

**Flexibility for Some, Security for Others:  
The Politics of Welfare and Employment in Spain**

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**Introduction**

Through the mid-2000s, 'flexicurity' became a central concept in discussion of labour market reform in the European Union. European countries with poor employment records were urged to follow the Danish example and 'protect the worker not the job', liberalizing hiring and firing and encouraging flexibility in the employment relationship, whilst at the same time enhancing security through generous unemployment compensation. The flexicurity idea posed particular problems for 'Bismarckian' welfare regimes in continental Europe, whose systems of social protection revolved around contributory occupational schemes (Palier 2010). These problems were even more acute for the Southern European member states, and particularly for Spain, which combined traditionally high unemployment with some of the most inflexible hiring and firing rules in Europe, at least for some categories of workers.

This chapter will present an account of the recent history of labour market and welfare policy in Spain, with a view to assessing the viability of and prospects for flexicurity in Spain. We will show that Spain's labour market and welfare

arrangements are distant from the prescriptions of the flexicurity agenda, but that they have emerged as a response to a series of political, social and economic conditions. Despite the apparently dysfunctional nature of Spain's labour market, with its combination of strong protections for some groups of workers, and very limited protection for others, it is also very stable, both in terms of its economic logic and its social and political consequences. The following pages will explain how the Spanish labour market has developed in the past decades, and assess the prospects for reform along the flexicurity model. Although the focus is largely on the medium to long term, we will also draw some tentative conclusions on the impact of the financial crisis and its brutal consequences for the Spanish economy.

## **1. The Context of Labour Politics: From Dictatorship to Democracy**

Spain, like most of the rest of Southern Europe, was a late democratizer. An early experience of democratic rule collapsed in 1936 and the Franco dictatorship entrenched authoritarian rule until the dictator's death in 1975. Free elections were held in 1977, and democratic politics became fully consolidated with the election of a Socialist government in 1982. In other words, full democracy arrived in Spain only after the Golden Age of full employment and welfare expansion in post-war Western Europe had already ended. Reform of the minimalistic welfare state and constrained labour politics of the Franco era had to take place in a context of high unemployment and a difficult international economic climate.

The legacy of the dictatorship had far-reaching consequences for policy-makers in democratic Spain. First, social spending levels were far below those of other European countries, including other Southern European countries such as Italy, which had democratized after the Second World War. Although a modest, Bismarckian (contributory) social security system had been introduced in the 1960s, pension levels were quite low and coverage was relatively restricted. With a residual government safety net and a prohibition on collective action in the marketplace or in politics, citizens' primordial source of protection from market risk was their familial network (whatever 'market' solutions might have existed, they were prohibitively expensive for most workers).

If the state failed to offer workers much protection from market risks, neither did it offer employers many options for flexible management. From the late 1950s onward, the Francoist regime engaged in regular negotiations with the International Labour Organization and the European Community regarding the protections afforded workers in a country where independent unions were illegal (Mateos 1997). Anxious to strengthen trade ties with the EC, the government steadily expanded individual worker protections, at least on paper. At most larger firms, layoffs (except where political motives could be alleged) were virtually impossible, temporary employment did not exist and internal flexibility was almost non-existent. Of course, given the Fordist, quasi-militarist organization of most larger firms and the explosion in demand for most firms' products and services throughout the 1960s and early 1970s, neither external nor internal flexibility was a priority for Spanish employers (Babiano Mora 1993; 1998). There were two, critical exceptions to these restrictions. First,

thanks in large measure to the political control over collective representation, firms were able to get away with paying extremely low wages. Second, outside of the very largest firms, most employers held sufficient leverage over their workers to obtain informally the minimal levels of internal flexibility they required (Babiano Mora 1993). The price paid by the regime for suppression of workers' collective rights was to legislate a high degree of employment protection through a labour law regime which envisaged high levels of compensation for sacked workers.

The impending death of the dictator brought about an enormous increase in worker mobilization demanding a sharp increase in wages and collective rights just as severe economic problems engulfed broad swathes of the economy. Transition to democracy implied the dissolution of the official vertical syndicates of the Francoist regime and a recognition of workers' rights to organize freely. It also required major sacrifices to restore economic stability. The Moncloa Pacts of 1977, signed by all the political parties represented in the first democratic parliament (but not the unions themselves), included sharp controls on wage inflation that brought a real decline in workers' standard of living. The close links between the two main Left opposition parties and the two largest union formations, the Communist CC.OO. (Comisiones Obreras) and the Socialist UGT (Unión General de Trabajadores), enabled the parties to guarantee that their union partners adopted a 'responsible' attitude towards the pacts<sup>i</sup>.

Although the first labour market reforms put forward by the minority center-right government of UCD included a mild relaxation of restrictions on external flexibility, neither the unions nor their party allies were prepared to accept a major

retreat from the individual job protections and restrictions on internal flexibility created by the Francoist regime. The increasingly weak Suárez government was reluctant to challenge the left, despite pressure from financial circles (Hopkin 1999), and as a result the politically-inspired, protectionist bias of the Francoist-era labour legislation was in large part institutionalized through the Workers' Statute and Employment Law of 1980, which between them established the broad framework for labour law in the new democracy<sup>ii</sup>.

In large measure, then, the political settlements of the transition entrenched the political economy of work and risk protection that emerged during the last two decades of the Francoist regime. Of course, the return to democracy and the recognition of workers' collective rights marked a wholesale transformation of the politics of adjustment. The dictatorship provided strong job protections for labour market insiders (largely male heads of households) while obliging the extended family unit to take responsibility for protecting its members from market risks. Although the dynamics of the transition gave rise to a set of labour market arrangements that reinforced this division of responsibilities between the state and the citizen, political demands for a larger state role in risk protection and the creation of economic opportunities for labour market outsiders could not be ignored for long. Nevertheless, the near-constant political crises that accompanied the UCD-led minority governments of the second democratic legislature (1979-1982) stymied efforts to pursue structural adjustment beyond the relatively successful efforts to reduce inflationary wage pressures.

## **2. Socialists and Workers: Labour Dualization under the González government**

Only when the Socialists of Felipe González took power in 1982 with an large majority in the Spanish Congress could truly difficult political choices be made regarding the distribution of the costs of adjustment. The Socialists initially elected two paths that reinforced the divisions between insiders and outsiders in the labour market. On the one hand, government-led restructuring of uncompetitive industrial firms in sectors ranging from textiles to shipbuilding facilitated exit from the labour market for 70,000 workers (Caloghirou, Voulgaris and Zambarloukos 2000). The generosity of the severance packages offered varied enormously according to the degree of local worker organization. In shipbuilding and ironworks in particular, workers in these large industrial plants rejected the terms of the severance packages negotiated by union officials from CC.OO. and UGT. After engaging in extensive industrial conflict, these workers achieved substantially more generous payouts than their counterparts in less unionized sectors (Etchemendy 2011).

These incidents provided an early glimpse of one of the most important obstacles to transforming the extant distribution of market risks among Spanish workers. While CC.OO. and UGT consolidated their privileged position as interlocutors with the government and in sectoral collective bargaining units across most of the economy, their ability to shape and aggregate the preferences of the rank-and-file remained quite limited. Institutions of workplace participation established in the transition to democracy constrain union leaders in important ways. Shopfloor works councils, although largely composed of union members in the most organized firms,

are legally independent from their respective union organizations (Escobar 1993). Local representatives are free both to negotiate collective bargaining agreements and to engage in strike actions that contradict the preferences of sectoral union officials: continuity in their posts is wholly contingent on the support of their workmates (union and non-union members alike) in works council elections held every four years. Critically, the number of delegates that each union seats on works councils determines its participation in sectoral collective bargaining and supply side labour market institutions (continuing education, extrajudicial dispute resolution, consultative bodies for economic and social policy, etc.), as well as the amount of state funding they receive. Because unions generally bargain on behalf of both members and non-members, incentives for affiliation are low (and, largely as a consequence of this, union dues are kept very low). Given the subsequent scarcity of human and material resources, unions' abilities to select, train and coordinate works council representatives is quite limited except in the most organized firms; so too, then, is their ability to shape the preferences of voters in works council elections and, thus, to advocate negotiating positions or policy reforms that strengthen the position of labour market outsiders at the expense of insiders' privileges<sup>iii</sup>. Unions can, however, rally both members and many non-members in defense of existing labour market and social welfare programs, as evidenced by the massive general strikes convened by UGT and CC.OO. against labour market reforms in 1988, 1992, 1994, 2000, and, indeed, 2010.

This institutionally-defined distribution of power within the labour market is critical to understanding the subsequent steps taken by the Socialists in their program

of structural adjustment. Faced with growing unemployment, loss of competitiveness and limited fiscal room for manoeuvre, the Socialists opted for an orthodox route to macroeconomic stability, learning from the fiasco of Mitterrand's attempts to stimulate recovery in France a year earlier. Under Economy Minister Miguel Boyer, the Socialists sought to squeeze inflation out of the system, initially seeking a corporatist solution, but later relying on fiscal and monetary tools as the unions showed increasing reluctance to impose wage restraint on their members (Boix 1998). As Boyer's successor, Carlos Solchaga, later explained, 'everything had to be done from the textbook' (*de manual*); no experiments or dashes for growth were contemplated (Iglesias 2003). The high unemployment that resulted from this approach was politically unpalatable for a party that had promised to create 800,000 jobs in its electoral manifesto.

The government's response was to introduce 'flexibility at the margin' (Toharia and Malo 2000) through a labour market reform in 1984 that extended the use of temporary contracts, leaving the high firing costs associated with permanent contracts intact. Although in principle firing costs were not immoderate (20 days salary per year worked, up to a maximum of 12 months), in practice costs were higher because of the way the law was interpreted by labour tribunals. Firing 'without cause' brought higher compensation (45 days per year worked, up to a maximum of 42 months, with one month's notice and salary during the subsequent 1-2 months while the issue wound its way through the labour courts), and since tribunals more often than not found against employers, the effective cost was higher than the law envisaged as employers offered higher payouts to avoid the courts (Toharia 1993;



Rhodes 1997; Rueda 2007). This made Spanish employees with indefinite contracts one of the most protected workforces in Europe, since as well as the high firing costs, collective layoffs required authorization from the Ministry of Labour, which like the tribunals, tended to be hostile to employers seeking to shed labour (Toharia 1993, Jimeno 1996). Given the electoral importance of core workers for the Socialist party, and the deep hostility of the unions to any reduction of employment protection, the government opted instead to promote temporary employment.

The 1984 Act was not the first legislation to permit temporary contracts in Spain: in fact these had been legalized in 1980 by the new Workers' Statute. However the 1984 legislation removed restrictions on the use of temporary contracts, allowing them for non-temporary work (previously they had been restricted to seasonal employment) and sparking a boom in fixed-term employment (Dolado *et al* 2002). On top of the existing temporary contracts for seasonal or specific work, the 1984 reform created two new kinds of temporary contracts: fixed-term employment promotion contracts (*contratos para el fomento del empleo*) and training/apprenticeship contracts (*contratos de formación/aprendizaje*). Employment promotion contracts lasted a minimum of six months, and could be renewed for up to three years; termination of the contract cost only 12 days salary for each year worked, and could not be appealed (Polavieja 2003: 71-2; see also Bentolila and Dolado 1994; Güell and Petrongolo 1998). The other two types of temporary contract entailed no dismissal costs at all. Temporary contracts therefore represented a very cheap and low risk way of taking on new workers, attractive to employers hesitant to hire workers on indefinite, and therefore very protected, contracts.

This 'partial deregulation' (Polavieja 2003) of Spanish labour law had a major impact on the structure of the labour market in the 1980s. At the start of the decade, over 90 per cent of the workforce were on indefinite, protected contracts, but by 1990 over 30 per cent of employees were on temporary contracts (the highest proportion in Europe by some distance) (Dolado *et al* 2002: F270). The payoff in terms of overall employment was mixed: unemployment declined from its peak in the early 1980s of over 20 per cent, but it was still 15 per cent in 1990, despite the strong economic growth Spain enjoyed in the second half of the 1980s (Guillén 2010: 192) (see Figure Two). The reform also had political consequences, creating a stark division between different sectors of the workforce: on the one hand the 'insiders' - protected employees (mostly men over the age of 30) whose primary concern was to maintain employment protection and secure adequate pensions on retirement - , and on the other the 'outsiders' - temporary employees (mostly the young and women), who instead had more interest in the expansion of unemployment compensation, training, and job creation. This division created particular tension in the Socialist Party, since the protected, unionized blue collar workforce was a key source of electoral support, yet the party also had to appeal to more marginalized groups. It has been argued that the Socialists thus had an incentive to cultivate 'insiders' at the expense of 'outsiders' (Polavieja 2003; Rueda 2007), maintaining insider protection at all costs. However, this partisan political claim would be called into question by the reluctance of the conservative Popular Power to significantly reduce these protections during their eight years in power (1996-2004). Indeed, while the Socialist government (and its conservative successor) was reluctant to address the high level of protection for

standard contracts, it did address some of the concerns of outsiders too, particularly through welfare reforms.

(Figure Two About Here)

#### **4. Catching Up with Europe: Welfare Expansion under the Socialists**

At the end of the dictatorship, government social spending in Spain was markedly lower than in neighbouring democratic countries at just 12.1 per cent of GDP (Gunther 1996: 179). This meant that income protection for those without work was extremely limited, and many workers fell outside the coverage of the social security system (Guillén 2010). The Franco dictatorship's approach to social protection had evolved little beyond the classic Bismarckian model of welfare provision, in which a core, largely male workforce enjoyed strong employment protection and some welfare provision through contributions to occupational schemes, and their dependants had no independent access to income protection. This was as distant from the flexicurity model as it is possible to imagine. However, the economic crisis of the 1970s and the political pressures emerging during the process of democratization forced substantial change in this model. A sharp rise in unemployment during the transition to democracy was immediately addressed by the centrist government of Adolfo Suárez through extensions of social spending, partly financed through the public deficit. After 1975, the year of Franco's death, social

spending grew consistently for two decades (see Figure One), although it remained substantially lower as a share of GDP than in more developed welfare states such as France and Germany.

(Figure One About Here)

The initial spur to welfare spending growth was the political emergency of the transition, in which the Suárez government sought to dampen social conflict by reducing the impact of the economic crisis on the organized working class. After 1982, the PSOE government initially left the existing arrangement largely intact, relying on early retirement and disability pensions to deliver compensation to workers laid off during the extensive industrial restructuring of Felipe González's first term in government (Smith 1998). As a result, social spending continued to grow, although more slowly than in the transition period. In the second half of the 1980s, the Socialists began to introduce a number of more structural changes to social protection, as part of a broad programme of social democratic modernization. These changes extended the coverage of unemployment benefits substantially, from 43.4 per cent of the workforce in 1986 to 80.3 per cent by 1992 (Guillén 2010: 191; Cruz Roche 1994), and an increasing share of these benefits were financed from general government revenue rather than social security contributions. This constituted a move away from the Bismarckian model, and towards a timid universalization, although in the 1990s the system became again more restrictive. Similarly, the pensions system was expanded with the extension of non-contributory minimum

pensions. Together these measures amounted to the development of a social safety net which approached, but did not entirely converge with, the welfare states of the older European democracies.

Guillén describes employment policy in this period as a 'typical Bismarckian trajectory' (2010: 191; also Palier 2010), and this can be seen clearly in active, as well as passive, labour market measures. Activation was a low priority under Francoism, and job placement services were bureaucratic and ineffective, with migration an important safety valve for those who could not find work. The creation of the National Employment Service (INEM – *Instituto Nacional de Empleo*) in 1978 was largely concerned with the management of unemployment benefits rather than job placement. Socialist policy significantly increased spending on training (Boix 1995) and overall spending on active labour market measures grew during the Socialist period, but it remained low in comparative terms. In 1985, Spain spent just 0.3 per cent of GDP on active labour market policies, compared to an OECD average of 0.7 per cent; by 1995 Spanish spending had grown to 0.7 per cent, still below the OECD average which had by then grown to one per cent of GDP (Scarpetta 1998).

By the late 1980s, the González administration was coming under increasing pressure from the labour movement, with the General Strike of 1988 – sponsored by both major trade unions – proving particularly damaging to the PSOE's relationship with the workers' movement, whilst the abandonment of the promise to leave NATO boosted support for the PSOE's rivals on the left, Izquierda Unida. The Socialists' response was to increase public spending, increasing minimum pensions, extending unemployment coverage and making resources available to regional administrations

for social policy development (Chhibber and Torcal 1997, Boix 1998, Hopkin 2001). These measures dramatically increased passive labour market expenditure, and had the effect of helping the Socialist government through the difficult electoral challenges of 1989 and 1993. But the economic crisis that began in 1992 limited the potential for public expenditure growth and brusquely interrupted the gradual labour market improvement of the first two terms of Socialist government.

The crisis of the early 1990s all but reversed the labour market gains of the 1980s, pushing unemployment back up to 24.6 per cent in 1994. As well as the political and economic costs of such high rates of joblessness, the Spanish government also faced a looming fiscal crisis, since the extension of unemployment benefits meant much greater social spending than in previous downturns. In response, the González government, weakened by corruption scandals and dependent on the parliamentary support of regionalist parties, introduced another labour market reform. The 1994 reform was introduced after extensive consultation with employer interests but the trade unions were reluctant to support any measures to liberalize contracts and refused to sign up to the changes (OECD 1999). The reform ostensibly aimed to address the prevailing labour market dualism by relaxing employment protection for core workers whilst disincentivizing employer reliance on fixed-term contracts, which by the time of the reform regulated the jobs of almost a third of the workforce (32.4 per cent). The broad macroeconomic backdrop to the reform was the approaching deadline for Euro entry, and the need to address the deficiencies in the collective bargaining system and the labour market in order to address Spain's unsustainably

high unemployment and relatively high inflation levels in time to take part in the first wave of European Monetary Union.

The 1994 reform aimed to weaken core worker protections, by simplifying administrative procedures for collective dismissals and clarifying the legal basis for dismissal, in a bid to increase the chances of employers convincing employment courts of their justifications for layoffs. All told, these changes appear to have had little practical effect on courts' decisions, and since the relatively high firing costs remained unchanged (in part because of fierce union opposition), core workers retained a high degree of protection from dismissal (OECD 1999; Ballester 2005, Bentolila *et al* 2008). The other main plank of the reform involved changes to temporary contracts. The fixed-term employment promotion contract was severely curtailed by the 1994 law, being allowed only for specific tasks and specific kinds of workers, rather than as an expedient from employing workers without job security as had been the case in the previous decade. However, although this should have led to a reduction in the use of temporary contracts, the implementation of the reform failed to effectively restrict the use of temporary contracts for non-temporary work, and employers simply adopted other kinds of temporary contracts instead. It has been suggested that this was in fact the intention of employers and policymakers (Toharia 1999); in any case, the proportion of temporary contracts in the workforce and the rate of conversion of temporary into permanent contracts appeared unaffected by the reform. A further measure in the reform clarified the legal standing of temporary employment agencies.

The emerging model of structural adjustment pursued by the Socialists thus combined increasing flexibility on the margins with increasing investment in passive

labour market policies designed to ensure a minimum income for heads of households displaced by industrial reconversion. Although an effort was made to embrace activation and the Socialists pushed through major investments in education and training (Boix 1995; 1998), the Spanish labour market of the 1990s retained a number of disfunctional features. The explosion of precarious employment after the 1984 reforms left Spain with perhaps the most starkly dualistic labour market in Europe, whilst persistently high rates of unemployment and labour market participation rates for women, youth and older persons of working age well below those of most of Spain's new European Union partners. Extensions of unemployment coverage took place without fundamentally changing the Bismarckian logic of the social protection system, and familistic provision of security remained a cornerstone of the system (Naldini 2003; Guillén 2010). In short, despite modernization, Spain's labour policies were a very long way from the flexicurity model.

#### **4. Reform from the Right: Welfare and the Labour Market under Aznar**

Most observers had expected that the conservative Popular Party (PP) would emerge victorious from the general elections of 1993. The Spanish Socialists, under the leadership of Felipe González, eked out a last-minute victory by painting Aznar and his party as the direct heirs of the Francoist regime and by raising doubts about the party's commitment to the welfare state. In the last televised debate before the vote, González warned that Aznar and his party would refuse to honor the state's pension commitments (Carrera *et al* 2009: 18), a threat which was credited by some



with saving the Socialists from defeat. The PP's keen interest in neutralizing this argument led them to support the proposal by the Catalan Nationalists of CiU (Convergence and Union) in 1995 to create a standing committee in Congress—the Toledo Pact—to develop all future reforms to the Spanish pension system through consensus<sup>iv</sup>.

The PP finally came to power in the general elections of 6 March 1996 with the support of the center-right Catalan and Basque nationalists, Convergence and Union (CiU) and the Basque Nationalist Party (PNV). Lacking an absolute majority and seeking to dispel considerable public concern about the Spanish Right's 'authoritarian tendencies,' the Aznar government sought to engage the social partners in the development of labour market and social policy. The new government of José María Aznar reached a pact with the two principal national-level unions, CC.OO. and UGT, to support the pension reforms reached by the Toledo Pact. These reforms were put into law through Ley 24/1997 (15 July). Key elements in this reform included steps to ensure the future financing of the social security system (particularly an increase in the number of years over which retirement pensions would be calculated) while maintaining the purchasing power of current pensioners, measures to reduce differences between various corporatist pension regimes and the general social security system, the introduction of fiscal incentives to encourage workers to contribute to complementary, private-sector pensions and the reduction of disincentives to work voluntarily beyond the age of 65.

These agreements were reached with relative ease, in part because most changes in pension eligibility requirements and levels were favorable to pensioners,

and in part because the increasingly rapid growth of Spanish GDP and employment generated tax receipts and social security contributions that neutralized those voices on the right concerned about the system's future viability. The Popular Party government's minority status, the party's desire to demonstrate social moderation to centrist voters still concerned about the government's real intentions and the positive economic context discouraged Aznar and his ministers from pressing for significant changes in the social security system or labour market regulations. Instead, mindful that the Socialists' 1994 labour market reform had provoked a general strike, the government encouraged the social partners to reach a consensus about future reforms, which the government then promised to implement through legislation.

The main national-level unions also had motives for participating in renewed dialogue regarding labour market and social policy reforms. On the one hand, the general strike declared against the Socialist labour market reform on 27 January 1994 had failed to halt its implementation; on the other, both UGT and CC.OO. had suffered significant losses in elections for shopfloor delegates in 1994 in the wake of that strike. The 20% increase in successful independent candidates suggested increasing worker exhaustion with the unions' in-fighting and their resistance to any significant labour market reforms. The leaders of each union made the case for a return to national-level dialogue at their respective national conventions in 1995 and 1996 (Jodar and Jordana 1999; Royo 2006).

The modest pension reforms agreed to through the Toledo Pact were complemented by a battery of agreements that appeared to signal an emerging consensus around a reconceptualization of the links between flexibility and security:

instead of flexibility 'on the margins' and security through familialist protections, the dominant parties in Parliament and the social partners seemed to be moving toward a model rooted in negotiated flexibility within the firm and labour market activation and greater protections for those at the edges of the labour market.

During the PP's first year, the two main unions and the employers' federation CEOE agreed to institutional reforms to promote both flexibility and employability. To reduce the costs, delays and uncertainties involved in resolving collective workplace dispute through the courts, the social partners established a co-managed institution for voluntary extrajudicial dispute resolution modeled on similar forums previously established by their respective affiliates in several Autonomous Communities. To enhance workers' skill levels, particularly in SMEs, the social partners renewed the bipartisan institute created in 1992 to manage European Union and Spanish government funds for on-going training. The implementation of both agreements was funded by governments (Spain and the EU) rather than the social partners. The signatories thus gained access to significant financial and institutional benefits without making a single concession regarding their core organizational priorities.

In 1997, the unions and CEOE signed what was then hailed as a major agreement on labour market and labour relations rules (OECD 1999; Bentolila *et al* 2008). The agreement sought to strengthen the labour market position of workers on the margins by limiting incentives for temporary contracting and by reducing the costs to employers of permanent contracting. Subsidies for temporary contracts were discontinued and the widely-used fixed-term employment promotion contract (*contrato temporal para el fomento del empleo*), already curtailed in 1994, was finally

abolished. The agreement also proposed a new, subsidized permanent contract for select groups of workers on the margins of the labour market (youth, women and the unemployed over 45), known as the 'star' contract. The star contract would include significantly lower dismissal costs than a standard permanent contract (33 days per year worked up to a maximum of 24 months' pay) and the subsidies would be provided by the government in the form of reduced social security contributions for employers (OECD 1999: 321-2; Bentolila *et al* 2008). A 'sunset' clause provided for a review in 2001. Although the government assumed the costs associated with the reductions in social security contributions intended to promote permanent contracting, the agreement yielded only limited reductions in the share of temporary employment.

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

On 12 March 2000, José María Aznar returned to power with an absolute majority. Relieved of the need to compromise with other parties to push through

legislation and with the economy growing rapidly, the negotiating positions of the government and CEOE quickly turned more aggressive. In March of 2001, the government unveiled its 'Urgent Measures for the Reform of the Labour Market and More and Higher Quality Employment'<sup>v</sup>. The reform sought to reduce temporary employment by placing slightly stricter limits on temporary contracting periods, raising the severance pay for the two most frequently used temporary contracts and substantially increasing social security contributions for temporary contracts of less than 7 days duration. More stable employment was also encouraged by making permanent the employment promotion contract established in the 1997 reform and expanding the universe of those who could be hired through this contract to youth to age 30, adults over 45, women in professions with low female participation rates, the handicapped and anyone else registered for at least six months (instead of a year) with the public employment services (INEM) (OECD 1999: 322-3).

At the same time, the reform expanded and introduced new, more flexible contracting categories that were severely criticized by the unions: extended qualification for the temporary training contract beyond the age limit of 21 for the disabled, immigrants during their first two years with a work permit and the long-term unemployed; greater flexibility in the maximum number of hours and their distribution in a part-time contract: and a new, temporary insertion contract for unemployed workers hired by the public administration.

Conflicts with the unions intensified drastically the following May when the government introduced 'Urgent Measures for the Reform of Unemployment Protection and Better Employability,' leading to a general strike by CC.OO. and UGT.

The reform proposed a major ratcheting up of pressures on the unemployed to return to the labour market. Workers would be required to accept employment offers from the public employment services within a wider geography (50 km), accept a position in a sector outside their professional experience after a year and face a total withdrawal of the unemployment subsidy after rejecting three offers of courses or jobs. The government also proposed a substantial reduction in layoff costs. Employers who assumed that a layoff would be judged without cause (and hence subject to higher severance pay) could deposit the amount of severance anticipated with the court within 48 hours and not have to pay the worker's salary during the months (typically 1-2) between the layoff and the judge's decision (salarios de tramitación).

After the general strike, Aznar relieved Labour Minister Juan Carlos Aparicio of his responsibilities and brought in a more seasoned politician, Eduardo Zaplana, former president of the Valencian Community region, to patch over relations with the unions. In December, the government passed a final version of the reform, with a significant relaxation of the demands that the PES could make on the unemployed. The geographical radius of offers that had to be accepted was reduced to 30 kilometers while demands for accepting jobs from other sectors were significantly weakened.

Critically, however, the option for employers to deposit severance pay at once and not be exposed to further payments was kept in place. With this reform, the costs of an individual layoff in Spain became knowable and fixed for the first time. To understand the significance of this change for Spanish labour market dynamics, it is important to keep in mind that layoff costs are substantially lower (20 days/year worked vs. 45) when a layoff is considered causal. The introduction of these causes in

the 2002 reform was intended to facilitate external flexibility with respect to insiders in order to close the gap with labour market outsiders. However, the implementation of the measure proved quite unsatisfactory from the perspective of employers. Labour court judges were unprepared to interpret firms' evidence and frequently unsympathetic to their claims, leaving employers to pay far higher severance than they had hoped (Malo 2005). With the 2002 reform, government efforts to balance employer needs for flexibility with permanent workers' needs for stability by reducing the costs of layoffs 'with cause' (*objetivos*) relative to those without (*improcedentes*) were effectively abandoned.

This reform completely transformed one major axis of the debate regarding flexibility in Spain. Just as unions were beginning to warm to the idea of lower costs for layoffs with cause as a way of reconciling employer and employee needs, the 2002 reform of non-causal layoff costs virtually collapsed the two categories: the principle of cause in layoffs—critical to traditional continental European conceptions of labour law as a framework for protecting the weaker party—was replaced by an exclusive focus on the cost of the layoff for whatever reason. In practice, employers in Spain as a result now enjoy a system of employment-at-will, with predictable, albeit significant, costs. On the whole though, the two terms of Aznar government left many of the institutional foundations of Spanish labour market dualism in place, and failed to make any fundamental reforms to collective bargaining, welfare provision or active labour market arrangements. Indeed it is striking how the trajectory of labour policy in Spain remained essentially unaffected by changes of government in this period.

## **5. The Return of the Socialists (2004- ): Continuity then Crisis**

The bombings in Madrid on March 11 2004, and the PP's bungled attempts to link the attack to the Basque terrorist organization ETA even as the evidence suggested otherwise, swept the Socialists back into power in the elections three days later. The PSOE, under the leadership of José Luis Rodríguez Zapatero, had expressed strong support for the unions' 2002 strike against the PP labour market reforms and, once back in power, moved quickly to demonstrate its support for social concertation. In July, CC.OO., UGT, CEOE and the government signed the Declaration for Social Dialogue. The signatories resolved to 'strengthen social dialogue' and 'communicate to society as a whole an unequivocal message of institutional confidence' by creating bipartisan (unions and employers) or tripartite, single-issue bargaining units to address employment creation, raising the minimum wage, ensuring flexibility for employers, immigration, training, workplace safety, industrial policy, environmental policy, reforming the structure and contents of collective bargaining, social security reform and the institutional participation of the social partners themselves<sup>vi</sup>.

This agreement defined 'social dialogue' as the preferred policymaking process for virtually all issues related to the labour market, including the pension system: if a new balance between flexibility and security were to be achieved in Spain, it would, it appeared, require consensus. The Declaration called for increasing the social partners' role in a number of regulatory institutions (the National Commissions governing collective bargaining and workplace health and safety and the national workplace inspector corps). It also highlighted the government's 'constitutional' obligation to



provide the social partners with the ‘means and instruments necessary for achieving the noble ends for which they have been constitutionally mandated’ as a justification for opening a debate regarding mechanisms that could deepen the institutional participation of the social partners<sup>vii</sup>.

In May 2006, following almost fourteen months of negotiations, the social partners and the government signed the Accord for Improvement and Growth in Employment. With rates of temporary employment in Spain remaining stubbornly above 30% even as the economy grew rapidly, the social partners agreed that the government should increase subsidies for permanent contracts for specific classes of employees and restrict employers’ abilities to rotate workers through one temporary contract after another. The agreement even received praise from the PP in the midst of a legislature racked by intense polarization around virtually every other government initiative (Alvarez del Cuvillo 2006).

The reform can scarcely be labeled ambitious: indeed, the preamble to the law declares that, in light of the positive results generated by the social partners’ proposals for reforms in 1997, ‘...it does not seem opportune to introduce substantial changes in labour legislation’<sup>viii</sup>. Given this lack of ambition, the only significant change in labour market regulations was the limitation on repeatedly contracting workers through temporary contracts for the same position. Workers contracted two or more times by one firm for the same job for more than 24 months in 30 would automatically be considered permanent workers. The law also encouraged sectoral collective bargaining units to negotiate limits on the ‘abusive utilization’ of temporary

contracting with different workers, either directly or through temporary employment agencies, to do the same job.

The 2006 reform did not substantially alter either the structure or composition of active labour market policies—subsidies for contracting continued to represent more than half of all spending on active labour market policies (García Serrano 2007). The most significant innovation in this regard was a restructuring of the subsidy from a reduction in the percentage of the social security contributions to be paid to a flat monthly amount that would vary according to the particular ‘marginal’ group—women, youth, long-time unemployed, older workers, or the disabled. This change had the effect of making the subsidy far more attractive for employers seeking to hire the low-skilled workers (with the correspondingly low wages) who were increasingly dominating the ranks of the unemployed during the economic boom of the late 1990s and early 2000s. In the event, the rate of temporary contracting fell just three percentage points through 2009 and only began to fall more sharply as firms adjusted to the post-financial crisis recession by not renewing expired temporary contracts. In short, the entrenched dualism remained.

The Zapatero government did however introduce a number of reforms aimed to enhancing social protection. In November, 2005 the government submitted to the social partners its proposals for minor reforms in the national pension system, increasing some non-contributory pensions, easing mandatory retirement age rules and permitting part-time work while receiving some pension benefits. In July 2006, the social partners and the government signed a tripartite accord on pension reform that approved the government’s proposal with no significant changes. The parties

agreed to establish a committee to pursue on-going discussions regarding the regulation of the pension system and to commission studies on the system's long-term viability. Similar accords introducing minor changes in the pension system were signed in 1996 and 2001. While demographic models suggested that Spain's extraordinarily low birthrate from the 1980s onward will soon challenge the sustainability of the nation's pension system, high levels of immigration and significant employment growth had pushed back the system's reckoning date, making it relatively easy for both the government and the social partners to reach agreements on minor innovations (OECD 2007).

In 2006 and 2007, the Socialists also approved a pair of major legislative initiatives intended to raise labour market participation rates by reducing the dependence of the Spanish welfare safety net on family support networks. The 2006 Dependency Law (*Ley de Dependencia*) sought to define a new public/private infrastructure for the care of dependent persons and facilitate the labour market participation of their traditional care-givers. Implementation of the law, and a significant portion of its funding, was delegated to the Autonomous Communities<sup>ix</sup>. The implementation problems associated with the law have been extensive. First, the Autonomous Communities were given some flexibility in the ways they defined dependency, leading to significant differences in the qualified population from one region to another. Second, the number of applications was far higher than initially expected, giving rise to a substantial backlog in the number of cases. Finally, the onset of the economic crisis came before the law was fully implemented. Given the extremely precarious finances of the Autonomous Communities and the Spanish State,

it is hardly surprising that the labour market consequences of the law have been far less extensive than initially envisioned (Bosch 2009).

The 2007 equality law sought to promote opportunities for women in the workplace and facilitate balance between work and home responsibilities. Firms with more than 250 workers were required to create equal opportunity plans for women while labour market protections were substantially extended to support the continued participation of women in the labour market during and after pregnancy. In particular, women's rights to demand reductions in work hours were greatly increased. This law was supported by CC.OO. and UGT; the CEOE refused to sign off on this legislation, however, concerned that the obligations placed on firms were far too onerous and expensive.

The social partners also reached a series of measures to improve the social welfare safety net for at-risk populations during the heady days of the economic boom. The minimum wage was increased at a rate far above inflation, from 460 Euros/month in 2004 to 600 Euros/month in 2008<sup>x</sup>. Minimum pensions, both contributory and non-contributory, were raised well above the rate of inflation in 2005 and 2006. An agreement reached in July of 2006 (Ley 40/2007) for social security reforms aimed at ensuring better balance between receipts and social security spending, higher non-contributory pension rates for the disabled and aged, new measures to combat fraudulent claims in disability pensions and changes to favor the continued labour market presence of older workers (Pérez Infante 2007: 67).

This second period of Socialist government enjoyed one full term of rapid economic growth and falling unemployment as Spain boomed on the back of a housing

and construction boom and flows of capital from surplus countries in the Eurozone. However, Zapatero's second term coincided with the financial crisis, the bursting of the housing bubble and Spain's descent into a deep recession and fiscal crisis. The gains of the early 2000s, in which unemployment fell rapidly even with high levels of immigration, were very quickly lost as the jobless figures returned to the levels of the early 1990s, again breaching the 20 per cent mark (Bentolila *et al* 2010). Until 2010, policy under both Socialist and conservative governments had been marked by continuity and incremental change in labour rules and the basic structure of the welfare state. The fiscal crisis has, however, placed policymakers in an entirely new situation.

## **5. Flexicurity in Spain: Reforms and Institutional Constraints**

The catastrophic effect of the financial crisis for Spain has renewed the call for reform, but existing templates for reform, as ever, clash with established labour market practices. Spanish labour law is built around the premise that permanent, in-job security is the default employment relationship. As such, the regulation of the employer's relationship with individual workers is strongly biased against all four employer flexibility goals identified by Wilthagen and Tros (2003, 2004). The Socialists' labour market reforms in 1984 and 1994 addressed this inflexibility by facilitating temporary contracting, thus enabling firms to achieve both an enormous reduction in layoff costs and much greater ability to manage market fluctuations (Toharia *et al* 1999). Temporary hiring also contributed to significant wage and

benefit cost reductions, principally through two mechanisms: to the extent that seniority is linked to pay and benefits, temporary workers are cheaper in nominal terms; at the same time, temporary workers are more vulnerable to being pressured to perform work above their pay grade, reinforcing these pay differences. As a result flexibility and security are not combined for individual workers: some groups of workers enjoy security, others provide employers with flexibility at the expense of their own security.

Collective bargaining practices are also a source of inflexibility. Spanish workers enjoy substantial collectively bargained employment protections, although the application of these agreements is quite unevenly distributed. Sectoral collective bargaining agreements are automatically applied to all workers within the geographic bargaining unit whether or not employers or workers are members of the bargaining unit. Spanish law places severe limitations on the ability of firm or workplace negotiators to alter the job classifications, wage minimums or the amount and distribution of work hours set out in sectoral agreements. 'Substantial'<sup>xi</sup> changes in the organization of work and collective dismissals of more than 10 per cent of the workforce must be negotiated with workplace representatives. As a result, changing the organization of work or reducing permanent worker staffing levels is slow, expensive (worker representatives generally demand employer concessions in exchange for their acquiescence) and often riven with conflict. Where agreement cannot be reached, the changes can be paralyzed until a judge decides whether or not they are justified. Until the 2010 labour market reform, firms could only evade the

minimum salaries and percentage increases agreed in sectoral agreements by demonstrating economic losses in court.

If Spanish firms largely achieve flexibility through fixed-term contracts and outsourcing, then the extent to which the workers affected by these policies achieve some measure of security will depend on their ability to find new work and the degree to which the welfare state cushions their exposure to market risks. We will examine Spanish labour market intermediation institutions below, but we first turn to the links between the dominant employer flexibility strategies and the social security system.

The design of the Spanish social security system is somewhat sensitive to the social consequences of the flexibility at the margin encouraged by labour market regulations and the collective bargaining system. Indeed, one might argue that the State encourages employers' efforts to gain external-numerical flexibility through the rules governing both contributory and non-contributory unemployment compensation. Spanish requirements for access to unemployment benefits are relatively generous and the quantities relatively high for those with low salaries. Many fixed-term contract holders are thus able to cushion unemployment spells with State support, reducing social conflicts surrounding high rates of temporary employment<sup>xii</sup>.

Employers use this system quite strategically. Arranz and García-Serrano (2010) show that approximately 46 per cent of all workers who lost their jobs between 2004 and 2007 were rehired by their former employer, compared to a figure of approximately one-third reported in other comparable countries. Of these workers who found a new position within two weeks, the number increases to 58.7 per cent; the figure was 35.7 per cent for those who had longer spells of unemployment but did

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

Early access to retirement and disability pensions strengthens the safety net for older workers; in the Spanish case it has also become an important tool for employers seeking manpower reductions and greater internal flexibility. Early retirement provisions have existed within the Spanish social security system since the early 1980s, when they emerged as a vehicle for easing conflicts surrounding industrial restructuring in the wake of the oil shocks and economic opening associated with the transition to democracy. These benefits were strengthened in 1994 to provide greater protections for workers in their fifties who do not yet qualify for early retirement at sixty. In 2002 the Popular Party government approved measures to facilitate continued labour market participation of workers near and



beyond the age of 65 through the elimination of various measures that penalized (through the definition of the base for calculating retirement pensions) transitions to part-time work and rewarded continued presence in the labour market with additional pension amounts upon retirement<sup>xiii</sup>. Argimón *et al* (2007) and Gutiérrez-Domènech (2006) found that these measures appear to have encouraged delayed retirements in the targeted age groups. However, these efforts to increase labour force participation by older workers pale compared to the effects of incentives for early departure.

Students of the Spanish labour market distinguish between early retirement ('*jubilación anticipada*')—a legal category in which persons who have paid-in sufficiently to Social Security can retire from age 61 with penalties —and *pre-retirement* ('*prejubilación*'), a non-legal category describing a widespread, but largely immeasurable phenomenon. Pre-retirement describes a pact between an employer and an individual employee, or, more frequently, between the firm and the workers' representatives, in which 'older' workers, usually long-standing employees in their fifties (although some as young as their mid-40s) are laid off and claim unemployment benefits for two years while the firm purchases an insurance vehicle which provides additional payments to minimize the loss in salary and continues to make social security contributions for the workers until they take early-retirement at age 61. Most of these agreements are reached in firms suffering economic difficulties, although they have also been used repeatedly by many Spanish banks and utilities such as Telefónica, among others, simply to restructure their workforces and reduce costs.

Collective pre-retirements are quite controversial, as firms are subsidized not only with two years of unemployment benefits but also frequently with significant support from the State and regional governments looking to avoid social conflicts. Lawyers involved in the negotiation of these agreements estimate up to 40 per cent of firm costs associated with these measures are paid with State funds (Maseres 2010). While several government officials have recently declared that these kinds of practices must end, particularly in profitable firms, the practice is well-consolidated in Spanish business culture, with a number of consultants whose sole service is to help organize these arrangements.<sup>1</sup> Critical to their success is that the public employment services do not pressure workers to accept another job offer as the law permits. Vall Castello (2010) finds that older workers' recourse to permanent disability benefits increases with regional unemployment and declines in national GDP growth, suggesting that those without access to retirement pensions or unemployment benefits are using disability benefits as a way out of the labour market. This phenomenon is more prevalent in the United States and in the Netherlands than in Spain, but it is nonetheless significant. Similarly, labour market exits to unemployment assistance spike at precisely 52, 56, and 58 years of age, years at which different benefits schemes come into effect.

All of this constitutes a model distant from the flexicurity ideal, and there is not a great deal more encouragement to be found in the area of activation. Active labour market

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<sup>1</sup> For example, Óptima Previsión: <http://www.prejubilaciones.net/>. These consultants claim that pre-retirements *reduce* State costs, as the worker's full pension is eventually less than it would be had he or she worked to the age of 65. The ministers evidently disagree: see the interview with Celestino Corbacho, then Minister of Labour, 'Hay que prohibir las prejubilaciones en las empresas con beneficios' ['Pre-retirements from profitable firms have to be prohibited'], *El País*, 21 February 2010. <http://www.elpais.com>.

policy, as in most European countries, has certainly become an area of some interest for policymakers, and spending has increased as noted earlier. However a considerable part of that spending (more than half, one of the highest figures in Europe) has been dedicated to subsidies for employment creation, which has promoted the creation of low-skilled jobs at taxpayer expense. Much less attention has been paid to the institutions to promote training and labour mobility, with a low ratio of public placement service employment to unemployment (one to 700) (García Serrano 2007). Low relative investment in public employment services has produced mediocre results, with just 10 per cent of all placements managed by these services at the beginning of the 1990s and only a slight improvement (16 per cent) a decade later (García Serrano 2007). In the area of training, there is a clear mismatch between investment in continuing training education, which is among highest in Europe (financed by both Social Security contributions and EU funds), and training for the unemployed, which is among the lowest. Much of the responsibility for training has been devolved to the Autonomous Community level, with resulting variability in outcomes, with funds caught up in the dynamics of clientelistic redistribution in some provinces and regions (López Viso 2004; Miramontes et al. 2005)

Substantial reforms have taken place in the area of placement, with the INEM's monopoly on placement formally abolished by the 1994 reform, which opened the market to non-profit placement services, temporary employment agencies, and direct hiring by firms. Moreover active labour market policies have also been affected by the decentralization process, with training being devolved down to the Autonomous Community level between 1992-99, and placement devolved in the period 1998-2003.

This has led to a greater differentiation of placement services between regions, despite the 2003 Ley del Empleo which attempted to regulate their coordination: already before the reforms were completed there was wide variance between Autonomous Communities, with some managing less than 5 per cent of placement and others achieving around 20 per cent (Catalonia), or more (Extremadura) (Alujas Ruiz 2008: 173). Given the widely varying unemployment levels in different parts of Spain, it is doubtful whether decentralization can deliver the kind of geographic mobility which is needed to match labour supply to demand.

### **The Politics of Flexicurity in Spain: An Unreachable Star?**

Spain appears a hostile terrain for the concept of flexicurity, given its combination of labour market dualism, weak to intermediate labour articulation, and limited activation infrastructure. A tradition of legalistic state interventionism in labour and product markets, typical of 'embedded illiberalism' (Hopkin and Blyth 2011; see also Schmidt 2002, 2009), encourages political actors to reach for legislative protection to resolve social and economic problems, rather than combine market forces with social compensation, as in the Nordic model. Moves towards flexicurity also lack a stable constituency of political support: the left has been reluctant to challenge core worker protections, but the right has shown similarly little interest in challenging dualism, in part because of the conservatism of employer interests and a fear of industrial unrest. The long boom starting in the late 1990s reduced unemployment substantially (albeit not sustainably) and Spain's impressive growth

record before the financial crisis further undermined arguments for fundamental reform. Substantial job growth up to the mid-2000s muted demands for reform, and the boom also provided employers with funds to purchase adjustment, obviating the need to transform model of shopfloor relations. In short, wholesale labour market reform was rejected not only by employers, but also by most core workers, who preferred adjustment at the margin to adjustments in their own working conditions. Yet Spain's structurally dismal record at job creation urges reform; Figure Two shows that even in good times, unemployment in Spain is higher than in comparable countries, and in bad times spikes in unemployment are a great deal higher than elsewhere. The ease with which temporary contract labour can be shed appears to increase volatility in the labour market, but without even achieving high levels of employment.

There are three broad political and institutional constraints on further progress towards flexicurity. First, the nature of collective bargaining and social partner articulation. The social partners' preference for 'autonomy' has led them to prefer 'consensus' over potentially conflictual radical change, and political parties have also learned that efforts to introduce real reforms carry costs: the PSOE in 1994 and the PP in 2002 both faced fierce opposition from the unions, and won relatively support from employers. Employers have on the whole preferred to 'purchase' assent for changes at the local or sectoral level rather than negotiate for nationwide reforms. Carrots and sticks on the margins (subsidies, new contract categories and restrictions on contracting) are easy to put in practice because neither unions nor bureaucrats can effectively thwart them, and therefore employers have avoided pushing hard for

deeper reform. Where both employers and worker representatives are prepared to engage in local productivity coalitions, even highly unionized firms are able to achieve the functional and internal-numerical flexibility they require to maintain international competitiveness. The willingness of multinational auto manufacturers to continue to invest in their highly unionized Spanish plants speaks eloquently to this point. The increasingly generous safety net for participants on the edge of the labour market, made possible by the long boom and increasing social security receipts, assuaged union and worker discontent at the high levels of temporary employment.

A second factor is Spain's complex territorial politics. Flexicurity has developed largely in small, ethnically homogeneous countries with strong institutions of inter-territorial solidarity. In Spain, the backlash against Franco's exacerbated centralism has mobilized powerful nationalist movements in several Spanish territories, and the decentralization process which created the Autonomous Communities has had the effect of dispersing control over key labour market policy levels (Gallego, Gomá and Subirats 2003). This fragmentation of policy is argued by advocates of competitive federalism to produce efficient policy outcomes as regions compete to attract investment; however there is at least some evidence that the in Spain effect of decentralization has also been to encourage political parties to use these policy levers for clientelistic politics to sustain local support bases (see for example Solé-Ollé and Sorribas-Navarro 2007). As well as creating difficulties for the coordination of active labour market policies, decentralization has also complicated the implementation of the *Ley de Dependencia* which has also implications for employment, particularly of the female labour force. Autonomous Communities have been charged with

implementing the provisions of the law without being fully resourced to do so, and without clear arrangements to ensure adequate minimal standards of coverage across the state territory (Azaña 2009).

A third factor is that Spain lacks both the formal and informal institutions necessary to promote high degrees of trust between the various actors involved in the politics of labour (Molina and Rhodes 2007; see also Eichhorst and Konle-Seidl 2005). Formally, gaining workplace representatives' collaboration is complicated by the legal structure of works councils. Unlike German works councils, their Spanish counterparts are both allowed to negotiate collective bargaining agreements and convoke strikes. Moreover, the number of representatives each union sends to the sectoral collective bargaining table is determined by the relative number of works council delegates representing that union in that sector. Where firms are not highly unionized, which is generally the case,<sup>2</sup> many of these representatives are only loosely tied to the unions they putatively represent. As a result, Spanish union officials exercise far less leverage over local worker representatives than do their German counterparts (Fishman 1990). Even when union officials understand the connections between greater functional flexibility, firm competitiveness and employment security, they are sometimes reluctant, and often unable, to persuade workplace representatives to accept such changes.

More broadly, Spain lacks the high degrees of social trust characteristic of the Scandinavian countries in which flexicurity has emerged as an effective labour market

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<sup>2</sup> Union density rates reached a post-Transition high of 18% in 1993 and were 14.3% in 2008. OECD, Trade union density in OECD countries, 1960-2008, available at [http://www.oecd.org/document/34/0,3343,en\\_2649\\_33927\\_40917154\\_1\\_1\\_1\\_1,00.html#union](http://www.oecd.org/document/34/0,3343,en_2649_33927_40917154_1_1_1_1,00.html#union).

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

The lack of social trust also undermines the effectiveness of combined active and passive labour market policies. Flexicurity rests not only on investments in activation being effectively implemented, rather than used to generate political support, but it also requires recipients of passive labour market measures to make genuine efforts to seek appropriate work. In a country with high levels of tax evasion and fraud, and a significant informal economy, the requisite levels of social cooperation may not currently be present (Algan and Cahuc 2006).

## **Conclusions**



Spain is not a model of flexicurity, and although tentative moves have been made in the direction of labour market policies advocated by the European institutions, the existing arrangements are still characterized by a polarization between very well protected workers on the one hand, and more precarious workers on the other. Despite very high levels of unemployment throughout the last 30 years, governments have eschewed fundamental reforms of employment protection, and high levels of job security for the core workforce remain the cornerstone of the Spanish labour market and the Spanish system of social protection.

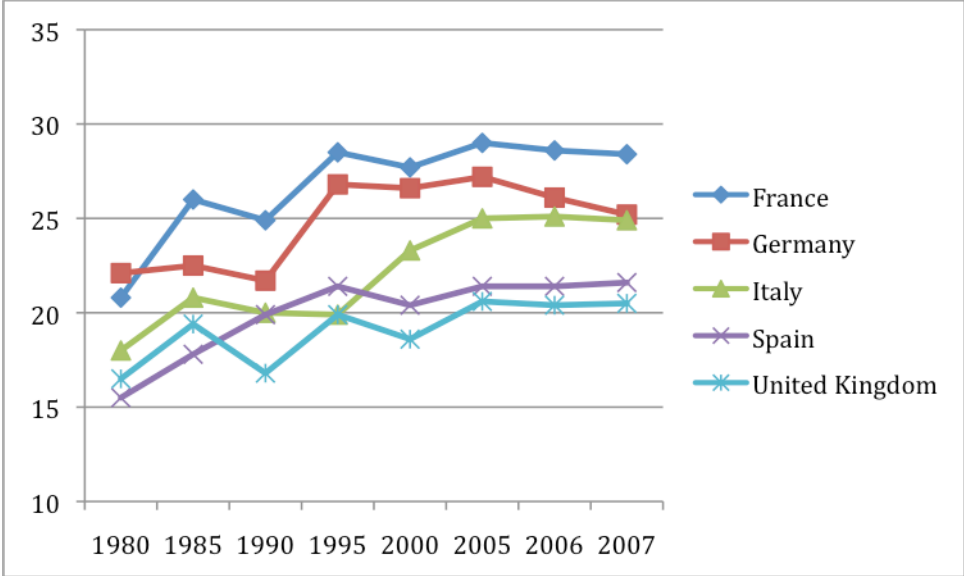
That said, Spain has developed a set of arrangements which do indeed deliver flexibility and security. Internal flexibility has been achieved in some industrial sectors, and numerical flexibility is made possible by the high numbers of temporary contracts. Security, on the other hand, has been greatly enhanced by the expansion of the welfare state to the degree that Spain's unemployment coverage is now a good deal higher than its Southern European neighbours. Moreover, intra-family solidarity ensures that through either secure employment, or provision of welfare transfers, severe poverty is actually lower in Spain than in several European countries, such as for example the UK (Eurostat 2010). A final plank of flexibility is the large informal economy and, recently, a rapid rise in migrant labour.

Is this model sustainable? The current crisis suggests that the arrangements for both flexibility and security are likely to undergo important changes. Flexibility through the relaxation of firing rules for workers on indefinite contracts is being presented as a necessary reform to deal with Spain's unemployment and wage cost problems, whilst security will be compromised by the reductions in government

spending adopted in response to Spain’s budgetary problems resulting from the financial crisis. The family plank of social protection is also threatened by social change, with growing female labour market participation incompatible with Spanish women’s traditional role as carers of children and the elderly. In short, the current arrangements are under pressure. However in the absence of the necessary institutional support mechanisms for flexicurity, it cannot be assumed that reforms will follow the direction advocated by the European institutions.

**Figure One**

**Social Spending (% of GDP) in Selected Western European Countries 1980-2007**

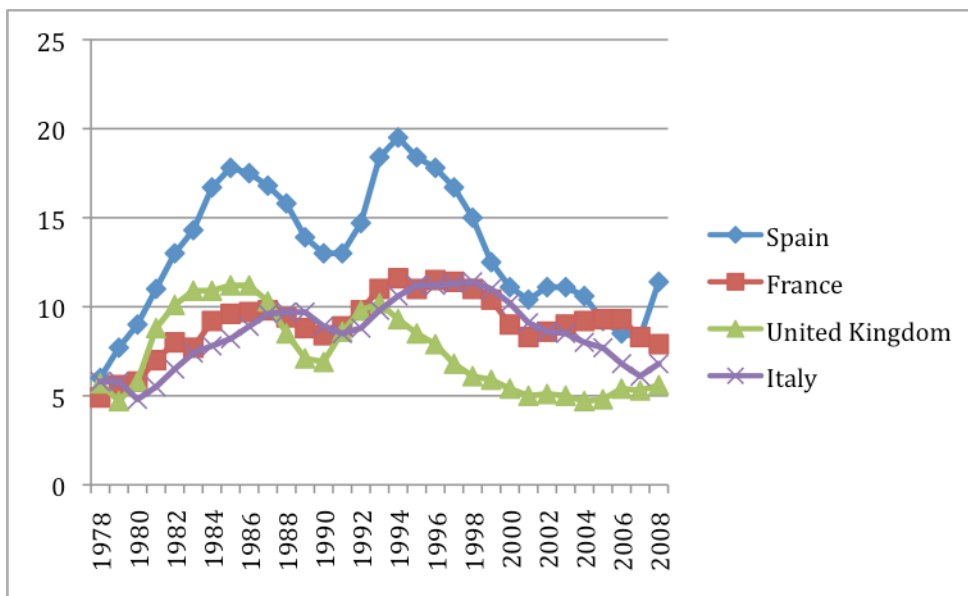


Source: OECD database (socx)

**Figure Two**

## Unemployment (% of workforce) in Selected Western European Countries

1978-2008



Source: OECD database (socx)

### Notes

<sup>i</sup> Both parties sought to project an image of moderation and responsibility in the face of the crisis as they positioned themselves before an electorate whose partisan ties were still largely in flux after forty years of dictatorship (see Gunther *et al* 1986; Maravall 1981).

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

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

<sup>iv</sup> Molinas, César. 25 September 2010. "El pacto de Toledo y la reforma de las pensiones". Downloaded at <http://www.fedeablogs.net/economia/?p=6286>, 16 November 2010; *Informe sobre el desarrollo del Pacto de Toledo*, V. 1. Ministerio de Trabajo e Inmigración. October 2008. Downloaded, 16 November 2010 from <http://www.imsersomayores.csic.es/documentacion/biblioteca/registro.htm?id=53152>.

<sup>v</sup> Royal Decree Law 5/2001 and Law 12/2001, of 9 July, 'Medidas Urgentes de Reforma del Mercado de Trabajo para el Incremento del Empleo y la Mejora de su Calidad'.

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

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

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

ix Ley 39/2006 de promoción de la Autonomía Personal y Atención a las Personas en Situación de Dependencia.

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

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

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

xiii Ley 35/2002, de 12 de julio, de medidas para el establecimiento de un sistema de jubilación gradual y flexible.

Under a particular economic-political circumstance, some actors have a big advantage over others in exerting influence on the making process of labor laws. Along. 4.Â [Figure 1] Framework for Analyzing the Politics of Employment Protection Legislation. III. TRENDS AND STATE OF NON-REGULAR EMPLOYMENT IN KOREA As exemplified in [Figure 2], non-regular employment, which had been a substantial part of the working population in the 1990s, soared sharply after the financial crisis of 1997-1998 in Korea. Against the backdrop of the economic crisis, many firms downsized regular employees and re-filled their positions with non-regular workers.