

**A Crucial Case for Flexicurity:
The Politics of Welfare and Employment in Spain**

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Introduction

This chapter will present an account of the recent history of labour market and welfare policy in Spain, with a view to assessing the viability of and prospects for the flexicurity project in the fourth largest economy in the eurozone. Spain is a 'crucial case' (Gerring 2007) for theories of labour market politics, since its labour regulation model has developed into a paradigmatic case of dualism. Achieving reforms in Spain would challenge existing explanations of dualism, and offer encouragement for policymakers wishing to transfer the flexicurity model across Europe. The following chapter will explain how the Spanish labour market has developed in the past decades, and assess recent attempts at reform. Although the focus is largely on the medium to long term, we will also draw some tentative conclusions on the impact of the financial crisis and its brutal consequences for the Spanish economy.

The Context of Labour Politics: From Dictatorship to Democracy

Spain, like most of the rest of Southern Europe, was a late democratizer, enduring authoritarian rule until Franco's death in 1975. Full democracy therefore arrived in Spain only after the Golden Age of full employment and welfare expansion in post-war Western Europe had already ended, and the transition to democracy took place amidst the backdrop of the economic crisis of the late 1970s and early 1980s. For these reasons, the institutional configuration of the labour market in Spain remains strongly influenced by the arrangements that emerged during the Franco regime.

These arrangements revolved around strong job protection for labour market insiders (largely male heads of households), based on legal rights to extensive compensation for sacked workers. At most larger firms, layoffs (except where political motives could be alleged) were virtually impossible and temporary employment did not exist. In the 1960s and early 1970s, the Fordist, quasi-militarist organization of most larger firms and Spain's low labour costs meant that greater flexibility was not a priority for Spanish employers (Babiano Mora 1993; 1998). This restrictive regulatory framework compensated for the dictatorship's outlawing of unions and collective bargaining rights (Mateos 1997) and its reluctance to establish a modern welfare state. Social spending levels were far below the European average; although a modest, Bismarckian (contributory) social security system had been introduced in the 1960s, replacement rates were low and coverage was restricted. With a residual government safety net and a prohibition on collective action in the marketplace or in politics, the main source of protection from poverty was their familial network.

The transition to democracy brought about an enormous increase in worker mobilization demanding a sharp increase in wages and collective rights just as severe economic problems engulfed broad swathes of the economy. The new, democratically elected government under the centrist Adolfo Suárez sought to avoid conflict with the labour movement, negotiating wage restraint at the expense of reform (Hopkin 1999). Neither the unions nor their party allies were prepared to accept a major retreat from the labour protections of the Franco regime, and as a result the protectionist bias of the Francoist-era labour legislation was in large part institutionalized through the Workers' Statute and Employment Law of 1980, which between them established the broad framework for labour law in the new democracyⁱ.

Only when the Socialists of Felipe González took power in 1982 with a large majority in the Spanish Congress could truly difficult political choices be made regarding the distribution of the costs of adjustment. Faced with growing unemployment, loss of competitiveness and limited fiscal room for manoeuvre the Socialists opted for an orthodox route to macroeconomic stability, learning from the fiasco of Mitterrand's attempts to stimulate recovery in France a year earlier. Instead, Economy Minister Miguel Boyer sought to squeeze inflation out of the system, initially seeking a corporatist solution, but later relying on fiscal and monetary tools as the unions showed increasing reluctance to impose wage restraint on their members (Boix 1998). Government-led restructuring of uncompetitive industrial firms in sectors ranging from textiles to shipbuilding facilitated exit from the labour market for 70,000 workers (Caloghirou, Voulgaris and Zambarloukos 2000). The high

unemployment that resulted from this approach was politically unpalatable for a party that had promised to create 800,000 jobs in its electoral manifesto.

The González government's two-fold response to this political dilemma laid down the contours of the Spanish labour market we can observe today. First, it pushed through a labour market reform in 1984 that vastly extended the use of temporary contracts, leaving intact the high firing costs for permanent contracts inherited from the Franco regime (Toharia and Malo 2000). Although in principle firing costs were not immoderate (20 days salary per year worked, up to a maximum of 12 months), in practice costs were higher because of the way the law was interpreted by labour tribunals. This made Spanish employees with indefinite contracts one of the most protected workforces in Europe, since as well as the high firing costs, collective layoffs required authorization from the Ministry of Labour, which like the tribunals, tended to be hostile to employers seeking to shed labour (Jimeno and Toharia 1993). Given the electoral importance of core workers for the Socialist party (Rueda 2007), and the deep hostility of the unions to any reduction of employment protection, the government opted instead to promote temporary employment.

Second, the Socialist government substantially expanded public spending to provide a more extensive social safety net. The Franco dictatorship had barely developed a welfare state (Gunther 1996: 179), but the sharp rise in unemployment during the transition to democracy led to a rapid rise in social spending that continued through the 1980s and early 1990s (Chhibber and Torcal 1997, Boix 1998), although it failed to reach the share of GDP spent in more developed welfare states such as France and

Germany. This increased spending implied a move away from the broadly Bismarckian model inherited from the Franco regime, and towards a more universalistic model, although the economic crisis that began in 1992 limited the potential for public expenditure growth and brusquely interrupted the gradual labour market improvement of the first two terms of Socialist government.

The emerging model of employment regulation pursued by the Socialists thus combined increasing 'flexibility on the margins' with increasing investment in passive labour market policies designed to ensure a minimum income for heads of households. The explosion of temporary employment after the 1984 reforms left Spain with perhaps the most starkly dualistic labour market in Europe, whilst persistently high rates of unemployment and labour market participation rates for women, youth and older persons of working age well below those of most of Spain's new European Union partners.

Flexibility for Some, Security for Others: The Challenge of Dualism in Employment Contracts

Spain's labour market and welfare regime was the subject of pressure to reform long before the term 'flexicurity' became currency in the policy debate. The main reason for this was Spain's lamentable employment performance, with unemployment remaining stubbornly well above 10 per cent throughout the 1980s and most of the 1990s. The emerging consensus amongst academic economists, best captured in the OECD's *Job Study* of 1994, identified Spain's strict rules on dismissals

as a key source of unemployment, and reform efforts through the 1990s and 2000s focused mostly on the unbalanced treatment of workers on temporary and permanent work contracts.

The 1984 labour market reform created a marked contrast in firing costs between workers with permanent contracts and those with temporary contracts. For the former, contracts could be terminated for economic reasons, but firing ‘without cause’ brought high levels of compensation (45 days per year worked, up to a maximum of 42 months, with one month’s notice and salary during the subsequent 1-2 months while the issue wound its way through the labour courts), and labour tribunals more often than not found against employers. As a result, employers tended to offer higher payouts than the law strictly implied in order to avoid the courts (Jimeno and Toharia 1993; Rhodes 1997; Rueda 2007). The 1984 Act removed restrictions on the use of temporary contracts, allowing them for non-temporary work and sparking a boom in fixed-term employment (Dolado *et al* 2002). On top of the existing temporary contracts for seasonal or specific work, the 1984 reform created two new kinds of temporary contracts: fixed-term employment promotion contracts (*contratos para el fomento del empleo*) and training/apprenticeship contracts (*contratos de formación/aprendizaje*). Employment promotion contracts lasted a minimum of six months, and could be renewed for up to three years; termination of the contract cost only 12 days salary for each year worked, and could not be appealed (Polavieja 2003: 71-2; see also Bentolila and Dolado 1994; Güell and Petrongolo 1998). The other two types of temporary contract entailed no dismissal costs at all.

Temporary contracts therefore represented a very cheap and low risk way of taking on new workers.

This 'partial deregulation' (Polavieja 2003) of Spanish labour law had a major impact on the structure of the labour market in the 1980s. At the start of the decade, over 90 per cent of the workforce were on indefinite, protected contracts, but by 1990 over 30 per cent of employees were on temporary contracts (the highest proportion in Europe by some distance) (Dolado *et al* 2002: F270). With employers making abundant use of temporary contracts, unemployment began to fall from the record levels of the early 1980s, but the crisis of the early 1990s all but reversed these gains, pushing unemployment back up to 24.6 per cent in 1994 (Guillén 2010: 192). This clear evidence of the limits of dualism brought a review of labour regulation, after the Socialists came close to losing the 1993 election.

The resulting labour reform of 1994 (OECD 1999) ostensibly aimed to address the prevailing labour market dualism by relaxing employment protection for core workers whilst disincentivizing employer reliance on fixed-term contracts. The reform simplified administrative procedures for collective dismissals and clarified the legal basis for dismissal, in a bid to increase the chances of employers convincing employment courts of their justifications for layoffs. All told, these changes had little practical effect on courts' decisions, and since the relatively high firing costs remained unchanged (in part because of fierce union opposition), core workers retained a high degree of protection from dismissal (OECD 1999; Ballester 2005, Bentolila *et al* 2008).

The second dimension of the reform was the peeling back of legal restrictions on the contents of collective bargaining. Given the explosion of temporary contracting

after the 1984 reform, the government hoped that opening up more issues to collective bargaining would encourage firms to pursue competitive adjustments through the organization of work rather than through employment levels: working hours could now be set annually rather than weekly, permitting a more flexible organization of working time; irregular shifts and overtime no longer had to be paid at a higher rate; job classification schemes could be simplified, permitting greater movement within the same job category; the rules governing more substantial modifications in working conditions were simplified, and seniority pay was no longer mandatory. Because collective bargaining rules made it difficult to impose any of these changes without the support of worker representatives, in practice employers found it easier to postpone greater internal flexibility in exchange for wage moderation. Nevertheless, this would remain the biggest change in collective bargaining until 2012.

The third main plank of the reform involved changes to temporary contracts. The fixed-term employment promotion contract was severely curtailed by the 1994 law, being allowed only for specific tasks and specific kinds of workers, rather than as an expedient form of employing workers without job security as had been the case in the previous decade. However, although this should have led to a reduction in the use of temporary contracts, the implementation of the reform failed to effectively restrict the use of temporary contracts for non-temporary work, and employers simply adopted other kinds of temporary contracts instead. It has been suggested that this was in fact the intention of employers and policymakers (Toharia 1999), and the fact that the Labour Inspectorate has never dedicated significant resources to cracking

down on these violations gives credence to this interpretation; in any case, the proportion of temporary contracts in the workforce and the rate of conversion of temporary into permanent contracts appeared unaffected by the reform.

In 1997, the Aznar government negotiated a further reform with the unions and employers association (CEOE) (OECD 1999; Bentolila *et al* 2008). The reform sought to strengthen the labour market position of workers on the margins by limiting incentives for temporary contracting and by reducing the costs to employers of permanent contracting. Subsidies for temporary contracts were discontinued and the widely-used fixed-term employment promotion contract (*contrato temporal para el fomento del empleo*), already curtailed in 1994, was finally abolished. The agreement also proposed a new, subsidized permanent contract for select groups of workers on the margins of the labour market (youth, women and the unemployed over 45), known as the 'star' contract. The star contract would include significantly lower dismissal costs than a standard permanent contract (33 days per year worked up to a maximum of 24 months' pay) and the subsidies would be provided by the government in the form of reduced social security contributions for employers (OECD 1999: 321-2; Bentolila *et al* 2008). A 'sunset' clause provided for a review in 2001. Although the government assumed the costs associated with the reductions in social security contributions intended to promote permanent contracting, the agreement yielded only limited reductions in the share of temporary employment, largely because the temporary contracts continued to be cheaper and, critically, their layoff costs more predictable.

Spain therefore managed to enter the first wave of European Monetary Union without any major reform of its dualistic labour market, and euro entry, combined with an apparently buoyant economic situation in the early 2000s, removed part of the motivation for revisiting the regulation of the labour market (see Villaverde, Garicano and Santos 2013). The re-election of a conservative government under José María Aznar in 2000, with an enhanced parliamentary majority, failed to make more than a dent in the existing arrangements. In March of 2001, the Aznar government unveiled its 'Urgent Measures for the Reform of the Labour Market and More and Higher Quality Employment', adopting a bullish rhetoric of far-reaching change. The reform introduced slight restrictions on the length of temporary contracts to reduce cycles of temporary contracting while simultaneously expanding the availability of temporary contracts for harder-to-employ groups. (OECD 1999: 322-3). The reform also aimed at a substantial reduction in layoff costs. Employers who assumed that a layoff would be judged without cause (and hence subject to higher severance pay) could deposit the amount of severance anticipated with the court within 48 hours and not have to pay the worker's salary during the months (typically 1-2) between the layoff and the judge's decision (*salarios de tramitación*).

The reform's hopes of closing the gap between labour market insiders and outsiders by easing firing rules were not, however, realized. Labour court judges were unprepared to interpret firms' evidence and frequently unsympathetic to their claims, leaving employers to pay far higher severance than they had hoped. Government efforts to balance employer needs for flexibility with permanent workers' needs for stability by reducing the costs of layoffs 'with cause' (*objetivos*) relative to those

without (*improcedentes*) were effectively abandoned. But the reform did have a major effect, by virtually collapsing the two categories of dismissals. The principle of cause in layoffs—critical to traditional continental European conceptions of labour law as a framework for protecting the weaker party—was replaced by an exclusive focus on the cost of the layoff for whatever reason. In practice, after the reform employers in Spain enjoyed a system of employment-at-will, with predictable, albeit significant, costs.

These arrangements largely persisted until the financial crisis of the late 2007. The Zapatero government elected in 2004 had little interest in radical labour market transformation, especially given the dramatic fall in unemployment resulting from the construction boom of the early years of monetary union. A process of concertation with unions and employers initiated after Zapatero's surprise electoral victory produced a timid reform in 2006, which frankly announced that '...it does not seem opportune to introduce substantial changes in labour legislation'ⁱⁱ. Given this lack of ambition, the only significant change in labour market regulations was the limitation on repeatedly contracting workers through temporary contracts for the same position. Workers contracted two or more times by one firm for the same job for more than 24 months in 30 would automatically be considered permanent workers. The law also encouraged sectoral collective bargaining units to negotiate limits on the 'abusive utilization' of temporary contracting with different workers, either directly or through temporary employment agencies, to do the same job.

The 2006 reform therefore left the stark division between different sectors of the workforce: on the one hand the 'insiders' - protected employees (mostly men over

the age of 30) whose primary concern was to maintain employment protection and secure adequate pensions on retirement - , and on the other the 'outsiders' - temporary employees (mostly the young and women), who instead had more interest in the expansion of unemployment compensation, training, and job creation. The Socialists were particularly affected by this division, since the protected, unionized blue collar workforce was a key source of electoral support (Polavieja 2003, Rueda 2007). However, it is equally noticeable that the conservative Popular Party showed limited interest in reducing the high level of protection for standard contracts during their eight years in power (1996-2004), calling into question the conventional insider/outsider argument. To properly understand the dynamics of labour market arrangements, it is important therefore to consider the other planks of the social contract: the social partners and patterns of concertation, and the emergence of a welfare state in Spain. These two areas are the subjects of the next two sections.

Labour Politics and Labour Institutions: The Failure of 'Competitive Corporatism'?

The role of trade unions and employers' organizations is crucial to understanding the nature of labour market regulation in Spain. The transition to democracy saw the liberalization of the labour regime, controlled by the Franco dictatorship through the so-called Vertical Syndicates. Under democratic conditions, two main trade unions emerged and consolidated an effective duopoly of worker representation: the Communist Comisiones Obreras (CC.OO), which had been active during the last years

of the dictatorship, and the historic Socialist UGT. But while CC.OO. and UGT consolidated their privileged position as interlocutors with the government and in sectoral collective bargaining units across most of the economy, their ability to shape and aggregate the preferences of the rank-and-file remained quite limited.

The reasons for the unions' weakness were connected to the way in which the democratic labour regime in Spain was institutionalized. Institutions of workplace participation established in the transition to democracy constrain union leaders in important ways. The elected shopfloor works councils, which although largely composed of union members in the most organized firms, are legally independent from their respective union organizations (Escobar 1993). Local representatives are free both to negotiate collective bargaining agreements and to engage in strike actions that contradict the preferences of sectoral union officials: continuity in their posts is wholly contingent on the support of their workmates (union and non-union members alike) in works council elections held every four years. Critically, the number of delegates that each union seats on works councils determines its participation in sectoral collective bargaining and supply side labour market institutions (continuing education, extrajudicial dispute resolution, consultative bodies for economic and social policy, etc.), as well as the amount of state funding they receive.

Because unions generally bargain on behalf of both members and non-members, incentives for affiliation are low (and, largely as a consequence of this, union dues are kept very low). Given the subsequent scarcity of human and material resources, unions' abilities to select, train and coordinate works council representatives is quite limited except in the most organized firms; so too, then, is

their ability to shape the preferences of voters in works council elections and, thus, to advocate negotiating positions or policy reforms that strengthen the position of labour market outsiders at the expense of insiders' privilegesⁱⁱⁱ.

On the face of it, the institutionalization of labour relations in democratic Spain appears to bear some responsibility for the dualistic nature of the labour protection regime, since union members tend to be insiders and unions have little incentive, or capacity, to represent broader, encompassing interests (Rueda 2007: Ch.5). However, the unions' approach has been dictated as much by their own weakness, and their inability to influence government policy, as any clear preference for the interests of insiders. The unions' inability to reach beyond the core worker constituency has led to focus on insiders, but they have also protested vigorously at measures to reduce labour protections for outsiders. Both the UGT and CC.OO have been able to rally both members and many non-members in defense of existing labour market and social welfare programs, as evidenced by the massive general strikes convened against labour market reforms, most notably in 1988, but also in 1994 and in 2010.

This institutionally-defined distribution of power within the labour market is critical to understanding the steps taken by the successive Spanish governments in dealing with structural adjustment. The main beneficiary of the worker mobilization of the transition was the Communist affiliate CC.OO, leaving the historic Socialist UGT struggling to catch up. The Socialist government under Felipe González had a long-term strategic interest in bolstering the UGT, meaning it could not press its affiliate to compromise over labour rights and wages. This helps explain why the Socialists ultimately followed the path of reinforcing the divisions between insiders and

outsiders in the labour market with a succession of measures to generate temporary employment. For example, the labour reform of 1994 was introduced after extensive consultation with employer interests but the trade unions were reluctant to support any measures to liberalize contracts and refused to sign up to the changes (OECD 1999).

Interestingly, the conservative governments under José María Aznar were more successful in reaching agreements with the unions. After forming a minority government in 1996, supported by the center-right Catalan and Basque nationalists, Aznar sought to engage the social partners in the development of labour market and social policy. The new government reached a pact with the CC.OO. and UGT, to support the pension reforms reached by the 'Toledo Pact' of 1995. Yet the Popular Party government avoided pressing for significant changes in the social security system or labour market regulations. Instead, mindful that the Socialists' 1994 labour market reform had provoked a general strike, the government encouraged the social partners to reach a consensus about future reforms, which the government then promised to implement through legislation.

The unions also had their motives for participating in renewed dialogue regarding labour market and social policy reforms. The general strike of 1994 had not played well the unions' core constituency, and both UGT and CC.OO. suffered significant losses in elections for shopfloor delegates in the wake of the strike. The 20% increase in successful independent candidates suggested increasing worker exhaustion with the unions' in-fighting and their resistance to any significant labour market reforms. The leaders of each union made the case for a return to national-level

dialogue at their respective national conventions in 1995 and 1996 (Jodar and Jordana 1999; Royo 2006).

This move towards a more conciliatory approach led to a battery of agreements that appeared to signal an emerging consensus around a reconceptualization of the links between flexibility and security: instead of flexibility 'on the margins' and security through familialist protections, the dominant parties in Parliament and the social partners seemed to be moving toward a model rooted in negotiated flexibility within the firm and labour market activation and greater protections for those at the edges of the labour market. During the PP's first year, the two main unions and the employers' federation CEOE agreed to institutional reforms to promote both flexibility and employability. To reduce the costs, delays and uncertainties involved in resolving collective workplace dispute through the courts, the social partners established a co-managed institution for voluntary extrajudicial dispute resolution modelled on similar forums previously established by their respective affiliates in several Autonomous Communities. To enhance workers' skill levels, particularly in SMEs, the social partners renewed the bipartite institute created in 1992 to manage European Union and Spanish government funds for on-going training. The implementation of both agreements was funded by government (and the EU) rather than the social partners. The signatories thus gained access to significant financial and institutional benefits without making a single concession regarding their core organizational priorities.

In 1997, the unions and CEOE signed what was then hailed as a major agreement on labour relations rules (OECD 1999; Bentolila *et al* 2008). The major element of the agreement was a commitment to improve coordination within the collective

bargaining system by reserving specific negotiating issues for national, regional and local level sectoral agreements, thereby advancing firms' abilities to reach local agreements to advance, primarily, internal flexibility. Critical to this accord was the agreement to negotiate nation-wide agreements in the vast majority of sectors where bargaining occurred only at the provincial level. In the event, the social partners have to this day failed to sign even one new, national-level agreement in sectors where provincial bargaining units already existed (see Dubin 2002). Provincial-level bargaining remained dominant, although the reform did lead to increased use of productivity clauses in agreements (OECD 1999: 322).

This brief period of tripartite collaboration – described by Rhodes as 'competitive corporatism' (2001) – ended once Spain had secured entry into the first wave of monetary union. In 2000, the PP returned to power with an absolute majority, and adopted a more aggressive stance towards labour issues. Conflicts with the unions intensified drastically the following May when the government introduced 'Urgent Measures for the Reform of Unemployment Protection and Better Employability,' leading to a general strike by CC.OO. and UGT. The reform proposed a major ratcheting up of pressures on the unemployed to return to the labour market. At the same time, the reform expanded and introduced new, more flexible contracting categories that were severely criticized by the unions. Once again, the unions responded strongly to measures to reduce employment protection for outsiders.

The bombings in Madrid on March 11 2004, and the PP's bungled attempts to link the attack to the Basque terrorist organization ETA even as the evidence suggested otherwise, swept the Socialists back into power in the elections three days

later. The PSOE, under the leadership of José Luis Rodríguez Zapatero, had expressed strong support for the unions' 2002 strike against the PP labour market reforms and, once back in power, moved quickly to demonstrate its support for social concertation. In July, CC.OO., UGT, CEOE and the government signed the Declaration for Social Dialogue. The signatories resolved to 'strengthen social dialogue' and 'communicate to society as a whole an unequivocal message of institutional confidence' by creating bipartite (unions and employers) or tripartite, single-issue bargaining units to address employment creation, raising the minimum wage, ensuring flexibility for employers, immigration, training, workplace safety, industrial policy, environmental policy, reforming the structure and contents of collective bargaining, social security reform and the institutional participation of the social partners themselves^{iv}.

This agreement defined 'social dialogue' as the preferred policymaking process for virtually all issues related to the labour market, including the pension system: if a new balance between flexibility and security were to be achieved in Spain, it would, it appeared, require consensus. The Declaration called for increasing the social partners' role in a number of regulatory institutions (the National Commissions governing collective bargaining and workplace health and safety and the national workplace inspector corps). It also highlighted the government's 'constitutional' obligation to provide the social partners with the 'means and instruments necessary for achieving the noble ends for which they have been constitutionally mandated' as a justification for opening a debate regarding mechanisms that could deepen the institutional participation of the social partners^v.

In May 2006, following almost fourteen months of negotiations, the social partners and the government signed the Accord for Improvement and Growth in Employment. With rates of temporary employment in Spain remaining stubbornly above 30% even as the economy grew rapidly, the social partners agreed that the government should increase subsidies for permanent contracts for specific classes of employees and restrict employers' abilities to rotate workers through one temporary contract after another. The agreement even received praise from the PP in the midst of a legislature racked by intense polarization around virtually every other government initiative (Alvarez del Cuvillo 2006). Ironically, the years running up to the crisis saw the increasing institutionalization of corporatist patterns of policy-making, with unions showing more interest in outsider-friendly policies. However there was insufficient progress to make any fundamental change to the dualistic labour market in Spain.

Passive and Active Labour Market Policy: Government Responses to Dualism

Although both Socialist and conservative governments were reluctant to reduce the high level of protection for standard contracts, they did address some of the concerns of outsiders through welfare reforms and active labour market policy. The reforms implemented over the recent period did not obviously respond to a coherent strategy to maximize both flexibility and security. Moreover, while progress was made in modernizing the anachronistic and dysfunctional institutions inherited from the Franco dictatorship, the consequences of major increases in spending levels

were often muted by limits in coordination across policy domains and accountability for results.

The Franco dictatorship's approach to social protection had evolved little beyond a broadly Bismarckian model of welfare provision, in which a core, largely male workforce enjoyed strong employment protection and some welfare provision through contributions to occupational schemes, and their dependants had no independent access to income protection. This meant that income protection for those without work was extremely limited, and many workers fell outside the coverage of the social security system (Guillén 2010, Guillén and León 2013). The major shift away from these arrangements arrived with the 'social turn' (*giro social*) of the second González government (Torcal and Chhibber 1997), in response to the successful general strike of 1988. The increased resources allocated to passive labour market measures allowed the coverage of unemployment benefits to be extended rapidly and substantially, from 43.4 per cent of the workforce covered by unemployment insurance in 1986 to 80.3 per cent by 1992 (Guillén 2010: 191; Cruz Roche 1994). Moreover, an increasing share of these benefits were financed from general government revenue rather than social security contributions. Resources were also made available to regional administrations for social policy development (Moreno 2004).

These measures, taken in part as a panicked response to the Socialists' waning electoral strength, implied a significant increase in government spending, and as soon as the economy entered into recession in the early 1990s, the emphasis shifted back to containment of the rising costs of the welfare state. But the essential foundations of

unemployment protection remained: a combination of contributory and non-contributory transfers which provided a safety net for laid off workers, with relatively high replacement rates for two years, in the case of workers with adequate contribution histories. Compared with, for example, the Italian case, Spain enjoyed by the 1990s an unemployment compensation regime which had universalistic features, leading at least one scholar to describe it as inspired by the 'Nordic model' (Moreno 2008).

The major failing of these arrangements has proved to be their lack of success in promoting labour market reincorporation for the jobless. The relative generosity of the unemployment coverage, added to the failings of the activation side of labour market policy, have been perceived as a reason for Spain's continued dismal employment performance. The payment of unemployment benefits was not tied to any credible conditionality, so a reform in 2002 by the conservative Aznar government sought to force recipients to accept employment offers from the public employment services within a wider geography (50 km from home), accept a position in a sector outside their professional experience after a year and face a total withdrawal of the unemployment subsidy after rejecting three offers of courses or jobs. These provisions were ultimately watered down after strong union protests.

One source of rigidity in the system was Spaniards' reluctance to move home in search of work. Cultural norms, a weakly developed rental market for residential property, and the practical consideration that low levels of social provision enhanced the importance of proximity to family members for obtaining childcare and other forms of support obstructed the movement of unemployed workers to areas with

higher labour demand. The Zapatero government elected in 2004 introduced reforms aimed at raising labour market participation rates by reducing the dependence of the Spanish welfare safety net on family support networks. The 2006 Dependency Law (*Ley de Dependencia*), described in ambitious terms as the construction of the missing third pillar of the Spanish welfare state, sought to define a new public/private infrastructure for the care of dependent persons and facilitate the labour market participation of their traditional care-givers. Implementation of the law, and a significant portion of its funding, was delegated to the Autonomous Communities^{vi}. The implementation problems associated with the law have been extensive. Given the extremely precarious finances of the Autonomous Communities and the Spanish State, it is hardly surprising that the labour market consequences of the law have been far less extensive than initially envisioned (Bosch 2009).

Other social measures introduced by the Zapatero government appeared more designed to use the buoyant tax revenues generated by the housing boom of the 2000s to consolidate the Socialists' electoral support. The minimum wage was increased at a rate far above inflation, from 460 Euros/month in 2004 to 600 Euros/month in 2008^{vii}. An agreement reached in July of 2006 (Ley 40/2007) for social security reforms aimed at ensuring better balance between receipts and social security spending, higher non-contributory pension rates for the disabled and aged, new measures to combat fraudulent claims in disability pensions and changes to favor the continued labour market presence of older workers (Pérez Infante 2007: 67). But all in all, little was done to improve the ease of movement of the unemployed back

into the labour force, and by the late 2000s, the focus shifted back to the urgent need to cover the collapse in incomes faced by families affected by the crisis.

In terms of the flexicurity model, it is in active rather than passive labour market measures that Spain falls short. The lack of any tradition of activation measures meant that post-Franco governments were faced with job placement services that were bureaucratic and ineffective, with migration an important safety valve for those who could not find work. The creation of the National Employment Service (INEM – *Instituto Nacional de Empleo*) in 1978 was largely concerned with the management of unemployment benefits rather than job placement. Socialist policy significantly increased spending on training (Boix 1995) and overall spending on active labour market measures grew during the Socialist period, but it remained low in comparative terms. In 1985, Spain spent just 0.3 per cent of GDP on active labour market policies, compared to an OECD average of 0.7 per cent; by 1995 Spanish spending had grown to 0.7 per cent, still below the OECD average which had by then grown to one per cent of GDP (Scarpetta 1998).

A considerable part of that spending (more than half, one of the highest figures in Europe) has been dedicated to subsidies for employment creation, which has promoted the creation of low-skilled jobs at taxpayer expense. Much less attention has been paid to the institutions to promote training and labour mobility, with a low ratio of public placement service employment to unemployment (one to 700) (García Serrano 2007). Low relative investment in public employment services has produced mediocre results, with just 10 per cent of all placements managed by these services at the beginning of the 1990s and only a slight improvement (16 per cent) a decade later

(García Serrano 2007). In the area of training, there is a clear mismatch between investment in continuing training education, which is among highest in Europe (financed by both Social Security contributions and EU funds), and training for the unemployed, which is among the lowest. Moreover, much of this spending on training has been squandered in courses of little value as political parties, unions and employer associations effectively subordinated the goal of human-capital development to their needs for organizational financing.

Substantial reforms have taken place in the area of placement, with the Public Employment Service's monopoly on placement formally abolished by the 1994 reform, which opened the market to non-profit placement services, temporary employment agencies, and direct hiring by firms. In practice this has tended to entrench dualism, with the liberalization of placement improving the flexibility of the already flexible parts of the workforce: those on temporary contracts. The reform did not substantially alter either the structure or composition of active labour market policies—subsidies for contracting continued to represent more than half of all spending on active labour market policies (García Serrano 2007). The most significant innovation in this regard was a restructuring of the subsidy from a reduction in the percentage of the social security contributions to be paid to a flat monthly amount that would vary according to the particular 'marginal' group—women, youth, long-time unemployed, older workers, or the disabled. This change had the effect of making the subsidy far more attractive for employers seeking to hire the low-skilled workers (with the correspondingly low wages) who were increasingly dominating the ranks of the unemployed during the economic boom of the late 1990s and early 2000s. In the

event, the rate of temporary contracting fell just three percentage points through 2009 and only began to fall more sharply as firms adjusted to the post-financial crisis recession by not renewing expired temporary contracts. In short, entrenched dualism remained.

Active labour market policies have been strongly affected by the decentralization process, with training being devolved down to the Autonomous Community level between 1992-99, and placement devolved in the period 1998-2003.

This has led to a greater differentiation of placement services between regions, despite the 2003 Ley del Empleo which attempted to regulate their coordination: already before the reforms were completed there was wide variance between Autonomous Communities, with some managing less than 5 per cent of placement and others achieving around 20 per cent (Catalonia), or more (Extremadura) (Alujas Ruiz 2008: 173). Given the widely varying unemployment levels in different parts of Spain, it is doubtful whether decentralization can deliver the kind of geographic mobility which is needed to match labour supply to demand. Moreover, funds for active labour market policies have also found themselves caught up in the dynamics of clientelistic redistribution in many provinces and regions (López Viso 2004; Miramontes et al. 2005)^{viii}. On the whole, multiple attempts at reform under both Socialist and conservative governments have left many of the institutional foundations of Spanish labour market dualism in place, and failed to come close to emulating the success of active labour market arrangements in Northern European countries. Indeed it is striking how the trajectory of labour policy in Spain remained essentially unaffected by changes of government. This failure to improve the workings of the labour regime

was clearly exposed by the financial crisis of the late 2000s. The gains of the early 2000s, in which unemployment fell rapidly even with high levels of immigration, were very quickly lost as the jobless figures returned to the levels of the early 1990s, again breaching the 20 per cent mark (Bentolila *et al* 2010). Until 2010, policy under governments of both parties had been marked by continuity and incremental change in labour rules and the basic structure of the welfare state. The fiscal crisis has, however, placed policymakers in an entirely new situation, as the following two sections explain.

The Politics of Flexicurity in Spain, B.C. (Before the Crisis)

Spain has long been hostile terrain for the concept of flexicurity, given its combination of labour market dualism, weak unions, and limited activation infrastructure. A tradition of legalistic state interventionism in labour and product markets, typical of ‘embedded illiberalism’ (Hopkin and Blyth 2011; see also Schmidt 2002, 2009), encourages political actors to reach for legislative protection to resolve social and economic problems, rather than combine market forces with social compensation, as in the Nordic model. Moves towards flexicurity also lack a stable constituency of political support: the left has been reluctant to challenge core worker protections, but the right has shown similarly little interest in challenging dualism, in part because of the conservatism of employer interests and a fear of industrial unrest.^{ix}

Prior to the crisis, there were three broad political and institutional constraints on further progress towards flexicurity. First, the nature of collective bargaining and social partner articulation. The Spanish social partners' have frequently called for governments of both the right and left to respect their 'autonomy.' In the wake of a highly interventionist dictatorship, such claims have long carried real political weight. Indeed, despite Spain's longstanding history of considerable collective conflict, no government has been willing to articulate an effective strike law as called for in the 1978 Constitution, a document which also prohibits obligatory binding arbitration in labor affairs under virtually all circumstances. In the Spanish context, however, autonomy should not be confused with consensual self-management; rather the demand that governments not interfere in matters of mutual interest is one of the few issues on which employer associations and unions have generally agreed. Unfortunately, many of these mutual interests are hardly conducive to flexicurity: chief among them, a disjointed collective bargaining map that imposes rigidities on wages and working conditions but justifies thousands of positions for those leading provincial bargaining and their control over EU and Spanish job training funds that fill organizational coffers while contributing woefully little in terms of human capital development. Political parties have learned that efforts to introduce real reforms that impinge on this autonomy can carry heavy costs: the PSOE in 1994 and the PP in 2002 both faced fierce opposition from the unions over their reforms, and won relatively little support from employers in return.

Where unions and employers have been unable to agree on major regulatory changes, employers have generally preferred pressing for government-imposed

changes on the margins (subsidies, new contract categories and restrictions on contracting). Not only are they easy to put in practice because neither unions nor bureaucrats can effectively thwart them, but such incremental changes also limit conflicts within a national umbrella employer association that has only a limited ability to build consensus among its membership. At the same time, where both employers and worker representatives are prepared to engage in local productivity coalitions, even highly unionized firms are able to achieve the functional and internal-numerical flexibility they require to maintain international competitiveness, muting pressures for change from the most competitive segments of the economy. The willingness of multinational auto manufacturers to continue to invest in their highly unionized Spanish plants speaks eloquently to this point. Meanwhile, the increasingly generous safety net for participants on the edge of the labour market, made possible by the long boom and increasing social security receipts, assuaged union and worker discontent at high levels of temporary employment.

A second factor was Spain's complex territorial politics. Flexicurity has developed largely in small, ethnically homogeneous countries with strong institutions of inter-territorial solidarity. In Spain, the backlash against Franco's exacerbated centralism has mobilized powerful nationalist movements in several Spanish territories, and the decentralization process which created the Autonomous Communities has had the effect of dispersing control over key labour market policy levers (Gallego, Gomá and Subirats 2003). This fragmentation of policy is argued by advocates of competitive federalism to produce efficient policy outcomes as regions compete to attract investment; however there is at least some evidence that in Spain

the effect of decentralization has also been to encourage political parties to use these policy levers for clientelistic politics to sustain local support bases (see for example Solé-Ollé and Sorribas-Navarro 2007). As well as creating difficulties for the coordination of active labour market policies, decentralization has also complicated the implementation of the *Ley de Dependencia*, which also has implications for employment, particularly of the female labour force. Autonomous Communities have been charged with implementing the provisions of the law without being fully resourced to do so, and without clear arrangements to ensure adequate minimal standards of coverage across the state territory (Azaña 2009).

A third factor is that Spain lacks both the formal and informal institutions necessary to promote high degrees of trust between the various actors involved in the politics of labour (Molina and Rhodes 2007; see also Eichhorst and Konle-Seidl 2005). Formally, gaining workplace representatives' collaboration is complicated by the legal structure of works councils. Unlike German works councils, their Spanish counterparts are both allowed to negotiate collective bargaining agreements and convoke strikes. Moreover, the number of representatives each union sends to the sectoral collective bargaining table is determined by the relative number of works council delegates representing that union in the sector. Where firms are not highly unionized, which is generally the case, many of these representatives are only loosely tied to the unions they putatively represent. As a result, Spanish union officials exercise far less leverage over local worker representatives than do their German counterparts. Even when union officials understand the connections between greater functional flexibility, firm competitiveness and employment security, they have often

been reluctant, and frequently unable, to persuade workplace representatives to accept such changes. These institutional obstacles have constituted yet another challenge discouraging the social partners from making more positive social contribution through their much-defended autonomy.

More broadly, Spain has lacked the high degrees of social trust characteristic of the Scandinavian countries in which flexicurity has emerged as an effective labour market arrangement. First, shopfloor relations in Spain have been strongly influenced by the country's conflictual history, which pitted a radicalized workers' movement against a violent, reactionary capitalist class for much of the twentieth century. As a result, the culture of most Spanish workplaces is one of relatively low trust: most employers do everything they can not to engage workplace representatives. Where the union presence is weaker, employers have typically been able to achieve reforms simply by offering individual side-deals to gain compliance—an option that is no longer available to many employers in the context of the current crisis. The above noted ability of certain industrial firms in highly competitive sectors to obtain the internal flexibility they need is the felicitous product of intense, sustained engagement with worker representatives; where employers have long resisted engagement, low levels of trust between management and worker representatives makes cooperation extraordinarily difficult.

The lack of social trust has also undermined the effectiveness of combined active and passive labour market policies. Flexicurity rests not only on investments in activation being effectively implemented rather than used to generate political support, but it also requires recipients of passive labour market measures to make

genuine efforts to seek appropriate work. In a country with high levels of tax evasion and fraud, and a significant informal economy, the requisite levels of social cooperation may not currently be present (Algan and Cahuc 2006).

No Flexicurity Here

The catastrophic effect of the financial crisis for Spain brought renewed calls for institutional change, but existing templates for reform, as ever, clashed with established labour market practices. Spanish labour law is built around the premise that permanent, in-job security is the default employment relationship. The Socialists' labour market reforms in 1984 and 1994 addressed this inflexibility by facilitating temporary contracting, thus enabling firms to achieve both an enormous reduction in layoff costs and much greater ability to manage market fluctuations (Toharia 1999). Temporary hiring also contributed to significant wage and benefit cost reductions, principally through two mechanisms: to the extent that seniority is linked to pay and benefits, temporary workers are cheaper in nominal terms; at the same time, temporary workers are more vulnerable to being pressured to perform work above their pay grade, reinforcing these pay differences. As a result flexibility and security are not combined for individual workers: some groups of workers enjoy security, others provide employers with flexibility at the expense of their own security.

Collective bargaining practices have also been a major source of inflexibility and one of the principle reasons that firms continue to adjust through employment levels rather than hours or work reorganization. The reform of collective bargaining

in 1994 made it possible for employers to negotiate a great deal of internal flexibility. However, because the law made non-consensual change difficult, achieving desired levels of flexibility required skillful negotiators and a willingness to pay for productivity. As a result, internal flexibility was increased only very slowly in most sectoral and firm-level agreements. In practice, most increases in internal flexibility were achieved through individual side-payments and, ironically, through temporary hiring, as employers systematically exploited the weaker bargaining position of temporary employees to adjust hours and working conditions unilaterally, often with the implicit consent of their permanent colleagues (Dubin 2012).

Spanish workers have enjoyed substantial collectively bargained employment protections, although the application of these agreements is quite unevenly distributed. Sectoral collective bargaining agreements have been automatically applied to all workers within the geographic bargaining unit whether or not employers or workers are members of the bargaining unit. Until the labor market reform of 2012, the law placed severe limitations on the ability of firm or workplace negotiators to alter the job classifications, wage minimums or the amount and distribution of work hours set out in sectoral agreements. 'Substantial'^x changes in the organization of work and collective dismissals of more than 10 per cent of the workforce had to be negotiated with workplace representatives. As a result, changing the organization of work or reducing permanent worker staffing levels has been slow, expensive (worker representatives generally demand employer concessions in exchange for their acquiescence) and often riven with conflict. Where agreement could not be reached, the changes were often paralyzed until a judge decided whether

on not they were justified. Prior to the 2010 labour market reform, firms in financial difficulties could theoretically evade the minimum salaries and percentage increases agreed in sectoral agreements by demonstrating economic losses in court; in practice, this was extremely difficult to do. After 2012, as we detail below, firms abilities to sidestep sectoral agreements would be vastly increased.

If Spanish firms largely achieve flexibility through fixed-term contracts and outsourcing, then the extent to which the workers affected by these policies achieve some measure of security will depend on their ability to find new work and the degree to which the welfare state cushions their exposure to market risks. The Spanish social security system takes into account some of the social consequences of the flexibility at the margin encouraged by labour market regulations and the collective bargaining system. Indeed, one might argue that the State encourages employers' efforts to gain external-numerical flexibility through the rules governing both contributory and non-contributory unemployment compensation. Spanish requirements for access to unemployment benefits are relatively generous and the quantities relatively high for those with low salaries. Many fixed-term contract holders are thus able to cushion unemployment spells with State support, reducing social conflicts surrounding high rates of temporary employment^{xi}.

Employers use this system quite strategically. Arranz and García-Serrano (2010) show that approximately 46 per cent of all workers who lost their jobs between 2004 and 2007 were rehired by their former employer, compared to a figure of approximately one-third reported in other comparable countries. Of these workers who found a new position within two weeks, the number increases to 58.7 per cent;

the figure was 35.7 per cent for those who had longer spells of unemployment but did not qualify for benefits and 29 per cent for those who did. Recalls are heavily concentrated among workers with permanent per-task contracts (74 per cent) and other fixed term contracts (44 per cent), and this strategy is more likely to be used by larger firms and certain service sectors. Because employers' social security contributions in Spain are not experience rated (although they do pay a somewhat higher rate for fixed-term workers than for permanent ones), these employers are successfully transferring the costs of keeping these workers during slow periods to the State (when the workers receive benefits) and to the workers themselves (when their eligibility has been exhausted or they do not qualify for benefits because their contribution period is short). Spanish law even allows workers to access contributory benefits when contracts are temporarily suspended or hours substantially reduced. This clause obviously facilitates union agreement to these kinds of reductions, passing a portion of the social costs of the temporary reduction on to the State.

Students of the Spanish labour market distinguish between early retirement ('*jubilación anticipada*')—a legal category in which persons who have paid-in sufficiently to Social Security can retire from age 61 with penalties —and *pre-retirement* ('*prejubilación*'), a non-legal category describing a widespread, but largely immeasurable phenomenon. Pre-retirement describes a pact between an employer and an individual employee, or, more frequently, between the firm and the workers' representatives, in which 'older' workers, usually long-standing employees in their fifties (although some as young as their mid-40s) are laid off and claim unemployment benefits for two years while the firm purchases an insurance vehicle which provides

additional payments to minimize the loss in salary and continues to make social security contributions for the workers until they take early-retirement at age 61. Most of these agreements are reached in firms suffering economic difficulties, but they have also been used repeatedly by many large firms simply to restructure their workforces and reduce costs.

Collective pre-retirements have thus been quite controversial, as firms are subsidized not only with two years of unemployment benefits but also frequently with significant support from the State and regional governments looking to avoid social conflicts. Lawyers involved in the negotiation of these agreements estimated that up to 40 per cent of firm costs associated with these measures are paid with State funds (Maseras 2010). The practice is well-consolidated in Spanish business culture, with a number of consultants whose sole service is to help organize these arrangements. Critical to their success is that the public employment services do not pressure workers to accept another job offer as the law permits. Vall Castello and Olivier (2010) find that older workers' recourse to permanent disability benefits increases with regional unemployment and declines in national GDP growth, suggesting that those without access to retirement pensions or unemployment benefits are using disability benefits as a way out of the labour market. This phenomenon is more prevalent in the United States and in the Netherlands than in Spain, but it is nonetheless significant. Similarly, labour market exits to unemployment assistance spike at precisely 52, 56, and 58 years of age, years at which different benefits schemes come into effect.

In response to the public outrage generated by a round of pre-retirements in Telefónica 2011 after a profitable 2010, restrictions were imposed by the Socialists in April 2011 and retooled by the PP in July 2012. As the law currently stands, firms with 100 or more employees and profits during the previous two years that pursue collective layoffs of workers aged fifty or older must pay social security costs for these workers—unemployment compensation, the contributions necessary to protect the level of the workers' eventual contributory retirement pension and a special subsidy for those between age fifty-five and retirement—until they find work (highly unlikely) or reach retirement age. Critically, they must also assume these same costs for all workers in the same age group dismissed individually or collectively during the three years before and after the collective layoff.

Towards A New Spanish Labor Regime?

In 2010 and 2011, the Socialist government introduced significant labor market reforms designed to increase firms' abilities to pursue competitive adjustment while encouraging measures that favored internal reorganization over dismissal. In 2012, the newly arrived government of Mariano Rajoy would introduce a much more ambitious set of reforms that turns on their head many of the core institutional arrangements regulating employment relations in Spain. In this final section, we consider whether these reforms can be understood as steps toward a system of flexicurity.

The Socialists' 2010 reform provided a number of incentives for permanent contracts. Significant changes were introduced in temporary contracting rules: open-ended temporary contracts were limited to 24 months over a 30-month period even when workers' job functions or the ownership of the enterprise changed; temporary contracts linked to specific projects were limited to three years by law or four years by collective bargaining agreement; and severance pay due at the termination of a temporary employment was scheduled to rise from 11 days' salary per year worked in 2011 to 12 days' salary in 2015. Permanent contracting was also encouraged by facilitating employers' abilities to demonstrate cause in dismissals of permanent workers, effectively reducing expected layoff costs in many cases from 45 days' salary to just 20. For firms with less than 25 employees, the government would subsidize causal dismissals by paying 8 of the 20 days' severance due through its Salary Guarantee Fund. Moreover, a permanent contract with lower layoff costs for non-causal dismissals (33 days instead of 45) once reserved for hard to employ populations was generalized for almost all workers.

These measures aimed at increasing security in contracting were accompanied by measures to promote flexibility. First, the reform also sought to encourage alternatives to dismissal by relaxing restrictions on hour reductions and opt-out clauses from wage levels in collective bargaining agreements for firms with difficulties. Second, the reform allowed for-profit placement agencies to compete with the highly ineffective Public Employment Service for the first time.

In June 2011, after the social partners were unable to agree to reforms in collective bargaining, the Socialists introduced a major battery of measures with an

eye towards encouraging firm-level bargaining, abolishing provincial level agreements widely viewed as a source of rigidities in wages and working conditions, speeding up the pace of bargaining, helping the parties to overcome stalemates and promoting arbitration as a solution to conflicts. Critically, however, the reform either delegated the development of the proposed measures to the social partners or else left the sectoral bargaining partners with the ability to limit the development of questions like firm-level opt-outs.

Before the success of these measures could be assessed, elections in November 2011 brought the PP to power with an absolute majority. In February of 2012, the PP introduced what has been called “probably the most far-reaching labor reform in Spain in the last 30 years (the February decree law was revised in its definitive parliamentary version in July). (Gómez-Abelleira 2012).

Regarding internal flexibility, part-time workers can now be required to work overtime (at least 3 hours/week plus an additional 40 hours/per year for a standard 20-hour part-time contract), firms can unilaterally reallocate at least 10% of workers’ hours over the entire year. Judicial intervention to determine if employers have good cause for major changes in work organization or reductions of hours has also been substantially pared back. Employers no longer need to show that the changes were necessary, but merely that there is some legitimate business reason (economic, technical, organizational or productive) for pursuing the change. Many major changes that once required negotiation with worker representatives can now be imposed unilaterally when they affect less than 10% of staff after a 15-day waiting period following notification.

Regarding flexibility in costs, the law permits unilateral changes in both the structure and level of pay after a reduction in income or sales lasting two consecutive quarters (compared to the same period a year earlier and excluding extraordinary income or losses). The rules governing when these changes must be negotiated with worker representatives are the same as for other major changes. When after 15 days of collective consultations, no agreement has been reached, the changes may be imposed unilaterally. Layoff costs have also been dismissed by permitting the extension of probationary periods in firms of less than 50 employees to an entire year until the unemployment rate dips below 15%.

Critically, the 2012 reform revisited the 2011 reform of collective bargaining, reducing enormously the ability of the sectoral bargaining partners to slow the introduction of major changes in firm level agreements. First, opt-outs from sectoral agreements are now possible regarding not only wages but also maximum working hours and social benefits upon showing, again, two consecutive quarters of reductions in income or sales. Disputes on these issues are now subject to binding arbitration within the Ministry of Employment; the constitutionality of this measure has yet to be clarified. Second, firm-level agreements will now automatically take precedence over sectoral ones on such issues as pay, overtime, working hours, and job classifications. Third, with respect to the critical issue of “ultraactividad,” the persistence of all clauses in an agreement beyond its expiry unless both sides agree to their renegotiation, clauses that have been denounced by one of the parties will be fully renegotiable after one year. This last reform is hugely significant and applies to sectoral as well as firm level agreements.

Despite the fact that the preamble of the law claims that it is intended to promote flexicurity, the above discussion reveals that it is mostly focused on achieving greater flexibility. The only major changes offering additional security are related to training. Employees with at least one year's tenure receive at least twenty hours of work-related training leave annually, with the possibility to accumulate this leave over five years. Employees whose jobs have been significantly changed must now receive the training required to adapt to the changes. At the same time, apprentice contracts now apply to a broader variety of situations and their age limit has been raised from 25-30 until the unemployment rate drops below 15%. None of these changes is likely to significantly increase workers' employability. In other words, the Legislator's claims to enhancing flexicurity are little more than rhetorical dressing for a radical reduction in the bargaining power of individual workers and their collective representatives.

Perhaps the only major challenge to employer discretion that remains in force in Spain is the constitutional requirement that unilateral modifications of major working conditions or dismissals are subject to judicial review. Depending how judges interpret this prerogative, employers may continue to find some incentives to bargain changes. Clearly, the PP reforms have eliminated much of the rigidity that has long brought complaints from employers and international observers. However, given the aggressive fiscal consolidation in process, it is hardly surprising that rigidity has given way to pervasive insecurity rather than anything remotely resembling flexibility. No matter how well crafted, statements of good intentions in a law's preamble do nothing to alter the reality of the regulatory changes that follow.

Conclusions

As we have seen, many of the reforms introduced in the Spanish welfare state since the transition to democracy were inspired by the Nordic model. However, the country's political, institutional, organizational and economic (productive structure and human capital endowments) realities generated not flexicurity but rather its pathological mirror image: excessive rigidity for some and pervasive insecurity for others. The economic boom of the 2000s provided Spanish politicians with the financial slack that might have been utilized to introduce thoroughgoing changes. The political reality of those years was that there was no constituency for change.

After five years of crisis, the new Spanish model that appears to be emerging is not flexicurity but rather flexi-insecurity. Labor market rigidities that long protected the incomes of heads of households muted opposition to the familialist bias of the welfare state and the inefficiencies of active labor market policy provision. With the reforms of the last three years, these labor market protections have largely disappeared. At the same time, massive fiscal retrenchment and grim prospects for significant growth in fiscal receipts over the medium term mean that both passive and active labor market policies are unlikely to compensate for the greater risks now facing much of the Spanish population. Many of the young and skilled have responded by leaving Spain. For those left behind, the prospects are increasingly bleak. It is too soon to provide a full accounting of the costs of Spain's failed transition from

embedded illiberalism to flexisecurity; whatever the final tally, it will not make for a pretty reading.

Notes

ⁱ As well as retaining key features of the existing system, the Statute was also heavily influenced by the 1970 Worker's Statute in Italy, which had established a high degree of employment security

ⁱⁱ '...Partiendo de que el Acuerdo Interconfederal de Estabilidad en el Empleo de 1997, firmado por CEOE, CEPYME, CCOO y UGT, merece a la vista de sus resultados una valoración positiva, no parece oportuno introducir alteraciones sustanciales en la legislación laboral.' Ley 43/2006 de 29 de diciembre, para la mejora del crecimiento y del empleo.

ⁱⁱⁱ Unions' strong resistance to any measure that reduces insiders' job security is often attributed to the composition of their membership. However, the reality is that union members, both in their responses to surveys and through their participation in collective actions, demonstrate greater support for policies that promote working class solidarity than the average non-union members who votes in works council elections (Alós-Moner *et al* 2004)

^{iv} 'Competitividad, empleo estable y cohesión social. Declaración Para El Dialogo Social 2004', signed July 8, 2004. Available at <http://www.ugt.es/dialogosocial/declaraciondsocial2004.html>.

^v The Spanish Constitution recognizes the right of democratically structured unions and employer associations to defend the economic and social interests of their respective support bases; however, it in no way obligates the government to provide institutional support (Spanish Constitution, article 7).

^{vi} Ley 39/2006 de promoción de la Autonomía Personal y Atención a las Personas en Situación de Dependencia.

^{vii} Most sectoral collective bargaining agreements set a wage floor well above the minimum wage. However, the legislated minimum is also an important point of reference for the calculation of non-contributory pensions.

^{viii} A recent example is the 'Pallerols case', where a Catalan political party, Unió Democràtica de Catalunya, was found to have used training funds to finance its partisan activities 'Unió admite que se financió ilegalmente con fondos de la UE', *El País*, 9 January 2013; http://ccaa.elpais.com/ccaa/2013/01/08/catalunya/1357665459_543303.html

^x Changes affecting the workweek, hours, shifts, compensation system, work system and productivity expectations, extended work assignments outside those functions defined for the worker's professional category, (Article 41, Workers' Statute).

^{xi} Workers who have contributed to social security at least one year over the last six receive 70% of the last six months' average pay for four months. Maximum contributory benefits are 24 months (with benefits dropping to 60% of average pay after 180 days). Those who have contributed between 3 and 11 months and fall below the income threshold of 475 Euros/month are eligible for 3-6 months of non-contributory assistance of 426 Euros in 2010. Persons with dependents whose contributory benefits are exhausted and whose per household member income is below the same threshold can receive the same assistance amount for from 18-36 months. Persons over the age of 45 without dependents whose contributory benefits have been exhausted may also receive them for another six months; those who are over the age of 52 and have the right to a retirement pension may gain this benefit until they reach retirement age.

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