

**INSTITUTIONALIZING INEQUALITY:
THE POLITICAL ORIGINS OF LABOR CODES IN LATIN AMERICA**

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ABSTRACT

When do labor laws protect workers from workplace risks, and when do they serve to institute or insulate the privilege of particular political and economic actors? This paper argues that Latin American labor laws are highly politicized, and have been since their early origins. In the early decades of the twentieth century, the first labor codes were formulated to favor skilled, unionized labor in key economic sectors controlled by business and governmental elites. Non-skilled labor outside of these sectors was largely locked out of the benefits of legislation. Recent efforts at market-oriented reforms, rather than creating a common (albeit weakened) norm for all workers, have only strengthened the privileges given to formal-sector, unionized workers, and widened the gap between these sectors and the unskilled workers in the informal sector. In this paper, I develop a theory of the political dynamics of labor code origins, emphasizing the explanatory role of skilled labor profiles, geographic isolation, and union organization, as well as the concentration of capital and nascent state power in the hands of a limited group of elites. I then illustrate the principal claims of the theory through a historical examination of three cases of labor law formulation: Argentina, Chile, and Peru.

RESUMEN

¿Cuándo sirven las leyes laborales para proteger a los trabajadores de los riesgos del trabajo y cuándo funcionan para institucionalizar los privilegios de actores particulares en los ámbitos políticos o económicos? Este artículo sostiene que las leyes laborales latinoamericanas son altamente politizadas y que lo han sido desde sus tempranos orígenes. En las primeras décadas del siglo XX, los primeros códigos del trabajo fueron formulados para favorecer a los trabajadores calificados y sindicalizados en los sectores económicos claves, controlados por las elites de negocios y gubernamentales. La mayoría de los trabajadores -- no calificados y ajenos a estos sectores -- fue excluida de los beneficios de la legislación. Los recientes esfuerzos de reforma, orientados al mercado, en lugar de crear una norma común (aunque debilitada) para todos los trabajadores, no han hecho más que fortalecer los privilegios concedidos a los trabajadores sindicalizados del sector formal y han ampliado la brecha entre estos sectores y los trabajadores no calificados del sector informal. En este artículo presento una teoría de la dinámica política de los orígenes de los códigos del trabajo que enfatiza los roles explicativos de los perfiles de calificación, el aislamiento geográfico y la organización sindical, así como los de la concentración del capital y el nascente poder del Estado en manos de un grupo de elite limitado. Luego ilustro los argumentos principales de la teoría a través de un examen histórico de tres casos de formulación de leyes laborales: Argentina, Chile y Perú.

Despite the growing convergence of opinion on the importance of the rule of law as foundational for economic growth and democratic development, labor laws in Latin America remain at once uneven and unequally enforced—and in many cases, surprisingly strong. This has remained true throughout the liberalizing reforms of the 1980s and 1990s and in spite of pressures from international financial institutions and nongovernmental organizations (NGOs) on the right and left of the political spectrum. Yet across the region there is also surprising variation, with some countries offering far more legal protections to workers and worker organizations than others. Where does this variation come from, and how has it changed through time? In spite of excellent studies of particular labor law reforms or modifications (Murillo 2005, Murillo and Shrank 2005, Cook 2007), political science has still not developed an adequate understanding of comprehensive national labor codes and their origins.¹

This paper examines comprehensive labor codes, as well as specific features of them, and presents a political explanation for variation in their design and reform processes, and for their resistance to convergence. It argues that the particular brand of labor law that currently exists in Latin America—coupling strong protections with weak enforcement and coverage—has its roots in the highly politicized context in which labor codes first appeared in the region. In the early decades of the twentieth century, in spite of morally motivated desires to deal with the “social problem” through legislation, the first labor codes were formulated to favor skilled, unionized labor in key economic sectors controlled by business and governmental elites. Non-skilled labor outside of these sectors was largely locked out of the benefits of legislation. Many decades later, efforts at market-oriented reforms, rather than creating a common (albeit weakened) norm for all workers, have only strengthened the privileges given to formal-sector, unionized workers, and have widened the gap between these sectors and the unskilled workers in the informal sector. In this paper, I develop a theory of the political dynamics of labor code origins, emphasizing the explanatory role of skilled labor profiles, geographic isolation, and union organization, as well as the concentration of capital and nascent state power in the hands of a limited group of elites. I then illustrate the principal claims of the model through a historical examination of three cases of labor law formulation: Argentina, Chile, and Peru.

The paper proceeds as follows. The first section describes the variation in Latin American labor codes and briefly describes some of the economic and political implications of these labor law differences. The second develops a political theory of labor code design that emphasizes the historical process of early labor code formation, which then served as the basis for later labor law modification. It argues that in this early period workers in key industries, and those with greater organizational capacity, were able to capitalize on their credible threat to hold up the economy to achieve the enactment of protective labor legislation. This legislation then served as a selective public good—applicable only to specific classes of workers; it also became a template for later labor law development and contestation. The third section traces out three historical case studies of labor law development and reform, emphasizing the way that early labor codes locked in protections for key sectors and effectively excluded others from enjoying the benefits of labor laws. Argentina, with one of the region's most professionalized and organized early labor movements, presents one of the most highly developed and protective labor codes in Latin America. Peru, with a much weaker and less developed early labor movement, stands as one of the least protective labor regimes. And Chile, whose early union movement was fragmented between miners and urban and port workers, has a middle-range legal code, with only limited support for labor unions but significant individual worker protections. The fourth section concludes the paper by suggesting that labor laws provide a particularly important perspective on inequality—and the perpetuation of inequality—in the region.

LABOR LAW VARIATION IN LATIN AMERICA

Labor laws are generally classified into two types: individual and collective (Botero et al. 2004). Individual laws deal with the contracting terms of specific workers, including job stability, limitations on working hours and working conditions, severance pay, paid leave and holidays, overtime premiums, etc. Collective laws treat the requirements for union activity, from formation, internal finance, and governance to participation in collective bargaining, collective lay-offs, and strikes.

Latin America's individual labor laws vary significantly across countries, but in general stand as quite protective vis-à-vis those of other regions. For example, nine of the Latin American countries have provisions for hiring and firing that are on par with, or more rigid than, those of France and Sweden; even the most liberal labor codes, in Uruguay and Chile, are only slightly more permissive than that of Belgium, and remain far from the flexibility of the United States, Canada, or Singapore (Heritage Foundation 2009).² Employers in Peru, for example, frequently complain that restrictive and protective individual labor laws—especially its guarantees of 30-day vacations and prohibitions on firing—make production there unprofitable. Latin America's collective labor laws similarly provide substantial protection and power to worker organizations, albeit with a range of variation among them. In Argentina and Mexico, these laws facilitate union organizing and influence—effectively establishing monopoly unions that bargain on behalf of all workers in an industry, and allowing unions to control significant funds—while in Chile they fragment unions by requiring all collective activity to occur at the local, firm level, and they limit the right to strike and to engage in political activity.

Figure 1 below plots the combination of labor laws in effect in each of 18 Latin American countries in the early 2000s. Twenty-three measures of individual and collective labor legislation have been coded for each country, resulting in placements of each country in the two-dimensional policy space described by the figure.³ The horizontal axis corresponds to the strength of laws fostering union organization and activity, with provisions that allow greater union freedom to organize, meet, bargain, and strike coded as higher values. The vertical axis describes the protectiveness of labor laws governing individual employment contracts, with provisions for greater job security, more generous pensions, vacation and leave policy, and more restrictive overtime regulations coded as higher values. The crosshairs indicate the median values on each dimension.

As can be seen in Figure 1, the diversity in labor codes is significant. The lower left-hand quadrant, which corresponds to no or very weak labor law, contains Venezuela and Colombia. Moving upward, countries such as Uruguay, Chile, and Costa Rica in the upper left-hand quadrant present a combination of protective individual labor laws but fairly weak protections for labor unions. Peru and Bolivia, in the lower right-hand quadrant, have weaker individual worker clauses but stronger collective laws for unions.

And Argentina and Mexico stand out in the upper right-hand quadrant for combining both strong individual job protections and substantial provisions for labor union activity. The remaining countries hover in the middle of the figure. In general, this data indicates that nearly all Latin American nations have developed extensive labor law systems, but each differs in its mix of individual and collective provisions.

FIGURE 1



These differences have enormous economic effects, and may have political consequences as well. Countries with more protective individual labor laws may suffer greater unemployment during crises (as employers are reluctant to hire given high dismissal costs), while those with more extensive opportunities for temporary or probationary contracts may see increased job rotation both in and out of crises. Labor market “flexibility” may attract foreign capital to an economy, but may also discourage long-term investments in human or physical capital. A significant literature in economics has developed around these impacts of labor codes (Cox Edwards 1997; Edwards and Lustig 1997; Heckman and Pagés 2004; Restrepo and Tokman 2005). The political implications can be equally pronounced, fostering the formation and growth of labor unions or limiting their capacity for strikes and mobilization, and providing or discouraging links between unions and political parties. Likewise, labor laws can shape the expectations of workers regarding the role of the state in the economy, both as enforcer of existing laws and insurer of last resort in cases of unemployment, disability, or old age.

THEORY: ECONOMIC “HOLDUP” AND EARLY LABOR CODE FORMATION

This section of the paper develops a theory of initial labor law development that emphasizes the capacity of key sectors to “hold up” the economy or political system. It argues that each country’s first set of labor codes set the parameters of later labor law reform or modification, and cemented a system that favors certain sectors, workers with particular profiles, and specific kinds of unions. Later efforts at labor law reform tended to either expand or contract coverage or modify particularly controversial provisions, but comprehensive reorientations of labor codes were extremely rare.

This approach marks a departure from many important studies of social policy—and in a limited number of cases, studies of labor laws—which have focused on the reform process undertaken in recent years.⁴ This research has emphasized partisan or electoral politics under democracy (Huber and Stephens 2001, Stokes 2000, Murillo 2005, 2001), as well as processes of international diffusion and imitation (Weyland 2007, 2004), economic pressure from globalization, structural conditions, and risk (Kaufman

and Segura-Ubiergo 2001, Madrid 2003, Mares 2003, Etchemendy 2004, Wibbels and Ahlquist 2006, Segura-Ubiergo 2007), and political legacies (Cook 2007). While these studies are particularly helpful for understanding specific reform measures in the 1980s and 1990s, they struggle to explain the variation in labor codes observed in the first section of this paper. Further, since only a few of the Latin American labor codes have changed from one quadrant to another during the reform period (Carnes 2008), the vast majority of the variation would seem to predate that period.⁵ The persistence of underlying labor law “regimes” in each country, which have roots in the early industrial development of each country, overshadow the changes introduced in the reforms enacted in the 1980s and 1990s.

To understand the formation of Latin America’s early labor codes, the theory developed here emphasizes the economic and political conditions under which employers and workers find labor laws, enforced by the state, to be the best response to the problems of repeated contracting and changing market circumstances. It draws on the literature on bilateral monopoly and the vertical integration of production processes in the firm. This perspective emphasizes how two monopoly firms, linked in a vertically integrated production process, may choose to merge into a single firm to overcome the mutual threat of defection which would hurt both parties. By doing so, the firms make gains from efficiency (Coase 1937), avoid costs of repeated and incomplete contracting (Williamson 2002, 1971), are able to engage in better monitoring (Alchian 1972), and diminish the possibility of holdup by either side (Klein 1988). Recent research has shown that such relationships, though initially observed in the economy, also may emerge in a political context. For example, Haber et al. (2003) and Razo (2005) have shown how early twentieth-century Mexican political elites used overlapping service in government posts and major industrial and banking firms’ boards of trustees in a form of “vertical political integration,” linking the resources of the state and the private sector to protect their business interests and stave off disruption from outsiders and competitors. Thus, laws, regulations, and state structures can be “captured” by those they govern, and used not only to facilitate coordination but also to block the entry or success of others (Stigler 1971).⁶ The theory elaborated below argues that labor laws have functioned in this way, especially in their early development, linking together specific groups of workers and

their employers with the mechanisms of the state, and effectively locking out other actors in the economy from the benefits such tight production relationships can convey.

Workers, Employers, and Bilateral Monopoly in Labor Law Development

Labor laws first developed in Latin America at the end of the 1800s and in the first decades of the 1900s, with the first comprehensive labor codifications taking place in the 1910s and 1920s. Prior to this period, employment relations were set in “spot-markets,” with individual employers (generally agricultural) hiring individual workers for a mutually agreed task, wage, and period. Contracts were not written, and the state did not intervene (Galiani and Gerchunoff 2003). This persisted even during the early industrialization of Latin America; meat packers in Argentina, for example, only began demanding contracts that would ensure a guaranteed number of paid hours in the 1940s (Lobato 1998; Bergquist 1986).

Demands for greater protection tended to come from two kinds of workers, both of whom were able to exercise some kind of holdup over the economy due to their geographic concentration, shared interests, and crucial role in the production process. The first of these were workers in key export sectors, or in the transport industry that facilitated production for export (Bergquist 1986). Thus, miners in Chile and Peru and meat packers in Argentina were among the first actors in each country to use their economic clout to demand labor regulation. Likewise, railroad workers in Argentina and port workers in all three countries could exercise economic threat. Note, however, that geographic concentration was particularly important for these workers. Cattle workers, for example, were not able to organize in Argentina in the same way as their meatpacking peers, due to both geographic dispersion and the diverse employers they faced. Concentration fostered information sharing, organizing, and the focusing of efforts and disputes, as well as defined worker interests in the sector vis-à-vis those in other sectors. Thus, workers in these key industries came to have disproportionate power in the economy.

Workers with particular artisanal, professional, or industrial skills were also able to distinguish themselves from the large mass of homogenous, unskilled laborers in such a way as to make demands for protection to their employers and the state. For example,

urban professionals and craftsmen could make credible threats to leave one firm to join another, especially in the years around the turn of the twentieth century when skilled labor was in short supply. Employers thus were forced to pay a premium to these workers, first in terms of wages but later in job protections and organization rights.

However, geographic isolation and skills could only provide the necessary context for labor contracts and codes, not the political process through which laws could be formulated. A necessary step was the emergence of worker organizations—whether guilds, labor unions, or federations—which allowed collective action and engagement with both employers and the state. These worker organizations tended to develop more quickly, and with greater effectiveness, where European immigration had been greater, bringing with it the experience of organizing on the old continent. Printers—whose skills were crucial to the growth of commerce and the state—were among the earliest workers to organize and hold strikes in both Argentina (Collier and Collier 2002) and Chile (DeShazo 1983). Likewise, the concentration and differentiation of workers, either due to their geographic location or shared skill profile, was critical in facilitating early union formation. Finally, divisions along ideological or strategic lines undercut unity in some cases. Chile, with a strong animosity between anarchists and communist currents, developed particularly fragmented labor unions with internal competition and divisions (Valenzuela 1979).

In economies with multiple export goods, or numerous centers of production, the “holdup” capacity of the sectors and unions described above would have been quite limited. But in late-nineteenth century Latin America, production was almost never diversified, and indeed remained highly dependent on a few key sectors in each country. Further, the investment stake of central members of the elite in key, capital-intensive industries, as well as in the nascent state, meant that elites had a crucial interest in ensuring sustained production and labor quiescence. Labor laws were thus an opportunity to create stability in employment relations, one that was beneficial not only to labor but to employers.⁷ Neither employers nor workers were concerned about labor laws as universal rights or even basic standards of the economy; rather, they sought to solve punctual problems that would otherwise result in high repeated-contracting costs and slow down or

halt economic production and growth. Labor laws functioned as a way to lock in these relationships and structures.

These elite business leaders thus were the necessary counterparts to labor in the bilateral monopoly production regime that developed in Latin America's key economic sectors. With underdeveloped capital markets, they concentrated their investments in the most promising and profitable enterprises in the country—namely, export production and crucial urban services—and were eager to protect their investments in the uncertain economic context (Haber et al. 2008; Haber et al. 2003). The threat of expropriation, either by other elites or by worker strikes or occupations, was real and continual.⁸ When sufficiently isolated, these foundational elites could either effectively repress the demands of their own workforce, or strike bargains with them, producing policies and labor standards that applied within the confines of their plants. Likewise, they could fight off the incursions of other elites or investors, blocking them out of entering the market as competitors.⁹ However, as labor became organized and access to outside credit increased, these elites found the costs of continual repression and negotiation too high and began to look to the state as a means to cement their economic status. Labor laws thus were designed as a kind of “selective property right” (Haber et al. 2003), formulated with particular firms and industries in mind and enforced almost exclusively for them.

Capturing the state and its regulatory capacity was crucial to both sides of the bilateral monopoly. For employers, the state provided enforcement mechanisms that hired thugs and collusion could not, including courts and the monitoring of competitors, and reduced the costs of repression, as armies and police forces were contracted with costs spread among property holders (rather than bourn by the individual employer). For workers, labor law provisions could act as barriers to entry to outside workers—by requiring certification programs to work in a given industry, for example—or to dissident unions, by establishing one union as the monopoly union and channeling all union dues to it. Legalization thus institutionalized and perpetuated the privileged status of those in the key sectors, holders of better skills, and the better organized. And as political parties developed or came to power, they frequently seized upon existing labor legislation, or wrote new legislation, to draw these key sectors into their power base, as well as incorporate other emerging elite or labor groups.

Thus, the emerging labor codes sharply divided the economy into “insiders” and “outsiders” (Rueda 2005). The earliest laws did this explicitly, because they were written to apply to single industries. Frequently, even within those industries, they were written to apply to white-collar *empleados* (employees); blue-collar *obreros* (workers) did not receive the same legal benefits and protections. Further, since universal enforcement of legal provisions was beyond the capacity of nearly every Latin American state in this early period, the laws only effectively applied to those key sectors and firms on which the state concentrated its resources. Not surprisingly, these were the ones that provided the greatest economic dynamism to the country, and in which state elites (who frequently overlapped with economic elites) had an interest. Outside of these key sectors, even laws that seemed to apply to broader classes of workers simply were not enforced, or employers manipulated their provisions to emasculate their effectiveness.¹⁰ Finally, all those workers who were self-employed or employed without a contract (within a family business, say, or in spot markets where contracts consisted of handshakes) were by definition “outsiders” to the system of labor laws.

Key Factors in Labor Law Development and Their Effects

To summarize, the theory described above relies on four key independent variables, which together account for the kind of labor code that developed.

- *“Key” Industries—Geography, Skills, Capital, and Productivity*: Industries that were concentrated geographically or relied on workers with specific, and relatively rare, skill profiles, were generally the locus for the development of written labor contracts, more elaborate employment policies, and eventually, labor laws. Further, “key” economic sectors, which provided essential exports, foreign exchange, and economic growth, and hence which could threaten to hold up the economy, were the focus of the state’s efforts to enact and enforce early labor codes.
- *Monopoly Workers*: Labor codes could only develop as selective rights where workers were able to function as an effective (albeit imperfect) monopoly. This occurred when workers possessed rare specific skills or when they were geographically isolated. Both features acted as barriers to entry to additional

workers, and gave the workers leverage vis-à-vis their employers. Further, where early worker unionization was stronger, workers themselves could preserve their monopoly status, blocking the arrival of migrant workers by force or by enforcing closed-shop practices.¹¹

In contrast, homogenous low-skilled workers, and those who were not sufficiently organized to monitor entry to their industry, were at a severe disadvantage in demanding labor policies at the firm level or regulations at the state level. In fact, given their lack of skills, it was often to their advantage to oppose labor laws, as these would increase the cost of hiring (and firing) and could make their employment less likely.

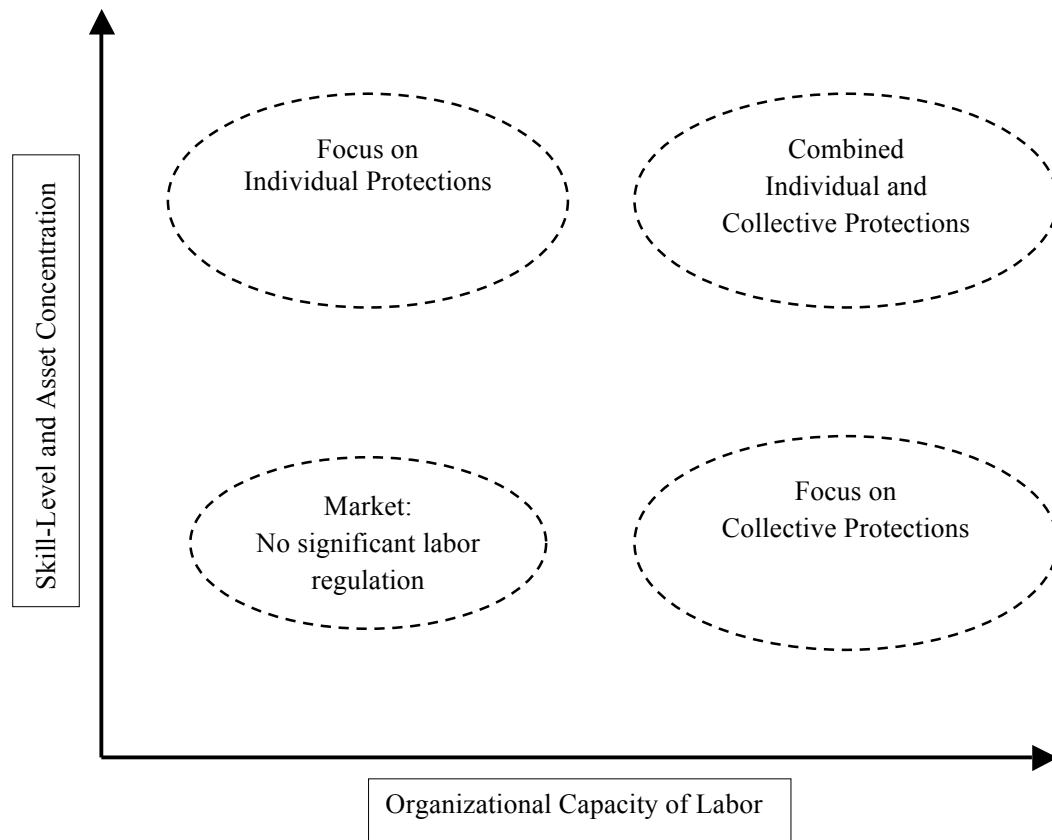
- *Concentrated Capital:* Concentration of capital and key industries in the hands of a small number of elites created a focal point for bargaining over labor contracts and standards. Further, it meant that employers in that industry or region did in fact constitute a monopsony—the single buyer of the skills offered by the relevant workers. Note that these elites need not be the only employers in the region or country, but the only ones who can credibly buy the services of a defined class of workers, because they control the mines, factories, or other scarce capital in which the workers have skills or relevance.
- *Access to the State:* Early labor law adoption was facilitated by a weak state with power concentrated in the hands of a limited number of elites. Further, to the extent that the state was dependent on a limited number of key sectors for foreign exchange, tax revenue, or the growth that could temper social conflict, the bilateral monopoly conditions that underwrote labor law formation were more likely. States that were more diversified in their elite bases, or in their sources of economic growth, were less likely to find labor laws a pressing need. Political parties often served as crucial means of interest aggregation and cross-elite and/or cross-union alliance, facilitating passage of labor codes.

The political nexus that emerged between monopoly labor suppliers, on the one hand, and monopsony employers on the other, was not universal throughout the economy. For this reason, the labor codes that developed were designed to address

the central concerns of the affected industries. Elite employers in other industries, in fact, had reason to block the creation of laws that could apply more broadly.

The kinds of labor laws that were implemented—specifically, the mix between individual and collective labor regulations—were also a function of the alignment of the above independent variables. Where workers had more unique skills, all else equal, they possessed greater leverage in their demands for individual labor protections, including greater job security measures, less severe working conditions, and more generous vacation and leave policies. Where they had more experience of organization and mobilization, and more unified leadership, all else equal, they sought and achieved more extensive collective labor laws as guarantees of union strength. This often entailed establishing a monopoly union, thus using the law as a barrier to entry to challengers in worker representation. Such laws also served the interest of employers, simplifying bargaining by creating a single interlocutor and establishing means for the state to intervene in the governance in the union. Alternatively, where union organization was weaker at the time of initial labor code adoption, the laws were designed to perpetuate union fragmentation, dividing the voice and strength of workers vis-à-vis their employers.¹²

Figure 2 below displays the predictions of the foregoing theory regarding the mix of labor law outcomes to be observed based on the above factors. The horizontal axis corresponds to the relative organizational capacity of the labor movement in a particular industry; in the context of a country, this can be thought of as the average organizational strength of workers across the key industry or industries (observed in the rate of union membership and the unity of leadership in the sector). The vertical axis represents the skill-level and asset concentration in the industry; again, in the context of a nation, this would be the average skill-level concentration across the key industries. Where values on both axes are low, workers are homogenous, low skilled, and plentiful, and employers are likewise numerous and competing with one another. In addition, no group of workers or employers possesses the means to capture the state. This results in spot markets, in which employers and workers come together for production but do not establish lasting contracts, and labor laws are not in the interest of either party.

FIGURE 2

Where skill-level and asset concentrations are high, but the organizational capacity of labor is low or fragmented (as in the upper left-hand quadrant), then the structure of production fosters settling on laws to protect individual workers, but that do not cement-in special privileges for labor union activity. Where skill-level and asset concentrations are low, but union organizational capacity is high (in the lower right-hand quadrant), the organizational strength of workers may allow them to extract some guarantees of their collective activity but they will be unable to achieve individual protections. This tends to be low cost to both employers and the state, because workers are still easily interchangeable, so their ability to exercise the conceded collective rights may be quite compromised. Finally, where both skill-level and asset concentrations are

high, and labor's organizational capacity is high (as in the upper right-hand quadrant), then a true bilateral monopoly occurs. The likelihood of holdup is very high, as both sides can marshal their resources as monopolist or monopsonist to seek concessions, effectively halting production. The labor laws that are adopted in this context work to institutionalize an effective relationship between employers and labor and to use the apparatus of the state to prevent defection or the entry of new competitors. Both individual and collective labor laws are strong.

Implications for Later Labor Law Expansion and Reform

The early labor laws in Latin America functioned as selective public goods designed, applied, and enforced in very limited sectors of the economy. As the previous section has shown, this had the result of creating a sharp division between those that were insiders and those that were outsiders. And it shaped the politics of later labor law expansion, contraction, and reform that would come in the ensuing decades (Pierson 1993; Rueda 2005).

Opportunistic politicians from the state in the 1930s and 1940s saw labor laws, and the sectors they applied to, as ripe occasions for building coalitions and political parties and expanding their own power. Thus, corporatist-minded leaders as diverse as Juan Domingo Perón in Argentina, Lázaro Cárdenas in Mexico, and Getúlio Vargas in Brazil, as well as military rulers such as Juan Velasco Alvarado in Peru, used the existing labor codes as a way of further cementing the key economic sectors into their power base and into the machinery of the state. Job security, wages, and social programs for unionized workers were massively increased, but at the cost of union leadership independence. The most extreme form of this political use of labor laws involved nationalization of key industries and incorporation of workers across the economy into the public sector; in this case, the government functioned as both employer and regulator of labor relations. The 1950s thus saw increases in coverage of labor laws and their protectiveness, such that by the early 1960s labor laws applied not only to white-collar *empleados* but also blue-collar *obreros*. The policies of import substitution industrialization (ISI) reinforced and facilitated these labor regimes, with state subsidies to bloated enterprises underwriting their political function; labor laws incorporated the

most important and threatening workers into the fortunes of the state and dominant political parties, trading economic privilege and stability for votes and loyalty.

Still left out of labor law protection were workers in non-skilled (and often agricultural) sectors, the self-employed, and the unemployed. While in some cases the state sought to reach out to these disenfranchised sectors—the creation of the “popular” branch of the Partido Revolucionario Institucional (Institutional Revolutionary Party, or PRI) in Mexico, for example, or Brazil’s military government-instituted pension system for agricultural workers—the dominant model of state neglect toward “outsiders” remained in force.

The economic crises of the 1980s, which forced economic restructuring, reduction of state spending, and opening of the economy to foreign trade and capital, fundamentally challenged the existing labor law regime in Latin America. As ISI was dismantled and state support for inefficient industries (and their large payrolls) withdrawn, new opposition to the region’s labor laws emerged. Most notably, export-industry employers who opposed the cost and “rigidity” of the labor codes called for “flexibilization,” through which labor laws would be relaxed during probation periods for new workers and the use of fixed-term contracts would limit job stability costs. By the 1990s, unemployed workers also came to fore, making new demands for inclusion in social protections; simultaneously, they brought pressure on the state to create a labor regime in which they could be more easily hired. And international agencies and nongovernmental organizations mounted campaigns to ensure that globalization and increased competition did not result in a “race to the bottom” by countries compromising labor rights to attract foreign investment (Mosley and Uno 2007).

Somewhat surprisingly, Latin America’s labor laws proved harder to reform than did other economic policies (Murillo 2005). Indeed, half the countries in the region saw no substantial change of their labor codes during the period from the 1980s to the 2000s, and of those who changed them, all but two made them *more* protective rather than less so. Elsewhere, I argue that this was due to the force labor market insiders were able to bring to bear on their associated parties and the state (Carnes 2008). They were particularly well-positioned to ensure that their benefits—especially those of monopoly union status and the financial resources that come with it, as well as the high severance

pay schemes that effectively granted lifetime job security to workers with high seniority—not be watered down through the inclusion of other workers or labor organizations. Where labor laws were weakened, insiders were smaller in number, less organized, and had weaker ties to the political system. Thus, the early period of labor law formation continued to exert an effect long after structural conditions had changed, with early-period insiders able to preserve their protections and benefits at the cost of outsiders.

CASE STUDIES

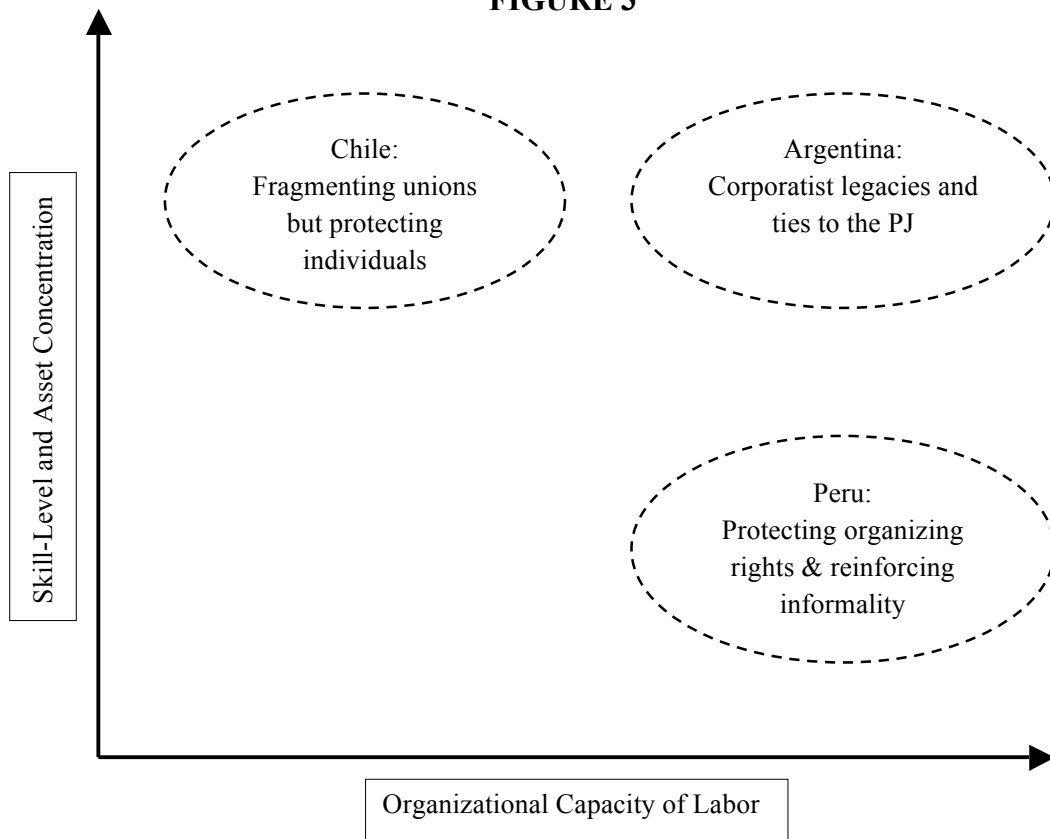
This section employs historical process tracing for three countries to better follow the political mechanisms underlying labor code adoption described in the theory in the previous section. Chosen for their variation on the key explanatory variables, Argentina (concentrated focus on beef for export, high union organization, high skill specificity, concentrated capital), Peru (diversified primary product exports, low union organization, low skill specificity, and relatively little capital-intensive investment), and Chile (focus on nitrate and copper mining for export, low union organization due to fragmentation, mixed levels of worker skills, and elite capital concentrated in cities) map onto three of the hypothesized labor law “regimes” described in the second section, above (see Figure 3). Of these, Argentina presents the most extensive labor protections for individuals and for its unions, which it accords monopoly status. Peru has the weakest codes for individuals, which effectively undermine their ability to exercise the nation’s collective provisions that foster union activity. Chile has relatively extensive individual labor protections but collective codes that fragment the union movement and frustrate organized, national-level political activity.

Argentina: From Beef and Railroads to Peronist Industrialization

Although they reached their culmination in the labor codes enacted under Perón, the highly protective individual and collective laws of Argentina actually had their roots nearly a half century earlier. In the late 1800s, two factors set Argentina apart from its neighbors and the rest of Latin America. The first was a tight labor market, which

required an influx of workers from Europe. These Europeans brought with them an experience of labor organization and mobilization that was not as developed elsewhere in the Americas; a small subset of them also brought skills in crafts such as printing and engineering.¹³ The other distinguishing factor was the country's reliance on its beef industry—and the associated meatpacking plants, cold storage facilities, and railroads that made transport to Europe a possibility.

FIGURE 3



Thus, labor mobilization and labor law development advanced on two fronts. The country's first union, of printers, emerged in 1870 and held its first strike in 1878 (Collier and Collier 2002). Urban, skilled workers with a syndicalist orientation thus laid the groundwork for organizing. Shortly thereafter, relatively low-skilled meat packers in the economically crucial *frigoríficos* (refrigeration plants) began to organize to collectively make demands of their employers. Between 1890 and 1914, meat shipped through the

frigoríficos went from accounting for 16 percent of meat exports to 88 percent (Easum 1953). Meat refrigeration is a process that is particularly vulnerable to holdup. Even a day's work stoppage can have devastating economic effects for ranchers and cattle brokers—leaving live cattle in holding areas that quickly overflow, or even worse leaving slaughtered cattle to decompose without a means of preservation. Thus, the capitalists who controlled the *frigoríficos*, as well as those in the supply chain of ranching, railroads, docks, and shipping had an interest in making sure that the meatpacking and refrigeration happened smoothly.¹⁴ Even prior to the advent of labor laws, concessions were made to the meat industry workers in the form of infirmaries, dining rooms, medical services, and eventually greater wage stability and assurance of a minimum number of working hours each pay period (Lobato 1998). It is not surprising that unionization took off in these sectors; by 1936, when union density was ten percent in the Argentine economy, it was 79 percent among the railroad supply-chain workers that fed the beef industry (Torre 2006: 45). The concentration of organized labor, and the requirements of significant infusions of capital to construct the *frigoríficos*, with holdup on both sides a perennial danger, made the industry a ripe one for a merger solution to resolve the bilateral monopoly.

When the Group of United Officers (GOU) seized power in 1943, they quickly recognized the holdup threat of the railroad and meatpacking industries, and employed both repression and cooptation to draw their workers into their coalition (Torre 2006: 55). Perón used his post in the National Department of Labor (later the Secretariat of Labor and Prevision) to move from monitoring labor law compliance to begin doling out an array of state-financed social assistance payments, including pensions, public health and housing finance assistance, and unemployment insurance (Godio 2000: 818–819). To further incorporate labor into the military-industrial alliance that had brought him and the rest of the military to power, he created a system of labor laws that gave him direct access to, and final control over, union organizations. The Law of Professional Associations (Decree 2,669), passed in 1943, was its cornerstone. This legislation limited *personería gremial* (union personhood)—legal recognition and voice vis-à-vis employers and the state—to a single monopoly union in each economic industry. These unions then belonged to an organic confederation structure, channeling activity by subsidiary unions

at the plant level. The result was disproportionate power for the confederation Perón chose as part of his movement, the Confederación General de Trabajadores (General Confederation of Workers, or CGT), and its affiliated sectoral unions, and it gave overwhelming influence in them to Perón and his government.¹⁵ Further, Decree 23,852 of 1945 gave monopoly unions financial resources, mandating that employers collect union dues and deliver them to the unions.

The corporatist approach employed by Perón led to rapid unionization, with union density climbing to 30.5 percent by 1946 (and 51.5 percent in manufacturing, which was to be one of the engines of growth of the economy) and to 42.5 percent in 1954 (55 percent in manufacturing, 41 percent in construction, and 51 percent in state services); transport and communication (including the railroads) approached 100 percent throughout the period (Torre 1972; Godio 2000). Perón extended protective individual labor provisions broadly to these workers, reaching a wide swath of the urban population. Among these individual labor protections were accident insurance, extended paid holidays and severance pay, vocational training, a year-end bonus, and restrictions on the dismissals of workers (Lewis 1990; Collier and Collier 2002).

Thus, a “decidedly prolabor” code emerged under Perón, with collective and individual laws designed to reach the industrial workers that were fundamental to both his economic and political program (Galiani and Gerchunoff 2003: 132). Beginning with the key sectors tied to transportation and the beef industry, he expanded coverage of the labor codes to create a broad coalition of workers across the economy. Having benefited from the holdup power of organized workers—he himself was brought out of exile when workers converged on the Plaza de Mayo on October 17, 1943—he recognized the need to control them and create an alliance with them. Using the mechanism of law and the resources of the state, he sought to bind labor to his personal political movement. And after his presidency, the merger between labor and the Peronists was further deepened through two informal mechanisms: the *tercio* (third), by which one-third of Peronist candidates were drawn from the labor sector, and the 1957 recognition of the “62 Organizations” as the primary labor voice within Peronist planning and policy making (Levitsky 2003; Gonzales 2004: 21). Thus, the political “merger” between the Peronist machinery and its chosen interlocutor in the labor movement (to which labor laws gave

disproportionate power and finances) was complete; in a sense, what was good for the CGT was good for the party, and vice-versa.

The labor law regime in Argentina proved surprisingly strong and resilient. Even when the Peronist party was outlawed under subsequent military governments, its allied “62 Organizations” gave it a continued presence in the country. And labor laws were never dismantled under various instances of military rule; while some measures were temporarily suspended, they always returned under subsequent governments.¹⁶ The most serious threat to them came under President Carlos Menem, who governed from 1989 to 1999. Himself a Peronist elected with labor support, he sought to increase the economy’s competitiveness and reduce unemployment by “flexibilizing” the labor market. He introduced new temporary hiring contracts and reduced severance payments, both of which were intended to facilitate hiring (Lo Vuolo and Barbeito 1998). In addition, Menem sought to weaken the collective power of unions by restricting wage bargaining to the firm level and by removing the unions’ access to the “*obras sociales*” (union-controlled health funds) that they administered (and used to political purpose).¹⁷ However, while initially successful at implementing many of these policies, Menem faced widespread dissatisfaction from organized labor, who had seen job stability threatened, and by 1998, facing electoral defection, he was forced to reverse course and remove the fixed-term contract measures. He was never able to push through the privatization of the *obras sociales* (Murillo and Schrank 2005). Thus, insiders in organized labor revealed that they were still able to mobilize political holdup power, threatening Menem’s ability to govern and effectively causing him to restore their protective labor codes.

In the years following the 2001 economic crisis, first Nestor and now Cristina Kirchner have looked to labor insiders, and especially their main voice, the CGT, to underwrite their power. Nestor extended both individual provisions—increasing severance pay for new hires, limiting the use of fixed-term contracts, and giving incentives for hiring by small- and medium-sized firms—and collective laws—by reactivating collective bargaining and reestablishing the principle of *ultractividad* (a legal standard by which expired labor agreements are assumed to remain in force), which allowed workers in many industries to use their labor-friendly agreements from the

second Peronist presidency in the 1970s as a reference for current negotiations. Further, after initial efforts to cultivate ties to dissident unionists in the Central de Trabajadores Argentinos (Center of Argentine Workers, or CTA), the Kirchners have progressively turned their backs on this potential rival to the CGT. The CGT thus retains its monopoly hold on representation of the broadest swath of workers in the economy, and the Kirchners have channeled resources to its coffers through changes in the *obras sociales* legislation and supported worker calls for large wage increases in collective bargaining (especially during Cristina's campaign for the presidency). It is not uncommon now to see Hugo Moyano, the secretary general of the CGT, on the dais with the Kirchners, a clear demonstration of the close partnership that exists between the Kirchners and the insiders from organized labor. The unemployed, who had begun to organize and pressure the government during the crisis as *piqueteros* (picketers), as well as dissident workers in the CTA, are now debilitated and relegated to a clear outsider position (Etchemendy and Collier 2007). The labor laws reinforce this political marginalization.

In short, Argentina presents a history in which the early development of sectors that faced conditions of bilateral monopoly—especially *frigoríficos* and railroads—bound together the fates of labor and capital and forced the development of rigid, protective labor practices. Perón, when he came to power, structured a labor code that fostered and deepened these ties, broadened it to include other elements of the industrial sector, and effectively incorporated these economic actors into the state (and the party/movement that bore his name). This political merger has withstood the test of time, largely because the labor laws create incentives against defection by workers and moderate labor demands. Since the demise of ISI policies, calls by capitalists to “flexibilize” have had only limited success, because the existing labor codes facilitate union strength and continue to give it holdup power in the economy and in politics. Insiders—especially the CGT—retain sufficient strength in the Peronist party, and in the economy, to resist the dismantling of the highly protective labor codes. Thus, the early history continues to exert significant effect in the present.

Peru: Military Governments, Absolute Job Stability and its Demise

The labor legislation in Peru, as presented in Figure 1, presents a combination of above-average collective protections and very weak individual protections. This uneven mix of legislation parallels the early development of labor laws in the country, which were a piecemeal “collection of scattered measures dictated by oligarchical regimes to favor the arbitrary action of the employers” (Angel 1979: 10, quoted in Cook 2007). As in Argentina, the first labor codes in Peru developed in industries where the threat and cost of holdup were highest, in the ports, cities, and mines. In 1913, dockworkers were the first to have a mandated eight-hour workday, and they were followed by urban workers in 1919, sugar workers in 1929, and miners in 1931 (Bernedo 1990). The first systematized labor legislation was included in the 1933 Constitution and 1936 Civil Code under General Oscar Benavides, and guaranteed an eight-hour workday, weekend rest, the prohibition of child labor, and compensation for workplace injuries (Castro Rivas 1981). Collective labor legislation was slow to emerge. Early labor unions in mining and manufacturing were formed without government oversight, and eventually were registered with the Ministry of Public Health in 1936 (Yepez del Castillo and Bernedo Alvarez 1985).¹⁸

Other legislation, especially concerning job stability and union organizing, was lacking. Workers did not possess sufficiently differentiated skills to pose a serious threat to employers or the government, and they lacked coordination and organization (Cook 2007). Indeed, there were no structural or productive bottlenecks in the Peruvian economy like the *frigoríficos* of Argentina. Employers could tolerate delays on docks or in mines until replacement workers could be found. Further, employment in Peru remained concentrated in agriculture, with industrialization proceeding far more slowly than in other Latin American countries. As late as 1961, the majority of the working population was in the agricultural sector (52.8 percent), while manufacturing constituted only 13.5 percent of employment (Thorp and Bertram 1978). Thus, the country did not present the kind of concentrated capital investment and concentrated skills in isolated geographic areas or populations that would have made a bilateral monopoly a possibility. Without this confluence of factors, the labor laws that developed were weak well into the early 1960s.

A decisive change in Peruvian labor codes occurred under the Revolutionary Military government of Velasco. Under its *Plan Inca*, and motivated by a conviction that ISI policies would bring the economy out of crisis, the military enacted a “capitalism of the state,” expropriating foreign-owned industries and expanding public sector employment (Contreras and Cueto 2000). At the center of the plan was the Ley General de Industria (General Law of Industry), which established the state as the monopoly manager of industry and manufacturing; it simultaneously integrated workers into its structures through “industrial communities” who were to share in the leadership and profits of the state-run firms (Parodi Trece 2000). Thus, what the structural conditions of economic development and worker skills had not required or permitted, the military government enacted by fiat: a bilateral monopoly of state-run industries and associated labor unions. The labor codes were designed for this new, vertically integrated economic model. Decree 18,741 (1970) of the Revolutionary Government gave workers near-absolute job stability, only permitting firing for “grave faults” and giving workers the right to sue for reposition if they were unjustly dismissed. This legislation was even further strengthened in 1975, under a policy called “absolute job stability” that rewarded dismissed workers with a “compensation for time of service” payment that was so high that it rendered firing impractical for employers (Castro Rivas 1981). Taken together, these labor laws represented the high point of labor legislation in Peru’s history.

Ironically, though, the “absolute” job stability measures proved remarkably unstable. Only three years after its advent, the provision was reduced to what was termed “relative” job stability, applying exclusively to workers hired before 1978. And in the 1979 Constitution, job stability was guaranteed, but without explicit mechanisms to ensure its enforcement. Although still relevant rhetorically, it had been eviscerated by employer evasion and government indifference.¹⁹ The return of democracy under Víctor Andrés Belaúnde brought no change in labor legislation or its enforcement, and the Alianza Popular Revolucionaria Americana (Popular American Revolutionary Alliance, or APRA) presidency of Alán García implemented laws that worked at cross purposes—a reaffirmation of job stability with increased severance pay for workers employed less than a year, coupled with an Emergency Employment Program that allowed employers to hire without paying benefits or ensuring job stability (Cook 2007). Facing economic

crisis, the job stability measures that had been imposed under authoritarian rule could not be sustained. Without massive state employment and spending (as had been undertaken by the revolutionary military government), they simply were out of sync with the economy. A relatively small isolated class of workers with longstanding tenure and protections against dismissals stood as insiders, while growing numbers of the workers on temporary contracts—or in the burgeoning informal ranks of the self-employed, unemployed, or underemployed—became labor law outsiders.

If the revolutionary military government represented the apex of job stability in Peru's labor legislation, the presidency of Alberto Fujimori (1990–2000) was its nadir. On the individual front, in 1991 he created permanent legal means for hiring workers on a temporary basis. Decree Law 728 introduced nine new “modalities” of temporary contracts—including ones for the start of a business, the reconversion of a business, and most broadly for “market necessities” (Vega Ruiz 2005). To make this politically palatable, it was written not to apply to workers hired before its passage. However, Fujimori used his political capital—won by bringing inflation under control and scoring decisive victories over the Shining Path rebels—to progressively diminish job security measures. In the 1993 Constitution, the principle of absolute job stability was removed, and in 1995 Law 26,513 did away with job stability for those hired before 1991.

Likewise, Fujimori undertook reform of the collective labor code. Removing protection for labor union leaders while in office (the *fuero sindical*, or union privilege) and fragmenting worker organization by allowing multiple unions at the firm level, he complicated procedures for collective bargaining and for strikes. In addition, he reduced public employment by nearly fifty-five percent, jettisoning the workers that had been incorporated into the state by earlier governments and that had formed one of the strongest bastions of protected insiders. By the end of Fujimori's government, labor unions were isolated and remained among the least-trusted and least-popular political institutions in the country (Grupo Apoyo polls, various years). In the early 2000s, estimates show only one-fifth of Peruvian workers had stable job contracts, (down from forty percent in 1990),²⁰ and only 8.3 percent of workers were unionized (down from 39 percent in 1990) (Chacaltana 2005).

Low levels of union organization and an ongoing labor surplus have stood as strong obstacles to labor law expansion in the 2000s. Alejandro Toledo undertook only very minor changes in individual labor laws—creating more legal oversight for temporary contracts and passing a law against sexual harassment in the workplace—essentially playing to popular opinion through low-cost measures. On collective relations, he restored many of the union freedoms that had been diminished by Fujimori, removing a prohibition on political activity by unions, making it easier for workers to join unions, giving greater freedom in union elections, expanding collective bargaining, and easing the requirements for legal strike activity. Of course, none of these measures guaranteed union strength—and indeed labor unions could just as easily be further fragmented since multiple unions per firm and industry are permitted. Alán García, in his return to office, promised a major overhaul of labor legislation in a new *Ley General de Trabajo* (General Law of Labor), in which unions called for a return of absolute job stability. However, talks stalled in the National Labor Council, and presently the legislation stands frozen in Congress, with little likelihood of moving forward (El Comercio 2007).

The evolution of Peru's labor regulation suggests that lasting labor codes emerge only when there is an underlying congruence between labor market conditions and the structure of capital and production in the economy—one that tends toward a bilateral monopoly, at least in key sectors. Only then is there an alignment of the interests of defined sets of workers and capitalists to call for legislation, and state willingness to underwrite it. Until the 1960s, a surplus of unskilled labor and agricultural worker dispersion across the countryside made organization difficult and the threat of holdup not credible. As a result, labor protections and laws were extremely limited and spotty. Only under the Revolutionary Military Government of the early 1960s did an attempt to create a bilateral monopoly for industrial production occur, in which the state was at once employer, legislator, and enforcer, and in which it fostered union organization in labor communities. The experiment was short-lived and unsustainable, relying on protected markets and state finance to underwrite it. Once these were withdrawn, Peru reverted to its long-term equilibrium of poorly protected surplus labor and diverse and fragmented labor unions. The current labor laws reflect this economic structure, facilitating rapid

turnover among workers on temporary contracts and providing ample opportunities for unions to form and compete (even when this works against their gaining strength).

Chile: Fragmented Unions and Concentrated Individual Protections

If Argentina's early twentieth-century economic history presented conditions ripe for labor organization and workplace legislation, and Peru displayed conditions averse to them, Chile stood as something of a middle case in which early labor mobilization existed but was fragmented, and the resulting individual labor protections were limited to a small segment of the population. Divisions within the labor movement further hindered the establishment of collective laws that would have increased labor union strength. As a result, Chile's labor laws provide significant protection of individual workers and working conditions, but relatively weak guarantees of collective union rights and resources.

In the late 1800s, two sectors were focal for labor organizing—the miners in the north and the urban workers and port workers in Santiago and Valparaiso. The mines entailed concentrated investments in geographically isolated areas, and relied on workers co-opted from the south and transported in on an as-needed basis (Ortiz Letelier 1985). The ports functioned as important supply lines to the inland capital, but were built up with diverse sources of smaller-scale capital. As a result, two relatively weak kinds of labor movements took shape: a more organized, anarcho-syndicalist effort in the urban crafts and services (for example, in the leather, baking, construction, coal mining, tramway, metal, maritime, furniture, textile, printing, garment, and tobacco industries), and a more diverse and disorganized one in the capital-intensive metal mining, railroads, communications, glass, and beverage sectors (DeShazo 1983). The first urban worker organizations took the form of mutual aid societies, in which workers paid dues in order to have access to sickness and accident pay, dignified burial, death benefits to dependents, and sometimes retirement payments; other societies also offered savings plans, night classes, cultural and social events, and consumer cooperatives (DeShazo 1983). The syndicalist approach of these organizations led to fragmentation: unions organized at the local firm level to resolve particular issues vis-à-vis their employers while larger, industry-wide efforts were not made. Internal divisions and competition for

local leadership, with union leaders emphasizing demand maximization produced a “contestatory type” of union movement, fragmenting the union voice and hampering collaboration across firms, even in the large-scale industries where it would have been most fitting and beneficial to workers (Valenzuela 1979).

In the early twentieth century, efforts to deal with the “social question” raised by industrialization, urbanization, and the working conditions they entailed produced competing visions of labor law from the two main political parties in 1919 and 1921. Conservatives emphasized plant-level unions overseen by government labor inspectors, in order to weed out agitators, while members of the Alianza Liberal (Liberal Alliance) preferred that workers be organized by trade or occupation; they also differed on questions of union finance, with conservatives preferring union participation in firm profits and liberals opting for finance through union dues (Valenzuela 1979: 558). This divide, coupled with an even fiercer stalemate over issues of governance and church-state relations, prevented the Congress from reaching consensus on legislation to protect higher skilled, white collar *empleados*, on the one hand, and laws to support blue-collar *obreros*, on the other (Morris 1966: 35). The issue was only resolved when young officers in the military government forced through legislation in an effort to contain worker mobilizations (DeShazo 1983: 222–223).

The seven laws that were passed under military pressure in the 1924 Labor Code included pieces of both of the earlier proposals, now assembled into a package that included the crucial issues of union organization and negotiation with employers (DeShazo 1983: 218). For individual workers, it regulated work contracts and the employment of women and children, established a social security fund financed with payroll deductions (one of the first in Latin America), and established a workers’ compensation fund.²¹ *Empleados* received a generous package of additional benefits, including yearly bonuses based on profit sharing, a maximum 48 hour work week, a guaranteed written contract, sick pay, a retirement fund, two weeks annual vacation, and the right to a separation/dismissal payment.

The 1924 collective legislation regulated cooperatives and the process to be followed in labor disputes (raising the bar for strikes), and established a legal division between craft-based professional unions and plant-based industrial unions. Both types

had the right to federate, but were expected to negotiate only at the firm level (unless they had employer agreement to negotiate on an industry-wide basis, as occurred in the textile, shoe, and garment industries).²² Union revenues were closely supervised by the government; strike funds were not allowed, and union officials were not permitted to be paid on a full-time basis for union activities. As a result, the 1924 Labor Code, while innovative for its time, “splintered the labor movement into isolated, impoverished . . . legal unions of negligible effectiveness in defending the economic interests of their members” (DeShazo 1983: 220). While the legislation provided important support for union formation, especially at the firm level, its protections were mainly limited to professionals, and many of its stipulations hindered the growth of united, national-level worker organization.

Elections in 1925 marked a brief return to democratic politics, but the infighting of communist elements in the union movement saw its strength fragmented and few advances in labor law. A military return to power in 1927 (through pressure culminating in the resignation of the President Emiliano Figueroa and a plebiscite electing General Carlos Ibañez) signaled the end of the independent labor movement; Ibañez implemented a systematic program of labor repression, arrest of union leaders, and the establishment of “official,” government-controlled unions (DeShazo 1983: 242). Unlike Peru, where the revolutionary military government sought to co-opt the labor movement by incorporating it into a new model of ISI-oriented industrial relations, or Argentina, where Perón created a network of preferred unions to support his own political movement, the Chilean model under Ibañez sought to fragment union cooperation and ensure collective labor quiescence. Its main tool was continued support and expansion of the collective labor legislation that impeded union organizing and collaboration. Without opportunities to federate, with only infrequent rounds of collective bargaining, and with little control over their own economic resources, the unions could never achieve strength or independence. Instead, workers focused on piecemeal increases in individual labor protections.

Indeed, over the subsequent decades, some elements of individual labor legislation were expanded to cover more of the *obrero* workforce; however, the emphasis of *obreros* on achieving similar benefits to their *empleado* counterparts effectively distracted them from seeking better legal recognitions of their collective organizing

rights.²³ Thus, while individual labor rights increased marginally, collective labor rights saw no significant change and remained highly concentrated on the professional *empleados*. Only under Socialist President Salvador Allende did labor unions see a substantial expansion of their rights and legal protections. Nationalizations of manufacturing industries and copper mines gave workers a rapid rise of 50 percent in their wages, and a newfound sense of their role in the economy and politics. They adjusted their expectations upward regarding working conditions and ongoing wage increases, and this produced a large increase in strikes, work stoppages, and rallies.

However, the new labor mobilization was short-lived, for when General Augusto Pinochet seized power in 1973, he sought to close spaces that had been opened for union organization and worker benefits under the Allende government. Immediately after the coup, he banned labor unions and strikes (both collective rights) outright. But by 1974 he began reinstating the basic union rights to organize. His 1979 Labor Plan, which was only the second comprehensive labor code in Chile's history, severely limited union rights by prohibiting intermediate-level organizations from intervening in plant-level affairs, restricting collective bargaining to the plant level at two year intervals—limited to the issue of wages (other working conditions were not permitted to be the subject of collective agreements), and constraining the ability of unions to strike (Pollack 1982; Frank 1995).²⁴ Further, in 1981 Pinochet privatized the Chilean pension system. This undermined one of the few solidaristic labor policies in the nation; prior to the reform, workers made pension payments into occupation-related “funds,” creating at least a minimal level of shared industrial identity (to make up for what they lacked due to restricted industrial-level collective bargaining rights). But with the privatization of pensions, the workers' ties to both the state (as guarantor of the pensions) and one another (as members of shared industrial funds) were severed. Valenzuela (1983) has referred to this as a “market strategy of containment,” in which market institutions and incentives are employed to fragment worker efforts at collaboration.

In spite of its organizational weakness, the labor movement became the first non-church actor to publicly oppose Pinochet (Frank 1995). When opposition parties were outlawed, the unions provided opportunities for meetings and the planning of protests against the military government, and eventually played an important role in mobilizing

voters for the “no” vote in the plebiscite on Pinochet’s continuance in office. Yet, unions were not nearly as effective in pursuing more protective labor laws or more permissive union organizing space. First, Pinochet had passed laws prohibiting union leaders from assuming party posts; if a leader wanted to enter the political arena, he or she had to give up the union post. Second, the binomial electoral system ensured that representatives from the right would retain a sufficient share of the congressional seats to resist reforms that would expand labor protections. Further, there was a lasting fear—even among members of the labor movement—of the instability that could be provoked by labor mobilization; the recent memory of the Pinochet coup against Allende made workers worry that their demands might provoke a new military intervention. Likewise, the parties of the nascent *Concertación de Partidos por la Democracia* (Concert of Parties for Democracy) did not want to identify themselves too closely with labor (whose close ties with Allende was believed to have made him a target) (Frank 1995). This reticence persisted in the early years of the restored democracy, and the result was ongoing continuity to the economic regime imposed by Pinochet (Navia 2008). The *Concertación* sought to continue the growth-inducing economic policies of the Pinochet regime, although with a more socially responsive outreach to the poor (Muñoz Gomá 2007). This meant increased emphasis on social spending, but not an overhaul of either the labor laws or the pension system.

Only under President Michelle Bachelet has the question of labor law reform been seriously revisited. While she has not pursued a comprehensive labor code revision, she has moved forward on two universalistic programs, both of which seek to reach those workers left out of the restrictive earlier labor laws. This marks a significant departure from earlier, targeted legislation. First, “basic solidaristic pensions” have been enacted to deal with the chronic underfunding of the privatized pension system installed under Pinochet. Even before reform, 81 percent of pensions were being paid by the state, and 92 percent required some state contribution (Valenzuela 2006). Many of the poorest people had never made sufficient contributions to their pension funds to receive any benefits. Thus, Bachelet introduced basic pensions in July 2008 for individuals over age 65 that were in the poorest 60 percent of the population. Further, for those who had paid into the private funds but were not receiving adequate benefits, placing them in the poorest 40

percent of the population, a supplemental state pension was enacted. Second, coverage was expanded for obligatory unemployment insurance, extending benefits to workers whose employment histories had not permitted them to make sufficient contributions to the insurance system. In both cases, individual protections have been increased to new classes of workers and pensioners, and an effort has been made to reach the poorest citizens based not on their employment status but on their need.

In terms of the theory presented in this paper, the fragmentation of the early Chilean labor movement, due to ideological differences and the lack of concentrated capital investments or geographically isolated industrial concentration, complicated and ultimately undermined the ability of labor to credibly threaten a holdup of the economy. Rather than demand legal protections of their right to organize, particular unions focused on more protective individual labor protections, initially granted by their employers at the firm level, and those in the professional classes saw many of their demands met in labor laws. This legislation then became the template for future demands by *obreros* in other segments of the economy. Military regimes in the 1920s and 1970s were willing to extend individual labor laws while ensuring that collective legislation gave unions few opportunities to collaborate across firms or organize broader political movements. As a result, relatively strong individual labor legislation, focused on a small segment of the population—formal sector workers in semi-skilled fields, coexisted with much more restrictive legislation on labor organizing and collective action. National federations remain weak in Chile, and universalistic labor protections have been few. The recent Bachelet reforms seek to reach the broader, non-insider population with solidaristic social policies; however, they do not address the issue of collective labor protections, and thus may further prolong organized labor's institutional weakness in Chilean politics.

CONCLUSION

The political process of early labor law adoption in Latin America has had long-lasting effects in the region. Establishing a class of insiders made up of workers and employers in key sectors characterized by bilateral monopolies, and employing the resources of the state to enforce their relationship and keep out competitors and new entrants, these laws

both reflected and perpetuated existing inequalities in the labor market. From their beginning, the region's labor codes were not intended to be inclusive or egalitarian. And in all three cases examined here, the strongest and most protective labor laws have been imposed during authoritarian rule, awarding privileges that frequently surpassed the leverage that labor might have been able to bring to bear.²⁵ This has presented significant obstacles to the efforts of recent decades to dismantle or modify labor codes, as previous protections have served as reference points for political opposition to reform by insiders. In spite of the humanitarian and human rights concerns of NGOs on the one hand, and the competitive pressures of employers and international financial institutions on the other, the labor codes have remained resilient and resistant to change. Reforms have largely been made to the margins of the laws, and to their coverage, but significant portions of the workforce—including the self-employed and those whose employment status is “off the books” in the informal sector—are simply beyond the scope of the legal system. Insiders, though weakened by globalization and market liberalization, continue to preserve ties to political parties and the state, and this gives them disproportionate weight in the design of labor protections.

This study highlights the importance of path-dependence in policy formation and reform. After the initial rounds of labor code development, existing policies served as templates for the demands of both insiders and outsiders, creating focal points around issues as diverse as industry-wide collective bargaining and union-administered resources in Argentina, job stability in Peru, and severance payments in Chile. This was true even after the initial conditions of bilateral monopoly (and other economic and political structures) had changed. Early laws proved particularly stable over time, much more so than government spending programs, and contributed to the lack of policy convergence noted in the first section. Further, they have shaped the subsequent development of democratic politics. Where early legislation gave unions rights to organize, strike, and control economic resources, labor has come to constitute an important part of political movements and parties. However, this political involvement has not guaranteed increased individual protections for workers. In contrast, where collective legislation has been lacking, labor unions have not been integrated into political parties, and most labor-related activity and advances have occurred in the individual legislation governing

specific sectors of the economy. Labor laws, rather than being value-neutral answers to the “social problem” of the modern economy or technical solutions that tend toward convergence across countries and industries, continue to reflect the political forces and unequal economic structures that created them.

ENDNOTES

¹ In a provocative 1979 paper, Collier and Collier suggested that labor laws could be analyzed as a “highly visible and concrete policy statement around which political battles are fought, won, and lost, and around which political support is attracted, granted, or withheld” (971).

² Of the 180 countries evaluated by the Heritage Foundation for their 2009 index of labor freedom, Chile and Uruguay stand as numbers 138 and 134 (higher numbers mean more liberalized); Ecuador (13), Honduras (17), Bolivia (19), Panama (26), Argentina (34), and Peru (46) all rank within the top third of countries worldwide for their protective (restrictive) labor laws. Thus, the majority of Latin American countries cluster among the more protective labor regimes worldwide, and the region’s outliers—though significantly less protective—still do not stand among the top quarter of liberal economies. For reference, France is number 64 and the United States is number 176.

³ This paper makes use of an original dataset of author-coded labor law provisions for 18 Latin American countries. It employs Vega Ruiz (2005) as the source for the labor codes of each country. Complete coding rules can be found in Carnes (2008).

⁴ Given its emphasis on the origins of labor legislation, this paper follows in the line of Skocpol (1995) and Baldwin (1990), who trace out the political coalitions that underwrote early social policy development in the United States and Europe. They show that the political logic that existed in social policy adoption differed from that hypothesized to explain later policy reform.

⁵ The only countries to move between quadrants during the reform period were Colombia and Peru. The latter of these cases is taken up at greater length in Section 3 of this paper.

⁶ Other studies have shown how industrial and financial incumbents used the state to enact regulations that hindered the development of free trade and open financial markets (Rajan and Zingales 2003) and to shape the uneven enforcement of financial market regulations (Pagano and Volpin 2001).

⁷ One particularly interesting example of laws ensuring stable production and employment was the *semana corrida* in Chile. Prior to its passage, Chilean blue-collar workers had the reputation of drinking heavily on the weekends, resulting in high absenteeism on Mondays (which colloquially became known as *San Lunes*, Saint Monday, because it functioned like a holiday) or increased workplace injuries, damage to tools, etc. The eventual enactment of the *semana corrida* law in 1948 gave workers an extra-day’s bonus for showing up at work all six days of the week, thus making production more predictable for the employer, reducing injuries, and perhaps saving workers’ livers (Obregón Castro 2009).

⁸ The source of the elites' monopsony employer status often had deep roots in the colonial experience.

⁹ In the late 1800s and early 1900s, many elites employed their own repressive apparatus—including thugs to put down labor uprisings and financial managers to restrain the flow of credit to potential competitors.

¹⁰ One frequent solution to high legally mandated severance packages (generally one month's salary for each year of tenure with the firm) was to simply fire the worker before they had achieved sufficient tenure to receive the benefit, and then immediately rehire them. Thus, a measure that was intended to protect workers by increasing their job stability was manipulated to reduce job stability and increase job rotation.

¹¹ A later strategy employed by skilled labor sectors to preserve their monopoly status would be the establishment of required training processes, colleges, or accreditation boards for a worker to exercise a given profession. Education, law, and medicine, as well as technical fields such as plumbing and electrification, have all established formation programs that create barriers to entry and serve to channel new entrants directly into associated labor unions.

¹² While fragmentation may not have served the interests of the labor movement as a whole, it may have been preferred by some union leaders, as it could create more career opportunities for them (albeit less prominent ones), or workers in specific firms, which feared their wages and benefits would be compressed by bargaining at the industry level (see Valenzuela 1992: 59ff for a discussion of union fragmentation).

¹³ Although initially marked by some anarchistic elements, the early labor movement opted ultimately for a syndicalist orientation, thus fostering collaboration across firms at the sectoral level, and later worker coordination in labor federations (Matsushita 1983).

¹⁴ Note that even ranchers, who did not employ meat packers, had an interest in an unhampered process at the *frigorífico*. While delays and work stoppages with their ranch hands could be tolerated at relatively low cost, the potential catastrophic loss of their ranch's output forced them to take an interest in preserving a smoothly functioning transport process.

¹⁵ Perón actively repressed the CGT's principal rival, as well as other "dissident" unions and union leaders (Godio 2006).

¹⁶ After the 1983 return to democracy, Raúl Alfonsín, the democratically elected radical president, reinstated many of the collective protections of the Peronist law of professional associations, as well as enacted a new law of collective bargaining that allowed for sectoral negotiation.

¹⁷ The effort to move collective bargaining to the firm level was accomplished by requiring that wage bargaining be limited to productivity advances. Since productivity can only be measured at the plant level, this had the effect of forcing negotiation over wages to the firm level. The privatization of the *obras sociales* was seen as a continuation of the privatization of the pension system. Following in the footsteps of Chile, Menem hoped to reduce state responsibility for costly pension and health care programs and stimulate the crisis economy with cash from state health funds.

¹⁸ The fact that labor regulation was included in the civil code and that union registration was conducted through the Ministry of Public Health—rather than through a labor code and a ministry of labor—only further underlines how little attention the state gave to regulating labor.

¹⁹ Because the “relative” job stability provision (Decree Law 22,126 of 1978) allowed workers with under three years’ tenure to be dismissed with 90 days notice, employers began to regularly fire and re-hire workers prior to their reaching three years’ seniority.

²⁰ García (2004) estimates this figure at 21 percent, while Chacaltana (2005) places it at 20.5 percent.

²¹ Interestingly, many of the mutual aid societies opposed the social security fund on the basis that it would render them unnecessary (DeShazo 1983).

²² I thank J. Samuel Valenzuela for bringing these examples of industry-wide negotiation to my attention.

²³ J. Samuel Valenzuela (2006) has pointed out that the expansion of existing labor laws to new sectors, rather than the design of new models of labor legislation, can in this case result in a tragic mismatch between needs and laws. He argues that the demand of *obreros* in Chile to share in the earlier-established severance pay regime of *empleados*—rather than insisting on a solidaristic unemployment insurance system—undermined the achievement of meaningful protection against periods of unemployment. The severance pay law was flawed in its design, allowing for easy manipulation by employers, and both *obreros* and *empleados* have suffered as a result. Thus, preexisting labor codes create politics not just around *who* gets incorporated, but *how* they get incorporated, and can lead to suboptimal outcomes.

²⁴ Limiting strikes was accomplished by allowing employers to hire replacement workers from the first day of the strike (diminishing the impact of the strike on firm output), restricting strikes to 60 days maximum, and allowing permanent firings after the 60 day period (Frank 1995).

²⁵ Mares and Carnes (2009) point out that the vast majority of the social welfare programs in Latin America—and in all developing countries—were instituted under authoritarian rule, and present political logics for variation in the design and scope of different social programs.

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