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# The Formalization of Informal/Precarious Labor in Contemporary Argentina

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**abstract:** In this article we argue that the Argentinian state is legalizing or formalizing informal/precarious labor. In the actual context of employment crisis in Argentina, the state intervenes in the labor market through a legislation that promotes low wages and unstable and unprotected work. Paradoxically, these precarious conditions are associated with informal labor, where the established theory does not recognize the power of regulation of the state. The new labor legislation in contemporary Argentina challenges the established division between formal-regulated vs informal-unregulated labor, at the same time that it contradicts the neoliberal/anti-state intervention discourses.

**keywords:** deregulation ♦ informal economy ♦ labor flexibility  
♦ labor market ♦ precarious labor

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Along with other countries in Latin America, Argentina has experienced profound changes in economic life since the 1980s. The privatization of state enterprises, the relaxation of state protectionist measures and trade liberalization resulted in the secular decline in urban-based, industrial and manufacturing jobs that had been traditionally held by male heads of households and where job security, social benefits and relatively robust wages were sheltered by a strong trade union movement. This situation has changed drastically. Faced with declining opportunities for regular wage-paying work, the unemployed and underemployed have turned to various income-generating survival strategies, including small-scale trading, barter and part-time work. The decline of employment opportunities in full-time, wage-paying jobs in large-scale (state and private)

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enterprises had led to an explosion of new forms of irregular, casualized work in services, petty trade and micro-enterprises. In order to understand these shifts in the labor market, scholars have worked with an analytic distinction between what they refer to as the formal and informal sectors. In the conventional formula, the formal sector refers to that economic zone that is legally sanctioned, regulated through state intervention, and marked by regular employment. In contrast, the informal sector typically refers to irregular work, outside legal sanction, without state regulation of any sort (Lozano, 1983; Hart, 1973; Portes et al., 1989; Portes and Saskia Sassen-Koob, 1987; Smith, 1990; Feldman and Ferretti, 1998; Williams and Windebank, 1998). Under the terms of structural adjustment programs implemented in the early 1990s, state policy-makers in Argentina embraced a job creation plan that called for the almost complete deregulation and flexibilization of labor markets, one significant consequence of which is the blurring of the dividing line between formality and informality. These new developments pose an important question: what does regulated employment really mean when deregulation seems to have become the norm (Pérez Sáinz, 1998)? In short, these new cleavages undermine the salience of the regulatory approach, in which a clear distinction is made between regulated (formal) wage-work and unregulated (informal) income-generating activities, and call for the development of new conceptual frameworks to understand the new realities of the labor market in Argentina.

Investigating the enactment of flexible labor laws since the early 1990s in Argentina enables us to critically assess what can be called the 'formalization of informality', and, as such, to question the hermetically sealed analytic distinction between formal and informal sectors. While this conceptual couplet provided criteria by which to differentiate between occupational categories and offered a useful framework for research over the past two decades, it appears that a revision of its operating principles is perhaps overdue. The view presented here is that to maintain a hard-and-fast analytic distinction between formal and informal economies – each with their own structural logic and 'rules of the game' – hinders our understanding of how labor markets actually operate on the ground in the urban settings of most third world cities today. Instead of treating these two spheres as separate zones of socioeconomic activity, it is much more fruitful to conceive of formality and informality as evolving moments along a fluid continuum of work relations, conditions of employment, and processes of competition in the labor market (Pérez Sáinz, 1998; Roberts, 1989; Murphy, 1990).

## The Age of Globalization

Generally speaking, the social economics of globalization entails worldwide market discipline, flexible accumulation and financial deepening, and an accelerated space of flows that has resulted in expanded movements of capital, commodities and people across national borders, and a greater homogeneity of lifestyles and consumer tastes. One significant consequence of the new global restructuring outside the core areas of the world economy has been a double process of, on the one hand, integration, and, on the other, social exclusion and informalization. The historic shift in the peripheral zones of the world economy from socialist and populist regimes to neoliberal economic policies, through structural adjustment programs, has led to the erosion of much of the social contract, collective responsibility and welfare state 'safety net' programs.<sup>1</sup> Thus, millions of people in the global South who depended on state provisions must now rely on their own initiative to survive. Deregulation of prices of basic necessities, like housing costs, rent and utilities jeopardizes the security of tenure of poor and working-class people, subjecting them to the vagaries of market forces and the risk of joblessness and homelessness. Reduction of state spending on social programs has meant reduced access to decent public education, health care, urban infrastructural development and state-subsidized housing.<sup>2</sup> The gradual removal of subsidies on basic foodstuffs, bus fares or petrol has radically undermined the living standards of millions of vulnerable people in urban areas. In the meantime, in a drive for privatization, public enterprises have either been sold or forced to conform to a strict market logic of profitability, which in both cases has resulted in massive layoffs without a clear prospect of boosting economic growth and creating alternative, viable jobs. With the prospects for finding work in the formal labor market declining, wageless workers have turned to all sorts of informal, exchange and barter relationships in order to make ends meet (see Sassen-Koob, 1989; Fortuna and Prates, 1989; Roberts, 1990, 1991; Telles, 1992). A large number of once well-to-do, middle-class state sector workers and displaced peasants have been condemned to the ranks of the urban poor in labor and housing markets (see Bayet, 2000: esp. 534–5; Minujin, 1993).

This restructuring of the world economy has also given rise to the exponential growth of marginalized subaltern classes in the rapidly urbanizing zones of the periphery (see Diaz, 1993; Barriga Ayala, 1996). There are now an increasing number of unemployed, partially employed, casual laborers, subsistence workers, street children and participants in the underworld – fluid social groupings that are interchangeably referred to as 'urban marginals', 'urban disenfranchised' and 'urban underclasses' (see Cartaya, 1994; Scott, 1994; Altimir, 1998). While such socially excluded

and marginalized collectivities are by no means new historical phenomena, global restructuring over the past several decades has intensified, amplified and extended the processes through which these groupings are produced and reproduced. With the creation of new barriers to entry into informal sector employment, those who have never worked face an ever greater exclusion (see Smith, 1984; Mead, 1996; Grosh and Somolekae, 1996).

### **The Shifting Structure of Production in Post-Authoritarian Argentina**

In the historiographical literature, there appears to be general consensus that political instability in Argentina from the 1930s to at least the 1980s can be characterized as an ongoing situation of catastrophic equilibrium. In the absence of a truly developed party system, three *factores de poder* (power brokers) – the military, business and unions – managed a weak state and confrontation and violence became the prevailing forms of political expression. These tendencies culminated in the ruthless military dictatorship (1976–82) that led the country from the ‘dirty war’ against left-wing political insurgencies to the climax of the Falklands/Malvinas fiasco. The 1982 political *apertura* (liberalization) – with Raúl Alfonsín and the Radical Party representing, paradoxically, a center-right coalition headed by a center-left party – was the direct consequence of economic malaise and military defeat (see Nef, 1988; Schvarzer, 1992).

Throughout the 1980s, Argentina, like many other countries in Latin America, experienced an extended period of socioeconomic crisis, which undermined the accumulation model based on inward-oriented and state-interventionist economic strategies that had prevailed off and on in the region since the 1930s.<sup>3</sup> Yet, the crisis has its origins in an earlier period. The evolution of the Argentinian economy during the model of industrialization through import substitution (ISI) shows that despite economic growth, it did not translate into significant increases in productive employment (see Hidalgo, 1999a, 1999b; CEPAL, 1988; Notchteff, 1998). Furthermore, the most salient aspect of the national labor market is the slight growth of employment in the primary sectors of the economy (industry) and the expansion of tertiary sectors (commerce, personal services, self-employment), which is known as *terciarización de la fuerza de trabajo Argentina* (tertiarization of the labor force). During 1947 and 1980, the tertiary sector contributed 70 percent to the total employment creation (see Hidalgo, 1999a, 1999b; Kosacoff, 1995; MTSS/PNUD/OIT, 1985; Barbeito and Lo Vuolo, 1992). As Hidalgo asserts, the tertiarization of employment was an adjustment mechanism of the labor market before the weak creation of jobs in the industrial/primary sector. Another adjustment

mechanism was the absorption of employment in the public sector with an average of 30 percent between 1960 and 1975. Hidalgo also points to the low rates of *asalarización o proletarianización* in Argentina, in times when the economic model was based on industrialization through import substitution. In the 1970s, the military government attempted to adjust the economy by adopting the liberal policies and opening up the economy to import and foreign capital. Hidalgo says, the military *apertura* crashed at the beginning of the 1980s before the interruption of the flow of foreign capital. The old optimism was eroded by profound stagnation in production that led to a steep decline in incomes, social marginalization and economic recession. The divorce between growth and generation of employment in the productive sectors crystallized in the social exclusion of a large sector of the Argentinian population.<sup>4</sup> Faced with huge external debt and spiraling inflation, a succession of fledgling political regimes embraced programs of economic restructuring designed to promote economic growth and engage with the world economy on the basis of economic liberalism and multiparty democracy. This process of economic restructuring was linked to the neoliberal model implemented in the majority of the Latin American countries, and it crystallized in the structural adjustment programs that were imposed by the International Monetary Fund and World Bank consultants in exchange for financial assistance (see Veltmeyer et al., 1997; Geddes, 1995; Smith et al., 1994; Smith and Korzeniewicz, 1997). This was the economic scenario where the democratic government of Raúl Alfonsín began its attempts of reconciling social-democratic demands with international pressures of economic structural adjustments. Alfonsín's regime faced the situation of dealing with devaluation of the national currency, imbalances in the public accounts (decreases in the state collection), inflation, and labor/union protests. In an attempt to counterbalance the situation, the government implemented a shock program known as 'Plan Austral', which fundamentally targeted the fiscal deficit and the control of prices. Yet, the economic and political conditions conspired against the Plan Austral: labor conflicts, financial speculation, lack of external additional aid, etc. The weakness of the monetary policies and the uncertainty of the electoral process of 1989, plus the suspension of World Bank financial aid due to the non-fulfillment of the established monetary goals of Argentina, accelerated the increases in prices, culminating in a process of hyperinflation, which seriously undermined the marketplace bargaining power of wage earners.<sup>5</sup> Social conflicts expanded and acquired such a political dimension that they forced the resignation of Raúl Alfonsín before his period in office was completed.

A combination of factors – the decline of regular wage-paying work in the manufacturing sector, the dismantling of large-scale state enterprises, trade liberalization and the implementation of structural adjustment

programs – has coalesced around a new model of political and economic homogenization. Its political form is liberal democracy and its economic logic is that of the free play of market forces. The hyperinflation at the end of the 1980s not only deepened the level of sociopolitical conflict, but also generated the conditions for a more fundamental transformation in the economic and institutional domains during the 1990s, when the government managed to elicit consensus for the draconian reforms.<sup>6</sup> In Argentina, as elsewhere in Latin America, economic restructuring has gone hand-in-glove with growing heterogeneity in both systems of production and in labor markets, trends that can be seen in the increasing regional and local polarization between rich and poor, widening income distribution, and deepening socioeconomic inequalities.<sup>7</sup>

The beginning of the 1990s marked the deepening of the monetary policies and stronger control on labor demands. The structural economic and institutional transformations crystallized in the Convertibility Plan of 1991, which changed labor–capital relations. Since the Convertibility Plan restricted the possibilities of modifications in the national currency, the major emphasis to control inflation was on labor costs (direct and indirect salaries). From this standpoint, the Convertibility Plan was no longer an anti-inflationary strategy, but a means to change sociopolitical relations (Hidalgo, 1999a: 59–60). Until 1993–4, the economy showed signs of growth. According to the Instituto Nacional de Estadística y Censos (INDEC) between 1990 and 1994 the GDP increased by 33 percent, total consumption by 39 percent. The high interest rate made the financial environment favorable to the inflow of foreign capital. Yet, in 1994 the international interest rate began to increase, which meant the departure of financial capital from Argentina and other Latin American countries. Alfredo Iñiguez argues that this financial capital departure shows the weakness of the model and the ‘casino’ character of the national economy. It also shows that international financial capital always looks for higher interest rates, not for long-term productive investments. The departure of international financial capital has produced uncertainty for investors in Argentine projects, generating a massive withdrawal of their savings and a financial crisis in the country (Iñiguez, 1997).

Despite increases in the GDP, the distribution of income was notably unequal. In the labor domain, one of the main causes of the inequitable distribution of income has been the high level of unemployment and the quality of jobs workers can get in a constrained labor market.<sup>8</sup> The resulting high unemployment and underemployment rates have also proceeded apace with dramatic shifts in the social composition of the economically active population. In particular, the rising unemployment and underemployment of primary workers (male heads of household) have gone hand-in-glove with the incorporation into the labor market of

secondary workers (female members of households and children) as a way of counterbalancing the loss of total household income.<sup>9</sup> In a constrained labor market, primary as well as secondary workers are exposed if not to unemployment, but certainly to declining wages and social benefits, harsh labor conditions (such as long hours and speed-up), and labor instability (or precarious work). From the standpoint of those who champion neoliberal reforms, the erosion of the marketplace bargaining power of workers is the 'positive' indicator of labor flexibilization, an indispensable tool for economic growth in the current era of intense global competition. To be sure, the increased flexibilization of labor is the intended consequence of neoliberal economic policies. The core features of this flexibilization of labor are reductions in the costs of labor (both direct and indirect salaries) and the legal freedom to hire and fire workers strictly in accordance with the demands of the market. In neoliberal doctrine, the concept of flexibility has a positive meaning: it refers to the capacity to overcome or bypass existing rigidities – institutional, juridical, or political – that prevent the free play of market forces from functioning smoothly. Yet the pressure to get labor to conform to the law of supply and demand is not an independent or autonomous process that takes place on its own: state intervention is required. In this sense, and in a context of high levels of unemployment, the labor reforms of the 1990s have contributed to deepen the external flexibilization of labor by providing the institutional framework to fire workers without much legal constraint. Likewise, these reforms have contributed to intensify the internal flexibilization of labor by promoting temporary, unprotected and low-income (precarious) employment. Despite the rhetoric of minimal state intervention and liberalization, the implementation of neoliberal policies has required the state to oversee the so-called deregulation of the labor market. By enacting labor legislation that promotes precarious work, state policies have actually benefited employers by enabling them to hire laborers at lower costs to themselves.<sup>10</sup>

### **Neoliberalism and the New Labor Legislation in Argentina**

Beginning in the early 1990s, state-sponsored labor market reforms in Argentina not only mark the denouement of the corporatist social contract, first implemented under the Peronist regime in the 1940s, but they also signal the shift toward the institutionalization of temporary, low-wage, unprotected employment (precariousness), and the legalization of substantial reductions in employers' contribution to the social security system inside the formal economy (see Hidalgo, 1999a, 1999b; Barriga Ayala, 1996; Villanueva, 1997). In particular, the enactment of the 1991

National Employment Law (NEL 24.013) provided a new rationale that allowed and justified state intervention into what labor market theorists have conventionally classified as the informal labor market.<sup>11</sup> Despite the rhetoric of non-interventionism, minimal state and free market, the 1991 NEL represented a significant intervention into the formalized regulation of all sorts of informal work relations, and one that has significant advantages for employers and disadvantages for workers (Villanueva, 1997; Rofman, 1997). Needless to say, the new legislation sought to bring about a strong regulation of the labor market, the purpose of which has been to control and to discipline the wage-earning classes. This sea-change in labor market regulation marks the beginning of what can be called the 'formalization of informal labor'.

Informality in the labor market has been the object of analysis since the early 1970s. The central interest in this field was motivated not by its novelty but by its increasing tendency in Latin America (Portes and Sassen-Koob, 1987; Portes et al., 1989; de Soto, 1989; Tripp, 1990, 1997; Dryden Witte, 1996; Quijano, 1998; ILO, 1999). There are studies that confirm the persistence and growing tendency of informality in many Latin American countries (see ILO, 1999; Gray, 1998). Different perspectives dominate the debate of informality: Marxism or structuralism; structural surplus labor force (SSLF); and neoliberalism. For Marxist proponents, the reserve army of labor typically explains the existence of informality and becomes an attribute of the informal sector. Capitalists manipulate the reserve army confronting workers in the formal sector with the replacement by cheaper labor in the informal labor market (manipulation). For the proponents of SSLF, the surplus of labor in urban settings explains the emergence and persistence of informal activities. In this perspective, informality is seen as a quasi-evolutionary process, where the informal activities will conduct its actors to the formal sector. Rather than a strategy to manipulate the reserve army, the informal sector is a 'different way of doing things' and achieving growth and development (ILO, 1972; Hart, 1973). In the neoliberal paradigm, Hernando de Soto asserts that the informal sector is a response to excessive state regulation. In the same line of reasoning, the legalist advocates emphasize the legal violation of informal activities, the breaking-down of the social contract and the social costs it has for the entire social order. Despite differences among these propositions, all these perspectives share the notion that informality is a domain where the state has no power of regulation. In this sense, they establish a theoretical consensus that places state regulations as the dividing line between formal and informal labor.

In Argentina, however, the enactment of labor laws that legislate temporary, low-wage, unprotected employment, and reductions in employers' contribution to the social security system, cannot be explained

without challenging the notion of informality as unregulated activities. The process of informalization of labor cannot be understood without incorporating the state as a crucial actor fostering this process primarily through legal frameworks of labor regulation practices. Similarly, the curtailment of workers' rights also cannot be explained without acknowledging the impact of these laws on the system of protection of the labor force.

The 1991 NEL began a process of rupture of the legal frameworks and the emergence of new forms of legalities in the labor market (Sassen, 1998). In particular, the main goal of this law was the dismantling of the political matrix established during Perón's nationalist-populist regime. By embracing principles of flexibilization and deregulation of labor relations, this law guided efforts to redefine the former arrangements in the labor market. The government presented the 1991 NEL and its subsequent amendments as the only way to counterbalance the persistent and increasing levels of unemployment and underemployment. The new legislation targeted direct and indirect labor costs through the legalization and promotion of cheaper contracts and reductions in employers' contribution to social security. Likewise, the law loosened the legal obstacles to fire workers, reducing the indemnity costs or even making the process cost-free with the institutionalization of temporary contracts. At the core of the strategy of labor flexibilization was the assumption that the cost of labor and the workers' demands were responsible for the imbalances in the labor market. Finally, the law fostered the decentralization of the bargaining process between capital and labor, encouraging employers–employee negotiations at the level of the firm and keeping the state and unions at the very margin of this process (Hidalgo, 1999a, 1999b). We argue that the analysis of the new labor laws is central to understanding the precarization of labor and the curtailment of workers' rights. The new legislation lies at the core of the process of formalization of informal labor in Argentina.

From the early 1990s, the government actively promoted flexible labor policies as a response to the fledgling democratic regime and the deepening economic crisis – a crisis in turn reflected in high unemployment and growing political resentment which threatened to spill over into open social protest. The political supporters of these new labor codes declared that the primary goal was to protect the rights of employed workers, to promote the expansion of employment, and to prevent the proliferation of non-registered work (Legislación Laboral 1/98, 1998). However, the rhetoric of protection of workers in regular wage-paying jobs has not matched the new realities of work in contemporary Argentina. In a critical analysis of the new labor policies, Castillo Marín found that state policy-makers have pursued a strategy that places a priority on reducing labor

costs (through reductions in salaries and labor taxes) as a means of increasing the level of employment, with little consideration of the loss of tax revenue from enterprises in the formal sector and with little consideration of long-term social security (for example, health, education and training) of the labor force. In addition, for most wage earners in Argentina, decent health services, quality education and other welfare benefits have become luxury commodities sold in the market (Castillo Marín, 1997).

The study of the modifications in legal framework regulating labor-capital relations in Argentina provides a unique opportunity for us to revisit the debate about the role of the state not only as a regulator of capital-labor relations, but also as a crucial actor undermining the bargaining power of workers and strengthening the hand of employers. The institutionalization of unprotected, unstable and low-wage employment provides a clear indication that the state administration has become a central and active promoter of labor precariousness at the same time that employers' contributions to the social security system have been reduced. As a consequence, the strong welfare component of previous labor policies in Argentina has been significantly undermined (Lozano, 1999; Hidalgo, 1999a, 1999b; Marshall, 1997). Furthermore, the labor reforms provide evidence that we are witnessing not a (dis)intervention of the state in the labor market, but a change in the direction of the state intervention, and one which serves to foster market forces (Coriat, 1992). The new type of intervention in the labor market rather undermines the non-interventionist discourses and confirms the arguments of Polanyi, de Brunhoff, Claus Offe, among others, who assert that there is no such thing as 'free' or 'self-regulated' market because the state is an inherent regulating mechanism in the market economy.<sup>12</sup> The state may change or take different forms, but it does not disappear; capital requires its existence, says de Brunhoff (1978: 100). In effect, the new labor legislation in Argentina has changed the direction of state intervention, redefining the power relations between labor and capital in favor of the latter.<sup>13</sup>

The 1991 NEL and its subsequent amendments brought about a rupture to the former legal framework, that had not covered irregular, precarious work in its mandate. The extension of state regulations to cover informalized/precarious work relations reflects the interests of global corporate enterprises who seek to break down all hindrances to trade and investment worldwide (Sassen, 1998). Historically speaking, employers and organized labor in Argentina operated under the broad umbrella of a social contract that provided jobs in the formal economy with a degree of social protection and stability. In contrast, the new legislation promotes precarious employment that can hardly match the conditions of what theorists consider formal labor. The new labor laws undermine the idea of permanent work with a modicum of economic welfare, social protection

(especially in the fields of medical care, old age security and educational opportunities), and job security. On the one hand, the 1991 NEL declared its intention to prevent and penalize all sorts of informal, non-registered, or so-called 'black labor', stating that the main goal of the law is to prevent and penalize such practices. On the other hand, the NEL has fostered a process of precarization of labor, which has seriously undermined workers' rights. Indeed, the state administration has responded to the crisis in the labor market by effectively legalizing informal conditions of labor. The NEL brought about what can be called the legalization, or formalization of informal/precarious labor.

In Argentina, the new labor legislation that instituted precarious employment has segmented the labor market in ways that cannot be sufficiently grasped using the analytic distinction between formal-regulated and informal-unregulated sectors. Formal employment in Argentina today does not guarantee workers the kind of legal rights they enjoyed under the terms of the social contract that bound employers and trade unions together during the Fordist era. The new kind of labor market segmentation in Argentina involves an extreme precarization of employment and the state regulation of informal/precarious conditions of labor. These new realities give rise to several legitimate questions: What does formal labor mean? What are the practical differences for workers in formal employment versus informal employment? Considering the degradation of labor conditions and the erosion of legal protections in the formal sector, and the reduction in the social security benefits legalized in the new laws, one would be hard-pressed to establish a clear distinction between a formal-regulated and informal-unregulated labor market.

Analyzing the introduction of new labor legislation in post-authoritarian Argentina provides a foundation upon which to challenge the well-known prescriptions of Hernando de Soto and his followers (de Soto, 1989; Tripp, 1990, 1997; Chickering and Salahdine, 1991). In their surveys of labor market relations in various third world countries, these writers advocate a total deregulation of labor relations as a means of promoting growth and prosperity. De Soto and his followers eagerly champion those who generate income for themselves and their families in the informal sector as the 'real revolutionaries', who heroically stand up to the tyranny of excessive state regulations, and proclaim that these informal workers are the real seeds of the free market (deregulatory) doctrine. Ironically, in post-authoritarian Argentina, many of these informal workers ended up working under the terms of the precarious/flexible programs legislated in the NEL, which imposes a tight control over labor relations, disciplining workers and forcing them to accept the meager salaries, unstable labor conditions and unprotected relations with employers (Hidalgo, 1999a, 1999b; Minujin et al., 1992; Beccaria and López, 1996).

The implementation of neoliberal policies in Argentina has changed the whole dynamic of the labor market. Specifically, economic liberalization, wild privatizations and state reform have produced a remarkable decrease in the labor demand and increase in the labor supply, generating high unemployment and underemployment rates. In addition, there are clear indicators of increases and changes in the composition of the economically active population (EAP). Fundamentally, the unemployment and underemployment of primary workers (heads of household) force the incorporation into the labor market of secondary workers (spouses and children) as a way of counterbalancing the household's loss of income. In a constrained labor market, the primary as well as secondary workers are exposed if not to the total unemployment, to very precarious conditions. At the XIV American Regional Meeting of International Labor Office (ILO) in August 1999, there was an open recognition of the negative impact of labor reforms (flexibilization) in the deterioration or precarization of employment in various Latin American countries (ILO, 1999).

In this sense, we argue that the 1991 NEL and its subsequent amendments effectively blur the frontier between formal and informal labor. Informality cannot be conceived of as an external condition, but as an integral feature of state-sponsored regulations governing the employment of casual labor. Under the terms of the new labor laws, the state administration authorizes private and formal employers to hire workers in conditions already recognized as informal, and where employers are not obligated to contribute to social benefits or the social security system. Informality is no longer 'outside' or 'against' state regulations, but it is now incorporated into the formal labor market through the very same labor legislation.<sup>14</sup>

### **The Analytic Distinction between Formality and Informality: The Declining Significance of a Once-Useful Quasi-Paradigm**

As a quasi-paradigm, the conceptual distinction between formal and informal economies was a useful orienting framework that enabled scholars working in very different historical, cultural and social settings to ask similar questions, to look for common patterns, and to seek generalizations about labor markets, work relations and income-generating activities. As a heuristic device, this conceptual couplet generated extensive scholarship, characterized by a burst of initial enthusiasm that was followed by an elaboration and refinement of models and research techniques. Despite differences among scholars operating within this quasi-paradigm, these researchers typically understood the condition of

informality as analytically distinct and outside the formal sector. These scholars typically associated informality with income-generating activities over which the state regulation had little or no influence or power (see Hart, 1973; Portes et al., 1989; Smith, 1990; Moser, 1994; Stepick, 1990; de Soto, 1989; Pozo, 1996; Quijano, 1998). Following this line of reasoning, Portes and Sassen-Koob assert that informality is the sum total of income-earning activities with the exception of those that involve contractual and legally regulated employment (Portes and Sassen-Koob, 1987). Generally speaking, scholars operating with the quasi-paradigmatic framework of informal versus formal coalesce around a theoretical consensus that establishes state regulation as the main element of formalization of labor. Informal labor implies employment that is 'out of' or 'against' state regulations. From the outset, this distinction marked a conceptual breakthrough that enabled researchers to grasp the new realities of unregulated, irregular work that took place outside the framework of legal sanction (see Pérez Sáinz, 1991). Within this frame of reference, there has been a great deal of literature that analyzes the labor conditions and the role of the state, along with labor movements seeking civil, political and social rights (Esping-Andersen, 1990, 1996, 1998; Esping-Andersen and Korpi, 1984). More specifically, in the theoretical and historiographical literature on informality, some analysts consider the achievement of civil, political and social (welfare) rights as a trend toward formalization of the labor market (full employment with a comprehensive welfare system). Some writers treat these gains as one of the indicators of national development (Williams and Windebank, 1998). In this understanding, the process of formalization of labor relations goes hand-in-hand with the gradual improvement of workers' rights (Esping-Andersen, 1990, 1996; Esping-Andersen and Korpi, 1984; Williams and Windebank, 1998; Offe, 1984, 1993; Marshall, 1963).

The distinction between the formal and informal sectors typically pivots around the notion of labor market segmentation. For example, Portes postulates that the formalization of labor and the consequent provision of state-sponsored welfare benefits have produced segmentation in labor markets, dividing a relatively high-paid minority of wage earners (workers' aristocracy) under the protective shield of state welfare provision from a mass of unprotected workers languishing in various informal arrangements (Portes, 1994). Yet, the extremely precarious position that formal workers get under the new labor legislation in Argentina challenges arguments advanced by Portes and others (Portes et al., 1989; Williams and Windebank, 1998). In this country, labor laws have begun to segment the market not on the lines of formal versus informal workers, but under the phenomenon of precarious versus non-precarious labor, thereby consolidating a process of social exclusion and poverty. On the

one hand, the laws directly promote precarious employment (attributes of informal labor), thus triggering a process of formal 'informalization' of labor. On the other hand, the context of rampant unemployment forces workers to work under the precarious conditions legislated in the law. Being formal workers no longer guarantees high-paid, protected employment. What is more, being a formal worker does not suppose any qualitative and quantitative difference with the workers in the informal sector. There could be a high-paid minority of wage earners, but it is not the outcome of a legislation that promotes precariousness. Instead, the state is producing a mass of unprotected workers that have no recourse but to accept the precarious conditions legitimated in law. The new segmentation between precarious and non-precarious labor can be no longer analyzed under the framework of the 'formal-regulated versus informal-unregulated' distinction.

Recent scholarship that addresses new divisions, segmentations and contradictions in work relations and labor markets raises serious questions about the continuing usefulness of maintaining a hard-and-fast analytic distinction between formal and informal economies. In the postindustrial era of globalization, we are witnessing a new social contradiction framed in terms of inclusion/exclusion (Minujin, 1993; Barbeito and Lo Vuolo, 1992; Peñalva and Rofman, 1996; Villanueva, 1997). This new contradiction must be distinguished from the former labor-capital contradiction that buttressed the formal/informal distinction. Nowadays, the struggle to enter a tight job market becomes a labor-labor rivalry, fostering competition for the scarce positions available. The success or failure in getting into the labor market determines the inclusion or exclusion not only in the labor domain, but also in the different dimensions of social life (economic, cultural, political, etc.). Furthermore, the quality of jobs also determines the extent of social inclusion or exclusion. In this sense, the precariousness instituted in the new legislation becomes central in understanding social exclusion and poverty of thousands of workers in contemporary Argentina. Whereas the formal versus informal distinction pivots on the presence or absence of state regulation, the new inclusion/exclusion division revolves around state regulations that formalize informal/precarious conditions of labor and undermine workers' rights (Malimachi, 1996).

We argue that the state-led labor precariousness challenges the duality of 'formal-regulated versus informal-unregulated' labor. As Quijano (1998) points out, the original concept of informality is imposed without a critical assessment, falling into tautological reasoning: everything that exists at the margin of state regulations is informal, and it is informal because it is out of the state formal norms. It is our understanding that the current situation in Argentina is one where informality is no longer

an external phenomenon, outside the normative framework of state labor legislation, but one actually promoted and sponsored by means of state intervention. State agencies both establish conditions for hiring workers, and even hire workers themselves under conditions already recognized as informal. At the same time, the state enables employers to substantially reduce their contribution to the social security system. Now it is the state that is the institution that hires or allows the hire of workers in conditions already recognized as informal. It is neither the case of informality being 'out of' or 'against' state rules, nor of its having a dynamic relation with the formal sector; it is the encroachment of informality into the core of the state.

Investigating the new labor legislation in contemporary Argentina enables us to grasp how the state not only regulates the nature and scope of informal employment, but also plays an active role in legitimizing informal work. As Williams and Windebank (1998: 5) clearly assert, the notion of informal as 'unregulated' is a myth because the state not only regulates the nature and scope of informal employment by changing its rules and regulations toward formal employment, but it also plays an active role in legitimating informal employment. Linking such notions as 'unregulated', 'illegal', 'irregular' and 'underground' with the concept of the informal economy falsely implies the disengagement of state involvement in the process of precarization/informalization of labor in the era of globalization. Hard-and-fast, analytic distinctions between formal and informal economies overlook the active role of the state in the promotion and regulation of precarious conditions of labor. The new labor legislation in Argentina exemplifies this trend toward regulating informality in the labor market.

We can conclude by pointing out three outcomes of the implementation of neoliberal policies in the labor market of contemporary Argentina. First, the flexibilization of labor rather generates a process of precarization of labor, causing situations of social exclusion and poverty. Second, this precarization is no longer an exclusive phenomenon of the informal market. Nowadays, the very state promotes precariousness and contributes to undermine workers' rights. This reality contradicts the deregulatory and anti-state intervention discourses upon which neoliberal doctrine depends. Third, state promotion and regulation of precarious employment challenges the division 'formal-regulated versus informal-unregulated' and calls for a revision of the theoretical parameters that identify and differentiate these two categories. Instead of a formal versus informal segmentation, we have witnessed the consolidation of a division between precarious and non-precarious labor, which goes beyond the former formal/informal demarcation and within which the state plays a fundamental role.

## Notes

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1. See Amin (1997). For a wider view, see Esping-Andersen (1990, 1996, 1998).
2. For a wider view on reductions of state spending in public services, see the works of Therborn (1987), Mingione (1978, 1994), Tokman and O'Donnell (1998) and Raczynski (1998).
3. For a wider discussion on changes in the accumulation model in Argentina see the works of Canitrot (1994), Waisman (1987), Powers (1995) and Garcia Heras (1997).
4. Many authors discuss the phenomenon of social exclusion and poverty in Argentina. For a wider view see, among others, the works of Peñalva and Rofman (1996), Minujin (1993), Bustelo and Isuani (1990), Barbeito and Lo Vuolo (1992) and Beccaria and López (1996).
5. For a comprehensive discussion on the process of hyperinflation in Argentina, see Canitrot (1994), Confederación General Económica (1989) and Weyland (1998).
6. The widespread support for draconian adjustment programs that Menem, as other Latin American presidents, achieved in the 1990s has been discussed in several places. For example, Kurt Weyland (1998) asserts that the biggest surprise in Latin American politics during the past decade has been the strong support that tough neoliberal reforms have elicited in several countries. In his analysis, Weyland proposes two hypotheses to explain the popular support for neoliberal reforms: compensation hypothesis, and rescue hypothesis. The first one refers to the social emergency programs, which target the poorest sectors, as the clue to generate support for the neoliberal programs. Making many people (at least initially) worse off by unleashing the invisible hand of the market, the governments have tried to neutralize some of the losses with the visible hand of the state. According to several scholars, targeted benefits are therefore crucial for making structural adjustments politically viable. The second (rescue) hypothesis refers to the people's fears of losing even more, a pervasive feeling in a context of profound economic crisis. The promises of averting and reverting losses are crucial for finding popular endorsement to painful reforms. Thus, neoliberal programs should find higher support in countries suffering deep crises, such as hyperinflation, than in nations with better economic prospects; see Weyland (1998). O'Donnell also refers to the economic crisis/hyperinflation as a foundation of a democracy that he conceptualizes as 'Delegative Democracy'. This concept points to the weakness of the democratic institution, especially the National Congress, and the immense power given to the president to implement the structural reforms of the 1990s; see O'Donnell (1994).
7. International agencies such as the ILO and World Bank address the worsening in income distribution and poverty in Argentina; see Gray (1998) and ILO (1999). See also the works of Tokman and O'Donnell (1998) and Berry (1998).

8. In 1991 (the beginning of the Convertibility Plan) the open unemployment rate was 6.9 percent. In 1994, this rate reached 10.7 percent. In 1995 the unemployment was at its peak, 18.4 percent. In 1997, the INDEC recorded a rate of 13.7 percent. At present the unemployment is approaching 19 percent. This information is available from the Instituto Nacional de Estadística y Censos (INDEC) at: [www.indec.mecon.ar](http://www.indec.mecon.ar)
9. For a wider discussion on 'secondary workers strategy' in Argentina, see Monza et al. (1996) and Salvia (1999).
10. See Testa and Figari (1997) and Alaluf (1997). These authors elaborate their analysis of labor flexibilization taking Robert Boyer's (1991) division of external flexibilization and internal flexibilization.
11. For further discussion, see Williams and Windebank (1998), Otero (1994), Portes (1996) and Quijano (1998).
12. See Polanyi (1944), de Brunhoff (1978) and Offe (1993). Following these authors, we argue that the implementation of neoliberal policies really succeeded in their attempts of labor flexibilization. Yet, the irony is that the flexibilization was not a pure result of the free play of market forces. The state administration has contributed in a significant way to this process through the promotion of very cheap, unstable and unprotected jobs.
13. In a broader perspective, the NEL reflects a tension between the discourse of deregulation, and the political and strategic necessity of intervening in the labor market, tension that the government resolves with the legalization/formalization of precarious employment. In a context of rampant unemployment, this kind of intervention corresponds to a capital requirement, in this case the generation of employment that the capital itself cannot meet given the structural limitations in the current economic model to create jobs. As de Brunhoff (1978) states, the first field of state intervention, whether in the form of economic policy or not, concerns the regulation and management of that particular commodity labor power (de Brunhoff, 1978: 9–10) which defies any deregulatory argument.
14. For a broader discussion, see Sassen (1996) and Itzigsohn (2000).

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