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Outsourcing and resistance to it in Brazil: Bill No. 4,330/04 and the actions of collective actors

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Abstract

One can clearly identify a process of increasing flexibility in labour relations occurring in Brazil, especially as from the 1990s onwards. A myriad of atypical hiring modalities have emerged, with the outsourcing of productive activities of particular interest to this present article. In the past, this was largely restricted to relatively few alternatives: subcontracting and the hiring of security services and temporary workers, all within a much more limited scope than we see provisioned for today. It wasn't until the early 1990s that the Supreme Labour Court (TST), through its Formal Declaration No.331, finally set down a provision for the outsourcing of core activities. Shortly afterwards, in 1998, a new Bill of Law was proposed, namely Bill No.4,302/98 (*PL n. 4.302/98*), whose provision for extending outsourcing to core activities was subsequently, in 2004, incorporated into Bill No. 4,330/04 (PL n.4.330/04). With these changes in mind, this article means to discuss, albeit on a preliminary basis, the institution of outsourcing in Brazil, focusing on its historical dimension, and especially on its status from a legal standpoint. The idea is to put the current situation into context. The debate has been raging over the potential impact of Bill No. 4,330/04 with particular force since April 2015, when the subject first emerged in the mass media. The bibliographic review that was carried out for this article produced a definition of a secondary objective. This involved identifying and critically analysing the participation of collective actors, including those entities that represent both employers and workers, as well as professional law associations, in the debate over the potential social and labour implications that might result from the passing of Bill No. 4,330/04 into law. The activities of these different actors were assumed as being representative of the forces that express trends and countertrends and, therefore, diverging interests in relation to the subject of outsourcing.

Keywords: Outsourcing. Precarious Work. Resistance. Bill. Collective Actors.

Terceirização e resistência no Brasil: o Projeto de Lei n. 4.330/04 e a ação dos atores coletivos

Resumo

É notável a crescente flexibilização das relações de trabalho no cenário nacional, sobretudo a partir da década de 1990. Uma miríade de modalidades atípicas de contratação emergiu, sendo de especial relevância, para esse trabalho, a terceirização das atividades produtivas, anteriormente restrita a poucas hipóteses: a subempreitada e a contratação de serviços de vigilância e de mão de obra temporária – em bases muito mais limitadas do que as previstas atualmente. Foi apenas no início da década de 1990 que se instituiu, por intermédio do Enunciado n. 331 do Tribunal Superior do Trabalho (TST), a previsão de terceirização para as atividades-meio e, ato contínuo, em 1998 foi proposto o Projeto de Lei n. 4.302/98 (PL n. 4.302/98), cuja previsão da extensão da terceirização às atividades-fim foi incorporada, em 2004, ao Projeto de Lei n. 4.330/04 (PL n. 4.330/04). Tendo em vista essas mudanças em curso, o objetivo deste artigo é discutir, ainda que preliminarmente, o instituto da terceirização no cenário nacional, privilegiando sua dimensão histórica, em especial sua inserção no âmbito legal, com vistas a contextualizar o momento atual, no qual têm lugar debates acerca dos impactos do PL n. 4.330/04, destacadamente a partir de abril de 2015, quando o tema emergiu na mídia de massa. A revisão bibliográfica empreendida resultou na definição de um objetivo intermediário, que consistiu na identificação e análise crítica da participação de atores coletivos, a exemplo das entidades de classe representativas do patronato e dos trabalhadores, além de associações de profissionais do Direito, na discussão das implicações sociais e trabalhistas advindas da eventual aprovação do PL n. 4.330/04. As atuações desses diferentes atores foram assumidas como representativas das forças que expressam tendências e contratendências e, portanto, interesses divergentes em torno do tema da terceirização.

Palavras-chave: Terceirização. Precarização. Resistência. Projeto de lei. Atores coletivos.

Subcontratación y resistencia en Brasil: el Proyecto de Ley 4.330/04 y la acción de los actores colectivos

Resumen

La creciente flexibilización de las relaciones laborales en la escena nacional es notable, en particular desde la década de 1990. Una miríada de modalidades atípicas de contratación emergió, con especial relevancia, para este trabajo, a la subcontratación de las actividades productivas, previamente restringida a unas pocas hipótesis: el trabajo subcontratado y la contratación de servicios de seguridad y de mano de obra temporal – de forma mucho más limitada do que la prevista actualmente. Fue sólo a principios de la década de 1990 que se instituyó, a través del Enunciado 331 del Tribunal Superior del Trabajo (TST), la previsión de subcontratación para las actividades de apoyo y, inmediatamente después, en 1998 se propuso el Proyecto de Ley 4.302/98 (PL 4.302/98), cuya previsión de ampliar la subcontratación a las actividades principales fue incorporada, en 2004, al Proyecto de Ley 4.330/04 (PL 4.330/04). Teniendo en cuenta estos cambios en curso, el objetivo de este artículo es discutir, aunque de forma preliminar, el instituto de la subcontratación en la escena nacional, enfatizando su dimensión histórica, en particular su inclusión en el marco legal, con el fin de contextualizar el momento actual, en el que se llevan a cabo debates sobre los impactos del PL 4.330/04, sobre todo desde abril de 2015, cuando el tema surgió en los medios de comunicación. La revisión bibliográfica realizada resultó en la definición de un objetivo intermediario que consistió en la identificación y el análisis crítico de la participación de actores colectivos, como las entidades de clase representativas del patronato y de los trabajadores, así como de asociaciones de profesionales del Derecho, en la discusión de las implicaciones sociales y laborales derivadas de la eventual aprobación del PL 4.330/04. Las acciones de estos diferentes actores se asumieron como representativas de las fuerzas que expresan las tendencias y las contratendencias y, por lo tanto, intereses divergentes en torno al tema de la subcontratación.

Palabras clave: Subcontratación. Precarización. Resistencia. Proyecto de ley. Actores colectivos.

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INTRODUCTION

The early 1970s saw the emergence of a far-reaching process of capital restructuring on a global scale, which had its primary origins in the developed western world (HARVEY, 1992; ANTUNES, 2013). In Brazil´s case, however, this process, which was marked by the emergence of the financial sector as a leading player in the economic arena, only became evident as from the 1990s onwards. As a result, the leading industrialists were no longer important players on the economic stage, a role that was instead assumed by the major financial operators, which included the large pension funds, insurance companies and investment funds (REICH, 2009; BOLTANSKI and CHIAPELLO, 2009).

In the context of Brazil, the effects of increased production flexibility can be viewed as a process that has tended to lead to an institutionalisation of modern flexibilization and a precariousness of work (DRUCK, 2013). This flexibilization can clearly be seen in the emergence of a series of atypical modalities of labour, within a scenario that reflects a tendency to weaken the formal ties between employers and workers. This is embodied in new forms of hiring that include part-time work, temporary work, trainee contracts, *worker cooperatives*, *entrepreneurism*, "*illegal work*", subcontracting and internal outsourcing. These two last examples are considered, for the purposes of this article, as representative of outsourcing in its broadest sense.

Outsourcing, within the field of administration in particular, has been the focus of analysis of a number of studies aimed at a critical debate on the subject, which either prioritise its symbolic dimensions (COSTA, 2007; LOPES and SILVA, 2009; SILVA JUNIOR, KILIMNIK, OLIVEIRA et al., 2008; DIAS, FACAS, MORRONE et al., 2011), or its ideological dimensions (MELLO, MARÇAL and FONSÊCA, 2009; SARAIVA and MOURA, 2010; BRITO, MARRA and CARRIERI, 2012). A more concrete dimension has emerged as a by-product (OLTRAMARI and PICCININI, 2006), despite the precarious work conditions to which a large proportion of Brazilian workers are subject.

The lack of available articles focusing on the socioeconomic dimension of outsourcing, whether in studies aimed at analysing labour relations, or those focused on organizational studies helped inspire the present study. Its purpose was primarily to map, albeit only provisionally, outsourcing in Brazil by focusing on its historical dimension and especially its status from a

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legal standpoint. The article seeks to contextualise the present time, one in which we are faced with an intense debate on the potential impact of Bill No. 4,330/04 (PL n.4.330/04), which primarily gained traction as from April 2015, when the subject first emerged in the mass media. One should stress that the different points of view in relation to the subject, which represent the varying interests of business leaders and those of workers, have permeated a reality that has been little portrayed over the last ten years or more. The special viewpoint of this article manages to look beyond the barriers imposed by organisations, and is thus able to see, above all, the political dimension that lies beyond the day-to-day of organisations.

To achieve the primary goal of this study, an analysis was made of the participation of other collective actors, as well as that of entities representing both employers and workers. The latter included the Brazilian Bar Association (OAB) and the National Association of Magistrates in Labour Courts (Anamatra) in the debate on the potential social and labour consequences of Bill No. 4,330/04, should it pass into law. To this end, this survey had two aims: firstly, to outline some of the forces working against the passing of this bill, in the form of different collective actors from within organised civil society, considered here as an alternative form of resistance, and secondly, to present the views of the OAB and Anamatra in relation to this bill, aligning them with the different positions adopted by both employers and workers.

To achieve this proposed objective, a multidisciplinary view was adopted, and to this were added certain contributions from the field of Administration, as well as from the fields of Sociology, Economics and, above all, from Law. The goal was to ensure a more holistic understanding of the process underway, aimed at the generalization of the instituting of outsourcing to each and any productive activity provided for in Bill No. 4,330/04. At the time of writing this article, Bill No. 4,330/04 was pending approval in the Federal Senate. This study has considered the original text of the bill, as presented by its author, federal deputy Sandro Mabel.

This present article considers that the institution of outsourcing is the transitory result of a dynamic process of conflict between individual and collective actors, which reflects the coexistence of trends and counter-trends. These can be identified by understanding the generative mechanisms that operate within a differentiated and a stratified objective reality, strongly influenced by knowledge and prior initiatives of social construction (BHASKAR, 1979; 2014; HAMLIN, 2000; FLEETWOOD, 2004; O'MAHONEY and VINCENT, 2014). The article has adopted Critical Realism as the ontology for guiding the proposed analysis.

The article is subdivided into eight sections, including this Introduction. We follow the Introduction with a brief description of the main characteristics of the critical realist ontology and then place the subject of outsourcing within the context of administration studies in Brazil. We then follow this with evidence of the precarious work conditions experienced by outsourced workers. The fifth section presents a brief history of the institution of outsourcing in Brazil and in the sixth section, we offer some brief methodological considerations. The seventh section deals with some of the arguments put forward by the entities representing both employer and worker trade unions in relation to Bill No. 4,330/04, as well as the views of the OAB and Anamatra related to the same bill. These primarily focus on two points of contention: the idea of extending outsourcing to core business activities and the limitations of employer responsibility or liability, to try to link them with those of employers and workers. Finally, and by way of conclusion, we reiterate the idea of outsourcing as being the partial result of a dynamic process, which is constructed socially within an environment in which distinct views and interests coexist. Suggestions are also made as to possible topics for future research.

CRITICAL REALISM

Initial considerations

In order to justify the decision to use Critical Realism in this article, which is a current of philosophy of the science whose modern-day origins are associated with philosopher Roy Bhaskar (1975, 1979), we offer some brief considerations below regarding this line of thinking, given that its inclusion in Brazilian organisational studies is as yet somewhat incipient. We begin by contextualizing the emergence of Critical Realism, which lies at the heart of a broader movement to overcome the dichotomy between the subjective and the objective dimensions of analysis in the social sciences.

The 1970s can be considered a landmark of the "movement of synthesis" (DOMINGUES, 2004, p. 57) or, the "new theoretical movement" (ALEXANDER, 1986) whose initial intention was to overcome micro/macro duality and thus transcend existing objectivist and subjectivist guidelines. The latter can be expressed in a renewed interest in phenomenology, hermeneutics and in ethnomethodology. Critical Realism, similarly to the far-reaching theories put forward by Anthony Giddens and Pierre Bourdieu, falls within the scope of the said movement. Regardless of the differences that exist between the ontological and the epistemological guidelines of these different currents, they all call for strong opposition to positivism.

Critical Realism is, therefore, a rejection of the positivist pretension to tie the qualitative nature of science to its quantitative aspect. The criticism is, therefore, of the relevance attributed to the extensive collection of data as being a necessary condition for the creation of universal laws governing the natural and social worlds, which is based on the development and testing of theories that are linked to the regularity of empirical events (O'MAHONEY and VINCENT, 2014).

Despite suggesting the existence of a "world (objective) [...] regardless of perceptions, language or of the imagination of people", Critical Realism does this without ignoring "that part of this world consists of subjective interpretations that influence the way in which this is perceived and experienced" (O'MAHONEY and VINCENT, 2014, p. 2-3). Consequently, the human agency emerges as a central aspect and, in spite of certain structural restrictions, subjects cannot be reduced to mere epiphenomenons of these structures. In the words of Bhaskar (1979, p. 109), "the agent should be understood as a specific [being] that is the centre or the origin of certain powers, just like any thing that is capable of producing a change in something else (including in itself)".

Fairclough, Jessop and Sayer (2002, p. 10) highlight the dialectic relationship between the semiotic and the non-semiotic aspects of social phenomena, as well as the recursivity between agency and social structures. These are determinant in the processes of the "emergence, reproduction and transformation of social structures in virtue of the actions of social actors and the reciprocal influence of these emerging structures on the social initiatives in progress". Consequently, whilst assuming a deviation of the subject, the authors do not share those points of view that suggest both the inexistence of a reality outside the discursive dimension, and the dissolution of the subject. As suggested by the authors:

> [...] the critical aspect [of the language] (p. e.g. "critical discourse analysis") concerns the truth, veracity and property of texts, their production and their interpretation. That is, it is concerned with the relationship between semiotics and the material and social aspects of the social world; people and their intentions, beliefs, desires, etc.; and social relations (Fairclough, Jessop and Sayer, 2002. p. 13).

In short, Critical Realism recognises the causual powers that are attributed to the reasons and motivations of authors, individuals or collectives, which can be activated and, consequently produce certain effects within the social world.

STRATIFIED REALITY

Critical realists suggest the possibility of formulating theoretical generalisations linked to the discovery of generative mechanisms, provisions and structures that are subjacent to the superficial level of analysis, whose causual powers may expand the explanatory, and not merely descriptive potential of the occurrence of phenomena and events, visible or not in empirical reality. Critical realists agree with the terms proposed by Giddens (2009, p. 21), for whom social scientists should focus on "concerns of a more ontological order [...] and above all, on remodelling concepts of the human being and of human endeavour, social reproduction and social transformation".

The priority attributed to ontology, associated with epistemological pluralism, is what lies at the heart of Critical Realism. In other words, one must postulate the existence of a stratified reality and the multiplicity of possibilities that exist for its apprehension. Certain very distinct methodologies, based on a qualitative and quantitative platform, tend to be preferred by critical realist researchers (ACKROYD and KARLSSON, 2014). However, Sayer (2004) stresses the impossibility of adopting methods that are typical to the natural sciences to cope with the hermeneutic dimension of the social sciences.

Hamlin (2000) suggests certain elements to support the typification of the different realist perspectives that exist. The first trait, which is central to all the different perspectives, refers to objectivity, in other words, to the existence of an object regardless

of one´s awareness of its existence. Fallibility, meanwhile, expresses the temporary nature of knowledge, which is subject to rebuttal in virtue of new evidence emerging. Put together, these two characteristics are central to positivism, an epistemological current that views reality as a series of observable facts.

However, two additional elements, namely transphenomenonality and counterphenomenonality, are essential to the proper characterisation of Critical Realism. Transphenomenonality points to a stratified reality, in other words, to beyond that which is observable on an empirical level of analysis. Counterphenomenonality, meanwhile, postulates that, on diving into the elements at the deepest levels of reality, the researcher may be faced with mechanisms, provisions and subjacent structures, expressed in the form of trends and countertrends, which can help him recognise and reveal the multifaceted nature inherent in social reality (HAMLIN, 2000).

Critical Realism has suggested three distinct fields of reality: the empirical, the factual and the real (BHASKAR, 1975; 1979; 2014; HAMLIN, 2000, SAYER, 2004, O'MAHONEY and VINCENT, 2014). The empirical dimension refers to the reality that is perceived through *sensorial experiences and perceptions* (O'MAHONEY and VINCENT, 2014) or through *direct observations* (HAMLIN, 2000). Factual reality, meanwhile, includes events whose occurrence may or may not correspond to perception or immediate observation, while the real field is made up of the mechanisms, provisions and subjacent structures, which are causually related to perceptions, observations and to the events that make up the other fields.

Following this brief explanation of the ontological perspective that is used in this article, we now turn our attentions to studies focusing on outsourcing in Brazil, which we follow with a more in-depth look at Bill No. 4,330/04 from the perspective of its broader socio-historical development.

OUTSOURCING IN BRAZILIAN BUSINESS ADMINISTRATION STUDIES

The multifaceted reality of the labour market has a number of dimensions through which its different topics can be looked at. Borges and Yamamoto (2004) suggest five dimensions for analysing the work or labour category, which are complementary in their focus of analysis. The first, the concrete dimension of analysis, involves the material and environmental conditions under which work is carried out, while the managerial dimension focuses on the new forms of management that have been adopted. The ideological dimension, meanwhile looks at discursive legitimisation aimed at collective and societal identities, highlighting the power relations within the internal and external scope of companies. The symbolic dimension casts an analytical eye on the subjectivity of workers and, finally, the socioeconomic dimension deals with a macro analytical plan, focusing on the study of the inter-relations between the labour market and the social, political and economic dimensions.

A review of brazilian literature on organisational studies, produced in the period between 2004 and 2014 and coinciding with the period during which Bill No. 4,330/04 was making its way through the Lower House, shows a strong predominance of research aimed at the symbolic and the ideological dimensions of the labour market. In view of the position taken in this article regarding the institution of outsourcing, this literature review has prioritised articles that have taken a critical position in relation to the subject, even though to different degrees and adopting different ontological, epistemological and methodological points of view.

A global analysis of the material that was researched suggests that the authors cover, simultaneously, a variety of dimensions in their research, given their inter-relationships. It is worth noting that the managerial dimension appears in transversal form in the texts, but is not the focus of their primary analysis, because of the non-managerial approach employed by the authors. With regard to the concrete dimension of the labour market, its presence in the texts is merely residual, despite the increasing precariousness of the objective conditions of labour. This precariousness manifests itself in the growing number of workplace accidents that have occurred, as well as in work that is often carried out under conditions akin to slavery, common not only in the primary sector of the economy but also in the second and tertiary sectors. Such cases are especially common in civil construction (OJEDA, 2014) and in the clothing industry (GUERRA, 2014; KIKO, 2014).

Oltramari and Piccinini (2006), in a comparative study of two industrial concerns in the textile sector, point to the adoption of different levels of automation and managerial and technological innovation and their relationship with different aspects of labour relations, including their significance to the workers. Their focus is, therefore, on the concrete dimension of analysis. These authors stress, in both cases studied that the essence of having a job and job satisfaction are lost, either because

of an intensification in the work that is linked to multifunctionality, or because of the mechanical routine of the work, both of which may be associated with a lack of prospects in terms of professional career advancement.

With regard to the symbolic dimension, research has prioritised the perspective of outsourced workers, looking at areas such the subjective construction of the psychological contract, moral harassment, and the construction of a collective identity of workers. In the case of the psychological contract, Rios and Gondim (2010) highlight, from among the results they obtained in their research, the reduced expectations of outsourced workers. This is compared to full-time employees doing the same kind of work, and refers to the receiving of proper treatment on the part of their employer, and the adoption of a more flexible negotiating position on the part of the former, because of the extreme fragility of their employment status.

Lopes and Silva (2009), meanwhile, point out that outsourced workers in the IT sector, because they are faced with the uncertainties of the weak employment ties that are typical in their field of employment, tend to value a more solid employment relationship, constructing their professional identities in such a way as to be largely disassociated from any kind of organisational belonging. They describe themselves as IT professionals and adapt themselves, even if within a conflictive environment, to the pressures of longer working hours caused by the fear of unemployment. However, the heterogeneity of the subjects of this research suggests that the condition of being an outsourced worker affects, in different ways, the expectations of the workers surveyed and, therefore, their psychological contracts.

In research focusing on the analysis of the construction of the collective identity of outsourced workers, Brito, Marra and Carrieri (2012) described the negative image that these workers have of their work and their own identities, with a relevant impact on the fragmentation of this working-class identity. Elements such as discrimination, feeling undervalued and insecurity in relation to the future seen among outsourced workers compete, in the view of these authors, to create the social construction of the perception portrayed. The question of moral harassment suffered by outsourced workers was also a focus of the study, which sought to show some of the ways in which such harassment might manifest itself in the workplace. These included: pressures aimed at ´obtaining` involuntary requests for dismissal, the intensification of the work process, resulting not only from an excess burden of work placed on workers but also from a requirement for them to be multifunctional, and the discrimination against outsourced workers (SILVA JUNIOR, KILIMNIK, OLIVEIRA et al., 2008).

Other authors have analysed labour relations and their subjective impacts from the perspective of the psychodynamic of work, showing not only evidence of pleasure being experienced but, above all, suffering experienced by outsourced workers in the workplace. Along the same lines, Costa (2007) looked at the suffering reported by outsourced workers, caused, among other things, by the lower wages received when compared to those received by directly employed workers, by the lack of training, by the lack of job stability and by the lack of a strong relationship with the company with which they maintained direct ties. Dias, Facas, Morrone et al. (2011) further concluded that this psychic suffering might be the result of an inflexible organizational structure and the burden of work, the intense demands for results and the scope itself of the work being carried out.

In terms of the ideological dimension of analysis, a recurring theme that was observed in literature on the subject referred to the criticism of the discourse that deals, in terms of partnership, with the relationship between contractees and subcontractors, in industrial sectors such as: the automotive (RYNGELBLUM, 2003), the mining (SARAIVA and MOURA, 2010) and the aviation sector (RUSSO and LEITÃO, 2006). Overall, these articles showed deep divergences between discourse and practice, especially in the case of those mobilised by the contractee firms. This was perhaps due to these companies´ growing power, the result of a relational dynamic between the parties marked by distrust and by the asymmetry in power wielded, which in turn reflected in the extensive subordination of the subcontractors.

In short, the articles that were analysed covered four of the five dimensions suggested by Borges and Yamamoto (2004), with the socioeconomic dimension, and especially the aspects referring to the inter-relations of organizations with the external political environment, dealt with only on a residual basis. It was, therefore, to fill this void that this study sought to map the institution of outsourcing in the case of Brazil, focusing on its historical dimension and thereby provide some context to the current scenario. Using this approach, the idea was to highlight the on-going debate over the potential impact of Bill No. 4,330/04 and provide evidence of the participation of collective actors, such as those class associations that represent employers and workers, as well as the Brazilian Bar Association (OAB) and Anamatra, in the debate over the possible social and labour-related implications that might arise should this Bill be passed.

Ryngelblum´s understanding (2003, p.152) is of extreme importance in this case, when he suggests “[institutional reforms] often come in the form of action, above all, that of powerful actors who fight amongst themselves in order to shape and

reformulate the rules that govern the political and economic systems". Along the same lines, Brito, Marra and Carrieri (2012, p. 78), stress that "[the] consequences for workers [outsourced] have been increasing at the same pace as the technological, political, social, cultural and economic transformations that have taken place", while Faria and Kremer (2004, p. 23) emphasise that the weakening of employment ties has resulted, initially, from the "manoeuvrings on a legal/political level [which] have led to the emergence of new modalities of formal employment ties".

In order to contribute to a better understanding of the outsourcing phenomenon, this study has outlined the lengthy process to which the above-mentioned Bill of Law has been submitted. Our research has helped reveal the battle being fought, for more than a decade now, by a wide range of different collective actors, reflecting the different positions and interests of the employer and the worker classes, as well as the views on the subject defended by different collective actors within civil society, such as the Brazilian Bar Association (OAB) and Anamatra.

OUTSOURCING IN BRAZIL: EVIDENCE OF THE PRECARIOUSNESS OF INDIRECTLY HIRED LABOUR

In Brazil, the process of restructuring the economy accelerated during the Collor Administration, especially through the import substitution policies that were adopted by that government, and was further boosted during the two governments of President Fernando Henrique Cardoso. Among the flexibilization measures adopted by the latter, one should highlight the following: the Hours Bank, as an alternative to overtime payments; temporary suspension, for economic reasons, of an employment contract; and temporary work (COSTA, 2003) which, together, suggested a clear trend to the deregulation of the system of worker protection set down in the Consolidation of Labour Laws (*Consolidação das Leis do Trabalho - CLT*). One should also highlight the legalisation of worker cooperatives, a labour structure widely used to get around the standard rules governing employment.

It is worth noting that within Brazilian society, especially as from the middle of the first decade of this new century, there was a sizable increase in the social mobility of a major contingent of Brazilians, who overcame unemployment and were lifted out of abject poverty. According to Pochmann (2012, p. 30), "this new contingent of workers with a basic wage would be better classified as the working poor", or, according to Jessé Souza (2012), as the new working class, differing from the traditional middle class in the accentuated asymmetry of its accumulated cultural capital.

Basing himself on data provided by the National Survey of Sample Homes (*Pesquisa Nacional por Amostra de Domicílios - PNAD*), of 2010, Pochmann (2012; 2014) points out that the absolute majority of the twenty-one million jobs created in the first decade of this century were in the services sector, of which 95%, in relative terms, or twenty million jobs, in absolute terms, paid in the range of up to 1.5 minimum wages. This group included, among others, work in call centres, in cleaning and private security services and as couriers, most of which were outsourced jobs.

Outsourcing has been of such significance, in terms of the newly emerging formats of organisation and management, that it has led to the creation of a "category of workers that is situated on the edges of the productive system" (BRITO, MARRA and CARRIERI, 2012, p. 78). The increased precariousness of the work to which most cases are subject allows one to classify them as marginalised actors (BRITO, MARRA and CARRIERI, 2012) or as second class workers (DRUCK, 1999).

A recent study produced by the Interunion Department of Statistics and Socioeconomic Studies (*Departamento Intersindical de Estatística e Estudos Socioeconômicos - DIEESE*) (2011) measured some of the impacts of outsourcing on workers, revealing a growing contingent of outsourced workers within the labour force, totalling, in 2010 some eleven million workers in all or, in relative terms, 25.5% of the total contingent of formal jobs in the economy.

In addition to referring to the asymmetric and unfavourable conditions faced by outsourced workers, the majority represented by the more vulnerable members of society, including women, youths, people of colour and immigrants, the survey also highlighted that the use of outsourcing has a negative impact on wages, the levels of which tend to be 27.1% lower than those received by formal employees. The working week was also longer in this comparison, by 3 hours. A greater instability in outsourced workers´ length of time in a job was also noted, with the average period they held on to a job being just 2.6 years, some 45% shorter than the average for directly employed workers.

Another aspect dealt with in this study went beyond the merely economic issue and looked at the physical integrity of these workers. According to the data presented, more than 80% of the total accidents occurring in the workplace involved outsourced

workers, the result of the precariousness of the conditions of safety and the nature of the work to which they were submitted. Another point raised, dealing with the proportion of outsourced workers found to be working in, and saved from conditions akin to slavery, showed clear evidence of the precariousness of the working conditions facing these individuals. If one considers the 10 largest annual operations to save workers from such conditions that took place between 2010 and 2013, carried out by the Department for the Eradication of Slave Labour (Detrae), at the Ministry of Labour and Employment (MTE), almost 85% of the individuals who were saved were employed on an outsourced basis (DELGADO and AMORIM, 2014).

In line with Castel (2010), one might say that the trend observed, despite occurring in a scenario different to that described by the author, represents, to large numbers of Brazilian workers, a definite risk of increased levels of precariousness. This portrait of precariousness is primarily based on the regression of social, labour and pension rights, signalling the emergence of a new vulnerability of the masses. The main difference between this and that seen during the 18th and 19th Centuries lies in the fact that currently, this vulnerability is not marked by an unrestricted absence of rights, but rather by a dismantling of the social protection mechanisms that were fought for, and won over the course of the 20th Century.

METHODOLOGICAL ASPECTS

In order to achieve the objective of this study, the process of research adopted here was based on two explanatory forms of reasoning, usually used within the scope of Critical Realism: abduction and retroduction. The first involved the search for information, based on the literary review carried out, whose aim was to identify potentially generative mechanisms related to the event being researched (O'MAHONEY and VINCENT, 2014).

The study, initially targeted at analysing the historical evolution of the institution of outsourcing in Brazil, branched out in two very different directions. Firstly, the discovery, during the literary review, of the existence of a number of different actors involved in the debate over the passing into law of Bill No. 4,330/04, over and above the traditional representatives of the combination of capital and labour, called for more in-depth research aimed at clarifying the inter-relationship between the arguments or discourses of some of these actors, and especially the OAB and TST. In order to analyse the arguments of the actors targeted by this study, we resorted to the public statements made by entities representing the interests of employers and workers in relation to Bill No. 4,330/04. These included, for example, an open letter addressed to society in general by the workers´ trade unions and an article published by the National Confederation of Industries (CNI) on its own website. The text in full of the Bill itself was also analysed.

The long process to which the Bill has been submitted whilst making its way through Brazil´s House of Representatives was of special interest to the researchers. An analysis of this process, from the moment the Bill was first proposed, has shown relatively irregular behaviour over the years, with it progressing through Congress at a very slow pace indeed, as shown by the large number of representations or briefs brought against the Bill, except in 2011 and 2013. Table 1 summarises the evolution of this process. The Bill´s irregular progress through Congress was reason enough to resort to the logic of reasoning referred to as retroduction, which consists of an intuitive and creative research exercise aimed at seeking out potential mechanisms that might have a relationship with the verified event; to imagine "how [reality] would have to be to allow one to observe the occurrence of a particular mechanism" (O'MAHONEY and VINCENT, 2014, p. 17). The research revealed the activities of certain institutions, such as the Federal Supreme Court (STF) and the Office of Public Prosecution for Labour Affairs (MPT) which, because they can impose losses on certain specific sectors of the business community, were considered as a potential extra discursive mechanism in the occurrence of the verified event – the speeding up of the Bill´s progress through Congress.

We therefore resorted to the usual forms of research logic used in the field of Critical Realism, as well as employing a hermeneutic approach to the perceptions provided by the different actors, by the Bill itself and by the literature under review.

OUTSOURCING AND NORMATIVY: RECONSTRUCTING A COURSE

The historical roots of the institution of outsourcing go back to the 1970s, with the gradual implementation of so-called Toyotism in Brazil. Nevertheless, it was only from the 1980s onwards that the adoption of flexible management practices, especially in the automotive sector, which experienced an increasing automation of its production process, began to see a

deverticalisation of the processes and productive structures. As from the 1990s onwards, the use of outsourcing took on epidemic proportions, even extending to nuclear-related business activities (DRUCK, 1999), but still lacking a proper legal framework. One should once again stress that, in the vast majority of cases, the increased reduction in social and labour-related rights can be directly linked to the practice of outsourcing (MELO, 2013).

From a legal standpoint, the Consolidation of the Labour Laws (*Consolidação das Leis do Trabalho - CLT*) made provisions, in its Art.455, for the practice of subcontracting, which was solely limited to the civil construction sector, where the main contractee, contracting or using the services provided by a contractor, is jointly responsible for any labour claims of an employee resulting from a default by the contractor (DELGADO and AMORIM, 2014). In this case, the contractee and the contractor are both considered as liable for any labour claims resulting from the non-compliance with its labour obligations by the contractor. Outsourced workers are therefore free to demand payment in full of any debts owing them from either one of these debtors. According to Delgado and Amorim (2014), this provision for joint responsibility imposed by the legislator came about because of practices that were commonly adopted in the civil construction sector, as early as in the 1940s, that were in detriment of workers' rights.

It was only in the mid-1970s that the use of outsourcing expanded to beyond the sectorial restriction provisioned for by the CLT. According to Biavaschi (2013, p. 177):

> [...] Law No. 6,019/74, the "Temporary Work Law", opened the way for outsourcing by introducing legal mechanisms to help companies face the competitiveness being imposed by the new globalised economic system, allowing them to hire qualified labour at a lower cost without the contractee having any direct responsibility or liability.

The legal provision, in this case, stipulates that the contractee only has a subsidiary responsibility in such labour issues. Thus, where a contractor fails to fulfil his obligations in relation to an employee, the contractee can only be called upon to settle any outstanding debt when the due legal process has been completed in full, that is, when all avenues for the contractor to fulfil his obligations have been exhausted. The contractor is, therefore, considered as the prime debtor responsible for any such labour obligations. This change differs from cases where the joint responsibility of the contractee is stipulated contractually. From the point of view of receipt, by the worker, of his rights due, the subsidiary responsibility of the contractee implies, for example, in the extension of the legal process, which can result in extensive delays in the receipt of payments by workers for maternity leave, holidays, severance pay and wages. If one considers that the majority of these workers are on low wages, prompt payment of such obligations is a matter of urgency, especially as they are invariably needed to help feed families.

Nevertheless, the hiring of temporary workers, as provisioned for in Law No. 6,019/74, was restricted to "special circumstances" (DELGADO and AMORIM, 2014, p. 39). Despite the possibility of being applied to both intermediate and core activities, this hiring modality was limited to a maximum period of three months and only in the case of substitution of a company´s full-time staff, or in the case of a temporary increase in demand for the services of a contractee, very common, for example, when demand increases because of seasonal factors.

During the 1980s, the scope of outsourcing was once again extended, this time to include security services (Law No. 7,102/83). Through its Precedent No. 256, the TST gave its jurisprudential understanding that, save in cases provisioned for in Laws No. 6,019/74 and No. 7,102/83, it is "illegal to hire workers for an outsourced company, with employment ties being created directly with the contractee of services" (BIAVASCHI, 2013, p.177). Still according to BIAVASCHI (2013), during the 1990s, the intensifying pressure to make employment ties more flexible impacted the jurisprudence of the TST. The revision of the TST´s Precedent No.256 led to its substitution, in 1993, with Precedent No.331, which provided for the outsourcing of the non-core activities of a contractee of services, limited, however, to the private sector. When this precedent was revised, however, in 2000, its scope was extended again, to include the public sector as well.

According to Delgado and Amorim (2014, p. 40), "the gradual process to expel activities from inside companies", during the 1980s, combined with the growing restructuring of the services sector, "[helped boost] the process of outsourcing, on the outskirts of legality". Such an assertion suggests, therefore, the contextualisation of demand for more flexibilization in labour relations within a scenario of the worsening legal standing of companies, resulting from the recurrent adoption of illegal outsourcing practices.

A brief outline of the legislative process to which Bill No. 4,330/04 has been submitted in the Brazilian House of Representatives is presented below, providing a brief pause in the historical track that has been pursued up to this point, for reasons explained below. In suggesting the existence of reasons and motives behind the agents' actions that might offer a potential explanation for the interventions of these social actors, as seen over the course of the period in which the Bill has made its way through Congress, one might be led to believe that the urgency seen in the progression of this issue might be related to sanctions suffered by corporations in certain sectors of the economy. In other words, one might postulate that the practice of illegal activities relating to outsourcing, by influential companies, may have influenced to some extent the pace at which the Bill in question has made its way through the law-making process. Thus, at least in terms of Bill No. 4,330/04, the allegation made by Delgado and Amorim (2014) gains some objectivity, when they associate the increased scope of outsourcing with the legalisation of practices that lie outside existing legislation on the subject. One can therefore detect, as shown below, certain interests, reasons and subjacent motives that are directly related to short-term corporate economic interests.

Table 1 provides information relating to the progression of Bill No. 4,330/04 through the Brazilian House of Representatives, focusing on the evolution of the progression of this issue between 2004 and 2015, evidenced by the number of briefs or memoranda relating to the subject´s progress, on an annual basis, listed in the Bill´s historical records. We only list the more relevant briefs, without delving into those that fall outside the scope of this article.

Table 1

Chronology of the progression of Bill No. 4,330/04 through the Brazilian House of Representatives

Chronology	No. Of Briefs	Highlights
Oct./Dec. 04	9	Presentation of the Bill; request for urgency; Bill sent to the Commission for Economic Development, Industry and Trade (CDEIC).
2005	5	Progression of the Bill through the CDEIC (amendments made to the bill).
2006	9	Bill approved in the CDEIC and sent to the Commission of Labour, Administration and Civil Service (CTASP).
2007	7	Progression of the Bill through the CTASP (amendments made to the bill).
2008	0	No activity registered.
2009	1	CTASP Rapporteur nominated.
2010	1	Proposal returned as a result of the end of the legislative term
2011	20	Request for examination: approved in the CTASP and sent to the Commission of Constitution, Justice and Citizenship (CCJC).
2012	2	Request submitted for the holding of a seminar to debate Bill No. 4,330/04, which was transformed into a public hearing held in November 2012.
2013	32	The Rapporteur´s final report presented and a substitute bill announced containing amendments proposed by the CDEIC and the CTASP; progression through the CCJC (amendments to the bill); request for examination; request to combine Bill No. 6,975/06 (deals with setting up provisions for the payment of outstanding labour obligations) with Bill No. 4,330/04; presentation of different requests.
2014	2	Request to separate Bill No. 4,330/04 from Bill No. 6,975/06; request denied.
Feb./Jun. 2015	26	Bill approved by the CCJC, and approved in a plenary session of the Brazilian House of Representatives (the Lower House); Bill sent to the Senate.

Source: Produced by the authors.

A cursory inspection of the information set out in Table 1 highlights, among other things, the small number of briefs or memoranda relating to the Bill that were presented between 2008 and 2010, and increased activities in this sense associated with the bill´s progression through the Commission of Constitution, Justice and Citizenship (CCJC) – in the period between 2011 and 2013. The small number of briefs presented during 2012, in relation to previous and subsequent years, may be explained by the approval of a request to hold a seminar to debate the implications of the Bill in relation to labour relations, which was subsequently transformed into a public hearing held in November of that year. This effectively resulted in an interruption to the Bill´s progress through the House.

If one looks at certain other events that were in progress in parallel to the progression of Bill No. 4,330/04, one can note a potential relationship between them and the Bill in question. Firstly, one should highlight a Decision on the Merits, in the TST in June of 2010, of legal action brought against OI, a telecoms company, prohibiting it from outsourcing its call centre activities, and the potential impact of this on the pace of progression of Bill No. 4,330/04. The understanding of Brazil´s Superior Labor Court was that such activities (call centres) should be considered as part of the telecom company´s core activities. They could not therefore be outsourced, which suggested, at least in theory, that there should be a greater urgency to approve this Bill, so as to finally legalise extending outsourcing activities to any and all productive activities, be they related to a company´s core activities or not.

From that point on, in the following legislative years, and especially in 2011 and 2012, there was a notable increase in the debate on the subject and a mobilisation of the different social actors with a vested interest. One should stress the reduced parliamentary activity witnessed in the second half of 2010, which was the result of elections to fill executive and legislative positions in that year. If in November of 2012, a public hearing was held at the request of the House of Representatives, one should also remember, as previously mentioned, another public hearing held in 2011, proposed by the TST, which gave rise to the Permanent Forum in the Defence of Workers Threatened by Outsourcing.

The increase in the MPT´s activities, resulting from the growth in the number of reports received denouncing acts of illegal outsourcing, especially after this mechanism was extended to companies' core activities, led to the setting up of a task force which, according to an article in the newspaper *Folha de S. Paulo* (ROLLI, 2014), began its work in April of 2013. This initiative, launched in different states throughout Brazil and over the course of a year, resulted in banks and telecoms companies being fined a total of R$318.7 million. Coincidently or not, it was in this same month of 2013 that the first brief was submitted within the scope of Bill No. 4,330/04 relating to the presentation of a report by the Bill´s rapporteur to the CCJC, even though parliamentary activities had only begun two months earlier, in February of that year.

Such events, when combined, suggest not only the recursive nature inherent in the agent-structure relationship, but also the presence of generative mechanisms, not always clear to the casual eye, capable of helping us understand some of the movements being made by different social actors in the struggle to protect their interests.

As part of the continuing and gradual process of flexibilization of labour relations there emerged, at the end of the 1990s, the provision for generalizing outsourcing to the core activities of organisations, set down in the filing of Bill no. 4,302/1998, which, in 2004, following a process of negotiation, excluded from its initial scope the provision for temporary work contracts, and thus ushered in Bill No. 4,330/04. This Bill had, at its core, a series of relevant impacts, which even included a revised meaning of the term 'outsourcing'. The definition generally associated with outsourcing, restricts the cases of its adoption to the transfer or passing on of core, or non-essential, activities to a third-party company (RUSSO and LEITÃO, 2006; SARAIVA, FERREIRA and COIMBRA, 2012). The legal mechanism in question changes this definition when it states, in its Article 4 Chapt. 2, that "a service provision contract may deal with the development of activities that are inherent in, accessory to or complementary to the economic activity of the contractee" (MABEL, 2004) or, in other words, that company´s core or non-core activities.

After more than ten years making its way through Brazil´s Congress, during which time the debate on the issue was scarcely reported in the mass media, Bill No. 4,330/04 was approved in the Lower House in April of 2015, when, it finally received considerable and due media coverage. Taken on its own, the passing of Bill No. 4,330/04 by the Brazilian House of Representatives says little about the evolutionary process of the institution of outsourcing within the national social, economic and political environments. According to Melo (2013), there are a total of 22 alternative bills aimed at regulating the institution of outsourcing making their way through the Lower House, with the main difference between them being the scope of their application, in other words, whether they include or not core activities and what their definition is in relation to the responsibilities or liabilities of the contractees of outsourced services, i.e. whether this should be subsidiary or joint liability.

Among the bills highlighted here, in addition to Bill No. 4,330/04, introduced by federal deputy, Sandro Mabel, a businessman in the foodstuffs sector and in favour of expanding the scope of outsourcing and the subsidiary or residual liability of contractees of outsourced services, we also had Bill No. 1,621/07. This latter Bill, introduced by federal deputy, Vicente Paulo da Silva, a leading figure in the history of the Brazilian trade union movement, has a completely contrary stance in the case of the two points mentioned above for the former Bill.

Considering the support given by the business community, and the opposition of the workers to Bill No. 4,330/04, as will be discussed below, one may consider this Bill to be representative of a trend towards a greater precariousness of working conditions. The bills contrary to the main points embodied in Bill No. 4,330/04, including Bill No. 1,621/07, are considered as reactions, or countertrends, to the increasing flexibilization of labour ties and to the prejudicial consequences suffered by those workers associated with such trends.

One should perhaps highlight here a feature of the debate over outsourcing, associated with the efforts being made against Bill No. 4,330/04 by a variety of collective actors who mostly represent public institutions that defend workers' rights. This affects the force field structured around this bill being passed, which is based on an asymmetry that is clearly favourable to the business sector. According to the Interunion Department for Parliamentary Assistance (DIAP), the business and trade union lobbies in the National Congress include, respectively, 273 and 60 members, including both deputies and senators (DIAP, 2014), showing the relative inequality that exists between the forces in the legislature. Antunes and Druck (2014, p.23) describe the coalition of forces that are lined up against Bill No. 4,330/04 as follows:

> Those openly rejecting Bill No. 4,330/04 include the National Association of Labour Magistrates (Anamatra), the National Association of Labour Prosecutors (ANPT), the Supreme Council of the Public Labour Prosecutor´s Office, the National Union of Labour Inspection Auditors (Sinait), the Permanent Forum in Defence of Workers Threatened by Outsourcing, which brings together researchers, academics in this field and representative organizations in the field of labour affairs, the Latin American Association of Labour Lawyers (ALAL), among others. In addition, 19 of the 26 judges that make up the TST also signed a document against the bill. The TST is the highest labour court in the country and it has a nationwide perspective of what is going in terms of outsourcing throughout Brazil and makes legal rulings on a wide variety of different aspects.

The association of different collective actors with entities that represent workers' interests is assumed, in this study, as a countertrend to the unrestricted expansion of outsourcing and, one should admit, as an alternative form of resistance that has joined the traditional rivalry between capital and labour. In order to better understand this opposition, the following section reviews some of the arguments put forward by the main political actors involved in the debate.

BILL NO. 4,330/04: DIFFERENT PERSPECTIVES

So as to better show the controversial nature of Bill No. 4,330/04 within the national political arena, we outline some of the main points of view regarding this issue as argued by the CNI, by the trade unions and, jointly by the OAB and Anamatra.

THE EMPLOYERS' POINT OF VIEW

The list of intentions attributed to Bill No. 4,330/04 by its author, include calls for urgency in its approval in order to guarantee the rights of workers and to fulfil the need of modern companies to focus on their core activities. As additional encouragement for a speedy approval, it claims that outsourcing is "one of the techniques of labour administration that is experiencing the most rapid rate of growth" (MABEL, 2004). In a similar vein, one has the affirmation made by Alexandre Furlan, president of the Council of Labour Relations and Social Development at the CNI, who argues that "we cannot close our eyes to outsourcing. Everybody outsources" (MARINHO, 2014), asserting furthermore, that this Bill does not pose a risk to rights, as those opposing the Bill claim, but rather "broadly guarantees the rights of workers", contributing to the regulation of a

practice that is widely spread throughout the country. In Alexandre Furlan´s view, "precariousness is to be in informal work" (MARINHO, 2014).

The president of the Council for Legislative Affairs at the CNI, meanwhile, in commenting on the same subject, argues that "this bill helps reduce the enormous legal uncertainty caused by the lack of proper regulation of outsourced work, which has led to one of the largest mountains of litigation in the world, with more than 16,000 law suits being processed by the TST alone [and, furthermore] it helps increase the competitiveness of companies" (MARINHO, 2014).

In terms of the need to regulate outsourcing, as an activity that is widely practiced across the country, the proposed argument falls not far short of that proposed by the author of the Bill. However, it does differ from it in terms of the title of the guarantees to be assured. Whilst the author of the bill, in his textual presentation of the reasons for passing it into law, mentions the legal uncertainties facing workers, the verbal declaration made by the president of the Council for Legislative Affairs links his defence of the Bill to the need for more legal security on the part of the business sector. This context suggests that outsourcing, both in core and non-core activities, can help fill a void in the conceptualisation of these terms, since the TST, in its Precedent No. 331, prohibited outsourcing in the case of core activities, but "never defined the difference between one and the other" (MARINHO, 2014).

The lack of clear rules on the definition of what is a core and what is a non-core activity has undoubtedly contributed to the subject becoming a judicial matter, resulting in it being treated on a jurisprudential basis. However, the huge numbers of court cases involving this issue that we have in Brazil are also the result of the repeated practice of the indirect hiring of services linked to the corporate purpose of companies, which reflects a degree of company opportunism. According to Caixeta (2013), the potential difficulty of demarcating the scope of core and non-core activities could be overcome "through a legal definition of what should be considered as a core activity".

In line with the terms proposed by the author, in 2008 a bill was produced which, among other things, defined core activities as "the business and labour-related functions and tasks that adapt to the core of the contractee´s business dynamic, being a part of the essence of this dynamic and furthermore, contributing to the definition of its status and classification within a business and economic context" (CAIXETA, 2013, p. 186). Thus, this clearly allows for the possibility of broadening the legal security of businessmen and outsourced workers involved in non-core activities without, however, having to extend outsourcing to core activities.

THE WORKERS' POINT OF VIEW

In an open letter to society five trade unions - *Central Única dos Trabalhadores (CUT), União Geral dos Trabalhadores (UGT), Nova Central Sindical de Trabalhadores (NCST), Central dos Trabalhadores e Trabalhadoras do Brasil (CTB) e Central Geral dos Trabalhadores do Brasil (CGTB)* – positioned themselves against Bill No. 4,330/04, and especially with regard to extending the possibility of outsourcing to core activities. They were also against the limitations of the contractee´s liability, in view of the subsidiarity provisioned for in the Bill (VERLAINE, 2013).

These unions claimed that passing this Bill would result in the institutionality of worker turnover and would also contribute to greater worker insecurity because of the poor working conditions to which outsourced workers tend to be subjected, lower wages and benefits, and longer working hours. They also warned of the potential for increased default in terms of labour-related obligations, as well as greater numbers of workers being discriminated against in some way.

The national executive director of CUT, Rosana Sousa (2013), reinforced this understanding that Bill No. 4,330/04 has a direct impact on the precariousness of labour relations, taking rights and guarantees away from workers and, above all, from those involved in core activities who are not covered by the TST´s Precedent No. 331. Sousa (2013) was opposed to the generalisation of outsourcing, as provisioned in the Bill, claiming that it contradicts the "false argument that one of the main justifications for outsourcing is specialisation or more focus".

Still with Sousa (2013), as in the case of the possibility of allowing outsourcing of non-core activities, its extension to core or end activities would result in a weakening of the trade union movement. Sousa also claims that because the Bill provides for – legalising and legitimising – the subsidiary liability of the contractee and subcontracting in a cascading effect, that is, outsourcing to a third party and to a fourth and so on, it would result in the loss of respect for the principle of trade union isonomy. It

would consequently violate international norms, such as Convention No. 100, of the International Labour Organisation (ILO), as well as Brazilian norms, including Article 7 of the Federal Constitution of 1988, and Article 461 of the CLT.

Finally, the trade unions suggested a degree of interference in the process on the part of the media, as a party with an interest in Bill No. 4,330/04 being passed, when they stated that "contrary to what is widely publicised by those with a direct interest, outsourcing does not create jobs, nor does it guarantee jobs for specialised labour. The disastrous results of this process are stamped on the statistics of suffering, ill-health and death" (VERLAINE, 2013, p. 2).

THE POINT OF VIEW OF ENTITIES REPRESENTING THE LAW

The following are excerpts from technical notes issued by the OAB´s Federal Council and Anamatra, which warn of the potential negative consequences that could come from passing Bill No. 4,330/04 into Law. These notes stress, above all, that Bill No. 4,330/04 represents a regression in workers' rights and "[makes it impossible to have] a coexistence of a constitutional order between the principles of free initiative and those of social value and human dignity, in such a way as to ensure a dignified existence for all" (ANAMATRA, 2012).

The idea is to find reasons that go beyond mere legal technicalities in order to ascertain the possible consequences of Bill No. 4,330/04 being approved into Law on the social reality of the day-to-day, in general, and on the world of work, more specifically. Before outlining the reasons advocated against Bill No. 4,330/04, we feel it would be useful to highlight the OAB´s understanding in relation to the institution of outsourcing, seen as the transfer and increasing precariousness of pre-existing jobs and not generating, therefore, new job. This is an understanding that is aligned with that seen in the aforementioned literature.

In a technical statement published in August of 2012, Anamatra stated that outsourcing is a form of labour relations that goes beyond the concepts of employee and employer set down in Articles 2 and 3 of the CLT, which consider employment ties as a bilateral relationship between employer and employee, defining the latter as:

> [...] an individual who provides a service in a non-substitutable and habitual way, in a manner that is legally subordinated to the employer – an individual or company -, who is responsible for paying him his wage opportunely and correctly and who, because of this, runs and oversees the personal provision of services (ANAMATRA, 2012).

In outsourcing contracts, there is a trilateral relationship, in which the outsourced company stands between the contractee and the employee, since the latter is hired indirectly. Thus, Anamatra (2012) considers that one cannot exempt from their responsibility for fulfilling all their labour obligations, those parties who "effectively figure as users of labour for economic benefit, since one would therefore be breaking up [...] the system of protection brought about by the social pact, which recognises capital and free initiative, but also attributes to this, in return, the responsibility for fulfilling the social purpose of property and ensuring Distributive Justice". Hence, this entity is favourable to the adoption of the joint liability of contractee companies, in the case of the outsourcing of labour.

Similarly, the OAB´s Federal Council criticises, in a technical statement to society, the provision in Bill No. 4,330/04 that allows for the subsidiary liability of the contractee. It suggests that such liability ends up "making it difficult to fulfil the rights [of workers]" and does not constitute, therefore, a guarantee (OAB, 2013). This is caused by, among other reasons, the lengthening of legal proceedings.

These two entities are also unfavourable to extending the scope of outsourcing, as provisioned for in Bill No. 4,330/04. Anamatra (2012) bases its opinion on the principle of "limited authorisation for the use of outsourced labour, that should be limited to the contractee´s non-essential activities and to really necessary situations, such as, for example, the services of armed surveillance". The OAB (2013) has the same understanding as Anamatra (2012), when it states categorically that:

> The logic of this Bill involves transforming the human workforce into a commodity that is traded between the company which, ultimately, pockets the profits from its productive activities, and another company, which works as an intermediary in the provision of services, earning its profits not from production, but

> from the commercialisation of the workforce [constituting, thereby] a serious violation of the Federal Constitution, in a clear affront to the democratic State of law (OAB, 2013).

Another point that is highlighted, by both institutions, is the contribution that passing Bill No. 4,330/04 would make to weakening an already frail system of trade union representation. The OAB (2013) states that the Bill would "encourage anti-trade union practices, to the extent that employers could take advantage of the precarious and fragmented conditions of workers submitted to outsourced work to reduce the costs of the processes of collective wage bargaining".

In conclusion, we should stress that both the OAB (2013) and Anamatra (2012) are opposed to the main proposals contained in Bill No. 4,330/04, which are in turn supported by the business sector, reinforcing the damaging nature of this legislative provision in relation to outsourced workers, both those already working under this system and those who might be forced into it. One can thus see an alignment between the positions of both entities and that of the workers.

BY WAY OF CONCLUSION

At this point one should perhaps review the objectives of this article, in order to bring them together in the form of a conclusion. A brief historical background of outsourcing in Brazil was presented to place the debate, which is still open, within the context of the approval of Bill No. 4,330/04. The main points within this debate refer to a growing trend towards the flexibilization of labour relations in Brazil, implying, in turn a deregulation and dismantling of the labour regulations substantiated in, above all, the CLT.

In proposing that outsourcing be extended to any and all productive activities, the Bill implies expanding the precarious working conditions of Brazilian workers, currently outsourced, to an unlimited number of occupations as yet not covered by the TST´s Precedent No. 331, which has regulated this issue since 1993. If the bill passes into law, any professional with direct employment ties will then be subject to being hired by indirect means, and this would include professors, bank staff, supermarket checkout operators, doctors, nurses and the absolute majority of workers in the retail sector.

The justifications attached to Bill No. 4,330/04, as well as the arguments, often paradoxical, put forward by those representing the business community present a discourse that portrays as "outdated legislation", an effective "lack of respect for labour laws" (FARIA and MENEGHETTI, 2011). The joint consideration of the literature on the subject, of the position taken by workers´ representatives and the views of the OAB and Anamatra, in terms of the main points of Bill No. 4,330/04, allows one to qualify the position taken by the business community, represented here by the CNI, as a discursive dissimulation that means to portray the Bill as something more than it really is: an extension of the precariousness that is represented by the device of outsourcing. In this sense, subjacent to the defence of the Bill by the business sector is its interest in expanding the rate of added value, by hiring workers at a lower cost. As Marx (1983, p.44) noted, what interests a capitalist in producing an item "is not strictly speaking the item itself, but rather its value over and above the value of the capital employed to produce it".

The contraposition of the different points of view confirms that the traditional arguments, aimed at legitimising outsourcing, ranging from an increase in the legal security of workers to the generation of jobs are "fallacies" and, therefore, lacking in consistent empirical foundations (ANTUNES and DRUCK, 2014). As Delgado and Amorim (2014) point out, the flexibilization of labour relations in Mexico recently, did not lead to more jobs being created, as those defending this measure forecast. During the year that followed its adoption, the level of unemployment did not contract. One should also stress, however, that this reform in Mexico only allowed for subcontracting in those activities in which contractees were not involved, prohibiting its use, furthermore, as a "tool of the intermediation of labour" (DELGADO and AMORIM, 2014, p. 27).

A brief look at the progression of the Bill through the Brazilian House of Representatives and its contextualisation on a macro level, to beyond this legislative House, saw a series of actions and events emerge whose occurrence appears to have contributed to better understanding the progression of this Bill, especially in temporal terms. In this sense, it does not seem unrealistic to consider that the acceleration in the process, in the years of 2011 and 2013, might have been associated, respectively, with an unfavourable ruling against the telecoms companies and the legal action by the MPT aimed at putting a stop to undue outsourcing activities, which resulted in heavy fines being applied. The lack of coverage in the media of the progression of

Bill No. 4,330/04, especially regarding the silencing of voices contrary to the Bill, also emerges as a mechanism that may have contributed to a seemingly biased coverage of the issue.

In addition to the facts mentioned above, one should also mention the asymmetric representation of the lobbies on the benches of the House that represent the rights of both employers and workers, resulting, at least in part, in a real dominance by the economic-financial sector in the political arena (SOUZA, 2012), and representing an effective process of colonisation of politics by the economic-financial sector. However, countertrends may emerge, as we have attempted to show, attributing a degree of uncertainty to the result expected on the basis of the dominant trend. Furthermore, one cannot ignore the real effects of outsourcing, represented by the worsening objective and subjective conditions of labour, "stamped on the statistics of suffering, ill-health and death" (VERLAINE, 2013). One can see evidence, on completing the partial mapping of the subject of outsourcing, and especially with regard to Bill No. 4,330/04, a certain coexistence of both discursive and non-discursive elements that operate within a stratified reality (FAIRCLOUGH, JESSOP and SAYER, 2002).

This work has focused on collective actors in the belief that, above all, it is "the collective political organisation of social groups that can unleash opposition on a social and labour-related front" (FARIA and MENEGHETTI, 2011). The active participation of the different actors mentioned in this article illustrates their efforts in pursuing their interests, denoting the exercising of the collective agency. The creation of the Permanent Forum in Defence of Workers Threatened by Outsourcing and the part played by organisations such as the OAB and Anamatra, which, together with the workers, have opposed Bill No. 4,330/04, are interpreted as potential alternatives of collective resistance.

This reinforces, therefore, the idea that outsourcing is the transitional result of a dynamic process of confrontations and compositions, between individual and collective actors, which reflects the coexistence of trends and countertrends. These are identifiable through an understanding of the mechanisms operating in an objective reality, which are highly influenced by prior knowledge and practices of social construction.

Within this process, one can clearly identify two distinct social and antagonistic positions. The first, defended by the trade unions, Anamatra and the OAB-RJ, among others, has a social connotation and is concerned with the potential loss of rights of a portion of the workforce, understood, from a Marxist perspective, as a social class oppressed by the dominant class. On the other hand, the position of the business sector is based on a view that sees reality from the perspective of an economic-financial logic. This position reveals the ideology of this social class, in its adherence to a neoliberal discourse favouring free market economics.

In conclusion, this article has sought to show that the dominance of the business sector in other spheres of organised social life, and especially that of politics, can be portrayed as a potential mechanism causally linked to legal insecurity, experienced by workers in the case in question, which is in turn the result of the potential universalisation of outsourcing. Nevertheless, one should stress that, on the day that this article was submitted and after its basic text was approved, on 8 April 2015, only a few items remained outstanding for discussion. This said, after an intense bout of negotiation, the item dealing with the joint liability of the contractee of a service was incorporated into Bill No. 4,330/04. Thus, until the process is completed, the redefinition of the institution of outsourcing remains open, and strongly influenced by the performance of the collective actors.

FUTURE RESEARCH

The belief is that the points discussed in this article will offer the potential for a number of additional lines of research. If one considers that the process of approving Bill No. 4,330/04 at the time of submitting this article was still underway, then future studies may well provide the analysis of this issue with some continuity, as well as help better understand the intense legislative activity that occurred in the first months of 2015, which resulted in among things, the partial adherence to the Bill by some unions who had previously been against it.

Furthermore, studies focusing on the micro dimension of analysis, in shining the spotlight on the different actors involved in this process, may be able to better capture the diversity of meanings, reasons, motivations, emotions and interests that move them and thus get a better insight into their views and positions in relation to this issue. Another point that deserves further analysis deals with the discourses of the mass media, especially following the approval of the Bill, which were meant to *inform* the great general public. What discursive formations were put into action? Which social actors were favoured with the *title of experts* in order to *inform* the public on the subject and which were silenced during this *process of informing*?

Finally, if we take into consideration some of the information on the objective conditions of labour that were mentioned, especially those dealing with *modern-day* service activities, then it is vital that we get a better understanding of how the labour process works in sectors that favour the adoption of a neo-Fordist system of production. This is in no way similar to the post-Fordist system, which is sometimes reified as a prototype of ultra-modernity, in order to only represent the reality of a small minority of workers. An understanding of the meaning of labour, for this great contingent of individuals, and the logic mobilised by them for its construction also offer a potentially fruitful line of research to consider.

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