

**Labour Market Institutions in the Brazilian
Variety of Capitalism since 2003:
Evidence from the Construction Industry**

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Abstract

This research project seeks explanations for an inconsistency between onerously-regulated, stable labour market institutions (LMIs) and everyday employment in the Brazilian variety of capitalism. The study adopts a new institutionalist approach and findings are based upon qualitative research on industrial relations in the construction industry. A key focus of the thesis is upon dynamic institutional interactions, known as *complementarities*, and their influence upon political processes relevant to labour. This aims to contribute to the understanding of institutional change and continuity during a key juncture in Brazilian development; a period of sustained economic growth and stability, accompanied by falling poverty and inequality under a Workers' Party (PT) government since 2003.

Chapter 1 introduces the new institutionalist approach and why it offers the most appropriate methodological set of tools to address the research problem. Chapter 2 discusses the relevance of the historical period analysed (2003-2015) and discusses the Brazilian variety of capitalism in light of the coordinated, hierarchical and liberal models. Chapter 3 traces the history of LMIs in Brazil and finds an embedded historical legacy still influential in the contemporary workplace. Chapters 4-6 enter into the construction industry case study element of the thesis with chapter 4 an exploratory analysis of employment relations.

Networks of mistrust are identified as a source of the inconsistency between the regulated LMI system and reality of employment. Labour representation and regulation are identified as two key issues analysed in more detail in the remaining two chapters (5 and 6). From a new institutional perspective, explanations for the inconsistency identified are found to be related to a composite set of interrelated factors with historical, informal, formal and rational choice elements. The research findings address more reductionist and static accounts as well as some popular misconceptions on the Brazilian LMI system.

Within comparative capitalisms debates, Schneider (2013) categorises the Latin American institutional model as hierarchical. A further aim of this research is to extend upon this model with an analysis of LMIs in the Brazilian variety of capitalism. Brazil, in its stable and influential trade union institutions is argued to represent a variation of Schneider's hierarchical market economy.

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Author's Declaration

I hereby declare the work presented in this thesis to be my own and none of the work has been previously submitted for any academic degree or award. Appropriate reference has been made when citing the work of others. All translations from Portuguese and Spanish language material are the author's own.

This thesis is dedicated to the memory of my Aunt Anne

Introduction

In 2011 there was a wave of optimism surrounding Brazilian development. Economic growth and stability had been sustained for almost a decade and was accompanied by unprecedented and dramatic reductions in poverty and inequality. The positive trajectory captured global attention as part of the ‘BRIC’ emerging markets trend, particularly as the sustained development bucked trends in the global economy after the 2007 financial crisis. The consolidation of growth, stability and falling poverty/inequality is described by the Brazilian Institute of Applied Economic Research (IPEA) (2012:13) as the ‘inclusive decade’ (2001-2011) and led influential international commentators to ask ‘Does Brazil Have the Answer’ (Nocera 2014: A19) and to observe that ‘Brazil Takes Off’ (The Economist 2009: cover). Many cited the selection to host the 2014 World Cup and the 2016 Olympic games as iconic of the ‘new’ and ‘booming’ Brazilian reality.

The starting point of this research project is located elsewhere; the construction site of the Abreu e Lima Oil Refinery in the Port of Suape in the northeast state of Pernambuco. In March 2011, tens of thousands of workers went on strike; highways were blocked, buses were set on fire and there were confrontations with security forces, scenes witnessed first hand¹. The unrest was part of a national mobilisation of construction workers with strikes spreading almost simultaneously across the high-profile Growth Acceleration Programme (PAC) projects. Hundreds of thousands of workers were involved leading to the deployment of the National Guard in the remote Rio Madeira hydroelectric plant sites. The main contractor and one of Brazil’s largest construction companies, Camargo Correa, evacuated 20 thousand workers from the same site (Jimenez and Bacoccina 2011).

Certain characteristics of the widespread labour unrest stood out. Initially, it ran contrary to the optimistic discourse on Brazil’s inclusionary growth trajectory in the 2000s and the labour-friendly credentials of Luiz Inácio Lula da Silva’s (Lula) Workers’ Party (PT) government in power since 2003. Secondly, in its scale and number of workers involved it represented mobilisation similar to and not witnessed since the emergence of ‘new’ trade unionism at the vanguard of democratisation movement from which Lula and the PT emerged in the 1980s. Related to the first two observations; the workers mobilised spontaneously, confronting employers, the state and in many cases their designated trade union.

¹ Also see accounts in *Jornal de Comércio* (2012), *Estado de São Paulo* (2011), *Veras* (2013) & *Jardim* (2015)

The Research Problem and Case Study

An initial inconsistency is identified from the case study and this represents the research puzzle or question. Within Brazil's system of labour market institutions (LMIs) there is a vibrant labour movement that emerged in the 1980s contributing to the survival of collective and individual labour rights contrary to international deregulatory trends and related globalisation pressures in the 1990s. This was followed by an increase in state involvement in the economy in the 2000s under a labour-friendly government with unprecedented levels of growth, stability and falling poverty and inequality.

The widely-reported cleavage factors for the dramatic episodes of worker dissatisfaction leading to the explosions of unrest across the PAC sites in 2011 represent something of an anomaly. Precarious work, insecure and unregulated working conditions, insalubrious accommodation, inadequate meal provision and unpaid wages contributed to a high incidence of workplace accidents and incidents categorised by the relevant authorities as 'people-trafficking' and 'conditions analogous to slavery'. The Brazilian LMI system and its 'labour-friendly' trajectory since the 1980s and recent development path since the 2000s is *inconsistent* with the reality at the workplace level. Long-standing stable institutions (employment and health and safety legislation, regulatory, representative and deliberatory tripartite organisations) exist to address or even prevent the vast majority of the cleavage factors identified.

Within Cook's (2012: 268) discussion of contemporary research agendas and approaches to political scholarship on labour in Latin America, the research problem represents 'an empirical puzzle that needs explaining' rather than a suitable problem chosen 'to test quantitative and macro-comparative analysis'. The period considered is from the beginning of the Lula/PT government in 2003, this corresponds with the majority of the IPEA's (2012:13) 'inclusive decade' of 2001-2011. Analysis extends to 2015. The recent economic downturn since 2014, although referred to in the thesis, is not within the scope of this research project. The workplace-formal system inconsistency within the historical period analysed suggests that falling inequality and poverty and economic growth and stability cannot automatically be presumed to represent significant structural change to the long-standing underlying institutional reality.

On this contemporary period of stability and growth in Latin America, incorporating the 'inclusive decade' and PT governments in Brazil, Cook (2012:266) argues for 'the need to

examine how labor organizations are faring in new economic and political contexts' yet observes that there are 'relatively few studies' on this new reality, speculating that the 'lack of attention might be due to scholars' investment in the earlier claim during the 1990s that forecast labor's secular decline'. Claims, as argued across this thesis, that are not substantiated by the socio-economic and LMI trajectory witnessed in Brazil since the start of the millennium. Again, this is a relevant consideration when considering wider research agendas and the intended contribution of this thesis.

The starting point for the research was the labour unrest at high profile infrastructure projects that were somewhat iconic of the new Brazilian reality of dynamic development. The causes of site-level conflict represent deeper structural institutional tensions. Within a society historically characterised by poverty, inequality and a related intense exploitation of labour, the growth strategy and development within a formal system characterised by strong labour institutions at certain institutional levels, regions and industries can be expected to bring to the fore certain tensions in the Brazilian development model. The workplace reality referred to in the research problem represents what Schneider and Karcher (2009:2) on Latin American labour markets describe as 'disappointing' results and in employment terms, corresponds to what Schneider and Soskice (2009:34) describe as the 'large share of the workforce [...] in badly-paid, insecure jobs' (see ch.2 part 2.2).

The state-led growth initiatives such as the PAC, were accompanied by policies to strengthen and reform the LMI system through social dialogue. A key example is The National Labour Forum (FNT) initiative launched in 2003. There was also a successful ongoing real minimum wage increase policy and employment protection policies in response to the economic downturn since 2014. Within the construction industry there was a prompt and thorough institutional response to the labour problems identified at the PAC sites in the tripartite National Commitment for Improved Labour Conditions in the Construction Industry (NCILC) initiative.

Part of the research problem to be investigated is that such policies envisaging improvements for labour and stronger institutions take place within an embedded institutional model with a formal LMI system characterised by substantial employment rights and protections and stable tripartite institutions. However, the de facto regulation of the formal system is fragmented, uneven and unpredictable and mostly applied retrospectively. It varies significantly between region, industry and institutional level.

Fieldwork observations identify inconsistent regulation within the same workplace (see ch.6 part 6.3). Resultantly, the partially effective formal system coexists with and allows for the persistence of long-standing employment practices closer to the exploitative reality of the 19th century than the formal provisions.

Any labour related policies that envisage change and transformation are introduced upon this embedded institutional structure characterised by tensions between what Cardoso and Lage (2007: title) describe as the ‘facts’ – the long-standing formal system and the ‘norms’ the everyday practices that can be traced to before the introduction of the existing LMI system in the 1930s (see ch.3). The relevant policies over the period analysed and the dynamics of employment relations should shed light upon some of these underlying institutional tensions in the Brazilian LMI system.

Within the context of the research problem, the construction industry is considered to be a valuable case study for multiple reasons. The research question originates from dramatic scenes of revolting workers witnessed first hand at the construction site of one of the high-profile PAC infrastructure projects. Construction was a key driver of economic growth even in the midst of a global economic crisis. In turn the high growth in the sector originated from public investments as part of the identified increase in state participation in the Brazilian economy from the 2000s after the ‘stabilisation’ decade of the 1990s (IPEA 2012: 40 see ch.2).

The Growth Acceleration Programme (PAC) was one of the most high-profile examples of public investment driven growth. R\$ 1.9 Trillion (equivalent to 589 billion USD at the time of writing) was invested between 2007 and 2015 (Ministério de Planejamento 2016). Importantly, and related to key characteristics of the Brazilian capitalist model and its LMIs, part of these resources are worker and employer contributions to employment insurance and severance funds - FAT (R\$220 bn in 2015) and FGTS (R\$4.1 bn) (BNDES 2016). These funds are overseen and partially administered by trade unionists (see Schneider 2013: 172-173; Soares 2013:549-550 in ch. 2).

Together with the PAC stimulated infrastructure boom, there was corresponding growth in residential or light construction; again an intentional growth strategy stimulated by public finance initiatives. The Minha Casa Minha Vida (MCMV) programme to facilitate home-ownership amongst lower income families was an important source of the high-growth witnessed in the construction industry and somewhat iconic of the emergence of a ‘new

middle class' (see Neri 2012; Pochmann 2012) during the 'inclusive decade'. The residential construction programme supports both the building and purchase of homes with subsidised credit from the state Caixa Economica Federal bank. As of 2015, 2.2 million residences had been built as part of MCMV, described as one of the world's largest housing programmes, mobilising R\$139.6 billion in loans with the government investing R\$114.9 billion in subsidies for low-income families (Portal Brasil 2015).

Considering the scale, impact and resources associated with the PAC and MCMV programmes; the first reason for researching the construction industry is its heightened relevance to contemporary Brazilian development. Direct and indirect state involvement in the construction industry represents a key part of the wider resumption of industrial policy by the PT/Lula government since 2003 (see De Toni 2015 and ch.2). Part of the research problem on the inconsistency between formal employment provisions and the workplace relates to a lack of any corresponding increase in effective institutional involvement in the *employment* aspect of the intense infrastructure and residential construction growth. This raises questions on the PT/Lula growth strategy and is evidence of the described tensions between the objectives of stronger labour institutions and sustained state-promoted dynamic economic growth within a society historically characterised by exploitative and unregulated employment.

The second reason for studying construction relates to existing scholarship on labour in Brazil from both international and domestic academics. Given the relevance of new trade unionism as part of the democratisation process, from which Lula, the PT and the largest peak association, the Central Única dos Trabalhadores (CUT), originate, there is understandably a wealth of analyses on the institutional dynamics and trajectory of trade unionism in the Sao Paulo automobile industry. The identified academic tradition has been assisted and sustained by the geographical proximity and interaction with Latin America's two most influential universities, the University of Sao Paulo (USP) and State University of Campinas (Unicamp).

From the 1980s to the present day there is a steady stream of influential scholarship based upon labour and trade unionism in the Brazilian automobile industry. Within the most influential contributions on Brazil over the last three decades there is a marked tendency to concentrate analysis on the metalworker in the automobile industry as iconic of the working class and trade union movement. Almeida (1996) Antunes (1988, 1991), Araujo

& Gitahy (2003), Boito (2003), Humphrey (1982), Marcelino (2004, 2008), Ramalho (2005), I. Rodrigues (1999, 2002), L. Rodrigues (1999), Santana (1999), Trópia (2004), all base their findings on labour and trade unionism in the automobile/metalwork industry example.

For this research, the much-studied automobile/metalworkers example continues to be of heightened relevance as it represents an essential part of the research question. The evolution of employment relations in the ABC² Paulista is the main empirical evidence of the coherent and productive industrial relations within the Brazilian LMI system, what Rodrigues (2002:154) describes as ‘conflictive cooperation’ and where Brazilian labour representatives participate at board level in German multinationals (Daimler AG 2016). In this sense, the ABC/Automobile standard of labour relations is a ‘best case’ example and the research question relates to the inability for such institutional dynamics to be reproduced in other sectors and regions.

In comparison with the automobile industry, construction is therefore something of a ‘worst case’ example, as the cleavage factors contributing to the striking PAC workers and innumerable instances of employment irregularities would suggest. This is an intentional choice of case study for the following related reasons. Focussing upon a ‘worst case’ example better captures the embedded institutional tensions described in the research problem and evident in the conflict at the workplace level. Solely analysing labour in the automobile industry and its trajectory over the last 30 years may provide an overly optimistic impression of employment relations in Brazil.

The institutional dynamics of the ABC standard are considered in this study as a somewhat region and industry specific ‘pocket of efficiency’. The idea of pockets of efficiency and the related idea of an embedded layer of institutions where, rather than transform the state, efficient institutional layers are added to the existing fragmented structure has been argued previously on Brazilian institutions by Guedes (1986:105) and Evans (1995:61) (see ch.2). This research applies the established concept specifically to labour market institutions.

Construction work is arguably more representative of employment across Brazil in the 2000s and 2010s than the automobile industry pocket of efficiency. According to Dieese

² ABC refers to the ABC Paulista region composed of the municipalities of Santo Andre, Sao Bernardo and Sao Caetano do Sul. The most intensely industrialised region of Brazil where the automobile industry has traditionally been concentrated. It is considered the birthplace of new trade unionism and the related emergence of the PT, CUT and president Lula.

superintendent Aguiar (2013: interview) the workers employed at the PAC sites ‘were supposed to be the poster boys and girls’ for the new employment reality in Brazil under the Workers’ Party (PT). From a socio-historical point of view and related to the ‘worst case’ logic, construction traditionally absorbs unqualified male workers often migrants from the most deprived areas of the country. This characteristic is widely recognised by relevant parties and such a description is included in the majority of collective bargaining agreements (CBAs) across the southeast (All Sao Paulo State agreements, Rio de Janeiro, Belo Horizonte amongst others - Sistema Mediador 2015). This is also recognised in similar construction industry specific studies (See Rodrigues Costa 2013:17; Coutinho 1980:79; Cardoso & Lage 2007:133). It is therefore of increased importance for related debates on inequality, poverty and development.

It is argued that work in construction more adequately represents the average employment experience across Brazil than the metalworkers example³. There is a more even geographical distribution of the PAC and MCMV driven construction activity than the automobile industry, concentrated in large cities of the more developed southeast. Argued in chapter 6, the MCMV construction activity observed in a small provincial town over the period of a week, is likely to better represent the ideal type of employment in the construction industry than the more high-profile and dramatic examples from the PAC sites. At a Brazil-specific level of analysis the construction case study is an intended contribution of this research and a valuable comparative example to the much-studied institutional dynamics of the automobile industry.

Methodology and Fieldwork

The first half of this introduction discusses the research problem and its related sub-questions and the construction industry case study. This section summarises how the research problem will be analysed. This is predominantly a qualitative research project for the following reasons: firstly, the empirical research problem dictates qualitative methods. Explanations are sought for the inconsistency between formal labour market arrangements and observable employment outcomes. As per the new institutionalist approach described in more detail across chapter 1, these can be expected from LMIs, their history, formal and

³ Similar to the typical metalworker - gender specificity of the average worker is recognised though further discussion is not within the scope of this thesis. Studying the recent LMI trajectory related to female-dominated domestic worker category represents something of a valuable research agenda in both labour and gender studies. The construction/domestic worker household is something of a low-income stereotype in Brazil.

informal manifestations and interrelatedness the latter known as *complementarities*. Such relational, non-tangible institutional elements are not easily quantifiable.

Secondly attempts to quantify or establish relationships by reducing them to dichotomies such as the deregulation focus upon the relationship between levels of formal legislation and the reality of employment, neglect other equally if not more relevant variables such as enforcement levels and can therefore be misleading (see ch. 6, Deakin 2009:16, Lee & McCann 2011: 1; 2014:12). As Franzosi (1995:21) observes on strikes ‘anything that is not quantifiable is not included in one’s model’ and ‘things are left out not because they are irrelevant rather that they are non-quantifiable and/or do not fit into pre-existing models (p.375). For example, on regulation debates (see ch.6 part 6.1), Berg and Cazes (2007:14) describe how tripartite negotiation and collective bargaining - ‘important means for achieving a dynamic and responsive labour market’ are absent from indexes that attempt to provide quantifiable and comparative data on national labour market regulation.

Thirdly, within the Brazilian context of persistently high informality and evasion of employment legislation some scepticism is required regarding the quantitative data available. On Latin America, Cook (2012: 268) observes that ‘in many countries quantitative data on unions, in particular, remain fraught with problems, raising questions about the reliability of analyses that draw heavily on such data’. The incidence of workplace accidents, a common cleavage factor leading to spontaneous worker unrest, represents a good example of unreliable data. Takahashi et al (2012:978) estimate underreporting of accidents at 90 per cent and union and business sources consulted during fieldwork describe such a practice as commonplace (Marreta-MG directors, Paulo, Laura, Camargo Correa 2013: observations and interviews, also see ch.6). Furthermore, the coexistence of formal measurable employment arrangements with informal practices identified in the same supply chain, employer and even individual employment relationship casts doubt on the accuracy of formal data.

On income, fieldwork data from three different sites (Paulo’s company, Camargo Correa & Marreta-PE administration department 2013: observations) strongly suggest that evidence from wage slips is *not* an accurate reflection of what workers actually received at the end of the month. Dieese-CE’s Aguiar (2013: interview) argues that informal and

immeasurable employment arrangements are so pervasive, particularly in his home state that the credibility of official comparative income data is weakened⁴.

Explanations are therefore sought from fieldwork research on the activity of relevant tripartite LMIs and their strategic interaction. In light of the research problem, specific attention is given to *complementarities*. Franzosi's (1995:16) analytical approach to strikes is considered here to be similarly applicable to the dynamics of employment relations and LMIs where:

Strikes are not simply multiple actor phenomena (most of which never make it into the picture); they are also multiple-action phenomena. If there is a multiplicity of actors, each actor will engage in different actions.

Explanations for the research problem are sought from analysis of the strategic interaction between employers, the state and workers and their relevant representative institutions, taking care to capture the more subtle, less quantitatively measurable phenomena.

The principal methods used are semi-structured, informal and in-depth interviews with relevant state, business and labour representatives as well as individual workers together with participant⁵ and non-participant observation and mini-ethnographies. Such methods are traditional and well established in social sciences. They therefore do not warrant a specific chapter. A summary of the fieldwork research carried out and sources cited is provided in Appendix I of this thesis. The originality of the research is in the construction industry case study during an unprecedented and distinctive phase of Brazilian development characterised by stability, growth and falling inequality. The evidence-based approach utilising extensive local knowledge is also argued to represent a contribution of this thesis, particularly when considering alternative studies that solely focus upon immediately quantifiable variables.

Prior to starting this doctoral project, considerable local knowledge had been accumulated on the research problem identified. I lectured in anthropology, sociology and local economic development on law and journalism courses between 2009 and 2012 in Pernambuco. The nearby Oil Refinery in the Port of Suape was of considerable relevance to local and national debates across a variety of disciplines. It was during this period as a lecturer that the inconsistency between the discourse of inclusive and dynamic growth and

⁴ He makes specific reference to the lower average income in the state of Ceará than Piauí that he attributes to a greater tradition of off the books payments or *caixa dois* in the former state.

⁵ Participation limited to assisting in the distribution of pamphlets, newsletters & collective bargaining agreements for Marreta-MG, Sintepav-CE & Sticrmf unions and covering for one teaching session at Marreta-MG's EPOMG technical school.

problematic industrial relations in the workplace was identified. This previous experience expanded the scope of fieldwork as an established network had already been established providing privileged access to key sources.

The Fieldwork itself involved two visits; the first for a 3-month period between September and December 2013 and a follow-up visit in 2015 for two months. Sixty-nine individuals were interviewed (38 construction workers across three sites, 18 union representatives from seven different unions, seven business/employer representatives, four state officials and two academics). The interviews overlapped with 25 days of observations of LMI activity which included strike and picket actions, localised union interventions, inspection patrols & administrative duties, mediation sessions, social events and a public hearing. Research activities took place in the states of Sao Paulo, Minas Gerais, Pernambuco and Ceará.

The first fieldwork visit was undertaken at an early stage of the research process and followed what the established methodology literature describe as a ‘wheel process’. It ‘starts with empirical observation which leads to the development of a research proposal or conceptual framework’ and allows for a change in direction depending upon the information that arises (Burnham 2004:45). The actual research undertaken is perhaps best captured by Kitay & Callus (1998:108) on methods in industrial relations where

It is not possible to start a case study with a predetermined research plan. The art of a good case study is in being able to follow leads and pick up on interesting issues as they arise

The fieldwork started with a broad problem on the inconsistency between the institutional labour system and the workplace reality and related sub-questions on the difficulties in reproducing the coordinated LMI dynamics evident in the automobile industry and at the national level of industrial relations since the 1980s. Interviews and observations were intentionally open ended in order to identify the main issues from diverse groups and individuals with considerable accumulated experience.

This wheel or open-ended method of fieldwork research explains the absence of any substantive debate on skills within LMI debates in this thesis. The subject area, research agenda, question and approach discussed across this introduction identify with the varieties of capitalism (VoC) agenda where formation of skills or ‘vocational training and education’ represent an essential element and a significant institutional distinction between

the Coordinated Market Economies (CMEs) and Liberal Market Economies (LMEs) (see Hall & Soskice 2001: 7-8; Estevez-Abe, Iversen & Soskice 2001; Schneider 2013: 113-133). Skill-formation *did not* emerge as a relevant issue from the fieldwork analysis of industrial relations and related tripartite institutional activity. Business leaders interviewed (Ishikawa & Ferreira 2013: interviews) and related media reports (Konchinski 2011; Resende 2011) highlighted a chronic shortage of skilled labour in construction. This is not to say that skills are irrelevant in a given variety of capitalism rather there was minimal evidence of its relevance in industrial *relations* in the construction industry. Institutional activity observed was dominated by noncompliance and its consequences. This contributes to a *network of mistrust* (see ch.4) with *regulation* meriting more detailed analysis (ch.6).

Fieldwork is considered overall to have been a successful exercise. Sufficient data was accumulated to make informed and robust observations on labour relations in Brazil from the construction industry case study and to direct the analysis of this thesis and competently address the research question. Gaining access to some important sources was unsuccessful. Contact with representatives of the Sinduscon business unions in Minas Gerais and Pernambuco was not achieved. Opinions from the business union would have provided a complete tripartite perspective after comprehensive information was received from corresponding union and state officials. Similarly, numerous attempts to visit the Pecem Steel Plant construction site in Ceará, a highly informative site-specific case study for this research, were unsuccessful. Fortunately, the follow-up visit in 2015 coincided with a public hearing on the problematic labour relations at the site and a variety of first-hand accounts were received from union, state and Dieese representatives. A day was also spent in the company of three scaffolding workers recently dismissed from the site.

Successful access to a network was achieved, both in terms of ongoing contact with relevant tripartite representatives and workers that continued after the initial visit in 2013. This assisted significantly with the return visit in 2015. The familiarity with the day-to-day operations of the relevant institutions gained from observations allowed for analysis of activities over the entire research period from secondary data. Ongoing research of union activity was possible through the analysis of newsletters and social media activity, providing data on the activity of construction unions not observed first hand. The data reinforces the idea of uniformity in the regular patrol and inspection activities of the individual union presented in chapter 4 (see part 4.4.2). Accounts received from counterpart institutions such as the Dieese, Sinduscon and unions together with the

availability of secondary data compensated for the described difficulty in collecting primary data from other key tripartite institutions.

The fieldwork research/primary data is somewhat skewed towards trade union activity. Given the nature of the research question and related sub questions already discussed, this was an intentional research strategy. Union activity represents a key institution in the formal corporatist system and in the more coordinated solutions evident at the national level and in the ABC workplace. Fieldwork findings also observed union (in)activity as a major issue in Brazilian LMI and construction specific debates and therefore, like regulation in chapter 6, merits closer analysis in chapter 5. Thankfully, the unions were found to be the most accessible institutions during research and important gatekeepers in facilitating access to relevant public authorities, workers, construction sites and even business institutions and employers.

Within this thesis there is an observable regional concentration of data coming from the state of Ceará, arguably a result of the research process itself together with the identified relevance of the Pecem Steel Plant case study. Ceará was the final fieldwork destination. The accumulated information, network and know-how established across the research process meant that a more thorough and balanced set of primary data was gained in this region. This involved interviews and extended observations of the activities of both the heavy and light construction trade unions (Sintepav-CE and Sticcrmf respectively), interviews and observations (Juca 2013) at the local Labour Ministry Employment Relations Secretariat (MTE/SRT), extended on-site ethnography at a Camargo Correa site, interviews with the Dieese regional superintendent (Aguiar 2013 & 2015), president of the Sinduscon-CE (Ferreira 2013) business union and head prosecutor for the Public Labour Prosecutor (MPT) (Marques 2015). It was also possible to attend the public hearing on employment relations at the steel plant organised by the MPT, where contributions were made by a variety of tripartite representatives (see ch.4 part 4.4.3).

The follow-up fieldwork visit in 2015 was to Ceará aiming to carry out further research on the Pecem Steel Plant. The site was described as a ‘powder keg of labour unrest’ by state and union officials in 2013 and somewhat predictably, the scene of Brazil’s most prolonged strike in 2014. The Pecem site is of heightened relevance to the research problem given the complexity of employment relations leading to a breakdown in industrial relations that cannot be captured by quantitative analyses or more general and

reductionist accounts. The site has a highly active union and mobilised workforce, which together with the high profile of the development, has contributed to considerable inspection and regulation activity by the state authorities. Chronologically the explosion of worker unrest and prolonged strike activity comes two to three years *after* the problems observed at the PAC sites and the prompt and responsive national NCILC tripartite initiative to address the identified problems. It represents a compelling example of the difficulties of implementing policies for change and transformation in the context of the embedded institutional tensions described.

As already mentioned, it was fortunate that the visit coincided with a public hearing on employment relations at the steel plant site and access to workers was achieved. The fieldwork is similarly fortunate in that the bulk of the research took place in 2013 before the outbreak of the ongoing *Lava Jato* scandal in 2014 involving billions of dollars of illegal payments related to the construction industry. There was a marked reluctance amongst LMI representatives to participate in the research in 2015 when compared with the more welcoming and hospitable response in 2013.

The second half of this thesis (chs. 4-6) reflects the sequential logic of the fieldwork research process. Chapter 4 is a more open and exploratory study of employment relations at the three different institutional levels from which two key issues related to the research problem emerge; representation and regulation; analysed in more detail across the remaining two chapters, representation in chapter 5 and regulation in chapter 6. The chapters examine the relevant theoretical debates before applying them to the Brazilian LMI reality and then to the construction industry case study.

An objective of this thesis and something of an ongoing challenge was to produce a study that represents a balance between the analytical discipline and structure of an institutional approach with the industrial relations tradition of ‘rich narrative accounts’ from the workplace (Kelly 1998:7). This is consistent with Cook’s (2012: 268-270) observations on research agendas in studying labour in Latin America. She calls for a revitalisation of ‘sustained case-study analysis that relies on extensive fieldwork and which typically produces valuable inductive work’ together with greater engagement and cross-pollination with empirical work on Latin America as part of a research agenda to cover the recent period of unprecedented inclusive growth and stability.

Outline of the Thesis and Relevant Literature

The main basis of this project is fieldwork research on ‘an empirical puzzle that needs explaining’ (Cook op cit). Discussion and analysis of the relevant literature is an ongoing consideration of the thesis rather than the focus of a single chapter. The literature varies significantly depending upon the layer of analysis and specific focus and objectives of each individual section. For example, chapters 5 & 6 discuss the relevant literature on representation and regulation respectively before applying the arguments to the Brazilian context and construction industry case study. This penultimate section of the introduction summarises the main aims of the six chapters with reference to the relevant literature.

Chapter 1 discusses why the new institutional approach offers the most appropriate set of analytical tools to address the research problem. It further establishes two key definitions to be applied across the thesis: that of an *institution* and *complementarity*. The second half of the chapter introduces the more empirically based VoC approach and, given its importance to the research question, analyses the importance of LMI systems in the coordinated and liberal institutional varieties. The final part of the chapter introduces the hierarchical Latin American HME type leading into chapter 2 titled ‘the Brazilian Variety of Capitalism’.

The relevant institutionalist literature cited in the first half of chapter 1, from which important definitions and analytical parameters of the research project are established, is: Amable (2000) Crouch (2010) Hall & Taylor (1996), Thelen (1999), North (1990,1991,2003) March & Olsen (1989) Peters (2005) Steinmo (2008) Steinmo & Thelen (1992) Streeck & Thelen (2005) and Streeck (2009). The VoC approach discussed across the second half of the chapter obviously draws heavily upon the original publication (Hall and Soskice 2001), the section on LMIs in particular (Thelen 2001). The fourth part of the chapter discusses outcomes for labour based upon the liberal/coordinated VoC distinction drawing on debates and analyses from Archer (1998) Haagh (1999, 2011 & 2012) Pagano (1989) Hall & Gingerich (2009) Standing (1999, 2009 & 2011) and the ILO (2012). As already mentioned, the VoC approach applied to Latin America (HME) is based upon Schneider (2009, 2013) Schneider & Karcher (2009) and Schneider & Soskice (2010).

The objective of Chapter 2 is to establish the context of the research problem from a VoC perspective, i.e. LMIs in the Brazilian variety of capitalism in light of the hierarchical, liberal and coordinated distinctions. Accordingly, the same VoC body of literature already

listed is discussed in relation to the Brazilian economy. This chapter has the most quantitative element of the thesis based upon datasets from reliable international and national organisations (CEPAL, Dieese, IBGE, ILO, IPEA, OECD, World Bank). Referred to across this thesis, the positive trajectory of the ‘inclusive decade’ (IPEA 2012:13) is discussed further and presented in figure 2.10 and the idea of pockets of efficiency (Geddes 1986:105) is introduced.

To support the underlying assumptions of the research question, that Brazil has coordinated tripartite institutional characteristics and its recent trajectory does *not* resemble that of a liberal market economy, two qualitative interpretations of the Brazilian model are cited. These are Evans’s widely cited Embedded Autonomy (1995) and Lazzarini’s (2011) *Capitalismo de Laços* [Capitalism of Ties]. Further related to the research problem, De Toni’s (2013 & 2015) analyses of industrial policy are referenced to support the idea that considerable state-lead coordinatory intentions and policies *are* evident in the Brazilian model.

The third chapter looks at the historical legacies for labour and its relevant institutions in Brazil and is therefore reliant upon the established historical literature, which is discussed in light of the research question and within the parameters of the new institutional approach. The contributions to the Cambridge History of Latin America Collection (Bethell Ed.1984,1985,1986, 2008) are relied upon for a comprehensive history of labour in Brazil and this is assisted by the IBGE’s (2006) *Estáticas do Século XX* multi-authored collection to quantify certain key aspects of Brazilian LMI history (see ch.3 figure 3.1).

The historical chapter also relies significantly on Carvalho (2013) and Cardoso’s (2010) Portuguese language publications. Cardoso’s (2010: 332) comprehensive labour specific history on Brazil warrants specific attention in that it is a detailed account of the historical legacy that has bequeathed Brazil with a ‘very low threshold’ for acceptable employment arrangements. This represents an important element of the research question as this low threshold is evident in the day-to-day employment reality inconsistent with the more regulated LMI system and examples of effective coordination mentioned across the thesis.

Collier and Collier’s (2002) influential comparative study is important to a key ongoing consideration of the thesis discussed in this chapter: that the 1930s labour reforms represent a ‘critical juncture’ that informed the trajectory of LMIs across the remainder of

the century. This weakens the idea of trade union mobilisation in the 1980s representing a 'new' phenomenon. Consistent with and based upon Collier and Collier (also see Santana 1999), an important consideration of this thesis is that the dynamics of the 1980s were path dependent upon the existing system. This is contrary to ideas that it represented any type of systemic rupture. For the research question this means that the examples cited of successful regulation and coordination at a national level and the ABC workplace are also embedded in the existing system introduced in the 1930s.

Chapters 4- 6 enter into the fieldwork and construction industry case study of the research, therefore there is less discussion of the existing literature than in the first half of the thesis. Fieldwork data is summarised in Annex I. Chapter 4 analyses employment relations in Brazil. This is again within the parameters of the new institutional approach to the study of LMIs discussed in chapters 1 and 2. The functions of tripartite institutions and their three levels of analysis: national, regional/sectorial and workplace are taken from Camargo (1997). Initial analysis of tripartite relations in Brazil draw from Cook (2007) and Weyland (1996). At the workplace level the ABC Standard of employment relations is analysed in more detail based upon Rodrigues (2002). The 'ABC standard' is an important ongoing concern in the thesis as it represents the coherent and productive industrial relations within the existing system at the workplace level of employment relations.

Together with the fieldwork data, the case study analysis of construction cites industry specific documents, the most relevant being the tripartite National Commitment for Improved Labour Conditions in the Construction Industry (NCILC) initiative (Brasil 2012; Dieese 2013; Ganz & Scherer 2012). This again is an important example for the entire thesis as it represents prompt, effective institutional coordination at the highest national bargaining level within the construction industry case study. The networks of mistrust relationship identified at the regional/sectorial level and summarised in figure 4.1 is mainly based upon fieldwork observations though also coherent with and influenced by Cardoso and Lage's (2007) study on the design and effectiveness of regulatory institutions in Brazil and formatted to resemble similar-looking VoC analyses of complementarities. The public hearing on employment relations at the Pecem Steel Plant was attended in person and the minutes of the hearing are used as the source to summarise its findings in table 4.4.

As already described, the order of chapters 4-6 represents the sequential logic of the research process. Therefore, the two main issues dominating industrial relations in Brazil

are discussed across the final two chapters. The first part of both chapters returns to the more general literature to discuss the existing debates, approaches and interpretations on representation (chapter 5) and regulation (chapter 6) within the context and parameters established over the first half of the thesis.

Given the characteristics and history of Brazilian LMIs, discussion of labour representation in chapter 5 is narrowed to corporatist systems. Drawing from Archer (1998), Crouch (1979, 1982, 1994) and Olson (1971) the conditions for effective representation within a corporatist system are established and discussed in light of the danger of an unrepresentative ‘iron law of oligarchy’ dominating trade union institutions (Michels 1968). This is of particular relevance to Brazil given the *peleguismo* phenomenon specifically used by Archer (1998:88) as an example of representational failure in a corporatist system.

The general debates and positions on labour representation are then applied to Brazil. Weyland (1996) is again cited and analysis of more contemporary relational dynamics draws from Horn & da Silva’s Eds. (2009) collection of ‘Essays on Trade Unions and Trade Union Reform in Brazil’ discussing the 2003-2004 tripartite FNT forum on reform of the Brazilian LMI system. An initiative introduced almost immediately by Lula’s PT government that is considered in this thesis to represent further evidence of the state-led tripartite *intentions* over the ‘inclusive decade’. Specific Labour Ministry (MTE 2003, 2004, 2005) documentation on the FNT initiative is also cited. Counter-factual analysis of whether LMI reform would result in improved representation mechanisms in Brazil cites Moreira Gomes’s (2010) arguments in favour of an end to Brazil’s corporatist LMI system as an adequate representation of common criticisms of the existing system.

Analysis of regulation of employment in chapter 6 sits within long-standing debates on the quantity of intervention in labour markets. This research and its related questions, problems and approach firmly identify with what could be summarised as the ‘ILO position’ consistent with Berg and Cazes (2007) Deakin (2009, 2012) Lee and McCann (2011, 2014) and Marshall (2007). A key consideration of this position is the rejection of the deregulation school and its reductionist and ideological logic that associates any intervention in the labour market with negative consequences (unemployment, evasion, informality etc.). Such an idea is considered to be weak, unproven and somewhat negated by the northern European CME empirical examples and Brazil’s recent development

trajectory (see Baker et al 2004 & Berg 2010 respectively). The deregulation school position referred to across chapter 6 is based upon Botero et al (2004) *The Economist* (2004,2011,2016) World Bank (2007) and specifically on employment legislation in Brazil, Pastore (2005).

Explanations for the widespread noncompliance observed in Brazilian employment, considered in this thesis to be heightened in the construction industry case study, are assisted by the analysis specific to regulation and compliance in Brazil carried out by Cardoso and Lage (2007). Fieldwork observations are supported by data from relevant industry and state publications (CNPJ 2015, FIESP 2016, Sinduscon-SP 2012, TST 2016b).

The conclusion presents and summarises the findings related to the research question. The nature of the institutionalist approach adopted means the analysis contributes to addressing certain popular misconceptions on the Brazilian LMI system. The concluding part of the thesis also acknowledges elements outside of the labour/employment relations institutionalist scope of the thesis that may also contribute to explanations for the inconsistency between the formal system and workplace reality identified in the research question. The thesis finishes with some tentative predictions on the future direction of LMIs in Brazil based upon research findings.

Approach and Agenda

Researching the observed inconsistency and related research problem lends itself firmly to the study of labour and industrial relations. Such a subject area is considered most appropriate to address the research question and carry out qualitative research for the following reasons: the workplace is a dynamic location involving a variety of actors and institutions. Influences on the reality of employment can be direct or indirect, formal or informal or a complex and context-specific blurred mixture. An essential consideration for this research is as to how the relevant actors interact and the importance of change and continuity. This is not easily quantifiable. The understanding of LMI dynamics cannot be expected from more static indicators. It is also argued to be inappropriate within the context of this research to adopt more ideologically loaded positions that may skew the findings and inhibit the identification of more subtle and less-tangible factors. The multi-disciplinary nature and importance placed upon empirical observation finds industrial relations as a best fit for this research problem and related methods.

The 'new institutional approach' (NIA) offers a comprehensive analytical toolbox to address the industrial relations research problem identified. Explanations for observable phenomena can be expected from a society's composite set of institutions or their 'variety of capitalism'. This thesis considers the sub-varieties of new institutionalism as complementary to one another rather than competing or rival approaches. By bringing them together their established weaknesses can be addressed and mitigated. Within institutionalism, scholars observe a dichotomy and culture of isolation between Historical Institutionalism (HI) and the influential and increasingly popular rational choice (RC) approach related to the 'behavioural revolution' in economics. Again, for the purposes of this research, the distinctive sub-varieties of NI are argued to complement and reinforce one another.

The idea of differing approaches used to 'supplement and strengthen' each other is described as a research agenda by Hall & Taylor (1996:955) and endorsed by Immergut (1998:28) Stoker & Marsh (2010:12) and Thelen (1999: 371), the latter institutionalist scholar identifying greater 'tangency than commonly assumed' between RC and HI variants. The appropriateness of the institutional analytical toolbox to address the research question is the focus of the first chapter. Combining institutionalist elements is an important consideration for addressing the real-world problem observed.

The distance between the formal employment protections and provisions in Brazil and the workplace reality are complex, context-specific with important formal, informal and historical influences and, perhaps most significantly, have to be analysed as a composite dynamic system characterised by processes of both continuity and change. From the industrial relations research problem identified and the new institutionalist toolbox, the thesis seeks to contribute to comparative capitalisms debates by arguing that the Brazilian case, in its labour institutions, is a distinctive variety of capitalism.

The Varieties of Capitalism (herein VoC) approach is described in its original form as an open research agenda 'useful for understanding political economies that do not correspond to the ideal type of a liberal or coordinated market economy' (Hall & Soskice 2001:35). For Latin America this has been done by Schneider (2009, 2013 also see Schneider & Karcher 2009 and Schneider & Soskice 2010) where the predominant institutional variety is described as one of Hierarchical Market Economies (HMEs). The five key 'reinforcing interactions' or negative complementarities of Latin American labour markets within the

HME-type are identified as ‘extensive labour market regulation, a low skills regime, rapid turnover, sparse unions, and pervasive informality’ (Schneider 2013:91).

This present research project is located within the research agenda of extending varieties of capitalism outside of the LME/CME advanced economy ideal types, in this case to Brazil. The intended original contribution of this thesis is to contribute to an understanding of Brazilian LMIs - an essential part of a society’s variety of capitalism. This is assisted by and related somewhat to Schneider’s HME ideal-type. Mentioned on more than one occasion across this study, hierarchical is a particularly apt description to describe employment relations in Brazil both historically and currently. The original contribution of this research however is a *variant* on the HME.

Variant does not imply a contestation or rejection of the HME interpretation. The ambitious exercise to categorise the variety of capitalism from an entire continent will invariably and somewhat necessarily neglect certain national specificities. Consistent with observations on the varieties of capitalism approach in general, the HME represents something of a static snapshot of an entire institutional system, of which LMIs are one element (Schneider: ch.5). This research aims to contribute to varieties of capitalism debates on Latin America by *extending upon* the HME ideal type rather than challenge it. Indeed, Schneider (idem: 181) recognises an open-research agenda of ‘within-type variations’ that he argues are no greater than the observable heterogeneity within CME and LME type economies of the original VoC distinction.

The underlying premises and definitions discussed across chapter 1 – institutions and their complementarities and observable outcomes as a result of a society’s composite set of institutions; are consistent with those used by Schneider (idem:91) who innovates by ‘putting together all these pieces’ in a study on Latin America. It is the ‘sparse union’ piece that is contested. The relevance of the HME ideal type to the research question is discussed towards the end of the first chapter and across the second chapter on ‘the Brazilian variety of capitalism’. Explanations for the inconsistency between the Brazilian LMI system and day-to-day reality of employment, a reality mostly consistent with that described in the HME model, can be expected from an analysis of the Brazilian variety of capitalism.

Sparse unions is one of the five core characteristics of labour markets in the hierarchical variety of capitalism (Schneider 2013:91) and of heightened relevance to explain outcomes given the underlying premise that institutions are complementary of one another (both

negatively and positively). Argued in greater detail across chapters 2 and 3, sparse unions is inappropriate to describe the Brazilian case for two reasons. Firstly, a long-standing system persists in Brazil that guarantees the existence and resources of labour and business representative institutions to *all* workers and businesses in formal recognised activities. As Cardoso (2003:34) describes and consistent with Collier and Collier's (2002:757) observations, it historically represents a system which can be used to both repress and rapidly mobilise workers, which leads into the second point.

The Brazilian system has produced *strong* unions that have contributed and evolved into influential peak associations with considerable sustained influence over policy at the national level. This is particularly the case since the 1980s with trade unions influencing the direction of the democratisation process, gaining influence at the highest levels of political decision making and contributing to a *non-transition* to LME-type labour arrangements across the 1990s when liberalisation pressures were at their peak. At the opposite end of the LMI scale, a *strong* trade union presence is evident at the plant-level of the automobile industry/metalworkers category in Sao Paulo. A presence that contributes to prompt resolutions to workplace disputes that arise based upon social dialogue, resembling the coordinated dynamics of a CME-type economy. This is referred to across this thesis as the ABC standard of labour relations (Rodrigues 2002:154).

The puzzle or problem attached to the research question when considered in light of VoC and the HME ideal-type is therefore: if not 'sparse unions' what explains the inconsistency between the employment relationship envisaged by the Brazilian LMI system and the workplace reality? In other words, what impedes the coordinated and effectively regulated dynamics of labour activity evident at a national level and on the ABC shop-floor from reproducing sufficiently to characterise employment outcomes across society? An important element here is historical legacies consistent with the HI and path dependency sub-areas of institutionalism. Cook (2012: 268) observes that legacies of labour market institutions in recent democracies such as Brazil are little explored, therefore the importance placed upon historical legacies in addressing the research question is another argued contribution of this thesis.

Summary

It is important to establish what is and is not within the scope of this research. Analysis is focussed at an intermediate level on the dynamics of industrial relations within the

Brazilian LMI system. A detailed analysis of the day-to-day employment conditions described is not an aim or object of study for this thesis. In a similar sense, and considering the identified importance of regulation and compliance that emerges from this research, a specific analysis of the relevant formal labour legislation is not part of the thesis. There is a wealth of legal scholarship on the formal labour legislation in Brazil. As per the institutional approach adopted for this thesis; formal labour codes represent only one of a variety of complementary institutions, with enforcement, compliance and evasion being equally relevant considerations.

This thesis is a study of labour market institutions. The original motivation for the study was an empirical problem observed at the workplace level of the Brazilian construction industry. Initial analysis identified an inconsistency between the LMI dynamics associated with 'new' trade unionism in the ABC Paulista since the 1980s and employment in the construction industry. Explanations for this inconsistency represent the research question or problem.

In line with the new institutionalist approach adopted for this research the contribution of this thesis can accordingly be described as a composite set of 'complementary' factors. At the more abstract level, the combination of elements of new institutionalism to analyse a labour market problem can contribute to the general study of LMIs. By considering the reality of employment as the result of a set of context-specific institutions, their history, interaction and formal and informal manifestations, more holistic interpretations can be expected. This is particularly the case in light of the influential and persistent reductionist deregulation arguments that negate key institutions and empirical examples and can therefore contribute to misleading diagnoses and prescriptions when used to inform policy. This places the research contribution within what is described here as 'the ILO school', given the institutional affiliation of the authors already listed.

At a more empirical level the intended contribution of the research is to contribute to a greater understanding of varieties of capitalism outside of the advanced industrial economies. This involves analysis of Brazilian labour market institutions as a variation upon Schneider's hierarchical Latin American model, contributing to a greater understanding of Brazil's within-type HME variety of capitalism, something not done previously. An underlying premise of the research question: significant examples of

institutional coordination and effective regulation in the Brazilian system contests the 'sparse unions' core trait of HME labour markets.

At the national and industry specific level the intended contribution has two key aspects. The first contribution is chronological; labour is analysed during the unprecedented development trajectory of the 'inclusive decade' that captured the world's attention. This then adds to the rich tradition of labour studies since the emergence of 'new' trade unionism in the 1980s. The choice of the construction industry is important within the context of the concentration of the existing body of scholarship focussing upon the more regionally concentrated and 'best practice' example of the São Paulo automobile industry. The ABC standard has considerable comparative value within this project and further informs and supports the idea of a distinctive Brazilian variety of capitalism and variant of an HME from its stable labour market arrangements.

An underlying objective of the thesis is to combine the analytical parameters and related contributions of an institutional approach to the study of LMIs with the rich empirical tradition of industrial relations. If this objective is to be met, the findings will hopefully be of interest to scholars of labour and Latin American political economy as well as practitioners ranging from trade unionists and business leaders to workers and employers. Indeed, the main pillar of the research project, the fieldwork data, is considerably indebted to numerous construction industry representatives.

Chapter 1 Studying Labour Market Institutions

Labour studies tends to be multi-disciplinary and draw from across social sciences: politics, sociology, economics and anthropology amongst others. This geographically specific study of labour institutions can therefore be expected to contain a mix of approaches from across relevant disciplines. Presented in this chapter are the definitions and boundaries applied to the thesis, influenced by the research problem: the persistence of hierarchical-type employment relations in Brazil despite the historical presence of a more regulated labour market system with tripartite institutions capable of coordinated solutions at some institutional levels and workplaces.

A two-way relationship exists between the research problem and approach (theory, methodology and analytical tools) adopted by this thesis. The employment relationship is a key contributor to levels of social equity within a given society and therefore explanations are sought from the relevant labour institutions. The *institutionalist* approach adopted and discussed across this first chapter defines the units of analysis - the existence (and inexistence) of formal and informal labour institutions and their interaction. The thesis discusses how this influences the employment relationship.

The first part of the chapter introduces the institutionalist approach and why it offers the most appropriate set of analytical tools to consider the research question, its Historical Institutionalism (HI) variety in particular. It also acknowledges and addresses the common criticisms of the approach regarding its capacity to adequately recognise gradual institutional change. The second part provides working definitions of an institution and institutional interrelations known as complementarities. Such definitions fall within the remit of an institutional approach and are applicable across the thesis.

The third part of the chapter continues logically from the previous definitions introducing the idea of comparative capitalisms i.e. significantly different institutional models (and therefore realities) in the wider capitalist system. Particular attention is given to the Varieties of Capitalism (VoC) distinction between Coordinated Market Economies (CMEs) and Liberal Market Economies (LMEs) based mainly upon the empirical examples of the advanced economies of Europe and North America.

Analysis of distinctive institutional arrangements for labour from different varieties of capitalism continues logically from the VoC discussion into the fourth part of the chapter.

The broad institutional approach and more empirically applied VoC framework stress that the reality of the workplace and employment relationship are the result of a society's set of historically embedded institutions. Discussion of which system best represents labour interests is based upon academic analyses (Archer 1998; Haagh 1999, 2011 & 2012; Pagano 1989; Hall & Gingerich 2009; Standing 1999, 2009 & 2011) as well as referencing the ILO (2012) framework for practitioners.

The VoC framework and agenda is directed towards the analysis of *developed* or advanced capitalist economies. This thesis aims to contribute to a greater understanding of the Brazilian model, argued across this research to be historically and deeply embedded. Schneider's (2009, 2013) Hierarchical Market Economy (HME) model, introduced in the fifth and final part of the chapter and examined in greater detail in chapter 2 assists in this exercise. Schneider contributes to the VoC framework/agenda by applying its approach to Latin America.

The HME represents an important analytical model for this thesis, which aims to contribute to the study of comparative capitalisms by extending upon the hierarchical category through the analysis of key peculiarities of Brazilian labour institutions. Within the context of liberal, coordinated and hierarchical institutional arrangements and the reality of employment in the Brazilian case study, the research project aims to evaluate the role and evolution of cooperative labour market institutions in Brazil. In turn this hopes to contribute to a wider understanding of the role of such institutions in contributing to developmental outcomes. The chapter concludes with a summary of the approach and definitions to be applied to the study of institutions and the labour market across the thesis.

1.1 The New Institutional Approach

This first part of the chapter presents the institutional approach and its compatibility with the aims of the research project. Whilst the exact scope and boundaries of the approach are subject to considerable debate and diverse interpretations, the three different sub-types specified by Hall & Taylor (1996:936) are herein considered to make up new institutionalism – the historical, sociological and rational choice varieties. Relevance and overlap with 'new institutionalism in economics', recognised by the same authors is similarly acknowledged here. The 'new' prefix for the approach relates to its broader more porous and flexible analytical tools when compared with traditional or 'old' institutional approaches. It further reflects an increase in popularity and credibility of the new

institutional approach (henceforth NIA) within political science since the 1980s after a decline of its 'old' form' and as a critique of the behavioural 'revolution' in political science.

The reality of employment is predominantly a product of the relevant institutions, their actions and interaction. Institutions in turn are the result of historical processes. In order to comprehensively explain observable phenomena there needs to be an understanding of what Thelen (1999:371) describes as 'how institutions emerge from and are embedded in concrete temporal processes'. This lends itself to the Historical Institutionalism (hereafter HI) variety of NIA which similarly addresses a problem highlighted by Kelly (1998:5) of analyses that attempt to explain employment relations with arguments 'couched in ahistorical terms without sufficient attempt to locate contemporary changes in historical perspective'.

One of the key contributions of the HI approach is the importance placed upon the history of institutions, their continuities and embeddedness. This is commonly known as 'path dependency' described by Peters (2005:71) as

when policy choices made when an institution is being formed, or when a policy is initiated, will have a continuing and largely determinate influence over the policy far into the future [...] meaning that when a government programme or organization embarks upon a path there is an inertial tendency for those initial policy choices to persist. That path may be altered, but it requires a good deal of political pressure to produce that change.

Path dependency has made considerable contributions to understanding institutional systems by focussing on the historical persistence of certain characteristics. Two distinguished examples are Collier and Collier's (2002) study of Latin America where the institutional characteristics of the 'incorporation' period of the 1930s and 1940s are demonstrated to have contributed significantly to the democratisation process half a century later and Thelen's (2004) comparative study of the political economy of skills tracing the success of modern day German apprenticeships to institutional dynamics put in place in the 19th century.

More closely related to the present research question is Cardoso's (2010) study on the history of work in Brazil. With considerable attention to historical detail he argues (pp.40-45) that the profound legacy of slavery established an inertial structural inequality and related extremely low threshold for what can be considered acceptable labour conditions.

Unfavourable dynamics still reproduced in contemporary society. This means that subsequent more modern labour reforms and legislation exist as a ‘utopian promise’ rather than an effective change in the reality for the majority of workers. Similarly relevant to the research question is Carvalho’s (2013) historical tracing of the history of citizenship in Brazil. Using the Marshallian concept of citizenship of which social/labour rights represent an important element, the historian stresses the persistence of the highly unfavourable legacy or ‘path’ embedded in the centuries of slavery and exploitative social relations (p.229).

Within institutionalist thinking there is widespread consensus on the importance of path dependence to understand institutions and their outcomes (North 1990:8; Solow 1990:87; Pagano 1991:327; Wood 2001: 250). It is very difficult to envisage competent explanations for observed contemporary phenomena in Brazilian labour institutions and practices without considering historical legacies. There are considerable continuities in contemporary industrial relations from the original ‘incorporation’ reforms of the 1930s. Consistent with Cardoso (2010) and Carvalho (2013), the persistent hierarchical social structure and certain unfavourable informal processes for workers can be traced back even further to colonialism and slavery. Chapter 3 specifically discusses these historical processes of the relevant labour institutions and the idea of the reality of modern day employment as historically embedded is ever present across this thesis.

Together with the ‘history matters’ aspect of HI, the nature of the case-study problem examined lends itself to such an approach in that it seeks explanations for empirical questions. Steinmo (2008:134) describes HI as ‘a research programme motivated by an interest in real-world puzzles and rare events’ in contrast to research aiming to ‘find general laws of history or politics’. Acknowledged by Steinmo & Thelen (1992:12) and Streeck (2009:12), this more empirical approach is criticised by scholars of a more positivist tradition as being ‘inelegant and atheoretical’ or dismissed as ‘story-telling’.

Whilst this chapter does not discuss these theoretical and methodological differences in depth, HI is considered well suited to the aims of this research project. The positivist ‘unscientific’ criticisms are rejected in that comprehensive explanations for the historically and geographically specific outcomes under analysis cannot be expected from a set of universal rules akin to those associated with exact sciences. The resurgence of an institutional approach to social sciences in recent decades could be argued to represent a

response to the non-emergence of a universal set of scientific rules to provide convincing explanations for significant differences in real-world phenomena (see March and Olsen 1989; Peters 2005; Hall & Taylor 1996; Immergut 1998; Thelen & Steinmo 1992:1). The problematic nature of contemporary attempts to create and apply universal comparative rigidity indexes to compare individual labour market regulation systems is discussed in chapter 6.

Within the same institutionalist school of thought, appreciation of the importance of path dependency is accompanied by recognition of its deficiency in adequately and competently explaining institutional change. The criticism is that a conventional path dependency approach stresses ‘continuity’ or a ‘static equilibrium’ only interrupted by major upheavals such as crises or systemic breakdowns described as ‘critical junctures’ or ‘punctuated equilibriums’. There is long-standing recognition (see Thelen & Steinmo 1992) of a weakness within the HI approach, in that path dependency can overstate the importance of continuity at the expense of institutional change not instigated by a major event.

Thelen (2004: 290) also questions the idea of a major upheaval as the turning point for observable institutional change, arguing that there can be ‘significant continuities through historically “unsettled” times and ongoing contestation and renegotiation in “settled” periods that nonetheless over time add up to significant change’. Campbell (2010:92) similarly recognises the deficiency of path dependency and critical junctures to explain ‘more incremental and evolutionary change’. Over two decades ago Thelen and Steinmo (1992:16) describe a ‘critical inadequacy of institutional analysis’ as ‘a tendency towards mechanical static accounts’. Consistent with HI, Streeck (2009:1) recognises that a society’s set of institutions has to be studied as a structure though stresses that it has to be considered a ‘dynamic process’ i.e ever changing rather than a ‘static structure’. As cited in Boas (2007:34): ‘Thelen (2003, 2004), Hacker (2004), Crouch and Farrell (2004), Schwartz (2004), and Alexander (2001) have all argued that prevailing models of path dependence overstate the degree of stability in political institutions’.

Given the velocity of transformations in technology, production strategies and global events, it is important that institutional analysis can competently explain change whether gradual or abrupt. Consistent with the ongoing institutionalist debates, the tendency to overstate or overanalyse the static or embedded nature of institutions in detriment to identifying more dynamic and nuanced change is acknowledged here as an important

consideration for the research project. Summarised in table 1.1, Streeck & Thelen (2005:19) present five modes of transformative gradual change away from the more radical or sharp changes considered critical junctures or punctuated equilibriums.

Table 1.1 Definitions and Mechanisms of Institutional Change: five types of gradual transformation

Type	Definition	Mechanism
Displacement	Slowly rising salience of subordinate relative to dominant institutions	Defection
Layering	New elements attached to existing institutions gradually change their status and structure	Differential growth
Drift	Neglect of institutional maintenance in spite of external change resulting in institutional practice on the ground	Deliberate neglect
Conversion	Redeployment of old institutions to new purposes: new purposes attached to old structures	Redirection, reinterpretation
Exhaustion	Gradual breakdown (withering away) of institutions over time	Depletion

Source: Adapted from Streeck & Thelen (2005:31)

Based upon the types identified by Streeck & Thelen, it is argued that sufficient mechanisms to analyse gradual change have been incorporated into contemporary Institutionalism. The addition of further tools to address identified deficiencies in analysing change are consistent with the flexibility and porous boundaries of an HI approach already described. In terms of this research it is necessary to recognise the importance and co-existence of both institutional continuities and dynamic change and take appropriate care not to neglect or overstate one at the expense of the other.

The analysis within this thesis is not limited to the historical variant of institutionalism. A key advantage of HI is its flexibility to incorporate other perspectives. Hall & Taylor (1996:950) describe HI as ‘commodious’ incorporating both the instrumental and strategic calculus approach and the more interpretive cultural approach. The authors similarly identify an openness of the HI approach where ‘although they [HI scholars] draw attention to the role of institutions in political life, historical institutionalists rarely insist that institutions are the only causal force in politics’. For the underlying research question this means the NIA approach offers the porous boundaries compatible with the inductive, problem-based and empirical characteristics of the study. Lowndes (2010:60), commenting upon the NIA approach, recognises such value and suggests the ‘multi-theoretic character [...] may actually prove to be its greatest asset’.

Institutionalists recognise that between the three variants of NIA there are significant cleavages (Thelen 1999:369), a tradition of ‘relative isolation’ (Hall & Taylor 1996:957) and competition between the distinctive schools of thought or ‘competing branches’

(Immergut 1998:5). It is not the aim of this chapter to contribute to the well-established debates on the pros and cons of each individual tradition; instead it is argued that the NIA approach adopted by this study allows for useful applications from across its sub-categories. The appropriateness of HI stands out in particular where its blurred boundaries and flexibility are considered to represent a distinct advantage. This is consistent with Peters (2005:85) who recognises that the lack of ‘sharp distinctions is in some ways a strength’ of HI.

Other authors highlight compatibility between the varieties of new institutionalism as Hall & Taylor (1996:955) observe:

if the most extreme assumptions of each [institutionalist] school’s theoretical position are relaxed, they share a great deal of common analytical ground on which the insights of one approach might be used to supplement or strengthen those of another.

Thelen (1999:371) similarly observes that between RC and HI variants ‘there are more points of tangency than commonly assumed’. The RC focus on strategic interaction and decision-making processes is of particular relevance to discussion on regulation. It is important to contribute to an understanding of institutional (in)effectiveness through game theory explanations of noncompliance with legislation (see ch.6, figure 6.1). A cultural/historical embeddedness explanation for noncompliance would be incomplete in this instance without an understanding of the choices, constraints and outcomes in strategic interaction between relevant actors.

Such boundary crossing is defended here as essential to provide a more complete set of analytical tools to adequately address the research question. It is also considered compatible with the HI approach described, as Hall & Taylor (1996: 957) conclude: HI ‘stands in an especially pivotal position’ with considerable common ground with both RC and Sociological variants of new institutionalism. Fusing elements from the variants of institutionalism is described as a research agenda. Immergut (1998:28) endorses what she describes as a ‘fruitful combination’ of elements of the three approaches and Hall & Taylor (1996:957) call for ‘a more open and extensive interchange’ between the three varieties. Similarly Stoker and Marsh (2010:12) recognise the pluralism of institutional approaches though advocate interaction over isolation. Franzosi’s (1995:12) study on strikes in Italy describes ‘the lack of integration between competing approaches’ as ‘one of the most serious problems in the literature’.

An empirical study of labour institutions is characterised by an eclectic theoretical-methodological approach. The theoretical differences and on-going debate between different sub-categories of institutionalism are acknowledged, though for the ends of this research project, a ‘border crossing’ institutional approach is considered a best fit. The overlap across the types of institutional approaches is a practical consideration rather than an aim of this thesis. An over-emphasis upon path-dependency analysis may limit the emergence of other important insights to address the research question.

Discussed across chapter 3 there is strong evidence of historical embeddedness and continuities or path dependency, greater than that implied by popular and traditional accounts of ‘revolutions’. Within a similar context to the criticism of ‘static accounts’ already addressed, describing contemporary problems as solely a result of history risks missing important processes of more gradual and subtle changes in contemporary industrial relations analysed across chapters 2 to 6. For the purposes of this research there are no relevant tensions between the variants of institutionalism, rather as Hall & Taylor (op cit) describe, they can be used to ‘supplement or strengthen’ each other.

1.2 Institutions and their Complementarities

1.2.1 Institutions

This second part of the chapter looks to establish two interrelated and important definitions, ‘institution’ and ‘complementarity’, to be applied consistently across the thesis. Studying institutions is an ever present across social science disciplines and invariably there is no hard and fast definition of what represents an institution. Within the NIA there is some nuance in definitions though considerable consensus on the main characteristics. Thelen and Steinmo (1992:2) describe the following definition by Hall (1986:19) as ‘widely accepted’: ‘The formal rules, compliance procedures, and standard operating practices that structure the relationship between individuals in various units of the polity and economy’.

Hall’s definition is consistent with North’s (2003:1-2) much-cited description where institutions are ‘made up of formal rules, informal constraints and their enforcement characteristics’ with a function to ‘provide incentives and disincentives for people to behave in certain ways; and if they are effective they structure and provide incentives and also structure economic, political and social activity’. Some of the more ample definitions

incorporate traditions, ideas and routines as institutions (see North 1991; Hall 1989 and March & Olsen 1989 respectively).

In simple terms the consensus is that institutions are rules. There is less consensus and certainty as to where to draw the line when considering what is (and is not) an institution, described by Thelen and Steinmo (1992:2) as ‘a matter of some controversy in the literature’. The broad and open-ended nature of the definition is consistent with the flexibility offered by an NIA, argued again to be an advantage when analysing a real-world problem. This study recognises that criticism exists over the open-endedness and looseness of this definition, yet it is argued that such a fluid and broad definition is an advantageous and valuable tool to address the underlying research question.

The working definition of an institution adopted for this research on labour institutions is on the broader end of the spectrum - any observable rule, idea, logic, tradition that has an influence upon the realities of employment is considered to be an institution and merits analysis. A key element of this definition is the importance of *informal* institutions, the idea that institutions represent more than a tangible organisation such as a trade union or government department or formal legislation in the form of a constitution or labour code. North (2003:2) describes formal rules as very straightforward and of less importance than the informal norms. He warns of the considerable limitations of analysis that focuses purely on formal institutional rules and enforcement mechanisms.

Analyses focusing purely on formal institutions were a characteristic of traditional or ‘old’ institutionalism (Peters 2005:10). The limitations of narrowly focusing upon the formal, as described by North, could be argued to have contributed to the decline in popularity and credibility of this approach during the twentieth century. Following the same line of thought, the widening of the definition of institutions to incorporate the informal is a key difference between ‘old’ and new institutionalism and can be considered a contributing factor to the resurgence of the new approach (Lowndes 2010:60-61). Attention upon the informal is essential for any credible study of institutional outcomes. Recognition of the importance of the less visible and more abstract informal institutions is highly compatible with the broad, open-ended working definition of an institution outlined above.

The importance of informal institutions is of particular relevance for this Latin America/middle-income economy based research project. Consistent with observations on ‘old’ institutionalist approaches Levitsky (2012: 88) observes that early studies of Latin

America assumed that formal or ‘parchment’ rules are ‘stable and effective’. He then argues that this may work in the advanced economies though not in Latin America ‘where rules are routinely circumvented, manipulated or changed’. Such routines can be considered informal institutions. Whilst it would be argued here, consistent with North (1991), that informal constraints and rules should be considered regardless of the advanced or middle-income economy context, Levitsky’s position of heightened importance of informal institutions in studies on Latin America is agreed upon.

Drawn from fieldwork observations and frequently cited across chapters 3-6 of this thesis, is an effective example of the importance of an informal institution, that of *peleguismo*. It represents a derogatory term dating back to the 1930s to describe a trade union leader or organisation allied with business leaders and/or government and therefore ‘betraying’ the workers’ movement. Fieldwork observations suggest that contemporary use of the term is widespread and has a variety of meanings within numerous contexts. At plant-level it is heard to describe workers who will not take a stand against bosses or refuse to participate in industrial action; at regional and national levels to describe union leaders and their organisations for being co-opted by business and/or state interests or alternatively for not believing in the inherent nature of capital-labour conflict.

The example of *peleguismo*, demonstrates the value of the analytical tools of the institutional approach and related definitions, particularly the importance of informal institutions. *Peleguismo* has historical and cultural traits and a variety of different meanings dependent upon context and actor perspective. It will more often than not have a direct or indirect influence upon tri-partite collective bargaining processes without being explicitly observable. Trade union approaches to employer counterparts and the state are influenced by the stigma of *peleguismo* amongst the grass-roots and further up the hierarchy by political or central organisation affiliations.

Peleguismo is a useful example to demonstrate the bidirectional relationship between research problem and approach. It is considered in this thesis as an important and complex *informal* institution with historical and cultural traits that influence institutional outcomes for labour. Adequately capturing its relevance for Brazilian labour institutions requires a combination of the new institutional approaches (HI, RC and Sociological) and a related broad definition of institutions to incorporate more subtle informal manifestations.

1.2.2 Complementarities

In the context of this chapter, the relevance of *peleguismo* in observed institutional interaction highlights a further key element of the new institutionalism approach. To provide adequate explanations institutions have to be examined as parts of an integrated system. As Morgan et al (2010:7) observe ‘different institutions inside society cannot be studied in isolation’. To acquire an effective understanding of the outcomes they must be considered as a composite system, the sum of numerous parts that interact with each other.

Observable phenomena are therefore the result of *institutional complementarities*. Another characteristic of the new institutional approach is the analysis of interaction to explain outcomes rather than studying individual institutions in isolation (Thelen & Steinmo 1992:6). Like the focus upon the informal, the idea of complementarities can similarly be argued to have contributed to the resurgence of new institutionalism.

Closely related to the definition of an institution presented above, this section of the chapter looks to establish a working definition of a complementarity and present its relevance to the underlying research problem. The definition discussed here and applied across the thesis is influenced by the institutional approach and is a logical and essential object of analysis. An aim of the institutional approach is to explain real-world puzzles, to do so adequately analysis must focus on a given society’s collective of institutions and their interrelatedness. As Amable (2000: 680) observes ‘it is more important to study the effects of interacting institutions or organisations than just to admit that “institutions matter”’.

It follows therefore that outcomes should be considered the product of how institutions interrelate and interact with one another, their *complementarities* rather than the result of an economy’s collective of individual institutions. Coherent with the institutional approach and the concept of an institution already presented, the working definition of a complementarity applied across this thesis is similarly broad and open-ended. It is not merely a synonym of observable interactivity as some institutions may never directly or noticeably interact yet their co-existence and interrelation have relevant consequences for observed outcomes. An example from criminology is where a resourceful police criminal investigation department supported by comprehensive legislation and powers may be incapable of reducing crime within areas where historically embedded norms and the presence of parallel spheres of influence stigmatise and punish any collusion with the

authorities. Within such a context an effort to combat crime may unintentionally increase violence and insecurity within a given community.

An example from this research project is the effect of the introduction of national labour legislation in the 1930s discussed in more detail in chapter 3. It is acknowledged (Costa 2005:113; Bonelli 2006:387) that the majority of workers were excluded by this legislation (87% in 1940 estimated by Pochmann 2010). Despite this mass exclusion, according to Cardoso (2010:160) the mere existence of the legislation entirely changed the relationship between Brazilian state and society as it provided the expectation and promise of employment rights to the excluded masses, stimulating mass rural-urban migration in search of achieving formal inclusion.

Complementarities between formal and informal labour arrangements are also widely recognised in the Brazilian case, known as the *efeito farol* [the lighthouse effect]. Neri, Gonzaga and Camargo (2001:78) identify what they describe as an ‘unusual’ effect of minimum wage legislation dictating the remuneration of ‘a high percentage of informal employees’. More recently Medeiros (2015: 289) recognises the lighthouse effect across the ‘inclusive decade’ period. Given the sustained significant increases in the minimum wage and the corresponding influence upon informal employment he describes it as the ‘propulsion effect’.

The term complementarity itself may initially seem misleading given the word has a positive association. Some institutional analyses use the term to focus on positive interactions as per the definition given by Hall and Soskice (2001:17 own emphasis): two institutions can be said to be complementary if the presence (or efficiency) of one *increases* the returns from (or efficiency of) the other. It is important to establish here as per Crouch’s (2010:117 own emphasis) definition that such a concept ‘enables analysts to consider when and how certain institutions “belong” together [...], or, in contrast to indicate when two or more institutions might be *incompatible* with each other’. Amable (2000: 656 own emphasis) similarly defines complementary institutions as those that ‘make one another more or *less* efficient according to their respective characteristics’. Complementarity is therefore used in this thesis to describe where institutional interrelationships and co-existence contribute to both negative and positive situations.

The importance of considering outcomes as the result of a composite set of institutions follows logically from the weight placed upon informal institutions already discussed.

Informal institutions have to be taken into account to effectively analyse empirical phenomena. It is therefore essential to consider the complementarities between the formal and informal. Cited earlier, Levitsky (2012:89) argues that the need to analyse informal institutions in Latin America is heightened given their historical presence and influence across the region. It is consequently of similar importance to pay close attention to the complementarities between informal and formal institutions.

There is a tendency to assume that informal institutions mostly interact negatively with formal institutions, undermining the effectiveness and objectives of the latter. This can often be the case, as described in chapter 6 on regulation where a variety of informal norms that incentivise ‘noncompliance’ are identified, limiting the effectiveness of comprehensive formal labour organisations and legislation. Levitsky (ibid 20) argues that there can also be a positive correlation between informal and formal institutions arguing that ‘effective formal institutions are frequently embedded in informal norms’. This is an important consideration and positive informal-formal complementarities are evident from research. Chapter 4 identifies ‘pockets of efficiency’ in plant level bargaining within Brazil’s automobile industry and amongst national-level peak associations. Importantly both institutions have informal origins and were incorporated into the formal employment relations system decades later with positive consequences for labour.

1.3 Models of Capitalism and Labour Institutions

The relevant approach and key definitions have been discussed and presented in the first half of this chapter. It is argued that when analysing labour market dynamics ‘institutions matter’: their interaction and historical nature in particular. It is established that the reality of employment in a given society is dependent upon its set of institutions and their complementarities. Such institutions can be formal or informal and are embedded in each society’s specific historic, social and cultural context. There will therefore be differing and sometimes unique characteristics between diverse societies.

This leads into the third part of the chapter presenting the empirical application of a new institutional approach that considers diverse institutional arrangements within advanced capitalist economies. Hall & Soskice’s (2001) Varieties of Capitalisms (VoC) distinguishes between Coordinated Market Economies (CMEs) and Liberal Market Economies (LMEs). From an institutionalist perspective, VoC emphasises the importance of a society’s composite set of institutions and their complementarities. It similarly recognises the

importance of informal institutions and significant diversity between capitalist societies. A core element of the approach is how institutional complementarities can improve competitiveness and economic performance at micro and macro levels (Hall and Gingerich, 2009: 450).

In a Liberal Market Economy (LME) coordination problems are predominantly resolved by 'hierarchies and competitive market arrangements' (Hall and Soskice 2001:8). Empirical examples of LMEs are: Australia, Canada, Ireland, New Zealand, UK and the United States. Also referred to as the Anglo-Saxon model or economies due to shared linguistic, historical and cultural traits. The Coordinated Market Economy (CME) in contrast relies heavily on 'non-market relationships to coordinate their endeavours' involving 'collaborative, as opposed to competitive relationships' (p.8). Empirical examples of CMEs are: Austria, Belgium, Denmark, Finland, Iceland, Germany, Japan, Netherlands, Norway, Sweden & Switzerland (p.20) sometimes referred to as the Northern European model. Whilst it is acknowledged that there will be market relations and hierarchy in a CME, its penetration is less than that in an LME and the reality of the workplace is often the result of 'strategic interaction' among relevant organisations and institutions.

The idea of two significantly different (and coherent) institutional models within the capitalist system contests the traditional idea of an evolutionary process of convergence upon one best-practice liberal free market model. This is present in Rostow's (1960) Modernisation Theory, Fukuyama's (1992) idea of an 'End of History' and in the neo-liberal policies of the 1980s and 1990s invariably prescribing flexibilisation and deregulation of the labour market and minimal state intervention. The VoC rejection of the idea of convergence is vindicated by empirical developments as, writing in the original VoC publication, Thelen (2001:75) observes: 'this literature's predictions of convergence and homogenization through competitive deregulation have simply not been borne out'.

Thelen (*ibidem*) recognises that the 'deregulation literature' is applicable to the LME examples of United States and Britain 'where the decline of unions and of collective bargaining has continued unabated'. It is therefore the CME model and its comparable success in terms of economic growth and development that significantly weakens the idea of convergence; the persistence of an advanced economic model that maintains non-market collaborative institutions as an integral part of the coordination of various spheres of its

political economy and retains its competitiveness with LME type economies such as the USA and Britain.

The CME/LME distinction of the VoC literature competently contesting the idea of convergence again demonstrates the value and contribution of an institutional approach discussed in the first half of this chapter. The VoC distinction draws attention to what could be described as two distinctive types of “common sense” derived from accumulated knowledge and experience within a given society’s set of institutions. This is aptly captured by the divergent rather than convergent responses to the restructuring, productivity and competitive pressures in the 1980s and 1990s usually labelled as ‘globalisation’ and henceforth referred to accordingly.

The VoC distinction recognises and ‘predicts’ that responses to globalisation pressures in the liberal market economies are to deregulate and allow for a greater penetration of market forces as Hall and Soskice (2001:57) describe ‘the conventional view’:

In the face of more intense international competition, business interests in LMEs are likely to pressure governments for deregulation, since firms that coordinate their endeavors primarily through the market can improve their competencies by sharpening its edges. The government is likely to be sympathetic because the comparative advantage of the economy as a whole rests on the effectiveness of market mechanisms.[...] The result should be some weakening of organized labor and a substantial amount of deregulation

Thelen (2001:76) describes the CMEs as ‘empirical anomalies’ to the conventional idea of convergence in their path or response to the same pressures and challenges created by globalisation again recognised by Hall & Soskice (2001:58):

Governments [in CMEs] should be less sympathetic to deregulation because it threatens the nation's comparative institutional advantages. Although there will be some calls for deregulation even in such settings, the business community is likely to provide less support for it, because many firms draw competitive advantages from systems of relational contracting that depend on the presence of supportive regulatory regimes.

It is anticipated that a given society will respond distinctly to change depending upon its set of institutions or its ‘variety of capitalism’. The comparative analysis of different responses to globalisation of the British LME and German CME is another useful exercise to highlight the contributions of this institutional approach. Britain is considered a more informative LME comparative example than the US as it previously had very strong trade union institutions and practices compared to the USA and therefore, as Thelen (2001:94)

observes, the reforms in response to globalisation pressures involving the ‘collapse of traditional bargaining institutions’ were ‘more dramatic’.

In institutional terms, Britain lacked the historically embedded or path dependent complementarities between institutions. This was evident in the response to the findings of the 1977 UK ‘report of the Committee of Enquiry on Industrial Democracy’ known as the “the Bullock enquiry”. The report contained recommendations for compulsory employee representation on company boards, a key pillar of the CME model and its labour-capital codetermination practices, such reforms were not carried out due to the opposition of business and employer groups (Clarke 2012).

Crouch (1979: 186-187) observes that corporatist initiatives such as the Bullock Report had ‘very limited success within British society due to the strength of the liberal legacy’; a decentralised trade union movement ‘with strong shop-floor roots’; deeply entrenched civil liberties and corresponding business organisations such as the CBI with ‘few powers of coordination’. Characteristics of Britain he argues, that ‘emerge from any comparison between it and those countries in which corporatism of various kinds has been more prominent – such as West Germany, Japan, Sweden and the Netherlands’.

The distinctive CME model on the other hand is characterised by a vested interest in such institutional coordination and as a result the response to globalisation pressures was to deepen and continue with the embedded processes of cooperation. When considering the composite set of institutions, Britain lacked the complementarities between ‘strong overarching institutions for non-market coordination’ that underpins the CME model (Thelen 2001: 99).

The relative historical absence of non-market institutional coordination in Britain meant that the deregulation path was more viable despite the opposition of once strong trade union opposition. There was not the same vested interest or comparative advantage of the institutional system akin to that observed in the CMEs such as Germany. Thelen (2004) compares the ‘political economy of skills’ between Germany, Britain the US and Japan stressing the historical divergence of each institutional arrangement and the consequences for labour markets. Thelen (idem: XIII & 2-3) highlights the historically embedded nature of institutional frameworks like that of Germany which have proven ‘incredibly resilient in the face of huge exogenous shocks’ and ‘key actors (especially employers) who have organised their strategies around these institutions will be loath to part with them’.

Similar to debates on the wider institutional approach discussed in the first part of this chapter, the VoC framework is also criticised for overstating static accounts of capitalist models and an inability to adequately capture processes of change. It is argued here however that VoC/Institutional analysis provides valuable insights into the *direction* of change based upon the attention to composite systems of institutions and their complementarities as evidenced by the convincing analysis of the LME/CME divergence in response to globalisation.

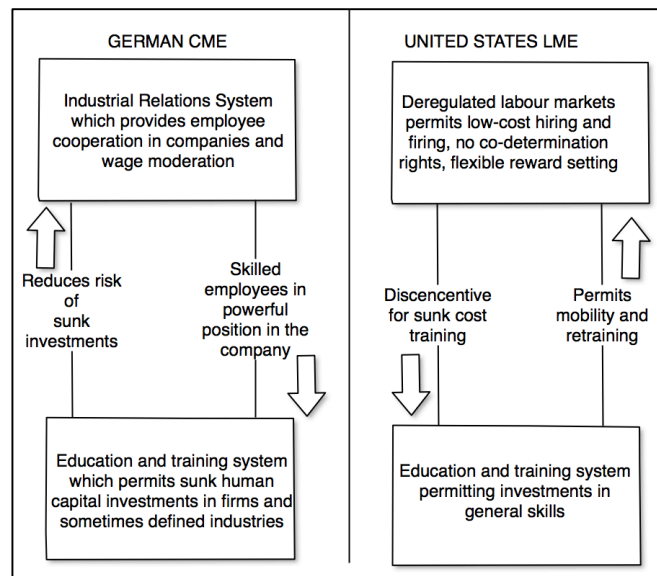
The British LME and German CME experiences traced by Thelen (*idem*) demonstrate that distinct historical processes dating back to the 19th century generated deeply embedded non-market processes of coordination between institutions in Germany. Despite similar institutions existing in Britain (strong trade unions, collective bargaining processes) institutional interaction produced a distinctive ‘matrix of sanctions and incentives’ (Hall & Soskice 2001:5). A set of complementarities involving more adversarial and hierarchical relations and a greater penetration of market logic in a more unequal society meant that there were less constraints and opposition to the liberalisation/deregulation involving the dismantling of labour institutions. In other words, there was not the similar shared institutional interest in non-market coordination between institutions from which comparative advantage was gained in the CMEs, as the response to the recommendations of the Bullock enquiry would suggest.

The VoC approach identifies five spheres ‘in which firms must develop relationships to resolve coordination problems central to their core competencies’ from the perspective of the firm (Hall & Soskice 2001: 7-8). These are: Industrial relations, vocational training and education, corporate governance, inter-firm relations and retention and training of existing employees. Given the need to consider the composite set or *cluster* of relevant institutions and their complementarities both negative and positive, the current research is not rigorously restricted to one of the five spheres rather the analysis prioritises those areas of the VoC most closely related to labour institutions and employment such as those summarised in figure 1.1.

The different comparative advantages or efficiencies of LMEs and CMEs are closely associated to the institutional framework of their labour markets. The flexibility of the LME labour market is argued to contribute to ‘radical innovation’ assisted by the ease in which firms can rapidly respond to changing market conditions due to the ease of hiring

and firing workers as per figure 1.1. The Coordinated Market Economy (CME) in contrast relies heavily on ‘non-market relationships to coordinate their endeavours’ involving ‘collaborative, as opposed to competitive relationships’ which requires a set of strong and complementary institutions as Hall and Soskice (2001:10) describe: ‘powerful business or employer associations, strong trade unions, extensive networks of cross-shareholding, and legal or regulatory systems designed to facilitate information-sharing and collaboration’.

Figure 1.1 Selected Labour Complementarities across VoC subspheres in German CME and US LME



Source: Adapted from Hall & Soskice (2001: 28 & 32 figures 1.3 & 1.4) complete diagrams in annexes 1.1 & 1.2

The institutional approach and the more empirically focussed VoC framework provide a useful set of conceptual tools for the present research question. Explanations for the frustrated potential of more coordinated solutions or the inability for pockets of effective representation and tripartite collaboration in Brazil to reproduce sufficiently to characterise employment relations should be found from its set of institutions, their history, interaction and coexistence (complementarities) i.e. the Brazilian Variety of Capitalism. Within the context of the research question of the systemic potential for more coordinated solutions from labour market institutions (LMIs) it is necessary to consider whether coordinated or liberal market arrangements are more favourable to labour in terms of wealth distribution and quality of employment. This is discussed in the following section.

1.4 Institutional Influence upon Employment

From the LME market/CME strategic coordination distinction, this fourth section considers which set of institutions more adequately operate in the interests of labour. This

requires discussion of what can be considered more and less desirable institutional arrangements. The LME offers a flexible or fluid labour market, argued to offer greater rewards for the most productive in society within a system characterised by managerial unilateralism. The CME in contrast is characterised by greater participation of workers and labour organisations in managerial decisions, where coordinated strategies often include wage-moderation when challenged by competitive pressures. The CME is associated with more stable long-term employment regimes with sunk investments in workers' skills and qualifications. The coordinated non-market nature of inter-firm and inter institutional relations means the competitive poaching of workers associated with the market logic of LMEs is diminished. These relationships are summarised in figure 1.1 and presented in greater detail in annexes 1.1 & 1.2.

For the purposes of comparison, the empirical examples of Britain and the USA are used as examples of LME type economies and Austria and Germany as representative of CMEs. These examples correspond to the two extremes of the LME/CME spectrum from Hall & Gingerich's (2009: 458) statistical analysis of the 'core contentions' of the VoC approach with a similar spectrum used by Ruedda & Pontusson (2000:354). The main macro-economic indicators for 2001 and 2014 are summarised in table 1.2. Brazil is added for comparison to be discussed across the remainder of the thesis. It is acknowledged that the macro-economic figures used are crude indicators that depend upon a variety of spheres across the macro-economy as well as international and historical variables. The Gini index in particular is a static indicator based upon historical data though worthwhile in this instance to reflect the LME/CME distinction consistent with Hall & Gingerich's comparative analysis.

An argued benefit of the LME model and free-market in general is the financial rewards for highly-skilled workers. This often leads those from free-market neo-liberal schools of thought to argue that this represents greater efficiency through higher motivation to succeed and 'meritocratic' system, this is related to popular ideas of 'the American dream'. As already discussed, the comparable economic performance and competitiveness of the CME type economies weakens arguments on the superiority of liberal free markets as comparable GDP per capita figures between CME and LME examples summarised in table 1.2 would suggest.

Table 1.2 Income (US\$) employment and distribution indicators for selected CMEs, LMEs and Brazil

CMEs	Austria				Germany			
	Gini	GDP/Cap	Unemp.	Quintile ⁶ Ratio	Gini	GDP/Cap	Unemp.	Quintile Ratio
2001	23.1	25,270	3.6%	5.5	30.0	USD 24,790	7.8%	7.9
2014	29.2	49,670	5.7%	4.6	28.3	USD 47,640	5.3%	4.7
LMEs	Britain				United States			
2001	36.1	27,220	5.0%	7.1	40.8	USD 36,840	4.7%	9.0
2014	36.0	43,430	5.9%	7.6	40.8	USD 55,200	6.1%	9.8
Brazil								
2001	59.1	9,336	11.2%	29.7				
2014	54.7	15,065	4.9%	16.9				

Source: OECDStat (2015b) & UNDP (2003:282-283 & 2011:135-136)

Were the argued benefits of greater rewards from the LME to hold firm or not, there is widespread recognition that the trade-off is a more unequal distribution of such rewards when compared with the CME model as reflected by the difference in Gini coefficients and quintile income ratios between CMEs and LMEs. Closer attention to the specific labour market characteristics, reinforce this idea of greater inequality and instability in an LME, where managerial unilateralism and a fluid labour market are two key elements (ease of hiring-firing).

Unrestrained by wage constraint and employee involvement at the top-level of the firm, the LME model may offer greater rewards for those at the top of the labour market, yet it is dependent upon an atomistic labour market with an abundance of unskilled labour generating and sustaining hierarchy and higher levels of social inequality (Ruedda & Pontusson 2000:354-355; Crouch, Finegold & Sako 2001: vii-viii). As per an NIA/VoC approach this is argued to be the result of a self-reinforcing embedded cluster of institutions where market coordination dominates across the relevant spheres of the macro-economy.

It is considered uncontroversial to argue the more equity-enhancing a set of institutional arrangements for a given society the better. This is consistent with observations made by the OECD (2011:30-31 also see OECD 2008 & 2015), attributing the problem of increasing inequality to flexibilisation and deregulation reforms carried out from 1980 to 2008. In the majority of OECD countries this ‘impacted on increasing wage inequality’. The Secretary General (OECD 2015) of the same organisation argues that inequality has

⁶ Ratio of the average income of the 20% richest to the 20% poorest. Closest available survey year for 2001 & 2014

‘reached tipping point’ and the organisation recommends that ‘Labour market policies need to address working conditions as well as wages and their distribution’ (Keeley 2015:3). This leads into the next point, which identifies the need for a more holistic, broader concept of employment.

Income and its distribution are essential variables to consider though there are other aspects that influence employment arrangements. Pagano (1991: 338) recognises ‘the need for a better working life is becoming more powerful as people already own a fair amount of consumption goods’ and on Brazil, Carvalho (2013:228-229) is critical of the dominance of basic consumption indicators to measure well-being and citizenship. The ILO’s (2012) Decent Work Agenda has ten measurements that cover stability, security, income and its distribution both within the individual workplace (safety, equal opportunities, skills and training unemployment and pension provisions) and the wider labour market (unemployment provisions, minimum wages and bargaining and representative mechanisms). These indicators are guided by the ILO’s four strategic pillars of full and productive employment, rights at work, social protection and the promotion of social dialogue (ILO 2012:7). Standing’s idea of industrial citizenship (1999:52; 2009:37; 2011:11) cites seven elements of labour security coherent with the ILO agenda and the ‘representation security’ compatible with the ILO’s strategic pillar of social dialogue.

Detailed analysis of these relevant variables is not amongst the objectives or scope of this present project. The focus is at an intermediate level of LMIs and seeking institutional explanations for the inconsistency identified between the formal system and workplace reality in Brazil. The present analysis is narrowed to labour institutions as a key contributor to a given society’s development model whilst also informed by the VoC logic, which convincingly demonstrates that institutions cluster around a set of mutually reinforcing characteristics across the various spheres of the macro-economy. This interaction is market-based coordination in LMEs and strategic cooperation in CMEs (Hall & Gingerich 2009:454).

Pagano (1991) describes the labour variables that directly influence human welfare as the ‘property-rights’ of labour that are dependent upon a society’s set of institutions. He is critical of orthodox economists narrow view of labour interests limited to wages, leisure time and consumption trade-offs and presents a broader concept of what variables should be included when considering labour well-being. Pagano (ibid:325) is critical of the

flexibility and competitiveness or ‘classical capitalism’ approaches to the labour market and the resulting hierarchical social structure this implies. It is argued that it is not only inefficient when a broader view of equitable outcomes/property rights for labour is considered though has self-sustaining characteristics despite its obvious inefficiencies. The liberal approach to labour is described as self-sustaining or ‘institutionally stable’ not because of any comparative advantages (as per the LME and neo-classical arguments) rather a historically embedded set of values or logic that penetrates the hierarchical society and the *absence* of a set of institutions and complementarities capable of offering a better solution. Part of the research problem is that many of the necessary institutions are *present* in the formal Brazilian LMI system though the ‘better solutions’ are not.

A more equitable option presented by Pagano is Horizontally Unionised Capitalism (HUC), which envisages a less hierarchical structure where key aspects of employment are: co-determined inter-firm transferable job specification and training with employers. Pagano (1991: 327-330) stresses on three occasions that the viability of these alternative models depends upon the pre-existence of the relevant institutions that present an alternative division of labour and property rights. The alternative institutional arrangements to the market presented by Pagano are compatible with the CME/LME distinction and Pagano’s observations of instability and inequality derived from an application of liberal/neo-classical logic to labour markets can be levelled at the LME type economies. The institutional dynamics and more equitable employment arrangements envisaged by the HUC alternative are consistent with those of the CME model and its empirical examples. Of particular relevance is the importance of cooperation and codetermination between employers and labour organisations.

Haagh (1999: 436-437) develops upon Pagano’s property rights for labour with the idea of ‘occupational citizenship’ which stresses workers’ control and stability over their employment dependent upon the effective statutory labour rights reinforced by institutional support from tripartite organisations. In light of the current discussion of the VoC CME/LME distinction, like Pagano, Haagh (ibid:434, 447) argues that ‘transaction cost’ (neo-classical) policies impede occupational citizenship which requires the correct set of institutions and linkages between them such as those associated with the German system.

Elsewhere Haagh (2012: 551) associates greater stability and control in horizontal capitalist states generating greater ‘freedom for all’. The welfare states of the Nordic

economies are compared with the more hierarchical liberal system of the United Kingdom, two opposite points of the LME/CME spectrum. Again consistent with Pagano, Haagh (2011:452) argues that institutions are required for occupational citizenship and a more horizontal capitalist system and the greater stability, control and freedom they offer. Not only the presence of individual institutions though ‘sophisticated institutional linkages’ (1999:430) and a ‘high level of purposeful coordination between institutions’ (2012:551).

Archer (1998:7) argues in favour of ‘economic democracy’, which involves greater worker participation in firms operating in market societies, like Haagh (2012), he argues that this will provide greater freedom and offers a solution to the ‘unfreedom’ associated with market-driven labour markets. Similar to the VoC distinction, Archer’s analysis is applied to advanced capitalist economies where ‘decent wages and conditions’, ‘the welfare state’ and ‘parliamentary democracy’ have been achieved with the remaining goal being economic democracy. He argues that this is both ‘morally desirable’ and ‘feasible’. Its feasibility requires ‘well-developed existing institutions’ (p.5). The key institutions capable of contributing to economic democracy are unions, capitalist employers and the government interacting within a corporatist system described by Archer (1998:85) as follows:

Corporatism has three key advantages over other industrial relations systems. First, by requiring workers to overcome collective action problems, it maximizes their strength and enables them to have a sustained power advantage over the employers. Second, it enables workers to pursue income policies, social contracts, and other forms of society-wide bargaining, in which they exchange goods, such as wage rises, over which they have a lot of influence for goods, such as greater control, over which their direct influence is weaker. And third, it enables the goods that are obtained to be distributed to all workers.

As already mentioned, it is not within the scope or objectives of this thesis to provide a detailed analysis of the variables that represent equitable labour outcomes. The concepts discussed above (decent work, industrial citizenship, horizontally unionised capitalism, occupational citizenship and economic democracy) analyse labour outcomes from diverse perspectives, at different levels and with distinctive objectives. These are considered henceforth as the multidimensional employment variables. Such variables encompass the important and most obvious aspect of income and its distribution, though also a range of non-income aspects related to the participation, control and stability offered to labour from a given system.

The variety of analyses of labour institutions and employment realities consistently stress that observed results are dependent upon the appropriate set of institutions and complementarities. Consistent with the VoC logic, institutional arrangements or dynamics tend to be reproduced and reinforced across other macro-economic spheres. As such, industrial relations and LMIs have a pivotal role. Greater equality and stability from the employment relationship contribute significantly to a more equitable society.

Based upon the empirical examples of LMEs and CMEs, the income distribution, employment tenure and skills and qualifications differences in particular, it is argued here that the CME set of corporatist institutions characterised by cooperative and co-determined tripartite solutions is considerably more favourable for labour than the more market neo-liberal influenced LME alternative. The liberal market option is argued to be the result of an absence of the cooperative institutions and complementarities that underpin the more equitable CME model rather than any superiority or comparative advantage. This is an essential ongoing consideration for the rest of the thesis: cooperative solutions, dependent upon an institutional system capable of such coordination, are preferable to those offered by free market influenced systems. This is apparent across the distinctive approaches to labour outcomes already discussed and the widely recognized global challenge of addressing increasing inequality.

Thelen (2010:646) observes that CME-type institutions ‘are widely considered to support a more egalitarian form of capitalism’. Crouch, Finegold & Sako (2001: 2) cite the CME examples of Germany and Sweden when presenting a ‘not completely unrealistic utopia’ of a society without unskilled low productivity workers, an equitable distribution of income and low inequality in living standards. Such a utopia would be ‘compatible with the political aspirations of both the political left (seeking a reduction of material inequalities) and right (seeking to achieve any social goals through market-compatible means)’.

The idea of CME superiority is further supported by closer analyses of the argued comparative advantages of the contrasting LME model. Crouch, Finegold and Soskice (idem:3) describe patterns of ‘bipolar growth’ in the US LME where the ‘unskilled’ and ‘left over’ workers have to ‘find their place in the workplace by becoming disposable and cheap’. Haagh (2012:553-554) describes the argued relationship between greater financial rewards and productive talent in an LME type economy as tenuous, highlighting how lax

regulation allows for excessive and *unproductive* resources to accumulate to the top 1 to 5 per cent of society.

The benefits and appropriateness of an institutional approach and its related definitions in light of the research question have been presented and justified. Considering the empirical VoC institutional distinction between LME and CME type economies together with a selection of approaches considering labour market institutions, it is argued that coordinated institution models (CMEs) are more favourable for the interests of labour than the liberal market types (LMEs). These more favourable employment arrangements are dependent upon the existence of a distinctive set of cooperative institutions. The VoC framework and much of the discussion on better institutional models focuses exclusively upon advanced capitalist economies. The next section discusses the adequacy of this approach when applied to the middle-income/ emerging-market context of Brazil.

1.5 Hierarchical Market Economies (HMEs)

The comparison of basic economic indicators between Brazil and the advanced capitalist economies in table 1.2 demonstrates the significantly lower GDP per capita and even greater inequality than the more hierarchical LME economies. This raises the question as to how applicable the VoC approach and its LME/CME models are to a society outside of the advanced capitalist/OECD economies. Furthermore, much of the discussion of more favourable arrangements for labour being dependent upon a given set of institutions is based upon comparisons and data from the most developed economies.

The starting point of Archer's (1998) discussion of the desirability and feasibility of economic democracy is that advanced capitalist societies have already achieved a welfare-state, parliamentary democracy and decent wages and conditions. Brazil has only had a consolidated democracy since the late 1980s and precarious welfare state provisions linked to formal employment when compared to advanced economies. An element of the research problem investigated across this thesis is the persistence of conditions that are argued to be *indecent* and inconsistent with the provisions provided by the formal LMI system; the influence of labour representative organisations at the national level and the workplace industrial relations dynamics of the automobile industry.

This may suggest that the LME/CME distinction is inappropriate for middle-income economies, however it is argued here that the difference in labour market arrangements

and the better wages and greater occupational stability and more encompassing welfare states produced by CME type institutional arrangement represent an important consideration for a high-inequality emerging capitalist economy. As per Hall & Soskice (2001:11) the importance of ‘institutions that provide actors potentially able to cooperate with one another with a capacity for deliberation’ is a transferable lesson and an essential consideration for the research question. As the same authors (p.35) argue, VoC represents an open research agenda that ‘can also be useful for understanding political economies that do not correspond to the ideal type of a liberal or coordinated market economy’.

Schneider (2013:22) similarly recognises such diversity beyond the LME/CME distinction describing ‘good reasons to think that capitalism and many middle-income countries may have settled into institutional foundations of its own’ and that ‘capitalism in many developing countries is what it is, rather than on its way to becoming something else’. Schneider describes the common model of the Latin American variety of capitalism as being one of Hierarchical Market Economies (HMEs). He (p.91) describes the core features of an HME as ‘extensive labour market regulation, a low skills regime, rapid turnover, sparse unions, and pervasive informality’. The coexistence of LME and CME characteristics is recognised (p.21), high turnover and extensive regulation respectively, yet there is little evidence of the argued comparative advantages of either model. In an HME, rather than coordination or markets it is an ‘oxymoronic coupling of hierarchy with market’ that contributes to a self-reinforcing and embedded system with a dysfunctional relationship between institutional components and subsequent inequitable employment arrangements.

It is understandable and widely recognised that a VoC approach and its models will unavoidably neglect distinctive characteristics of individual societies; this is the case with the CME, LME and HME categories. As per Streeck (2009:1) institutional arrangements should be seen as dynamic processes rather than static structures, it is unlikely that such dynamic elements will be incorporated into ambitious regional categorisations of VoC ideal types. In the Brazilian case, it is argued across this thesis that ‘sparse unions’ is not an appropriate description of the reality of industrial relations. Firstly, as many of the institutions required for a more coordinated economic model *exist* in the long-standing corporatist system, argued in the previous section to offer potentially more equitable benefits than a market based model.

As the institutional approach outlined in this chapter dictates, the mere existence of such formal institutions is insufficient to provide more equitable solutions, the complementarities and role of informal institutions also needs to be considered. This also brings into question the ‘extensive labour market regulation’ core feature of HMEs when applied to the Brazilian case. That the regulation of the employment relationship in Brazil is extensive is not disputed, what is challenged however is the simplistic and defining relationship or negative complementarity between *one* institution (formal legislation) and observable LMI outcomes such as informality, noncompliance and unemployment.

The HME ‘extensive regulation’ characteristic (Schneider 2013: 173) is based upon Botero et al’s (2004: 46-67) comparison of 90 economies, which categorises Brazil as having the world’s most regulated labour markets. The comparative exercise is criticised for its methodology, which presumes that widespread compliance characterises the employment relationship, neglecting evasion and other related key variables and is therefore considered to be misleading (Deakin 2009:6; Lee and McCann, 2014:8). The widely influential reductionist logic is not compatible with the complexity of the institutional approach and the need to consider a composite set of institutions, their informal manifestations, historical legacies and complementarities. The idea of ‘extensive regulation’ when applied to LMIs in Brazil is discussed across chapter 6 where it is argued that the arguments on the quantity of regulation are misleading and there should be greater recognition of the quality/nature of regulatory arrangements.

Contrary to deregulation arguments that often cite Botero et al, there is evidence of the more regulated Brazilian corporatist system contributing towards democratisation and a progressive constitution in the 1980s. This point is analysed in greater detail across the remainder of the thesis. The Brazilian response to globalisation and liberalisation challenges in the 1990s did *not* involve the decline of ‘unions and the collective bargaining system’ (Thelen op cit) or the same ‘weakening of organized labor and a substantial amount of deregulation’ (Hall & Soskice op cit) that characterised the LME response. The corporatist system remained intact. There is evidence in certain industries and regions of coordinated capital-labour solutions evolving to address the challenges of the liberalisation reforms influencing the practice and position of the largest and dominant peak association, the CUT. This relatively effective coordination is described by Rodrigues (2002:154) as the ‘ABC standard’ of industrial relations characterised by ‘conflictive cooperation’.

The persistence of a resourceful corporatist structure and the observable ‘pockets of efficiency’ of effective and evolving capital-labour coordination in Brazil are not reflected in Schneider’s HME, characterised by ‘sparse unions’ and ‘extensive regulation’. The reality of employment in the Brazilian system *is* consistent with that described by Schneider and ‘hierarchical’ aptly captures the predominant dynamics of institutional relations in Brazil. This is an important part of the research question, the inconsistency between the existence and survival of collaborative and bargained institutional arrangements and the non-transition to an LME in Brazil (see next chapter) and the persistence of *hierarchical* outcomes. Part of the puzzle is to find explanations for why the observed effective coordination in some areas has not been sufficiently reproduced across other spheres of the macro-economy to characterise employment relations more generally.

Conclusion

This first chapter establishes the key analytical parameters to be applied implicitly across the remainder of the thesis. To argue that the analytical framework will be followed rigorously or parsimoniously would be somewhat contradictory. One of the key advantages of an institutional approach is its porousness and flexibility, considered ideal to study the real-world puzzle under analysis. Greater rigour is required when considering the key definitions related to this research project.

Primarily there are institutions, a fluid and broad definition is argued to be most compatible with the aims of the research project. It is fundamental that analysis includes and recognises the importance of informal institutions. As North (2003 op cit) argues, analysis limited to formal rules and their enforcement is highly limited. A considerable number of legal studies on labour relations in Brazil are devoted to analysis of the relevant legislation, described by Levitsky (op cit) as ‘parchment’ rules. Levitsky recognises that traditional studies erroneously presumed such rules to be ‘stable and effective’.

The inconsistency between the formal LMI system and workplace reality identified in the research question suggests some ineffectiveness of the formal institutions. Analysis of the formal relevant legislation in Brazil would reflect very positively upon the potential for coordinated institutional labour arrangements. Explanations for the inconsistency between the formal system and reality of employment requires a detailed analysis of its composite set of institutions; their history, informal and formal manifestations and importantly their

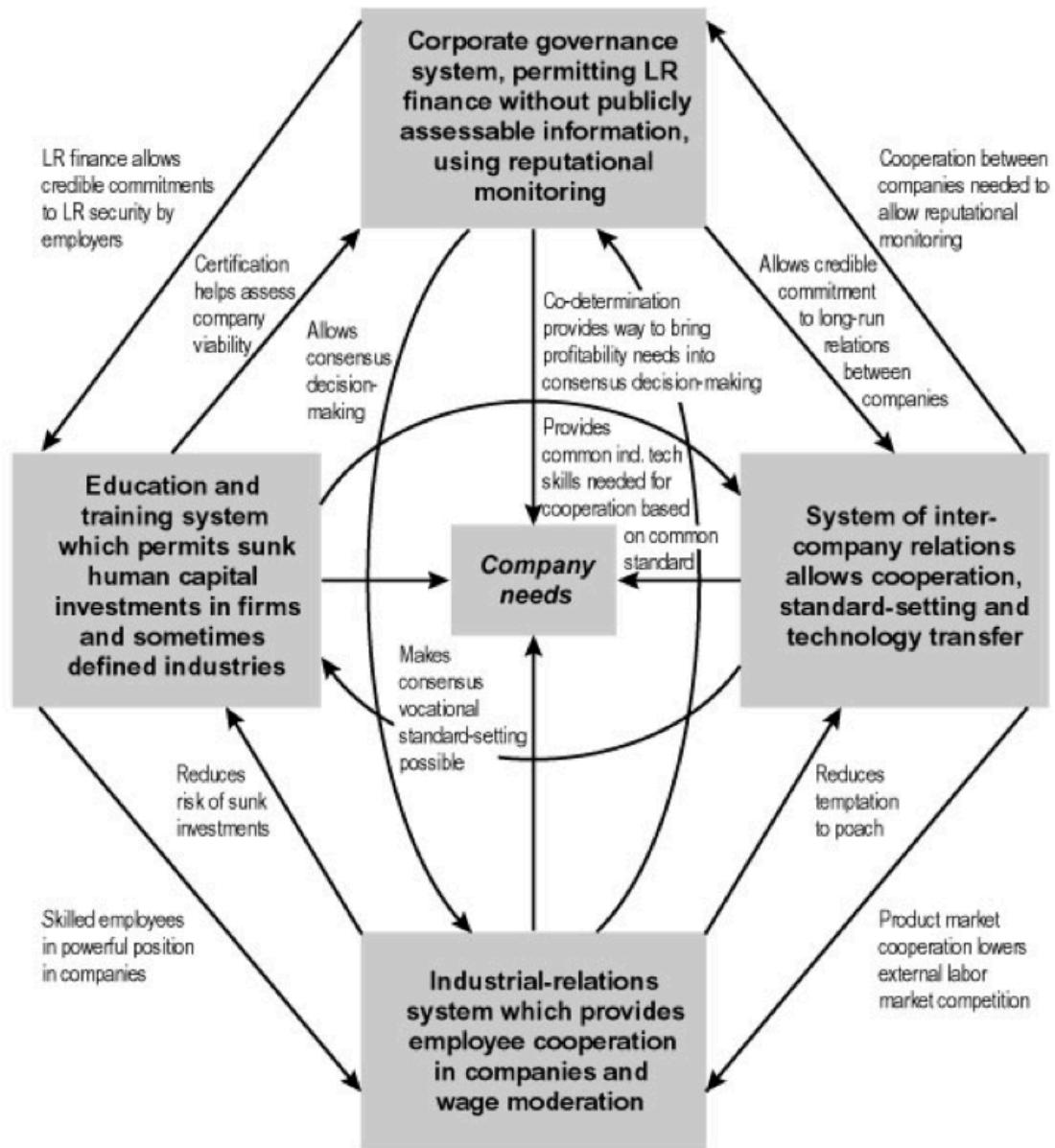
complementarities. This is the two-way relationship or *complementarity* between the empirical research problem and the institutional approach adopted.

The research lends itself to the Varieties of Capitalism approach that differentiates between coordinated and liberal institutional arrangements amongst advanced capitalist economies. It is from the *Brazilian variety of capitalism* that answers to the research question are expected to be found. The empirical example of the CME type economies and their comparative development with LMEs significantly weakens the popular arguments of global convergence upon one type of deregulated neo-classical type market economy. It is argued here that the interests of labour and related greater stability and wealth distribution through employment are produced by cooperative institutional arrangements.

When applying the VoC research agenda to Brazil, a middle-income or emerging economy outside of the traditional OECD examples, a key consideration for the research is that a composite system of institutions with the capacity to coordinate across various spheres of the macro-economy contributes to a more equitable society. The need for more de facto equitable institutional arrangements is heightened in the Brazilian case given the extremely high and persistent levels of inequality.

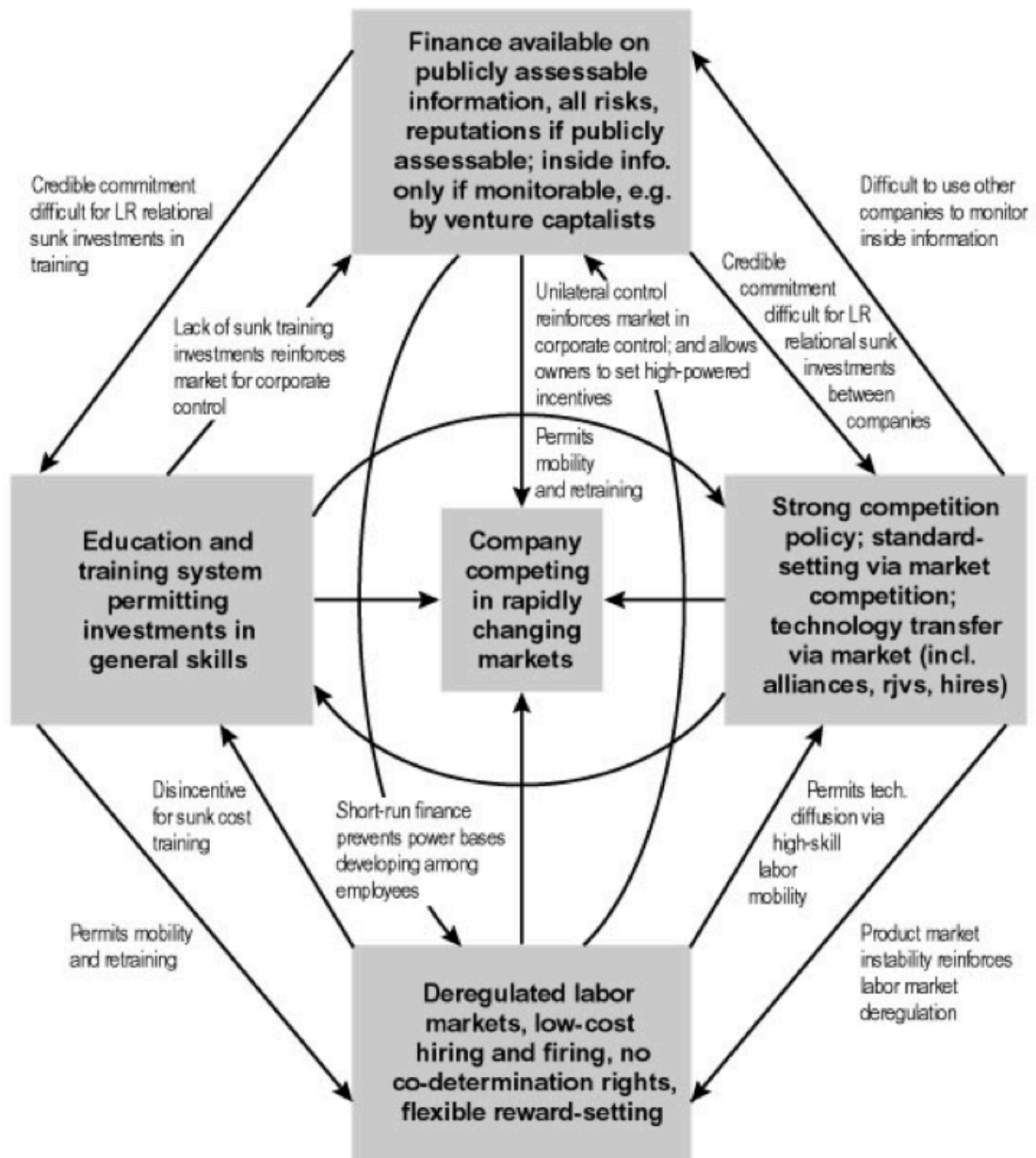
Applying a VoC approach to a Latin American economy is assisted by Schneider's HME model that demonstrates considerable tangency with the Brazilian economy. Within the labour focus of this research however, the idea of 'sparse unions' in HMEs does not fit with the Brazilian example and there is some controversy over the implications of the idea of 'extensive regulation'. There is evidence of successful tripartite coordination that has contributed to the survival of the formal corporatist institutions during the liberalisation reforms of the 1990s generating greater employment stability in some regions and industries and a relevant factor in the development trajectory in the 2000s (see next chapter). Consistent with the HME description, Brazil does not display the comparative advantages of either the LMEs or CMEs. Therefore, part of the research question is as to why the successful coordination examples between Brazilian labour market institutions and greater rewards for labour implied in terms of stability and income, has not reproduced sufficiently to be able to characterise the reality of employment across society.

Annex 1.1 Complementarities Across Subsystems in the German Coordinated Market Economy



Source: Hall & Soskice (2001:27)

Annex 1.2: Complementarities Across Subsystems in the American Liberal Market Economy



Source: Hall & Soskice (2001:31)

Chapter 2 – The Brazilian Variety of Capitalism

Hall & Soskice's (2001) Varieties of Capitalism (VoC) distinction between Coordinated Market Economies (CMEs) and Liberal Market Economies (LMEs) provides valuable applications for the study of institutions. The liberal – coordinated dichotomy is based upon empirical examples of *advanced* economies. Schneider's (2013) Hierarchical Market Economy (HME) model applies the VoC approach to *emerging* or *middle-income* economies in Latin America. For Brazil, 'Hierarchical' is considered a particularly apt description in light of its high and persistent levels of inequality. From a VoC approach this chapter analyses the Brazilian institutional model, its labour institutions in particular. There is considerable tangency between Schneider's Latin American model and the Brazilian economy. The negative complementarities observed in the HME model of labour institutions adequately reflect the reality of employment in Brazil referenced across this thesis and in the research problem.

A comparative capitalisms exercise categorising groups of economies with similar institutional arrangements will invariably be somewhat static and neglect unique and exceptional characteristics and dynamics of an individual society. It is here that this research project seeks to contribute by looking at the existence and role of Brazilian labour market institutions that differ from the Latin American HME ideal type. Schneider's (2013:91, 101) description of 'sparse', weak and small unions is an unsuitable description of the Brazilian institutional model. This is particularly the case since the 1980s where institutional relations in some spheres of the economy demonstrate a capacity for coordinated tripartite solutions involving a strong trade union presence.

The observed tripartite institutional system is characteristic of a CME type labour market, argued to contribute to more equitable employment arrangements than the liberal market arrangements of LME type economies. On the other hand, the negative institutional complementarities of the hierarchical model are consistent with those observed in contemporary Brazilian employment. This is part of the underlying research problem: the persistence of this type of employment reality in Brazil *despite* the historical presence of a highly regulated institutional system that envisages and suggests a considerably more stable and representative type of employment relationship.

The first section of the chapter considers the participation of the state in the Brazilian variety of capitalism in light of the LME/CME dichotomy. Quantitative data is presented

in the first part to locate the role of the Brazilian state in a comparative context. The second part discusses two more qualitative analyses of state influence: Evans's Embedded Autonomy (1995) that makes extensive use of the Brazilian case-study in a comparative perspective and Lazzarini's (2011) Capitalism of Ties [*Capitalismo de Laços*] description of Brazilian institutional relations. Some CME or non-market type traits and 'pockets of efficiency' can be identified from these interpretations. This weakens the idea of any irresistible path towards a minimal-state, liberal-market economy in Brazil.

The second section narrows its scope to labour institutions, the main focus of the thesis. The first part discusses the HME ideal type and its relevance to Brazil. The negative hierarchical complementarities of Latin American capitalism are in the most part consistent with those observed in Brazil. The second part of the section argues that 'sparse' 'weak' and 'small' unions is not or *should* not be applied to the Brazilian institutional model. The role and influence of trade unions differs from the hierarchical ideal type with outlying characteristics when compared with other societies both within Latin America and beyond. This discussion of Brazilian exceptionality seeks to extend upon, rather than contest the HME discussion within comparative capitalisms debates. This is consistent with Schneider's analysis that recognises 'within-type heterogeneity' (2013:181) and the HME as a 'useful framework' and research agenda to analyse 'variations within Latin America' (Schneider & Karcher 2010:24). The complex tensions, incompatibilities and negative complementarities identified in Brazilian LMIs means that it is described in this chapter as an *incongruous* system.

Section three continues upon the idea of Brazilian exceptionality by discussing labour relations between 2003 and 2013. Closely related to the period described by the IPEA (2012) as the 'inclusive decade' (2001-2011) and the two-term PT-Lula government (2003-2010). The consolidation of economic growth and stability with reduced inequality and poverty over a 10-year period is historically unprecedented and therefore may be considered a turning point or 'critical juncture' for Brazilian development. Of considerable significance is that this positive trajectory took place without the major deregulation of labour markets evident in LME type economies and the institutional interaction over the period demonstrates some characteristics associated with the more equitable coordinated market economies.

The fourth and final section of the chapter considers the factors hindering the potential for greater institutional coordination between tripartite labour institutions; factors that may limit the continuation and/or deepening of the historically unprecedented trend towards a more equitable society evident over the decade in question. Many of the observed problems are recognised in Schneider's HME model. The direction of this research considers the role and potential of Brazilian labour institutions in the evident negative and positive complementarities.

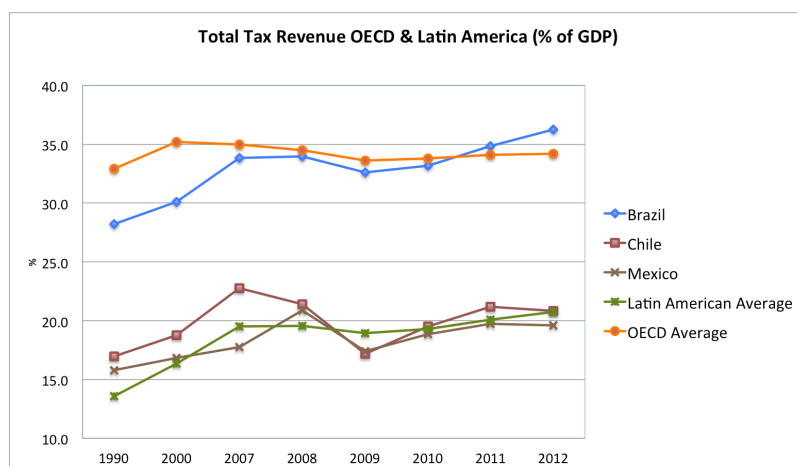
The conclusion provides a summary of Brazilian labour institutions from a VoC perspective and the relevance of some unprecedented developments and trends in the 21st century also accompanied by significant continuities. This builds upon the previous chapter establishing the analytical parameters of an institutional approach (ch.1). It further serves to provide the institutional background for the microanalysis of labour institutions in the construction industry analysed over the second half of the thesis.

2.1 State Participation and Influence in the Brazilian Variety of Capitalism

The comparative capitalisms literature (Boyer 2007:522; Bresser-Perreira 2011:6, Jackson and Deeg 2008 :683) and the specific VoC literature (Hall & Soskice 2001:36, Schneider 2013:22) recognise that distinctive types of capitalism exist outside of the OECD nations. Nevertheless, the VoC's Liberal-Coordinated dichotomy still provides a useful research agenda to apply outside of the advanced economies. Argued in chapter 1: economies that possess institutions able to coordinate their actions offer greater influence to labour interests when compared with more market influenced institutional systems.

The first part of this section attempts to locate Brazilian macro-characteristics within a comparative context with advanced OECD economies, the LME & CME sub-categories and Latin American averages. This then leads into discussion of the appropriate description of state participation in the Brazilian variety of capitalism, looking at the qualitative embedded autonomy, capitalism of ties and HME descriptions. Within the LME/CME dichotomy, liberal market societies are characterised by reduced state participation in the economy. As an initial and basic indicator of state involvement in society figure 2.1 looks at Brazil's tax revenue as a percentage of GDP compared with the OECD and Latin American averages together with Mexico and Chile.

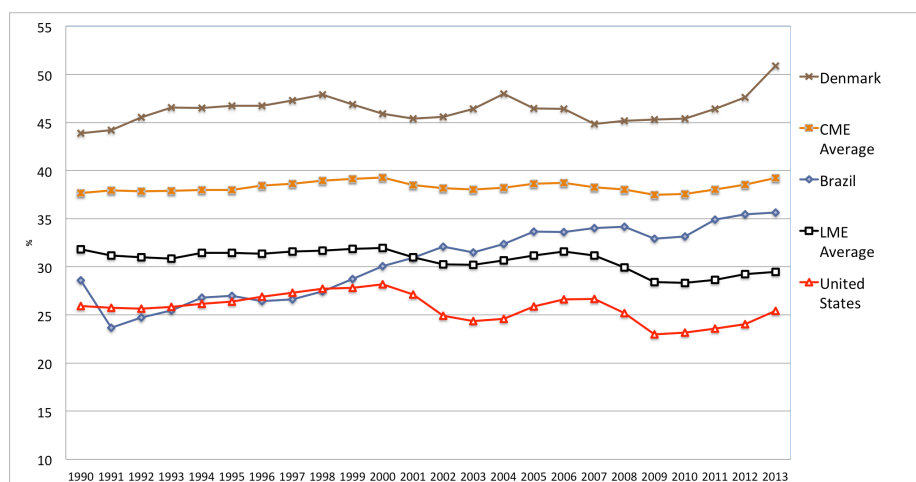
Figure 2.1 Total Tax Revenue OECD & Latin America (% of GDP)



Source: Adapted from OECD, ECLAC & CIAT (2014).

The increasing GDP/tax ratio between 1990 and 2012 in Latin America (+7.1%) and in Brazil (+8.1%) cannot automatically be interpreted as an increase in state intervention or participation in the economy. It has to be considered in the historical context of economic reforms coming after the heightened borrowing of the 1970s and the macro-economic instability resulting in hyperinflation over the ‘lost decade’ of the 1980s. As recognised within the relevant OECD report (2014: 23), these trends, particularly across the 90s can be associated with the ‘imposing of fiscal discipline’, which can often represent a reduced role of the state in the economy. The IPEA (2012:13) describe the 1990s as the ‘stabilisation decade’ preceding the ‘inclusive decade’.

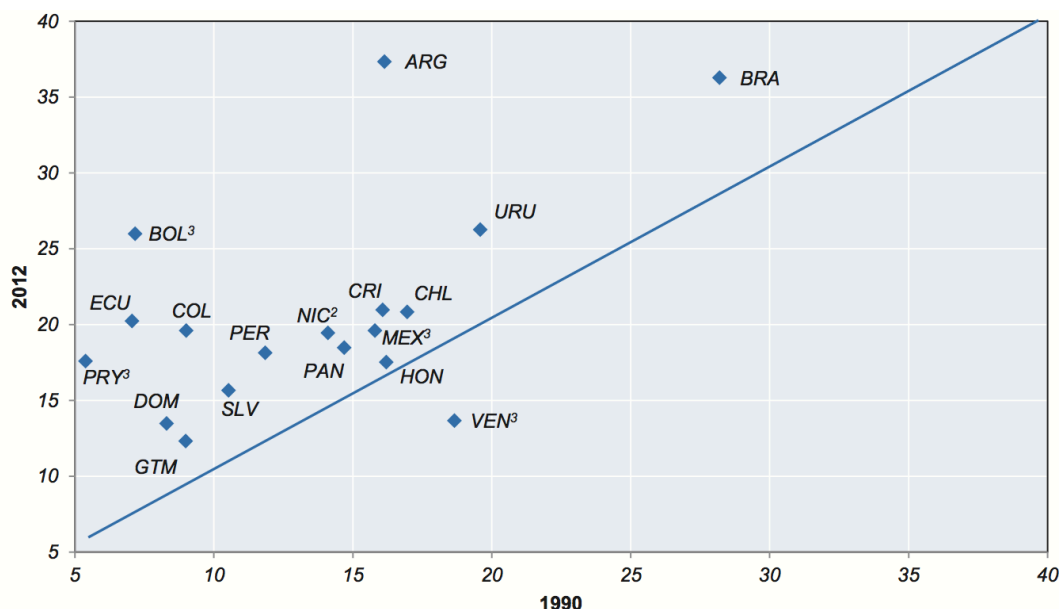
Figure 2.2 Total Tax Revenue CMEs, LMEs & Brazil (% of GDP)⁷



Source: Data from OECDStat 2015 & CEPALStat

⁷ LME average from Australia, Canada, Ireland, New Zealand, UK & USA. CME average from Austria, Belgium, Denmark, Iceland, Germany, Japan, Netherlands, Norway, Sweden and Switzerland

Figure 2.3 Changes in tax to GDP ratios in selected Latin American Countries



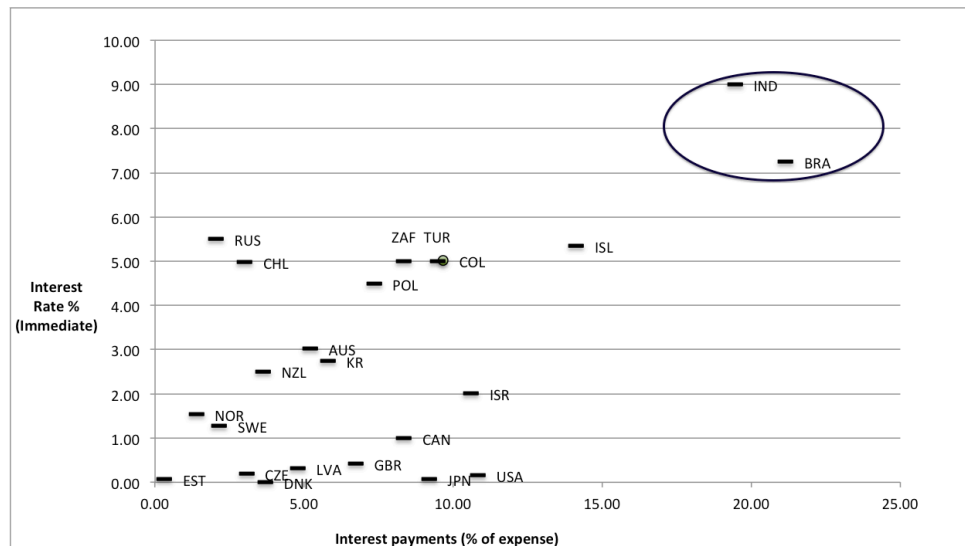
Source: OECD/CEPAL/CIAT 2014 p32 (2) 1991 data used (3) estimated data for 2012

Advocates of free-markets and a reduced role for the state are critical of the excessive presence of the state and the Brazilian Tax/GDP ratio is often cited (Pastore 2005:9; The Economist 2004: 51). Discussed across Chapter 1, CMEs characterised by higher GDP/Tax ratios than Brazil and LME type economies are argued to generate more equitable outcomes for society. In this sense the trend that sees Brazil’s tax ratio converging upon the CME average could be viewed positively. Yet within the context of this indicator, the Brazilian economic model stands out for its *poor* return in terms of socio-economic indicators when compared with economies with similar ratios. As The Economist (*ibidem*) observes the tax levels are ‘almost enough to finance a European-style welfare state’.

At a macro-level, the inconsistency between the ‘OECD level of taxes’ and development indicators in Brazil mirrors the underlying research problem applied to the labour market; an inconsistency between the observed outcomes and a set of institutional characteristics with the potential for more equitable results. In the context of persistent inequality and poverty discussed in more detail in the next chapter, the idea that there is a poor return from tax levels in Brazil is not disputed. Recognised by Todaro & Smith (2006:27): Brazil ‘should have been in a much better position to fight extreme poverty and improve economic equity and social indicators’. What is disputed, discussed in greater detail in Chapter 1, is the idea that a liberal market path is the most desirable option for more equitable solutions. This is consistent with Evans (2005:25) who argues that ‘neo-

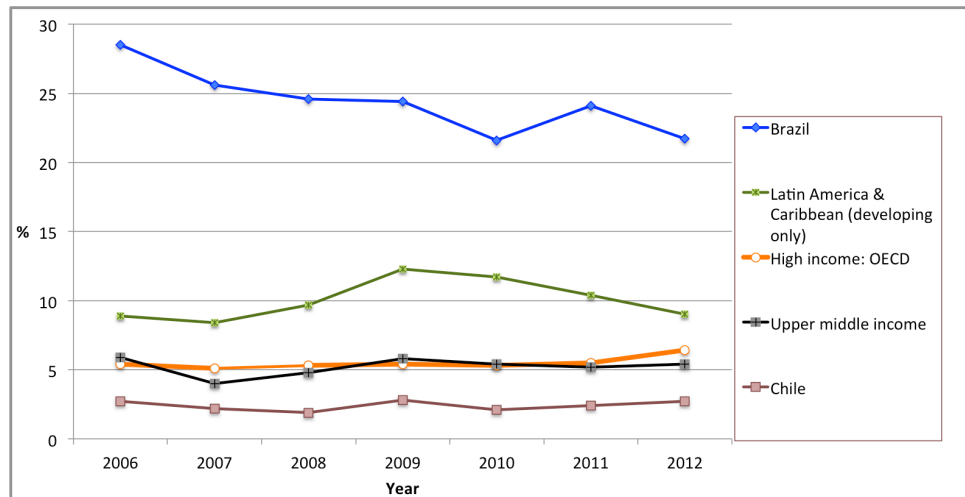
utilitarian orthodoxy' made developmental problems worse in 'intermediate embedded autonomy' industrial states like Brazil.

Figure 2.4 Spending on interest payments (%) cost and proportion in 2012



Source: Data from OECDStat & World Bank: World Development Indicators

Figure 2.5 Interest payments (% of revenue)

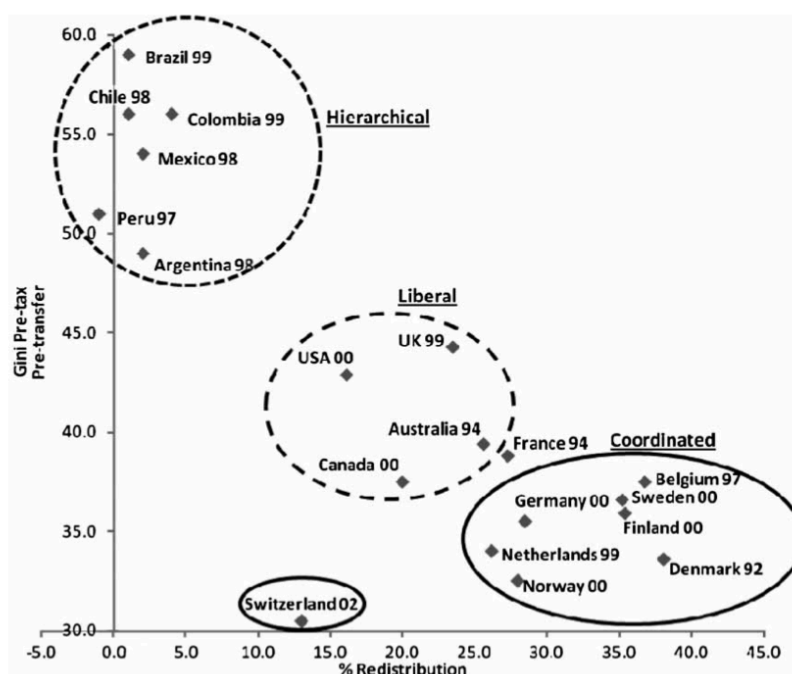


Source: Data from World Bank: World Development Indicators.

The indicators of levels of state spending presented in figures 2.1 to 2.3 need to be considered together with data on the nature of this spending. Levels and cost of government spending on interest payments is presented in figures 2.4 and 2.5. The data demonstrates Brazil as a clear outlier in terms of the costs of servicing the debt burden both regionally and within its income group (fig. 2.5) and internationally (fig. 2.4). This is consistent with the fiscal discipline nature of state spending already mentioned and the persistence of the historical fragility of Brazilian public finances identified in chapter 3 (Abreu 2008:312,331 & 385). Different to the debt crisis of the 1980s the majority of

interest, 94 per cent is paid upon internal debt (Tesouro Nacional 2016). Weisbrot, Johnston and Lefebvre (2014:11) consider this to be important as the government was able to ‘pay off the IMF in 2005 and subsequently avoided much of the Fund’s influence and conditionalities’. Conditionalities that have historically tended to favour liberal market type policies.

Figure 2.6 Market inequality and political redistribution in selected Latin American countries in comparison to developed countries



Source: Schneider and Soskice (2009:32) data from Luxembourg Income Study & Goñi et al. 2008

A further important consideration on public finance beyond the interest/debt burden is the redistributive nature of the spending. Figure 2.6 demonstrates minimal ‘redistribution through the government’ in Latin American economies (Schneider & Soskice 2009:32). A World Bank (2004 xviii - xix) report on Brazil attributes public transfers to 39 per cent of the ‘excess inequality’ observed with social spending ‘heavily biased in favour of higher income groups’. In comparative terms, social spending is more regressive than that of the relatively inegalitarian example of the United States. Distribution and returns of education spending is similarly recognised as comparatively more regressive than that of the US LME and fellow HMEs Mexico and Colombia.

A key factor when considering the inconsistency between Brazil’s level of state income and lower social indicators when compared with societies with similar levels of tax revenue is the debt service burden and the highly regressive nature of the remaining public spending. GDP/tax ratios are comparable to those of advanced economies, greater than

LMEs and converging upon CME levels as demonstrated in figures 2.1-2.3. In terms of debt servicing costs, Brazil is a significant outlier comparable only to 'Lower Middle Income' India, 55 places below Brazil in the UNDP Human Development Index (HDI) ranked 130 and 75 respectively (UNDP 2015).

In terms of the financial participation of the state, the data presented is sufficient to suggest that Brazil does not resemble an LME type economy both historically (Fig.2.3) and in recent trends (Fig. 2.2). This weakens the idea of a path towards a minimal-state liberal-market economy. The relatively higher state participation suggested here, both historically and currently in the Brazilian economy together with the rejection of the idea of a 'powerless state' on a liberal market path, is consistent with the arguments and models of Evans (1995) and Lazzarini (2011). Both interpretations identify CME-type institutional relations within the Brazilian variety of Capitalism consistent with the premise of the research question on the type of labour market arrangements envisaged by the formal LMI system.

Evans's (1995:12) study seeks to 'establish a connection between developmental impact and the structural characteristics of the state'. Based upon empirical examples, he presents the ideal type of a successful developmental state as one of 'embedded autonomy', characterised by the fusion of institutional or 'corporate coherence' (autonomy) and a 'concrete set of societal ties that binds state to society and provides institutionalized channels for the continual negotiation and renegotiation of goals and policies' (embeddedness).

There are similarities between the premises of embedded autonomy and the VoC approach, both stress that observable phenomena are the product of composite institutional systems encompassing 'informal networks and norms' and the form in which institutions interact to resolve coordination problems (Evans 1995:26; Hall and Soskice 2001:13). Embedded autonomy resembles the CME model in the sense that it stresses the importance of the quality and nature of state involvement for successful industrial/developmental policy. This moves away from 'more versus less' state intervention arguments (Evans 1995:22) and challenges the neo-liberal prescription of free markets and a reduced role for the state. Indeed, Evans (idem:200-221) describes the impetus for embedded autonomy as 'Discontent with neo-utilitarian visions of state-society relations' that do not recognise the 'possible benefits of having a cohesive, coherent state apparatus'.

CME similarities with Evans's ideal type are evident in the use of Austria as an archetype of embedded autonomy. He (idem:240-242) describes a 'highly organized industrial sector closely linked to the state apparatus' and, importantly in the context of this present research, 'state-labour links as intricate as those that connected the state and capital'. The coordinated/cooperative element of Austrian institutions is reflected in the Joint Commission: 'a state-sponsored forum for translating the interests of capital and labor into policies'.

Brazil is categorised as an intermediate example of embedded autonomy together with India. Evans describes 'replicating the embedded autonomy of the developmental state' as a 'giant step forward' for intermediate states. Evans's (idem 29, 62-64) model recognises the importance of the historical embeddedness of a society's set of institutions and describes the Brazilian state as an 'uninterruptedly powerful presence in the country's social and economic development' with a central role in 'an impressive record of industrialisation'. This contributes to the idea of Brazil as an outlier in terms of state influence already discussed and the 'uninterrupted' nature of Brazilian development described across the next chapter.

Using the term widely associated with Geddes (1986: 105) the embedded autonomy elements of the Brazilian model are characterised by 'pockets of efficiency' where the state is not transformed, instead efficient institutional layers are added to the existing, less-efficient structure hindered by clientelism, rent-seeking, fragmentation and political interventions (Evans 1995:61). Successful examples of institutional coherence from the Brazilian case study are identified as the National Bank for Economic and Social Development (BNDES), a source of important long-term financing for the most successful elements of industrial development. These in turn are identified as the auto-industry, a joint project between the state and MNCs; Petrobras – the state-owned oil company described as a 'sectorally specific version of embedded autonomy' both characterised by a 'dense network of ties' (idem:64).

Evans's (1995:64) outlook for the future feasibility of embedded autonomy-type development or the maintenance or creation of further pockets of efficiency is pessimistic stating that 'the decay and dismantling of state institutions ensures that examples of embedded autonomy will be harder to find in the future'. Such pessimism is justifiable given the observable tendencies at the time of the research and publication, with neoliberal

ideas and policies at the height of popularity. Market resolution was a uniform response to all economic problems (Idem:153). Evidence at the time suggested Brazil was on the path towards an LME demonstrating a loss of faith with, and dismantling of state involvement in the economy.

The data presented in the first part of this section suggests that a transition to an LME type economy predicted by Evans and many others was not borne out. This idea is reinforced when Lazzarini's (2011) more recent Capitalism of Ties⁸ (herein CoT) analysis of the Brazilian model of capitalism is considered. CoT demonstrates the persistence and adaptation of comparable levels of state influence and strong ties with business into the 21st century. Lazzarini's analysis begins in 1996 with the first wave of privatisations of the Cardoso government and aims to challenge the widely-held idea that this process represented a reduction or removal of state influence from the economy.

At first glance and argued by many, the reforms of the 1990s such as privatisation, global trade and investment liberalisation followed by a large increase of companies listing on the Brazilian stock exchange in the 2000s seems like a path towards an LME type economy. Through a comprehensive analysis of state-business relations between 1996 and 2009 with data from approximately 700 Brazilian firms, Lazzarini (2011: 147-164), demonstrates that the economic reforms of the 1990s and 2000s changed very little in the distribution of power or the centrality and levels of state influence over the economy.

According to Lazzarini (idem:10) the close state-business *ties* embedded in Brazilian history persisted and actually became stronger. It is argued that the Brazilian capitalist model, through indirect state bank and pension fund influence, is as state led as ever. This goes against common criticisms and initial fears of the economic liberalisation process regarding the denationalisation of the economy, a weakened state and a society at the mercy of free market logic as the author describes (idem: 19-20 emphasis in the original);

although the rise in participation of foreign capital in the country and less *direct* government participation through state enterprises is undeniable, [...] It is proposed that the capacity for intervention of the government *hasn't* diminished and that the main economic actors in the economy continue to be entities directly or indirectly linked to the government in association with some private groups of greater influence. In reality and paradoxically, the privatisation phenomenon and greater global insertion from the 1990s in Brazil helped to *reinforce* the influence of government and certain domestic groups. This distinct interpretation emerges when we observe what did and didn't change in the relationship patterns between diverse stakeholders in the economy.

⁸ Capitalism of Ties is presented in English language publication Musacchio & Lazzarini (2014) 'Reinventing State Capitalism: Leviathan in Business, Brazil and Beyond' Harvard University Press

Capitalism of ties was deepened not dissolved by the diverse restructuring that took place in Brazil.

Considerable similarity can be observed between the CoT model and Embedded Autonomy. Lazzarini's 'ties' are consistent with the 'coherent, cohesive state apparatus with close, institutionalized links to an economic elite' that characterise Evans's model (Evans 1995:225). Both authors recognise the importance and contribution of the BNDES in state business ties and the two models stress the importance of the quality rather than quantity of state intervention. CoT is presented as a unique model of capitalism, with the state-business ties described not inherently negative such as those associated with 'crony-capitalism' (Lazzarini 2011:3-4). Both positive (long-term and patient capital, potential large-scale projects) and negative (anti-competitive and vulnerable to clientelism) characterise Lazzarini's model (idem: 111).

The persistence of close state-business ties into 21st century Brazil described by Lazzarini's CoT model means Evans's (op cit) concerns of a liberalisation process that would remove the institutional requisites for a successful developmental state did not take place. Considering both the CoT and embedded autonomy interpretations, the suggestion that Brazil's variety of capitalism does *not* historically resemble that of an LME nor is it converging towards this type of economy is further reinforced. Whilst certain trends such as privatisation and increasing stock-market capitalisation resemble a liberal market path, Lazzarini's detailed analysis competently demonstrates that state influence has changed and adapted over recent decades. The capacity of and levels of state intervention in Brazil have been maintained if not increased (Lazzarini 2011:10).

Different to this present research project, the state-business centrality of the two models discussed places little emphasis upon labour institutions. Evans (1995:14) presents the inclusion of state links with 'other social groups, like labor' as a research agenda within embedded autonomy and strong labour institutions and tripartite relations characterise the Austrian archetype model (op cit). Lazzarini's analysis does not incorporate the role of labour institutions though it is important to recognise that the state financial and pension fund institutions directly and indirectly tied to private companies frequently have trade unionists participate at director level.

Soares (2013:549-550) observes that Lula filled half (1,300) of the senior strategic director and consultancy roles in key organisations with trade unionists. Amongst which are:

unemployment insurance funds (FAT & FGTS), pension funds, state companies such as Petrobras and the BNDES development bank referenced in both Lazzarini's and Evans's models (op cit). Soares estimates trade unionists were in control of or had significant influence over an annual budget of 57 billion US Dollars.⁹

The state-business relations of Brazil described in the CoT model are therefore quite unlike the arms-length, non-interventionist or competitive institutional dynamics associated with an LME and closer to the coordinated networks and state-guided institutional relations associated with a CME. Citing Lazzarini's research, Schneider (2013:172-173) argues the CoT type of state involvement in Brazilian companies 'trumps the possible transition to more LME-type corporate governance'. However, he rejects the idea that it represents a movement towards a 'sort of state-directed CME' instead arguing that the BNDES and pension fund pressure upon national companies represents an element of hierarchy rather than CME type coordination. This again supports the idea presented here of a *non-transition* towards an LME. The idea that the dense state-business ties represent hierarchy rather than CME-type traits does not weaken the premise of the research question which argues that Brazil has institutions *capable* of reaching coordinated solutions.

The idea of Brazil as a hierarchical variety of capitalism rather than a hybrid or emerging variant of liberal and coordinated types based upon advanced economies is convincing, albeit it is not focussed specifically upon labour market institutions (LMIs). The HME provides a useful analytical model for understanding the reality of employment in Brazil referred to across this thesis, however it is precisely at the labour market institutional level that this research offers a Brazilian variant of the HME. Schneider's model looks at general HME institutional outcomes and this research focuses specifically upon LMIs where significant within-type heterogeneity is observed in the Brazilian case. Analysis in the next section is narrowed to the labour market and its institutions; a key element to understand the Latin American/HME type of capitalism.

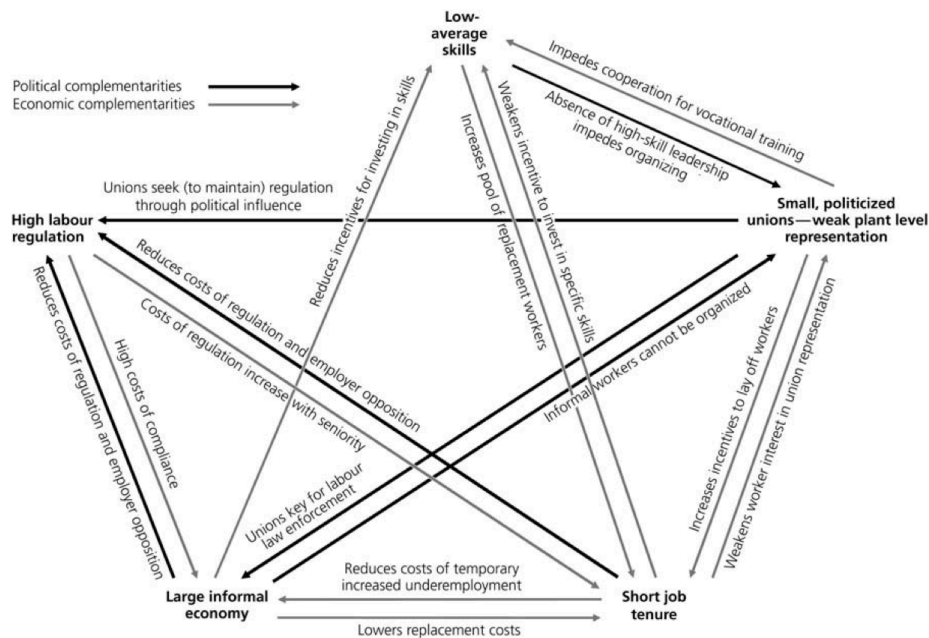
2.2 Brazil as a Hierarchical Market Economy (HME)?

This second section of the chapter presents the core features of HME labour institutions and how they contribute to the described 'disappointing' outcomes observed (Schneider and Karcher 2009:2). The comparison of inequality and GDP per capita levels in figure 2.6 suggests a comparative cluster of middle-income, high-inequality Latin American

⁹ 200 billion Brazilian Reales (BRL) at Exchange rate of 3.5 BRL/USD

economies. Schneider’s hierarchical model identifies similar sets of mutually reinforcing, continuity-enhancing institutions and complementarities across the labour markets of the region. Analysis focuses upon the coherence between the HME and the observable characteristics of the Brazilian model. The second part of the section discusses the specificities of the Brazilian model that diverge from the HME ideal type.

Figure 2.7 Economic and Political Complementarities in Latin American Labour Markets



Source: Schneider & Karcher (2010:12)

The five core features or institutions of HME labour markets are summarised as ‘extensive labour market regulation, a low-skills regime, rapid turnover, sparse unions and pervasive informality’ (Schneider 2013: 91). As per the institutional approach adopted and discussed in more detail in chapter 1, these institutions need to be analysed as interacting bodies within a composite system. The original VoC distinction (Hall & Soskice 2001) identifies two models within the capitalist system with diverse sets of complementary institutions producing distinctive comparative advantages. The complementarities between the core features of HME labour markets are described as interacting negatively both politically and economically by Schneider and Karcher (2010:12) as outlined in figure 2.7.

The consequences of these core elements of HMEs correspond to the reality of employment in Brazil referred to across this thesis and consistent with those observed in Brazil. Low average-skills and short job tenure mean low pay and instability for workers. The pervasive informal sector excludes a significant proportion of the workforce from the

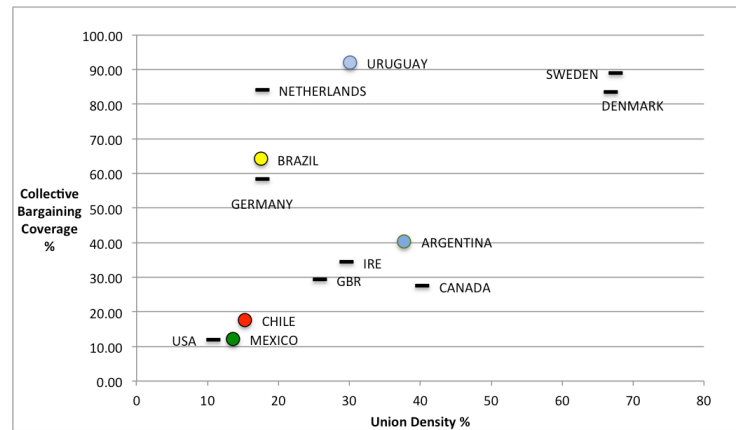
considerable formal protections and labour rights. Within the HME analysis (Schneider and Soskice 2009:34) there is recognition of the existence of ‘good and stable careers in the public sector, MNCs and in large domestic groups for those with higher education’. The labour market reality referred to across this thesis and in the HME negative complementarities refers to the ‘large share of the workforce [...] in badly-paid, insecure jobs with no possibility of training’.

The idea of a correlation between the size of the informal sector and amount of regulation in Latin America is disputed. Summarised by Schneider & Karcher (2010:2): ‘more and better enforcement’ and tripartite social dialogue is prescribed by the ILO for greater formalisation and ‘rigidity and overregulation’ cited by the World Bank for the size of the informal sector. This reflects wider differences (Haagh & Cook 2005:174) between the neo-liberal ‘employment as a commodity’ and more rights and well-being industrial relations approaches to the labour market. The next chapter highlights historical embeddedness or path dependencies that contribute to the evasion of labour legislation and the persistence of a large informal sector in Brazil rather than a universal positive correlation between regulation levels and informality. The insufficient enforcement or excess regulation debate applied to Brazil is discussed in more detail across chapter 6.

The HME characteristic of weak, sparse or small unions is considered inadequate in the case of Brazilian labour institutions, particularly since the 1980s and into the 21st century. As per figure 2.8 and commented upon by Schneider (idem:173), Brazil’s union density of 17.5% in 2012 is high amongst HMEs, significantly higher than that of the US (10.8%) comparable with Germany and Australia (17.9% & 17% respectively) and behind Uruguay and Argentina (30.1 % 37.7%) in the region (ILOStat 2016). Schneider (2013:173) argues that union density figures ‘overstate the real extent of labour organization’ due to existence of compulsory union dues in many sectors¹⁰.

¹⁰ The syndical tax of one day’s wages/year to finance trade union organisations is compulsory for all workers independent of affiliation. Monthly union dues of 1-2% of wages are voluntary though depending upon the category they may, consistent with Schneider, be de facto compulsory given the difficulty to opt-out for certain categories. The hospitality workers’ trade union of Riberão Preto-SP was condemned and fined by the Higher Labour Courts (TST) for charging dues to non-members in March 2016 (four years after the original complaint) (TST 2016a)

Figure 2.9 Collective Bargaining Coverage & Union Density 2012 or most recent available



Source: Data from ILOStat (2016) & World Bank: World Development Indicators (2016)

Union density as an insufficient indicator of labour organisation is agreed upon here. As an example, the Germany – Brazil equivalency fails to capture the existence of plant-level works councils in the north European example. For Brazil, it is argued here that the union density figures *understate* the influence of labour organisation. Collective bargaining coverage together with union density presented in figure 2.9 may give a better impression of trade union presence in Brazil yet formal quantitative indicators are still a limited measure to fully understand the particularities of the Brazilian labour market institutions in comparison with other Latin American/HME economies.

The unicity system in place since the 1930s guarantees the existence (one union per category and region) and resources (syndical tax) of labour and business representative institutions independent of voluntary affiliation. This has drawbacks in terms of the effectiveness and legitimacy of labour representation with trade unions existing outside the workplace, fragmented regionally and sectorally and prone to co-option and complacency (Cook 2007:60,70; Weyland 1996: 53-56, Schneider 2013:179). In this sense, the HME characteristics of fragmented institutions and a weak plant-level presence characterise the historical role of trade unions in Brazil analysed in more detail in the next chapter. However, the idea of weak unions in the HME ideal type neglects the recent trajectory of trade unions since the 1980s and some CME-type industrial relations ‘pockets of efficiency’ within certain regions and sectors.

Brazil’s labour institutions represent a system that can be used to both repress and rapidly mobilise workers (Cardoso 2003:34) and labour mobilisations can be expected when authoritarian controls are relaxed (Collier and Collier 2002:757). Since the 1980s with the

‘new trade union’ movement at the vanguard of the democratisation process, there is an evident path of increasing trade union strength and influence and that does not correspond to the ‘sparse’ unions trait of HMEs. The emergence and influence of peak associations during the 1980s, the CUT in particular, has the potential to counteract the fragmented structure of the CLT institutions.

Weak plant-level presence is a historical characteristic of Brazilian trade union activity consistent with the HME model, yet there is a significant counter trend since the late 1970s. Metalworkers unions in the automobile industry established employer-worker plant level negotiations evolving into the CME-type of institutional complementarities described by Rodrigues (2002:155) as ‘conflictive cooperation’. In the late 1980s the plant level negotiation evolved into the tripartite *Camaras Setoriais* [Sectorial Chambers] across national industry. According to Anderson (1999:2) this type of institution was unprecedented in representing a shift away from authoritarian imposition towards consensual tripartite solutions in industrial relations.

The *Camaras* are of considerable historical significance in that this type of sectorial and regionally specific CME-type institution emerged at a time when free-market and liberalisation ideas dominated government policy and the approach of the dominant CUT trade unionism to industrial relations was adversarial, combative and suspicious of tripartism. The unfavourable context was further aggravated by economic (hyperinflation) and political (president Collor’s impeachment) crises. The agreements were a ‘reasonable’ success in minimising layoffs and maintaining real wages in the automobile sector (Anderson 1999:37). Despite the *Camaras* being temporary (until 1995) their success and effectiveness means that they represent something of an influential benchmark of successful tripartism in subsequent Brazilian industrial policy and employment relations debates.

A further outlying characteristic of Brazilian trade unions and labour institutions was their survival after the liberalisation reforms of the 1990s and continued influence into the 21st century. This again reinforces the idea that Brazil is not on a path to an LME-type economy. The HME framework recognises this continuity-reinforcing characteristic of trade unions as Schneider (2013:108) observes ‘unions have the best documented effect on continuities in labour market regulation’. Such continuity may not have positive connotations in the HME analysis as it sustains the negative complementarities

summarised in figure 2.7. In light of the current research question it is viewed positively in the sense that it represents the continued capacity for more equitable CME-type solutions. This is arguably a similar, albeit labour market specific logic to Evans's concern that liberalisation reforms would remove the potential for embedded autonomy in Brazil.

It is argued here that Brazil has a greater trade-union presence than that described in Schneider's ideal type. The idea of weak unions is considered more appropriate to describe Chile at the opposite end of within-type HME variation from Brazil in terms of the presence and influence of labour institutions. Chile is frequently cited as an example of weak, sparse and small unions in the HME analysis with union influence legally restricted to firm-level wage bargaining (Schneider 2013:174, Haagh 2002:92). Chile is often paired with Brazil in a comparative sense (Cook 2007, Collier and Collier 2002) and the two are similarly paired within the HME analysis as examples of 'effective governance, political stability, and bureaucratic capacity' and with the greatest potential to escape from 'the middle-income trap' (Schneider 2013:176, 168).

The idea of divergent trade union paths since the 1980s between Chile and Brazil is recognised by Haagh (2002:93) who observes 'one-sided' flexibility reforms' creating less influence or 'weaker upward ties' in Chile when compared with Argentina, Brazil and Uruguay consistent with figure 2.9. Collier and Collier (2002:746) pair Brazil and Chile given the similarities in the initial processes of incorporation of the labour movement. Haagh & Cook (2005: 178) describe two distinct path dependent responses to liberalisation processes in the 1980s and 1990s. Brazil's corporatist labour institutions were able to secure most of their individual and collective rights with union influenced political liberalisation processes in the 1980s preceding the subsequent economic liberalisation in the 1990s.

The combination of historical particularities of Chile: aggressive anti-union economic liberalisation in the 1970s coming before democratisation in the late 1980s and a more liberal and less developmentalist tradition when compared with Brazil, contributed to weaker labour representation and 'union acquiescence to unfavourable labour reform'. On labour rights, Cook (2007:196) reflects positively on the survival of Brazil's collective and individual rights when compared with the more deregulated institutional arrangements that emerged in Peru and Chile.

In terms of trade union presence, figure 2.9 suggests that Brazil is closer to Argentina than Chile or Mexico. Similar to arguments already presented on Brazil, union strength in Argentina likewise does not fit with the HME description of ‘sparse’ unions, though like in Brazil, weak plant-level presence limits the transformative potential. In an exercise comparing employment regimes in emerging economies, Haagh & Cook (2005) describe Argentina’s strong unions as the opposite of Chile’s weak corresponding institutions. With regards to trade union capacity to defend existing rights from deregulatory pressure, Argentina’s recent trajectory is similar to that of Brazil.

Haagh and Cook (*idem*: 184) observe a less successful trajectory for Argentinian trade unions, despite their strength, when compared to corresponding processes in Brazil. This is attributed to path dependent institutional characteristics, particularly the institutional interaction or complementarities with a ‘weak Argentine state’ unable to influence ‘strong employer associations intent on gaining greater freedom in the labour market, and a strong labour movement intent on safeguarding its collective resources’. In terms of trade union strength Brazil is placed between Chile and Argentina (*idem*: 193). Although Brazilian trade unions are historically weaker than the corresponding institutions of its southern neighbour, the strength and influence of labour institutions has increased significantly since the democratisation process of the 1980s.

The success of Brazilian labour institutions is found in the society’s path dependency and institutional complementarities. The emergent new trade unionism interacts with a traditionally and relatively strong corporatist developmentalist state. This is recognised by Haagh and Cook’s comparative analysis (2005:193): demonstrating relative success in the Brazilian trajectory where ‘union strength, combined with the corporatist tradition, created more space for dialogue and a search for qualitatively ‘deeper’ solutions to the employment crisis’. This resulted in labour rights being extended during the democratisation process and successfully defended over the subsequent liberalisation reforms.

The comparative analysis discussed above supports a key premise that underpins this thesis: Brazil, in its corporatist institutions, response to liberalisation pressures and recent trajectory, possess many of the labour institutions with the capacity for coordinated/cooperative solutions. Solutions argued to produce more equitable employment arrangements for society based upon the CME/LME advanced economy

distinction. The argument presented in this second section of the chapter contests the HME core characteristic idea of ‘weak unions’ as characteristic of Brazilian labour markets. It does *not*, however contest the validity of the hierarchical capitalism analytical model.

Many of the outlying characteristics or ‘within-type HME variation’ are recognised in Schneider’s analysis, which provides a useful research framework. Consistent with the institutional/VoC approach adopted and demonstrated by the quantitative data presented in the first part of this section and Haagh & Cook’s (2005) comparative analysis, quantitative data or single variables such as trade union strength are only suggestive of institutional characteristics. To fully address the research question, institutions have to be considered as part of a path-dependent, interacting composite system.

It is argued here that ‘sparse’, ‘weak’ or ‘small’ are inappropriate terms to describe Brazilian labour institutions. This core Latin American feature is perhaps more apt to describe Chile, Mexico and Colombia the latter two described by Schneider as closest to the HME ideal type. The other core characteristics: pervasive informality, high labour turnover, low skills and high regulation *are* core characteristics of Brazilian labour markets. This is the essence of the research question, given the described CME-type regionally outlying institutional characteristics at the core of the Brazilian model, why does the reality of employment still demonstrate the negative complementarities of the HME model?

This thesis describes labour markets in the Brazilian variety of capitalism as incongruous, in the sense that it is an inconsistent system due to the tensions created by the incompatibility between the formally envisaged arrangements and the long-standing workplace practices described in more detail in the next chapter. The idea of an incongruous model is consistent with Weyland’s (1996:15) idea of a fragmented institutional system hindering equity-enhancing reforms since the 1980s (see ch.4 part 4.1). On regulation and related to the implication of inconsistency, incongruous is compatible with Lee and McCann’s (2014: title) concept of ‘regulatory indeterminacy’ (see ch.6 part 6.1). The idea of an inconsistent system is coherent with the IPEA (2012: 4-5) description of Brazil as a scale model of the world with some characteristics resembling advanced industrial countries and others less developed nations. ‘Brazil as a scale model’ relates to the popular term in development circles of ‘Belindia’: ‘a large, poor India coexisting with a small, rich Belgium’ (Beghin 2008:1).

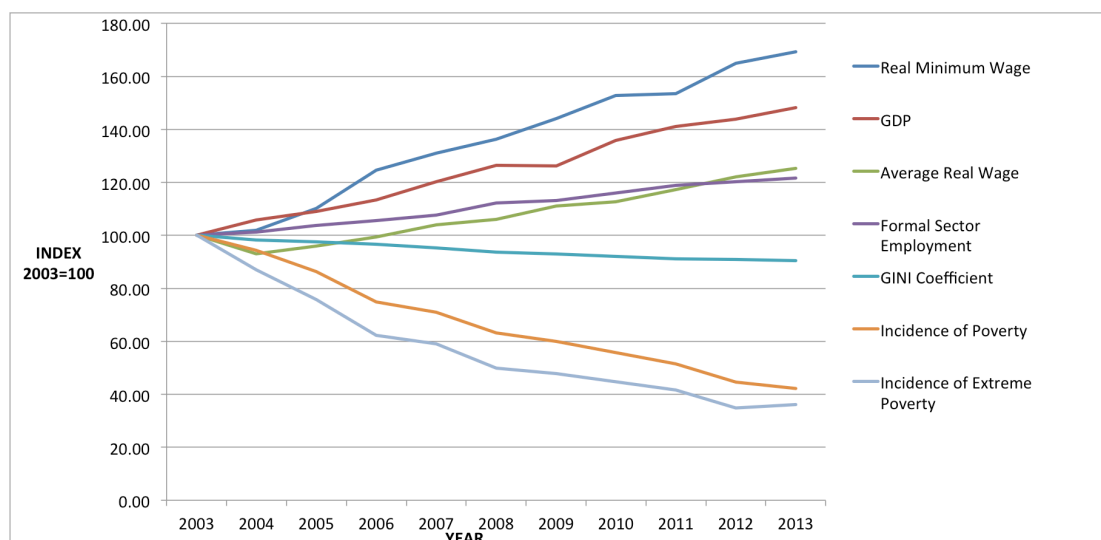
An incongruous system is consistent with Schneider's description of labour market systems in HMEs in so far as it recognises the relevance of incompatibility or negative complementarities. Specific to Brazil it varies from the HME model in that it refers to a less static and more complex LMI system. The inconsistency implied by incongruous means that the HME interaction summarised in figure 2.7 is *not* a systemic inevitability. For example, in the Brazilian variety of capitalism there is evidence of strong unions with significant plant level representation mechanisms contributing to widespread compliance with the 'high labour regulation'. This is referred to across this thesis as the ABC standard in the Sao Paulo automobile industry (see ch.4 part 4.3). Discussion across the remainder of this thesis (see the CSP Pecem steel plant case study in ch. 4 part 4.4.3 and ch. 6 part 6.6.3 in particular) supports the idea of more complex and context-specific complementarities than those envisaged by the description of labour markets in the HME Latin American variety of capitalism.

The next section of this chapter considers whether the Brazilian model may finally be shifting away from its incongruous system and moving towards a more consistent and coordinated LMI system into the 21st century. The consolidation of democracy, economic growth, political stability, falling inequality and poverty in the first decade of the 21st century has been unprecedented in Brazil's history. This without having followed the neo-liberal agenda of deregulated labour markets that characterised Chilean and liberal market economic reforms.

2.3 The inclusive decade 2003-2013

This third section of the chapter analyses the direction and role of labour institutions since the start of the Workers' Party (PT) - President Lula government in 2003. The consolidation of prolonged economic growth and stability, falling inequality and poverty represent a positive and historically unprecedented period in Brazilian development as indicated by figure 2.10 and table 2.1. It took place under a political party and president that emerged from the 'new' trade union movement of the 1980s. Following discussions in the first half of the chapter this section considers the period from a VoC perspective within the LME, CME and HME ideal types. Specific attention is focused upon whether the period represents a genuine shift towards more coordinated institutional arrangements to contribute towards more equitable outcomes for labour and society.

Figure 2.10: Development trends over ‘the inclusive decade’: Brazil 2003-2013



Source: see Table 2.1 below

Table 2.1 Comparison of 2003 and 2013 development indicators

Indicator	2003	2013	% Change	Source	Notes
Average Real Wage (BRL)	1,851	2,319	+ 25.3 %	Monthly Employment Survey (PME) IBGE	6 Metropolitan regions only. Figures for January of each year used after annual correction for inflation
Real Min. Wage (BRL)	240	678	+ 69.45 %	Dieese (2016:4)	
GDP (USD trillion)	2.106	3.121	+ 48.2 %	World Bank: World Development Indicators	PPP - Constant International 2011
Formal Sector Employment (% Share)	45.9	55.8	+21.6%	Continuous National Household Survey – (PNAD) IBGE	Author’s calculation from informality rate definition III. Derived from Berg (2010:10). No data/survey for 2010
GINI Coefficient	0.583	0.527	-9.52%	IPEA: Data from PNAD/IBGE	No data/survey for 2010
Rate of poverty (%)	35.75	15.09	-45.45%	IPEA Data	No data/survey for 2010
Rate of extreme poverty (%)	15.18	5.50	- 73.79 %	IPEA Data	No data/survey for 2010

Symbolically, the PT/Lula rise to the presidency in the 2002 elections represents the introduction of a labour-friendly government (see Scherrer and Hachmann 2012:146). Close ties between the PT and the CUT trade union peak association transforms the latter’s traditional role from an opposition force to a position of loyalty, support and partnership. A distinctive change in labour relations was an objective of government and trade unions evident in both discourse and policy. The tripartite National Labour Forum (FNT) under the direction of the labour ministry (MTE) was introduced in the first year of the Lula administration and related to electoral promises of dialogue and consensus in reform processes.

The stated objectives of the FNT as per the MTE (2004: 23-24) final report were: the democratisation of labour relations through greater freedom and autonomy, reform of employment legislation to make it more compatible with the new demands of national

development and generate employment and income. The forum was intended to stimulate dialogue and tripartism to promote social justice in labour institutions, conflict resolution and collective trade union rights. This strongly suggests that the intended direction of the Lula administration was towards a more coordinated institutional model.

The coordinated direction of the development strategy of the PT government is further evidenced by the creation of the permanent tripartite National Social and Economic Development Council (CDES) and National Industrial Development Council (CNDI) the latter a 'national tripartite arena for discussing strategic issues of industrial policy' created in 2004 and to promote high-level dialogue between state, business and labour (de Toni 2013 & 2015:8). In VoC terms these forums represent a shift towards a CME type institutional arrangement rather than greater penetration of market logic. Between the distinctive diagnoses and prescriptions of the World Bank (deregulation) and the ILO (greater enforcement and tripartite dialogue) already commented upon (Schneider and Karcher op cit), the FNT and development councils represent adherence to the latter.

When considering institutional change, the PT/Lula decade discussed in this section is frequently compared to the previous administration of president Fernando Henrique Cardoso (FHC), often labelled as 'neo-liberal'. In comparison to LME-type economies and Chile as already discussed (Haagh & Cook op cit) there is a tendency to overstate the level of reform in Brazil over the 1990s. This is evident in arguments on weakened state-influence countered by Lazzarini's CoT model. It is also applicable to labour market arrangements. Consistent with a historical trend of continuities, trade union institutions and protective labour legislation survived the reforms of the 1990s. The flexibilisation reforms that were carried out were subject to collective bargaining approval and as Cook (2007:86) observes were not always popular with employers as short term contracts reduced funds available to 'employer federations that managed professional system training and social assistance programmes financed by the payroll taxes (sistema "S")'.

There is significant continuity in the labour relations system and it is argued here that structural institutional reforms carried out by the Lula administration were moderate. Significant change is apparent between the approaches of the FHC and Lula administrations to industrial relations rather than any structural institutional change per se. Cook (idem: 102-103) describes adversarial relations between the CUT and government in the 1990s where the latter introduced reforms 'through decree or provisional measures'

albeit with the support of the fast-growing Força Sindical (FS) peak association. In contrast, the PT government's approach is characterised by a commitment to consensus and social dialogue, evident in the election campaign and upon taking power with the immediate creation of forums such as the FNT, CNDES and CNDI. It is similarly recognised (Araujo & Veras 2011: 108, Marcelino 2008) that relations between the traditionally rival peak associations CUT and FS have evolved into cooperation within the tripartite forums mentioned.

An important change is evident in the Lula administration's approach to industrial policy, contributing to the positive development trajectory. Whilst industrial policy is outside the immediate labour market focus of this thesis, it supports certain premises of the research question; Brazil has continued with a system contrary to liberal market prescriptions of a reduced state and deregulated system and therefore maintained the institutional capacity for more coordinated solutions or a model approximate to Evans's embedded autonomy ideal type.

Weisbrot, Johnston and Lefebvre (2014:13) highlight the 'reactivation of industrial policy' as a key contributor to Brazil's positive development trajectory in the 21st century. The influential role of the BNDES is highlighted with its disbursements increasing from 2.2 per cent of GDP in 2015 to almost 4 per cent in 2013. According to the authors, the reactivation is considered historically significant

Previously, industrial policy had been abandoned under an IMF-imposed austerity program in 1983, with neoliberal policies dominating throughout the rest of the 80s and 90s, as in many other Latin American countries.

The adoption of a more state-led approach to industrial policy through the tripartite councils, funded through the BNDES and other sources of public finance, represents a significant change in direction between the FHC and Lula administrations. There was considerable pressure upon the second-term FHC administration from business representatives frustrated with the inertia of Brazilian industrial development. These demands were met with timid initiatives, which according to de Toni (2015: 7,9) never got off the ground due to industrial policy being a dirty word or an 'anti-agenda' in the FHC administration considered 'harmful and the cause of irreparable damage to free market equilibrium'. This meant that any industrial policy type initiatives from relevant government departments were met with hostility from the finance ministry.

The free market institutional logic described is the same recognised by Evans (op cit), concerned how its penetration would hinder the potential for future embedded autonomy type development in Brazil. Importantly De Toni recognises the success of the tripartite *Câmaras Setoriais* within the automobile industry as an exception to the industrial policy void of the 1990s. This trend is similarly recognised across this research project as an established pocket of efficiency of coordinated solutions within Brazilian industry. The experience of successful social dialogue is argued to have softened the CUT's traditional hostility or mistrust of tripartism (Cook 2007:70). Therefore, the shift towards greater tripartism and social dialogue by the Lula administration had precedents in the previous decade albeit somewhat region (Sao Paulo) and sector (automobile) specific.

The reactivation of industrial policy is a development parallel to the described shift towards greater tripartism. De Toni (2015:8) describes three simultaneous vectors of Lula's election pledge to defend national industry, a high degree of intragovernmental coordination between key ministries and the promotion of high level dialogue and debate between the public sector, business and labour through tripartite forums such as the CNDI, CNDES and FNT.

In terms of the premises of the research question, the reactivation of industrial policy and related shift towards greater tripartism and social dialogue strengthen the ideas presented across this chapter that Brazil is *not* in transition towards an LME type economy. The participation of existing labour institutions across the decade of unprecedented developmental success strengthens the idea that Brazil has the institutions for a more coordinated economic model and raises the question as to whether the 'inclusive decade' represents an institutional shift towards greater coordination.

Focussing upon labour market institutions, this second part of the section critically discusses the driving factors behind the 2003-2013 developmental success. Analysis is from a VoC perspective considering whether the improvements can be considered a definite shift away from an HME towards the more equitable outcomes associated with coordinated capitalism. The idea of Brazil as a Latin American nation capable of breaking out 'of the negative complementarities in hierarchical capitalism' is presented in Schneider's (2013:181) analysis. Schneider acknowledges the optimism regarding Brazil's 'excellent start to the 21st century' whilst recognising the numerous positive factors required to converge to transition away from the HME negative outcomes.

Considering the trajectory of development indicators across the ‘inclusive decade’ shown in figure 2.11 and the HME complementarities summarised in figure 2.7, recent trends of falling inequality without any significant reform to collective or individual labour rights weakens arguments on the ‘high labour regulation – large informal economy’ negative relationship. This also strengthens the social dialogue and greater enforcement prescription to deal with high inequality over the deregulation option preferred by the neo-liberal school.

Berg (2010:7-8) seeks explanations for the rising formality in Brazil and the contribution of government policies towards ‘the improved performance of the labour market’. Formality here, consistent with analysis in the next chapter (see figs. 3.2 & 3.3), represents those workers in receipt of labour rights through a signed workbook or social security contributions. There is ongoing global debate on the informalisation of formal work though this is not considered to be the case in Brazilian labour markets. Consistent with arguments already presented in this chapter, Berg (*ibidem*) observes that ‘labour market reform was not as far-reaching’ as the rest of Latin America and argues there was ‘greater institutional influence on the working of the labour market, not less’ in the 2000s. The five factors contributing to increased formalisation identified by Berg (*idem*:23) are as follows:

- a) a more favourable macroeconomic environment characterized by a more competitive exchange rate and more inclusive pattern of growth; b) reduced labour supply; c) the Simples law; d) improved labour inspection and new approaches to formalization; and e) greater legal awareness and respect for the law.

Berg seeks to respond to perceptions that there was an element of luck in the increased formalisation trend, which is only partially influential in factors (a) – high commodity prices and b) demographic trends reducing labour supply. Elsewhere institutional influence is evident in the ‘more inclusive pattern of growth’ evident in figure 2.11. Educational reforms resulted in an increased number of youths in full-time education reducing the supply of labour. Improved education levels could also be considered to have contributed to the greater legal awareness of workers. Berg (*idem*:17) identifies improved labour inspection through improved procedures *despite* a persistently inadequate number of labour inspectors in Brazil (see ch. 6).

The increased formality and institutional influence upon the labour market not only suggests a shift away from the high regulation – large informal sector complementarity of the HME present in figure 2.7. It also weakens the oft-presented idea of an innate positive

correlation between regulation and informality. Improved education levels could be loosely associated to skill levels though there is no evidence of improvement in the low job tenure rates. Statistics indicate an increase in labour turnover between 2002 and 2013 (Dieese et al 2013:3).

Greater legal awareness amongst workers contributing to increased formality can be linked to improved education. Although not mentioned by Berg, it is possible that trade union institutions contributed to the improved labour inspection figures. The contribution of trade unions towards effective labour inspection is recognised in Schneider's HME model: 'unions key for labour law enforcement' (in fig. 2.7), in the industrial relations literature (Weill 1999:340) and evident during fieldwork (see chapter 5 on union as an extra layer of regulation). It is therefore probable that trade union presence and influence may have contributed to the improved inspection cited by Berg. This further reinforces the idea that the 'sparse unions' HME core characteristic is not appropriate to describe the Brazilian model.

The contribution of trade union institutions to the more positive complementarities can also be inferred from the evidence of increased worker bargaining power. Weisbrot, Johnston and Lefebvre (2013: 3) cite the growth of income and employment and the expansion of government social spending together with rises in formality and the real minimum wage as indicative of an increase in worker bargaining power. They highlight the growth of average real wages, maintained even as the economy began to slowdown in 2011 and argue 'This indicates that there may have been an institutional change in the bargaining power of workers in Brazil, which could continue to contribute to reducing inequality in the future'.

The increased influence of labour through the tripartite forums upon a state more open to social dialogue and consensus has already been described and the minimum wage policy is much celebrated as a significant achievement by the trade union movement (see ch. 4 part 4.1). Boito & Marcelino (2010:64) describe a resurgence of trade union activity contrary to the 'thesis of the irreversible historic decline of unionism' from the 1990s. The measurement of influence is strike activity between 2004 and 2008. Whilst the number of strikes had been comparatively high in Brazil since the 1980s and this trend continued through the 90s; Boito & Marcelino (idem 67-68) identify a shift from defensive industrial

action in the 1990s to successful ‘offensive’ action increasing rights and wages and demonstrating significant levels of organisation and mobilisation.

Significant change since 2003 is apparent in the PT/Lula approach towards tripartism, consensus and social dialogue when compared with the previous administration and authoritarian tendencies of the past. The reactivation of industrial policy represents a significant shift from the previous two decades described as ‘crisis’ (1980s) and ‘stabilisation’ (1990s) by the IPEA (2012:13). The successful development trajectory arguably vindicates such an approach to employment relations and industrial policy contrary to neo-liberal prescriptions. The consolidation of stability and growth, reduced informality and significant falls in both relative (inequality) and absolute poverty is unprecedented in Brazilian history. Comparatively it goes against trends of increasing inequality elsewhere (OECD 2011: 22). It suggests that Brazil is shifting away from the HME economic model, not on a liberal market path but one closer to a coordinated market economy.

2.4 Coordination or Hierarchy?

The idea of Brazil transitioning towards a more equitable society akin to a CME should be considered with caution. Trends shown in figures 2.10 and 2.11 are positive and unprecedented, but it should be recognised that in socio-economic terms Brazil starts from a very low threshold. This is recognised in the IPEA (2012:8) inclusive decade report where it is highlighted that inequality is at its lowest since records began though the trajectory would still need to continue for a further 20 years to reach levels of inequality comparable to the USA, not a society associated with equitable wealth distribution (also see ch.1 table 1.2).

The official discourse and rhetoric of consensus, partnership and tripartism at the highest level with trade unionists in positions of significant influence and power since 2003 warrants careful analysis. Expectations for the Lula/PT government were high and groups with more anti-capitalist ideologies were disappointed by the administration’s conciliatory approach to labour-capital relations and/or continuities or the non-reversal of liberalisation and public spending reforms from the previous FHC government.

Opposition and dissatisfaction is evident with two new political parties splintering from the PT: the United Socialist Workers’ Party (PSTU) in 2004 and the Socialism in Freedom

Party (PSOL) in 2005. Two new trade union peak associations were formed, breaking away from the CUT: Conlutas affiliated to the PSTU in 2010 and the Brazilian Workers' Centre (CTB) formed from the classist strands within the CUT affiliated to the Communist Party (PCdoB) in 2008. The anti-capitalist ideology is different to the institutional approach of this thesis envisaging labour interests to be better represented in coordinated capitalism. However, the criticisms of the dynamics of state-labour relations and the presence of trade unionists in positions of power under the PT administration are relevant when considering the direction of change between 2003 and 2012.

Critics argue that the state-labour relations are characterised by passivity, co-option and hierarchy/elitism. This is distinctive to the consensus and social dialogue envisaged in the official government discourse. Araujo and Veras (2011:84) describe a transition from 'defensive resistance' under FHC to a 'passive attitude' of expectation of government initiatives with the trade union movement losing its political protagonist role of the 1980s and 1990s. Soares (2013:548) considers the participation of trade unionists to be a Gramscian process of transformism where the trade unions have established closer ties with the state at the highest levels of institutional relations and are distant and detached from the shop-floor.

Former PT academic, Oliveira (2011 in Soares 2013:543) argues that the trade unionists at the highest level represent a 'new social class' acting in self-interest rather than representing labour. Perry Anderson (2011:5) describes a process of the PT colonising the federal administration where militants 'all but completely detached from the working class [...] became functionaries enjoying, or abusing, every perquisite of office'. The trade unionist presence at this highest level of institutional relations could therefore be considered representative of the PT ruling political party rather than labour interests. Whilst much of this criticism comes from anti-capitalist groups, Sinduscon-CE's president Ferreira (2013: interview) made similar observations arguing that the trade unionists were granted such senior positions not to represent labour interests, but in exchange for their loyalty to the PT administration.

From a historical perspective, Braga (2012:204-205) argues that the trade union activity at the *cúpula* [summit] or top of the labour institutions hierarchy represents a regression from the 'new' or 'authentic' grass-roots trade unionism of the 1980s to the pre-1964 *cupulista* or hierarchical organisation detached and distant from the workplace. Argued in more

detail in the next chapter some scepticism is required regarding the hegemonic domestic discourse of a significant break between ‘new’ and ‘old’ trade unionism. It is a somewhat imaginary distinction created by academics and trade unionists. As Santana (1999:112) observes pre-1964 unions were closer to the workplace than the popular discourse describes. Significant continuities between ‘old’ and ‘new’ trade unionism are understated by the popular and convenient discourse of ‘new’, ‘authentic’ and ‘grass-roots’ trade unionism.

The criticisms of the PT and Lula administrations summarised above generally come from more anti-capitalist ideological perspectives than this current institutional study. The evident continuities in fiscal prudence and the conciliatory approach to industrial relations frustrated the expectations of many expecting a more significant rupture or critical juncture with the existing system. The criticisms that trade union presence and influence at the upper institutional echelons is *not* representative of workers and detached from the shop floor is plausible and again highlights the appropriateness of the term hierarchical to describe Brazilian society.

Given the continuities and persistence of the 75-year-old corporatist institutions and the emergence of influential peak associations since the 1980s and across the 1990s, the HME trait of weak, small or sparse trade unions is contested in the Brazilian case. On the other hand, ‘weak plant-level representation’ (Schneider 2009:103), with the exception of the automobile industry in the southeast since the 1970s, accurately reflects Brazil’s labour institutions. The idea of a verticalised, subservient relationship between the state and the largest peak associations is credible, given the hierarchical nature of the state, its historical strength and authoritarian legacy.

It is argued that Brazil has the institutional framework and intentions for coordinated labour solutions. The shift towards greater consensus, tripartism and social dialogue by the Lula government increases the feasibility of this type of model argued to produce more equitable employment arrangements. The unprecedented positive development trajectory over the 2003-2013 decade, consolidating stability, growth, poverty and inequality reduction suggests this approach to institutional relations was vindicated and weakens the alternative liberal market prescriptions. It remains to be considered as to how coordinated, cooperative and consensual labour relations actually were. The effectiveness and outcomes from the FNT, and CNDI forums provide a useful insight in this respect.

The removal of the final vestiges of the corporatist and authoritarian traits of the Vargas/CLT system, namely the unicity system of one union per category and region and the compulsory financing of the institutions through the syndical tax was a long standing and defining campaign for both the CUT and PT since the 1980s. It was also a stated expectation and objective of the FNT. Its removal was part of the forum's agenda and a timetable for transition to a more plural, democratic and autonomous system was established. Provisions for plant-level representation, historically weak in Brazil, were also suggested. Despite the high profile and symbolic character of the FNT the majority of its initiatives stalled and any institutional or systemic change was minimal.

Peak associations were incorporated as formal institutions with legal entitlements, which represents very little in the way of meaningful change given the long-standing hegemony of the CUT and FS. No consensus could be reached on plant-level representation and the one shop steward per 200 workers reform was repetition of existing provisions (Verlaine 2005). Any further measures for plant-level representation were left to be bargained between employers and unions. Despite the long standing CUT/PT campaign whilst in opposition to reform the employment relations system, attempts stalled and the unicity and compulsory dues are still in place today.

The CNDI initially made some important steps towards coordinated solutions to contribute to Brazil's positive development trajectory, seeking to overcome the historical incongruity of fragmented state institutions and a lack of intragovernmental coordination. With close support of the 'deep pockets' of the BNDES, the CNDI represented something of an additional embedded autonomy or pocket of efficiency type institutional layer. Guimarães (forthcoming) describes the forum as a 'very effective space for strategic debate and search for coordinated solutions'. Citing the high level of coordination between state institutions and consensus with the private sector, De Toni (2013: 16) describes the success of the CNDI up to 2007 as an outlier and historically unprecedented.

De Toni (2013: 54) observes how the coordinated success of the CNDI was not reproduced during the second Lula administration (2007-2011). He attributes this to 'the absence of the same vectors contributing to the exceptional performance of the first mandate'. Factors cited by De Toni for the 'demobilisation of the CNDI' are: a change in personnel with the new Development Minister Jorge not benefitting from the same strong ties and credibility with the business sector as his predecessor Luiz Furlan, the global economic crisis

weakening the external commodity and domestic market booms leading to a preference for ‘top-down’ Finance Ministry imposed crisis measures - ‘dispensing with the need for forums or more collective decisions’.

From a VoC perspective the example of the CNDI under the two Lula governments represents hierarchy reproducing itself into an institution which demonstrated the potential and benefits of coordinated/cooperative solutions, albeit temporarily. This simultaneously reinforces the idea of the presence of institutions with the capacity to achieve coordinated solutions in the Brazilian institutional model and the difficulties of producing durable coordinated outcomes given the persistence and self-reproducing characteristics of hierarchy.

Closer analysis of the CNDI example weakens the tripartite coordinated credentials of its initial success. De Toni’s (2013,2015) account of the dynamics of the industrial policy institution is more indicative of a bipartite rather than tripartite forum. Labour representatives made up only 10% of the CNDI forum participants. When this is considered together with the criticisms of *cupulismo* and self-interest of the trade union elite within a hierarchical system without plant-level employee representation, the tripartite credentials of the forum are further weakened.

The failure of any significant consensual reform from the FNT, where there was a more balanced distribution of representation between state, labour and business, is suggestive of difficulties and limitations in reaching coordinated solutions. Given the historical legacy described in the next chapter and the hierarchical nature of social relations such an impasse should not come as a surprise. Schneider’s (2013:35) analysis recognises the difficulty of coordinated solutions where ‘the relative disengagement of business and labour with each other means that both groups tend to organise more to engage the state’. De Toni’s account of the CNDI (2013:54) suggests such business-labour disengagement may exist within the tripartite forums mentioned. Weak negotiation mechanisms at lower levels of labour relations are also acknowledged by Schneider (2013:28): ‘the absence of other intermediating forums like works councils or factor committees reduce the potential for managers from negotiation and thereby increase the relative returns to hierarchical employment relations’.

The existence of the FNT, CNDI and similar forums, simultaneously exemplify the capacity and difficulties for effective coordinated solutions in Brazilian industrial relations.

An unfavourable historical legacy, hierarchical social structure and weak or non-existent negotiating mechanisms at the plant-level impede the reproduction or trickle-down of coordinated institutional solutions across employment relations. Based upon fieldwork research and using the construction industry as a case study, chapters 4 to 6 look at these difficulties to achieve consensual solutions at intermediate and workplace levels.

Conclusion

This chapter provides a snapshot of the Brazilian variety of capitalism between 2003 and 2013. This comes after Chapter 1 discussing the new institutional approach adopted and its relevance to the research question and the varieties of capitalism research agenda. The next chapter provides the historical legacy or path dependency of this snapshot and demonstrates heightened continuity in Brazilian institutions, often greater than that envisaged by alternative interpretations. It is argued across this present chapter, both historically and currently, that there is greater state participation in the economy when compared with other Latin American and upper-middle income economies.

Institutional dynamics in the 21st century strongly suggest that the Brazilian model does *not* resemble a liberal market economy nor is it on the path towards such a variety of capitalism. A key factor to this non-transition is the institutional continuity of the corporatist labour system meaning liberalisation reforms across the 1990s did not result in the permanent decline of labour market institutions or reduced state influence contrary to other interpretations and predictions at the time. This is demonstrated by the successful and unprecedented development trajectory from 2003 accompanied by institutional arrangements divergent from the neo-classical agenda of a minimal state, greater market penetration and deregulated labour markets.

Within the context of the research question and institutional approach of this thesis such a non-transition can be viewed positively. In the same manner that Evans argues that replicating embedded autonomy represents ‘a giant step forward’ for intermediate states, it is argued here that replicating the more equitable coordinated institutional arrangements of the CME type economies would be of great benefit to Brazil. A society characterised by a system historically hostile to labour with high levels of social inequality.

Whilst evidence strongly suggests a non-transition to an LME type economy, the idea of CME-type solutions contributing to the positive trajectory between 2003 and 2013 should

be considered with caution. Closer analysis of institutional interaction during the period suggests that despite some ‘pockets of efficiency’ and the survival of an institutional system with the capacity for more coordinated solutions, the overall Brazilian system continues to be more aptly described as one of hierarchy than coordination. Again, parallels can be made with Evans’s ‘embedded autonomy’ where Brazil is an intermediate case with *some* of the institutional characteristics of this ideal type of development state.

It is argued here that Brazil has many of the institutional prerequisites for more coordinated solutions that contribute to a more equitable society through greater stability and wealth distribution through the employment relationship. The existence of resourceful trade unions, their evident influence and strength since the 1980s goes against the ‘weak sparse and small’ core features of the HME type model. Nevertheless, the reality of employment is consistent with other negative complementarities of Schneider’s Latin American variety of capitalism summarised in figure 2.7. Here lies the essence of the research problem, which seeks explanations for the persistence of negative hierarchical complementarities in the employment relationship despite the existence of institutions that envisage considerably greater protection, stability and representation for labour.

The positive developmental trajectory of the ‘inclusive decade’ should also be considered with caution. The emphasis upon social dialogue and consensus under the Lula government and creation of tripartite forums is suggestive of a shift towards greater coordination, however closer analysis of the institutional dynamics and the tangible results of the tripartite forums suggest that the coordinated nature of institutional relations over the positive development trajectory may be overstated. Despite the high profile of the FNT it produced very little in terms of consensual reform (see ch. 5 for further discussion).

The CNDI forum was initially an example of successful coordination though reverted into a more hierarchical arrangement when challenged by less favourable economic circumstances and change of personnel. Using the language of Evans’s (1995:12) model: the ‘corporate coherence’ (autonomy) and ‘continual negotiation and renegotiation of goals and policies’ (embeddedness) are weakened by the penetration and reproduction of hierarchy rather than horizontal tripartite ties.

The survival of the corporatist trade union institutions is considered favourable for labour in that coordination offers more equitable employment arrangements than liberal-market solutions. A shift towards a more liberal market model would involve the dismantling of

such institutions and therefore reduce such a capacity. Evans feared this would happen in the 1990s reducing the likelihood of embedded autonomy. With the Brazilian economy currently in recession and undergoing a political crisis, the system will undoubtedly face further pressures for reform. History suggests that the existing corporatist labour institutions are somewhat sticky and resistant to change and may survive such pressures. Therefore, the potential for more coordinated solutions will remain. Despite the positive trajectory of the first decade of the 21st century, a shift towards greater de facto coordination to characterise institutional relations is yet to be realised despite the evident intentions. The reality of employment remains closer to that of an HME than the advanced economy coordinated or liberal institutional models.

The inconsistency between the tripartite coordinatory design of the embedded Brazilian LMI system and the widespread reality of employment closer to the hierarchical institutional model represents the underlying research problem of this thesis. The next chapter traces historical legacies from the 19th century and the introduction of the existing CLT system in the 1930s up until 2003. This is to identify examples of path dependency and institutional change relevant to contemporary observations on employment and industrial relations. Analysis of contemporary employment relations and the construction industry case study begins in chapter 4: an exploratory analysis of employment relations that identifies representation and regulation as two key factors discussed in greater depth in the remaining chapters, 5 and 6.

Chapter 3 – A brief history of labour and its institutions in Brazil

Explanations for the reality of employment for the majority of Brazilian workers in the 21st century can be found within the society's set of institutions, both formal and informal, and their interaction and co-existence - known as complementarities. Such institutions are path dependent, the consequence of historical processes. Identifying such processes is an essential exercise to provide convincing explanations for the reality of modern day employment. Consistent with a Historical Institutionalism (HI) approach, this involves path tracing: identifying relevant historical processes and continuities as well as recognising significant change, the latter often provoked by 'major watersheds' known as critical junctures (Collier & Collier 2002:27).

The objective of this chapter is to identify the key historical processes dating back to the 19th century that contributed to Brazil's relevant modern-day labour institutions. As per the advantages of an HI approach, this is argued to offer a more holistic understanding of socio-economic issues when compared with more ahistorical and positivist approaches (see ch.1). Many important contributions to the specific literature on historical legacies in Brazil (see Collier & Collier 2002, Cardoso 2010, Carvalho 2013) precisely stress the importance of 'the past' when discussing observable contemporary phenomena and look to address its neglect in alternative analyses. Cook (2012: 268) describes the analysis of historical legacies to explain LMIs in the recently democratised Latin American economies as 'little explored'.

This chapter considers the relevance of historical legacies to the research question and intended contribution of the thesis. Explanations for the inconsistency between institutional arrangements and workplace reality can be anticipated from an analysis of relevant LMI historical legacies or path-tracing. The formal institutional capacity element of the research question contests the 'sparse unions' trait of Schneider's Latin American HME model. The HME describes functional characteristics of Latin American labour market dynamics (see figure 2.7) that are mostly consistent with the reality of employment in Brazil. Nevertheless, Schneider does not discuss the historical origins of the complementarities at any length. Part of the stated contribution of this research is to contribute to a variation on the HME-model, considering the history of LMIs is an essential part of this exercise and

should further support the contestation of the ‘sparse unions’ trait in the Brazilian variety of capitalism. By analysing historical legacies, it is anticipated that more dynamic and gradual processes of change can be identified in contrast to more static models.

The four sections are separated chronologically into identifiable periods or between what may or may not be considered critical junctures. The periods: pre-1930, 1930-1964, 1964-1989 and 1989-2003 are consistent with and informed by those used widely in the literature (Carvalho 2013, Fausto ed. 2007, Bethel ed. 1984 in particular). The majority of analysis in the first section focuses upon pre-1930 Brazil considered the initial conditions or regressive path dependency: the legacy of centuries of slavery, colonialism and monoculture as well as discussing independence and abolition and their relevance or non-relevance to labour. In a similar fashion to the literature cited above, analysis is proportionate to its historical relevance for labour rather than chronology, with certain sub-periods meriting greater attention.

The 1930-1964 second section covers the incorporation of the labour movement and the establishment of encompassing nationwide labour legislation and institutions and the ‘aftermath/legacy’ period (Collier & Collier 2002: 354). This period extends to the military coup of 1964 and the onset of a 20-year authoritarian dictatorship. The initial incorporation period is of particular relevance as it establishes the formal labour institutions (business and worker unions, encompassing labour legislation and state agencies), the majority of which are still in place today.

The third section 1964-1989 covers the military dictatorship and the two ‘Brazilian economic miracles’ of intense industrialisation and the subsequent democratisation process. Much of the existing literature focuses upon economic development, the priority here as per the thesis as a whole is analysis of labour and its relevant institutions. It is at the end of this period that the new trade unionism movement emerges which leads into the fourth and final section of the chapter. The 1989-2003 period covers the economic restructuring of the 1990s and the consequences for labour institutions. The concluding section of the chapter looks to summarise what can be considered as relevant historical legacies and paths from the four periods analysed and any significant change consistent with the definitions and parameters established and discussed in the previous chapters (see table 1.1).

3.1 Pre-1930: A deeply embedded path for labour

By the time of independence Brazilian society had already established a significant and robust developmental path. Within this first section of the chapter there is only a brief description of pre-1822 society to characterise the specific colonial legacy or *initial conditions* for independent Brazil's socio-economic structure, its labour arrangements in particular. The main focus of this section is the 1822 to 1930 period. This covers three historically significant events: Independence, Abolition and the transition from an imperial political system to a republic. The first part analyses the impact upon labour of key inter-related colonial continuities that persist well into the 20th century. The second part looks at the different forms of organised labour institutions that emerged tenuously at the beginning of the 20th century particularly after the First World War and into the 1920s with patterns and characteristics of some relevance to the future direction of labour institutions and social relations in Brazil.

Upon independence Brazil inherited what Carvalho (2013:17-18) describes in terms of a broad Marshallian definition of citizenship as a 'very discouraging legacy'; a description similarly applicable to labour conditions for the vast majority of the population. The legacy of Portuguese colonial rule was a vast territory under an absolutist state dominated by the large monocultural rural plantation producing primary goods for export. The socio-economic structure was based upon slave labour. Whilst the institution of slavery was by no means unique to Brazil, comparatively its intensity and embeddedness within society is without equal. Wilberforce described the nation as 'the very child and champion of the slave trade, nay the slave trade personified' (Bethell 1985:192).

Compared with other societies in the Americas the scale of slavery was unprecedented as Alencastro (2010: 87) summarises what he describes as Brazil's 'original' sin where 44 per cent of the 11 million Africans removed to the Americas arrived in Brazil over three centuries (1550-1856) compared with only 5.5% being trafficked to the United States over a shorter period (1675-1808). From a path dependency perspective, the very 'discouraging' colonial legacy and social structure described changed very little post-independence (1822). It can therefore be considered a non-critical juncture in terms of any rupture to the extreme hierarchy described by Cardoso (2010:19) as a profoundly unequal social order 'in many ways hostile to most Brazilians'.

Bethel (1985:196) describes Brazil's transition from colony to independent empire as 'characterized by an extraordinary degree of political, economic and social continuity' and therefore a 'counter-revolution'. Such a conservative transition to independence was an intentional strategy on behalf of the ruling elite, influenced by a strong vested interest in the status quo of the socio-economic structure and a desire to avoid the drawn out more violent independence processes witnessed in Spanish America resulting in the fragmentation of the region between weak and strong states (Carvalho 2013:27).

Fear and resistance to any hint of reform that could facilitate a popular uprising also influenced the highly conservative independence process. According to Viotti da Costa (1986:793) oligarchical intentions were to 'govern the country without taking any account of the mass of the population, whom they feared and despised'. The oligarchic pact between the central state and the local oligarchies during this period prioritised *stability* and *order*. This was maintained by what Viotti da Costa (1986:735) describes as a shared interest in 'the maintenance of traditional structures of production based on slave labour and the export of colonial staples to the international market' and the fear of any type of revolt from below: "white fear of the black wave" (Azevedo 1987: title).

This local-central power equilibrium further strengthens a deeply embedded regressive path dependency with negative consequences for the majority of the population of Brazil. For most workers in 19th century Brazil this meant subjection to a regime of exploitation, oppressive violence and complete dependence upon the local oligarchy for sustenance and survival. According to Carvalho (2013:21-22) not only the slave but also the average Brazilian was dependent upon the local oligarch 'to live, work and protect them from arbitrary government actions and other landholders' and therefore at the 'mercy of the arbitrary nature of the most powerful'.

Much is made of the paternalism of social and labour relations in Brazilian history (Schmitter 1971: 97-98, Buarque de Holanda 2009 [1936]: 91). This sometimes understates the underlying threat and regular use of violence; a shared responsibility of the state and local oligarchies in response to any form of manifestation that contests their vested interests in the existing social order. As Graham (1985: 794) describes Brazil after independence:

The stability which so concerned both Conservatives and Liberals mainly sprang not from political institutions, however, but from social relationships based upon the exchange of loyal service for protection and favours [...] in every case, benevolent care

gloved outright force. In political life elaborate systems of patronage made it possible to grant benefits - especially authority over others - to those who steadfastly supported the existing structure. Favours not only won compliance from those expected to obey, but assuaged the sensibilities of those charged with enforcement.

Further evidence of the embeddedness of the described regressive path is its resistance to international pressure for the abolition of slavery and the slave trade. A condition of British approval for independence was a Brazilian commitment to abolish slavery and there was a formal legislative Anglo-Brazilian treaty in 1826 and 'severe penalties' on the international slave trade introduced in 1832 (Bethel & Carvalho 1986: 696). The phrase *para ingles ver* ('for the English to see') originates from this formal anti-slavery legislation and can be described as a somewhat persistent informal institution in Brazilian society. It is defined by Carvalho (2013:46) as a 'law implemented for formal reasons with no intention of it ever being enforced'.

Like Independence, when abolition finally arrived sixty-six years later in 1888 it is widely considered as a non-critical juncture in terms of any significant change in the existing hierarchical and exploitative social order (Cardoso 2010:97; Carvalho 2013:17; Hale 1986:372). As Viotti da Costa (1986:767) describes 'The system of patronage remained intact and oligarchical groups continued to control the nation to the exclusion of the masses'. It is important to recognise that the regressive path for labour described in this section, profoundly affected the majority of workers in Brazil, not merely those directly subjected to slavery.

The majority of the working population fared little better than the slave labour. Fragoso (2000) uses the term 'non-slave labour' instead of 'free' given that the latter term would be an inaccurate description to describe the situation in which the majority of Brazilian workers found themselves. Consensus can be observed on the blurring of slave and non-slave labour during the 19th century as Cardoso (2010:66) observes:

Often the only distinguishing feature of the free man (white or not) and a slave was that they were not the property of anyone, but in other respects such as diet, clothing, housing, life expectancy etc. they were very similar.

Graham (1985:757) describes the slave - free worker distinction as 'not always clearcut' and that 'the distinction between slave labour and wage labour tended to blur'. It is therefore reiterated that the persistence of an extremely hierarchical social structure based upon slave labour, that remained relatively untouched by independence or abolition, had profound negative repercussions for the majority of workers to the extent that a clear

distinction between slave and non-slave labour was difficult. As Viotti da Costa (1986:726) describes abolition and the transition from monarchy to republic:

Rural oligarchies continued to control government, state and federal. And the great majority of the Brazilian population, free poor, ex-slave — and immigrant — continued to be exploited as it always had been. After two decades of reform the country did not seem fundamentally to have changed.

The exploitative social relations were similarly reproduced into the urban environment, despite the absence of the rural *latifundio* structure. Hall & Spalding (1986: 328) describe a Latin American tendency where urban growth coincided with the ‘flooding’ of the labour market creating a substantial ‘industrial reserve army’ making any organisation or mobilisation very difficult. The regressive social structure persisted and reproduced itself in the urban environment at the beginning of the 20th Century. Oligarchic fear of any reformist pressure from below and a distinct preference for social order and continuity persisted. It was enforced by considerable coercion and facilitated by the poverty, vulnerability and dependence of the majority of urban workers. Due to the persistence of secular institutions of repression and control, conditions were unfavourable for the emergence of labour institutions in urban areas.

There are some notable, albeit tenuous developments in terms of labour organisation that merit attention which leads into the second part of this section. The first manifestations of organised labour were the mutual aid societies present in the second half of the 19th century, a response to precarious urban living conditions rather than any contestation of the social system ‘attempting to provide benefits in cases of accident, sickness or death’ (Hall & Spalding, 1986:337). There was evidence of a propensity to strike in Rio de Janeiro and Sao Paulo in the 19th century though these tended to be sporadic mobilisations; again not challenging the social structure and predictably, given the prevailing social relations, were met with violent repression. The police, as Fausto (1986:793) observes, represented ‘a traditional appendage of the large landowners’.

Fausto (1986:810) describes the period of 1917-1920 as a ‘phase of major growth in the labour movement’. Influenced by developments abroad (Russian and Mexican revolutions) together with domestic conditions, workers begin to organise. Within the emergent organisation of labour there were significant strikes bringing Sao Paulo to a standstill in July 1917 and increased union membership with 20,000 workers in the Rio de Janeiro textile union. The predominant strand of labour organisation in Brazil and Latin America is

widely reported as being anarcho-syndicalism, where according to Hall & Spalding (1986:341)

the notion of 'direct action' generally occupied a central place. By this militants meant that workers should rely on strikes, sabotage, boycotts and similar weapons, rather than seeking gains through the institutions of the bourgeois state, among which they included all political parties.¹¹

There was significant divergence and pragmatism within the Brazilian strands of anarcho-syndicalism. Hall & Spalding (idem:342) describe a regional tendency in Latin America of hybrid anarcho-syndicalism, where anarchist aspects of the doctrine became 'very diluted indeed'. Contrary to the underlying ideology many unions would call for state intervention and devote a 'considerable amount of their attention and energies to their securing of economic gains'. In this sense the anarcho-syndicalism overlapped with another significant strand within the emerging trade unions, which is described as reformist or "yellow" by its critics. Reformist unions are those who work towards gains for members through the constraints of the existing system.

The emergence of organised labour in urban Brazil between 1917 and 1920 evident in strike activity in the two main cities does not represent a transformative change to the social structure or any alteration to the existing repressive path dependency already described. The inability of labour organisations to challenge the hierarchical social order is due to the interrelated characteristics of both the ruling oligarchy and the masses. Hall & Spalding (1986:333) acknowledge that collective action and establishing organisations has been historically difficult for workers 'everywhere' particularly in the earlier phases of industrialisation though they describe the conditions prevailing in Latin America as particularly unfavourable or 'especially difficult' (p.328).

Such unfavourable conditions are well summarised by Fausto (1986:809-810); initially describing the existence of the 'necessary conditions for the emergence of a labour movement in the cities' and class consciousness given the dynamics of urban sociability of workers less constrained by the paternalism and clientelism of rural power dynamics. However, when considered in light of other interrelated characteristics, the potential for a labour movement with political influence to contribute to transformative change is frustrated. A key factor is economic, given the abundance of available labour due to a

¹¹ Interestingly representatives of trade unions with pre-1930 origins (Marreta-MG, Marreta PE & STICCRMF) consulted during 2013 fieldwork place considerable importance upon their anarcho-syndicalist roots.

mixture of mass immigration, abolition and internal migration. The dominant coffee industry generated a surplus urban labour force and as a result bargaining power was reduced and replacing striking workers was relatively easy.

The especially difficult conditions for mobilisation are further reinforced by the action and inaction of the state and its oligarchic pact, what Cardoso describes as ‘vertical violence’. Justified by the predominant liberal ideals of the era, there was almost no state involvement with employment relations other than brutal repression. This is consistent with the persistence of the hierarchical and exploitative social relations. The minimal protective legislation that did exist (child labour provisions) was *para ingles ver* (Carvalho 2013:62). Significant continuities from previous centuries can be identified in state action as Dean (1986:723) describes elite attitudes

Trade unions they regarded as subversive, workers as indigent dependants, and the unemployed as lazy and potentially criminal. Labour relations in the cities, if practised at all, were considered a form of charity, and it was expected that workers should reciprocate with humility and gratitude.

The increasingly powerful State and the persistence of the oligarchical pact where employers could rely upon the repressive forces to suppress any challenge to the existing social order meant that attempts at organised labour were further limited by severe repression. Hall & Spalding (1986:331) observe that ‘The ferocity of state repression even shocked foreign police agents, not normally suspected of excessive sympathy toward the labour movement’. The persistence of an unfavourable set of institutions and complementarities means that organised labour weakened significantly after a peak in activity between 1917 and 1920. Together with abolition and independence this initial mobilisation can similarly be considered a non-critical juncture in terms of any substantive change to the regressive path dependency embedded in the hierarchical social structure.

Despite much discussion on the origins of the Brazilian labour movement the transformative effect of the pre-1930 mobilisations should not be overstated. Most of these institutions emerged in an urban environment, Rio de Janeiro and Sao Paulo in particular; within a society where only 16.6 per cent lived in cities with a population over 20 thousand people and seventy per cent of the urban population were involved in agricultural activity (1920 census in Carvalho 2013:54). This initial emergence of some forms of labour institutions could therefore be considered somewhat exceptional and regionally specific when considering the entirety of Brazil’s workforce.

When the existing system did finally come to an end it was not due to internal factors or pressure from below. The socio-economic model before 1930 was dependent upon primary goods and external markets sustained by a mutually supportive and self-reinforcing oligarchic pact between large landholders and the state that had proven to be resistant, hostile and impermeable to change over centuries. It imploded due to its own unsustainability exposed by the global crash of 1929.

3.2 1930-1964: The path of labour market institutions and the promise of employment rights

The period discussed in this second part of the chapter is considered in two sub-sections. Using Collier and Collier's (2002) terminology: the 1930-1945 'incorporation' period where labour and its related institutions are introduced into the formal 'political arena' and the 'aftermath/heritage' of the reforms between 1945 and 1964. For many analysts the 1930s is the starting point for studying modern Brazil. The systems introduced over the decade are still by and large in place today, particularly labour-related institutions. As a result, analysis of this first 'incorporation' sub-period is prioritised.

It is particularly important to consider whether the incorporation reforms significantly alter, break with or overcome the historically embedded regressive path for labour depicted in the previous section. A related question is as to what degree have antecedent conditions influenced the 1930-1945 institutional reforms? This means continuities in terms of the conservative tradition of the state, i.e. prioritisation of maintaining social order, control based upon a combination of violence and paternalism and any formal legislation favourable to workers being *para ingles ver*.

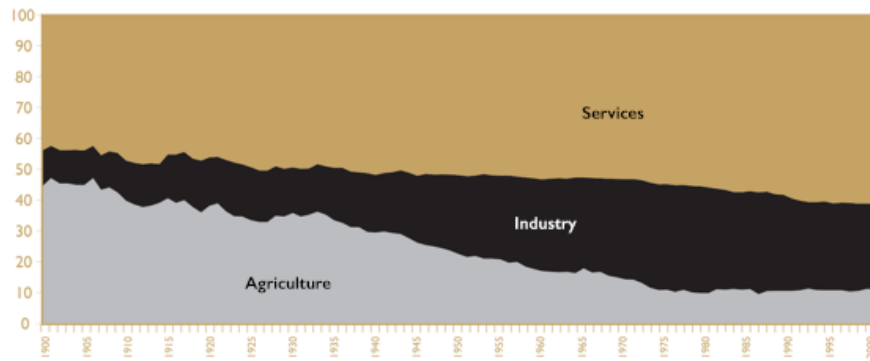
The period is undeniably one of significant change. In terms of the balance of power there is a shift towards centralisation of State power bringing the previous oligarchic pact to an end. In line with international trends there is State recognition that the previous *laissez-faire* socio-economic and international relations model was responsible for Brazilian problems: national under-development and sustaining what is described as the 'social issue': the abject poverty in which the majority of Brazilians found themselves. There is therefore a significant shift in the role of the State from minimalist liberal form dependent upon proxy rule through regional powers to a more interventionist centralised power seeking to act in the 'national interest' and supported by an increasingly influential and powerful military.

An important element of the new approach was the regulation of employment relations through the accelerated introduction of robust national institutions and bureaucratic apparatus summarised in more detail in Annex 2.1. It culminated in the *Consolidação das Leis de Trabalho* (CLT) [Consolidation of Labour Law] in 1943 an institution still in place today. The post-1930 reforms are closely associated with the personality of president Getúlio Vargas who took power in a coup and ruled until 1945 with some democratic interludes though mainly in an authoritarian manner particularly during the Estado Novo 1937-1945 period. The terms Vargas/CLT/Estado Novo to describe the reforms are herein used interchangeably.

The first consideration is as to what proportion of the Brazilian workers actually benefitted from the newly introduced protective legislation. One key factor, widely recognised as having significant consequences for labour and Brazil's subsequent development path (see Collier and Collier 2002: 166-167, Costa 2005:115, Carvalho 2013:146, Cardoso 2010:164, Silva 2008:473) was the non-inclusion of rural workers to the CLT until 1963. This meant that the majority of Brazilians, the 70 per cent of the population living in rural areas in 1930, or the 65.9 per cent of the economically active population (EAP) employed in agriculture in 1939 (Abreu 2008:286) were formally excluded from its direct benefits.

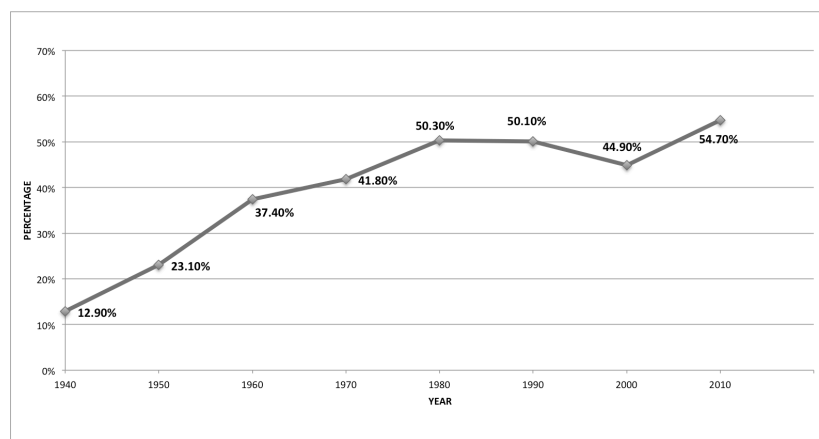
Further analysis of the practical impact of the CLT protections in the urban labour market suggests they did not represent an effective legal right or entitlement but a benefit to a relatively privileged minority. The new provisions encompassed formal sector workers in officially recognised professional categories. So even within the urban sectors significant proportions of workers were excluded from the benefits of what Santos (1979:75-76) describes as 'regulated citizenship'. According to Silva (2008:464) these excluded groups are those at the base of the 'pyramid of urban social stratification' including domestic service workers (estimated at 20 per cent of the total female workforce in 1920) and self-employed casual workers. Consistent with Silva (2008:464) and Carvalho (2013:153) the urban workers most likely to be excluded from formal employment and its CLT protections are those from sectors 'rooted in the country's slave owning historical culture'.

Figure 3.1: Percentage participation in Gross Domestic Product (GDP) at constant prices - Brazil 1900-2000



Source: IBGE 1990 & 2001 in Bonelli 2006:387

Figure 3.2 Evolution of the participation of workers protected by social and employment legislation as a proportion of total workforce (%)



Source: IBGE protection estimates: occupations with some social and employment protections; Elaborated by Pochmann (2010)

Figure 3.1 demonstrates the exclusionary nature of the reforms. Applying a highly optimistic supposition that *all* industrial workers benefitted from CLT legislation this still only represents 18.4 per cent of economic activity in 1940. The idea of mass exclusion from labour rights is reinforced by Pochmann's (2010) estimates using IBGE data presented in figure 3.2 with only 12.5 per cent of the workforce covered by social and employment legislation in 1940. Similarly relevant from this data is that this exclusion of the majority persists until 1980 when half the workforce continues to be excluded from the 50-year old legislation. As per Peters (2005:71) on path dependency quoted in chapter 1: 'when a government programme or organization embarks upon a path there is an inertial tendency for those initial policy choices to persist'. Evidence strongly suggests that exclusion from the protections of the CLT legislation persisted across the 20th century.

Using Santos's (1979: 75-76) terminology, Cardoso (2010:170-171 emphasis in original) describes how those without a formally recognised profession are excluded from regulated

citizenship and are therefore ‘pre-citizens’ for whom the benefits of the CLT regulations exist as a *possibility* or *promise*. He further describes access to the promised labour rights as often being a ‘long and frustrating obstacle course’. Receipt of CLT benefits required a CTPS workbook, which to be issued required the production of a birth certificate. Possession of the required formal registration was rare particularly for those having migrated from rural areas. Obtaining the appropriate documentation to be entitled to the CLT rights was a bureaucratic inferno, particularly for the poorest in society.

The considerable formal and informal barriers to the effectiveness of the CLT reforms lead French (2004:97) to argue that the ineffectiveness was intentional in its design. He suggests legislators were aware unfavourable political conditions meant the law would not be respected and compliance represented a choice for employers. If this were to be the case it would represent an example of the *para ingles ver* historical trait of legislation passed as a façade with no intention of enforcement; a phenomenon that can be traced to the evasion and noncompliance with anti-slavery measures. Within the HI approach it is an example of the ‘drift’ form of ‘institutional change’ (see ch.1 table 1.1), however in this case it would be ‘deliberate neglect’ to *impede* rather than *instil* change.

Whether noncompliance and exclusion was an intentional objective of legislators and reformers is not discussed in any further detail here. Yet it can be considered an embedded historical trait that persists into contemporary employment relations (see figure 3.2, Cardoso and Lage 2007 and ch. 6 on regulation). It is one of a number of characteristics of the Estado Novo labour reforms influenced by the dynamics of the previous historical period. Such historical legacies within the reforms are perhaps understated in alternative analyses that take this period as a starting point for modern Brazilian society.

The persistent pre-1930 conservative, authoritarian, hierarchical and paternalistic historical traits are particularly evident in the corporatist trade union system introduced. By 1930 the labour movement was, in Cardoso’s words (2010:167) ‘weakened and defeated’ from its 1917-1920 peak and was highly unlikely to have achieved the gains introduced by Vargas’ ‘revolution’. Despite the relative absence of any popular pressure, all the CLT reforms were present in the demands of striking workers during the 1917-1920 period and labour debates of previous decades where they were ignored, repressed and/or denounced as subversive and ‘anti-Brazilian’.

This means the reforms were top-down paternalistic initiatives rather than responses to popular pressure and this has consequences for subsequent effectiveness. The CLT is presented as a privilege or a gift rather than a legal right or entitlement. The paternalistic element is personified by the figure of Vargas as the ‘father of the poor’ who upon the return to democracy in 1945 plays heavily upon his ‘gift’ of social legislation to the Brazilian people. The individual rights introduced within the reforms were granted at the expense of collective organisational freedoms. In this sense it reflects the formalisation of historical social relations where workers are expected to ‘respond with humility and gratitude’ (Dean op cit) to any benefits granted. In this case trade unions are created, structured and expected to be compliant and collaborative organisations in exchange for the granting of employment rights.

The unions were state controlled bureaucratic entities; their formation and leaders dependent upon state approval and subject to intervention and disbandment in the case of noncompliance with Labour Ministry regulations. Employment disputes became an administrative issue to be resolved by the newly established labour courts, which represents progress from the previous era where such matters were left to ‘the oppressive instruments of law and order’. Strikes were prohibited, as was inter-category organisation. Independent of its legality, inter-sectorial organisation was made difficult by the vertical and fragmented structure of trade union organisation (Silva 2008:472).

Any labour organisation outside of the corporatist system was met with both violent and non-violent repression, particularly left-wing groups as the historical fear and loathing of the masses evolved into a fear and loathing of the left-wing ‘subversive’. Even in the absence of repression, alternative grass-roots labour organisations would struggle to compete with the resources and bureaucratic apparatus offered by the corporatist structure particularly after the introduction of the *imposto sindical* [syndical tax] in 1941. All workers independent of membership contribute the equivalent of a day’s wages to finance the system, distributed between the union (60 per cent), federation (15 per cent), confederation (5 per cent) and Labour Ministry (20 per cent).

The new trade union institutions existed *outside* of the workplace, whilst there were State representatives in the unions, there were no union representatives at the plant-level, meaning that the institutions were detached from the shop-floor and rank and file. This separation between worker and union is aggravated further by the consequences of the

syndical tax. Carvalho (2013:121) observes that the guaranteed funds incentivised the proliferation of small trade unions that could effortlessly command these resources rather than increased worker unionisation. Silva (2008:473) observes how ‘The unions increased in number without effective representation or meaningful membership, run by individuals, the so-called *pelegos*’.

Carvalho (2013:122) describes *peleguismo* as one of the most negative consequences of the authoritarian trade union legislation. As described in chapter 1, the *pelego* – is a union leader or representative acting in self-interest with close ties to the State and employers at the expense of adequately representing their category. Carvalho describes the syndical tax, the vertical structure of trade union institutions and the labour court system as having created a hotbed of *peleguismo*. Silva (2008:473) describes the *pelego* trade union leaders as being ‘for all practical purposes, de facto staff of the Ministry of Labour completely subservient to orders of the government of the day’.

When analysing the composite CLT system an incompatibility or negative complementarity can be observed between the individual labour rights legislation and the trade union institutions introduced. Firstly, as Roxborough (1995:342) observes, ‘Nothing equivalent to shop stewards ever developed and unions had no workplace function’. Secondly, the unions that did exist had an institutional design to collaborate with or answer to the State to guarantee social harmony and the national interest, rather than actively defend employment rights. Silva (2008:473) relates that the guaranteed financing of the unions independent of membership meant that they were ‘already quite docile’ and with the establishment of specialist labour courts to arbitrate between capital and labour and the government determining the minimum wage they became ‘even more irrelevant in terms of their capacity for collective bargaining’. Within this system responsive and active trade union representation to incentivise workplace compliance with the CLT is improbable.

The conservative or even counter-revolutionary nature of the reforms means that significant continuities and persistence of traits unfavourable to labour should be expected to have persisted beyond the 1930-1945 incorporation period. This is the case when considering the predominant rural social structure of labour relations and land ownership. The ‘discouraging legacy’ for labour described in the previous section was left ‘virtually untouched and unaffected’ (Silva 2008:473). The lack of a significant break with the

regressive path for labour follows historical tendencies of the State to prioritise ‘stability and order’, evident since the independence process a century earlier.

The absence of a significant rupture with the previous social structure calls into question whether the CLT can be considered a ‘critical juncture’. In the sense that it did not bring an end to the regressive patterns embedded in previous periods and the conservative nature of the reforms bear many of the negative hallmarks of the previous state-society dynamics. Similarly there is no immediate substantial change in the reality for the majority of Brazilian workers. The unequal social structure proves resistant or even ‘hostile’ to reform. Such continuities arguably still influence employment in contemporary Brazil (see chapters 4-6). Whether it is a ‘critical juncture’ is a matter of perspective.

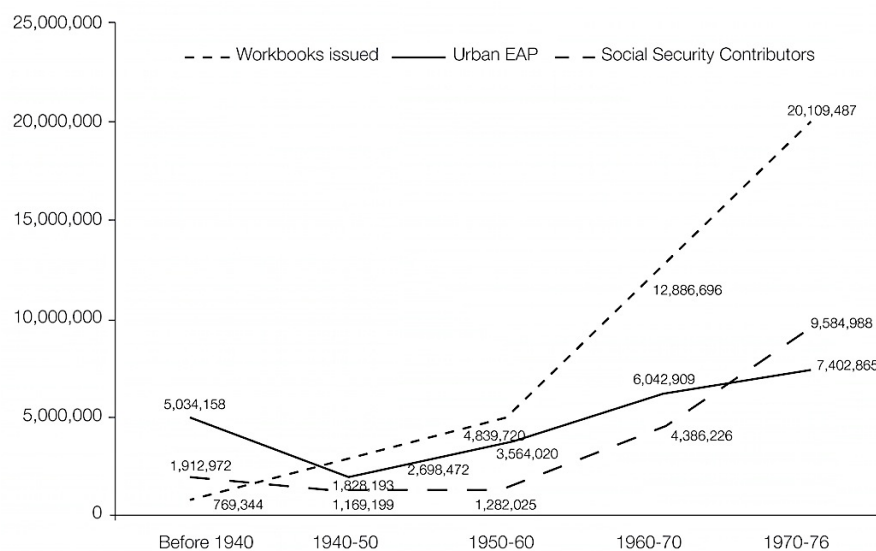
The 1930-1945 labour reforms represent less of a period of substantive change than that presented in more traditional, emotive and nationalistic interpretations of a “revolution” centred around the messianic figure of Vargas (see Oliveira Vianna 1951 in particular). As Levine (1998:112 own emphasis) observes ‘his [Vargas’] revolution was partial; one in which new constituencies and rules were *grafted onto traditional political practices*’. Consistent with Levine, the Vargas reforms could be described as an example of the layering type of gradual transformation (Streeck & Thelen 2005:31) summarised in table 1.1 in chapter 1. Rather than a critical juncture or radical break with the embedded regressive path for labour already discussed, it could be described as an additional layer ‘attached to existing institutions’. Figure 3.2 demonstrates the gradual evolution of workforce inclusion under the employment legislation.

Cardoso (2010:159-160) recognises that the promises of social inclusion were not yet realised when they were introduced. However, he argues that the introduction of “regulated citizenship” ‘entirely changed the relationship of the Brazilian State with its people’. The additional layer of social and employment protection described in the previous paragraph became an expectation, ambition and goal for Brazilian workers according to Cardoso. The undelivered promise of social protection and well-being represented something worth fighting for and the bureaucratic, legislative and repressive apparatus introduced, places the existing system in a privileged position to dispute hearts and minds ‘with other promises (such as socialism)’.

Cardoso (idem:181) demonstrates the idea of CLT protections as an aspiration through an analysis of the difference between the number of CTPS workbooks issued, the Urban

Economically Active Population (EAP) and workers making social security contributions presented in figure 3.3. The difference between the number of workbooks issued and those covered by the CLT provides a good indication as to how many workers, within the sectors eligible for such benefits had a formal CLT regulated employment relationship as an *objective*. It similarly suggests, from the 1950-1960 period in particular, there is a significant disparity between those in receipt of and those seeking the benefits offered by the CLT. This is an essential ongoing consideration when considering the relationship between the formal legislation and its effectiveness. Despite the exclusionary and somewhat authoritarian nature of the formal LMI system already described, Cardoso's interpretation is an early example of the 'lighthouse effect' of an identifiable complementarity between the formal legislation and informal employment (See chapter 1, Neri, Gonzaga and Camargo 2001:78, & Medeiros 2015:289) incentivising and directing excluded workers to seek out their legal entitlements.

Figure 3.3 Evolution of the Urban Economically Active Population (EAP), the number of workbooks issued by the Labour Ministry and the number of social service contributors - Brazil 1940-1976



Source: IBGE: Annual Statistics – Brazil, various years; e IPEA data for estimations of the urban EAP and social service contributors compiled by Cardoso (2010: 181)

Collier and Collier (2002:752-753) place considerable importance upon the 1930-1945 'incorporation' period. It is considered a major watershed/critical juncture given the influence it had upon the subsequent regime dynamics over the next fifty years, the 'new' trade unionism as part of the democratisation process of the 1980s in particular. Considering both the Collier and Collier and Cardoso interpretations, the Vargas/CLT reforms draw the battle lines or 'define the political arena' for the subsequent trajectory of Brazilian society and the labour movement. Therefore, despite the exclusionary nature

already discussed, the institutional reforms represent a critical juncture when the subsequent dynamics set in motion are considered. This is evident in the subsequent aftermath/legacy period 1945-1964.

A more democratic political system was introduced from 1945 albeit with some relevant authoritarian continuities such as the corporatist unicity trade union system. Considerable restrictions on the right to strike persisted, as did the prohibition of cross-category union organisation. This period saw an emergence of popular pressure and contestation from below that was absent before and during the ‘incorporation’ period. The labour movement that emerged displayed some similar traits with its pre-1930 manifestations with anarcho-syndicalist, socialist and communist strands and similar ‘pragmatism’, ‘dilution’ and ‘flexibility’ of ideological identities to those evident in pre-1930 labour mobilisations (Hall & Spalding op cit).

Despite the persistence of ‘red scare’ within society used to justify the 1964 coup, the communist party mostly worked within the constraints of the CLT system. As Santana observes (1999:106-107) the communists ‘gave life’ to the corporatist system between 1945 and 1964 with negligible challenges made to the syndical tax that maintained its structure. Collier and Collier (2002:549) describe the communist party, dominant in Rio and Sao Paulo as ‘pursuing a fairly conciliatory, nonrevolutionary position, working within the official framework and hoping to gain legalization’. This mirrors the hybrid or pragmatic characteristics of the pre-1930s anarcho-syndicalist labour manifestations.

Carvalho (2013:122-123) provides an informative description of the development of the labour institutions post 1945. He describes how the majority of the post-democratisation labour struggle ‘revolved around attempts to remove the pelegos’ from the leadership of the trade unions. He describes this as ironic as the Estado Novo system being used to remove the pelegos was the same one that had put them in control of the unions in the first place. Within the types of gradual change framework (Streeck & Thelen op cit), evidence from this period indicates the ‘conversion’ potential of the CLT institutional framework: ‘the redeployment of old institutions to new purposes: new purposes attached to old structures’.

The more politicised groups described as “authentic”, some from the outlawed Communist Party took control of many of the trade unions and Pension and Retirement Institutions (IAPs) and in breach of CLT regulations formed unified peak organisations such as the

General Workers' Command (CGT) and Unity and Action Pact (PUA). The declining yet 'still important' force within the trade unions, the pelego groups reorganised as an anti-communist faction calling themselves the *democráticos* (Collier and Collier 2002: 550).

Without a trade union presence in the workplace, Carvalho (2013:123) argues that the transition from pelego to politicised more militant leaderships did not significantly change the relationship between the trade unions and the rank and file with the latter continuing to be excluded. He describes the shift as 'merely a change at the *cupula* [summit]' of the institutions and likens trade-union power to an 'army without soldiers'. This described absence of popular support or grass-roots engagement of the 'summit' of the new trade union groups was exposed by the failure of a general strike called by 'confident trade union leaders' for the 31st of March in opposition to the military coup where: 'the masses in whose name the leaders spoke did not appear in defence of the [ousted] government' (Carvalho 2013:144 also see Bethel & Castro 2008:168).

The idea of pre-1964 trade unionism being an 'army without soldiers' distant from the shop floor is contested by Santana (1999). He argues that it represents an imagined discourse contributing and strengthening an idea of a rupture in trade unionism and the 'new' or 'authentic' identity emerging in the 1970s. He cites a body of work (idem: 110) including his own that evidences significant efforts and some success by communist groups to create plant-level representation mechanisms pre-1964 and therefore the hegemonic trade unionism strands of the 1945-1964 'cannot be characterised as detached from the grass-roots at the workplace'. Leaders becoming more responsive to the rank and file over the 1950s is also acknowledged by Collier and Collier (2002:549).

The mobilisation of rural workers during the 1945-1964 period is of considerable historical significance given that the incorporation reforms had left the traditional rural employment relations and social structure untouched. In 1960 this sector still represented the majority of the population (50 per cent) and labour force (55 per cent of workers in the primary sector) (Carvalho 2013: 139). Rural mobilisation initially formed outside of the CLT structure through the *Ligas Camponesas* [Peasant Leagues] movement in the northeast, which spread nationwide. Responding to popular pressures and the post-Cuban Revolution fear of the radicalised *Ligas*, rural workers were finally incorporated into the CLT system two decades after its finalisation. Inclusion was through the Rural Workers Charter in 1963

introduced by Goulart's government described by Silva (2008:487) as 'desperately seeking to broaden the precarious base of its popular support'.

The inclusion within the formal institutional system and the restrictions and resources this implies meant that formal rural trade unionism spread rapidly, displacing the *ligas camponesas* in terms of influence (Silva 2008: 487). By 1964 The Rural Workers Confederation (Contag) included 26 federations, 263 authorised unions, with almost 500 awaiting recognition. Carvalho (2013:140) describes the newly emerged rural trade unionism as a much greater threat, albeit perceived rather than genuine, to the traditional landholding elite than the urban trade unions of the 1930s, particularly given the clamour for agrarian reform. In response to the emerging pressure from below, a land reform and expropriation decree was passed in March 1964. Within the wider context of increasing post-Cuban revolution ideological polarisation and the fear of the perceived revolutionary intentions of the Goulart government together with economic instability and high inflation, there was a military coup within the same month of March marking the beginning of 20 years of conservative authoritarian rule.

From the 1930-1964 period certain characteristics stand out on the history of LMIs in Brazil; initially the exclusion of the majority of the workforce from the protections introduced over the 1930s suggests continuity of the noncompliance tendencies that pre-date the CLT system itself. The low levels of inclusion should not however downplay the significance of the reforms identified by Collier and Collier (2002:752-753) as a critical juncture. The relationship between Brazilian workers changed considerably as Cardoso (2010 op cit) observes with the promise of labour rights coming 'to define the political arena'.

The CLT system appears robust as its survival into the present day would suggest. Evidence indicates however that it should not be interpreted as a *static* system, a common misconception on contemporary criticisms of the 75-year old LMI arrangements. The observable change between the original institutional design of authoritarian control of civil society and the labour mobilisations that represented a significant cleavage factor leading into the authoritarian reversal of 1964, shows that it is not a static system in terms of labour mobilisation and trade union influence. This is consistent with Cardoso and Collier (op cit) on the potential of the system to rapidly mobilise labour. This capacity for 'conversion' is not captured by more static analyses. Union presence and influence may

be 'sparse' during certain historical periods and at certain institutional levels (union absence within the workplace see Roxborough op cit), but 'sparse' does not adequately describe the influence and path of trade unions in Brazil since the 1930s.

3.3 1964-1989 –Reconversion and Continuity: Military Rule and Democratisation

The period of military rule and subsequent democratisation process is analysed in this third section. Three specific points are examined: firstly, as to what degree the authoritarian coup altered the two paths for labour already identified and discussed: the 'regressive' pre-1930 legacy and the 'CLT path' characterised by the promise and expectation of labour rights. The second point discusses how this economic 'miracle' period affected labour and society. The third element considers the historical significance of the mobilisation of labour organisations at the end of the 1970s and into the 1980s, widely described as 'new trade unionism'. Cardoso (2003:50) describes the 1980s as the 'pinnacle of trade union organisation in Brazil' yet this period coincides with the 'lost decade' of an economic crisis of unprecedented proportions with considerable repercussions for labour (and general development).

When analysing relevant continuities and change for labour, the military coup can be considered an authoritarian/conservative *reversal* or *regression* with some significant parallels to the Vargas reforms three decades earlier. In terms of labour reforms, the existing corporatist/authoritarian system already provided the state with the formal powers for authoritarian intervention. Once again demonstrating the systemic capacity for 'conversion'. As Cardoso (2003:34) argues, it represents a system that can be used as a tool for 'control and repression' by an authoritarian regime or for 'rapid nationwide collective organisation' in an emerging democracy. One of the first comprehensive measures of the newly installed military regime was the immediate and widespread intervention in the more combative trade unions. Between 1964 and 1970 there were 536 interventions in trade union organisations with 35 directors dismissed or 'retired' (Klein & Figueiredo 1978).

For the majority of military rule the formal labour institutions reverted to the role originally intended for them by the Vargas reforms; collaborative organs of the state to contribute to the national interest. There was no strike activity of any significance between 1968 and 1978, regional minimum wage levels were determined by the State often using

the ‘always underestimated’ inflation figures (Abreu 2008: 363). Trade Unions therefore returned to their previous *pelego* format providing some social assistance to members, remained outside of the workplace and continued to be funded by the guaranteed resources of the unicity system; institutions of control and arbitrary assistance rather than the ‘authentic’ representation of workers’ interests. Within the gradual transformation framework already discussed, the authoritarian reversals can be described as a rapid process of institutional *reconversion*.

The military regime did not significantly alter the existing labour institutions. The Length of Service Guarantee Fund (FGTS) system was introduced, acting like employment insurance with employer and worker contributions. It replaced the CLT provision granting stability for workers over ten years in their job seeking to introduce more flexibility to the labour market. Whether in practice the introduction of the FGTS (still in place today) represents the effective removal of a labour right is questionable, as Abreu (2008:369) observes ‘it became a generalised practice to fire workers before they completed the ten-year period to avoid the high costs of firing’. This within the already discussed historical context of the majority of the workforce excluded from the CLT protections.

The military government actually extended and consolidated the CLT labour rights during its rule. Social welfare provisions, (medical assistance, retirement and pension benefits) were extended to cover the historically significant (and excluded) rural, domestic and self-employed workers. The reforms affecting rural workers, described by Carvalho (2013:171) as the ‘eternal pariahs of the system’, merit specific attention given the historical neglect already described. The rural social welfare benefits were part of the Rural Assistance Fund (Funrural) and the responsibility for distribution was with the rural CLT trade unions under Contag.

Carvalho (idem: 172) describes how the initial repression of rural movements by the military regime followed by the subsequent extension of social benefits reinforced traditional conservatism¹². He further observes that the state did not make demands of the landholding elite to finance the extension of social benefits. This reflects a similar reluctance or unwillingness to intervene in the traditional rural power and privilege structure to that of the Vargas regime.

¹² To use a Brazilian expression: *pau* (stick) followed by *pão* (bread).

The trajectory of the CLT reforms during the military government is consistent with the *Estado novo* trait of gifting social rights in exchange for control. A characteristic argued here to be embedded in the pre-1930 historical tendency where ‘humility and gratitude’ is expected for any favourable concession to workers (Dean op cit). High economic growth figures also meant that it was not only in the rural areas that the regime benefitted from popular support and credibility. This leads into the next sub-section considering how the economic ‘miracles’ of the period affected workers or altered the reality of employment for the majority of the workforce.

The period from 1964 to the end of the 1970s saw intense economic, geographical and demographic change considerably altering the characteristics of the economy and society. In absolute terms there were significant human development improvements that benefitted the labour force as well as the wider population, substantial poverty reduction in particular. Silva (2008:494) describes an unprecedented ‘degree of social mobility’ between 1945 and 1980, yet recognises that such improvements are absolute rather than relative and observes (502) that:

with economic growth rates at the levels observed during the period under discussion, redistributive processes would have to have been very warped indeed not to have produced some improvements in the conditions of the poorest classes.

Abreu (2008:380) observes that ‘the absolute improvements in all deciles of the income distribution particularly the very poor was highlighted by pro-government analysts’ whereas those in opposition to the government pointed out increases in income concentration. In terms of inequality the richest five per cent of Brazilian society saw their share of income increase from 28.3 per cent in 1960 to 39.8 per cent in 1972 and the participation of the richest one per cent almost doubled from 11.9 per cent in 1960 to 19.72 per cent in 1972. The poorest fifty per cent saw their share of national income fall from 17.4 per cent to 11.3 per cent during the same period (IBGE, 1979:196 in Lago, 1989:290). Within the context of the nationalist and populist euphoria surrounding the economic growth within an authoritarian regime and a historical legacy of embedded inequality it can be anticipated that income concentration was not a major official concern.

Similar to the trade union legislation already mentioned, the military government was bequeathed with a defined and restrictive wage negotiation structure within the CLT legislation. Despite the statistical precariousness for the historical period in question (recognised by Silva 2008: 502, Santos 2006:27, Lago 1989:209), Lago (1989: 286)

observes that ‘whichever indicator is chosen, the 1967 to 1973 period demonstrated a fall or stagnation in the real minimum wage’ in spite of strong economic and productivity growth. The overall general trend observed by Lago (idem:287, 294) and Abreu (2008:363), whether wages fell, stagnated, or increased, is that earnings did not rise in proportion to the high growth of domestic wealth during the period. Lago recognises that this relative loss for workers was somewhat mitigated by the investments in social infrastructure during the period.

Were there to have been a radical challenge to this unequal and persistent social order through institutional reforms, consequences for labour could have been different. However, any radical break with the past similarly goes against the described historical traits of stability, order and continuity. Whilst the CLT guaranteed the existence of trade unions, the authoritarian and corporatist nature of the Vargas legislation meant that such institutions could not be expected to challenge the development model under an authoritarian conservative regime as Lago (1989: 294) speculates:

The impression remains that very satisfactory growth would also have been possible with a less restrictive wage policy, greater individual freedoms and greater participation of the mass of the population in decision-making and in sharing the fruits of economic growth.

The high growth economic strategy of the authoritarian regime proved unsustainable in the late 1970s due to unmanageable public finances and related rising inflation. The labour movement emerged at the vanguard of opposition to the regime organising a wave of strikes in what is widely described as the ‘*new* trade unionism’ movement. After a decade (1968-1978) without any significant labour mobilisations there was a wave of strikes originating in the ABC Paulista industrial region, the location of the most intense transformative industrial development over the previous decades.

Worker discontent was heightened by real wage losses with official state wage policy granting rises at half the rate of inflation. Employers used regular layoffs and rotation of the workforce to further suppress wages and bargaining power, aggravating worker grievances (*ABC da Greve* 1990). An initial strike by metalworkers at Saab-Scania initially spread across the neighbouring automobile plants then nationally across other industries leading to the general strike of March 1979 involving 3 million workers in ‘industry, mining, urban services, banking, civil construction and education’ across fifteen states representing the birth of the new trade unionism (Bethell & Castro 2008:214).

There is a celebrated and somewhat romanticised interpretation of the worker mobilisation within the ‘new’ trade union movement as emerging from the shop-floor as Roxborough (2008:362) describes ‘the *pelego* union leadership was bypassed and new leaders emerged from the rank-and-file’. Such a description is arguably partial or inaccurate; Collier and Collier (2002:757) are critical of the ‘too many analysts’ describing the wave of labour mobilisations and strike activity as surprising or as a ‘new’ social force. The authors comprehensively argue that the emergence of strong and influential trade unions is path-dependent upon the creation of the trade union institutions during the 1930-1945 incorporation period. Collier and Collier therefore argue that a re-emergence of the labour force ‘might be anticipated’ whenever controls were relaxed as observed during the ‘aftermath’ 1945-1964 period.

This is consistent with Cardoso’s (op cit) observation that the existing system could be used to both repress or rapidly mobilise workers and the idea of conversion and reconversion presented in this chapter. It is widely recognised that the ‘new’ or ‘authentic’ trade union institutions and leaders (including future president Luis Inacio da Silva – “Lula”) emerged from within the existing 50-year old CLT institutions¹³ (Bethell and Castro 2008: 214, Collier and Collier 2002:757, Braga 2012: 166-167; Santana 1999:110). Therefore, from an institutional path dependency point of view, the social forces taking Lula from the factory floor to a close second in the presidential election of 1989 and the presidency in 2003 can be traced to the dynamics of the CLT institutions created in the 1930s.

The workers’ mobilisation did possess some ‘new’ or historically unprecedented characteristics. The mass mobilisation and the nationwide adherence to the general strikes represents a significant change from the hierarchical ‘army without soldiers’ detached from the masses of workers described by Carvalho (op cit) during the previous 1945-1964 wave of mobilisation, albeit an account disputed by Santana (1999) and others. The establishment of factory commissions within the ABC Paulista industrial region is similarly unprecedented in the context of the historical absence of CLT trade unions in the workplace, though this is argued to be somewhat industry and region specific (see ch. 4 – on the ABC standard of representation).

¹³ Braga rejects the ‘authentic’ or ‘grass-roots’ credentials of the ABC metalworkers unions, tracing the origins of the leaders to ‘known *pelego* groups’. Similar opinions were shared during fieldwork in 2013 from Marreta-BH union representatives and a group of veteran social movement militants in Recife (Sinttel 2013) who recalled hierarchical and impermeable metalworkers’ leadership groups contrary to the ‘authentic’ and ‘grass-roots’ image.

It is similarly notable that rural worker mobilisation characterised by conservatism under authoritarian rule was also a significant force during this period a further example of the rapid systemic capacity for conversion. The ongoing dispute over land rights and the support of the Catholic Church through the Pastoral Land Commissions (CPTs) mobilised the workers through the official Contag confederation. According to Carvalho (2013:182) rural trade unionism was comparable in numbers to the metalworkers' vanguard though without the same 'firepower' as their urban counterparts. The ongoing economic crisis meant that middle-class, civil servants and state employees, traditionally protected by formal labour legislation were similarly mobilised and allied with the masses. Cardoso (2003:36) describes how a fall in purchasing power of federal civil servants between 1983 and 1989 'catapulted' them into collective action and emerging as the second most influential group within the CUT organisation despite public service worker unionisation yet to be legalised.

Even though new trade unionism was embedded in the existing CLT parameters there were some significant long-term institutional developments stemming from the mass mobilisations. The Partido dos Trabalhadores [Workers' Party] (PT) is formed, described by Bethell and Castro (2008:214) as 'the only party born outside congress without ties to the traditional 'political class'' together with the Central Única dos Trabalhadores (CUT) peak association which as of 1989 had 2,000 unions affiliated covering 8 million workers, described by Cardoso (2003:38) as hegemonic in Brazilian trade unionism. In terms of labour rights and legislation it should be recognised that the CLT protections were maintained and extended during authoritarian rule, so there are no major upheavals comparable to the 1930s incorporation period in evidence. The labour provisions included in the 1988 Constitution (CF88) summarised in annex 2.1 are mostly repetition or extensions of the existing CLT legislation.

The 1980s labour reforms of most significance for the trade union institutions were the legalisation of the right to strike and independence from the state. Two key corporatist provisions remained: unicity - one union per category and region and the syndical tax - compulsory funding and Labour Ministry authorisation required to form a trade union - the *carta sindical* (see chapter 5 for discussion of corporatist continuities). There are also two key omissions; workplace representation and inter-category organisations are not incorporated into the employment relations system despite their presence and influence within the labour movement. For individual workers the introduction of universal

unemployment insurance under the *Fundo de Amparo ao Trabalhador* [Workers' Protection Fund] (FAT) system stands out as a significant gain.

From a historical perspective, the real and tangible gains for labour from the democratisation process should not be overstated. CLT labour rights and protections continued and expanded as they had during the previous authoritarian period. The social and labour rights within the CF88 formally covered the entire population in contrast to the CLT legislation of the 1930s that formally and informally excluded the majority of the population (rural, domestic and self-employed workers). Brazil's development path described in this chapter meant that by the 1980s it was the world's most unequal society (IMF 2011:33, Berg 2010:24). The benefits and protections offered by the relevant legislation cover formal employment, therefore it can be expected that a large section of the population, corresponding to historically under-privileged groups, would continue to be excluded from its coverage.

When the context of the 'lost decade' of 1980s Brazil is considered together with the historical persistence of the widespread ineffectiveness of the CLT, little transformative change or a critical juncture can be expected for Brazilian workers from democratisation and the constitution. One positive complementarity during the period is the existence of a mobilised and vibrant labour movement within what Bethell & Castro (2008:229) describe as an unexpectedly 'strong civil society'. Yet membership and protection is conditional upon a formal employment relationship and the trade union institutions are perhaps more moderate than they have been widely depicted.

During times of crisis the persistence of low and falling real wages is no longer mitigated by public social and infrastructure investments as was the case during the economic 'miracle' periods described by Lago (1989:294). Despite considerable demographic and industrial change since the 1930s, the persistence of the inequality and hierarchy aggravated and exposed by the socio-economic conditions of the 'lost' decade can similarly be described as a social structure unfavourable or 'hostile' to the majority of workers as it was at the beginning of the 20th century.

The reforms of the 1980s can therefore be considered another institutional layer that represents a 'utopia', a possibility, promise or aspiration for workers (Cardoso op cit) rather than a tangible and widely respected right. During the period in question there was concern expressed by leading intellectuals including future president Fernando Henrique

Cardoso that the enthusiasm and optimism for political and civil rights ‘distracted attention from the need to confront Brazil’s fundamental structural problems, economic and social’ (Bethell and Castro 2008:223).

Carvalho (2013:7) retrospectively describes ‘naivety in the enthusiasm’ surrounding the belief that a democratic system and highly progressive formal ‘citizen’s constitution’ represented the answer to all Brazil’s historical problems. This ‘naivety’ mirrors the weaknesses of solely considering formal institutions, characteristics of ‘old’ institutional approaches discussed in the previous chapter (see North 2003:2 & Levitsky 2012: 88). The subsequent non-materialisation of significant change should have been expected in light of the absence of widespread CLT compliance since its introduction in the 1930s.

The first democratic election took place in 1989 with Lula, the PT candidate and former metalworker and union leader, coming in a close second to Fernando Collor after a second round of votes. This was a signal of the strength, influence and credibility of the labour movement particularly within an international context of highly weakened labour institutions in the advanced industrial countries¹⁴. In terms of the economy, inflation for 1989 was at 1,800 per cent resulting from a series of failed heterodox stabilisation plans involving price and wage freezes.

Declining real wages/purchasing power has traditionally been a grievance of the Brazilian population mobilising significant protest and opposition. This is evident from the Rio de Janeiro penny riots of 1879, the mobilisations of the 1950s pressuring the government into a 100 per cent increase in the minimum wage, amongst the main grievances of striking metalworkers in the 1970s and evident in the present day with the 2013 and ongoing 2016 protests against public transport fare rises.

3.4 1989-2003: Democracy Before Stability and the Survival of the LMI system

The 1989-2003 period brings the analysis towards contemporary Brazil, overlapping with discussion of contemporary employment and institutions covered over the next three chapters. The 1990s is characterised by profound macro-economic reforms to achieve stabilisation and correct historical imbalances that have been persistent since the middle of the twentieth century. This section continues the path-tracing of labour institutions coming

¹⁴ Most obvious comparisons are with Reaganism in the United States and Thatcherism in the UK

after the ‘lost’ decade characterised by recession and instability and a peak in labour mobilisation. The two issues analysed are the effect of the economic reforms upon labour institutions and the direction(s) of the trade union movement in light of liberalising reforms that often involve the flexibilisation of employment legislation.

There has been minimal mention of inflation and economic instability up until this point, though it is worth highlighting that macro-economic instability was *not* a new phenomenon originating in the late 1970s and the 1980s. Instability was most intensely observed over the ‘lost decade’ by a dramatic crash coming after the economic ‘miracles’ financed by foreign loans rather than internal resources. Within the already identified tradition of *para ingles ver* reforms, Abreu (2008:312,331 & 385) observes a ‘structural long-term fragility of Brazilian balance of payments’ since the late 1930s and describes control and orthodoxy attempts as ‘lip-service’ during both the democratic interlude of 1945-1964 and under military rule.

Economic instability characterised by high inflation or an unstable wage/price relationship contributed to popular mobilisations under Vargas in the 1950s and was an important cleavage factor leading to and justifying the military coup of 1964. The disproportionate increase of prices in relation to wages was an initial grievance for prompting the shop-floor mobilisation across the São Paulo automobile factories in the 1970s. There is consensus that high inflation disproportionately affects the poorest in society and aggravates income inequality (Kuznets 1955; E. Cardoso 1993: 114-115; Bulir 2001:157). Within the context of the secular persistence of a social structure unfavourable for the majority of Brazilian workers, high inflation can be considered a further factor contributing to an adverse situation for labour.

The narrow (margin of 6 per cent) victory of Fernando Collor over Lula in Brazil’s first democratic election was on the basis of promises of economic reform involving what Costa (2005:120) describes as an ‘avalanche of liberalisation measures’ privatisation, trade liberalisation and deregulation of the labour market as part of the competitiveness and efficiency rhetoric. This is consistent with a global trend of ‘neo-liberal’ or free-market reforms in the advanced economies from the 1970s. To many observers this was an alarming development in the Brazilian context given that it represented the reversal of rights formalised in the constitution only a few years prior.

As argued in this chapter, the historical problem with labour rights in Brazil since the 1930s has not been their formal content, but the persistent formal and informal exclusion of the majority of workers from their protections. As was the case during the conservative military regime, the majority of CLT provisions survived the economic liberalisation of reforms of the 1990s. Haagh & Cook (2005:185) attribute the survival of labour rights into the 21st century to the order of Brazilian reforms. Political liberalisation and its strong mobilised labour movement came before the economic liberalisation process. In this sense there is a positive complementarity in the emergence of an active labour movement in the 1980s and the survival of labour rights and protections in the following decade.

Despite the survival of the CLT labour institutions, the wider Brazilian economic model changed significantly and rapidly from its inward looking closed and interventionist state-led form to a more liberal open economy with negative consequences for labour. In the context of the persistent problem of the majority of the labour force being excluded from the CLT since its inception, the 1990s sees a reversal of a trend (albeit a slow and gradual one) of increasing inclusion as demonstrated in figure 3.2. Consistent with this increase in informality and the global tendency of liberalisation policies where full employment is no longer considered a viable objective, unemployment doubled and became something of a new social problem. With the state spending cuts and loss of industrial jobs, unemployment is a problem facing those historically accustomed to a formal employment relationship. The excluded majority do not benefit from formal provisions and protections for unemployment.

With regards to more equitable labour arrangements and the political trajectory of the 1990s the successful containing of inflation is important. Within the historical context of persistent, robust and increasing income inequality the stabilisation had an immediate and one-off positive effect upon income distribution and real wages particularly benefitting the lowest earners (Amann and Baer 2000:1807). It also provided greater stability, particularly after a decade of high and hyperinflation and a series of failed heterodox reforms.

In the same manner the military regime benefitted from credibility and popularity from the economic 'miracle', the liberalising groups in government in the 1990s benefitted significantly from the popularity of the successful stabilisation policies. The popular approval and sustained price stability contributed to Fernando Henrique Cardoso's election

and re-election in 1994 and 1998 respectively. The PT/CUT candidate Lula was in second place on both occasions.

There were also significant changes in the path of the trade union movement entwined with the stabilisation reforms. The 'authentic' position of the CUT peak association was anti-capitalist, combative and in opposition to the stabilisation measures involving privatisation, trade liberalisation and the involvement of foreign capital and multi-lateral agencies such as the IMF and World Bank. Overall the stabilisation decade is described as one of crisis for Brazilian Trade Unionism particularly for the CUT strand (see Boito 2003, Cardoso 2003, Pochmann 1998, Rodrigues 1999).

The new economic logic and role of the state that the stabilisation reforms implied, de-indexation, fiscal surpluses etc., weakened the bargaining power of the unions. The privatisation of state industries and the drive for competitiveness meant that the two main power bases of the CUT, industry and public workers were significantly weakened with 2 million industrial jobs lost between 1990 and 1999 and unemployment doubling from 4 to 8 per cent over the same period together with the increase in informality already mentioned (Cardoso 2003:42).

In political terms the CUT were defeated not only in the 1994 and 1998 elections though also in their opposition to the liberalisation process. Within a new political context of fair and free elections, the combative CUT approach to negotiations was reciprocated by the government taking an aggressive position towards strike activity. The credibility gained from the success of stability policies, within a logic that cites union influence as an aggravator of inflation and given the economic conditions already described, the popularity and credibility of the trade unions fell significantly from its peak of the previous 'democratisation' decade.

The government's position was also strengthened by a split in the union movement with the creation of the Força Sindical (FS) peak association that emerged in 1991 as a 'results-based' or 'pragmatic' organisation. The founding principals were the rejection of 'combative/confrontational' trade-unionism. FS therefore emerged as an alternative or opposition to the then dominant left-wing CUT and its unions. From a power base of the City of Sao Paulo metalworkers' union the peak association was consistently supportive of liberalisation reforms and was the fastest growing trade union organisation from 1992-2001 increasing 170% to CUT's 70% (IBGE 2003 in Trópia 2009:41).

The direction of the CUT during the 1990s merits attention; given the size, scope and number of affiliated trade unions, significant internal diversity can be expected and some internal paradoxes and contradictions can be observed. Despite the ‘authentic’, anti-capitalist and combative rhetoric of the central organisation, patterns of employment relations within the CUT’s ABC regional and industrial powerbase demonstrate a different trend towards plant-level cooperation with employers.

Within the economic context of industrial restructuring, automobile workers made deals with employers through the tripartite *Cameras Setoriais* [Sectorial Chambers]. More flexible employment regimes were bargained in exchange for the avoidance of mass-dismissals. Therefore, some of the flexibilisation policies formalised in the 1990s such as flexitime (*banco de horas*) and production/performance based pay (PLR) as part of a set of reforms opposed by the CUT originate from the shop-floor of the CUT dominated unions (See chapter 6 for the evolution of ABC Paulista employment relations standard, a selection of flexibilisation reforms are summarised in annex 2.1).

A further long-standing CUT campaign since democratisation has been for greater democratisation of the collective employment relations system, namely the removal of the corporatist elements of unicity and the syndical tax. In the context of the path traced in this chapter and recognised by Cardoso (2003:40) this opposition is something of a paradox. The corporatist elements of the system have contributed to the survival of trade union institutions over two decades of authoritarian rule and throughout the 1990s reforms. This contrasts with the deregulation and flexibilisation processes in other societies. Argued in this chapter and consistent with Collier and Collier (2002) the emergence of the CUT dominated ‘new’ trade unionism in the 1980s was path dependent upon the 1930s reforms.

The main liberalising reform to the collective representation system from the democratisation and 1998 constitution was trade union independence from the state. This new more subtle freedom had unintended consequences, argued here to follow familiar historical patterns, that contributed to the decline of trade unionism in the 1990s. Cardoso (2003:40) describes the ‘partial liberalisation in the new Constitution’ as a key element in its 1990s decline. Citing IBGE census data, Cardoso observes a 40 per cent increase in the number of trade unions between 1991 and 2001 though only a corresponding 10.2 per cent increase in formal employment and decreasing rates of unionisation.

Such a phenomenon is described as union *pulverisation* or *fragmentation*, a negative complementarity for labour can be observed between the greater ease in creating a new union/category within the unicity system (recognition of new category, sub-category or region) and the resources guaranteed by the syndical tax. The imbalance or contrasting trends between the number of unions, formal employment and unionisation rates suggest that the objective of many of these new unions is to capture the guaranteed resources. This is a familiar historical pattern, or unintended consequence of the unicity system comparable to trends in the 1930s and 40s described by Carvalho and Silva (op cit) where small trade unions proliferated to effortlessly command the resources offered without meaningful membership and representation.

Within the context of unsuccessful challenge to the economic reforms labelled generically as ‘neo-liberal’, the loss of the quasi-monopoly of trade unionism with the emergence of the pragmatic FS and the ‘battle for democracy’ already won, there is a significant shift in the CUT approach to industrial relations over the 1990s. Santana (1999:111) describes how the CUT’s new trade unionism matured from a *movement* into an *institution* and this involved the radical challenge to the existing trade union structure giving way to ‘accommodation and coexistence’. Rodrigues (1999:88-91) describes an increasing distance between the combative discourse and increasingly reformist practice of the central organisation participating in tripartite forums such as the *Camaras Setoriais*, making concessions to avoid mass dismissals and negotiation of collective and individual bargaining agreements with employers. This new position is described by Rodrigues as ‘defensive realism’.

The defensive posture of trade union organisations can be viewed as a success when considering the survival of labour organisations, labour rights and protections within society. This is particularly the case when compared with union decline in the more liberal advanced industrial economies. Whilst the economy underwent an economic liberalisation process, formal labour rights remained relatively unaltered and are a long way from representing the “hire and fire” flexible neo-liberal ideal type that characterises the Anglo-Saxon economies.

The flexibilisation of the CLT during the period in question was controversial though many of the reforms are subject to approval within collective bargaining agreements (flexitime and variable salaries for example). The persistent historical problem with the

CLT protections is their non-effectiveness and exclusionary character rather than content. For formal sector workers at least, active labour institutions defending existing rights offer a potential complementarity to address this secular problem.

As of 2003 the CLT labour protections and trade union system were still firmly in place, albeit with some reforms already discussed and summarised in annex 2.1. The unicity and the syndical tax corporatist provisions continue. Despite the importance of the CUT and FS peak associations and plant-level representation over the previous two decades in collective bargaining processes, such institutions were yet to be formalised in 2003.

Conclusion

This chapter demonstrates considerable *continuity* in Brazilian labour institutions, with unfavourable characteristics that can be traced back to the 19th century. This goes against popular interpretations of revolutions. The 1930s reforms creating the CLT system, the authoritarian intervention of 1964 and the democratisation process of the 1980s were and still are popularly and incorrectly described as ‘revolutions’. Skocpol (1994: 5 & 313) defines social revolutions as ‘rapid, basic transformations of a society’s state and class structures, accompanied and in part accomplished through popular revolts from below’ within the context of an administrative-military breakdown of the state. This type of radical change or breakdown is not apparent in the history of Brazilian labour institutions traced in this chapter. This gives credence to the idea that a regressive path dependency from the 19th century still influences employment relations.

The Vargas ‘revolution’ of the 1930s is characterised by a strong state, an absence of popular revolts from below and the initial policy choices introduced exclude the majority of workers. The corporatist system installed possesses familiar historical characteristics of authoritarianism with objectives of ‘stability and order’ in the national interest. The exclusionary nature of the legislation introduced and the absence of trade unions at a plant-level give weight to the idea that the reforms follow in the *para ingles ver* historical tradition of formal legislation designed to fail. Consistent with Levine (1998:112) and Cardoso’s (2010:159-160) interpretations, the incorporation period is argued here to represent a moderate conservative process. Rather than substituting or radically altering the regressive path for labour, it represents an additional layer upon existing institutions.

Collier and Collier's (2002) description of the incorporation period as a 'critical juncture' is appropriate when the subsequent path of 20th century labour institutions is considered. Albeit not a social revolution, the system introduced defines the political arena and the vast majority of actors operate within its constraints. Despite the 'fear of communism' used to justify the conservative "revolution" of 1964, the left-wing institutions mainly operated within the CLT institutional parameters. As argued in this chapter, the system demonstrates the potential for conversion (and reconversion) with cycles of control (1930-1945), mobilisation (1945-1964) – control (1964-1978) mobilisation (1978-1988).

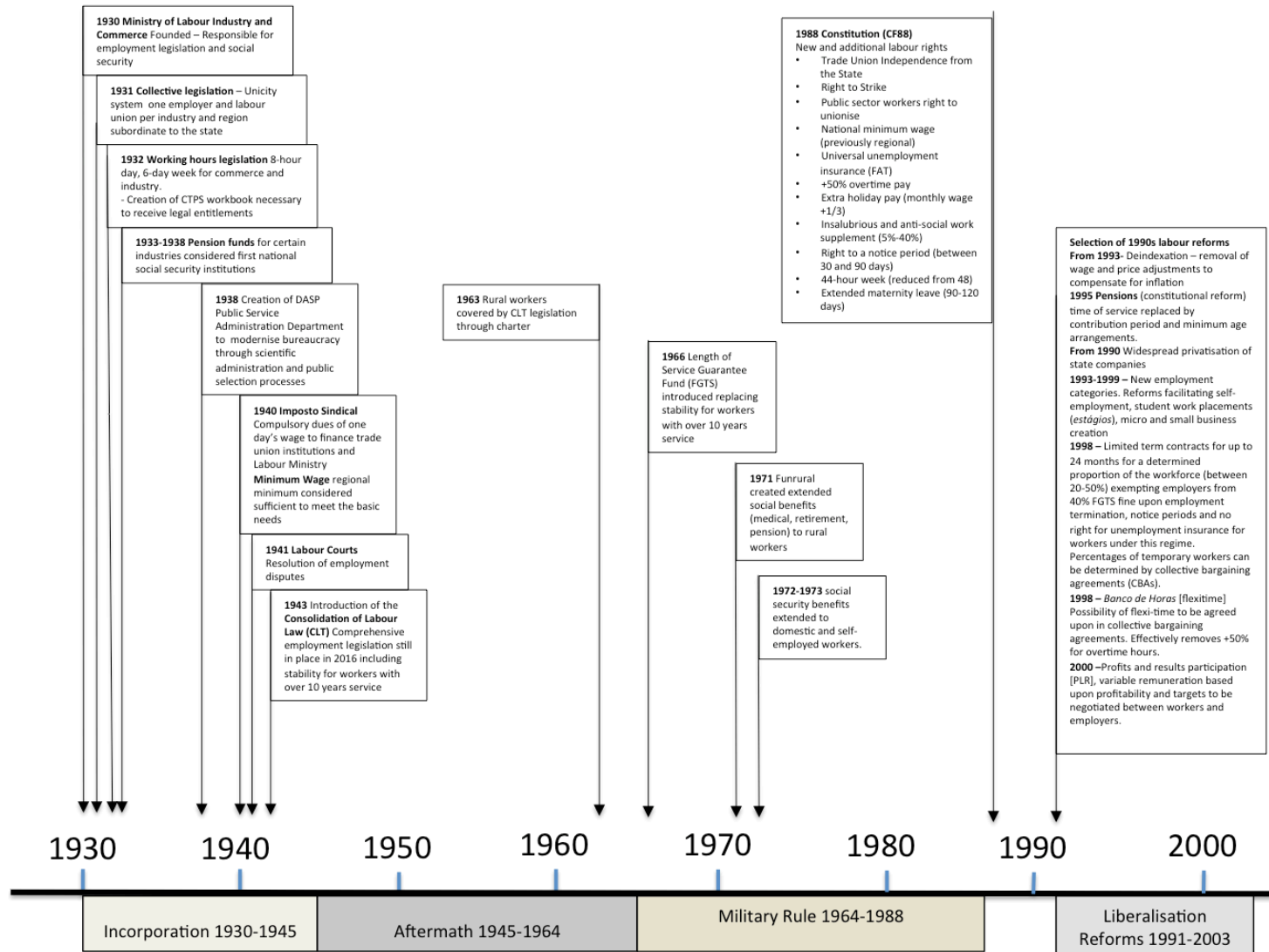
The examples of the labour institutions and plant-level mobilisation at the vanguard of the democratisation movement in the 1980s and the subsequent survival of the regulated corporatist structure over the subsequent decade of liberalisation reforms is considered here to represent a progressive path dependency. The persistence of high inequality and poverty levels throughout the 20th century strongly suggests that this progressive path has yet to overcome or replace the regressive path also described in this chapter.

Within the wider research focus of this thesis, whilst this chapter identifies considerable historical continuities in contemporary Brazil in two distinctive historical paths identified; the persistence of exploitative practices for labour (regressive path) and the promise of extensive labour rights (the CLT path). Historical evidence demonstrates such continuity is not synonymous with a *static* LMI system. This is particularly the case in relation to the stickiness of the long-standing CLT corporatist arrangements. Within the gradual modes of change (Thelen and Streeck 2005:31 see table 1.2) there is evidence of 'layering' and 'drift' in the introduction of the original CLT system in the 1930s where existing regressive practices for labour were not displaced and evidence suggest the reforms followed in the *para ingles ver* tradition of 'deliberate neglect' of formal legislation.

There is also evidence of 'conversion' and 'reconversion' or the 'redeployment of old institutions to new purposes' in the systemic capacity for the existing institutions to rapidly mobilise workers and represent labour interests. Such a capacity has been sustained into the 21st century as the defence and expansion of existing labour rights since the 1980s leading up to the PT government in 2003 would suggest. This capacity for conversion is not captured by more statically descriptive analyses as is argued to be the case on the Latin American HME ideal-type, the history of trade unions in Brazil is again not one of 'sparse' institutions.

The recognition of gradual change is also a weak point of alternative path dependency analyses as discussed in chapter 1. There is an inability to recognise institutional change ‘not instigated by a major event’ resulting in a tendency to overstate continuity. What is observed in the Brazilian case however, is an imagined major event or critical juncture in the emergence of the ‘new’ ‘authentic’ trade unionism emerging since the 1970s. This misrepresents the conversion or reconversion changes within the existing system as a break or rupture with the existing system. It would be argued here, consistent with Collier and Collier (2002:757) and Santana (1999:110), that ‘new’ trade unionism emerged *from* rather than in opposition to the existing corporatist system. This is an important ongoing consideration as calls to reform the existing system from trade unionists themselves are often embedded in an imagined concept of authentic grass-roots worker representation incompatible with the long-standing CLT arrangements (see ch.5 on representation).

Annex 3.1 Timeline of selected labour reforms in Brazil 1930-2000



Source: Adapted from adapted from Brasil (1988 & 2000); Cardoso 2003; Carvalho (2013:113); Krein (2007); Silva (2008:470-473)

Chapter 4 - Employment Relations in the Brazilian Variety of Capitalism

This chapter analyses industrial relations in Brazil, building upon previous discussions where it has been argued that the economy is not on a liberal market-type path. Levels of state participation do not resemble the liberal model and, specific to employment relations, the survival of the corporatist institutional system across the 1990s with resourceful trade unions and the emergence of influential peak associations means that the formal system and its recent trajectory is closer to that of a Coordinated Market Economy (CME).

Drawing upon fieldwork observations, this chapter seeks explanations for the observed inconsistency between the employment relationship envisaged by the formal institutional system and the workplace reality. The first half of the chapter looks at general industrial relations in Brazil at three interrelated levels: national, regional/sectorial and workplace. The second half enters into the construction industry case study analysed at the same three levels. Specific attention is given to relations at the Pecem Steel Plant construction site; the subject of a public hearing called in 2015 by the regional Public Labour Prosecutor (MPT-CE) to address the persistent and heightened problems observed. Over 2014 there was an almost complete breakdown of on-site employment relations, three-years after the problems witnessed across the PAC sites.

This chapter draws upon primary analysis of employment relations based upon fieldwork within the construction industry complemented by relevant data from a range of secondary sources. It remains within the parameters established by the new institutional approach and specific research problem of this thesis. As already discussed, and within the varieties of capitalism research agenda; the existence, capacity and success of tripartite interaction between state, business and labour institutions are key variables for consideration. It represents what has already been identified by this thesis as the sustained capacity for collaborative solutions from the embedded Brazilian labour market institutional system (see ch.2).

A transition towards an LME in the Brazilian case is not evident nor does it seem likely from a path dependency perspective when the endurance of the corporatist system is considered. As discussed in chapters 1 and 2, it would be a significantly less equitable or

institutionally compatible path than the alternative of greater coordination, particularly in light of the extremely high levels of inequality that characterise Brazilian society. More cooperative solutions are not straightforward however. As an institutional approach would anticipate, the feasibility of institutional coordination is dependent upon a complex and context-specific set of institutions, their historical legacies, informal manifestations and complementarities.

Pagano (1991:325) argues that the liberalisation path results from an *absence* of institutions and complementarities offering more coordinated solutions that more adequately represent the interests of labour. The less favourable LME path is argued to be one of less resistance within VoC debates. Hall and Soskice (2001: 63) observe that deregulation is an easier path. The observation is considered to be similarly applicable to the idea of transitioning away from an HME model as argued by Schneider (2013:38)

In most realms, it is more difficult to build networks of trust or institutionalize negotiation in LME and HME than it is to introduce markets and hierarchy to undermine or displace networks and bargaining in NMEs and CMEs.

Consistent with the basic pillars of ILO policy (2012) the coordinated option or ‘social dialogue’ is considered here as the means to meeting the challenges of generating quality employment to contribute towards equitable development. It also represents a superior alternative to the ‘less resistant’ path of deregulation offering less equitable employment arrangements.

This chapter is somewhat exploratory in its analysis of the three levels of industrial relations both generally and specific to the construction industry. The idea that coordinated or social dialogue solutions are desirable in the high-inequality/hierarchical context of Brazil is a basic underlying premise. The objective is to identify the main obstacles towards greater coordination between LMIs. Availability of research data and the ongoing contestation of the HME trait of ‘sparse unions’ means analysis of trade union activity is prioritised. The main issues identified in this chapter are then discussed in more detail across the remaining two chapters applying established theoretical debates to the Brazil/construction employment relations case.

4.1 National Level Bargaining: Labour Interests at the Highest Level

Camargo (1997:10) describes the functions of tripartite institutions and identifies three different hierarchical levels of collective bargaining: national, sectorial/regional and plant level. For LMIs Camargo (p.6) describes three basic functions of employment legislation¹⁵: ‘to create an institutional environment where negotiations between workers and employers lead to efficient solutions’; and to ‘possess incentives and penalties in order that solutions are socially efficient and not solely in the immediate interests of the parties involved.’ And the third:

To guarantee that the parties involved in negotiation have sufficient bargaining power to be able to appropriate the fruits of productivity with equanimity and as a result guarantee an acceptable degree (for society) of equality in the negotiated solution

At the national level, rights and obligations to be respected throughout the labour market are negotiated. At this highest bargaining level, the Brazilian system has proven to be resistant to liberalising reforms with existing collective and individual rights maintained in the face of a global shift towards freer markets. In the LME type economies, the flexibilisation and deregulation of labour markets in the 1980s and 1990s represent a key differential when compared to the more coordinated path taken by CME economies. On Brazil, Cook (2007:103,196) describes Brazilian labour institutions as comparatively effective in resisting liberalisation pressures particularly in defence of collective rights. She attributes this success to strong unions; this bodes well for meeting the basic function of employment legislation to ensure negotiating parties have ‘sufficient bargaining power’.

The capacity of labour representative institutions to defend existing rights at the national level described by Cook (*idem*) is not synonymous with productive social dialogue or coordinated tripartite solutions. Indeed, Cook (p.70) observes that in previous decades the dominant peak association, the CUT, were mistrustful of tripartite mechanisms. She further describes (p.85) the bargaining power of labour being limited in previous decades due to rivalry and differences between the CUT and Força Sindical (FS) peak associations, describing the latter’s accommodation with government flexibilisation reforms as undermining the former’s position. Weyland (1996:67) similarly recognises partisan ‘cleavages’ between peak associations as weakening labour interests at the highest level.

¹⁵ Within North’s (1991) definition of Institutions being ‘formal rules and informal restraints’ the term is used interchangeably with Camargo’s use of “legislation”.

The division of trade union institutions at a national level in the 1990s can be associated with the institutional trait of organisational fragmentation in Brazil. Weyland (1996:15) attributes the persistent failure in redistributive and equity enhancing reforms in post-democratic Brazil to institutional fragmentation. Compared to Weyland's diagnosis there is an observable shift in the 2000s towards greater labour unity and tripartite dialogue (see Araujo & Veras 2011:108, Riethof 2004:41 and Marcelino 2008). It represents a change from the described mistrust of such mechanisms by the CUT in previous decades. A similar change is observable in the state's approach; according to Cook (2007 102-103) such an emphasis on tripartism 'marked a departure from the previous government's policy of issuing decrees and provisional measures'.

This shift towards greater tripartism in the 2000s coincided with unprecedented levels of sustained economic growth and stability with a dramatic decrease in poverty and falling inequality. The IPEA (2012: 8) 'inclusive decade' report attributes 58 per cent of the positive results between 2001 to 2011 to the labour market. A key contributor to labour market improvements and therefore overall social indicators was the sustained and significant increase of the minimum wage, increasing 76.54 per cent in real terms between 2002 and 2015 (Dieese 2016:4). The real minimum wage increase policy with provisions to continue until 2020 can be considered a social dialogue success, with the central trade union organisations participating actively, and importantly in unity, towards the implantation of the policy widely considered to be a key element of the success of the 'inclusive decade'. CUT president Marinho (2007) describes it as representing mature and responsible negotiations between central trade union organisations and the government towards the best possible adjustment to the minimum wage.

More recently a coordinated tripartite response to a prolonged economic downturn is evident. A provisional counter-cyclical measure (PPE) to protect employment at businesses affected by the economic downturn was introduced. It involves reduced hours & part-subsidised salary reductions and was the outcome of tripartite negotiations. Although this essentially involves a temporary financial loss for labour, in terms of tripartite dialogue it demonstrates a capability to reach consensus for a type of cooperative policy often associated with the German economic model and resembles the trade-offs of a successful corporatist system described by Archer (1998:103-104). The CUT secretary general, Nobre cites the European CME model when justifying trade union support for the PPE:

‘numerous European countries have similar programmes, and in our opinion the German model is the most efficient’ (Aragão 2015).

Institutional relations at the national level in the 2000s could be said to possess some characteristics of a CME model or at least the shift towards greater tripartite intentions and initiatives in the 2000s compared with previous decades can be considered a move in the direction of coordination. The ongoing problem considered throughout this thesis persists however; despite some ‘efficient solutions’ at a national level the reality of employment is inconsistent with that of the coordinated models and similarly lags behind that of LME type economies. It is therefore important to analyse the levels of cooperation at the sectorial/regional and plant levels to gain an understanding understand why some success at the national level is not reproduced sufficiently to *characterise* the reality of employment nationally.

4.2 Incongruity and Networks of Mistrust: Regional/Sectorial Bargaining

In formal legislative terms the institutional conditions to fulfil the functions of employment legislation as described by Camargo exist at the Brazilian regional/sectorial level. The corporatist unicity system of one union per category and region for both business and labour financed by compulsory dues guarantees the existence and resources of institutions responsible for participating in negotiations. These representative organisations are legally obliged to negotiate collective bargaining agreements (CBAs). Negotiation takes place on an annual basis over a two-month window leading up to the base date, the anniversary of the previously negotiated CBA. It is here that the potential for greater social dialogue and cooperation towards better employment is identified.

In practice, dialogue with business representatives tends to be more adversarial than cooperative and the majority of the union activity is directed towards pressuring the state rather than producing tripartite agreements. This is recognised by Collier and Collier (2002: 508) and Schneider (2013:35). The latter author observes that ‘in hierarchical capitalism (as in most LMEs), business and labor rarely negotiate’ and ‘In Latin America, the relative disengagement of business and labor with each other means that both groups tend to organise more to engage the state’. In this sense the Brazilian system is consistent with the HME model.

Within Latin America, Brazil has the highest union density of 19.5 per cent (ILOStat 2016) above the OECD average and that of most liberal economies though less than the coordinated economies of northern Europe. As argued in chapter two, solely focussing upon union density figures *understates* the influence of labour organisations in the Brazilian context. The unicity system means that the majority of formal workers are covered by collective bargaining agreements negotiated between labour and business representatives independent of their union affiliation (see ch. 2 figure 2.9). Considering the observable recent coordinated success at the national level and the robust presence of bargaining institutions at the intermediate level, it is again argued in terms of presence, resources and influence that Brazilian trade unions do not fit with Schneider's (2013:91) description of 'sparse unions' for HME/Latin American economies.

Other core HME labour market features, low skills, high turnover and extensive informality are consistent with those observed in Brazil. Therefore, despite a greater union presence, the disappointing results point to an institutional system not as effective as it perhaps should and could be in meeting the basic functions of employment legislation. The system guarantees negotiation between business and labour representatives and resources for the relevant institutions though this does not lead to widespread cooperation or indeed 'efficient solutions' to an extent that it characterises industrial relations nationally.

A controversial factor is the unicity system that establishes one union per industrial category and region leading to the fragmentation of both the business and labour representative bodies. Despite what is argued to be the success of social dialogue at a national level, the type of fragmentation Weyland (1996) attributes to the failure of equity enhancing reforms persists and has accelerated in recent years at the regional/sectorial level. In Evans's (1995:225) Embedded Autonomy terms, a 'coherent and cohesive' institutional apparatus is lacking (see ch.2). The number of trade unions has increased by 54 per cent between 1998 and 2012 whilst the rate of unionisation actually fell by almost 1 per cent during the same period (Cardoso 2014: 22-23).

Union (Julio, Claudinho, Aguiar 2013 interviews) and state representatives (Farias, Juca 2013 & Marques 2015 interviews) describe such an increase in the number of trade union organisations; what they believe to be newly accredited unions formed to capture the resources the system offers and therefore weakening and further fragmenting the labour movement. This phenomenon is widely known as trade union pulverisation. Fragmentation

at the intermediate level generates considerable heterodoxy in the collective bargaining outcomes between sectors and regions, reflective of the high regional and socio-economic inequality across society contributing to what this thesis presents as an incongruous system. Such fragmentation and asymmetry between parties means that the capacity for collective bargaining at a regional and sectorial level to contribute to nationwide transformations in the reality of employment across society is constrained.

As recognised by Weyland (1996:38), the regional and sectorial fragmentation of trade unions and the varying capacity for bargaining this implies can be mitigated by the association with and participation of central trade union organisations (CUT, Força Sindical, UGT etc.). The effectiveness of such institutions is evident at a national level and their strength and resources are drawn from the regional/sectorial level institutions sustained by the unicity system. Similarly, the Inter-Trade Union Department of Statistics and Socioeconomic studies (Dieese) created by the labour movement in the 1950s offers research, consultancy and assistance to individual trade unions in bargaining campaigns and negotiations.

Association with and assistance from the central organisations and the Dieese in collective bargaining is voluntary. It cannot therefore, address the problems of inactive, complacent trade unions run in self-interest and disengaged from the category they legally represent. This phenomenon locally known as *peleguismo* and discussed in greater detail in the next chapter, is considered a pervasive problem created by the corporatist system and a significant contributor to the inequality of representative capacity between different unions. According to Trópia (2014: conference contribution) the greatest concern regarding ineffective representation of workers is the one third of trade union institutions with no affiliation to any central organisation, rather than the much-debated ideological cleavages and rivalries between peak associations.

The problem of *peleguismo* distorts the intended distribution of bargaining power of the institutional system and has provoked significant pressure for change. The main stimulus behind the FNT initiative was the problem of increased fragmentation or pulverisation of trade unions since democratisation (MTE 2003 & 2005). The systemic weaknesses caused by fragmentation and *peleguismo* are often cited by both liberal arguments favouring an end to the corporatist system and trade unionists arguing for a more democratic, free and ‘authentic’ representation system. Both arguments need to be considered with caution (see

next two chapters). Such reforms could potentially be counter-productive as a means to improve LMI effectiveness. Deregulation could set the system on a liberal path resulting in the disappearance of labour organisations, albeit often weak and flawed, making the possibility of bargained solutions towards improved employment conditions or ‘efficient solutions’ less feasible in the future, removing the capacity for coordination/tripartism identified across this thesis.

Based upon examples from the construction industry, it is argued in the next chapter that a militant and mobilised category can be an effective check and balance to the problem of *peleguismo* by pressuring the union to be active and assertive in their representation and collective bargaining (see part 5.4). Effective representation is evidently possible within the existing system. Interviews with union and Dieese representatives (Albano, da Silva, Julio, Aguiar 2013 & Marques 2015 interviews) would suggest however, that such effectiveness represents the exception rather than the rule. Problematic and incongruous representation mechanisms at the regional/sectorial level are recognised here as a significant contributory factor to the formal system – employment reality inconsistency identified in the research question and analysed at greater length in the next chapter.

A further issue impeding better results from institutional relations is the level of conflict between labour and business representatives. An important question here is as to why such high levels of conflict exist. This problem is not immediately related to the phenomenon of *peleguismo*, indeed it is common for a trade union perceived as having a cordial and cooperative relationship with employers to be labelled as a co-opted, *pelego* institution. The rhetoric of a considerable number of trade unions is one of struggle and confrontation with employers; this often means a rejection of the idea of tripartism. Such a posture is often labelled as ‘authentic’ or ‘new trade unionism’ in contrast to the state-controlled passive organisations that predominated before the 1980s democratisation process.

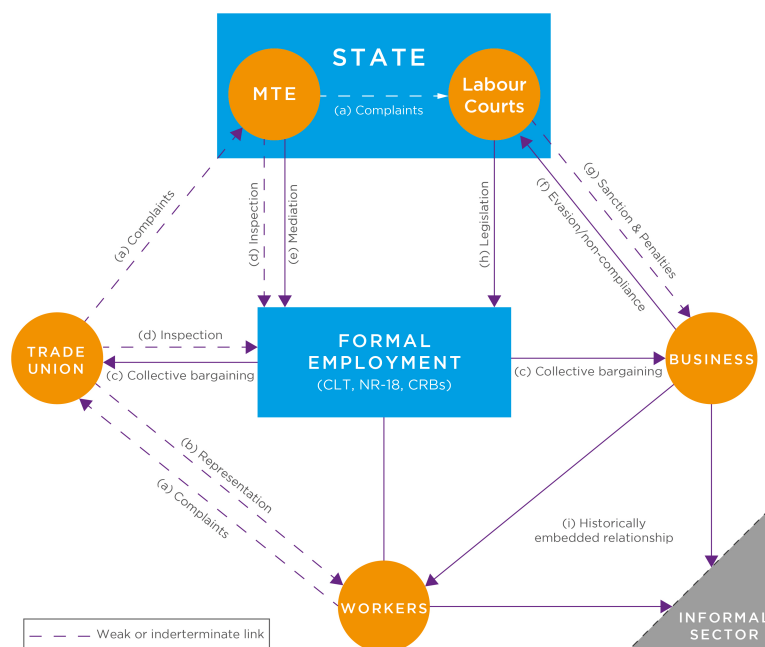
From an employers’ perspective when negotiating with a resourceful and active union a common grievance is that productive dialogue and cooperation is made impossible due to the combative anti-capitalist ideology of the labour institution. Conticom-CUT president Claudinho (2013: interview) counter argues that combative strategies are necessary as employer organisations do not come to the table ‘of their own free will’ and have to be pressured into negotiations through industrial action. When asked about the potential for greater coordination between business and labour representatives, regional Dieese

supervisor for Ceará, Aguiar (2013 interview emphasis in the original) confirmed reluctance amongst some unions to cooperate with employers, responding with jest:

Working together? That's known here as PE-LE-GUIS-MO, in the minds of the boys [trade unionists] integrated capital-labour relations are unacceptable – I mentioned social dialogue and you can imagine the hammering I took. They said it would be tantamount to submission and called me a pelego.

Unwillingness on behalf of the labour unions to contemplate greater cooperation with employers is a historical characteristic and relevant variable though should not be considered in isolation or dismissed simply as the result of predominant political ideologies (see next chapter). The strategy of confrontation needs to be analysed in the context of strategic interaction with other relevant factors within the employment relations system summarised in figure 4.1.

Figure 4.1 Networks of Mistrust: Tripartite Relations at the Regional/Sectorial Level



Source: Adapted from own fieldwork research and Cardoso & Lage 2007

Networks of mistrust within Brazilian employment relations is an important consideration for the remainder of this chapter and the following two chapters on representation and regulation respectively. Starting at the bottom of the diagram, the worker - trade union relationship is weakened or indeterminate for a number of interrelated reasons. A low threshold for employment conditions together with a historical absence of representation

within the workplace (see Cardoso 2010:332 and section 4.4 in this chapter respectively) means that the willingness and ability to complain to the representative union (linkage a) is constrained. The indeterminate nature of the union –worker relationship is reinforced by the problem of *peleguismo* already described, where unions exist outside of the workplace and are sustained by compulsory dues (syndical tax) and monopoly of representation (unicity) mechanisms (see ch.5), weakening the responsiveness or representativeness towards workers (linkage b). Such an indeterminate relationship in turn weakens the inspection function of the trade union (linkage d) to work towards greater compliance with the existing formal employment legislation.

Within the Brazilian system the designated trade union in turn is responsible for representing workers to reach a collective bargaining agreement (CBA) with employers (linkage c). This is not identified as a weak or indeterminate relationship here, yet it has to be considered together with the relationship between workers and their designated union as well as the long-standing practice of unregulated or informal employment (linkage i). This is a key feature of the networks of mistrust: the high incidence of noncompliance by employers with the legally enforceable negotiated CBAs, general employment legislation enshrined in the CLT and Constitution as well as health and safety rules (NRs) (linkage f). Resultantly, the role of the state's inspection, enforcement and legislative activities needs to be considered.

When the scarce inspection resources of the state are considered (see ch.6 on regulation, Berg 2010:17, Cardoso and Lage 2007:87, and described by Julio, Ishikawa, Juca 2013: interviews) the state inspection of compliance with labour legislation is weakened (linkage d) and the Labour Ministry (MTE) are dependent upon complaints from the trade union whose indeterminate representation and inspection role has already been described. This complex composite structure of strategic interaction creates an incentive and penalty structure that stimulates evasion by employers (linkages f & g). Endemic noncompliance generates very high levels of litigious conflict overwhelming the relevant state labour institutions, crowding out the possibility of more productive and proactive negotiated solutions. The levels of litigation going through the labour courts are internationally unprecedented with 3.5 million cases received by the Labour courts per year (TST 2016b see ch.6, fig 6.2), the weakness of the processes leading up to the MTE (linkage a) complaints to the labour courts in figure 4.1 suggests noncompliance could be even greater

than that indicated by the huge burden upon the labour courts (this is also suggested by labour judge Farias 2013: interview).

Mediation processes (linkage e) are observed by this research to be effective (Juca 2013: interview), however these are often dealing with the consequences of the networks of mistrust where unions and employers are unable to reach consensus on a CBA or related industrial dispute without third-party intervention. Linkage h – legislation is argued to be a strong linkage in the sense that the formal CLT system of employment rights and protections has remained stable and resisted deregulation pressures (see ch.2 part 2.2).

The construction industry case study demonstrates inter-company mistrust equally as relevant as the tensions between employers and workers. Between different companies in the supply chain, levels of compliance with relevant employment legislation and additional CBA provisions vary, this contributes in some cases to a breakdown in on-site industrial relations (see part 4.4.3 in this chapter). This can be related to the historically embedded relationship in linkage i, which contributes to the difficulties for union and state institutions to ensure greater compliance. It also places a strain upon the internal compliance mechanisms of the larger companies within complex supply chains involving diverse productive phases and numerous sub-contractors.

4.3 Institutional Absence and Employer Resistance: Plant Level Bargaining

Despite the pessimism implied by the idea of ‘networks of mistrust’ at the regional/sectorial level, there is a more optimistic body of work (see Rodrigues 2002; Ramalho, Rodrigues & Conceição 2009; Boito & Marcelino 2010) focussing upon new trade unionism and the automobile industry in the southeast region. Rodrigues (2002:148) describes how ‘in some parts of the country’ union activity evolved to contribute to a strong representational presence on the shop floor to undertake direct negotiations with employers. In terms of the capability and feasibility of greater tripartite cooperation, the example of Sao Paulo metalworkers offers empirical evidence of successful, responsive and evolving capital-labour cooperation within the constraints of the existing system. This example is referred to across this thesis to support the idea of CME potential within the Brazilian LMI system and the inconsistency between these practices and the employment reality elsewhere is an important characteristic of the incongruous LMI system described across this thesis.

Rodrigues (Idem: 154) describes how employment relations within this region and sector have progressed from ‘extremely conflictive and even confrontationist’ to ‘conflictive cooperation’. Ramalho (2005:516) explains how the institutional dynamics from the ABC Paulista experience were successfully replicated in ‘new areas of production’ when the automobile industry transferred production to new or non-traditional productive regions in the neighbouring state of Rio de Janeiro. The experience of the ‘new’ trade unionism movement in plant-level bargaining could similarly be argued to have contributed upwardly to the effectiveness of labour representation at a national level.

The largest central trade union organisation, the CUT has its origins in the ABC Paulista new trade unionism and Força Sindical’s main power base is the City of Sao Paulo Metalworkers Union. Perhaps of greater significance is the experience of the two traditionally rival organisations successfully coordinating activities in 1999 to campaign for a nationwide bargaining agreement to cover the automobile industry. This could be considered an important historical precedent that contributed to the subsequent strength and unity of trade union influence at the national level, evident in the more recent minimum wage policy and PPE negotiations already described.

The ABC model provides a useful template for employment relations elsewhere. With heightened relevance to the current research question, Rodrigues (2002:155-156) asks to what extent this effective model stemming from a strong plant level presence is capable of expanding to the rest of the country. The author attributes the success of the ABC trade union standard as having influenced the posture of the dominant elements of the CUT central organisation contributing to the shift from a confrontational posture to an approach that has ‘negotiation as its primordial objective’. He argues that such a standard of trade union activity can be seen as a national benchmark and ‘should not be restricted to one region’ yet recognises that the ABC Paulista experience has unique political economic and social characteristics and differs hugely from other regions in the country.

Dieese’s Aguiar (2013: interview) similarly recognises this regional and sectorial exceptionality declaring that ‘the ABC is the ABC, anything untoward in the factories workers bring production to a halt within 30 mins’. He goes on to describe a very different reality in the state of Ceará. With a percentage of industrial employment close to that of Sao Paulo state and very high compared to the rest of the northeast region, Aguiar argues how this should theoretically be a positive factor for generating stable formal employment.

In contrast, he describes that in reality the quality of employment is ‘terrible’, amongst the worst in the country with local criteria for what constitutes decent work having an extremely low threshold. The poor outcomes are associated with archaic authoritarian human resources practices, low wages and the country’s highest percentage of workers without employment protections working under self-employment agreements. Aguiar’s depiction of contemporary employment practices in Ceará is closer to the historically low threshold for employment conditions described by Cardoso (2010: 332) than the Sao Paulo automobile industry example.

The example of effective trade unionism within the automobile industry demonstrates the potential for plant level bargaining to produce what could be described as efficient solutions for both capital and labour within the constraints of the existing system. Plant level representation is described as ‘a long-standing demand of unions’ (Cook 2007:101). However outside of the ABC ‘pocket of efficiency’, plant-level bargaining is a shortcoming of the Brazilian institutional system. It hinders more cooperative and proactive solutions capable of mitigating the HME-type negative complementarities. In this instance there is consensus with Schneider’s description of negative complementarities in hierarchical LMIs (2009:102) where ‘weak plant-level representation’ impedes labour-management cooperation’.

Nationally, trade union presence tends to be shop door rather than shop floor. This limits the capacity of the system to produce the type of coordination capable of delivering the more equitable labour market results associated with CME type economies. The general absence of union representation within the workplace means that disputes and irregularities are almost always dealt with post facto rather than proactively, in some cases years after the transgression within a highly overburdened and slow legal system (see ch.6 figure 6.2). This then reinforces the noncompliance strategy on behalf of employers when the likelihood of detection and eventual sanctions are considered. This sees employers profiting from evasion when inflation, interest rates and statute of limitations variables are considered. As labour judge Farias (2013: interview) describes: *if the infraction is detected or reported they will be made to pay what the law dictates they should have paid in the first instance years ago.*

This further contributes to the idea of ABC Paulista exceptionality from the national norm. In contrast to the widespread noncompliance described by Cardoso & Lage (2007), Pastore

(2005) and Farias (2013: interview); Rodrigues (2002:151-152) observes that working conditions are rarely an issue in ABC metalworker negotiations due to the organisational characteristics of these workplaces. Conditions are described as much better than the national average with active plant-level representation dealing with issues on a day-to-day basis.

The exceptionality of what Rodrigues calls the ‘ABC metalworkers trade union standard’ (pp.148-9) with unionisation rates of 70-80 per cent, three to four times the national average is recognised. It demonstrates the possibility of coordinated industrial relations originating from effective plant-level representation and bargaining. The pro-activeness of day-to-day union activity could be argued to represent an alternative to the retroactive patterns observed elsewhere. The post facto patterns produce uncertainty, instability and adversarial industrial relations. This fuels and sustains the ‘network of mistrust’ reducing the potential for a more cooperative relationship and related improved employment conditions for workers to emerge.

Despite the promising ABC metalworkers example, a number of factors limit the possibility of effective plant-level representation. The historical legacy of employment relations within Brazil makes the idea of organic change to more horizontalised capital-labour interaction in the workplace a distant possibility. Alves and Silva (1987:48) describe how democracy had never entered the ‘factory doors’ in Brazil. Carvalho (2001: 53-54) describes how the legacy of slavery and the large rural property still persist, particularly in the North and Northeast with a culture of impunity and authoritarian control of workers by bosses. This is represented by linkage (i) in the bottom right corner of figure 6.1, where there is a historically embedded worker-employer relationship away from any formal institutional involvement or protections. Given the widespread absence of trade union representation within the workplace, it can be presumed that the regressive path for labour traced in chapter 3, the historically low threshold for acceptable working conditions, is strongest at this level of employment relations.

A further consideration on plant-level representation is its complementarity with the regional/sectorial and national level institutional bargaining arrangements. The persistence of the corporatist elements at a sectorial/regional level could be said to crowd-out the possibility of greater grass-roots representation, particularly in the instances where the designated union is complacent and/or run in self-interest (*pelego*). Critics of the current

system argue that existing unions lack incentives to support and mobilise plant-level organization due to the compulsory financing. Some trade unionists, such as the Marreta-BH directors and lawyer (2013: interviews) also suggest that rival *pelego* unions are resistant to factory level commissions, loathe to share power and control and possibly nurture future opposition groups for control of their organisation.

Visions of liberalising reforms at the regional/sectorial level contributing to an organic emergence of productive plant-level employment relations akin to the ‘authentic’ ‘ABC metalworkers’ union standard’ need to be considered with caution and are arguably misplaced and potentially counterproductive. As argued in the previous chapter, it has to be recognised that the ABC dynamics emerged *from* the regional/sectorial institutions of the existing corporatist system. The idea of the corporatist institutions hindering grass-roots or bottom up representation also neglects the considerable regional and industrial exceptionality of the ABC experience as well as the diverse historical and socio-economic characteristics of Brazilian society. The embedded inequality or hierarchy within society makes it highly difficult to envisage a nationwide reality where workers have sufficient bargaining power to engage in productive social dialogue and resolve disputes at the plant level as Schneider (2013:15) recognises:

vast differences in education, norms, ethnicity and sometimes gender and language sometimes create a gulf between workers and managers that make both sides less disposed to engage in coordination and negotiation.

4.4 The Construction Industry

This second part of this chapter narrows the analysis of industrial relations to the construction industry case study. Identified in the first half of the chapter, there is evidence of effective institutional coordination at the national level whilst outcomes in the intermediate regional/sectorial level are characterised by networks of mistrust. The mistrust is sustained by the negative complementarities summarised in figure 4.1, facilitated by fragmented, uneven and unpredictable representation and enforcement contributing to widespread noncompliance. This results in employment relations distant from the ‘efficient solutions’ expected from bargaining institutions (Camargo op cit).

Representation and bargaining take place predominantly outside of the workplace and therefore the plant level is characterised by a historical institutional absence. This observable absence arguably fuels the networks of mistrust, widespread noncompliance in

particular, as grievances tend to be dealt with predominantly post facto and only after recourse to legal action. The case of employment relations in the ABC Paulista therefore stands out as best practice. There is a huge difference between the ABC standard described by Rodrigues (2002) where issues on working conditions are resolved on a day-to-day basis and rarely enter into the collective bargaining process and construction. The issue of working conditions dominates tripartite relations at all three levels (national, sectorial & shop-floor) in the construction industry.

4.4.1 Prompt Tripartite Policies: National Industry Level Bargaining

Consistent and parallel with industrial relations trends in Brazil, there is evidence of successful social dialogue in the construction industry towards decent work at the national level. This is apparent in the 20-year-old tripartite Permanent National Committee for Construction Industry Working Conditions and Environment (CPN) that contributes to the health and safety legislation specific to the industry - NR-18. The protective legislation is detailed and extensive, meeting all the specific health and safety needs for workers. Evidence from fieldwork interviews with relevant state, business and trade union representatives, including current CPN member, Ishikawa (2013:interview), suggests there is consensus on the necessity and importance of the relevant NR-18 legislation. Health and safety secretary for the Contricom trade union confederation, da Silva, describes the industry specific legislation as consistent with those societies where workers' health and safety is taken most seriously (NCST 2014).

Further evidence to support the claim of effective social dialogue at the national level comes from the 'National Commitment for Improved Labour Conditions in the Construction Industry' (NCILC) signed in March 2012. The tripartite agreement came in response to perhaps the most intense instances of labour unrest since the 1980s across the PAC construction sites. The most dramatic scenes of burning workers' villages came from the remote Jirau hydroelectric plant site, 2 thousand miles from Sao Paulo. According to the CEO of Camargo Correa, the company responsible for the construction site, 20 thousand workers were evacuated from the site at a cost of 15-18 million BRL (Jimenez and Bacoccina 2011). The disturbances provoked a response from the Employment Minister and the President's office with the National Guard called in to contain the unrest.

Table 4.1 List of NCILC Tripartite Forum Participants

State	Labour	Business
<p>Coordination -Office of the President -Ministry for Labour & Employment (MTE)</p> <p>Participating Ministries Planning, Budgeting and Management Pensions Social Development and Hunger Prevention Presidential Chief-of-Staff Education Cities Mining & Energy Sport National Integration Transport Human Rights</p>	<p>Technical Assistance Dieese</p> <p>Peak Associations CTB CGT CUT Força Sindical NCST UGT Conlutas*</p> <p>Trade Union Confederations Conticom Contricom CNTI CNTIC Fenatracop</p>	<p>National Union for the Heavy Construction/Infrastructure Industry (Sinicon) Brazilian Chamber for the Construction Industry (CBIC)</p>

*Represented through Sticrmb & Sticcrmf

Source: Brasil: Governo Federal 2012, Dieese 2013

The NCILC document is a comprehensive response to all the problems exposed by the unrest across the country's largest construction sites. The initiative makes provisions for greater security in the recruitment of workers. This is a response to the problems of illicit intermediaries (*gatos*) transporting workers, sometimes speculatively, to the remote PAC sites, in the worst cases tantamount to people trafficking and conditions analogous to slavery. It similarly recognises the deficiencies of the trade union representation exposed by the high levels of conflict present across the PAC sites and includes provisions to introduce plant-level representation stating that:

social dialogue within the workplace is an efficient form of avoiding labour disputes that negatively affect the progress of construction, and its dissemination as best practice in labour relations has the potential to create a healthy workplace, improve productivity levels and reduce the need to resort to the overburdened labour courts for conflict resolution. (Brasil 2012: 17)

The remaining guidelines of the NCILC are summarised in table 4.2

Table 4.2 Summary of Main NCILC Guidelines

Item	Problem(s)	NCILC Response
Recruitment	Illicit use of intermediaries, precarious recruitment practices	<ul style="list-style-type: none"> - All recruitment should use the MTE's National Employment System (SINE) as an intermediary. - Workers to be recruited at their point of origin - Greater monitoring of employer compliance with recruitment processes <ul style="list-style-type: none"> -Preference for local workers -Adequate return transport provisions for candidates <ul style="list-style-type: none"> - Ensure compliance in outsourced companies -No informal workers or companies allowed on site
Skills and Training	Unskilled labour, falsified work experience	-Promote an articulated industry specific programme of training and certification system (Certific)
Health & Safety	Noncompliance, high levels of accidents	<ul style="list-style-type: none"> -Health and safety committee for each construction site with worker and employer representatives monitored by trade union - Promote workplace inspection in PAC, World Cup, and Olympic sites
Trade Union Representation in	Inadequate representation, worker-union tensions, worker-	- 1 Shop-floor/Plant-level union delegate for sites with over 200 workers and one for each further 500 workers

the Work Place	employer tensions, widespread unrest.	up to a maximum of 7 – delegates nominated by relevant union -Add human and labour rights and industrial and inter-personal relations in worker and managerial training programmes
Working conditions	Insalubrious conditions on construction sites Precarious provision of transport, meals and accommodation. Inconsistency of conditions between contracted and sub-contracted employees On-site criminality	- Reinforce existing legislation, NR-18 for migrant worker accommodation provisions -Promote inspection to ensure compliance with legislation and CBAs -Adequate conditions for the provision of meals - Extra leave every three months and paid return journeys for migrant workers.
Community Relations	Rise in anti-social and illegal behaviour in surrounding communities	-Social and environmental compensatory measures - Establish dialogue with communities affected by work -Preference for hiring and qualifying local workers - Training and qualification programmes for local communities - Reinforce public security
Conditionality of Public Works Financing	Poor working conditions in state financed projects	- Where state resources are used the relative Federal Administration should adopt measures to ensure compliance with the measure of the NCILC

Source: Brasil (2012) Compromisso Nacional: Aperfeiçoamento das Condições de Trabalho na Indústria da Construção

The creation of the NCILC demonstrates the willingness and capacity of institutions to cooperate towards improved labour conditions in the construction industry. It similarly suggests national responsiveness or upward links to the plant-level mobilisations involving hundreds of thousands of workers. The Dieese (2013:8) describe the agreement as ‘a historical achievement for employment relations in the sector, working towards a national agreement to ensure decent working conditions and employment relations across the construction supply chain’.

Diverse union groups working together towards a national bargaining agreement for the construction industry mirrors similar efforts made in the automobile industry towards a single nationwide collective agreement in the 1990s. The evident capacity for consensus in the industry also reflects general cooperative tendencies at the national level evident in the minimum wage negotiations, the recent employment protection provisional measure and the ongoing defence of existing labour rights from liberalisation pressures.

The assertion that the NCILC represents a ‘historic achievement’ for employment relations towards decent work at the national level is questionable. There is little optimism for potential widespread positive change when a variety of other interrelated factors are considered. The reality of tripartite relations at the regional/sectorial and plant levels and the issues of representation and compliance summarised in figure 4.1 and discussed in more detail across the next two chapters are key factors limiting the NCILC’s effectiveness.

Post-NCILC fieldwork evidence supports the idea of limited transformative change. Interviews and site-level observations included accounts from Sinduscon CE president Ferreira (2013: interview) who represented CBIC in the national tripartite negotiations and on-site observations and interviews at two of Brazil's largest construction companies Cyrela (Ademilson 2013: interview) and Camargo Correa (2013: observations/interviews). Based upon their experiences, all the business representatives consulted were mistrustful of the formal recruitment (SINE) and skill certification (Certific) mechanisms, key NCILC recommendations. There was an obvious preference for recruitment and skill verification mechanisms through tried and trusted informal networks widely known as *Rádio Peão* [the worker grapevine].

In summary, construction industry labour relations reflect those in the wider economy with evidence of successful tripartite social dialogue at the national level. This is evident in the long-standing CPN health and safety forum contributing legislation comparable with that of the most advanced economies. The prompt formulation of the NCILC initiative also demonstrates responsiveness and capability among tripartite institutions to achieve consensus in recognising and addressing widespread problems within the industry. Problems dramatically brought to their attention by workplace mobilisations. Such top-down initiatives, in some cases reproducing existing legislation as is the case with the NCILC, are unable to overcome the networks of mistrust that prevail at the sectorial/regional level and the precariousness of representation at the plant-level. The inability to reproduce the coordinated solutions at lower bargaining levels limits the effectiveness of initiatives that can be described as social dialogue successes at the national level.

4.4.2 Construction Regional/Sectorial Level

As per the general regional/sectorial level of employment, the compulsory negotiation mechanisms within the Brazilian system are similarly argued to possess the potential for greater social dialogue and cooperation towards better employment within the construction industry. The idea of such potential is supported by fieldwork observations suggesting there is considerable coincidence of interest between state, business and labour institutions within the sector. Similar and sometimes duplicated activities by union, state and business organisations towards a shared goal of greater compliance, health and safety in particular, were evident from primary observations. Strong cooperative links are evident between trade unions and state institutions yet there is very little in the way of coordinated

initiatives between union and business groups, this despite evidence suggesting considerable tangency and overlap in their regulatory activities (see ch.5).

There is noticeable uniformity in the day-to-day activities of the six individual unions observed in their relations with state and business representatives. Such uniformity may be considered surprising to some observers. Trade union directors themselves may disagree on this point given the diversity of ideological identities and related approaches to industrial relations between the unions observed. The uniformity in day-to-day practice between the unions is apparent in the regular localised interventions at construction sites. The interventions are most commonly responses to complaints made by employees or reports of workers having downed tools.

The most common on-site disputes tend to be over health and safety irregularities, the provision and quality of meals and non-or delayed payment of salaries and benefits. This research finds that relations between employers and the trade unions are significantly more antagonistic and adversarial in the northeast of the country regardless of political, ideological and central organisation affiliations. This in turn limits the possibility of greater social dialogue and its potential rewards.

Such regional relational disparities are arguably evident from the collective bargaining agreements (CBAs) of the construction unions. Across the construction industry in the southeast of Brazil there exists the Social Services for Light Construction institution (Seconci) providing health, education and social care to those within the industry. It dates back to 1964 and is sustained by compulsory employer payroll contributions negotiated into the CBAs across the region (MTE/SRT 2014). Within the CBAs of the northeast trade unions analysed there is no Seconci equivalent (with the exception of the small state of Sergipe). A comparative analysis of CBA documents shows items dealing with incidences of industrial action to be much more common place in the northeast region. This is evident in the CBAs for Recife (Marreta-PE 2014-2015), Fortaleza (Sticcrmf & Sintepav-CE 2014-1015) and Belém (Sticrmb 2014-2015) (Sistema Mediador 2015).

Within the construction case study there is much greater recourse to strike action in the northeast where the sector in the Fortaleza region saw the nation's most protracted strikes of 2012 (light construction-Sticcrmf), 2014 (CSP Pecém Steel Plant – Sintepav-CE) and 2015 (light construction Marreta-PE). Importantly the unions involved were both the combative anti-capitalist Sticcrmf affiliated to Conlutas in the 2012 instance and the

pragmatic results-based Sintepav-CE affiliated to Força Sindical at the steel plant site. This supports the idea that the northeast – southeast regional variable is of greater relevance than the ideology of the individual union.

The Pecem Steel Plant construction site is a useful case study to understand employment relations both within the construction industry and at the regional/sectorial level. It is argued to represent a scale-model of employment relations within the industry and the region. The observable tensions could be said to exist elsewhere albeit in less dramatic and intense forms. The high profile of the steel plant, which represents a huge transformative industrial investment to the region means that it receives considerable attention from the relevant authorities with numerous inspection visits and mediation sessions carried out.

Analysed in more detail in the next chapter on representation, the union responsible for the on-site workers, Sintepav-CE cannot be considered a *pelego* institution and has evolved since the PAC unrest of 2011 to be very active in its representative and bargaining activities, particularly within the Pecem development. Despite these promising institutional pre-conditions, the heightened level of conflict in industrial relations witnessed at the steel plant site provides useful empirical evidence as to the multi-faceted and complex difficulties in reaching coordinated LMI solutions towards more socially efficient outcomes.

4.4.3 Companhia Siderurgica de Pecem (CSP) Site, Ceará

The highly problematic labour relations at the CSP steel plant were the subject of a public hearing in February 2015, called by the MPT as the levels of on-going conflict were ‘of concern to the public authorities’¹⁶. Julio Castro, head of human resources for the Pecem Steel Company (CSP) a joint venture between Brazilian mining multinational Vale and Korean companies Dongkuk Steel and Posco addressed the hearing expressing his frustrations with the persistent conflict given how important the investment is to the region and in light of the ‘progressive human capital policies envisaged for the steel plant’. He cites the transformation of the city of Ipatinga in the southeast state of Minas Gerais as an example of how a similar major industrial investment transformed the local development reality. Castro estimates the steel plant will create 2,800 direct jobs and 16 thousand indirect posts.

¹⁶ Public hearing organised by the Labour Public Prosecutor (MPT) ‘Labour relations at the Pecem Steel Plant construction site’ attended on the 26th of February 2015

The comprehensive proactive labour policies and local development initiatives carried out in preparation for the operations at the plant presented by Castro are highly compatible with established concepts of labour welfare and sustainable development. Policies involve investment in the local community with comprehensive training and qualification policies in preparation for the start of operations at the plant. If CSP were to keep the human capital promises presented at the hearing, the potential for the creation of quality employment is high. Industrial employment at the operational plant could recreate the ABC Paulista standard and represent a ‘pocket of efficiency’ in a historically less-developed region characterised by poor quality employment (Aguiar op cit).

Speaking after Castro, Jean Hermelino, head of employment relations for Posco Engineering and Construction (PEC) the Korean company responsible for the site build, describes feeling aggrieved by the violence and damage caused by regular worker mobilisations. He highlights that the level of employee benefits and remuneration within the specific CBA for the site are superior to any comparative agreements nationwide. Hermelino presents the terms and conditions on offer as though they were an altruistic act of good faith rather than the result of collective bargaining with a militant and well-organised labour institution (Sintepav-CE). Sintepav-CE president Gomes responds to Castro and Hermelino’s grievances observing that the plant-level reality is far detached from the positive descriptions given by the business representatives. He cites widespread noncompliance with relevant legislation and the non payment of wages to 40 per cent of workers in any given month.

The CSP construction site case study is a convincing example of the complex networks of mistrust, argued across this chapter to hinder the possibility of greater social dialogue to contribute to improved labour conditions. The level of benefits and financial rewards within the plant specific CBA agreement are amongst the most rewarding within the construction industry. However, the widespread noncompliance with this legally binding negotiated agreement and national employment and health and safety legislation across the supply chain of 102 different subcontracted companies provokes regular outbreaks of labour unrest. The level of conflict reached such a level that all parties are negatively affected and any potential for local sustainable development through quality employment creation is checked. The MPT, Posco and CSP estimate that between 2012 and 2015 there were stoppages totalling 150 days at an estimated cost of R\$2 million/day (Marques 2015: interview and MPT public hearing: 2015).

The network of mistrust between parties within the CSP site is complex and multi-dimensional, contributing to self-perpetuating conflict. Such an assertion is supported by first-hand accounts from three scaffolding workers (Scaffolders 2015: interview/observation) recently dismissed from the Pecém site, the organiser of the public hearing MPT Public Prosecutor Gerson Marques (2015: interview) and the accounts presented at the hearing itself. Some quite startling information received from the three workers was not possible to verify and therefore not included for analysis. Other accounts from the workers were subsequently corroborated by information provided at the public hearing. The issues highlighted by Marques at the opening of the hearing and based upon the complaints received by the MPT are summarised in table 4.4.

Table 4.4 Selection of complaints received by the Public Labour Prosecutor's office (MPT) on working conditions and employment relations at the Companhia Siderurgica de Pecem (CSP) construction site.

a) Health and safety irregularities
b) Delays in severance payments and the receipt of other assistential benefit entitlements
c) Black-listing of workers who had participated in previous strikes
d) Delays in employing successfully recruited workers
e) Inadequate meal provision
f) Abusive strikes non-compliant with relevant collective strike legislation
g) Posco and Labour union Sintepav-CE bargaining without any participation of the 102 sub-contracted companies
h) Existence of bribes and kick-backs between subcontracting facilitated by the existence of rent-seeking intermediary fake companies (<i>laranjas</i>).
i) Criminality on the site, drug-use by workers, suspicions of workers carrying firearms creating insecurity in the working environment
Further Items: Persistence of noncompliance with working environment regulations even after detection, huge number of complaints within the justice system, on-site pressures making completion of legal processes difficult.

Source: MPT 7a Região, Minutes of Public Hearing

Items (a) and (e) were common complaints highlighted by representatives of the Union, Dieese (Aguiar 2013: interview) and MTE (Juca 2013: interview) prior to the outbreak of prolonged conflict and unrest in 2014. The MTE representative Ibiapina presented inspection data at the hearing describing the opinion of inspection teams that ‘there was an alarming incidence of labour irregularities’ citing violations of NR health and safety regulations contributing to unsafe working conditions that would be repeated even after detection and sanction. The statistics presented at the hearing detailed 198 inspections, 600 infractions detected and sanctions upon 102 different companies between 2010-2014.

Sintepav-CE president Gomes cited these statistics in response to employers’ grievances on excessive union/worker militancy at the site. He observed that these already alarming

figures represent the tip of the iceberg of the real incidence of irregularities on site given that employers receive prior warning of the MTE inspections. Gomes's observation is corroborated by the accounts from the three scaffolding workers. They describe the numerous inspections and already high number of irregularities detected by the MTE as barely scratching the surface of the real number of infractions. It is further suggested that rewards were distributed amongst workers and subcontractors for evading detection of numerous other, often more serious infractions.

The three workers had not moved on from the region due to item (b) in table 4.4, awaiting severance payments. Their accounts of the reality on site supported items (h) and (i). One likened the lawlessness of the construction site to the Serra Pelada gold rush area of the 1980s Amazonia region. Another of the workers speculated that some individuals will have made their first million from the construction site through companies used to channel kickbacks and bribes and/or acting as *gatos* - extra-official recruitment agencies (item h). They all describe drug-use and dealing as commonplace together with the threat and use of violence on-site. A local journalist (confidential interview) similarly observed considerable and unexplainable increases in wealth of some individuals associated with the site over a short period of time. Gaining access to the site was described as extremely difficult and considered unsafe to report on or investigate by journalists.

Items (f) and (g) are of particular relevance to an understanding of the complexity and multi-dimensional nature of the employment relations problems on-site. The issues of noncompliance, high incidence of industrial action causing financial prejudice and delays to the build cannot be simply associated with employer – worker tensions. Significant antagonism is evident between the contracting company, Posco and subcontracting companies as well as between the subcontractors themselves. Posco agreed a site-specific CBA with the Sintepav-CE union, considered to be one of the country's most rewarding without any participation of the other companies involved.

These companies submit price competitive tenders for work ignorant or negligent of the CBA additions and therefore not incorporated into costing, making non compliance almost inevitable. Here there is incongruity between an employer's free-market LME approach to outsourcing within a more coordinated and highly regulated institutional environment supported by greater state and union involvement to enforce sanctions and penalties for noncompliance. The inter-company tensions were recognised at both the public hearing

and by the three workers consulted, this has led to a situation where many subcontracting companies are said to have a vested interest in, and actively incentivise strike action at the site. This is to provide greater leverage to renegotiate their terms with Posco. The tensions between companies are often presented in crude Brazil versus Korea terms further deepening the ‘network of mistrust’ on-site.

The CSP-Pecem steel plant site represents a highly informative case study and exemplifies the complexity of improving social dialogue towards improved labour conditions for workers and greater productivity for business. Workers and business are locked into a relationship producing ‘negative complementarities’ where profound and complex networks of mistrust prevail. In the steel plant case study: a weak, unrepresentative *pelego* union cannot be attributed as a factor to explain poor tripartite/social dialogue outcomes. Instead, a lack of organisation and coordination on the business side has contributed to difficulties in meeting the relevant legislation prolonging the conflictive relations on site. In the CSP case the business side of the LMIs are evidently fragmented, disorganised and underrepresented.¹⁷

Strike action by workers at the CSP site gained self-perpetuating characteristics as the described bargaining dynamics meant workers have almost always been paid in full for strike days. MPT Prosecutor Marques (2015: interview) recognises highly impressive solidarity and a related capacity for worker mobilisation across the site, however he argues that the propensity to strike has got out of hand with workers now accustomed to receiving full pay during strike periods.

Employers feel aggrieved that operations in the entire site will be halted due to irregularities and grievances (usually on payment) at one or two of the approximately one hundred on-site contractors. This problem often originates from non-payment further up the productive hierarchy, by Posco for instance. Sintepav-CE president Gomes (2015: public hearing) partially agrees with employers that irregularities at one company should not bring the entire site to a halt, though criticises businesses for their lack of empathy with unpaid workers and ignorance of the close family, community and solidarity networks that exist between workers across the supply chain.

¹⁷ No corresponding local heavy construction business union to Sintepav-CE existed until January 2016, a few months before the completion of the Steel Plant (O Povo 2016)

Industrial relations contributing to quality employment at the CSP-Pecem site can be considered a success if analysis is limited to the formal content of the relevant CBA negotiated between Posco and Sintepav at the highest level of negotiations. Within the complex web of mistrust that prevails on-site, the high threshold set by the conditions of the CBA actually worsens employment relations and reduces the potential for productive plant-level social dialogue. When faced with a mobilised workforce supported by a union that is obliged to be active by the shop floor as is argued to be the Sintepav case, the immediate result is heightened conflict that becomes self-perpetuating rather than improved social dialogue mechanisms. Within the context of networks of mistrust in figure 4.1: any potential for improved employment outcomes from collective bargaining (c) is impeded by the persistence of evasion/noncompliance (f).

4.4.4 Employer Resistance: Plant Level Representation

Based upon the empirical example of the ABC Paulista metalworkers model and recognised by the NCILC initiative, relations at the plant-level could be considered to be a key variable towards successful or unsuccessful employment outcomes. An absence of institutionalised workplace resolution of conflicts outside of the Sao Paulo/metalworkers example means that issues are dealt with retrospectively overwhelming the state institutions and crowding out the possibility of more cooperative solutions from the existing negotiation and bargaining processes.

In cases such as the CSP-Pecem site, such dynamics represent a bottleneck to local or even national development given the strategic importance of the steel plant to industrial policy. Furthermore, remedial action is often only provoked by dramatic displays of worker unrest, as exemplified by the strikes across the PAC sites and the subsequent creation of the NCILC. The physical and human resources mobilised across the PAC sites are considered in this thesis as a stress test for Brazilian industrial relations; a test that was essentially failed. The problems witnessed at the steel plant came five years after the initial unrest at the Rio Madeira PAC sites and one to two years after the NCILC initiative. An initiative that failed to avoid further heightened conflict at the high profile Pecem project. This reinforces an underlying premise of the research question: the difficulty for the observed potential for effective coordination, at the national level in this case, to reproduce sufficiently to characterise the reality of employment.

The need for plant-level representation is recognised in the retroactive responses to the problems observed across the PAC sites. The capacity for workers and employers to come to timely consensual solutions within the workplace is argued to be a key institutional deficiency of the existing system characterised by networks of mistrust and antagonistic and adversarial relations, particularly in the less developed northeast. Within this context the automobile industry's 'ABC Paulista Metalworkers Union model' where issues relating to working conditions are resolved more proactively on the shop-floor (Rodrigues 2002:148, 151-152), represents a best practice model for improved employment relations in the construction industry.

The idea of proactive plant-level solutions could be described as a distant possibility or even utopic within the context of deep mistrust in the construction industry supply chain. When considering the particularities of the construction industry the challenges to more productive plant-level relations are considerable. The levels of conflict witnessed at the CSP-Pecem site and the institutional commitments to improve relations could potentially evolve into something akin to the 'conflictive cooperation' described in the automobile sector. Given the productive reality of the construction sector such evolution is unlikely. The industry operates in comparatively short windows, under 12 months in the light construction sector and up to five years for the larger infrastructure projects. Within these operational windows the turnover of workers and subcontracted companies is high due to the different productive phases (approx. 3 to 12 months).

The construction industry absorbs individuals from the poorest regions and sectors of society. Therefore, in a society with a strong legacy of embedded hierarchical and authoritarian labour relations it is very difficult to envisage horizontalised plant-level relations where workers can look to protect their comprehensive CBA, NR and CLT rights through direct dialogue with employers. It should be recognised that this is not a problem exclusive to construction, Brazil or blue-collar work, but with the employment relationship in general.

A further difficulty for institutionalising plant-level representation is employer resistance. This was evident both nationally within the tripartite National Labour Forum (FNT) negotiations between 2002 and 2004, where employers opposed the introduction of compulsory plant-level representation mechanisms and union participation in the election of internal representatives (Marinho 2004:9; Cook 2007: 102). The NCILC measures to

introduce plant-level representation to address a range of problems observed in the construction industry were resisted by employer representatives both during discussions and in its implementation according to the Dieese report (2013:15) on the effectiveness and potential of the tripartite commitment. Sindiscon-CE president Ferreira (2013: interview) expressed considerable mistrust of compulsory plant-level representation provisions. He argued unions would distribute stable shop-steward employment opportunities amongst themselves as favours rather than contribute to workplace dialogue.

Both generally and specific to the construction industry an absence of institutionalised mechanisms of representation and dialogue at the plant-level is a relevant factor limiting the possibility of greater coordination and more equitable outcomes for workers. Analysis at this level is consistent with Schneider's HME model (2009:102) where 'weak plant-level representation' impedes labour-management cooperation. There is evidence of social dialogue successes at the national level and significant potential for more cooperative solutions in the formal system at the regional/sectorial level though this does not translate into widespread employment improvements given the relative absence of cooperation in the workplace.

Conclusion

The analysis of employment relations across this chapter identifies a formal system, referred to in the underlying research question, with considerable protections for labour with substantial individual and collective rights and a capacity and design compatible with collaborative solutions. Prompt tripartite policies towards improved employment conditions are evident at the *national* level of institutional relations both generally (minimum wage and PPE) and in the construction industry case study (NCILC and CPN). This is a clear indication of increasing coordination since the 2000s coinciding with the sustained inclusive growth of the 'inclusive decade'.

Whilst a shift towards greater tripartite dialogue is evident since the start of the Lula/PT government in 2003, the dynamics of effective social dialogue can be traced back to the 1980s at the workplace level of the automobile industry in the ABC Paulista region. The ABC dynamics upwardly influenced the position of trade unions at the national level of bargaining through the largest peak association, the CUT. Within this research project this evidence of coordinated success is of considerable relevance for two reasons. Firstly, it represents empirical evidence of the institutional capacity of the Brazilian labour market

system to reach effective coordinated solutions. Secondly it is important to note that the dynamics of these successful examples date back to the 1980s and resulted *from* rather than *contrary* to the existing institutions of the long-standing corporatist LMI system.

As per the inconsistency identified in the research problem, the examples from the national level and ‘ABC standard’ of industrial relations do not characterise employment more generally in Brazil despite the recent positive development trajectory. It is at the intermediate level of industrial relations that difficulties can be observed. Employment relations are characterised by networks of mistrust related to uncertain and indeterminate relationships between designated unions and their workers and high levels of noncompliance summarised in figure 4.1. Within this context of weak linkages or negative complementarities it is difficult to envisage the institutional coordination ‘pockets of efficiency’ evident in the ABC standard and at the national level reproducing sufficiently to characterise employment and LMI activity across the Brazilian variety of capitalism.

From the analysis of this chapter: two key issues are identified on the inconsistency between institutional design and the workplace reality of employment characterised by networks of mistrust. These are *representation* and *regulation*. On representation it is argued that the Brazilian system is fragmented at the regional/sectorial level where the majority of resources of the collective representation system are concentrated, a process that has increased since the partial liberalisation of the collective rights system in the 1980s, a process widely referred to as pulverisation. A further long-standing criticism of the existing system is its capacity to sustain unrepresentative, inactive and complacent trade unions weakening worker representation.

If this thesis were a study of linguistics, the *corpus* of fieldwork vocabulary would be dominated by variations of the term *pelego*. Representatives consulted strongly suggested that pelego trade unionism is the rule rather than exception in the Brazilian system. The systemic capacity to produce unrepresentative unions is discussed at more length in the next chapter. Representation is also an essential ongoing consideration of the entire thesis and research contribution aiming to extend upon the HME Latin American ideal type, contesting the ‘sparse-unions’ core trait in the Brazilian variation.

Regulation debates dominate collective bargaining in the construction industry case study at all three institutional levels. This is its ‘worst case’ characteristic when compared with the ‘best case’ of the ‘ABC standard’ of industrial relations where working conditions are

described as promptly and proactively resolved on the shop-floor. Regulation of the employment relationship is also a key element in the VoC CME/LME distinction and fuels a persistent an ongoing general debate at global levels between liberal deregulationist and social dialogue/greater enforcement positions. Implicit from the research question, this thesis identifies with the ILO social dialogue and enforcement position (see ch.2 part 2.2). The next two chapters identify and discuss the wider debates on representation and regulation respectively before applying them to the Brazilian model and specific construction industry case study of this thesis.

Chapter 5 - Corporatist Representation of Labour in Brazilian Employment Relations

This chapter discusses representation in the Brazilian industrial relations system. The previous chapter identified worker representation as a key element of the inconsistency between the employment relationship envisaged by the formal LMI system and the reality of the workplace referred to in the research question. Analysis is defined by the parameters of the new institutional approach of the thesis and the research question. Focus is predominantly upon labour and trade unions within a *corporatist* system¹⁸. This continues logically within the ongoing consideration that the corporatist institutional arrangements of coordinated market economies (CMEs) offer more equitable development than liberal deregulated market alternatives (LMEs).

Up to this point in the thesis, it has been argued that Brazil has maintained an industrial relations system with the institutional design or capacity for more coordinated tripartite solutions. Since the 1980s there is evidence of effective evolving cooperation and consensus achieved between labour, business and the state mostly within the constraints of the existing system. The emerging success, particularly apparent in the Sao Paulo region and automobile industry, is all the more notable given the unfavourable circumstances from which it emerged. A historical legacy of exploitative employment relations and an authoritarian state and system, a dominant trade union strand that shunned tripartism and an administration that favoured market based solutions over consensus and dialogue throughout the 1990s.

The unprecedented and successful development trajectory of the Brazilian economy since 2003 suggests the institutional system may finally be ‘maturing’ or shifting towards a more inclusive collaborative phase. The embeddedness of the long-standing labour institutions together with the increasing state participation in the economy indicates that Brazil is not on a path towards an LME. Nevertheless, closer analysis of institutional relations and labour outcomes across the ‘inclusive decade’ suggests that despite the much-celebrated

¹⁸ Noronha (2000: para 2.) rejects the common application of the corporatist or neocorporatist label for contemporary Brazil. He argues Brazil is atypical when compared with the European corporatist ideal type. He describes the post-democratisation Brazilian institutional model as ‘legislated (however with considerable discretionary power to employers)’ and with ‘pluralist tendencies’ rather than tripartite corporatism. Noronha’s interpretation is not contested here and specificities of the ‘Brazilian variety of capitalism’ are an ongoing consideration of the thesis. For the sake of understanding and simplicity as well as the analytical framework adopted, (Archer 1998 & Crouch 1979, 1983, 1994) the term ‘corporatism’ is used across this chapter. The legislated nature of the Brazilian system is discussed in the next chapter on regulation.

developmental results, the reality of employment remain closer to those of a *hierarchical* market economy (HME) than the more equitable CME (see ch.2. fig.2.7).

The objective of this chapter is to consider the *representativeness* of labour within the contemporary Brazilian system. Representation - ‘strong or weak’, ‘authentic or compromised’ is frequently cited from all sides in debates on labour market institutions (LMIs). It is not always carefully defined. Within the context of this chapter, overall effective labour representation is that which manages to influence activities, policies and regulation in the interests of workers – which in turn should contribute to overall equity gains within society. Such interests can be related to income (amount and distribution), safety, control, stability, progression and fairness at work (see ch. 1, part 1.3).

As presented in the previous chapter, there are three complementary levels of labour interest representation: the workplace, the regional/sectorial union and confederations and peak associations at the national level. Analysis of the intermediate regional/sectorial level is prioritised across the chapter as it is the point where the trade union interacts directly with workers and the majority of resources are concentrated in the Brazilian case.¹⁹ Criticisms of the existing and long-standing corporatist arrangements and debates on systemic continuity and reform are also concentrated at this level of representation.

The main question is whether the Brazilian system allows for effective representation. This is discussed in light of the long-standing problem of ‘artificial’ trade union institutions with ‘low levels of representativeness and impermeable to social control’ sustained and protected by the monopoly of representation and compulsory dues provided by the existing system (Horn 2009b: 151). The proliferation of such unions, described as phantom, *de gaveta* [in the drawer] or by the catch-all *pelego* term, is widely argued to have accelerated since democratisation (Cardoso 2003:302, 2014:22; Horn 2009a:59; 2009b:151; MTE 2005).

The first section considers established arguments and debates on the effectiveness of a *corporatist* system. Borrowing from Archer (1998:85) it seeks to identify the ‘potentials and dangers of corporatism’ and determine the necessary institutional conditions for trade union representation to contribute to a more equitable coordinated economic model. A wealth of literature and theory exists on industrial relations; the majority based upon

¹⁹ 60 per cent of the mandatory dues (syndical tax) and the majority of the ‘assistential’ and ‘associative’ contributions of workers (generally a monthly payroll deduction of 1 per cent each).

empirical examples of European and North American advanced economies. Accordingly, given the institutional approach of this thesis, it is applied to the Brazilian case in the following section with care to allow for the analysis of national specificities.

The second section applies the discussion of corporatism to the Brazilian institutional model. It then examines the long-standing debates on the need for a more democratic and grass-roots interest representation system often argued in terms of compliance with the ILO's Convention 87 on the Freedom of Association. The stalled National Labour Forum (FNT) reform process is analysed together with explanations as to why the controversial monopoly of representation (unicity) and compulsory dues (syndical tax) provisions have survived persistent pressures for reform. It considers counterfactually whether the removal of the provisions could contribute to a more representative system of employment relations.

The second half of the chapter returns to the fieldwork and ethnographic element of the thesis based upon the construction industry case study. Analysis is informed by the 'potentials and risks' of corporatism and the issues of peleguismo, fragmentation and weak plant-level representation discussed and identified across the first half of the chapter. The second part of the section examines the significance of the intense industrial conflict witnessed across the high-profile Growth Acceleration Policy (PAC) public infrastructure construction sites.

The evolution of representation by the Sintepav unions at the PAC construction sites of Suape in Pernambuco and Pecem in Ceará is used as a case study. It demonstrates that effective trade union representation *is* possible within the existing institutional system and unrepresentative inactive unions are not a systemic inevitability. The conclusion considers counterfactually whether the clamour for a more pluralist or democratic system would improve the representation of labour interests or contribute to a greater systemic capacity to do so. It also argues for a distinctive definition of effective representation in the Brazilian context that leads into the following and final chapter on *regulation*.

5.1 On Corporatist Representation

This section discusses the necessary conditions for effective trade union representation within a corporatist system. The idea of proportionate representation of interests is consistent with the work of Archer (1998: 68) who identifies 'unions, capitalist employers,

and the government as the three actors with the most influence over the feasibility of any strategy for achieving economic democracy'. As to what represents effective representation of labour depends upon the ideological perspective of the observer. Marxists would argue that workers should be represented and organised to end capitalism and introduce a new type of society whilst a *laissez-faire* perspective would see any type of business or labour organisation and the involvement of the state as 'inefficient' interference in the free market. Neither camp would favour a corporatist system.

In contrast, Archer (idem: 91-92) identifies 'three key advantages' of corporatism representing the basis of a feasible and gradual transition to economic democracy. The first is 'the maximisation of workers' strength' providing influence over wage levels and production issues such as modernisation and the organisation of the workplace. Second is where worker strength within corporatism provides 'a wider variety of goods than in other industrial relations systems' through trade-offs with employers and the state such as wage restraint for greater control (idem 103-104). The third advantage is that such bargained goods can be distributed to the entire working class.

According to Archer (idem :74), to realise the described advantages within a corporatist system, industrial relations actors need to be *organised* which is dependent on the level of *centralisation*. Crouch (1994:12) prefers the term 'articulation of local with central power' as centralisation could be interpreted as the relationship of a 'central bureaucracy out of touch with active forces on the ground'. Archer (1998: 71-73) specifies three attributes of a highly organised class: the first is 'a high concentration of power' - the degree of influence of participation of peak associations upon the activities of affiliates in terms of collective bargaining and collection of dues amongst other powers. Second is organisational *unity* – dependent upon whether there is unity or fragmentation at the peak council level or if workers are separated by class and category. Archer argues unity is stronger 'if there are a small number of large industrial unions'. The third attribute is the membership density of trade unions.

This thesis and its research question identifies with the potential-stressing optimists that believe corporatism is a system in the best interests of workers rather than the pessimistic idea that it serves the interests of the state and capital. In this sense it is consistent with Archer's 'economic democracy' and Crouch's analyses, stressing the *potential* for better representative mechanisms for labour interests from the corporatist system. This is based

upon empirical evidence of CME-type economies and the pockets of efficiency identified in the Brazilian institutional system discussed across the previous chapters. To justify the optimistic position of this research the criticisms present in the collective organisation literature and oft heard during fieldwork merit analysis. There is a traditional position arguing that corporatist representation of labour encourages the co-option or incorporation of labour institution in detriment to the interests of the rank and file.

The idea of unrepresentative collective organisations is long standing in the sociology of organisations. Michels (1968 [1911]) argues that Weberian type bureaucratic processes of professionalisation and rationalisation within organisations lead to the ‘iron law of oligarchy’. Therefore, the rank and file are dominated and ruled by their trade union, which may operate in self-interest with distinctive interests to those of its members (Crouch 1982:163). Similar classical accounts of the inevitability of oligarchy in organisations are given by Pareto describing the ‘perpetual circulation of elites and oligarchy’ and Mosca describing the dictatorship of the majority by the minority as inevitable (Evans 2006: 42-3).

Later interpretations shift away from the Michelsian pessimism on the inevitability of unrepresentative oligarchy within a corporatist system. A more nuanced relationship between the rank and file of workers and trade unions with a range of potential outcomes is presented. The Michelsian type of relationship is recognised as a possibility or risk of a corporatist system rather than inevitable. Archer (1998:89) describes oligarchy as ‘a potential problem for most organisations’ and something of a practical consideration in order for organisations to function properly. He further observes that it is evident in trade unions of both the highly centralised Austrian model and in the United States ‘where unions are highly decentralized’.

Crouch (1982: 187-188) argues that the view of trade unions as a mere ‘reflection of members’ wishes’ is misguided though the opposite assumption of an impenetrable oligarchy detached from the rank and file is considered even more unrealistic. He describes the relationship between members and their representative organisation as one of *interdependence*, where the shop floor needs the advice and assistance of the union and the union requires the shop stewards and other activists to provide its ‘basic means of mobilisation’, which may in some cases involve the discipline, or restraint of workers. Hyman (1971 in Crouch 1982:166) argues against the inevitability of the ‘iron law of

oligarchy' observing that in some circumstances union leaders are obliged or even want to follow and ratify the actions of shop-floor movements and follow members' wishes.

Crouch (1994:8) argues that collective bargaining arrangements and strong trade unions require discipline in order for governability to ensue and for representation to be 'compatible with economic growth and stability'. Crouch (1979:188) makes the case for 'bargained corporatism' over the more libertarian 'free collective bargaining' with both systems characterised by strong trade unions. The latter would characterise the UK system, unable to reach coordinated solutions as the failure of the Bullock enquiry would suggest (see ch. 1, 1.3) and was subsequently dismantled over the 1980s. According to Crouch (idem:193) the bargained corporatism option represents:

a convenient compromise half-way between collective bargaining and incorporation of unions, in some senses it would constitute yet another compromise between the forces of order and freedom, or between capital and labour.

A risk would be a swing to the incorporation or co-option of unions to discipline labour in the interest of the state, business and/or self-interest. Crouch (idem:188) argues that such subordination is unlikely in a free society as 'no trade-union can cooperate indefinitely with employers and government without doing something to represent its members' immediate interests'. The successful example cited of West Germany's trade union movement is cited. Described as the 'most co-operative in Western Europe' with a legal system disciplining workers operating outside the formal institutions. Streeck (1997:34) similarly describes how such a 'firmly institutionalised' compromise was achieved in the German model.

Olson's (1971:2-6) influential 'logic of collective action' also recognises the disciplinary or subordination element of trade union representation. He argues that the 'rational self-interested individual' will not voluntarily act to 'achieve their common or group objectives unless there is coercion to force them to do so'. The survival of a trade union institution is therefore reliant upon 'some form of compulsory membership'. The danger of compulsory membership creating self-serving organisations that fail to represent their members' interests, is acknowledged.

Unlike the Michelisan interpretation, Olson presents union co-option as a possibility rather than an inevitable outcome. Similar to Crouch and Hyman, he identifies interdependence between unions and their members where the existence of non-representative unions is

‘severely limited’ where ‘organizations often perish if they do nothing to further the interests of their members’. It is stressed throughout Olson’s study (idem 3,13,68,87,88) study that compulsory membership is essential for ‘an enduring stable labour movement’ of the type Archer (op cit) presents as necessary to realise the potential of a corporatist system.

Olson (idem:88) rejects criticisms of the compulsory element of contemporary unionism restricting individual freedom as ‘misleading and unhelpful’. On freedom, an underlying argument of Archer’s (1998: 3,9) economic democracy is that a liberal market employment relationship is characterised by ‘unfreedom’ whereas greater freedom is ‘morally-desirable’ and feasible within a corporatist system if ‘certain conditions are met’. Workers can gain greater control and influence over their jobs and the operation of their workplace through trade offs with employers. This arguably offers more complete freedom than formal voluntary association mechanisms in pluralist free collective bargaining systems.

Similar arguments on freedom are made in Haagh’s (2012:551) Occupational Citizenship model comparing the liberal UK with the more corporatist Scandinavian models. A ‘high level of purposeful coordination between institutions’ in the latter more horizontalised capitalist system is argued to offer greater freedom, stability and control. Using a more holistic concept of freedom, it can therefore be surmised that despite some authoritarian and compulsory *means* within a corporatist system the *ends* or outcomes offer the potential for greater freedom within society.

The conditions identified by Archer (1998:132) for the feasibility of a corporatist industrial relations system are as follows:

1. the workers must have an exchangeable good that threatens the capitalists' profits,
2. the trade-off must be compatible with the requirements of national economic management, and
3. the corporatist industrial relations system must be compatible with the requirements of national economic management

He (idem: 235-6) argues that in some economies these conditions have been met. He cites the persistence of centralised bargaining in Germany and other countries where ‘the basic structure of collective bargaining has scarcely altered’ and identifies ‘examples of bipartite and tripartite central agreements involving national union organisations’ across Europe with the exception of ‘atypical’ Britain. Crouch (1994:7) similarly recognises ‘sustained success’ across Northern European economies categorised as CMEs in the VoC

literature²⁰. Two decades on, Archer's optimism on the potential of corporatism has been vindicated. As discussed in more detail in chapters 1 and 2, global convergence upon a single liberal market system in response to the pressures of globalisation did not take place and the CME institutional model persisted and prospered.

The development trajectory of the CME-type European economies when compared to the more liberal systems characterised by pluralist free collective bargaining –the LMEs, represents the feasibility of a successful corporatist system. When a more composite concept of freedom is adopted, the more equitable development and comparable levels of economic efficiency of economies like Austria and Germany when compared to the liberal market economies, weakens the arguments that the compulsory membership elements of a corporatist system offer less freedom than a libertarian system. Within these successful examples, trade union representation combines labour representation with a governance and social order function as 'state-bearing forces' (Böckenförde,1977: 244 in Crouch 1994:7) or as Wright Mills (1948 [1971]:8-9) describes, trade unions as the 'managers of discontent'.

As per Archer there are 'potentials and dangers' in a corporatist system. The potential for greater 'economic democracy' depends not only upon the centralisation and unity of trade union organisations though also their capacity to reach collective bargaining trade-offs 'within the requirements of national economic management'. The means of a successful corporatist system may be considered somewhat antiliberal given the necessity of compulsory dues to ensure 'a stable trade union movement' and the need for trade unions to be able to control and discipline their members (Archer 1998:79; Crouch 1979: 175). Whilst a successful corporatist system could be considered freedom enhancing when a more composite definition of freedom is applied, the more authoritarian means may be incompatible with embedded liberal and civil liberties traditions. This is argued to be the case in the US and British LME examples, as Crouch (1979: 186-187) observes in the case of the UK (see ch.1).

Empirical developments into the 21st century, 'continuing and if anything increasing divergence between the 'coordinated' and 'liberal' market economies' (Thelen 2001:72 see ch.1) has strengthened the case for a corporatist system. The more equitable development

²⁰ 'in Austria, Germany, the Netherlands, Norway, Sweden, Switzerland, and possibly Belgium and Denmark'

of the CME with a vested interest and key role for strong representative trade unions vindicates the optimism regarding the potential and feasibility of such a system.

In summary, traditional accounts view unrepresentative trade unions acting in self-interest or co-opted to capital or state interests as an inevitable consequence of collective organisation. More contemporary and empirically influenced analyses suggest that this is a *risk* or *possibility* in a corporatist system rather than a foregone conclusion. A relationship of interdependence more accurately reflects the relationship between the trade union and the rank and file.

The vast majority of discussion, approaches and theories of trade union representation in a corporatist system are based upon the empirical examples of advanced capitalist countries. The next section considers the applicability and relevance of trade union representation approaches to the middle-income/emerging Brazilian institutional model. In terms of the research question, the activity and presence of trade unions to represent labour interests is a key variable and is discussed across the remainder of this chapter.

5.2 Corporatist Representation in Brazil

This section applies the ‘potentials and dangers’ of a corporatist system to the Brazilian institutional model. Criticism of the existing system together with proposals and initiatives for its reform are ever present in labour market debates and have intensified since democratisation in the 1980s. Of particular controversy is the persistence of the monopoly of representation and compulsory financing provisions, hereby referred to as unicity and syndical tax respectively. The criticisms are discussed in this section and considered counter-factually as to whether the proposed alternatives would produce a more representative system. Specific attention is given to the proposals and outcomes of the FNT reform initiative under the Lula government, which aimed to create a more ‘democratic and modern’ LMI system.

Brazilian LMIs created in the 1930s had state control as an objective and the CLT labour code was ‘heavily inspired’ by fascist Italy’s *Carta del Lavoro* (TST 2013). Labour and business unions were divided with one union per region and category, subject to state intervention and sustained by compulsory dues. Peak associations and strikes were prohibited. Additionally, and described in more detail in chapter 3 (see figures 3.1-3.3), the rights and protections of the legislation excluded the vast majority of the workforce.

Noronha (2000) views these ‘authoritarian mechanisms approximating fascism’ as a negative trait of Brazil’s state corporatism when compared to the ideal type of Swedish neocorporatism.

The unicity system resulted in ‘a proliferation of small trade unions’ (Carvalho 2013:121) and importantly, they existed *outside* the workplace. Quoted in chapter one on path dependency, Peters (2005:71) describes ‘an inertial tendency’ for ‘initial policy choices to persist’. The formal structure of the Brazilian CLT system today bears many similarities to its original form, the continuation of the unicity and syndical tax in particular.

Characterised by *disunity* and *decentralisation* with a dispersal of power across a large number of small unions - the original institutional design of the Brazilian system could almost be described as the antithesis of Archer’s (1998:72) attributes of a ‘highly organized class’.

Weyland’s (1996:21) analysis of Brazil identifies institutional fragmentation as a key variable; not solely in the employment relations system, but across Brazilian institutions generally with a specific focus upon tax and social security systems. He argues that such fragmentation is one of the main institutional obstacles to equity enhancing reform in post-democratisation Brazil. Weyland describes a systemic weakness in the capacity to create the necessary encompassing, cohesive and united representative associations required for more equitable change. On LMIs he (*idem*: 43) identifies multiple cleavages accentuating the fragmentation of the formal institutional system. He argues that fragmentation is accentuated by the ‘cleavage between the informal and formal sector’ separating workers from the ‘marginal mass’ (see next chapter for analysis of the formal/informal cleavage).

The emergence of peak associations such as the CUT is acknowledged by Weyland (*idem*:66-69) as representing ‘the most important organizational change that democracy has brought’, though he describes how they have been similarly fragmented or ‘kept apart by ideological and partisan divergences that the regime change [democratisation] has fueled’. Within LMIs and across Weyland’s analysis (*idem*:22,29,47,56,68) an exception to the fragmented tendency is identified in the rural National Confederation of Agricultural Workers (Contag). Contag is argued to represent an island of ‘more encompassing organization’ and the ‘most encompassing in Brazilian society’, having maintained its internal unity and producing a collective bargaining agreement (CBA) covering all workers both informal and formal. A single nationwide CBA has been an objective of the

automobile industry trade unions since the 1990s and more recently the construction unions, evident in the voluntary NCILC initiative in 2012 (see previous chapter).

Despite the emergence of the peak associations and the persistent unity of Contag through democratisation, the partial liberalisation of the collective representation system had the unintended consequence of accelerating the division of the already fragmented LMIs on both the employer and business sides. According to Carvalho Neto (2009:29), the rationale for the maintenance of the unicity system post democratisation was to allow for the survival of the existing trade unions and avoid their fragmentation and division or reduction to firm-level bargaining²¹ and that ‘it was presumed that the organisational autonomy would stimulate mergers and incorporation of increasingly encompassing and strong entities’.

What took place was the dismembering of the union structure in a process widely described as trade union ‘pulverisation’, a term used interchangeably with fragmentation and atomisation. Carvalho Neto (2009:29) and Horn (2009a:67) list a variety of motives for the increased fragmentation: new professions and technology, ideological differences and what can be described as traditional self-interest *peleguismo*. Carvalho Neto describes the more sinister creation of new categories for ‘certain groups’ to appropriate the compulsory financing, or create entities to allow for social ascension and the accumulation of power and influence.

The 2003 FNT reform initiative of the Lula/PT government was a response to the process of trade union ‘pulverisation’ and related representational deficit amongst many trade unions, facilitated by the partial liberalisation of collective labour legislation as the MTE (2003:3) document introducing the initiative states:

there are many legitimate and representative trade unions, but this contrasts with the proliferation of increasingly small and less representative unions, amongst both employer and labour representative institutions, this makes it necessary to move on from the existing model of trade union organisation, criticised for years for its authoritarian and corporatist origins, its low representativeness and for being impermeable to social control.

The objectives, content and outcomes of the FNT merit attention when analysing representation in the contemporary Brazilian system. There are three key observations to be considered in turn. Firstly, the content of the proposals aiming to remove the

²¹ An argued weakness of the Chilean system see ch. 2, Haagh (2002:92) and Schneider (2013:174)

controversial syndical tax and unicity system were modest and timid initiatives that offered more continuity than change (Horn 2009b:164). Proposed alternatives to the syndical tax did not remove compulsory trade union funding, replacing it instead with alternative obligatory mechanisms. The suggested reform of the unicity system offering greater pluralism at the trade union level to comply with the ILO's convention 87 on the freedom of association still retained elements of monopoly of representation in collective bargaining processes.

The second observation on the FNT is that there was minimal evidence of consensus in the reform proposals. The objectives of the initiative were to reform the system through tripartite dialogue, an example of the state-lead coordinated intentions described in chapters two and four. However, little in the way of coordinated outcomes can be observed from the process. As a result, very little if any substantive reform actually emerged. Acknowledging the high profile of the Forum, Chiarelli (2009:125), paraphrasing Aesop, observes that the 'mountain did not even bring forth a mouse'. The moderate and continuist reform proposals presented to congress were mostly archived. The only observable reform to the existing system, passed in 2008, was the formal recognition of the peak associations with a 10 per cent share of the syndical tax income. Given the presence and influence of peak associations since the 1980s, including at the FNT negotiation table itself, it represents a symbolic rather than transformative reform.

The third point is the almost complete absence of any deregulation or liberalisation agenda within the debates of the FNT. This is commented upon by Horn (2009b:177-178) who observes that neoliberal type arguments in favour of a complete deregulation of the employment relations system were not systemically presented in any of the FNT debates. He states that this absence may be due to the political climate related to the 2002 and 2006 election and re-election of Lula. However, the FNT is not the first attempt at reforming or 'democratising' the system post-democratisation. The 1993 'Forum Barelli' was a tripartite initiative involving the then extra-official peak associations that similarly failed to produce any meaningful reform (Camargos 2010:110). Corporatist continuity prevailed at a time when deregulation and market policies were at their height of popularity elsewhere in the polity (see Evans 1995:153).

The absence of a deregulation agenda reinforces the idea already presented that Brazil is not on a path to an LME. The similarities between the FNT and the Barelli forum are also

indicative of a tendency to overstate the level of liberalisation and flexibilisation reforms of the 1990s and underestimate the systemic continuities between the FHC and Lula governments (see ch. 2). The inability of the FNT to produce meaningful tripartite consensus again exemplifies the research problem - the difficulty to move away from hierarchical arrangements and reach coordinated solutions. One particular source of dissent within the forum warrants attention given its importance to the day-to-day reality of the workplace. This was the proposal for strengthening or introducing compulsory mechanisms for the plant-level representation of labour.

An observable and persistent absence in the Brazilian LMI system is formal institutional provisions for plant-level representation. This has contributed to a tradition of union representation *outside* the workplace. Whilst this thesis contests the ‘sparse unions’ core characteristic of HMEs when applied to Brazil, the defining feature of ‘weak shop-floor presence’ (Schneider 2013:79) is consistent with the characteristics of the national model. It is an important consideration when applying the corporatism approaches outlined in the previous section to the Brazilian case, given that they mostly take mechanisms for workplace representation and the existence of shop-stewards as a given when contesting the inevitability of ‘the iron law of oligarchy’.

When the historical weakness of trade union representation within the workplace is considered together with the syndical tax something of a negative complementarity can be observed. The compulsory dues combined with the absence of workplace representation weaken the upward links or ‘interdependence’ (Crouch op cit) between union and worker. Olsen (op cit) recognises the risk of *peleguismo* in trade unions sustained by compulsory dues where ‘Some organizations may out of ignorance fail to further their members’ interests, and others may be enticed into serving only the ends of the leadership’ though he argues that it is unlikely as it would likely lead to organisational failure.

When the characteristics of the Brazilian institutional model are considered such a check and balance on the existence of unrepresentative unions is weak. Considering the compulsory dues together with a general absence of plant-level representation, the potential for unrepresentative unions or ‘dangers of corporatism’ can be considered heightened in this case. Indeed, Archer (1998:88) describes the Brazilian ‘*pelegos* phenomenon’ as a ‘particularly graphic product’ of the danger of unions *not* representing labour interests in a system of interest intermediation.

In light of the idea of a negative complementarity contributing to a heightened danger of unrepresentative trade unions described, counter-factual analysis of the recommended reforms is important. In particular, the long-standing controversy of the syndical tax and unicity. Measures that have survived authoritarian regimes, political and economic liberalisation processes and two tripartite forums in which their reform or removal was anticipated.

Moreira Gomes (2010:117) argues that the ‘modernisation and democratization of Brazil’s labour rights system depends upon the end of the corporatist system’. Moreira Gomes (idem:107) and Carvalho Neto (2009:141) both stress the urgent need for the Brazilian system to comply with the ILO’s Freedom of Association Convention 87, which would involve the end of unicity and the syndical tax. Both commentators argue that this did not take place in the FNT forum as the participating business and labour representative institutions have a vested interest in the maintenance of the corporatist elements. Moreira Gomes (2010:97-103) argues that a less authoritarian system allowing for freedom of association would allow for more ‘authentic’ and ‘true’ trade union representativeness.

The problems of fragmented organisations, weak plant-level representation and the proliferation of pelego type unions heightening the ‘dangers’ of corporatism are recognised here. However, counterfactually, the idea of improved representation from the removal of unicity and the syndical tax appears fanciful. The adoption of policies or removal of obstacles towards greater freedom of association could be counterproductive. The phenomenon of trade union pulverisation was facilitated by the partial liberalisation of collective labour legislation; greater pluralism and choice would therefore only accentuate or perpetuate such a problem. This is anticipated by Horn (2009b:178), identifying the risk that the FNT proposals for greater pluralism would create ‘an ungovernable patchwork quilt’.

The ‘islands’ or ‘pockets’ of effective representation, acknowledged by continuists and reformists alike, emerged *from* the existing corporatist system. The Contag union identified by Weyland as an example of an effective encompassing organisation was created by the existing system when labour legislation was finally extended to the countryside (see chapter 3, 3.2). The imagined discourse of authentic representation in the ‘new’ trade unionism can be misleading. The activities of the ABC metalworkers’ union, cited by Moreira Gomes (2010:99) and Carvalho Neto (2009:134), represented effective *new*

representational practices (strike-activity, plant-level commissions, direct negotiations with employers). Though these were new practices by an *existing* institution - created, sustained and path dependent upon the existing system. The influential peak associations operating extra-officially until 2008 did not exist in opposition to the corporatist system, rather they emerged from and were sustained by the stability of the formal representative institutions at the intermediate level.

Removal of the corporatist elements of the system may therefore weaken its identified and proven potential instead of addressing the observable problems and dangers of the system. There is a tendency to overstate the influence or inevitability of certain outcomes from the formal Brazilian industrial relations system. Encompassing national peak associations can mitigate the effects of the fragmented union structure at the lower levels of organisation providing the centralisation, unity or articulation required to benefit from a corporatist system (Archer & Crouch op cit).

Weyland (1995:67) argues that such potential is frustrated due to the 'partisan and ideological cleavages' between the peak associations, however there is greater observable unity into the 21st century during the Lula & Dilma PT administrations. This is recognised by Araujo & Veras (2011: 108), Marcelino (2008) and Riethof (2004:41). A united position is also evident in the automobile and construction industries at the national bargaining level (see ch.4), FNT and similar tripartite forums, national debates on the minimum wage, pension reform and anti-cyclical policies.

The risk of an unrepresentative pelego union sustained by the compulsory dues could also be mitigated by plant-level organisation and representation. The absence of workplace representation mechanisms is recognised as an institutional weakness of the Brazilian system, however the precariousness has not impeded its emergence and existence. Successful factory-level bargaining developed in the ABC metalworkers' union example and managed to upwardly influence and strengthen the bargaining strategies of the dominant CUT peak association (see ch.4, parts 4.1 & 4.4.1). This demonstrates bottom-up influence and ties from the shop floor to the more centralised national institution. It also suggests the risk of a 'central bureaucracy out of touch with active forces on the ground' (Crouch op cit) or the top-down imposition of peak association policy upon the individual union (Chiarelli 2009: 125) is *not* a systemic inevitability.

In summary, when considering the composite representational system in Brazil there is a heightened risk of its institutional complementarities contributing to unrepresentative institutions. This then limits the potential of the corporatist system. Arguments in favour of a system more compatible with ‘freedom of association’ removing the compulsory financing and monopoly provisions of the existing system are counterfactually weak. The institutional complementarities of Brazilian LMIs mean there is a heightened danger of unrepresentativeness. However, the potential for successful corporatism contributing to greater social equity, the tripartite/social dialogue path argued across this thesis, is dependent upon the same system. The ABC metalworkers standard with effective plant level representation practices and the encompassing peak associations all emerged *from* the existing system rather than in opposition to it.

Even the most vociferous and persistent advocate of labour law flexibilisation in Brazil, Pastore (2003) argues in favour of strong unions and considers the simplistic proposal to remove compulsory dues as potentially counter-productive, weakening effective unions. Within the overall direction of the thesis the removal of the corporatist elements of the system in the name of ‘freedom of association’ could have the undesired effect of setting the economy upon an LME path characterised by atomistic and flexible labour markets and greater income inequality than the coordinated model. The libertarian Chilean system could be argued to offer greater ‘freedom’ of choice for workers though contributes to a minimalist system with less potential or institutional mechanisms to represent labour interests (see Haagh & Cook 2005:179).

Considering the risks and potential of the Brazilian system, the remainder of the chapter examines representation within the construction industry. Specifically examining how the problems of fragmentation, weak shop-floor presence and heightened risk of *peleguismo* manifest themselves in contemporary industrial relations. This is considered together with the identified systemic capacity for effective representation and mitigation of the dangers in the day-to-day operations of LMIs in a key labour intensive industry.

5.3 Worker Representation in the Construction Industry

President of the CUT National Confederation for the construction industry (Conticom), Claudio da Silva Gomes (Claudio 2013: interview), estimates that only one in ten of the 150-160 trade union bodies in the construction sector adequately represent their category. He believes that union (in)activity that may favour business over labour is not usually an

intentional strategy rather a result of their omission from actively representing their workers.

Representatives of other trade unions or relevant LMIs²² do not dispute Claudinho's estimate. Gerson Marques, Head Prosecutor for the Public Labour Prosecutor (MPT-CE) (2015: interview), argues that Claudinho's one in ten estimate would be an optimistic estimate when considering other economic sectors where the proportion of unrepresentative unions is likely to be even higher than in construction. He describes how during MPT investigations on union activity, data received from the Labour Ministry (MTE) showed that over 50 per cent of trade unions had never entered into any sort of collective bargaining agreement (CBA). Within the same data, documentary evidence demonstrated a significant number of unions with presidential or directorship terms of 10,15 and even 20 years.

Marques describes this data as alarming and questions what this significant number of unions actually do in their role and relationship with designated workers. He links unrepresentativeness with the high number of enquiries the MPT receives from individual workers trying to discover which union represents them, where they are based and as to whether any CBA exists. Both Marques and Marreta-PE president Dulcilene Morais (2013: interview) acknowledge an organised crime element in some unions²³. The proliferation of the described unrepresentativeness adequately captures the manifestation of the 'dangers' of Brazilian corporatism described in the first half of this chapter.

The willingness and transparency of the six unions observed during fieldwork, allowing access to: workers, directors, mediation sessions at the MTE, inspection patrols, picket activity, press and legal offices, social and community events and facilitating meetings with state and business counterparts, strongly suggests they are all part of the identified minority of *active* representation institutions. MTE, Dieese, and business representatives consulted generally confirmed the representative credentials of the unions in question²⁴. When business counterparts and/or workers criticised the union it usually related to the combative, adversarial and ideological nature of activity, strikes in particular, rather than any complacency or omission.

²² Conversations during fieldwork at Marreta-MG, Dieese-CE, SRT/CE and MPT-CE amongst others

²³ Authorities disbanded the retail workers trade union in Rio de Janeiro in 2014, run by the same family for 35 years described in an MPT (2015) publication as a 'mafia'.

²⁴ Sinduscon SP, MTE/MG, Cyrela Reality, MRV Engenharia – MG (Marreta-MG 2013: observations), Dieese-CE, SRT/CE, Brasília Guiabe-PE (Sintepav-PE 2013: observations)

In the absence of primary fieldwork data on the (in)activities of an unrepresentative pelego union. This research is dependent upon the accounts of relevant parties and to consider counter-factually how an inactive or complacent union effects worker representation within the Brazilian system. A common pride in the representational credentials and traditions can be observed from the six unions though with distinct partisan, ideological and discursive identities.

There is the CUT-affiliated, *Cutista* (Sinticom-SP & Marreta-PE) strand of traditionally ‘authentic, grass-roots and combative’ trade unionism closely linked the ruling PT party. The Força Sindical tradition (Sintepav-CE & PE) is one of more moderate results-based trade unionism emerging in the 1990s in opposition to and as an alternative to the combative *Cutista* strand (Trópia 2009:14-15). Marreta MG & Sticcrmf possess a more critical anti-capitalist discourse. Belo Horizonte’s Marreta-MG reject any interference from official peak associations or political parties in the representation of the rank and file. Fortaleza’s Sticcrmf has a more radical Trotskyist identity through its affiliation with the Conlutas peak association and PSTU political party breakaway groups from the CUT & PT respectively.

Sintepav-PE and Sintepav-CE and other corresponding Sintepav unions are what can be described as ‘new new’ trade unions; created by the division in the construction economic category between *civil* [light] and *pesada* [heavy] construction as part of the post-democratisation fragmentation of existing trade unions.²⁵ Within the construction industry there is evident antagonism from the traditional unions towards the new *pesada* category in São Paulo, Minas Gerais and Pernambuco.²⁶ Failed legal challenges to the division in category and perceived weakening of influence and representational scope by the creation of what are invariably described as an ‘opportunistic, inauthentic pelego’ institutions by rivals, is further aggravated by existing ideological and partisan divisions. The ‘new new’ trade unions tend to be creations of the traditionally more moderate Força Sindical peak association (Sintepav unions in the northeast, Sintrapav in Sao Paulo) or with no peak association affiliation (Siticop in Minas Gerais).

²⁵ The Supreme Court initially vetoed the creation of a heavy construction union in Campinas as it was in breach of the unicity principle, though the decision was not unanimous. Assisted by international differentiation between the two categories the division of the construction category into light and heavy categories was subsequently approved.

²⁶ Fortaleza seems to be an exception, Nestor and Raimundo (2013: interviews) presidents of STICCRMF (civil) and Sintevap-CE (pesada) respectively – describe a relationship of cooperation and mutual respect.

Politicised trade unions are recognised as a characteristic of labour representation in Schneider's HME model (2009:562) and partisan cleavages contributing to the fragmentation observed by Weyland (1996:67). A regular criticism of the unions with more ideological and combative identities and approaches to industrial relations is that their ideological goals are prioritised over, or incompatible with, the representation of their category. During fieldwork such criticisms were directed at Marreta-MG, Marreta-PE and Sticcrmf by employers, training institution representatives and supervisors recounting on-site confrontations with the union in question. On Sticcrmf, Sinduscon-CE president Ferreira (2013: interview) argues that the highly-politicised union is capable of running itself into the ground in support of the PSTU political party and its aims are to bankrupt employers and destroy the system rather than represent workers' interests.

The ideological identities and discourse of the unions come across clearly in interviews and ethnography, though based upon the same fieldwork observations, it is argued here that there is considerable distance between the discourse and the practice of the individual institution. The distance identified by this research is something of a historical trait of Brazilian trade unionism as discussed in chapter 3, where doctrinal aspects were diluted and outlawed communist parties generally worked *within* the parameters of the existing system (see Hall & Spalding 1986: 359; Collier and Collier 2002:757 and Santana 1999:110).

Using evidence from the more combative and antagonistic manifestation of worker representation, the strike, it is argued in the following analysis that the worker-union dynamics observed in the industrial action demonstrate *interdependence*. In the Brazilian context the strike represents the 'manager of discontent' role with evident sensibility or permeability to workers wishes rather than rigidly following any ideological or partisan goals.

A general strike called by Marreta-PE was observed over its weeklong duration from the vote and declaration at assembly to the agreement to return to work. The strike cannot be considered a grass roots initiative, yet nor is it a one-way top down imposition. Workers actively participating in the strike seem to expect and wish for some type of industrial action to take place during the annual collective bargaining negotiations and evaluate union effectiveness or representativeness on their bureaucratic capability and willingness to call a strike. The behaviour observed by the active strike participants in demonstrations

and picketing has an almost carnival atmosphere at times. Workers supported by the union exercise their right to strike, venting their frustrations and revelling in the temporary reversal of the employment relationship where they can (at least in the instances observed) effectively impose their will upon employers.

During the strike, the union acts to channel, discipline and control worker activity to remain within the tolerated legal parameters and avoid creating situations that could lead to the strike being declared as illegal and abusive by the authorities. Whilst strike activity antagonises employers and their representatives it is arguably a more disciplined and controlled manifestation of industrial action than some of the ‘bloody-minded’ informal manifestations of unorganised conflict (Hyman 1984:106), as the burning buildings and evacuation of the initial PAC site worker mobilisations discussed later in this chapter would suggest.

The agreement to end the strike made between the workers’ and employers’ union also had to be sold to the workers. This again demonstrates that representation is not exclusively a top-down, one-way process. The Marreta strike was ended on the 1st of November 2013 with a pay increase across the categories of ten per cent (4.9% in real terms) and all existing social benefits (breakfast, lunch, return ticket to hometown) secured and, what seems to be a significant sticking point in bipartite negotiations, no payroll deductions or extra hours to compensate for the strike days.

The comparative example provided by Marreta-PE in justifying the Sinduscon-PE business association offer was the ‘worst-case’ scenario of Fortaleza. Sticcrmf’s 31-day strike in 2012 was the longest witnessed in Brazil that year. The agreed clause for the days to be compensated by workers over the following five months lead observers to describe the industrial action as extremely prejudicial to workers and weakened the credibility of the union.

On the Fortaleza example, Head of the Labour Relations Secretariat for the state of Ceará (SRT/CE), Jeritza Juca (2013: interview), believes that the newly re-elected Sticcrmf directors had misread the strike process in the belief that their position would be strengthened through industrial action. Instead, the hard-line negotiating approach adopted by Ferreira’s Sinduscon-CE meant that the strike resulted in workers turning against the union. Since 2012 a more cautious approach to negotiations can be observed with no repeat

of the heightened conflict and no general strike called in 2016 despite Dieese's Aguiar (2013: interview) describing it as something of a predictable annual tradition prior to 2012.

This supports the idea of interdependence between the union and the rank and file and permeability of worker influence. Despite the more radical identity and discourse of some unions their approach is sensitive to workers' wishes. This works in both directions. The more combative unions are obliged to moderate their activities to avoid losing the support of the category. Likewise, the Força Sindical unions of a moderate or pragmatic ideology are obliged to take a more militant and combative posture to employment relations due to pressure from the shop-floor.

Brazil's most prolonged strike of 2014 was at the CSP-Pecem steel plant construction site where workers are represented and organised by Sintepav-CE. Esdras, a Communist Party of Brazil member (PCdoB) and union press and communications officer observes that militancy is not in the ideological nature of Sintepav and Força Sindical, though he believes that they had no other choice than to support and organise the localised strikes in Pecém given the militancy of the revolting workers (Sticcrmf 2013: observations). The evolution of worker representation under the 'new new' Sintepav unions is discussed in more detail in the next section.

MPT-CE's Marques (2013: interview), citing the militancy and heightened conflict involving 'moderate' FS affiliated unions, argues that ideological and partisan identities represent the origins of individual unions and groups though can no longer be considered determinate of their approach to representation and industrial relations. This is consistent with the idea presented here, based upon observations of strike activity and a distance between the discourse and activity of the individual trade unions.

Despite the observable cleavages, rivalries and antagonisms, ideological and partisan identities may influence, but do *not* define the institutional approach to representation. Union activity *is or can be* permeable to worker mobilisation. The antagonism and partisan rivalries between different groups and with employers and their representative organisations, contributes to a tendency to overstate the inevitability of a certain type of representation based upon peak association and political affiliations.

The idea of permeability to worker interests is reinforced by the observations of the day-to-day activities of the observed unions. Shadowing the inspection patrols of the Belo

Horizonte, Recife and Fortaleza unions (2013: observations), considerable uniformity of action is identified despite the oft-cited regional, ideological and partisan differences. Directors and inspection teams patrol their respective regions responding to complaints received from workers or reports of on-site unrest and/or workers having downed tools.

When irregularities involving noncompliance with relevant legislation (CLT, CBAs, industry-specific health and safety NRs) are detected the union seeks to represent the workers' interests, negotiate an immediate solution with employers where possible (known as 'autocompostive' solutions) and when immediate safety risks are detected, pressure the labour ministry to take urgent remedial action. Despite radical identities or reputations, the activities are mostly within the existing institutional parameters and seek to represent workers by bringing them within the formal system i.e. compliance with existing legislation.

This observed extra level of regulation role performed by the distinctive unions represents an effective form of worker representation in the Brazilian context²⁷. In the highly legislated Brazilian institutional model (see Noronha 2000) there is little in the way of 'exchangeable goods' or scope for the bargaining 'trade-offs' identified by Archer (op cit) as requirements for successful corporatism. There were flexibilisation attempts in the 1990s to allow for collective bargaining to supersede employment legislation though these were unsuccessful, part of the effective defence of labour rights by labour institutions across the decade (see chapters 2 & 3, Haagh & Cook 2005:185, Cook 2007:196).

SRT/CE's Juca (2013: interview) argues that despite the primacy given to collective bargaining processes in trade union representation, the number of bargaining issues or 'exchangeable goods' is limited. She praises the provision of breakfast, lunch and snacks negotiated into the Fortaleza region CBA by Sticcrmf given an observable and related reduction in workplace accidents²⁸. She is highly critical of CBAs that reproduce existing legislation and describes it as symptomatic of an unprepared trade union. She stresses on more than one occasion that 'the law is to be obeyed not bargained'. In a mediation session observed (MTE/SRT/CE 2013: observation), Juca chastises the parties for repetition of CLT legislation in the drafted agreement.

²⁷ Observation of the unions visited during the 2013 fieldwork period has continued through the analysis of newsletters and social media activity. This also provides data on the representational activity of construction unions such as Sintracon-Sao Paulo, Sintracon - Campo Grande, STICC - Porto Alegre, STICMB - Pará not observed first hand. The secondary data reinforces the evidence of uniformity in the patrol and inspection day-to-day activities of the individual unions and the idea of effective and active representation through the extra layer of regulation role.

²⁸ According to Juca, autopsies of fatal workplace accidents showed a relationship between an empty stomach and the victim, the fatality rate was reduced with the introduction of meal provisions into the CBA

The importance of the trade union as an extra layer of regulation is highlighted when considering the negative complementarities of the Brazilian institutional model: extensive legislation, the regressive path dependency of exploitative employment relations, widespread noncompliance and weak workplace representative mechanisms. In light of these interrelated characteristics, the trade union has an important representational function to contribute towards greater compliance by defending the worker within the formal institutional system and its related protections.

Despite the sometimes radical and combative discourse and identity of some unions and reports of violent confrontations, by and large the active unions fulfil the ‘managers of discontent’ (Wright Mills op cit) role. They mainly operate within the parameters of the existing institutional constraints both in their industrial action and day-to-day inspection patrols. Considering counterfactually the consequences of inactive union representation, which many suggest is somewhat epidemic in the Brazilian system, it is the absence of this extra layer of regulation that is of most relevance to labour. Union inactivity facilitates the persistence of the regressive path dependency of noncompliance and exploitative labour conditions identified in chapter 3.

As per the overall objectives of the chapter, the identified active regulatory role of the unions observed supports the idea that complacent inactive trade unionism is not inevitable in the Brazilian system, despite the identified problems of fragmentation and absence of institutionalised mechanisms for workplace representation. This is consistent with the ideas (Crouch, Olson, Archer, Hyman op cit) that the danger of unrepresentative unions is not inevitable within a corporatist system. It is however, argued to be a heightened problem in the Brazilian variety of capitalism.

In the instances of deficient representation, the systemic problems of fragmentation and weak workplace representation mechanisms are exposed. The short productive windows and national-level migration of workers between projects in the construction industry means workers will be subject to varying standards of representation causing instability and unpredictability. Pessanha & Morel (2009:105) highlight the ‘heterogeneity’ of collective representation where ‘various academic or trade union analyses have observed’ the coexistence of organisations engaged with their category with others demonstrating a ‘low expressivity of the genuine interests of the rank and file’. Such heterogeneous representation in Brazil contributes to what this thesis describes as an incongruous LMI

system (see ch.2, part 2.2) and what Lee & McCann (2014:title) refer to as ‘regulatory indeterminacy’, discussed in more detail in the next chapter.

5.4 The Growth Acceleration Programme (PAC) Sites and the Evolution of Sintepav

Informative and dramatic examples of fragmentation and inconsistent trade union representation are observable from the large infrastructure construction sites of the state’s high profile Growth Acceleration Programme (PAC). In its most extreme manifestation of industrial relations failure, the construction of the Jirau and Santo Antonio hydroelectric plants on the Rio Madeira river, the consequences were military intervention, mass evacuation and a construction site in flames.

In contrast, the PAC modernisation project of the Replan oil refinery in Paulina the state of São Paulo could be considered something of an institutional success story. Sinticom-CUT union president Luiz Albano (2013:interview) describes challenges, tensions and some worker unrest being quickly addressed to the satisfaction of all parties. He attributes this to the responsiveness of his union and the early creation of a plant-level commission. The success described by Albano is in Sao Paulo - arguably Brazil’s most institutionally developed region, with a strong representative tradition spreading from the nearby ABC Paulista experience. Consequently, Replan workers were represented by an experienced union with close ties to the more encompassing and centralised CUT peak association. This is a competent example of the potential of the existing system allowing for responsive representation and plant-level commissions.

Evidence from PAC sites in less institutionally developed regions in turn demonstrates the dangers of Brazil’s fragmented system. The construction of the Rio Madeira Hydroelectric plants in the remote state of Rondônia mobilised tens of thousands of workers to an area that could be considered a ‘green-field’ site, in both trade union activity and industrial development terms. The representative union for the two sites was the Sticcero union affiliated to the CUT peak association potentially able to mitigate for fragmentation and inexperience and without the same neo-pelego stigma (see Trópia 2004:3, Boito 1996:83) attached to the ‘new new’ FS unions.

The levels of unrest at the Rio Madeira sites resulted in the evacuation of 20 thousand workers, the deployment of the National Guard and the personal intervention of the Labour

Minister as control of workers was lost and accommodation units were set on fire. It hindered a key PAC developmental policy of the PT and weakened its labour-friendly credentials (Veras 2014:128; Braga 2012a:235). Worker dissatisfaction and unrest was over a combination of factors and accentuated by the isolated nature of the site: precarious and insalubrious living and working conditions, noncompliance with labour legislation or commitments made upon recruitment thousands of miles away, high incidence of accidents, workers abandoned and stranded after being brought to the site by informal and opportunistic recruiters.²⁹ Worker hostility was directed at both the employer and Sticcerio, as it was believed that the union was acting in the interests of the state and employers by not supporting the wildcat strikes or adequately responding to workers' grievances.

Donizete from the state of Maranhão worked for six months at Jirau and was brought to Belo Horizonte by the Marreta-MG union 'for his own safety' (EPOMG 2013: group interview). In the absence of workplace representational mechanisms, his position as the worker elected on-site health and safety representative (*Cipeiro*) meant that he acted as a de facto shop steward. He was highly critical of Sticcerio and described an on-site perception of the union as unsupportive of the workers' considerable grievances and related desire to strike, acting instead in the interests of the government and Camargo Correa company. Donizete describes how they called an assembly to 'try and trick' the workers into calling off their wildcat strike and workers responded by throwing stones at the union entourage.³⁰

The unrest across the PAC sites is considered here to be a stress test upon the Brazilian industrial relations system, one that was essentially failed due to the fragmented and uneven nature of representation. The unions were unable to 'manage the considerable discontent' and their perceived inactivity or incapacity became a further source of grievance to the striking workers. Alternatively, the subsequent evolution and institutional response to the PAC failed stress test could be argued to represent the *potential* of the

²⁹ The colloquial term 'gato' [cat] is used to describe informal sector recruitment agents. In the case of Jirau and Sto Antonio they would speculatively bring groups of workers to meet the high demand for workers, regularly abandoning them when things went wrong. Given the distances involved and lack of formal protections the role of the gato became synonymous with people-trafficking. This is discussed in more detail in chapter 6 on regulation.

³⁰ Donizete's account of worker discontent with Sticcerio's representation and perceived attempts to convince and 'deceive' workers to end their wildcat strike and the hostile response is consistent with worker interviews from an allTV Amazônia (2012) news report.

system. This is argued to be the case upon analysis of the evolution of representation under the ‘new new’ Sintepav unions.³¹

There was considerable unrest at other PAC sites including the Suape and Pecém developments in the states of Pernambuco and Ceará respectively. The representative trade unions were the Força Sindical affiliated Sintepav-CE & PE heavy construction unions formed in the early 2000s. Similar to the Rio Madeira sites, Suape and Pecem were in green-field industrial and trade union sites albeit within 100km of a major capital (Recife and Fortaleza respectively). Veras (2013: 243) describes how the Força Sindical (FS) peak association anticipated the imminent PAC construction boom and established the Sintepav-PE ‘heavy’ construction union in 2000. According to Veras this ‘took advantage of the lack of attention’ by the local CUT affiliated Marreta-PE union, it was also made possible by the recent official sub-division of construction between heavy and light construction categories.

When the construction boom at the PAC sites took off, tens of thousands of often skilled and experienced migrant workers found themselves in regions with very little industrial experience represented by newly formed unions with no previous background or tradition in representing such workers. Hindsight would suggest that tensions could have been anticipated, however Dieese’s Aguiar (2013: interview) describes on more than one occasion how both the federal government and trade unions were caught totally unawares by the prolonged and often-violent workers’ revolts that ensued. In his words, they were ‘caught with their pants down’. Veras (2014:128) similarly describes the standard trade union response to revolting PAC workers as one of a ‘state of surprise’.

High levels of worker unrest were witnessed at Suape oil refinery in Pernambuco and UTE Pecém I thermoelectric power station in Ceará with wildcat strikes, facilities being set on fire and violent confrontations with security forces. Initial heightened unrest and mobilisation was spontaneous and worker-lead. Discontent was manifested towards employers, the state and the official representative unions.

Regional Labour Court Judge, Fabio Farias (2013: interview) shared his experiences with the Suape workers and Sintepav-PE in the role of Head Counsel of the MPT-PE prior to

³¹ A similar process of evolution of representation mechanisms by Sticcero assisted by considerable involvement of the CUT peak association and national confederation Conticom is evident from secondary sources and reports from Jirau & Santo Antonio (CUT 2014, Veras 2014:130, Conticom 2015) Fieldwork research produced a greater amount and variety of primary source data on the Sintepav unions at the Suape and Pecem PAC sites respectively, including access to the two unions and state and business counterparts as well as workers that had been through both sites.

taking up the judgeship in April 2013. Farias is critical of the motives of the initial wildcat strikes, 'it was enough for someone to say they found a maggot in their food for a "carnaval" to start', he also describes how there would be a strike on the last working day before a prolonged public holiday and upon returning to work after the break there would be no evidence of demands presented or negotiations having taken place.

Despite Farias's observation on the frivolity of some of the strike activity, speaking to workers and rival union officials to the Sintepavs (Marreta MG & PE 2013: observations) who had been through Suape and/or other PAC construction sites, the grievances observed were often legitimate, varied and numerous. They ranged from the poor quality of meals and accommodation units provided to excessive hours and precarious safety conditions. These accounts heard first hand are consistent with the observations of the Labour Inspectors Union quoted by Veras (2013:246) 'excessive working hours, incidence of accidents, undocumented work, payment delays and overcrowding of accommodation'.

A site foreman working for Camargo Correa (2013: observations/interviews) in Fortaleza had previously worked at the Suape site and described the grievances he observed causing workers to down tools and protest as: non-payment for the tools used, huge discrepancies between the pay and conditions between workers of the main firms and sub-contracted companies, irregularities in the productivity bonuses promised and the way in which absences were being recorded.

Farias attributes the observed militancy and visible anger to the experience gained from previous on-site conflicts citing the states of Sao Paulo, Rio de Janeiro and Bahia. The disparities created and formalised by the one union per region/sector can also be considered as an aggravating factor, the differences in benefits between collective bargaining agreements means that workers may look to immediately take action to achieve parity with accumulated collectively bargained benefits achieved in other regions. This again contributes to the incongruous LMI system characterised by a certain unpredictability or indeterminacy of employment outcomes and is symptomatic of the fragmentation at the intermediate level of representation.

Marlon, a health and safety technician for Camargo Correa (2013: observation/interviews) also highlights the accumulated experience of migrant construction workers, specifically citing the construction of the Camaçari complex in the state of Bahia. Camaçari was perhaps the first of its type in terms of a large-scale green-field industrial development (oil

refinery and Ford plant) away from the more industrially developed southeast regions. The link to the state of Bahia means revolting PAC workers were commonly labelled as *Baianos*.

The Sintepav union did *not* have this accumulated experience and Farias describes his frustration with Sintepav-PE's actions during this period of spontaneous unrest:

They invited me to an assembly to approve their agenda on a Wednesday at 7am in the city, sixty kilometres away from the nearest concentration of their category and 600km away from another mass of their workers. The meeting was publicised in the Official State Gazette (DOU) a publication usually read by judges and lawyers. No worker is ever going to read the DOU – I told them they couldn't do this, they went ahead anyway and two days later workers are setting fire to the construction site.

President of Sintepav-PE and FS state president Aldo Amaral (2013: interview) describes a huge challenge for the recently formed union to deal with so many workers arriving in such a short space of time in what was an unprecedented situation for the north-eastern state. Amaral, like Farias and Marlon, recognises that the migrant workers had considerable experience of on-site negotiation and political struggle. He also makes specific reference to the Camaçari complex in Bahia where many of the migrant workers had gained such experience.

Other rival union and political representatives had described instances of on-site disagreements between workers and Amaral's Sintepav-PE representatives during the initial wildcat strikes. Mirroring events described at the Rio Madeira site, Veras (2013:248) describes the worker response to a Sintepav-PE request to return to work in Suape with 'stones thrown at directors who had to make a quick exit' before the police arrived with rubber bullets and flash bombs.

Similar initial challenges to the Sintepav union leadership were evident in the Pecem complex in Ceará (pre-steel plant in the same industrial complex). Sinduscon-CE president Ferreira (2013: interview) describes how groups of *Baianos* with no identifiable union or political affiliations migrate to the PAC sites with the sole intention of starting a strike. He further describes an 'unprecedented' incident of one worker called *Baianinho* shouting down everything presented by the Sintepav-CE president Raimundo in an assembly. Press officer and PCdoB member Esdras gives a similar account of workers challenging Sintepav-CE's role as their representative institution with accommodation units being set on fire in the Pecem Thermoelectric complex in protest.

Tens of thousands of migrant workers were represented by local trade unions without the experience, capability or credibility to manage the discontent of the category designated to them under the unicity system. In this case it seems that the migrant workers had greater experience of industrial relations than some of the unions. Unions such as the Sintepavs, created in anticipation of the arrival of the thousands of workers rather than from the rank and file. The more representational dynamics of union representation that emerged in the 1980s were not immediately reproduced inter-industrially or over a greater geographical distance in this instance. Even the involvement of the more centralised and influential two largest peak associations, CUT (Sticcero) and Força Sindical (Sintepav-PE & CE) was insufficient to organise and represent the discontented workers.

In the short term, the PAC unrest exposed the dangers of the fragmented and unprepared (intentionally or not) trade unions distant from the shop floor, hindering a flagship national development programme. Yet when the evolution of worker representation at the PAC sites is analysed, the same case study also demonstrates the potential within the system. Farias describes how Sintepav-PE developed mechanisms to bring the employment relations to within the ‘institutionality’ of the Brazilian system, describing it as a literal example of how the representation process gradually adjusted to operate within the law. He further describes how the situation has evolved from the initial unorganised mobs in the Suape region to the current existence of adequate negotiation mechanisms operating within the Brazilian legal framework. He estimates that evolution process of representativeness by Sintepav-PE took approximately 3 years.

Amaral describes the union’s most effective negotiation strategy as being to withdraw their labour or ‘cross their arms’ being the colloquial term used in Brazil. He points to the 50,000 workers organised by Sintepav-PE who downed tools in the [then 2013] most recent industrial dispute in Suape as a clear sign of the effectiveness of the union’s organisation. Similar evolution from hostile workers challenging the credentials of the official union to active representation within Brazilian ‘institutionality’, is evident in the Pecem-Ceara case. Union president Raimundo (2013: interview) similarly speaks with pride of being responsible for supporting workers’ industrial action across the State’s main PAC sites in protest at poor health and safety conditions, quality of the meals and accommodation provided as well as noncompliance with the collective agreements in effect.

The terms and conditions within the collective bargaining agreements for Suape and Pecem workers since 2013 are significantly higher than any other professional category in the region of a similar level of qualification, particularly when compared with the remuneration levels and benefits in the light construction collective agreements where considerable overlap between the professional categories exists. Industrial action in the form of localised stoppages and disputes are still commonplace, particularly at the CSP-Steel plant (see ch. 4 part 4.4.3 & ch. 6 part 6.3.3), though the representation of labour in this instance is organised, controlled and disciplined by the Sintepav unions.

The Sintepav experience within the PAC construction projects demonstrates an example where union leaders are obliged to follow the shop-floor within the corporatist unicity system. The willingness to promote localised strikes in protest at conditions or to pressure employers to meet demands presented is argued to come from the rank and file. The initial wildcat disturbances suggest that workers, in the construction industry at least, will take matters into their own hands if they feel the legally designated union is not adequately representing them.

Based upon the evolution of Sintepav, it can then be argued that the representational deficit caused by the unicity system can be overcome when workers are mobilised, militant and demanding of their regionally/sectorial designated union. In this sense any original pelego or self-interest motives in the creation of the union have been checked by an active and mobilised rank and file contributing to a responsive union-worker relationship more akin to that described by Hyman (1971) than the traditional idea of an inevitable and impermeable iron rule.

A similar and simultaneous process of the evolution of labour representation is also evident at the national level of LMIs. Analysed in more detail in chapter 4, in response to the unrest witnessed across the PAC sites, unions, employer and government created the 'National Commitment for Improved Labour Conditions in the Construction Industry' (NCILC). The initiative represents a prompt tripartite institutional response to the grievances and unrest witnessed across the PAC sites. In terms of the aims of this chapter it is indicative of the necessary *unity* and *organisation* for a successful corporatist system. It could similarly be argued to represent the national-level institutional capacity to mitigate the fragmented structure at the intermediate level. Consistent with the successful examples of worker representation, which often involved the creation of plant-level commissions, a

key recommendation of the NCILC was for the urgent introduction of compulsory workplace representation mechanisms.

The focus on this chapter has been *worker* representation. Although not analysed in this chapter, effective representation of state and business interests are also key variables in reaching more equitable tripartite outcomes in a corporatist system as Archer (1998:68) recognises. At the CSP-Pecem steel plant construction site under Sintepav-CE worker representation, there have been critical levels of labour unrest and conflict over 2014 and 2015. A third of working days were lost to strikes and this led Marques and the MPT-CE to call a public hearing in February 2015.

Up until very recently there was no corresponding local organisation to represent business interests with the formation of such an institution held up by state bureaucracy, Sinicon-CE was finally formalised in January 2016 (o Povo 2016). Therefore, a key weakness in the CSP example has been the fragmentation of the *business* side of representation, leading to outcomes *incompatible* with economic growth and stability. Institutional relations at the CSP-Pecem site are analysed in more detail in part 4.4.3 of chapter 4.

Conclusion

When applying the dangers and potential of corporatism to the formal Brazilian LMI system, it is argued that certain national characteristics heighten the probability of ineffective labour representation. There are observable institutional incompatibilities between the Brazilian model and the conditions argued to be necessary to realise the potential advantages of such a system. The LMIs at a formal systemic level are fragmented and decentralised. The potential for mutually beneficial trade offs between labour and business envisaged by Archer is limited by the highly-legislated nature of employment law. This means that there are few exchangeable goods available. The idea of wage moderation and trade offs are not as applicable to the Brazilian case as the advanced economy examples due to the historically persistent low wages, high inflation and exploitative employment conditions (see chapter 3).

Despite the evident manifestations of the dangers of corporatism, the persistent reform arguments neglect the evident potential within the same system. They overestimate the defining nature or inevitability of formal systemic outcomes in Brazil. Considered counterfactually, the removal of unicuity towards greater pluralism could aggravate existing

problems of fragmentation. Removal of the compulsory financing of unions could weaken the overall influence of labour within society and set it upon a less equitable LME path. This is consistent with Olson who argues that mandatory dues are necessary for encompassing trade union institutions.

The idea of a natural emergence of 'authentic' labour institutions from an alternative system offering greater freedom of choice and liberty is somewhat speculative and often misinterprets the existing examples of effective representation. The ABC metalworkers example, Contag national confederation, centralised and encompassing national peak associations, together with the evolution of active and responsive worker representation in the construction industry presented in the second half of this chapter, all emerged *from* the existing system of monopoly of representation and compulsory dues. Reforms could be counterproductive in that they would remove this capacity for effective representation without addressing any of the existing problems.

The example of the evolution of the Sintepav unions from fieldwork research suggests pelego representation is not a systemic inevitability. A mobilised and active rank and file can mitigate the danger of inactive and complacent trade unions. Permeability to worker influence is further evident in the identified distance between discourse and practice of the unions observed. There is likewise no inevitability of trade union action based upon their ideological and partisan identities and discourse. Evidence demonstrates that workers moderate the activity of traditionally more radical unions and unions labelled as moderate can be obliged by the rank and file to take a confrontational stance to employment relations.

Primary and secondary observations demonstrate considerable uniformity in the day-to-day patrol and inspection activities of construction trade unions. Within the Brazilian context of comprehensive legislation, a historical legacy of exploitative employment conditions and widespread noncompliance (see chs. 3, 4 and 6) *the trade union as an extra layer of regulation* emerges as an effective labour representative function. Such a role brings workers to within the 'institutionality' and protections of the existing system rather than working against it. In terms of the research question it represents a key variable in the inconsistency between the employment rights and protections offered by the formal LMI system and the workplace reality, in the sense that greater de facto regulation could contribute significantly to improved conditions for workers. Together with representation,

regulation is considered a key area to address the research question and is discussed in the next chapter.

The argued need for a regulatory role for unions is also indicative of a systemic weakness in the Brazilian system, that of a 'weak shop floor presence' and related inability for workers and employers to ensure compliance without resorting to external intervention. The examples of effective representation within the existing system, the 'potential', generally have workplace representation mechanisms as a key component. The case of the ABC metalworkers for example. In the construction industry, it is evident in the Sinticom/Paulina example and the need for workplace commissions was a lesson learned in the evolution of representation under Sintepav. The tripartite institutional response to the PAC disturbances, the NCILC initiative, produced strong recommendations for greater social dialogue and more compulsory mechanisms of workplace representation.

Some of the necessary conditions for effective representation in a corporatist system are weak or absent in the Brazilian model, however, the deficiencies are not a systemic inevitability. There is the capacity for effective representation to exist or emerge from within the constraints of the existing system. Calls for reform tend to underestimate or misinterpret this evident existing potential and/or overstate the inevitability of ineffective representation.

Chapter 6 Regulation in the Brazilian Construction Industry

The previous chapters argue that contemporary Brazilian labour market arrangements are not, nor have they ever been on a liberalisation type path. The corporatist elements of collective and individual labour rights in the Consolidation of Labour Law (the CLT path) dating back to the 1930s have proven resistant to liberalisation pressures and can be described as embedded. Historical path-tracing analysis in chapter 3 identifies another persistent path embedded in the highly unfavourable legacy for labour that can be traced back to colonialism, elite rule and slavery in the 19th century (the regressive path). The potential for greater institutional coordination and representation of labour is argued to exist within the CLT path, yet it still coexists and interacts with the regressive path; characterised by widespread noncompliance and exploitative labour conditions weakening the identified potential for greater institutional coordination and labour representation.

Over the recent and unprecedented positive development trajectory under the PT government of falling inequality and poverty reduction (see ch. 2 - figure 2.10 & table 2.1), increasing coordinated intentions are evident. This is particularly the case with regards to the state: seeking to promote social dialogue accompanied by an observable increase in participation across the political economy, contrary to laissez-faire prescriptions. Despite these intentions, the ineffectiveness or lack of meaningful consensus or solutions that emerged from high profile tripartite initiatives such as the FNT, CNDI, CDES indicate that there are still considerable obstacles to achieving tangible institutional coordination.

Chapter 5 discusses the issue of representation; the collective legislation mechanisms of the existing system, often criticised for producing complacent, inactive and oft co-opted pelego representative institutions on both the business and labour sides. Within Schneider's (2013:91) five core features of HME/Latin American labour markets it corresponds to the 'sparse unions' characteristic. The problem of weak representation is recognised in this analysis (see ch. 4 and 5) though it is not an inevitable symptom of the existing system.

The potential for more active representation is identified when workers are demanding of their representative unions and plant-level representation mechanisms are established. Counterfactual analysis found liberalising reform proposals towards a 'free collective bargaining' system to address problems with representation weak and potentially counterproductive. Given the dynamics of the collective representation system the 'sparse

unions' feature is not considered an adequate description of the Brazilian labour market system.

Another persistent criticism of the Brazilian employment relations system is that it is excessively regulated (The Economist 2004:51, 2011:57, 2016:5; Pastore 2005:25; CNI 2012:21), what classical economics tends to label as 'rigid' employment systems (Saint Paul 2000:1; World Bank 2013:102; Forteza & Rama 2006:75). Indeed, when compared to the European corporatist ideal type presented by Archer (1998:132) it is clear that there is less in the way of the necessary exchangeable goods or trade-offs to be made between labour and business in the legislated Brazilian example. Furthermore, in the middle-income/emerging context characterised by low wages and unfavourable working conditions it is difficult to envisage wage-moderation characteristics of the German CME and Archer's ideal type. This leads Noronha (2000 para. 2) to describe the Brazilian system as *legislated* rather than *corporatist*. There is evidence of worker employer trade-offs in the automobile industry, the ABC pocket of efficiency standard already discussed and in recent PPE anti-cyclical initiatives, albeit the latter again of most relevance to the automobile industry in the southeast (see ch.4 part 4.1).

This chapter focuses upon *regulation* as a key variable in the reality of employment and similarly relevant to the research question on the distance between what is envisaged in the formal employment rights and protection and the workplace reality. Within Schneider's (2013:91) core HME labour market features, this corresponds to the 'extensive regulation' and 'pervasive informality' characteristics. There is some logical overlap with the previous chapters on relations and representation. Chapter 4 identifies prompt tripartite initiatives at the national level of industrial relations to address problems caused by widespread noncompliance and informal recruitment practices. Persistent difficulties in the effectiveness of such initiatives are observed at the workplace and intermediate levels of relations contributing to the prevalence of *networks of mistrust* (see ch. 4 figure 4.1).

Regulation in this chapter refers to individual labour rights. These include, but are not limited to, arrangements encompassing: remuneration, working conditions, health and safety, unemployment and social security contributions, recruitment and dismissal aspects of the employment relationship. The first section analyses wider debates on the regulation of labour markets from an institutional perspective. It addresses the long-standing neo-classical idea of high levels of employment regulation having negative consequences for

labour markets, such as informality, noncompliance and unemployment. It identifies a broader set of interrelated variables or complementarities to be considered for an effective analysis of the complexities of employment regulation and its enforcement. Continuing from this analysis, the definition and relevance of the informal sector within regulation debates is considered. This is consistent with the institutional approach of the thesis where informal institutions are of considerable explanatory relevance (see ch. 1).

The second part of the chapter applies the approaches discussed and analysed in the first section to the Brazilian case. Assisted by the rational choice model of Cardoso & Lage (2007), analysis of Berg (2010) and fieldwork findings, the problem of noncompliance is analysed. Noncompliance or evasion is identified as a historical trait of employment relations in Brazil (ch. 3 part 3.2), fuelling networks of mistrust in industrial relations (ch. 4 part 4.2) and where trade unions as an extra layer of regulation can contribute to observable labour outcomes (ch. 5 - conclusion). The persistent deregulation arguments are addressed in light of the problem of widespread noncompliance. An important consideration is to seek explanations for the observable difficulties of compliance in the Brazilian institutional model.

The second half of the chapter applies the regulation issues to the construction industry where such issues on compliance and enforcement dominate debates and institutional activity at all levels (see ch. 4 on relations). The problem of noncompliance and the influence of the informal sector are discussed in light of research data from business, union and state activities observed and interviews with respective representatives. The conclusion looks to summarise the importance of regulation within research focus upon the inconsistency between formal systemic provisions and the workplace reality and its relevance to the Brazilian variety of capitalism.

6.1 Labour Market Regulation

This first section discusses general debates and approaches on the governance or regulation of the labour market. Regulation is considered here to be all rules, norms and practices relevant to the employment relationship. Consistent with the institutional approach and related definitions of this research project, regulation represents interrelated elements of a composite system and can be formal or informal. It is therefore important to analyse institutional complementarities within all manifestations of regulation.

Within theoretical debates there is a long-standing position with a variety of labels: orthodox, laissez-faire, classical, neoclassical, textbook amongst others, herein described as the rigidity or deregulation school of labour market regulation. Such a position favours the LME- type deregulated and flexible labour markets. More general discussion and critical analysis of liberal market ideas are in chapter one. Analysis of the deregulatory position in this chapter is narrowed to its idea of a universal positive correlation between the amount of regulation and negative LMI outcomes such as informality, noncompliance and unemployment and the related policy prescriptions for minimal regulatory intervention. This is considered in light of alternative positions and evidence-based findings. The different trajectories and realities of the labour market arrangements between the respectively more and less regulated CMEs and LMEs are of heightened relevance within this context.

Mentioned in chapter two, Schneider and Karcher (2010:2) identify two opposing positions on labour market regulation in Latin America. The World Bank is critical of ‘rigidity and overregulation’ and in favour of ‘deregulation and flexibility’ whereas the ILO and IDB argue for the improved enforcement of existing legislation and greater dialogue between parties. The rigidity/deregulation school will be considered initially. It would be a generalisation to attribute such a position to the entire World Bank though the idea of a universal positive correlation between levels of employment legislation (‘rigidity’) and labour outcomes and compliance (the less interference the better) represents an underlying premise of the institution’s influential annual Doing Business Report (DBR) issued since 2003. The 2008 report argues ‘laws created to protect workers often hurt them’ (World Bank, 2007:19).

Berg and Cazes (2007), Deakin (2009) and Lee, McCann and Torm (2008) are all critical of the data sets used to support the deregulation arguments. Importantly for this thesis, Berg and Cazes (p.14) highlight the absence of tripartite negotiation and collective bargaining from the DBR index, described as ‘important means for achieving a ‘dynamic and responsive labour market’. Lee, McCann and Torm (p.421) describe how deregulated labour markets of Afghanistan, Papua New Guinea and Haiti score higher marks on the index than the ‘prosperous’, low ‘unemployment and high productivity’ economies of Finland, the Netherlands and Sweden. This strongly suggests that the World Bank index is incapable of recognising the success and efficiency of CME-type economies.

Deakin (2009:6) makes specific reference to Botero *et al's* (2004) comparison of 80 different economies that is interpreted to support the idea of a negative impact of labour regulation. This index is used in the DBRs and by Schneider (2013:173) to support the 'extensive regulation' characteristic of Latin American labour markets and Pastore's (2005:26) prescriptions for the 'modernisation' of LMIs in Brazil. Deakin (2009:6-10) questions the reliability of the data sources used and identifies 'problematic methodological issues'. A major weakness is the assumption that there is widespread compliance with the relevant legislation, the probability and incidence of evasion is not captured as a relevant variable. Lee and McCann (2014:8) describe the same World Bank DBR indicators as 'ill-attuned to capturing the range of work relations that either entirely elude legal regulation or are subject to diminished standards'.

By not considering or measuring noncompliance, the comparable rigidity indexes are incompatible with the new institutional approach and related definitions adopted by this thesis (see ch.1). The credibility and relevance of the comparable data on 'rigidity' are weak. This is due to the simplicity of the approach; the reductive focus upon a single institution – formal legislation – to provide explanations for the reality of employment. What can be observed from the employment relationship in a given society is the result of the complex interaction of a society's set of historically embedded institutions.

The widely-accepted definition of institutions is that they are both formal and informal; encompass 'compliance procedures, and standard operating practices' (Hall & Taylor 1986:19) and 'enforcement characteristics' (North 2003: 1-2). The effectiveness of 'old' institutional approaches was limited or even flawed by its sole focus upon formal or 'parchment' rules (Peters 2005:10, Lowndes 2010:60, Levitsky 2012:88). North (2003:2 own emphasis) considers formal rules to be of less importance than the informal norms and argues that concentrating solely on the former 'gives us an inadequate and frequently *misleading* notion about the relationship between formal constraints and performance' when analysing 'institutions, institutional change and economic performance'. This position weakens the applicability of the comparative 'rigidity' indexes used to support what Deakin (2009:1) describes as the 'previously accepted wisdom on the supposedly negative economic impacts of labour law regulation'.

A further incompatibility between the DBR/Botero *et al* regulation data and the institutional approach is the absence of any consideration of historical legacies or path

dependency. The idea of a universal relationship between higher levels of employment legislation with negative outcomes (unemployment, evasion, inefficiency etc.) represents what Hall & Taylor (1996:941) describe as a ‘traditional postulate that the same operative forces will generate the same results everywhere’. A simplification rejected by a path dependent approach and an important consideration when analysing relevant employment legislation and its enforcement. As Deakin (2011:36) observes: the origins of legal systems are ‘context-specific, their effects will not be constant across firms, industries or national systems’.

From a new institutional perspective and considering the related importance of path dependency, complementarities and informal institutions, the deregulation approach not only appears weak and deficient though potentially counter-productive and misleading if used to inform policy. Alternative indexes that similarly attempt to measure and compare employment legislation such as the OECD’s Indicators of Employment Protection (IEP) recognise the limitations of the indicator where data reliability ‘suffers from problems of subjectivity’, availability for some countries, inability to capture the differences between legal provisions and practice and the synthetic nature of the indices (OECD 2004:99). As a result, the OECD index (2016c own emphasis) is accompanied by the following disclaimer: ‘it is important to note that employment protection refers to only one dimension of *the complex set of factors* that influence labour market flexibility.’

The Cambridge Centre for Business Research (CBR) attempt to address the weaknesses of the World Bank and OECD indexes and drawn from a study of employment legislation in France, Germany, India the UK and US. Deakin, Lele and Siems (2007:154-155) argue that the Botero et al/World Bank implication that economic performance could be improved if countries such as France ‘abolished some or all of their labour laws’ is based upon excessively reductive and misleading evidence and such a conclusion ‘cannot validly be drawn from the present state of knowledge on the workings of labour law systems’.

Based upon the reductive nature of the datasets used, the absence of informal, context-specific and path dependent considerations in particular, the deregulation argument does not stand up to evidential scrutiny; as Deakin (2009:17, 2012: 353) argues ‘the empirical basis for the deregulatory approach is not very strong’. Much of the evidence-based support came from a reductionist comparison of levels of unemployment between continental European economies and the more liberalised UK and US models. Even then

such conclusions were subject to scrutiny with Baker et al (2004:15) arguing that the econometric data is ‘at best inconclusive’ with regressions that find relationships between LMIs and the unemployment rate and ‘equally plausible regressions that do not’. A similar non-conclusive or ambiguous relationship between employment protections and unemployment are presented by Bertola, Boeri & Cazes (2000:62).

The regulation – unemployment positive relationship is considered inconclusive and negligent of the ‘cyclical volatility of employment’ that is external to the levels of regulation (Bertola, Boeri & Cazes 2000:60, also see Crouch and Streeck 1997:6). It also neglects the quality of employment aspect. Consistent with Lee, McCann and Torm’s (op cit) observations on the DBR index, the empirical credibility of the deregulation position is further weakened by the Varieties of Capitalism (VoC) distinction between the regulated labour markets of the CMEs and the more flexible arrangements of LMEs. Analysed in more detail in chapter 1, the convergence upon a single more flexible model of labour relations predicted and prescribed by the deregulation school did not take place (see Thelen 2001:72).

The distinctive paths or non-convergence between LMEs and CMEs challenges the deregulation school in the sense that comparable efficiency, income and levels of employment were achieved in the latter more regulated institutional model (see ch. 1 table 1.2) and more equitable employment arrangements are evident in terms of distribution of income and greater stability from longer employment tenure and average skill levels. As Baker et al (2004:16) argue ‘a complete and convincing analysis of the relationship between labour-market institutions must explain the success of these more-regulated countries as well’.

Lee and McCann (2014: 11) observe that ‘simplistic accounts of the impact of labour regulations are slowly ceding ground to more sophisticated analyses’, however the deregulation position has proven to be durable especially in certain policy circles despite the identified methodological and empirical weaknesses. This leads commentators to argue that its logic is predominantly ideological rather than evidence-based as Deakin (2009:17) observes:

the analyses contained in the *Doing Business* reports have been framed by the World Bank’s prior commitment to the Washington consensus formula of the minimalist state, property rights and trade liberalization as the basis for growth.

On the impact of this influential ideological position Lee and McCann (2011:2) observe that:

It has long been recognized that the simplistic dichotomy between ‘regulation’ and ‘deregulation’ characteristic of the neoclassical economic tradition and Washington consensus policy agendas is both highly influential and also threatens the distributive objectives of labour market regulation.

Between the World Bank’s rigidity and deregulation or the ILO/IDB’s enforcement and social dialogue diagnoses on labour market governance the position adopted in this chapter and across this thesis is implicit from the new institutional approach to research and the nature of the research problem *per se* – the distance between the formal LMI system and the reality of employment in the Brazilian institutional model. The deregulation arguments are rejected as incompatible with the research aims of this thesis and weak when subject to evidence-based scrutiny, the empirical example of labour arrangements in CME type economies in particular.

The rejection of an inherent negative economic impact of labour regulation implied by the deregulatory agenda does not suggest an opposing argument in favour of *more* regulation. Such a reductive and universal assertion would be similarly flawed as Deakin (2009:16) concludes on the evidence-based approach to labour regulation: their impact cannot be predicted ‘through models with universal application’, they are context-specific. Crouch and Streeck (1998:7) adequately capture the non-committal position adopted here on the amount of employment legislation

Undoubtedly institutions may sometimes have a negative effect on economic performance, or they may outlive an earlier usefulness; but discovery of this will have to be the result of detailed theoretical and empirical investigation, not a conclusion to be derived axiomatically

The approach to labour outcomes adopted here is that they are the result of a complex set of complementary institutions. One of these institutions is the formal legal code, the enforcement of which is similarly dependent upon the composite institutional system. The less deterministic position of Lee & McCann (2011: 1; 2014:12) writing in an ILO publication is favoured here, that ‘labour market regulation is inevitably complex, and its outcomes – social and economic – difficult to predict’.

Lee & McCann (2011:17-18) highlight the complexity of the relationship between labour regulations and economic and social impact. To escape the neoclassical

‘regulation/deregulation dichotomy’ the concept of ‘regulatory indeterminacy’ or uncertain outcomes is presented, stressing the need to analyse complexities, indeterminacies and the design and operation of regulatory frameworks. The related ILO publication (McCann et al eds 2014:1) attribute the indeterminacy to three factors ‘1. the accelerating fragmentation of employing enterprises 2. Complex interactions that take place between labour market institutions; and 3. Varying effectiveness of labour law enforcement’. These factors are summarised and adapted here as *fragmentation*, *complementarities* and *enforcement* to analyse the issues of regulation in the Brazilian national system and construction industry case study across the remainder of the chapter. It also corresponds to the idea of the Brazilian variety of capitalism being characterised by an incongruous LMI system (see ch.2 part 2.2).

An issue in research on labour market institutions is the application of methods, approaches and findings based upon analyses of advanced economies to middle-income or emerging examples. There is an observable overreliance upon data from advanced economies and negligent of the context specificities of middle-income/emerging economies. Such a criticism can be made of both the deregulation school and the varieties of capitalism approach in its original form. One particular area of controversy is the informal sector. Therefore, analysis of general debates on informality; its definition(s), causes and relationship with formal employment legislation merit analysis before moving on to the Brazilian case characterised by a large informal sector.

Interpretations of informality are divided along similar fault lines to the World Bank/deregulation versus the ILO/enforcement and dialogue cleavage. Initially there is no set definition of informality and therefore measurements of the size of the informal sector can vary. Whichever measurement is used, the idea of levels of informality being of considerably greater relevance in middle-income/emerging cases than advanced economies is non contentious. ‘Pervasive informality’ (Schneider 2013: 91) as a core feature of Brazilian and Latin American labour markets is not disputed here, rather its relationship with formal legislation and enforcement institutions is questioned in light of the popular, influential and persistent deregulation arguments.

The size of the informal sector in developing countries contributes to the problematic nature of comparable labour regulation statistics such as those used by the World Bank’s DBR and the credibility of findings based upon using such indexes (Deakin, Lele and Sims

2007:141). Similar to views on unemployment levels, the deregulation school identifies a direct correlation between the size of the informal sector and amount of regulatory intervention in the employment relationship. As already discussed and justified, such a reductionist approach based on questionable data and methodology is rejected here in favour of a more context-specific institutional approach. An approach which sees the size of the informal sector as an outcome resulting from a complex set of interacting formal and informal institutions of which formal labour legislation is but one relevant institution.

The deregulation approach is also criticised for its over-simplification or reductionist view of informal employment. Citing the World Bank 2005 & 2010 DBRs, Lee & McCann (2014:4) criticise a 'clear-cut dichotomy between the 'formal' and 'informal' economies where labour standards are 'unknown' or 'entirely irrelevant in the informal sector. The same authors (2011:22) argue that such 'simplistic characterizations do not attend to the complexities of their functioning in low-income settings'.

From an institutional perspective there is a neglect of the complementarities between the formal legislation and employment in the informal sector. This is recognised by Cardoso (2010:181) in the relationship between the formal employment legislation and the excluded majority discussed in chapter three. Rather than two independent regulated and unregulated systems, studies recognise that they are related parts of the same wider institutional system. The 'lighthouse effect' of a strong influence of formal minimum wage legislation upon higher remuneration in informal employment in Brazil is recognised by Neri, Gonzaga and Camargo (2001:78) and Medeiros (2015: 289) discussed in chapter 2 also identified by Groisman (2014: 100) and Lemos (2009:22). Boeri, Garibaldi & Ribeiro (2010:27) identify a similar complementarity in Argentina. The neglect of the relationship between formal legislation and informal employment is therefore a significant weakness of the deregulation approach.

The construction industry case study similarly finds interdependency, overlap and co-existence of formal and informal employment relationships. Rodrigues Costa's (2013:147) study of construction sites in Belo Horizonte found workers to be well aware of the costs and benefits of informal productivity *por metro* working agreements or a formal employment agreement workers called 'the union wage', with a preference for the lower wages and greater stability offered by regulated work when available.

Workers interviewed as part of the fieldwork for this research project demonstrated preferences for both the lower remuneration and stability of the formal employment contract (On-site interviews Paulo's firm 2013) and greater remuneration from unregulated work including self-employment (Observations and interviews Cefet-MG Progest 2013). The latter resembling what is described in the literature as the 'upper-tier' informal employment (Fields 1990 in Kucera and Roncolato 2008:321). This is consistent with Almeida and Carneiro's (2012:64) findings on Brazil that find 'lower paid formal sector jobs become attractive to some informal workers'.

Consistent with the approach and parameters on regulation presented in this first section of the chapter, the relationship between the informal and formal sectors in the construction case study can be described as one of interrelated complexity rather than simplistic and reductionist dichotomies. Analysed in more detail in the second half of this chapter, evidence demonstrates the coexistence of regulated and unregulated work within the same supply chain and even the same firm. This again reinforces the idea of systemic incongruity even within the individual workplace.

The next section discusses labour market regulation in the Brazilian national system. Despite this thesis's rejection of the deregulation/World Bank/Botero *et al* approach and its implied negative impact of labour regulation, it still warrants further discussion given its persistent influence in policy debates. The deregulation ideology or agenda and its influence represent something of a 'relevant institution' of particular significance to the Brazilian model. A model categorised by the Botero *et al* (2004:46-47) study as having one of the world's most regulated labour market; data subsequently cited by Schneider (2013:173), Pastore (2005:31) and the World Bank DBRs. Otherwise the more complex 'regulatory indeterminacy' ILO/Lee and McCann (2011 & 2014) parameters are applied to consider the observable issues of labour market regulation in Brazil.

6.2 Regulation of the Brazilian labour market

Formal regulation of the employment relationship in Brazil contained within the *Consolidação das Leis de Trabalho* (CLT), health and safety laws (*Normas Regulamentadoras* - NRs) and legally enforceable collective bargaining agreements (CBAs), hereby referred to as the *legislation*. A detailed analysis of the contents of the legislation is not within the scope of this research project. The contestation of the deregulation ideology in the previous section does not imply a defence of the highly

legislated Brazilian system or negate the existence of any potential for equity enhancing reforms to the legislation. From an institutional perspective and supported by fieldwork observations, the focus of this chapter is to seek explanations for the widespread noncompliance contributing to ‘regulatory indeterminacy’, suggested here to impede more coordinated outcomes and negatively effect the quality of employment.

Following the discussions in the previous section, formal legislation is one of a number of institutions that influence the employment relationship within a complex system. Predictably, Brazilian legislation is much criticised by the deregulation school as over-regulated, ‘rigid’ and archaic (citing the 1930s origins of the CLT see the Economist 2011 & 2016 op cit) and even as the main obstacle to improved economic development (Schneider F. & Enste 2000:108 and Perry et al 2007). As already argued in this thesis, the trajectory of Brazilian development since 2003 demonstrates considerable socio-economic improvements combined with sustained economic growth and increased or recovering trade union influence, all *within* the constraints of the existing legislation. This trend runs contrary to the deregulation school’s basic premises on the consequences of labour market intervention.

Evidence from the recent development trajectory of the Brazilian economy, the ‘inclusive decade’, further weakens the deregulation arguments and criticisms of Brazilian labour legislation. For example, Bosch, Goñi and Maloney (2007:26) attribute the unemployment and increased informality in 1990s Brazil to the increase in labour rights over ‘several dimensions of the Constitutional reform’ in the 1980s. This position not only suffers from the problems of over simplicity and reductionism of similar indexes discussed in the first part of the chapter, it also neglects other cyclical and macro-economic reform variables outside of the scope of LMIs. Berg (2010:9 emphasis in original) observes that the deregulation argument cannot explain or runs contrary to the observable trends in the 2000s where formalisation and wages increased ‘in spite of – or perhaps, *as a result of* increased regulation or intervention in the labour market’. Cook (2012:266) speculates that a recent lack of academic attention upon contemporary Latin American labour markets may be related to previous unsuccessful forecasts of ‘labor’s secular decline’.

As already examined in chapter 2, Berg (idem: 23) identifies five factors contributing to the increased formalisation in Brazilian labour markets two of which correspond to greater de facto regulation of employment ‘improved labour inspection and new approaches to

formalization’ and ‘greater legal awareness and respect for the law’. Two of the remaining factors: favourable macroeconomic environment and reduced labour supply are arguably cyclical factors also neglected in the reductionist deregulation arguments. Only the contribution of the new *simples* tax arrangement, embraced by Pastore (2005:20), for small and medium enterprises has any consistency with deregulatory approaches.

To argue that the observed sustained socio-economic improvements in 2000s Brazil are the result of more de facto regulation would be based upon the same misleading reductionist logic of the deregulation school that argues in the opposite direction. As already discussed, it is dependent upon a complex set of complementary institutions of which the formal legislation is but one. An oft-neglected aspect of the relevant institutions is their history or path dependency.

As argued and concluded in chapter 3 on the history of Brazilian LMIs, two distinctive paths co-exist and interact in contemporary Brazil. The first is the initial conditions or regressive path dependency linked to slavery and exploitation. This path is characterised by an extremely low threshold for labour conditions and persistent and generalised noncompliance with any existing legislation – the *para ingles ver* institution. The second path relates to the introduction of LMIs in the 1930s, the CLT system still in place today associated with the promise and expectation of considerable labour rights.

Criticisms of the existing CLT system as rigid, archaic and/or anti-modern are rejected here for the following reasons: Firstly, the lack of recognition of the influence of the historically embedded practices that pre-date the CLT system, noncompliance in particular. The CLT path did not displace the regressive path as Levine (1998:112) describes: ‘rules were grafted onto traditional political practices’; arbitrary, authoritarian and paternalistic practices described by Cardoso (2010:19) as ‘hostile to most Brazilians’ and distant from the CLT ideal. Ronconi (2015:23) identifies a relationship or complementarity between colonial legacies of labour exploitation and ‘stringent labour laws in an attempt to buy social peace’ he also observes a tendency for countries with such ‘stringent laws’ to enforce less.

The argument here from a path dependency perspective is that factors contributing to the noncompliance or ineffectiveness pre-date the labour legislation itself. The majority of the workforce was excluded from the ‘stringent’ labour protections (see ch.3 figures 3.1-3.3) for most of its 75-year history. This historical element is neglected in analyses that

presume the existence of widespread compliance with legislation and ahistorical/static approaches that neglect the presence of continuities. The latter is consistent with Marshall (2007:15) on noncompliance in Latin America who concludes that ‘cultural norms relative to corruption and enforcement should be also taken into account to explain compliance levels’. Cultural norms argued here and in more detail in chapter 3 to be embedded in the 19th century rather than the much-evaded labour legislation per se.

The historical inconsistency between the extensive rights of the CLT and the observable reality for workers must take into account *enforcement* as a key contributor to the effectiveness of the formal legislation. French (2004:97) recognises the potential of the CLT as the ‘world’s most progressive labour legislation’ though argues that it was designed to be unenforced and its survival across the 20th century is dependent upon this deficiency as genuine enforcement would have provoked ‘profound conflict’ between government bureaucracy and powerful private interests’.

The ‘archaic and rigid’ criticisms of the Brazilian labour legislation neglect the issue of its widespread non-enforcement for the majority of its existence. Cardoso and Lage (2007:77) identify improved labour inspection procedures since the 1990s, also recognised by Berg (2010:17) and identified as contributing to the socio-economic gains of the 2000s. It may be that enforcement only started being taken more seriously since the emergence of a strong civil society led by the trade unions and related democratisation process and constitutional reforms of the 1980s.

The recent improvements in inspection need to be contextualised. Similar to the wider context of improving social indicators in Brazil in the 2000s, the society is starting from a very low threshold in terms of social equity levels (see ch. 3, IPEA 2012:8). This is also the case for enforcement improvements through inspection. The continued precariousness and limited impact of inspection are acknowledged by Berg and Cardoso & Lage (op cit) when citing the recent improvements.

Anner (2007:44) and Berg (2010:18) highlight the low and decreasing number of labour inspectors in Brazil with the number well below half that recommended by the ILO’s convention 81³² to which Brazil is a signatory, leading Berg (idem:24) to argue that ‘the workforce would be well served by dedicating more resources to inspection’. Extended

³² Article 81 recommends 1 inspector per 15,000 workers, as of 2013 Brazil had 0.45, five times less than Chile (ILOStat 2016)

fieldwork interviews with business, state and union leaders evidenced significant concern with the precariousness of human inspection resources.

In an extended interview Sinduscon SP vice-president Ishikawa (2013: interview) was uncritical of existing employment regulation and very supportive of the robust and detailed health and safety specific legislation (NR-18). His main grievance was the MTE's scarce inspection resources to deal with the negative effects of informality in the industry. He describes enforcement as the main weakness of existing legislation, with only eight MTE labour inspectors for the entire City of Sao Paulo with 400,000 workers in the light construction sector alone. A similar complaint made more recently by the Força Sindical (2016) peak association highlights only six inspectors for 87 thousand companies spread across 15 municipal areas of the Osasco region of Sao Paulo.

Consistent with observations made by Almeida & Carneiro (2012:69) and Cardoso & Lage (2007:91), Ishikawa further laments that when the scarce MTE inspection resources are mobilised, it is predominantly to inspect large-scale construction activity in the formal sector. The informal sector, where the majority of labour rights and health and safety irregularities are concentrated is essentially bypassed by the State's inspection activity.

In separate interviews union lawyer for Marreta-MG, Julio and Conticom president, Claudinho (2013) defend the formal legislation and describe the weakened inspection and enforcement resources of the MTE as an intentional strategy on the part of the State. Julio describes it as 'intentional and orchestrated'; Claudinho explains that a government dominated by business interests, Congress in particular, have a vested interest in weak inspection and enforcement institutions and have created convenient enforcement mechanisms. Both labour representatives described enforcement as weakened even further by the prevalence of inactive pelego unions (see ch. 5 on representation, peleguismo and the union as an extra layer of regulation).

The national trade union for labour inspectors (Sinait) 2012-13 campaign focussed upon the urgent need for more inspectors to be recruited, a bureaucratic process subject to Presidential approval and also an ongoing demand of striking PAC workers (Sinait 2012). The union observe that there were 2,741 active labour inspectors, the lowest number for 20 years and 902 short of the 3,643 required by national law (Sinait 2014). Anner (2008) cites complaints made by the regional association of inspectors for Rio Grande do Sul who,

consistent with the idea of willing neglect of enforcement, observe that the labour inspectorate has suffered from

heavy political interference aimed at preventing inspection: political authorities, who are likewise landowners, have close links with the military police, which protects their interests, turning a blind eye to their actions (CEACR 2005: 309 in Anner 2008:50)

The low number of inspectors available to the MTE is in breach of national law and international ILO conventions 81 and 129 to which Brazil is a signatory. A 2012 IPEA study, compiled in cooperation with the labour inspectors' union and presented in a formal complaint made to the ILO, estimates that a further 5,273 labour inspectors are required over four years in Brazil to adequately combat the problems of workplace accidents (Barbosa, Corseuil & Reis 2012:22). SINAIT (2014) cite the 700 thousand accidents and 2,700 fatalities per year in the workplace as a direct consequence of the lack of human resources to adequately inspect workplaces in Brazil.

Labour inspector Jeritza Juca, currently working as the head of the Labour Relations Secretariat for the state of Ceara (2013: interview), believes that the alarming figure of 2,741 auditors actually underestimates the seriousness of a situation she describes as chaotic. Many of the inspectors considered 'active' may be working in alternative supervisory or leadership roles, like in Juca's own case, and a significant number may also be on long-term sick leave. Juca describes the demand for more inspectors as the main struggle for the professional category and adds that she has never seen conditions as bad for the MTE since 2003 and cannot understand the thinking of those in power throughout this period. When presented with Julio and Claudinho's suggestion of intentionally weakened enforcement, Juca agreed that there did seem to be a vested interest in a weak MTE in her professional opinion.

The idea of intentional neglect of enforcement is consistent with French's (2004) analysis of the history of labour legislation in 20th century Brazil and the persistent exclusion of the majority of the workforce from the formal employment protections described across chapter 3. Intentional and persistent noncompliance is also recognised in 20th century European labour legislation (Rogowski 2015:157) and Ronconi (2015:23) observes a 'stringent labour laws and very weak enforcement' relationship in less developed countries with a historical legacy of exploitative employment relations. Argued in chapter 3, this corresponds to the 'drift/intentional neglect' type of Streeck and Thelen's (2005:31 see

ch.1) mechanisms of gradual change, though in this instance the neglect of enforcement serves to impede change and reinforce continuities with the regressive path.

Cardoso & Lage (2007) argue convincingly that the greatest problem is not the formal system itself but the way it operates in practice. Considerable attention is given to the Labour ministry’s inspection resources and procedures already discussed, though it is recognised that this is one of a set of relevant enforcement institutions. According to the authors (p.23) for capitalists to respect workers’ rights they are reliant upon four institutions; Trade Unions or ‘the capacity for collective action’, the activity of the State regulatory body (MTE), the Labour Courts (*Justiça de Trabalho*) and the Labour Public Prosecutor (MPT). The authors highlight the ease in which businesses can ignore and bypass legislation presenting a simplified rational choice/game-theory scenario shown in figure 6.1. Noncompliance with legislation is presented as a rational choice when the benefits of disobeying the law, the likelihood of detection and punishment and the severity of such potential sanctions are taken into account.

Figure 6.1 Compliance with labour legislation structure of opportunities

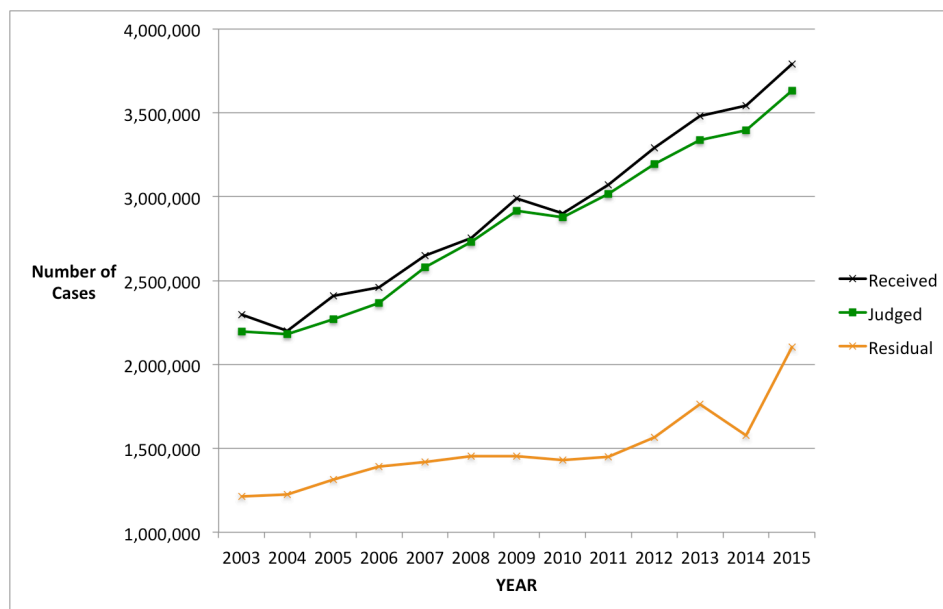
		Level of severity of sanction	
		High	Low
Risk of detection and being sanctioned	High	1. Comply	3. Noncompliance
	Low	2. Noncompliance	4. Noncompliance

Source: Cardoso & Lage (2007) p.71

The reality of enforcement and compliance described by Cardoso and Lage is a key contributor to the networks of mistrust argued in this thesis to characterise employment relations (see ch. 4, figure 4.1). The difficulty for workers to take action against their employer is inherent to the employment relationship though can be argued to be heightened in the Brazilian context. A context characterised by pervasive informality, poverty and a historically low threshold for employment conditions. The formal protections have represented something of a utopia or aspiration rather than a widely-respected right (Cardoso 2010:40). Based upon figure 6.1 and Cardoso & Lage’s analysis; it is likely that employers and workers are fully aware of ongoing noncompliance with employment law though employees will only take action at the end of a period of employment.

The scarce inspection and sanction resources of the Labour ministry are dependent upon complaints from workers and/or their representative unions. Concluded in the previous chapter on representation, the trade union as an extra layer of regulation is argued to have an effective role in the legislated Brazilian LMI context. Trade unions contributing to effective enforcement is similarly recognised by Anner (2008:43), Weill (1999:340) and Lee and McCann (2014:23). Despite the existence of resourceful trade unions this potential complementarity is weakened by the widespread absence of representational mechanisms in the workplace (plant-level) and the prevalence of inactive and complacent pelego unions discussed in previous chapters.

Figure 6.2 Cases Received by the Labour Courts (Brazil 2003-2015)



Source: TST (2016b) based on Cardoso and Lage (2007:111) with figures for 1980-2003

Even if union and MTE inspection activity were intensified it would only add to the millions of cases slowly going through the labour courts demonstrated in figure 6.2. This context of systemic uncertainty or instability is adequately captured by Lee and McCann’s idea of regulatory indeterminacy. Within such a context the ABC standard of labour relations discussed in more detail in chapter 4, again stands out as something of a labour market ‘pocket of efficiency’; where working conditions are rarely an issue and resolved on a day-to-day basis by plant-level representatives (Rodrigues 2002:151-152) and workers will halt production almost immediately when irregularities are detected (Aguiar 2013: interview).

The extraordinary and internationally unprecedented number of employment cases going through the labour courts per year shown in figure 6.2 are regularly cited by advocates of deregulation in Brazil. Consistent with more general arguments this position appears to be overly reductionist and negligent of enforcement, compliance and contextual aspects of regulation. The deregulation arguments based upon the amount of litigation are further weakened when the nature of the majority of the cases is considered. Based on data from Rio de Janeiro courts, Cardoso (2003:181) observes that the ‘vast majority’ of cases (over 90 per cent) were related to straightforward payments of severance entitlements. The simplicity or non-complexity of the cases is similarly implicit in the fact that 80 per cent of the cases are resolved at the first hearing (CNJ 2015:13).

All union legal representatives consulted relate that the vast majority of cases they pursue through the courts are decided in favour of the employee³³. The extremely high and increasing levels of labour litigation can be described as symptomatic of complex systemic difficulties related to uneven and fragmented enforcement institutions contributing to the incongruous nature of LMIs in the Brazilian variety of capitalism. Employers and workers are in something of a noncompliance equilibrium related to the rational choice scenario demonstrated in figure 6.1, described by Cardoso (2003:125) as a business strategy of ‘non-payment of labour rights and waiting for the worker to litigate against them’. Farias (2013: interview) similarly describes this situation observing that if only seven out of ten employees make a complaint and take their employer to court the business would be making an overall gain.

6.3 Regulation in the Brazilian Construction Industry

This second half of the chapter analyses regulation and enforcement issues in the construction sector drawn from fieldwork research and other compatible analyses. As per discussions in previous chapters, noncompliance and related outcomes dominate industrial relations sustaining the inconsistency between the formal legislation and workplace reality and reducing the possibility of more pro-active coordinated institutional arrangements.

Identified in chapter 4, there is evidence of effective and responsive cooperative initiatives at the national level of collective bargaining in the long standing technocratic tripartite Committee for Construction Industry Working Conditions and Environment (CPN) that

³³ Sintepav-PE Lawyer Federico (2013:interview) observes an almost 100 per cent success rate with up to a thousand dismissal and severance cases in SUAPE the one or two that weren’t decided in the employee’s favour was due to the workers in question not providing requested documentation.

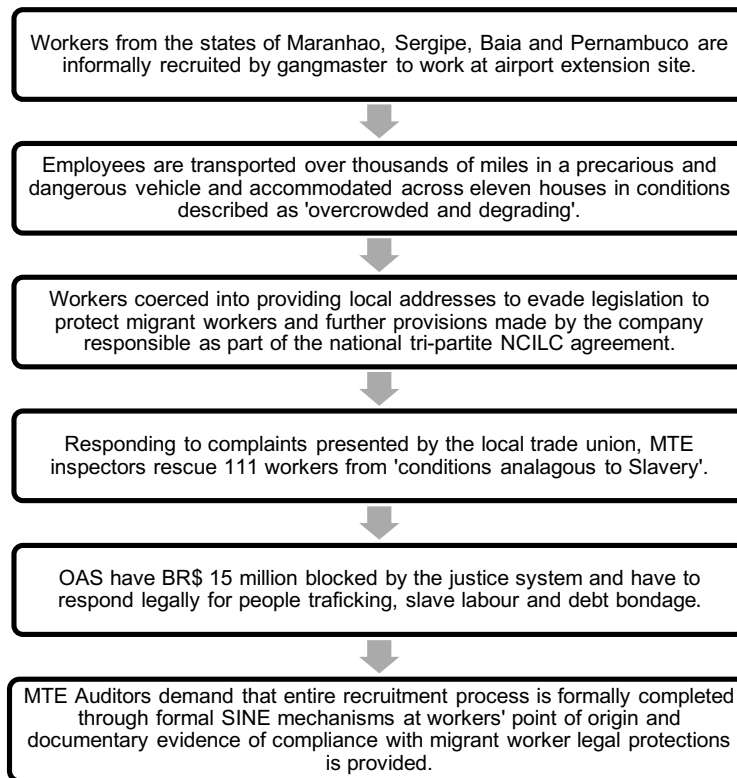
contribute to health and safety rules (NRs) and more recently a prompt coordinated institutional response to the unrest witnessed across the PAC sites with the creation of the National Commitment for Improved Labour Conditions in the Construction Industry (NCILC) signed in March 2012. However, in the Brazilian system there are observable problems related to implementation (enforcement) and institutional coherence (fragmentation), therefore tinkering with the design of formal legislation cannot be expected to contribute to greater compliance and related stability.

This is argued to be the case with the NCILC initiative described in more detail in chapter 4. The majority of the high profile voluntary initiative is repetition of existing legislation and a commitment to use existing formal mechanisms for recruitment and skill certification purposes (SINE and Certific) respectively. Industry reports observe that its effectiveness has been limited (Dieese 2013:15, Ganz Lúcio & Scherer 2012). Business representatives consulted (Sinduscon's Ishikawa & Ferreira, Cyrela's Ademilson and Camargo Correa's Marlon 2013: interviews/observation) believed it to be limited in relevance to the Rio Madeira PAC sites. Their mistrust of the SINE and Certific persisted post NCILC, along with the distinctive preference for informal recruitment mechanisms (*Rádio Peão*) even for large, high-profile public projects.

One example of the lack of impact of the NCILC and related difficulty in transforming legislation into widespread practice is summarised in figure 6.3 with 111 workers rescued by the MTE from degrading living conditions on the Sao Paulo – Guarulhos airport extension. The project involved 4 thousand workers at Latin America's busiest airport and was overseen by one of Brazil's largest and most high-profile construction companies, OAS, in the country's most economically and institutionally developed region.

Both the problem and institutional response to the Guarulhos case are indicative of the difficulty of effective implementation of labour policy and initiatives devised at the national level. The subsequent prescription made by the MTE to the main contractor (OAS) was to hire workers at their point of origin using the formal SINE recruitment system. OAS had previously agreed to this measure as part of the tri-partite NCILC initiative. The goal of full compliance with the NCILC recommendations at the Guarulhos airport site is publicised in the 2011-2012 sustainability report of the company responsible (OAS 2012:49).

Figure 6.3 Case: Sao Paulo Guarulhos airport extension – Process of informal recruitment to ‘conditions analogous to slavery’ and MTE Intervention



Source: Wroblewski (2013), Sinduscon SP (2013) & Sindcongru (2013)

The OAS example is far from being an isolated example, such cases generally make the headlines when they involve workers on high profile projects such as airports, the World Cup, Olympics, or well-known domestic and international firms. Analysis of numerous reports demonstrates that the problems are with one or more of the subcontractors within the supply chain. Union officials consulted describe the large companies as ‘non-problematic’ in meeting relevant legislation for their direct employees. The productive windows of larger construction projects may involve hundreds of outsourced companies. The OAS/Guarulhos case is evidence of the difficulties these companies have to ensure the compliance with employment legislation across outsourced activities. This contributes to regulatory indeterminacy across the supply chain.

6.3.1 Outsourcing

From the union perspective and related to the supply-chain compliance difficulties described above, Marreta-MG president David Quirino (2013: interview) identifies outsourcing as representing the construction industry’s greatest problem. In his experience the smaller outsourced firms bring workers from the poorer regions of the country to work

in the cities with no consideration for the extensive welfare legislation in place, leaving them to go hungry in precarious accommodation and quite often abandoning them thousands of miles away from home when any difficulties emerge.

Such unreliable firms or opportunistic gangmasters within the construction industry are commonly referred to as *gatos*. The informal recruitment and outsourcing practices of the *gatos* contributed to the dramatic breakdown of industrial relations across the PAC sites. The subsequent recommendations of the NCILC initiative (recruitment at point of origin and use of the formal SINE and Certific systems) were specifically aimed at removing this practice and its negative consequences from the construction industry.

The problem of irregularities in outsourced companies, highlighted by all union representatives consulted³⁴, is based upon accumulated experience. The unions observed that there are minimal issues with irregularities in employment with the larger companies such as OAS, it is further down the supply chain of the same firms that noncompliance resulting in a high incidence of accidents and what the legislation describes as ‘conditions analogous to slavery’ is identified.

Within a context of a high number of fatal accidents within the construction sector, 450 per year and 16.5% of all formally registered workplace deaths³⁵ (INSS 2013 in Filgueiras 2015:1), there is a clear relationship between outsourcing and the failure of employment protections. This is recognised by the Labour Ministry and Trade Unions. The MTE director of health and safety Marinho states that ‘subcontracted workers are the most exposed to the risk of accidents’ and that this risk is aggravated by firms outsourcing the more dangerous activities to companies that rarely have well-elaborated accident prevention plans in place (Pyl 2012). Outsourced workers accounted for 80 per cent of fatal accidents at Petrobras between 1995 and 2013 and according to the MTE, 90 per cent of workers rescued in the 10 largest anti-slavery cases (Locatelli 2015).

The authorities similarly recognise the issue of precarious employment and related health and safety irregularities in outsourced firms. In an initiative similar and parallel to the NCILC in 2013, the Labour Public Prosecutor (MPT) urged the eight largest construction companies (MRV Engenharia, Rossi, PDG-Goldfarb, Odebrecht, Brookfield, Cyrela,

³⁴ In particular conversations during the observation of the *homologação* (employment termination verification and sign-off) teams at Marreta PE and Sintepav-PE Pecém branch

³⁵ Data on industrial accidents argued to be problematic by (Takashi et al 2012:978) with a recognised tendency of underreporting of approximately 90%.

Gafisa and Direcional) to sign up to a Term of Behavioural Adjustment (TAC) to provide greater legal protections and guarantees to outsourced workers and eradicate the use of informal work (PRT -15ª Região 2013).

Outsourcing is a divisive issue between business and labour representatives. This is evident at the sectorial level where Ishikawa and Ferreira (2013: interviews) are fully supportive of outsourcing and its logic, particularly within the construction industry. All union and state officials consulted were in opposition based upon their accumulated experience in dealing with the consequences of noncompliance by outsourced firms. Similar division is evident at the national level on advanced legal reform proposals PL 4330 to make outsourcing easier. The CUT and National Association of Labour Prosecutors (ANPT) fervently oppose the deregulatory measure and corresponding business organisations such as the FIESP and CNI are in favour. Union officials consulted had concerns for the wider effect upon the potential for decent work. In construction Quirino (2013) described the proposals as representing the legalisation of existing widespread illegality³⁶.

Analysis limited to the formal legislation and neglectful of the important variables of enforcement and compliance would not capture the relevance and controversy of outsourcing. In construction at least, independent of whichever part or company within the supply chain the worker is employed – they are protected by the extensive legislation and represented by the designated union independent of affiliation (see ch. 5 on the unicity system). Legally the main subcontracting company is held responsible for the rights and welfare of workers in the outsourced firms through the subsidiary and solidary responsibility laws. In formal legal terms, outsourcing does not allow for companies to evade the protective legislation³⁷. They are still held responsible for the compliance of the subcontracted firms. Existing legislation ensures that subcontracting companies are liable for employment contributions when the resources of the subcontractor are exhausted, and solidary responsibility obliges the subcontracting party to meet its labour obligations when it has been negligent in auditing outsourced firms' compliance (Camera dos Deputados 2013).

³⁶ Quirino and director Zé Luis cited the case of the MRV firm one of the country's largest residential construction firm that illegally outsourced all their productive activities. The firm were subsequently prosecuted by the Labour Public Prosecutor (MPT) for irregularities dating back to 2007, fined BRL 6.7 million to and made to sign a Term of Behavioural Adjustment (TAC) committing to an end to illicit outsourcing (PRT 15ª Região:2013).

³⁷ One way of avoiding labour legislation is to register individual workers as subcontracted companies, meaning all the substantial rights derived from the employment relationship are removed. This is a similar phenomenon to the false self-employment that predominates in the UK construction industry, described by the main union as 'undoubtedly, the biggest employment challenge in construction' and 'immoral though not illegal' (UCATT 2014). Within the more regulated labour environment of Brazil, disguising relationships of employment is illegal even with the "consent" of the worker in question (Tribunal Superior de Trabalho 2012). Such a practice at one site involving twenty workers was under investigation by the Sinticom union when visited in 2013.

6.3.2 Internal Business Compliance Practices

This sub-section considers regulatory indeterminacy based upon observations and first-hand accounts with professionals responsible for compliance within the supply chain of a given employer. A week was spent observing the activities of Paulo³⁸ (2013: observation and interviews), a professional responsible for internal site inspection for a medium size residential construction company in a provincial town 100 kilometres from the large state capital. It was Paulo's role to monitor compliance with the relevant legislation and company policy across the supply chain. With fifteen years' experience in the industry his attitude to inspection was to 'play things by ear', seeing improvisation, flexibility and creativity as key attributes to his role. He admitted at times this means turning a blind eye to some irregularities otherwise the company would end up with no workers, having ostracised or fired all their employees.

On the first site visited on the Monday, the construction of a twenty-storey residential block, approximately half of the employees were absent from work without authorisation and a further four sub-contracted employees present were prohibited from entering the tower block construction as they were intoxicated. The foreman observed that this was commonplace, particularly on a Monday with the collective bargaining agreement allowing for four unauthorised absences per month without disciplinary sanctions. Speaking about the absences later with the HR manager and company director they expressed frustration with the labour union's inflexibility for not accepting an offer to exchange the unauthorised absence clause for health insurance in the last round of collective bargaining as 'they cannot be seen to be bargaining away acquired rights'.

The frustrations expressed with the 'union's inflexibility' were not extended to the general CLT and NR legislation. The HR manager described meeting regulations to be a challenge made more difficult as workers cannot be relied upon to monitor their own entitlements and often have to be chased or even disciplined to make sure their documentation and records are in order so the company would not be liable to sanctions in the case of any regulatory inspection or audit.

Activities at four of the company's construction sites were observed. The first site was overlooked by the MTE offices and was a model of compliance with health and safety and employment regulations. Another site was visited in a more remote area on the outskirts of

³⁸ Pseudonym

the town, neighbouring irregularly constructed housing settlements³⁹. The building project in question was a beneficiary of state benefits in the form of subsidised credit as part of the *Minha Casa Minha Vida* (MCMV) popular house building programme. Although there were no obvious immediate safety hazards on the site, the conditions and facilities were in clear noncompliance with the requirements of the NRs and CBA with over half of the employees working without uniforms on informal day-labour agreements from the neighbouring community.

Paulo candidly admitted that the use of informal labour and noncompliance was ‘conscious negligence’ by the company. Taking into account the scope and relative inactivity of the local trade union and the low probability of an MTE inspection and local availability of casual labour, little effort was made to guarantee compliance at this more remote site. The irregularities at this one site notwithstanding, general compliance and efforts to ensure worker well-being within this company appeared high. Registered employees interviewed on the main sites described being very satisfied with their conditions of employment and the working culture of the company in question.

On another of the company’s MCMV sites, a subcontractor with five employees from the less-developed State of Maranhão was carrying out the rendering of the buildings. Upon arrival, the subcontractor had made no provisions for the accommodation of his team of migrant workers expecting them to sleep in the partially constructed buildings, use the portable toilets and wash with an outdoor hose. Despite being a long-standing cultural norm in the industry, such suggested living arrangements are in clear breach of numerous NR-18 industry-specific regulations. Detection could result in accusations of conditions ‘analogous to slavery’ from the authorities and media mirroring the process of events described in figure 6.3. Paulo intervened finding compliant accommodation for the outsourced workers at the expense of the subcontractor who was initially resistant to the idea stating ‘his boys were used to it’ and ‘didn’t mind’ such conditions.

Paulo explained why he and the company make a conscious effort to provide for their employees’ needs; the account was informative in the sense that very little reference was made to the possibility of detection and sanctions by the trade union and/or MTE.

Neither I nor the company would consciously deceive or let our employees be exploited, this is a small town. I see these people in the street with their children, we go

³⁹ Commonly referred to as favelas

to the same church on Sundays, not only would it be wrong, it's not possible in a small provincial town like this one.

The influence of this Durkheimian collective consciousness described by Paulo seems to have a greater influence upon activity than the formal constraints of the relevant institutions. The local union was described by a director of Paulo's company as irrelevant; workers interviewed seemed quite distant from their designated representative institution viewing it as having a purely administrative function to sign off on severance payments. This relationship differs significantly to that observed from the activity of the six unions observed in larger cities.

Such community-related pastoral or paternal constraints are arbitrary and may not be considered in non-local employers' decision making. With migrants composing the majority of construction workers in the state in question many workers may not benefit from this informal safety net. Consequently, this communitarian sensitivity cannot be expected or relied upon in other regions, in the larger cities and/or larger companies and construction sites like the Guarulhos airport extension case and PAC sites. Nonetheless, were widespread compliance with all the relevant existing legislation to characterise the employment relationship there would be no need to depend upon the arbitrary 'good nature' of employers.

The example of the operation of Paulo's company in a city of 100 thousand people arguably represents something of an ideal type or scale model of the construction industry in Brazil during the high growth of the 'inclusive decade' period covered in this research. Perhaps more so than the high-profile PAC examples cited across this thesis. A medium-sized firm building standard residential blocks of apartments and condominiums aimed at the 'new middle class' and related consumption boom, assisted by state bank subsidies through the Minha Casa Minha Vida programme, characterises the industry across Brazilian cities in the 2010s.

Within the employment practices of the *same* company there is evident inconsistency of enforcement and compliance or regulatory indeterminacy. This is evident between the full compliance on one site and the textbook informality elsewhere. Within the relatively short supply chain there is similarly evidence of tensions between formal compliance and widely accepted practices evident in the subcontractor's attitude on acceptable accommodation for his team and the need for the contracting company to intervene. This represents micro-

level evidence of the coexistence of compliance with the ‘stringent legislation’ and practices characteristic of the historically-embedded low threshold for decent work. The inconsistency is sustained by the availability of workers from the less-developed regions of the country (Maranhão in this case) and sectors of society such as the informal day labourers from a more deprived area of the city.

Similar dynamics and tensions are apparent from the accounts of two social workers responsible for inspecting working conditions on supply chains across larger construction sites. The role of social worker within construction companies is a relatively recent development and arguably represents part of the trend of improved inspection and greater legal awareness recognised by Berg (2010:12). Laura⁴⁰ (2013: interview) was working on the construction site of a shopping centre in one of Brazil’s largest cities involving 1,500 construction workers and 50-60 different subcontracted companies. Her responsibilities involved delivering the initial six to eight hours of obligatory health and safety training for all workers new to the site as well as inspecting safety and welfare conditions across the supply chain. Carolina,⁴¹ (2013: interview) held a similar role in the same region for the consortium responsible for the construction of one of the main World Cup stadiums.

Laura describes being supported by quite rigorous internal standards established by her high-profile employer to complement the already comprehensive items established by law. She however admits that there is still a lot left to be desired in terms of compliance in the workplace, particularly across the outsourced companies. Consistent with Quirino’s observation, Laura notices that sub-contractors bring workers long distances from the poorest parts of the country and leave them in sub-standard living conditions which are difficult to monitor given their off-site locations and the short productive windows of some firms. As workers affected are unlikely to complain, Laura has to proactively seek out such irregularities, preferably before they are detected by the local union or MTE, the former observed to be a more ‘rigorous detective’.

Carolina’s World Cup site involved 3,000 workers, two-thirds migrants accommodated on-site. She is overall very positive and proud of the working conditions established. Given the high profile of the site it saw a lot of union activity and was inspected on twenty occasions by the MTE. Consistent with Laura’s account, Carolina argues that her internal inspection duty is challenging due to opportunism amongst sub-contractors trying to avoid

⁴⁰ pseudonym

⁴¹ pseudonym

their legal responsibilities hoping that they can avoid detection or sanctions from the contracting company until their services have been completed.

Both Laura and Carolina recounted what they described as aggressive interventions by the local trade union. The union representatives involved (also consulted) attribute the number of MTE inspections and related good working conditions described by Carolina at the World Cup site as the result of their militancy and interventions in response to reports of widespread irregularities and wildcat strikes at the start of the project.

Laura describes two-way pressure in her role on the shopping centre, that of the local union, likely and willing to intervene and support stoppages in response to irregularities reported by workers and from the managerial professionals on-site who are hostile to safety and welfare interventions when they are deemed to go against productivity and related deadlines.

Similar to Paulo's observations, Laura admits that it is impossible to respond to all irregularities observed and has to regularly turn a blind eye to avoid bringing production to a standstill. A regular grievance from the unions is that employers cover up accidents to avoid the obligatory reporting to the relevant authorities⁴². Laura admits that this is unfortunately commonplace even in the relatively more regulated environment of her company. On trade union interventions, she expressed considerable relief that her next location was outside of the designated region of this more combative union. Based upon reputation and previous experience she doubted there would be much pressure from the relevant union at the site of the next project.

Laura and Carolina's accounts on compliance and enforcement in high profile large construction sites and extensive supply chains are consistent with those observed in Paulo's company on regulatory uncertainty, albeit to scale. The challenges of ensuring enforcement are evident with productivity pressures from within the firm itself and the unevenness of regulation across the supply chain with some subcontractors actively seeking to evade detection. The influence of union and MTE activities upon internal inspection activities emerges as a relevant variable and supports the idea presented in the

⁴² Marreta MG directors (2013) complain of a widespread practice of employers pressuring or encouraging the emergency services to report deaths as having taken place in the ambulance or at hospital to avoid an automatic embargo of the site, this was said to occur even in cases where the body had lain dead on-site for hours before the arrival of medical staff. Camargo Correa's Marlon (2013) recounted a popular anecdotal story in the industry on the construction of a residential tower where the firm responsible dressed a suicide victim in a uniform and all the appropriate personal protection equipment (PPE) before the emergency services arrived as they had mistakenly believed it was an employee that must have fallen whilst working on an informal and illegal overnight shift.

previous chapter of the union as an extra layer of regulation. However, Laura's account of the next site being in a region where the union are less active suggests that this type of union contribution towards regulation is similarly fragmented, uneven and unpredictable.

The idea of uneven regulation causing uncertain and inconsistent employment conditions across the supply chain is reinforced by the accounts from business inspection professionals Paulo, Laura and Carolina, the information received from trade unions and the reports on the incidence of irregularities and consequences of noncompliance amongst outsourced firms. It is a challenge for firms to regulate their own supply chains and there are observable tendencies to ignore and underreport irregularities. The potential for unions and the MTE to contribute to improved widespread compliance is constrained due to their presence being outside the workplace together with the issues of *peleguismo*, fragmentation and scarce resources already discussed in the previous two chapters.

The complexity and complementarities of context-specific issues contributing to regulatory indeterminacy cannot be attributed to a single-issue. As a result, the ideas of too much/little legislation, representativeness of unions, amount of inspection resources are all of relevance though considered in isolation they do not determine the observed difficulties in greater regulation. The CSP Pecem steel plant again represents an informative case study on this complexity, particularly as it is an example where union representation and state inspection have been onerous.

6.3.3 Regulatory Indeterminacy at the Pecem Steel Plant

As already discussed in chapter 4 on relations, the Pecem site has a workforce with an accumulated experience of previous on-site negotiations and industrial action, highly likely to take defensive measures against any payment or safety irregularities detected across the supply chain and offensive action for improved pay and benefits. A willingness to challenge the designated union if they feel they are not fulfilling their representational responsibilities was evident at the construction of the thermoelectric plant PAC site at the same location as part of the outbreak of widespread unrest in 2011.

Workers are represented by Sintepav-CE (see previous chapter on the evolution of Sintepav representation) whose active and resourceful representation is described by Dieese's Aguiar (2015: interview) as somewhat exceptional amongst Brazilian trade unions. The site-specific collective bargaining agreement has terms and conditions above

those envisaged by the NCILC, adherence to which was rejected by the Posco company at the start of operations (eyewitness account from Juca 2013: interview) and superior to any comparative agreements nationwide (MPT Public Hearing 2015).

Given the levels of unrest and related complaints from the mobilised workforce and active union, the state's labour and inspection institutions (MTE & MPT) have similarly been very active at the site. Ibiapina (*idem*) from the MTE identified unsafe working conditions and persistent irregularities even after 198 inspections, 600 detected infractions and sanctions upon 102 different companies between 2010-2014. The deregulation argument of rigid, excessive legislation is not applicable here as there is very little if any arguments to justify the flexibilisation of health and safety measures. Furthermore, many of the non-safety critical irregularities relate to straightforward wages and severance payment evasion (see ch. 4, table 4.4 - severance also dominates labour litigation cases more generally, see figure 6.2).

Rather than contribute to improved compliance, the Pecem case saw a breakdown of employment relations resulting in 150 days lost to strikes at a high cost. There is an evident inability to meet basic employment commitments despite the pressure from workers, union and the state. The weak link in this instance is the employers. Unorganised, unrepresented and fragmented across the supply chain of over one hundred companies, a local business union for heavy construction corresponding to Sintepav-CE was only authorised in 2016, months before the completion of the steel plant.

The Pecem case highlights the complexity of relevant regulatory factors. As already discussed, Cardoso and Lage (2007:23) identify four institutions upon which compliance with workers' rights depend upon: Trade Unions, the MTE, the Labour Courts and the Labour Public Prosecutor (MPT). At the steel plant, all four of these institutions have maintained a strong and active presence yet there has still been a breakdown in industrial relations due to endemic noncompliance (see ch.4 part 4.4.3). This suggests that regulation depends upon an even more complex set of institutional factors than those envisaged by Cardoso and Lage in their criticisms of reductionist analyses that solely focus upon the quantity of formal legislation. Some of these complex factors may be *outside* of the immediate LMI scope of this research and are discussed in the following section.

6.3.4 Regulatory Complementarities and Wider Systemic Influence

Considering CSP-Pecem as a scale model of wider labour relations highlights the complex set of interacting variables or complementarities necessary for effective regulation and its related stability to prevail. It should also be recognised that such outcomes are influenced by broader characteristics of the Brazilian system outside of the immediate LMI focus. Aguiar (2015: interview) is critical of the original price-sensitive concession to Korea's Posco with a bid billions of dollars below the competing tenders from Europe and the United States. He argues the large discrepancy in the value of the bids should have set alarm bells ringing and a lack of due diligence meant that subsequent labour problems in the supply chain were somewhat inevitable.

Three separate employment disputes originating from a public body withholding payment were observed during fieldwork. At a mediation session at the Belo Horizonte Regional MTE Office (MTE/DRT 2013: observation), one business owner had been unable to pay his increasingly hostile workers due to non payment by the state water company COPASA whose representative presented no justification for withholding payments other than mismanagement and indifference. A further two cases were observed in Fortaleza where large construction companies were said to be delaying completion of two high-profile public projects as the City Council was months in arrears with its contractual payment. The companies involved were receptive to union intervention and stoppages in the hope that it may pressure the authorities to make the outstanding payments. A return visit in 2015 found Marlon's Camargo Correa site, described by Sintepav-CE as a model of compliance in 2013, at a standstill as the Fortaleza City Council, Ministry of Tourism and PAC departments were in dispute as to who should finance the completion of the public infrastructure project.

The Sao Paulo Federation for Industry (FIESP)'s Construction Industry Department produced the report 'Responsibility with Investment - The Problem of Unpredictability in Construction Projects: Create New Laws or Adjust the Existing Ones'. The report, based upon business surveys, was in response to the widespread problem of delays and suspension of construction projects. Consistent with the idea of an incongruous system presented in this thesis, the main sentiment of the report is that the industry is held back by unpredictability. Fragmentation, incoherence and mismanagement of related *public sector* activities (regulatory, utilities, legal) described as slow, 'disarticulated and inopportune'

are cited (FIESP 2016:5,15). Consistent with the on-site problems observed in Fortaleza, an excess of bureaucracy contributing to delays in the release of funds is highlighted.

The majority of the business survey-based report attributes the difficulties to problems of public administration. Labour is only one of 10 issues attributed to workplace stoppages. Scarcity of skilled workers is cited as the main problem, related to increased wage costs without any corresponding increase in productivity. There is no mention of levels of employment legislation. Bureaucracy is cited as a problem general to the Brazilian system and it is unpredictability, fragmentation and the slow nature of relevant state activity that is cited rather than amount of legislation per se (idem: 20). This is informative, as the FIESP is the organisation most commonly associated with neoliberal thought and the related deregulation position on labour markets in contemporary Brazil.

The administrative indeterminacy or fragility observed permeates into labour relations. Issues outside of the immediate LMI focus of this research project are not discussed in any depth. However, the idea of wider problems in the Brazilian variety of capitalism affecting the regulation of employment is coherent with the arguments already presented. It reinforces the idea of the *complexity* of interrelated issues that influence regulatory outcomes. This in turn is consistent with the premise that deregulation arguments reducing the reality of the employment relationship to a consequence of the amount or rigidity of formal legislation are weak and misleading. It is worth highlighting that the levels of litigation shown in figure 6.3 exist elsewhere in the Brazilian polity. At the time of writing the construction of the Suape Oil Refinery in Pernambuco has been halted due to irregular payments between the state and large construction firms as part of the ongoing *Lava Jato* scandal (Jeronimo 2016).

Sinduscon SP vice-president Ishikawa's (2013: interview) main professional concern is the negative effects of the informal sector to all parties involved and he describes a successful shared agenda with the trade unions in Sao Paulo towards decent work and the combat of informality and related noncompliance. Sinduscon-CE president Ferreira (2013: interview) makes passing reference to the comparatively high holiday entitlements of Brazilian workers and tax burden upon payroll though his main grievance was the recent increase in wages without any corresponding increase in productivity. This view is consistent with the FIESP report and related surveys in which it can be presumed Ferreira actively participated. Like Ishikawa he viewed combatting informality and noncompliance as an

important mission of the Sinduscon business organisations and members responsible for labour irregularities are subject to sanctions and expulsion.

The main point of disagreement between Ishikawa and Ferreira and labour representatives is the issue of outsourcing, associated with greater flexibility of labour arrangements though it does not; in theory at least, involve the deregulation of long-standing employment rights and protections. In a distinctive interpretation to trade union president Quirino's (2013: interview) argument on outsourcing as the legalisation of widespread illegality, Ferreira (2013: interview) argues that it would provide outsourced workers with greater legal security than the current model and reduce informality.

From both the construction industry specific FIESP report and this present research project there is no evident tangency between the position of business representatives and the universal arguments for deregulated labour markets (the Economist, Pastore, World Bank op cit). In the literature, the most fervent support of dismantling Brazil's long-standing employment legislation is also somewhat limited to Pastore (1997, 1998 & 2005). There is minimal evidence of a corresponding deregulation desire or priority amongst business representatives. The FIESP report demonstrates greater frustration with issues outside of the scope of labour institutions that subsequently contribute to the observed regulatory indeterminacy in employment relations.

Conclusion

During fieldwork when discussing accounts of noncompliance and its consequences a regular question asked of LMI representatives was as to whether the evasion was due to employer incapacity to meet the legal requirements or intentional opportunist evasion. With hindsight, this was not an important or even relevant issue in the same sense that the 'too much or not enough legislation?' question is highly reductionist, overly simplistic and potentially misleading. Noncompliance and the regulatory indeterminacy it generates is a widespread problem in Brazil and represents a systemic outcome of a complex set of context-specific variables of which the formal labour code is but one. Effective enforcement of the legislation is also dependent upon a similarly complex set of factors.

Schneider (2013:181) highlights how difficult it is to 'break out of the negative complementarities of hierarchical capitalism' given the 'many positive factors that need to converge'. This can similarly be applied to the issue of regulation, where a multiple set of

complex and context-specific factors are required to converge for widespread compliance to characterise employment across the political economy. Factors involve cultural/historical norms, the inspection and enforcement role of the state, civil society and business organisations as well as the national socio-economic reality.

The Pecem steel plant case is of particular relevance given that a set of positive factors for labour (demanding workers and an active union and state) seemingly *did* converge though the outcome was predominantly one of persistent noncompliance leading to industrial relations failure. A disorganised, fragmented and underrepresented business sector and issues originating outside of the immediate LMI focus of this research (initial tendering processes) were factors frustrating the potential of the converged set of positive factors.

Independent of whether evasion of labour laws is due to capability or an intentional strategy, the composite system of LMIs in practice contributes to a system where noncompliance can be seen as something of a rational choice (see figure 6.1). Discussion of the optimum level or quantity of employment legislation is not within the scope of this thesis nor is it considered to be a viable analytical exercise given that institutional labour market arrangements are context-specific. Attempts at creating such indexes such as that of Botero et al are argued to be limited and misleading as the authors of similar exercises (OECD 2016c) freely concede.

In the case of Brazilian employment legislation there is evidence of contextual appropriateness of the ‘stringent’ labour laws. Considering the poverty and related vulnerability of certain sectors of the population evident in the high levels of regional and socio-economic inequality and the more dramatic consequences of noncompliance in the construction industry: workers thousands of miles from home in conditions analogous to slavery, health & safety irregularities contributing to fatal accidents, the extensive and highly detailed Brazilian legislation seems logical and rational.

The idea of legislating for the size of a mattress, light and ventilation levels in workers’ accommodation, meal provision at evenings and weekends (NRs) and the amount of milk and cheese to be provided for breakfast (CBAs) and extra paid leave with travel expenses for return trips to a worker’s hometown (NCILC) may seem peculiar or excessive in other socio-economic contexts. The Brazilian context is distinctive from the advanced economic examples where much of the regulation debates take place. Archer’s (1998:5) Economic

Democracy discussed in chapter 1 is based upon societies where ‘decent wages and conditions’ are presumed to have already been achieved. This is not the case in Brazil.

There is minimal evidence of tangency between business and managerial representatives consulted and the wider deregulation arguments. This is consistent with Cook’s (2007:86) observations on flexibilisation debates in Brazil in the 1990s. The FIESP construction industry report makes very little reference to the levels of labour regulation and informality. The main concern presented by the report and business representatives consulted relate to wider administrative problems of the Brazilian public sector outside of the immediate LMI scope.

On labour, a skills deficit in the construction industry is described as ‘chronic’ by the FIESP report. Tripartite arrangements contributing to a skilled labour force is a key characteristic and comparative advantage of the CME-type economies. Despite the ongoing argument of this thesis on the existence of institutions with the design and capacity for tripartite consensual arrangements, with LMI activity and complementarities dominated by ‘regulatory indeterminacy’ and ‘networks of mistrust’ it is difficult to envisage this type of arrangement in Brazil in the near future. This further weakens the deregulation arguments in the Brazilian context, as it is difficult to envisage horizontalised freely-bargained solutions from a deregulated system within such a historically hierarchical social system.

In practice, the LMI system and employment relations, in construction at least, are dominated by the uncertainty of compliance. This in turn fuels a multi-directional network of mistrust between relevant parties. This includes tensions between businesses within the same supply chain as the evidence presented would suggest. Consistent with the conclusion on institutional relations in chapter 4 and the idea of a regressive path dependency for labour in chapter 3 the redistributive capacity of labour market regulation in Brazil is hindered by its incongruity - the persistence of high inequality, fragmentation and uncertainty of such regulation.

Conclusion

Crouch (1994:7-8) describes a research journey in the 1970s of the ‘revived school of corporatist analysis’ where academics initially hostile to corporatism and its illiberal or ‘fascist connotations’ gradually became advocates of such a system. He describes his own transition from initially viewing corporatism as ‘antiliberal’, to a conviction that ‘it was only under the discipline of such arrangements that strong trade unions and collective bargaining could be made compatible with economic growth and stability.’ He describes a similar path taken by Schmitter (1974 & 1981) who studied corporatism across Latin America where:

he had noticed, as had several other scholars, that in western Europe corporatist structures were more likely to be associated with social democracy than with fascism; and by 1981 was comparing such societies favourably with those that lacked these organizational characteristics.

Albeit to scale, the research process of this thesis identifies with such a change of heart on the corporatist Brazilian system. Influenced by popular interpretations of ‘new’ and ‘authentic’ trade unionism and the much-cited problem of peleguismo, the dramatic workplace level problems in the construction industry observed in 2011 raised immediate questions on the effects of the long-standing monopoly of representation (unicity) and compulsory contribution mechanisms (syndical tax).

An image of the trade union in an air-conditioned ‘castle’ miles away from their designated category counting syndical tax contributions came to mind. This is not to say that peleguismo is not a widespread problem (see Claudinho 2013 & Marques 2015 interviews). Evidence also suggests that this may have been the case in some of the observed instances in the construction industry (see Farias 2013 interview and the evolution of Sintepav in ch.5), yet more detailed systemic analysis from a new institutional/varieties of capitalism perspective shows that it is from the existing institutions of the existing corporatist system that the inconsistency between the formal rights and protection and the precarious reality of employment can be addressed.

This first part of the conclusion summarises the explanations for the described inconsistency identified by this research project and discusses why it contributes to the understanding of LMIs within the Brazilian variety of capitalism. The following section tentatively generalises the wider theoretical contribution of the research. It stresses the importance of evidence-based findings and the need for scepticism when citing models that

neglect or exclude less-measurable, more subtle institutions: their history, informal manifestations and complementarities in particular. It then examines the limitations of the research findings and discusses relevant research agendas stemming from this thesis. It finishes by making some tentative predictions on the future of the Brazilian system in light of the ongoing economic and political crisis at the time of writing.

The argument of this thesis is not that Brazil possesses an optimum or best-practice system of employment relations. Nor does it negate the possibility for equity-enhancing reforms of the existing system. What is shown, supported by evidence-based research, is the capacity of the existing institutions to influence the employment relationship in favour of labour interests. Given long-standing traits of economic instability and high levels of poverty and inequality inconsistent with the country's level of development, this is not a widely-recognised trait of Brazilian institutions. Schneider's varieties of capitalism HME Latin American ideal-type where LMIs are argued to be characterised by 'sparse-unions' does not capture this characteristic. Shown across this thesis, the relevance of trade union activity in contemporary Brazil means that it represents a variation on the HME in its labour market dynamics.

The existence and persistence of weak representation and its consequences for labour are acknowledged and represent a key focus of the research question. The benefits of an institutional approach demonstrate that the observed inconsistency is the result of a variety of institutional factors related to an incongruous system of historical, formal and informal institutional manifestations and their interaction or *complementarities*. This is the research's significant contribution to empirical knowledge on Brazilian LMIs and represents a corrective to alternative interpretations. More reductionist approaches focussing on single issues or relationships are unable to capture such complexity, whether it be the deregulation approach on the negative effects of any intervention into the free workings of the labour market, or trade unionists and academics that identify the formal corporatist system as the main obstacle to the more 'authentic' or 'grass-roots' representation of labour interests.

The capacity to achieve coordinated LMI solutions is an important consideration as empirical evidence demonstrates more equitable development in economies where labour market issues are resolved through tripartite cooperation or social dialogue than those economies where liberal market solutions prevail. This affirmation is based upon the

Varieties of Capitalism distinction between coordinated and liberal market systems. It is argued across this thesis that the existing system guaranteeing the existence and resources of trade union institutions has the capacity and design for tripartite cooperation. The research problem is the distance between the employment rights and protections of the formal LMI system and the widespread workplace realities that are closer to those of the Latin American hierarchical ideal-type than either the CME or LME advanced economy examples.

The poor employment conditions observed are a function of several factors. Initially there is a historical legacy that has bequeathed Brazilian society with a very low threshold for employment conditions that still persists today, described across chapter 3 as the regressive path. Exploitative employment is a characteristic of 19th and early 20th century capitalism, particularly in post-colonial societies, however even within this context it is argued that such a legacy is heightened in the Brazilian case given the intensity, scale and duration of slavery and related oligarchical rule followed by the absence of any significant break with the inherited social structure. Within existing debates this is an important variable as the relevance of the regressive path is neglected in alternative ahistorical analyses that overstate the determinism of the formal CLT system to the reality of the employment relationship.

The existing CLT system was introduced upon a long-standing institutional layer characterised by exploitative labour conditions and non-compliance with legislation excluding the vast majority of the workforce from the extensive collective and individual employment rights introduced. From a path dependency perspective, the labour reforms are introduced in the 1930s within a very challenging context in terms of their potential impact and effectiveness. This is not to say that the CLT was *ineffective*, despite its initial exclusionary and non-compliance (*para ingles ver*) traits, it has continually acted as a 'lighthouse' for the majority of the population in defining employment rights as a goal or ambition, defining the political arena (see Cardoso 2010:181 & Collier and Collier 2002:752-753 respectively). Popular interpretations of the formal Brazilian CLT system neglect the pervasiveness of the regressive path and the low threshold of acceptable employment conditions bequeathed upon society.

Related to the potential of the existing system identified within the research question there is a further tendency in alternative analyses to neglect its capacity for gradual change and

overstate the inevitability or determinism of certain outcomes. Recognition of gradual change, specifically conversion/reconversion (Streeck & Thelen 2005: see ch.1 table 1.1) in the Brazilian LMI system is absent in critical analyses and reform proposals that often neglect less tangible institutional manifestations and overstate the deterministic influence and static nature of formal institutions. As both Cardoso (2003:34) and Collier and Collier (2002:757) recognise, the system provides the capacity for the rapid mobilisation of labour. Consistent with Collier and Collier's (2002) analysis, it is argued in this thesis that labour mobilisations *dependent* upon the stability and continuity of the exiting corporatist LMI system have, since the 1980s, contributed to the sustained influence of labour interests in the political economy.

The sustained influence of labour interests described, is evident in the democratisation process and new constitution of the 1980s. The momentum continues into the 1990s with the defence of collective and individual labour rights contrary to international deregulationary responses to globalisation and liberalisation pressures. There is an increased presence and influence of labour institutions at the highest levels of institutional relations over the period of unprecedented equity-enhancing growth and stability analysed in this thesis. Together with the more equitable development trajectory of the advanced CME-type economies, the survival of Brazilian LMI arrangements and the developmental success in the 21st century weakens the more ideological and reductionist deregulation arguments.

A highly unfavourable and persistent historical legacy has been identified by this thesis as a relevant factor in explaining the inconsistency between potential and outcomes in Brazilian LMIs. This does not provide a complete explanation, particularly as, given the favourable set of institutional circumstances since the 1980s, what explains the continued observed inconsistency into the 2010s and during the positive phase of equitable growth? The exploratory analysis of employment relations in chapter 4 identifies representation and regulation as two key issues. Findings from both general employment relations and the construction industry find industrial relations to be locked into 'networks of mistrust' at the sectorial/regional level. The described equilibrium of negative complementarities is sustained by indeterminate regulation and representation mechanisms hindering the potential for equity-enhancing change from greater institutional coordination.

Theoretical analysis of representation in chapter 5 is found to be consistent with the idea presented across this thesis of the potential for equity-enhancing change from a corporatist system of labour representation (see Archer 1998:74 and Crouch 1994:7). The danger of oligarchical unrepresentative pelego type trade union institutions is recognised as a danger of such a system though one that can be mitigated by an active rank and file (see Olson 1971:88 and Hyman 1971 in Crouch 1982:166).

In the Brazilian context, it is recognised as a heightened risk given the historical legacy already discussed and the widespread absence of plant-level representation mechanisms, though analysis based upon observations of representation in the construction industry demonstrate that it is not a systemic *inevitability*. Consistent with the general industrial relations literature, unrepresentativeness can be mitigated against and individual trade unions can evolve to actively represent their category at the regional/sectorial level and on the shop floor (see evolution of the Sintepav unions in ch.5 and CSP Pecem examples discussed across chs. 4-6).

The effective representation of labour interests at the national level is evident both generally and within the construction industry case study. A sustained union presence and influence is evident in tripartite forums and social dialogue processes contributing to minimum wage policy and anti-cyclical employment protection initiatives. A similar presence and influence is evident at the national level of the construction industry case study. There is the long-standing tripartite CPN health and safety forum and the prompt institutional response of the NCILC to problems observed at the workplace level of the PAC construction sites.

It is at the intermediate and workplace levels of industrial relations that the Brazilian system is identified in this research as more problematic. ‘Sparse unions’ may characterise LMIs in certain industries and regions due to a fragmented system contributing to representational indeterminacy. As already argued this is not a systemic inevitability and there is evidence of effective representation within the constraints of the existing system. These are described here as ‘pockets of efficiency’ most evident in the ABC standard of trade unionism. When analysing the problems at the intermediate level it is important to recognise that the national-level presence and effectiveness of trade union peak associations and the pockets of efficiency identified at the intermediate and workplace levels are dependent upon the stability and resources provided by the same system.

The issue is that the evident effectiveness is unpredictable and coexists with incompatible underlying institutional characteristics. This is best described as an incongruous system which captures both the systemic inconsistencies and unpredictability together with the incompatibility between the rights, protections and representation in the formal labour system and the embedded day to day practices identified in the research problem. This envisages a less static and more complex system in Brazil with less inevitability than the HME description of labour markets in Latin America (see ch.2, figure 2.7).

In the context of the construction industry, where employment relations are shown by this research as being dominated by networks of mistrust, there is evidence of effective union activity as an extra layer of regulation. This leads into the key factor of *regulation* to explain the inconsistency between the embedded LMI rights and protections and the workplace reality. This research finds regulation issues in Brazilian employment relations to be connected to a complex and composite set of institutional factors. Solely focussing upon formal legislation appears particularly inappropriate in such a context.

As an institutional approach would suggest, compliance and enforcement are key variables to consider and the Brazilian system is characterised by ‘regulatory indeterminacy’ (Lee and McCann 2014: title). Such indeterminacy is found by this research to be related to a complex set of factors that characterise the composite regulatory system: inspection, the judiciary, fragmentation at the intermediate level and the historical legacy of employment relations already mentioned.

The Pecem steel plant case study referred to across chapters 4-6 of this thesis is a particularly informative example. It highlights the complexity of factors that should be considered when analysing regulation issues. The high profile industrial development received considerable attention from the state regulatory authorities and had a militant mobilised workforce represented by an active and resourceful union that negotiated highly favourable employment terms and conditions into the collective bargaining agreement. In this instance, such an alignment of favourable complementarities did not produce an employment relations pocket of efficiency. The persistence of non-compliance with basic health and safety laws, payment of wages and employment rights resulted in an almost complete breakdown of industrial relations with a third of working days lost to strikes at a high cost.

In seeking explanations to the research problem, a complex set of context-specific and historically negative complementarities are identified. Representation and regulation stand out as key issues. In turn, observable and interrelated representation and regulation issues are similarly outcomes of a complex set of complementary institutional variables. Providing solutions or prescriptions for the identified problems is not within the aims or scope of this academic research exercise, however the recognition and analysis of such complexity from a new institutional perspective is an important contribution of this research. Important due to the counterproductive potential when more reductionist and ideological findings that ignore such complexity are used to inform policy.

Recognition and analysis of the complexity of interrelated factors that contribute to the employment relationship is an initial contribution of this thesis. This is particularly the case when considering what can be considered popular misconceptions on the nature of the Brazilian LMI system. The weaknesses of deregulation arguments have already been discussed though persistent criticisms from other ideological positions also remain, especially on the corporatist unicity and syndical tax elements. The compulsory mechanisms are argued by many to impede the emergence of more ‘authentic’ labour representation. General theoretical discussions on corporatism and counterfactual analysis of this research in chapter 5 find these arguments to be weak. The popular and persistent idea of the inevitability of pelego institutions impeding the grass-roots emergence of more authentic representation is based upon an *imagined* narrative of ‘new’ trade unionism.

A popular misinterpretation is identified here. What is widely depicted as ‘new’ and ‘authentic’ trade unionism exists as a consequence of the same embedded LMI system identified in the research question. It is evident in the ABC standard of employment relations and the influence of trade union peak associations at the national level. Similar pockets of efficiency are identified in the construction industry example. More detailed analysis finds that these successful examples of tripartism/social dialogue are produced and sustained by the long-standing corporatist system rather than from outside or in opposition to the formal institutional parameters.

A similar inconsistency is evident in the activity of the individual trade union. Many unions possess a radical, combative and anti-institutional identity and discourse, argued in this research to be a logical response to the levels of irregularity and networks of mistrust that prevail. Fieldwork observations show that the majority of the day-to-day trade union

activities work towards greater effectiveness of the existing system. The extra layer of regulation role is identified as a significant contribution to employment conditions (see ch. 5, part 5.3). Historical analysis also finds the distance between the radical discourse and moderate practice of the union to be a long-standing institutional trait (see ch. 3 & 5, Hall & Spalding 1986: 359; Collier and Collier 2002:757 and Santana 1999:110).

The new institutional methodological toolbox used by this research and its related importance of historical, formal and informal institutional manifestations and crucially their complementarities, aims to contribute to the wider study of labour. Recognition and analysis of the complexity of interacting factors that influence observable outcomes is compatible with the ILO related 'Regulating for Decent Work Agenda' in its 'aims to development a coherent response' to more reductionist and ideological approaches to LMIs such as the deregulation school (ILO 2016).

An intended contribution of this thesis is at the comparative capitalisms analytical level. In a similar manner, this thesis has contested popular misconceptions on the Brazilian CLT system, it also extends upon Schneider's Latin American HME ideal-type within comparative capitalisms debates. The sustained influence of peak associations at the national level since the 1980s and the role of resourceful and active unions in the identified pockets of efficiency at the intermediate and workplace levels, both generally and within the construction industry example, demonstrate that 'sparse unions' do not characterise LMIs in the Brazilian variety of capitalism.

At the Brazil-specific level, the intended contributions of the thesis are the 'inclusive decade' and PT government period analysed, complemented by an innovative case study in the construction industry. Increased coordinatory or tripartite *intentions* and greater state involvement in the political economy are evident since the start of the PT government, particularly in the return of industrial policy. The construction industry represents an important and iconic element of this new direction. The MCMV housing and PAC infrastructure state investment initiatives were high profile drivers of the sustained economic growth and construction boom.

In seeking explanations for the research problem, proportionately less institutional involvement or intervention in the *labour* aspect of the positive growth period is identified. Inspection resources have decreased over recent years despite the booming economy and levels of employment litigation increase and remain at internationally unprecedented levels

(see ch.6, figure 6.2). The observations of the reality of employment and industrial relations realised by this research, the idea of self-reproducing networks of mistrust and a non-compliance/litigation equilibrium somewhat dampens the optimism on any widespread structural or significant changes in the workplace over what the IPEA (2012:11) describe as the ‘inclusive decade’.

Consistent with the new institutional approach to the research problem, the intended originality of this thesis can be found in a ‘composite’ set of ‘complementary’ factors. Firstly, there is the importance of history, it seems a basic premise that recognition of what came previously, the directions or paths taken and elements of change and continuity are essential for analysing present and future empirical questions.

Comparisons between capitalist systems in advanced industrial economics (Varieties of Capitalism) and those in Latin America (Hierarchical Market Economies) is a useful exercise and informs the underlying premises and analytical parameters of this thesis. The results of this research exercise demonstrate that there must be an appreciation of historical particularities in comparative analysis. Within this context an exercise comparing New Zealand’s minimalist system of LMIs favourably to Brazil’s corporatist system (see Pastore 2005: 96-98) appears particularly reductionist and unhelpful. Considering systems with *similar* historical legacies and categorising different varieties of capitalism is a fruitful research agenda. It is also important to consider historical and contextual specificities of an individual society. This is apparent in comparisons between Brazil and Chile and explanations for the distinctive labour market paths taken over the last 40 years.

Ideologically-loaded ahistorical accounts drawn from more easily quantifiable and reductionist data fail to include equally important factors to account for contemporary phenomena. Referring back to Franzosi’s (1995: 21) observations quoted in the introduction to the methodology of this thesis, things are excluded from analysis as they are ‘non-quantifiable and/or do not fit into pre-existing models’. Neglecting history and continuity and change in the past, i.e. path dependency and less tangible or measurable institutional manifestations will invariably produce partial results that are potentially misleading. More easily measurable formal institutions cannot be automatically presumed to be stable and effective as this research project demonstrates in a variety of contexts.

Findings based upon analysis that incorporates more subtle institutional manifestations contributes to and demonstrates the value of a new institutional approach and the wider

study area of institutions and comparative capitalisms. This is evident in the relevance of the evidence-based findings of this research that run contrary to, or should at least encourage more critical interpretations of the deregulation argument. In particular, its discourse of universality and attempts to create a ‘scientific’ model to classify regulatory systems and influence policy debates.

Similar to the problems of making a reductionist comparison between the systems of New Zealand and Brazil as evidence to support an argument, the non-critical use of Botero et al’s (2004) regulatory classification is problematic. It is applied to Brazil by Pastore (2005), Latin America by Schneider (2013) and the global economy by the World Bank Doing Business Reports (2004, 2007). It is ideologically-loaded and evidentially weak (see Deakin 2009:17, 2012: 353 in chapter 6). The indexes exclude any measurements of institutional relations and collective bargaining (see Berg and Cazes 2007:14). A partial consequence of such an omission means that the labour market arrangements of the world’s least developed economies score more favourably in this influential rigidity index than the most advanced and more regulated CME-type economies characterised by tripartism. (see Lee, McCann and Torm: 421 in chapter 6).

This research’s contribution to theory and methods in studies on labour market institutions and comparative capitalisms is *not* within debates on whether there should be more or less regulation of employment. It instead seeks to move away from such a dichotomy. The relevant argument is that there are valuable inductive findings from evidence-based empirical case-study analysis that should be included in analytical models. The *means* used to arrive at the conclusions of this thesis (see chapter 1): the parameters of a new institutional approach, a less-analysed innovative case study, and extensive evidence-based data through prolonged primary research, can and perhaps should be replicated elsewhere to make further contributions to contemporary understanding of labour markets and industrial relations.

As already mentioned in this conclusion, this research is not a defence of the existing LMI arrangements in Brazil. Instead it emphasises the importance of its systemic specificities. For the understanding of corporatist and deregulated labour relations elsewhere, the thesis reinforces the position of Crouch and Streek (1998:7 own emphasis) quoted in chapter 6 that findings should be ‘the result of detailed theoretical and *empirical* investigation’ not ‘derived axiomatically’.

The potential for this evidence-based research to contribute or contest more ideologically loaded analyses is demonstrated by the fact that the findings not only challenge the free market interpretation of labour market regulation though distinctive interpretations from what, in simple terms, can be described as the other side of the ideological spectrum. The criticisms of the existing corporatist system from those that make reference to its authoritarian legacy, representational deficit and related tendency to create complacent and/or co-opted trade unions *does* include an analysis of history and path dependency. It is however, a partial interpretation of history if not a convenient partisan misreading of the path dependency of labour institutions in Brazil.

The idea that an authentic, genuine and more militant labour movement would emerge were the long-standing corporatist arrangements to be removed (interestingly a similar policy objective to the rigidity/deregulation school) is fanciful. It neglects the relationship between the evidential pockets of strength and influence of labour and the existing corporatist system. In terms of more general contributions to theory and methodology this highlights the importance of *complementarities* in institutional analysis.

The theory and methods behind the model of networks of mistrust (see ch.4 fig. 4.1) as a key factor to explain the inconsistency observed in the research problem reinforces the importance of incorporating less-measurable and informal variables and their complementarities. The model is based upon case-study evidence, primary and secondary data and similar labour studies (see Cardoso & Lage 2007). It includes the variables of enforcement, evasion and the related influence of trade unions and the State, factors often neglected in alternative analyses that overemphasise the determinism of formal institutional arrangements.

This contributes to research methods as it demonstrates the importance of considering empirical problems as a function of several factors. This in turn should encourage some scepticism when considering analyses of single issues such as the amount of legislation or the relationship between the union and the rank and file. The empirical value and applicability of the networks of mistrust logic is evident in its application to the CSP Pecem steelworks case.

Based upon accounts from a variety of tripartite actors the CSP case demonstrates the value of analysis incorporating multiple complementary dimensions when compared with studies overly focussed upon single issues. In the Pecem case, weak enforcement and

‘sparse’ or complacent trade unions were *not* in evidence yet there was still an intense breakdown of industrial relations similar to the events that inspired this research project. This demonstrates the importance of analysing the composite system including the historical and less tangible institutions and the way they interact to influence observable phenomena.

Focussing upon complementarities, an established consideration of Varieties of Capitalism and new institutional approaches in general, is not an innovation by this research project. Networks of mistrust in this thesis contributes to comparative capitalisms by applying the institutional approach to a single economy using a less-studied industry as a case study. An in-type variation of the Latin American Variety of Capitalism is observed. It is found to be less deterministic than Schneider’s HME model and characterised by an incongruous system as the networks of mistrust model and its empirical examples would suggest. This contributes to an understanding of contemporary Brazil and challenges existing influential interpretations, which in turn could inform future comparative research of industrial relations elsewhere.

In summary, the theoretical contribution of this research project is found in the importance placed upon informal less-measurable institutions and their complementarities, generating insights on a given society that challenge alternative interpretations. This adds to the Varieties of Capitalism agenda both in Latin America and elsewhere. More generally speaking, the relative success of the research project in making an original contribution to the understanding of Brazil vindicates the historical institutionalism approach, strengthening its importance and value within contemporary theoretical debates.

As mentioned in chapter 1, an institutional approach acknowledges other causal forces in politics outside of its scope. It would be contradictory to argue that *all* relevant factors have been discussed within this thesis. What has been argued is that additional less-studied elements and the way they interact were incorporated into the research. A recognised limitation of the scope of this thesis is analysis of institutional influences *outside* of the immediate LMI scope. External variables are acknowledged – with regressive public spending and debt service burdens recognised in chapter 2 (see figures 2.1-2.6), historical persistence of macro-economic instability and related high inflation in chapter 3 (see part 3.3) and wider systemic influences that effect compliance in the construction industry discussed in ch.6 (part 6.3.4 and see FIESP 2016 report).

Whilst the relevance of these factors is recognised, they are not analysed further in any depth. The existence of relevant institutional variables outside of the immediate scope of LMIs affecting the reality of the employment relationship is compatible with the porous approach of this research and its conclusions. The argument that outcomes have to be considered the result of a complex set of interacting institutions is coherent with the idea that there will be significant influence from institutions outside of LMIs. It is however beyond the scope of this thesis. It is not anticipated that any identified relevance or influence of non-LMI institutions upon observable labour outcomes would contest or weaken the findings of this thesis. Indeed, the idea of negative outside influences is compatible with the 'pockets of efficiency' concept used across this thesis and applied to LMI outcomes - where some efficient institutional layers exist upon a less efficient structure (Guedes 1986:105).

A further valid question of this research is on the generalisability of the construction industry case study. The importance, scale and distribution of construction activity across Brazil and its association with employment for individuals from the more deprived regions and sectors of society has already been commented upon. It is argued that construction work is perhaps more representative of employment across Brazil than the automobile/metalworker example, and as such represents a valuable comparative example.

The observed capacity of construction workers for industrial action may be somewhat industry specific or exceptional when the nature of employment is considered. The concentration of hundreds of male workers per site, many with considerable accumulated experience in a variety of locations over relatively short productive windows results in an observable heightened capacity for industrial action which can pressure employers, the designated union and the state into action. This is evident on a daily basis across the industry nationwide. The high-profile and large-scale examples of the PAC sites and CSP Pecem sites are some of the more dramatic and intense examples of this capacity for collective action.

It is questionable whether a similar capacity for collective action would exist in other sectors; retail workers for example spread across numerous individual outlets. This is an important consideration as the world of work shifts away from the traditional ideal type of blue-collar male-dominated industrial work. However, consistent with the findings here on the systemic potential for mobilisation, Braga (2012a:202-203; 2012b:112,117) identifies a

capacity for mobilisation within the parameters of the existing Brazilian LMI system amongst the new and less gender-specific category of call centre workers even against a backdrop of unfavourable circumstances that usually inhibits collective action.

Construction is therefore argued to be a worthwhile case study; its generalisability and comparative value can contribute to wider research agendas. Given the male domination of employment in construction an alternative and similarly informative case study is that of domestic employment; a predominantly female category dispersed across individual households and historically excluded from any type of employment protection and representation mechanisms. There is strong evidence of increased organisation, formalisation and rights in domestic work over the period researched, culminating in increased employment rights and protections in 2015 (Lei Complementar no. 150).

Consistent with findings in this thesis, contemporary studies on domestic workers in Brazil (Acciori 2016; Bernadino Costa 2015:155 and Gonçalves 2010:64) recognise that the recent increase in mobilisation and organisation of the category was assisted by the existence of the long-standing stable CLT corporatist trade union system. As argued in Chapter 1 (part 1.4), citing Pagano (1999: 327-330) and Haagh (2011:452) more equitable employment arrangements require the necessary set of institutions. Brazil has many of these institutions.

At the time of putting the finishing touches to this thesis, Brazil is going through a political and economic crisis. There is observable concern from commentators that there will be considerable pressure for substantial deregulatory reform of the LMI system or ‘an attack on labour rights’. Based upon the analysis across this thesis, it is tentatively predicted that the existing LMI system of collective and individual employment rights and its related institutions will remain firmly in place. Whilst the PT party is currently in crisis, there is no corresponding weakening of state, union and business LMIs. Weak political parties and strong institutions is a historical characteristic of Brazil’s political economy (Mainwaring 1992: 702).

Pension reforms and outsourcing are two major current issues in Brazilian political economy with hundreds of thousands taking to the streets in protest at the perceived loss of rights. It is immediately apparent that many of these protestors do not currently benefit from employment protections, yet are vociferously defending an aim, ambition or expectation of benefitting from the existing CLT rights in the future. The ‘lighthouse’ still

shines brightly. Parallels and continuities are therefore observed between the present-day relationship between labour institutions and the population and that observed in the 1930s when the system was introduced.

At the time of writing it seems highly likely that there will be reforms on individual issues such as the pension system, similar to those that took place in the 1990s (see annex 3.1). As was the case over this decade, it is probable that the existing system and its relevant institutions will remain stable through this period of economic and political uncertainty. Such a prediction is based upon the observation that at certain levels of the Brazilian variety of capitalism, LMIs are characterised by strong, resourceful and influential trade unions, making the model a distinctive variation of the HME ideal type.

Appendix I Fieldwork Research Data

- Aguiar**, Reginaldo – Regional superintendent for the Dieese. Personal Interviews. Dieese regional offices. Fortaleza. 27 November 2013 & 16 January 2015
- Albano da Silva**, Luiz. - President of the Sinticom light construction trade union for the Campinas Region. Personal interview at Sinticom headquarters, Campinas, São Paulo. 17 September 2013
- Amaral**, Aldo - President of Sintepav-PE & Força Sindical Pernambuco *and* **Tavares**, Federico Sintepav-PE lawyer. Personal interview. Força Sindical headquarters – Recife. 7 November 2013
- Amigos de Haiti** – Observation of multi-agency meeting including Marreta-MG officials on initiatives to assist recent migrants from Haiti, many working in the construction industry. Belo Horizonte. 1 October 2013
- Camargo Correa** – Week-long observation of activities at a public infrastructure construction site, shadowing health & safety technician **Marlon** and 20 individual interviews with workers on-site. 9-13 December 2013. Return-visit 10 January 2015
- Carolina** (pseudonym) – Social worker for construction consortium working on World Cup 2014 stadium. Confidential personal interview. Brazil. Between September and December 2013
- Damasceno**, Livia – Coordinator, Escola Popular Orocílio Martins Gonçalves (EPOMG) technical school run by Marreta MG trade union. Personal Interview. EPOMG - Belo Horizonte 26 September 2013
- Da Silva Gomes, Claudio (**Claudinho**). President of the national federation for CUT affiliated construction industry trade unions. Personal interview at CUT head office - City of São Paulo. 18 September 2013
- EPOMG** – Observation (participatory & non-participatory) of activities at EPOMG/Marreta-MG Technical School. Belo Horizonte 25-26 September & 8-10 October 2013

- Farias**, Fabio Andre – Appeal Court Judge for the Regional Labour Court (TRT), former MTE Superintendent. Personal Interview. TRT 6^a região. Recife, 7 November 2013
- Ferreira**, Roberto Sergio – President of Sinduscon-CE business union. Personal Interview. Offices of SERT Engenharia. Fortaleza, 21 November 2013
- Gomes**, Raimundo Nonato – President of Sintepav-CE, heavy construction industry workers in the state of Ceará. Sintepav-CE headquarters. Fortaleza, 14 November 2013
- Ishikawa**, Haruo. Vice-President Capital – Labour Relations for Sinduscon-SP business union. Personal interview at the office of Ishikawa Engenharia. City of São Paulo, 18 September 2013
- Júlio**, José – Lawyer for Marreta-MG trade union. Personal interview. Marreta-MG headquarters. Belo Horizonte, 9 October 2013
- Juca**, Jeritza – Head of Employment Relations Secretariat (SRT) at the MTE Regional Labour Office for Ceará. Personal Interview. Fortaleza, 02 December 2013
- Laura** (pseudonym) – Social worker for a large well-known construction company. Confidential Personal Interview. Brazil. Between September and December 2013
- Local Journalist** - Confidential personal interview, Ceará. January 2015
- Marques** de Lima, Gerson - Head Prosecutor for the Labour Public Prosecutor (MPT). Personal Interview. MPT 7a Região Offices, Fortaleza. 25 February 2015
- Marreta – MG** – Observation of day-to-day trade union activities including inspection patrols. Belo Horizonte region. 8-11 October 2013
- Marreta-PE** – Trade Union for light construction industry in the greater Recife area. Observation of union activities, including inspection, strike activity, picketing and administrative duties. Pernambuco 23-25 & 28-30 October, 1 & 4 November 2013.
- Mendes**, Amilton. – Trade union advisor for Sinticom. Informal interview at Sinticom headquarters, Campinas, São Paulo. 17 September 2013

- Morais**, Dulcilene – President of Marreta-PE Trade Union. Personal Interview. Recife, 23 October 2013
- MPT 7ª Região** – Public Hearing on Labour Relations at the CSP-Pecem steel plant construction site. Faculdade de Direito, Universidade Federal de Ceará. Fortaleza, 26 February 2015
- MTE/DRT** – Observation of mediation session between Copasa public utility company and a construction firm over non-payment for services. Accompanying a Marreta-MG representation. Personal interview with mediator **Reginaldo** after session. Belo Horizonte. 9 October 2013
- MTE/SRT/CE** – Observation of two collective bargaining mediation sessions. Employment Relations Secretariat, MTE regional office. Fortaleza, 2 December 2013
- Paulo** (pseudonym) – Site inspector for medium size residential construction company in a provincial town. Week-long observation of inspection activities including interviews with 14 on-site workers. Anonymity requested. Brazil. Between September and December 2013
- Progest** – Full-day observation of training activities of the Progest project at the CEFET-MG. Personal interviews with 11 participants including Labourers, Builders, Foremen and small business owners. Belo Horizonte, 28 September 2013
- Quirino de Paula, David & Zé Luis** – President and director of Marreta-MG (respectively) construction trade union for the Greater Belo Horizonte Region. Marreta MG headquarters, Belo Horizonte, 30 September 2013.
- Rodrigues da Cunha**, José Antonio – Site Foreman and EPOMG teacher. Personal interview at Marreta-MG headquarters, Belo Horizonte, 11 October 2013
- Rodrigues Costa**, Luciano – Sociologist - Federal University of Viçosa (UFV). Personal Interview. UFV, 17 October 2013
- Santana**, Ana Paula (school director); **Lima**, Gerson (Liga Operária director) and **Donizete** (construction worker –pseudonym). Group Interview at EPOMG/Marreta-MG Technical School. Belo Horizonte, 26 September 2013.

Santos, **Ademilson** – Human resources director for Cyrela Brazil Realty. Personal Interview. Le Parc residential construction site. Recife, 5 November 2013

Scaffolders – Observations and interviews with three scaffolders recently dismissed from the CSP-Pecem site on the condition of anonymity. São Gonçalo de Amarante, Ceará. entire-day sometime between January and February 2015

Sinttel - Esquerdas Não Institucionais e Movimentos Anticapitalistas [The Non-Institutional Left and Anti-Capitalist Movements] Conference. Sinttel –Telecoms Trade Union headquarters, Recife, 9th November 2013

Sintepav-CE – Observation of Sintepav-CE inspection activities. Fortaleza & Pecem. 18-20 November 2013

Sintepav-PE – Observation of the inspection activities of the trade union for the heavy construction industry workers in the state of Pernambuco (Sintepav-PE). Recife, 8 November 2013.

Sticcrmf – Observation (participatory and non-participatory) of the communications team (Metamorfose Comunicações) activities for the light construction workers trade union for the greater Fortaleza area (Sticcrmf). Fortaleza. 23,27-29 November 2013 & 20 February 2015

Tomasi, Antonio. Sociologist –Coordinator of the CEFET - PROGEST - Engineering, Society and Technology programme. Personal Interview at CEFET-MG Technical University. Belo Horizonte, 24 September 2013

Trópia, Patricia. Conference contribution. GT08 Trabalho, Políticas e Lutas Sociais [Labour, Politics and Social Struggles] International Symposium on Labour, Employment Relations, Education and Identity –SITRE V, UFMG, Belo Horizonte 26-28 May 2014

Abbreviations

ABC	Region in the State of Sao Paulo made up of the Santo Andre, Sao Bernardo & Sao Caetano municipal areas.
ANPT	Associação Nacional de Procuradores de Trabalho [National Association of Labour Prosecutors]
BNDES	Banco Nacional de Desenvolvimento Econômico e Social [National Bank for Economic and Social Development]
BRIC	Brazil, Russia, India and China
BRL	Brazilian Real
CBA	Collective Bargaining Agreement
CBIC	Câmara Brasileira da Indústria da Construção [Brazilian Chamber for the Construction Industry]
CBR	Cambridge Centre for Business Research
CDES	Conselho de Desenvolvimento Econômico e Social [National Social and Economic Development Council]
CEACR	Committee of Experts on the Application of Conventions and Recommendations
CE	State of Ceará
Cefet	Centro Federal de Educação Tecnológica [Federal Centre for Technical Education]
CEPAL	Comisión Económica para América Latina y el Caribe [Economic Commission for Latin America and the Caribbean]
Certific	Certificação Profissional e Formação Inicial e Continuada [Professional Certification and Initial and Continuous Development]
CESIT	Centro de Estudos Sindicais e de Economia de Trabalho [The Centre for Studies in Trade Unionism and Labour Economics]
CF88	Constituição Federal de 1988 [1988 Federal Constitution]
CGT	Comando Geral do Trabalhadores [General Workers' Command]
CIAT	The Inter American Center of Tax Administrations
CLT	Consolidação das Leis de Trabalho [Consolidation of Labour Laws]
CME	Coordinated Market Economy
CNDI	Conselho Nacional de Desenvolvimento Industrial [National Industrial Development Council]
CNI	Confederação Nacional da Indústria [National Council for Industry]
CNJ	Conselho Nacional de Justiça [National Justice Council]
CNTI	Confederação Nacional dos Trabalhadores na Indústria [National Confederation for Industrial Workers]

CNTIC	Confederação Nacional dos Trabalhadores na Indústria da Construção [National Confederation for Construction Workers]
Contag	Confederação Nacional dos Trabalhadores Rurais [National Rural Workers Confederation]
Conticom	Confederação Nacional dos Sindicatos de Trabalhadores nas Indústrias da Construção e da Madeira filiados à CUT [National Confederation of CUT Affiliated Trade Unions in the Construction and Carpentry Industries]
Contricom	Confederação Nacional dos Trabalhadores da Construção e do Mobiliário [National Confederation of Construction Workers]
COPASA	Companhia de Saneamento de Minas Gerais [Minas Gerais Water Board]
CoT	Capitalism of Ties
CPN	Comitê Permanente Nacional [Permanent National Health & Safety Committee]
CPT	Comissão Pastoral da Terra [Pastoral Land Commission]
CSP	Companhia Siderúrgica de Pecém [Pecem Steel Company]
CTB	Central dos Trabalhadores e Trabalhadoras do Brasil [Brazilian Workers' Central]
CTPS	Carteira de Trabalho e Previdência Social [Work and Social Security Book]
CUT	Central Única dos Trabalhadores [Central Workers Union Peak Association]
DBR	Doing Business Report
Dieese	Departamento Intersindical de Estatística e Estudos Socioeconômicos [Inter-Trade Union Department of Statistics and Socioeconomic studies]
DOU	Diário Oficial da União [Official State Gazette]
DRT	Delegacia Regional de Trabalho [Regional Labour Office]
EAP	Economically Active Population
ECLAC	Economic Commission for Latin America and the Caribbean
EPOMG	Escola Popular Orocílio Martins Gonçalves [Orocílio Martins Gonçalves School for Popular Education]
FAT	Fundo de Amparo ao Trabalho [Workers' Protection Fund]
Fenatracop	Federação Nacional dos Trabalhadores nas Indústrias da Construção Pesada [National Federation for Heavy Construction Workers]
FGTS	Fundo de Garantia de Tempo de Serviço [Time of Service Guarantee Fund]
FHC	Fernando Henrique Cardoso (President of Brazil 1995-2003)
FIESP	Federação de Indústria do Estado de São Paulo [Sao Paulo Federation for Industry]

FNT	Forum Nacional de Trabalho [National Labour Forum]
FS	Força Sindical
Funrural	Fundo de Assistência ao Trabalhador Rural [Rural Assistance Fund]
HI	Historical Institutionalism
HME	Hierarchical Market Economy
HUC	Horizontally Unionised Capitalism
IAP	Instituto de Aposentadoria e Pensão [Retirement and Pension Institute]
IBGE	Instituto Brasileiro de Geografia e Estatística [Brazilian Institute of Geography and Statistics]
IDB	Inter-American Development Bank
ILO	International Labour Organization
IMF	International Monetary Fund
INSS	Instituto Nacional do Seguro Social [National Social Security Institute]
IPEA	Instituto de Pesquisa Econômica Aplicada [Institute of Applied Economic Research]
LME	Liberal Market Economy
LMI	Labour Market Institution
MCMV	Minha Casa Minha Vida [My House My Life]
MG	State of Minas Gerais
MNC	Multinational Corporation
MPT	Ministério Público de Trabalho [Public Labour Prosecutor]
MTE	Ministério de Trabalho e Emprego [Labour Ministry]
NCILC	National Commitment for Improved Labour Conditions in the Construction Industry
NCST	Nova Central Sindical de Trabalhadores [New Workers' Trade Union Central]
NI	New Institutional(ism)
NIA	New Institutional Approach
NR	Normas Regulamentadoras [Health and Safety Laws]
NR-18	Normas Regulamentadoras - 18 [Construction Industry Specific Health and Safety Laws]
OECD	Organisation for Economic Co-operation and Development
PAC	Programa de Aceleração do Crescimento [Growth Acceleration Programme]
PCdoB	Partido Comunista do Brasil [Brazilian Communist Party]
PE	State of Pernambuco

PEC	Posco Engineering and Construction
PLR	Participação nos Lucros e Resultados [Participation in Profits and Results]
PPE	Programa de Proteção do Emprego [Employment Protection Programme]
Progest	Programa de Estudos em Engenharia, Sociedade e Tecnologia [Engineering, Society and Technology Study Programme]
PRT	Procuradoria Regional de Trabalho [Regional Labour Prosecutor's Office]
PSOL	Partido Socialismo e Liberdade [Socialism and Freedom Party]
PSTU	Partido Socialista dos Trabalhadores Unificado [United Socialist Workers' Party]
PT	Partido dos Trabalhadores [Workers' Party]
PUA	Pacto de Unidade e Ação [Unity and Action Pact]
RC	Rational Choice
Seconci	Serviço Social da Construção Civil [Social Services for Light Construction]
Sinait	Sindicato Nacional dos Auditores Fiscais de Trabalho [National Trade Union for Labour Inspectors]
Sindcongru	Sindicato dos Trabalhadores nas Indústrias da Construção e do Mobiliário de Guarulhos [Trade Union for Construction Workers in the Guarulhos Region]
Sinduscon	Sindicato da Indústria da Construção Civil [Business Union for the Light Construction Industry]
SINE	Sistema Nacional de Emprego [National Employment System]
Sinicon	Sindicato Nacional da Indústria da Construção Pesada [National Union for the Heavy Construction/Infrastructure Industry]
Sinicon CE	Sindicato da Indústria da Construção Pesada do Estado de Ceará [Union for the Heavy Construction/Infrastructure Industry for the State of Ceará]
Sintepav	O Sindicato dos Trabalhadores das Indústrias de Construção de Estradas, Pavimentação e Obras de Terraplenagem em Geral [Trade Union for Workers in the Heavy Construction Industry]
Sinticom	Sindicato dos Trabalhadores nas Indústrias de Construção e do Mobiliário de Campinas e Região. [Trade Union for Construction Industry Workers in the Campinas Region]
Sintracom	Sindicato dos Trabalhadores nas Indústrias da Construção e do Mobiliário de Campo Grande [Trade Union for Light Construction Workers in the City of Campo Grande]
Sintracon	Sindicato dos Trabalhadores nas Industrias da Construção Civil de São Paulo [Trade Union for Light Construction Workers in the City of Sao Paulo]

Sinttel	Sindicato dos Trabalhadores em Telecomunicações [Trade Union for Telecommunications Workers]
SP	State of Sao Paulo
SRT	Secretaria de Relações de Trabalho [Labour Relations Secretariat]
Sticc – PA	Sindicato dos Trabalhadores na Construção Civil do Porto Alegre [Trade Union for Light Construction Workers for the Porto Alegre Region]
Sticcero	Sindicato dos Trabalhadores na Construção Civil do Estado de Rondônia [Trade Union for Light Construction Workers for the State of Rondonia]
Sticermf	Sindicato dos Trabalhadores da Indústria da Construção Civil da Região Metropolitana de Fortaleza [Trade Union for Light Construction Workers in the Fortaleza Metropolitan Region]
Sticrmb	Sindicato dos Trabalhadores na Indústria da Construção Civil de Belém [Trade Union for Belém Light Construction Workers]
TAC	Termo de Ajuste de Conduta [Term of Behavioural Adjustment]
TST	Tribunal Superior de Trabalho [Upper Labour Court]
UCATT	Union of Construction, Allied Trades and Technicians
UGT	União Geral dos Trabalhadores [General Workers' Union]
UNDP	United Nations Development Programme
Unicamp	Universidade Estadual de Campinas [Campinas State University]
USP	Universidade de Sao Paulo [Sao Paulo State University]
VoC	Varieties of Capitalism
WUN	Worldwide Universities Network

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