

LEGISLATION AND LABOR POLICY IN LATIN AMERICA: CRISIS, RENOVATION, OR RESTORATION?

Graciela Bensusán†

Recurrent economic crises, the reorientation of development strategies from a focus on internal market to exports, and political democratization have all contributed to the reorientation of labor policies in Latin America. These factors have led to new scenarios in which old institutions were reformed or operated differently, sometimes favoring employers and sometimes strengthening the protection for workers. Countries such as Mexico, Argentina, Chile, Brazil, and Uruguay were amongst the first to regulate relations between labor and capital. A distinctive feature of their labor laws was the markedly statist and pro-worker character of their approach to labor regulation, leaving little scope for the negotiation of working conditions between the social partners.¹ This is a reason why the advent of neoliberal policies (notably trade liberalization and privatization) seemed to herald more than economic crisis. For many, it was also the end of the model or labor paradigm that had prevailed in the most developed countries of the region. This model was predicated on the protection of dependent workers and associated with import substitution development strategies and industrialization centered on the domestic market.²

† Research professor at the Universidad Autónoma Metropolitana–Xochimilco in Mexico City. The author wishes to thank Gregor Murray and Michel Coutu, of the University of Montreal, and Martine Le Friant, of the University of Avignon for improving the quality of this Article and to Annette Hayden and Gregor Murray for their editorial work on it.

1. This characteristic does not negate the importance of other sources of regulation, such as customary practice and implicit agreements between labor and capital. See H. W. Arthurs, *Labour Law Without the State?*, 46 U. TORONTO L. REV. 1 (1996). On the concept of labor legislation and the ideas that inform it in Latin America, see Adrián Goldin, *Global Conceptualizations and Local Constructions of the Idea of Labour*, in *THE IDEA OF LABOUR* 69 (Guy Davidov & Brian Langille eds., 2011). In relation to the characteristics of the Latin American labor regulation models, see EL MODELO MEXICANO DE REGULACIÓN LABORAL [AUTHOR, PLEASE PROVIDE ENGLISH TRANSLATION FOR THIS TITLE.—EDS.] (Graciela Bensusán ed., 2000) (Mex.). For Argentina, Brazil, and Mexico, see Adalberto Cardoso & Julian Gindin, *Industrial Relations and Collective Bargaining: Argentina, Brazil and Mexico Compared*, at 108 (Int'l Lab. Office. Working Paper No. 5, 2009), available at http://www.ilo.org/ifpdial/information-resources/publications/WCMS_158020/lang--en/index.htm.

2. Not all who dealt with the problems facing Latin American labor law in the context of globalization foretold its failure, or did so from an exclusively pessimistic perspective. See, e.g., Adrián Goldin, *Labour Subordination and the Subjective Weakening of Labour Law*, in *BOUNDARIES AND*

The evolution of labor law and policy in the 1990s, with a strong regional convergence toward greater freedom in labor markets, was reinforced by the negative effects of economic globalization on the quality of jobs. This suggested the necessity of promoting other forms of extra-state regulation, leading to what became known as “legal pluralism.”³ In 2001, the crisis of the neoliberal economic model arose in Argentina, which spilled over into neighboring countries. The global economic crisis of 2008–2009 had a strong impact in the region but it was followed by a rapid recovery in most of the countries. This decade showed that there was reason to question the most pessimistic prognoses about the denouement of the attacks on the old Statist Model of Labor Regulation (SMLR). In many countries, especially those where the old instruments of state intervention remained intact and where parties or coalitions of the center-left held political power, there was a return to using labor institutions to favor workers and a revitalization of social policies, particularly by expanding protection to sectors excluded from formal employment.

To highlight the core argument of this Article, labor law has apparently overcome the crisis that it experienced during the undisputed hegemony of the neoliberal model. In a new context, it continues to provide essential instruments to promote inclusive development, to reduce poverty and inequality, and to help governments enhance their capacity to respond to the effects of the financial crisis of 2008–2009.⁴ In contrast, the emerging sources of nonstate regulation associated with legal pluralism in the world of work, such as codes of conduct of multinational companies, were of less importance than might have been expected, thus confirming the continuing impact of previous “statist” trajectories of labor regulation. Overall, when the nature and depth of the structural changes associated with the emergence of a “new economy” are considered, the downside of the restoration of this traditional labor law paradigm is that the capacity for institutional innovation is no doubt less than that required to resolve the challenges posed by both the old and new labor problems of the region.⁵
[Author, please consider rewording for clarity.—Eds.]

FRONTIERS OF LABOUR LAW: GOALS AND MEANS IN THE REGULATION OF WORK 109, 110 (Guy Davidov & Brian Langille eds., 2006).

3. “Legal pluralism” refers to the coexistence of diverse legal orders, coordinated within the same country and on the same level of equality. Norberto Bobbio, *La resistencia a la opresión, hoy*, in *TEORÍA GENERAL DE LA POLÍTICA* 10–13 (Norberto Bobbio ed., 2005). **[Author, please provide English translations for the title of the work and the book and country of publication.—Eds.]**

4. See INT’L LAB. OFFICE., ILO GLOBAL ESTIMATE OF FORCED LABOUR: RESULTS AND METHODOLOGY (2012), http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_182004.pdf.

5. In relation to precarious employment in the new economy, see the various contributions in *PRECARIOUS WORK, WOMEN AND THE NEW ECONOMY: THE CHALLENGE TO LEGAL NORMS* 432 (Judy Fudge & Rosemary Owens eds., 2006).

To develop this analysis, this Article is divided into three Parts. Part I reviews the literature on the relationship between globalization, the new economy, and labor rights in developing countries. Then Part II draws on the experience of five countries (Argentina, Brazil, Uruguay, Chile, and Mexico) in order to illustrate empirically the main oscillations in legislation and labor policy. Finally, Part III presents the most important effects of these oscillations. Because a detailed description of these trajectories and their effects exceeds the space available in this Article, it can only highlight some aspects of these labor law and policy developments in these Latin American countries.⁶

I. GLOBALIZATION, THE NEW ECONOMY, AND LABOR RIGHTS IN DEVELOPING COUNTRIES

The effect of globalization on labor legislation in developing countries such as those Latin American countries analyzed in this Article can be considered in the light of four interrelated debates emanating from a variety of disciplines (economics, economic sociology, legal sociology, political science, law, and international politics). These debates concern: (1) the convergence or divergence of labor regulation in the context of the expansion of multinational companies (MNCs) and, more generally, of the new economy in developing countries; (2) the crisis of traditional models of labor legislation and the rise of hybrid systems of labor protection, which give rise to theories of legal pluralism; (3) the role of private transnational protection as a potential substitute or as a complement or a resource to enhance the capabilities of state regulation and enforcement; and, (4) the benefits of the decent work approach as advocated by the International Labor Organization (ILO) and international human rights movements.

A. *The First Debate*

The first debate—certainly one of the most important with regard to the future of worker protection over the three decades—concerns the expansion of MNCs, often organized as network enterprises, and how these companies undermine the effectiveness of national regulation and the quality of jobs beyond borders. One position argues that globalization inevitably implies a convergence of rights and labor practices, either to the

6. For a more detailed overview of this evolution, see Graciela Bensusán, *Working Times and Minimum Wages: Regulations and Trends in Five Latin American Countries* (presentation at a conference on Regulating for Decent Work, July 6–8, 2011) and Graciela Bensusán & Juan Carlos Moreno Brid, *La interacción de las políticas macroeconómicas y laborales: continuidades y rupturas*, in 2 AMÉRICA LATINA EN LOS ALBORES DEL SIGLO XXI: ASPECTOS SOCIALES Y POLÍTICOS 145 (Martín Puchet et al. eds., 2012). [Author, please provide English citations as above and country of publication.—Eds.]

lowest standards (“race to the bottom”) or the highest (“climb to the top”). The outcomes apparently depend on the point of view of the observer.⁷ Critics of globalization argue that it has led to a “McDonaldization” of jobs, which threatens the classic labor law and employment protection paradigm.⁸ Proponents of globalization, such as the OECD (2002), suggest that best practices are transferred, meaning benefits accrue to both the MNCs and the countries where the best practices are implemented in the development of alternative sources of labor regulation. This optimistic outlook, however, contrasts with the evidence of the widespread deterioration in job quality and the fact that private regulation (like Codes of Conduct for MNCs) does not appear to have compensated for the weakening of state legislation (including collective bargaining) in developed and developing countries. This situation was further aggravated by the effects of the financial crisis of 2008–2009.

An opinion shared by critics of globalization and scholars of the “new economy” is that the deterioration of labor protection is the result of a convergence of technological change and the reorganization of work and their impact on the skills of workers and managers.⁹ This has been accompanied by the decline of the state, the growing power of MNCs, the weakening or destruction of unions, and the relaxation of national regulation. Job insecurity, extensive use of outsourcing in the framework of global value chains, and increased use of nonstandard and independent employment are just some of the consequences.¹⁰ The new economy is thus characterized by a dramatic decline in the stability and duration of employment, and in the links between workers and a union, employer, industry, and even paid work. This differs markedly from the previous models of labor regulation.¹¹

Although these changes significantly affect the performance and ability of different models of labor protection to respond to the challenges posed by globalization, there is some consensus that the effects on the economy, politics, and society will differ according to the characteristics of the country concerned. This points to an important distinction, which is

7. Douglas Kellner, *Theorizing Globalization*, 20 SOC. THEORY 285 (2002).

8. GEORGE RITZER, *THE MCDONALDIZATION THESIS: EXPLORATIONS AND EXTENSIONS* 224 (1998).

9. [Author, please provide a citation for this assertion.—Eds.]

10. See Anne Posthuma, *Beyond Regulatory Enclaves: Challenges and Opportunities to Promote Decent Work in Global Production Networks* (presentation at a conference on Regulating for Decent Work: Innovative Labour Regulation in a Turbulent World, July 8–10, 2009). According to Gereffi and Mayer, the process of outsourcing jobs has gained momentum since the 1970s. Gary Gereffi & Frederick Mayer, *Globalization and the Demand for Governance: The New Offshoring of Jobs and Global Development*, 1, 4 (Social Policy Lectures in Jamaica, 2005). “Outsourcing” is understood as one of the dimensions of this process, resulting from the decision to “make or buy” certain inputs and services, which has tended to favor buying as opposed to making option.

11. Arthurs, *supra* note 1, at 16.

2013] LEGISLATION AND LABOR POLICY IN LATIN AMERICA 105

made in this Article, between structural changes in the nature of the state, economy, and society (as the result of neoliberal globalization) and the cyclic changes in political alignments and public policies. The relationship between both types of change (structural change and cyclical variations) and whether they reinforce or offset each other with regard to their impact on labor institutions have to be considered separately in the case of each country examined.¹²

Both Gereffi and Mayer from economic sociology and Kolben from legal sociology highlight the deficits in local and global governance in labor relations.¹³ These deficits arise from the limited capacity of international organizations and countries—developed or developing—to fulfill the rights of workers in a new context. Kolben gives even more importance to the “domestic labor governance gap” than to the international or global governance gap.¹⁴ He argues that the deficiencies in national labor models are crucial because they are the ones that have played the biggest role in this field.¹⁵ Aspects such as the closeness between the government and employers (or workers), decisions as to which functions of the state apparatus to strengthen, the enforcement capacity or the level of sanctions for noncompliance, and the prevalence of a culture of compliance or noncompliance are all factors that demonstrate the differences between countries and that influence the effect of globalization on labor rights and the quality of jobs.¹⁶ The possibility that private regulation could strengthen state efficiency should also be considered.

From the perspective of comparative international politics, Mosley similarly assigns a marked weight to the context of the host country, with the political system and the model of labor regulation as key factors, along with other exogenous factors derived from globalization and the characteristics of MNCs.¹⁷ Mosley and Uno find that the effects of globalization do not only depend on the extent to which a country is integrated into the global economy, but also in the way in which it participates in it.¹⁸ Furthermore, there is a statistically significant correlation between democracy and respect for labor rights.¹⁹ Its [Author,

12. *Id.* at 8.

13. Gereffi & Mayer, *supra* note 10; Kevin Kolben, *Toward an Integrative Theory of Transnational Labor Regulation* (presentation at a conference on Regulating for Decent Work: Innovative Labour Regulation in a Turbulent World, July 8–10, 2009).

14. Kolben, *supra* note 13, at 5.

15. *Id.* at 6.

16. *Id.* at 28.

17. Layna Mosley, *Worker's Rights in Open Economies: Global Production and Domestic Institutions in the Developing World*, 41 COMP. POL. STUD. 674 (2008).

18. Layna Mosley & Saika Uno, *Racing to the Bottom or Climbing to the Top? Economic Globalization and Collective Labor Rights*, 40 COMP. POL. STUD. 923 (2007).

19. *Id.*

what is this “ITS” referring to?—Eds.] effectiveness may then have more to do with the level of economic and political development of a country rather than with its economic openness.

These different contributions point to the need to nuance any axiomatic interpretation of the inevitability of negative or positive effects of globalization on labor rights, while highlighting the importance of domestic factors as mediators of the impact.²⁰ We need to know what roles other sources of nonstate regulation might play to compensate for negative effects or to strengthen positive effects.

B. *The Second Debate*

A second debate concerns legal pluralism and hybrid systems of labor protection. This has attracted increasing interest in recent decades in developed countries, where the neoliberal model disrupted the assumptions on which the “classic labor law” paradigms were founded.²¹ For example, Arthurs argued that the future of labor protection would be “full of nuances, variations and contradictions” and would have a hybrid nature.²² However, the expectations among Latin American scholars is that other sources of regulation, such as codes of conducts and international labor standards, are unlikely to compensate for the disruption of traditional labor law assumptions. This is notably the case in the countries of the Southern Cone. After the ravages of neoliberal policies in the 1990s, support for State protection returned. In the best cases, this entailed a new overlap with labor and social policy aimed at ensuring the inclusion of those who could not access formal and protected employment, which may help explain the political success of the democratic left in the region over the last decade.

Kolben’s criticisms of the proposition that nonstate forms of regulation can be a substitute for the old paradigm of labor law, and operate separately from it, are useful for framing the Latin American experience.²³ He argues that it may be desirable to have nonstate forms of regulation to fill regulatory gaps, but that these should not be seen as ideal solutions to the failures of public regulation.²⁴ Instead, he proposes a holistic approach in which policymakers strategically develop state and nonstate structures to improve the deficiencies in the capacities of domestic state regulation.²⁵ He claims that the shortcomings of public regulation in developing countries

20. Kellner, *supra* note 7.

21. Arthurs, *supra* note 1; Pierre Verge, *Les instruments d’une recomposition du droit du travail: de l’entreprise-réseau au pluralisme juridique*, 52 REVISTA LES CAHIERS DE DROIT, no. 2 2011, at 135 (Fr.). [Author, please provide English translations for the title and the journal.—Eds.]

22. Arthurs, *supra* note 1, at 8.

23. Kolben, *supra* note 13.

24. *See id.*

25. *See id.*

are embedded in specific state contexts and are not just due to a lack of resources, but also of political will to protect the rights of workers and promote goals such as industrial democracy or the redistribution of wealth.²⁶ This may be due to a variety of factors: the links between governments and employers, corrupt practices rooted in corporatist systems with unions aligned with the government, the dominance of economic ministries over those linked with labor and welfare, an absence of sanctions or the existence of sanctions set at low levels, and a culture of weak legal compliance. These factors—also associated with a deterioration of traditional instruments for the protection of workers—are evident in the 1990s empirical research on countries such as Argentina, Brazil, Chile, and Mexico.²⁷

In support of this analysis, Kolben reviews three approaches that each questions the effectiveness of “command and control” state regimes and instead promotes decentralization, deliberation, and communication.²⁸ These are the systems approach, the system of responsive regulation, and the new governance. He rightly argues that the weakness of civil society and of trade unions, as well as the capture of the state by business interests in developing countries, are all important obstacles to the achievement of such approaches.²⁹ The antistatist and managerialist assumptions underlying these approaches, which set aside the rights approach and hope the problems are resolved through technical and productivist solutions, actually conceal conflicts of interest between workers and employers and the asymmetries of power between them. Kolben argues that these asymmetries can only be offset through a legal regime resulting from democracy, and not only from the market.³⁰ As it is explained below, the evidence during the last decade from the countries selected for this analysis supports this point of view.³¹

C. *The Third Debate*

The core proposition of the third debate is that strategies to defend labor rights based on private transnational regulation by MNCs, such as corporate codes of conduct, can be a substitute or a complement for weakening labor regulation. Kolben also questions the enthusiasm of civil

26. *See id.*

27. See Graciela Bensusán, *Diseño legal y desempeño real: México*, in *DISEÑO LEGAL Y DESEMPEÑO REAL: INSTITUCIONES LABORALES EN AMÉRICA LATINA*, 313–409 (Graciela Bensusán ed., 2006) (Mex.) [hereinafter *DISEÑO LEGAL Y DESEMPEÑO REAL*]. [Author, please provide English translations.—Eds.]

28. Kolben, *supra* note 13.

29. *See id.*

30. *Id.*

31. *See infra* Part III.

society activists for this approach, arguing that it is more important to expand local and national citizenship and focus efforts on the state.³² Strengthening the civil rights of workers in this way would allow them to make their voices heard and to increase their power through collective negotiation.

Despite the undeniable value that derives from its universality, the benefits of a fourth strategy, promoted by the ILO since the late 1990s, in favor of fundamental labor rights and the decent work agenda have also remained in the background in the majority of Latin American countries. These countries typically maintain high-profile state regulations on individual and collective rights, together with mechanisms to enforce them (as opposed to international conventions).³³ It is noteworthy that the promotion of decent work has been used as justification for the shift in state intervention in favor of workers when the center-left governments come to power. By the same token, decent work is also invoked by governments clearly aligned to the right of the political spectrum in Latin America, and interested in more flexible labor regulation.

Critics of the idea of the “hollowing of the state” under the neoliberal model, used to explain the weakening of the classical paradigm of labor regulation, arguing that the new economy did not really imply the withdrawal of the state, but rather its realignment against the regulations and policies that protected workers and were promoted in the postwar period.³⁴ According to Arthurs, this interpretation is the only one consistent with the possibility that government intervention could be exploited in the future to promote a more equal and fair society.³⁵ The evolution of state intervention in some Latin American countries over the decade following the economic crisis in Argentina in 2001 provides important evidence in support of argument. Simply put, how else can we explain the reorientation of the country’s development strategy once the political alignment of the government changed?

To summarize, the state’s power to regulate the dynamics of labor relations was preserved under the dominance of the neoliberal model implemented so widely in Latin America in the 1990. The analytical frameworks briefly outlined in this Part provide some understanding of this phenomenon. This is why, in a new economic and political context, that

32. Kolben, *supra* note 13.

33. On the limitations of private transnational regulation in protecting the quality of jobs in Mexico, see Graciela Bensusán (2007b) [Author, we did not find this citation in the reference list. Please provide missing information, with English translations if applicable.—Eds.]; Graciela Bensusán & Chris Tilly, *Confronting Globalization: Lessons from Puebla*, 19 NEW LAB. F., no. 3, 2010, at 64.

34. [Author, please provide a citation for this assertion.—Eds.]

35. Arthurs, *supra* note 1, at 8.

Latin American governments were able to use their power to improve the quality of jobs and restore workers' protections, with varying degrees of innovation and protection deficits in each country. The core argument in this Article is that such deficit will not be resolved by minimizing the strength of state regulation, but rather by redesigning some of the rules and institutions to be effective in a new context, by combining them with other sources of regulation, and by adopting new public policies (macroeconomic, labor, and social) that put the quality jobs at the center of the agenda, recognize collective actors and social rights, and make progress sustainable.

II. FLUCTUATIONS IN LABOR PROTECTION

A. *The Evolution of the Statist Model of Labor Regulation*

Three phases can be identified in the evolution of the statist model of labor regulation. The first phase, which entailed the emergence and consolidation of the statist model, occurred under the sustained development strategy of import substitution between the 1940s and the 1980s. It ended with the opening of the region's economies to international commerce and the privatization of most state enterprises. This first phase consists of the statist model of labor regulation having its greatest achievements and effects. The second phase, which was the crisis of this statist model, occurred during the predominance of neoliberal policies in the 1990s and reached its zenith with the economic crisis in Argentina in 2001 and the spillover of this crisis on neighboring countries. Finally, the third phase entailed the restoration of the statist model. This third phase started around 2003–2004, with the recovery of economic growth and the reorientation of development strategies. The strategies were aimed at increasing domestic demand (without abandoning exports). Despite contradictory signs about its medium and long-term prospects, the third phase has lasted until the present.³⁶

The heterogeneity characteristic of Latin America is also expressed in the way the countries have passed through these three phases. This Article is based on fairly similar cases with regard to the emergence of the statist model of labor regulation in the first half of the twentieth century and to its crisis in the context of the neoliberal policies of the Washington Consensus. However, not all the countries considered experience the third recovery phase, nor do they do so to the same extent.

36. Graciela Bensusán, *Labour Law in Latin America: The Gap Between Norms and Reality*, in TZEHAINESH TEKLÈ, *LABOUR LAW AND WORKER PROTECTION IN DEVELOPING COUNTRIES* 135 (2010); Bensusán & Moreno Brid, *supra* note 6.

The countries considered here are Argentina, Brazil, Chile, Uruguay, and Mexico. All are middle-income countries and have experienced a double transition—economic and political—over the last three decades, although the order of this transition process varies between countries. Chile and Mexico effected a significant part of their economic reforms under authoritarian regimes and transited to democracy in macro economically stable conditions, allowing for greater continuity of neoliberal policies and less space for the recovery of the traditional statist model of labor regulation, of union power, and of inclusive labor and social policies. Argentina also began pro-market reforms under a dictatorship, but deepened them under democratic conditions, leaving the unions to exert some counterbalances. Brazil and Uruguay liberalized their economies in a gradual manner under democratic governments, facing strong opposition from the left and unions which had been strengthened during the transition. This prevented, or at least moderated, the scope for neoliberal reforms and attempts to dismantle state intervention in key sectors.³⁷

During the transition to the neoliberal model, specific adjustments were made to the statist model of labor regulation. This was of a more radical nature in Chile and Argentina and less so in Brazil and Uruguay. The adjustments were made through legal (Argentina, Brazil, Chile) or *de facto* (Uruguay and Mexico) reforms to employment regimes. These changes allowed for more flexible contracting and/or dismissals, without altering the distinctive features of the statist model of labor regulation inherited from the era of import substitution. In the field of collective rights, they were more conservative than in the employment regime (with the exception of Chile, where the labor model experienced a real rupture and collective rights were virtually eliminated during the dictatorship). However, the weakening of unions during this period was widespread.³⁸

From 2000 onward, the national trajectories were quite diverse. Argentina, Brazil, Chile, and Uruguay performed a “left” (or “center/left”) turn, seeking to counteract some of the most negative social effects of neoliberal reforms. Although the policies of these center-left governments (Argentina, Brazil, Uruguay, and Chile) were different, they each charted a post-neoliberal path, or at least questioned some of the fundamental principles of the Washington Consensus.³⁹ All the center-left governments

37. MARIA LORENA COOK, *THE POLITICS OF LABOR REFORM IN LATIN AMERICA: BETWEEN FLEXIBILITY AND RIGHTS* 231 (2007).

38. A detailed analysis of the institutional reforms advanced in the labor legislation of these countries can be found in COOK, *supra* note 37 and Bensusán, *supra* note 27.

39. However, there are significant differences in the degree to which markets were liberalized, workers and key sectors of the economy lost their protections, and unions were weakened, and, after the neoliberal phase, in the way that governments used their instruments of intervention through legislation and labor policy to improve quality of jobs. Previous trajectories also explain these behaviors. John

2013] LEGISLATION AND LABOR POLICY IN LATIN AMERICA 111

remained open to international trade and, with varying degrees of success, were concerned about the fiscal balance and price stability.⁴⁰ In all these cases, the parties in government had historical links with the unions, giving the unions varying degrees of influence over labor policies.⁴¹

Apart from the ideological orientations of their governments and previous national trajectories, another factor, which affected the statist tradition of labor regulation and the nature of its labor policies in this third phase of development, was the location of each country in the global economy. Following the crisis of 2001, the strategies of Brazil—with its lesser degree of openness to international trade—and Argentina aimed to expand the domestic markets while, at the same time, diversifying international trade relationships, particularly toward the more dynamic Asian markets.⁴² This strategy contrasts markedly with that of Mexico, where the domestic market tended to decrease and trade relations were concentrated with its northern neighbor. For much of the last decade, Mexico experienced a lower growth rate than the other four Latin American countries considered in this study. Mexico also suffered the worst decline in GDP (down 6.5%) during the 2008–2009 financial crisis.⁴³ Overall, the higher economic growth experienced during the second half of the 2000s (or earlier, in the case of Chile) and the redirection of exports from the Southern Cone countries into the region and toward growing markets (especially basic products), offsetting the loss in European or U.S. markets, favored the continuation of inclusive labor market policies after the last crisis.⁴⁴

Sheahan, *Alternative Models of Capitalism in Latin America*, in *MODELS OF CAPITALISM: LESSONS FOR LATIN AMERICA* 25, 30 (Evelyn Huber ed., 2002).

40. Marcelo Leiras, *Latin America's Electoral Turn: Left, Right, and Wrong*, 14 *CONSTELLATIONS* 398, 405 (2007). On the classification of leftist governments, see Jesús Tovar, *Tres Corrientes y un dilema de la izquierda latinoamericana*, 57 *REVISTA METAPOLÍTICA* 21 (2008). [Author, please provide English translations for the title and journal name as well as country of publication.—Eds.]

41. Jorge Lanzaro, *La socialdemocracia criolla*, 217 *REVISTA NUEVA SOCIEDAD* 40 (2008). [Author, please provide English translations for the title and journal name as well as country of publication.—Eds.]

42. The importance of imports and exports for the GDP of Chile and of Mexico shows that these two countries have more open economies (68.55% and 57.1% respectively) than Argentina and Brazil (37.4% and 22.6% respectively). Uruguay, like Chile and Mexico, also depends on relations with external markets (52%). This is probably also a reflection of the smaller economy of Uruguay. What distinguishes Chile from Mexico is the diversity of destinations for its exports. While 80.3% of Mexican exports are destined for the U.S. market, Chilean exports are distributed between Europe (24.6%), the rest of Latin America (19.2%), China (14.3%), and Japan (10.5%). *THE WORLD BANK ANNUAL REPORT 2011: YEAR IN REVIEW* (2011), http://siteresources.worldbank.org/EXTANNREP2011/Resources/8070616-1315496634380/WBAR11_YearInReview.pdf.

43. On the effects of the crisis and the measures taken in each country, see **ECLAC** 2010. [Author, please provide the name of the report you are referencing here? We did not find this report on the reference list.—Eds.]

44. *Id.*

A distinctive aspect of the left turn in Argentina, Uruguay, and Brazil (contrasting with Mexico and Chile), was the change in the official positions of the international financial organizations such as the OECD and the World Bank. Protections for workers, unions, and state interventions were no longer seen to be the cause of the problems experienced by labor markets, but part of the solution. It can be argued that this led to the realignment of labor policies in the Mercosur region. Labor institutions were generally strengthened. This took several forms: tripartite wage fixing or social dialogue; the arbitration of disputes, labor inspection as a tool to promote social security registration, reduce informality and protect the working conditions of vulnerable groups; and even strengthening unemployment insurance, albeit insufficiently. This realignment also featured new and better regulations regarding subcontracting, domestic work, farm workers, the eradication of child labor, and gender discrimination, all of which facilitated the auditing and formalization of employment.⁴⁵

In contrast, labor policy in Mexico has not changed substantially since the 1980s. The focus continues to be on macroeconomic policies aimed at stabilization and an export model—based on low wages—to the United States. This approach was further reinforced by the political change in 2000 when a center-right party came to power.⁴⁶

Despite these important differences, a common factor is that Mexico, Argentina, Brazil, and Uruguay all continue to have corporatist unions, with greater state intervention and different degrees of autonomy,⁴⁷ while Chile retains a more liberal regime with less power for unions.⁴⁸ Meanwhile, in

45. Graciela Bensusán (2007) [Author, please provide a full cite, we did not find this in the reference list. Also please provide English translations if applicable.—Eds.]; Graciela Bensusán & José Antonio Espinal, *Política laboral y alineamientos políticos en Argentina, Brasil y México: ¿importa la diferencia?*, in TRANSFORMACIONES EN LOS MUNDOS DEL TRABAJO Y POLÍTICAS SOCIALES EN AMÉRICA LATINA (Betty Espinosa ed., 2009) (Mex.) [Author, please provide English translations—eds.]; Bensusán & Moreno Brid, *supra* note 6. A comparison of the situation of the labor inspectorates and of its consequences in these five countries can be found in Graciela Bensusán, *Estándares laborales y calidad de los empleos en América Latina: algunos factores explicativos y vías de solución*, 34 PERFILES LATINO AMERICANOS, July–Dec., 2009, at 13 (Mex.) [Author, please provide english translations.—eds.]

46. GRACIELA BENSUSÁN & KEVIN MIDDLEBROOK, ORGANIZED LABOUR AND POLITICS IN MEXICO: CHANGES, CONTINUITIES AND CONTRADICTIONS 134 (2012).

47. Although Uruguay has almost no regulatory framework for collective rights, except for the rules to promote trade unionism that were adopted by the government of Tabaré Vázquez during the mid-2000s, it has been strongly interventionist and a protector of individual rights since the early twentieth century, and it also allows for greater union autonomy. See GRACIELA MAZZUCHI, LAS RELACIONES LABORALES EN EL URUGUAY: DE 2005 A 2008 (2009) (Mex.) [Author, please provide English translations—Eds.]

48. COOK, *supra* note 37; 2007, Evelyn Huber et al., *Politics and Social Spending in Latin America*, 70 J. POL. 420 (2010). A comparison of unionism in Argentina, Brazil, and Mexico can be found in Cardoso & Gindin, *supra* note 1. On transformations in the Argentinean labor regime, see Sebastián Etchemendy & Ruth Collier, *Golpeados pero de pie: Resurgimiento sindical y neocorporativismo segmentado en Argentina (2003-2007)*, REV. POL. & SOC'Y, Sept. 2007 (Mex.)

Brazil, the corporatist tradition was renewed during the democratic transition through the “new unionism.”⁴⁹ In Uruguay, it was revitalized when the Broad Front (*Frente Amplio*) took office in 2005. In Argentina, corporatism was revived following the 2001 crisis, allowing unions a greater role and influence on labor policy. Mexico again marks a contrast as its corporatism and the role of unions has degraded to the extent that, with just some exceptions, they have almost completely lost their role in labor representation.⁵⁰ These differences will have consequences for the evolution of key labor indicators, as discussed in Part III.

Therefore, while the Mercosur region can be seen as a case of strong institutional convergence in favor of workers following the 2001 crisis in Argentina and its impact on the region,⁵¹ the NAFTA region, in which Mexico participates with a strong dependence on exports to the United States, has been considered as a case of limited regional convergence in favor of employers, without the need for institutional changes to impose conservative values.⁵² As stated by Arthurs in relation to the case of the United States, it was sufficient to leave the institutions to wither.⁵³

B. Progress Through Institutional Reforms

The reforms adopted in the Mercosur countries over the last decade are an example of their attempt to overcome the tenets of the Washington Consensus. This objective was expressed in the Declaration of the Ministers of Mercosur and Associated States that was issued in Buenos Aires in April 2006.⁵⁴

[Author, please provide English translations.—Eds.]. On unionism in Mexico, see BENSUSÁN & MIDDLEBROOK, *supra* note 46.

49. Brazil is the only case in the region where a prominent union member became president of the republic. For an analysis of the consequences of this on labor policy, see Reiner Radermacher & Warldeli Melleiro, *El sindicalismo bajo el gobierno de Lula*, 211 REVISTA NUEVA SOCIEDAD 124 (2007) (Mex.) [Author, please provide English translations.—Eds.] and Brasilio Sallum, *La especificidad del gobierno de Lula: Hegemonía liberal, desarrollismo y populismo*, 217 REVISTA NUEVA SOCIEDAD 155 (2008) (Mex.) [Author, please provide English translations.—eds].

50. BENSUSÁN & MIDDLEBROOK, *supra* note 46.

51. Chile does not belong to Mercosur, but is associated with this regional integration process. Due to its development strategy and its more forthright adoption of the conservative principles of the Washington Consensus with regards to labor policy, it is closer to the countries of Central America and to Mexico than to neighboring countries in the Southern Cone. In the case of Chile, there was more continuity in labor policies over the last two decades and, it can be argued that, the ideological orientations of various governments (for example, the turn to the center left with Presidents Lagos and Bachelet) exerted less influence on labor policies than in the other cases considered in this Article.

52. Scott Martin, *Resilient Institutions, Limited Convergence: Comparative Evolution of Labor Regimes in Canada, Mexico, and the United States Under Globalization and Regionalization*, in SENDEROS DE LA INTEGRACIÓN SILENCIOSA EN AMÉRICA DEL NORTE 129 (Ismael Aguilar et al. eds., 2010) (Mex.). [Author, please provide English translations.—Eds]

53. Arthurs, *supra* note 1.

54. In this Declaration, they revisit claims made in INT'L LAB. OFFICE, DECENT WORK IN THE AMERICAS: AN AGENDA FOR THE HEMISPHERE, 2006-2015 (May, 2006), <http://www.ilo.org/public/>

While recent reforms have not returned the extent of protection in the employment regime to previous levels, the measures taken demonstrate the importance of the state's role as an instrument of social justice. Other examples of this trend in favor of workers' rights include the nationalization in Argentina of the pension system in 2008, the extension of family allowances to informal workers, and the broadening of the scope of legislation regarding employees. These reforms demonstrate the intention to universalize rights and counter the segmentation characteristic of the typical corporatist protection systems. Similarly, a new scheme for rural workers was also adopted in Argentina in 2011, matching the rights of rural workers to those of other workers and improving their working conditions.⁵⁵ In this sense, the promotion of greater labor flexibility as a response to the problems of the labor market in the context of globalization has seen a diminished importance on the public agenda in Argentina.⁵⁶

Similarly, in Brazil, the rise to power of the PT presidential candidate—Luis Ignacio “Lula” Da Silva—and the participation of the CUT in government helped to impede business pressures and gave a new impetus to the protection of the most vulnerable workers. For example, it is currently one of the few countries in the region that has proposed to extend the scope of labor justice to the self-employed.⁵⁷ Furthermore, it has combined individual protection in cases of dismissal (unemployment benefits with low coverage, coupled with extensive and permanent workers training plans) with old mechanisms of employment protection (*Fondo de Garantía por el Tiempo de Servicio*).⁵⁸ While the results are still limited, the protection of domestic workers has also made progress in recent years, with an aim to achieve formalization through tax cuts to their employers and awareness campaigns or, as in Uruguay, through legislative change.⁵⁹

A counterexample of this trend toward institutional reform to achieve enhanced worker protection is provided by Mexico, where the 2008–2009 crisis was an opportunity to implement a liberal reform of its labor

english/standards/relm/rgmeet/16amr/dwork.pdf, and the five challenges that are identified in that Report. *See id.*

55. The new Statute of the Rural Laborer, a sector with high levels of informality, was approved on December 22, 2011. However, approval was challenged by union representatives, due, among other factors, to conflicts with the government. Thereafter, the unions would lose the control that they once had over social security resources.

56. Cecilia Senén & Héctor Palomino, *Diseño Legal y desempeño real: Argentina*, in DISEÑO LEGAL Y DESEMPEÑO REAL, *supra* note 27, at 95. [Author, please provide English translations.—eds.]

57. Adalberto Cardoso, & Telma, *Diseño legal y desempeño real: Brasil*, in DISEÑO LEGAL Y DESEMPEÑO REAL, *supra* note 27, at 197. [Author, please provide an english translation.—eds.]

58. *Id.*

59. Janine Berg, *Laws or Luck? Understanding Rising Formality in Brazil in the 2000s*, in REGULATING FOR DECENT WORK: NEW DIRECTIONS IN LABOUR MARKET REGULATION 123 (Sangheon Lee & Deirdre McCann eds., 2011) [hereinafter REGULATING FOR DECENT WORK]; Manuela Tomei, *Decent Work for Domestic Work: An Achievable Goal or Wishful Thinking?*, in REGULATING FOR DECENT WORK, *supra*, at 276.

legislation. It was enacted in November 2012. Although the justification for the reform was to achieve greater labor flexibility in hiring and dismissal—ostensibly to promote job creation—the changes in law were less dramatic than those adopted in the 1990s in Argentina or Brazil. While new forms of temporary contracts were regulated, and outsourcing was legalized, the legislature process also imposed various restrictions on their use. However, any advances in the protection of the most vulnerable groups such as women, domestic and farm workers were more limited than that observed in other Latin American countries. Changes aimed at increasing democracy, transparency, and accountability in unions were also relatively minor. Finally, although employer penalties for failure to comply with their obligations dramatically increased, the reform did not strengthen labor inspection nor improve state auditing capacity. Overall, although it is still too early to fully assess its impact, this reform did not seek to modify corporatist structures. Instead, it was designed to signal to firms and to international organizations (such as the OECD and the World Bank) an improved climate for investment.⁶⁰

C. The Strengthening of State Control

In 1990s, economic and political changes affected the performance of the Labor Inspection (IT, for its initials in Spanish). Over the following decade, the five countries adopted reforms of varying scope (legal and regulatory, through policies, plans, and programs) with the central purpose of modernizing the inspection service and, supposedly, improving its effectiveness. The variations observed between them may reflect the influence of past trajectories and the political alignments of their governments on the characteristics of their labor policies.

In Argentina, Uruguay, and Brazil, following the election of left-wing governments, greater emphasis has been given to establishing a better balance between support and punishment. In Chile, this has also happened to some extent with the arrival of democracy in the late 1980s. These countries all experienced very positive changes in Labor Inspection (although best accomplished and consolidated in Brazil). This convergence can be explained by the political position of the respective governments, the strong social factors influencing that position, and by the incipient

60. On the background, characteristics, and political dynamics in the approval process of this reform, see GRACIELA BENSUSÁN AND KEVIN MIDDLEBROOK, *SINDICATOS Y POLÍTICA EN MÉXICO*, UNIVERSIDAD AUTÓNOMA METROPOLITANA, MÉXICO (2013) (Mex.). [Author, please provide English translation.—eds.]

harmonizing effect that MERCOSUR has had on labor institutions in the region, in terms of raising the level of state responsibility and compliance.⁶¹

Of these five countries, Brazil has demonstrated the greatest ability to protect formal and informal workers embedded in the formal economy through a combination of educational and punitive intervention strategies, adequate work and planning organization, increased budgetary resources, and conditions conducive to the good performance of the inspectors. These factors include autonomy, job security and attractive performance-related pay, control mechanisms that prevent corruption, and the participation of stakeholders in the inspection process. Although coverage of the inspection system in Brazil is very high, it is not without problems.⁶² Around half of the economically active population is made up of unregistered workers, and new registrations as a result of audits are low.⁶³ To get a sense of the challenges faced by Labor Inspection to meet the protection requirements in labor markets in Brazil, and even in Brazil where Labor Inspections appear more organized and efficient, it was estimated in the middle of the decade (circa 2005) that at the current pace of auditing, it would take twenty-five years to completely register the workforce.⁶⁴

Mexico illustrates the counterexample of seeking to privatize state functions and to tolerate the violation of labor rights in order to maintain low unemployment. Consistent with the desire to avoid sanctions, and supposedly to reduce the corruption of inspectors, new mechanisms were adopted to promote voluntary compliance, especially with regard to working conditions and health and safety. They were supported by electronic processes of self-assessment. The auditing and sanctioning of companies with fewer than ten employees, which in fact account for the

61. See Bensusán & Espinal, *supra* note 45. On the results of these strategies, see the following sources: for Argentina, Senen & Palomino, *supra* note 56; for Brazil, Berg, *supra* note 59, Cardoso & Lage, *supra* note 57, and Roberto Pires, *Governing Regulatory Discretion: Innovation and Accountability in Two Models of Labour Inspection Work*, in REGULATING FOR DECENT WORK, *supra* note 59, at 313; for Chile, Rodrigo Figueroa, *Diseño legal y desempeño real: Chile*, in DISEÑO LEGAL Y DESEMPEÑO REAL, *supra* note 27, at 241; and for Mexico, Bensusán, *supra* note 27 and Bensusán, *supra* note 45. [Author, please provide English translations where applicable.—Eds.]

62. One of these problems is that the institutional design favors, through incentives offered to inspectors, audits of companies with more than fifty employees, so companies with less than fifty are hardly audited at all. Companies covered by unions and the Ministry of Labor and Employment represent 70% of companies formally registered, but less than a third of companies that actually exist (in both formal and informal sectors). This weaker coverage reflects a widespread problem in the region.

63. Berg, *supra* note 59, at 138.

64. See Cardoso & Lage, *supra* note 57; Roberto Pires, *Cómo hacer realidad la ley: Métodos y logros de la inspección del trabajo brasileña*, 127 REVISTA INTERNACIONAL DEL TRABAJO 223 (2008) (Mex.) [Author, please provide English translations.—eds.]; Pires, *supra* note 61. It should be noted that the achievements in Brazilian Inspection did not involve increasing the number of inspectors, but instead changes to incentives, such as performance-related pay, and new methods of inspection and identification, with a primary objective of promoting the movement of workers from the informal to the formal sector—a process which began in the mid-1990s. Another innovation was the creation of working groups to address the problems of specific sectors. Berg, *supra* note 59, at 137.

great majority of employees, therefore ceased. Privatization of labor inspection (in other words, the subcontracting of such inspection) has also been implemented with regard to the verification of compliance for health and safety regulations in large state enterprises. The results of this liberalization have weakened government capacity to audit and to persuade employers, and have thus led to reduced protection for workers, especially the most vulnerable. This result has even been acknowledged by officials of the previous two administrations. Faced with the political impossibility of introducing changes in labor legislation, Mexico has thus moved toward *de facto* flexibility.⁶⁵

Once again, Mexico provides an important counterexample. It took advantage of the 2008–2009 financial crisis to raise the unresolved problem of labor law reform for increased labor flexibility, which was finally approved in November 2012.⁶⁶ None of the other Latin American countries considered here pursued such a liberalization strategy. Indeed, these Southern Cone countries offer an interesting contrast to developed countries, where nineteen of the twenty-seven EU countries pursued liberalization strategies.⁶⁷

III. RESULTS

A. Labor Law Coverage

In all five countries considered here, labor regulation has generally remained focused on workers in a subordinate or dependent relationship with their employer and targeted the principle of equality in working conditions.⁶⁸ Despite few formal changes, the legal coverage has been affected by the process of informalization and lack of job protection. Fluctuations in economic activity, the expansion of temporary or atypical employment contracts and subcontracting in productive chains, scarce auditing, and the concealment of waged labor under arrangements governed by civil or commercial law (including in the public sector) resulted in the shortcomings of the legal coverage.⁶⁹

65. Bensusán, *supra* note 45. On the evolution of labor inspection in the twelve countries in the region, see *id.* and Graciela Bensusán, *Regulaciones laborales, calidad de los empleos y modelos de inspección: México en el contexto latino americano*, (CEPAL–México, Working Paper no. LC/MEX/L.861, 2008), <http://www.eclac.org/cgi-bin/getProd.asp?xml=/publicaciones/xml/8/33218/P33218.xml&xsl=/mexico/tpl/p9f.xsl&base=/mexico/tpl/top-bottom.xsl> (Mex.). [Author, please provide English translation.—eds.]

66. See *supra* notes 59–60 and accompanying text.

67. INT'L LAB. OFFICE, *supra* note 4.

68. MARÍA LUZ VEGA RUÍZ, *LA REFORMA LABORAL EN AMÉRICA LATINA* 56–57 (2005) (Mex.) [Author, please provide English translation.—eds.]

69. Víctor Tokman, *Flexibilidad con informalidad: opciones y restricciones*, in *EL NUEVO ESCENARIO LABORAL LATINO AMERICANO: REGULACIÓN, PROTECCIÓN Y POLÍTICAS ACTIVAS EN LOS*

Argentina and Uruguay illustrate the strongest fluctuations in the coverage of labor legislation. For example, in Argentina, members of the workforce who were not registered for social security increased from 29.6% in 1991 to 37.3% in 2000 and to 44.8% in 2003.⁷⁰ Subsequently, the unregistered workforce was reduced to 36.3% by the third quarter of 2008, but then increased to 37.8% in the next quarter due to the financial crisis.⁷¹ The percentage of contributors to social security in Uruguay fell by 10.7% between 1998 and 2002, and it increased by 50.1% between 2003 and 2008 (8.5% per year).⁷²

The decline of informal employment (whether de facto or through the lack of legal protection), even before the 2008-2009 crisis, also reveals a certain improvement in the coverage of labor law, albeit of a different magnitude.⁷³ We can identify three different periods of the coverage of informal workers by labor protection. These periods are defined by the rise of and crisis in neoliberal policies and the related changes in political alignments in the Southern Cone: (1) 1990–1996, (2) 1997–2002, and (3) 2003–2008. During these periods, Argentina, Brazil, and Chile all exhibit a decline in informal work (between the first and third period it fell 2.4% in Argentina, 4.5% in Brazil and 4.8% in Chile). Uruguay presents a mixed trend with an increase in the average number of informal workers in each period, but the percentage of informal workers decreases 2.5% between 2004 (the rise of Tabaré Vázquez) and 2008. Informality in Mexico increased between the first and second periods by 2%, then fell by 0.9% between the second and third periods. Mexico reports the highest percentage of informal workers among the five countries considered in this analysis with 43.7% in 2008 (as opposed to 42% in Brazil and 42.8% in Uruguay). Due to the absence of unemployment insurance in Mexico, the high absorption capacity of the informal sector and the importance of external migration, it also has the lowest unemployment rate in the region. It stands at just over 5% as compared with approximately 8% in the other

MERCADOS DE TRABAJO 255 (Jürgen Weller ed., 2009) (Mex.). [Author, please provide English translations.—Eds.] On the reforms in employment regimes and the sociopolitical and economic context in which they occurred, see COOK, *supra* note 37. A comparative analysis can be found in VEGA RUIZ, *supra* note 68.

70. MARTA NOVICK ET AL., TRAS LA CRISIS: EL NUEVO RUMBO DE LA POLÍTICA ECONÓMICA Y LABORAL EN ARGENTINA Y SU IMPACTO 114, 263 (2009) [Author, please provide English translations.—Eds.]

71. See *supra* note 70 and accompanying text.

72. Jürgen Weller, *Políticas para el perfeccionamiento de la institucionalidad laboral en Uruguay*, at 8–13 (CEPAL-Agencia Española de Cooperación para el desarrollo, Project No. 265, 2009) (Mex.), http://www.eclac.org/cgi-bin/getProd.asp?xml=/publicaciones/xml/3/36853/P36853.xml&xsl=/publicaciones/ficha.xsl&base=/publicaciones/top_publicaciones.xsl. [Author, please provide English translation.—Eds.]

73. The author is grateful for the processing of employment data, performed by Rodrigo Salazar Elena, coordinator of the UMIE at FLACSO.

four countries. Of course, this does not imply improved coverage of legal protection.⁷⁴

During the 2008–2009 financial crisis, Uruguay, Chile, and Brazil all reduced informality, while it remained at the same level in Argentina and actually increased in Mexico.⁷⁵

Over the last five years, increases in pension coverage were registered in three of the five countries. Argentina moved from 63.2% to 71.9% of insured employees between 2005 and 2009, Brazil from 76.1% to 80.3% over the same period (about 4% less than in 1995), and Uruguay from 80.3% to 84.7% between 2005 and 2008. In Chile, the level of insurance remains unchanged at 82.8% of insured employers, and was about 1% lower in 2006 than ten years earlier. Once again, Mexico is the only one of the five countries with a decline in coverage, from 63.4% to 60.7% between 2000 and 2008. Moreover, Mexico has the lowest coverage of the countries investigated in this study.⁷⁶

B. *The Uncertainties in Minimum Wage Policy*

The volatility of the purchasing power of the minimum wage, resulting from the change in the direction of state intervention in the world of work, further illustrates the impact of these changes in labor protection.⁷⁷ In Uruguay, the minimum wage experienced a dramatic deterioration in real terms, in 2004 reaching less than a third of its 1981 value, falling most markedly during the second half of the 1990s and between 2000 and 2003. In the following year, the recovery began with the arrival of a center-left government, even before the reactivation of the economy. In Argentina, there were strong fluctuations in the 1980s. In 1990, after two years of high inflation and the beginning of the shift to neoliberal policies, the real minimum wage amounted to just a quarter of that two years before. In 1994, the minimum wage began to recover, but the sharp decline resulting from the 2001 crisis did not start reversing until 2004, with the new labor policy implemented under the government of President Kirchner, which was continued by his successor. Since then, the minimum wage has increased steadily. By 2009, it had doubled its 1980 rate, growing even during the financial crisis.⁷⁸

74. ECLAC, 2009 [Author, what is this reference? We did not find it on the reference list. Please provide missing information.—Eds.]; ECLAC, *supra* note 43; see Bensusán & Moreno Brid, *supra* note 6.

75. See INT'L LAB. OFFICE, *supra* note 4.

76. ECLAC, *supra* note 74.

77. Although no changes were made to the regulations on minimum wages in Uruguay, this recovery can be explained because, after 2004, the tripartite Wage Council, which had ceased to function, was reconvened. This also happened in Argentina.

78. ECLAC, *supra* note 74.

Brazil, in addition to experiencing a strong recession in the 1980s, faced the same fiscal problems as Uruguay due to the relation between minimum wage and pension benefits. Nevertheless, it began a very slow, if unstable, recovery of minimum wages after 1992 with the adoption of the Real Plan. It was followed by a severe decrease in minimum wage. While the statutory minimum wage had lost 35% of its value in 2000 compared to 1980, and from 2004 onward, it recovered quickly to gain 72% in value compared to 2000. By 2009, it had surpassed the 1980 rate by more than 35%. In 2010, it rose by more than double the rate of inflation experienced in the previous year.⁷⁹

The arrival of democracy in Chile generated a shift in minimum wage policy, to start a gradual and sustained recovery. By 2009, the level was almost double that of 1991, and minimum wage had become a powerful instrument of social policy.⁸⁰

Mexico is, again, a distinct case. Since the 1980s, Mexico has maintained a restrictive minimum wage policy. The minimum wage has been a tool to fight against inflation since the 1980s and, in the context of NAFTA, became a resource to favor exports to the United States and to compete with China. The result of this was the loss of more than two thirds of the value of the minimum wage between 1980 and 2000. Although the major decline was experienced in the 1980s and 1990s, there was a further erosion of more than 7% between 2000 and 2009. Moreover, Mexico was the only one of the five countries that did not have an active wage policy during the financial crisis. At this very low level, the minimum wage remained almost unchanged between 2008 and 2010, despite the fact that the fall in GDP in 2009 was among the highest in the region.⁸¹

The active minimum wage policies favored in the Southern Cone countries led to the strengthening of the relationship between the minimum and the average wage and an overall lower disparity in wage structure. This can be observed between 1995/1997 and 2004/2005 when the minimum wage as a percentage of the average wage rose from 26% to 49% in Argentina, from 20% to 33% in Brazil, from 33% to 44% in Chile, and from 18% to 28% in Uruguay. In contrast, over the same period, Mexico has experienced a weakening of this ratio, from 40% to 32%.

In 2011, Mexico had the overall lowest minimum wage of the five countries: between \$140 and \$147, depending on location in one of three geographical areas of the country. This is the only minimum wage that is

79. INT'L LAB. OFFICE, *supra* note 4, at 70.

80. ECLAC, *supra* note 74.

81. INT'L LAB. OFFICE, *supra* note 4. This trend in Mexico (in 2010) concerned average wages. According to the ILO (2010), the fall was 0.6%, while for the Ministry of Labour and Social Security there was an increase of 0.2%. See El Universal, Jan. 28, 2011. [Author, what is this source? Please provide a full citation and English translations.—Eds.]

2013] LEGISLATION AND LABOR POLICY IN LATIN AMERICA 121

below the poverty line and about half of the level of Uruguay (\$300), less than a third of that paid in Argentina (\$545), and less than half of that in Chile (\$372) and Brazil (\$318).⁸²

CONCLUSIONS

The fluctuations experienced in labor protection in the five Latin American countries considered in this Article reveal both the diversity of responses to globalization and economic crises and the restoration of traditional objectives pursued by labor institutions in a new context. Whilst the 1990s certainly showed that none of the achievements from the Golden Age of labor protection were had been permanently acquired, the next decade from 2000 showed that the neoliberal regressions of the 1990s were not permanent either.⁸³ [Author, please revise for clarity.—Eds.] The flexibilization reforms of the 1990s clearly did not resolve any of the problems that they were intended to address (notably low growth in formal employment) and instead increased precariousness and informality.

In contrast, the restoration of the institutional protection of labor was compatible with high rates of economic growth and formal employment. Important as these signs of recovery are, it is clear that they do not tell a full story. Some countries, like Argentina, Uruguay, and Brazil, have sought to strengthen labor market oversight (inspection) and universalize social policy in order to include workers who do not have standard employment in the coverage offered labor legislation. These countries have even sought to expand the scope of their labor coverage, so as to guarantee fundamental rights, such as access to protection in justice and family benefits. It is still timid and insufficient progress, because large contingents of workers subsist without effective protection in all five of the countries, notwithstanding the loss of jobs or deterioration of their quality, which is increasingly common in the new economy. There also remains the need to innovate and adopt new regulations that take into account structural and demographic changes, such as the increased volatility of employment and the increased participation of women in the labor market. There is also a need to adopt laws and policies reconciling work and family.

Finally, the democratization of union regimes inherited from an authoritarian past and the strengthening of those weakened in the context of neoliberal policies are necessary conditions for workers to have sufficient power to further development strategies that facilitate social inclusion

82. Minimum wages calculated in dollars, corresponding to 2011, were consulted on February 1, 2011. See WIKIPEDIA, *Minimum Wage*, http://es.wikipedia.org/wiki/Salario_mínimo (last updated Mar. 18, 2013).

83. See Bensusán & Moreno Brid, *supra* note 6.

122 COMP. LABOR LAW & POL'Y JOURNAL [Vol. 34:101

through good quality employment. This may give long term sustainability to the improvements achieved in economic and political environments that are more favorable to workers than have existed in most of the countries of the region during the 2000s.