

# Toward Flexible Industrial Relations? Neo-Liberalism, Democracy, and Labor Reform in Latin America

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Neo-liberal economic reforms have placed significant pressure on traditional industrial relations systems throughout Latin America. In this context, most countries have revised their basic labor legislation. Yet, despite similar economic pressures, countries have moved in varying directions in revising their labor laws, and industrial relations systems remain highly diverse. This paper focuses on democratization, institutional legacies, the role of organized labor, and the political negotiations surrounding labor law changes to help explain this diversity.

LATIN AMERICA HAS SEEN sweeping political and economic changes in recent years. Most countries underwent a transition from authoritarian rule to democracy during the 1980s. The region also experienced a shift in economic development strategies away from import-substitution industrialization toward the adoption of “neo-liberal” economic policies oriented toward exports. In addition, virtually every Latin American country has revised its basic labor law in recent years. Yet, while the economic and political changes affecting the region were similar, countries reacted differently in revising their labor laws. Some countries made their laws more flexible. Others responded by strengthening

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employment protection for workers and retaining a strong role for the state in industrial relations. This lack of unidirectional movement in labor law changes in the context of similar pressures posed by economic liberalization requires a deeper analysis of the complex factors that led to labor law revision in each country.

This paper describes these recent trends and attempts to explain why labor law moved in varying directions throughout Latin America. The analysis focuses on labor law rather than on other industrial relations changes for several reasons. Labor law establishes the framework in which industrial relations operate. Changes in the law therefore provide a good indication of the nature of change in industrial relations systems generally. Changes in labor law are also among the most visible and most documented labor reforms in the region. Moreover, because of heavy legal regulation of labor relations in Latin America, legal change is often the principal means for introducing flexibility, whereas in other countries flexibility may be introduced through collective bargaining or personnel management (Córdova, 1996). Finally, the negotiation and conflict that surround efforts to revise labor law reflect a struggle to redefine the key institutions of industrial relations for years to come.<sup>1</sup> A focus on labor law, therefore, provides a window into the complex dynamics of industrial relations institutional change in the region.

This paper is divided into four parts. The first part provides an introduction to traditional industrial relations patterns in the region and describes the recent twin pressures for change acting on these systems: democracy and neo-liberalism. Part two discusses the character of labor law in Latin America and provides examples of changes that have taken place in individual employment law and in collective labor relations. The third and fourth sections analyze why changes in the region have moved in different, sometimes contradictory directions, drawing from selected country cases. The paper concludes by stressing the importance of national institutional legacies and of political conflict and negotiation for understanding the persistence of highly varied industrial relations systems in the region despite increasingly similar economic contexts.

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<sup>1</sup> For example, the contentiousness surrounding labor law has been evident in Panama, where protests over the 1995 labor law revision left four dead and led to 500 arrests. In Argentina, labor confederations staged a general strike in December 1996 to protest further flexibilization. In Venezuela and Colombia, labor reform took years of debate to pass through their respective congresses, and in Mexico, the labor movement was able to fend off revision of the labor law for years.

## Industrial Relations Patterns and Pressures for Change

Studies of change in industrial relations systems have focused largely on advanced industrial countries and therefore have limited application to the special circumstances of developing countries. In the United States, for instance, recent analysis identifies employers, not governments, as the driving force for change (Kochan et al., 1994). Yet in Latin America and in other developing areas, industrial relations changes appear to depend on deeper structural reforms in the economy and, in particular, on development strategy shifts that affect various arenas simultaneously.<sup>2</sup>

The link between industrial relations change and economic strategy in the developing world draws our attention to the important role of the state. The state is often the chief architect of economic reform as well as of legal and institutional changes in industrial relations. Given the extensive regulation of labor relations in Latin America and the protective thrust of most labor legislation, most flexibilization of industrial relations also begins with the state and with the law. Governments may either implement legislative reform or facilitate de facto flexibilization through nonenforcement of existing legislation and other practices. The importance of sweeping political change—democratization in the Latin American case—also bears on the question of industrial relations in the region. Hence politics plays a central role in the analysis of industrial relations change as well.

*Origins of Labor Law.* The first labor legislation adopted by Latin American countries reflected government efforts to address the social conflict that accompanied the emergence of an urban industrial work force. With the exception of Uruguay, labor legislation did not emerge in the region until after 1917, and in most countries not until the 1930s. Indeed, the industrial work force did not occupy a central role in any national economy until after 1930 (Hall and Spalding, 1986). Labor laws developed at that time reflected the belief that the state should intervene to protect the individual worker against employers, explicitly recognizing the power imbalance that existed between labor and capital. For these reasons, much labor legislation was and remains highly detailed, covering working conditions, benefits, leaves, holidays, compensation, and so forth, with some of these provisions constitutionally enshrined as social rights<sup>3</sup>. While it was paternalistic

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<sup>2</sup> Kuruvilla has advanced this argument with regard to Southeast Asia (Kuruvilla, 1996).

<sup>3</sup> For example, besides guaranteeing freedom of association, the right to organize, and the right to strike, Article 123 of the Mexican Constitution guarantees minimum wages, hours of work, overtime pay, maternity leave, vacations and holidays, profit-sharing, job training, safety and health and workers' compensation, just cause for discharge, severance pay, and other working conditions.

regarding individual workers, legislation also reflected the state's mistrust of unions as an independent force by granting authorities a strong role in controlling union activities and intervening in industrial relations, eliminating or restricting any autonomous means by which workers could express their political and economic will (Bronstein, 1997; Hall and Spalding, 1986).

This social-protectionist and interventionist legislation coincided with an import-substitution phase of industrialization that for many countries began in the 1930s. Import-substitution industrialization involved protection of the domestic market and a heavy state presence in the economy. The political inclusion of the working class also coincided with this development strategy. It was achieved through complex forms of legislation that were aimed at securing the adherence of trade unions to the state or to political parties in power (Collier and Collier, 1991). "Corporatist" legislation extended inducements to unions, such as subsidies and exclusive representation, in exchange for restrictions on their autonomy and effectiveness (Collier and Collier, 1979). Corporatism in such countries as Brazil, Argentina, and Mexico also reflected an effort to promote harmonious capital-labor relations through strong state mediation. Corporatism played less of a role in other countries, such as Chile, Peru, Bolivia, and Uruguay. In these countries, trade unions developed more autonomy from the state, and some ultimately established ties with Marxist parties.

The politicization of labor was therefore an important regional characteristic. Rather than rely on what was often their weak economic bargaining power, unions in many countries adopted political and militant strategies targeting the state directly, enlisting the support of other groups, and mobilizing in the streets, in what Payne (1965) referred to as "political bargaining." The prevalence of political bargaining reflected the historical weakness of collective bargaining. This weakness was due to the abundance of labor and sporadic enforcement of legislation, which made economic strikes ineffective, as well as to the state's role in settling disputes, which politicized capital-labor conflicts.

In the 1960s and 1970s, the economic strains generated by the breakdown of the import-substitution model led to a crisis of democratic regimes throughout the region. Most Latin American countries experienced periods of military rule at some point in their histories, but almost every country in the continent was under some form of authoritarian rule during the 1970s and part of the 1980s. The military regimes of Argentina, Chile, Brazil, Uruguay, Guatemala, and El Salvador, in particular, were marked by extensive human rights abuses. At a minimum, collective rights to organize, bargain, and strike were suppressed under these regimes. In Chile, the military government implemented an entirely new labor code in an effort to redefine

industrial relations (Ruiz-Tagle, 1989). In Brazil, legislation dating from the 1940s provided military rulers with ample opportunity to control labor activities (Mericle, 1977; Pastore and Skidmore, 1985).

*Democratization.* In the 1980s, most countries returned to civilian government as support for military regimes crumbled under the pressure of economic crisis, prolonged human rights violations, and military failures such as the Argentine military's defeat in the Falkland Islands war with Britain (see Table 2). Democratization had a significant impact on industrial relations systems throughout Latin America. It restored collective rights to workers where these were dismantled under authoritarian regimes. It also enabled unions to restore ties to political parties and to reoccupy their places in the political life of the newly democratizing regimes. In Chile, Argentina, and especially Brazil, organized labor played an important role in resisting military rule, and its role in the transition period was likewise significant (Valenzuela, 1989). Democratization also brought an increase in the number of strikes in some countries, such as Brazil, and of politically motivated general strikes, as in Argentina (Cox Edwards, 1997; McGuire, 1997). Yet in Chile between 1990 and 1994, the levels of strikes and labor disputes remained relatively low.<sup>4</sup> While in most countries union membership levels declined throughout the 1980s and into the 1990s, the restoration of political freedoms led to the initial increase in union density in some countries, such as Chile and Paraguay.

In many cases, however, the return to democracy occurred in the context of economic crises—especially high inflation, indebtedness, and wage decline—so that restored political rights for labor did not always translate into the ability to advance in material gains. In addition, these fragile political transitions often required union restraint in voicing pent-up demands. Despite the obvious benefits of democracy, unions in many countries entered this new political period from a position of significant weakness.

*Neo-liberal economic reform.* As Latin America emerged from the debt crises of the 1980s, many countries adopted export-oriented development strategies that called for major structural reforms. Typical policies implemented throughout the region included trade liberalization, privatization of state-owned enterprises, cuts in social spending, fiscal austerity,

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<sup>4</sup> Chilean unions showed restraint after the end of military rule so as not to disrupt the fragile democratic transition. This restraint was aided by unions' close ties with the coalition of political parties in power (the Concertación de Partidos por la Democracia), and by their participation in a tripartite accord during these years (Cortázar, 1997).

elimination of subsidies for national industries and small and medium-sized businesses, and flexibilization of labor markets. Bilateral and regional free-trade agreements also proliferated in the 1990s.

In most cases the results of these policy changes were restored economic growth and greatly reduced inflation (United Nations, 1996). However, layoffs as a result of privatization and the closing of noncompetitive firms, high levels of unemployment and underemployment, low wages, employment instability, and persistent income inequality have generated strong criticism of the neo-liberal model. Unions have been especially affected by these developments. Analysts have noted a “crisis of corporatism” and a weakening of militant unionism—the former a product of the shrinking role of the state and the antilabor policies it has adopted under neo-liberalism, the latter the result of the decline of the Marxist left. Instead of targeting their actions at the state, privatization and firm-level changes have shifted unions’ focus to private employers. Some unions have pursued a more cooperative strategy, insisting on a union role in negotiating workplace flexibility, productivity, and quality improvements with employers (de la Garza Toledo and Pries, 1997).

Yet relatively few unions have the resources, bargaining power, or employer counterparts willing to engage in this kind of negotiation. Employers throughout the region have preferred the unilateral imposition of workplace changes. Such changes include reassigning workers, workplace reorganization, introducing merit-based pay and promotion, subcontracting, increasing the pace of work, and so forth (de la Garza Toledo, 1997). “Advanced” human resource practices, such as the adoption of work teams and quality circles, the use of training to enhance productivity and quality, and other pay incentive and employee participation schemes, remain limited to a small percentage of large, usually transnational exporting firms (de la Garza Toledo, 1993).

Additional trends affecting the labor force include the entry of women into the labor market, especially in tertiary-sector activities, the increase in lower-paying and less stable service-sector employment, the increase in part-time and temporary work, the stagnation of manufacturing employment, the decline of public-sector jobs, high levels of informal-sector employment,<sup>5</sup> the geographic redistribution of employment, and

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<sup>5</sup> The share of the work force not covered by formal regulation has remained high in the region, at an average of about 40 percent. Countries with the highest levels of informal employment include Colombia, Mexico, Bolivia, Peru, and Central American countries. Argentina experienced a sharp increase in informal employment in the 1990s, while Chile saw a decline. Some researchers stress that the deterioration of conditions and erosion of job stability in the *formal* sector have blurred the boundary between informal and formal employment (Tardanico and Menjívar Larín, 1997).

the dramatic growth of export manufacturing in the largely nonunion in-bond assembly or *maquiladora* sector, especially in Central America and Mexico (de la Garza Toledo and Pries, 1997; Tardanico and Menjívar Larín, 1997). These developments generally have lowered union membership levels. Most unions also have found themselves ill-prepared to forge strategic responses to the rapid changes in economic policies, institutions, and labor regulations.

## Labor Law Changes

In this context of economic reform and democratization, many countries revised their labor laws. Traditionally, individual employment legislation was highly detailed, regulated, and protective. Collective labor law reflected government efforts to control unions and involved high levels of state intervention (Ermida Uriarte, 1995). Recent tendencies in some countries reflect a departure from this traditional pattern. The most common change is toward a greater degree of flexibility in both individual labor law and collective labor relations and toward a greater degree of liberalization (reduced levels of state intervention, greater pluralism, and autonomy of unions) in systems with previously high levels of intervention or state corporatism. Despite these dominant trends, several countries also reinforced or extended protections for individual workers and retained a strong role for the state in industrial relations.

This section will describe three different kinds of changes in labor law that have been undertaken in the region: flexible, liberal, and protective. *Flexible* laws are those which deregulate the labor market, lower employer costs, and generally grant employers greater maneuverability in contracting and deploying their labor force in response to market pressures. *Liberal* reforms are those which strengthen the autonomy of unions and employer organizations from the state and which encourage pluralism, as opposed to the monopoly of representation and dependence on the state often found in corporatist systems. *Protective* changes reinforce or establish protections for workers by stipulating these in legislation rather than leaving them subject to negotiation between workers and employers. Examples include setting overtime restrictions and safeguarding employment by establishing high severance payments in the event of dismissal. Laws that promote liberal or pluralist industrial relations may coincide with either flexible or protective labor laws. Flexibility and protection, however, reside on opposite ends of a continuum. Table 1 shows selected features of industrial relations systems in five Latin American countries

TABLE 1  
 SELECTED FEATURES OF INDUSTRIAL RELATIONS SYSTEMS AND SAMPLE LABOR LAW  
 CHANGES IN SELECTED LATIN AMERICAN COUNTRIES (1980s–1990s)

Country	Features of IR System	Labor Law Changes
Argentina	<p>National and industrial union organization.            Unions must register with government.            Striker replacement prohibited.            Collective contracts cannot reduce benefits granted in earlier agreements.            Wage indexation.            Union-administered welfare funds, provide mandatory health services to workers.</p>	<p><i>Protective:</i>            Established as mandatory subjects of bargaining: mobility on the job, introduction of new technologies, productivity improvement, etc.</p> <p><i>Flexible:</i>            Established fixed-term employment contracts with reduced payroll taxes, weaker dismissal laws.            Linked wage increases to productivity.            Facilitated decentralized bargaining.            Established special terms for small and medium-sized employers.            Weakened length of workweek and overtime restrictions.</p>
Brazil	<p>Unions based on occupational category and territorial unit.            Voluntary union membership.            Compulsory fee deducted from all workers (union tax) for union activities.            Terms of contract extend to all workers and employers in occupational category regardless of union affiliation.</p>	<p><i>Liberal:</i>            Removed state role from union authorization and determining legality of strikes.            Extended right to organize to public sector.</p> <p><i>Flexible:</i>            Removed restrictions on including contract clauses weaker than those in previous contract.            Facilitated decentralized bargaining.</p> <p><i>Protective:</i>            Reduced length of work week.            Increased maternity leave and introduced paternity leave.            Strengthened protection for right to strike.</p>
Chile	<p>Enterprise-level union organization.            Voluntary union membership.            Decentralized bargaining; multiemployer bargaining permitted but restricted in practice.            Some unions not allowed to bargain or strike.            Contract applies only to workers involved in bargaining.            New firms and semipublic firms exempt from collective agreements.            Issues that restrict employer ability to manage firm excluded from bargaining.            No collective bargaining for public sector workers.            Striker replacement and employer lockouts permitted.</p>	<p><i>Protective:</i>            Increased minimum wage.            Removed restrictions on strike length.            Extended maternity protections.</p> <p><i>Liberal:</i>            Extended right to organize to public sector.            Extended right to strike to selected public enterprises.</p>

Country	Features of IR System	Labor Law Changes
Venezuela	Industrial and enterprise-level union organization. Unions must register with government. Collective bargaining fees charged to nonmembers. State oversees bargaining process. Public sector strikes permitted. Plural unionism.	<i>Protective:</i> Increased severance pay for workers. Strengthened dismissal laws. Extended maternity leave provisions.  <i>Flexible:</i> Narrowed definition of wages. Weakened length of work week and overtime restrictions. Removed restrictions on including contract clauses weaker than those in previous contract.
Columbia	Enterprise-level union organization. Politically fragmented union movement. Collective bargaining limited to economic issues. Plural unionism.	<i>Protective:</i> Extended maternity leave provisions.  <i>Flexible:</i> Established fixed-term employment contracts. Narrowed definition of wages. Weakened length of work week and overtime restrictions. Flexible probationary period. Eased dismissal restrictions.

and sample labor law changes they implemented. The table indicates whether these changes constituted flexible, liberal, or protective changes.

*Flexible changes.* *Flexibilization* is commonly used throughout Latin America to refer to many of the changes that have been implemented both in law and in employment relations practice in recent years. Flexible policies are intended to increase firms' productivity, efficiency, and competitiveness, regarded as especially important in a context of greater economic openness. Specific examples of flexibilization include establishing fixed-term employment contracts rather than the formerly prevalent permanent contracts of "indefinite" duration, making dismissals easier through reducing severance pay and other termination costs, converting from daily to hourly pay, and granting special treatment to such sectors as small and medium-sized enterprises, export-processing zones, and agriculture (Córdova, 1996).

Flexibility in hiring and employment termination has received especially great attention (Córdova, 1996). Measures adopted by several countries include introducing multiple types of fixed-term individual employment contracts, legalizing part-time work, extending probationary periods in regular employment contracts, and establishing temporary

employment agencies. For example, the Argentine National Employment Law passed in 1991 allowed for a range of fixed-term “atypical” employment contracts ranging from 6 months to 2 years. These contracts called for reduced payroll taxes on employers and lower benefits for workers, including pensions, social welfare, and family allowances (Relasur, 1995; Bronstein, 1997). Peru, Chile, Colombia, Panama, and Ecuador, among others, also have developed a range of fixed-term contracts in an effort to increase flexibility and encourage formal employment. Several countries have introduced special contracts for such categories as agricultural, domestic, and *maquiladora* workers, where benefits, wages, and conditions are lower or more flexible than those provided to “normal” workers under the law.

Wage flexibility is reflected in efforts to define wages more narrowly to reduce the payroll taxes for pensions and other benefits.<sup>6</sup> In Colombia, profit-sharing, bonuses, and incentives were excluded from the scope of wages in the 1990 legislation. In Venezuela, the redefinition of wages has been a conflictive issue for years because it affects the calculation of the *prestaciones sociales* (social charges) paid by employers (Ellner, 1993). A 1991 decree in Argentina stipulated that wage increases should be tied to productivity increases. According to Córdova, however, “flexibility is to be achieved here through the imposition of a rather rigid rule, which may help to explain why this provision has never been fully applied” (Córdova, 1996:324–325).

Another arena in which laws have moved in a flexible direction is in the scheduling of workshifts and overtime. In some of the more industrialized countries in the region, restrictions on the maximum daily or weekly work hours have been lessened so that the distribution of hours worked is usually determined via collective bargaining (Relasur, 1995). For instance, in Argentina, the National Employment Law permitted the parties in bargaining to use averages over a period longer than a week to determine daily maximums. Peru, Colombia, and Chile also have flexibility in regulating the length of the workweek (Bronstein, 1997; Córdova, 1996). Flexibility in the determination of work hours is on the agenda in both Brazil (where it is already contemplated in the 1988 constitution) and Mexico. In some of these countries, overtime pay also has been increased, yet these changes in determining work hours tend to deprive workers of any benefits of such increases.

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<sup>6</sup> Another common reform in the region involves pensions. Pension reform has taken place so far in Argentina, Chile, Colombia, Costa Rica, Mexico, Peru, and Uruguay.

In collective labor relations, laws can promote collective bargaining agreements that call for labor mobility and “functional flexibility”—the ability to redefine jobs and reassign workers—in addition to the inclusion of productivity clauses, incentive pay schemes, flexible work organization, and the like. This also can be seen as “internal” flexibility and may not necessarily express itself in changes in labor law. This kind of flexibility has been introduced through collective agreements in much of Latin America, often through unilateral rather than negotiated means (de la Garza Toledo, 1997). De facto flexibilization is also common due to low levels of enforcement, especially in poorer countries (Córdova, 1996).

Decentralization of collective bargaining away from industry-level agreements to enterprise-level agreements also may be considered a sign of flexibility, since agreements can be tailored to specific firms. In Brazil and Argentina, where more centralized bargaining typically has occurred, legal changes have facilitated two-tiered bargaining, which has come into increasing use (Relasur, 1995). In the rest of the region, however, decentralized bargaining has predominated for some time (Córdova, 1984).

*Liberal changes.* Liberal or pluralist changes promote greater autonomy among the social actors involved in the industrial relations system. A key example of this type of legal change is the reduction of the state’s direct involvement in industrial relations. For instance, liberal reform might remove state authority to register unions, intervene in their affairs, or determine the legality of strikes, as occurred in Brazil. Plural unionism is another liberal feature found in Uruguay, Paraguay, and Chile, among other countries.

Measures to strengthen collective bargaining also constitute liberal reform because they promote the autonomy of social actors and reduce state intervention. Historically, collective bargaining has been a weak institution in the region (Córdova, 1984). In recent years it has become more prevalent, although obstacles to its widespread use remain<sup>7</sup> (Relasur, 1995). Public-sector bargaining (especially in public administration) traditionally has been restricted in Latin America. Recent legislative change has liberalized this process. In Argentina, Brazil, and Paraguay, bargaining is permitted in public enterprises (as it is in Uruguay, although there is no law regulating this practice). Legislation granting the right to bargain to public administration

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<sup>7</sup> State involvement in collective bargaining remains strong in Venezuela, Mexico, and even Argentina despite other measures aimed at strengthening bargaining in that country. Highly detailed regulations cover the bargaining process in Chile, where the goal is to encourage the direct settlement of conflict among the parties (Romaguera et al., 1995). Yet Chilean law also contains important restrictions on bargaining structure and scope that constrict unions’ bargaining power.

workers was passed in Argentina in 1992, in Paraguay in 1994, and in Brazil in 1990, although in this last case the legislation was vetoed by the president (Relasur, 1995). In Chile, public administration workers and public enterprise unions are not legally allowed to bargain, yet negotiations with the government take place in practice.

Another example of liberal reform was the extension of the right to organize to public-sector workers in Brazil, Chile, Paraguay, Peru, and Guatemala.<sup>8</sup> Paraguay in particular has seen a dramatic increase in union organization in the public sector (Moreno and Céspedes, 1995). Public-sector organizing remains prohibited in El Salvador, Bolivia, and Ecuador, although this prohibition is not strictly enforced (Bronstein, 1995). Protection of the right to strike was strengthened in Brazil and extended to the public sector via constitutional reform (Smith, 1995). Restrictions on strikes remain throughout the region, however, especially in public administration and essential services.

*Protective changes.* Protective legislation embodies the philosophy that workers need protection by the state when facing employers. Examples of this kind of legislation include extending protection for female workers and children (e.g., maternity protections, paternity leave, etc.), shortening the work week, restricting overtime hours, increasing benefits, making it more difficult to fire workers (mandating expanded notification time of dismissal, high severance payments, and/or reinstatement), indexing wages to inflation, and extending coverage of labor legislation to previously excluded categories of workers (domestic, homework, rural, and so forth.).

Several countries have increased protective legislation for individual workers. One of the most common legal changes undertaken in the region was the extension of protections for mothers (while removing special treatment for female workers in cases of night work, for example, which is increasingly being recognized as discriminatory in effect). Examples of recent reforms in this area include increasing postnatal paid leaves, job tenure for pregnant workers, leave for a sick child, paternity leave, and mandated day-care centers and feeding times for new mothers at the workplace (Romaguera et al., 1995; Freije Rodríguez et al., 1995; Bronstein, 1997).

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<sup>8</sup> In most Latin America countries, public-sector employees are governed by a separate statute. Although a recent tendency has been the liberalization of public-sector labor relations through granting rights to strike and to bargain in addition to organizing rights, important restrictions remain in place compared with private employees, especially for public administration. In many countries the public sector is highly organized and politicized, which has made it resistant to change. Protests and strikes increased in this sector throughout the region during the 1980s.

## Explaining Change in Labor Law Regimes

This section examines why changes in labor law have moved in varied directions despite the relatively uniform direction of economic reform. The key variables in this explanation include the timing of the labor law change, such as whether it coincided with a country's transition to democracy or whether it was implemented in response to neo-liberal economic change, the character of the industrial relations system prior to the labor reform, and the strength and orientation of organized labor. Additional factors may be important for understanding outcomes: the unity and orientation of employer groups, strategies of government leaders, the actions of external actors (such as the International Monetary Fund or International Labor Organization), levels of legal enforcement, and characteristics of national economies and labor markets such as degree of liberalization, the importance of export manufacturing employment, and the size of the informal sector. Only brief mention of these dimensions can be made here, however, because further research is needed to understand precisely how these factors shape labor law changes in each country.

*Rounds of labor law reform.* Important changes in a country's labor law tend to occur in "rounds" that respond to significant shifts in political regime or economic development strategies. In Latin America, these rounds of labor law reform generally occurred at the initial foundation of the legislation, during populist/corporatist regimes in the 1930s and 1940s, under authoritarian governments in the 1960s and 1970s, again during redemocratization, and in response to neo-liberal economic reform in the late 1980s and 1990s.

This concept of rounds of reform helps to explain the character and direction of changes implemented in legislation. In general, changes that coincided with democratization restored collective and individual protections removed or reduced during authoritarianism. The countries that fell into this category included Brazil, Chile, Paraguay, Uruguay, El Salvador, and Guatemala. Labor law changes that responded to economic pressures and neo-liberal policies tended to be flexibilizing. Those countries whose reforms were motivated primarily by economic pressures include Argentina, Colombia, Peru, and Ecuador. However, countries whose reforms initially reflected demands of democratization also have seen economic policy changes. In some of these cases, pressure has built to move to a second labor reform round in which the primary direction of change is flexibilization. Table 2 shows the timing of democratic transitions, of neo-liberal reforms, and of labor law changes

TABLE 2  
POLITICAL AND ECONOMIC FACTORS SHAPING THE DIRECTION OF  
LABOR LAW REFORM IN SELECTED LATIN AMERICAN COUNTRIES<sup>a</sup>

Country	Timing of Democratic Transition	Neo-liberal Reform	Character of Previous IR System	Labor Reform	Reform Response To?	Direction of Change	Character of Current IR System
Argentina	1983	Since 1989	Protective	1991, 1993, 1995	Neo-liberalism	Flexible	Mixed protective-flexible
Mexico	Liberaliz/PRI 1994–1997?	Since 1986, esp. 1990s	Protective/corporatist	None	—	—	Protective/corporatist
Uruguay	1985	Since 1973/1991	Restrictions on collective rights under military	Authoritarian legislation repealed 1985	Democracy	Liberal	Liberal
Brazil	1985	1990s, esp. post-1994	Protective/corporatist	Constitution 1988	Democracy	Protective/liberal	Mixed liberal-corporatist
Venezuela	No transition; democratic	1989	Protective	New code 1990–1991	—	Protective	Protective
Bolivia	1982	1985/1990s	Protective	1995 (limited)	—	Protective	Protective
Chile	1990	Since 1976	Flexible	Laws 1990–1991; new code 1994	Democracy	Protective	Flexible
Paraguay	1989	1991	Restrictions on collective rights under military	Const./law 1992; new code 1993/94	Democracy	Protective/liberal	Liberal
Peru	1980	1992	Protective	Law-in stages throughout 1980s–1990s	Neo-liberalism	Flexible	Flexible
Columbia	No transition; democratic	1990	Protective	Law 1990–1991	Neo-liberalism	Flexible	Flexible
Ecuador	1980	1990	Protective	Law 1991	Neo-liberalism	Flexible	Flexible

<sup>a</sup>All data from author's evaluations based on various sources.

for selected countries, including the direction of change represented by the labor reforms and whether the changes responded primarily to democratization or neo-liberalism.

Even though the direction of change may be similar in these countries, the final characterization of the industrial relations system often differs. For instance, Chile, Venezuela, and Brazil all moved in more protective directions, but Chile's industrial relations system is ultimately more flexible, Venezuela's retains a strong state role and worker protections, and Brazil's system has become more liberal (see below). This suggests the importance of identifying the prereform starting point for each country (see Table 2).

*Preexisting industrial relations systems.* In order to understand both the character and the extent of changes in labor law, it is important to know the characteristics of the system prior to the reform round. For many countries in Latin America, this means the characteristics of the industrial relations and labor law system prior to democratization. If industrial relations in a particular country were made significantly more repressive during the military period through decrees and legal changes, one would expect reforms undertaken during democratization to move in a more liberal or protective direction. In some countries, such as Uruguay, this meant repealing restrictions on collective rights established under the military. In others, such as Chile, it meant extending the right to organize to protect labor interests in a system that had become highly favorable to employers. With the exception of Chile, where the industrial relations system was revamped during the military regime, in most countries the systems that prevailed during the postwar period exhibited remarkable continuity, persisting through military rule and into the "new" democracies. Democracy in turn made it more difficult to carry out a wholesale reform of industrial relations institutions without producing significant political conflict.

*Strength of organized labor.* The strength and orientation of organized labor constitute another factor that has influenced the timing and substance of labor law change. Stronger labor movements are those with high unionization rates, dominant or single-peak confederations, industrial unionism, relatively little conflict within or among peak confederations, and strong party alliances, especially with a party in power<sup>9</sup> (McGuire,

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<sup>9</sup> Reliable data on union density for Latin America are difficult to find. For a discussion of data availability, union-density estimates, and other measures of union power in Latin America, see McGuire (1997: 265–269).

**TABLE 3**  
**INDICATORS OF ORGANIZED LABOR STRENGTH IN SELECTED LATIN AMERICAN COUNTRIES**

Country	Union Members as % of EAP <sup>a</sup>	Union Members as % of Wage and Salary Earners <sup>a</sup>	Dominant Union Structure Pattern <sup>a</sup>	Number of Peak Confederations <sup>b</sup>	Political Conflict within/between Peak Confederations <sup>b</sup>	Alliance with Political Party in Power <sup>c</sup>	Strength of Organized Labor <sup>e</sup>
Argentina	36.1	57.2	Industry	Dominant	Medium	Yes	High
Brazil	29.0	60.7	Local	Multiple	Medium	No <sup>d</sup>	Medium
Chile	10.2	17.8	Firm	Dominant	Medium-high	Yes <sup>e</sup>	Low
Columbia	9.3	24.8	Firm/craft	Dominant	Medium-high	No	Low
Mexico	12.8	42.6	Industry/local	Dominant	Medium	Yes <sup>f</sup>	Medium
Venezuela	19.3	34.6	Local/industry	Dominant	Medium	No <sup>g</sup>	Medium

<sup>a</sup>McGuire, 1997:268, Table 10. Data from the 1980s.

<sup>b</sup>Adapted from McGuire, 1997:268, Table 10. Modified for 1990s by author; evaluation based on various sources.

<sup>c</sup>Author's evaluation based on various sources.

<sup>d</sup>CUT's ties with opposition Workers party.

<sup>e</sup>Sector of CUT leadership allied with Christian Democrats; other parties represented in CUT.

<sup>f</sup>CTM allied with PRI; UNT (formed in 1997) nonaligned.

<sup>g</sup>CTV allied with Acción Democrática, in opposition after 1993.

1997:268). Based on these indicators, Table 3 shows the strongest labor movements in Argentina, followed by Brazil, Mexico, and Venezuela with moderate strength, and Chile and Colombia with the lowest levels of organized labor strength.<sup>10</sup>

Labor organizations may be able to exert greater influence in the democratization round of labor law change than in the neo-liberal round. This is so because the primary aim in the first instance is to restore some sense of social justice and to repair the damage done to labor rights under authoritarianism. In contrast, the primary goals of labor law change under neo-liberalism are to introduce labor market flexibility and reduce “rigidities” by legislation. Unions see this as an attack on them. Reforms in this phase are often viewed in zero-sum terms and, consequently, spark a greater degree of conflict. While even strong labor movements may be unable to halt the flexibilization trend, they may be able to negotiate the outcomes in ways that at least safeguard their key power resources. Strength may be reflected in labor’s ability to block changes through public protests, other forms of resistance, or noncooperation. Labor strength also may be indicated by unions’ ability to participate in the reform process itself, via representation on tripartite committees or other means of negotiation over the terms of specific provisions. These strategies may be joined—governments may concede participation to unions only after they have been able to demonstrate an ability to mobilize against proposed changes. Weak labor movements are less able to resist extensive flexibilization of labor law in the reform round occurring in the midst of a neo-liberal policy shift.

*Additional factors.* Divisions among employer organizations on specific provisions of labor reform or a lack of strong commitment to change may diminish the incentive governments have to revise labor legislation and enable a strong labor movement to influence the process. Employer interests are not monolithic; there are important differences among small and medium-sized employers versus larger employers, those oriented to the domestic market versus those geared for export, agricultural versus industrial employers, and so forth. These divisions have become sharper with policies that open the economy to competition from imports and with the removal of subsidies to small producers. Likewise, governments do not always follow employer preferences. Indeed, throughout the region, governments have tended to act unilaterally on labor reforms and

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<sup>10</sup> Other countries with strong labor movements include Uruguay, with moderate levels of strength, Bolivia, and with lower degrees of labor strength, Ecuador, Paraguay, and Peru.

have expended little effort to consult with those who may be most affected (Córdova, 1996).

External actors also have played an important role in shaping labor laws. Governments have responded to conditionality requirements of the International Monetary Fund to flexibilize labor law, for instance, and to pressures exerted by the United States under the Generalized System of Preferences to improve labor standards and protection for labor rights (Pérez Sáinz and Cordero, 1997). The ILO's Committee of Experts on the Application of Conventions and Recommendations has been especially influential in shaping changes in Central American labor laws (Bronstein, 1995).

A country's ability to enforce its laws may shape actors' preferences for legal changes. Where laws are enforced, legislation provides a more accurate reflection of reality and more effective moderator of behavior. Employer groups are more likely to protest protective labor laws in this case or promote flexibilizing changes. Where enforcement is weak, one may expect to find a gap between law and social reality. Employers may put up less resistance in countries with *de facto* flexibility. This is arguably one reason why protective legislation met little resistance in El Salvador, Guatemala, and Paraguay.

Economic and labor market characteristics also may provide important indicators of how strong the pressures for flexibilization will become in a given country. Flexibilizing pressures may emerge more strongly in economies that are undergoing extensive liberalization, have large export manufacturing sectors, or have a combination of high informal sector activity and high levels of protective legislation. In this latter case, obstacles to formal employment may be addressed by flexibilizing conditions in the formal sector. Yet these characteristics by themselves are unlikely to determine the pace or extent of labor law change. Instead, the degree to which there is political support for such reforms and the degree of resistance to change may be more important in determining outcomes.

## Divergent Paths of Reform

The following country cases illustrate the varied contexts in which recent rounds of labor law change have taken place in Latin America and the role of several of the factors mentioned in the preceding section.<sup>11</sup>

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<sup>11</sup> The selected countries are among the largest and most developed in the region, yet they have been chosen because of the variety they display in terms of industrial relations systems, the direction of labor law changes, and the role of organized labor.

*Liberalization of corporatist industrial relations: Brazil.* Brazil's corporatist labor legislation dating from the 1940s provided government with the means to control labor in subsequent decades, including the military period from 1964–1985 (Mericle, 1977). Singular features of the Brazilian system included the *sindicato*, whereby unions were formed on the basis of occupational category and territorial unit (no smaller than a *município*<sup>12</sup>); the union tax, which was compulsory for all employees regardless of union membership and helped to finance non-political union activities; and the central role of the labor courts in individual and collective labor conflicts. The late 1970s saw the emergence of the “new unionism” in Brazil, a powerful grassroots workers' movement that was behind the formation of the independent Workers party in 1979 and the Central Unica dos Trabalhadores (CUT) in 1983, Brazil's largest labor confederation (Keck, 1992). After the return to civilian rule in 1985, the CUT, the Workers party, and other more moderate political parties and labor confederations were able to influence the constitutional reform on labor issues.

The constitutional revision reflected a compromise in which some of the more liberal proposals backed by the CUT were introduced, while key features of the old corporatist system were retained. The constitutional revision greatly liberalized strike laws, eliminated the requirement that unions be registered with the government, and reduced interference in union affairs. But it maintained the union tax and the organizational structure of the *sindicatos* and expanded the role of the labor courts (Smith, 1995; Buchanan, 1989). From an already protectionist and state-interventionist base, constitutional changes in Brazil extended protections and established greater autonomy for collective actors by formally removing the state from industrial relations. Rather than radically transforming Brazilian industrial relations, however, this left a hybrid system of corporatist and liberal elements, with many constitutional provisions still awaiting passage of implementing legislation by the mid-1990s (Córdova, 1990).

Labor law has yet to be made significantly more flexible in Brazil for two main reasons. One is that despite rigid regulations, the labor market is already flexible, with high levels of labor turnover and mobility between formal and informal sectors of the market (Amadeo et al., 1995). Another is that pressure to shift economic policies in a neo-liberal direction did not become strong in Brazil until the 1990s. Given the recent emphasis on neo-liberal economic reform, additional flexibilizing labor law changes

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<sup>12</sup> The *município* is roughly equivalent to a county in the United States.

may be expected. Indeed, President Fernando Henrique Cardoso has implemented several flexible measures already, and attention to reforming the 1943 labor code has resurfaced. However, Brazilian labor weakness in the 1990s due to structural changes in the economy, privatization, and declining manufacturing employment may reduce unions' ability to influence labor legislation if there is a new "neo-liberal" reform round (Bureau of National Affairs, 1996).

*Labor market flexibilization with strong unions: Argentina.* Argentina's labor movement has long been regarded as one of the strongest in Latin America. Since the government of Juan Domingo Perón (1946–1955), most Argentine unions have identified with the Peronist party (*Partido Justicialista*). After the fall of military government in 1983, unions sustained high levels of protest, staging 13 general strikes during the presidency of Raul Alfonsín (1983–1989) (McGuire, 1997). In 1989, a Peronist party candidate was elected president. With political support from the Peronist unions, President Carlos Menem was able to implement a wide range of economic reforms, including extensive privatization. Economic growth was restored, but unemployment soared to 18.4 percent in 1995. The Peronist union leadership's acceptance of many of these changes eventually led to splits within the labor movement. For instance, the Argentine Workers Congress (CTA), a new confederation, and the Argentine Workers Movement (MTA), a dissident current within the CGT, were more critical of Menem's policies and of the collaborationist position adopted by the larger Confederación General de Trabajadores (CGT).

Although Argentina underwent a democratic transition, labor changes in the 1990s did not move toward protectionism but toward flexibilization. This was so because some labor rights removed under the military had already been restored during a first round of labor reform under President Alfonsín (Ranis, 1995). Menem's government was less concerned with consolidating democracy than it was with reforming the economy, which was suffering from hyperinflation and economic stagnation (Acuña, 1994). Argentina's labor changes under the two Menem administrations therefore were consistent with the government's market-oriented economic reforms.

The Argentine labor movement exercised greater influence during the neo-liberal reform round under the second Menem government. As Menem persisted with labor and economic reforms during his second term in office (1995– ), various currents of the labor movement joined in protest. A series of successful general strikes in late 1996 led Menem to

negotiate a new, broader labor law proposal with the CGT during 1997 (Warn, 1997). This proposal contained elements of flexibility, angering other labor groups, but did not go as far as employers wanted, eliciting their protests. Labor unions also had managed to preserve such sources of power and wealth as their administration of social welfare funds, and some received shares in newly privatized companies as well as positions on their boards of directors (Levitsky and Way, 1998). Legislative elections in October 1997 nonetheless brought defeat for the Peronist party in favor of a center-left coalition concerned about unemployment, declining living standards, and corruption under Menem. This, together with growing tensions within his own party, has placed the future of Menem's labor and economic reforms in question for the first time since his election (Jones, 1998).

*Flexibilization with weak unions: Colombia and Chile.* The Colombian and Chilean labor law regimes and industrial relations systems are significantly flexible, despite the different paths taken toward flexibilization by each. In Chile, neo-liberal reforms and industrial relations change took place during the 1970s and 1980s in the context of a military government. The unions' resistance and strong political orientation were dismantled through repression. Colombia retained a democratic, if embattled, regime throughout this period, and neo-liberal economic reforms were initiated later. Colombia's labor legislation went from one that was protective in individual law and interventionist in collective relations to one that was made more flexible in both areas in the 1990 law. Too weak to influence the 1990 law, Colombia's relatively small and fragmented union movement remains incapable of responding to flexibilization and the consequences of economic reform (Dombois and Pries, 1994). In contrast to Chile, the Colombian political situation is also highly unstable, wracked by drug trafficking, corruption, and guerrilla movements (Tickner, 1998).

In Chile, the labor movement's influence during democratization was restricted because of employers' resistance and the conservative opposition in the senate and because neo-liberal economic reforms were already in place.<sup>13</sup> Given the Chilean government's continued commitment to neo-liberal economic policies and to flexibilization in labor relations, it is unlikely that industrial relations changes would substantially reverse the

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<sup>13</sup> This was the case despite the fact that Chilean unions participated in a national tripartite agreement during 1990–1994 that increased minimum wages and covered other aspects of basic labor and economic policies.

already high degree of flexibility and low level of protection dating from the authoritarian period (Romaguera et al., 1995). Despite their close ties with political parties, Chilean unions are also in a weak position due to low levels of union membership, fragmentation, and political divisions within the main labor central, the CUT. Efforts to alter some legal provisions in order to increase unions' bargaining power have been blocked so far by conservatives in congress (Epstein, 1997).

*Continuing the protective tradition: Venezuela.* Venezuela's revised labor law was passed in 1990 after 5 years of debate in congress. Although it contained elements of flexibility, the 1990 law essentially strengthened the prior legislation's protective orientation. Labor law change did not respond directly to economic pressures, in spite of Venezuela's economic decline during the 1980s and repeated attempts at economic restructuring. Nor did democratization explain the outcome, since Venezuela did not have an authoritarian episode before the reform. In this way, Venezuela represents a somewhat anomalous case. Although President Carlos Andrés Pérez was committed to implementing neo-liberal reforms when he was elected in 1988, corruption scandals and two coup attempts finally forced him to step down in 1993, postponing substantial economic reform.

By 1996, the government again turned to a structural adjustment program, and discussion of further labor reform resurfaced. A tripartite commission was established to discuss wage and social security reforms, resulting in an agreement to alter the determination of wages in a way that would reduce the social charges employers were obligated to pay, which had long been an employer demand. Involving labor through the tripartite commission helped to tone down unions' earlier resistance to neo-liberal reform. However, by August 1997, employers had not yet followed through on their commitment to raise wages, and the unions launched their first general strike in 8 years (Ellner, 1993; *Latin American Weekly Report*, August 5, 1997).

*Economic neo-liberalism without labor law reform: Mexico.* Mexico represents a paradox. On the one hand, it is rapidly integrating with the world economy and has gone far in implementing liberal economic reforms. On the other hand, Mexican labor law has not changed significantly from its origins in 1931 and remains highly detailed, interventionist, and protective of workers. One explanation for this unusual situation was the resistance of the Confederación de Trabajadores de México (CTM) to labor law reform during the de la Madrid (1982–1988) and Salinas administrations (1988–1994). The CTM, linked to the ruling Institutional Revolutionary party, was

able to thwart labor law change in exchange for accepting wage restraint, maintaining political control over its members, and supporting the president's economic policies. Another explanation lies in the severe wage decline during the 1980s, low levels of industrial conflict, and the de facto flexibility that employers enjoyed, which relieved some of the pressure to change the law. Nonetheless, the CTM did participate in a round of talks with the main employer groups during 1995–1996. These were widely viewed as preparing the groundwork for future labor law reform. Recent developments, including the expansion of democracy and the emergence of independent labor groups, are likely to return labor law revision to the national agenda. Mexico's future labor laws may respond *both* to pressures for increased flexibility *and* to democratizing trends that call for a weakening of the corporatist framework.

## Conclusion

This paper has highlighted four dimensions as especially important in understanding industrial relations change in Latin America: (1) the central role of the state in reshaping industrial relations, (2) the important influence of democratization, (3) the significance of the shift in economic model in triggering the push for flexibilization, and (4) the role of legal change. All the countries in Latin America, with the exception of Mexico, have implemented significant labor law changes in the last 15 years. Pressures to flexibilize industrial relations have been strong throughout the region as countries have opened their economies. Yet not all labor law changes responded to these pressures. Labor reforms that took place during the early democratization phases of some regimes tended to move in a more social-protectionist direction, restoring rights and protections dismantled under military rule. Labor reforms that took place largely in response to neo-liberal economic policy shifts tended to move in a flexibilizing direction. This explains in part the varied directions of labor law change in Latin America during the late 1980s and 1990s.

While the timing of the reforms may explain the direction that labor law changes have taken in each country, it cannot explain the scope and substance of these changes. Of special significance for understanding the character of reforms taking place in each country is the role of organized labor. Weak labor movements, such as those of Chile and Colombia, were less able to resist flexible reforms or to negotiate better terms of change. Although stronger labor movements may not be able to block flexible labor law changes, they may succeed in shaping the outcomes through mobilization, coalition building, and insistence on

participation, as they did in Argentina and Venezuela. The unity and orientation of employer organizations, government strategies, external actors, and economic pressures are additional factors that may explain the character of the changes. The relative importance of each dimension in any particular country, however, can only be discerned through further research into national contexts.

Similar economic transformations and a tendency toward flexibilization and liberalization in labor law would seem to suggest a convergence of labor law and industrial relations systems in the region. Countries with highly protective labor laws have implemented some flexibility, whereas countries with flexibility yet constraints on union activities have moved to restore a balance between employers and unions. Still, what is striking is the persistence of highly varied labor law regimes and industrial relations systems in the region. This variety underscores the important legacy of "traditional" industrial relations institutions and the centrality of political conflict and negotiation among unions, employers, and governments as factors that mediate economic reform pressures and their impact on labor laws. This focus on domestic institutions and politics calls for a deeper understanding of national contexts, in particular of the way that political tradeoffs take place around the highly contentious process of labor law change in each country.

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