation, the famous *Carta del Lavoro* (Charter of Labor, 1927), mostly known as a preamble to current Italian laws on corporations.

The declaration III of the *Carta del Lavoro* stipulates freedom of union organization. Nevertheless, this premise has very specific sense herein, since only by the acquisition of prior legal recognition by the State, an union is legally considered as upholding the rights to represent the whole category of workers or employers for which it is constituted. Under this approach, formation and maintenance of Unions carried out much more as a specific type of public matter (strongly submitted to the faith of political matters) than as a reflex of private demands and problem-solving organization.

Brazil, it is worth noting, not only emulated the above stated charter of labor in 1943 but also introduced the framework for the specialized labor/employment jurisdiction in labor courts. It is important to underline that one of the most controversial legal issues within the labor courts and the Supreme Labor Court is about its jurisdiction on cases that present civil features- not related to the master/servant relationship.

The so-called consolidation of labor legislation (Consolidação das Leis do Trabalho - Decreto-Lei nº 5.452) was enacted in May 1, 1943. Not a coincidence, Labor Day.

Up to the present, this legislation still outlines all labor and employment relationships. Virtually no aspect of the relationship is left outside the legal control given the tremendous intricacies of norms and regulations. Almost no negotiation is legally allowed, as the basic principle in Brazilian Labor/Employment Law is the presumption that the employee has no knowledge about her rights and is unable to establish equilibrated negotiations with the employer. From a current negotiation approach, one may say: this is a zero-sum game, where batna (best alternative to a negotiation agreement) is, by definition, hindered by power distribution.

Nearly all initiatives to create a new legal scenario in this context are hampered by political reasons and permeated by corporativist doctrine. Social protection is necessary, but it is evident that conflict of interests within the union context is obstructing changes.

An argument that is frequently raised against a labor or employment legal reform is that it would weaken fundamental rights of the worker class. This idea is challenged by the fact that more than half of the country's workers abide the informal employment sector; that is, current legislation lacks the capacity to provide adequate levels of job security for more than half of the workers.

Nonetheless, many trade unionists still display a solid corporatist behavior claiming for the maintenance of the 1943 Code on the grounds that it provides effective protection for workers against arbitrariness from the employer. For those who have the privilege to have formal job contracts (formal sector) it may be true. But the actual fundament for trade unions is the maintenance of the status quo. It is patent that the workplace has changed since 1943. And let's remember that this precise legislation was an emulation of the Italian chart of 1927.

Brazil did not ratify the international labor organization ILO convention 87 (freedom of association and protection of the right to organize). Internal forces are considerably robust in order to fundament the avoidance of ratification. Further to that, even Argentina, Brazil's neighbor that is renowned for the lack of freedom during certain time periods, ratified convention 87.

The decrease or even the lack of workers representation in order to promote worker objectives does not hinder some Brazilian unions, much as these unions seem to pay little attention to their decreasing membership and the global unionism declining phenomenon that is been seen all around the globe. A commonly held critique is that this phenomenon is caused by ineffectual unions that under no circumstance represent unionized workers or employees, but rather their own selves, by means of the mandatory union tax (1 day’s wages per year, which 20% goes to the government, as set forth below) that should be paid even by the nonunionized workers that link to the labor category. To the extent that this is the case, one may say that represented workers are frequently unrepresented, while instances that were expected to represent them end up hindering the chances of true representation. Under this view, employees and employers must accept the fact that union representation and labor organizations, protected by corporatism, can act like an extension of the State, coordinated by political movements.

Mandatory union taxes are at the core of this discussion, where they represent strong argument against changes in labor policy. The State itself retains taxes that, in principle, reflects workers interest. Through the Length of Service Guarantee Fund (FGTS- ***Fundo***de Garantia do Tempo de Serviço), employers deposit over 8,5% of their income in joint-accounts that should be maintained in a specific Federal Bank (Caixa Econômica Federal). Balance is released if and when worker is fired without cause, is diagnosed with AIDS, cancer or if she decides to buy a property. Government interest rate for these mutual savings is generally 3% a year, which is well-below mean inflation rate in this country, through the decades. Bottom line is that any other low profile investment could accrue considerably more than that.

The Brazilian Constitution of 1988 is the vivid example of the Italian intricacies influence. Articles 7 and 8 are meticulously intricate in the sense that a number of workers' rights (article 7) and trade unionism elements (article 8) are peremptory determined. The core labor rights, which are fundamental rights inserted in the Constitution, guarantee minimum requirements of protection but the intricacies denote that corporatist interests were at stake inasmuch as the constitutional legislators focused on details such as domestic employees' rights.

The will of the Constitution legislature (***mens legislatoris***) in 1988 was driven profusely by an inherent native corporatism. Strictures arising from the set forth above explain the lack of flexibility concerning the Brazilian labor market. The labor legal ambit is arguably overly regulated and private bargaining is systematically averted by an inaccurate speech in which the employee is considered an incapable human being in the sense that she cannot dispose of her own employment or labor connected rights. To reform this system is the same of attempting damage to workers rights.

Notwithstanding the fact that the Constitution allows employers and employees to agree about wages, fringe benefits are legally interpreted as fundamental rights not disposable to workers bargaining. In practice, the system looses in capacity to promote the entrance of informal workers in the formal marketing, based-upon the questionable premise that social protection could not exist under different conventions, despite vivid examples showing the contrary, all around the globe.

II. Corporatism

Corporatism comes from the Latin word ***corpus***, which means 'body'. It points to the idea of a group that organize itself so as to take advantage of collectiveness power. This has several consequences, on one hand it can increase labor and employment protection, whereas on the other, it can become an instrument for some determined groups to manipulate national policy, particularly through State intervention.

Much as we saw in the introduction, from a theoretical viewpoint, Brazil's corporatist state model has Italian roots. Brazilian dictator and democratic elected president Getúlio Vargas is the most important actor responsible for the robust introduction of corporatism in Brazil. Inspired by the Mussolini's methodology, Vargas attempted to centralize all power in the government, in which he exerted utter control. Co-optation of unions or labor organizations was essential in this aspect, and suppressing the left-wing movements at that time period was crucial.

In addition, the relevance of centralizing the government power, mediating market forces and avoiding revolutionary ideas against the corporative system was enormous. The union structure raised during Vargas government was deeply consolidated under the influence of corporatism. The State should intervene diffusely upon society and that was the Italian role model at the time.

Massoni (2007, p. 102) examines corporatism as a "phenomenon within the society based on the principles of State organization in order to mitigate conflicts. It goes on the opposite direction of individualism, with the scope of gradually instilling solidarity in society. In this aspect, the isolation of individuals in society, as the liberal doctrine of the 19th century outlined, is a societal characteristic to be avoided. The liberal doctrine, as an individualistic line of thought, classifies the individual simultaneously as the origin and ultimate object of the State" (emphasis added).

Under the fascist paradigm, Social peace and national productivity justified state intervention in widely spread areas such as in labor organizations. By these means, unions were allocated as ancillary organs of the State and corporatism taken as the conventional way to institutional representation.

Thus, in reference to that doctrine, the State is not a simple intermediary between internal groups and powers, but rather the highest organ in the societal system. It controls and preserves the social fabric, stimulating social harmony and development, all under the guise of nationalism.

In Manoilesco (1938) evaluation, "Corporatism emphasizes that national collectiveness represents a superior entity with marked distinguish personality and attributes in relation to individuals. The State is not neutral or agnostic, but rather something ideally superior as to individuals who can be considered instruments serving the State".

The corporative regime comprises the individuals, groups in society and the State itself. The above stated political system allocates various different groups, for instance labor, government and industry, organized in a corporative manner.

In light of the set forth above, corporatism encompass unions as well. Labor organizations are *de facto* agents of the State in that sense. Mortati (1931) examines the corporatist regime under the viewpoint of a "new organization of productive classes in which the main objective is to prevent or mitigate conflicts using the State authority if necessary. The State coordinates all the productive activities among the societal groups in order to maximize productivity whereas all this organization is targeting the scope of the State" (emphasis added).

It is worth noting that the corporative system in its early stages was supposed to substitute Liberal economy, permeated by free market *laissez-faire*, invoking corporative economy criteria in which private interests were assumed as relevant only in their ancillary function in relation to the State, which was expected to set national guidelines firmly holding one exclusive objective: common good.

The rationale is equality. At least in theory, corporatism evokes an obliteration of unfair competitions between individuals and groups in society, in order to cope with conflict between capital and work that steams from free market.

The non-corporatist State ignored the friction that the relation capital/work could give rise to. An ideal equality and an apparent generalized liberty under the rule of law led to circumstances on which inequality and iniquity spawned imbalance of conditions among people. To worsen the situation, the work force class was not organized enough to face powerful

groups that could take advantage of this alleged societal disequilibrium. Corporatism emerges by and large as a panacea for all those problems originated after the Industrial Revolution and during the evolution of the early stages of capitalism in the first quarter of the 20th century.

Giannotti (1987) asserts that the actual role of unions in this context is to protect the interrelation and cooperation between labor, capital and government. The end result is the class warfare administration by the State, despite the fact that the State denies the very class warfare.

III. Corporatist legal system in Italy

The major factor of the Corporativist doctrine is the organization of social forces mixing the public and the private sectors in a corporatism-style. In Italy in April 3rd, 1927 the Rocco Law was enacted to discipline collective labor relations and it comprised three chapters:

1. legal enforcement of unions;
2. labor courts and labor judges;
3. lockout and strike; pillars.

At the same year regulation of the law was created. This entire legislation surge was more than mere construction of a juridical private system; it was one of the main pillars of the new social system namely the corporatist legal system.

It is important to stress that the basic conception of corporatism seems structured to serve several principal purposes, and one of them is the protection of employee against abuses interrelated to the right of control that could be perpetrated by employers. Vulnerability to exploitation could be theoretically suppressed by State intervention.

The Rocco Law was promulgated under the fascist Council guidelines whereby the primary basic norm was the sheer labor organizations control by the State.

As formulated in the Rocco Law, only one single union is permitted to represent each category of workmen. And each union represented not only unionized employees got the cohort being able to establish collective bargains that were binding for the entire category.

Rosado (1937) asserted that Labor Law and Employment Law Courts were responsible to enforce the above-mentioned collective bargains. The creation of these specialized courts banned officially the self-defense of each category.

In essence, strike and lockout were illegal in virtue of anti-economic and anti-social features which were considered thereby anti-national. Strike and lockout were crimes.

In Italy, after promulgation of the 1947 Constitution, only some remaining formal aspects of registration are required in connection with the creation of unions.

According to Galantino (2000), the Italian constitution allows private freedom in light of labor organization and concerning the scope of unions action.

IV. Corporatism and labor organizations in Brazil

According to Romita (1976), legislation encompassing Brazilian unions soon after the creation of the Republic rendered certain degree of freedom in connection with plurality and representation. However, in view that historically Brazil was basically an agrarian country, the framework of labor organizations was still remarkably weak in the beginning of the 20th century. Notwithstanding some demonstrations of organized labor, such as strikes and workers agglutination, unions did not evolve.

In relation to its labor market historical framework, until May 13, 1888 slavery in Brazil was lawful. The country was based almost entirely upon rural work. Coffee plantation system was dependent on slave work.

After the abolition of slavery, the workforce that came to replace the work that slaves were undertaking was European, especially from Italy. And the Italian workers have brought the basic ideas of unionism and labor organization that was spread broadly in the old continent. The first Republican Constitution in Brazil, promulgated in 1891, established association rights in that sense of openness to new ideas and immigrants were bringing from Europe. The decree 979, enacted in January 6, 1903, allowed professional workers in agriculture and rural industry to organize themselves by means of unions in order to protect their interests.

The rural absolute predominance of the country reverberated in the content of legislation. In spite of the fact that the law has given rise to the creation of rural unions, in virtue of the

primitiveness of general labor conditions, the incipient rural labor movement did not encounter a prolific ground to boom. Nonetheless, the country was experiencing some incidental industrialization and workers of this sphere of society as well with workers in commerce starter to vindicate labor organizing rights analogous to rural workers. In 1907, the Law 1637 was enacted in terms of originating the possibility of workers in any kind of profession to organize themselves with freedom of association with the scope of labor protection. Union plurality was also enforced by the law.

The incipient union structure that has thrived was not strong enough to survive the revolution that Vargas gave rise to in 1930. It is relevant to highlight that in November of that same year Vargas created the Ministry of Labor, which is instrumentally fundamental in terms of State control over broad labor aspects of the nation. Specified regulation (decree 19.770) enacted in 1931 rescinded unions autonomy submitting them to the power of the State. Thereafter, unions were mere ancillary entities of the government by means of chambers of conciliation and judgments regulating the conflicts between employers and employees, among other functions.

Essentially, the regulation can be considered as pillars for the creation of a corporatist union model in Brazil.

Decree 19770: in March 19, 1931 these decree created Union Association norms. The union is defined as an organ of collaboration in "unicidade" (no pluralism). There is a prohibition of any intercourse with international entities and there are hypothesis of State intervention in the labor organization. The state delegated public functions to the unions, such as the right implement and administrate employment agencies, cooperative entities, health services, schools and other philanthropic entities.

The above described decree determined that each branch of labor activity should be compressed in one category for each union. The category comprised workers exerting identical, similar or interlocked professions. Such measure constrains the freedom to determine the union framework within the professional sphere.

According to Joaquim Pimenta (1957), unicity (geographical prohibition of more than one union in each municipality – which still exists in Brazil to date) representing the profession

as its exclusive organ is an essential device for the efficient cooperation between the union and the government.

Unicity consists in an evident control device over unions. This is so because it facilitates the state control over unions and inhibits by means of law the creation of competition between unions that could generate a natural development of the labor organization structure. And any developments in terms of efficiency and complexity could hinder state-controlled union ambit.

Corporatist union is the emblematic outcome of Vargas specific policy over the 1930s, on which for Gomes (1999) the insertion of trade unions in the machinery of the State and in the body of laws was an underlying premise.

Actually, Gomes (***opus cit***., 565) is very insightful by saying that the authoritarian State overpowered unions. This assertion does not indicate that unions were neutralized or eradicated. For Gomes, the State "absorbed" the unions and further to that, transformed unions into a ramification of the State concerning workforce and professional spheres. It was "the end of the real union".

Some labor rights were obliterated during the interregnum in which the Brazilian State had the power to control the major aspects of unions' machinery and functions. Freedom of association did not exist and the right of association was not exerted voluntarily.

Notably, the 1934 Constitution formally reestablished autonomy and plurality within the Union sphere. In fact, a revolution happened in the state of São Paulo against the dictatorship and domain of Vargas over the whole country. São Paulo lost the war, after numerous deaths, but managed to force Vargas the promulgation of the new constitution. That is the reason why some aspects of the new Carta Magna were just a formal method of legislation in order to compose insurgency.

In practice, the Government could formulate decrees with force of law. Therefore, regulation concerning unionizing and union relations kept all the former rigid corporatists principles that existed prior to the 1934 Constitution.

In November of 1937, Vargas overthrew all the opposition in a political and military movements that ensued the so-called "New State" creating a new constitution in which the

entire union ambit and labor organizations context were almost literally an emulation of the fascist *Carta del Lavoro*.

Despite the fact that the constitutional letter allowed professional freedom of association and freedom in unionizing matters, the government control and influence upon internal structure of unions became Draconian. The paternalistic position of the State became so strong (and not only in the labor concept) that to date it seems to be remarkably indelible.

The Constitution of 1937 presented the outlines of unions major features:

1. protection of labor rights and professional interests of members;
2. organization of rights and duties concerning the relationship between employers and employees resulting from the conditions of a specific economic activity by means of collective bargains (collective labor agreements or collective labor conventions);
3. collaboration with the State upon solving labor conflicts related to the interests of the respective members.

Article 140 of the above-mentioned Constitution determined that the means of production of the economy should be "organized in corporations which, as representative entities of national labor forces, within the protection of the State". Those "corporations" were considered by the Constitution as "organs exerting delegate functions of the public power" (emphasis added).

Union's regulation came to a more definite format in 1939 by means of the decree number 1402, which explicitly consolidated unions' geographical exclusivity of representation (maximum one per city).

This type of configuration in labor organization infrastructure described above virtually eliminated any form of competition among unions and was transposed into the CLT - Consolidação das Leis do Trabalho - in 1943 and are to date still enforceable. All the subsequent Constitutions in Brazil (1946, 1967, 1969 and 1988) adopted the same formal model based upon freedom of association as a mere formality, whereas the real system lacked plurality, autonomy and freedom.

The consolidation of labor legislation- Consolidação das Leis do Trabalho- which the acronym is widely known in Brazil as CLT, provides in article 579 that union tax should be paid by all members of a specific economic or professional cohort. The fact of the matter is that what defines the obligation to contribute is the relation between the worker and the determined labor category or profession. Federal Constitution in article 149 and the tax code in article third corroborate the mandatory tax nature of the set forth above union contribution. Such a contribution does not depend on the will of the employer or the employee.

The end result of this unions system not based on real representation of constituencies, but rather on mandatory taxes, is a myriad of unions spread all over the country. Unions occur massively even in non-industrialized regions. And further to that, the number of unions in Brazil is astonishing. As of September 26, 2008, formally registered unions according to the Ministry of Labor encompassed 11847 [1].

The Brazilian Federal Constitution in article 8 provides freedom of association, professionally or in terms of unionizing. Nevertheless, section (incise) IV of the same article determines that membership is irrelevant in a reference to mandatory tax or union contribution (contribuição sindical). Employees, domestic employees, self employees, independent contractors are all obligated to pay the union contribution related to their profession or category.

A federal bank (Caixa Econômica Federal) keeps specific accounts classifying each one of the benefited labor organizations to which, pursuant the articles 588 and 589 of the CLT, the money should be distributed in the following proportion:

I. 5% to the correspondent Confederation;

II. 15% to the correspondent Federation;

III. 60% to the correspondent union;

IV. 20% to the "employment and salary special account".

The "employment and salary special account" is administered by the Ministry of Labor which can designate the distribution of this money.

Untimely union contribution entails 10% fee (penalty) in the first 30 days with an additional of 2% per month plus interest of 1% per month and monetary adjustment.

Cases in which there is no union contribution payment at all require judicial execution promoted by the labor organizations. This legal action have to be filed in labor courts in virtue of the specific labor or employment jurisdiction, a notable characteristic of current corporatism in Brazil. The constitutional amendment number 45/2004 corroborates the jurisdictional competence of labor courts to adjudicate any litigation connected with the legal execution of union taxes/contributions.

Pursuant article 149 of the Brazilian Constitution of 1988, only the federal government or the federal legislative branch have the power to create social contributions on the interests of professional or economic categories; which means that states and municipalities cannot create union taxes or contributions.

Union dues can be refuted by workers if the labor organization does not offer any assistance or in the absence of membership. In effect, a procedure of this nature will take a Herculean effort by the worker. However it is technically feasible.

Employers have the duty to union contributions in virtue of the inherent taxation nature of these payments. According to article 578 of the consolidation of labor legislation- CLT- the factor that generates the obligation to pay the mandatory tax is the classification in a specific economy category.

In case of legal entities that perform a variety of activities, the method to ascertain how to classify in which economic category is based upon the prevailing or preponderant activity. Generally, the brackets involving the above-mentioned union contributions made by employers and legal entities vary in accordance to social capital (0,02% to 0,8%).

Unions monopolize labor representation by law. Workers can be represented by only one union in each segment of profession or category within a municipal geographical range. Therefore there is no competition among unions. Unions have certain autonomy but workers haven't acquired organizational freedom. Such model is a hybrid feature of unions in Brazil mixing elements of liberal and corporatist characteristics. Such phenomenon obstructs the country to ratify the International Labor Organization – ILO Convention number 87 [2].

In that point pension funds could be the salvation for unions if mandatory contribution (and no plurality principle thereof) or the lack of competition are suspended. This is so because

private pension plans with the scale of many participants could give unions the framework to subsist. Perchance the current system prevent any major development of pension funds in trade union field precisely because there is no need to create new mechanism to gather new members.

After the promulgation of the 1988 Constitution some aspects of corporatism were obliterated or mitigated. The right to strike and lockout are good examples to corroborate this assertion. The fact that unions began to bear more independency to organize and to negotiate without State intervention adds another important element to the interrelationship between State and union power. At least legally the government does not have autonomy to intervene in unions internal issues.

Collective labor agreements or collective labor conventions can be performed between Unions and employers. The difference involving collective labor agreements and collective labor conventions is basically:

1. collective labor agreements: consist in a collective bargain encompassing only one specific union and one or more correlated employer (e.g. company or companies within the same economic activity);
2. collective labor conventions: consist in a collective bargain affecting two or more unions and the entire category of workers represented by those unions.

The maximum interstice of the set forth above collective labor agreements and collective labor conventions is two years, and it varies within this ambit. After this time period the collective bargain should be renewed (ratified again) or some contractual can be added or subtracted.

In spite of the inherent increase of the union action spectrum, the 1988 Constitution also confirmed union's monopoly of representation and increased the power of labor organization to tax the constituencies not just in the sense of union tax but also by dues (assistance contributions) and Federation and Confederation taxes.

Central unions and workers confederations were strengthen by constitutional provisions allowing these entities to erect framework and inhibit plurality. All the scenery still presents an external freedom of association label.

The lack of plurality (unicidade) implies in the following systematization (in accordance with ILO's Convention 87, Article 5):

1 Unions;

2 Federations;

3 Confederations.

Federations represent a minimum of five unions comprising the absolute majority of a specific group of activities or identical, singular or connected professions. Confederations represent at least three union Federations. Federations or Confederations do not have the right to affiliate with international organizations of workers and employers.

It is important to highlight that this unitary system has marked ramifications in each sector of the unions' structure, thus mitigating the possibility of agglutination in working movements. There is no entity reuniting all the unions. This is a task for the State as the main organizer of social movements. And this concept derives from the corporatism idealized during the Vargas government, in which there is no space for any social organization outside the sphere of State control.

Freedom of association in a monopolistic labor environment is hard to be knowledgeable. But union leaders in Brazil claim that labor organizations need to keep the monopolistic framework in order to survive. Otherwise, following their line of thought, worker would be completely vulnerable under the capitalistic malignant scopes of employers.

So far as that is concerned, to the present there is hardly any reform interlocked with the corporatist union system and employment growth, labor force participation or unemployment rates for instance.

Actually, whatever proposition to change the labor system in Brazil is charged by many academics and pundits, unionists and part of society as an attempt to revoke labor rights and to destroy all the history of workers legal protection. So far this speech is similar to a dogma, whereby discordance or refutation against unions are sometimes reputed as an act against democracy, workers and the State.

It is important to underline that there are numerous positive situations in Brazilian history in which unions performed a very relevant role in the workers' favor. There is no doubt that, particularly in the southeastern Region, unions have been a fundamental player in the organization of workers.

Especially in the industrial field, the union role in the development era of the 1970's is undeniable in terms of defending the constituency's interests, protecting and giving favorable labor meanings to workers. Using the former presidential example, Lula has built up his career upon that glorious time when Brazil was growing like China is growing for the last years. In the 1980's labor organizations had multiples achievements on their behalf. The current state of development of collective bargaining in Brazil is rooted in this context as well.

Glorious times gave rise to unions to increase labor market rigidity. It is a fact that today Brazil is losing space for other economies in the global market in virtue to the lack of change in its labor and employment structures. It is undisputable that minimum requirements of labor and employment protection have to be irrevocable. However, since virtually every single aspect of the employment relationship is defined either by the Constitution, the CLT or sparse regulation, the labor system in Brazil is tremendously constrained in terms of freedom to contract between employer and employee.

Due to the fact that the Constitution itself outlines many elements of labor contract, a major labor principle consists in the unwavering condition of labor rights. And as a consequence, the terms of the labor contract became roundly rigid.

The Brazilian work market has to be adaptive. Global circumstances are immensely propitious to adaptations in labor market institutions and labor and employment regulations. Income inequality has stabilize and even reversed in recent years, but to a palpable extension the world demand on commodities and economic solidity hand in hand with a major modification in labor market institutions, regulations, and interventions could give rise to an economic development comparable to India or China. Poor public policies in labor field, intrinsic to the corporatist background, still obstruct development and defalcate the country's wealth.

Surely it is not correct to compare China as a role model in the labor area. The common sense bar heightening of labor relations in a way that is detrimental to workers' dignity. But

delineating details and intricacies of labor relationship in the text of the Constitution and maintaining a body of legislation that goes back to fascist group of laws is an act that can undermine any attempt to modernize the Brazilian society.

A possible way to move toward modernization involves the introduction of alternative methods for syndicates' fund raising. Since 2001 the country's trade unions are allowed to create pension funds for unionized members; nevertheless, the current system obliterates that efficient method of encouraging association. It is worth noting that the importance of private retirement plans in the United States (among other developed countries) achieved such a tremendous relevance in recent times that some of the most important unions strategies for collective agreements started to be guided by these, in several professional categories. In that sense, the American Private Pension System has ceased to be a secondary aspect of the overall labor agreement, and began representing a preponderant element in labor negotiation procedures, in opposition to what applies to Brazil, where chances of taking advantage of such windows of opportunities are left unexplored.

It is of our understanding that the picture framed in this article should be used to guide changes from a more coercive to a more spontaneously advantageous model of attraction of works; a shift by which, instead of considering to join a union because that is mandatory, a worker will think about jointing it as a strategic investment in her career. Moreover, it is unlikely that Brazil will achieve the so-called “full freedom”, established in the International Labour Organisation Convention n. 87, Article 3 (1) without the formal ratification of that convention, which we also see as a essential step toward progress of labor-employer relations.

V. Conclusion

Corporatism in Brazil has a manifested influence of Mussolini’s program. Despite the fact that even Italy itself has not maintained the corporatist legal framework to the present date (it was actually changed after the II World War), Brazil opt to maintain corporatist model, by means of legislations that were inspired on Mussolini’s *Carta del lavoro*, as one can find in two fundamental articles of the 1988 Constitution, dealing with labor issues.

Brazil's main labor and employment regulation was promulgated in 1943 (CLT). It emulates *Carta del lavoro* and is presently enforceable. Unions depend on the State’s outdated

labor policy to maintain the status quo. The number of existing unions is astounding and connotes the wide spread motivation avoiding alteration in regulation or legislation.

In numerous occasions some politicians have tried to suggest modification in the labor system, never in an emphatic manner it is pertinent to say. There is an evident political willing to change the aforementioned labor context in order to increment jobs. Nevertheless, changing this policy has been proven to be a tremendous political onus that nobody is willing to undertake. It is indisputable that social protection and social justice have to prevail in any labor/employment reform. It is a matter of updating the Brazilian legislation and enhancing the number of workers within the formal market.

It is a fact that after the promulgation of the 1988 Constitution the legal structure that ensued state intervention upon labor organizations came to an end. But still politically there is a palpable dependence of unions in relation to the government's labor policy. For example, articles 7 and 8 of the Constitution are considered a reflex of CLT within the constitutional text (celetização da constituição**).**

Given that there is still today a union mandatory tax for workers, even for those not unionized, representation is solidly prejudiced in the sense that unions do not need efficiency or efficacy to exist. A symptom of that union protection by the State is the small number of pension funds that are created by unions, even if that is possible since a new legislation of 2001.

Significant achievements in the labor field in Brazil must be recognized thought. Especially during the 1970s and 1980s, unions situated mostly in the Southeastern region have proven to be palpable protection elements in order to improve the organization and standard of living for unionized workers. However, the above-referenced achievements should not be the reason to instill among the national believe that unions have the divine right to avoid any change in their representation design grounded on past victories.

Therefore, taken into account the origin of the Brazilian labor model and some of the present consequences of that model, some legal reformulation is indispensable. Unions should take taxes in accordance to the actual benefit they render to their constituency. Some unions are competent and already manifest such performance, notwithstanding a number still lack real labor representation objectives.

Another type of change involves fund raising strategies for Unions. One of the main alternatives for unions to entice membership in this new global environment is creating pension funds. As mentioned, Complemental Law n. 109 allows, since 2001, unions to develop the so-called instituted pension funds. Very rarely in Brazil unions have started pension funds for their constituency after that, and every mean is important to divulge such a relevant information to improve the union system. Members see their best interest preserved since their unions present them private retirement supplement to Social Security, and new membership can happen given that workers statistically try to find form of accumulation as to times of retirement. United States are a good example of that method involving unions and pension funds.

The patent immutability in the labor and employment legal environment is arguably an obstacle to the Brazilian economic development. In Brazil, the law encompasses virtually every aspect of the relationship between employer and employee. The main premise is that the employee should be protected in all aspects of her labor life and cannot decide for herself. This is so true in as much as the discharge results in overall 20% labor law suits – employee against employer – even though the employee has to sign the legal term of discharge.

As Balzac once said, a country with too many laws has no law. And taken as a whole, labor unions in many fields are not involved with the real protection of their constituency. Thus, the Brazilian State in a sense reverberates the above-mentioned idea of refusing to modernize union model and employment and labor legislation.

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[1] http://www.mte.gov.br/sistemas/cnes/relatorios/painel/GraficoTipo.asp

[2] (…) Article 2

Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization.

Article 3

1. Workers' and employers' organizations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programmes.

2. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

Article 4

Workers' and employers' organizations shall not be liable to be dissolved or suspended by administrative authority.

Article 5

Workers' and employers' organizations shall have the right to establish and join federations and confederations and any such organization, federation or confederation shall have the right to affiliate with international organizations of workers and employers.

(…)