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Published

2005

Journal Title

International Journal of Human Resource Management

DOI

[10.1080/0958519042000295957](http://dx.doi.org/10.1080/0958519042000295957)

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**Labour reform in a neo-liberal ‘protected’ democracy:
Chile 1990-2001**

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Abstract

This paper analyses the direction and degree of labour reform in Chile since the reestablishment of the democratic regime in 1990, sixteen years after the 1973 *coup d'état* that installed General Augusto Pinochet in power. The military regime (1973-1989) adopted a highly repressive political character and implemented neo-liberal economic policies, which together with the institutional restructuring that accompanied them, transformed vast sectors of Chilean society. The 1979 Labour Plan significantly changed the character of industrial relations legislation and the roles and balance of power among social actors, transforming the way in which industrial relations had been conducted since the 1920s. We argue that despite more than a decade since the recovery of democracy, and after several reform initiatives, the current legislation presents remarkable continuity with the one enacted under authoritarianism, contradicting claims that profound change has been achieved. In attempting to explain the direction and degree of the Transition's Labour Reforms, we emphasise the importance of political-economy approaches. We explore the conservative nature of the Chilean transition to democracy, the continuity of the neo-liberal economic model, and the increasing imbalance of power between capital and labour, in an effort to account for the persistence of the authoritarian legacy in today's Chilean industrial relations system.

Introduction

Industrial relations systems bear the works of their historical, political, legal, economic, and social contexts. The modification of any of these variables changes the way industrial relations are conducted and this may happen either gradually or abruptly (Bronstein, 1995). In the past 30 years, the context of the Chilean industrial relations system has undergone significant political and economic change. In 1973, a *coup d'état* led by General Augusto Pinochet terminated a long-established democratic tradition by aborting the Constitutional government of President Salvador Allende (1970-1973). Since the beginning, the military regime (1973-1989) adopted a highly repressive character and implemented neo-liberal economic policies, which together with the institutional restructuring that accompanied them, transformed vast sectors of Chilean society including the way in which industrial relations had been conducted since the late 1920s. In 1979, the military enacted the so-called Labour Plan that significantly changed the character of legislation, and with it the roles and balance of power among the social actors. In 1990, after sixteen years in power, Pinochet left office and a centre-left coalition backed by the labour movement took over. At the outset of the process of transition to democracy major reforms to the labour legislation were in the agenda. Several laws were passed in the early 1990s, a new Labour Code was issued in 1994 and further reforms were passed in 2001.

This paper analyses the content and the degree of the main changes that the Chilean industrial relations' legal framework has experienced under the democratic regime. We argue that despite more than a decade since the recovery of democracy, the

current legislation presents remarkable continuity with the one inherited from Pinochet's dictatorship. Although it is not the purpose of this paper to develop a legal analysis of the reforms, it focuses on labour law because in Chile legislation has been historically the main means for introducing change in industrial relations. In addition, 'changes in the law (...) provide a good indication of the nature of change (and also), the negotiation and conflict that surround efforts to revise the labour law reflect a struggle to redefine the key institutions of industrial relations' (Cook, 1998: 312). Chile is an important case in the study of the effects of neo-liberal political and economic restructuring in Latin America as it was the first country that introduced such policies in the mid and late 1970s (Riethof, 1999) and since its approach closely resembles the one recommended by the international financial institutions to other developing countries (Schurman, 2001).

This paper is divided in three parts. The first part explains the political and economic legacy of Pinochet's dictatorship, and presents its implications for the industrial relations legal framework enacted during military rule. The second part discusses the direction and degree of labour law changes undertaken by the democratic governments. The third part argues for the importance of political-economy approaches in explaining labour reform. It explores the conservative nature of the Chilean transition to democracy, the continuity of the neo-liberal economic model, and the increasing imbalance of power among social actors, in attempting to account for the persistence of the authoritarian legacy in today's Chilean industrial relations system.

The legacy of the dictatorship (1973-1989): ‘protected democracy’, neo-liberalism, and the 1979 Labour Plan

It is widely acknowledged that since the *coup d’etat* of 1973 Chilean society has been transformed in political, economic, and social terms. Furthermore, the transformations commenced during the course of authoritarian rule (1973-1989) ‘have come to be seen as one of the most internally consistent and comprehensive neo-liberal developmental models in the world’ (Kurtz, 1999: 399). In this section we briefly examine the legacy of sixteen years of authoritarianism for the transformation of the industrial relations system through what Kurtz (1999) considers to have been the two overarching goals addressed by the military regime: political restructuring and economic stabilisation. We also present schematically the main features of the 1979 Labour Plan.

Political repression and the model of ‘protected democracy’

A year after the *coup d’etat*, in 1974, the military *junta* proclaimed in its ‘Declaration of Principles of the Government of Chile’ that it did not ‘intend to be a mere caretaker’ and that instead it would ‘take upon itself the historic mission of giving Chile new governmental institutions that embody the profound changes occurring in modern times’ (cited in Collins and Lear, 1995: 27). However, in order to achieve this long-term objective, the military proceeded first to ‘stabilise’ the country, which meant in practice the open repression of the Left and the dismantling of the ‘dangerous’ ‘representative institutions that had allowed Chile to become the first nation in the world to elect a Marxist head of state’ (Roberts, 1998: 94). Thus,

thousands of left-wing activists and militants were exiled, tortured or killed, the Constitution was abrogated, Congress was closed, and political parties were dissolved and outlawed (Roberts, 1998).

Most labour rights for organised and unorganised workers were suspended indefinitely. Organised labour was severely attacked because of its linkages to the Left in general and to the deposed government in particular (Frías, 1993). The main labour organisation, the *Central Unica de Trabajadores* (CUT) was dissolved and declared illegal in the first week after the *coup* whilst union leaders suffered persecution and in some cases were assassinated (Sznajder, 1996). Series of executive decrees severely restricted freedom of association, suspended collective bargaining norms and the right to strike, and allowed politically motivated job dismissals. In this way, political and union activity virtually stopped and the problem of short-term political stability was ‘solved successfully’.

The regime’s ‘historic mission’ however was to ensure that Chile would not return to its pre-*coup* model of democracy, ‘characterised by mass mobilisation of the lower classes and attempts to reform or even revolutionise Chile’s traditional structures of land holding, economic social and political organisation’ (Sznajder, 1996: 729). The *junta* sought to structure a political system that would permanently reduce the power of the Left in a future post-authoritarian order (Angell and Pollack, 1993). The new institutional framework established by the 1980 Constitution defined the path for a future ‘protected’ democracy (due to start in 1990) based on the use of legal barriers to the re-emergence of the Left (Kurtz, 1999), on the creation of new political and social institutions that would replace organisational forms considered dangerous, and

on setting limits to the exercise of popular sovereignty by the democratic majority. Consequently, it established the constitutional proscription of Marxist parties and prevented union members to hold party affiliations; set up the existence of influential non-representative institutions such as the National Security Council and a Supreme Court nominated by the military; and, created a future political representation system that would confer veto power to minority elites and to the military through designated lifetime Senators. In relation to industrial relations, the model of 'protected democracy' aimed to eliminate the mutual source of strength and support between political parties and organised labour, and to make it difficult for any potential elected government to intervene on behalf on labour (Kurtz, 1999).

Structural adjustment and neo-liberal economic policies

According to the regime's declaration of principles, it would seek to 'reorganise the economy, destroyed to its very roots by Marxism' (cited in Collins and Lear, 1995: 27). Regardless of the official propaganda about the causes, what is certain is that the economy was in crisis (hyperinflation, fiscal deficit, collapse of investment, etc.). In order to stabilise it, the regime introduced measures that included among others, a sizeable cut back of public spending, the end of subsidies and price controls for entire industries and local products, the unilateral reduction of tariff barriers, a substantial increase in interest rates, the reorganisation of taxation, and the grant of privileges to private capital (Arrizabalo-Montoro, 1995; Bronstein, 1997). In addition, the military decided to cut labour costs by fixing wages below inflation, making cuts in the minimum wage and employment compensation, and facilitating layoffs. In this way, the regime's economic advisers –the so-called 'Chicago Boys'–

started to adapt the ideas of Hayek and Friedman to the realities of Chile's military dictatorship, 'generating a special brand of economic neo-liberalism practised in the politically thoroughly anti-liberal environment of Pinochet's dictatorship' (Sznajder, 1996: 731). Thus, for example, whilst strengthening the role of market forces and the private sector through deregulation and grant of privileges, the state tightly fixed wages and controlled labour activity, placing the burden of the adjustment on the workers (Mesa-Lago, 2000). As a result wages collapsed, unemployment soared, thousands of manufacturing jobs were lost, companies were closed, entire industries were weakened, and the social security system started to fall apart (Bronstein, 1997; Sznajder, 1996). Organised labour lost members in the sectors most affected by the adjustment and in those were they had been traditionally most active (manufacturing, public enterprises and services).

After a few years, inflation started to be under control and the macroeconomic success of the adjustment policies encouraged the regime to deepen the structural transformation of the economy in line with neo-liberal ideas (Kurtz, 1999). Thus, it rejected the previously dominant -and fragile since the 1960s- paradigm of import-substitution industrialisation¹ by reinstalling a natural-resource-based export-oriented development strategy, under which 'promotions of exports based on comparative advantage trade and an open economy are seen as the optimal path to development' (Riethof 1999: 1050). After the serious difficulties posed by the international recession of the early 1980s -that threatened the very continuity of General Pinochet and his neo-liberal advising team in power- the economy started to show signs of recovery in the mid 1980s and the new development strategy became firmly established. This changed the face of the Chilean economy causing a rapid decline of

some of the traditional segments of its productive structure, especially manufacturing, whereas the importance of the service and primary export sectors has grown rapidly ever since². Unions were not able to broaden their bases in the growing primary export sector, frequently associated with low organisational levels. For Schurman (2001: 5), workers in these sectors ‘were paid extremely low wages, had no job security, and were subject to working conditions reminiscent of the Industrial Revolution.’

‘Authority and discipline’ in industrial relations: the 1979 Labour Plan

The *junta*’s declaration of principles signalled its ‘intention of imposing authority and discipline in production and labour relations’ (Collins and Lear, 1995: 27). In the early years of the regime this purpose was accomplished by force: suspending workers’ rights and openly repressing organised labour. But after six years into military rule and mainly as a response to international pressure, Pinochet’s government decreed a new labour code. The enactment of the ‘1979 Labour Plan’ did not mean however that the regime had abandoned its intention of imposing ‘discipline’ in industrial relations, or that it had decided to genuinely restore suspended workers’ rights. In fact, the ‘modernisation’ process was highly dependent on the reduction of labour costs, and hence a principal aim of the code was to restrict ‘rigidities, such as labour rights and labour market protection’ (Riethof 1999: 1050). The new legal framework was carefully designed not only to continue its approach to labour –this time by law- but also to provide for a completely free labour market in line with the neo-liberal rationale.

Collective labour relations: a market containment strategy for union control

In the area of collective labour relations, the 1979 Labour Plan was designed ‘to insure that the labour movement would remain weakened and fragmented’ (Roberts, 1998: 114). Firstly, as is evident in Table 1, it restricted the right to organise to the individual enterprise only after a year of business existence, made affiliation to unions voluntary, and permitted several unions within the same workplace. Some large categories of workers were not granted organising rights (public and agricultural sectors, seasonal and temporary workers among others) and it reduced legal protection of union leaders. It banned the existence of national federations (*centrales sindicales*) and severely restricted the functions of higher-level labour organisations (federations and confederations). Most union functions and activities were subject to detailed regulations and procedures (elections and composition of directorates, financing and management, etc.).

Secondly, the 1979 code decentralised collective bargaining completely by prohibiting it to be conducted at any level but that of the enterprise or workplace. Several economic activities and unions were excluded. Federations and confederations were not allowed to bargain collectively. Unions were stripped off their exclusive representation rights in collective bargaining and collective contracts ceased to be the exclusive outcome of the latter. On the one hand, one or more workers could form ‘bargaining groups’ (*grupos negociadores*) with the sole purpose of bargaining and signing a collective instrument. On the other hand, the code allowed for two modes of collective bargaining, a regulated and a non-regulated one, that led respectively to two kinds of collective agreements: ‘collective

contracts' and 'collective conventions' (*convenios colectivos*) (Montero *et al.*, 1999). Whereas regulated collective bargaining took place according to detailed and strict procedures established in legislation and contemplated the right to strike, the non-regulated method neither considered procedural rules nor 'was vested with even the minimal rights (traditionally) associated with collective bargaining such as the right to strike' (Haagh, 2002: 103). The Plan prohibited the extension of both types of collective instruments (contracts and conventions) to any employee not involved in bargaining. In addition, it banned a number of matters from collective bargaining restricting it in practice to wages.

Thirdly, the Plan restricted the right to strike by imposing numerous conditions so as to render it ineffective. A strike was only legal as part of a regulated collective bargaining process, that is, the one leading to a collective contract, and solely if no new contract had been signed among other requirements. Their maximum duration could not exceed 60 days, after which strikers were understood to have 'resigned voluntarily'. The employer was allowed to lockout and to hire replacements, and after 30 days any worker was allowed to resume work and bargain individually.

In this way, the 1979 Labour Plan severely weakened collective labour relations and affected workers' bargaining power reflecting the adoption of a market containment strategy for union control (Valenzuela, 1989). Authoritarian regimes' containment strategies can be divided into two ideal types: the corporatist and the market. The former involves the creation by the state of some controlled form of worker organisation, whereas the latter tries to weaken unions as bargaining agents. According to Valenzuela (1989: 457), regimes as the Chilean one, 'employing exclusively a market strategy can only be characterised as 'syndically harsh', since

this approach is single mindedly centred on preventing collective actions from having an effect on the labour market’.

TABLE 1 ABOUT HERE [Table 1. Selected features of the 1979 Labour Plan: Collective Labour Relations]

Individual employment contract: a neo-liberal model for labour market flexibility

To complement this the 1979 Labour Plan was designed to provide for a free labour market that would give the economic incentive and ‘legal flexibility employers felt was necessary to modernise Chilean industry’ (Collins and Lear, 1995). As indicated in Table 2, the 1979 Labour Plan grant ample discretion to employers in the contracting and deploying of their labour force. First, it encouraged the use of fixed-term contracts and facilitated different kinds of indirect contracting (externalisation, intermediation, subcontracting, outsourcing, seasonal work, etc.). It also increased the number of jobs excluded directly or indirectly from the application of labour legislation (independent workers, some agricultural workers) (Morgado, 1999). Second, the Plan flexibilised regulations governing *working conditions* by repealing previous protective legislation and by permitting employers’ unilateralism in several areas. Third, it gave employers the right to *dismiss* workers without a just cause but with compensation. However, since the latter was modest and the range of acceptable causes was broad, the code allowed employers in practice to hire and fire workers at will.

The 1979 Labour Plan’s deregulation of the individual employment contract reflected the adoption of a neo-liberal model of industrial relations which allows

firms to have recourse to their external labour market for increased numerical and functional flexibility. Under this model, flexibility is conceived as the capacity for downward adjustment of terms of employment, quantitatively through wage cutting and substandard contracts, and qualitatively as the restoration of managerial authority (Streeck 1987).

TABLE 2 ABOUT HERE [Selected features of the 1979 Labour Plan: Individual Employment Contract]

The legacy of the dictatorship for the industrial relations system was significant both in direction and scope. The 1979 Labour Plan drastically changed the character of legislation, and with it the roles and balance of power among the social actors. The traditional legislation that had prevailed in Chile and Latin America since the 1930s was characterised as restrictive in the area of collective labour relations (Córdova, 1996) and highly detailed, regulated, and protective with regard to the individual worker (Cook 1998). The 1979 Labour Plan weakened collective labour relations, deregulated the individual employment contract, and increased the number of employment relationships excluded directly or indirectly from the application of the labour law. Whereas traditional industrial relations reflected the belief that the state should intervene to protect the individual worker against employers, explicitly recognising the power imbalance between labour and capital (Cook, 1998: 313), the 1979 Labour Plan tilted the balance of power in favour of employers, making the state not only to abandon its protective role with regard to the individual worker but also to cease being the arbiter of class conflict in collective labour relations.

The combination of political repression, economic restructuring and the 1979 Labour Plan weakened organised labour and resulted in an increase of precarious forms of

employment. Unions lost members in the sectors most affected by the adjustment, and in those where union members had been traditionally most active. Losses were aggravated since unions were not able to compensate them by broadening their bases in the growing service and primary export sectors, frequently associated with low organisation levels. Although there are no reliable data for 1974-1979, the number of unionised workers declined 56 percent between 1971-73 and 1980-85 (from 29 to 12 percent of the labour force), while the number of workers participating in collective bargaining dropped by 71 percent in the same periods (from 11 to 3 percent of the labour force) (Mesa-Lago, 2000). As indicated in Table 5, by 1988, the year of the plebiscite, union membership accounted for 10 percent of the employed labour force, a third of its 1973 peak (Dirección del Trabajo, 2003b). Likewise, industrial conflict decreased dramatically. The number of strikes and workers involved decreased by 96 percent between 1973 and 1980, and the number of workdays lost declined by 83 percent (ILO 1977-83 in Mesa Lago, 2000).

Facing the test of democracy: Labour reform under the democratic regime (1990-2001)

As prescribed by the 1980 Constitution, and after sixteen years of dictatorship, the military regime carried out an internationally controlled plebiscite in 1988 that would decide the continuity of General Pinochet in power for eight more years. The opposition defeated the regime by a clear majority and free elections were held a year later. In 1990, a centre-left broad coalition led by the Christian Democracy and the Socialist Party –the *Concertación de Partidos por la Democracia* (henceforth

Concertación)- brought Patricio Aylwin (1990-1993) to power. At this stage, the recovery of democracy seemed to offer the opportunity to overcome the limitations perceived in labour legislation and indeed there were reasons to believe that the industrial relations legal framework was going to be submitted to significant reform. Firstly, the opposition to Pinochet had bitterly confronted the means and ends of his dictatorship. It had suffered brutal political repression and questioned the ‘predatory, dependent, and excluding’ character of the neo-liberal economic model. Secondly, the 1979 Labour Plan was seen as an essential cause of the ‘social debt’ accumulated under military rule. Thirdly, organised labour was showing increasing signs of recomposition, rearticulation, and reactivation³. In 1988 the CUT⁴ was recreated as an umbrella labour organisation with a broad and representative political basis, re-establishing its links with political parties, becoming one of the main components of the *Concertación* and playing an important role in the triumph of the opposition.

During the ‘transition to democracy’ labour reform has been a major political issue. The battle to redefine the industrial relations legal framework has proven to be a very contested and ideologically charged process that has been conducted with different degrees of success by the three *Concertación* administrations. Aylwin’s government (1990-1993) sought to manage industrial relations through broad tripartite agreements negotiated at the national level among the government, the CUT, and the peak business association, the *Confederación de la Producción y el Comercio* (henceforth CPC). In this period, three laws were passed concerning the individual employment contract, trade union federations, the right to collective bargaining and the right to strike. Together with a further reform in 1993, negotiated between the government and the CPC, these laws were later consolidated into the

‘1994 Labour Code’ (Bronstein, 1997). Under the Frei administration (1994-1999) the idea of tripartite agreements was abandoned formally not only by the CPC but also by the CUT. The meagre results achieved, from the perspective of labour, generated considerable tension with the government, and the CUT elected a non-*Concertación*, Communist leadership. New reforms were proposed in 1997 but although they were the product of government-opposition consensus, the former was unable to get them passed by the conservative Senate majority. In the context of the recession provoked by the Asian crisis and the general slowdown of the world economy, the newly elected government of Socialist Ricardo Lagos (2000-2006) passed the ‘2001 Labour Reforms’ intending to put an end to the ‘labour transition’ according to Socialist Minister of Work Ricardo Solari (Sanfuentes, 2000). In the next section, we present schematically the main labour reforms passed under the democratic regime. For the purposes of this paper, the ‘Transition’s Labour Reforms’ will refer to both the ‘1994 Labour Code’ and the ‘2001 Labour Reforms’.

Between re-regulation and flexibility: the Transition’s Labour Reforms

In order to examine the content of the Transition’s Labour Reforms, it is necessary to consider the direction -or type- of the changes in relation to the legislation being reformed. Cook (1998: 317) distinguishes three types of possible changes in her analysis of labour reform in Latin America:

‘Flexible laws are those which deregulate the labour market, lower employer costs, and generally grant employers greater manoeuvrability in contracting and deploying

their labour force in response to market pressures. *Liberal or pluralist* reforms are those which strengthen the autonomy of unions and employer organisations 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’.

In general, one would expect that changes that respond to economic pressures and neo-liberal policies would tend to be consistent with flexible reforms, whereas changes that coincide with the reestablishment of democratic regimes would tend to move in a more pluralist and protective direction (Cook 1998).

In addition, it is needed to take into account the degree –or scope- of the changes. Burke and Litwin (1989) have distinguished between transformational and transactional degrees of change. *Transformational* change refers to significant if not fundamental change. *Transactional* change represents fine-tuning or incremental modifications, which are not significant in scope. Most authors agree with the idea that significant change in a particular industrial relations legal framework tends to occur as a response to significant political or economic shifts. Thus, the significant political change represented by the substitution of a new democratic regime for Pinochet’s dictatorship gave reason to expect transformational reforms to labour legislation.

The Transition’s Reforms of collective labour relations

The reform of collective labour relations under the democratic regime has taken a pluralist and protective direction. As it can be observed in Table 3, the Transition's Labour Reforms have extended the right to organise, to bargain collectively and to strike to previously excluded groups of workers. The requirements to form unions, federations and confederations have been reduced, and the existence of national federations (*centrales sindicales*) has been permitted. The reforms have allowed collective bargaining to be conducted beyond the firm's level and broadened the matters that can be subject of bargaining. In addition, they have set no time limit for strikes' duration and prohibited in principle the hire of replacements. A closer look however, shows that despite of their direction, the reforms have not been as significant as they may appear and as asserted by some commentators (Acevedo, 2001; Mesa-Lago, 2000), but rather modest (Escobar, 1999; Haagh, 2002). In order to illuminate this point it is helpful to briefly consider some examples of the main reforms of the period.

The Transition's Labour Reforms have encouraged and extended the right to organise to several previously excluded groups of workers and sectors of the economy but the extension of this right has not been accompanied in all cases with the rights to collective bargaining and to strike. On the one hand, there are still large categories of workers explicitly excluded from collective bargaining such as those in the public sector. On the other hand, some categories of workers -agricultural seasonal workers for example- have been given bargaining rights but only in their non-regulated form, that is, the one leading to collective *conventions* that does not provide for information, protection, or strike rights (Dirección del Trabajo, 2001).

Although the right to organise has been widely extended, the incentives for unionisation and maintenance of membership have remained low because collective bargaining has not been strengthened. In fact, the Transition's Labour Reforms have kept intact the key features of the 1979 Labour Plan that allowed the existence of two competing types of collective bargaining procedures (regulated and non-regulated), instruments (contracts and conventions), and representatives (unions and bargaining groups). It is said that the reforms have strengthened the regulated collective bargaining process by reducing the numerous issues excluded from bargaining stipulated by the 1979 Labour Plan. However, they have left in place the latter's most relevant and broadly inclusive restriction banning 'all matters that may restrict or limit the employer's exclusive right to organise, lead, and manage the firm, and those external to the firm' (Dirección del Trabajo, 2003a). In addition, collective bargaining beyond the enterprise level has been allowed, but only if employers agree. The dependency on employers' consent questions the real significance of this change for the strengthening of collective bargaining.

The Transition's Reforms have not succeeded in strengthening the right to strike either, rendering it ineffective in practice. Measures such as the elimination of the maximum 60 days length for strikes have been 'compensated' by reducing from 30 to 15 days the minimum number of days allowed for individual employees to dissociate themselves from the strike and to negotiate individually. Furthermore, the Reforms concerning the hiring of strikers' replacements have come to be seen as a symbol of the limited significance of the entire process of labour reform. Whilst the 1979 Labour Plan allowed replacing strikers with little restrictions, the 1994 Labour Code restricted this possibility to the satisfactory compliance by the employer of

certain conditions. The 2001 Labour Reforms prohibited ‘in principle’ the hire of replacements *unless* the employer would comply with virtually the same previous requirements and pay a compensatory bonus to the union (Dirección del Trabajo, 2001).

TABLE 3 ABOUT HERE [Main Transition’s Labour Reforms: Collective Labour Relations]

The Transition’s Reforms of the individual employment contract

The reform of the legislation governing the individual employment contract has taken a protective direction in most areas whilst maintaining, and sometimes, increasing its already flexible character in others. As is evident in Table 4, the greater part of the reforms has focused on statutory protections, which have included increases in the minimum wage, extension of maternity protections, maximum working hours governing some occupations, and the creation of an unemployment insurance system in 2001. In addition, the Transition’s Labour Reforms have increased the level of protection with regard to hiring, working conditions, and dismissals, but not significantly enough to change the flexible character of the previous legislation. In fact, the reforms have left in place most of the features of the 1979 Labour Plan that conceded employers great manoeuvrability in adjusting and deploying their labour force.

Although the reforms have intended to put an end to the abuse of fixed-term contracts by introducing various regulations, they have generated a range of new forms of employment contracts, where rights, wages, benefits, and working conditions are lower than those provided to ‘normal’ employees. At the same time

that the reforms have regulated more favourable working conditions for a large number of workers, they have kept several areas of employer unilateralism regarding the organisation of work. Most significantly, the reforms have maintained most of the flexible character of the 1979 legislation on dismissals. At the beginning of the 1990s, the most important labour's demand regarding the individual employment contract was protection against dismissals (Sanfuentes, 2000). The 1979 Labour Plan had repealed the 1966 law which stipulated that dismissal could only occur for a good cause and allowed dismissal without any stated reason subject only to advance notice and to compensation to the employee⁵. The 1994 Labour Code specified that dismissal could only occur for a just cause but at the same time it incorporated clauses that left the law unchanged in practice. Thus, workers could be dismissed because of the 'necessities of the firm'; a wide ranging provision since almost everything can be justified with this pretext: 'an employer can terminate a contract of work using as a cause the necessities of the firm, establishment, or service; such as those deriving from rationalisation, modernisation, falls in productivity, changes in market conditions or in the economy which make it necessary to dismiss one or more workers, and the technical or working unsuitability of the worker' (adapted from Haagh, 2002). The 2001 Labour Reforms eliminated the final part of the sentence regarding the lack of a worker's skills and ability in order to 'encourage training programmes' (Acevedo, 2001), leaving the rest intact. The levels of indemnity payments and fines for unfair dismissals have been increased⁶ but their relative low amount and the provisions mentioned above reduce their effectiveness in practice.

TABLE 4 ABOUT HERE [Main Transition's Labour Reforms: Individual Employment Contract]

In summary, the Transition's Labour Reforms have modified aspects of both collective and individual labour relations and taken predominantly a protective, and to lesser extent, pluralist direction (Cook, 1998). That labour reform has moved in these directions has not meant however that as a result, legislation changed significantly and gained a protective or pluralist character. On the contrary, it can be argued that several of the most 'significant' reforms enacted during the transition had provisions that meant in practice only incremental change, leaving the character of labour legislation essentially flexible. Whereas the 1979 Labour Plan transformed industrial relations by de-regulating and dismantling the previous protectionist system, the Transition's Labour Reforms have improved the level of protection re-regulating several areas, but without returning to the earlier situation (Bronstein 1997). In this way, the current Chilean industrial relations legal framework displays remarkable continuity with its predecessor as the latter's main features have remained in place, and the principles upon which it was designed are still valid: a market containment strategy for union control and a neo-liberal model of labour market flexibility.

Explaining the direction and degree of the Transition's Labour Reforms

Why have the Transition's Labour Reforms been so limited? Various dimensions have been considered important in explaining recent labour reforms in developing countries in general and in Latin America in particular. These include, among several others, the relative strength or weakness of industrial relations actors, government strategies, economic pressures, and political and economic shifts. A

close examination suggests the presence of two broad categories of explanations: those centred primarily on political considerations and those emphasising mainly economic factors. In the Chilean case, they have focused on the high degree of employers' resistance, the blocking role of the conservative opposition, the weakness of the labour movement, the early introduction and continuous commitment of the government to neo-liberal policies, and the good state of the economy (Cook, 1998; Escobar, 1999; Espinosa, 1996; Haagh, 2002; Olave, 1997). Both politically and economically centred explanations offer valuable insights but none of them on their own is capable of offering a satisfactory account of the problem.

The mutual dependency of both political and economic processes in practice is what gives good reason for a more comprehensive political-economy approach capable of incorporating and strengthening partial explanations. We believe that exploring both processes and the way they have developed under the democratic regime, may help us illuminate the particular direction taken by, and limited degree of, the Transition's Labour Reforms⁷. In what follows, we examine how a conservative transition to democracy legitimated the model of protected democracy instituted by the 1980 Constitution, and with it the neo-liberal development strategy. By continuing the political and economic policies of the dictatorship, the democratic governments found themselves institutionally and structurally constrained from pursuing significant reforms of the labour law. In doing so, they have also contributed to deepen long-term trends in the imbalance of power between capital and labour.

The political dynamics of a conservative transition to democracy

In attempting to explain the direction and degree of labour reform in Chile during the 1990s, it is necessary to set this process against the background of a conservative transition to democracy and its particular dynamics. At the outset of the democratic regime, the leaders of the *Concertación* were greatly concerned with the viability of the newly elected government. Indeed, an essential issue regarding transitions is whether they lead to consolidated democracy. In words of Przeworski (1991: 37), ‘a breakdown of an authoritarian regime may be reversed, or it may lead to a new dictatorship. And even if a democracy is established, it need not to be self-sustaining; the democratic institutions may systematically generate outcomes that cause some politically important forces to subvert them’. The *Concertación* felt the potential for a return to authoritarianism was high and gave the highest priority to the objective of democratic stability and consolidation.

In doing so, it favoured a *pacted* and *elite-led* type of transition. A *pacted* transition ‘with its awkward name derived from the Spanish case (*transición pactada*) concerns the establishment of democratic rule within the institutional framework of a previous authoritarian regime’ (Wilde, 1999: 478). The new government accepted the dictatorship’s institutional framework -and with it the model of ‘protected democracy’ instituted by the 1980 Constitution- by participating in the 1988 Plebiscite. It was firmly believed that defeating the regime within its own set of rules would help secure the results in the event of victory at the ballot box. In addition, democratic elites sought political stability by exerting tight control over the transition process since, as Karl (1990 in Roberts, 1998: 119) has asserted, ‘democratic stability is more likely, at least in the short term, when elites rather than masses are ascendant during the process of transition, and when they define the

parameters of political and economic change through negotiated political pacts rather than the forceful imposition of any single actor's political project'.

The delicate political dynamics associated with this conservative mode of transition severely weakened the push for democratisation, preserving the bulk of the authoritarian legacy and conditioning in turn the possibilities of systemic change and significant labour reform. In accomplishing democratic stability and consolidation, the *Concertación* had to achieve a fragile balance between mitigating the threats and fears of a defeated but unusually strong opposition, and the containment of its own supporters' demands for change. Thus, both the alliance and organised labour made substantial efforts to show restraint and to downplay mass mobilisation, favouring elite-negotiated social and political pacts (Figure 1).

FIGURE ABOUT HERE [Figure 1: The political dynamics of the Chilean *pacted* elite-led transition to democracy]

Ameliorating elite opposition

Although defeated in the electoral arena, the opposition to the democratic government was, and has remained, ideologically cohesive, economically powerful, and politically disciplined. It congregates the great majority of the economic and political right, as well as ample sectors of the military and the media, all of which share having been part or active supporters of the military regime. The immense political and economic power amassed during authoritarianism granted the opposition enough power to block, or to threaten with a backlash, any major attempt

to systemic reform. One of the ways in which the democratic government sought to mitigate the fears of the opposition, was by accepting most of the institutional ‘protections’ against the exercise of popular sovereignty stipulated in the 1980 Constitution. Despite the fact that, as part of the process of *pacted* transition, a package of more than 50 constitutional reforms was negotiated and ratified later in a plebiscite in 1989, several ‘authoritarian enclaves’ remained in place⁸. The most relevant of the enclaves left were the regime’s right to designate nine life-time senators (one-fifth of the Senate), and a binominal electoral system that has over-represented the right, while *de facto* excluding the Communist Party and other leftist forces outside the *Concertación* (Wilde, 1999; Roberts, 1998). The ‘protected democracy’ model has proved to be highly effective in preventing any attempt to significant labour reform. An artificially strengthened and politically disciplined right controlled the Senate for most of the past decade with an average of only 35 percent of the popular vote, and it used its veto power to prevent any major reform of Pinochet’s legacy⁹.

An additional way of ameliorating opposition to the newly elected government, was the latter’s capacity to appease the business sector, whose capacity and principled inclination to resist most changes in labour legislation has been considered a major obstacle for significant reform¹⁰. The *Concertación*’s encouragement of tripartite ‘consensus building’ negotiations did not only make explicit its *pacted* elite-led approach, but sought to show restraint regarding reforms that could potentially threaten the democratic stability as the labour ones. In addition, moderation of demands was considered the only way of achieving concessions from employers and the opposition since the *Concertación* did not have the majority in the Senate. After

a short period of dialogue in late 1989 and early 1990 however, the CPC chose a more hard-line leadership which resisted most reforms of the labour code and dedicated itself to the defence of Pinochet's economic legacy abandoning *de facto* the whole idea of a social pact (Roberts, 1998). Haagh (2002: 94) has shown how employers have remained political actors and opposed 'legal reform of the Pinochet code not by remaining outside the political process, but by defending the essence of the existing legislation, piece by piece, using the powerful tool of neoclassical doctrine'.

Containing demands

Simultaneously, both the government and the labour movement had to contain the demands of its rank-and-file. In the beginning of the transition process, democratic stability seemed to be heavily dependent on the successful containment of 'lower-class challenges to the social hierarchy' (Roberts, 1998). As Valenzuela (1989: 450) has observed, reactions of the labour movement in periods of redemocratisation may provide the pretext for a backlash by hard-line forces that still retain portions of state power:

'a combination of high labour and popular mobilisation at certain critical moments of breakdown of the authoritarian institutions (that is, when the option for a course of redemocratisation becomes possible but state elites have not yet committed themselves to it), followed by the decline of that mobilisation and by the willingness and capacity of the labour movements' union and political leaderships to show restraint when the political agenda shifts in favour of re-democratisation, would seem to provide the

ideal mix in terms of labour's contribution to ensuring the latter's success'
(Valenzuela, 1989: 450).

The 'mobilisation-restraint' sequence was clearly observable in Chile. Due to its close ties with the *Concertación*, the CUT gave priority to the objective of democratic stability and consolidation and showed restraint after the end of military rule so as to facilitate the transition¹¹. Organised labour sensed that commitment to dialogue and social peace would bring democratic stability and significant changes in the labour law and consequently it made substantial efforts to demobilise. Nevertheless, the CUT's participation in tripartite accords resulted in meagre results since few concessions were obtained from employers and the right. Furthermore, even if demobilisation was useful for democratic stability -which is open to question- it had the opposite effect for the process of labour reform. Demobilisation strategies detached the CUT from the rank-and-file and they could not revert to mobilisation when dialogue was abandoned.

The political dynamics of a conservative transition are useful in describing the political process that resulted in the early labour reforms (1994 Labour Code). However, the scenario that led to the 2001 Labour Reforms was different in several respects. In the context of a major economic slowdown, the Lagos administration achieved for the *Concertación* a small majority in the Senate for the first time since the recovery of democracy. Yet the alliance had already started to show signs of exhaustion and it divided precisely over the issue of labour reform. A sizeable part of the Christian Democracy united with the opposition in blocking significant changes and keeping in place some of the most emblematic 1979 legislation such as strikers' replacements. It was argued that this had to do with the imperative of flexibility for

the Chilean economy which has come to be seen as the ‘philosopher’s stone’ of the economic recovery (Sanfuentes, 2001). As we will see below, the convergence of a sizeable part of the government and the opposition over the economic model has prevented significant labour reform since the beginning, but since the *Concertación* gained the Senate, this has become even more evident.

In summary, whilst the push for democratisation may explain the direction of labour reform, the nature of the process of transition seems to account for its depth. Reforms that restored and protected basic labour rights stem from the redemocratisation impulse. Their incremental nature however has been a consequence of a conservative transition, which weakened the push for democratisation and contributed to stabilise an effective ‘protected democracy’ system.

Continuity in the economic model and development strategy

Perhaps continuity in the economic model was the most viable way to alleviate the concerns of employers and conservative sectors and induce their political and economic co-operation with the democratic government. Thus, in the onset of the democratic transition the *Concertación* ‘softened its opposition to the neo-liberal model and backed away from any plan for a radical change in Chile’s development trajectory’ (Roberts, 1998: 146). What represented a significant concession to the opposition in the political arena reflected also a high sense of opportunism and pragmatism in the economy. In the context of strong macro economic indicators (rapid economic growth, low inflation, and declining unemployment), the

government had no intention of introducing radical changes to the development model. Most important, however, was the ideological ‘evolution’ of important sectors of the *Concertación* -especially that represented by the ‘renovated’ Socialist Party (Munck, 2000)- that had already begun to converge in some fundamental aspects with the neo-liberal economic thinking (Collins and Lear, 1995). As a result, an economic model originally associated with Pinochet’s dictatorship came to be reproduced and legitimised by its previous opponents.

The continuation of the neo-liberal development strategy constrained the prospects of significant labour reform. Kuruvilla (1996) argues that significant industrial relations changes depend on significant structural reforms in the economy and, in particular, on development strategy shifts. The 1979 Labour Plan responded to deep structural reforms and consequently it meant a transformation of the industrial relations system. In contrast, the Transition’s Labour Reforms have resulted in incremental changes, which from this perspective is not surprising since they have not responded to any major change in development strategy. Nevertheless, the confirmation of the economic model by the democratic governments helps to explain the direction of most labour reforms. In fact, the claim that there are close links between development strategy shifts and changes in industrial relations systems does not mean that a certain development strategy is associated with a particular kind of industrial relations system. In other words, what development strategies entail are common objectives but not necessarily common practices. Therefore, variables such as political shifts can make a difference in the way the economy in general and industrial relations systems in particular is carried out within the same development strategy. In the Chilean case, although a conservative transition reduced the

significance of the push for democratisation, the presence of a democratic regime explains in part the pluralist and protective direction of the Transition's Labour Reforms. In addition, the continuation of the economic model confirmed the push for marketisation set in motion under military rule and seems to account for the preservation of most of the flexible features of the authoritarian labour legislation.

'Growth with equity'

Under different labels, the three *Concertación* administrations have consistently defined their economic and social strategy as 'growth with equity'. Whereas the principle of growth advances the maintenance of the economic model, the principle of equity refers to the simultaneous moderation of the latter's negative effects. According to Aylwin's Minister of Planning (cited in Riethof 1999: 1050), this strategy assumes that 'first, increases in social spending depend on economic growth, and second, poverty is not related to the structural characteristics of the economy, and therefore, the role of social policy is to moderate the negative effects for the poor (...) and not lead to the transformation of the static factors of the structural order'. Labour legislation has been at the heart of this equation and, for some commentators, the corresponding challenge for the government has been how to achieve a balance between worker protection and labour market flexibility (Sanfuentes, 2000).

On the one hand, according to Aylwin's Minister of Work René Cortázar (1996), the principle of equity was translated into labour policy objectives as 'equity, social autonomy and participation'. However, a conservative transition restricted the depth

of pluralist reforms that would have otherwise effectively encouraged social autonomy and participation. Labour policy objectives focused on equity, narrowly understood as the moderation of the negative effects of the model, which helps to explain the predominantly protective direction of the Transition Labour Reforms. The same can be said about the pluralist reforms that restored basic labour rights. On the other hand, the principle of growth was interpreted as 'efficiency of development' for the effects of labour reform (Cortázar, 1996). The 'efficient' side of development overtly acknowledged the perceived importance of a flexible labour market in achieving economic growth. Indeed, flexibility with recourse to the external labour market has been considered crucial in keeping labour costs under control, which in turn seems to account for the conservation of the flexible character of the authoritarian legislation¹².

The democratic governments have achieved significant economic growth and reduced the social deficit inherited from military rule. Between 1990 and 1997, the economy grew at an average level of 7 percent and the levels of poverty halved. Nevertheless, the worsening of income distribution, the exhaustion of natural resources, and the high vulnerability to external economic shocks, have allowed commentators to cast doubts about the long-term viability of the country's development strategy. Furthermore, some authors have doubted the 'protective' effectiveness of the 'growth with equity' strategy. Referring particularly to workers employed in the export sectors, Schurman (2001: 17) has argued that 'the main source of improvement in wages and working conditions (has been) economic rather than political or institutional'. In principle, the democratic governments wish to craft policy incentives that will channel investment toward higher value-added products

with greater levels of processing to make Chile's economic expansion more sustainable and less dependent on primary exports. Although some 'industrialisation' has been achieved in the primary export sectors (Schurman, 2001), there is strong evidence that little fundamental changes have been accomplished in the composition of exports and imports during the *Concertación* administrations (Calcagno and Calcagno, 2000).

By setting its socio-economic room of manoeuvre within the bounds of the inherited neo-liberal development strategy, the government has acknowledged the difficult task of balancing worker protection and labour market flexibility. Whilst the reforms concerning the former emanate from the push for democratisation, the latter have been the consequence of pressures for marketisation. The limited degree of labour law change shows the importance given to market pressures, which constrains in turn the prospects for further revisions especially regarding private sector industrial relations.

Hegemony versus fragmentation: the increasing (in)balance of power between labour and capital

The direction and degree of the Transition's Labour Reforms cannot be attributed solely to macro political and economic considerations. Furthermore, the current state of Chilean industrial relations cannot be seen as a pure consequence of legislation. Indeed, legal frameworks are built and reformed under the pressure of social actors and according to the actual correlation of forces between them (Montero *et al.*, 1999). Thus, political and economic accounts are to an important degree conditioned

by power relations. Under the democratic regime, long-term trends in the balance of power between labour and capital have been deepened. In a diametrically contrasting but mutually reinforcing process, employers have strengthened their political, economic, and social position, whilst that of the workers has been weakened.

Roberts (1998: 126) argues that organised labour's 'organic ties to political parties and the state have loosened, its access to the policy making has been narrowed, its organisational and political leverage has been diluted, and their ability to speak for a plurality of interests has diminished'. The Chilean labour force presents a decreasing degree of associability and an increasing degree of fragmentation, that have been seen both as cause and consequence of the weakness of the labour movement (Campero, 1999; Cook, 1998; Espinosa, 1996; Roberts, 1998). The rearticulation and strengthening of organised labour in the early re-democratisation process proved to be an illusory one. Union membership post-*coup* peaked at 15 percent of the employed labour force in 1991 (Table 5) but a year after (just two years after the democratic government took office) the absolute and relative number of workers affiliated to unions began to drop returning to 1980s figures. By 2000, only 10 percent of the employed labour force was unionised. At the same time, a marked increase in the number of unions and a decline in their average number of members have accompanied the decline in union membership. In 1991, 9858 unions had an average of 71 members whilst in 2001 there were 15134 unions with an average number of 40 workers. These figures contrast sharply with the 100 members an average union had in 1981 and the 144 they had in 1973. The trend towards more but less representative unions has not been reversed since the enactment of the 1979 Labour Plan, which suggests that the process of fragmentation will continue further.

Moreover, at the same time that new unions have been established, others have gone into 'recess'¹³. Montero *et al.* (1999) point out that the number of unions in recess has increased dramatically. In 1994 34 percent of registered unions were in recess whilst in 1998, their number had increased to 49 percent. In other words, only half of Chilean unions are active in practice, which in turn helps to account for the 'stability' and low levels of conflict observed during the transition. The regulations governing collective bargaining have weakened unions further. Both the number of bargaining groups and number of collective *conventions* have increased relatively to unions and collective contracts (Dirección del Trabajo, 2003b).

In contrast, capital has been strengthened significantly. Whilst fragmenting the labour force, the neo-liberal model has concentrated capital in the hands of large business and financial groups (Fazio, 1997). This paradoxical effect has been intensified further by the systematic reduction of the size of the state. The extensive privatisations and rationalisations of public services and enterprises that benefited economic groups¹⁴ dismantled also institutions that had offered the most vulnerable population a certain degree of social protection. The extension of these changes has been significant. Whilst in the early 1970s, 'the state accounted for 75 percent of investment (...), the private sector now accounts for 75 percent' (Roberts 1998: 121). Furthermore, capital concentration has increased at a faster rate than GDP, and today less than 2 percent of all companies account for about 75 percent of all sales.

In explaining the limited significance of labour reform, several authors focus on the weakness of the Chilean labour movement. Cook (1998), for example, has described the process of reform as 'flexibilisation with weak unions'. Although tacitly included

in these accounts, we consider necessary to underline the strengthening of capital vis-à-vis labour, this time as a linked process and as a consequence of the intensified market pressures entailed in a neo-liberal model. In general terms, for Hyman (2002: 12), the outcome of these pressures ‘(...) has not been to establish an impersonal economic regime but rather to reconfigure the balance of social (and class) forces. “Deregulation” actually consecrates new rules: intensifying the law of value, with effects, which empower some economic actors while disempowering others (the majority)’.

TABLE 5 ABOUT HERE [Unionisation in Chile 1973, 1974-2001]

Conclusions

According to Wilde (1999: 476) ‘when assessed against the diverse transitions to democracy throughout the contemporary world, Chile is widely and correctly considered among the most successful’. The *Concertación* governments have retained political stability and achieved sustained economic growth reducing the serious social deficit accumulated under military rule (Wilde, 1999). However, they have been unable to reform much of the authoritarian legacy. The restrictive character of the current ‘protected’ democracy system can be observed not only in the military tutelage of the political process, but also in the substantive modest outcomes of the various attempts to systemic reform. In this paper, we have discussed the various implications of the political and economic transformations carried out by the military regime for the current industrial relations legal framework. In addition, we have reviewed some of the most important reforms for

labour relations enacted during the transition. Our evaluation of the changes however, has indicated that only modest changes have been achieved, leaving most of the authoritarian character of the system unchanged.

In attempting to explain the direction and degree of the Transition's Labour Reforms we have argued for the importance of political-economy approaches. Our analysis has focused on both political and economic processes and the way they have unfolded in Chile since the reestablishment of the democratic regime. The conservative nature of the process of transition severely weakened the push for democratisation and contributed to the immunity of the regime's legacy regardless of its absence from power. Nevertheless, and even though reduced in its significance, most protective and pluralist reforms seem to derive from the redemocratisation impulse. The confirmation of the neo-liberal development strategy has resulted in an intensification of market pressures, which accounts for the preservation of most flexible features of the authoritarian legislation. Whilst internationally acclaimed for its macroeconomic success, the development strategy's implications for Chilean workers have not been as rosy. Although the democratic regime has improved the level of social protection for some vulnerable groups of workers, the increasing imbalance of power between capital and labour seems to be the major impediment for better terms of employment, and what limits further the prospects for future significant revisions of labour legislation. Finally, although the ways in which the political and economic inter-relate are likely to be highly context specific to each country, our discussion has suggested that political-economic approaches may contribute to illuminate multifaceted issues such as those entailed in the processes of labour reform.

Acknowledgement

We would like to gratefully acknowledge Carola Frege for her helpful guidance and support in the early stages of writing this paper.

Notes

¹ The focus of the import-substitution development model was ‘to stimulate local industry to produce consumer and industrial goods that would substitute for imported alternatives and thereby conserve valuable foreign exchange’ (Kuruville, 1995: 116). Under this model, national industries had protection from external competition via state regulation and high import tariffs.

² Between 1984 and 1996, the value of Chilean exports quadrupled from \$3.6 billion to \$15.4 billion, and natural-resource intensive goods (fruit, fishery, forestry, etc.) represented about 90 percent of all exports (Schurman, 2001).

³ The early re-democratisation process presented a substantial increase in labour participation and activation. Between 1988 and 1991, union membership increased from 10.4 to 15.1 percent of the employed workforce (see Table 5), the number of strikes grew by almost 50 percent, and the participation of workers in strikes increased by 20 percent. All these processes were complemented by the high degree of legitimacy gained by the labour movement due to its firm opposition to the dictatorship (Campero, 1988).

⁴ This time as Central *Unitaria* de Trabajadores.

⁵ On the basis of one month’s pay per year of service to the same employer, up to a maximum of five months pay.

⁶ From five to 11 month’s wages per year of service and the fine for unjust dismissals was raised by 20 percent, and again in 2001, by 80 percent.

⁷ An exercise of this kind is admittedly problematic in balancing the treatment of general trends and context-specific circumstances. For example, we are not explicitly considering the role of international financial institutions, which influence cannot be denied in Latin American policymaking and reform.

⁸ The most important of these reforms eliminated the constitutional proscription of Marxist parties, allowed union members to hold party affiliations, and prevented the President from dissolving the lower house of Congress (Roberts, 1998).

⁹ Conversely, the Communist Party for example is not represented in Congress at all despite having about 5 percent of the popular vote.

¹⁰ We acknowledge however that the business sector in general and employers and particular conform a heterogeneous category that includes different positions (Sanfuentes 2001). We refer here to what is commonly called ‘economic right’.

¹¹ Although in the first year of the Aylwin administration the number of strikes increased by almost 50 percent and the participation of workers in strikes grew by 20 percent, they dropped and remained relatively low for the rest of the decade (Cortázar, 1996).

¹² Keeping labour costs under control is crucial for an economy competing principally in commodity markets. For example, Petras *et al.* (in Mesa-Lago 2000) explain the demobilisation strategies of the early transition in these grounds when asserting that the government dismantled popular mobilisation mainly in order to achieve better export competitiveness.

¹³ According to the Chilean legislation, a union can be valid or dissolved. The former means that a union has legal existence but this can be ‘active’ or ‘in recess’. A valid and active organisation has a registered membership and directorate whilst a union in recess lacks both (Montero *et al.*, 1999).

¹⁴ Some authors argue for a truly ‘entrepreneurial Pinochetist network’ that benefited from obscure privatisation processes giving rise to powerful economic groups (Mönkeberg, 2001).

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Tables and figures

Table 1. Selected features of the 1979 Labour Plan: Collective Labour Relations.

Right to organise
<ul style="list-style-type: none"> • Enterprise-level union organisation. • Voluntary union membership. • Multi-unionism permitted. • Party tickets' eliminated. • National, inter-sectorial, and inter-occupational federations (<i>centrales sindicales</i>) prohibited. • Multiple affiliation to federations (<i>federaciones sindicales</i>) and confederations (<i>confederaciones sindicales</i>) prohibited. • No unions allowed in the first year of a business existence. • No organising rights in the public sector. • No organising rights for workers employed in the agricultural sector; in the newly privatised pensions and health systems; and employed for less than six consecutive months. • Minimum number of workers to form a union. Firms with more than 25 workers: 25 workers and 10% of all workers. Firms with less than 25 workers: 8 workers and 50% of all workers. • Reduction of legal protection of union leaders. • Financing of unions must come exclusively as 'voluntary contributions' from affiliated workers. • Check off system prohibited.
Collective bargaining
<ul style="list-style-type: none"> • Enterprise-level collective bargaining. • Federations and confederations are not allowed to bargain. • Collective bargaining forbidden in the first year of a business existence. • No bargaining rights in the public sector. • No bargaining rights for workers employed in the agricultural sector; in the newly privatised pensions and health systems; for less than six consecutive months. • Numerous issues excluded from bargaining including 'all matters that may restrict or limit the employer's exclusive right to organise, lead, and manage the firm, and those external to the firm'. Collective bargaining restricted to wages. • Elimination of the floor (<i>piso</i>) for negotiated wages that guaranteed that wages could not be negotiated downward. • Unions are not the exclusive bargaining representatives of workers. Two or more workers can form 'bargaining groups' which are allowed to bargain and sign 'collective conventions'. • Collective contracts are not the exclusive outcome of collective bargaining. 'Collective conventions' (<i>convenios colectivos</i>) can be signed by unions or bargaining groups in a non-regulated process that does not allow for the right to strike and other elemental bargaining rights. • Limits the application of collective bargaining to those workers involved in negotiations. Prohibits the extension of collective agreements to non-union workers. • Minimum duration for collective contracts and conventions: 2 years. • If no contract is agreed it is decided on a 'final offer selection' based compulsory arbitration.
Right to strike
<ul style="list-style-type: none"> • Strikes are legal only as part of the collective bargaining process leading to collective contract. • Strikes restricted to a single workplace. • Strikes limited to a maximum of 60 days, after which workers could be dismissed without compensation ('voluntary resignation'). • Striking workers entitled to individually dissociating themselves from the strike and to negotiate individually after 30 days. • Employer's lockout and strikers' replacement permitted. • The President of the Republic could decree a strike illegal if it was deemed to be a threat to National Security, the economy, and/or the well-being of the population.

Sources: adapted from Bronstein, 1997; Collins and Lear, 1995; Cook, 1998; Mesa-Lago, 2000; Morgado, 1999.

Table 2. Selected features of the 1979 Labour Plan: Individual Employment Contract.

Hiring
<ul style="list-style-type: none"> • Fixed-term employment contract for a period up to two consecutive years. • New contractual framework for children, apprentices, agricultural, and home workers. • Excludes independent workers from the application of labour legislation. • Eliminates the regulation of homework.
Working conditions
<ul style="list-style-type: none"> • Working hours calculated on an individual basis within the limits of a 48-hour week allowing broad flexibility to plan daily work timetable. • Employer authorised to modify up to 60 minutes of the agreed daily work time distribution. • Repealed regulations governing more favourable working hours applicable in certain specific sectors. • Permitted children less than 16 years of age to undertake night work in certain industries. • Extended exceptions to Sunday rest and legal holidays. • Abolished differentiated minimum salaries for blue-collar workers and minimum wages for white-collar employees. Instead established a national minimum wage and set its value at the level of the former minimum salary. • Minimum wage not applicable to workers under 21 and over 65 years of age. • Allowed salaries lower than minimum wage for apprentices, agricultural, and home workers. • Employer authorised to alter the nature and location of the services provided by the enterprise. • Employer allowed to determine when workers can take their annual leave.
Dismissal
<ul style="list-style-type: none"> • Freedom to lay off workers without a just cause but with compensation. • Compensation: one month's salary for each year worked for the same employer, up to a maximum of five months. • Range of causes that do not allow for compensation. Political and National Security causes included. • Duty to reinstate unfairly dismissed workers abolished. • Abolished norms that required authorisation for collective dismissals (more than ten workers in a month).

Sources: adapted from Bronstein, 1997; Collins and Lear, 1995; Cook, 1998; Mesa-Lago, 2000; Morgado, 1999.

Table 3. Main Transition's Labour Reforms: Collective Labour Relations.

1994 Labour Code	2001 Labour Reform
<p>Right to organise</p> <ul style="list-style-type: none"> • Re-established the right to organise national federations (<i>Centrales Sindicales</i>). • Reduced requirements to form federations (minimum of three unions) and confederations (minimum of five federations). • Allowed to organise unions in the first year of a business existence. • Extended right to organise to the public sector with exclusions. • Extended right to organise to workers employed in the agricultural sector; in the newly privatised pensions and health systems; and employed for less than six consecutive months. • Reduced minimum number of workers required to form a union. Firms with more than 50 workers: 25 workers and 10% of all workers. Firms with less than 50 workers: 8 workers and 50% of all workers. • Granted protection to union leaders, prohibiting their dismissal without approval by a labour court. • Established new rules and increased sanctions for employers' unfair labour practices and facilitated access to labour courts. • Facilitates check off system. 	<p>Right to organise</p> <ul style="list-style-type: none"> • Reduced further requirements to form confederations (minimum of three federations). • Extended right to organise to previously excluded public enterprises dependent from the Defence Ministry. • Established a promotional norm in firms with less than 50 workers allowing 8 workers to form a union and to complete the minimum requirement within one year. • Reinforces Labour Office's (<i>Inspeccion del Trabajo</i>) attributions regarding unfair labour practices. • Unfairly dismissed workers for unfair labour practices allowed to choose between reinstatement or compensation.
<p>Collective bargaining</p> <ul style="list-style-type: none"> • Voluntary collective bargaining beyond enterprise level permitted if employers agree. • Allowed federations and confederations to bargaining collectively if employers agree. • No bargaining rights for public sector workers. • No bargaining rights for agricultural workers. • Issues excluded from bargaining reduced but maintained the clause about 'all matters that may restrict or limit the employer's exclusive right to organise, lead, and manage the firm, and those external to the firm'. • If benefits gained in a contract by the union are extended by the employer to non-union members, the latter must pay 75% of union contributions throughout the duration of the contract. • Introduced free mediation procedures. 	<p>Collective bargaining</p> <ul style="list-style-type: none"> • Employer must provide the union with information about the firm's financial situation and labour costs. • Introduced some procedural regulations to collective conventions. • Allowed agricultural seasonal workers to bargain collectively and to sign conventions. • Modified duration of collective contracts and conventions. Minimum: two years and maximum: four years.
<p>Right to strike</p> <ul style="list-style-type: none"> • Revoked the maximum of 60 days for strikes and set no time limit for their duration. • Striking workers entitled to individually dissociating themselves from the strike and to negotiate individually after 15 days. • Strikes can be automatically called off after 50% of striking workers returned to work. • Striker replacement permitted from day one of the strike if employer complies with certain conditions. 	<p>Right to strike</p> <ul style="list-style-type: none"> • Striker replacement prohibited in principle unless employer does not comply with certain conditions. Among them, compensation payment to the union.

Sources: adapted from Bronstein, 1997; Cook, 1998; Mesa-Lago, 2000; Morgado, 1999; Dirección del Trabajo, 2001 and 2003a.

Table 4. Main Transition's Labour Reforms: Individual Employment Contract.

1994 Labour Code	2001 Labour Reform
<p>Hiring</p> <ul style="list-style-type: none"> • Fixed-term employment contract maximum duration reduced to one year. • If work continues after fixed-term contract concludes, indefinite contract becomes due automatically. • Indefinite contract automatically replaces fixed-term contract after second renovation. • Workers employed discontinuously for twelve months over a 15-month period entitled to indefinite contract. • Establishes a range of fixed-term employment contracts where benefits, wages, and conditions are lower than those provided to 'normal' employees. 	<p>Hiring</p> <ul style="list-style-type: none"> • Added new forms of employment: E-work (<i>teletrabajo</i>) and Training Contract for Youths up to 24 years of age. • Extended full-time employment rights to part-time workers (no more than 2/3 of normal working day).
<p>Working conditions</p> <ul style="list-style-type: none"> • Extension of the 48-hour week to the hotel and catering trade. • Maximum working hours and minimum rest periods for commerce, transportation, and fishing workers. • Night-time work prohibited for children under 18 years of age. • Workers entitled to a minimum of one Sunday a month. • Increased national minimum wage. • Introduced a national minimum wage for workers 65 years of age or older. • Increased family allowances, minimum pensions, and family subsidies. • Created paid leaves for birth or death of a worker's child and death of a spouse. • Extended maternity protections and improved working conditions for women. • Extended family obligations and rights to male workers. • Compulsory internal rules and procedures for firms employing more than 25 workers. • Matters related to health and hygiene must be part of the firm's internal rules and procedures. • Employers must provide for adequate safety and hygiene working conditions. • Universalised the right to paid vacations to all workers. • Increased sanctions for employers' labour violations and facilitated worker's access to labour courts. 	<p>Working conditions</p> <ul style="list-style-type: none"> • Reduces the working week from 48 to 45 hours distributed in five days (from 2005). • Hotel and catering trade exempted of the reduced 45-hour week. • Especial working-time arrangements must be authorised by the Labour Office (<i>Inspeccion del Trabajo</i>). It requires the previous agreement between the employers and workers. • Workers entitled to a minimum of two Sundays a month. • Established a compulsory unemployment insurance system financed by the employer and the worker. • All firms employing more than 10 workers must have a internal regulations. • Employers must provide for food, shelter and transportation for seasonal agricultural workers when working far away. • Employers must provide for day care facilities for children of seasonal agricultural workers.
<p>Dismissal</p> <ul style="list-style-type: none"> • Discretionary dismissal replaced by statement of cause with exceptions (managers and home workers). • Increased the maximum compensation to one month's salary for each year worked for the same employer, up to a maximum of eleven months, for contracts started after 1981. • Incorporates the 'necessities of the enterprise' as just cause for dismissal. • Eliminates political and National Security as causes that do not allow for compensation. • Workers dismissed without a cause granted the right to appeal to labour courts • Unfair dismissal compensation equal to 120% of compensation. 	<p>Dismissal</p> <ul style="list-style-type: none"> • Eliminates the 'technical or working unsuitability of the worker' as a just cause for dismissal. • Causes that do not allow for compensation can only be those related to the job. • Increased unfair dismissal compensation up to 200% of compensation.

Sources: adapted from Bronstein, 1997; Cook, 1998; Mesa-Lago, 2000; Morgado, 1999; Dirección del Trabajo, 2001 and 2003a.

Table 5: Unionisation in Chile 1973, 1974-2001

	Year	Total workforce	Employed workforce	Union members	Unionisation % total workforce	Unionisation % employed	Number of unions	Average union size	
Allende¹	1973	*	2923800	934335	*	32	6502	143.7	
Military regime (1973-1989)	1974-79 ²	*	*	*	*	*	*	*	
	1980	3650094	3251344	386910	10.6	11.9	*	*	
	1981	3700477	3271100	395951	10.7	12.1	3977	99.6	
	1982	3657579	2943900	347470	9.5	11.8	4048	85.8	
	1983	3731430	3216100	320903	8.6	10.1	4401	72.9	
	1984	3814767	3268100	343329	9.0	10.3	4714	72.8	
	1985	4246624	3537400	360963	8.5	9.7	4994	72.3	
	1986	4312010	3862850	386987	9.0	10	5391	71.8	
	1987	4425330	4001290	422302	9.5	10.6	5883	71.8	
	1988	4656280	4285440	446194	9.6	10.4	6446	69.2	
	1989	4805290	4463420	507616	10.6	11.4	7118	71.3	
Democratic regime (1990-)	Aylwin	1990	4888590	4525530	606812	12.4	13.4	8861	68.5
		1991	4983890	4630670	701355	14.1	15.1	9858	71.1
		1992	5199800	4877430	724065	13.9	14.8	10756	67.3
		1993	5458990	5109290	684361	12.5	13.4	11389	60.1
	Frei	1994	5553830	5122760	661966	11.9	12.9	12109	54.7
		1995	5538240	5174410	637570	11.5	12.3	12715	50.1
		1996	5600670	5298680	655597	11.7	12.4	13258	49.4
		1997	5683820	5380190	617761	10.9	11.5	13795	44.4
		1998	5851510	5432350	611535	10.5	11.3	14276	42.8
	Lagos³	1999	5933560	5404480	579996	9.8	10.7	14652	39.6
		2000	5870890	5831460	595495	10.1	10.2	14724	40.4
	2001 ⁺	*	*	605363 ⁺	*	*	15134 ⁺	40.0 ⁺	

¹: Allende's government lasted for three years between 1970 and 1973.

²: Not reliable statistics for period 1974-1979.

³: The Lagos administration finishes in 2006.

*: Not available.

⁺: First semester 2001.

Sources: adapted from Dirección del Trabajo, 2003b; INE, 2001; and Roberts, 1998.

Figure 1: The political dynamics of the Chilean *pacted* elite-led transition to democracy

