The Politics of Justice: Rethinking Brazil's Corporatist Labor Movement

Fernando Teixeira da Silva and Larissa Rosa Corrêa

For many post–World War II specialists in the field of labor and trade unions in the United States, the corporatist labor law system associated with the Getúlio Vargas dictatorship (1930–45)—and all too reminiscent of that of Fascist Italy—presented a major obstacle to introducing "free and democratic" trade unionism in Brazil. Much of the criticism arose from the supposedly profound differences between two systems of labor relations that also appeared to define different views of politics and society. Corporatist unionism was firmly grounded in an organic conception of society built mainly on trade unions officially recognized by the state and structured according to their economic and productive roles. Many US scholars of the 1960s and 1970s, steeped in the liberal tradition, urged developing nations to follow the model of Anglo-Saxon democracies, setting aside corporatist conceptions of society.[1] Stanley Gacek, an American attorney specializing in Latin American labor relations, in 1994 summarized two decades of "North American" wisdom on the subject by reiterating support for "the contractualist ideal for labor activism" and a "genuinely voluntary" path of collective bargaining.[2] At that time, an "autonomist" policy was having a major impact on the Brazilian academic world and labor movement in the context of the *Novo Sindicalismo* ("New Unionism"). It supported the elimination of the corporatist union structure, exploded the regulatory limits imposed by the labor courts, raised the profile of the labor movement as an agent of national policy, and famously put the spotlight on leaders like the metalworker Luís Inácio Lula da Silva and the Central Única dos Trabalhadores (CUT; Unified Workers' Union), a national confederation that was officially banned at the time. Encouraged by the hope springing

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1. Erickson, *Brazilian Corporative State*, 2.

2. Gacek, *Sistemas de relações de trabalho,* 121–22. He was assistant director for international affairs of the United Food and Commercial Workers Union (United States) and chair of the International Labor Law Committee of the District of Columbia Bar Association (United States).

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from that situation, Gacek argued that, "in short, Brazilian labor law and labor courts should stay as far away as possible from normative power, or the substantive determination of labor agreements."[3] When referring to this power, Gacek was invoking the most powerful, distinctive, and controversial tool of the labor tribunals, since the judges could hand down decisions on wage increases and new working conditions when workers and bosses failed to agree. "Normative power," in short, expressed the labor courts' capacity to impose binding solutions on collective disputes.

As it happens, Gacek's remarks were offered as a critique of a more sympathetic as well as a more nuanced view of corporatism enunciated a few years earlier by another US legal scholar, Tamara Lothian, who compared the roles of contractualist and corporatist systems in the mobilization of Brazilian and US workers. While commonly identified only as an instrument of repression and control of the labor movement accompanying right-wing authoritarian regimes, corporatism, Lothian argued, depending on the period and context, might also strengthen working-class social movements. In countries where democratic regimes adopted a corporatist system, she suggested, the union movement might become more "vigorous, independent and politicized" thanks to the development of political activism that managed to appropriate the corporatist apparatus. On the other hand, under dictatorships, corporatism was no doubt a means of control and depoliticization. At the same time, she argued, contractualist systems tended to encourage a moderate style of trade unionism primarily focused on economic issues, which itself limited the power of working-class movements. Such arguments go against the widespread idea that regarded the labor relations typical of "voluntarism" as inherently more progressive, independent, and democratic.[4]

On balance, and based on our own original survey of the historical record of the labor courts, the quintessential expression of the Brazilian corporatist system, we are inclined to support Lothian's side of the Lothian-Gacek debate. This article shows our argument in that sense, presenting new evidence that corroborates her essayistic assumptions. Moreover, over the last decades, most research points to the limits of traditional views that social and labor law, labor courts, and corporatist unionism served mainly to subdue the workers to capitalism's domination. We add to this evaluation of Brazilian corporatism as more than an authoritarian project, seeing it as an arrangement that did not necessarily eliminate the mobilization and organization of the workers nor close itself to the representation of various interests. Labor legislation and its application and enforcement under corporatism became a force field in which different groups acted with uneven resources but one where workers enjoyed multiple opportunities to advance their interests.

In Brazil, the labor courts must necessarily stand at the center of any evaluation of the larger corporatist legal system with regard to worker welfare, to the extent

3. Ibid.

4. Lothian, "Political Consequences of Labor Law Regimes"; Gacek, "Revisiting the Corporatist and the Contractualist Models." See Lothian's response: "Reinventing Labor Law."

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that they have established themselves as a basic point of reference in labor relations and conflicts. Furthermore, labor tribunals are often seen by critical observers as *the* institution par excellence responsible for the supposed decline of the union movement. According to this view, labor is better advised to depend solely on its own potential and resources to establish collective bargaining with the employers without the support and entanglements of the state. In recent years, scholars in Brazil have made great efforts to rethink the role of the labor courts, going beyond instrumentalist concepts according to which the legal apparatus is merely a tool for domination by employers, endorsed and supported by the state.

This article analyzes the role of the Regional Labor Council (Tribunal Regional do Trabalho [TRT]) in São Paulo State, which was the most dynamic hub of Brazilian industrialization and the scene of one of the most significant expressions of the organization and mobilization of the Brazilian working class. We focus on two crucial periods of the courts' action. First, we examine the judicial cases filed between January 1963 and March 1964—that is, in a democratic environment, albeit during the dramatic political and institutional instability under President João Goulart (1961–64). Second, we analyze how the TRT dealt with the demands of workers in the early years of the military dictatorship (1964–68). During that period, it was still possible to find institutional support in the labor courts to mitigate strong wage squeezes and the limitations placed on the organization and mobilization of workers.

Labor Courts: Creation and Dynamics

Vargas created the labor courts by decree in 1939, but they only began functioning in 1941; that is, during part of the Estado Novo ("New State," 1937–45). This was a dictatorship under which trade unions were rigidly controlled by the state, while the government drove the creation of a vast swath of social and labor laws embodied in the world-famous Consolidated Labor Laws (Consolidação das Leis do Trabalho [CLT]) of 1943. The CLT furnished detailed regulations of labor relations in more than nine hundred articles covering such matters as paid holidays, restricted working hours, protection for work by women and children, workplace hygiene and safety, the minimum monthly wage, and an avalanche of further rights. In addition, the CLT, which remains in force to this day, established rules for union organization and representation, determined the functions and responsibilities of the labor courts, and regulated individual claims, class actions, and the compulsory arbitration of disputes and strikes.

This massive output of laws during the first Vargas administration (1930–45) must be understood in the context of the construction of corporatist trade unionism. A 1931 decree on trade union law effectively redefined labor organizations within a corporatist structure as consultative agencies that collaborated with the government and were banned from propagating political and religious ideologies. In order to become official, unions had to be recognized by the Labor Ministry, which meant complying with a wide range of requirements. The decree also established the principle of exclusive representation, in which each group of workers in a specific trade could have only one local union in a given county (*município*), which meant that

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trade union jurisdiction was limited by county boundaries. Furthermore, labor entities were hierarchically organized (i.e., union locals, state federations, and national confederations).

The labor tribunals were created within this legal and institutional framework to conciliate and arbitrate labor disputes, both individual and collective, requiring class-based representation. Individual grievance procedures were within the remit of the Boards of Conciliation and Judgment, with a judge presiding, whereas the TRTs were the next step for pursuing individual demands as well as conciliating and arbitrating collective grievance procedures. The Superior Labor Court was the supreme judicial authority and was under tripartite representation. In the democratic constitution of the so-called populist republic of 1946, the labor courts ceased to be an administrative system of justice subordinated to the executive branch and became a special, independent part of the judicial system.

The labor courts' main duties included avoiding strikes and lockouts. The solution to these "ills" was compulsory arbitration ending in the judges' decision when the disputing parties failed to reach an agreement. Generally speaking, workers and employers had the following options: the path of direct negotiation or collective bargaining; appealing to the normative intervention of the labor courts (mediation and arbitration); and militant workplace action—that is, strikes or lockouts under certain conditions. These three options were subjected to a thorough legal system, but the legal impediments did not prevent choices, calculations, and expectations. Therefore, we will begin by taking a look at how the workers and their unions dealt with these three possibilities in the context of intense political and institutional instability that led to the civilian-military coup of 1964.

By the mid-1950s, and strongly controlled by the Communist Party of Brazil (Partido Comunista do Brasil [PCB]), leftist forces had gained uncontested leadership of the labor movement. Banned since 1947, the PCB achieved "de facto legality," thereby playing a decisive role in the political and institutional scene in Brazil. The party called for a democratic, nationalist, and "reformist" government, particularly raising the banner of agrarian reform during the administration of Goulart, when the mobilization of urban and rural workers increased considerably.

In the field of trade unions, the Workers' General Command (*Comando Geral dos Trabalhadores* [CGT]), created and dominated since 1962 by the Communist Party, was largely responsible for the dynamism of the labor movement until March 1964, going against the CLT, which had banned such central union confederations. The first months of 1963 saw increasing militancy on the Left but also a heightened reaction from the Right, leading up to the coup. Goulart had succeeded Jânio Quadros following the latter's resignation in 1961, but did so under a hastily constituted parliamentary system that diminished the powers of the nation's new leader, whom the Right viewed as a dangerous "populist" and scion of Vargas-era "Laborism."[5]

5. *Trabalhismo* in Portuguese, from the name of the Brazilian Labor Party (Partido Trabalhista Brasileiro [PTB]).

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Goulart's presidency was marked by acute social and political tension, agreements and disagreements between government and social movements, partisan polarization, legislative paralysis in congress, alarming inflation, successive waves of strikes, and unprecedented labor organization. Furthermore, ultraconservative groups organized a loud and costly campaign against the government, which they considered an accomplice and backer of the "communization" of the country.

At the same time, the parliamentary system failed to please the popular sectors striving for "structural change" in the country, who threw themselves into the struggle for a "plebiscite with reform" that resulted in the return of the presidential system in January 1963. That resounding victory seemed to indicate that social movements had acquired political power and raised hopes that, once firmly in office, Goulart could finally implement the planned reforms advocated by the Left. After swinging back and forth on the difficult trapeze of national politics, between reconciliation with the conservative forces and commitment to reform, Goulart in early 1964 reconnected with the Left. Even as the president identified with the workers, however, he lost the backing of his own party, the PTB, and intensified middle-class opposition. A massive rally in the city of Rio de Janeiro on March 13, where Goulart announced a new series of radical reforms, was one among several episodes that finally provoked the military crackdown, which proved the beginning of the coup d'état that ended the twenty-year-old "populist republic."

In the early 1960s, it should be emphasized, workers showed an unprecedented capacity for mobilization. According to a vast recent scholarly output, the participation of the labor and trade union movement in the course of national politics did not mean that the workers were unconditionally harnessed to a populist political system. The Left and the rural and urban workers' movements not only launched "political strikes" but also, and above all, demanded and struggled for better living and working conditions. The fifteen months preceding the 1964 coup were especially prodigious in that regard, when spiraling inflation simultaneously depleted the workers' purchasing power and fueled mobilizations, particularly against the economic policy that controlled wage increases. It was in this difficult situation that the workers exerted their greatest efforts to confront the limitations imposed both by the laws that restricted the right to strike and by the regulatory powers of the labor courts, which were seen by the government as an antidote to the endless work stoppages.

The Labor Courts in the Context of the Coup

Our first finding stresses the resiliency of collective bargaining and organized worker leverage within the Brazilian corporatist structures. Collective bargaining, as we will see, was not banned in the years under review; rather, it was one possibility within an institutional framework of regulations for dealing with labor conflicts. Once a year, at the end of annual contracts, the unions and employers (industry associations or businesses) could negotiate freely and privately. They would then submit the agreement reached to the TRT for homologation, a kind of collective bargaining contract with legal effect. Moreover, if they failed to reach a "friendly understanding," any of

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the parties could seek the intervention of the labor tribunals. The first step was, then, conciliation in the Regional Labor Office (Delegacia Regional do Trabalho [DRT]), an administrative agency of the Labor Ministry. Once reached, a conciliated agreement went to the TRT, which gave its official seal of approval. The documents covering agreements between the parties, both private and through the DRT, will henceforth be called homologations.

When conciliation proved impossible, the TRT intervened directly. Above all, the judges had to seek a solution to the conflict through an understanding between the contenders. If that was not achieved, the final decision was up to the court, which handed down normative decisions (*acórdãos*) that stipulated wage increases and working conditions. Furthermore, the Brazilian system also left room for the compulsory arbitration of collective conflicts. Strikes remained illegal in the case of so-called essential activities that included primarily public services. For "ancillary" activities, collective work stoppages were only allowed after proceedings had been initiated in labor courts, never before, and the workers were bound by the decisions of the court. Documents dealing with such situations were called "collective grievance procedures."

Of the 484 cases (a number that includes homologation and collective grievance procedures) filed between January 1963 and March 1964, almost half (45 percent) ended in a mere homologation, according to results systematized in a detailed computerized data bank.[6] This finding was surprising because one might have expected that in a corporatist system of labor relations, the labor courts would have had overwhelming weight, minimizing or precluding the "amicable out-of-court settlements" expressed in the homologations. Even more astonishing is that 80 percent of those homologations were reached privately, without the intervention of any official agency, while just 20 percent involved mediation by the administrative body (DRT). When focusing on collective grievance procedures, we found that 30 percent resulted in an agreement during the proceedings. These results are surprising within a legal framework that presupposed absolute intervention of the judicial branch in labor relations, particularly in a political context in which powerful voices wanted to exert strict control over the workers.

Did the workers obtain more favorable results for their demands through homologations or through court proceedings? First, we must consider the range of demands themselves. As Figure 1 shows, the majority of demands had to do with wage increases and different forms of remuneration. This was most likely the case because the comprehensive and highly detailed CLT regulates labor relations in Brazil quite minutely and covers many of the questions that are dealt with in the United States through collective contracts.[7] Inflation, in turn, undermined the bargaining power of employees with fixed wages. Finally, the regulatory power of the court was

6. See "Dissídios: Trabalhadores e justiça do trabalho," Centro de Pesquisa em História Social da Cultura, www.ifch.unicamp.br/cecult/dissidios/ (accessed December 5, 2015). The following analysis of labor court cases is a synopsis of Silva, "Entre o acordo e o acórdão."

7. Hall, "Corporativismo e fascismo."

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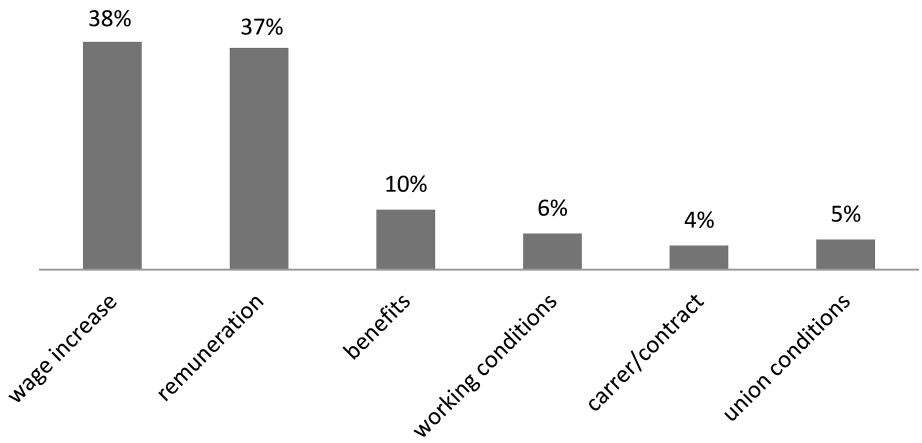

Figure 1. Subject of demands (January 1963–March 1964). Source: Regional Labor Council 2nd Region/SP

limited, because the judges avoided interfering in businesses' "private" affairs. We might assume, therefore, that in direct negotiations there would be greater inclusion of provisions other than those relating to wages and remuneration, freeing the workers from limits that labor courts imposed on themselves. Nevertheless, Figure 1 shows the opposite. In homologations, the unions were not as bold, basically negotiating wage increases. In other words, without the intervention of the court, the range of demands is always smaller, particularly with regard to the most controversial issues. The main reason for this discrepancy is that, especially in the case of trade unions and professional groups with less bargaining power, workers sought to avoid as much as possible the wide range of strategies employers used to delay the proceedings pending before the labor courts. While 69 percent of direct agreements were reached in thirty days, only 21 percent of collective grievance procedures were concluded in the same length of time. Thus workers and their unions often preferred agreements with leaner terms and accepted lower counteroffers than those they could obtain in court.

Second, we have used variables pertaining to time, place, and occupational groups to better evaluate the decision-making process during direct negotiations and judicial intervention. In São Paulo (city) and the port city of Santos—areas of the most intense struggle for workers' rights and the politicization of the labor movement—we found a higher percentage of legal proceedings, whereas homologations predominated in towns and cities in the interior of São Paulo state (Figure 2). As for the time period, the rate of collective grievance procedures increased significantly in the second half of 1963 (Figure 3), when the labor movement gained greater prominence in the context of the worsening political and ideological polarization in Brazil. Therefore, homologations, which here express collective bargaining without judges' decisions, prevailed in places, occupational groups, and periods in which the labor movement

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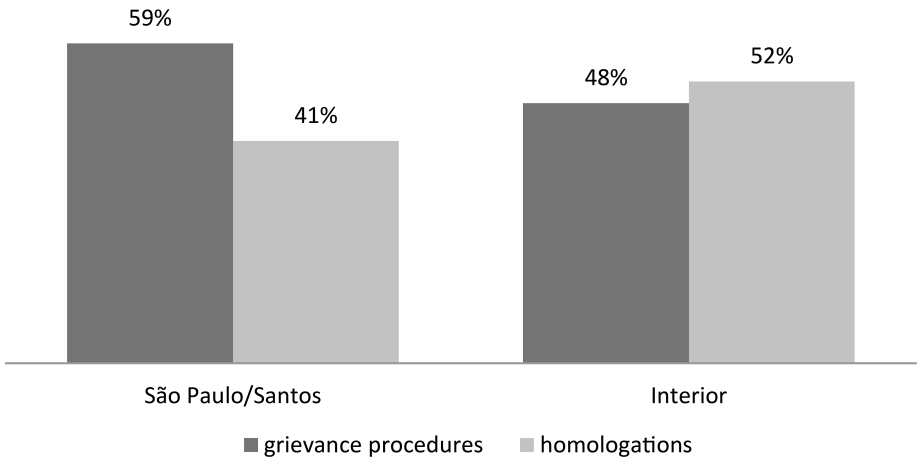

Figure 2. Regional percentages of grievance procedures and homologations (January 1963–March 1964). Source: Regional Labor Council 2nd Region/SP

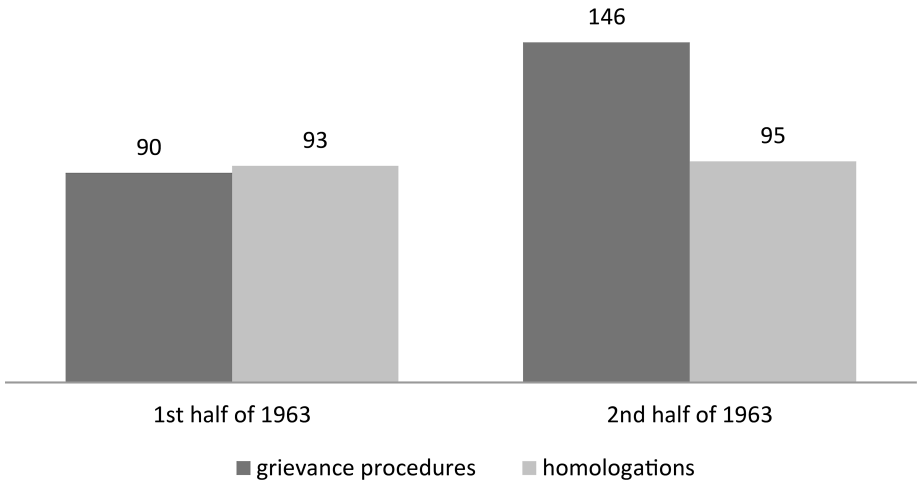

Figure 3. Comparison of grievance procedures and homologations per six-month period (1963). Source: Regional Labor Council 2nd Region/SP

was weaker. When possible, organized labor preferred to trigger the courts' intervention to wrest greater gains.

In the final analysis, workers' demands succeeded more often in court-decided collective grievance procedures than in homologations. Excluding the cases in which workers did not ask for a wage increase and did not go to judgment, the average raise obtained through procedures was 70 percent, whereas the equivalent figure for homologations was 55 percent. This discrepancy shows that employers were often

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keen on paying low wages, while the TRT was more prodigal in its decisions. This seems to be sufficient reason for many workers to prefer to go to court. Afterwards, we analyzed twelve adjudicated procedures that permit us to distinguish clearly between the average percentages requested (88 percent) and granted by the court (72 percent). In this case, we concluded that the workers managed to receive 82 percent on average of what they initially demanded, which leaves no doubt that it was advantageous to await the court's ruling.

This explanation appears to be tautological, because if the more organized and mobilized groups tended to go to court with greater frequency than the less structured ones, then, logically, they should wrest greater rewards from court proceedings than through mere homologations. Yet, we want to emphasize a different aspect here. The arguments in favor of a system of labor relations in which free negotiation should reign supreme without regulatory interference by the courts imply that in times and situations in which the working class's bargaining power had increased tremendously, it would have been better to engage in direct negotiations with the employers. By so doing, workers would have been able to impose a wider arc of claims and get more positive results without requiring the intermediation of the courts. What we see, however, is the opposite: there was a greater intervention of the TRT, precisely during the period, in the cities and among the occupational groups that presented the most favorable conditions for mobilization and the achievement of rights. This shows that employers were inflexible in negotiations, forcing more organized workers to go to court, where they could obtain more favorable results for their demands.

But, it would be wrong to conclude that the most organized and strongest groups did not engage in direct negotiations. Metalworkers, for example, participated in seven homologations and seven class action suits, which indicates that not infrequently they too opened the doors to "friendly" agreements, although homologations were more common among groups with low bargaining power (Figure 4). In other words, the degree of judicial mediation in conflicts involving the latter groups always remained lower than in the case of categories with greater bargaining power.

The employers complained that the labor courts in some cases granted higher wage increases than those claimed by the unions, which made no sense to them. This in itself is an admission that the employers did not tend to offer higher wages in direct negotiations. We have identified nine cases in which the TRT granted wage increases that were slightly higher than the amount initially demanded. This may not seem to be significant, but alongside the tendency to readjust wages even on the basis of cost-of-living indexes,[8] even official ones, it was enough to leave employers wary of the courts. In 1963, there was a relevant real increase in wages in the industrial sector, which was remarkable "in view of the fast pace of inflation and slowing economic growth at the time."[9] This achievement can be attributed to the growing strength of

8. Singer, "O significado do conflito distributivo," 19.

9. Colistete, "Salários, produtividade, e lucros," 392, 399.

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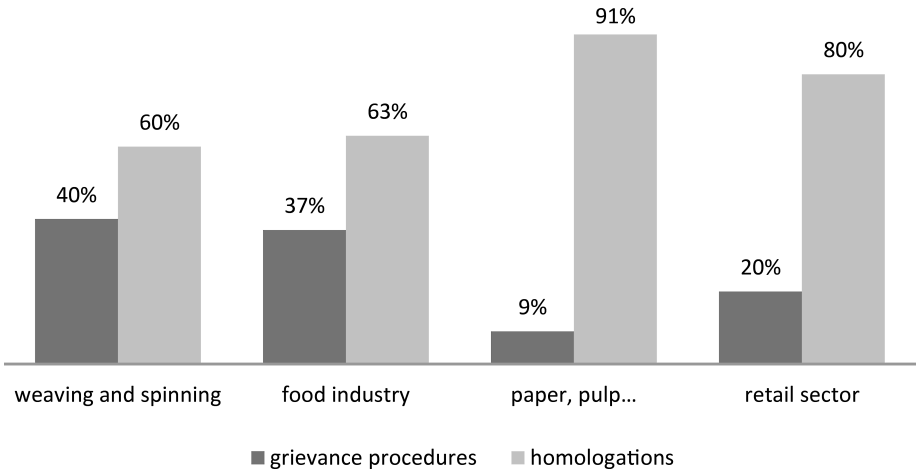

Figure 4. Proportion of collective grievance procedures and homologations per group with lower bargaining power (January 1963–March 1964). Source: Regional Labor Council 2nd Region/SP

the union movement, but we must also consider the somewhat distributive role of the courts, since, once again, the raises granted in out-of-court negotiations were smaller.

However, it would be wrong to believe that, before and after going to court, workers and their organizations only expected the labor courts to benefit them. The wave of strikes at this juncture had a major impact on the outcomes of the procedures. We must therefore clarify that the normative role of the courts and the right to strike coexisted, although both were considered legal and legally incompatible. Of the total of 268 collective grievance procedures filed from January 1963 to March 1964 that were handled by the TRT, 93 (35 percent) reported an ongoing strike. The number of stoppages must have been higher, since not all procedures enable us to see whether, in fact, there was a strike going on in the course of the judicial proceeding. In any case, this index cannot be underestimated, because the labor courts and the laws regulating the right to strike were created precisely to prevent or even prohibit strike movements.

The most important thing to emphasize is this apt statement by Jorge Miglioli: "A strike is held when workers think it is the best time for it: either before, during or after arbitration."[10] In fact, according to regulations, only 37 percent of strikes could be considered legal because they occurred exclusively during the course of the proceedings—that is, after collective grievance procedures were filed in accordance with the law. Of the total records showing strikes in progress, 14 percent of the strikes occurred before the collective grievance procedures, 46 percent before and during, and 3 percent before, during, and after. Thus in these three situations, 63 percent of strikes were in flagrant violation of the law. In other words, many stoppages occurred before the procedures, which was illegal. Striking first and appealing to the courts

10. Miglioli, *Como são feitas as greves no Brasil?*, 49.

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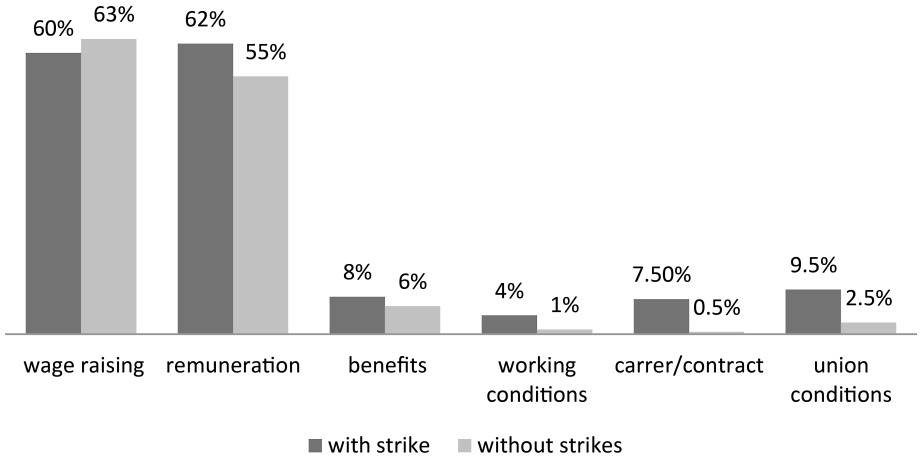

Figure 5. Proportion of achieved rights in grievance procedures with and without strikes. Source: Regional Labor Council 2nd Region/SP

shortly thereafter was part of the strategy to hurry and pressure judges. As employers accurately perceived, the law and the labor courts, which were beyond their power, fostered the outbreak of strikes, because just the threat of a stoppage was enough to legitimize the filing of a procedure in order to make it go faster.

Furthermore, procedures accompanied by strikes produced more favorable results for the workers. Observing the ratio of items claimed and granted in court rulings, the data in Figure 5 shows that it was through strikes that workers secured their rights in areas where the regulatory power showed very little progress, although the numbers do not permit this to be overstated. Finally, we emphasize that the judges ignored the appeals of business leaders to use the "strike law" against the workers, despite the leaders' claims that these were illegal strikes involving "essential activities" and, in the case of unions in "ancillary activities," that they ignored legal procedures. Without exception, in the fifteen months prior to the coup of March 1964, the TRT never ruled on the legality of any strike.

Certainly, we are far from pointing to the existence of a vaguely contractualist model in Brazil. On the contrary, even the option for direct, free, private independent or voluntary negotiations, or any other name one wants to give it, was marked out by a set of standards and public parameters. So deciding what option to choose always depended on considerations regarding the greater or lesser viability of going to court, according to well-known legal guidelines. However, our legislated model was two-sided, so the path of direct negotiations remained open to unions, and they followed it, although it was almost always a disadvantage for workers compared with the results they achieved through collective grievance procedures.

These findings refer to a period in which the decisions of the labor courts, in their own way and with all their limitations, moved in the opposite direction from

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the political intentions that led to the 1964 coup. And for that reason, they would be severely punished.

The Labor Courts in the Early Years of the Military Dictatorship

Now we come to the analysis of the initial impact of the military dictatorship on the labor courts, showing how repression and wage policy affected workers, unions, and judges. We have analyzed eighty-four labor lawsuits (including collective grievance procedures and homologations) filed between 1964 and 1968, when the labor tribunals faced strong intervention from the administration of Marshal Castello Branco (1964–67), the first president of the military regime. The dictatorship not only changed labor law, which was responsible for handling conflicts between employers and employees, but also directly impacted the functioning and composition of the labor courts. However, during the initial phase of the dictatorship, workers and their organizations could still use some institutions, within strict limits. Indeed, the labor courts resisted certain rules created by the authoritarian state, seeking to act in accordance with the principles established over the course of their activities.

Thus we argue that the labor courts were not a monolithic institution and that heterogeneity was one of their most striking features in the pre-1964 period. Professionals endowed with their own policy ideas and experiences were active in those courts, providing a locus that brought together labor law experts and representatives of workers and employers aligned with different political and ideological currents. However, what they all had in common was diverging interpretations of legal norms, with regard both to labor law and to the case law established by the regulatory judgments handed down by the judges.

Following the 1964 coup, the government that overthrew Goulart severely persecuted the so-called internal enemies of the new regime. Among these were workers, trade unionists, labor lawyers, and labor judges, many of whom identified with the Communist Party and the national-reformist groups. The government removed thousands of such people from their workplaces and unions, and hundreds were imprisoned, exiled, tortured, or killed.[11] On the opposite side, heartened by the new political landscape that favored their interests, employers engaged in mass layoffs. With the repressive system in full sway, they took advantage of it to rid themselves of "undisciplined" workers. The Ministry of Labor appointed new union leaders—called interventors—and suspended elections in the unions indefinitely in order to ward off communist trade unions such as those of the metal, chemical, port, and textile workers of São Paulo, whose leadership was widely controlled by the Left. They were the targets of various types of charges, such as corrupt practices, embezzlement, and conducting "subversive" activities, most of them never proved. The goal of the authoritarian government was to demobilize organizations' strong greater bargaining

11. Regarding repression of workers during the military dictatorship, see "Ditadura e repressão aos trabalhadores e ao movimento sindical," Relatório final do Grupo de Trabalho nº 13 da Comissão Nacional da Verdade, trabalhadoresgtcnv.org.br/ (accessed February 13, 2015).

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power and political pressure at the time. Not coincidentally, São Paulo was the state that was hardest hit: 270 labor organizations suffered intervention.[12]

During the democratic period, the labor courts had achieved a certain amount of independence from the government, becoming one of the most important tools for shaping a culture of rights in the Brazilian working class. Nevertheless, the civilian-military coup cut short the movement to retake the labor courts by the organized workers and their leftist parties. Consequently, after 1964, the labor tribunals, like the unions, came to be viewed merely as agencies to serve the interests of the state and the employers. The military regime opted to maintain the corporatist structure, including labor laws and the labor courts, but subjected their continued existence to strict control of their activities.

Strike law no. 4.330 of June 1, 1964, tried to obstruct the process of legalizing strikes and urged the labor courts to intervene with much greater commitment in collective bargaining directly carried on between employers and employees. Solidarity strikes and those considered by the law of a political, social or religious nature came to be judged illegal. Those held to demand payment of back wages and better working conditions were allowed, but the bureaucratic proceedings imposed on the unions made it extremely difficult to obtain their recognition by the labor courts.[13] Such measures drastically reduced protest movements. According to Maria Helena Moreira Alves, "[After] the 154 strikes carried out in 1962 and the 302 in 1963, the total dropped to 25 in 1965, 15 in 1966, 12 in 1970 and none in 1971. Between 1973 and 1977, there were only 34 strikes and slowdowns."[14]

Law no. 4.725 of July 13, 1965, known as the "wage squeeze law," sought to impose restrictions on the normative powers of the labor courts with regard to ruling on collective grievance procedures. During the period leading up to 1964, wage increases were generally determined according to cost-of-living indexes. However, during the military dictatorship, they came to be determined exclusively by the federal government and were applicable to all working occupations. In practice, for the Castello Branco administration, keeping wages low was the best strategy for combating inflation. The result, felt soon after the first collective bargaining procedures held in the second half of 1964, was that employers refused to discuss wage increases. In labor court hearings, the companies responded that they were unable to meet the workers' demands because the law no longer permitted it.[15] Wage increases had become a "mere technical calculation, not carried out at the negotiating table, but [determined by] impersonal state agencies that were resistant to pressure."[16] The wage squeeze as well as direct interference in the collective grievance procedures judged by the labor courts and the apparatus that repressed the unions' political activities impacted the

12. Alves, *Estado e oposição no Brasil*, 71–110.

13. Costa, *A política salarial no Brasil*, 136.

14. Alves, *Estado e oposição no Brasil*, 70.

15. "10 anos . . ." (article on the situation of the Brazilian people during ten years of Military Dictatorship in Brazil), São Paulo, CEDEM/ Unesp, RG ASMOB, box 17.03.59.4/037.

16. Alves, *Estado e oposição no Brasil*, 83.

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quality of life of workers and the organized labor movement. The new wage policy caused a real loss of wages and benefited high-income sectors, the largest share of the consumer market for durable goods.[17]

In short, before the coup, the labor tribunals established wage increases based on indexes supplied by official agencies. After 1964, the executive branch took on the task of setting wage increases. In response to measures that limited the normative power of the labor courts, the judges of the São Paulo TRT declared their support for the military government's economic policy. However, they expressed their concern about the imbalance caused by the disparity between inflation and the vague indexes used to calculate the cost-of-living increase offered by the government.

According to the sample of collective grievance procedures, the São Paulo TRT in the first two years of the dictatorship, despite the restrictions imposed by the government, did not give up its relative independence when setting indexes for wage increases. We have found more than once that the judges granted raises that were slightly higher than the inflation rate set by the government, going against the orders of the executive branch. The judges' dilemma in defending the regulatory power of the labor courts while ensuring a balance between the economic stability plan and the conciliation of labor disputes is clear when reading court records for collective grievance procedures. The court demonstrated that it understood the government's mission to reestablish the nation's political and financial stability. Yet, the measures could not involve "restricting the constitutional mission conferred on the labor courts, which through normative power supersedes free contractuality and requires that the contracting parties set the salary along the lines of better social suitability," as one judge ruled in a collective bargaining procedure.[18]

Closely monitored by the political police and the Ministry of Labor, the unions also found themselves at an impasse. To justify intervention in union affairs, the interventors needed to win the trust of those whom they "represented." Only then would the interventors be able to win union elections when the government permitted such elections to be held and definitively remove communist leaders who still sought ways of returning to their unions. The choice of leadership depended on the votes of the union workers. Therefore, it was important to get the labor courts to provide reasonable wage increases and collective contracts that were better than those achieved by left-wing leaders. However, to keep their posts and to lead the unions, interventors also needed to please the employers and political authorities. Workers were suffering from the loss of substantial labor rights that had been canceled in the name of national economic development.

In disputes waged in the labor courts, employers invoked the dictates of the military regime's new wage policy as well as their own role as government collabora-

17. Almeida, *Política salarial, emprego, e sindicalismo*, 17–19.

18. São Paulo, TRT, 2nd region archive, Sindicato dos Trabalhadores nas Indústrias Metalúrgicas, Mecânicas e de Material Elétrico de São Paulo e outros *VS* Sindicato da Industria de Artefatos de Ferro e de Metais do Estado de São Paulo, case no. 199, 1964.

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tors, with the intention of not responding to collective demands. The TRT handed down rulings on collective grievance procedures more rapidly, thereby preventing the workers from mobilizing further. Negotiations were conducted hastily, preempting the organization of strikes. During the São Bernardo metalworkers' campaign for higher wages in 1965, for example, the union—even under the leadership of an interventor—announced a legal strike; that is, one that was within the parameters that had been set by law no. 4.330 in June 1964. The strike was scheduled for March 1, 1965, but the labor tribunals speeded up the judgment and disallowed the strike, to the intense dissatisfaction of the workers.[19]

While workers sought gradually to fight repressive measures that had hit the entire trade union movement, the dictatorial government introduced new legal requirements to further limit the role of the labor courts in regard to setting wage increases. In 1966, new decree-laws were issued for that purpose,[20] but, as we observed in the sample procedures, the São Paulo court continued to present conciliatory proposals with raises that were slightly higher than those offered by the federal government. These, as well as the terms offered by the court during the conciliation stage, generally seemed to follow the same criteria.

In early 1967, the new president of Brazil, Marshal Artur da Costa e Silva (1967–69), and the Minister of Labor, both newly sworn in, promised to review the wage policy. In the newspapers, Finance Minister Delfim Neto, recognizing the Castello Branco administration's error in projecting an inflation rate that was much lower than the real one, even declared that the trade unions' complaints about calculations provided by official agencies were legitimate.[21] Faced with strict rules that severely limited the decision-making powers of the labor courts, preventing the judges from setting wage increases above the official inflation rate, São Paulo city metalworkers decided to enter into direct negotiations with the employers. Other unions followed suit.

However, the labor movement, which was still trying to regroup after the coup, was once again demobilized by the crackdown that followed the enactment of Institutional Act No. 5 of December 13, 1968. Known as the AI-5, this decree suspended a number of constitutional guarantees and increased the president's powers while allowing the political rights of opponents of the regime to be revoked. Armed with legal instruments created by the dictatorship, Costa e Silva closed Congress. These authoritarian measures represented the seizure of power by the radical military group known as "hard liners." As a result, the repressive apparatus completely demobilized social movements, including trade unions.

When the dictatorship began, the Castello Branco administration had chosen to maintain the labor courts instead of eliminating them, removing professionals who

19. Oliva, *Imagens da luta*, 132.

20. See decree-law no. 15/66 of July 29, 1966, Organizamos o conhecimento que você precisa, JusBrasil, www.jusbrasil.com.br (accessed February 13, 2015).

21. *O Estado de São Paulo* (newspaper), April 13, 1967.

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did not fit into the authoritarian ideology of the recently established regime. Judges Carlos Figueiredo de Sá and Fernando de Oliveira Coutinho as well as attorneys Rio Branco Paranhos and José Carlos Arouca were among those persecuted under that new system. Arouca, for example, was not allowed to take his post as labor judge even though he had come in first place in a competitive examination.

Labor attorney Agenor Barreto Parente, who represented workers, classified judges of the TRT in three categories: pro-employer, pro-employee, and independent. Parente believes that some professionals played "the dictatorship's game" in order to gain advantages under that political regime.[22] Regarding collective grievance procedures, Parente observes that "disputes were always agreed to on the basis of political interests, the percentages were always very low." However, the lawyer continues, "the labor courts generally favored workers, except in cases where there was a political connotation, such as a strike, for example."[23] According to Superior Labor Court minister Pedro Teixeira Manus, referring to the activities of the labor tribunals during the dictatorship, the military regime "did not interfere in individual rights [in accordance with the Consolidation of Labor Laws], since the judgments continued to have the same content, except for part of the legislation that changed regarding job security."[24]

Aluísio Mendonça Sampaio, for example, was viewed as a "progressive" judge and considered "one of the exceptions" in that court during the military dictatorship, in Pedro Manus's opinion.[25] Sampaio had also been a communist sympathizer, along with his brother, attorney Walter Mendonça Sampaio, who also admired the communist judge Figueiredo de Sá. Indeed, the courts seemed to bring together professionals of various ideological hues who maintained a certain atmosphere of respectability. However, after the coup, the São Paulo TRT's activities were closely scrutinized by the political police. Many court officials established a close relationship with secret service agents (Bureau of Social and Political Order [DEOPS]), reporting activities and people in the labor courts they considered "suspicious." According to Manus, "the agent did not call the judge, he called his clerk."[26] Judges Sá, Carlos Bandeira Lins, and Coutinho, as well as the lawyers of workers and union leaders who were activists or sympathizers of leftist organizations, became the main targets of police repression in the labor courts.

Whether the judges were "conservatives" or "leftists" directly affected the interests of the working class. Decisions handed down by Sá, who was removed from office in mid-1968 on charges of collaborating with the clandestine organizations struggling against the dictatorship, contrasted leftist ideas with the conservative thinking that generally prevailed in the labor courts. Curiously enough, based on statements from those who knew the judge personally, he was highly respected by his peers, even judges who were said to be conservative.

22. Agenor Barreto Parente, interviewed by Larissa R. Corrêa, São Paulo, June 19, 2010.
23. Ibid.
24. Pedro Teixeira Manus, interviewed by Larissa R. Corrêa, São Paulo, June 12, 2010.
25. Ibid.
26. Ibid.

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Since 1936, Sá had figured among the "subversive" youths investigated by the DEOPS. He was accused of spreading Communist propaganda and was persecuted a few times by the police, according to reports in his police record. He became a judge in the labor courts in 1953. That same year, he signed a manifesto, a "tribute to Generalissimo Stalin by the people of São Paulo," which was duly noted by the political police. After the 1964 coup, his name was once again popular in the police archives, together with the names of other judges, in the context of criminal background checks.[27] Sá was systematically monitored by the secret service and removed from his post as labor judge due to his "subversive" activities. He returned from exile after the amnesty for political prisoners in 1979.

The presence of left-wing activists at the TRT made it the target of attacks organized by anticommunist groups. One of the offensives against leftist organizations took place in mid-December 1965, when agents of the political police were warned that the Anti-Communist League had placed a "high-explosive bomb in the courthouse [that] would blow up the building on Brigadeiro Tobias Street." The building was evacuated, but another threat was made immediately afterward, targeting another TRT building on Rego Freitas Street.[28] In addition to Sá, the repressive system persecuted other judges, such as Coutinho and his brother, both of whom had links to the Communist Party.

The cases presented in this article aim to show that although it was subject to the complex rules of the government's wage policy during the military dictatorship, the São Paulo TRT still sought a certain amount of autonomy, albeit with limits, in its decisions on wage increases. The makeup of the court was quite diverse, but we can see that the judges had to deal, even rhetorically, with the principles of equality between the parties and the establishment of "social harmony." The problem was that, with the military in power and its policy being largely favorable to the interests of industry, the employers were not in the least willing to negotiate.

We have seen how, following the establishment of the authoritarian regime, the military governments of Castello Branco and Costa e Silva decided to maintain the structure of the labor courts to make them exclusively an effective instrument for controlling and demobilizing workers. At the same time, they allowed thousands of workers to turn to the labor courts to gain redress from the employers' constant disrespect for the law and individual rights. There was a significant increase in cases filed after the coup in the labor courts across the country: between 1964 and 1966, the numbers rose from 295,882,000 to 541,396,000 procedures.[29] With the unions demobilized and under heavy police surveillance, the increasing litigation was due largely

27. Carlos Figueiredo de Sá file n. 4.511, Public Archive of the State of São Paulo, Political Police Archive of São Paulo (DEOPS).

28. Dossier no. 50-Z-0-11.157, Public Archive of the State of São Paulo, Political Police Archive of São Paulo (DEOPS), December 2, 1965.

29. "Série histórica da movimentação processual, 1941 a 2014," Statistics and Research Department, Superior Labor Court (Trubunal Superior do Trabalho), www.tst.jus.br/justica-do-trabalho (accessed September 30, 2015).

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to the fact that the labor tribunals had become one of the few remaining forums for the struggle for rights and the activities of trade unions.

In the first two years of the dictatorship, the São Paulo TRT challenged the constitutionality of law no. 4.725 of 1965, understanding that it restricted the normative power of the labor courts, but in the following years it found itself obliged to accept the decisions of the superior court, especially those that legalized decrees issued by the executive branch. However, the exercise of normative power was always the subject of debate and reflection, not only on the part of workers' representatives but also by the industrialists and the labor judges themselves. According to Regional Labor Attorney Luiz Roberto Rezende Puech, although the federal constitution of 1946 guaranteed that legal instrument, it did establish precisely how and to what degree it should be used. Therefore, the judges had some leeway and free will, although that leeway shrank further and further over the course of the dictatorship.[30]

In 1967 and 1968, workers began presenting long lists of claims in collective grievance procedures,[31] not just in the hope of seeing them accepted by employers or approved by the judges but probably with the intention of drawing the court's attention to the needs of the working class. As for what was to follow during the "years of lead"—that is to say, the most repressive period of the regime, between 1968 and 1974—we do not yet have studies that allow us to reach a conclusion about the significance that workers attributed to the labor courts. It is very likely that, with regard to collective grievance procedures, unions had very little power to pressure the judges to rule in their favor. Similarly, the judges must have complied to a large extent with the orders of the executive branch, especially in regard to wages.

Conclusions

As we suggested at the beginning of this article, both in academia and among left-wing activists inside and outside Brazil, the idea prevailed that the Brazilian system of labor relations, with its rules controlling union organization, had thwarted the development of an authentic, independent, free, and democratic worker's movement. In other words, the system was believed to have been structured to co-opt and manipulate the workers, who were supposed to be invariably subordinated to the state. That view was also strategically constructed by the AFL-CIO when implementing its cooperation program with Brazilian unions at the height of the Cold War. Ever since the first contacts by American unions with Brazil in the 1940s, the operations of the corporatist system in structuring labor relations was at the heart of the debates and criticism of the trade union movement in this country. For the largest US trade union confederation as well as for American experts on international labor issues, the Brazilian corporatist system represented a major obstacle to the nation's

30. São Paulo, TRT 2nd region archive, Sindicato dos Trabalhadores nas Indústrias Metalúrgicas, Mecânicas e de Material Elétrico de S. Paulo e outros *VS* Sindicato da Indústria de Serralheria do Estado de S. Paulo, case no. 225, 1966.

31. See, for example, the following cases handled by the TRT: no. 47, 1967; no. 252, 1968.

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industrial development. The alternative was the contractualist, or "voluntarist," US model, according to which wage increases and demands for better working conditions would be dealt with through direct collective bargaining with employers. Thus the labor movement would be free of state interference as well as from any legal system of regulating employment contracts and the normative intervention of the labor courts.

In 1962, the AFL-CIO, with funding from the Agency for International Development and the collaboration of American multinationals, founded the American Institute for Free Labor Development (AIFLD). In addition to demobilizing the communists, nationalists, and anti-American union leaders, or those who were seen as such, the goal of the AIFLD was to implement direct collective bargaining between employers and employees without government interference through the work of a national federation of labor, which was to operate along the lines of the AFL-CIO. Thus it was expected that direct negotiations with employers would gradually replace the established corporatist system of labor relations. In the American unions' views, the new local leaders, once trained by the AIFLD, would become responsible for the implementation of a free trade union movement in the country. According to the AFL-CIO's model for trade unions, the new leaders should only represent the specific problems of the working class, focusing on collective bargaining and the improvement of working conditions rather than broader political objectives.

To achieve this goal and ensure that Brazil would not become a "new China," the AFL-CIO, supported by the US government, directly contributed to the overthrow of the Goulart government. The US trade union's leadership, headed by George Meany, believed that the Brazilian military government would adopt the regulatory model of US labor relations in exchange for more financial investments in technology and industry. Thus it was assumed that the elimination of the corporatist system and its replacement with the contractualist model and "free unions" would attract more investment from multinationals in this country. However, after a series of activities organized by the AIFLD in the early years of the military dictatorship and thousands of dollars spent on the Brazilian trade union movement, the dictatorship chose to maintain the corporatist structure of labor regulations, along with the functions of the labor courts.[32]

This is not the place to explain the complex reasons behind the US's "failure," at least regarding the goal of introducing a different system of labor relations in Brazil. What we want to point out is that the Brazilian model had a "flexible rigor," an oxymoron with which we want to explain the longevity and tradition of corporatist-inspired institutions, which were permeable and malleable in different political regimes. The continuation of the labor courts during the dictatorship reveals the strength of the tradition of the institutions created during Vargas's first administration. If during the postwar period the trade union movement learned to handle the corporatist system in general and the labor courts in particular to achieve workers' rights and better working conditions, during the post-1964 period we have noted that

32. Corrêa, "Democracy and Freedom in Brazilian Trade Unionism."

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employers were not willing to engage in "free" negotiations with the labor movement. They were supported by the authoritarian regime, and repression as well as economic policy were on their side. Not coincidentally, the dictatorship soon began restricting the right to strike and the normative powers of the labor courts.

Therefore, since corporatism is not monolithic and labor laws were used pragmatically by employers and workers, it could be that the legal system introduced in the 1930s served both as an instrument of control and repression and for the politicization of the labor movement. However, the impacts of the corporatist system on the organization and mobilization of workers should not be sought only and fundamentally in the system's "original sin"—that is, its fascist origins and the institutional design that shaped it. The point is to understand the relationships developed among different social actors in specific political and economic circumstances. The labor tribunals in particular had a Janus-like nature. Both the filing of collective grievance procedures with labor courts and the achievement of collective agreements through direct negotiations with employers were calculated actions, taken within the same legal and judicial system. The workers' success depended fundamentally on the strength of their productive sector—that is, the bargaining power of a particular occupational group—as well as the organization of the labor movement in different political and institutional regimes.

When we think about the factors that led to the continuation of the corporatist model of labor relations during the dictatorship, we can say that under the strong control of the executive branch and with the rigorous selection of judges, the labor courts served the interests of the military regime and many business leaders, most of whom were allies of the dictatorship. During the years of harshest authoritarian rule (1969–78), workers had few means at their disposal to fight the official union structure, since the police and intimidation by employers, in line with labor legislation, undermined any kind of action. This situation began to change after 1978, when the military regime started showing signs of weakness and union opposition began to infiltrate the trade unions, ultimately removing some of the most conservative directors nationwide, both in urban and rural areas. Until then, the repression of the trade union movement, the co-optation of leaders, and compulsory arbitration of labor disputes (through strong limitation of the labor courts' normative power) were key mechanisms for sustaining a repressive military regime. In this sense, it is clear that the military government chose to maintain the labor courts and the corporatist system because it understood that they were an effective instrument of control and demobilization of the Brazilian trade union movement. In that moment—and only in the context of the certain specific conditions that we have outlined—did the corporatist system lose its advantages for workers. In that controlled context, the regime came to resist the introduction of "free unions" and cling to what was recognized as the Vargas legacy.

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FERNANDO TEIXEIRA DA SILVA is professor of history at the State University of Campinas (UNICAMP), Brazil. He was a visiting fellow at University of Illinois at Chicago in 2014. He has been studying labor history in comparative perspective.

LARISSA ROSA CORRÊA is professor of history at Pontifical Catholic University of Rio de Janeiro, Brazil. She did her postdoctoral work at International Institute of Social History in Amsterdam in 2013. She is a labor historian with interest in the Southern Cone trade unions' international relations during the military dictatorships.

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