

X. The Changing Global Context of Labor Laws and Their Enforcement

Labor Law Reform and Union Decline in Latin America

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Abstract

In response to growing concerns of state decline resulting from market-oriented reforms, an increasing number of scholars have found that in the area of employment relations most labor laws have become more protective of labor rights. Reforms have reduced requirements for union formation, eased restrictions on strikes, and extended unionization to public-sector employees. However, a decade after the implementation of the reforms, labor unions continue to lose members. This paper argues that the cause of union decline is linked to three factors: (1) the limitations of the reforms; (2) deficiencies in state enforcement capacity; and (3) adverse economic reforms.

In the early 1990s a wave of scholarship predicted an unprecedented decline of the state due to economic globalization (Ohmae 1995). Extending this view to the area of labor relations, some observers have suggested that globalization creates pressure for more flexible labor relations regimes with weaker collective rights (Cingranelli 2003). Scholars of Latin American employment relations responded to these arguments by indicating that labor laws in fact have become more protective of collective labor rights due to democratization, labor movement activism, and external pressure (Bronstein 1995; Cook 1998; Murillo

and Schrank 2005). Yet this literature does not explore why labor unions have continued to lose members despite favorable labor law reforms.

In this paper I argue that collectively these labor law reforms were relatively minor—especially in the context of dramatic economic changes. Some reforms, such as decreasing the number of workers needed to form a union, contributed to greater union fragmentation as opposed to stronger union movements. Most of the reforms did not take into consideration the dramatic restructuring of the economy, most notably international outsourcing and the growing informal sector of the economy. Finally, as trade liberalization created the need for a more vigilant state to avoid competition through violations of labor laws, the enforcement capacity of Latin American states was inadequate.

Labor Law Reforms in Latin America

Beginning in the late 1980s most countries in Latin America reformed their regulation of employment relations. In 1988, after two decades of military dictatorship, the Brazilian government not only reinstated collective labor rights that had been curtailed but also expanded unionization rights to public-sector workers. In subsequent years eight other countries followed suit by enacting labor-friendly collective labor law reforms. For some countries, like Brazil, favorable reforms were the result of democratization and influential labor movements. In Latin America's smaller countries, like El Salvador and the Dominican Republic, positive reforms resulted from international pressure applied through the labor rights clause in the United States trade program, the General System of Preferences (GSP).

Four countries—Chile, El Salvador, Nicaragua, and Panama—reduced the number of workers required to form a union. On average, twenty workers are needed to form a union in the region. Other changes included an easing of strike regulations. The Dominican Republic, Nicaragua, and Peru now require a simple majority of workers in a work center to call a strike. Previous laws required support from as much as 75 percent of the workforce for strike authorization (Lora 2001). Other reforms were scattered throughout the region. Argentina and Peru gave unions the right to employer financial information to facilitate collective bargaining. Brazil and Paraguay legalized unionization in the public sector. Reforms in Guatemala simplified the procedures to form unions and increased employer fines for violations (Fruendt 1998, 150–151).

Yet in the years following the reforms, unions in Latin America have continued to lose members. While data on unionization rates suffer from many limitations, what data do exist suggests that there is no significant difference in the rate of decline in those countries with union-friendly reforms and those

countries with union-averse reforms (Anner forthcoming). I argue that three factors explain the continued decline of unions in Latin America despite the mostly union-friendly reforms. First, the reforms were relatively limited and individual employment law reforms often undermined the collective reforms. Second, enforcement mechanisms remained inadequate. Third, market-oriented economic reforms were too deep and far-reaching to be adequately mediated by the labor law reforms. In the sections that follow, I will examine each factor in turn.

The Limitations of the Reforms

As mentioned above, one common reform of Latin American labor laws was a reduction in the number of workers needed to form a union. The International Labor Organization (ILO) considers restrictions on union formation such as a high membership threshold to be a violation of freedom of association. Making union formation easier is seen as unambiguously favoring labor. Yet, is this always the case? In fact, the end result may be a proliferation of small, fragmented unions (Caraway 2006). This is especially true if reforms do not also facilitate collective bargaining and the right to strike.

For example, following the enactment of union facilitation reforms in El Salvador, the number of manufacturing unions in the country increased by 12.5 percent, yet the unionization rate in the sector dropped by 14 percent (Ministerio de Trabajo y Previsión Social 2001). That is, there were more unions but fewer union members in El Salvador. Elsewhere, while restrictions on strikes were reduced in a few countries, most countries still required at least 50 percent of the workforce to support a strike before allowing workers to exercise this right, in addition to other requirements. In general, strikes have declined in Latin America, and in some countries they remain very rare. In Costa Rica there have only been two legal strikes in the last fifty years (ICFTU 2001).

Collective bargaining in some countries requires a significant portion of the workforce to be union members, and thus it is much more difficult to bargain than to form a union. In general, the labor law reforms have facilitated the formation of small, fragmented unions with weak or no bargaining power. In many countries, the reforms failed to radically alter the old corporatist system, a system that was designed for protected economies, not the export-oriented economies of today. For example, in Brazil limitations on national union formation and union plurality were maintained, as was a union tax imposed on all workers where a union is present.

While collective labor law reforms most often were somewhat favorable to labor, individual employment law moved in the direction of greater flexibility. This is a reflection of the more general trend toward market-oriented reforms

in the region. Part of this shift was due to a change in domestic politics as proponents of market reforms were elected president. But it is also a result of international pressure from institutions like the International Monetary Fund and the World Bank.

The World Bank has developed indicators on the ease of doing business in countries around the world; these indicators are used as part of their loan conditionality in developing countries. Most notably, the World Bank has called for greater labor market flexibility. Countries can achieve greater flexibility by reducing social security taxes, increasing the retirement age, and lowering severance pay requirements (World Bank 2005). One result of this form of loan conditionality is an increase in the ease of dismissing workers. The average cost of laying off a worker in Latin America has declined by 15 percent since 1985 (Lora 2001). In some cases, the ease in dismissing workers has hurt labor union organizing because labor activists can also be dismissed with greater ease. Thus, while collective labor laws may slightly favor labor, the growing flexibility of individual employment law reforms may, in some cases, undermine collective labor law reforms.

Inadequate Enforcement

The second major limitation of the labor law reforms is the lack of adequate enforcement. Any system based on the rule of law requires not only adequate laws but also a means to detect violations and a system of punishments for violators. However, most Latin American states display noticeable weaknesses in the area of labor law enforcement. A brief examination of the number of inspectors, fines levied, and budgets of Ministries of Labor provide an indication of these limitations.

In Peru the Ministry of Labor receives only 0.7 percent of the national budget. In Bolivia there are only eighteen workplace inspectors for La Paz, which has a population of over one million. Since the average salary of a Bolivian labor inspector is US\$165 per month, many inspectors work second jobs in order to meet their financial obligations (ILO 2006, 70). In Guatemala the government provides the Ministry of Labor with a paltry 0.18 percent of the national budget (Ministry of Public Finance 2005).

The budget of the Salvadoran Ministry of Labor accounts for 0.23 percent of the total central government budget. As part of the negotiations surrounding the Central American Free Trade Agreement (CAFTA), the United States government applied pressure on El Salvador to increase the resources it dedicates to labor law enforcement. This resulted in a slight increase in the Ministry of Labor's budget from 2004 to 2005. However, the overall share of the ministry's budget is still less than one quarter of 1 percent of the national budget and remains below the 2002 level.

In Brazil the number of workplaces visited by labor inspectors dropped from 414,875 in 1990 to 304,254 in 2002. During this same period, the number of inspectors per 100,000 workers declined from 5.61 to 3.63 (Ministério do Trabalho e Emprego 2007), and the number of fines levied on employers for labor rights violations dropped from 1.41 per 100,000 to 1.17 per 100,000 (IDB 2003, 278).

Scarcity of resources also affects the ability of labor courts to carry out their duties. In Paraguay, which has the lowest unionization rate in South America, court cases involving fired union leaders have lingered for up to nine years (U.S. Department of State 2007). In Brazil some three million worker complaints have lingered in the labor courts in 2003, and some cases took five to ten years to resolve (U.S. Department of State 2003).

Market-Oriented Reforms

Perhaps the biggest factor undermining Latin America's collective labor law reforms is the dramatic transformation in the economies of the region. Since the 1980s the liberalization of financial markets increased by an astonishing 166 percent, and the average trade tariff imposed on imports dropped from 48.9 percent in 1985 to 10.7 percent in 1999 (Lora 2001). Furthermore, Latin America was home to the deepest and quickest privatization program in the developing world. Between 1986 and 1999, some 396 major state operations were privatized, the sale of which amounted to over half the value of all sales made by developing countries during this period (Lora 2001).

The shift toward market-oriented reforms not only facilitated trade and financial flows; it also contributed to a dramatic restructuring of productive activity. Most notably, it signified the end of large, protected industries and the beginning of globally integrated production networks. In many cases, manufacturers shifted from producing goods for the local market to assembling components for exports to foreign markets. One example of this new form of production is Export Processing Zones (EPZs). In the EPZ system, multinational corporations (MNCs) design and market apparel while outsourcing almost all production to industrial parks located in developing countries. Over 2.5 million people work in EPZs in Latin America, with 1.2 million in Mexico, 700,000 in Central America, and 540,000 in the Caribbean (Singa Boyenge 2007).

While EPZs represent perhaps the most dramatic example of industrial restructuring, there are other processes that have had adverse effects on unions as well. In the auto and other heavy industries, corporations have outsourced increasingly complex components of their products through systems of modular production (Salerno 2001). Every major auto plant built in Brazil since 1996 uses modular production as opposed to the traditional, centralized Fordist system.

These work centers that form part of international production networks face structural constraints that often inhibit unionization. For example, under outsourcing systems multinational firms often provide their subcontractors with the materials needed in the production process. The result is that the single greatest production cost for subcontractors is labor costs. As a result, subcontractors work especially hard to keep unions out in order to keep wages low. At the same time, the geographic dispersion of workers through international production networks accentuates labor's collective action problem, making efforts to improve wages and benefits all the more difficult. Due to these factors, unionization rates tend to be much lower in these new production networks relative to the traditional, protected enterprises. For example, while 65 percent of workers in the old, traditional auto plants in Brazil are unionized, only 37 percent of workers in new modular plants are union members (Anner 2003). In Mexico the unionization rate in EPZs is one third the rate of large traditional enterprises (Bizberg 1996).

One additional economic shift that has been detrimental to unionization is the growth of the informal sector. On average, 53 percent of Latin Americans work in informal activities, an increase of 11 percent since 1990 (ILO 2005). Many informal-sector jobs—street vendors, shoe-shine boys, etc.—do not entail a traditional employment relationship (work at a wage rate for an employer) and thus preclude unionization. Where a traditional employment relationship does exist, workers in small, informal enterprises often are prohibited from unionizing by laws that require twenty workers or more to form a union. Thus, part of the decline in national unionization in Latin America can be linked to the shift in employment to the informal sector.

Conclusion

Labor law reforms in Latin America indicate that the state remains important in regulating employment relations. Since the late 1980s, more often than not, collective labor laws have been more, not less, protective of labor. However, labor unions in the region have continued to lose members. This is because the labor law reforms were relatively minor and often encouraged union formation without facilitating collective bargaining or strike leverage. The laws also have not been able to address the profound economic changes in the region, most notably the increase in informal employment and industrial restructuring. Finally, enforcement mechanisms in the region have been weak.

Yet labor relations transformation in Latin America remains a dynamic process. In Brazil the labor movement is now working with the government of the ex-union leader Luiz Inacio "Lula" da Silva to enact union-friendly

reforms, and the Lula government has recently dedicated more resources to enforcement. Central American countries and the Dominican Republic also recently were forced to dedicate more resources to enforcement in order to join CAFTA. It is not clear whether these changes are enough to reverse the decline of organized labor in Latin America. Yet whatever the future of organized labor in the region might be, a fuller analysis of the dynamics of labor relations must look beyond labor laws to explore state capacity and economic transformation.

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