

ORIGINAL ARTICLE

Why Is It So Difficult to Reform Collective Labour Law? Associational Power and Policy Continuity in Chile in Comparative Perspective

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Abstract

Since Chile returned to democracy in 1990, centre-left governments have tried to reform the provisions on collective bargaining, strikes and unions established by the Pinochet dictatorship. Between 2015 and 2016 President Michelle Bachelet made the latest attempt to reform them. Despite favourable conditions, the changes were modest. This article explains why this is so. Drawing upon the notion of ‘associational power’ and through comparisons with labour reforms in Argentina, Brazil and Uruguay, this article suggests that the imbalance between workers’ and employers’ collective power is key for explaining why pro-labour reforms fail.

Keywords: collective labour law; labour reform; associational power; employers; workers; Chile

Introduction

Why is collective labour law so resistant to change? What are the constraints progressive governments face in promoting pro-labour policies? This article answers these questions by analysing the labour reform carried out in Chile by the socialist administration of Michelle Bachelet between 2015 and 2016. According to the Bachelet government, the reform bill would repeal the main aspects of the Labour Plan enacted in 1979 by the dictatorial regime of Augusto Pinochet (1973–90).¹ The Labour Plan restricted collective bargaining to the firm level and allowed employers to hire replacement workers during strikes. It also weakened union activity by promoting the coexistence of multiple unions within firms and the formation of firm-level *grupos negociadores*, i.e. ‘bargaining groups’ formed with the goal of signing semi-regulated collective conventions (*convenios colectivos*). These conventions do not grant workers the rights typically entailed in standard (regulated) collective agreements (*contratos colectivos*) usually signed by unions –

¹‘La Ministra del Trabajo, Javiera Blanco, asegura que el proyecto de reforma laboral es transversal’, *El Mercurio*, 4 Jan. 2015.

e.g. right to strike and special protections for the workers who participate in the bargaining process (*fueros*).² Moreover, after some modifications, the law also allowed unions to sign collective conventions instead of collective contracts, which means that in practice some unions (more than 30 per cent, according to data collected by Paul W. Posner) function as bargaining groups.³

With the return to democracy in 1990, presidents Patricio Aylwin (1990–4) and Ricardo Lagos (2000–6) implemented labour reforms. However, while improving the protections for individual labour rights, none of these reforms substantially changed the 1979 collective labour laws.⁴ In the mid-2010s, President Bachelet made the most recent attempt to reform the 1979 laws. Nonetheless, the outcomes of her reform efforts were essentially the same as those of her predecessors. The labour law resulting from the 2015–16 legislative process (Law 20,940) continues to define agreements beyond the level of the firm as only voluntary for employers. Likewise, unions' bargaining power continues to be weakened by laws that promote competition between unions and that encourage the signing of semi-regulated collective conventions as opposed to standard (regulated) collective agreements. Finally, the right to strike continues to be undermined by clauses that, while formally prohibiting the replacement of strikers, allow employers to make any 'necessary modification' in non-strikers' shifts to ensure the firm's provision of broadly defined 'minimum services'.

Why did the Bachelet labour reform fail to dismantle the regulations that have undermined workers' collective rights since 1979? Literature has accounted for labour policy continuity through explanations based on the effects of dictatorial legacies, state actors' resolve to pursue reforms and, especially, as emphasised in the research espousing the power resources approach, by analysing labour power (or the lack thereof) and unions' linkages with centre-left ruling parties.⁵ However, several factors highlighted in these explanations suggest that, compared to previous reform attempts, during the Bachelet administration the conditions were more favourable for more substantial pro-labour reforms.

Between 2007 and 2015, Chile witnessed a 'renaissance' of union activism. Both at the sectoral and the workplace level, unions confronted employers' hostility by

²María Ester Feres, 'Los proyectos de reforma legal sobre la negociación colectiva: ¿Esfuerzos azarosos y logros marginales o infructuosos?', in *Negociación colectiva en Chile: La debilidad de un derecho imprescindible* (Santiago: Dirección del Trabajo, 2009), pp. 109–48.

³Paul W. Posner, 'Labour Market Flexibility, Employment and Inequality: Lessons from Chile', *New Political Economy*, 22: 2 (2017), p. 240.

⁴Matthew Carnes, *Continuity Despite Change: The Politics of Labor Regulation in Latin America* (Stanford, CA: Stanford University Press, 2014); María Lorena Cook, *The Politics of Labor Reform in Latin America: Between Flexibility and Rights* (University Park, PA: Pennsylvania State University Press, 2007); Volker Frank, 'Living in the Past or Living with the Past? Reflections on Chilean Labor Unions Twenty Years into Democracy', in Teri L. Caraway, María Lorena Cook and Stephen Crowley (eds.), *Working Through the Past: Labor and Authoritarian Legacies in Comparative Perspective* (Ithaca, NY: Cornell University Press, 2015), pp. 179–96.

⁵Walter Korpi, 'Power Resources Approach vs. Action and Conflict: On Causal and Intentional Explanations in the Study of Power', *Sociological Theory*, 3: 2 (1985), pp. 31–45; 'Power Resources and Employer-Centered Approaches in Explanations of Welfare States and Varieties of Capitalism: Protagonists, Consenters, and Antagonists', *World Politics*, 58: 2 (2006), pp. 167–206; María Victoria Murillo and Andrew Schrank, 'With a Little Help from My Friends: Partisan Politics, Transnational Alliances, and Labor Rights in Latin America', *Comparative Political Studies*, 38: 8 (2005), pp. 971–99.

promoting union democracy and engaging in novel tactics that, in many cases, ended in significant victories for workers.⁶ At the national level, important events also occurred. In 2011, social movements influenced the country by questioning both the neoliberal legacy of the Pinochet dictatorship and the shortcomings of the post-dictatorial democratic administrations.⁷ In this context, Bachelet won the 2013 presidential election. Endorsed by the centre-left coalition Nueva Mayoría (New Majority, NM), she promised an ambitious programme which included reforms to the tax and education systems, to labour law and to the Constitution itself. An NM senator even defined this reformist platform as ‘the backhoe’ that would ‘destroy the underpinnings of neoliberalism’.⁸ In effect, unlike the centre-left coalition that preceded it and ruled the country between 1990 and 2010 (the Concertación), the NM adopted a more leftist orientation and integrated the Partido Comunista (Communist Party, PC) into the government. In addition, different from the reform attempts under the Concertación administrations, the comfortable electoral victory of 2013 gave the NM coalition a majority in both the Senate and the Chamber of Deputies. Last but not least, the 2005 constitutional reform had eliminated the nine unelected senators that, since the return to democracy, over-represented conservative views in the legislature by strengthening the veto power of the right-wing parties.

Why, then, did the Bachelet labour reform fail? In this article, I answer this question by proposing an explanation based on the concept of ‘associational power’, understood as the capacity of a class to advance its interests through the collective organisation of its members.⁹ This explanation centres on the way that workers and employers, organised respectively in the Central Unitaria de Trabajadores (United Workers’ Association, CUT (Chile)) and the Confederación de la Producción y del Comercio (Confederation of Production and Commerce, CPC), act collectively to defend their class interests and influence interactions with state actors and the legislative process. Drawing upon interviews with key informants, analysis of extensive archival material and a brief comparative analysis of labour reforms carried out by centre-left governments in Argentina, Brazil and Uruguay, I show that the disparity between capitalists’ and workers’ associational power (observed, in Chile, in employers’ outsized ability to unify and mobilise their class-wide interests vis-à-vis the reformist government) is a key factor shaping reform outcomes. This focus on the imbalance of associational power between capitalists and workers allows me to improve upon the traditional power resources explanation by

⁶ Antonio Aravena and Daniel Núñez, *El renacer de la huelga obrera en Chile: El movimiento sindical en la primera década del siglo XXI* (Santiago: ICAL, 2009); Carolina Bank Muñoz, *Building Power from Below: Chilean Workers Take On Walmart* (Ithaca, NY: Cornell University Press, 2017); Camilo Santibáñez and Franck Gaudichaud, ‘Los obreros portuarios y la idea de “posición estratégica” en la posdictadura chilena (2003–2014)’, in Julio Pinto, José I. Ponce and Camilo Santibáñez (eds.), *Trabajadores y trabajadoras: Procesos y acción sindical en el neoliberalismo chileno, 1979–2017* (Valparaíso: Editorial Nuestra América, 2017), pp. 301–32.

⁷ Sofia Donoso and Marisa von Bülow, *Social Movements in Chile: Organization, Trajectories, and Political Consequences* (New York: Palgrave Macmillan, 2017).

⁸ ‘Senador Quintana anuncia “retroexcavadora” contra modelo neoliberal’, *EMOL*, 25 March 2014.

⁹ Erik O. Wright, ‘Working-Class Power, Capitalist-Class Interests, and Class Compromise’, *American Journal of Sociology*, 105: 4 (2000), pp. 957–1002.

proposing a relational view of class power that helps explain why shared linkages between labour associations and centre-left ruling parties do *not* necessarily result in pro-labour reforms. Likewise, it allows me to show that when associational power is successfully constructed, the mobilisation of other power resources (e.g. political resources derived from linkages with parties and policy-makers) is more likely to be effective.

Labour Reform and Policy Continuity in Chile

During the first two decades of democratic rule, key regulations contained in the 1979 Labour Plan proved to be resistant to change. Some scholars have accounted for the persistence of the Labour Plan by contending that significant reforms were difficult to pass in the 1990s and the 2000s because of institutional or ideological legacies inherited from the dictatorial period. Institutional legacies such as unelected senators and the binomial majoritarian electoral system gave right-wing parties a veto power that they would not have had otherwise, while ideological legacies reinforced pragmatic, pro-market and non-ideological politics among centre-left policy-makers. This, in turn, facilitated business influence in the policy-making process.¹⁰

Others have suggested explanations based on the role of state actors. These scholars suggest that centre-left parties' abandonment of class politics led policy-makers to frame pro-labour reforms not only as a threat to economic efficiency, but also as a danger to the construction of non-conflictual relationships with the business sector.¹¹ Finally, emphasising the concept of class politics, scholarly research has also explained labour policy continuity by showing how, after years of dictatorial repression and radical neoliberal restructuring, organised labour was unable to push for redistributive reforms.¹² Some analysts also argue that, unlike workers, employers entered the democratic period in a position of strength that allowed them to successfully oppose any attempt to reform the dictatorial legislation.¹³

Despite its focus on class politics, this research usually defines capitalist and working-class power as mechanisms dependent on other factors. For example, employers' successful opposition to reformist governments is depicted largely as a result of institutional legacies that granted veto power to right-wing parties and ideological legacies that reinforced pro-business views among centre-left policy-makers. Thus, research has barely examined how business power is constructed and exercised, what resources employers utilise in this process, or the role played by business associations vis-à-vis labour and the state.¹⁴

¹⁰Fernando Durán-Palma, Adrian Wilkinson and Marek Korczynski, 'Labour Reform in a Neo-Liberal "Protected" Democracy: Chile 1990–2001', *International Journal of Human Resource Management*, 16: 1 (2005), pp. 65–89; Frank, 'Living in the Past or Living with the Past?.'

¹¹Feres, 'Los proyectos de reforma legal sobre la negociación colectiva'.

¹²*Ibid.*; Durán-Palma *et al.*, 'Labour Reform in a Neo-Liberal "Protected" Democracy'.

¹³Florencia Antía, 'The Political Dynamic of Redistribution in Unequal Democracies: The Center-Left Governments of Chile and Uruguay in Comparative Perspective', *Latin American Perspectives*, 46: 1 (2019), pp. 152–66; Posner, 'Labour Market Flexibility, Employment and Inequality', pp. 237–56.

¹⁴For an exception, see Louise Haagh, 'The Emperor's New Clothes: Labor Reform and Social Democratization in Chile', *Studies in Comparative International Development*, 37: 1 (2002), pp. 86–115.

Similarly, in emphasising the constraints on working-class power in the 1990s and 2000s, recent accounts have not examined how contemporary processes of union revitalisation might have affected policy outcomes since the mid-2000s. This ‘renaissance’ of unionism was expressed not only in highly disruptive (and successful) industry-wide mobilisations in strategic sectors, but also in the explosive rise of union activism within the workplace.¹⁵ Some of these trends are seen in Figures 1 and 2. Figure 1 demonstrates that despite the low levels of collective bargaining coverage, union density has consistently grown since 2006. In line with the labour revitalisation argument, Figure 2 demonstrates that unions’ disruptive power – as measured in strike activity – increased significantly between 2005 and 2015.

In sum, explanations of labour reform lack both a systematic analysis of business power and a more profound study of recent developments within the labour movement. These gaps can be filled by recent literature on class and power, which examines how employers and workers defend their class interests vis-à-vis each other and the state through the mobilisation of different power resources.

Class, Collective Action and Power Resources

Investigations espousing the power resources approach argue that in capitalist democracies, linkages between organised labour and office-holding, centre-left parties are a key power resource for the working class.¹⁶ In Latin America, scholars have demonstrated that when these linkages are strong, unions have more capacity to oppose privatisation programmes and to push policy-makers for redistributive social policy.¹⁷

Regarding business power, emerging literature has studied it by drawing on the distinction between ‘structural’ and ‘instrumental’ power.¹⁸ Structural power refers to firms’ economic power derived from maximising behaviour, which is therefore expressed in policy-makers’ fear of capital flight. Instrumental power, on the other hand, involves the *deliberate* use of ‘political’ means to favour business interests – e.g. lobbying; formal or informal ties with politicians, bureaucrats or parties; privileged access to the media; business associations’ technical expertise; etc.¹⁹ Based on this distinction, this literature has overcome traditional approaches, which focus exclusively on structural power and assume that the collective organisation of employers is largely irrelevant as a power resource.²⁰ In contrast to traditional approaches, this emerging research has demonstrated that business sector

¹⁵Bank Muñoz, *Building Power from Below*; Santibáñez and Gaudichaud, ‘Los obreros portuarios y la idea de “posición estratégica” en la posdictadura chilena (2003–2014)’.

¹⁶Korpi, ‘Power Resources Approach vs. Action and Conflict’.

¹⁷María Victoria Murillo, *Labor Unions, Partisan Coalitions, and Market Reforms in Latin America* (Cambridge: Cambridge University Press, 2001); Murillo and Schrank, ‘With a Little Help from My Friends’.

¹⁸Tasha Fairfield, *Private Wealth and Public Revenue in Latin America: Business Power and Tax Politics* (New York: Cambridge University Press, 2015).

¹⁹Tomás Bril-Mascarenhas and Antoine Maillet, ‘How to Build and Wield Business Power: The Political Economy of Pension Regulation in Chile, 1990–2018’, *Latin American Politics and Society*, 61: 1 (2019), pp. 101–25; Fairfield, *Private Wealth and Public Revenue in Latin America*.

²⁰Claus Offe and Helmut Wessenthal, ‘Two Logics of Collective Action: Theoretical Notes on Social Class and Organizational Form’, *Political Power and Social Theory*, 1: 1 (1980), pp. 67–115.

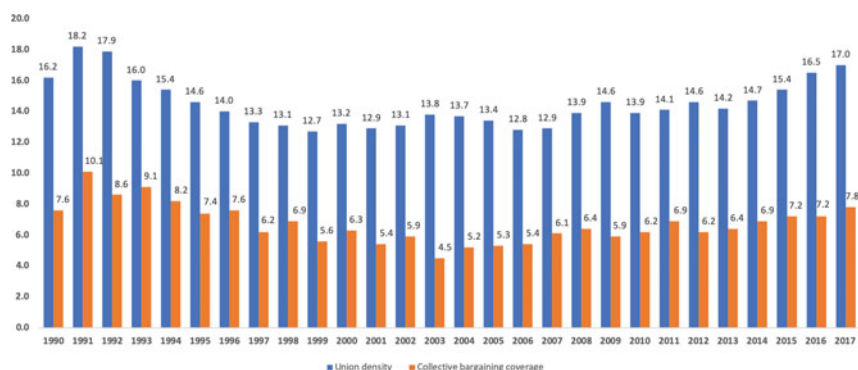


Figure 1. Union Density and Collective Bargaining Coverage in Chile (%), 1990–2017

Source: Author's own elaboration based on data from the Dirección del Trabajo (Labour Directorate), Chile.

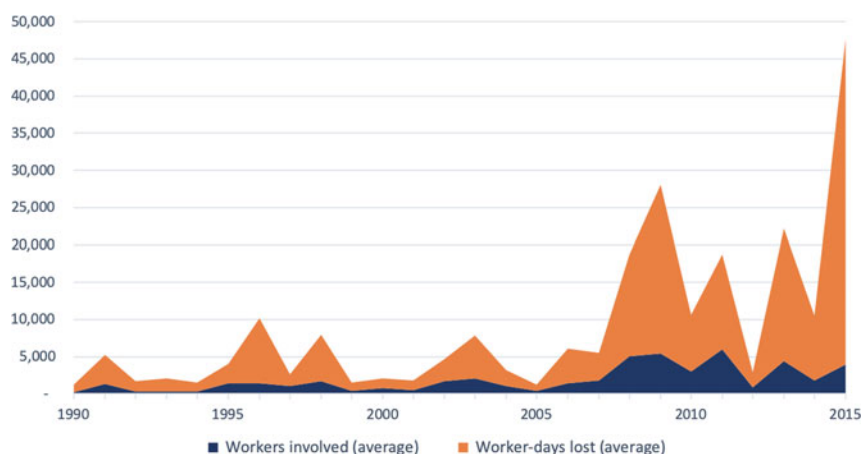


Figure 2. Strike Activity in Chile, 1990–2015

Source: Author's own elaboration based on data from the Observatorio de Huelgas Laborales (Labour Strikes Observatory, OHL), Centro de Estudios de Conflicto y Cohesión Social – Universidad Alberto Hurtado (Centre for Social Conflict and Cohesion Studies – Alberto Hurtado University, COES-UAH).

influence is more consistent when both types of power are strong,²¹ and when associations allow employers to overcome collective action problems such as competition or interest heterogeneity (particularly inter-sectoral conflicts of interest).²²

In this article, I draw upon these bodies of literature to develop an analysis of labour policy continuity centred on the notion of working-class and capitalist *associational power*. I define ‘power’ as capitalists’ or workers’ capacity to realise their

²¹Fairfield, *Private Wealth and Public Revenue in Latin America*.

²²Ben Ross Schneider, *Business Politics and the State in Twentieth-Century Latin America* (New York: Cambridge University Press, 2004); Franz Traxler, Sabine Blaschke and Bernhard Kittel, *National Labour Relations in Internationalized Markets: A Comparative Study of Institutions, Change, and Performance* (Oxford: Oxford University Press, 2001).

mutually opposed class interests.²³ Without denying power's multidimensional character,²⁴ I use this concept simply to denote the ability to advance class interests through influence over the policy-making process.

Associational Power

Erik O. Wright defines 'associational power' as the power resulting from the formation of collective organisations such as unions, parties, work councils, etc.²⁵ Recently, scholars have identified different forms of power such as structural (economic), political-institutional and 'societal' (i.e. discursive and coalitional) power.²⁶ Marissa Brookes emphasises that power is a *capacity*, so it should not be conflated with the idea of 'power resources'.²⁷ Accordingly, while associational power denotes a *capacity to act collectively*, the other forms of power refer to *capacities to mobilise* resources – e.g. economic resources to destabilise the production process (structural power) or political resources such as partisan linkages to influence state policies (political-institutional power). In defining it as a capacity, Brookes also contends that power has a relational nature. In doing so, she asserts that no theory of workers' power is complete 'without a full consideration of *employers'* interests, strategies, resources, and vulnerabilities – and vice versa'.²⁸

In this article, I follow these recommendations and use the concept of 'associational power' to analyse workers' and capitalists' collective power. I examine how Chilean workers and employers construct and exercise collective power through their organisation in the CUT (Chile) and the CPC, respectively. The CUT (Chile) and the CPC not only represent and help construct collective interests, but also define strategies and tactics to influence the political system, whether directly – e.g. through mass mobilisation or media campaigns – or indirectly through the use of political resources such as linkages to parties and state actors, lobbying with policy-makers, etc. In this sense, I conceive business associational power as a particular aspect of what scholars call 'instrumental power'. I argue that 'association' is a key power resource that is successfully exercised when the organisation – whether it be a union or a business association – is able to represent wider class interests (i.e. to generalise interests), forge class-wide solidarity and consensus, and make its members comply with common goals.²⁹ Thus, when associational power is successfully constructed – i.e. when the working-class or employer association manages to recruit members, represent and homogenise class interests and forge class-wide unity – the members of a social class (say, the working class) are more likely to act in coordination to defend their interests vis-à-vis the other class

²³Wright, 'Working-Class Power, Capitalist-Class Interests, and Class Compromise', p. 962.

²⁴Steven Lukes, *Power: A Radical View* (London: Palgrave, 2005 [1974]).

²⁵Wright, 'Working-Class Power, Capitalist-Class Interests, and Class Compromise', p. 962.

²⁶Stefan Schmalz, Carmen Ludwig and Edward Webster, 'The Power Resources Approach: Developments and Challenges', *Global Labour Journal*, 9: 2 (2018), pp. 113–34.

²⁷Marissa Brookes, 'Power Resource in Theory and Practice: Where to Go from Here', *Global Labour Journal*, 9: 2 (2018), p. 256.

²⁸*Ibid.*, p. 255. On a relational view of power, see also Schmalz *et al.*, 'The Power Resources Approach'; Wright, 'Working-Class Power, Capitalist-Class Interests, and Class Compromise'.

²⁹Schmalz *et al.*, 'The Power Resources Approach'.

(say, employers) and the state. Assuming that the different forms of power are inter-related, this also means that they are more likely to succeed in mobilising other power resources to advance their class interests – e.g. mobilising linkages with parties and state actors. On the contrary, when associational power is weak – i.e. when the organisation is unable to protect interest and strategic unity, or when it is unable to recruit and represent wide segments of a class – the mobilisation of other power resources is less likely to be effective. As stated by Brookes,³⁰ associational power is a precondition for magnifying the impact of the other power resources.

Research Objectives, Methods and Data

The following is a case study in which the single unit studied (the Bachelet labour reform) is used to understand larger processes that go beyond the unit itself³¹ – particularly, to understand how class-based power imbalances shape labour policy in Latin America. The case under analysis was selected on the basis of the ‘deviant case’ design. This aims to explain ‘surprising outcomes’ by illuminating causal processes through explanations that, as long as they apply to other cases, are meant to improve existing accounts.³² I conceive the Bachelet labour reform as an ‘exception’ in the sense that it is at odds with the patterns identified in existing theoretical models.³³ In other words, I aim to explain why the latest attempt to change the 1979 labour laws failed, in spite of the fact that between 2015 and 2016 the factors emphasised in existing accounts of policy continuity (e.g. labour weakness and authoritarian legacies that reinforced conservative views among policy-makers) were downplayed. Thus, analysing this ‘exception’ is helpful to challenge standard categories, identify ‘new’ classes of objects and disclose ‘new’ sets of relations.³⁴

While focusing on Chile, I also briefly examine pro-labour reforms carried out by centre-left governments in Argentina, Brazil and Uruguay. In comparing these experiences with the ‘exceptional’ case of the Bachelet reform, I demonstrate that labour reform outcomes are often more complex than predicted by the traditional version of the power resources approach. I show that, when business power is strong, linkages between labour and centre-left ruling parties do *not* necessarily lead to more protective social policy. Moreover, I argue that in those cases such linkages may be *detrimental* for workers because they increase divisions within labour associations and undermine working-class associational power. In doing so, I emphasise the need to study business power, which is, as noted by Tasha Fairfield, a central but usually under-studied variable.³⁵

This article draws on evidence from 56 interviews with key informants (employers, leaders and staff members of business associations, union leaders affiliated and

³⁰Brookes, ‘Power Resource in Theory and Practice’, p. 256.

³¹Jason Seawright and John Gerring, ‘Case Selection Techniques in Case Study Research: A Menu of Qualitative and Quantitative Options’, *Political Research Quarterly*, 61: 2 (2008), pp. 294–308.

³²*Ibid.*, p. 302

³³Ivan Ermakoff, ‘Exceptional Cases: Epistemic Contributions and Normative Expectations’, *European Journal of Sociology*, 55: 2 (2014), pp. 223–43.

³⁴*Ibid.*

³⁵Tasha Fairfield, ‘Structural Power in Comparative Political Economy: Perspectives from Policy Formulation in Latin America’, *Business and Politics*, 17: 3 (2015), pp. 411–41.

unaffiliated with the CUT (Chile), and state actors) as well as extensive archival material from sources such as national newspapers (*El Mercurio*, *La Tercera*, *El Mostrador*, among others), government documents (e.g. presidential messages and statements presented to Congress) and bulletins from the CUT (Chile), the CPC and other actors involved in the reform process. The interviews and archival research were carried out over the course of one year of fieldwork in Santiago, Chile, conducted between January and December 2015.

The Bachelet Labour Reform

As part of her reformist agenda, on 29 December 2014 President Bachelet announced the introduction of a labour reform bill that aimed to achieve four main goals.³⁶ First, it aimed to extend the right to bargain to categories of workers previously excluded from this provision – e.g. construction workers under temporary or short-term fixed contracts (*contratos por obra o faena*). Second, it sought to protect the principle of *titularidad sindical* (the union's legal control over collective bargaining) in order to restrict bargaining groups' ability to sign collective bargaining instruments (collective agreements or conventions) when a firm already has a union. Third, the bill aimed to revoke employers' unilateral ability to extend collective agreements to workers unaffiliated with the union (laws on *extensión de beneficios* (extension of collective agreements)). Finally, it intended to repeal the provisions that allowed employers to replace striking workers, in accordance with the International Labour Organization (ILO)'s Convention No. 87 (Freedom of Association and Protection of the Right to Organise) and Convention No. 98 (Right to Organise and Collective Bargaining).

The CUT (Chile)'s president, communist worker Bárbara Figueroa, enthusiastically endorsed the reform bill, claiming that it was 'the most important one' since the return to democracy.³⁷ Despite this endorsement, workers complained that the bill included some 'pro-business' clauses, which, if passed, would undercut the reform's central goals – e.g. provisions that would require the union to provide 'minimum services' to guarantee the company's 'indispensable operations' during strikes.³⁸ Within the CUT (Chile), this gave rise to tactical differences regarding how labour should face the legislative process. While the PC leaders argued that the 'positive aspects' of the bill should be protected through lobbying with centre-left government leaders, others claimed that workers should adopt more confrontational tactics.³⁹ Yet, due to the PC hegemony, the non-confrontational, lobbying position prevailed.

In addition to the CUT (Chile), different coalitions of unions attempted to have a voice throughout the labour reform debate. Regardless of important differences

³⁶Congreso Nacional, 'Historia de la Ley N° 20.940: Moderniza el sistema de relaciones laborales' (Santiago: Gobierno de Chile, 2018).

³⁷Bárbara Figueroa, presidenta de la CUT: "Ésta es la reforma laboral más importante de los últimos 25 años", *El Siglo*, 9 Jan. 2015.

³⁸*Ibid.*

³⁹Interviews with CUT (Chile) leaders Nolberto Díaz, José Figueroa, Horacio Fuentes, Jorge González, Arturo Martínez, Eitel Moraga, Laura San Martín, Pedro Muñoz, Valentín Vega and Claudio Urrutia (Sept.–Nov. 2015).

between them, these non-CUT actors agreed on two basic points. First, they saw the CUT (Chile)'s restraint tactic as subjugation to party interests. Second, they believed that the reform bill had important advances that could only be protected and deepened through mass mobilisation. Throughout the legislative process of 2015 and 2016, the two most important non-CUT actors were the '4x4' coalition and the *Trabajadores por una Mejor Reforma Laboral* (Workers for a Better Labour Reform, TMRL) group.

The 4x4 coalition was formed by powerful labour confederations such as the *Confederación de Trabajadores del Cobre* (Confederation of Copper Workers, CTC) and the *Unión Portuaria de Chile* (Chilean Port Workers' Union, UPCh). These two confederations were the main actors in the renaissance of the labour movement observed in the 2007–14 strikes.⁴⁰ Despite dissimilar internal stances towards the CUT (Chile) and traditional parties (unlike the UPCh, the CTC was led by communist workers who even occupied an office on the CUT (Chile)'s executive committee), the 4x4 was a coalition comprised of confederations that had participated in recent successful experiences of collective struggle, and that were therefore aware of their disruptive power. This explains why from the beginning of the labour reform debate the 4x4 coalition claimed that organised labour should use mass mobilisation to put pressure on legislators. Different from the 4x4, the TMRL group was formed by unions that did not hold disruptive power, nor had participated in recent successful experiences of mass mobilisation. However, like the 4x4 workers, the TMRL workers distrusted the CUT (Chile)'s emphasis on restraint and lobbying tactics.⁴¹ According to them, such emphasis was the best expression of the CUT (Chile)'s co-optation by traditional centre-left parties (particularly the socialist and communist parties).

Different from labour, within the business community there was much more agreement on the stances towards the reform bill and the strategies to confront the government. The bill and its 'syndicalist orientation' was rejected by the six sectoral associations affiliated with the CPC – the *Asociación de Bancos e Instituciones Financieras* (Association of Banks and Financial Institutions, ABIF), the *Cámara Chilena de la Construcción* (Chilean Chamber of Construction, CChC), the *Cámara Nacional de Comercio, Servicios y Turismo* (National Chamber of Commerce, Services and Tourism, CNC), the *Sociedad Nacional Agraria* (National Agrarian Society, SNA), the *Sociedad de Fomento Fabril* (Society for Manufacturing Promotion, SOFOFA) and the *Sociedad Nacional de Minería de Chile* (National Society of Mining, SONAMI).⁴² Thus, as the encompassing association representing all these sectoral organisations, the CPC decidedly opposed the reform project from the very beginning.

Employers criticised the government for seeking to extend collective bargaining not only to fixed-term workers (e.g. construction workers) but also to 'supra-firm levels' through clauses which, according to them, would facilitate bargaining

⁴⁰The 4x4 also comprised the *Sindicato Interempresa Nacional de Trabajadores de la Construcción* (Inter-Firm Construction Workers' Union, SINTEC) and the *Federación de Trabajadores de la Construcción y la Madera* (Forestry Workers' Federation, FETRAFORMA).

⁴¹Interviews with six 4x4 and TMRL workers (Aug.–Dec. 2015).

⁴²'Laboral: Otra reforma estructural', *El Mercurio*, 30 Dec. 2014.

by inter-company unions. They also argued that the bill aimed to restrict their ability to replace striking workers and establish a system of 'mandatory unionism' through the provisions on *titularidad sindical*, which sought to empower unions vis-à-vis bargaining groups. According to employers, these regulations were unconstitutional, like the rules on *extensión de beneficios* that sought to revoke their unilateral ability to extend collective agreements. Not only would these regulations undermine the individual worker's right to association (they would 'force' the worker to belong to a union in order to be able to bargain), but they would also undercut the employer's right to own the company's properties, including those that were expressed in their ability to decide whether to extend collective agreements.⁴³

The Passage of the Bill in the Chamber of Deputies

On 13 April 2015, the executive branch submitted more than 800 amendments for consideration to the lower chamber's Commission of Labour. The amendments evoked varying reactions among workers. While the CUT (Chile) noted that they were positive because they eliminated clauses that required a strike to be a 'peaceful action', the TMRL and 4×4 coalitions criticised the amendments' 'pro-business orientation', arguing that they did not correct the still-ambiguous clauses on 'minimum services' during strikes. They also rejected the amendments that said nothing about concrete mechanisms to promote supra-firm collective bargaining. In effect, at this stage of the legislative process, some pro-labour, left-wing deputies did push to repeal the articles that defined agreements beyond the firm level as voluntary for employers. Similarly, NM deputies claimed that they would endorse clauses to strengthen confederations' right to bargain as a way to promote sectoral bargaining. According to them, this was the only way to extend the right to bargain to categories of workers that, in practice, would never be covered by collective agreements (e.g. workers in medium-sized and small companies). Therefore, they said, not considering sectoral bargaining was 'at odds' with the government's goal of increasing the proportion of workers covered by collective bargaining.⁴⁴ However, other centre-left actors were not that convinced. To avoid negative reactions from employers, who contended that the recognition of labour confederations' right to bargain was the 'first step' towards industry-wide collective bargaining, the ministers of finance and labour claimed that making sectoral bargaining mandatory for employers 'would put the economy at serious risk'.⁴⁵ In protest against this stance, the 4×4 coalition called for a general strike, which took place on 21 April 2015.

Despite key state actors making it clear that they would not endorse clauses on sectoral collective bargaining, business continued to oppose the bill. As usual, the spokesperson for business complaints was the CPC president, mining businessman

⁴³CPC: Reforma laboral impone una "sindicalización automática encubierta", *El Mercurio*, 13 Jan. 2015; Interviews with 13 businessmen (May–Dec. 2015).

⁴⁴Reforma laboral se endurece en la Cámara de Diputados y senadores ven lejano un acuerdo político', *El Mercurio*, 10 May 2015.

⁴⁵Gobierno cierra las puertas a negociación por rama para no afectar el crecimiento', *El Mercurio*, 2 April 2015.

Alberto Salas. However, some employers decided to confront the reform process through a new coalition, which became known as the ‘Anti-Reform Front’. This was formed by CPC-affiliated associations such as SOFOFA, CNC and CChC, and also included the Asociación de Emprendedores en Chile (Association of Chilean Entrepreneurs, ASECH). Differences aside, the leaders of these associations believed that employers should confront the government through more ‘activist’ tactics than those used by the CPC – e.g. through more aggressive communication campaigns that included YouTube videos, paid advertisements in newspapers and even a website funded by ASECH and devoted exclusively to spreading propaganda against the labour reform bill. Despite their more activist orientation and their (mostly veiled) criticism of the CPC president’s ‘conciliatory stances’,⁴⁶ the Anti-Reform Front’s leaders never called into question the CPC’s legitimacy, nor its role as *the* representative of *all* employers vis-à-vis the state. This explains why the Anti-Reform Front’s associations never adopted an ‘anti-CPC’ position, let alone made calls for the formation of a new encompassing association, as several non-CUT labour leaders frequently did when questioning the CUT (Chile)’s ability to represent rank-and-file workers.

This was a key difference between workers and employers, which escalated when the bill passed the Chamber of Deputies and was introduced into the Senate. At this point, the CUT (Chile) was still confident that the pro-labour clauses that remained in the bill would become law. However, based on the experience of the 2014 tax reform, the CPC was also hopeful that the chances of weakening the most important pro-labour clauses were higher in the Senate than in the Chamber of Deputies. In 2014, during the passage of the tax reform bill in the Senate, prominent businessmen established direct negotiations with some Partido Demócrata Cristiano (Christian Democratic Party, PDC) senators such as Andrés Zaldívar. The negotiations developed through informal meetings (many of which took place in businessmen’s houses) and resulted in several policy proposals that were included in the final draft of the bill. These proposals sought to reinstate tax exemption benefits for big companies, whose elimination had been one of the main goals of the government.⁴⁷ Yet, as a result of pressure from these senators, the minister of finance Alberto Arenas compromised and the proposals turned into amendments, eventually becoming law. Based on this experience, employers had reasons to be optimistic. Employers’ optimism was reinforced in May 2015 after Bachelet reshuffled her cabinet and, as demanded by the business sector,⁴⁸ removed Alberto Arenas from office. Businesspeople applauded the reshuffle, claiming that, unlike Arenas, the new minister Rodrigo Valdés was an economist who was always ‘willing to talk with the business sector’.⁴⁹

⁴⁶ Alfredo Ovalle: “A Salas le pediría una actitud más rígida”, *La Segunda*, 7 Aug. 2015. In interviews, CPC leaders and staff members claimed to be aware of these criticisms.

⁴⁷ Francisca Skoknik, ‘Los forados a favor de la elusión que dejó el acuerdo tributario de Arenas con la derecha’, *CIPER*, 2014, available at <https://ciperchile.cl/2014/07/17/los-forados-a-favor-de-la-elusion-que-dejo-el-acuerdo-tributario-de-arenas-con-la-derecha/>, last access 20 Aug. 2020.

⁴⁸ José Antonio Guzmán analiza el escenario económico y gremial’, *El Mercurio*, 18 Jan. 2015.

⁴⁹ ‘Necesitamos hechos: Que el diálogo público-privado no sea un diálogo de sordos’, *La Tercera Negocios*, 17 May 2015.

The Bill in the Senate: Disparities of Associational Power and Intra-Coalition Disputes

The legislative discussion in the Senate showed two contrasting images of collective organisation and associational power. While the CPC and the Anti-Reform Front continued to work in coordination to oppose the 'syndicalist' provisions of the bill, the confrontation between the unions affiliated and unaffiliated with the CUT (Chile) escalated, especially when workers realised how employers' influence was facilitated by some PDC senators and the recently appointed minister of finance. Similar to the 2014 tax reform, these business-friendly senators addressed employers' demands by putting together the Pro-Small and Medium-Sized Enterprises (SMEs) Legislators' Group, with the overt goal of defending business interests during the passage of the bill in the Senate.

The creation of the Pro-SMEs Legislators' Group revealed the business sector's successful linkages with key state actors and the serious ideological divisions within the NM. It also signalled a breaking point in the labour reform process as a whole. After several meetings with business associations, these pro-business PDC senators made proposals that, between September 2015 and March 2016, resulted in amendments that dismantled most of the pro-worker clauses that remained in the bill. For example, they proposed to reinstate the articles that prohibited strikes in strategic industries and to broaden the concept of 'minimum services' during strikes. These proposals were the basis of the amendments introduced by the executive branch on 12 September 2015.

Months later, other significant pro-business modifications were introduced into the bill. These gave rise to clauses that reinforced the union's obligation to provide 'emergency crews' to ensure the firm's provision of 'minimum services', that protected employers' ability to make 'necessary modifications' in non-strikers' shifts and work schedules during strikes, and that eliminated the fines for employers who replace striking workers (which had been established in the 2001 reform). In addition, as demanded by employers, pro-business PDC and right-wing senators introduced modifications that made it more difficult to form unions in firms with less than 50 employees. They also proposed the elimination of the mandatory 75 per cent of union dues payment associated with the extension of the collective agreement to non-unionised workers, suggesting that the payment amount should be agreed between the union and the employer.⁵⁰ All these proposals were eventually included in the bill that became law in August 2016.

According to labour, these events demonstrated how business influenced the legislative process. While agreeing on this point, the CUT (Chile) and non-CUT sectors had different approaches to it, which resulted in the final rupture between them. The TMRL workers and the 4×4 coalition saw the pro-business amendments as the 'final proof' that the NM government was not really interested in pursuing significant reforms. After concluding that there was nothing left to fight for, both coalitions stopped their attempts to influence the reform debate and called on the

⁵⁰Juan Vergara, 'Reforma laboral (XIX): Las modificaciones introducidas por la Comisión de Trabajo del Senado', *ProSindical*, 2016, available at <https://prosindical.wordpress.com/2016/01/22/reforma-laboral-xix-las-modificaciones-introducidas-por-la-comision-de-trabajo-del-senado/>, last access 20 Aug. 2020.

government to withdraw the bill.⁵¹ Meanwhile, the CUT (Chile) continued to endorse the bill, demanding (without success) that Bachelet discipline the NM pro-business senators.

These calls had no impact on the executive leader. The PDC senators' behaviour suggested that further pro-labour amendments would not pass the Senate. Therefore, the executive branch preferred to avoid confrontation with the NM's pro-business sectors in order to secure the advances made in the Chamber of Deputies. In response, in the following months the CUT (Chile) decided to call for a general strike to protest the 'capture' of the reform bill by business. The general strike took place on 23 March 2016 but did not influence the legislative discussion at all. For one thing, it occurred when all non-CUT actors had already withdrawn from the reform debate and, consequently, when the momentum observed in mid-2015 was gone. Additionally, the strike was called at the very end of the legislative process, once the bill was ratified by the lower chamber after passing the Senate.

The Injunction in the Constitutional Court and the End of the Labour Reform Debate

After the passage of the bill in the Senate, some articles on collective bargaining were introduced to a joint commission (*comisión mixta*) and were eventually approved by the Senate on 6 April 2016. That same day, the right-wing parties filed an injunction in the Constitutional Court. Reinstated in 1980 by the dictatorship, the Constitutional Court is a court functionally independent of the judicial branch, the president and the Congress, formed by ten appointed members. Its main function is to define whether the laws passed by Congress are in conflict with the (still in force) Pinochet Constitution. Due to its veto powers and its historical conservative composition, the Constitutional Court has been depicted as an 'institutional lock-in' inherited from the dictatorial period.⁵² In this case, the veto powers were used by right-wing parties which, following the claims made by the CPC from the very beginning of the legislative process,⁵³ argued that the provisions on unions' legal control over collective bargaining (*titularidad sindical*) and on collective bargaining extension (*extensión de beneficios*) were unconstitutional because they represented a threat to union freedom and property rights.

On 27 April 2016, the Constitutional Court ruled in favour of the injunction against the provisions on *titularidad sindical*.⁵⁴ Despite dismissing the injunction against other provisions on collective agreements extension, the court's ruling was a hard defeat for the CUT (Chile). The laws declared unconstitutional, which would have restricted the power of bargaining groups vis-à-vis unions, had become one of the few concrete 'advances' CUT (Chile)'s leaders had fought for.

⁵¹Trabajadores por una Mejor Reforma Laboral, 'Carta a Ximena Rincón', Santiago, 2015.

⁵²Fernando Atria Lemaître, Guillermo Larraín, José Miguel Benavente, Javier Couso and Alfredo Joignant Rondón, *El otro modelo: Del orden neoliberal al régimen de lo público* (Santiago: Debate, 2013), pp. 94–5; Claudio Fuentes, *El Pacto: Poder, constitución y prácticas políticas en Chile (1990–2010)* (Santiago: Ediciones UDP, 2012).

⁵³CPC: Reforma laboral impone una "sindicalización automática encubierta", *El Mercurio*, 13 Jan. 2015.

⁵⁴Tribunal Constitucional de Chile, 'Sentencia al requerimiento de inconstitucionalidad (boletín N° 9835-13)' (Santiago: Tribunal Constitucional de Chile, 2016).

(In interviews, many of them contended that, if passed, the new laws would be ‘the most important’ policy change since the return to democracy.) In contrast, the business sector applauded the court’s decision, claiming that it demonstrated that unions cannot be strengthened ‘at the expense of undermining individual workers’ freedom’.⁵⁵ For employers, the ruling also confirmed the legitimate existence of bargaining groups and reaffirmed, the SOFOFA president said, that ‘there is no need to belong to a union to be able to bargain (collectively)’.⁵⁶

In response to the Constitutional Court’s ruling, Bachelet used a presidential veto to suppress the articles that promoted firm-level flexibility agreements. She contended that these articles were concessions to business that ‘made sense’ only if unions were the only entity that had the right to collective bargaining. Also, in order to finish the legislative process, she decided not to introduce a complementary law (*ley corta*) that would demarcate the rights of unions and bargaining groups. In practice this implied that, having replaced the provisions contained in the previous legislation (Law 19,759), the new laws would lack specific rules to regulate the coexistence of unions and bargaining groups within firms. Despite these problems, the new labour law was enacted on 29 August 2016 (Law 20,940).

Policy Continuity and Disparities of Associational Power

For workers affiliated and unaffiliated with the CUT (Chile), the balance of the reform process was largely negative. Although Law 20,940 restricted employers’ ability to unilaterally extend collective agreements to non-unionised workers (now the extension has to be agreed upon between the union and the employer), the most significant pro-worker measures included in the original bill failed to turn into law. This was the direct result of the way in which organised business successfully influenced the different stages of the legislative process.

Employers’ influence was expressed in several ways. In some cases, there were pro-worker clauses that remained in the bill until the end of the reform debate – i.e. the clauses on the union’s exclusive control over collective bargaining. Nevertheless, these were declared unconstitutional by the Constitutional Court. In other cases, pro-labour deputies proposed important amendments which were nonetheless quickly dropped by the president once employers and right-wing parties made it clear that they would not even discuss them (e.g. provisions to facilitate collective bargaining by inter-company unions or confederations). In addition, there were provisions that, while passed into law, were weakened to such an extent that they would be simply unable to fulfil their original goal. This was the case with the regulations that restrict employers’ ability to replace striking workers, which were lessened by the clauses on ‘minimum services’.

The 2015–16 legislative process also led to the weakening, or even the elimination, of some pro-labour measures passed in the 2000–1 reform. These changes were not part of the government’s original proposal and were only included in the bill *after* its passage in the Senate. For instance, the regulations that imposed

⁵⁵‘Empresarios valoran decisión del TC: “Reafirma los principios de la libertad”’, *La Tercera*, 28 April 2016.

⁵⁶Hermann von Mühlenbrock: “Chile no puede jugarse a que la mediocridad actual la resuelva un presidente que llegue en dos años más”, *La Tercera Negocios*, 26 June 2016.

finances for employers who replace striking workers were eliminated, while the clauses that regulated union activity changed so that the formation of some types of unions became more difficult than before. As demanded repeatedly by employers, the new legislation established that in firms with less than 50 employees a union could be formed only if, in addition to having eight affiliates, it represented at least 50 per cent of the total number of employees.

Why did the Bachelet reform project fail to dismantle the regulations on collective bargaining, union organisation and strike activity established during the Pinochet dictatorship? The evidence suggests that the disparity between capitalists' and workers' associational power is, in interaction with the role played by state actors and the effects of dictatorial legacies such as the Constitutional Court, a central factor shaping the outcomes of this most recent reform process. How can the disparity of associational power be explained?

Workers' weak associational power is directly related to the CUT (Chile)'s incapacity to safeguard working-class unity. This incapacity has been a recurrent problem of the Chilean labour movement. At least since its foundation in 1988, the CUT (Chile) has been unable to overcome the 'restraint vs. militancy' debate and, more generally, the question of the autonomy of labour vis-à-vis centre-left parties in office.⁵⁷ Throughout the Bachelet reform, the debate took place both outside the CUT (Chile), in the 4x4 and TMRL workers' criticisms of the CUT (Chile)'s 'passivity', and within it, as expressed in some CUT (Chile) officials' criticisms against the PC leaders for their 'excessive' emphasis on restraint. In personal interviews with PC leaders, they claimed that restraint was an effective tactic because, unlike what happened in previous decades with the Concertación parties, the PC's ideological commitment to labour's demands was 'real'. Thus, they contended, their partisan linkages would help them to defend the 'positive' (pro-labour) aspects of the bill. However, in contrast to their expectations, this tactic proved to be unsuccessful. Their main allies in office – communist and left-wing socialist congresspeople – certainly held consistent pro-labour stances. Nevertheless, they were a minority in a coalition with serious ideological disagreements. As a result, in addition to being ineffective, the tactic adopted by the CUT (Chile)'s main leaders had negative consequences as it reinforced strategic and political divisions existing within the labour movement.

Labour's inability to build and exercise associational power is also explained by the persistence of the 1979 labour laws themselves. Not only have they restricted the right to strike, but they have also promoted labour flexibility, firm-level bargaining and the formation of small and fragmented unions within firms.

In contrast to the CUT (Chile), the CPC's construction and mobilisation of associational power was noticeably successful. This success dates back to the 1980s, when employers decided to 'revive' the CPC to confront the challenges of the economic crisis and the threats derived from the democratic restoration.⁵⁸ Since then,

⁵⁷Patricio Frías, *Los desafíos del sindicalismo en los inicios del siglo XXI* (Buenos Aires: CLACSO/OIT/Universidad Central, 2008).

⁵⁸Schneider, *Business Politics and the State in Twentieth-Century Latin America*; Eduardo Silva, 'Organized Business, Neoliberal Economic Restructuring, and Redemocratization in Chile', in Francisco Durand and Eduardo Silva (eds.), *Organized Business, Economic Change and Democracy in Latin America* (Miami, FL: North-South Center Press, 1998), pp. 217–52.

the CPC has successfully overcome strategic, political or ideological intra-class conflicts (e.g. disputes between sectoral associations or, until the 1990s, between 'neoliberal' and 'protectionist' employers). In forging and safeguarding class unity, the CPC has thus worked as a vehicle of associational power. The CPC's exceptional capacity to build and maintain unity derives from political-ideological factors,⁵⁹ such as state recognition, integration into consultation mechanisms and business leaders' recurrent use of the idea of 'threat' to reinforce unity, as well as from its own organisational structure. Two components of this structure play a key role. First, leadership structures such as the national council and especially the executive committee, which are formed by representatives of the six associations affiliated with the CPC and whose main function is to generate consensus among them regarding the 'general' (class-wide) issues faced by employers. The second component refers to the CPC's system of indirect affiliation. While formally comprised of six sectoral associations, the CPC is attentive to the reality of firms from regional and lower-level associations that, due to their direct affiliation with those sectoral associations, are its 'indirect' affiliates. Through this system, the CPC can represent a wide variety of business interests without compromising or 'over-exhausting' its internal decision-making structures.⁶⁰

As a result, in contrast to the CUT (Chile), the CPC has not suffered from splits or, in periods of reform, from the emergence of coalitions that openly question its leadership role. In 2015 the 'conciliatory' stance of the CPC president Alberto Salas was certainly criticised by some business activists. Yet, in no case did these critics cast doubts about Salas' role, let alone about the CPC's position as *the* representative of the *whole* business sector vis-à-vis the government.

As the basis of business associational power, class-wide unity has allowed employers to effectively use other power resources. It has facilitated employers' adoption of pragmatic strategic positions towards parties and state actors – observed, for example, in their ties with centre-left policy-makers – without renouncing their traditional hard-line ideological stances towards labour law.⁶¹ During the Bachelet labour reform, the combination of hard-line ideologies and pragmatic strategic positions enabled the business sector to oppose all the 'syndicalist' clauses included in the bill *and* at the same time keep cultivating friendly relations with important government leaders and legislators of the ruling coalition (e.g. officers from the Ministry of Finance and some senators). These ties were particularly important as corruption scandals and the electoral defeat of 2013 had significantly weakened right-wing parties. Unlike in the 1990s, in the mid-2010s they did not seem to be an ally the business sector could rely on to influence the policy-making process.

In Chile, capitalists' mobilisation of associational power was certainly facilitated by the business sector's economic resources. Compared to unions, business associations have more material, technical and infrastructural resources, which allow them to work more efficiently. However, resource differentials between workers'

⁵⁹*Ibid.*

⁶⁰Pablo Pérez Ahumada, 'Business, Workers, and the Class Politics of Labor Reforms in Chile, 1973–2016', unpubl. PhD diss., University of California, San Diego, 2017, pp. 345–54.

⁶¹*Ibid.*

and employers' associations do not explain *per se* the associational power disparities. If this were the case, employers' associational power would be stronger wherever this resource differential exists (i.e. in any capitalist society). However, as the next section shows, this is not the case in countries such as Argentina or Uruguay.

In addition to the disparity of associational power between workers and employers, three other factors help explain the failure of Bachelet's reform attempt. The first one is related to business structural power and was expressed in some NM policy-makers' rejection of amendments to facilitate multi-company bargaining and, in later stages, in their desire to reach cross-coalition agreements to 'shut down' the labour reform debate. In both cases, they did so by arguing that legislative changes which only favour labour interests would create 'uncertainties' that might affect the economy as a whole.⁶² The second factor refers to dictatorial legacies such as the Constitutional Court. This was key for strengthening employers' opposition to the pro-labour measures that remained in the bill until the end of the reform debate. Finally, the NM's own political problems also played a role. In addition to the ideological divisions between pro-labour and pro-business legislators already noted, in 2015 Bachelet's leadership was affected by a corruption scandal known as the 'Caval affair'. This involved Bachelet's son and daughter-in-law, who were accused of influence peddling and, along with damaging Bachelet's popularity, undercut her ability to implement the reforms promised during her campaign.

Associational Power and Labour Policy in Latin America: Chile in Comparative Perspective

So far, this article has shown that variables such as 'legacies' or state actors' willingness to pursue reforms should not be analysed separately from the way in which class-based actors organise collectively to defend their interests vis-à-vis other classes and the state. Experiences of labour reforms carried out by centre-left governments in countries such as Argentina, Brazil and Uruguay indicate that this explanation also holds in other Latin American political economies.

In Argentina, the left-wing Peronist administration of President Néstor Kirchner successfully passed a reform in 2004 that reinstated several pro-labour measures revoked in the 1990s by presidents Carlos Ménem and Fernando de la Rúa. Among other things, the new policies (Law 25,877) recentralised collective bargaining by facilitating sectoral agreements and by establishing that they would set the stage for local or firm-level agreements.⁶³ In addition, the policies restored the stipulations on *ultraactividad*, according to which the terms of a collective contract remain in force until the contract's expiration if no new agreement is negotiated. They also strengthened the right to strike by forbidding the replacement of striking workers in line with the ILO's conventions 87 and 98.⁶⁴

⁶²La gente que hizo el programa creó la expectativa de que con voluntad se solucionaba todo a la vez', *La Tercera Reportajes*, 16 Aug. 2016.

⁶³Clara Marticorena, *Trabajo y negociación colectiva: Los trabajadores en la industria argentina, de los noventa a la posconvertibilidad* (Buenos Aires: Imago Mundi, 2014), pp. 56–7.

⁶⁴Cecilia Senén, 'La revitalización sindical en Argentina durante los Kirchner', *Revista Trabajo*, 5: 8 (2011), pp. 39–64.

The impact of these laws was significant for organised labour. Union membership rates increased from 32 per cent in 2000 to nearly 40 per cent in 2006; so did the number of collective agreements signed (from 76 in 2000 to 1,231 in 2008) and the number of workers covered by collective bargaining (from 3 million in 2003 to 5 million in 2008).⁶⁵

The case of Uruguay is, in many respects, similar to the Argentine case. In 2004, the candidate for the centre-left coalition Frente Amplio (Broad Front, FA), Tabaré Vázquez, won the presidential election. Once in office, Vázquez summoned the Rural Superior Council and the Public Sector Bipartite Council to initiate legislative changes to extend collective bargaining to rural and public-sector workers. He also created the Tripartite Superior Council to convene the wage councils and recentralise collective bargaining (which had been *de facto* decentralised in 1991, after President Luis A. Lacalle suspended the councils to flexibilise the labour market). Vázquez's goals materialised in several reform bills that became law – e.g. Law 17,940 (2006) on legal protection for union leaders, Law 18,508 (2009) on collective bargaining in the public sector and Law 18,566 (2009) on collective bargaining in the private sector. In addition to establishing the principle of *ultraactividad*, Law 18,566 made national-level bargaining mandatory for employers and gave primacy to higher-level agreements by establishing that they would set the stage for firm-level ones.⁶⁶ These changes had significant positive effects on labour. Union membership and collective bargaining coverage rates grew. So did the number of workers affiliated to the labour association Plenario Intersindical de Trabajadores – Convención Nacional de Trabajadores (Workers' Inter-Union Plenary – Workers' National Convention, PIT-CNT), which increased from 130,000 workers in 2004 to 320,000 in 2011.⁶⁷

The balance of power between workers and employers is, in interaction with legacies and political factors, key for explaining the success of pro-labour reforms in Argentina and Uruguay. While the role played by labour associations, employer organisations and the government was similar to that observed in Chile (in these two countries the main labour associations had strong links with a centre-left government whose reform programme was resisted by employers), there were significant differences between these countries and Chile. In both Argentina and Uruguay the balance of power was more favourable for the working class than in Chile.

Like in Chile, the main labour associations of Argentina and Uruguay – the two factions of the Confederación General del Trabajo (General Confederation of Labour, CGT) and the Central de Trabajadores de la Argentina (The Argentine Workers' Association, CTA) in Argentina and the PIT-CNT in Uruguay – actively endorsed the reform bill proposed by the government. However, in Argentina unions were stronger. In spite of deep free-market reforms throughout the 1990s, Argentine unions could preserve important institutional power resources – for instance, corporatist provisions that allowed them to control social welfare funds

⁶⁵*Ibid.*, pp. 55–6; Marticorena, *Trabajo y negociación colectiva*, p. 96.

⁶⁶Mariela Quiñones, 'Gobiernos progresistas, sindicatos y trabajo en Uruguay', *Revista Trabajo*, 5: 8 (2011), pp. 65–82; Luis A. Senatore, 'Uruguay 1992–2009: Las políticas laborales y el sujeto sindical', *Revista Latinoamericana de Estudios del Trabajo*, 14: 22 (2009), pp. 53–76.

⁶⁷Quiñones, 'Gobiernos progresistas, sindicatos y trabajo en Uruguay', p. 77.

and hold exclusive representation of entire economic sectors.⁶⁸ Compared to Uruguay (and certainly Chile), these corporatist legacies put Argentine unions in a stronger position vis-à-vis centre-left ruling parties.

In Uruguay, on the other hand, the shift towards neoliberalism led to the dismantling of important power resources for workers throughout the 1990s (e.g. sectoral representation derived from centralised bargaining). However, in a context of relative weakness, their linkages with centre-left ruling parties were particularly relevant. Unlike its centre-left counterpart in Chile (the PS), the FA in Uruguay continued cultivating strong ties with grassroots movements after the end of the dictatorship.⁶⁹ Therefore, the FA's government leaders differed from their Chilean counterparts in that they were more receptive to working-class demands and, consequently, more resolved to carry out legislative changes to those ends. This became, in the end, a central power resource for Uruguayan workers.

In both Argentina and Uruguay, the government's resolve was dependent, however, on the balance of power between capitalists and workers. Even though Uruguayan and Argentine employers' opposition to labour reforms was similar to that observed in Chile, in these two countries the business sector was much more divided and fragmented. In both Argentina and Uruguay, employers lacked a powerful economy-wide encompassing association such as the CPC, able to construct associational power by lessening the recurrent sectoral divisions they were exposed to.⁷⁰ These divisions were vividly observed in Argentina, where some industrialists affiliated with the Unión Industrial Argentina (Argentine Industrial Union, UIA) departed from the business sector and even endorsed the recentralisation of collective bargaining, claiming that it would help them ameliorate class conflict.⁷¹ Also, in Argentina right-wing parties were weaker and more delegitimised than in Chile, while in Uruguay no right-wing party opposed the government's reform as decidedly as their Chilean counterparts.⁷² Indeed, Chile's two main right-wing parties – Renovación Nacional (National Renewal, RN) and the Unión Demócrata Independiente (Independent Democratic Union, UDI) – are salient examples of parties that, in addition to making electoral gains, have successfully engaged in the programmatic mobilisation of non-distributive divides (e.g. economic growth). This has, in turn, empowered them to block progressive reforms carried out by centre-left governments.⁷³

⁶⁸Sebastián Etchemendy and Ruth B. Collier, 'Down but Not Out: Union Resurgence and Segmented Neocorporatism in Argentina (2003–2007)', *Politics and Society*, 35: 3 (2007), pp. 363–401.

⁶⁹Steven Levitsky and Kenneth M. Roberts, 'Latin America's "Left Turn": A Framework for Analysis', in Steven Levitsky and Kenneth M. Roberts (eds.), *The Resurgence of the Latin American Left* (Baltimore, MD: JHU Press, 2011), pp. 13–14.

⁷⁰Florencia Antía, 'Gobiernos de centro-izquierda y derechos colectivos del trabajo: Entre reformas marginales y reformas significativas en Chile y Uruguay en los años 2000', in Carmen Midaglia, Gerardo Ordóñez and Enrique Valencia (eds.), *Políticas sociales en América Latina en los inicios del siglo XXI: Innovaciones, Inercias y Retrocesos* (Buenos Aires: CLACSO, 2018), pp. 139–68; Schneider, *Business Politics and the State in Twentieth-Century Latin America*.

⁷¹Marticorena, *Trabajo y negociación colectiva*, pp. 103–5.

⁷²Antía, 'Gobiernos de centro-izquierda y derechos colectivos del trabajo'; Fairfield, *Private Wealth and Public Revenue in Latin America*.

⁷³Juan Pablo Luna and Cristóbal Rovira Kaltwasser, 'Introduction: The Right in Contemporary Latin America: A Framework for Analysis', in Juan Pablo Luna and Cristóbal Rovira Kaltwasser (eds.), *The Resilience of the Latin American Right* (Baltimore, MD: JHU Press, 2014), pp. 1–22.

In contrast to the Argentine and Uruguayan cases, the experience of Brazil under the presidency of Luiz Inácio 'Lula' da Silva shows that when labour is weak *and* the reformist government is unable (or unresolved) to carry out pro-labour reforms, these are unlikely to pass. In 2003, Lula tried to reform old state-corporatist laws articulated in the Consolidação das Leis do Trabalho (Consolidation of Labour Laws, CLT) and observed in the provisions on *imposto sindical* (mandatory union tax) and on *unicidade sindical* (which established the standard of one union per economic activity per municipal unit). Unlike his predecessor Fernando H. Cardoso, who aimed to dismantle the CLT laws by implementing provisions that facilitated fixed-term employment contracts and allowed employers and workers to negotiate flexible work schedules, Lula attempted to increase the protection of workers' collective rights. He emphasised dialogue and consensus and called for a national consultation on labour law reform that materialised in tripartite organisations such as the Conselho de Desenvolvimento Econômico e Social (Council for Social and Economic Development, CDES) and especially the Fórum Nacional do Trabalho (National Labour Forum, FNT). In 2004 the FNT presented several proposals to legalise labour associations, permit the formation of industry-wide unions, extend the right to strike, revoke the union tax, as well as replace unions' monopolist representation system with a new one based on pluralism.⁷⁴ These amendments were used by the government to draft a reform bill that was submitted to Congress in March 2005.

Despite the consensus-building process in the FNT, most employer associations did not endorse the proposals. The opposition to the project was also reinforced by the high level of disunity over the bill, by the government's lack of majority in Congress and by the government's legitimisation problems derived from the 'Mensalão' corruption scandal. As a result, the reform bill did not pass Congress and Lula negotiated directly with unions on the introduction of a bill that, after passing Congress in March 2008 (Law 11,648), legalised labour associations and allowed them to get a 10 per cent share of union dues.⁷⁵ Along with the decrees to increase the real minimum wage, the legal recognition of labour associations was one of the most significant pro-labour reforms passed under President Lula.⁷⁶ Yet, compared to Argentina and Uruguay, the general balance of labour reforms was less favourable for the working class. Similar to the Chilean case, Lula's administration was unable to abolish or reverse the most important flexibilisation measures enacted in previous administrations.

Following the framework developed in this article, three factors explain the limited scope of labour reform under Lula. The first one relates to labour fragmentation and the inability of the Central Única dos Trabalhadores (United Workers' Association, CUT (Brazil)) to construct associational power. The flexibilisation policies of the 1990s increased firm-level agreements and, consequently, labour

⁷⁴Angela Carneiro and Roberto Veras de Oliveira, 'El sindicalismo brasileño en la era de Lula', *Revista Trabajo*, 5: 8 (2011), pp. 83–112.

⁷⁵*Ibid.*, p. 96.

⁷⁶Jean François Mayer, 'The Limits of Labor Legislation Reforms: Rigidity, Growth, and Employment in Brazil, 1995–2010', in Paul W. Posner, Viviana Patroni and Jean François Mayer (eds.), *Labor Politics in Latin America: Democracy and Worker Organization in the Neoliberal Era* (Gainesville, FL: University of Florida Press, 2018), pp. 135–61.

fragmentation.⁷⁷ Moreover, in the 2000s working-class fragmentation was reinforced by recurrent political conflicts between unions. Similar to the case of Chile, partisan linkages between the CUT (Brazil) and Lula's party, the Partido dos Trabalhadores (Workers' Party, PT), gave rise to recurrent conflicts revolving around the question of labour autonomy. These conflicts were usually expressed in unions' criticisms of the CUT (Brazil)'s 'passive' stance towards the Lula administration. Like in Chile, they led to splits, unions' disaffiliations from the CUT (Brazil) and the formation of new labour associations.⁷⁸

A second factor relates to the way in which the government's conciliatory approach towards policy turned the balance of power in favour of the business sector. Compared to their Chilean counterparts, Brazilian encompassing business associations were fragmented and poorly organised.⁷⁹ However, this lack of associational power was compensated by Lula's desires to secure the political neutrality of the economic elites.⁸⁰ Through the creation of tripartite organisations such as the FNT, Lula gave employers the opportunity to influence the policy-making process, even though their collective action capacities were comparatively weak.

Finally, political and institutional conditions explain the outcomes of the Lula labour reforms. In an attempt to obtain an electoral majority, in the late 1990s the PT decided to broaden its agenda to include segments of the middle class and the business sector into its constituency.⁸¹ Similarly, despite the PT's electoral triumph of 2002, opposition parties continued to hold a majority of seats in Congress. Thus, while aiming to favour the interests of the working class, the leverage of Lula's reformist agenda was limited from the beginning.

Power Imbalances and Labour Reform: Implications for the Study of Power Resources

In addition to showing the central importance of power imbalances between capitalists and workers, the comparative evidence presented here helps improve the main explanations derived from the power resources approach. Similar to the case of Chile, the Brazilian case suggests that when the balance of power is more favourable to business, pro-labour agendas can easily fail. In Chile the power imbalance was the result of the disparities between capitalists' and workers' associational power. As shown throughout this article, this allowed Chilean employers to successfully confront the Bachelet reform *even* when right-wing parties were in a weakened position. In Chile, this imbalance of associational power was reinforced at the political and institutional levels by the ruling parties' inability to pursue coordinated pro-labour agendas and by dictatorial legacies such as the Constitutional Court. In Brazil, on the other hand, the power imbalance was an outcome of labour fragmentation and the government's conciliatory stances. This gave employers more

⁷⁷ Carneiro and Veras de Oliveira, 'El sindicalismo brasileño en la era de Lula', p. 89.

⁷⁸ *Ibid.*, pp. 97–8; Cook, *The Politics of Labor Reform in Latin America*, pp. 101–2.

⁷⁹ Schneider, *Business Politics and the State in Twentieth-Century Latin America*, Chapter 4.

⁸⁰ Carneiro and Veras de Oliveira, 'El sindicalismo brasileño en la era de Lula'.

⁸¹ *Ibid.*, p. 92.

opportunities to influence the policy-making process even though the business sector was comparatively weaker and more disorganised than in Chile.

In contrast, the cases of Argentina and Uruguay show that when the balance of power is more favourable to the working class, pro-labour reforms are more likely to pass. In Argentina the balance of power was largely explained by unions' ability to retain institutional (corporatist) power resources, while in Uruguay it was explained more by the presence of a pro-labour ruling coalition which, in a context of labour's relative weakness, was committed to pursuing redistributive reforms. Also, different from Chile, in these two cases employers' weak associational power was a key factor because it allowed the reformist governments to carry out legislative changes without having to face exceptionally strong opposition from organised business.

The comparative evidence presented above has two implications for the study of power resources. First, it suggests that labour reform outcomes are often more complex than predicted by the most traditional version of the power resources approach. This approach has rightly demonstrated that party–union linkages benefit workers' interests regarding social policy. However, the cases of Chile and Brazil imply that these linkages do not *necessarily* lead to more protective collective labour laws. Moreover, the Chilean experience demonstrates that centre-left parties' inability to pursue coordinated pro-labour agendas may end up increasing strategic and political disputes within labour, thereby undermining working-class associational power. In addition, the Chilean case demonstrates that these linkages can also restrict labour leaders' use of a wider array of tactics, as such linkages induced leaders to emphasise lobbying even when they were totally aware of the gains obtained in previous years through mass mobilisation (for instance, in the cycle of strikes that started in 2006). This is in line with Andrew Lawrence's critique of the power resources approach.⁸² In his study of the German and South African labour movements, he demonstrates that labour autonomy can sometimes be a source of power because it enables unions to develop new repertoires of action. By doing so, he concludes that the power resources approach mistakenly assumes that linkages between labour and state actors *always* represent a 'higher stage' of labour power.

Secondly, in line with newer versions of the power resources approach and recent analyses of social policy in Latin America,⁸³ the evidence presented in this article suggests the need to adopt a *relational* view of power. Accordingly, working-class power should not be simply seen as an outcome of workers' linkages with centre-left ruling parties. Nor should it be conceived as the simple outcome of labour policy – for example, as the direct effect of corporatist provisions. While certainly important, the effect of these political (partisan-based) and institutional (legal) resources is dependent on capitalists' power to disorganise or come to an agreement with labour (or, like in the case of Chile, capitalists' power to defend the persistence of dictatorial legacies such as the 1979 Labour Plan). In simpler

⁸²Andrew Lawrence, *Employer and Worker Collective Action: A Comparative Study of Germany, South Africa, and the United States* (New York: Cambridge University Press, 2014), p. 254.

⁸³Walter Korpi, 'Power Resources and Employer-Centered Approaches in Explanations of Welfare States and Varieties of Capitalism', p. 206; Schmalz *et al.*, 'The Power Resources Approach'. On Latin America, see Antía, 'The Political Dynamic of Redistribution in Unequal Democracies'; Tasha Fairfield and Candelaria Garay, 'Redistribution Under the Right in Latin America: Electoral Competition and Organized Actors in Policymaking', *Comparative Political Studies*, 50: 14 (2017), pp. 1871–906.

words, conceiving power as a relational phenomenon implies analysing how the degree of power of a class (say, the working class) shapes and is shaped by the degree of power of other classes (e.g. the capitalist class).⁸⁴

Needless to say, this focus on class-based power imbalances does not mean that state actors and parties are unimportant. As shown for the case of Uruguay, they can play a significant role when unions are comparatively weaker. Similarly, the example of Brazil suggests that when state actors and office-holding parties privilege consensus, business power is reinforced despite the relative weakness of employer associations.

Conclusion

Focusing on the notion of ‘associational power’, this article analyses the case of Chile and suggests that the imbalance of power between capitalists and workers is, in interaction with the role played by state actors and the effect of legacies, key for explaining labour reform outcomes. In recognising the centrality of class interests, collective action and organisation, this article shows that the research on labour policy reform should focus less on static notions such as ‘legacies’ and more on the balance of power between class-based actors (particularly unions and business associations) as well as on the interactions between them and state actors taking place in a given institutional context.

The evidence presented in this article contributes to the research espousing the power resources approach by emphasising a relational view of power. According to this, traditional measures of working-class power (such as the presence of linkages between unions and centre-left parties in government) should be supplemented by more extensive analyses of both the internal dynamics of labour associations that facilitate (or not) the construction of associational power *and* the processes through which employers build and exercise their collective power. This article demonstrates, in effect, that when business power is strong and centre-left governments are unable (or unwilling) to pursue pro-labour agendas, the linkages between labour leaders and parties can be prejudicial for labour as such linkages become a threat to working-class unity.

To conclude, it is worth reflecting on how, from the framework developed here, the social outbreak observed in recent months in Chile might have led to significant changes within the labour movement. Since the protests started on 18 October 2019, unions affiliated and unaffiliated with the CUT (Chile) started to work together within Unidad Social (Social Unity), the coalition that comprises the social movements and organisations that led the protests. Between October and November 2019, unions became the most advanced actor of Social Unity. They organised several general strikes and massive demonstrations which had a profound impact on the political system. For example, the general strike held on 12 November 2019 was, along with the joint action of opposition parties, a key event that led the Piñera administration to call for a plebiscite to change the 1980 Constitution. It is too early to assess the final outcome of these processes. However, they suggest that if unions can overcome the political divisions that undermine working-class

⁸⁴Wright, ‘Working-Class Power, Capitalist-Class Interests, and Class Compromise’, p. 962; Schmalz *et al.*, ‘The Power Resources Approach’, p. 115.

associational power, a new stage of class politics could start in Chile. In this, workers could have greater chances to regain the rights they have been denied for decades.

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Spanish abstract

Desde que Chile retornó a la democracia en 1990, gobiernos de centro-izquierda han tratado de reformar las estipulaciones sobre pactos colectivos, huelgas y sindicatos establecidos por la dictadura de Pinochet. Entre 2015 y 2016 la presidenta Michelle Bachelet hizo el último intento por reformarlas. Pese a existir condiciones favorables, los cambios fueron modestos. Este artículo explica por qué. Partiendo de la noción de 'poder de asociación' y mediante comparaciones con reformas laborales en Argentina, Brasil y Uruguay, este artículo sugiere que el desequilibrio entre el poder colectivo de los trabajadores y el de los empleadores es clave para explicar por qué las reformas en pro de los trabajadores han fracasado.

Spanish keywords: legislación del pacto colectivo; reforma laboral; poder de asociación; empleadores; trabajadores; Chile

Portuguese abstract

Desde o retorno do Chile à democracia em 1990, governos de centro-esquerda tentam reformar as medidas sobre negociações coletivas, greves e sindicatos, estabelecidas durante a ditadura de Pinochet. Entre 2015 e 2016, a presidente Michelle Bachelet realizou a última tentativa de reforma. Apesar do momento apresentar condições favoráveis, as mudanças foram apenas modestas. Este artigo explica as razões pelas quais isso aconteceu. Mobilizando o conceito de 'poder de associação' e comparando a reforma chilena com as reformas trabalhistas na Argentina, Brasil e Uruguai, o artigo sugere que o desequilíbrio entre o poder coletivo dos trabalhadores e dos empregadores é a chave para compreender o fracasso das reformas pró-trabalhadores.

Portuguese keywords: lei de trabalho coletivo; reforma trabalhista; poder de associação; empregadores; trabalhadores; Chile

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