Organizing Workers in Argentina, Brazil, Chile and Mexico: The Authoritarian-Corporatist Legacy and Old Institutional Designs in a New Context

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In what way do the corporatist and authoritarian legacies that modelled some Latin American labor institutions influence the opportunities for and restrictions on organizing workers in a new context? To what extent did institutional designs, together with other economic and political factors, influence the characteristics that currently distinguish the union organizations in the countries of the region? Taking into consideration the existence of a broader debate about the consequences of globalization and political democratization for unions, the contribution of historical institutionalism and previous research, in this Article I compare the institutional and organizational dynamics of unions in four countries with authoritarian legacies and corporatist traditions (Argentina, Brazil, Chile and Mexico). The Article argues that in spite of these shared traditions, the differences in the institutional designs — which have scarcely been considered in the specialized literature — have historically imposed distinctive features on the associational power of workers and unions. These features not only persist to the present day, but also translate into dissimilar trajectories of the labor movement and opportunities for organizing workers in the last decade.

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Introduction

As elsewhere in the world, Latin American unions have been weakened as their governments have responded to the demands of globalization by adopting neoliberal policies. This tendency has been clearly manifested in four of the region's nations — Argentina, Brazil, Chile and Mexico — where unions, whether allied with governing political parties or autonomous, had held a significant role as social interlocutors, especially during the period of state-led industrialization. However, recent studies have shown that national politics and the institutional environment have a greater impact on unions and collective bargaining than globalization. They conclude that "careful historical case studies are likely to provide more nuanced and convincing explanations" than globalization.[1] More specifically, the welfare of unions in the region was significantly influenced by a dual process of transition — political and economic — which occurred in most of these countries during the past thirty or forty years, depending on the particular case. To some extent, the sequencing of these transitions (first political measures and then economic, or vice versa) and the way in which they unfolded (with or without an institutional break from previous authoritarian regimes) explains the differences in the opportunities for and restrictions on trade union renewal post-transition.[2] Considering the double transition and institutional designs in four countries in the region, in this Article I test their implications for the evolution of the associational power of workers.

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1 John Schmitt & Alexandra Mitukiewicz, *Politics Matter: Changes in Unionisation Rates in Rich Countries, 1960-2010*, Indus. Rel. J. 260, 263, 277 (2012); *accord* John Godard, *Union Formation*, *in* The Sage Handbook of Industrial Relations 382 (Paul Blyton et al. eds., 2008).

2 *See* Maria Cook, The Politics of Labor Reform in Latin America, Between Flexibility and Rights (2007); Graciela Bensusán & Maria Cook, *Political Transition and Labor Revitalization in Mexico*, *in* Labor Revitalization: Global Perspectives and New Initiatives 229 (Daniel B. Cornfield & Holly McCammon eds., 2003) [hereinafter Bensusán & Cook, *Transition*]; Graciela Bensusán & Maria Cook, *State-Corporatist Legacies and Divergent Paths: Argentina and Mexico*, *in* Working Through the Past: Labor and Authoritarian Legacies in Comparative Perspective 142 (Teri L. Caraway et al. eds., 2015) [hereinafter Bensusán & Cook, *Legacies*]; César Guzmán, *Sindicalismo, neo-corporativismo y transformismo* [*Unionism, Neo-Corporatism and Transformism*], *in* Sociedad, trabajo y neoliberalismo: apuntes de las escuelas de formación sindical [Society, Labor and Neoliberalism: Notes from Unions Training School] 192 (2004); Adalberto Cardoso & Julián Gindin, *Industrial Relations and Collective Bargaining: Argentina, Brazil and Mexico Compared* (ILO, Working Paper No. 5, 2009).

One shared circumstance, regardless of the transformations experienced in the course of the dual transition process, is the persistence of authoritarian and corporatist legacies in the labor models inherited from previous political regimes.[3] This has given rise to a variety of obstacles not only to the ability to exercise collective rights in connection with employers or governments, but also in the sense of carrying democracy into the internal operations of union organizations, giving voice to and expanding the interests of the most vulnerable workers. There have been serious economic, social and political consequences.

Latin America remains the world's most unequal region, and the source of a great deal of its poverty is its labor markets, where informality and precariousness affect, on average, half of those employed. The present reality in many countries is that there are severe restrictions on collective action and the capacity to ensure the enforcement of labor rights has shrunk; moreover, it is also the case that new forms of representation and collective organization, capable of mitigating the pronounced asymmetry in negotiating power between labor and capital in the globalized context, have not emerged. From this perspective, it is an open question whether or not unions will have the power and necessary skills to effectively influence the design of public policies or to reach agreements with employers that are mutually beneficial.[4] It is noteworthy that the presence of legitimate and effective organizations, which represent workers' interests, is a key part of fundamental human and

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3 Here we understand "authoritarian legacies" to be those which leave the state with significant ability to intervene in the organizing and mobilizing process of workers and in the resolution of conflicts between capital and labor, as well as between unions themselves. These legacies may or may not include state-corporatist arrangements which concede a monopoly on representation in exchange for an agreed-upon role in ensuring social control. *See* Philippe Schmitter, *Continúa el siglo del corporativismo?*, *in* Neocorporativismo I, Más Allá Del Estado Y El Mercado [Neocorporatism I, Beyond the State and the Market] 15 (Philippe Schmitter & Gerhard Lehmbruch eds., 1992); *Modos de Intermediación de Intereses*, *in* Neocorporativismo I, *supra*, at 77.

4 Erik Wright argues for the ability to reach such agreements, given certain conditions, and mentions distinct types of class-based commitments between capital and labor. One is a positive agreement between classes with opposing interests, where both parties improve their situation via various means of cooperation. According to Wright, the ability to reach this degree of stable compromise depends upon "the relationship between the *associational power* of workers and the *interests* of capitalists." Erik Wright, *Working-Class Power, Capitalist-Class Interests, and Class Compromise*, Am. J. Soc. 957, 957-58 (2000). In this Article I concentrate only on the relationship between associational power and institutional design.

labor rights. Without such organizations, the quality of new democracies is diminished, given that democracies require expansion into other spaces within civil society to allow the emergence and consolidation of an active citizenry.[5]

In this Article, I propose using a comparative perspective to examine institutional designs in order to uncover the key factors that explain similarities and differences in how unionism has developed. I attempt to identify whether institutional change is an inescapable condition for trade union revitalization in the new global context and, should that be the case, to determine what issues must be addressed in each of the four countries. While it is true that authoritarian or corporatist legacies permeate the labor regimes of all four, and there are important similarities between them (such as the persistence of high levels of state intervention in the processes of organizing and collective bargaining), I argue here that differences in institutional design and the manner in which these institutions operate have consequences for the configuration of the *associational power* of workers.[6]

These differences allow us to explain some of the features that distinguish the various trajectories of union organizations in the four countries in recent decades, and the resultant impact on labor conditions. In Brazil, for example, the labor model since its inception was configured as a "soft corporatism."[7] Under this model and during the dictatorship, a "new unionism" emerged. This new unionism represented workers in an autonomous manner with new practices and demands and was a protagonist in the country's political transition. After penetrating traditional union structures, it attained the hegemony and

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5 *See* Carole Pateman, Participation and Democratic Theory 45 (1970) (arguing that democracy requires the construction of citizenship within all spaces in society).

6 Wright, *supra* note 4, at 962, defines the "associational power" of the working class as "the various forms of power that result from the formation of collective organizations of workers." This includes such things as unions and parties, but may also include a variety of other forms, such as works councils or forms of institutional representation of workers on boards of directors in schemes of worker codetermination. In Latin America, and the selected countries in particular, codetermination or worker participation in company boards does not exist (with a few exceptions for health and safety committees and the like). Therefore, to understand associational power I focus principally on the institutions that shape the characteristics of union organizations and, more generally, on the expressions of institutional power: freedom of association, collective bargaining and the right to strike, as well as the representation of unions in tripartite organs of administration, labor policy and social dialogue.

7 Adalberto Cardoso, *Your Defensive Fortress: Workers and Vargas's Legacies in Brazil*, *in* Working Through the Past, *supra* note 2, at 164.

finally, in 2003, was able to elect one of its own to the Presidency, leading to pro-worker labor and social policies. This evolution contrasts dramatically with events in other countries, the case of Mexico in particular, where we see a severe degradation of labor unionism under an arrangement we might term "rigid corporatism," as we shall see further on.[8]

The way in which the law distributes power (between unions, workers, employers and authorities) determines, on the one hand, the extent of organizations' associational power and bargaining power. In this regard, institutional design influences the quality of representation experienced by workers and the unions' strategies for member recruitment, internal democracy and accountability (primarily in formal or procedural dimensions as well as in the substance of union representation). These conditions are requirements for ensuring that union leadership takes the interests of its membership into account when negotiating and reaching agreements with governments and employers.[9] On the other hand, the state was a key piece of the institutional design under the model of state-led industrialization, for its capacity to shape political negotiations with unions and resolve redistributive conflicts. However, in the context of neoliberal policies (where the state's range of action is limited) it also becomes essential to consider the degree to which employers may unilaterally impose the conditions under which workers are organized, contracted and employed along with the methods they use to achieve this.

To summarize, my research question refers to the way in which the underlying authoritarian and corporatist legacies in Latin American labor institutions, especially those which shape collective rights, influence the distribution of power

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8 I characterize the Mexican case as "rigid corporatism" (in contrast to Brazil) for the difficulties it creates for the emergence of union organizations that are independent of the government (at the macro level) and employers (at the micro level). However, at the same time the Mexican labor model allows "flexibility through corporatism," considering the role that unions traditionally have played in bending the protections found in labor laws to needs of the employers, which explains the enormous gap between laws and practice in this country, to a much greater extent than in the other three countries examined in this Article. *See* Graciela Bensusán, El Modelo Mexicano De Regulación Laboral 494 (2000).

9 I use these concepts (formal and substantive dimensions of representation) in the sense given by Hanna Pitkin, The Concept of Representation 38-40 (1985), who analyzed the different dimensions of political representation. Pitkin understands the "formalistic view of representation" as that which refers to "someone who has been authorized to act." Greater legitimacy is granted to leaders within democratic proceedings to achieve this representation. "Substantive representation" alludes to how well the interests of members are satisfied through the actions of the representative. *Id.* at 212.

between actors in the labor world; and what this implies, as a result, in terms of opportunities to organize and defend workers' interests through collective action. The cases of Argentina, Brazil, Chile and Mexico serve to shed light on this question given that, as mentioned above, these are countries where trade unionism has held different roles and experienced different trajectories during the past decade. First, it had a primary role as the channel for the expression of workers' demands under the state-led model of industrialization. Second, within the globalization process, these legacies gave unions a privileged role in the function of social control inherent in state-corporatist arrangements and, in extreme cases such as that of Mexico, led to their becoming nearly complete perversions of the meaning of "representation." Finally, while in Argentina and Brazil associational power has somewhat been revived in the past decade, this did not occur in either Chile or Mexico. These cases also allow us to corroborate how the state-corporatist arrangements and authoritarian legacies may function in an alternative manner: while they may provide a buffer against relentlessly antiunion policies, they can also become a straightjacket that restricts union renewal or revitalization.

To analyze this particular question, in this Article I carry out a "contextualized comparison" of the authoritarian and corporatist legacies in the selected countries.[10] I take into account the specific contexts (economic and political factors) and institutional differences that affect the associational power of workers and unions, beginning with their origins and those transformations that were the result of the dual transition and those which were carried out post-transition. I start by analyzing our dependent variable, the evolution of unions and the resultant impact, establishing their connection with institutional evolution (Part I). In Part II, I focus on the independent variable: institutional designs inherited from an authoritarian past and their implications for what I refer to here as associational power and bargaining power, as well as the degree to which states and employers may intervene in the processes of organizing and mobilization.

10 Regarding the advantages of the contextualized comparison and its relationship with the institutional focus, see Richard Locke & Kathleen Thelen, *Apples and Oranges Revisited: Contextualized Comparisons and the Study of Comparative Labor Politics*, 23 Pol. & Soc'y 337 (1995).

I. Union Trajectories: Convergences and Divergences

A. Origins

Unions in Mexico, Brazil and Argentina have common starting points. From an early date, unions in these countries were closely aligned with their governments (those of Cárdenas, Vargas and Perón during the 1930s and 1940s, which were generally characterized as "populist"). This situation allowed them to assert their presence within the framework of state-corporatist arrangements. Furthermore, the authoritarian legacies were forged from the inception of their labor regimes, which showed a remarkable continuity under changing economic and political arrangements.

In contrast, the authoritarian legacy was a later development in Chile and the result of the Pinochet regime (1973-1989), when the labor model experienced a sharp break. In this country, unionism developed in a more independent manner. In its origins, Chilean unionism was classist, with greater margins of autonomy from the state and with political aspirations to transform the capitalist system. Chile's labor legislation offered few worker protections, but also fostered less intervention in union life.

However, these differences in the origins of legacies were reflected more in speech than in practice, given that in all four countries power was concentrated at the leadership levels of union organizations, and there was a tendency to favor political negotiations with the state around labor conditions rather than develop bargaining relationships with employers.[11] Political negotiations were employed in Brazil and in Mexico, in response to the limited structural power of unions in labor markets. This was the case in these countries because wage workers were a minority. Unlike Brazil and Mexico, in Argentina wage workers had been the majority since the beginning of the twentieth century. This explains how the traditional union bureaucracy in Argentina was historically able to maintain margins of relative autonomy, despite the state-corporatist institutional design. At the same time, its alliances with the Justicialist Party, including during the military regimes which prevailed after the fall of Peron in 1955, served as a powerful resource when negotiating with the government.

Within a development model based on the domestic market in Argentina, as well as in Brazil and Mexico, unions acquired significant political and economic power in exchange for control in redistributive conflicts, structuring themselves as national and sectorial unions and in powerful confederations closely allied with political parties (such as the Argentinian CGT and the CTM in Mexico). This organizational monopoly and the financial power

11 Guzmán, *supra* note 2, at 197.

acquired through obligatory union dues payments (in Argentina and Mexico) and union taxes (in Brazil) granted significant benefits to these unions, as we shall see in the next Section. As Adalberto Cardoso asserts, the legislation of Vargas in Brazil acted initially as a "narcotic" on union activism, ensuring the organizations' survival regardless of their membership size, owing to the union tax.[12] Broad protective legislation made collective bargaining less important, a phenomenon also observed in Mexico. Again, the situation in Chile was different from the other three countries, because the labor legislation had historically kept a low profile in protecting workers and unions, to the degree that the CUT (Chile), established in 1953, experienced greater obstacles to growth and won legal recognition only in 1971 under the Allende government.

B. Authoritarian Regimes

The military dictatorships in Argentina (1976-1983) and Brazil (1964-1985) permitted union structures to remain unchanged and even allowed for internal elections. However, the state intervened frequently enough in union affairs to repress the majority of leaders and activists who had been opposed to these traditional union bureaucracies which had been allied with the fallen governments. This was the case with a dissident faction of the Argentinean official CGT, and with the new unionism in Brazil whose leaders, such as Lula, emerged during the military dictatorships.[13]

In Chile, the consequences of the *coup d'etat* and military regime (1973-1989) for leaders and activists were even more severe than in the other countries, with the exception of unions aligned with the Christian Democratic Party, which supported the break with constitutional order. The adoption of the Labor Plan in 1979 put an end to sector-wide collective bargaining and severely restricted the right to strike, establishing an authoritarian legacy that still persists twenty-five years after the arrival of democracy. This legislation fragmented unionism into bargaining units at the shop-floor level. Paradoxically, the decentralization had some positive effects, as it obliged unions to become more organized and cohesive. This led to a growth in union density and an important renewal between 1983 and 1988 when the unions were protagonists in the struggle against the Pinochet regime and in the transition to democracy.[14]

The case of Mexico differs from the others, given that the political regime of

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12 Cardoso, *supra* note 7.

13 Guzmán, *supra* note 2.

14 Volker Frank, *Living in the Past or Living with the Past? Reflections on Chilean Labor Unions Twenty Years into Democracy*, *in* Working Through the Past, *supra* note 2, at 179.

one hegemonic party, authoritarian in nature and with power heavily concentrated in the Presidency, remained stable through an extremely long period of over seventy years (1929-2000). This period was characterized by no institutional break and by strong control over the workers' movement, which was allied with the governing party (the PRI), thus allowing the government also to control how workers could claim their rights and preventing the emergence of unions which might oppose government policies. In this setting, the institutionalization of the ties between the government, the PRI and unions had greater long-term negative consequences than in other countries, consolidating into a "rigid corporatism." This was backed by employers' organizations, which brooked no margin for union autonomy despite numerous attempts to win small openings. This is seen in the systematic defeat of workers' struggles in the late 1950s and the emergence of an insurgent unionism in the mid-1970s.[15]

C. The Dual Transition

The dynamics and sequencing of the economic and political transition processes had differing effects on union trajectories in the region. In Argentina and Brazil, where the democratic transition had an impact before that of the economic transition, unionism was able to regain a degree of its previous strength, in both countries. However, it was later still unable to prevent an intense flexibilization process of labor relations, including legal reforms, which reduced worker protections.[16] Even so, it can be said that the institutional legacies of authoritarian regimes, which still persist within these relatively new democracies, acted as a form of "defensive bunker," in which unions could shelter, first from the onslaught of antiunion policies during the military governments, but later also from those adopted within neoliberal economic models.[17]

The flexibility of corporatist structures in Brazil, a "soft corporatism" in terms of the opportunities made available to penetrate union structures and transform them from within, and where power was concentrated in local unions, allowed the emergence of a new unionism as seen in the CUT (Brazil). This new unionism replaced traditional unionism while preserving the former structures and later — after the 1988 Constitution was ratified — obtained greater guarantees for union autonomy, though never reaching a point where

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15 Kevin Middlebrook, The Paradox of Revolution: Labor, the State, and Authoritarianism in Mexico 222-47 (1995).

16 Cook, *supra* note 2.

17 Cardoso, *supra* note 7; Guzmán, *supra* note 2.

it ratified ILO Convention 87 (Freedom of Association and Protection of the Right to Organise Convention, 1948).[18]

In Argentina, by contrast, despite the creation of a more favorable context for pluralism in 1983 once democracy was achieved and the internal divisions in the CGT surrounding its position on governmental policies had been overcome, the old unionism remained dominant and closely allied with the Justicialist Party. The new CTA (established in 1991) was unable to win the legal bargaining authority necessary for collective bargaining (*personería gremial*), though it did later win official recognition (*personería jurídica*).[19] During the neoliberal Menem government, led by a party traditionally allied with worker organizations, economic reforms deepened and forced the transformation of earlier union structures. In this case, what prevailed were the material interests of union leaders. Historically they controlled vast economic resources derived from the income of social services agencies that they managed for their members, but under the new policies they were unable to defend wages and lost credibility with members and the public.[20] The cooptation of union leadership under the 1990s neoliberal policies resulted in a conversion to "business unionism," accomplished through corruption, business deals, and the steering of significant benefits towards union leaders during the privatization processes.[21]

In Mexico and Chile, unions underwent a process of intense economic reforms under authoritarian regimes, and had fewer opportunities to later improve the adverse correlation of forces generated by the new economic model. In the political transition in Chile (as in Brazil) unions played a leading role, which they gradually lost under the democratic regime. Unions in Mexico, largely within the ruling apparatus of the governing PRI, ostensibly played their conservative role and staunchly supported the authoritarian regime. However, they rapidly adapted to a new party in the federal government in 2000.

In both cases, it is apparent that authoritarian institutional legacies became an effective straightjacket, even with the arrival of democracy, favoring a system of precarious employment and tamping down any attempt at union renewal. For example, in Mexico, the exodus of a large number of union

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18 Cardoso & Gindin, *supra* note 2; Cardoso, *supra* note 7.

19 Bensusán & Cook, *Legacies*, *supra* note 2; Bensusán & Cook, *Transition*, *supra* note 2.

20 Adriana Marshall & Laura Perelman, Why 'Union Revitalization' Is Not an Issue in Argentina? Labour Institutions and the Effectiveness of Traditional Trade Union Recruitment Strategies, Paper Presented at the 29th Annual Conference of the International Working Party on Labour Market Segmentation, Porto 7-11 (Sept. 8-10, 2008).

21 Guzmán, *supra* note 2, at 210.

organizations from the Congress of Labor — which served as the government's instrument — and the formation of a new central in 1997 — the National Union of Workers (UNT) — did not create a genuine alternative for workers due to, among other reasons, the obstacles raised by institutional design, as we shall see in the next Section.

While the CUT in Chile did have a notable political presence in the mobilizations leading up to and during the 1989 plebiscite, which opened the door to democracy, it later reverted to an essentially adaptive and pragmatic strategy within the demarcations of the agreements that led to the transition. The formerly classist unionism thereby adopted a different modality, one that was "sociopolitical," setting aside confrontational tactics and acting more as an "agent of regulation and social control." In this way, unionism was able to contain the repressed social conflict left over from the years of the dictatorship and lend legitimizing support to the continuity of the economic model. This did lead to gradual improvements in job quality. However, in the context promoted by this model there were slim margins for a sustained political exchange with the government, even slimmer for successful micro-corporatist agreements with employers, given the weakened state of the labor movement. An example of the kind of unions that emerged under the new democracy in Chile was the Autonomous Workers Center, created in 1995. Currently the second-largest trade union organization in the country, it openly supports the neoliberal model and asserts — unlike great swaths of Chilean civil society — that Chilean workers currently enjoy decent employment with good salaries, and that discussions of change are unnecessary.[22]

D. Post-Transition

Since 2000, union trajectories have shown even greater divergences than in decades past, revealed in different capacities to organize and win gains for their memberships. After the 2001 crisis in Argentina, which exposed the failures of neoliberal reforms, the governmental policies of Argentina and Brazil shifted. This happened once parties or coalitions on the left end of the political spectrum won elections and reoriented development models towards a greater emphasis on strengthening internal markets. The export boom of raw materials and growth recovery created a more favorable environment for a recovery in minimum wages, and for collective action. This new economic environment opened spaces for social dialogue with union participation, leading to a significant rebound in unions' associational power, improved job quality and expanded social programs, with corresponding reductions

22 *Id.* at 203.

in poverty and inequality. But even before the recovery — and perhaps the change in ideology is most important here — these governments recognized that flexibilizing labor was not a recipe for economic and employment growth and that it would be necessary to strengthen worker protections. Labor policy became a priority and with it, the unions gained strength.[23]

While in Chile the minimum wage grew since the 1990s as a governmental tool to fight against poverty, this did not happen in Mexico and unions did nothing to reverse this policy. The rise in salaries began unevenly in Brazil in the mid-1990s and intensified when Lula reached the Presidency in 2004.[24] In Argentina, wage recovery began in 2004 when trade unions revived, there was an increase in labor conflicts (replacing the mobilizations of the unemployed commonly undertaken in the 1990s), and sector-wide collective bargaining again became more important than shop-floor negotiations.[25] (See Figure 2 in the Appendix.)

In the first decade of this century, while in Chile some candidates from the Socialist party did reach the government as part of the *Concertación* coalition that has governed the country since the 1990s, the opportunities to recover union power did not improve under the Presidencies of Lagos (2000-2006) and Bachelet (2006-2010). This was due to the fact that there were no significant changes in legislation or in labor policy.[26] Therefore, the high rates of growth and the country's economic success in the 1990s and early 2000s were not accompanied by gains for wage workers. Wage growth was not linked to increases in productivity; and the functional distribution of income among the factors of production (wages, rents, etc.), after a period of recovery in the 1990s, continued to deteriorate.[27] (See Table 2 in the Appendix.)

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23 Graciela Bensusán & Juan Carlos Moreno Brid, *La interacción de las políticas macroeconómicas y laborales: continuidades y rupturas* [*The Interaction of Macroeconomic and Labor Policies: Continuities and Ruptures*], *in* América latina en los albores del siglo xxI. aspectos sociales y políticos [Latin America at the Beggining of xxi Century] 145, 167 (Martin Puchet et al. eds., 2012).

24 Cardoso & Gindin, *supra* note 2.

25 Sebastián Etchemendy & Ruth Collier, *Down but Not Out: Union Resurgence and Segmented Neocorporatism in Argentina (2003-2007)*, 35 Pol. & Soc'y 363 (2007).

26 Bensusán & Moreno Brid, *supra* note 23; Evelyne Huber, Jennifer Pribble & John D. Stephens, *The Chilean Left in Power: Achievements, Failures and Omissions*, *in* Leftist Governments in Latin America: Successes and Shortcomings 77 (Kurt Weyland, Raúl L. Madrid & Wendy Hunter eds., 2010).

27 Gonzálo Durán, *Panorama Sindical y de la Negociación Colectiva en el Chile de los US$22.655* [*Outlook of Union and Collective Bargaining in the Chile of US$22.655*], 3 Rev. De Der. Y Seg. Soc. 85 (2013).

According to César Guzmán, in the new Chilean democracy unionism evolved into something resembling corporatism at the shop-floor level, depoliticized and pragmatic, while also creating tripartite bodies for dialogue with governments and employers, with the support of the political parties in *Concertación*, which led to the labor reforms in 1990, 2001 and 2007.[28] The first set of reforms focused on individual rights and the judicial system. Later reforms in 2007 regulated subcontracting, but faced numerous difficulties in implementation and enforcement due to fierce resistance from employers and conservative positions within the judiciary. It is notable that this country experienced the greatest loss of union density of the four countries, as shown in Table 1 in the Appendix.[29]

The authoritarian legacy of the Pinochet regime was strongly questioned by social movements in 2006 and 2011, obliging the CUT (Chile) — which was immersed in a serious crisis of legitimacy due to its "decomposition and fragmentation"[30] — to launch national strikes in 2011 and 2012 in support of striking students, which drew a poor turnout among affiliates. This limited capacity to mobilize has been explained by, among other reasons, the need for an internal democratization process within the organization (including its electoral processes, currently based on a system of indirect representation via delegates with weighted voting power according to the number of workers represented); as also the need for the restoration of its own internal unity. In addition to the questions raised by the lack of a direct and universal voting system, other problems center on the existence of "ghost unions" (interestingly, a concept also used in Mexico) included in electoral rolls, electoral fraud and intervention, the exclusion of dissident workers, and the existence of parallel unions within a single workplace.[31]

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28 Guzmán, *supra* note 2.

29 With an employed labor force nearly triple the size it was in 1973, it was only in 2013 that the country reached the same number of union members from that time, meaning that in this last year only 14.6% the number of potential union members (i.e., excluding the public sector) were unionized, while the figure stood at 33% when Pinochet took office. It is important to add that while under democracy union density has recovered, to 18.2% in 1992, since then the trend has been constantly downward and only began to reverse in 2007. However, the coverage of collective bargaining is even more limited and was only 8.1% of the workforce in 2012 compared to 12% in 1990. Durán, *supra* note 27, at 3.

30 Julián Véjar, Dasten, Diez núcleos de tensión del sindicalismo en Chile [Ten Tension Cores ("Nucleous") of Chile's Unionism], 1 Paper presented in Latin American Congress of Sociology, Santiago de Chile (Sept. 30-Oct. 4, 2013), at 10.

31 *Id.*

Political alternation in Mexico — which began in 2000 when the candidate for the PAN, a party on the right of the political spectrum whose founding platform since the 1930s spoke against corporatist arrangements between the state and unions, became president — also failed to open space for independent trade unionism. Not only were there no changes in macroeconomic, social or labor policies, but there was also an unexpected degree of continuity in the relationship between the state and unions. The frustrated attempts to reform the country's labor law in 2002 — which were initiated by the government and employers — were principally oriented towards granting current legislation greater flexibility without touching the role of the state or employers in the labor model. Union leaders did find themselves with a greater margin of autonomy with a weaker presidency, but without internal democracy, transparency and accountability within the union, this autonomy merely translated into greater opportunities for corruption and collusion with employers, further eroding the public image of unions while lining the pockets of union leaders.

It is in Mexico that the deterioration of the unions' role as the defenders of workers' interests over the past three decades has been the most pronounced. It has worsened to such an extent that there is a generalized inversion of the meaning of representation (union leaders defending the interests of the employers and the government before the workers, rather than the other way around), and widespread simulation in collective bargaining.[32] Importantly, furthermore, there has been a decrease in union density, which has been limited only because workers are essentially captive within their unions due to the presence of "exclusion clauses" that mandate affiliation.[33]

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32 This simulation originates in the signing of collective bargaining agreements between companies and organizations to avoid a genuine unionization of the workforce and to unilaterally determine working conditions, usually leaving them at the level of the Federal Labor Law. As such, these contracts (essentially sweetheart contracts) do not serve the legal purpose of being an instrument to improve such conditions. For more, see Graciela Bensusán, *Los determinantes institucionales de los contratos de protección* [*Institutional Determinants of Employer Protection Contracts*], *in* CONTRATACIÓN COLECTIVA DE PROTECCIÓN EN MÉXICO: INFORME A LA ORGANIZACIÓN REGIONAL INTERAMERICANA DE TRABAJADORES [COLLECTIVE BARGAINING OF EMPLOYER PROTECTION IN MEXICO: REPORT TO THE REGIONAL ORGANIZATION OF INTERAMERICAN WORKERS] 11 (Alfonso Bouzas ed., 2007).

33 These clauses oblige workers to join the union which has been legally recognized as the exclusive bargaining agent for a worksite, in order to be eligible for employment at that worksite, and, until the 2012 labor law reform, threatened the employees with dismissal in the case of resignation or expulsion from the

Illustrative of the degradation of union representation is the fact that the campaign to raise the minimum wage in Mexico, which was launched in May 2014 by the Mexico City government, found among its most tenacious opposition the union leaders who represent workers in the tripartite National Minimum Wage Commission.[34] It is worth noting that the minimum wage lost seventy-five percent of its buying power between 1982 and 2014, and it falls below the poverty line, a unique situation in Latin America.[35] Mexico today has the productivity levels of Chile (the second highest in the region), but a minimum wage level comparable to that of Nicaragua (see Figure 1 in the Appendix). The contraction in minimum wage rates has dragged down the entire salary structure across the economy,[36] as well as making the functional income distribution between labor and capital the worst of the four countries (see Table 2 in the Appendix).

In the new context of political pluralism, as before under the hegemonic party system, unions opposed to government policies experienced widespread attacks of every nature. These practices include the persecution of leaders, the loss of thousands of jobs due to the closure of public utilities, and drawn-out conflicts — usually unsuccessful — to obtain *titularidad* (essentially, legal control or ownership) of collective bargaining agreements controlled by leaders not elected by members, and at times even unknown to them. The result is that, while in Mexico there have been divisions within the labor movement like those seen in the other two countries with a corporatist tradition, traditional unionism remains dominant. The "new unionism," for several reasons (endogenous and exogenous to the organizations, such as factors resulting from institutional design), has been unable to develop into

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union. Graciela Bensusán & Kevin Middlebrook, Organized Labour and Politics in Mexico: Changes, Continuities and Contradictions (2013).

34 The pronouncement was signed on August 13, 2014 by the leaders of the CTM, CROC, CROM and UNT, as well as by the national leaders of the Coparmex, and other business chambers. The CTM leader — the largest central federation — underscored that those who wanted to earn more should be more productive and competitive, and that agreements to improve wages would be settled between employers and workers according to the reality in each worksite. *See* Carmen Aristegui, *Gobierno federal 'batea' propuesta de aumentar salario mínimo* [*Federal Government "Batting" Proposal to Increase Minimum Wage*], Aristegui Noticias (Aug. 13, 2014), http://aristeguinoticias.com/1308/mexico/gobierno-federal-batea-propuesta-de-aumentar-salario-minimo/.

35 Bensusán & Moreno Brid, *supra* note 23, at 191.

36 José Gabriel Palma, *Homogeneous Middles vs Heterogeneous Tails, and the End of the "Inverted-U': The Share of the Rich Is What It's All About* 49-51 (Cambridge Working Papers in Economics, CWPE 1111, 2011)

a genuine alternative for workers. In this context, the legislative reform adopted in 2012 (after more than twenty years on the public agenda) left in place essentially all of the locks which ensure that control over the organizing and collective bargaining processes remain in the hands of the government, employers and their allied unions. Therefore, collective bargaining as well as tripartite structures such as the National Minimum Wage Commission and the Labor Boards operates in favor of the particular interests of union leaders, government and employers and against the interests of workers.[37]

In all, the political and economic changes in these four countries followed different dynamics, while authoritarian legacies persisted with different consequences. There was, first, a notorious convergence of the weakening of trade unions under neoliberal policies with negative impacts on job quality and an increase in poverty and social inequality. However, the trajectories of unions were influenced by the sequencing of the dual transition — which was less adverse to the maintenance of union power in Argentina and Brazil. The more favorable economic context in the decade of the 2000s, and even the ascendancy of leftist governments in three of the four countries, also did not translate into similar evolutions. While in Brazil and Argentina there were greater opportunities to organize, make gains for workers and revitalize union organizations, in Chile this did not occur. The Mexico case is distinct from the others because, first, leftist governments did not reach power at the executive federal level. Second, unionism experienced an extreme degradation in the context of a new manner of engaging in the global economy, based on the export of low-value-added goods and processes of international subcontracting, turning low wages into the country's principal competitive advantage. This model turned out to be incompatible with authentic union representation empowered with the legal authority that labor laws ostensibly grant but simultaneously impede, effectively creating a shield against any attempt to change the distribution of power through a labor law reform.[38]

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37 Bensusán & Middlebrook, *supra* note 33.

38 *See* Graciela Bensusán, *Las instituciones laborales en una perspectiva comparativa* [*Labor Institutions in Comparative Perspective*], *in* Diseño legal y desempeño real: instituciones laborales en América Latina [Legal Design and Real Performance: Labor Institutions in Latin America] 439 (Graciela Bensusán ed., 2006); Cardoso, *supra* note 7; Frank, *supra* note 14.

II. Authoritarian and Corporatist Legacies and Institutional Design: Points of Friction

The context in which institutions are forged and transformed is the first notable difference between labor models among the four countries studied here. As previously mentioned, in the cases of Argentina, Brazil and Mexico, authoritarian legacies were established in the first half of the twentieth century in an economic and political context in which governments sought the inclusion of workers as beneficiaries of development as well as to be the principal motors of growth based in a domestic market. Decades later, problems developed in adapting these institutional arrangements — which strongly protected workers and unions — to the demands of a new economic model. In the case of Mexico, the radicalness of the legislation granting greater coercive powers to unions was owing to the post-revolutionary context in which it was developed, but in practice this legislation had the lowest degree of compliance of the four countries. Even when adjustments were made in the three cases (via laws or in practice) to facilitate this adaptation, especially with regard to greater labor flexibility (Mexico's reforms were the latest to occur, in 2012), it is notable that in the three countries the design of collective rights has been maintained with few modifications from its original formulation in the 1930s and 1940s.[39]

In the case of Chile, the original model was less protective than the other three countries and the authoritarian legacy was established later, during the Pinochet dictatorship when the Labor Plan was adopted in 1979.[40] This Plan's aim was to concede greater discretion to employers and dismantle union power by drastically circumscribing collective rights in order to impose an economic model in which worker benefits should be limited. Another difference from the other three cases is that in Chile there are no unions that owe their creation to an authoritarian legacy.[41]

As argued in the Introduction, institutional designs affect the distribution of power between actors in the labor world. Table 3 in the Article's Appendix summarizes the main similarities and differences in the associational power of unions, according to the main features of institutional design. We can see that unionism in Argentina has significant resources, typical in a regime with a strong corporatism that enjoys centralized collective bargaining and the presence of tripartite bodies; large and diverse sources of funding; and a

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39 Bensusán, *supra* note 38.

40 When the cost of labor (non-salaried) is compared, Chile comes in lowest (38.6% of ordinary salary), followed by Argentina (45%), Mexico (47%) and Brazil (67%). *Id.* at 417.

41 Frank, *supra* note 14.

strong incentive to continuously build its membership in order to maintain stable rates of unionization. According to Adriana Marshall and Laura Perelman, in the 1990s changes in labor markets (high unemployment and informality), the increased presence of multinationals, a loss of credibility, and an unfavorable climate for unions under the neoliberal model generated only a marginal decline in the unionization rate, although the total number of union members did decline.[42] However, given a more favorable context since 2003, union membership numbers have grown, giving unions renewed access to this funding source and allowing them to maintain their traditional passivity in the process of recruiting new members, by only strengthening their presence in the workplace and gaining benefits for union members. In short, the authoritarian legacy continues to generate benefits for traditional unionism, while allowing the persistence of obstacles to the emergence of new organizations with real bargaining power.

In contrast to Argentina, Chile's union system grants workers and unions lower associational power and leaves more room for the intervention of employers. In Mexico, union power resources are significant in scope but remain under strict state control in terms of when and by whom these resources can be used (especially the right to strike); barriers to the emergence of independent trade unionism are very high, and unions have a low workplace presence. Under the neoliberal model, unionization rates in Mexico and Chile have declined and are lower than in other countries. Brazil is in an intermediate situation: although it has monopolistic features and compulsory adjudication for unions, with legal access to funds via mandatory dues, in practice its unions are also highly fragmented and competitive, with a low workplace presence and a decentralized bargaining system, which undoubtedly could be a factor of weakness.

As I have shown in a previous research, another way to compare the strengths and weaknesses of union regimes is by evaluating the implications that compliance with collective rights has for the employers in each of the four countries.[43] For this purpose we used a scale of 1 to 5, taking into account five key aspects of institutional design: unions' power to organize and bargain collectively, collective autonomy, internal democracy, the scope of the right to strike, and the presence of union representatives at the shop-floor level. Through this exercise we find that the highest value, therefore indicating where collective rights are strongest, belongs to Argentina (3.44), followed by Brazil (2.7), Chile (2.6) and Mexico (2.2).[44] Table 4 in the Article's Appendix

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42 Marshall & Perelman, *supra* note 20.

43 Bensusán, *supra* note 38.

44 The methodology and analysis of the results of the index measuring the cost of

summarizes these results. Although these values in large degree correspond to what we have seen in relation to the trajectories of unions in these countries, it is useful to observe the values of each element, as this allows us to understand how within each system there are interactions which counteract or encourage collective rights. The example of Mexico shows this clearly.

As we can see in Table 4, Mexico formally has the highest score (1 of 1) in terms of associational power (right to organize and collective bargaining), followed by Brazil (0.8 of 1). However, Mexico has the lower score in terms of collective autonomy, shop-floor level representation (union delegates) and internal democracy (the highest score here going to Brazil, followed by Chile and Argentina). This implies that the formal dimension of representation is awarded low legitimacy or credibility, something which cannot be compensated for by collective bargaining or a generous minimum wage policy when the margin for political exchange with the government is simultaneously quite limited, as it is in the current export-based model based on low wages. Observing the institutional interaction in this way, we can understand that in Mexico the institutional design contains mechanisms which largely nullify associational power: lack of autonomy, lack of delegates in the workplace, and the concentration of power in union leaderships, without internal democracy or accountability to members.

Needless to say, strong autonomy and internal democracy are incompatible with the unions' role of social control that they were intended to carry out. To the contrary, the power of employers to choose their counterpart for collective bargaining, as well as the institutionalization of tripartism in the labor justice system and in the National Minimum Wage Commission, creates mechanisms to effectively control redistributive conflicts and conflicts between unions. In consequence, trade unionism aligned with the government and supported by employers becomes a barrier to the emergence of an independent trade union movement dedicated to defending the rights of those it represents.[45]

A comparison of the rules and practices in the four countries shows that the same designs may operate differently, depending on context, and different designs may result in similar outcomes.[46] For example, in the case of Argentina and Brazil, union presence and bilateralness in determining working conditions have not been directly called into question by employers. The latter have refrained from doing so even when changes in the labor markets (growing levels of informal and precarious employment, the elimination of manufacturing jobs) have undermined associational power and the power of

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compliance with collective rights may be found *id.* at 417, 482-96.

45 *Id.*

46 *See* Diseño legal y desempeño real, *supra* note 38.

collective bargaining, which had tended to weaken and fragment in the 1990s. While this is not the only factor which may explain this situation, in both labor models, employers could not directly meddle in the organizing process nor are there such restrictions on collective bargaining, as seen in Chile. Moreover, governments are granted broad abilities to ensure the recognition of bargaining authority, to resolve disputes over who should be responsible for bargaining in a given situation, and to mediate employer-labor conflicts by either administrative or judicial means. In this way, the legislation itself also limits the power of a union to inflict damage on its counterparts through prolonged strikes and therefore allows a greater degree of autonomy.

In the case of Brazil, the Constitution of 1988 removed some of the authoritarian legacy and opened the way for greater union liberty by eliminating the requirement to register with the Labor Ministry, allowing registration with civil authorities. The requirement was reinstated after a Supreme Court decision in 2003, based on the fact that the Labor Ministry decides who has the representational rights in each jurisdiction, meaning what union has the right to receive the obligatory union tax.[47] However, a later reform in 2008 legalized union centrals (including federations and confederations), which increased the associational power of unions in this country. Importantly, note that in Brazil the judicial branch, where there are no longer classist judges, has always wielded enormous power in resolving conflicts and imposing labor conditions, by creating — not only enforcing — new rights through a version of arbitration consented to by at least one of the parties. Its intervention has become an instrument for defending labor rights against attacks from neoliberal policies.[48] The judiciary has not prohibited the right to strike, but it has limited the length of strikes, without affecting workers' gains. In other words, instead of prioritizing the prevention and inhibition of conflicts (as in Chile and Mexico), what exists in Brazil is a more sophisticated ability to resolve conflicts through institutional channels, much like in Argentina.[49]

The regimes of collective rights in Chile and in Mexico facilitate a greater degree of unilateralism in determining labor conditions and a greater margin of employers' intervention, which allows them to avoid a strong union counterpart,

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47 Cardoso & Gindin, *supra* note 2, at 17.

48 Adalberto Cardoso & Thelma Lage, *Diseño legal y desempeño real: Brasil* [*Legal Design and Real Performance: Brasil*], *in* DISEÑO LEGAL Y DESEMPEÑO REAL, *supra* note 38, at 167.

49 According to Cardoso, *supra* note 7, Lula introduced incentives for union leaders to adhere to the pillars of the Vargas labor model, such as participation in conciliatory and inclusive mechanisms by the most important federations in the union system, something that Vargas had not foreseen

leading to low union density levels and significantly diminishing the number of strikes during the past decade.[50] However, they are distinct in other regards. In Chile, where there is formally a greater degree of collective autonomy relative to the state and employers as well as better conditions for internal democracy within unions, in turn there is also less union associational power than is recognized in Mexico. The collective rights regime is minutely regulated by legislation, leaving relatively simple conditions for forming unions, thanks to the 1990 and 2001 reforms, but at the same time it strictly limits how collective bargaining may occur as well as the right to strike. Unions have limited economic resources and incentives to encourage unionization. The restrictions on the right to strike create unfavorable conditions for negotiation, leading to meager benefits for union members.[51] At the same time, this promotes the formation of weak, atomized associations, with few collective bargaining agreements and a predominance of collective agreements informally negotiated without the right to strike. As well, ad hoc negotiating groups with the support of employers displace unions in negotiations and later disappear once agreements are reached, leaving behind a very weak level of worker protections. In all, the result in Mexico as well as in Chile is that determining wages and working conditions is a markedly unilateral process; a matter that Erik Wright notes is the main objective of employers.[52]

However, this unilateralism was achieved in the two countries via different designs. In the first place, the existence of ad hoc negotiating groups in Chile is regulated by legislation (which is minutely detailed regarding the process of collective bargaining). This imposes certain criteria obliging a degree of transparency and ensures that the ad hoc group speaks in genuine representation of at least some workers in the workplace in terms of bargaining opportunities and outcomes: a) when the employer receives a bargaining proposal it is required to share its content with all workers, who may then present their own proposals within a thirty-day period by way of their unions or negotiating groups; b) at least eight workers are required to form a negotiating group, who then elect their representatives via secret ballot before a certifying officer, and the company must respond formally, in writing, to the bargaining proposal made by the group of workers; c) the company's proposal should be voted

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50 In Mexico the annual average number of strikes fell from 138 in the period 1989-1994 (when neoliberal policies were implemented) to 18 in the period 2007-2012. Bensusán & Middlebrook, *supra* note 33, at 60. In Chile the percentage of workers with the right to collective bargaining and who participated in a strike fell from 1.5% to 0.65% in the period 1990-2012. Durán, *supra* note 27, at 5.

51 *Id.*

52 Wright, *supra* note 4.

on by the workers via secret ballot in the presence of a labor inspector; and d) unions as well as ad hoc negotiating groups have the right to obtain the necessary information required to develop and present a collective bargaining proposal according to the current situation of the company. Suffice it to say that in Chile, this set of mechanisms makes it difficult, though not impossible, for an employer to manipulate the organizing and bargaining process of the workers.

In contrast, Mexican institutional design creates the opportunity for union leaders (those registered with the labor authorities) and the employers to commit extensive fraud against the law and simulate a nonexistent negotiation through collusion and complicity. These leaders have been granted legal registration and reach agreements with employers with backing from the authorities, at times even before a business begins operations and before workers have been hired. These practices are quite generalized and have been the option of choice for companies in the new economy (service franchises, banks, the *maquila* export industry, companies subcontracted along the chain of production), to where jobs from the traditional manufacturing industry have shifted. This simulated negotiation is assisted by the total lack of transparency or democracy in the unions and the opaque process for selecting a counterpart for collective bargaining (which is unregulated, except when the right to strike is exercised). This complicity is reinforced by the fact that the entire process of registering a union, collective bargaining and strikes is carried out and resolved within the tripartite Labor Boards (with the exception of the registration of unions under federal jurisdiction, which is realized by the STPS). In this instance, the demands of authentic union leaders and independent organizations to obtain legal recognition, collectively bargain or exercise the right to strike are trumped by those actors who seek to evade authentic union representation and worker action, i.e., the union leaders aligned with the company who enjoy government support.[53]

Conclusion

The cases of Argentina and Brazil show that while authoritarian and corporatist legacies remain, they have served to prevent a more pronounced weakening of unions under the dictatorships and neoliberalism. In a more enabling environment, when the state reinforced its interventions in labor markets to partially correct the high costs of the neoliberal model, unions used their old institutional sources of power to extend their presence and once again

53 Bensusán, *supra* note 38.

win gains for their members (strengthening the substantive dimension of representation).

The main questions raised in Argentina and Brazil focus on the existence of a monopolistic union regime which concentrates the sources of power (such as the ability to collectively bargain once the *personeria gemial* has been received or the obligatory union tax, respectively) in the hands of majoritarian organizations, depriving other organizations of the same. While in Brazil there were sustained efforts to modify this situation, consensus was never reached over a new model. Even the CUT, which has always sought a reform in this direction, in the end opted to maintain the status quo. Recall that this is a new unionism which was able, in this case, to overcome institutional barriers to revitalize itself once democracy arrived, and to maintain broad collective bargaining contract coverage (nearly sixty percent of wage workers), with salary and job quality improvements; as such, its conservative position on labor reform is understandable. However, it is not clear if the CUT will be able to maintain the advantages of the ongoing authoritarian legacy in the low-growth context which is currently affecting the country, or if the union centrals will have the capacity to launch a broader and more aggressive representation on behalf of informal and precarious workers, who remain an important part of the labor market (along with the urban and rural poor).

The situation is even more complicated in Argentina. Traditional unionism (in its varied formats) continues to be the main beneficiary of the state-corporatist regime, both for the relative monopoly of union options and because it manages social services and other resources that it could defend and even expand in exchange for tolerating the reforms adopted in the context of neoliberal policies. The differences established between unions with the right to collective bargaining and those with simple state recognition constitute the main point of friction impeding freedom of association, a deeper revival of Argentinian trade unionism, and even greater democratization of unions. For this reason, this differentiation has been the subject of serious question by the nation's Supreme Court, the ILO and the CTA.[54] These authoritarian and corporatist legacies have permitted important margins of internal autonomy and, to an extent, have not detracted from the substantive dimension of their representation.

However, they result in low levels of legitimacy and credibility of the leadership of the unions due to the lack of internal democracy and the business and corruption opportunities, along with wide swaths of precarious workers who do not benefit from collective action. This has led to the term "segmented neo-

54 *See* Adrian Goldín, *A Supreme Court Challenge to Argentina's Trade Union Model*, 148 Int'l Lab. Rev. 163 (2009).

corporatism" for this model of unionism.[55] Even so, new forms of organization have emerged from the rank and file. These new forms of more "grassroots" organization in many cases take advantage of the shop-floor delegate structure to produce more combative organizations, closer to the interests of the workers, and demanding autonomy from traditional unions. Such new organizations aim to provide an alternative in a context of growing divisiveness of the old structures whose stances continue to be defined by their relationship with, or in opposition to, the government.

For its part, the Chilean case confirms that economic growth is insufficient to improve opportunities for collective action, given that high rates of economic growth during the 1990s and 2000s were accompanied by a striking weakening of trade unionism. In fact, currently Chilean trade unions have less presence and bargaining power than they did when democracy and the *Concertación* governments arrived. Chile exhibits an economic model that has been relatively successful, becoming one of the twenty-five nations that have most grown as it quadrupled its per capita income between 1990 and 2015 (to $22,655). Moreover, Chile's economic growth has turned it into a high-income country with high levels of economic formality, but with a notoriously weak trade unionism, a deterioration in working conditions, and high rates of inequality.[56]

This reality lies behind the decision of the second Bachelet government to propose a new labor law reform to eliminate some elements of the authoritarian legacy of the Pinochet regime. The main changes needed would be to remove the restrictions on collective bargaining content, the prohibition on sector-wide collective bargaining, the exclusion of varied groups of workers from the right to bargain, the disincentive to collective action, the legalization of parallel unions and negotiating groups, the employer's ability to define the scope of the collective agreement, and the employer's ability to use strikebreakers during strikes from nearly the first day under certain conditions.[57] However, still, in terms of both the minimum wage and the functional distribution of income, Chilean workers are much better off than their Mexican counterparts.

Finally, the Mexican case serves as an extreme example of the deterioration of the unions' role as the defenders of workers' interests over the past three decades and of the need for a dramatic change of institutional design. The authoritarian legacy remains present in labor laws which, in the post-revolutionary context in which they were born, formally granted great associational power to unions, but included in the same institutional design the necessary elements to place it at the service of the interests of union cupolas, employers, and sustained labor

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55 Etchmenedy & Collier, *supra* note 25.

56 Durán, *supra* note 27, at 1.

57 *Id.* at 2-3.

peace through union control. The preservation of labor peace, expressed in the near-absence of strikes, has been a goal pursued by all governments whatever their political stripe. In this context, tolerance for extensive corruption was a state resource historically used in the service of disciplining the leaderships of large unions and confederations where all union power was concentrated.

The comparative study of the different national contexts shows us how differences in the broader institutional environment— the strength of the rule of law in Chile, unlike in Mexico — are important, and explain why while in Chile neoliberalism led to weaker trade unions, it led to their total degradation in Mexico, where with few exceptions there is now an inverted sense of representation.[58] Moreover, the contextualized comparison, as it identifies equivalent mechanisms for weakening trade unions within apparently distinct institutional designs, allows us to show how these mechanisms can follow the same route (unilateral employer action). In the immediate future, specific reforms will be indispensable, in order to open the way to a deeper revitalization, renovation and democratization of the unions in Argentina and Brazil. In the latter country we must take into account that the internal democracy of the CUT Brazil may have been weakened due to its links with recent governments.

In Chile and in Mexico major institutional transformation is required. In Chile this process seems to be underway, although there is a strong resistance to adopting profound changes in the collective rights. Yet, in Mexico, the last labor reform (2012) did little to remove the authoritarian legacy in collective rights. However, not only must the institutional design in Mexico change to redistribute power in the labor world and effectively enforce labor legislation, but it will also be necessary to modify the broader institutional environment to make the rule of law a reality.

58 Bensusán & Middlebrook, *supra* note 33.

Abbreviations

CGT	General Confederation of Labour
Coparmex	Employers´ Confederation of the Mexican Republic (Confederación Patronal de la República Mexicana)
CROC	Revolutionary Confederation of Peasants and Workers (Confederación Revolucionaria de Obreros y Campesinos)
CROM	Regional Confederation of Mexican Workers (Confederación Regional de Obreros Mexicanos)
CTA	Argentinean Workers Center (Central de Trabajadores Argentinos)
CTM	Confederation of Mexican Workers (Confederación de Trabajadores Mexicanos)
CUT (Chile) CUT (Brazil)	The Workers' United Center of Chile (Central Unitaria de Trabajadores)) Unified Workers' Central (Central Única dos Trabalhadores)
ILO	International Labour Organization (Organización internacional del trabajo)
PRI	Institutional Revolutionary Party (Partido Revolucionario Institucional)
STPS	Secretariat of Labor and Social Welfare (Secretaría del Trabajo y Previsión Social)
UNT	National Workers' Union (Unión Nacional de Trabajadores)

Appendix

Table 1: Latin America Rates[59]

	Unionization rates			Collective bargaining rates		
	Year	Wage Employees (%)	Total Employees (%)	Year	Wage Employees (%)	Total employees (%)
Argentina	2006	37.6	---	2006	60.0	---
Brazil	2007	20.9	17.8	2006	60.0	---
Chile	2007	11.5	13.6	2007	9.6	6.5
Mexico	2008	17.0	11.2	2007	10.5	6.9

Table 2: Earnings Participation in GDP[60]

	Around 1990 (a)	Around 2000 (b)	Around 2009 (c)
Argentina	44.7	40.5	42.9
Brazil	53.5	47.1	51.4
Chile	38.7	46.5	45.4
Mexico	32.3	34.5	32.2

59 Source: Susan Hayter & Valentina Stoevska, Social Dialogue: Indicators International Statistical Inquiry 2008-09: Technical Brief (2011).

60 Source: Martín Abeles et al., *Participación del ingreso laboral en el ingreso total en América Latina, 1990-2010* [*Share of Labor Income in Total Income in Latin America, 1990-2010*], 114 CEPAL 31, 44 (2014).

Table 3: Similarities and Differences in Associational Power[61]

Union regime	Brazil (″soft corporatism″)	Chile (from autonomy to microcorporatism post-transition)	Argentina (″strong corporatism″)	Mexico (″rigid corporatism″)
Ratification ILO Convention	98	87 and 98	87 and 98	87
Critical aspects	Compulsory union tax and unity in each jurisdiction	Severe restrictions on collective bargaining and right to strike	Restrictions on unions with recognition but without "personería gremial"	Discretional choice of union partner in collective bargaining by employer
Union unity vs pluralism	Compulsory unity (industry or professional level in each jurisdiction: local, state or country) but highly fragmented and competitive in practice	Pluralism but highly fragmented in practice	Compulsory unity at the industrial level	Formally pluralism but with monopoly of representation via closed-shop
Union registration authority	Civil authorities but Labor Ministry determines which union has the monopoly of representation and obtains the compulsory union tax.	Labor Inspection	Ministry of Labor. Monopoly of collective bargaining is recognized for the most representative union.	Ministry of Labor (federal jurisdiction) or Conciliation and Arbitration Boards (local jurisdiction)
Protection against antiunion practices	Yes	Yes	Yes	No

61 Sources: For Brazil: Cardoso & Gindin, *supra* note 2; and Amauri M. Nascimento, curso de direito do trabalho (2011). For Argentina: Marshall & Perelman, *supra* note 20. For Chile: Durán, *supra* note 27. For Mexico: Bensusán & Cook, *Legacies*, *supra* note 2; Bensusán & Cook, *Transition*, *supra* note 2.

Union regime		Brazil (″soft corporatism″)	Chile (from autonomy to microcorporat-ism post-tran-sition)	Argentina (″strong corporatism″)	Mexico (″rigid corporatism″)
Collective bargaining		Decentralized at firm level or collective convention for compulsory jurisdiction (different categories at local level)	Decentralized at firm level and informal collectives conventions without right to strike	Centralized at industry or sector level; firm level.	Decentralized at firm level and few law-contracts (industry or sector).
Right to access to information before collective bargaining		No	No	No	No
Other negotiators (different unions)		No; if no unions, federation or confederation can negotiate	Yes, bargaining groups supported by the firm	No	No
Dispute resolution by the State		Judicial power can intervene in collective conflicts	Yes	Yes	Only if both parties agree
Scope of right to strike		Wide, arbitration on request of one party	Limited, with replacement of strikers	Wide, arbitration on request of one party	Wider than the others. Unlimited duration. Arbitration only on request of both parties
Union Resources	Collective bargaining effects	Erga omnes	Unionized workers. Benefits can extend to nonunionized workers if the employer decides and they pay 75% of union's fees,	Erga omnes. Non-members could be obligated to pay fees to the union with a monopoly of representation.	Erga omnes
	Union workplace repre-sentation (strong resource for union-ization)	Must be negotiated with the employer.	No	By law in places with ten or more workers, and by collective bargaining	Exceptional by law and collective bargaining

Union regime	Brazil (″soft corporatism″)	Chile (from autonomy to microcorporatism post-transition)	Argentina (″strong corporatism″)	Mexico (″rigid corporatism″)
Sources of funding	Compulsory union tax for all waged workers	Union's fees	Union's fees and employer contributions stipulated in collective agreements. Union-managed scheme of healthcare provision for all waged workers	Compulsory fees and employer contributions stipulated in collective agreements
Affiliation and Incentives to recruit members	Voluntary; Positives;	Voluntary; Positives but scarce	Voluntary; Union-managed healthcare provision for waged workers, and services (tourism, sports, legal advice and others)	Compulsory and negatives (closed shop)
Political activities	Permitted	Prohibited	Permitted	Permitted
Tripartite instances of participation	Yes Example: National Labor Forum, 2003, to discuss a new labor code	Yes	Yes (Example: Wages Councils)	Yes (Administrative, like CNSM and Labor justice)

Table 4: Strength of Union Regimes (Regulation of Collective Rights)[62]

Index	Argentina	Brazil	Chile	México
Union Power	0.60	0.80	0.60	1
Collective autonomy	0.67	0.50	0.83	0.5
Internal democracy	0.75	1.00	1.00	0.25
Scope of right to strike	0.42	0.33	0.33	0.50
Union representatives at the shop floor level	1.00	0.00	0.00	0.00
Total	3.44	2.63	2.76	2.25

Figure 1: Labor Productivity and Minimum Wage in Latin America, 2010[63]

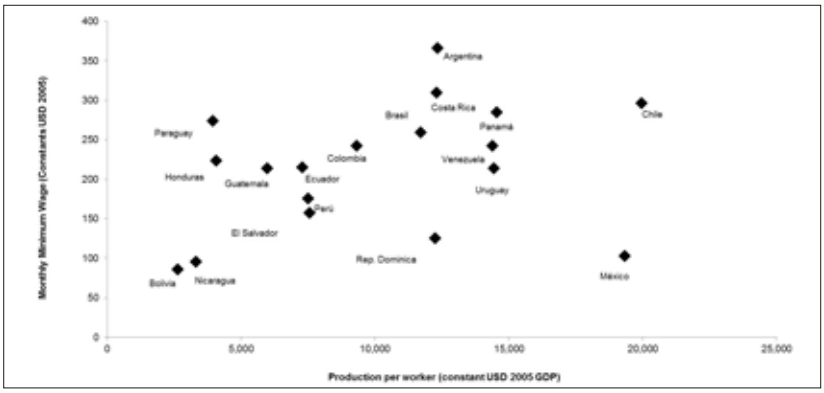
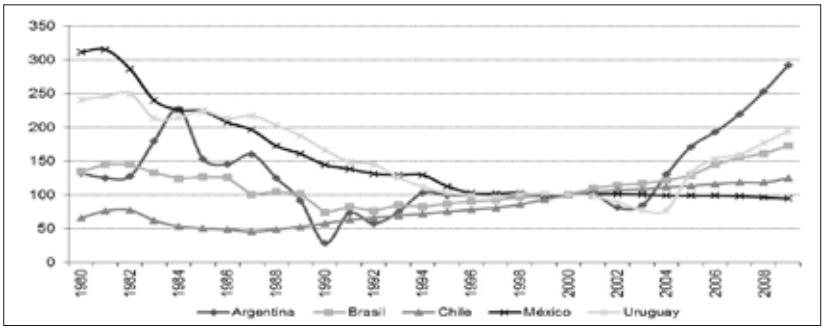


Figure 2: Evolution of the Real Minimum Wage (Index, Base 2000=100)[64]



62 Source: Bensusán, *supra* note 38, at 417.

63 Source: Juan C. Moreno Brid et al., *Salario Mínimo en México* [*Minimum Wage in Mexico*], 11 Rev. Eco. 33, 78-89 (2014).

64 Source: Bensusán & Moreno Brid, *supra* note 23.