Beyond the letter of the law
Transforming labor institutions and regulations in Argentina

by

Marcela A. Natalicchio

M.A., Sociology, 1998
Boston University

Licenciada in Sociology, 1992
Universidad de Buenos Aires

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[June 2006]

Signature of Author.....
Department of Political Science
April 7, 2006

Certified by.....
Richard M. Locke
Alvin J. Siteman Professor of Entrepreneurship and Political Science
Thesis Supervisor

Accepted by.....
Roger Petersen
Associate Professor of Political Science

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ABSTRACT

This dissertation analyzes the factors that lead to the transformation of labor regulations and institutions after the opening of previously closed economies, using the case of Argentina as a "crucial case". In the 1990s, almost every government in the Latin American region attempted to reform its labor code and systems of labor relations. However, despite these attempts at reform, the labor codes and their systems of labor relations appeared resilient to change. The bulk of the literature on the political economy of reforms had concluded that labor unions had managed to stall or derailed these attempts, although unions had been unsuccessful at stopping all other market-oriented reforms.

I conceptualized the labor codes and the system of labor relations considering the way they work in practice, including informal arrangements, and I use the notion of "labor regimes". This conceptualization differs from the dominant approach on this issue, which focuses almost exclusively on changes in labor codes approved by Congress. Using this approach, I argue that a system of rigid labor laws and centralized bargaining institutions in a more competitive, pro-business environment tends to get relaxed and more decentralized. However, changes do not necessarily occur through modifications in the overall national legal framework. Changes occur through: 1) layers of regulations that overlap with the old system, and 2) new practices of the main stakeholders on the ground that may create new institutional arrangements. In order to understand the direction and scope of these changes, focusing exclusively on the interests of central unions, business associations and the state at federal level will only render a partial explanation at best. Instead, a more societal and micro political approach is required. I argue that how the *balance of power* between business and labor at the local level plays out, the extent to which the *interests of unions and business align at the local level* as opposed to the legislative arena, and the characteristics of the *previous institutions of industrial relations* play a larger role in explaining why and how changes occur.

Thesis Supervisor: Richard M. Locke
Title: Alvin J. Siteman Professor of Entrepreneurship and Political Science

To Rodrigo and Sebastián

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his parents were up to, but made our lives better and more enjoyable. I dedicate this project to them.

List of Acronyms

ANSES	*Administración Nacional de la Seguridad Social* National Administration of Social Security
ADIMRA	*Asociación de Industrias Metalúrgicas de la República Argentina* Association of Metallurgic Industries of the Argentine Republic
ANSSAL	*Administración Nacional de Seguro de Salud* National Administration of Health Insurance
ART	*Administradora de Riesgos del Trabajo* Occupational Safety Insurance Fund
ASIMRA	*Asociación de Supervisores Metalmecánicos de la Argentina* Association of Supervisors of the Metalmechanic Industry of Argentina
CGT	*Confederación General del Trabajo* General Confederation of Workers
CTA	*Central de Trabajadores Argentinos* Argentine Workers Confederation
CGE	*Confederación General de Empresas* General Confederation of Companies
CIS	*Cámara de la Industria Siderúrgica* Chamber of the Steel Industry
DGI	*Dirección General Impositiva* General Agency for Tax Collection
FREJULI	*Frente Justicialista de Liberación Nacional* Justicialista Front of National Liberation
FREPASO	*Frente País Solidario* Front for a United Country
G-8	*Grupo de los "8"* Group of the Eight
ISI	Import Substitution Industrialization
IDEA	*Instituto para el Desarrollo Empresarial de la Argentina* Institute for Entrepreneurial Development of Argentina

LCT	*Ley de Contrato de Trabajo* Law of Labor Contract
MTA	*Movimiento de Trabajadores Argentinos* Movement of Argentine Workers
MTSS	*Ministerio de Trabajo y Seguridad Social* Ministry of Labor and Social Security
PJ	*Partido Justicialista* Justicialista Party (or Peronist Party)
SMATA	*Sindicato de Mecánica y Afines del Transporte Automotor* Union of Mechanics of the Auto and Related Industries
SOEs	State-Owned Enterprises
STIA	*Sindicato de Trabajadores de la Industria Alimenticia* Union of Workers of the Food Processing Industry
UCR	*Unión Cívica Radical* Radical Civil Union (Radical Party)
UIA	*Unión Industrial Argentina* Argentine Industrial Business Union
UOM	*Unión Obrera Metalúrgica* Metal Workers Union

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CHAPTER ONE
Introduction

1. Second Generation Reforms and Institutional Change

The 1980s and 1990s were decades of drastic policy changes in Latin America. After almost fifty years of Import Substitution Industrialization (ISI) economic policies, characterized by strong state intervention and closed domestic markets, Latin American governments joined the global market and liberalized their economies. Sweeping reforms that included the liberalization of financial markets, the lowering of tariff barriers, the reduction of state subsidies and privatization of State Owned Enterprises (SOEs) were promptly and successfully implemented in most countries in the region.[1] These transformations have been variously termed structural, neo-liberal or market-oriented reforms.

In light of the drastic transformation of the political economy in the region, the academic literature has also focused on the study of the politics of economic reform, giving birth to a wealth of studies that looked at the political factors that promote or impede the successful implementation of these policies.[2] Scholars offered different explanations, but generally agree in classifying reforms into two types. Their distinct nature leads to different kinds of policies in their implementation. These different types are known as "first generation" and "second generation" reforms. Although the distinction has not always been drawn analytically in empirical studies and there is a tendency in the literature to lump together different kinds of reforms, scholars are starting to realize that the political processes of reform may be more specific than it was first assumed.

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[1] An index (0 to 1) that measures the level of market freedom allowed by economic policies in 19 Latin American countries in 1995 estimated an average value of 0.9 for trade policies and 0.8 for financial policies. Average tariffs throughout the region fell from 45% in 1985 to 13% in 1995; the permits and non-tariff restrictions that in 1985 affected 34% of imports ten years later covered no more than 11%. In the same period, in the area of finance, liberalization measures led to the elimination of interest rate controls, the dismantling of targeted credit systems, and the reduction of reserve requirement ratios to below 20% in most countries. (Lora 1997, 2000) Latin America accounted for 55% of all privatizations in the developing world in the 1990s, with most activity concentrated in the three largest economies (Argentina, Brazil, and Mexico) and a few smaller countries such as Peru and Bolivia. In Mexico, for instance, the share of public enterprises in GDP went from 15% in 1982 to less than 5% in 2001. (Chong and Lopez de Silanes, eds., 2005)

[2] See Alesina and Drazen (1991); Alesina (1994); Haggard, Stephen and Robert Kaufman (1992); Nelson, Joan (1989, 1990); Rodrik (1996); Bates, Robert and Anne Krueger (1993); Geddes, Barbara (1995); Williamson (1994); Krueger, Anne (2000); Weyland, Kurt (2002); Lora (2000)

"First generation" reforms are considered easier to implement than "second generation" reforms. They comprise macroeconomic stabilization packages, exchange rate management, trade liberalization, reduction of state subsidies, and privatization of SOEs. These reforms usually entail the dismantling of old institutions, which are not necessarily replaced by new ones. Thus, many of these reforms can be accomplished through the enactment of presidential decrees that do not require the participation of Congress, and their implementation does not require the participation of other bureaucratic agencies either. In addition, they are usually presented as technical solutions to the type of fiscal and inflationary crises that brought many of these countries to the brink of economic and social collapse. These "crisis" situations usually make it easier for diverse interest groups in society to accept the policies mentioned above.

In contrast, "second generation" reforms comprise policies that entail creating new institutions and regulatory systems. Their urgency, necessity and technical appropriateness appears as less obvious to society at large. Among "second generation" reforms are the reforms of the education and health systems, tax reforms, reforms of the judicial system, social safety nets, regulatory and export promoting agencies, and the reform of labor market institutions. Second generation reforms are considered crucial in promoting sustainable and equitable growth in the long run as well as consolidating first generation reforms. However, the literature on the political economy of reforms has dealt primarily with the study of the politics of first generation reforms, with particular emphasis on the politics of trade reform. Studies of the politics of "second generation" reforms have only recently taken center stage.[3]

In fact, the literature seems to have concentrated on the study of the reforms with which governments have had an easier time implementing. At the same time that the implementation of first generation reforms has been carried out without reversal in almost all countries in the Latin American region, second generation reforms are still far from being fully accomplished. The latter does not mean, however, that governments have not made serious attempts at reforming their education and health systems, the judiciary, or institutions of the labor market. The reality of the reforms on the ground, however, has appeared to give credence to the assumption that the adoption of this type of policies is

[3] For recent of studies of second generation reforms, see Kaufman and Nelson (2004)

less straightforward than the first generation ones. Nonetheless, recent studies have shown that the problem may lie in that these types of reforms require a different conceptual and empirical approach than the one that has been used in the past, precisely because of their different nature.

This study focuses on the reform of institutions and regulations of the labor market. The reform of labor regulations and institutions, which have been present in Latin America since the 1940s, are a good example of "second generation" reforms. It is usually assumed that the re-regulation of the labor market requires approval from Congress and not only the enactment of presidential decrees. Moreover, for the use of new regulations and institutions in the labor market to become really effective it takes a certain level of consensus from the parties involved, i.e. unions and employers. Even if one of the parties benefits more than the other with a specific institutional arrangement, the consent around the rules of the game by which everybody will abide has to exist. This minimum level of consensus is necessary for the institutions and regulations to be effective even if well enforced monitoring systems were in place, which in many instances are lacking. In sum, the reform of labor regulations and institutions requires the replacement of old institutions by new ones, and this implies that all actors involved in the functioning of this new system of labor relations and regulations must come forward to achieve its appropriate use and application. Thus, the understanding of how these new institutions can be created and sustained over time should contribute to the comprehension of other types of "second generation" reforms as well.

Almost every country in the Latin American region has made strides in changing different aspects of its labor code and has attempted repeatedly to introduce changes in its systems of labor relations. The potential consequences of the reform of labor regulations and institutions for workers, companies, and unions are substantial and can be long-lasting. New labor regulations have the potential to affect not only how income is distributed, the social safety net for workers and their families, workers' welfare on the job, but also the profitability and competitiveness of companies. As for trade unions, the potential effect of reforms in labor codes and institutions can be dramatic in that it has the ability to affect their sources of power and organization. However, and despite the importance of this reform, more in-depth, empirical studies of the transformations of

these institutions on the ground are still limited. One of the most obvious contributions of this study will be to provide an analysis of the political economy of the transformation of these entrenched legislations and institutions of the labor market, and what it takes to create new ones, thereby contributing to the literature on institution building associated with "second generation" reforms. Given the many similarities that the reform of labor institutions shares with other "second generation" reforms, it will shed light on the politics of reforms beyond the labor market as well. Even though countries have been altering their economic policy regimes since the 1980s, "even the most reform-minded countries, still have considerable agendas for further reform"[4] and the literature on the politics of economic reform is still far from conclusive.

2. Theoretical Approaches to the Political Economy of Reforms

The literature on the political economy of policy reform "is now vast, unwieldy, and in typical academic fashion, increasingly balkanized."[5] Nonetheless, two main approaches dominate within it. One has focused on *social preferences and interest groups* as the anchor from which to think about the political process of reform. The other one has focused on *formal institutions of the political system*, i.e., their constitutional design, the characteristics of the decision-making process and the incentives facing politicians, as the point of departure to think about the distinctive nature of the politics of reform. Both approaches have important shortcomings in particular to explain the politics of "second generation" reforms, which entail institution building.

The social preferences and interest group approach focuses on the fact that reforms always carry distributional consequences. That is, as a result of these reforms some groups in society experience gains while others experience losses. The politics of reform are thus thought as shaped by the winners and losers of these reforms. The main idea behind it is that if reforms have concentrated effects on losers and diffuse effects on winners, it will find resistance from those losers. Thus, successful reforms result from the formation of a minimum coalition and the defeat, or at least acquiescence, of those groups opposed to reform.

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[4] Krueger, op. cit., p. 3.
[5] Haggard, Stephen, in Krueger (2000), p. 21.

This coalition approach remains present in the literature despite having received numerous criticisms. One of these criticisms is that approaches that focus narrowly on the economic interest of actors as the basis of their political action have failed to capture the multiplicity of factors that can shape the perception of interest for a given group.[6] In fact, empirical studies of the politics of economic reform have found that interest-based explanations narrowly focused on economic interests have overestimated the intensity and direction of potential opposition by interest groups to market reforms, as well as exaggerated the importance of interest group support for reforms.[7]

Another criticism is that the approach of coalition politics has been used indiscriminately regardless of the type of reform considered, even though the nature of the reform determines the extent to which the coalition politics approach is relevant. This is in part because there has been a tendency to study the reforms altogether under the general title of "market reforms", which has not contributed to discriminate among the different politics involved in each of them. Different types of coalitions have not been adequately considered, and their relative explanatory power for a given reform properly evaluated. As Schneider points out, the array of coalitions includes distributional, electoral, legislative, and policy coalitions and each of them can play a more important role in different types of reforms.[8] For example, reforms with multiple, uncertain, distributional effects would probably lead to the creation of electoral coalitions, while reforms with more uniform, predictable effects would probably be more adequate to evaluate with a policy or distributional coalition approach.

However, the coalition approach, even if more specific, still fails to capture the complexity that can be involved in the process of creation of new institutions and regulations during the course of the reforms. One factor that has been recently emphasized in new studies of "second generation" reforms is the change that can take place and often does during the course of implementation of a certain policy, through the bureaucratic agencies involved. In a recent comprehensive study of social reforms in Latin America, Kaufman and Nelson found that implementation is in many respects the most problematic phase of the reform process, and it is probably at this point that social

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[6] Haggard (2000); Schneider (2004)
[7] Kingstone (1999); Murillo (2001); Schamis (2002); Corrales (2002); Thacker (2000)
[8] Schneider (2004)

sector reforms differ most notably from "first phase" adjustments.[9] They found that the implementation of health and education reforms shifts the arena of politics back to each sector's bureaucracies, national and sub-national, and opens up the micro-politics of change at the individual schools, hospitals and clinics. They did not find that interest group politics is irrelevant in shaping the politics of reform, but that it tells only part of the story.

The other main approach in the politics of economic reform literature emphasizes the importance of political institutions in shaping the policy outcomes of the reforms. In this approach, known in political science as new institutionalism, politicians are faced with different constraints depending on the political system in which they are situated. The rules of the game embedded in the specific traits of party systems, the internal organization of parties and the constitution of presidential authority imprint particular characteristics to the process of decision-making and the enactment of new laws, regulations, and policy changes. According to this approach, the particular combination of traits in the political system affects how decisive and consistent the Executive can be in the implementation of policies, as well as to what extent the policy should be subject to reversals or will be more or less credible to the general public. For example, the number of veto points in a political system should explain how difficult it would be to implement a given policy and at the same time how stable and credible it tends to be. The more veto points, the more difficult it would be to change a given policy, but the more stable it would be once enacted, given the difficulty to reverse it.[10]

Likewise, some political systems encourage responsiveness to the average voter while others provide strong incentives for politicians to respond to the interests of narrow groups.[11] The main criticism to this approach is that there are numerous political institutions that can have an effect on policy outcomes, and it is difficult to determine *a priori* the interactions among each other.[12] Also, the way they really work has to be determined empirically, as the formal rules may not be the ones actually used.

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[9] Kaufman and Nelson (2004)
[10] Tsebelis (1995)
[11] Myerson (1993)
[12] Haggard (2000)

What both approaches have in common is that they locate the main influence in the scope and content of policy change in the macro political system. Both the interaction between interest groups and government, and the influence of different institutions of the political system over policy outcomes take place through the channels and mechanisms embedded in the macro political system. Moreover, many of these studies assume the political preferences of interest groups and their predicted behavior, as well as the way in which institutions work. However, the decisions made after negotiations between the Executive and Congress and between either of them and specific interest groups cannot be assumed to be the whole story in the policy change process. As mentioned, many changes can occur through the implementation stage, which has been found to be highly political in the case of "second generation" reforms, and through the micro politics that unfold in more specific cases below the scene of the macro political exchanges. For example, the "interests" of business or unions as they are represented by their central organizations may differ from the "interests" of less aggregated organizations at the local level, such as specific chambers, companies, or local unions. As these interests differ, new possible negotiations can be achieved at the micro level.

In addition to the neglect of the implementation stage as a highly political moment in the reform process, and which needs to be further investigated, the creation of more informal but stable institutional arrangements has not been seriously considered by the main approaches in the political economy of reforms. The need to incorporate informal institutions in the study of politics of economic reform has been repeatedly acknowledged by the literature but the main focus continues to be in the formal institutions, both in shaping the process and in the final outcome. As this study will show, the creation of informal but stable institutional arrangements could be a viable alternative to the formal implementation of a specific reform. This alternative route is particularly relevant in developing countries, in which informality coexists often with formal rules of the game that are ignored. Thus, the processes by which these informal rules and institutions are originated and sustained deserve careful investigation. Informal institutions can be efficient and adequate solutions to changes in environmental conditions that might have been addressed by more formal reforms and therefore, they can satisfy interests of stakeholders. By so doing, these informal institutions can delay or

stall processes of formal institution building, and their study can provide useful clues for the difficulty of introducing "second generation" reforms.

3. Conceptualization and theories of the reform of labor institutions and regulations

3.1. Conceptualizing the outcome

Interest in studying the politics of labor reform has been growing in the last decade. International financial institutions such as the World Bank, the IMF, and the IDB have become frustrated with the little progress that this reform process seemed to have made, while unemployment remained at high levels over the 1990s. Also, in the academic literature, interest in this type of reform has grown, as an example of "second generation" reforms, and as a crucial reform for union organizations in the region, as well as labor-based parties. Also, as more information has been accumulating on reforms implemented in several countries, more attempts have been made to produce more systematic studies.[13] However, more recent attempts at studying "second generation" reforms have not included labor reform. More specific studies on labor reform have remained on the surface of legal reforms before their implementation, and they have lacked empirical investigations on how these transformations actually occur on the ground, among companies, unions, and workers.

Studies of the transformation of labor institutions and regulations have focused on what governments have termed "labor reform", and the outcome has been measured overwhelmingly as changes in labor codes as passed through Congress.[14] This "legalistic bias" in the literature has two important limitations. First, since labor reform included a bundle of disparate reforms that span from changes in individual labor laws, such as the inclusion of temporary contracts, to changes in collective labor laws, that include regulations of different kinds, such as collective bargaining and the regulation of union competition, as well as the introduction of employment insurance schemes, scholars have tended to consider that the change of these disparate regulations and institutions entails the same type of political process. Consequently, it has been assumed that changing the

[13] Murillo (2005); Murillo and Shrank (2005); Etchemendy (2004).
[14] Etchemendy and Palermo (1998); Murillo (2000, 2005); Torre and Gerchunoff (1999); Cook (1998, 2002); Corrales (1997); Norman (2001)

level of decentralization of collective bargaining and the content of collective agreements requires the passing of a law, as much as the adoption of temporary contracts. However, practice shows that this is not necessarily the case.

Second, many authors have considered that a successful reform takes place when a certain change has been introduced through Congress, and a failure when it has not. [15] This has two shortcomings: one is that it does not take into account the implementation phase, which in many cases does not occur; the other is that change can occur in many other ways besides congressional reforms.

The bundling of disparate policy changes becomes more problematic in cross-country comparative studies. Comparative studies of labor reforms in Latin America have tended to blur the workings of the legal system for each specific country, and for the sake of generalization to equate diverse country regulations and add them into broad categories, such as "collective labor laws", and "individual labor laws". However, the risk associated with this type of strategy is that it blurs the importance of each one of these regulations for each specific country and the relative importance to deregulate that specific aspect. For example, in the case of Argentina, rules associated with the use of labor within a given company are not regulated by the government, but by collective bargaining. Therefore, any changes in the content of collective bargaining, formal or informal, have an effect on the internal flexibility of a company, which is crucial to compete in a global economy. Likewise, the deregulation of collective bargaining in Argentina is politically more salient, and economically more pressing, than in Mexico. This is the case because in Mexico collective bargaining is already highly decentralized, while it has been formally centralized for many years in Argentina. Also, the centralization of collective bargaining has potential effects over the strength of the labor movement in Argentina, which is not the case in Mexico, where the association of the labor movement with the party has a larger effect in its strength. Thus, a lack of deregulation of collective bargaining in Mexico does not have the same effect than a lack

[15] An exception to this is the work of Etchemendy, which compares the level of deregulation in labor reforms in Argentina, Spain and Chile. In this case, for collective bargaining deregulation he considers the number of agreements effectively signed at different levels. One problem with this way of measuring the level of deregulation is that it relies on official statistics of the formal collective bargaining agreements signed. Official statistics cannot capture the important transformations that take place underneath the surface of official regulations and miss the greater degree of decentralization that can be taking place more informally in parallel systems of collective bargaining. (Etchemendy 2001)

of deregulation in Argentina, and thus an evaluation of these outcomes should take into account these differences.[16]

3.2. Theories of change of labor regulations and institutions

Theories of change in labor regulations and institutions have tended to follow the developments in the before mentioned general debate in the political economy of reforms. Three main approaches exist in this literature: a) *distributional coalition*, b) *political institutions*, and c) *party identity*. All these explanations share a focus on the policy making stage and the passing of labor regulations in Congress, and thus in the exchanges between interest groups and politicians in the formal political system at the macro level. Therefore, the explanations do not look into the implementation stage of these policies, and much less on the practices actually adopted on the ground by unions and companies.

Most of the explanations fall into the category of "distributional coalition" arguments. Their starting point is that strong interest groups in society that are affected by the reforms will react to government actions and shape the final outcome of reform. In the case of labor reform, since its general orientation is to deregulate the labor market, decentralize collective bargaining, and increase the level of competition among unions, it has been assumed that it would receive a strong resistance from labor unions. In fact, whenever labor reform appeared to have had disappointing results and a partial reform was the result at best, the outcome was attributed to the ability of labor unions to either stop it or derail it.[17] In fact, as Schultz puts it, "in many developing countries, unions appear to be as strong as, if not stronger than, their counterparts in developed countries."[18] The argument appears in the analysis of single case studies as well as in comparisons of different countries, which appear to have had different degrees of deregulation in their labor laws. The argument presents some variations. The strength of unions and their ability to stop or derail reform appears, in many of these arguments, associated with their link to labor-based parties, which were in office at the time of

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[16] Locke and Thelen (1997) make a similar point with regards to comparative studies of changes in labor relations in Europe.
[17] Etchemendy and Palermo (1998); Torre and Gerchunoff (1999); Etchemendy (2001); Murillo (2000)
[18] Schultz (2000)

reform. Thus, a more inclusive coalition between the government and the unions is supposed to lead to a lower degree of deregulation in labor laws and institutions.[19] Other times the strength of unions is associated with their links to party members in Congress who favor the unions' views and use institutional mechanisms (veto points) to stop and derail reforms.[20]

Another type of argument focuses on the importance of *party identity* in shaping the final outcome of changes in labor regulations and institutions. Murillo (2000) makes the case in a comparative study of labor reforms in Latin America that despite economic pressures in a global economy, partisan preferences in policy making are allowed in the case of labor reforms. In a mix of partisan identity and electoral considerations, labor-based parties have a tendency to favor the preferences of unions and refrain from extreme relaxation of labor codes, in particular when they fear they may lose votes. However, the power of unions to press labor-based parties to refrain from relaxing labor codes still counts, and produces different levels of deregulation. The argument is elegant and attractive, but as in other cases, the outcomes are exclusively focused on legal changes, regardless of their importance in the labor system of a given country as a whole, their actual implementation, and the practices that in fact take place on the ground. So, one of the prime examples of her argument is the re-centralization of collective bargaining in Argentina in 1998, which would show that the government was strongly favoring unions' preferences, despite pressures from the business sector. Nonetheless, formal statistics of collective bargaining do not show any significant increase in the signing of centralized collective agreements, and the regulation never took effect in practice.

Finally, another type of argument for changes in labor regulations and institutions focuses on the characteristics of the *political institutions* of a given political system. These types of arguments have either focused on the existence of "veto points" in the system that allow unions to block the passing of deregulatory legislation, or in the relationship between the Executive and Congress, through the ruling party. In the first case, the resistance of unions that according to the distributional coalition arguments has the potential to shape the reforms is channeled through "veto points" in Congress. So, for

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[19] Etchemendy (2001); Murillo and Shrank (2005).
[20] Torre and Gerchunoff (1999); Etchemendy and Palermo (1998); Norman (2001)

example, the use of labor committees by unions through the support of members of Congress of the same political party has been commonly cited for the case of Argentina[21]. The ability of the Executive to gain the support of their party allies in Congress for their agenda is also cited as a requisite for the successful implementation of reforms, which was absent in the case of labor reform.[22]

4. Argentina as a "crucial case"

Given that data on the practices between companies and unions and the functioning of more informal institutions of the labor market is not readily available for every country, I chose to examine one national case over a decade, as a first step towards the development of theories for cross-country comparisons. The study of *labor reform in Argentina* provides an excellent window through which to evaluate the transformation of labor institutions and regulations after the opening of the economy to international competition, and the role of informal institutions in the implementation of more flexible work rules. More in-depth country studies of the transformations of labor regulations and institutions are necessary building blocks for comparative explanations that are rooted in the workings of the labor regimes on the ground, and take a historical perspective.

I chose the case of Argentina as a "most likely case" for the relaxation of regulations and institutions of the labor market[23], in order to test the most predominant approaches in the political economy of reforms. Argentina is a "most likely case", because on the one hand, the change in economic conditions pressured for a relaxation of labor regulations and institutions arguably more than in any other country in the region. On the other, because many of the political conditions found to push for the successful implementation of reforms were also present in the case of Argentina. According to the "convergence" theories, these economic pressures coming from the opening of a previously closed economy to international competition should lead to the relaxation of labor regulations and the decentralization of collective bargaining. At the same time, Argentina became a poster child of international organizations for its ability to implement radical market reforms in a short period of time. For that reason, it also became a

[21] Torre and Gerchunoff (1999); Etchemendy (1998); Norman (2001)
[22] Corrales (1997)
[23] For the definition of "most likely case" and its pros and cons, see Odell (2001).

commonly chosen case for the study of successful reforms. In sum, both economic conditions and political conditions indicated that Argentina would have moved in the direction of less protectionist labor market regulations and less centralized collective bargaining agreements.

A couple of characteristics make Argentina a "most likely case" for changes in the regulations and institutions of the labor market, among countries with democratic regimes. As for the economic conditions, Argentina was exposed to greater pressures for the reduction of costs than other countries in the region, given the combination of a rapid and drastic opening of the economy with the implementation of a tight monetary policy that tied the peso to the dollar in a one to one relationship. This combination of open trade and tight monetary policies made competition for domestic industries more difficult, since it not only removed all previous tariff barriers but it also appreciated the domestic prices in comparison to domestic imports and similar exports. While most countries in the region liberalized their trade policies, most of them proceeded at a slower pace, and none of them had such a tight monetary policy.

Another economic condition that contributed to the pressure for reform of Argentina's protectionist and centralized labor regime was its high rate of formal employment. Argentina had one of the highest levels of formal employment in the region, with low levels of unemployment. This characteristic of the Argentine labor market led to an extensive use of legal norms, which subsequently created more pressure for reform. Between 1963 and 1978, the average rate of unemployment in urban areas was 5.6%, similar to the level of unemployment in the United States and slightly higher than the level of unemployment in Europe. The level of informal employment was low compared to other Latin American countries.[24]

Argentina also had the political conditions cited in studies of the political economy of reforms, as conducive to their successful implementation. In fact, it came as a surprise that a country with a strong labor movement had been able to pass so many economic reforms in a short period of time with the acquiescence of the unions. This outcome was even more surprising, considering that the Peronist party implementing the changes had been a historical ally of the labor movement and opposed market-oriented

[24] Llach (1997)

policies since its creation. According to one cross-national study of economic liberalization, the Argentine reforms were the second most far-reaching in the world in the 1990-95 period, and they were faster and more far-reaching than those of Margaret Thatcher in England, Augusto Pinochet in Chile, and Solidarity in Poland.[25] The fact that the unions where in Menem's party (the Peronist party) helped to gain support for the market-oriented reforms through different tactics such as compensation, divide and conquer, and the de-linking of the party from the unions.

Some of the political factors that seem to explain that success were the presence of a strong Executive with decisive support from congress, "change teams" in the Executive isolated from interest groups with a clear agenda of reform; a labor-based party that had successfully adapted to the new environment and was able to carry forward the reforms without losing electoral support; and Senate composition that favored the formation of pro-reform coalitions with the Executive.

Another reason why Argentina constitutes a "most likely case" is that it was one of the countries in the region that attempted the most serious efforts to reform the labor market in five occasions in less than a decade. Among the market-oriented reforms implemented in Argentina during the nineties,[26] the government attempted to dismantle its protectionist labor laws and to decentralize its system of industrial relations at five different points in time.[27] Even though almost every country in the region attempted to change its highly protectionist labor laws and regulations, the case of Argentina was considered one of the most serious attempts at pursuing it. The favorable political conditions, and the pressures coming from an increased level of international competition, were then coupled with an explicit government attempt to modify the rules of the game that regulate the labor market.

The case of Argentina, even if it is only one country, can be taken for several cases of comparison as well[28]. Over time, Argentina represents two different outcomes of the labor regime. At the beginning of the 1990s, Argentina had a highly protectionist

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[25] Gwartney et al. (1996) See also Inter-American Development Bank (1997), cited in Levitsky (2003).

[26] Before the financial crisis that started in December 2001 and led to the declaration of "default" in its foreign debt, Argentina had been considered during the 1990s one the fastest, most radical, and successful cases of the implementation of market-oriented reforms. It had been praised by international financial institutions for its accomplishments, and taken as a model to be imitated by other developing nations (Levitsky, 2003).

[27] The five major attempts took place in 1991; 1993-94; 1995-6; 1998; 2000.

[28] See Ragin (1992).

regime with a centralized system of collective bargaining and a high level of state intervention. This is similar to the characteristics of other labor regimes in the region, as well as some European countries until the 1970s. By the end of the 1990s, however, the labor regime had turned into one that provided for more flexible rules of work and labor contracts, with decentralized collective agreements at the company level and less state intervention in labor affairs.[29] Regarding these two outcomes, I explain what led to change. In fact, the two different outcomes in labor regime can be associated with quite different economic and political circumstances in Argentina, from which I traced the factors that led to the change. Within the ten-year period, I have five examples of attempts at reform, which allows me to test for the effect of reform in five different observations, with variations in the orientation of reformers, government tactics, and political party in government.

In addition to comparing two moments in time within the case of Argentina, which represent different outcomes of the labor regime, I compare different sectors of the economy and within them different companies. This allows me to observe the effect of sectors of the economy and type of company in the transformation of labor regulations and institutions, that is, I can see if a long-term trend of change has important variations by sector or type of company. At the same time, it increases considerably the number of observations for the effect of reforms and other factors in the change observed in the labor regime. For the evaluation of companies, I use both a quantitative database with 4,000 companies in the province of Córdoba, and qualitative information from particular companies that allows me to observe closely the workings of this change at the company level.

According to the dominant literature on the politics of labor reform, the fact that Argentina could be considered a "most likely case" of reform led to the elaboration of special theories for labor reform in particular, which seem to lead to unexpected results. As explained, given that the evaluation of the results of labor reform were based on the legal changes introduced in Congress, most assessments were pessimistic, that is, despite

[29] This final outcome for the labor regime in Argentina is not the agreed upon outcome for changes in labor reform in the literature of political economy of reforms. As I will show however this is the most accurate portrayal of the transformation of the labor regime, when considering practices and informal institutions, and not just legal changes through Congressional approval.

the fact that economic and political conditions seemed to indicate that Argentina had to move forward in the liberalization of its labor regime, it did not. Most evaluations found that the reforms had been partial[30] and some authors had gone as far as to say that the reforms had tended to reinforce the level of protection for unions and the re-centralization of collective bargaining.[31]

However, while these attempts failed to significantly change the formal rules for collective bargaining, a new informal institution of decentralized collective bargaining was being created underneath the formal framework, and this had two important effects. One was that it modified the level of centralization of collective bargaining, with the potential consequence of reducing unions' strength. The other was to relax many regulations through the signing of informal agreements. Both effects were consistent with the objective of the formal reforms and the predicted outcome given the economic pressures that Argentina was exposed to. However, this outcome contradicts common evaluations of labor reform and questions the explanations given for it. Therefore, Argentina as a "most likely case" for changes in labor regulations shows that even if formal attempts at it have limitations, deregulation proceeds in the expected direction. This investigation will provide the explanation for the factors that led to reform and explain not only its direction but also its specific shape. Argentina then provides an adequate and rich case to explore the reasons *why legal reforms of the system tend to fail* and *what leads to the transformation of labor institutions through more informal routes.*

The implication for other cases in the region is that if even in the "most likely case" for reform of institutions, this transformation did not occur mostly through legal means, this outcome should not be expected in cases in which the formal labor market was even more reduced and informal practices in the labor market were already more widespread. However, it is very likely that the transformation of labor regulations and institutions will occur in the cases in which the economic environment pushes in that direction.

Given that other Latin American countries have similar protectionist labor laws and "corporatist" systems of labor representation that date back to the 1940s, the

[30] Etchemendy (2001); Corrales (1997); Torres and Gerchunoff (1999)
[31] Murillo (2005); Murillo and Shrank (2005).

understanding of the Argentine case should provide useful hypotheses for other cases. Unlike studies of developed countries, industrial relations systems have not been systematically analyzed in Latin America. And although scholars have studied their highly political origins, changes in the nineties with important consequences for unions, workers and companies remain poorly understood.[32] This study should contribute to fill in this gap in the literature and further the understanding of the systems of industrial relations, their functioning, and their change under increased pressures since the 1990s.

This study is based on two years of field research in Argentina in which I carried out one hundred and fifty interviews with all relevant players in the policy arena, that is, officials involved in reforms, and legal advisers for both employers and unions; union leaders in diverse sectors of the economy; labor lawyers that advise either unions or employers; representatives of business associations; judges in labor courts; and officials in the departments of labor in the provinces of Buenos Aires, Santa Fe and Córdoba. In addition, I base my arguments in a data base of 1,450 agreements collected from the archives of the secretary of labor in the province of Córdoba, for the sole purpose of this investigation, along with a smaller data base gathered for the province of Buenos Aires. I also revised documentation on legal reforms, Congressional minutes of debates on labor reforms, and information collected through newspapers. Finally, I also used case studies of transformation of labor relations in different sectors and companies that were already available.

I collected and evaluated the data at three different levels. First, I evaluated the arguments presented by the literature about the causes of failure of the reform of the labor market, and to compare the legal changes with its implementation on the ground. Second, I examined the level of the implementation agencies to evaluate how public agents carried out policies. Third, I carried out interviews at the company level, which I complemented with detailed case studies by other researchers to look at the use of the parallel system of collective bargaining as it actually occurs at the company level. Finally, in order to establish the factors that prompt changes in labor regulations and

[32] Even though studies of the labor movement in Latin America have remained an important research subject, the systematic study of systems of industrial relations has been neglected. Most studies have concentrated on the relationship between parties and the labor movement and the participation of unions in politics (Collier and Collier 1978 and 1991; Levistsky 2003; Middlebrook 1995; Murillo, 2000).

institutions and the origins of the parallel system of collective bargaining I use the method of "process tracing."[33]

5. Changes in the labor regime in Argentina

Once the definition of the dependent variable is extended to cover the labor regulations and institutions that actually organize transactions in the labor market, the extent of the changes that has occurred in the labor market was beyond what has usually been acknowledged. The same applies to changes implemented within the legal framework but either through less visible and politically costly means such as the sanction of regulatory decrees or the dismantling of mechanisms of enforcement. If the focus changes from strict changes in the legal framework through legislation to actual practices in the labor market, one could visualize a change in what some term a "labor regime."[34]

The functioning of labor institutions and regulations as they actually work has not been the focus of studies in Latin America, as it has been the case in Europe and the United States. Even studies in the sociology of work, which usually has a greater concern for actual practices has usually been narrowly applied to specific case studies in particular sectors of the economy and not the national legal framework as a whole. As a result, we still lack a good understanding of the functioning and evolution of actual institutional frameworks in Latin America, and how they get modified in the context of high competition that puts pressure in their restructuring. That is precisely what this study is trying to explain.

The tendency to add layers of regulation that modify the previous regime (not

[33] For the different interpretations of the method of process tracing to infer causalities in case studies, see Van Evera (1997).

[34] Labor regime has been defined as the pattern of recruitment and terms and conditions of employment that structure the articulation of workers' concerns and interests to government and to industry, both being owners and managers of productive assets. Labor regimes are overlapping and multifaceted. Labor regimes operate at national, regional, and local levels in all sectors of the economy, formal and informal. They are structured by a variety of laws and social institutions, and the absence of such laws and institutions. The government's license to allow employers, in the private as well as in the public sector, to evade labor regulations is also a determining feature of a labor regime. (Candland and Sil, eds., 2001) Although this definition of labor regime seems overly ambitious and tries to cast the net too widely, making it difficult for a single researcher to capture the depth and breath of such an ambitious definition, I believe that it moves in the right direction of opening the view of labor institutions to real practices instead of circumscribing it exclusively to what has been written in the law.

through Congress) and the existence of parallel practices that subvert the legal framework can be observed in many countries in the Latin American context. Several studies have documented changes in labor regulations despite resistance to changes of the legal framework through Congress, in cases such as Mexico and Brazil, just to mention the largest countries in the region.[35] In the case of Argentina, which is the focus of this study, changes occurred both in actual labor regulations and institutions. If changes are classified according to the type of flexibility they are meant to produce, in cases in which previous rigidities existed, one sees that the Argentine system has been modified in important aspects not recognizable through the observation of changes in laws or formal statistics alone.

The main changes in the labor regime in Argentina can be visualized on Table 1. One of the most dramatic changes has to do with the level of decentralization of collective bargaining. The labor regime in Argentina has been characterized by a predominance of centralized collective bargaining agreements at the industry level since its inception in the 1940s. Even though in strict terms the law that regulates collective bargaining agreements has never banned the negotiation of company level agreements, a strong ideology coming from the unions has made the system of centralized negotiations the undisputable mainstream, and most of the agreements have overwhelmingly been signed at this level.[36]

The implications were important given the characteristics of regulations sanctioned through them, which imposed clear rigidities in terms of internal flexibility, that is, categories, work time, and work organization in general. Since the 1990s, the Menem administration tried to dismantle the centralizing tradition through new legislation that ended up being exchanged for other changes in the labor market in their negotiations with unions. Several decrees were signed to further decentralize negotiations, in order to compensate for the lack of changes in the law itself. In fact, the law would have allowed for a greater degree of decentralization if both business and unions had agreed to it, but the statistics show that formal negotiations did not keep pace with the intention of greater decentralization expressed in the decrees.

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[35] De la Garza Toledo (2000); Martin (2001).
[36] Important exceptions have always existed in the auto and textile sectors.

Table 1.1
Changes in the labor regime in Argentina during the 1990s

Institution/Regulation	*Before 1990s*	*During 1990s*
1. Collective Bargaining (Level of negotiation)	a. Formal system Centralized sector level (95% of wage earners) Company level (5% of wage earners)	Timid decentralization (majority "continuity by default")
	b. Informal system Company level	Important decentralization (5:1 informal/formal)
2. Internal Flexibility (Allocation of HR inside the company)	Regulated by formal collective bargaining (rigid in categories, work hours, work org.)	Altered through parallel system of negotiations
3. Salary Regulation	High level of government intervention	Little government intervention
	Collective bargaining (Adjustment by inflation)	Prohibition to adjust by inflation Reduction in labor taxes
4. External Flexibility	Contract of indefinite duration is paradigm	Part time work regulated in parallel system Introduction of short-term contracts (1991;1995; reversal 1998; 2000)
5. Monitoring system	Relatively well enforced	Lax

However, the level of decentralization of collective bargaining was indeed dramatically modified into a hybrid of formal and more informal negotiations underneath the surface of non-renegotiated centralized agreements. On the one hand, the trend in formal agreements has been to increase the number of company level agreements over

the number of agreements above company level, although, of course, given the small number of agreements signed at the company level, the percentage of workers covered in the workforce by these agreements is still small. Most of the agreements remained at a centralized level, but as a result of the "continuity by default" clause that makes un-renovated agreements still current in Argentina. Therefore, most of the agreements at a centralized level were agreements signed in 1975, some of which were renegotiated in 1988 but only in their level of wages.

Many studies focus in this picture and conclude that the level of centralization of agreements in Argentina is still high. Moreover, they assume that these old agreements still regulate transactions in the labor market, making it rigid.[37] Also, they tend to assume that the labor reform of 1998 achieved its objective of recentralizing collective bargaining, even though the statistics on the actual agreements signed do not show any renegotiations at this level.

The reality is that the labor market ended up being regulated by a greater level of agreements at the company level that were formal, a large number of agreements at the company level signed in the parallel system of negotiations, and centralized agreements that remained current as a result of the "continuity by default" clause that had the potential of introducing rigidities, but only if they were actually enforced by either the unions or the monitoring system regulated by the government. However, as I will argue, the monitoring system was severely weakened as an alternative means of reducing rigidities in legislation, and the unions chose not to enforce old agreements. Thus, the end result was that the system of collective bargaining was highly decentralized through a small portion of formal agreements, and the extended use of agreements at the company level in parallel system of negotiations. In sum, the level of centralization of the agreements was dramatically modified to a higher level of decentralization in the most part through agreements signed in the parallel system of negotiations at the company level.

The extensive use of the parallel system of negotiations brings another important consequence in terms of changes in the labor regime, in particular in what is known as internal flexibility, that is, all the aspects that deal with the allocation of human resources

[37] Guasch (1999); Etchemendy (2001)

within a company. Internal flexibility will include aspects such as work organization, working hours, vacations, promotions, and categories. If the parallel system of negotiations is ignored and it is assumed that the un-renovated agreements at the centralized level signed in 1975 and some slightly modified in 1988 still regulate the operation of companies, the picture one gets is one of little change and rigidity. However, this is not how the labor contract in this regard really gets regulated.

The parallel system of negotiations not only modifies the level of centralization of negotiations bringing it down to the company level, but also alters dramatically the way in which internal flexibility is regulated basically introducing all the forms of relaxation from previous rigidities known in the literature, from polyvalence to work teams, to unorthodox uses of work time and vacation periods, and innovative compensation schemes that introduce compensation for productivity to a greater extent.

In terms of salary regulation important changes were introduced in the labor regime as well. One of the most important changes has been the adjustment of wages according to productivity instead of inflation. This measure in itself led to the flattening of salaries over the 1990s due to the fact that estimates of productivity were more difficult and completely unknown to unions. Labor taxes were also reduced through different means over the decade and the minimum wage was not updated as part of a government policy.

Change in external flexibility, basically through the novel introduction of short-term contracts with considerable reductions in labor taxes for employers in a previous labor regime with a solid tradition of indefinite duration contracts as the main and only paradigm was less straightforward. Ironically, the main change in the legal system introduced for the first time in 1991 suffered a backlash in 1998 when these short-term contracts were completely eliminated, only to be partially re-introduced in 2000. Supposedly, the outcome that would have least interested unions because it did not affect their organizational and financial power directly ended up being targeted in the 1998 reform because it was the most visible legal change of all. This shows the greater level of effectiveness of changes introduced through more politically subtle means, as I will show later. However, if the period of 1998-2000 is bracketed, overall the indefinite duration contract was no longer the main paradigm and longer trial periods with no severance

payment and other forms of short-term contracts with reduced costs of severance and labor costs in general became part of a new labor regime.

Finally, another change that greatly affects the functioning of the system and its level of rigidity is how well the system is actually enforced. As I will show later, the system of enforcement of labor regulations deteriorated over the nineties. In fact, the Menem administrations seemed to have encouraged this process through several government actions. Some of the rigidities that were in place in the legal system would have been felt more strongly if the monitoring system of labor would have properly enforced them. Likewise, the parallel system of collective bargaining, which I argue was key, in the decentralization of collective bargaining and the relaxation of labor regulations, would not have existed if the state had decided to go against it through the enforcement of current regulations.

Many of these changes are invisible when the focus is exclusively on changes achieved in legislation passed through Congress. The extent of these changes becomes visible only after one looks carefully at the extent to which laws and regulations passed were actually implemented and enforced. Likewise, decrees that can seem harmless have in fact important effects in the labor market. Thus, some of the changes become visible only when the current framework of regulations and the passing of new laws are checked against the implementation stage of policymaking and the real functioning of the labor market. For example, statistics on formal collective bargaining clearly show that despite the re-centralization of collective bargaining through new legislation passed with the labor reform of 1998, agreements renovated after this new regulation continued to occur mainly at the company level. Likewise, documentation on the application of decree 1334/91 that ties wages to productivity increases provided ample margin for the negotiations of new workplace rules that contradicted and relaxed previous collective bargaining agreements that were supposedly still regulating certain activities.

Finally, evidence of the existence of a more informal system of negotiation in which the relaxation of labor laws was taking place comes from different sources. Studies at the company level in different sectors have revealed that negotiations to redefine the

terms of previous collective bargaining agreements were pervasive in the 1990s.[38] These negotiations not only took place in more informal or small companies, but also happened in the most modern and dynamic sectors of the economy in which large companies both of national and foreign origin predominate.

Evidence of the existence of this system also comes from media statements by business associations and ministers of labor, that have pointed to the fact that a relaxation of labor regulations was already taking place in the labor market through negotiations at the company level, despite opposition from unions and other sectors to introduce these changes formally in the legal framework. Qualitative evidence from interviews with labor lawyers who advise some of the most important and dynamic companies in the country, reveals that negotiations in the parallel system has been the most commonly used form of negotiation to alter conditions in previous collective bargaining agreements. This evidence has been confirmed in interviews with public officials in the departments of labor in the most dynamic provinces in Argentina, namely, Santa Fe, Córdoba and Buenos Aires which together accounted in 2005 for about fifty percent of the national GDP[39], and from managers and unionists in different sectors.

In addition to the evidence previously quoted, a database of company level agreements recorded by the department of labor in Córdoba was collected for the purpose of this investigation. Records of these agreements also exist in other departments of labor in the country but access to this information is difficult and collection of the data is very tedious and time-consuming and, requires not only authorization for access but also the hiring of personnel. The gathering of these data for the province of Córdoba has allowed me to provide a quantitative estimation of the parallel system of negotiations, compared to negotiations in the formal system and a qualitative analysis of its nature. Using data of the number of companies in other provinces and the qualitative evidence of their

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[38] See Fernández (1995) who did a study of 23 companies in Quilmes, Buenos Aires province, in the metal, food processing and chemicals sectors. He found that *comisiones internas* were negotiating with managers new working conditions at the factory level to modify old conditions in collective bargaining agreements. Feldman (1991) also performed a survey in different sectors in the province of Buenos Aires in which he found that agreements between *comisiones internas* and management were modifying conditions in collective bargaining agreements, despite the fact that formally it appeared as if they had not been touched and continued to be legally binding. Other in depth case studies in the metallurgic sector have revealed the same tendency (See Jabbaz, 1996; Freytes Frey, 1997).

[39] The GDP is an estimation of the PBG (Gross Geographic Product) calculated by the Dirección Nacional de Cuentas Nacionales (National Income Administration.)

existence I have also estimated the number of agreements that would have taken place in these other locations for which I could not gather data based on actual agreements.

Results of this database are analyzed in detail in chapter VI, but a preview of the findings is in order. In the city of Córdoba, which represents 43% of the total of population of the province of Córdoba, 1,400 company agreements were signed between *comisiones internas* with or without the participation of local unions and management at the company level in different sectors of the economy between 1990 and 2000. This represents a considerable amount of agreements if one compares them with the company agreements signed at the national ministry of labor, which is the way in which all formal agreements need to be ratified in the formal system.

Considering that this is only part of what is negotiated through the parallel system of negotiations because many agreements remain in the companies or in the law firms, that Córdoba as a province only represents 8% of the national GDP, and the database only captures agreements in the provincial capital, the amount of company level agreements is considerable. In the period between 1990 and 2000 the number of agreements registered in the city of Córdoba represented 25% of the national agreements in 1997 when Córdoba went through a political turmoil that paralyzed its administration, to 1.19 times the number of national agreements in 1999, and almost 4 times the number of national agreements in 2000. Considering that Córdoba has approximately 17% of the total number of companies in the country, if the Córdoba database was projected for all other provinces, the number of agreements would have been 8,235 for the period between 1990-2000, which means an average of 823 agreements per year.

The parallel system would represent almost 5 times the number of agreements signed at the national level in the formal system of labor relations. This is a conservative estimate because it takes only the agreements signed in the city of Córdoba but using the total number of companies for the whole province as a proxy (number of companies for the city of Córdoba are not available).[40] It also captures only those agreements registered at the provincial departments of labor, and it covers only companies that have legally

[40] My own estimation using the number of companies per province from the Observatorio de Empleo y Dinamica Empresarial – DGEyFPE – SPTyEL – MTEySS, based on SIJP. These companies are all in the formal sector, given that the records are taken from their registration in the social security system. The statistical series starts in 1996. Data for the previous years is not available. See all the information in Appendix I.

registered workers, which in the 1990s represented approximately 60% of the labor force.

In sum, even though the exact number of agreements signed through the parallel system is not known, the estimations based on the Córdoba database using information from qualitative interviews provide good evidence of the importance of the system in the labor market. Qualitative analysis of the content of company level agreements that comes from qualitative interviews, case studies, the Córdoba database and the agreements signed through decree No. 1334/91 show that a relaxation of types of compensation, and work rules occurred through these agreements in the 1990s.

6. The argument in a nutshell

This study challenges the conventional argument about the politics of labor reform in Argentina during the 1990s. Contrary to the prevailing view about the success of the labor movement in blocking any reform to make the labor regime more flexible and decentralized, I show the extensive decentralization and deregulation that took place during the 90s in the Argentine system of industrial relations. These transformations happened through a hybrid reform process that combined both formal and informal changes to the labor regime.

The factors that led to this process of hybrid reform are illustrated in Figure 1.1. The opening of the economy in Argentina (a) shifted business preferences strongly towards deregulation and decentralization (to become more competitive in the international market), (b) weakened the alliance of labor unions with labor-based parties, and (c) tilted the balance of power in favor of business over labor. At the same time, important political groups (including labor) still retained the capacity to resist change, particularly in Congress. This created an important policy dilemma in which strong business pressures to deregulate and decentralize the labor regime collided with entrenched political resistance in Congress. While the conventional argument in the literature for the resolution of this dilemma emphasized the effectiveness of political actors in stopping change altogether, this study challenges this view.

I argue that this dilemma generated strong incentives to pursue avenues for reforming the labor regime that had low political visibility and costs. Whether such avenues materialized or not, and the form that they took, depended on two main factors:

the level of alignment of local interests, especially between business and unions, and the structure of the labor relations system.

In the case of Argentina, the main avenue for reform was the gradual emergence of an extensive, parallel, decentralized, and deregulated system of labor relations. This parallel system was possible for two main reasons. First, even though the system of industrial relations in Argentina is centralized, its organizational structure contains the seeds for greater decentralization at the company level. Although unions negotiate by industry lines, they have a highly decentralized internal organization based on *comisiones internas (internal committees)*[41] at the company level. Second, in a context of balance of power that favored capital over labor, *comisiones internas* faced intense pressures from management and from their rank-and-file to find concrete solutions to the restructuring needs of firms, providing these *comisiones* with strong incentives to search for local agreements, thereby aligning their interests with those of local businesses. The weakening of the power of the central unions during the 1990s increased substantially the relative autonomy that *comisiones* had to act on and respond to these pressures, leading them to engage in negotiations at the company level.

While the main avenue to reform the labor regime was through this parallel and informal system of negotiations between firms and unions, the state accompanied this process through limited but complementary and enabling initiatives. These included legal changes created via layers of additional presidential decrees that overlapped with more

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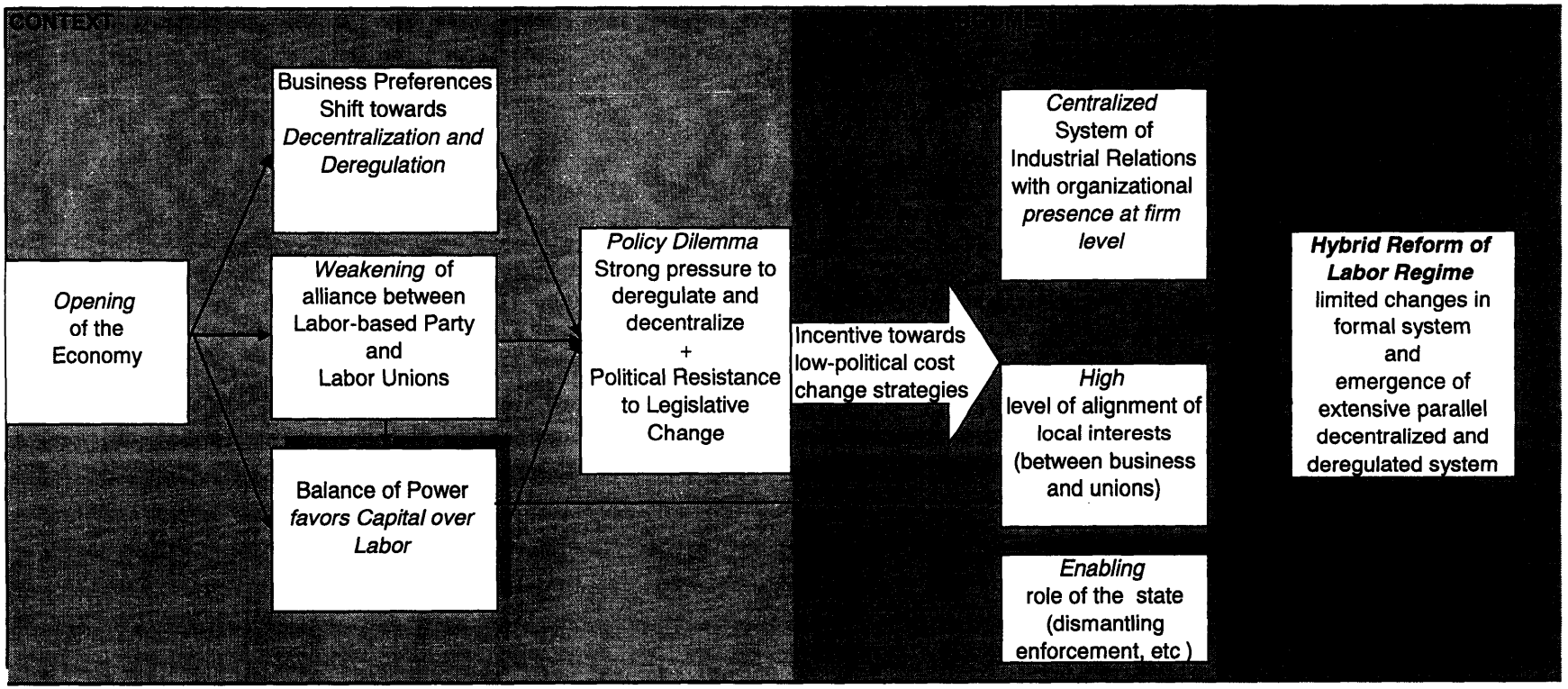
[41] All workers at the company level elect the *comisión interna* regardless of their union affiliation. Therefore the *delegados* (delegates) that form that *comisión interna* represent all workers before the employer at a particular workplace. All workers vote through direct and secret ballot. The *delegados* have to be members of the union that has the monopoly of representation in that sector. The *comisión interna* is at the same time a representation of the union inside the company and the representation of workers regardless of their affiliation before both the union and the employer. It is important to notice that the *comisión interna* gives voice to all workers and it is not just a link between the local union and the company. Since 1988, the functioning of the *comisión interna* has been regulated by the *Ley de Asociaciones Sindicales* (Labor Unions Law), Law No. 23.551. See more details on the functioning of the *comisión interna* in chapter 4. I will use the term *comisión interna* as the usual form of representation in all companies to simplify the use of vocabulary. However, in strict terms the formation of a *comisión interna* requires the presence of at least three *delegados* at the company level. The number of *delegados* is related to the number of workers at a given company, according to Law 23.551 (1988): if the company has between 10-50 workers, it can have one *delegado*; between 51-100 workers, it can have two *delegados*; and if it has more than 100 workers then it has one more *delegado* every 100 workers in excess of 101. Therefore, only companies with more than 100 workers will have a *comisión interna* in strict terms. However, negotiations will proceed with management even if the *delegados* do not constitute a *comisión interna*. The likelihood of having more negotiations within the parallel system between *delegados* and management will increase with the size of the company.

rigid and unchanged regulations, and the dismantling of enforcement mechanisms. These changes were less politically visible and easier to implement, and since they did not elicit organized opposition, they had better chances of being effectively adopted.

The existence of this parallel system for collective bargaining reduced the incentives that businesses had to continue pressuring the government for legislative reform. It is this change in business incentives rather than the strength of the labor movement, I argue, the more plausible explanation for the limited progress of labor reform in the legislative arena. What this study shows is that explaining second generation reforms, which involve deep institutional change, requires a combination of the conventional macro political approach to the study of interests and actors with a more societal and micro political approach.

Figure 1.1. Logic of the Argument



I will briefly illustrate the analytical leverage that this framework can have to understand processes of reform in other countries, by showing how changes in any of these analytical dimensions may lead to different policy outcomes. I will refer to four alternative policy outcomes:

1. *Radical formal deregulation and decentralization*: Chile under Pinochet and Peru under Fujimori are two cases where the absence of political resistance to change eliminated the policy dilemma that was present in Argentina, therefore opening the avenue for a formal process of reform.

2. *Stalled reform:* Sweden in the 1970s is a case where the policy dilemma not only existed but was actually greater than in Argentina given the strong alliance between labor unions and the labor based party. While collective bargaining was centralized as in Argentina, the absence of an organizational structure of the union at the firm level did not provide the outlet for channeling the tensions that could not be resolved at the national level. The final resolution to this impasse came during the 1980s when the balance of power in favor of business groups led to the break-up of the system of centralized bargaining.

3. *Informal unilateral deregulation:* Mexico during the 1990s is a case where the policy dilemma was also present, although only with respect to deregulation and not to decentralization given that collective bargaining was formally decentralized. However, the absence of union organizations within firms provides little incentives for business to negotiate their restructuring with local unions, especially when the latter are weak. Instead, business finds it easier to impose their preferences unilaterally. The state here also plays an enabling role of this unilateral deregulation.

4. *Partial recentralization:* Argentina since 2004 is a case where the alignment of local interests between business and unions weakens due to the fact that central unions regained power, caused by their renewed alliances with the left leaning administration of Nestor Kirchner from the Peronist Party. In this case, there has been a re-centralization of collective bargaining but limited to salaries.

7. The role of the state and the power of central unions in the shaping of hybrid labor regimes

In the creation of hybrid labor regimes, the state plays an important role as an "enabler" of the conditions for the transformation of labor relations at the local level. In this respect, the federal government may play a more *laissez-faire* role in letting go of the existence of regulations and institutions that contradict the current legal framework or actively dismantle the monitoring system. At the same time, local governments can play a more active role in promoting these changes beyond the letter of the law.

Through the implementation of more administrative measures, such as the passing of presidential decrees, or the dismantling of the government office that manages the monitoring of more rigid regulations, a deeper level of changes in labor regulations and institutions becomes possible. This is a different take on the transformation of labor regulations and institutions than the one usually taken by the dominant approach in the literature. As has been found in other studies of "second generation" reforms, the implementation stage appears as even more relevant in determining policy outcome than it was previously thought. Whenever legislative mechanisms fail to change the legal framework that regulates the labor market, bureaucrats can find new venues to relax old regulations and decentralize institutions of collective bargaining. The use of presidential decrees that do not need the approval of Congress can modify the application of a certain regulation to the extent of radically modifying its effects. The effect of deregulation can be even more devastating when the mechanisms of enforcement of rigid regulations are severely weakened or dismantled. The dismantling of monitoring institutions, however, is rarely publicized, occurs as an administrative procedure sometimes as a result of budget cuts, and gives less opportunity to interest groups to modify its course. The action is highly consequential and political in nature.

Local governments also have a stake in promoting a peaceful restructuring of companies and providing a good business environment and this interest is even more acute than the interest of the federal government, if only because of a matter of proximity. As local communities compete for investments and labor conflicts erupt in specific places, local governments have a particular interest in promoting a good business environment and keeping social peace. Thus, local governments also participate in

promoting the relaxation of old labor regulations and contributing to the creation of new labor institutions, and converge with local unions and companies in doing so.

As said, the federal government engages in promoting conditions for the relaxation of labor regulations and institutions. However, it is also the federal government that receives the pressure from national unions to moderate its agenda. This pushes the federal government to find subtle and less politically visible ways to carry out its agenda, through the implementation stage, the dismantling of monitoring, or letting go of arrangements that are in violation of current regulations. In addition, when the party in government is a labor-based party with historical alliances with the labor movement, depending on the political circumstances the government may enact erratic policies, favoring business and labor alternatively, as a way of offering concessions to their allies when pressured for votes. Although many of these concessions remain on paper and are never enacted, the unintended effect of these erratic policies is to alienate further the interest of business in formal reforms. As the government loses credibility, the parallel mechanisms of negotiations are reinforced.

This erratic nature of policies has led on occasion to the reversals of deregulations. This has prompted some scholars to point to the relevance of party ideology and party union alliances in the reversals. However, the argument appears as exaggerated. First, deregulation continues at a fast pace in parallel systems of negotiations, despite these reversals. Second, these re-regulations are not even implemented.

Finally, if in addition to the creation of parallel systems of negotiations, all above mentioned mechanisms can lead to the transformation of labor regulations and institutions, it is clear that previous explanations that claim that interest groups, particularly central unions managed to shape the final outcome of labor reform are at best incomplete. The distributional coalition approach that portrays the unions as particularly strong in this policy arena has been exaggerated. Instead, the transformation of labor regulations and institutions can be partially shaped by the political power of national unions. This can happen through their alliances with labor-based parties, or alliances with party members inside Congress (veto points), but changes do not stop there. Unions and their political allies can affect the transformation of labor regulations to a certain extent

when attempts are made at reforming labor laws through Congress, however, their power in the implementation of enacted legal changes or their reversal through administrative actions is much more limited. In fact, the participation of local unions in the creation and sustainability of parallel institutions of collective bargaining that deregulate the labor market, runs counter to previous explanations. Other explanations that consider the interests of labor-based parties in taking the unions' side for electoral reasons, or that emphasize the existence of "veto points" in the political system that helped stop the labor reform suffer much from the same problem. In sum, as long as the emphasis is on changes in the legal framework and the transformation goes beyond it, the effect of these variables will also be more limited.

8. Transforming labor regulations and institutions in Argentina

8.1. Local conditions and the shift in the balance of power

The drastic shift in the economic and political conditions in Latin America during the nineties had a visible effect in weakening the power of national unions vis-à-vis business. While this phenomenon is not unique to Latin America, the need of populist parties to look for new constituencies left the unions in the region in an even weaker position than their European counterparts. The new economic conditions brought a change in the preferences of business for more relaxed labor regulations and less constraining conditions for collective bargaining closer to the company level. This change in preferences, coupled with the shift in the balance of power, pushed for the deregulation of the existing labor regime. The effect of the economic and political conditions on the change of labor regime stands out in a comparison of these conditions before and after the nineties.

In Argentina, a model of a closed economy in the period 1940-1980 and organizational and political factors that strengthened the power of labor unions vis-à-vis employers favored the creation and endurance of labor regulations that were highly protectionist and detailed, as well as a centralized framework for collective bargaining agreements. A closed economy, a high level of state intervention that involved a high percentage of state-owned companies and high levels of formal employment characterized the economic context. At the same time, the political power of the labor

movement was strengthened through its close link to the powerful Peronist party, which always managed to have a dominant role in politics, even when it was banned from democratic and open elections.

The economic environment played an important role in helping the unions maintain their institutional preferences for centralized collective bargaining and protectionist legislation. A closed economy with a high level of government intervention that included heavy subsidies to industries and the maintenance of an artificially high level of employment, thanks to public employment, shaped the preferences of business in regards to labor legislation and centralized collective bargaining, as well as the ability of unions to impose their preferences over them. As for the employers, the fact that they were selling for a shielded domestic market with heavy subsidies from government made them more indifferent towards higher wages and more rigid labor conditions.[42] In fact, wage hikes were always transferred to prices with little effect on demand, given the common cycles of inflation and hyperinflation in the Argentine economy.

In a closed economy, higher wages also contribute to bolster the purchasing power of the population. This benefited local producers as well, creating an additional incentive for business to remain indifferent or even supportive of institutions that promote higher wages. In the case of business, the fact that Argentina has one of the most disorganized business sectors in the region, did not contribute to advance their positions about institutional preferences in the labor market.[43]

The origins of the labor legislation and the organization of collective bargaining that date back to the 1940s can be attributed more directly to the Peronist party. However, it is clear that the labor movement acted as a key ally for Perón vis-à-vis other groups in society, such as the middle classes, big business, and the traditional oligarchy, and strengthened his position as a political leader. The labor movement was also responsible

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[42] This explanation for employers' preferences is consistent with employers' behavior in other parts of the world. The preference for lower wages and the maintenance of social peace seems to be associated with the exposure of the sector to international competition. Employers in shielded sectors of the economy are more indifferent to higher wages and more rigid working conditions than employers in sectors subject to international competition (Bowman, 2002; Marks, 1989). However, the institutional preferences do not seem to be determined by the employers' preferences for a certain level of wages. This choice seems to depend upon other specific historical factors.

[43] See Schneider (2004) for his classification of business organization in Latin America in which Brazil and Argentina appear as the most disorganized in the region.

for keeping these institutions functioning, by participating in collective bargaining and monitoring its enforcement at the company level. It was also the labor movement that defended these institutions when military governments made attempts to eliminate them at different points in time, and when Peronism was banned from politics. Nevertheless, these same factors that contributed to union strength and the maintenance of the labor regime changed dramatically in the 1990s and with it the balance of power between business and unions.

The new environment in the 1990s was systematically eroding the power of unions at the same time that it was strengthening the power of business. Shrinking union density,[44] which is the most commonly used measure of union strength,[45] shows a rather dramatic decline in power, from 67.4% in 1985 to 38.7% in 1995.[46] Several factors account for that decline, including a sweeping program of privatizations, the growth of the informal and service sectors, and the participation of women in the labor market, as well as the loss of confidence in the unions' effectiveness in solving workers' problems. Not only did they lose membership, but also their ties to the Peronist party were severely shaken. The link to the party is particularly important for countries in the Latin American region in which these political ties have dramatically bolstered the market power of unions, which has not been as strong as the market power of their European counterparts.[47] The deterioration of the ties between the unions and the party worsened the on-going process of deterioration in the market power of the unions due to changes in the labor market and the economy alone.

The successful survival of the Peronist party had to do in part with the loosening of ties to core constituencies such as organized labor. It is precisely the fact that the party-union link was weakly institutionalized, when compared to other labor-based parties in European countries, which allowed the Peronist party to dismantle traditional mechanisms of labor participation when union influence began to hinder the party's electoral performance. This coalition transformation took place after 1983 and the Peronist party went from a de facto labor party to a predominantly patronage-based party.

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[44] Union density is calculated as the percentage of the total formal workforce that is affiliated to a union.
[45] For different measures of union strength, see McGuire (1999).
[46] See ILO, World Labor Report (1997-1998). In fact, Argentina represents one of the most dramatic declines in union density in the region.
[47] Burgess (1998)

In the past, unions had had considerable influence in taking legislative seats for the Peronist party and in influencing the party agenda. This influence was exercised through the weakly institutionalized idea that the unions had the right to a "*tercio*" (a third) of seats on the party ticket; the political branch of unions gathered around what was termed the "62" organizations during the dictatorship; and through the substantial organizational and financial resources provided by unions for the purposes of party elections[48].

The Peronist party's 1983 defeat sparked the emergence of the Renovation faction within its ranks. The objectives were to broaden the Peronist party's electoral appeal, to democratize and strengthen its territorial base, and to de-emphasize traditional party symbols and rhetoric, all of which implied loosening their ties to labor. The Renovation took on the task of getting rid of the "*tercio*", the "62", and the influence of unions through their financial resources. The union "*tercio*" was already contested in 1983. The Renovation pressed to replace it with direct primaries to select leaders and candidates and the party adopted this new mechanism. Through this mechanism, the Renovation managed to change the leadership of the party with victories in large urban districts.

Once the Peronist party won seats in elections, the party started to replace union funds with government resources for political campaigns and with clientelistic tactics. In 1983, the Peronist party had won 12 governorships, hundreds of mayoralties and provincial legislative seats. The *punteros* (captain wards) who had previously gone to unions for resources now turned to Peronist public officials. Finally, between 1983 and 1987, the "62" lost its informal status as the Peronist party's encompassing "labor branch" and instead came to be viewed by Peronists as one of several labor factions.

At the same time that the union movement was losing strength and power, business was becoming a central actor in the new economic environment with increased power. Several factors account for this power increase.[49] First, as the Menem

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[48] Levitsky (2003)

[49] This is of course a statement of a general trend although within the business community some groups benefited more than others and there were "losers" and "winners" during the process of reforms. Foreign producers were among the winners in this process in which they were offered extraordinary levels of profits during the processes of privatization in sectors such as oil, telecommunications, electricity, gas, and transportation. Domestic producers, although supposed at first taken to be the net losers of this economic transformation as a result of cutting down on State subsidies, in many cases became winners in processes of privatization or even through the upgrading of their operations or the creation of joint ventures with foreign investors (Etchemendy, 2004; Schamis, 1999.)

administration in the 1990s started an aggressive program of market-oriented reforms that included the privatization of all previously state-owned companies, private capital became the main engine of growth and government revenues. As such, the state became more dependent on private investment and more pressed for creating the best conditions for capital accumulation. In the context of a global economy in which countries like Argentina depended on foreign investment, pressures to provide a good investment environment became even more of an issue. Moreover, as the Menem administration decided to adopt a fixed exchange rate of a one to one parity between the peso and the dollar in 1991 through the Convertibility Law, giving up its monetary policy, it became imperative for the state to promote sustained growth and revenues so as to keep the level of reserves in line with the supply of domestic currency. Attracting foreign investment, creating good conditions for investment in general, and increasing the level of competitiveness of companies became an important priority. The need to generate a sustained level of growth and revenues was compounded by the foreign debt that Argentina had to pay as a result of decades of irresponsible borrowing.

The heightened importance of business in the new environment was immediately reflected in the cabinet formed by the Menem administration, along with the adoption of pro-business policies. The first two ministers of economy came from one of the most traditional and powerful conglomerates in Argentina, Bunge and Born. In 1991, Menem chose Cavallo as minister of economy, who remained in this position for the following five years. Cavallo had worked for big business in Argentina and was a fervent advocate of market-oriented reforms. He masterminded many of the market-oriented reforms and accumulated so much power within the cabinet that was known as a *"super ministro"* ("super minister").

Two additional factors contributed to increase the power of business vis-à-vis labor in the 1990s. One of the factors was the level of unemployment, which rose to unprecedented levels by the mid 1990s and reached 20% in 1995 from a traditional level of 5%. This phenomenon was taking place throughout the Latin American region and remained a constant feature of its labor markets up until the present. As it is well documented, high levels of unemployment tilt the balance of power towards business, as more workers are looking for employment than jobs are offered. In this scenario, even the

employed became more insecure as the risk of losing their jobs was more real and they were more willing to accept labor conditions imposed by business. Unions, in turn, not only lost membership as a result of a net job loss but also had less capacity for maneuvering, as workers were less willing to organize against employers for fear of losing their jobs.

The last factor contributing to increase employers' power *vis-à-vis* unions' was the need to find supporters of market-oriented reforms in a context in which opposition was to be expected from potential losers of these reforms, such as unions. In building coalitions for reform, especially in the case of a populist party such as Peronism that had been characterized as consistently carrying out many of the policies that the market-oriented reforms were supposed to reverse, business was clearly a potential ally. As shown, the Menem administration looked for ways to entice business into its political coalition by offering government positions to members of the right-wing party, UCD, or members of the business community. A string of market-oriented policies implemented forcefully, even against the active opposition of unions and other interest groups, also gained the confidence of business in the government's agenda.

In sum, the shift in the balance of power in favor of business in a context in which business had changed their preferences to lower labor costs, a more efficient workforce, and more decentralized bargaining agreements is essential in pushing the change of labor institutions and regulations in that direction. However, the mere change in the balance of power cannot explain the direction and final shape of these changes. As the shift in the balance of power takes place in a certain political context and within specific labor institutions already in place, the characteristics of previous labor institutions and politics between business and labor at the micro level will shape the final outcomes of the transformations of labor regulations and relations.

8.2. Government actions, labor reform, and the response of private actors

As the economy opened up to global markets, subsidies were reduced or eliminated, most state-owned companies were privatized, financial markets were liberalized and the currency board was approved, and pressure to reduce costs and increase productivity grew. Most of the literature in the political economy of reforms has

focused in this context in the legislative changes that the government tried to implement through the so-called labor reform. Argentina pursued one of the most aggressive programs of liberalization in the world, and one of the most serious attempts at reforming its labor codes for both individual and collective labor rights. Attempts at reforming the labor codes occurred in 1991, 1993, 1995, 1998 and 2000. While Argentina was considered a "poster child" for the successful implementation of a wide range of market-oriented policies in a short period of time, the legislative changes introduced on labor reform seemed to have proven disappointing. The 1991 reform succeeded at introducing short-term contracts into a legal framework that did not offer any alternative to the contract of indefinite duration, although the 1998 reform eliminated them, only to be restored back again in the 2000 reform. So, external flexibility seemed an area in which legislative changes had been able to modify it, even if the 1998 reform represented a backlash. However, other important areas for company restructuring seemed to have remained difficult to change.

For example, throughout the nineties, the level of centralization in collective bargaining seemed to have remained quite high, even if there was a growing tendency to sign decentralized agreements at the company level, the actual number of agreements signed was still small. This seemed to indicate that unions had imposed their views against what the government was trying to change, that is, centralization was prevailing over decentralization of collective bargaining. Moreover, in 1998, there was a legislative change in labor codes. Its main objective was to re-centralize collective bargaining and strengthen the power of national unions. Studies of labor reform take the 1998 reform as an example of partisan policies and the power of unions to impose their views, despite the fact that further investigation reveals that no new agreements at the central level were signed after the 1998 reform, and the tendency to decentralize continued.

The dispute over the level of centralization of collective bargaining was key in the Argentine labor regime and was a highly political issue. It had been one of the defining features of the labor regime since the 1940s. For unions, centralization of collective bargaining meant centralized power and a stronger union movement. National unions feared that the decentralization of collective bargaining could lead to less control over local unions and a fragmented union movement with less bargaining power vis-à-vis

employers. For employers, especially in large companies, centralized collective bargaining meant having to agree on working conditions that may not be adequate for their own companies, more rigidity, and in general a less flexible method for rapidly adjusting conditions inside the company to the changing environment. In fact, updating old agreements to new conditions was essential for companies in an environment in which easy cost adjustments were not always tenable. The level at which the agreements would be renewed was part of the renewal process and an important political battle for unions.

Judging exclusively from the point of view of changes in legislation and the attempts that the government had made in decentralizing collective bargaining, as opposed to the successes, it appeared as if the unions had imposed their views. However, the reality of these negotiations was quite different on the ground, and the government helped to smooth the process. A parallel system of negotiations that was highly decentralized and gathered local unions, employers and workers blossomed in the nineties beneath the surface of a labor regime that looked outdated and unchanged. In its more formal version, the parallel system of collective bargaining consists of civil law agreements signed among local unions, workers and companies, which are often times registered in the departments of labor at the provincial level. This system developed fully in the highly competitive context of the nineties, but its more modest origins can be traced back to the fifties. So, beneath the surface of outdated and rigid centralized agreements and only few decentralized formal agreements, employers, local unions and workers were negotiating new labor conditions at the company level, and the labor regime was being reshaped by it. Whatever national unions could do to prevent the passing of new legislation in regards to collective bargaining, they were not able to prevent decentralization on the ground.

Soon after the policy change game started in the 1990s, it became clear to employers that the administration did not have the same kind of determination to impose a market-oriented reform in the labor market as it had done in other areas. As the policy change game unfolded, this intuition became almost a fact. The government not only had made important compromises in passed legislation, in 1998 it completely reversed its policies, removed all temporary contracts, and re-centralized collective bargaining. As

the decentralized parallel system of negotiations had started from the beginning of the reforms, in part as a response to the unions' hard stance towards decentralizing negotiations formally, and in part, as a result of the weariness of employers to commit formally in a rapidly changing environment, it continued to blossom as changes in the economy prompted companies to restructure. As the system proved to be highly effective, the costs for bypassing the formal system diminished, and local departments of labor became willing to promote the parallel system or at least to let it go. This parallel system became more and more the normal way of doing business. Moreover, its existence deflated the interest of employers to push for formal reforms, as well as the interest of officials to impose politically costly changes. Thus, as the difficulty to change the formal system of labor relations prompted the blossoming of the informal system, once the informal system established itself as an efficient way to make changes at the company level, it reinforced the difficulty to change it formally, and reached a sort of balance.

The parallel system of negotiations was key not just in modifying the level at which negotiations were reached, but also in the content of those negotiations. Negotiations in the parallel system not only modified substantially the current content of centralized agreements, increasing the internal flexibility of the company, and going beyond the constraints imposed by law in company restructuring, but also made it easy to re-negotiate and modify them as the company saw fit. Moreover, as the parallel system became the regular way of negotiating, even some of the windows opened in the legislation to introduce more internal flexibility with formal decentralized agreements were not exploited. In 1991, and again in 1996, several modifications were introduced in the legislation that allowed for the introduction of more flexible work rules in collective agreements. The number of formal agreements, however, remained unchanged. Unionists and employers argue that once they start signing agreements in the parallel system, it is very difficult to make them compatible with more formal agreements, even if more decentralized, either because national unions would get involved in new negotiations, or because they introduce a level of flexibility that cannot be matched by more formal agreements. Therefore, there is a tendency to stay on the same course once agreements start being signed in the parallel system.

The legislative means for changing the system has been overestimated;

bureaucrats and politicians have found alternative means for either introducing changes or for supporting the development of the parallel system. In the case of collective bargaining, even if the government failed to decentralize it through the introduction of new labor codes, although it attempted to do so in 1993 and again in 1995, it pushed the system in that direction through the implementation of decree 1334/91 passed in 1991, the deregulation of collective bargaining in privatized companies, and in particular by not interfering with the negotiations at the company level carried out in the parallel system. Decree 1334/91 which had the main objective of banning negotiations over wages based on inflation, and regulated that negotiations had to be based instead on productivity, was responsible for launching the signing of a significant number of "*acuerdos*"[50] at the company level that were supposed to complement previous agreements, but which in fact modify the fundamentals of those agreements: not just wages but working conditions as well. These negotiations created an important precedent in negotiations at the company level, breaking a longstanding tradition of centralized negotiations which unions endorsed. Special regulations through decrees also had the effect of decentralizing agreements for privatized companies and alienating from the labor movement many public sector unions, which became more closely aligned with governmental policies. Finally, the government chose not to interfere with the negotiations in the parallel system, being well aware of their existence, although it circumvented legal regulations. In fact, the dismantling of the monitoring system further reinforced the minimization of controls over the enforcement of centralized agreements that remained current, given that inspections included the verification of the enforcement of previous agreements, thus opening the way for local unions, employers and workers to change labor conditions on their own accord. Also, on the implementation side, it was up to the provinces to enforce labor regulations, through the departments of labor, which by their actions were in fact reinforcing and promoting the existence of decentralized negotiations in the parallel system.

The sanctioning of decrees, and administrative actions at both the federal and provincial levels, was therefore responsible for stirring the labor regime in a deregulatory

[50] For a definition of "*acuerdos*" see the section on The Role of Collective Bargaining Agreements in chapter 2, section 6, in particular footnote 67.

course. Similar actions were taken by the government in regards to wage regulation, with the effect of further reducing labor taxes in addition to some of the measures taken through legislative changes. The end result was the change of many of the defining features of the previous labor regime, such as the centralization of collective bargaining, rigid regulations in regards to internal flexibility, wage adjustments by inflation, and a monitoring system that was relatively well enforced. Even the *obras sociales* (union-managed health coverage funds) were subject to some deregulation through decrees. The recognition of the CTA as an alternative workers' confederation and the relaxation of regulations for the registration of local unions, opened the way for a less centralized union movement. However, the *obras sociales* and the centralization of the labor movement remained untouched, and were used consciously by the government to negotiate other changes. The former, however, were not relevant for employers to deregulate labor conditions and adjust costs, and did not stand in the way of company restructuring.

8.3. Origins and sustainability of the parallel system of negotiations

Given that the reshaping of labor institutions through a parallel system of negotiations and the relaxation of labor regulations that takes place in it constitute a big part of the adjustment of labor institutions and regulations in a highly competitive context, an explanation of its origins and sustainability is in order. The importance of this parallel system is considerable, given that it introduces a level of decentralization in collective bargaining that was hardly achieved through legal changes or formal negotiations. At the same time, the content of the negotiations relaxes labor regulations to a greater extent than what the government has accomplished through legislative changes.

What made the decentralization of collective bargaining possible in a system always characterized as highly centralized and in which national unions had forcefully defended this level of negotiations? The decentralization of the collective bargaining system through a parallel system of negotiations at the company level can be accounted for by three factors: a *dual institutional structure* in the Argentine system of labor relations; certain *conditions* that pressure the labor relations system downward to the company level; and the *interests* of the main stakeholders. First, a certain institutional

structure of the labor movement that presented a duality between a highly centralized structure, in the *Confederación General del Trabajo* (CGT) but also in the highly centralized national unions that represent workers in each sector, that lobbied the government politically and a highly decentralized structure with *comisiones internas* at the company level in each sector. This institutional structure had the potential to generate a greater level of decentralization if conditions pressured the system downward.

Second, the conditions that create pressure to give more weight to the *comisión interna* at company level negotiations were present at several points in time, shifting the focus of negotiations towards these *comisiones internas*. The *comisiones internas* are the link between workers at a given company and the union in that sector. It has a dual function of representing workers vis-à-vis the employers and the union vis-à-vis the workers. It is the presence of the union at the company level, but it also voices the demands of workers within the union and before the employer. The mandatory presence of the *comisión interna* makes the union stronger vis-à-vis the employer because it makes it an unavoidable witness of the company operations, and the communication channel for the national unions' position. It is the link between the rank-and-file and the highly political central unions. Historically, however, the link between the *comisión interna* and the national unions has varied in its strength, and the ability of the national unions to control the *comisión interna* is contingent upon the political conditions. A certain mismatch between the political position of a national union and the daily operations of the *comisión interna* has always been a possibility.

Contingent historical factors created these conditions that favored the role of *comisiones internas*. First, the fact that business was never organized in a central organization similar to the union movement has made it more difficult for unions to find a business counterpart with which to sign an activity agreement[51]. This trend was more pronounced in the 1990s, given that many of the business organizations (*cámaras*

[51] See Schneider (2004) for the fragmented nature of the business organizations in Argentina, as opposed to a more cohesive and corporatist structure in other Latin American countries such as Mexico. The fragmented nature of business organizations in Argentina however does not make collective bargaining agreements at the industry level impossible. In regards to collective bargaining, Argentine legislation has made provisions for the state to decide which business organization or group of business could serve as a counterpart of a given union for collective bargaining purposes. Nonetheless, this makes who is in government crucial to promote collective bargaining when actors would not be so willing to engage in by themselves.

empresariales) that had originally signed agreements had disappeared or the companies in the sector had changed hands, disappeared, or new ones had sprung up, making some of these *cámaras* not really representative. This tendency pressured for negotiations below the industry level. Second, the prohibition of collective bargaining during the 1976-1983 dictatorships and at several points in time during other de facto governments during the 1960s and 1970s, prompted companies to continue their negotiations with workers at the internal level. During the 1960s and 1970s the labor movement remained strong despite formal prohibitions to exercise its full rights, which translated into continuous negotiations with the *comisión interna* at the company level. During the 1976-1983 dictatorship, *comisiones internas* continued representing workers informally inside companies and had to be consulted by management during their restructuring.

In addition to the institutional structure that provides a platform for company level negotiations with *comisiones internas*, and certain conditions that pressured for negotiations at this level, it is necessary that the strategic interests of the main stakeholders are well served by this parallel system in order to account for its creation and maintenance. In this case, the main stakeholders are workers, local unions, business and the government. For workers, negotiations in the parallel system constitute an effective means of solving immediate problems that are specific to their workplace and the improvement of their welfare. This is clearly the only alternative during the prohibition of formal collective bargaining, but at times, even when formal negotiations are possible, workers find that their views are better represented by *comisiones internas* at the company level, than by national unions, that are more removed from their realities and more concerned by their own power games. For business, it is an effective and efficient means of carrying out daily operations or implementing changes while preserving social peace inside each company. In the 1990s, they could circumvent the presence of national unions, which could be more reluctant to introduce changes. They could avoid lengthy, complicated mechanisms for negotiations they could cater the negotiations to their own needs more closely, and have a more flexible mechanism for changing rules when needed. However, the presence of the *comisión interna* at the company made some kind of negotiations with the local union and the workers unavoidable, which could have been otherwise neglected altogether. As for the unions,

their interests are more contingent, and interests of local unions can differ from the interests of national unions. In general terms, however, unions have an interest in representing workers against employers to justify their existence and preserve their power.

The parallel system of negotiations developed in a piece-meal process over the years since the time in which the centralized system of labor relations was created. Four clear phases are present in the development of the parallel system of negotiations. In every phase, the three factors mentioned above can be found with different levels of intensity and in different historical circumstances, but the three of them are essential to create and sustain the parallel system. A first phase appeared since the inception of the system of centralized negotiations in the 1940s, when *comisiones internas* negotiated at the company level specific working conditions and wages at the company level, even when centralized negotiations dominated the scene. At this point, the parallel system of negotiations played a marginal role compared to the formal system of centralized negotiations, but it was nonetheless present.

A second phase in the development of the parallel system of negotiations took place between 1973 and 1975. At this time, there was a split in the Peronist labor movement and many of the *comisiones internas* sided with a left-wing movement that questioned the top-down style of national unions. The parallel system of negotiations became at this point a real challenge to the formal system of centralized agreements, but the state with the acquiescence of national unions repressed the left-wing movement. A third phase developed over the dictatorship that lasted from 1976-1983. As during other dictatorships, the military banned formal collective bargaining as well as any other union activity. All actors involved agreed that during this period, negotiations between workers and employers would continue at the factory level, albeit informally, provided that it was the only possible alternative. By now, bargaining at the factory level making use of civil law contracts or other alternative means had become the norm.

Finally, a fourth phase started in the 1990s and the parallel system of negotiations blossomed while formal negotiations at the central level were stalled. In the last phase, pressures to deregulate and decentralize were stronger than ever before, and a balance of power in favor of business took place. Civil contracts had been in use for a long time and

the informal system satisfied the interests of the main stakeholders. As I will show later, the parallel system was ignored by the federal government and was even enforced by departments of labor at the provincial level. The parallel system generated so many agreements that translating them or making them compatible with more formal agreements became difficult, and the parallel system was "locked-in".

8.4. Why and when do sectors get involved in the parallel system of negotiations?

As argued, previous institutions of labor relations play an important role in shaping the transformations to adapt to a more competitive environment. At the national level, the dual character of the Argentine labor movement, with highly centralized unions at the top and highly decentralized *comisiones internas* at every company account for the formation of a hybrid in which the parallel system of negotiations played a crucial role during the adjustment phase. Likewise, the fact that the labor movement and collective bargaining is organized along sector lines, with the same central union at the top intervening in all negotiations in this sector influenced the specific shape that labor relations takes in every sector.

As explained, the parallel system of negotiations appeared underneath the surface of formal negotiations that still existed in every sector, although the parallel system surpassed the number of agreements signed formally. So, even though the parallel system of negotiations became a phenomenon that transcended any specific sector, the particular bundle of formal and informal negotiations in each sector was shaped at the sector level.

Through a comparison of similar sectors such as the auto and metal industries, I explain the factors that seem to determine the specific bundles of formal and informal agreements that will appear in every sector. Possible bundles of agreements determine four typologies according to the level of informality and centralization (see Table 1.2).

Table 1.2.
Typologies of Collective Bargaining Agreements

	Centralized	Decentralized
Formal	1	2
Informal	3	4

Agreements signed in 1975, and still current in important sectors of the economy, would enter into category (1) while agreements in the parallel system of negotiations would be in category (4). Category (3), although possible in theory does not have any empirical cases, given that all negotiations in the parallel system are decentralized. So, for example, the metal sector would be a combination of category (1) with its industry agreement of 1975 and a plethora of agreements in category (4) that have updated wages and working conditions since then. A few sectors, such as autos and textiles will have a combination of agreements in category (2) and some of them will be in category (4).

From the systematic comparison over time of the metal and auto sectors, in addition to the evaluation of examples from other sectors, I found that three factors seem to determine the particular bundle that appears in every sector. First, the ideology of the union in regards to centralization plays an important role in determining the number of agreements signed in the parallel system. The stronger the ideology in favor of centralized agreements, the higher the volume of agreements signed in the parallel system. Unions with a strong ideology in terms of centralization prefer to keep negotiations at the company level informal, so that they do not openly admit their defeat before the employers.

If a strong ideology of centralized collective bargaining will tilt the bundle of agreements towards the parallel system of negotiations, other two factors will make unions sign formal decentralized agreements. These two factors act as *incentives* that produce an alignment not only of local interests--local unions and companies--, but of the interests of central unions as well. It is consistent with the general argument that assumes that central unions will oppose reforms and it is the alignment of local unions and companies that pushes changes, often times informally. However, when the alignment includes the central unions as well as local unions, then the effect is to formalize the changes. So, when these incentives are present, they push formal negotiations when they were previously informal.

One of the factors is the arrival of new and substantial investment and the other one is the level of competition among unions in a given sector. The arrival of new and substantial investment creates an incentive for unions to sign formal agreements at the company level, which is always the preference of business, given that they can gain new

financial resources and a new constituency. In addition, if there is competition among unions in a given sector, so that companies could play them against one another, unions will try to please the companies to gain the representation of new workers in usually dynamic companies. So, in those cases, even a union like UOM with a strong ideology of centralization would make an exception and sign a more formal decentralized agreement.

9. How this dissertation is organized

This dissertation is organized as follows: In chapter 2, I discuss how the system of labor regulations and relations, as it was set up in the 1940s and remained in place at the beginning of the reforms in the 1990s, was creating certain rigidities in the deployment of the labor force. I draw from the literature on rigidities/flexibilities in the labor market and analyze the Argentine labor codes and labor relations in light of it. This chapter provides an essential analysis for the evaluation of how legal reforms or the parallel system of collective bargaining were providing outlets of flexibility in regards to these regulations. Only with this background in mind is it possible to discriminate among the different legal reforms, presidential decrees and informal regulations, and understand the relative importance of each of them, instead of doing a blanket appreciation of how many reforms were approved or not in Congress.

In chapter 3, I present the legal changes that the government tried to implement in the 1990s, and what it accomplished in the end. The reforms were carried out once the balance of power between business and labor switched in favor of business and the economic environment was changing dramatically, in part through the market-oriented reforms that the government was implementing. In this chapter, I show how the dominant approach in the literature leads to a misrepresentation of the importance of changes in modifying behaviors in the labor market, because of its exclusive focus on the passing of laws through Congress. In some cases, it overestimates the importance of some of the changes such as the centralization of collective bargaining in 1998, while it underestimates others that have been implemented through presidential decrees or the relaxation of the monitoring system. I basically argue that because the path of legal changes found several sources of resistance from social actors, two strategies were found more effective: the dismantling of mechanisms of labor enforcement and the enactment

of less visible changes using presidential decrees. In this chapter, it becomes clear why and how policy change scenarios affect the way in which government acts towards the reform of the labor market, looking for additional outlets to relax labor regulations and why the parallel system of labor relations bloomed on the side of the legal system.

In chapter 4, I show the influence of the characteristics of the previous system of labor relations in the development of a parallel system of collective bargaining. In this chapter, I present the evidence for the existence of the parallel system of collective bargaining through which actors decentralized collective bargaining and relaxed labor regulations in Argentina. I argue that this has been the main mechanism through which changes in labor institutions and regulations have been accomplished with the active participation of business and unions and the acquiescence of the federal government. In addition, the existence of this effective mechanism explains why legal reforms have been delayed or stalled.

In chapter 5, and given the importance of informal mechanisms of negotiations in the transformation of labor institutions and regulations in Argentina and other countries in the region, I explore why this parallel system of negotiations was created and sustained over time. This chapter tries to point out the factors that led to the creation of a new institution as the parallel mechanism of negotiations and how it could survive in the outskirts of the legal system. In addition, I further investigate why different sectors of the economy engage at different rates in the parallel system of negotiations and argue that the final shape of labor relations is fought out at the sector level. This chapter is an extension of my argument in the previous chapter, on the effect of the previous system of labor relations in the creation of new institutions in the labor market. If at the national level, the dual character of the Argentine labor movement led to the creation of a parallel and decentralized system of negotiations, the fact that special bundles of informal/formal negotiations vary by sector is related to the sector based organization of the labor movement, which is also a characteristic of the system of labor relations in Argentina.

Chapter 6 concludes with the main contributions of this research and some of its limitations, and explores a future research agenda for the study of change in labor institutions and regulations beyond the case of Argentina.

CHAPTER TWO
The Argentine Legal Framework through the Rigidity/Flexibility Lens

1. Introduction

Studies in the politics of labor reform have tried to unravel the reasons behind the apparent 'anomaly' of a stalled or derailed labor reform in an era of otherwise policy reversal. Most of the explanations pointed to the political factors that had derailed the reform and stopped the process of deregulation. Which political factors in particular affect the process of reform depends on the characteristics of the political system in question, but they are all related to the process of passing reforms of labor laws through Congress.

In the next two chapters, through the evaluation of the case of Argentina in the 1990s, I will show that these approaches to labor reform miss important transformations in labor regulations and institutions for two main reasons. On the one hand, evaluations of the success or failure of a specific labor reform focus exclusively on changes in labor codes amended through legislative procedures. This method contains several assumptions. First, changes in labor codes are seen as the main tool to introduce changes in the labor market. Second, changes in labor codes are given precedence over more subtle but powerful means of changes, such as presidential decrees or changes in the enforcement of regulations. On the other hand, looking exclusively at the scene of big politics and the changes sanctioned by the state, they miss the transformations that have occurred through private agreements reached between employers and workers in actual labor market transactions.

Overall, changes in labor regulations and institutions were understood as a total change of the system, which should happen through the change of labor codes. As Maria Lorena Cook puts it, this is based on a number of assumptions about the system of labor regulations and relations in Latin America that distinguish them from other systems. Given that labor codes are so detailed and protective with a strong state intervention in labor relations and union formation, it seemed that the only way to change the system was through the total change of the legal framework. As I will show in this chapter, however, this assumption is too rigid and there are more interstices in the system through which flexibility can be introduced than it could be assumed at first glance. Exclusive

focus on the macro political scene will miss the transformations that take place through the political maneuvering between unions and business in each sector.

As I will argue, in order to understand changes in labor regulations and institutions in a context of increased competition, it is essential to understand how the system of industrial relations in each country really works beyond the letter of the law, and how the incentives and constraints for the actors that play in it are actually determined. At the same time, sources of rigidity in each specific country need to be identified before one is able to see the way in which these rigidities can be relaxed, instead of assuming that changes introduced through the packages of so-called labor reforms will accomplish it. In fact, attempts at explaining changes in industrial relations systems and regulations in Latin America are also reaching the conclusion that more information on the characteristics of the workings of these systems are required before comparisons can be drawn.[52]

In this chapter, I will focus on the characteristics of the Argentine system of labor regulations and industrial relations before the opening of the economy in the 1990s, and I will point to the possible sources of rigidity in a context of increased competition. This chapter will provide the necessary background to understand the changes in the legal framework through a different light, and posit the limitations of previous approaches in the literature. In the following chapter, I will discuss how the system was changed through an array of measures that were effective at diminishing some of the possible sources of rigidities, and the ones that still remained and were effectively modified through changes in the parallel system of negotiations, which I will discuss in chapters 4 and 5.

2. Labor legal frameworks under stress: Origins and features of the Argentine system

Protectionist labor laws and centralized collective bargaining were institutionalized in Argentina at a time when closed economies were the norm, and many countries in the region were under populist regimes. In the 1940s, Argentina had a closed economy with a high level of reserves in the central bank, in a world with little international trade, and a working class that was growing stronger, better organized, and

[52] Cook (1998); Indermit et.al (2002)

politically active. In such economic and political context, Perón found in the passing of protectionist labor legislation a potent political tool to gain the popular support of the working class, and attract unions as political allies, while keeping the economy growing.

The military coup of 1943 through which Perón reached the Department of Labor and Social Security brought to the fore a new ideological view, one in which labor legislation and social security were understood as essential elements of development and social justice. Perón embraced this new ideology and started his own political campaign through this office by enacting many separate pieces of legislation to protect and promote the welfare of workers in the workplace. Along with his passing of decrees and regulations to protect workers, Perón courted the support of unions, which ultimately brought him to the presidency in 1945.

The two Peronist administrations left an indelible mark in the Argentine political system and in the institutions and regulations of the labor market. Most of the labor legislation that still regulates labor market transactions and union organization date back to the 1940s when Perón was in power. Labor codes that regulate individual contracts were premised on the notion that workers and employers are not equals. Workers are the weaker party in a labor relationship, and the state assumes a protector role in it, to ensure that workers get a fair treatment. Labor legislation for individual contracts is not only protective of workers, but it is also thorough and detailed, legislating over almost every aspect of a labor contract.[53]

The Peronist administrations also enacted legislation in regards to collective bargaining and union organization with an eye on strengthening the power of its main political ally: the unions and the workers it represented. In a nutshell, the legislation on collective bargaining coupled with the legislation on union organization promoted centralized collective bargaining to reinforce the power of central unions. In addition, union organization was set up in a way that restricted competition among unions and encouraged a vertical organization of unions by sector at the national level, so that every

[53] Perón enacted separate pieces of legislation to regulate different aspects of the individual labor contract, which were gathered into a simple code titled Ley 20.744-*Ley de Contrato de Trabajo* (Law of Labor Contract) in 1973 during his third term as president and was later transformed into Ley 21.297 in 1976, with minor changes, and it is the one that remains current. The Law of Labor Contract only gathered pieces of legislation that already existed and had been regulating transactions since the 1940s, but it gave them more visibility and clarity.

sector would have only one union representing all workers nationwide. A national union, usually located in the capital city of Buenos Aires, would be decentralized into numerous local unions throughout the national territory. According to the legislation that regulates union organization, only the most representative union in each sector would have the legal right to declare strikes, carry out collective bargaining, and will be entitled all other rights and obligations associated with its title.

In labor regulations, the state has important prerogatives, to the extent that many experts describe the Argentine system of labor relations and union organization as one with a high level of state intervention. To put it succinctly, the state has a decisive role in the content and validation of collective bargaining agreements, and regulates the formation and functioning of unions, from granting the monopoly of representation, to declaring a certain strike illegal or forcing employers and workers to reconcile their differences through a process called *conciliación obligatoria*.

The bottom line in regards to the legal framework that regulates labor contracts is that consensual agreements between employers and workers are limited and supervised by the state authority. This means that any agreements reached between employers and workers have to meet certain minimum standards in their content and procedures to be considered legal labor contracts. Given these legal constraints, the system of regulations contains rigidities that make it difficult for the system to accommodate to drastic changes in the economic environment.

In more specific terms, every collective bargaining agreement signed between an employer and a union needs to be revised by the state in light of what is the *Orden Público Laboral* (Public Labor Order) in order to be legally validated. The Public Labor Order consists of all laws and regulations related to labor contracts, starting with the labor rights enshrined in the National Constitution with its 1949 amendment during the first Peronist administration. In hierarchical order, the *Orden Público Laboral* comprises first the rights enshrined in the National Constitution, followed by the general principles that guide all labor legislation which state that workers are the weakest party in the relationship and that in case of doubt the law should side with the worker, a principle known as "*in dubio pro operario*".

In addition, all labor codes in regards to individual contracts should be adhered to

as well, as all previous collective bargaining agreements signed between employers and unions and validated by the state. In practical terms, this means that labor contracts cannot be below this threshold of minimum standards, even if workers and employers consent to it. For collective bargaining agreements, this means that company agreements can only *improve* on conditions established in central collective agreements and the labor codes, which impose tight limits to what company agreements can accomplish.

Besides the minimum standards imposed by law in any labor contract, collective agreements in Argentina, which also acquire legal status once ratified by the state, have the characteristic of regulating an activity *until a new contract replaces it*. This principle known as *ultraactividad* (continuity in-force) introduces an additional level of rigidity to regulations introduced by collective bargaining, unless they are not renegotiated through another agreement, which is common in many sectors.

Agreements remain valid and override any private agreements between workers and employers that do not follow the right administrative procedures. This feature of the system is one that has been forcefully defended by unions when the issue of removing it was discussed during proposed labor reforms. It is important to bear in mind that such contracts also maintain in force any contributions to the unions previously agreed with employers, which usually constitute a percentage of the paid salaries. During the 1990s, when union finances were dwindling, preserving these contributions was important, especially because the market power of unions was weak. Also, removing continuity in force means that every negotiation with an employer has to start anew, while with continuity the negotiation floor is the previous collective bargaining agreement. Again, when the power of unions is weak as it was in the 1990s starting negotiations from a blank slate undermined the possibilities of signing good agreements from a union's point of view.

The fact that labor laws and regulations are federal and therefore are valid throughout the national territory does not help in making them adaptable to specific regional situations. Within Argentina's large territory lie important regional differences in terms of level of development and human resources. Despite these regional differences, workers in the modern and sophisticated capital city of Buenos Aires are regulated by the same labor regulations as rural workers in remote and backward areas of

the interior, adding to the rigidities of labor codes. Provinces are only granted the right to police the use of these regulations but cannot change the codes or enact new ones.

The system not only imposed clear limits to what employers and workers could agree on their free will, but it also included effective enforcement mechanisms. Violations of labor rights resulted in lawsuits that could cost large sums of money to companies. Given the guiding principles of the labor code in Argentina, almost all lawsuits are resolved in favor of the worker, with all the costs paid by the employer. Legal experts have long considered the Argentine legal system for labor disputes as highly contentious, with a large number of highly trained labor lawyers graduating every year specialized on labor disputes, a well developed sub-field within the profession, and a competent judicial system devoted to this subject.[54] It was common for fired workers to sue former employers demanding compensation for legal rights that had been violated. This was particularly easy to do in a labor market that had been characterized by low unemployment rates until the nineties.[55]

The system of highly legalistic and detailed labor regulations, coupled with a centralized system of collective bargaining which at first sight does not seem to be the employers' heaven, seemed to be relatively well tolerated by employers, and produced good results in the labor market. This was partly the result of an economy that was sheltered from international competition, and in which the state heavily subsidized private businesses.

If labor regulations or centralized collective bargaining with a politically and organizationally strong labor movement was pushing costs up, they could be transferred to prices, as employers in fact did. This was the picture at least up until the seventies, when the economy started to show some signs of deterioration and important changes took place in the labor market. Up until then Argentina had been characterized by relatively low levels of unemployment and a relatively small informal sector. Wages had kept pace with economic growth, and indicators of income distribution were good, especially in a region characterized by dramatic income inequalities.

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[54] Goldín (2001)

[55] According to a study by IDEA, in 1995, lawsuits resulted in 8,970 million dollars in costs for employers, only for work-related accidents, even after reforms to the system had been introduced. This amount represented 3.1% of the total GDP for the whole country and 16.5% of all wages paid.

However, even in the seventies, when the system started to show some signs of exhaustion, the country witnessed one of the most comprehensive rounds of centralized negotiations between unions and employers, which showed how resistant to change the system was. In 1975, employers and national unions from every single sector of the economy signed a collective bargaining agreement to regulate all workers in that sector, irrespective of their affiliation to the union, and their direct involvement in the agreement. These agreements were comprehensive and introduced regulations in all aspects of the labor market, from wages and other types of compensation to working conditions and work hours. The agreements covered 100% of the labor force and it was considered one of the biggest successes of the labor movement.

The scenario of protective labor legislation and centralized collective bargaining continued almost unaltered up until the nineties. Despite some clear mismatches between labor institutions and the reality of the economy and the labor market, labor unions had been successful in harboring out any attempts at changing the legal system. Centralized collective bargaining and even aspects of legal regulations had been interrupted from time to time when Argentina suffered the ambush of yet another military dictatorship. However, the interruptions never succeeded at imposing a different order, and labor regulations were always restored after these illegitimate attacks. It could be argued that no serious attempt to reform these institutions occurred until the nineties, when the Menem administration carried through an ambitious neo-liberal reform plan. Institutions proved to be resilient to a large extent because strong players in society had much to gain from them, and economic and political conditions allowed for it.

3. Labor institutions and politics

Labor institutions and regulations do not function in a political vacuum. The Peronist party made labor institutions and regulations its own political victory, and supporting protective labor laws and a strong labor movement became part of what being a Peronist meant. These concepts became ingrained in the ideology of the labor movement and in the ideology of the Peronist party. In fact, the Peronist movement was, in its origins, a divisive movement in which workers were portrayed as being against "capital", and the state was to become the mediator of that opposition to make things

more equal and fair. Labor regulations and institutions were part of the fulfillment of that ideology.

Not only did labor institutions become an important part of what the Peronist party was about. These institutions were now part of the "political exchange" between the party and its main political ally: the labor movement.[56] As a labor-based party,[57] the Peronist party and the labor movement would exchange political assets as part of their on-going alliance. Alliances between political parties and labor unions involve some exchange of socio-economic, political, and organizational incentives. The union offers the party working-class votes in elections, backing for the party's policies when in government, and legitimization of the party as a representative of low-income sectors. In some cases, as it is clearly the case with the Peronist party, the union also provides crucial financial resources to the party. In return, the party offers the union socio-economic policies that benefit workers and unions, privileged positions for union leaders in policymaking circles, and backing for the union in its relations with employers and/or competing labor organizations. Some parties also, as it is the case with Peronism, provide financial subsidies to unions and thus opportunities for acts of corruption by union leaders.[58]

For the labor movement, many of the features of labor institutions, in particular the ones associated with centralized collective bargaining, union organization, and the management and provision of health insurance for workers through *obras sociales* were essential to keep their organizational and financial resources. If the Peronist party used these regulations as "inducements" and "constraints" to shape its alliance with the union movement,[59] the union movement later became a strong and large constituency that used

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[56] For a body of literature that takes an exchange-based approach to industrial relations see Pizzorno 1978; Lange et al. 1982; Gourevitch et al. 1984; Regini 1984; and Howell and Dalley 1992-93.

[57] The classification of Peronism as a labor-based party is not uncontroversial. Those who argue in favor of considering it a labor-based party define a labor-based party as one in which organized labor is its core constituency (Levistky 2003; Gibson, 1996.)

[58] While Peronism was banned from politics between 1955 and 1973, the labor movement became not only its main ally but also the incarnation of the party itself. Any political exchanges with the labor movement by other political actors were taken as an exchange with Peronism itself. The labor movement, in fact, was the main financial source for party organization, and it was providing the important function of retaining the Peronist constituency, until Perón was allowed to return from exile in Spain. For an excellent account of the salient role of the labor movement while Peronism was banned from politics, see McGuire (1997).

[59] Collier and Collier (1978)

these regulations as one of its main defenders.[60] The reform of these regulations would certainly change the political landscape in which unions and employers operate and would entail serious challenges for the labor movement.

The Argentine labor movement has been historically a centralized movement with a vertical organization that responds to the directives of the highly politicized national unions. The monopoly of representation granted by the state induced this type of development and eschewed the development of collective bargaining in the same direction. The Peronist labor movement has been historically a highly disciplined labor movement in which local unions will convey information from the top to the rank-and-file and execute policies expeditiously. Labor leaders were always conscious that their power depended in part on their highly centralized and disciplined organization, which could represent millions of workers and at the same time either mobilized them against employers or wrong-headed state policies, or sign agreements on behalf of the entire labor force.

Although the ties between central and local unions have been weakened at times and politically contested at others, the centralized tradition of the labor movement remains very much a strong feature of its ideological foundation. Considering it a non-negotiable issue, the labor movement has stuck to its idea that decentralization would undermine its political power.[61] Whether or not this fear has real foundations or not, or if this view is shared by all leaders in the labor movement, it undoubtedly represents the dominant view of labor leaders at the top, and it has been consistently put forward as the political position of unions with respect to labor reform.

Thus, considering the connections between existing labor institutions and the unions' political power, it is clear that reforming labor institutions and decentralizing collective bargaining would certainly put the labor movement on the defensive, and it has. It would also find many members of the Peronist party protesting against the advocates of these reforms and accusing them of traitors of the Peronist ideology, and would make many weary of what this dismantling of protection and centralization would do to workers. Thus, the labor movement and members of the Peronist party would be the

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[60] Pierson (1994)

[61] Personal interviews with Garzón Maceda and Tomada, legal advisers for the Confederación General del Trabajo (CGT).

main suspects of resisting and slowing down these reforms.

In fact, as mentioned, the labor movement had been highly successful in the past in resisting and completely reversing reforms of protectionist labor legislation during military dictatorships. It also successfully resisted a comprehensive reform of the internal functioning of unions, which the Radical Party tried to pass in the 1980s during the presidency of Alfonsín. As I will show in the next sections, however, the nineties would bring profound and drastic changes in the economic and political landscape, which would make this resistance a lot more ineffective.

4. The components of rigidity/flexibility classification

I explained in section 1 how the legal system of labor regulations and relations is organized in Argentina, and how the Labor Public Order interconnects the rights enshrined in the Constitution with the labor code for individual contracts, and how this in turn creates a threshold below which collective bargaining cannot reach. The end result of this legal framework is a highly protectionist system with an important level of state intervention in industrial relations. With a strong tradition in civil law, Argentina is known in comparative studies of labor law for having one of the most rigid labor regulations in the world.[62]

In this section, I will take a deeper look at the labor regulations and institutions in Argentina as they existed previous to the reform in order to identify some of its potential rigidities in a process of profound economic restructuring as it occurred in the 1990s. As I examine these regulations and their ability to block some changes that companies wanted to undertake in this context it would become clear, which of them were also politically salient components of the labor relations system. It will also become clearer how the government and the use of private contracts were used to circumvent them.

This approach that links existing regulations with their potential for creating rigidities for companies trying to adjust in a highly competitive international market does not ignore the nuances of this debate and its highly ideological overtones. However, given the objective of this study to understand the changes in labor regulations and relations in the 1990s, and provided that the intended direction of these changes has been

[62] Caro Figueroa (1993); World Bank (2004)

towards greater relaxation of labor regulations and decentralization of collective bargaining, it is essential to comprehend what the initial situation previous to the reforms was in this respect.

In the discussion of these regulations, I will emphasize their relationship to the three types of flexibility that the literature refers to as the aspects that need to be relaxed in order to make restructuring within companies feasible, as well as the movement of workers across jobs within the labor market smoother.

These types of flexibility are known as: external flexibility, internal flexibility, and pay flexibility. Labor market flexibility is usually referred to as the "ability of a company (i) to adjust the level and timing of labor inputs to changes in demand, (ii) to vary the level of wages according to productivity and ability to pay, and, (iii) to deploy workers between tasks to meet changes in demand. A company's ability to achieve these objectives is normally enhanced by introducing changes in contracts of employment, working time, pay systems and work organization."[63] In what follows, I will explain in more detail what each of them means.

Pay flexibility is, in essence, the responsiveness of wages to changes in individual and collective productivity, and to competitive cost pressures exerted by markets. In more specific terms, discussions between policy makers, employers and trade unions usually revolve around the following aspects of pay determination: systems of wage bargaining; minimum wages; linking pay to performance; and wage indexation.

External flexibility refers to the ability of a company to adjust the level of labor inputs to changes in demand, that is, it refers to regulations in regards to hiring and firing. One widespread method of enhancing flexibility in the labor market has been the introduction of changes in regulating employment contracts. It has typically taken the form of relaxing controls over (i) the use of "atypical" employment contracts, that is, forms of employment that are not full-time employment for an indefinite duration; and (ii) the termination of employment contracts at the initiative of the employer.

In turn, internal flexibility refers to the ability of a company to deploy workers between tasks to meet changes in demand. Thus, internal flexibility refers to the deployment of workers inside the company, as opposed to the external flexibility that

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[63] Muneto, ed. (2000)

refers to the exchange between the company and its environment. In this category, changes in working time and work organization are included.

As the decentralization of collective bargaining has also been seen as a way of providing more flexibility to companies in making decisions about the deployment of labor, I will briefly discuss this issue as well. Regardless of how true this assertion is employers and governments throughout the world have exerted pressure to introduce changes in this direction, which have in turn been resisted by unions in cases in which centralization has been seen as an important source of their power. The main argument against centralization of collective bargaining has been its potential to negate the important differences that exist within each sector at the company level. According to this view, companies need to have more flexibility to negotiate with their own workers labor conditions that best fit their needs to compete, instead of abiding by general regulations from national agreements.

There is an abundant literature on the topic of decentralization of labor relations in the developed world. The extent to which decentralization is the most appropriate form of labor relations in an era of globalization has been the subject of debate. Delving into the nuances of this debate goes beyond the scope of this chapter. However, the degree of centralization of the labor relations system is one of the features upon which they are classified. The level of centralization of a collective bargaining system is supposed to carry important macroeconomic consequences, such as its effects on inflation and productivity, as well as microeconomic consequences, such as the ability of a company to deal with specific challenges posed by international competition. Thus, national systems of labor relations are classified in a continuum from highly centralized (i.e. Sweden until the 1980s) to highly decentralized (i.e. Chile since the 1970s.) It is against this backdrop that the Argentine system of labor relations will be evaluated in the next section.

In the next sections, I will evaluate the Argentine system of regulations for individual contracts and collective bargaining agreements against the backdrop of the rigidity/flexibility spectrum to show what the initial situation was in the 1990s before any of the reforms were introduced.

5. The labor code for individual contracts: *Ley de Contrato de Trabajo (LCT)*

The *Ley de Contrato de Trabajo (LCT)* was passed as late as 1973 but the origins of the pieces that comprise it date back to the 1930s. Different aspects of the individual contract had been previously regulated by disparate pieces of legislation that were gathered under one code in 1973 during the third presidency of Perón. Labor codes and labor relations in Argentina were modeled after the European labor regulations, in particular those of Spain, France and Italy. The LCT reflects the influence of the Statute of Workers in Italy, some Spanish regulations, and the French labor code as well.

The *Ley de Contrato de Trabajo (LCT)* specifies almost all aspects related to an individual labor contract, from hiring and firing conditions, suspensions, determination of severance payments, vacation period, work hours, change of categories, and compensations. As explained, its general orientation is highly protective and detailed; and it sets the standards for collective bargaining agreements. The LCT establishes a minimum below which collective bargaining agreements cannot be negotiated, even if there is a consensus between workers and employers in doing so.

In terms of hiring and firing, in 1974 the LCT enshrined the *indefinite duration contract* as the paradigm of hiring, meaning that once hired, a worker would be considered in a contract of indefinite duration. If the employer decided to terminate the contract without just cause, he would have to pay a severance payment and give either a previous notice of one month or otherwise pay an extra monthly salary. The calculation of severance payment was also established in the labor code and it was based on the worker's salary and his or her seniority.

The extent to which the contract of indefinite duration was the main paradigm is reflected in the fact that the labor code considered it its default category. This meant that if a worker had been employed informally, she had the right to sue the employer for all the unpaid benefits during the time of employment.[64] The contract of indefinite duration was based on the principle of job stability and assumed that the worker was working full time, for only one employer, in a location different from his residence, and under only

[64] Proof of employment only requires witnesses testifying that the person was coming regularly to a certain work location.

one statute.[65] It applied to all workers regardless of age, working for any company, regardless of its size.

Given the fact that the Argentine economy had been characterized until the 1970s as one with a high level of job creation and medium to low levels of unemployment in a context of moderate economic growth, it allowed for the creation of a high percentage of formal employment with indefinite duration contracts (Table 2.1.). Urban unemployment was 5.6% between 1963 and 1978 similar to the level of unemployment in the USA and slightly higher than in Europe (see also Table 2.2.). In fact, the level of informal employment was low compared to similar countries in the Latin American region.[66]

Table 2.1
Employment and Growth in Argentina (1910s-1990s)

	Annual GDP Growth Rates		Employment		GDP/employment	
	Total	Urban	Total	Urban	Total	Urban
1913-1929	3.5	3.7	2.5	2.1	1.0	1.6
1929-1947	2.7	3.1	2.0	3.3	0.7	0.0
1947-1970	3.9	4.3	1.5	2.0	2.4	2.3
1970-1980	3.8	4.1	1.4	1.7	2.4	2.4
1980-1990	-1.1	-1.3	1.5	1.6	-2.6	-2.9
1990-1996	5.7	6.0	-	1.1	-	4.8

Source: Consejo Empresario Argentino (CEA)

[65] Caro Figueroa notes that Norberto Centeno who drafted the LCT drew its principles from the Spanish and Italian labor codes that represented the most aggressive defenders of the principle of "job stability" in Europe at the time. In fact, at the time other European countries were introducing temporary contracts as the result of changes in their economic environments. Even Spain and Italy joined the wave of transformation of labor codes with the introduction of more flexible rules soon after.

[66] Llach (1997.)

Table 2.2
Open unemployment and participation rates: 1974-1991

	Open unemployment		Participation rate	
	G.B.A.	Interior	G.B.A.	Interior
1974	3.3	-	40.6	-
1980	2.3	3.2	39.3	36.8
1984	3.9	6.0	38.4	36.7
1987	5.3	6.9	40.5	37.1
1990	7.3	7.5	40.6	36.8
1991	5.8	7.5	40.9	37.6

Source: Consejo Empresario Argentino (CEA)

As the contract of indefinite duration was considered the default contract in case of doubt, even the part-time contract had an unclear status, and its use always entailed some form of liability for the employer. The legislation did not ban it, but it remained unregulated and contributions and severance payments had to be calculated based on a salary of a similar full-time job. Fixed term contracts were very limited and could only be used in cases in which the nature of the job was temporary, occasional, or in cases in which permanent workers were under a leave of absence and needed to be replaced for a limited period of time.

In addition to the strict regulations in terms of hiring and firing and the choice of the indefinite contract as the default contract, the LCT also regulated functional mobility (content of job), geographical mobility (space allocation) and work hours. In terms of functional mobility, Argentine labor law uses the concept of categories to refer to the content of job. The category is really central in the regulation of individual contracts because it determines the tasks that the worker will perform, but also union membership, wages, and career mobility. The article 37, of the LCT states that collective bargaining agreements and professional statutes will regulate the issue of category. Thus, in this regard the agreements reached between unions and employers are the essential means to determine how work is organized within the company.

Regulations about functional mobility restrain the power of employers to decide unilaterally how work is organized inside the company and give unions the right to negotiate over them. However, with the consent of the union, employers could in principle introduce flexible changes in work organization, as it has been the case with the automotive sector, which in the 1990s changed the rules of work organization in order to

introduce more flexibility. As I will show later on, however, the problem resides in the collective bargaining agreements that unions refuse to re-negotiate and the norm of "continuity by default". The latter introduces rigidities for a company when renegotiation is not reached. The introduction of new forms of work organization has been an important element in the restructuring of companies in the 1990s and, as I will show later, this issues has been resolved through the extensive use of private contracts in the parallel system of collective bargaining.

Once categories are established by collective bargaining agreements, however, the LCT becomes more restrictive in regards to changing them. It determines that changes can only be done within the category but not between categories. Therefore, it reinforces what has been agreed in the collective bargaining agreement with the unions, and the employer has to agree with them again in order to change categories or wait for the next round of negotiations. A study of collective bargaining agreements signed in 1975, which continued to regulate many activities in the 1990s, showed that the way in which the issue of categories and mobility between them was regulated was particularly rigid.[67]

In terms of geographic mobility, that is, the possibility that the worker could be transferred to another location within the same company, the LCT also restrains this possibility by upholding the principle of geographic stability. This means that if the worker agrees to be transferred, it can be done. However, if the worker refuses, the law will side with the worker.

The LCT does not regulate working time explicitly. Workers must abide by the regulations set by collective bargaining. In this respect the law gives more maneuvering room for regulations to be set through collective bargaining, although unions need to be involved in the decision and the law will uphold it. However, if some changes were introduced unilaterally and the worker appealed, judges had to rule in favor of the stability of work hours and reverse the changes introduced by the employer.

In general, it is easier to introduce changes in work hours through collective bargaining but once they are introduced they are difficult to modify. Modifications in work hours outside what has been agreed through collective bargaining gives the worker the right to consider herself fired and to receive a severance payment. It would be

[67] Caro Figueroa (1988).

possible to change working conditions through private agreements but they should be compatible with the general regulations of LCT and other regulatory principles in the labor code and should introduce only improvements in what has been previously agreed. The idea that private agreements can only introduce improvements to the situation of the worker, however, makes the use of private agreements more risky and subject to the judge's interpretation.

The issue of work hours was an important aspect in the restructuring of companies under the increased pressures of competition in the 1990s. The LCT states that the assignment of work hours can be subject to collective bargaining, but there is a maximum of hours that can be worked weekly and a minimum of hours that have to be assigned for weekly breaks. This type of regulation makes the implementation of the flexible use of hours according to changes in demand very difficult. The regulation of the limited and uniform workday started in 1929 through Law 11.544, and establishes a limit of eight hours per day and 48 hours a week.

In sum, in the early 1990s the law imposed limitations on the application of flexible hours, such as the use of hours that can be assigned flexibly over the year according to demand. In fact, changing working hours has traditionally been an easy way to adjust to sudden changes in demand, and employers have used it in the past through the addition of overtime, paid at a higher rate, as stipulated by law. According to a study for the 1974-81 period, workers with only one job worked 55 hours per week; in the year 1977 this average reached a peak of 70 hours a week.[68] Another study shows that overtime represents on average more than 11% of the regular salary.[69]

The LCT also regulates vacation time and imposes certain limitations on it. The law establishes the duration of the vacation in accordance with the seniority of the employee and that it has to be taken during the summer. As I will show later on, along with the introduction of flexible hours this is another aspect that companies try to modify in order to align their cycles of production with the vacation period of their employees.

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[68] Novick et.al. (1986.)
[69] Caro Figueroa (1992.)

Finally, another regulation commonly cited in the debate over flexibility debate concerns firing and suspensions. As discussed, firing with "unjust cause" is possible but costly for the employer. The LCT determines that the cost has to be calculated as a month worth of wages if the employee does not receive a one month notice previous to the firing, plus one month worth of wages per year worked. The LCT nonetheless establishes that the base wage taken for the calculation cannot exceed three times an average salary of a worker in the activity considered, determined according to the collective bargaining agreement in that sector.

There are other types of firings such as the firing with "just cause" or disciplinary firing, but they are more limited and require filing a lawsuit against the employee to demonstrate the employee's fault. If the cause of the firing is demonstrated, the employer does not have to make a severance payment. At the other extreme is discriminatory fire, in which case the severance payment doubles.

An important type of firing in terms of the introduction of flexibility is the firing based on economic reasons, given that it allows the company to justify the firing based on its own situation instead of on the behavior of the worker. The LCT considers a firing for economic cause in cases in which the economic activity at a certain company suddenly diminishes. In these cases, the law allows the employer to pay only 50% of the severance payment. However, jurisprudence sides with the employee in these cases and blames the employer in most cases for the reduction in the level of activity, arguing that the employer has to assume the "business risk" and not the employee. Thus, the use of firing for economic reasons is difficult in practice.

Finally, the LCT also regulates the issue of temporary lay-offs ("suspensions"), which as I will show became an important issue during the 1990s. Article 98 of the LCT allows an employer to temporarily lay-off workers only with "justified motives"—i.e., the employer has to demonstrate his reasons for the suspensions. The employee, however, can appeal in a court of law, and courts tend to rule in favor of the worker. Even if the ruling favors the employer, the latter could still be obliged to pay wages. It is possible for an employer to temporarily lay off workers in the case of unforeseen circumstances that result in a reduction of the workload, but this is subject to negotiation through collective bargaining. Temporarily lay offs have a limit of 30 to 75 days per year.

In sum, the LCT imposes several limitations on how the employer can deploy workers, either by explicitly establishing how to do it, or by imposing a collective bargaining with unions for that purpose. In the next section, I will discuss how regulations on collective bargaining agreements impact on the possible rigidities/flexibilities in the deployment of the labor force.

6. The role of collective bargaining agreements

Since the 1940s, Argentina had a centralized system of collective bargaining at the industry level. This system entails that every economic activity has a collective bargaining agreement at the national level, signed between the national union representative of that sector and the respective employers' association. As a result, every company in the same sector was regulated by the same collective bargaining agreement with respect to labor rights and regulations. This meant that wages, work hours, vacation, categories, and the like were all the same for every single company in the same sector located within the national territory.

In addition, according to the *erga omnes* principle that regulates collective bargaining in Argentina, these agreements covered all workers and all employers in a certain sector regardless of the workers' membership in the union that signs it, and regardless of the direct participation of every single company in the signing of the agreements.

For its detractors, the system was extremely rigid and did not allow companies to accommodate for regional socio-economic differences or for company differences. For its defenders, the system allowed unions to increase their bargaining power and establish minimum fair standards of work across the nation, thus giving workers with less bargaining power in isolated locations to benefit from work standards in other areas of the country.

In addition to the centralization of collective bargaining at the industry level, the clause of "continuity by default" (*ultra-actividad*) strongly defines and completes the features of the system. Continuity by default of collective bargaining agreements means that once signed, contracts that regulate a certain sector will remain operative until another is signed to fully replace it. This clause meant that in the 1990s most workers

were still regulated by agreements signed in 1975, with all the consequences in terms of rigidity that this implies. Employers and governments have attempted to break this system by eliminating the "continuity by default" clause, so that companies could ignore all the rigidities associated with the existence of regulations that go back to the 1970s. However, as I will show, all these attempts have been unsuccessful and this clause still remains a feature of the system.

The content of these collective bargaining agreements is very relevant for companies to regulate working conditions for companies given that once they are signed they take the status of a law. In addition, the lack of renegotiation results in the perpetuation of these agreements over time. Collective bargaining agreements usually regulate wages, categories, work hours, internal mobility, and vacations. They also regulate aspects of hygiene and safety, as well as conflict resolution and union involvement in them. As mentioned in the previous section, labor codes for individual contracts leave it up to collective bargaining to specify the regulation of work hours and of categories, within the limits that the bargaining establishes.

Therefore, the fact that in the 1990s many of the collective bargaining agreements had not been renegotiated implied that many companies were still obliged to abide by those regulations. This does not mean that companies were actually forced to do so, given that this would be the case only if either unions forced companies to abide by them, or an individual employee or a group of them brought the issue to court. However, the other mechanism through which these agreements could be enforced would be through the labor inspection system. For reasons I will explain later, none of these mechanisms were forcefully activated, but the fact remained that by not renegotiating agreements companies increased their labor liabilities, which could potentially be activated through legal actions.

In 1975, a total of 623 collective bargaining agreements had been negotiated, of which only 167 were company agreements. The remaining 456 agreements were registered as activity or industry agreements. Of the 456 above company level agreements, 189 had national coverage and applied to 5,217,774 workers, representing more than 75% of wage earners. All the collective bargaining agreements signed in 1975

covered 100% of salaried workers, which as shown represented a high percentage of workers in the labor market.

Out of the 167 company level collective bargaining agreements, 59 belonged to agreements signed with state-owned companies that had a monopoly of the provision of a given good or service. Thus, only 108 collective bargaining agreements belonged to the private sector, and therefore the number of workers they covered in the labor market was not very significant. Even if the collective bargaining agreements that also covered public employees of state-owned enterprises are added, the total of company level agreements only covered 5.4% of salaried workers.

The process of collective bargaining, which had been suspended since 1976 by the military dictatorship, was reopened five years after the return to democracy. In the first years of this new period, the structural trends of the previous decades did not seem to have changed much. In 1988, only 27 agreements above company level were signed and none was signed at the company level. In 1989, 59 agreements were registered at the level of industry or activity and 18 at the level of the company; in 1990, 62 agreements were signed above the company level and only 12 at the company level. However, many collective bargaining agreements "continued by default", that is, they were not re-negotiated. Of those, a high percentage was agreements negotiated in 1975. Of the total of collective bargaining agreements current in 1997, 46% were agreements that had been negotiated in 1975, and only 10 of them covered 55% of the population that worked under collective bargaining agreements.

Since 1991, there has been a decline in the negotiation of collective bargaining agreements above company level and a concomitant increase in the negotiation of collective bargaining agreements at the company level. However, the decline in the negotiation of activity level agreements was not compensated by the increase in company level agreements. As a result, the number of workers covered by these renegotiated agreements declined. As mentioned, these workers continued to be covered by "default" agreements and by labor laws corresponding to individual contracts. In 1997, of a total of 706 collective bargaining agreements almost 85% had not been renovated and only 103 were renovated.

According to estimations by the Advising Technical Commission on Productivity and Wages at the Ministry of Labor and Social Security, the coverage of the total number of collective bargaining agreements and *acuerdos*[70] at the company level from 1988 to 1998 reached 390,000 workers. If the *acuerdos* and the collective bargaining agreements at the company level that have been replaced by new ones are excluded, that coverage does not reach more than 300,000 workers[71]. This is a small figure, considering that the salaried population in Argentina was at the time over 8 million and that almost 5 million could potentially be covered by collective bargaining agreements[72].

As these statistics show, when the period of reforms of labor market institutions (the so-called labor reforms) started, most workers in the labor market were regulated by rigid rules for individual contracts and collective bargaining agreements signed in 1975. As shown, the return to democracy and the official re-opening of collective bargaining negotiations five years later in 1988 did not bring much change. There were no attempts to reform institutions in the labor market and very few agreements were re-negotiated in the private sector. It is important to understand that changing the terms of these agreements was crucial to bring regulations on categories, internal mobility, work hours, and other aspects of work organization in line with the restructuring that companies were undergoing under an increased level of competition. In a context in which an overvalued peso made it more difficult to compete on the basis of cheap labor, re-organizing work within companies became even more crucial.

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[70] According to the legislation on collective bargaining agreements in Argentina, it is possible to reach an *acuerdo* in addition to a specific collective bargaining agreement, to which the *acuerdo* is attached. The acuerdo cannot replace any important piece of the referred collective bargaining agreement, but it can complement it with specifications that are compatible with the basic points of the main agreement. Acuerdos can be reached at the company level even if the original collective bargaining agreement was above that level, but they cannot contradict the basic understandings of the main agreement. So, for example, if the main collective bargaining agreement established that wages would be adjusted according to productivity increases, the *acuerdos* can specify the level of wages reached according to those increases. *Acuerdos* can also introduce new elements to the collective bargaining agreement to which they are attached, as long as the new element is considered an improvement in the labor conditions of the workers. I am using the Spanish term *acuerdos*, given that the literal translation would be "agreement" which would confuse it with the collective bargaining agreement itself, which in Spanish is called *convenio*.

[71] Carlos Aldao Zapiola and Sergio Chocrón estimated in July 1998 that collective bargaining agreements reached at the company level in 1975--previous to the attempts at decentralizing collective bargaining in the 1990s—covered 384.297 workers.

[72] In 1995, the salaried population in Argentina numbered 8,270,000. If domestic workers (680,000), rural workers (650,000), public workers (1,670,000), and managerial positions were excluded, the salaried population in the private sector that could be covered by collective bargaining agreements reached almost 5,000,000 people.

As shown, the LCT delegated the regulation of categories, internal mobility and work hours to the parties involved in the negotiations of collective bargaining agreements, although in particular with regards to work hours, the law imposed some initial limitations to the negotiations. The round of collective bargaining agreements in 1975 had strongly favored labor and their demands in a context in which labor unions were involved in running government alongside the Peronist party[73]. In a period in which the economy was still shielded from external competition, with inflation wiping out the effects of wage increases, and a political situation that clearly favored unions over business, the collective bargaining agreements reflected the pinnacle of concessions for labor in all aspects of the negotiation.

All aspects of the labor contract, individual and collective, were negotiated in a fashion that reflected the highly protectionist stance towards labor enacted in the labor codes and practices and specific aspects of collective bargaining agreements were drafted with the Fordist model in mind. Important sectors of the economy such as the metallurgic, commerce, construction, and banking sectors retained these rigid regulations in their collective bargaining agreements negotiated in the 1970s.

7. Looking at the "continuity by default" agreements: the case of UOM

To illustrate the character of these collective bargaining agreements, I will take the case of the union that represents workers in the metal industry, the *Unión Obrera Metalúrgica* (UOM), and the agreement signed with employers in 1975, known as agreement number 260/75.[74] This is a good example, since UOM at the time constituted the model of negotiation that was followed by other unions. UOM was the most politically powerful union within the labor movement with a strong connection to the Peronist party. It had an extraordinary tradition of strong leadership and was in a dynamic and crucial sector of the economy. In a typical round of negotiations, other unions would wait for UOM to reach its agreement, and then negotiate in their own sectors.

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[73] For an excellent account of the important role of labor unions in the policy making process during the presidency of Perón's widow, María Estela Martínez de Perón, see Torre, J.C. (2004.)

[74] See the legal document *Convención Colectiva de Trabajo No. 260/75 para los trabajadores de la Industria Metalúrgica*, Buenos Aires, 1975, registered in the Ministry of Labor. The number 260 is the number under which the collective bargaining agreement has been registered in the Ministry of Labor; 75 is the year in which it was signed.

The "260/75 agreement" has as one of its pillars the spelling out of all categories in which workers have to be classified. It describes meticulously the qualifications required for each category and the tasks associated with it. The idea of a multi-task worker that became so common in the 1990s was completely foreign to this classification, in which each worker is specialized in one or a few technical tasks. The worker does not participate in quality control, or team work, or in arranging and cleaning his/her own station while at the same time performing a specific operation, as it could be the case in modern team work cells. Categories are organized as in separate compartments from more complex tasks that require a higher level of specialization to simpler tasks that are auxiliary to the more qualified ones, as in a typical Fordist model of organization.

The idea of category is central in the agreement because all other aspects of the labor contract revolve around it. Once the worker is classified into one of them, his promotion and wages are determined. He can be promoted in the hierarchical ladder of categories and his wages increase as he moves up through these categories. Promotions from one category to the next require passing exams, and once they are approved a salary raise must be granted, regardless of the availability of a new position in the next category. Categories have to be established with the consent of the union, and once established they cannot be changed without the union's approval. In a typical Fordist fashion, wages are determined by qualifications and seniority with no link to measures of individual or collective performance.

Work hours are established in a rigid fashion and the consent of the union is required to incorporate any changes. The agreement reiterates all legal constraints in regards to work hours, its limits, and the way in which it needs to be divided between work hours and breaks. It also specifies that the union needs to be involved in the approval of changes in the regular schedule of workers as well as in the concession of overtime, even if paid at the legal higher rate.

The 159-page agreement that includes the specification of categories and wages for every single sector within the metal industry, from automobiles to electronics, contains regulations in regards to all aspects of the labor contract including hygiene, health and safety provisions, accidents and work-related illnesses, provision of clothing

and tools by the employer, special leaves that include the celebration of the day of the metal worker as a special holiday, additional compensations, and labor relations. It basically reiterates what the law establishes in these regards, while including some additional benefits. Finally, to reinforce the precedence of this activity agreement over any other company or individual agreements, unless they improve on these benefits, it states that none of the workers could reject any of the benefits established in the present agreement. All other agreements celebrated between workers and employers in the future should be considered nullified.

Finally, 260/75 establishes how the *comisión interna* that represents the union inside the company has to be chosen according to the number of workers. It establishes that the *comisión interna* is responsible for enforcing all the aspects negotiated in the collective bargaining agreements and that any changes in regards to labor conditions should be discussed with it. It also establishes the constitution of another commission, the *comisión paritaria*, with equal number of workers and employers, representing each group respectively, to resolve any differences that could result from the application of the collective bargaining agreement.

8. The regulation of wages

To complete the picture of labor institutions in Argentina I will briefly discuss the issue of wages. Economists agree that the 1990s constitute a turning point in terms of the importance of wage determination for the level of competitiveness of companies.[75] Up until then, two factors had contributed to minimize the importance of wage hikes in the economic performance of a company. On the one hand, as mentioned, the fact that Argentina was a closed economy with little exposure to international competitiveness shielded companies from price competition and allowed for wage increases that did not have a direct impact in the level of sales. On the other hand, and in particular after the 1970s, when Argentina suffered from regular surges of hyperinflation, wage raises were usually withered away by inflation, and price increases did not necessarily translate into a decrease in the level of demand.

[75] Llach (1997); Bour (1996); Giordano (1996)

As Bour explains, since the beginning of the 1970s and in particular with the hyperinflation of 1975, inflation almost completely destroyed the system of prices. Consumers worried about the loss of purchasing power with inflation would spend their money as quickly as possible regardless of price surges, and this consumer behavior in turn translated into an enhanced ability of companies in the private sector to fix prices, even beyond the small pool of companies that had a monopoly in a given market.

In the 1990s, drastic changes in the economic environment occurred that made companies sensitive to price changes and the effect of salaries in them. Basically, the two factors mentioned before that made the economy less sensitive to price changes, and salary increases were completely reversed. On the one hand, there was a drastic opening of the economy through tariff reduction, liberalization of capital markets, reduction of subsidies, and an aggressive program of privatization. On the other hand, with the implementation of a currency board in 1991 through the convertibility law that pegged the peso to the dollar in a one on one relationship, inflation was halted. In this new context, companies started to watch their costs and prices closely and the issue of wages became more salient.

Up until the 1990s, the regulation of wages in Argentina had basically three main institutions and mechanisms, in addition to the regulation of additional contributions and benefits, known as labor taxes regulated by the labor code. First, there was a minimum wage that was supposed to guarantee a minimum income for more vulnerable groups and serve as a benchmark for wage negotiations and severance payments. Second, wages were determined through collective bargaining agreements and mechanisms of automatic indexation were agreed upon between employers and unions, especially during inflationary periods. Third, it was not uncommon that the Executive would mandate a wage hike for the whole economy through the passing of decrees.

As mentioned, one of the institutions available to determine prices was the minimum wage, the *salario mínimo, vital y móvil.* Before the constitutional reform of 1957, Argentine positive law established the *Instituto Nacional del Salario* (National Wages Institute). It was created by decree No. 33,302 in 1945 to determine the minimum wage, but this institution never really worked. In 1965, through Law 16,459 another attempt was made. The government created the *Consejo Nacional del Salario Mínimo,*

Vital y Móvil (National Council for Minimum Wage). Its main function was to periodically determine the minimum wage. If the cost of living changed, the wage was supposed to be adjusted accordingly, when any of the members of the Council requested such as change. This institution worked for only a year, after which the Executive was authorized to determine the minimum wage by itself, according to certain criteria established by Law 21.307.

The other important mechanism for the regulation of salaries was the collective bargaining agreements. The determination of wages had always been one of the main concerns of unions during these negotiations. These negotiations had constituted an important mechanism through which wages were established every time they were not prohibited by the interruptions of democratic rule. The negotiations of 1975 had left a bad memory for employers. Led by the negotiation of UOM, collective bargaining agreements were signed in every sector. In the middle of a quite chaotic political and economic situation, the salary increases agreed by UOM were so excessive that ended up producing hyperinflation and the collapse of an already fragile economy. Unions ended up being blamed for an irresponsible behavior, which carried costs for the whole economy. Thus, collective bargaining was regarded with suspicion.

Overall, in the context of a closed economy and until the 1970s, wages and employment grew constantly, and had a positive effect on income distribution. In fact, until the 1950s Argentina had some of the highest wage levels in the world and that is why it received many immigrants from Europe during those years. For example, in the 1940s salaries in dollars in the formal sector were as much as twice those in other Latin American countries, including Brazil. The only exceptions were Chile and Uruguay, where wages were only 20-30% lower than those in Argentina, and Venezuela which had higher wages than Argentina, although in a smaller formal sector (Llach, 1987). Argentine wages were also higher than in many European countries that had suffered the devastating effects of the World Wars, which explains the immigration of more than a million Europeans to Argentina between 1945 and 1952. However, in the 1950s there was an excess of skilled workers who were paid at a lower rate than in other countries. The opposite occurred with less skilled workers who kept coming from neighboring countries.

Since the 1970s, however, the model of import-substitution industrialization started to show signs of exhaustion and productivity was stalled. However, employment continued to grow through more artificial mechanisms, such as the creation of public employment financed with public deficits and the creation of private employment in sectors of the economy that were also heavily subsidized. With the recurrent surges of inflation and the ability of companies to fix prices, labor costs became flexible even in a context of rigid labor contracts. In contexts of downturn cycles of growth, companies would adjust by increasing prices. Bour argues that along with high severance payments sanctioned by law, this mechanism was responsible for stability in the level of formal employment despite the steady decline in growth rates. Productivity drops were also compensated through continuous devaluations of the local currency.

In the 1980s, however, Argentina experienced economic stagnation. All economic indicators worsened including levels of employment and productivity. This was the economic situation when Argentina returned to democracy in 1983. In the next section, I will explain how the government attempted to introduce changes in labor institutions and regulations through legal changes, and why some of these attempts failed to introduce important changes. I argue that the different actors chose to introduce modifications through more informal mechanisms in the parallel system of negotiations.

9. Conclusion

Before the government attempted to reform the institutions and re91gulations of the labor market to make them more attuned to the new economic conditions, most of the labor market transactions were regulated basically by two pieces of legislation: the *Ley de Contrato de Trabajo* (LCT) that regulated individual labor contracts and the *Ley de Negociación Colectiva* that regulated collective bargaining agreements. The system was characterized by highly rigid regulations for hiring and firing and for internal flexibility. In addition, wages were adjusted by inflation through quasi-automatic indexation mechanisms. Collective bargaining had historically being carried out at the industry level and most of the agreements had not been renegotiated until 1988. As a result, most of the sectors were in principle still regulated by outdated and rigid collective agreements at the industry level that covered most of the workforce.

As I will show in the next chapter, the government attempted to change all of the elements of rigidity present in these regulations during the so-called labor reforms in the 1990s. The passing of the reforms in Congress, however, met with resistance from different social actors, including organized labor. This was not, however, the end of the story. The economic context generated pressures to reform, and led to a drastic change in the balance of power in favor of business. The transformation of labor institutions and regulations had to be pursued through other means.

CHAPTER THREE
Unpacking the Legal Changes

1. Introduction

In this chapter, I explain government attempts at changing labor institutions and regulations. In the case of Argentina, as was the case with Mexico, Venezuela and Brazil, the relaxation of labor laws and the deregulation of the labor market met resistance from certain groups in society, in particular from organized labor, that were transferred to the formal political system.

As shown, the drastic change in the economic and political environment tilted the balance of power in favor of business. Not only did the balance of power change, but also business' preferences had changed in favor of the decentralization of collective bargaining and the relaxation of labor laws. In this new scenario, labor-based parties, such as Peronism, found themselves in a difficult position. The state was more economically and politically dependent on business than ever before, thus it had to create a good environment for private investment. The relaxation of labor codes and institutions was part of that effort to create good conditions for investment, and to modernize outdated legislation to adjust to the new realities of the labor market, as they put it.

At the same time, and even if the Peronist party had severed its political and financial ties to organized labor, politicians did not want to lose the unions' political support completely. In fact, during the campaign for the second re-election of Menem, which did not ultimately succeed, Menem made an effort to reach for the unions' support once more.

Organized labor did not agree with the basic orientation of the proposed reforms, and feared, in particular, losing in two fronts: their organizational strength and their finances. In regards to their organizational strength, they feared that the decentralization of collective bargaining could lead to the decentralization of the labor movement, which they thought would severely weaken their power. Thus, they fiercely opposed the formal decentralization of collective bargaining.

They also opposed the elimination of the "continuity by default" clause in collective bargaining agreements. To lose this clause would have meant two things. First, the nullification of all previous collective bargaining agreements which had expired and

were the majority of all agreements, with the implication that the new negotiations had to start from a blank slate because they could not fall back to previous agreements. Given that unions were aware of their weakened position, they wanted to avoid new negotiations with business that could end in a failure for the labor movement. Also, the "continuity by default" clause meant that employers had to continue paying contributions to unions agreed in the past in these agreements.

Unions feared losing control over the health care infrastructure they have available for their members, the *obras sociales*, which represented a considerable portion of the unions' finances, in addition to being one of the main services that they provide. As I will show later, the Menem administration constantly offered unions to stay away from taking over the *obras sociales,* as an incentive to pressure unions to accept other changes in labor regulations.

In this chapter, I will show that despite opposition from organized labor to the deregulation of the labor market and its ability to stop or delay some of the formal reforms, the transformation of labor institutions and regulations took place in the desired direction, but through the "path of least resistance". The government looked for more subtle ways to make effective changes in the labor market in the desired direction. It mainly made use of presidential decrees that could make important transformations in the labor market without passing through Congress. They also relaxed the use of still unchanged legislation through two basic means. On the one hand, they dismantled the monitoring system both in regards to individual contracts and collective bargaining, and on the other hand, they allowed for the flourishing of the parallel system of negotiations between companies and workers.

In addition to these intentional actions taken by the government to relax labor codes and their application, other government policies had the effect of either facilitating the decentralization of collective bargaining or of diminishing the power of unions, even if that was not the main intention of such policies.

In this chapter, I show that considering the areas of rigidity shown in the previous chapter, it is clear that the system of labor relations and regulations was transformed in order to provide the most adequate institutions for the operation of companies in a competitive environment. The literature, however, misses the changes and the

mechanisms of these changes because of its exclusive focus on changes through legal means in a quite narrow sense and in an almost mechanical fashion: how many attempts at reforms were made, how many were passed, and how many were rejected.

A more qualitative analysis is required to unravel the importance of changes passed or not passed, alternative mechanisms for implementing the same policy, and the re-introduction of changes through legislation previously rejected through presidential decrees. I agree with the literature in that there was resistance to change, although instead of privileging one source of resistance over another, as the literature portrays, I argue that resistance to change had different sources. Moreover, it is clear that the government already took into account this resistance and trimmed down its more ambitious plans before sending proposed reforms to Congress.

Legal changes were, in fact, mostly marginal. Through a counter-factual analysis, it is possible to imagine that the government could have used more aggressive strategies as it had done in other policies areas. However, in the area of labor relations the government had other options. As I argue, the parallel system of negotiations took root early on during the process of reform. As changes were introduced at the company level in a satisfactory way for employers and with the acquiescence of unions and workers, the interest of employers to lobby the government for further reforms was deflated. Likewise, the need of government to pay a high political cost for introducing the change diminished.

This chapter is organized as follows: I first discuss briefly some of the explanations for the lack of a profound labor reform despite success in all other market-oriented reforms, which shared the idea that resistance in society led to the stalemate of labor reform. Then, I show the two approaches within the Executive towards labor reform, which revolve around how to deal with the expected resistance to the reform, particularly from unions. This shows that the Executive was well aware of the existence of resistance and generated strategies to deal with it.

The next sections show how the Executive introduced a number of important reforms in the functioning of the labor market through decrees even before the rounds of so-called labor reforms were introduced in Congress. Thus, challenging the explanations

that look at the transformations of labor institutions with a narrow focus on changes in the legal framework through Congress.

The rest of the chapter is organized in chronological order around the rounds of packages of labor reform and the dismantling of the monitoring system. These rounds of reforms took place in 1991, 1992-93, 1995-96, 1998 and 2000. Each of the sections shows the limitations of the legal changes that the government tried to introduce, and the ways in which it managed to introduce other changes through presidential decrees. Finally, I show the deterioration of the system of monitoring, which I argue was another strategy for relaxing a system that was resistant to change through legal means in Congress.

2. The role of resistance and two approaches to the reform of labor institutions

The transition to democracy brought the Radical Party to the presidency. This happened to the surprise of many, who expected the Peronist party to win the vote of lower-income sectors. President Alfonsín did not embrace the neo-liberal ideology, and tried to apply some more heterodox policies in the economic arena. Although he tried to privatize some state-owned companies, he was faced head-on with the opposition of public employees and their unions.

His attempts at reforming labor institutions and regulations were lukewarm. One bold attempt was made at introducing a greater level of internal democracy within unions, known as the Mucci Law, which turned out to be a total failure for the government.[76] The economy still remained partially shielded from external competition and subsidies to companies remained in place. By 1988 inflationary pressures started to mount, and in 1989 it ended in one of the worst hyperinflationary spirals that Argentina has experienced, which led Alfonsín to transfer the presidency to Menem before the end of his term.

All in all, the Alfonsín government did not bring a drastic change to the economy to increase pressure over labor costs. This would happen later on. As the government that represented the transition to democracy, it reinstated all previous labor rights and

[76] For a good account of the attempts at democratizing unions and its demise, see Thompson and Gaudio (1990).

institutions as they existed in the 1940s, and it opened up collective bargaining in 1988, calling on companies and unions to renegotiate their "continuity by default" agreements of the 1970s.

However, very few agreements were actually re-negotiated. Partly because unions were speculating that the Peronist party would win the next elections providing a more pro-union environment, and also because the chaotic economic situation brought by hyperinflation did not generate a good platform from which to negotiate. Therefore, when Menem took office by the end of 1989, labor institutions had not been reformed and collective bargaining was still stalled.

As it is well known, despite running on a populist platform, Menem brought to the Executive an agenda for neoliberal reform that turned out to be one of the most drastic reforms in the developing world in pace and scope. Its main initial challenge was to tame hyperinflation and to open up the economy to international competition.

In the middle of a chaotic economic situation, Menem requested from Congress special powers and the passing of two emergency laws that would authorize the Executive to introduce sweeping reforms without its approval. The special powers for the Executive were granted, and his administration enacted more decrees than Argentina had seen in decades.[77] The Law of Economic Emergency and the Law of State Reform were passed to provide a framework to liberalize the economy and privatize state-owned companies, as well as to initiate a process of rationalization in the state bureaucracy that would reduce the fiscal deficit.

In 1991, the convertibility law was passed, and this law would set the tone for the economic environment of the 1990s. The convertibility law established a currency board that tied the peso to the dollar in one to one parity. As a result, inflation was tamed, providing a spectacular success for the Menem administration, and consolidating both the power of the economic team led by Cavallo within the administration, and its neo-liberal orientation. As many reforms were in the government agenda, they were given different priority over the course of the administration. As the first goal was to clean up the fiscal deficit, privatizations took political precedence over other policies. However, the

[77] Many articles were written on *decretismo* and a special style of politics that O'Donnell termed "delegative democracy" which spread rapidly to other countries in the region (O'Donnell 1994; Ferreira Rubio and Goretti 1998).

administration was already conceiving a plan to modernize labor relations and deregulate labor institutions.

There were two basic approaches towards the deregulation of labor institutions since the onset of the period of market-oriented reforms. Different teams within the Menem administration shared the main orientation of the reform towards greater deregulation in the labor market and a more decentralized collective bargaining. However, they differed in their approaches towards implementation.

Cavallo's team in the ministry of economy, which became very powerful thanks to the success of its economic policies, considered that the deregulation of the labor market had to be a sweeping reform delivered from the Executive by decree. Cavallo doubted that the Peronist party and the unions would be instrumental to a reform that seemed so foreign to their views.

In contrast, a team of labor lawyers that belonged to the Peronist party and had worked for unions in the past considered that consensus over the reform could be reached in Congress, and could be implemented through the mechanisms of collective bargaining with the full support of unions. In both cases, however, they had the perception that the implementation of a reform that did not have a direct link to rescuing the economy from the chaotic situation and the reduction of the fiscal deficit to reinstate a sound monetary policy would not be perceived as urgent and necessary as the privatization policies. Provided that the labor legislation had been rooted in the ideological platform of Peronism and that some of its features were direct sources of power for the unions, resistance from both within the ranks of Peronism and unions was to be expected.

While the anticipation of resistance from different sectors (peronist party, unions, labor lawyers) toned down the proposed legal changes, it did not stop the process of change of labor institutions. Expecting resistance from social actors government enacted early on a decree on wage hikes based on productivity, which was essential to tame inflation and had long-lasting effects on the decentralization of collective bargaining both formal and informally. This was clearly an initiative from the Ministry of Economy and it was seen as an essential tool to sustain the currency board in a country with an inflationary culture.

Along the same line, the privatization process brought profound changes in the structure of collective bargaining in previously powerful and influential unions in the labor movement, such as the public sector unions. Based on the extraordinary powers delegated to the Executive by Congress, the privatization of state-owned companies produced the decentralization of collective bargaining and the introduction of more relaxed regulations that inevitably influenced the rest of the labor movement. The importance of these two measures in reshaping labor relations and regulations is usually missed in the dominant explanations of labor reform. I will discuss them in more detail in the next section.

The previously stated government policies were basically implemented from the Ministry of Economy, either by decree or through the use of extraordinary powers delegated to the Executive by Congress. The reforms that followed, known as the labor reform packages, are the ones usually taken up by the literature as the most relevant in part because they have been officially designated as such by the government.

These policies were implemented by the team of labor lawyers that believed that a more negotiated approach could be reached with unions and certain sectors of Peronism in Congress. As I will argue, even though some of the projects were trimmed down in the course of negotiations with unions and congressmen, the core of the reforms was passed through congress with the approval of Peronism, which had a majority in Congress during the two Menem administrations, and was ultimately approved by unions. In fact, as I will show, some of the reforms could have led to a greater level of formal decentralization of collective bargaining and the introduction of changes in regulations through these agreements in formal contracts. However, employers and unions did not take up the route of formal negotiations, but rather implemented these changes through the extensive use of private contracts in the parallel system of collective bargaining. Thus, it was not so much Congress that stopped the reforms but business and unions that took another more informal route.

As I will show in the next chapter, one of the main routes through which the decentralization of collective bargaining occurred, along with the relaxation of labor regulations, was what I termed the parallel system of collective bargaining. The origins of the parallel system of negotiations date back to the fifties but it clearly blossomed during

the 1990s under the pressure of increased competition and the need of companies to restructure. This system, which is completely ignored by dominant explanations of labor reforms, competed with the formal reforms of the system. Employers, unions and workers evaluated formal negotiations against more informal ones through the use of private contracts. The existence of this parallel system and the efficiency it provided to the actors involved, accounts for the lack of implementation of some of the formal reforms despite approval by Congress and unions.

In the next section, I will explain the implementation and effects of the decentralization of collective bargaining, the relaxation of labor regulations, privatizations, and the presidential decree passed in order to base wage hikes exclusively on productivity.

3. Setting the tone: privatizations

One of the first measures adopted by Menem's administration was the privatization of state-owned companies in order to reduce the fiscal deficit, the public debt, and improve the quality and efficiency of services provided by public utility companies. Law No. 23696 (Law of State Reform) and Law No. 23697 (Law of Economic Emergency) were passed by Congress in 1990 under high pressure from the Executive, who argued that these laws were essential to get the economy out of the chaotic situation generated by hyperinflation during Alfonsín's term.

These two laws regulated the process of privatizations, and some of their articles referred exclusively to the labor regulations that should apply to these companies after the hand over to private owners. Decree No. 1757/90 that regulated Law 23696 in article 68 established that the company to be privatized had to submit to the Ministry of Economy a report with all clauses and norms of their collective bargaining agreements for their revision and approval. These reports then had to be sent to the Ministry of Labor, which in turn had to inform the respective union, and the union had to take a position.

The idea was that the agreements had to be revisited and had to conform to the needs of the owners of the privatized companies. In case there was no agreement between business and unions because unions ratified previous collective bargaining agreements, the Ministry of Labor had to force negotiations between the actors until a

new agreement was reached "that did not affect the productivity of new companies."[78] As a result, all privatized companies reached new agreements at the company level with the unions, even if they operated in the same sector, and collective bargaining agreements signed in 1975 expired. As explained in the previous chapter this was not the preference of unions, which wanted to keep collective bargaining centralized, but they were forced into them.

Not only public sector unions were forced to sign company level agreements, which if nothing else increased the number of contracts signed at this level, but also by so doing they created noise within the monolithic ideology of unions that centralized collective bargaining was a non-negotiable issue. Privatizations had the "unintended" consequence of dividing the labor movement on the issue of collective bargaining, but also of alienating even further public sector unions from their opposition to market-oriented policies. Once among the leading unions within the labor movement, public sector unions were now joining the ranks of pro-reform unions.

In order to make the transition smoother, Menem's administration made sure that unions received some benefits out of their participation in the privatization process, and this strategy proved to be very successful. One of the main instruments used to compensate unions for the loss of jobs and the uncertainty associated with the privatization, was their participation and of their workers in the companies' stock options. This program is known as PPP (*Programa de Propiedad Participada.*)

In sum, one of the strategies used by the government to introduce changes in labor institutions was to "obfuscate" these changes by disguising them within other reforms, such as the privatization of public companies. Hidden from public view and not presented as mainly accomplishing changes in labor institutions, privatizations of public companies had a profound and indelible impact on the labor movement and collective bargaining agreements that went beyond the handful of workers and unions directly affected by them. It is unlikely that the reformers who drafted the labor clauses for the privatizations completely ignored their consequences, although it is possible that the extent of their impact was somehow "unintended."

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[78] Strega (2000.)

4. Getting around the potential "rigidity" of wages and labor costs

Another way in which the changes in labor regulations were introduced through subtle and less contested means was the passing of Decree No. 1477/89 (decree of necessity and urgency). Once again, even before the government announced its intention to pass a labor reform with the objective of making the protective legislation less so and increase competitiveness, reduce labor costs, and create more jobs, they passed an Executive order as effective as any law, with considerably large effects over the labor market.

Decree No. 1477/89 allowed employers to pay a percentage of workers' wages in food stamps (*Ticket canasta*) that were redeemable at supermarkets and restaurants to buy food and household supplies. For employers, the advantage of these food stamps was that they did not have to pay for payroll taxes on those amounts. Thus, they constituted an important reduction in labor costs with the associated loss of benefits for workers. The justification for the decree was that it was a way of increasing wages in the midst of a rampant social and economic crisis without increasing labor costs for business.

However, in 1993, when the economy was growing at a rate of 7%, the government ratified the use of food stamps through decree No. 333. In 1995, the government passed decree No. 592, in which it included some limitations and requirements to use these food stamps to avoid fraud. Twenty five percent of the users of food stamps were salaried workers, 35,000 stores had adhered to the system, and they were making U$1,200 million a year.[79]

In 1996, when the government was facing a fiscal deficit, it passed decree No. 763/96 to eliminate decree No. 1477/89 that had given origin to the food stamps, only to reinstate it a couple of months later, although this time with less tax benefits for employers. The government had received complaints not only from employers, but also from some unions, which had incorporated the use of food stamps in their collective bargaining agreements. The government backpedaled in its decision to reinstate payroll taxes, with the fiscal deficit in mind, under the pressure of unions and employers. All

[79] de Diego, Julián, cited in Strega (2000.)

these changes, with important consequences for "labor costs" and workers' benefits were more hidden from public view than the highly publicized labor reforms.

5. "Rocking the boat": collective bargaining beyond privatizations

In 1991, once the Menem´s administration had passed the convertibility law that pegged the peso to the dollar in a one to one parity, the Executive sanctioned decree No. 1334/91, which had important consequences for the level of negotiation of collective bargaining agreements and the ability of unions to negotiate with business over wages and working conditions. Even though this decree was not highly publicized as introducing any changes in labor laws and institutions, it had the ability to affect them to an extent that more obvious reforms of collective bargaining agreements did not.

Decree 1334/91 was a regulatory decree that modified some of the articles of Law 14.250 of collective bargaining, with the main goal of regulating the convertibility law.[80] The decree tied wage hikes to increased productivity. By introducing this constraint to negotiations over wages, the government was doing mainly two things. It was giving the upper hand to business in negotiations over wages, making productivity levels their prerogative, since there was no law or regulation that could effectively oblige them to share that information with unions. Without information about productivity, unions were left in the dark in their demands for higher wages. At the same time, the government was introducing a strong incentive to negotiate at the company level, which was one demand put forward by big business, since it is at this level that productivity increases are measured. Collective agreements at the industry level were henceforth more complicated.

Moreover, provided the long tradition in Argentina of government intervention in the determination of salaries and the focus of unions in negotiating mainly over wages,

[80] The 1853 Argentine Constitution provided the president with three types of decree powers: "regulatory" (for the executive's implementation of legislation approved via the normal constitutional process), "autonomous" (related to the executive's singular constitutional duties), and "delegated" (as when the Congress grants legislative authority to a president in emergency situations.) The Reform of the State Law (23.696) and the Economic Emergency Law (23.697) in 1989 are examples of laws implemented by delegated executive decree authority. After 1990, Menem increasingly resorted to "decrees of urgency and necessity" (*decretos de necesidad y urgencia*), which gave the president the ability to legislate without going through Congress. Urgency decrees also gave Menem the ability to pressure Congress into approving bills lest the legislature be excluded from influencing the content of new laws. The Supreme Court sanctioned Menem's use of the extra-constitutional urgency decrees after the PJ-dominated Congress, in April 1990, approved an increase in the number of Supreme Court justices, from five to nine. See Ferreira Rubio and Goretti (1996) and Jones (1997).

unions were confronted with negotiating over other issues. In fact, right after the sanctioning of decree 1334/91, formal collective bargaining agreements signed at the company level increased dramatically, while agreements at the industry level leveled down.

Evidence that this decree effectively affected unions in their ability to negotiate, that it had the effect of decentralizing collective bargaining agreements was their insistence on pressuring the Executive to backpedal on its enactment. Unions pressured the Minister of Labor to change the decree and pressured the president directly with the same issue. The response was a consistent and resounding negative to change that legislation that was seen by the Executive as a non-negotiable issue. The issue also shows that when the government judged that the battle was too important to lose, it did not concede to unions' demands.[81]

A closer look at the implementation of this decree provides further evidence to the drive of companies to decentralize negotiations at the company level, and to exchange wages for the relaxation of aspects of labor regulations that had been particularly rigid in the past. At the same time, the fact that this instrument went from originating agreements that complemented previous "continuity by default" agreements at a rate of 32% to a meager rate of 0.1% in a few years, points again to the increasing adoption of informal and private agreements through the parallel system of negotiations which performed a similar function, although it remained officially unregistered.[82]

Decree 1334/91 tied up wages to productivity increases exclusively through the use of agreements (*acuerdos*) that particular companies or sub-sectors within a sector

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[81] In April 2, 1992, after the reunification of the CGT—divided since the initiation of the market-oriented reforms in 1989 into CGT-San Martín and CGT-Azopardo—Oscar Lescano took over the leadership and demanded the elimination of decree 1334 that conditions wage hikes to increases in productivity. Rodolfo Díaz, who was the Minister of Labor at the time, immediately rejected this demand. In April 22, five members of the unified CGT met with the president and again demanded the elimination of the decree, which Menem rejected. In July 1, the CGT declared a general strike with no certain date to demand the elimination of decree 1334, along with the restoration of the control of *obras sociales*, which the government wanted to privatize, and the rejection of the privatization of social security. Menem responded immediately by saying that "the government does not accept any threats." In July 17, when it seemed that the CGT would declare a general strike, the minister of economy, Cavallo, negotiated with the CGT. The unions got back control of the *obras sociales* and the government promised to revise the issue of decree 1334. However, in September, Cavallo ratified that wage negotiations would continue to be carried out according to productivity, putting an end to the struggle of the CGT to get rid of this new regulation (See Senen Gonzalez and Bosoer, 1999.)

[82] Aldao Zapiola et al (1994.)

could sign with a union to modify aspects negotiated in the past through collective bargaining agreements. These *acuerdos* were not "default" ones, so they expired after the period of application and needed to be renewed in order to remain valid. Once expired, if not renewed, previous "default" agreements would continue to regulate a certain activity.

From the passing of the decree in 1991 to December 1993, 511 agreements had been signed between unions and companies and ratified by the Ministry of Labor. Initially, 236 agreements were signed out of a total of 737 collective bargaining agreements that could potentially had been attached to these agreements. This implied an adhesion of 32% but an impressive 66% of beneficiaries, which represented 4.407.900 workers. However, as mentioned, this initial adhesion decreased dramatically over time and fewer and fewer of these agreements were renegotiated, going from a 33% of adhesion to a meager 0.1%. Analyses of this trend point to the continuation of these negotiations through private agreements in the parallel system of negotiation, which remained obscured from the official registration.

Negotiations of *acuerdos* tended to occur more frequently in sectors in which unions had previously been negotiating more often in regular collective bargaining agreements. Most of the *acuerdos* were signed in sectors that had renewed agreements between 1988 and 1993 (60%) while the rest were signed in sectors with "continuity by default" agreements from 1975. In the latter case, the impact in terms of workers was important, since unions in the metal, commerce, and construction industries have many members. A higher level of adhesion occurred in sectors in which previous agreements had been signed at the activity level, which shows the need to adjust conditions at a lower level of negotiation. Also, there was a high level of adhesion in the area of services such as commerce, banking, and insurance.

Most collective bargaining agreements did not generate attached *acuerdos,* and these companies represented 2 million workers. These companies are usually small and tend to have limited union representation at the company level, if at all. They have a tendency to negotiate with workers through un-written agreements. In most cases, they have "continuity by default" agreements that date back to 1975. They represent an important number of workers in all sectors of the economy.

An important feature of this decree is that it not only tied wage increases to productivity, which in itself, was an unwelcome novelty for unions, but it also managed to tie negotiations over wages to the relaxation of labor regulations in connection to internal flexibility and external flexibility, one of the aspects that was particularly rigid, and which companies were eager to modify. This is so because the government allowed companies to negotiate with workers wage raises based on "future productivity", which meant that workers were committed to adopt certain changes in work time and work organization in exchange for future raises.

In fact, the Ministry of Labor was willing to stretch the limits of the labor law in the ratification of these agreements, introducing de facto changes in, for example, vacation time, which was not allowed by law. Most of the *acuerdos* were based in a criterion of future productivity, and the issues exchanged for higher wages included multi-tasking, short-term contracts, work time, vacations, assistance, overtime, and work organization. As shown, the type of issues selected for negotiations in exchange for wages, perfectly match with the rigidities pointed out in the previous chapter on the Argentine labor code.

5. 1. Examples of *acuerdos* with Decree 1334[83]

Categories

A good illustration of the many *acuerdos* signed around the issue of categories is the *acuerdo* between the electricity workers' union, *Federación Argentina de Trabajadores de Luz y Fuerza* (Argentine Federation of Electrical Workers) and the Electricity Generation Station of San Nicolás. *Acuerdo* 36/75 signed in 17/09/93 relaxed the notion of categories as strictly attached to one tightly defined task, and incorporated the idea that categories should be understood within the general notion of multi-tasking, geared towards greater productivity. The terms of the agreement are vague enough to allow for changes in the tasks accomplished within categories in a broad range.

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[83] For a comprehensive and detailed analysis of all *acuerdos* signed within the legal framework of decree 1334/91 and a complete list of all of them, see Aldao-Zapiola et. al (1994.)

Short-term agreements

Acuerdo 70/93 between the *Sindicato de Trabajadores de la Industria del Gas* (Gas Industry Workers' Union), Buenos Aires and Greater Buenos Aires Local with the Distributor of Gas Metropolitano, opened up the possibility not only of using the short-term agreements authorized by new labor laws, but also innovated in the possibility of using part-time workers, which are unregulated by law, paying only half of the total amount of labor taxes paid for full time workers, as it is established by law.

Work Hours

In general, these types of agreements try to use work hours in a more effective way, establishing that the distribution of time should not follow a previously agreed schedule, but should be adapted to the needs of the company in a more flexible way. Agreement 158/75 signed in 1992 between the *Sindicato Argentino de Trabajadores Navales* (Argentine Union of Navy Workers) and the Chamber of Argentine Naval Industry establishes that workers should expect to distribute their work hours in the most effective way for the company. However, in other cases over time can be redefined in a more flexible way. For example, *acuerdo* 154/91 signed in 1992 between the *Sindicato de Trabajadores y Empleados de la Industria Vitivinícola* (Union of Workers and Employees of the Wine Industry) and the Association of Wine Producers of Mendoza and others, established that when hours of work are lost due to bad weather conditions, they can be considered as a credit for the employer to extend hours of work during times of increased levels of production. Another issue that is negotiated through these *acuerdos* is the regulation of work breaks, again to make them more flexible and adjust them to the type of activity.

Vacations

Another aspect that was rigidly regulated by labor laws was vacations. These could only be taken during the summer time and between specific dates. However, this was the subject of negotiation during the *acuerdos*, even beyond the letter of the law. Basically, *acuerdos* were signed to establish vacations other than in the summer time, during downturns in production. *Acuerdo* 66/89 signed between the *Unión Obrera*

Molinera Argentina and the *Federación Molineros y Cámara de Fabricantes de Alimentos Balanceados* is a good example. Employers and workers agreed to disregard regulations for vacation periods, and established them according "to the needs of the industry and the level of production at the most convenient moment during the year."

Elimination of subsidies or leaves of absence

Some of the *acuerdos* were used to eliminate subsidies that had been previously agreed upon at the industry level, such as bonuses paid on a regular basis. *Acuerdo* 193/92 between the Argentine Wool Industry and the Union that represents workers in this activity established that a special bonus that had been given to workers in past years had to be eliminated. It would not be considered an "acquired right" as Argentine law establishes in regards to the benefits negotiated in a given collective bargaining agreement, which cannot be overridden by subsequent agreements. Regarding leaves of absence, most of the agreements negotiated to eliminate or reduce the number of circumstances that originate the payment of leaves.

In sum, the implementation of this decree demonstrates several points. First, the extent to which the government managed to introduce innovations in labor institutions and regulations through more subtle but effective means such as the use of decrees, even before the launching of so-called labor reforms. The decree was ambitious and targeted to solve many of the problems in regards to labor codes and regulations. It certainly eliminated the method of wage indexation, which had brought high levels of inflation in the past, eliminating possible salary rigidities in a context of an overvalued peso and high levels of exposure to international competition.

At the same time, the decree also sought to eliminate several rigidities in regards to internal and external flexibility, by allowing companies to negotiate wage increases in exchange for the future productivity that would be gained through the implementation of more flexible rules of work and compensation. It also ratified agreements with ample discretion in regards to the limits of the labor codes, clearly favoring the implementation of more flexible rules even if stretching the limits of the law. Moreover, it shows that the ability of unions to derail a process of relaxation of labor institutions and regulations was

quite limited, given that their pressure to eliminate this decree was completely unsuccessful, and the implementation of the decree clearly had profound effects in the level and content of negotiations in the opposite direction in which unions would have wanted it.

The initial high level of adhesion by companies to the signing of these agreements also shows that the need to introduce more flexible rules of work and compensation was not exclusively an ideological posture of the government. As shown, the *acuerdos* negotiated precisely the most rigid aspects of labor regulations besides decentralizing negotiations and adapting rules to smaller units. It also demonstrates that unions, despite a public discourse that showed them against the relaxation of labor institutions and regulations, were in practice signing agreements that reflected the kind of change that both employers and the government wanted to implement.

However, the implementation of the productivity decree also shows the limits of government action in regards to introducing formal changes in labor regulations. As shown, even though the adhesion to the signing of these agreements was quite high at the beginning with 33% of previous collective bargaining agreements being related to a new *acuerdo* to only 0.1% in just a few years. As I will show in the next chapter, employers and workers and their unions continue to negotiate more flexible rules of work, but using private agreements in the parallel system of negotiation, and the government chose not to pay the political cost of pushing the implementation of the decree in favor of employers.

Also, the signing of the *acuerdos* was still dependent on the signing of collective bargaining agreements to which they were attached and, as explained, its lifespan was limited to the duration of the *acuerdo*, after which the collective bargaining agreement signed in the industry would continue to be the formal regulation. This meant that even though in practice this policy elicited the desired effect, it had limitations in sustaining it over time, as collective agreements were not replaced and remained "by default."

6. Profiting from unions' vulnerabilities: using *obras sociales* as the main token of negotiation

Before dealing with each reform and how the government negotiated them with the social actors, mainly business and unions, it is best to identify the main policy

instrument used to "negotiate" the reforms with unions. According to all actors involved[84], and the sequence of reforms and decrees as recorded in newspapers[85], throughout the 1990s the government used the threat of taking the administration of *obras sociales* away from unions, as its main tool to pass other legislation on issues that are important for workers but less important for the preservation of unions' organizational and financial power. The basic equation has typically been to negotiate the preservation of the unions' control of *obras sociales* in exchange for other reforms of the labor market. The main concessions of policies in exchange for the preservation of the control of *obras sociales* have been: the relaxation of laws regarding individual contracts; the reform of the legislation that regulates work-related accidents and illnesses that basically reduces costs for employers; and reform of the social security system with dramatic consequences for workers and the state but little effect for unions in terms of loss of power.

Union finances were dwindling due to the fact that membership had diminished in almost all sectors. In addition, unions had always depended heavily on the *obras sociales'* money to fund their union activities--which in many cases had large bureaucracies and offered costly services, such as hotels in beach resorts on the Atlantic Coast. The government could take advantage of this vulnerability of unions.

In fact, many of these unions' *obras sociales* and the unions themselves had already filed for bankruptcy. Since surviving as an organization depended more on the preservation of state-sanctioned privileges than on their membership, it seemed logical that unions were mostly concerned about their most obvious and immediate sources of financial and organizational survival.

Moreover, many of the changes introduced to drafts of legislation sent to Congress by the Executive, had been introduced not by the union leaders' themselves but by their legal advisors, who took advantage of their position of representation of the

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[84] Interviews with many public officials involved in negotiations with unions, as well as businessmen and union leaders themselves, have asserted in personal interviews with this researcher once and again that the main concern of union leaders during the negotiations of all labor reforms has been to keep control of the *obras sociales*.

[85] For the sequence of events that shows that every time the government wants to pass a reform of labor laws, it also passes a decree concerning the control of *obras sociales* by unions, see Senén González and Bosoer. The government either forgives the *obras sociales* and unions' debts or stops the process of decentralization and privatization of *obras sociales*, which supposedly wanted to carry out.

unions' interests to prevent changes to individual contracts that would have drastically reduce the protective character of labor legislation.

7. The first round of reforms: 1990-1992

7. 1.The first attempt at "labor reform": The *Ley Nacional de Empleo* (National Law of Employment)

In 1990, the government finally launched its first official attempt at changing labor laws and institutions through legal changes sanctioned by Congress. From the beginning of the administration, there had been a tension between the teams at the Ministry of Economy and the Ministry of Labor in regards to how to approach changes in labor institutions and regulations[86].

The team at the Ministry of Economy led by the then influential minister Domingo Cavallo[87] wanted to keep introducing reforms of labor institutions and regulations through the use of presidential decrees (*decretos.*) In fact, as shown, the government had accomplished quite a lot through the use of these decrees up until then. However, the team at the Ministry of Labor, which were comprised by the first four Ministers of Labor during the Menem administrations—Jorge Triaca, Rodolfo Díaz, Enrique Rodríguez, and Armando Caro Figueroa—thought that reforms in labor institutions and regulations could not be implemented successfully with the use of decrees. They thought that these changes could only happen through laws approved by Congress and mediated by the creation of a new consensus around what protecting workers meant in the 1990s.

Drawing from their experience in high rank positions in the Peronist party and as legal advisers for unions and companies Rodolfo Díaz and Enrique Rodríguez[88] were

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[86] See interviews with all ministers of labor under Menem in Senén González-Bosoer. Personal interviews with Ministers and Secretaries of Labor in all Menem administrations: Rodolfo Díaz, Caro Figueroa, Rodolfo Izquierdo, Carlos Etala, Enrique Rodríguez, Jorge Triaca and Osvaldo Giordano.

[87] Cavallo became a central figure of the market-oriented reforms not only because he introduced one of the most successful economic measures, which was the convertibility law, but also because he centralized many government functions under the ministry of economy.

[88] Enrique Rodríguez, a famous labor lawyer and university professor who had published important works on labor law, was appointed as secretary of labor while Rodolfo Díaz was Minister of Labor. He later on became Minister of Labor himself when Díaz resigned, due to differences with Cavallo. In fact, Díaz, Rodríguez and Caro Figueroa operated as a team from 1990 to 1998, occupying different positions in the Ministry of Labor or working as independent consultants for it.

convinced that they needed to create a strong consensus around the issue of workers' protection, for the laws to be effective. The idea was that protecting workers in the 1990s meant relaxing laws and regulations on firing and hiring, to favor the creation of employment in an economic environment characterized by higher levels of competition. The reform focused mainly on the creation of fixed term contracts and in setting the groundwork for unemployment insurance, since they judged that full employment would be difficult to attain.

In October 1989, Minister of Labor Jorge Triaca, a union leader, announced at a Conference of IDEA—a conference that traditionally draws big businessmen from all sectors of the economy—that the government intended to introduce changes to labor regulations and institutions to adapt the old legislation to the liberalization of the economy. It was Rodolfo Díaz, his secretary of labor, however, one of the mentors of the labor reform, who moved the project forward once he became Minister of Labor in 1990.

Before drafting the project, Díaz hired a considerable number of consultants, most of them technicians and specialists from international organizations to get their feedback. The initial project had 174 articles, and focused mainly in creating mechanisms to relax hiring and firing clauses through fixed term contracts, creating unemployment insurance and improving the monitoring for the enforcement of labor legislation. The idea behind it was to enforce more compellingly a legislation that would overall be less rigid than the previous one. Since the legislation was going to be less rigid, the government would be less willing to tolerate the creation of informal employment. At the same time, it was assumed that a certain level of unemployment would be inevitable, and thus unemployment insurance had to be created.

The dominant view about this labor reform in the academic literature is that business groups drafted the project and that it was the merit of the unions through the labor commission in the Chamber of Deputies to modify its highly deregulatory stance. However, the draft was in fact criticized by all sectors, including business, unions, and labor specialists. It reflected the views of labor lawyers at the Ministry of Labor, who did not want to introduce a radical deregulation of labor laws. As a result, the final legislation still had a protectionist stance and ended up being highly regulatory. Also, since Díaz and his team tried to generate a general consensus around the norm, and given that business

and unions had opposing views, the project ended up being unsatisfactory for all of them. The project reflected a difficult, if not impossible compromise between radically different positions, and that is in part the reason that its implementation failed.

As shown, previous decrees had helped companies to implement more flexible work rules and forms of compensations, keeping wages in line with productivity increases to avoid inflation. The next step was to introduce higher external flexibility through the relaxation of hiring and firing rules, which were quite strict before the reform. The law introduced four types of short-term contracts: 1) employment promotion; 2) new activity; 3) internships for young people; and 4) job training. However, despite the introduction of these short-term contracts, the law continued to give preference to the contract of indefinite duration, not only because these contracts were targeted to a reduced number of workers, but also because the misuse of these contracts could lead to the assumption that they were in fact labor contracts of indefinite duration.

These short-term contracts introduced the novelty that the employer only has to pay half the amount of a regular severance payment at the end of the stipulated period of the contract. The idea is that short-time contracts are related to either exceptional or temporary situations. In addition to the exceptional principle that defines them, these contracts are highly regulated through numerous bureaucratic requirements that need to be met in order to use them. In fact, these requirements made them difficult to use, if not risky, given that failing to fulfill these requirements meant considering them as contracts of indefinite duration with higher severance payments. The period of use of these contracts was shorter than the period of similar contracts in other countries that use them. Also, the short-term contracts did not incorporate the idea of a trial period, as it is customary in other countries, during which the employer does not have to pay labor taxes.

The categories of workers to which it applied was limited to people less than 24 years-old, unemployed—if the worker previously held a job in the formal market—recently dismissed in the public sector, or workers involved in the beginning of a new activity at a given company—a new product, a new area, or a new factory. In fact, the latter category was the most frequently used, given that it provided more latitude in its definition. In addition to all these requirements already devised in the original project,

negotiations in Congress resulted in the incorporation of the requirement that employers did not dismiss any workers in the year previous to using short-term contracts and did not owe any payments to the social security system for their workers. Also, as a result of discussions with Congress, these short-term contracts had to be negotiated through collective bargaining agreements previous to their use by the employer, and the number of workers hired through these contracts could not exceed 30% of the total number of workers at any given company. The government, however, had already devised an escape clause. If authorities declared an employment emergency in a given sector or region, all these restrictions for the use of contracts could be eliminated. In that case, these contracts could be used for any type of worker, under any circumstance, for a period of 6 to 18 months and did not require the signing of a collective bargaining agreement. This is exactly what the government did once it realized that the use of these short-term contracts was limited, and by so doing it overrode all restrictions imposed by legislators and unions. Before the introduction of an emergency situation, until 1993, the use of these contracts was very limited (Table 3.1.)

Table 3.1
Number of short-term contracts effectively used by year (*)

Year	Employment Promotion	New Activity	Internship	Job Training	Total
1992	3,309	8,565	1,807	775	14,456
1993	13,813	24,771	2,540	2,434	43,558
1994	22,539	36,579	3,025	3,587	65,730
1995	24,795	36,944	2,691	2,657	67,087
1996	13,156	16,493	1,254	859	31,762
Total	77,612	123,352	11,317	10,312	222,593

Source: Ministry of Labor (MTSS)
(*) Since 9/95 two new norms make the use of these contracts less attractive and explain the decline in its use. Law 24.465 creates new short-term contracts with higher levels of reduction in labor taxes and which did not require registration in the ministry of labor. Also, Law 24.467 for small and medium size firms allows small companies to use these contracts without registering with the ministry of labor.

The National Law of Employment did not regulate part-time employment, which would have had a major impact in the relaxation of hiring rules. As before, part-time jobs could be created but labor taxes had to be paid based on a full time salary. Little was done in regards to deregulating internal flexibility, which had been the objective of the decree that regulated wage increases according to productivity. However, this new law

allowed for the negotiation of work hours in companies declared under restructuring, but the term was vague and it was risky to use it. In addition, it allowed the negotiation through collective bargaining of the reduction of work hours, but it did not open the door for the creation of flexible schedules. The reform did introduce a regime of exception that was used liberally by employers, given that the requirements for its use were not very strict. It was the Preventive Procedure of Crisis (PPC) that could be used in case a high percentage of workers had to be dismissed for economic reasons. In these cases, previous collective bargaining agreements expired automatically and changes could be introduced. It was used mainly in sectors in which unions systematically refused to negotiate at the company level, as it was the case of UOM.

The main accomplishment of this reform was the elimination of a previous decree sanctioned in 1989 that allowed workers to sue employers for severance payment with no caps. The National Law of Employment reestablished the limit to the maximum that can be paid in concept of severance payment, but it changed it from 3 minimum salaries to 3 average salaries in collective bargaining agreements. It also regulated the minimum wage to make it neutral to inflationary pressures. It basically banned the use of the minimum wage as a benchmark to establish other labor institutions or collective bargaining agreements. It also de-linked the determination of the minimum wage to the amount required to satisfy the basic needs of a standard family (basic basket.) All these measures reinforced the wage flexibility that had already been established through the prohibition to adjust wages according to inflation and only in regards to increases in productivity.

Finally, the reform also laid the ground for the creation of unemployment insurance, seen as a complement to the implementation of short-term contracts and the inevitable dismissal of workers due to company restructuring. Unemployment insurance was quite an innovation for the Argentine labor market, but it was limited in duration and could cover only workers in the formal sector. Its implementation was constantly boycotted by the ministry of economy, which reduced the amounts spent on it in order to avoid a fiscal deficit, until it made the unemployment insurance meaningless in terms of the amount received by workers and its actual coverage. The reform also entailed the improvement of the system of monitoring of labor codes, but this aspect was systematically dropped during the phase of implementation in every round of reforms. As

I will argue, it was another way the government used to relax labor institutions every time that the legal changes fell short of it.

As mentioned, the argument about the veto point at the Labor Committee of the lower House of Congress does not completely explain why the first reform was still protectionist and lukewarm, and why many aspects of its implementation failed. The usual argument is that the Labor Committee of the chamber of deputies had a high percentage of legislators who were trade unionists, and who were essential to reach a majority and send the project for congressional approval. However, even though the Labor Committee of the chamber of deputies expressed opposition to the project and managed to introduce some changes to the original proposal, this does not fully explain the protectionist slant of the final bill, or the failure to implement decrees and some of the reforms that were passed. The Committee was not able to stop the de facto implementation of many changes, including the decentralization of collective bargaining and the relaxation of regulations regarding suspensions. It did not stop the changing of categories or work hours through the extensive use of private contracts, despite the fact that changes were not formally introduced.

Even if only considering the effects of the Labor Committee on the passing of the reform, its role was limited to the Law of National Employment. It is a well-documented fact that the proposal from the Executive was still protectionist and highly regulatory, judging from the criticisms it received from business sectors, even before it entered the legislative process. It was also criticized by prestigious labor lawyers, who found it either insufficient to reduce the level of rigidities present in the labor codes or highly regulatory.[89] In fact, it is hard to judge who introduced the changes to the original draft, since the first draft never took written form until it was widely circulated and negotiated with several actors and consultants. Given that the government judged that it would be easier to negotiate the project in the Senate, it initiated the legislative process in the Senate.[90] There, it met with the resistance of legislators, not only from the Peronist Party but from the Radical Party as well. However, three months after the project reached the

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[89] Strega (2000)

[90] According to the Argentine Constitution the Chamber of Congress that initiates the discussion of a certain bill, always has the last word in its final content, given that it always has to return to that chamber before approval and that chamber can choose to ratify or reject the changes made by the other chamber.

Senate, the minister of economy, Cavallo, negotiated with senators additional requirements for the use of short-term contracts. Cavallo agreed to concede that employers had to prove that they had not dismissed any worker in the previous year to the use of the contracts and that they did not owe any money in labor taxes. A month after those negotiations, the bill was passed and went to the chamber of deputies for discussion. It was then that it reached the Labor Committee of the chamber of deputies.

The bill was met with resistance from legislators on the Labor Committee and in the Lower House in general, despite the fact that the Peronist Party had a legislative majority during both Menem administrations. Union-member legislators, who were on the Labor Committee negotiated with the Executive that in exchange for their vote in favor of labor reform, the Executive would pay for their union debts with public funds. After this agreement, the bill was up for a vote on the House floor, and Peronist legislators twice failed to give quorum. In retaliation, the Executive vetoed the Law of Internal Consolidation, through which it would pay the unions' debts. Then, the legislators promised to vote in favor of labor reform and the Executive backpedaled in its veto decision. In the meantime, the PJ won legislative elections by a landslide and the party success was taken as a measure of approval of the Executive neo-liberal agenda.

Taking advantage of that political moment, Cavallo managed to negotiate some concessions from legislators. They agreed to limit the legal amount for severance payments, which was very significant in terms of a reduction of labor costs. However, the chamber of deputies added a new restriction to the use of short-term contracts: they had to be negotiated with unions through collective bargaining agreements. The Law of National Employment was finally approved with a majority vote of the Peronist party and other small provincial parties. The Radical party rejected the project. As explained, all the concessions made to legislators were removed in practice through the unilateral declaration by the Executive of the state of employment emergency, which made the use of short-term contracts less restrictive and allowed for its use without having to mediate a collective bargaining agreement.

Another common explanation for the failure of reform has to do with party ideology (Corrales 1999). As the Peronist party was responsible for the creation of the labor codes in the 1940s and the party became associated with the protection of workers,

the dismantling of labor legislation should be seen by party members as a direct attack on its core ideology. However, as previously shown, even though Peronist legislators showed great concern for the creation of short-term contracts with its potential to create more precarious jobs and were reluctant to its approval, in the end they were supportive of the legislation, which in fact was rejected by the Radical party, not the Peronist. Also, as shown, resistance came from the Radical party and labor lawyers as well and not only from the Peronist party. Therefore, even though Peronist ideology seemed to play a role in the resistance, it was not the only element associated with it.

In sum, as it has been shown, changes in labor institutions and regulations could not be properly judged by looking exclusively at their rate of approval by Congress, provided the importance of the implementation stage in their final efficacy. For example, the short-term contracts were not widely adopted despite their virtues in reducing costs, but their use increased with the declaration of employment emergency unilaterally by the Executive. Also, changes in working conditions were achieved through the use of the PPC, even though this aspect was not subject to negotiations in Congress.

Political compromises to pass the legislation had left social actors, both on the business and union sides unsatisfied, so the need to introduce changes in labor deployment to remain competitive did not find a legal outlet, and the door was open for alternative means of accomplishing it. In fact, in this first round of labor reform, it was clear that the government would not take the side of the employers without making concessions to unions. This would have been politically costly for the Executive. As I will argue in the next chapter, an alternative channel for changes, in addition to changes introduced through decrees, had already been opened. This channel was a satisfying solution for unions and companies, so it became the main route for changes in labor laws and institutions and was in fact reinforced by the legal stalemate.

7. 2. Other changes: Law 24028 on Work-related Accidents and Illnesses and Decree on Decentralization of Collective Bargaining

In addition to the passing of the National Law of Employment, the government passed legislation to reduce labor costs associated with work-related accidents and

illnesses, which was well received by employers and went by without a fight with unions despite the fact that it was clearly a reduction in benefits for workers.

From the outset, the government identified the reform of the legislation regarding work-related accidents and illnesses as one of its objectives. This had been a demand of business, in particular of medium and small size companies that alleged that many of them were going into bankruptcy every year due to the high cost of lawsuits brought against them due to work-related accidents and illnesses suffered by their employees. The government evaluated that the high cost of lawsuits also affected rates of employment if the companies considered these risks when hiring a new worker.

The main issue was that work-related accidents could not be insured any more, given the fact that the current legislation encouraged excessive litigation and the amounts to be paid by employers in case they lost the case could not be foreseen and were usually over the limit of what they could afford. This situation led to the bankruptcy of many medium and small size companies, but also of many insurance companies that could not pay the costs of compensation to workers ruled by labor courts. The issue was taken up by the media, which campaigned against the current legislation and its disastrous effects on companies, and ultimately on society as a whole.

Law 23643 regulated work-related accidents and illnesses, which had modified Law 9688 sanctioned in 1915. This legislation was modified through different administrative regulations and laws that basically preserved their spirit but some profound changes were introduced in their interpretation in the labor courts. Law 23643 modified the way in which the calculation of compensation to the victim was carried out, giving more compensation to younger victims and increasing the caps for compensation amounts. However, the main change that this law introduced was to broaden the possible demands that could be included as work-related accidents and illnesses, and the presumption that the employer was responsible for the illnesses that the worker could have in case the cause could not be determined exactly.

Both unions and business participated in the drafting of the new legislation and influenced its new content. According to labor experts, the law did not drastically modified previous legislation but fixed some of its previous problems, such as reducing the range of accidents and illnesses that could be claimed as work-related, and eliminated

the assumption that the employer was guilty in case the real cause of illness could not be determined precisely. As a result, it brought down the number of lawsuits. In addition, lawyers' fees were limited to reduce compensation payments. Those fees could not represent a percentage of the total amount of compensation demanded for the workers.

Even though there is a debate of the extent to which the number of lawsuits for work-related accidents and illnesses and the amounts charged in compensation are off the charts, evidence compiled from both sides of the debate indicate that even though lawsuits constitute a considerable percentage of GDP, this percentage has been diminishing considerably over time since the changes in legislation were introduced[91]. It is fair to assume then that this reform meant a considerable reduction of labor costs for employers, and its approval in fact depended very much on the inclusion of specific demands from the UIA, an organization that represents business nationwide. It is interesting to notice that even though it also had important consequences for workers in that the range of accidents and illness that could be claimed was substantially reduced and their ability to win a case slashed, unions did not present as much opposition as they did on other issues such as union-managed health insurance (*obras sociales*) or collective bargaining that affected more directly their own organizational interests.

Given that the decentralization of collective bargaining was a desired objective in the government agenda but more resistance from unions was anticipated in this subject, once again the government resorted to the issuing of presidential decrees. Decree 2284/91 known as a decree of economic deregulation established that the parties to a collective bargaining agreement could choose the level at which they wanted to negotiate it. Collective bargaining agreements could be negotiated at the activity level, sector level, a specific craft, or at the company level. The effectiveness of this decree on decentralization was bound to be scarce, since it did not oblige the parties to re-negotiate their previous agreements, which was a crucial factor in the stalemate in negotiations. In fact, the decree was not adding anything new to the existing legislation, provided that

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[91] According to IDEA, a pro-business organization, in 1995, four years after the legislation had been passed, the number of claims added up to 7176 million dollars, representing 2.5% of the GDP and 13.2% of total wages paid. If fees paid to lawyers were included then the total was 8970 million dollars, representing 3.1% of the GDP and 16.5% of total salaries paid. According to Héctor Recalde, a labor lawyer who represents unions, based on statistics from labor courts, the number of claims presented in labor courts in regards to work-related accidents and illnesses had dropped 40% from 1991-1994.

Law 14250 that regulated collective bargaining already established that negotiations could proceed at any level, and in fact sectors such as textiles and autos have traditionally negotiated at the company level. The objective of the decree was to establish the government's position on collective bargaining and to make it clear to unions that it was not going to defend their position on keeping the centralization of collective bargaining as it had been the tradition in Argentina up until then. It was a reminder to actors that negotiations did not necessarily have to go on at the activity level, as it had been the position of unions over the years.

8. The Second Round of Reforms (1992-93)

As stated, by the end of 1991 the government got a boost in the legislative elections and the PJ victory was taken as a strong backing of the Executive's neo-liberal agenda. The position of the minister of economy was particularly strengthened, as he had been responsible for stopping hyperinflation and making the economy grow once again. In that context, the Executive tried to push for the deregulation of the labor market even further by eliminating the rigidities that were still pending since the last reform. The Cavallo team was clearly on the offensive with respect to the labor ministry team in this second round.

The Ministry of Labor also wanted to deepen the reform of collective bargaining and pushed for its decentralization. In order to do it, the ministry pushed for a decentralization of collective bargaining and a democratization of the union movement. Given that the centralization of collective bargaining was to a large extent determined by the concomitant centralization of the labor movement, both reforms were seen as necessary for the decentralization of collective bargaining to be effective. The reform of legislation on union formation was directed to improve internal democracy and facilitate the creation of new unions as a way of giving more power to local unions and propel a more active role for them, as it was already occurring in the parallel system of negotiations, as I will show in the next chapter.

However, if the relaxation of labor contracts of indefinite duration had been hard to negotiate, the decentralization of collective bargaining and the democratization of unions were precisely the two aspects that more directly attacked the power of unions

alongside the privatization of union-managed health insurance. The two projects, therefore, met with opposition in Congress and were not even considered.

In October of 1992, while Díaz was still the minister of labor, Cavallo made the announcement that the government was considering to enact a presidential decree to drastically deregulate the labor market, without even consulting with the ministry of labor. Although it was supposed to target only small and medium size companies, the cut off point for being considered small or medium size was too high, i.e. 200 workers. The objective was to include almost all companies in a special regimen under a deceiving title, and deregulate the labor market far beyond its proclaimed target. The reform was intended to formally eliminate some of the rigidities that were still present after the first reform. Thus, it was planned to deregulate work hours, allowing for flexibility to assign them; to introduce a less expensive and more flexible regimen of severance payments; to privilege negotiations at the company level over a more aggregated level; and to oblige all sectors to re-negotiate their contracts.

By now, the unions were on the defensive. Their expectations that a Peronist government would be labor friendly did not materialize, and they decided that they had to protect their privileges against policies coming from their own party ranks. The CGT rejected the project and demanded Díaz' resignation, even though the Ministry of Economy was in fact responsible for it and Díaz did not support it. Menem decided to accept Díaz' resignation and named Enrique Rodríguez, who had been Díaz' undersecretary of labor. As a prelude to yet another congressional battle for new reforms, Menem announced that he planned to de-regulate the regimen of *obras sociales* managed by unions, the other Achilles heel of the unions' finances.

The political climate favored unions, since Menem wanted to go for his re-election and needed all the political support he could get to change the constitution that banned reelections. In fact, one of the first things that Rodríguez did when he took office was to have a meeting with the CGT to strategize on how the union confederation would support Menem's re-election. At that time, the CGT took advantage of this political context and handed in its own proposal on the de-regulation of *obras sociales* to Rodríguez. In fact, and given the political context, Cavallo did not want to send the project of labor reform to Congress until the legislative elections in October were over, so

that the political bargaining could be reduced to a minimum. Also, and due to the need to reduce the fiscal deficit, Cavallo wanted to concentrate all his political efforts on the passing of the reform of social security, along with the negotiation of a new federal fiscal pact with the provinces, instead of the deregulation of the labor market.

Thus, the Ministry of Labor concentrated its efforts on the passing of social security reform and the CGT supported the project as well as the re-election, in exchange for managing social programs, getting posts in congressional election tickets, getting posts in the ANSSAL, which manages the funds for *obras sociales*, and positions in the labor area of consulates. As a result of the negotiations, the reform of social security was passed in Congress and the unions obtained limits to the project of de-regulation of *obras sociales*. Workers would have the right to choose to which union-managed health insurance (*obra social*) they wanted to pay their dues, regardless of their union membership, and the organizations that received new patients because of this new policy could not receive more than 20% in new members.

By the end of 1992, Rodríguez sent to Congress another project of deregulation of the labor market, which tried to accomplish the same objectives present in the proposal of Cavallo through a presidential decree. The project was ambitions and wanted to formally deregulated work hours, vacation period, leave of absence, and collective bargaining with the imposition of the expiration of old contracts. As a concession to unions, the government included in the proposal the right to access financial information from companies and an extension of the authorized over time, which got a total rejection from employers. Thus, labor reform was totally rejected in Congress not only by Peronist legislators, regardless if they were trade unionists, but also by UCR legislators, and got a quite negative reception from the Catholic Church as well. In fact, the reason why the proposal was rejected is not completely clear, but the role of the media against it seemed to have played a crucial role. The proposal included the elimination of certain labor rights for journalists through the elimination of statutes that regulated their profession. As a consequence, the project had a very bad review in the press, which was compounded with the opposition in Congress and the adverse political context.

This period ended with Rodríguez' resignation, to a large extent due to the constant frictions between the Ministry of Labor and the Ministry of Economy because of

their different views about how to proceed in regards to labor reform. Cavallo always wanted to impose the reform from above and even cancel collective bargaining altogether, given that he did not think that companies could agree with their unions about new conditions in the labor market that could mean losing some of workers' previous rights. The team at the Ministry of Labor, on the contrary, believed that unions could negotiate the new conditions and that as a result it was not necessary to change neither collective bargaining nor the union organization model. In terms of the labor reform, the original bill, which contained 150 articles, was reduced as a product of negotiations with social actors to 18 articles, but as mentioned earlier it got a total rejection in Congress and the Executive decided that it was not the right time to have a political fight for it. The main change in terms of labor regulations during this period was the reform of the social security system, which was partially privatized with important consequences for workers in the future.

9. The Third Round of Reforms (1994-1997)

In October 1993, the PJ won the legislative elections once again, giving another boost to the government agenda. In December 1993, after the resignation of Enrique Rodríguez as Minister of Labor, Armando Caro Figueroa took his position and a new phase of reforms started. This time, the Minister of Labor was closer to the position of the Minister of Economy in terms of the extent of deregulation that needed to be accomplished in the labor market. Caro Figueroa came with a strong technical background, and a direct participation in the reforms of the labor market in Spain in the 1980s, but with few political attachments to either the union movement or the Peronist party.

At the same time, the CGT leadership was now in the hands of someone who was closer to the government's reform agenda. Cassia, of the oil workers, was in one of the leading sectors of the economy, privatized under Menem, whose workers had gotten important concessions during the privatization process. A more friendly direction of the CGT coupled with a financial situation of the *obras sociales* that had worsened in the last year due to an Executive decree that had reduced the contributions to them to favor employers, made unionists more willing to negotiate new reforms.

Again, as a way of preparing the terrain for negotiations with unions around reforms the Executive started attacking them in their weakest spot: their finances. The DGI (Dirección General Impositiva) sued the UOM and the CGT because of owed contributions to the social security system and launched an investigation against several unions whose debt with the social security system reached 200 million dollars. The DGI also warned the unions that their *obras sociales* needed to make their debt payments by January of that year. At the same time, the Executive ratified Decree 2609 that reduced employers' contributions to the *obras sociales*. This threat was a way of bringing in the unionists who had more critical positions towards the reforms.

Caro Figueroa decided to take back the project presented to Congress by Rodríguez, and started open negotiations with unionists and employers before sending a new project. The negotiation style, even though hailed by some studies of the labor reform as a great novelty and the reason that reforms sped up considerably[92] was not so new. In fact, reforms had always been negotiated with social actors, particularly unions, before sending them to Congress. The only novelty was that this time negotiations had business and unions at the same table and their agreements were made public. In fact, the 1993 labor reform that did not pass in Congress under the previous minister of labor, was discussed in this new round of negotiations and most of their points were approved in an agreement called *Acuerdo Marco para el Empleo, la Productividad y la Equidad Social (AMEPES)*. This was despite the fact that the reason why it got rejected the first time was because the degree to which it de-regulated the labor market was said to be inadmissible to unions.

Before Caro Figueroa gathered employers and unionists to discuss a new bill, he tried to get the Rodríguez bill approved in Congress. The strategy did not work, given the opposition from almost all parties. The UCR and the CGT were together in their rejection of one of the articles of the bill, which allowed that one individual could negotiate labor conditions with an employer directly, regardless of collective bargaining agreements. Of course, if that article was approved the de-regulation could have been brutal, so this one was not included in the final reform, but many of their articles were included in their next draft. They also agreed on the article that allowed unions and workers to access

[92] Etchemendy (1998)

information about the economic and financial situation of companies to better negotiate with them, which was not finally included.

Caro Figueroa finally negotiated formally with the "Group of 8"—which gathered the main business groups—and the official CGT—led by Antonio Cassia —and they signed the "*Acuerdo Marco para el Empleo, la Productividad y la Equidad Social*". Some of the points included in the agreement were that the Executive would take the labor reform bill out of the consideration of the Labor Committee in Congress and would send another one previously agreed upon by the social actors. Second, the social actors made a commitment to draft a new bill on work-related accidents and illnesses, to further reduce the high cost that employers had to pay as a result of lawsuits. Finally, unions and employers had to agree on a new bill for collective bargaining agreements.

It is not surprising, however, that business and unions never reached an agreement regarding formal changes in collective bargaining while they continued negotiating in the parallel system. As I will argue and present more extensively in the next chapter, employers and unions had opposing views when it came to collective bargaining, and more importantly they already had a parallel system of collective bargaining which was effective, in full use, and satisfied the interests of both business and national unions. According to the *Acuerdo Marco* signed by unions and employers, the government was going to create a National Commission that would deal with collective bargaining issues, and it was going to reinforce the existing National Direction for Labor Relations that operates within the Ministry of Labor, but none of this was ever done.

In September 1994, the Ministry of Labor enacted another Executive Order, this time regulating the resolution of conflicts around work-related accidents and illnesses, with the immediate result of reducing costs for employers derived from lawsuits on this issue. The Executive Order legalized the private agreements made between employers and workers for workers' compensation when the worker suffered an accident or illness related to his or her job. The agreement would be considered "judged fact" and could not be appealed in court.

In exchange for union support, the government resorted again to making promises on dwindling union finances. This time, it promised unions to provide them with a subsidy. This was in compensation for the reduction in employer contributions to *obras*

sociales that resulted from an earlier presidential decree. In October 1994, unions again got a concession from government in exchange for their support of reforms. As always, the concession was related to the *obras sociales*. This time, the government decided to backtrack on its decision to cut down 120 million dollars that were supposed to reach the ANSSAL, which is the agency that collects money for the *obras sociales*. A day after this decision was made, the government admitted that it was considering an ambitious project of de-regulation of the labor market for small and medium size companies, which hire most of the labor force in Argentina, approximately one million workers. The project created tension within the CGT and Cassia was accused of giving in too much to the government.

Despite tensions within the CGT, the project of relaxation of labor market regulations and institutions for medium and small size companies got into the agenda to be discussed in the Chamber of Deputies and was finally approved and sent to the Senate for approval in March 1995. Law # 24467 (Special regimen for medium and small size companies) was finally sanctioned and it introduced the possibility to modify and relax many labor regulations for this type of companies. It allowed these companies to hire workers under short-term contracts with considerable reduction in labor taxes and severance payments, without having to fulfill the requirements and the paperwork involved with them according to Law 24013 (National Law of Employment). In addition to the more flexible use of short-term contracts, Law 24467 also allowed for the modification of many of the "rigidities" included in labor laws and collective bargaining agreements. However, all those changes had to be introduced through "collective disposition" (*disposición colectiva*), which meant the signing of collective bargaining agreements between unions and companies. Despite the introduction of legal routes to introduce more flexible labor regulations, small and medium size companies have rarely made use of this legislation, with the exception of restaurants and the garment industry. The reason again has to do with the obligation of using collective bargaining agreements which employers and unions are not compelled to use unless they both agree to. Given that this sector possesses a high level of informality in negotiations, scarce union representation in small and medium size companies, and a reluctance of unions to sign

agreements that cut down on previous labor rights, the legislation ended up being of little use.

Along with Law 24467 that sanctioned a special regimen for medium and small size companies, Congress passed Law 24465, which was also part of the agreement signed between business and unions. Law 24465 introduced again short-term contracts that could be used for special groups of the population such as workers over 40 years-old, physically challenged people, women and veterans of the Malvinas war. In those cases, employers had to pay lower labor taxes and severance payments, and in addition to those advantages they did not have to fulfill any additional requirements, as it was the case with Law 24013 which also introduced short-term contracts. However, the contracts were still limited to specific groups of the population, leaving the contract of indefinite duration still as the dominant form. Law 24465 also introduced a part-time contract, which had never existed in Argentina with the same legal standing as a full-time contract, eliminating an important rigidity in the hiring and firing regulations.

Law 24465 also extended the trial period for any worker, during which the employer is not obligated to pay labor taxes and does not have to make a severance payment either, from 30 days to 90 days, which was the most widely adopted change introduced by this legislation. The trial period could be extended to up to six months if signed through collective bargaining agreements with unions. And in many cases unions added this possibility within their collective bargaining agreements. As a special type of contract, in fact not covered by labor laws and regulations, an *apprenticeship contract* was created as another window for hiring without paying labor taxes and severance payments. It was considered as a special contract between an employer registered in the Ministry of Labor and a person between 14-25 years old, which should have a minimum duration of three months and maximum of twenty four months. This type of contract, however, was not widely used given that some requirements were attached, and even if minimum, it implied that the cost of hiring a worker under these conditions was over the cost of his or her minimum wage. The employer was obligated to guarantee the good health of the employee and provide an excellent insurance coverage in case of a work-related accident or illness.

During this period, the government also managed to radically transform the work-related accidents and illnesses insurance system, basically transferring it to the social security system, and taking it out of the individual responsibility of each employer. The main effect was to reduce the labor cost associated with the compensation that companies had to pay to workers in case of an accident occurred or an illness developed within the workplace. One year after the sanctioning of this law, companies were spending 1.44% of the total of wages instead of 8-12% spent in the past. Law # 24557 sanctioned in November 1995 and agreed upon with social actors through negotiations in the *Acuerdo Marco para el Empleo y la Productividad* created the Occupational Safety Insurance Funds (*Administradoras de Riesgos del Trabajo—ART*), which therein would insure companies for work-related accidents and illnesses.

Two other laws were passed that had an impact on the relaxation of labor regulations, even though they were not passed under the package of the labor reform. Once again, the government was using a more subtle way around the deregulation of labor codes. A bankruptcy law was passed, Law # 24522 that modified the previous law on this issue. Even if it appeared to be unrelated to labor regulations, it actually touched on important labor issues, and was in fact widely used for that purpose. When a company files for bankruptcy, in order to facilitate the restructuring of the company, the law allows for the suspension of any collective bargaining agreements signed before the bankruptcy was filed for a period of up to three years. During that time the company can agree on a new collective agreement for the period of crisis and restructuring. The novelty is that in case of transferring to another owner, the new owner does not inherit previous debts, including the ones associated with labor costs, neither has the obligation to honor previous collective bargaining agreements. In practice, this law was used in a fraudulent way, and mainly small companies could declare bankruptcy, avoid paying any obligations to their workers and start again under another name.

Another law that had important consequences in deregulating the labor market and bringing down labor costs was a law referred to legal mediation between employers and their workers in case of an individual and group conflict in regards to labor issues. It established that in case of labor conflict between a worker, or a group of workers, and their employer, before filing a lawsuit against the employer through the labor courts, the

workers were obligated to go to a mediation service and try to reach an agreement. A new mediation service was created for that purpose called the *Servicio de Conciliación Laboral Obligatorio*.

Finally, as mentioned, one of the points in which business and unions did not reach an agreement was in the reshaping of collective bargaining. It is not surprising that this was the case, given that they had opposite views about how to organize it, in particular when they voiced their preferences in public. While unions wanted to "preserve" a centralized collective bargaining at the industry level, business wanted to totally decentralize it and carry it out at the company level. Moreover, as I will argue in the next chapter a parallel system of collective bargaining that was formally centralized and informally decentralized was already in place and satisfying for both parties.

In fact, the government did not ignore how things operated at the company level and knew that companies were adjusting to new conditions in the international market, and that unions were negotiating with them through the use of private contracts. Notwithstanding, it kept trying "indirect" ways of changing the legal framework. In 1996, the government decided to regulate again the existing legislation on collective bargaining and enacted three Executive orders that would have changed collective bargaining in a radical way.

Executive Orders 1553/96, 1554/96 and 1555/96 modified article 4 of Executive Order 200/88 and gave the Ministry of Labor the authority to decide at which level the collective bargaining agreement had to be carried out. This would have opened the door to state intervention to turn the negotiation to the company level and in favor of business preferences. Executive Order 1555/96 that wanted to "regulate" Law 24467 allowed internal commissions, delegates or similar organizations and an employer or group of employers to initiate collective bargaining agreements in small and medium size companies. This was the way in which negotiations were in fact taking place in the everyday operations of companies, and therefore it would have been a step forward in its legalization. According to Law 14250 of collective bargaining, negotiations had to start in special commissions formed by unions and employers that were representative of the workers in the negotiation. This had meant in practice for many years that central unions at industry level and business associations designated for the industry by the Ministry of

Labor. The Executive Order no doubt would have changed the framework of negotiations and its participants in a radical manner.

This time, however, the government could not get away with the implementation of radical changes through subtle and indirect means, and the CGT appealed the Executive Orders in Court. The first and second instances of labor courts determined that the decrees on collective bargaining were unconstitutional because the government was interfering with union activity, but the decision by the Supreme Court was still pending in 2000. By 2005 the implementation of these decrees had never materialized.

10. The Fourth Round of Reforms: Politicization and the Undoing of the De-regulation process (1998)

In a political climate in which president Menem was seeking to change the Constitution for a second time to be able to be re-elected for a third term, the Executive decided to get closer to the unions in order to court their support. In that climate, Erman González replaced Armando Caro Figueroa as Minister of Labor. Erman González was a very close friend of the president, adhered to the Social Doctrine of the Catholic Church, had no previous experience on labor or union issues, and from the beginning of his position in the ministry of labor he developed an excellent *rapport* with the union movement and severed all the ministry's ties with their business counterpart.

After a period in which the government had been favoring more clearly business demands in exchange for the preservation of *obras sociales* for the unions, the union movement seized the political moment by drafting the labor reform this time. This reform in fact was negotiated between the Executive and the unions without the involvement of business associations in July 1997,[93] and it is believed that legal advisors to the union movement drafted the bill. Its main intention was to eliminate all short-term contracts introduced by previous reforms alleging that employers were abusing them, and to reform the collective bargaining legal framework so as to reinforce its centralization and the power of central unions.

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[93] See *Acta de Coincidencias entre el Gobierno de la Nación y la Confederación General del Trabajo.* Unpublished document, Buenos Aires, May 9, 1997, at the Library of the Ministry of Labor and Social Security.

A good example of how little the business association represented the true view of large businesses in the area of labor market deregulation, which in fact was shaped in the parallel system of collective bargaining, is the voting on this reform. The vote in Congress that defined it came from the head of one of the most traditional and conservative business organizations in the country, the UIA, who was at the time also a member of Congress. The business community asked Sebastiani to resign after his vote in favor of the reform.

The bill was passed as Law # 25013 and it abolished all forms of short-term contracts previously sanctioned by Laws 24013, the National Law of Employment sanctioned in 1991, and Law 24465 that introduced additional and less restrictive short-term contracts in 1995. The CGT accused employers of abusing these short-term contracts, and distorting the labor market by it. They also accused the employers of evading their payments to the social security system and weakening unions by creating an important layer of temporary workers who were not paying their union dues and were harder to organize. In the same vein, Law 25013 also reduced the trial period for contracts of indefinite duration from 90 days to 30 days as established by the Law of Labor Contract.

The new law kept the learning contract (*contrato de aprendizaje*) and the internships system, but made their requirements more stringent and similar to a regular labor contract regulated by the Law of Labor Contracts, which made them less appealing for their use. Overall, the reform of 1998 reversed all changes that had been made to relax regulations of labor contracts of indefinite duration, which had been limited in comparative perspective.

In regards to collective bargaining, the union movement took this political opportunity to adjust the system to its preferences and eliminate the previous attempts by the Executive to decentralize it. The new legislation established that the unions that had to participate in the negotiations of collective bargaining agreements are the national unions in each sector. The idea was to reinforce again the power of the national unions over the local ones, given that the latter had been more active in signing collective bargaining agreements in the parallel system of negotiations. The new law authorized national unions to delegate the power to negotiate to local unions, but it gave national

unions the prerogative to make such a decision. It also established that only when a company had more than 500 workers the delegate of workers at the company level could intervene in the negotiations. The latter showed the extent to which national unions wanted to keep the power of these delegates at bay.

The law was supposed to eliminate the "continuity by default" clause that allowed collective bargaining agreements to remain current until replaced by a new one, as this was one of the main demands of business. The law was publicized as eliminating this clause but it was written in such a way that the "continuity by default" clause was not eliminated. Labor lawyers in charge of writing this draft added a requirement for the collective bargaining agreements that had to expire that in fact spared them from expiring. It was a subtle move that misled the public and achieved the objective of keeping centralized agreements, as unions had wanted it. The additional sentence incorporated in the text of the law said that collective bargaining agreements signed before Law 23545 was passed had to expire only if "after 1988 no change had been introduced to them, via the signing of agreements regardless of its nature and scope". Since all collective bargaining agreements have addendums, even if minor, on wage indexation, no collective bargaining agreement could in fact expire.

Another issue that also reflected the unions particular sensitivity to the issue of decentralization and the government's desperate attempt to show that it was trying to please both business and unions, was the regulation of the relative standing of centralized collective agreements at the industry level vis-à-vis collective agreements at the company level. The relative standing of centralized agreements with respect to company level ones had always been a sensitive issue. It affects how power gets distributed between national and local unions, the national unions being more relevant in the settling of centralized agreements.

The relative standing of collective bargaining agreements of different levels also affects how power gets distributed between unions and business, with centralized agreements favoring the fragmented power of unions over business. In particular, article 15 of Law 25013 established that centralized collective bargaining agreements--and not company level ones--were the only ones authorized to bargain over work time, an issue that, as shown, had been widely bargained at the company level.

However, Law 25013 allowed collective bargaining agreements at the company level to prevail over collective bargaining agreements in cases in which a union and a given company had previously agreed to "articulate" them. This articulation meant that unions had previously intervened in the signing of agreements at both levels and that the company level agreement was not stripping down labor rights already bargained for the central level, but improving on them. The articulation also meant that the company level agreement had to expire if it was not renewed within a year. In case it expired, the centralized agreement would prevail again. The complicated scheme seemed to reflect a compromise between business demands for company agreements while at the same time imposing severe constraints on them. The way this scheme was set up created an additional incentive for business to stay in the parallel system of collective bargaining, in which no constraints existed neither in the way agreements were set up nor in their content.

11. The Fifth Round of Reforms: Going back to Deregulation (2000)

In 1999, Fernando de la Rúa was sworn in as the new president of Argentina, representing the Alianza coalition, made up of the UCR and FREPASO. The first initiative was a labor reform bill that was sent to Congress in January of 2000. The Alianza, even though it had a more populist orientation than the Menem administration, had assured the population during the election campaign that it would stick to the basics of the neo-liberal reform agenda launched by the Menem administration. The Alianza had no special commitments to the union movement. Some members of the FREPASO were former Peronists, but the UCR had traditionally been opposed to the labor movement, particularly to its state-sanctioned privileges and undemocratic practices. As the main political rival of Peronism, the UCR had always wanted to cut off the ties between unions and the Peronist party, in order to weaken its main adversary politically.

For reasons that are not at all clear, the Alianza chose to use its recently earned high levels of approval from the population to pass yet another labor reform to deregulate the labor market. The Congress still had a Peronist majority and labor unions were not pleased to know that the government was planning another reform, especially because their own legal advisors had drafted the previous reform to their advantage.

The original project as the Executive sent it for discussion to Congress was quite audacious in regards to the decentralization of collective bargaining, but the law that was finally passed eliminated many of the most radical elements of the reform, or severely complicated a successful implementation of it. The spirit of the project presented to Congress by the Executive was to make all collective bargaining agreements, especially the old ones (1975 and 1988 agreements), expire by eliminating the "continuity by default" clause and promote the negotiation of new agreements in all sectors. The agreements could be signed at any level, could modify current labor laws, the participation of delegates of workers at company level had to be guaranteed in companies of up 300 workers, and company level agreements would prevail over industry level agreements. The reform went against everything unions had fought for during the 1990s reforms and had many of the elements that business insisted on getting from collective bargaining.

The Executive could not afford to do without the support of the Peronist legislators. Given the delicate fiscal situation in which it was, the support of Peronist governors and Congress was absolutely essential for the Executive and could not be taken for granted. Therefore, the labor reform had to be negotiated in particular with Peronist legislators and their union allies if it was to be passed in Congress. As a result, the original project was severely slashed in its ability to accomplish a radical decentralization of collective bargaining, while other less political topics were included in it. Notwithstanding, important changes were introduced in regards to collective bargaining, which could potentially lead to a greater level of decentralization, enough to make union leaders and their legal advisors quiver.

Law 25.250 was approved by Congress and published in the Official Bulletin[94] on June 2, 2000, along with decree No. 432/00 that regulated its implementation. Many changes were introduced in the original bill, in particular in the Senate, even though the Labor Committee in the Chamber of Deputies had previously been reputed with being the main obstacle for reform. The law provided a plan to eliminate all old collective bargaining agreements as in the original project presented by the Executive, but it gave

[94] Publication in the Official Bulletin (*Boletín Oficial*) is a mandatory requirement for any law to become effective.

more time for unions and companies to negotiate a new agreement while the old one still remained current. The regulation of this transition was quite awkward, with agreements signed in 1975 expiring in a period of two years, after which unions could appeal for a mandatory mediation with intervention of the state and the possibility to maintain old contracts. Agreements signed after 1988 expired two years after either business or unions "denounced" them as inappropriate. Unlike the agreements signed in 1975, the 1988 agreements expired even if employers and unions did not sign a new agreement. But in the latter case, clauses regarding wages would still remain current. Therefore, the law made it easier for agreements signed in 1988 to expire than for the ones signed in 1975, which could potentially remain "by default" and represented important sectors of the economy, such as banking, commerce, metallurgy and construction.

Changes introduced in the Senate also imposed limitations on the ability of companies to sign company level agreements. Even when the law declared that company level agreements would prevail over industry level agreements, some important restrictions were added. Company agreements had to preserve at least minimum wages associated within given *categories* in the industry level agreement. In fact, the word categories associated with wages meant more than it would appear at first glance, because categories had been something that employers had been changing through more informal means over the 1990s. Therefore, it could be anticipated that it would be something they would want to turn into a formal agreement. In addition, national unions had to participate in the signing of the company level agreements. All of these changes had the effect of making company level agreements less appealing to employers than they would have been otherwise.

It is important to bear in mind that the fact that the law was making company level agreements prevail over industry level agreements, does not mean that "*acuerdos de empresa*" were suddenly made legal. Agreements signed in the parallel system of collective bargaining remained with a limited legal standing as civil contracts, and the law only refers to company level agreements signed thereafter according to the letter of the law. Thus, companies had to sign new agreements if they wanted to have formal collective bargaining agreements at the company level, and transferring the ones they already had signed in the parallel system of collective bargaining was not as easy as it

may sound, because it involved re-negotiating them with national unions and under different circumstances.

In addition to introducing changes in collective bargaining, Law 25.250 introduced changes in individual contracts with the intention of promoting job creation. In this case, it increased again the time frame for the probation period from 30 to 90 days, but eliminated all possible incentives to use them as short-term contracts. Employers had abused the probation period in which they usually do not pay labor taxes and are not obligated to make severance payments and hire employees only for that period and then fire them, only to hire other employees for another probation period. This had of course the side effect of increasing the turn over and diminishing productivity and investment in training. In fact, the new law created incentives to hire an employee more permanently by offering cuts in labor taxes in case the employers hired more permanent employees.

In August 2000, newspapers started timidly publishing allegations that bribes had been paid to Senators to pass the labor reform. The news quickly took over the front page of all newspapers and became a national scandal. The immediate effect of the accusations was not only the resignation of Flamarique as Minister of Labor, but also a delay in the implementation of negotiations that would lead to new collective bargaining agreements. The MTA brought an appeal to court petitioning to nullify the law based on the fact that there were serious "procedural" violations in its sanctioning. The payment of bribes could not be proven, and the law was implemented (although in delayed form) despite the fact that its legitimacy remained doubtful.

Patricia Bullrich replaced Flamarique as minister of labor, and she became known for confronting the labor movement, launching investigations of its finances, and accusing its leaders of corruption. Bullrich tried to speed up the implementation of the collective bargaining negotiations, but made serious administrative mistakes in trying to impose certain dates for each sector to sit and negotiate in violation of the legal procedure. As a result, negotiations were stalled, despite the fact that some sectors decided to sit around the negotiation table.

12. A New Window of Opportunity for Unions: Getting Rid of de-regulation

In December 2001, Argentina's financial crisis exploded and political, institutional, and economic chaos reigned until Mr. Kirchner was sworn in as president in May 2003. During this period in which many companies went bankrupt and political and economic uncertainty became the norm, negotiations did not progress. However, after May 2003, negotiations started slowly to appear again in the horizon more informally in many sectors, as a way of testing the waters between employers and unions. It was unclear if these preliminary negotiations would lead to any concrete agreements when in January 2004 the Executive made a decision to abolish law 25.250 based on the confession of a former public official working as administrative secretary in the Senate—Mario Pontaquarto—who in December 2003 declared in court that he had personally delivered the money to bribe senators to vote in favor of the labor reform passed in 2000.

The Kirchner government named Carlos Tomada as Minister of Labor, someone who had been the advisor of the CGT during negotiations of previous labor reforms, and who represented the unions' views in terms of deregulation of the labor market. Tomada believed that the deregulation of labor market institutions had gone too far in previous administrations and that centralization was important to keep the power of unions, which had been seriously weakened during the period of market-oriented reforms. Since his designation he started taking measures to protect workers, such as doubling the amount of severance payments to stop dismissals. He showed himself on the side of unions without giving in to all of their demands. His approach was to enact Executive decrees to regulate the labor market in a top-down fashion, as had been the case with many previous Peronist administrations. This was a way of helping out politically weakened unions, which could hardly get these concessions through collective bargaining.

The Kirchner administration did not have any intention of modifying the previous labor reform, since it would have entailed using a political capital that was needed to recover the country from the brink of social dissolution and economic chaos. However, as the confession to the former public official working for the Senate, Mario Pontaquarto took the public scene, unions and politicians started to pressure the government to derogate the previous law, which had been passed by bribing Senators. The issue went beyond labor reform to become an issue of lack of probity of the Senate and a political

scandal. The Kirchner administration took advantage of this political context to push forward its agenda of rolling back the previous level of deregulation of the labor market and restore centralization of collective bargaining along with the "continuity by default" clause of previous contracts.

The demands of unions were targeted to a higher level of protection of hiring and firing of formal workers and to centralize collective bargaining, restoring the recourse to a "continuity by default" agreement in case a new one was not reached. In regards to hiring and firing, unions asked for a reduction in the probation period to 3 months and an increase in the amount of severance payment. As for collective bargaining, they wanted to reinstate the recourse to "continuity by default" clause to keep old agreements current if a new one was not reached, along with the predominance of the agreement of higher level over the agreement of lower level. The latter meant that the industry level agreement prevailed over company agreements, which gave the upper hand to national unions *vis-à-vis* local unions, which were usually more involved in the negotiation of company agreements. The recourse of "continuity by default" helped the unions to keep some power over companies in changing legally some of the previously acquired rights.

The government proposal got close to the unions' demands but included some measures towards employment creation. The proposal included a reduction in the probation period for new workers as well as the obligation to register all workers under probation in order to avoid fraud, as it had been the case in the past; a reduction in labor taxes for companies that created new employment, and a compromise between industry level agreements and company level agreements, in which the industry level agreement provides a framework of reference for the activity and the company level agreements are more specific, yet articulated. However, in regards to the standing of each type of agreement, the government bill gave predominance to the agreement that favors workers the most, whichever the level at which it was signed. Therefore, the government was embracing the unions' demands for more centralization but yet chose to favor workers and not unions in terms of which agreement would carry more relative weight.

The government bill also contained two other articles that were relevant to the reshaping of collective bargaining. One article referred to the obligation of companies to provide a social balance to industry level unions. This social balance had been included

before in Law 25.550, although its implementation on the ground had always been difficult, but the Kirchner administration wanted to extend this obligation to larger companies with more than 200 employees. This report had to include the annual balance of the company, profits and losses, information about costs, information on the company's financial situation, the market in which it competes, the evolution of wages paid over time, as well as their distribution by categories. This information that companies were obliged to provide to unions was sought to enhance the ability to negotiate on the side of unions. Another important article with regards to collective bargaining was the repeal of a mandatory schedule to negotiate for all sectors, as was mandated by the previous law. The Kirchner administration promised to promote negotiations instead of forcing sectors to do it. This is what unions wanted, given that they did not want to be forced to negotiate under unfavorable circumstances and from a blank slate, as was the case with the previous legislation.

This time the bill was passed without delays and little resistance, although some changes were introduced in the Senate. The bill was approved in the Senate with the full support of the UCR and PJ.[95] One of the changes introduced in the Senate was to give notice to the provinces before the federal government could proceed to a labor inspection in that province. The idea was that the federal government wanted to toughen up the controls over the enforcement of labor legislation, which had been relaxed during the previous decade. The federal government also wanted to centralize the authority to do labor inspections as well, which had been decentralized in the 1990s. As I will show in the next chapters, the involvement of provinces as a third party enforcer in the parallel system of collective bargaining, as well as its own relaxation of monitoring, made them weary of what the federal government could do with its intervention.

The approved bill in the Senate reduced the number of employees that a company had to have in order to receive the benefits of reduced labor taxes in case it hired new employees. The number of employees went from 200 as the government had proposed to 80, with the understanding the 96% of companies in Argentina had less than 80

[95] It was approved with 65 votes in favor (PJ and UCR) and 1 vote against (Socialism). It was also the first bill in Argentine history where each individual vote was recorded electronically. The bill was passed directly on the floor with enough quorum provided by the UCR, given that the discussion in the Labor Legislation Committee in the Senate was lacking in their following of formal procedures.

employees. In terms of the short-term contracts, the new law kept the training contracts (*contrato de aprendizaje*) and internships that were also preserved by law 25.013, which were targeted mainly to young people.

Once in the Chamber of Deputies, the minister spoke to the Labor Committee presided by Saúl Ubaldini, an old union leader who had led the CGT in the 1980s, and the bill was passed with 215 votes in favor and 23 against it, with minor changes.

13. The dismantling of the monitoring system

Finally, the one policy that the government consistently pursued during the nineties was the dismantling of the system of labor inspections along with its disregard for the growing of the parallel system of decentralized agreements. De-activating controls was a less intrusive and a less political change than passing new legislation, but it had a similar effect.

The dismantling of labor inspections can be traced in different ways. One way is to look at the evolution of the informal sector, defined as comprised by workers who do not receive the legal contributions to social security and are not registered as formal workers. In those cases, companies do not pay any of the labor taxes and it is fair to assume that they also violate other kinds of labor regulations and restrictions. The growth of the informal sector in the nineties was exponential and reached 50% of the labor force from 25% in the eighties, a number that is unprecedented in the Argentine labor market. Even though it could be argued that this is a response of companies to the pressure of high labor taxes and rigid regulations, it is also a sign of the lack of enforcement.

A more direct measure of the dismantling of law enforcement in the labor area is to look directly at the number of inspectors assigned in each jurisdiction, and compute the number of companies each of them should, in principle, be able to inspect. The results are telling of the inability of the government to enforce the labor legislation. Even considering that the numbers are not reliable because they are most likely inflated by the provincial administrations, it would be impossible to render a level of inspection that makes companies think that they are at risk of paying fines for their violations. The situation of labor inspections has never measured up to be an efficient system, as it exists in more developed countries, but it has certainly deteriorated in the last decade.

Statistical information on measures of labor inspections is not only inflated, but also scant. All reports and evaluations done by the government and the ILO confirm the high level of ineffectiveness of the system. Statistics available for the city of Buenos Aires, one of the best performing agencies in the country, show clearly the lack of resources available to the provinces to do proper inspections. The series start in 1996 in the middle of the process of dismantling that occurred in the 1990s, so the deterioration of the system of inspection cannot be confirmed. The level in the 1990s was much worse than after Kirchner got into office and took several measures to improve it. Even so, effectiveness is still lacking.

Table 3.2.
Percentage of Employers Inspected in the City of Buenos Aires

Year	Workers subject to Inspection	Employers subject to inspection	% of employers inspected
1996	1,039,000	121,018	9
1998	1,104,000	102,979	9
2003	1,035,000	110,000	14
2004	1,121,000	111,000	15

Source: Cited in Palomino, H., C. Senén-González, Silvia Garro, Inspección del Trabajo en Argentina, manuscript, 2005. Data from MTEySS and the Dirección de Protección del Trabajo de la Ciudad Autónoma de Buenos Aires.

The system is ineffective not only because of the meager number of inspectors assigned to cover a large number of companies but also because of the lack of resources to carry out their daily tasks. Inspectors complain of their low wages, insufficient funds to carry out inspections, and an insufficient number of computers and technical support. In fact, in addition to the small budgets assigned to labor inspections, there were constant budget reductions throughout the nineties. A measure of efficiency in labor inspections in the city of Buenos Aires shows that inspectors barely inspect one company a day in the best performing years. An estimation of how many companies could be inspected by the inspectors available for the whole country from the Ministry of Labor shows that each inspector could carry barely one inspection a day, when eleven companies per inspector should be carried out. This means that each inspector is covering barely 1% of the companies that he should be inspecting.

Table 3.3.
Efficiency of the Monitoring System in the City of Buenos Aires

Year	Number of Inspections	Number of Inspectors	Inspections/Inspector
1996	10,945	62	177
1997	10,046	52	193
1998	9,223	48	192
1999	2,442	51	48
2000	4,898	12	408
2001	10,116	11	920
2002	15,241	--	--
2003	15,773	54	292
2004	12,308	56	220

Source: Cited in Palomino, H., C. Senen-González Silvia Garro, Inspección del Trabajo en Argentina, manuscript, 2005. Data from MTEySS and the Dirección de Protección del Trabajo de la Ciudad Autónoma de Buenos Aires.

The magnitude of evasion on social security taxes that comes with the growth of the unregistered workers due to a great extent to the inefficiency of the labor inspection system has been estimated by the ANSES in U$3,000 million dollars per month. The ANSES also estimates that 3.5 million workers evade social security taxes between salaried and self-employed workers. It was this fiscal deficit, in fact, that brought the government to implement new programs of labor inspection targeted to the detection of unregistered workers.

The deterioration of the system of labor inspection is directly linked to government policies. First, the government has systematically failed to implement programs that focused directly on the tightening of the labor inspection agencies. In every package of labor reforms the government has included a program to reduce tax evasion in regards to labor taxes, and pledged to reduce the level of informality in the labor market. However, the promises and grand plans were never turned into effective policies, and many agree that the government did not want to create a strong system of labor inspection.

The system of inspection was not only weakened in general, but the policies that the government tried to promote have been limited to the inspection of registration of workers and the associated issue of tax collection. This specific focus of labor inspections leaves aside all aspects related to working conditions and wages, which had been the subject of negotiations through the use of private contracts, making it easier to become oblivious to the public view.

Second, two processes initiated during the Menem administrations weakened the system of enforcement even further. One of the processes is the decentralization of the system of labor enforcement to the provinces, and the other one is the centralization of labor inspection and tax

collection in the federal tax collection agency, the DGI (*Dirección General Impositiva*), which in different ways had a negative impact in the effectiveness of the system of enforcement.

Regarding the programs to fight against unregistered workers and tighten up labor inspection, the National Law of Employment (LNE) of 1991 was the first one to include some measures. Under the assumption that with the relaxation of hiring and firing rules, employers would enjoy a lower cost of abiding by the labor codes, the LNE enacted a "forgiving program" (*blanqueo laboral*) by which companies could register their unregistered workers without being punished for past offenses. It also raised penalties for infractions of labor codes to 25% of the salary of every worker in an irregular condition, and doubled the amount of severance payment if the worker was unregistered. The government assumed that companies would be more law abiding if hiring and firing costs were lower and penalties for infractions were raised.

The government, however, did not include any measures to improve the system of labor inspections, and as a result the effectiveness of the system did not change. Only few employers decided to register their employees. A total of 44,757 employers filed to register 342,855 workers. Of these workers however only 111,983 were completely formalized. The measure of increasing severance payment in case the worker was unregistered only resulted in an increase in firing costs. Dismissed workers sued employers using this clause to receive a higher severance payment.

The lack of efficiency of the system became more apparent, when in 1995 the unemployment rate jumped to an unprecedented 18% and the deterioration of the quality of the existing employment rate became more of an issue. The Minister of Labor, Caro Figueroa, acknowledged that a lack of political commitment explained the deterioration of the system of inspections. In response to that situation, the government decided to launch new plans to fight against the lack of registration of workers. However, once again the plans did not bring enough commitment either in terms of policy design, or funds to make them effective.

Caro Figueroa basically took two measures. First, he tried to re-centralize the inspection system, acknowledging that the previous decentralization to the provinces had been pernicious. However, although it declared the re-centralization of inspection at the federal level through the Program of Labor and Social Security Regularization, and the federal government could intervene in the inspections at the provincial, nothing was done to put it into action. In fact, in 1998, because the re-centralization had been ineffective, the government created the Federal

Pact for Work in which all provinces participated and tried to coordinate their actions around labor inspections. The Federal Pact for Work was later transformed into the Federal Council of Work in 1999 regulated by Law 25212.

Second, Caro Figueroa launched a series of operations to inspect companies on the issue of unregistered workers. The most important initiative was Executive decree 1186/96 through which the CGT would help in the inspections carried out by the Ministry of Labor. Labor unions could designate one representative in each province in which they had representation to carry out the inspection. Inspections had to be exclusively targeted to the detection of unregistered workers and could not include other aspects of working conditions. The program was not very effective and only 10% of workers were evaluated. Employers complained that unions were using these inspections as a way of retaliating against companies whenever there was a conflict, instead of focusing on a comprehensive program to detect unregistered workers.

As mentioned, in addition to the lukewarm initiatives to strengthen the performance of labor inspections only in regards to unregistered workers, the government also embarked upon the decentralization of labor enforcement. The authority for enforcement of labor laws was switched from the central government to the provinces in the nineties. This was a process that started under the Alfonsín administration, right after the return to democracy, and became effective at the beginning of 1990s. It was a claim from the provinces that the sovereignty to enforce labor regulations belonged, in a federal system, to them. The decentralization of labor inspections was actively promoted from the central government as part of larger decentralization scheme that involved other areas of government as well, such as education and health, as a way of reducing the federal budget deficit, while devolving responsibilities to local governments.

The result of this decentralization has been a weakening of the system of enforcement, given the limited financial and human resources, which most provinces assigned to this task. The federal government had been traditionally in charge of this task and had the technical expertise to carry it out. With decentralization, the federal government transferred responsibilities without providing neither financial nor human resources or adequate training. Moreover, this area has been targeted several times for budget reductions over periods of fiscal tightening at the provincial level, which resulted in personnel reduction, lack of training, and wage freezes. Provinces also had incentives to relax the application of labor codes, given that

they were competing against each other for investments and job creation, in a context of increased competition and an over appreciated peso.

In regards to the centralization of labor inspection and tax collection at the federal level in the DGI (*Dirección General Impositiva*), the impact on labor inspections has been negative, in particular for one reason. With the centralization of tax collection and inspection at the DGI, inspection on social security contributions was transferred from the Ministry of Labor to the Ministry of Economy, and the rounds of inspections were therefore transferred to accountants with little knowledge of labor regulations. Not only the inspectors are not trained in the area of labor regulations but the targeting of the Ministry of Economy in regards to what companies should be inspected with the highest priority is the exact opposite of what happens in the labor market. While the Ministry of Economy targets first the largest companies for the inspection of contribution to direct taxes, given that these are the largest contributors and therefore, the most time efficient way to increase revenues, the Ministry of Labor usually targets medium and small size companies first, given that it is this layer of companies where most labor tax evasion takes place.

14. Conclusion

In sum, shallow policy reform in a policy arena that was resistant to change and potentially politically costly for the actors involved, labor reforms that were not able to push the decentralization of collective bargaining in the real world, and a weakening of labor inspection rendered a final picture of a deficient formal reform of labor market regulations and institutions in a context of increased competition and an overvalued currency. In this context, negotiations between workers and employers in a parallel system of decentralized collective bargaining blossomed and, it was reinforced over the course of the reforms. The federal government even contributed to its expansion and consolidation through the weakening of labor inspection, a tacit approval of its existence, and the difficulty to stir events in a different direction. Meanwhile, the provincial governments were providing an institutional platform to register these agreements in the parallel system and acting as a third party enforcer.

In the next section, I discuss the origins and sustainability of what I termed the parallel system of decentralized collective agreements. For this section, I draw from secondary data and interviews for the origins of these agreements and on quantitative and qualitative data collected

at the Department of Labor in the provinces of Córdoba, Buenos Aires and Santa Fe. I draw from a database collected for the purpose of this research project based on 1,450 agreements signed between unions and employers in the province of Córdoba, to provide an example of the widespread nature of the arrangements and their qualitative nature.

CHAPTER FOUR

Transforming labor institutions and regulations through the parallel system

1. Introduction

In the previous chapter I showed that macro-political explanations that focus exclusively on labor laws passed in Congress do not accurately capture the reasons why labor reform was only partially adopted. Special interests of labor unions or their "institutional veto points" in Congress cannot account for the wealth of labor laws that were in fact passed, even if Congress managed to introduce changes that attenuated the effects of deregulation. Decentralization of collective bargaining was in fact legally available, as it was the relaxation of several aspects of internal and external flexibility, but adoption by business and unions did not occur in many sectors.

I also argued that many important changes in labor institutions were brought forth by the use of less obtrusive means of implementation, such as the use of presidential decrees, or the dismantling of the system of labor inspections. Decrees to reduce labor taxes through the use of food vouchers or to obligate unions to negotiate wages only in accordance to productivity increases had a considerable impact in the labor market, allowing for an increased wage and internal flexibility. The previous chapter, in fact, has shown that several decrees had allowed businessmen and workers to sign decentralized collective agreements, but neither these decrees nor the laws that re-centralized collective bargaining in 1998 were put into effect. Thus, I concluded that the problem with the relaxation of labor laws was as much in the implementation as it was in the lack of depth of the some of the regulations passed.

The question is, then, why is it that neither the decentralization of collective bargaining nor the negotiation of more flexible labor regulations was implemented? And why did the government not push for further centralization in 1998 or for further formal decentralization before that? I argue that the reason why these proposals were never implemented and the business community was not eager to pressure for more radical legal reforms is that a parallel system of decentralized collective bargaining agreements, in which the relaxation of labor laws was in fact negotiated, was already in place. After the liberalization of the economy and the increasing pressure for competition, the system was further developed and reinforced. Thus, no explanation of the partial adoption of

reforms in the labor market is complete without including the existence of the parallel system of negotiations as a crucial factor. I argue that the parallel system of decentralized collective bargaining was a "second best" solution to all parties involved, in particular unions and companies. Once in place, it became more difficult to turn these agreements into formal collective bargaining agreements, thus creating a path-dependence that locked-in the parallel system of labor relations.

Moreover, it was the state that was at one level trying to formally and legally change the system of labor relations, that helped to reinforce this parallel system through two mechanisms: a) the dismantling of enforcement mechanisms and b) by providing third party enforcement through the departments of labor at the provincial level, while ignoring the existence of the system at the federal level. Government officials have been aware of the existence of this parallel system of labor relations, having been practicing labor lawyers or advisors to the involved parties themselves, and knew they could let go of implementing new regulations and labor reforms, given that the actors themselves had a private system that worked. The role of the state was actually essential in sustaining these agreements over time, which could not have survived if formal labor laws had been enforced to their fullest extent. The "parallel route" was actually a smoother way of implementing *de facto* reforms that did satisfy powerful interest groups such as business and unions, allowing for the restructuring of companies, and keeping social conflict to a minimum.

The existence of this parallel system of decentralized collective bargaining shows how real changes in the system of industrial relations occur in Latin America, in contrast to the overriding assumption in the literature that changes will occur through new legislation. This chapter will show the characteristics of this system, how it works, explain the origins of this system in Argentina, and the factors that explained its endurance despite changes in the policy environment.

2. The parallel system of decentralized negotiations: structure and content

The under-secretary of labor, Strega, states in his book on labor reforms that, while the government was trying to pass legal reforms, a parallel system of negotiations with informal agreements had been emerging in the last years. Informal agreements at the

company level in which union leaders accepted labor conditions below what was established in collective bargaining agreements was common in order to keep jobs. Against this backdrop, Blanco Villegas, the president of UIA said that if the reforms were not implemented legally, companies would continue to negotiate more flexible conditions at the plant level.

A labor attorney, who works for one of the most prominent law offices in the country that provides services for important companies, agrees that formal company agreements are very limited. In most cases, what we find is that companies use private agreements in the parallel system of negotiations. Sometimes, unions want to say that these agreements are actually complementing existing formal agreements at the industry level, and they use the word 'articulation' for that. In fact, that is a euphemism for what in reality are true company agreements.

Before explaining the appearance and maintenance of the parallel system of collective bargaining and why it constitutes an essential factor for explaining the partial implementation of labor reforms, a definition of what it is and what it does is in order. The parallel system of collective bargaining consists of agreements celebrated between workers/unions and employers at the company level in which wages and working conditions are agreed upon. Many issues agreed upon in these contracts have gone, in particular in the 1990s, beyond and against labor regulations. In fact, Argentine labor law does not recognize these agreements as legitimate collective bargaining agreements.

These agreements take several forms and have different degrees of informality. The most informal agreements are the ones that are unwritten, which are usually but not exclusively celebrated in small size firms with little professional management. A second type of agreement is the one contained in "operative manuals" (*manuales operativos*) drafted by company owners and managers and agreed upon with workers, in which new rules of work, and working conditions are established, without explicitly alluding to the fact that they contradict current legal regulations and legally sanctioned collective bargaining agreements. A third type of agreement is the one celebrated between workers/unions and employers at the company level using civil law contracts, and which are either confidentially kept in companies or in labor lawyers firms, or registered in the departments of labor at the provincial level. The latter has the highest degree of formality,

even though strictly speaking is not considered a legal collective bargaining agreement and may violate current norms. However, it uses a legal instrument to write down agreements and in many cases it either implies the involvement of labor lawyers on both sides and in addition it may get registered in a public agency, such as the departments of labor at the provincial level.[96]

Why these agreements are not considered collective bargaining agreements? As explained in the previous section, collective bargaining agreements once signed are current until another one of the same nature replaces it--"continuity by default" clause. These new agreements have to follow several procedures in order to be considered legitimate agreements. For example, they need to be signed by unions with *personería gremial* (the ones that are officially recognized to have a monopoly of representation in a given sector—usually the national unions); they need to be ratified by the Ministry of Labor at the federal level; and explicitly change previous regulations and replace them with new ones.[97] Thus, departments of labor are not allowed to ratify these agreements as it happens in the parallel system. Departments of labor can enforce collective bargaining agreements, promote new ones, or solve specific labor conflicts, but cannot ratify new collective bargaining agreements.

Likewise, agreements between workers/unions and employers cannot contradict current labor legislation or current collective bargaining agreements. If "private agreements" are signed, they are not considered collective bargaining agreements and would not be considered legal and current in a labor court, and they cannot modify what has been established in previous collective bargaining agreements. It has a limited legal validity as an agreement between the signing parts, that is, the employers and the workers that actually signed them. It does not cover workers who did not sign agreements, neither

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[96] Notice that even if the agreements are not written they have legal value as long as the employer commits to implement what was agreed on them on a regular basis and it becomes part of the everyday procedures at a given company. Workers can use witnesses to prove that in fact those unwritten agreements existed between them and the employers (Moreno, 1991)

[97] Here, I am providing what constitutes an informal agreement in general terms. For a comprehensive enumeration of what constitutes a true collective bargaining agreement and what does not and all the nuances of legal technical aspects, see Moreno (1991).

workers hired after the agreement was signed, which somehow complicates the use of these contracts for employers.[98]

This parallel system of collective bargaining with all its limitations, however, has burgeoned since the opening of the economy to international competition, and in fact complements, supplements, or in many sectors completely replaces the legal system of collective bargaining and *de facto* regulates the labor market. With different degrees of formality/informality these agreements exist in all sectors of the economy and companies of different sizes. They are signed both at some of the largest multinational corporations, and the smallest firms producing for the domestic market.

Despite its socio-economic importance and political implications, this system has been overlooked in studies of the politics of economic reforms in the region. There are several reasons for the neglect of this system in academic explanations. One of the reasons is that the theoretical lenses used for the study of the political economy of reforms have focused in the formal/legal reforms and their implementation by the main political actors in the formal political system. Using this approach, informal changes even if highly consequential, would be neglected. Another reason for the neglect of this system has to do with the fact that it is informal and not highly visible, and records are hard to access. Not only are records hard to access but also there is a scant literature about it, despite its importance, which also contributes to their lack of visibility. Therefore, it is methodologically more difficult to research. Finally, for political and professional reasons, actors involved in the use of this system can be secretive about it, dismiss it or deny it, and make it "invisible" for researchers. However, as this project testifies, access to this information is not impossible even if difficult and time consuming to get.

Since the parallel system of collective bargaining has from the 1990s on supplemented, complemented or sometimes even replaced the formal system of

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[98] It is important to bear in mind that Argentine legislation in regards to collective bargaining (Law 14.250 until 2000, Law 25.250 2000-2004, Law # 2004-present) does not ban the possibility of signing agreements at the company level, but it does constrain it in several ways. The main constraint is that it authorizes only unions with *personería gremial* to sign them, which because of the legislation regarding union formation in Argentina tends to be given to activity level unions or federations. These types of unions have a preference for signing agreements at the activity level and this has become a strong ideological aspect of the Argentine labor movement. In many activities, signing agreements at the company level is regarded as "treason" to the labor movement, given that these agreements if extended are seen as a threat to the strength of the labor movement that comes in part from their high level of centralization. Therefore, in practice, formal collective bargaining in Argentina has tended to occur at the activity level.

negotiation, it is used to agree over every single issue related to labor market regulations, from setting wages, to working conditions, suspensions, dismissals, and changes in work organization. The system has given high flexibility to the labor market in response to the detailed and rigid regulations contained in labor laws, and previous collective bargaining agreements. It has changed the conditions that made companies more concerned with cutting costs and increasing quality.

3. Some vignettes: the parallel system in action

To illustrate the use of the parallel system of negotiations I will present the case of ACINDAR, one of the largest and most influential companies in the steel sector in Argentina. The case will illustrate how the transformation of labor relations and regulations took place during the restructuring of companies through the use of the parallel system of negotiations. ACINDAR negotiates with UOM as the union that represents blue-collar workers and ASIMRA as the union that represents supervisors in the metallurgic sector.

In the previous chapter, I have analyzed the collective bargaining signed in 1975 that regulates this sector, which continued to be current in the 1990s. Thus, it will become clear how the parallel system overrides the formal system of negotiations and the regulations it establishes, as well as the regulations in the labor code. The case will also show how the local union gets involved in these negotiations, what the company gets from them, and how the national union oversees the process.[99]

ACINDAR is one of the oldest steel companies in the country. Created in 1942 during the process of import-substitution prompted by the lack of imports from Europe due to World War II, ACINDAR grew to become one of the dominant companies in this sector along with SIDERCA of the Techint group. By the 1990s, ACINDAR had two main plants in the steel industry, one in La Matanza (province of Buenos Aires) known as plant 1, and one in Villa Constitución (province of Santa Fe) known as plant 2. In 1978, thanks to state subsidies ACINDAR, went through a process of technological change and

[99] I will base the illustration of this case in an in-depth case study conducted by Jabbaz, Marcela and published in Modernización Social o Flexibilidad Salarial (1996) and documents and interviews I collected in Villa Constitución, province of Santa Fe, with UOM workers. During these interviews, I gathered several copies of agreements signed in the parallel system of negotiations.

vertical integration that transformed the plant in Villa Constitución in the most modern plant in the country with state of the art technology. By 1984, the steel industry was the third in importance in Argentina, after the oil industry and the auto industry.

During the 1980s ACINDAR went through a merger and the incorporation of new technology. This period was characterized by labor repression during the dictatorship of the military junta. The company had an authoritarian manager who implemented massive dismissals. Along with the dismissals, the company adopted as a policy the hiring of workers with no union affiliation, which increased the number of workers out of the boundaries of the collective bargaining agreement and accounted for up to 13% of the total by the end of the dictatorship in 1983. However, between 1985-87 when the company re-localized some of its plants in the province of San Luis to take advantage of tax breaks, it fired workers that were not unionized.

As a result of the process of technological change, the whole industry went from 47,102 workers in 1975 to 17,349 workers in 1992,[100] which implied a reduction of 63.2% of plant workers. Between 1975 and 1981, the reduction in personnel was of 30% due to technological change, and between 1991 and 1992 only the reduction was of 20%, due to a drastic reduction in subsidies and policies towards the opening of the economy to international markets. Therefore, the threat of loss of jobs that became a stick to induce the negotiations of new conditions of work was a credible one. Meanwhile, productivity in the industry grew constantly (by 226%) for the whole period.

During the 1980s, when the domestic market for steel contracted, ACINDAR increased its exports, reaching between 1982-86 30% of the total production. The increase in exports raised the quality standards and the company started to see the need to introduce changes in work organization. However, even though the company underwent a technological turnaround in the 1980s, it was only in the 1990s that it launched programs to introduce changes in work organization. Changes in macroeconomic policies that resulted in a complete change of the rules of the game, and stringent conditions for competition, heightened the pressure for overdue changes in work organization.

On the side of workers stood the UOM (Union Obrera Metalúrgica) one of the most politicized unions in the country with strong links to the Peronist party and a strong

[100] Numbers come from CIS (Cámara de la Industria del Acero) statistics.

leadership within the labor movement. The UOM, like many other unions, had been intervened during the dictatorship, and its leader at the national level, Lorenzo Miguel, had been imprisoned. The intervention meant that the military dictatorship replaced union leaders by others who were hand picked by them. Union activity was banned, but unions continued to negotiate with management inside companies. The local union in Villa Constitución in particular, was very militant and critical of the national union, which they thought was too politicized and bureaucratic. Serious confrontations between the local union and the national union had occurred during the 1970s, which had ended in the brutal repression of local leaders.

After the repression and the authoritarian management of the early 1980s in ACINDAR, in 1984, during the local union elections, workers reelected the old militant leaders by a landslide. In response, ACINDAR hired a new manager who wanted to negotiate changes in work organization directly with workers, although without the intervention of unions. However, the union had the support of the workers, and the manager had no option but to negotiate with them.

The first measure was the implementation of a quality program. After trying to convince workers to take their grievances directly to management without the intervention of the internal commission of the union to no avail, management started negotiations and a debate around the issue of labor flexibility ensued within the local union. In 1989, they launched a program to change the work organization of workshops. ACINDAR tried to implement these changes again, both in La Matanza and Villa Constitución, without the participation of the union.

The approach of management in regards to the implementation of changes in work organization was to avoid as much as possible the participation of unions in it and involve workers directly. However, while in La Matanza management used a conflict between the workers' delegates—chosen by direct vote of workers—and the internal commission to expedite the implementation of changes, in Villa Constitución it did not succeed in creating these cleavages and the union got more involved in the implementation of changes.

The manager that had implemented changes in La Matanza by using internal conflicts within the union, moved to implement changes in Villa Constitución in the same

fashion. He first tried to convince workers to accept new working conditions through individual contracts[101] and threatened the union with mass dismissals if it did not acquiesce with the changes proposed. The workers, however, refused to do it without negotiating through the union. In the end, the company decided to sign a private agreement with the workers to establish the new conditions of work.

The private agreement proposed by the company and to be signed by all the workers affected, the local union, and management, argued that new conditions of work had to be implemented, given the situation of crisis in which the company was, due to a contraction of the demand in the domestic market. They argued that they needed to increase their exports in order to keep the level of employment. The private agreement was proposed to workers on July of 1990, while the first package of labor reforms was being discussed in Congress (National Law of Employment.) Thus, old labor codes and the collective bargaining agreement signed in 1975 in the metallurgic sector regulated ACINDAR in all that concerned their labor arrangements.

The agreement revolved mainly around the introduction of more flexible work organization schemes and remunerations. In terms of work organization the agreement made it clear that all rigid categories were thereby eliminated. Rigid categories had been, as explained, one of main tenets of the collective bargaining agreement in this sector that would remain current even after the signing of these agreements. The collective agreement could not, according to the law, be replaced through the use of a private agreement at the company level, without the participation of the national union. But that is precisely what the company and the local union did. Thereby, workers were expected to perform different tasks in accordance to the needs of the company. The different tasks would involve quality control, maintenance, and the operation of computers. Regarding wages, it was established that up to 20% of a worker's income could come from group work. Also, the company would consider paying part of the wages with food vouchers (ticket canasta), which as mentioned, through an executive decree eliminated all labor taxes associated with the portion of the salary paid with them.[102]

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[101] It is worth noticing that signing new work conditions in individual contracts that contradict previous collective bargaining agreements would have also been against Argentine labor laws.

[102] The union managed to negotiate the payment of vacations and annual compensation as a proportion of the ticket canasta as well, but all other labor taxes were not included. The private agreement also mentioned

The union accepted the terms of the agreement conditioned on the creation of a commission with workers' representatives, although independent from the union to oversee the implementation of changes in work organization.[103] The negotiation of new categories and wages proceeded then sector by sector within the company, and it generated several agreements for each of them. The local union maintained the national union informed of all these negotiations, which were not officially acknowledged by them. Neither the union nor the company proposed to take the agreements over to the Ministry of Labor for ratification, given that none of these agreements fell under any current labor codes. In fact, they contradicted them. The agreements stayed within the confines of the company with a copy to the local union.

The preservation of the agreement depended, however, on how much the company thought it could do without the union while keeping social peace, that is, on what the balance of power was between management and the union. In December 1990, rumors started that the company was planning more massive dismissals. In March 1991, after the reorganization of 40% of the workforce, the company decided unilaterally to break the previous agreement in the parallel system and stop negotiating job classifications through the independent technical commission. Management did not pay owed wages that had accumulated, and decided to divide the vacation period in 14 days in the summer and the rest during the winter at the convenience of the company, contradicting labor legislation. As a result of the breaking of the agreement unilaterally, a labor conflict ensued, which resulted in dismissals and the closure of the technical commission. However, negotiations with the local union continued and all previous negotiations around the re-categorization of workers continued as well.

Once the labor conflict erupted, the local union asked the UOM national leadership to intervene in a more political fashion, and a formal negotiation in the ministry of labor was launched. The local union had kept the national union up to date of all the negotiations that took place through the parallel system, but it chose not to bring

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that after a year the company would start paying labor taxes that included contributions to health insurance and social security, as well as contributions to the union, but opened the possibility to not include them if the workers agreed to continue in the previous situation.

[103] The private agreement, however, had a clause that said that in case the technical commission and management could not reach an agreement, the company would submit the problem to the union to solve the conflict.

them up to the negotiating table, even though it was tacitly approving of its existence. However, because it did not acknowledge the negotiations and the agreements that came out of them, it could not fight for the reinstatement of the technical commission. The national union did not want to formally acknowledge that negotiations with the local union at the company level had taken place, because that would have established a precedent that the national union was approving of company level negotiations, of which it was officially fiercely against.

In fact, all parties involved, for different reasons, chose to ignore the existence of negotiations in the parallel system and by so doing they tacitly approved of them. The company did not want to acknowledge that it approved the existence of a technical commission to discuss changes at the company level, because it did not want that practice to spread. The national union did not want to formally approve of the existence of company level agreements, but it did not have the political strength to openly fight for it. However, they wanted their workers to benefit from those negotiations. The ministry of labor, although it was formally supporting the decentralization of collective bargaining, decided to go along with the negotiations between the actors, as they existed, implicitly favoring the business side by allowing it to get rid of the technical commission.

The signing of private agreements in the parallel system of collective bargaining continued unabated throughout the 1990s and up into 2003. In 1993, the union presented a proposal to raise salaries based on the fact that wages were not keeping pace with living costs and that the company had increased productivity in a 50%. Also, the union argued that the company had already benefited from wage flexibility with the introduction of ticket canasta and a different calculation of wages that implied a reduction of labor taxes, but workers did not benefit from it. In 1997, negotiations went on in order to agree on the way in which a process of wage flexibility would continue to be implemented, and other private agreements were signed for that purpose. In 2002, other private agreements were signed to introduce changes in work organization in a specific sector within the company. It established the new duties that workers had to perform, a commitment of the company to train them, the compensations they would receive, and a commitment of workers to reduce the level of absenteeism. Private agreements around compensations continued

well into 2003, even when formally the law endorsed the decentralization of collective bargaining.[104]

4. The Enforcement of the parallel system of collective bargaining: The Case of Córdoba

The parallel system of collective bargaining, which decentralized negotiations at the company level and encouraged agreements between workers or internal commissions and representatives of the employers, not only was not persecuted by the federal government but was encouraged and legitimized by the provincial departments of labor. The provincial departments of labor became "third party enforcers" of these agreements, to the extent that employers and workers requested the assistance of these public agencies on a regular basis, either to register agreements, solve conflicts, or even get technical assistance during the process of negotiations.

All main actors involved in the signing of these "company agreements" (*acuerdos de empresa*), employers, labor lawyers who work either for employers or unions, union leaders, and public officials coincide on the role that departments of labor at the provincial level have played in enforcing and encouraging these agreements. Although the degree to which departments of labor get involved in the negotiation and registration of these agreements varies with each province, according to the state capacity of each of them and the strength of the union movement in that particular region all of them have played a role in the enforcement of agreements. Given the difficulty of accessing this information, which is not readily available, but needs to be collected by the researcher interested in the subject, this study provides quantitative information from the province of Córdoba that records the number of agreements signed by year, by whom, and the type of changes introduced, complemented with in-depth interviews with key players in the provinces of Córdoba, Santa Fe and Buenos Aires. Altogether, these provinces account for 60% of the national GDP, and that is the reason they were chosen. They can provide a general overview of why and how the system was encouraged at the local level.

[104] This researcher obtained several copies of private agreements from the UOM local in Villa Constitución, of which two had been registered with the department of labor of the province of Santa Fe, in the branch of Villa Constitución. Unionists said that some of the private agreements had been lost, given that they did not have a systematic way of keeping their records, especially after those agreements expired, but stated that private agreements were a common occurrence and in fact the only way in which negotiations had taken place since the collective bargaining agreement of 1975.

In the words of Omar Dragún, Secretary General of the CGT-Córdoba[105] that represents all workers in the provincial territory, "coming to the department of labor gives us confidence that the agreements will be upheld." He also testifies that these agreements tend to go beyond the letter of labor laws and violate them. He says "these agreements modify clauses in the formal collective bargaining agreements, and that should not happen, but it is the only way to adjust to the new reality." Héctor Morcillo, who is the leader of the Federation of Food Processing Industry workers in Córdoba emphasizes the importance of these company agreements in updating the labor conditions of workers even in a sector in which the national union has signed formal agreements with business. Morcillo, however, dismisses the formal agreements as mere formal recognitions of changes that have already occurred informally, and which are usually limited to wage increases, without dealing with other changes that are also negotiated locally. "In the 1990s, we reached many company agreements that were ratified by the department of labor in Córdoba...In fact the (formal) agreement signed with the national federation in 1994 did not bring anything new. It was a mere recognition of the wages that were in fact paid and were negotiated informally in the previous years". On the employers side, Gambero, president of ADIAC (National Business Association for the Food Processing Industry) also agrees that the department of labor plays an important role in enforcing and encouraging these types of agreements, he says that "not all companies can honor the collective bargaining agreements signed at the national level...but all company agreements signed at the department of labor in Córdoba are honored because we sign agreements that are reasonable and can be honored."[106] Likewise, Jorge Tobar, a public official at the Córdoba department of labor who mediates in hundreds of negotiations between companies and workers a year, states that "the agreements that are signed at the department of labor are effective even if they go against the strict regulations on collective bargaining". He also believes that these agreements substantially modify old collective bargaining agreements, which should not happen

[105] Personal Interview, 7/16/03
[106] Personal Interivew, 7/18/03

according to the labor laws that regulate them. He says "these agreements modify previous collective bargaining agreements but without saying so directly."[107]

The same kind of testimonies can be heard in different sectors of the economy, with very different types of unions and employers, and in different provinces. Elba Picciola is a labor lawyer who has participated in hundreds of negotiations yearly between workers and companies in the most diverse sectors as a public official at the department of labor in province of Buenos Aires. She says that hundreds of agreements are registered and validated every year at that provincial labor department. The department of labor even mediated these negotiations in the 1990s, providing a de facto technical assistance to the parties. The agreements are very efficient and successful and very few of them are challenged in the courts, even if many of them are in the borderline between legality and illegality.[108]

The Department of Labor of Rosario, province of Santa Fe, which receives most of the agreements belonging to important industries located in the province, prefers to be reserved about the registration of agreements between companies and workers that took place during the 1990s, and that were in many cases in violation of labor laws and collective agreements. Some of the public officials only spoke to me about them off the record, and access to written agreements registered in their archives was physically difficult, if not impossible. Marcela Marconi, who has worked at the department of labor in Rosario since 1987, and handles every single agreement signed at the department between workers and employers before they are handed down to the Secretary for revision, was adamant about the overwhelming amount of agreements signed in the 1990s. She recalls that most of the agreements were coming from as diverse sectors as metal-mechanic sector (metalúrgico-UOM) that represents both large, multinational firms, and small and medium size firms, commerce (Federación de Empleados de Comercio) that represents retail, and UTEDyC that represents personnel of non-governmental organizations. The public official who was in charge of the conciliation of collective conflicts and witnessed the signing of many of these agreements, went as far as saying that many agreements came to the department in the 1990s with the request of

[107] Personal Interview, 7/16/03
[108] Personal Interview, 8/14/03

changing categories or type of compensation, which was in violation of labor laws. The official added that he personally handled and registered those agreements, but if asked about it, he would deny it. He defended himself arguing that the department could not possibly defy the power of companies that ask for the registration of those agreements.

It was clear that, the degree to which, secretaries of labor are willing to admit their participation in the legitimization of the parallel system of company agreements varies, with Córdoba being the most adamant and open about it, followed by the province of Buenos Aires. Authorities in Santa Fe province seemed to be more regretful. Social actors involved in negotiations, particularly those on workers' commissions, take these company agreements more as a matter of fact issue, and many of them are unaware of the fact that some of them are in violation of regulations. Employers can also be more cautious about mentioning these agreements and would probably deny their existence publicly. The fact remains that company agreements are a widespread practice in every sector, with many different unions and employers, and that provincial governments contribute to it.

This chapter explains why local governments at the provincial level get involved in the signing of "company agreements" and act as a "third party enforcers", contributing to the consolidation of the parallel system of collective bargaining by so doing. It also shows how local governments participate in the system, and how it is possible to act as a public enforcer circumventing the fact that provinces are not legally authorized to do so. For this chapter, I draw from qualitative evidence based on interviews with key actors involved in the signing of company agreements at the departments of labor of the major provinces in Argentina, that is, the province of Buenos Aires, Córdoba and Santa Fe which together account for over 60% of the national GDP, and with the current and former members of the *Consejo Federal del Trabajo* that gathers representatives of the departments of labor of all provinces in Argentina. I also took the case of Córdoba for a more in depth look at the workings of the system at the provincial level as an "ideal type", in the way Max Weber refers to use of them as a heuristic device. Córdoba provides the best chance to research these agreements and evaluate their breadth and depth, provided that it is the province that has taken the most adamant and open position in acting in the negotiation of collective bargaining agreements and defying the

prerogatives of the federal government in this regard. As evidence of the registration of these agreements and their use in diverse sectors of the economy by different unions and types of companies, and for the analysis of the type of agreements signed, I used a data base specially gathered for the purpose of this study with help of public officials at the department of labor in Córdoba. The database contains 1,400 company agreements signed and registered at the department of labor in Córdoba between 1990 and 2000.

5. A Methodological Note

One of the main obstacles for doing research in what I have termed the parallel system of collective bargaining is its underground nature, given the implications for data collection. The fact that the federal government and to a certain extent the local governments choose to ignore the phenomenon means that the gathering of information that turns into statistics does not clearly reflect its presence. Provincial departments of labor that register these company agreements, file them along with other individual and collective claims, that are different from the quasi collective bargaining agreements signed through civil contracts. This means that statistics only distinguish between individual and collective complaints, but not all collective complaints constitute quasi-collective agreements, and none of these agreements are further examined for their qualitative nature.

Provided that data is collected and gathered in a safe place, and can be recovered by going through a stack of files divided by year (something that can never be assumed when working in developing countries), an interested analyst can go through them and sort out the ones that constitute quasi-collective agreements. This operation may require the assistance of a labor lawyer with experience in these agreements to read through the technical jargon and distinguish between the different types of documents. Finally, since these documents belong to the labor departments, a researcher needs to get permission to work with them, and most likely provide funds to gather a new database using the mentioned files. Considering that some departments of labor are not so willing to admit their involvement with the parallel system of collective bargaining, this may not be an easy task.

The first province I visited to collect information about the role of provinces in the signing of agreements in the parallel system of collective bargaining, was the province of Santa Fe. I got permission to go through the data which was stored partly in a safe and partly in a far away location that had been flooded, which had probably spoiled many of the files. The files were not well stored and they were in a range of around 5,000 a year. With no previous experience in dealing with this kind of data and confronted with a secretary that was not very pleased to hear my questions and help me with my research, I decided to leave the possibility of working with the data registered in those files for a later time. However, I had gathered enough qualitative information through interviews with key officials and actors to know that the phenomenon was well under way in the province.

When I got to the province of Córdoba, I had an excellent reception by the secretary of labor and another labor lawyer who worked closely with him. They were happy to help me out with questions, setting up interviews for me, and provided me with all relevant data that I needed. When I asked about statistics that I could use to provide evidence for the existence of these company agreements, they first referred me to the administrative person that had been working on the filing of agreements for many years. She explained to me how this information is gathered, how folders are organized, how many files per year they handle, and all the statistics that were available. Even though I was hopeful that the statistics that the secretary had collected already would be useful for my purposes, they were not, for two reasons. For one, I was advised not to use them by the current administration of the department on the basis that the information was highly unreliable. Second, the information only separated individual from collective complaints but without regard to the distinction among collective complaints of the ones that constitute quasi-collective agreements.

At this point, we started contemplating the idea of carrying out a joint project of data collection in which we would separate the quasi-collective agreements from collective complaints in general, and extract some qualitative information from them. The secretary of Labor in Córdoba thought it would be useful information for them as well to know the extent of these agreements happening at the provincial level, and probably to further their cause at the federal level to allow provinces to carry out this procedure

legally. We drafted the project with Jorge Tobar, a labor lawyer at the department of labor who participates with the secretary of labor in negotiations of these agreements with many different sectors, and who has many years of experience working as a labor lawyer in Córdoba. In the meantime, I raised funds to carry out the project and got a grant through my advisor at MIT who thought this was a great opportunity not to be missed. With those funds, I hired Jorge Tobar and a recently graduated accountant who would enter all the data in spreadsheets, and worked full time on the project for three months.

The project took place at the department of labor in Córdoba in an office that was specially dedicated to the task, and with the occasional assistance of administrative personnel who carried the files back and forth from the place in which they were stored. An average of 5,000 files a year were revised for the period of 1990-2000, and from that the total of quasi-collective bargaining agreements were separated using the following definition: "an agreement between an employer/s and a group of workers/union that introduces a long lasting change in compensation schemes, work organization, and other work-related issues." The definition is quite strict and eliminates many collective agreements that do not fit this standard. All collective agreements that are signed to enforce agreements, which are already in existence or current labor laws, were not considered. By making the definition stringent we did not run the risk of over representing the number of agreements actually signed. Despite the restriction, the number of agreements that fit the definition was substantial. Particularly, it must be noted that these agreements are signed in the provincial capital city, but there are more agreements signed at the labor delegations—local branches of the department of labor--scattered in the interior of the province, and that many agreements actually never reach the department of labor, because they are either stored at attorneys' offices or are unwritten negotiations between workers and employers.

The database has 1,450 agreements of which we could get the following information: when the agreement was signed, the name of the company that signed it, the name of the union that signed it, the type of change that was introduced, the type of activity in which the company operates, the number of companies involved, and whether the activity is private or public. This constitutes the only database in existence that

contains this kind of information, but it is a first step in the investigation of these types of agreements.

Other similar databases could be created out of the files stored in labor department archives. As mentioned, the province of Santa Fe used the same system as Córdoba in filing all labor disputes and negotiations by year in correlative order regardless of the type of agreement, which constitutes the raw material for the database. This may be more time consuming, considering the poor condition of the archives, but it could be done. In the case of the province of Buenos Aires, it is also possible to retrieve the files and construct a database. The main obstacle in the province of Buenos Aires is that being that it concentrates the bulk of the national GDP the amount of files can be daunting. In addition, in the case of the province of Buenos Aires, it has at least 20 delegations in the interior that work with a high degree of autonomy, and information from these delegations does not flow too smoothly to the central agency. In all the cases, additional funds would have to be provided to the agency to collect the information in case they agree to release it. For the purpose of this study, I take the case of Córdoba as an example of how the phenomenon takes place at the provincial level and complete the picture with the other two provinces that along with Buenos Aires are the most populated and yield over 60% of the national GDP, using qualitative information gathered through interviews with main actors and key public officials at each labor department.

In the next section, I explain what the logic behind the involvement of provinces in the signing of these agreements is; how they get away with stepping over the legal attributions of the federal government and how they get away with it; and its effect over what I term the parallel system of collective bargaining.

6. Federal enforcement and local conflict

Officials at the departments of labor always put it blatantly when asked why they get involved in registering company agreements that are on the borderline between legality and illegality when it comes to the enforcement of labor laws. They say that while at the federal level they might want to believe that legislators can still uphold a rigid and protective legislation, social conflict erupts at the local level where the reality

collides with a rosy picture of protective legislation amidst a highly competitive international environment.

The provinces of Buenos Aires and Córdoba act very consciously on the issue of handling their own provincial affairs within their own boundaries, even if that means interpreting their legal attributes quite loosely. Mr. Sappia who was Minister of Labor of Córdoba province from 1988 to 1995 and had been very outspoken on the right of the provinces to handle negotiations between companies and unions within their own boundaries, thinks that "the provinces know better about their own local conflicts and how to solve them...the collective bargaining agreements are also an instrument to promote employment and local development. Collective bargaining agreements represent a form of "social contention", a way of ending conflict in a reasonable way". Elba Picciola, who acted as a labor lawyer mediating hundreds of conflicts between workers and employers at the Buenos Aires province labor department, says that the idea that guided the public officials' actions towards "company agreements" in the province was that "everything that happens in the province of Buenos Aires is solved within the boundaries of the province". In the case of Santa Fe, the same happened in a less overt way but public officials acted as if the province had legal attributions over solving social conflicts and handling collective bargaining agreements as they see fit.

Provincial public officials, however, knew very well that they were stepping off their own legal attributions. The legal attributions of the federal government as opposed to the provinces in regards to labor issues has always been clear to everybody, despite the decentralization of labor enforcement and conflict resolution in favor of the provinces since the 1980s. Provinces were entitled to enforce the law, as it exists, which means that in theory there is no room for loose interpretations of it. Neither is there room to overstep their boundaries or to create new labor regulations that clearly go beyond mere enforcement. The federal government still retained the right to handle negotiations between unions and companies and ratify them and declare them legally valid. The latter is a subtle but extremely consequential point, because it means that without the intervention of the federal government, collective bargaining agreements are not legally and rightfully so. Other types of agreements between unions/workers and companies even if consensual are civil law agreements but never collective bargaining agreements that

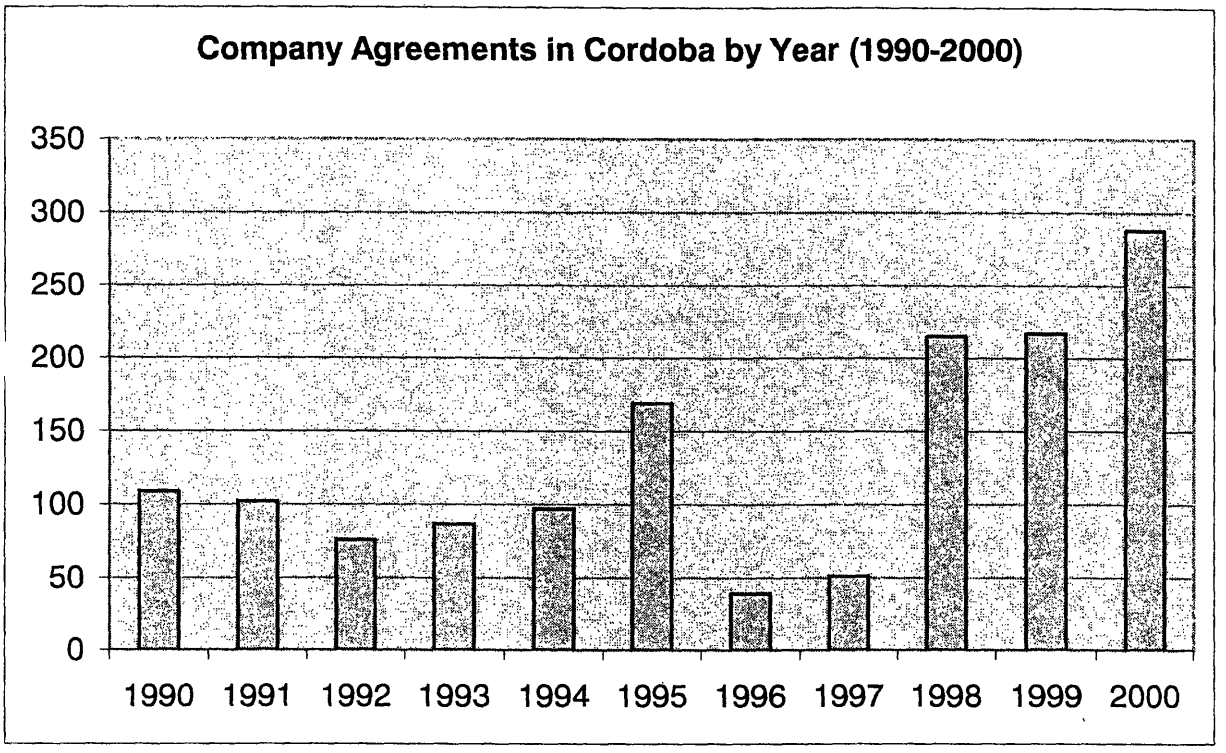
replace previous ones.[109] The provinces are allowed to administer collective bargaining agreements, which means that they can help the process of negotiations when it is under way and before it reaches the Ministry of Labor at the federal level, but cannot promote them, neither ratify them, and least of all renew old collective bargaining agreements with "company agreements" or overstep the boundaries of what is prescribed by labor laws.

Nevertheless, given that local actors, both unions/workers and companies were interested in signing these agreements, and felt that registering them at the provincial labor departments was a reassurance of commitment to them, and the federal government was ready to turn a blind eye on them, the agreements kept on growing. Only in the province of Córdoba, companies and workers/unions registered 1,450 "company agreements" between 1990 and 2000, which is equivalent to the agreements registered over the same period of time nationwide. Considering that Córdoba only represents 15% of the national GDP, this is an impressive figure (see graph 4.1, Table 4.1).

We also know that in terms of "company agreements" signed in the parallel system of collective bargaining, this is only the tip of the iceberg, considering that not all agreements are registered at labor departments, but many of them are filed at the companies themselves, attorneys' offices, or are simply unwritten. It can also be observed in the graph that the tendency to register agreements at labor departments is increasing over time. The lapse observed between 1996 and 1997, in which the number of agreements signed at the labor department declined dramatically, can be attributed to a deep financial crisis that affected the province of Córdoba in particular, and affected the provincial economy as a whole.

[109] The other exclusive attribution of the federal government is to declare a union as the most representative one, which is known as the process of giving personería gremial.

Graph 4.1.



Source: Personal database created from Córdoba labor department archives 1990-2000

Table 4.1 shows a comparison of the agreements signed in Córdoba city as opposed to the agreements signed at the national level. It is clear that the parallel system of collective bargaining with a high level of decentralization, given that almost all agreements are signed between only one company and a group of workers/local union, is outpacing the formal system of collective bargaining which in the few cases in which it works, has been growing into a more decentralized system of negotiation. In the years 1999 and 2000, the amount of company agreements signed in Córdoba province has surpassed the amount of collective bargaining agreements signed at the federal level, and only for the years 1996-97 that were quite exceptional for Córdoba, the agreements at the provincial level were fewer than the ones at the federal level. The importance of these agreements is that they show a completely decentralized system of negotiation which is loosely coupled with the more formally centralized system of agreements, and that they

create not only new labor institutions through which to negotiate agreements, but actually new laws and labor regulations that actually regulate the labor market.

The extent to which the parallel system of collective bargaining was becoming more and more the standard procedure, given its effectiveness in delivering achievable agreements and in maximizing unions', workers' and employers' interests can also be evaluated against the policies on collective bargaining sanctioned by law at the federal level. As the graph shows, company agreements signed in Córdoba, that is decentralized negotiations, reached a peak and kept on growing, particularly after 1998. Ironically, it is in 1998 when Congress, during Menem's second term, passed law 25013, centralizing collective bargaining and strengthening the power of national unions in negotiations. This is what scholars have specially pointed out as the moment of maximum pressure of unions towards the government, and when unions managed to reverse previous policies of decentralization and get back to employers.[110] The data, however, shows that neither the government nor the unions had the power or political will to enforce their implementation and the parallel system of collective bargaining continued to be the preferred medium to carry out negotiations.

The fact that the parallel system of collective bargaining with registration at the labor departments was taking root is reflected in the criteria that the Córdoba labor department was developing to deal with company agreements. Instead of using the current labor regulations as the only benchmark to be compared with the agreements, in order to evaluate if an agreement would be taken by the secretary for registration, the following criteria was developed: 1. An agreement was reached between employers and workers, and therefore the agreement can be considered "reasonable", 2. The agreement doesn't contain an obvious and flagrant violation of the labor codes or at least is not presented in such a way, 3. The agreement provides an efficient way to solve the conflict and implies some kind of improvement in the real situation of each party, that is, employer and workers. As it can be observed, the criteria introduces other elements as equally relevant as the relationship of the agreement to the current laws, giving importance to reaching a consensus between the parties, and its ability to solve a concrete conflict with mutual gains for employers and workers.

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[110] Murillo (2005), Etchemendy (2001).

Table 4.1.
Comparisons of Collective Bargaining Agreements at the Federal Level with Company Agreements for the city of Córdoba 1991-2000

Year	Federal	Córdoba
1991	97	102
1992	209	76
1993	218	87
1994	202	97
1995	196	129
1996	152	39
1997	208	51
1998	219	215
1999	182	217
2000	76	288
2001	150	-
2002	208	-
2003	200*	-

Source: Ministerio de Trabajo, Empleo y Seguridad Social de la Nación
* These are the agreements signed between January and May 2003.

7.How are local governments getting away with non-enforcement?

To understand how the parallel system of collective bargaining, in particular the fraction that the labor departments enforced, is kept alive and does not get exposed as an unfair practice, it is useful to start understanding what it would take to expose it.

To begin with, as mentioned earlier in the methodological note, it is not all that easy to access these agreements at labor department offices, because they are filed in consecutive order along with hundreds of other documents that are totally unrelated. In addition, labor departments do not have any statistics readily available to show how many of these contracts are signed and with whom. In a way, it is the perfect hideaway when the agreements can get buried in an obscure basement somewhere in the interior of the country. But not so buried that cannot be useful to those who use the system and know how it works.

However, even within this bureaucratic maze, things could take a wrong turn and labor departments could be exposed as partners in meddling with labor laws to make them more amenable to business competition. In this regard, and as a general principle, it

is important to note that actors involved in these agreements do not expose their existence in the media where things could get out of control. It is interesting to note in this respect that even though during the 1990s there were hundreds of articles written about the so-called labor reform, with numerous pages written about the government's intentions, and employers' and unions' opinions about it, the existence of these agreements is never mentioned, never mind made an issue. At the most, what the media could refer to is the idea that labor laws were not really upheld in the market and that things were changing anyway. However, there was no evidence of how systematic this practice was, the extent to which unions were involved in it, how it happened, and what exactly was changed. In fact, the idea that everything could be changed in the market was as wrong as saying that labor laws were upheld.

However, in addition to the general secrecy around the system helped by the bureaucratic mess in which it is disguised, there were other ways in which it could have gone wrong. Any of the actors involved in this scheme, that is, the federal government, the local labor inspection, the employers, the unions, or the workers themselves could have denounced this system as unfair or exposed either the incompatibility of company agreements with previous collective bargaining agreements or current labor laws. If taken to the courts, it could have cost a large sum of money to the employers involved in these parallel negotiations.

Departments of labor can even take some measures to shore up their responsibility in enabling the tinkering around with labor laws by employers, workers and unions. In order to accomplish this, they look for ways to frame the agreements in a way that does not sound as introducing a dramatic change in labor regulations, as it may be the case. Then, obscuring the language is one way to get away with tinkering around with the law. In addition to not using a language that explicitly refers to the way in which the agreement changes previous regulations, departments of labor also use a language that reflects different degrees of ratification of what is said in the agreements. The strongest word that implies that the secretary of labor has reviewed the agreement as a legal document and has found it in accordance with current regulations is to ratify the agreement (*homologación*). If the labor department finds the agreement to be in disagreement with the law in a way that is rather obvious, then it can choose to simply

"register" (*registrar*) the agreement, which means filing the agreement at the department without ratifying its legality, or "take note of it" (*téngase presente*) which implies an even lower level of commitment with what it is written in the agreement.

First of all, the federal government could have interfered with the way local governments were handling these collective agreements, and require them to strictly enforce labor codes, which was what they had to do in the first place. According to the law, every agreement signed at the labor department as a result of the resolution of a labor dispute, had to be carefully inspected by labor lawyers working at the department to make sure that the agreements did not step over the boundaries of what is considered the "Labor Public Order" (*Orden Público Laboral*), that is, all rules and regulations legally sanctioned for the functioning of the labor market starting with the National Constitution and down to every single collective bargaining agreements signed in each particular sector. The provincial labor department had no discretion in enforcing these regulations and could not accept an agreement that contradicted current legislation, and there was no way around it. The federal government knew what was happening but chose not to do anything about it. Moreover, as I argued, the federal government was well aware of the existence of this system and that is why it could choose to not enforce, neither de-regulation nor regulation which could have been politically costly, knowing that these private contracts and negotiations would take care of introducing more flexible norms for the labor market.

The second mechanism that could have blown the parallel system by making employers pay for stepping off the boundaries of the labor codes would have been the regular implementation of on-site labor inspections. Labor inspections entail the assessment of the implementation of general labor codes as well as signed collective bargaining agreements at a given company. Employers have to demonstrate that they follow collective bargaining agreements that were signed in the sector in which they operate, even if the agreement has not been renewed for a number of years, and as far back as 1975. However, as explained in the previous chapter the 1990s had witnessed a systematic and profound dismantling of labor inspections coming from both the federal level and the local level. The federal government did not implement many of the programs that it promised to implement to fight against "informal employment" through

an increased level of labor inspections. In fact, informal employment did nothing but grow incessantly over the decade. Likewise, the provincial governments who had been so eager to claim their rights to manage labor inspections at the provincial level without the oversight of the federal government did their part in the dismantling of the inspection system by reducing the personnel assigned and not investing in their training.

The third mechanism would have been through exposure of these agreements by unions. Unions, in fact, have a crucial role in guiding labor inspections and the enforcement of labor laws and collective bargaining agreements. On the one hand, union representatives at the factory level have as one of their roles the responsibility to make sure that employers follow labor regulations and implement collective bargaining agreements. If employers violate either the laws or the agreements, unions can request a labor inspection from the labor department and get the employer to either follow regulations or pay fines. On the other hand, labor inspections almost always depend on these union claims, given the lack of resources at labor departments. Therefore, if unions do not present a request for inspection, it is likely that whatever happens in the company will continue its own course. In fact, union delegates guide the inspectors within the company to assess the violations of labor codes, and therefore it is also up to them to denounce or not the existence of company agreements on the side. This gives a lot of power to union delegates and an incentive for employers to keep them happy, which may be an additional inducement to sign company agreements.

We know from the available statistics on labor inspections, and to the extent that they can be credible, that the number of labor inspections is completely insufficient to cover the whole universe of companies, or at least to an extent that they could be become a real threat to violators. To completely prove the point that unions do not force inspections on companies to uncover their use of company agreements on the side, we would need to have information that matches unions with inspections, but that information is not available. However, from qualitative information coming from interviews with employers, labor lawyers and unions we know that one of the reasons the signing of agreements in the parallel system of collective bargaining has been so successful is that agreements are upheld by both unions/workers and employers and that nobody denounces them. In fact, it would make little sense that if unions agree to sign

these contracts, they would ask labor inspections to come after employers for signing them.

The only cases in which company agreements signed in the parallel system of collective bargaining are exposed is when an individual worker decides to sue the company, and in order to increase his compensation he denounces the conflict between company agreements and previous collective bargaining agreements and requests payment of benefits included in previous agreements and not honored by the company. However, statistics show that legal actions against companies by individual workers diminished dramatically during the 1990s and qualitative data indicates that although there are cases in which this has happened, it is not a common occurrence.

In sum, the actors involved in the signing of agreements, that is, workers, unions, and employers have an interest in making them work, and therefore do not denounce them. As for local governments, they also have an interest in keeping the system working for the sake of maintaining social peace and the level of investment in their provinces. The federal government also chooses to ignore them because they move in the desired direction, allowing companies to remain competitive while protecting jobs, even if it means working longer hours and reducing some of the workers' previous benefits. Also, the government does not have to pay the political price of confronting unions to formally decentralize collective agreements and negotiate previous social and political conquests enshrined in those previous collective bargaining agreements. It is interesting to notice that the government has chosen inaction in regards to this parallel system of agreements either in the cases when it was enacting laws to either decentralize, which represent more the employers' view, or to centralize, which represent the unions' view. Siding with one or the other to force the implementation of formal agreements would have been politically costly, and it always had to compete with their "alternate", the parallel system of decentralized collective agreements.

7. <u>The System at Work</u>

Formal collective bargaining appeared to be stalled in many sectors of the economy and for most of the workforce, however, unions, workers and employers were busy making company agreements throughout the nineties. In fact, for many workers this

was the only type of negotiation possible and in many occasions they brought better benefits than if the companies had gone ahead with their projects as they saw fit.

The parallel system of collective bargaining was there to be used for whoever wanted to make use of it. A closer look at the database collected at the Córdoba labor department based on the company agreements signed in the city of Córdoba alone in the nineties, reveals that over eighty different unions had participated in the signing of 1,450 agreements in diverse sectors such as the automobile industry, the shoe and garment industries, food processing industry, construction, transportation, and mining. Most of the agreements are signed in the manufacturing sector, which has from 60-80% of the agreements every year. However, within the manufacturing sector, we find many different sectors with different types of national origin ownership, company size, market share, capital intensive and labor-intensive sectors alike.[111] There are also agreements beyond the manufacturing sector, in services, mining, construction, transportation and a few in the public sector.

Many types of unions with different histories, leaderships, and institutional structures participated in the signing of these agreements, of a total of over 80 different unions that participated in the signing of 1,450 agreements in the nineties. Even though the level of engagement and the way in which they engage in negotiations, choosing more the formal route or the parallel route, and the way in which workers are allowed to participate in negotiations or the knowledge with which union representatives come to negotiations varies by union, the type of union in itself does not explain the origins of the parallel system of collective bargaining, neither the motivation to participate in it. Neither does the sector. The use of the parallel system of collective bargaining is not specific to a certain sector of the economy, even though some sectors may engage more in it than others.

In the database gathered at the Córdoba labor department for the purpose of this investigation, we recorded to which sector of the economy each agreement belonged, which was deduced from the union that got involved in the agreement. Given that in Argentina unions are representative of one specific sector and they are not allowed to

[111] This tendency to find more agreements signed in the manufacturing sector than in other sectors of the economy mimics what happens with formal agreements at the federal level. See Novick (2000), La Negociación Colectiva en el período 1991-2000.

represent workers outside of it, it is easy to know to what activity a certain agreement belongs by knowing the union that had been involved with it.

Table 4.2.
Company Agreements by sector – Córdoba 1990-2000

Sector	**1990**	**1991**	**1992**	**1993**	**1994**	**1995**	**1996**	**1997**	**1998**	**1999**	**2000**
Manufacturing	*78*	*69*	*58*	*55*	*76*	*143*	*31*	*35*	*179*	*190*	*249*
Metallurgic	23	20	18	9	8	35	3	1	32	30	87
Autos	14	12	3	2	5	32	15	18	53	54	32
Food processing	10	6	9	9	6	7	2	3	6	1	2
Shoes	1	4	2	23	33	30	2	4	14	23	35
Employees*	15	9	7	2	6	11	1	4	8	25	15
Others**	15	18	19	10	18	28	8	5	66	57	78
Construction	2	3	3	4	6	4	1	3	7	1	1
Mining	9	2		3	6	6	1	2	1	1	4
*Services****	16	13	11	4	7	11	2	1	12	16	18
Elect/water/gas	1	3	1	12	1	1	2	4	7		1
Rural Workers		7	1	1					1		
Transportation	5	4		5		1	1	2	1	7	11
Municipal Workers		1		1				2		1	2
TOTAL	**107**	**102**	**72**	**86**	**96**	**168**	**38**	**50**	**214**	**215**	**287**

Source: Personal database collected from files at Córdoba department of labor.
*It means that the employees/delegates did not bring the union to the negotiation table, but came representing only themselves
**This category includes agreements in the following sectors: oil, ceramics, paper, sodas, garments, printed materials, wood, mosaics, ceramics, glass, chemical products, textiles, and aviation.
***This category includes agreements in the following sectors: health services, civil associations, security services, pharmacy workers, trash pick-up, teachers, retail, restaurants and hotels, banking, and the media.

As Table 4.2 shows, every year most of the agreements are signed in the manufacturing sector, mainly in the auto, metallurgic, shoes, and the food processing industries. The category "others" within manufacturing also covers a broad number of sectors that range from oil to garments, but none of them appears consistently signing agreements every single year, as it is the case with the other sectors. The category "employees" appears consistently every year and we could determine if it belonged to manufacturing, services, or another broad category but we could not determine to which sector it specifically belonged, precisely because the union in those cases was not present. The cases in which only the employees appear signing, or sometimes the union delegates, often reflects distrust of the union by the employees who prefer to sign the agreement

directly with the employer without the involvement of the union. Delegates can also disagree with the local union but still want to represent the workers inside companies, and in those cases they also show up for negotiations along with the employees.

The sector that follows in importance to manufacturing is services with a wide variety within it, such as retail, banking, teachers, health workers, and civil association employees. Diverse sectors such as construction, mining, and transportation— which include long distance buses, local buses, and truck drivers--have a constant presence at the negotiating table even if they do not sign a large number of agreements every year. As the table shows, the parallel system of collective bargaining is not circumscribed to any specific union or sector, but is a general and widespread mechanism of negotiations known to any actors that are willing to use it. In fact, it is clear that sectors do not share any particular trait, being this how many multinationals are present in the sector, the type of capital used, or the union that represents its workers. Further investigation could be carried out to better understand the level of involvement of each particular sector or the quality of the agreements, but it is clear that the system is ingrained in the society and known and used by a wide range of sectors. As mentioned before, the phenomenon is also not unique to Córdoba, but it exists in all of Argentina's provinces and in particular in the richest and most populated ones, such as Buenos Aires, Córdoba and Santa Fe.

In principle, these agreements are not forbidden by law, and therefore could change any labor regulation. The Córdoba database was designed to record the type of change introduced in the agreement. The results are shown in table 3, in which we observe that the overwhelming majority of agreements have to do with introducing changes in compensation schemes. In 89% of the agreements one of the changes introduced is related to changes in compensation schemes. This type of change is followed by changes in working hours, mentioned in 12% of the agreements, and the introduction of productivity premiums, mentioned in 5% of the agreements. Agreements also included the following type of changes: change of categories (1.5%), changes in vacation time/leaves (2%), changes in conflict resolution rules (2%), approval for signing short-term contracts (0.3%), training (0.4%) and others (2.5%). The changes are not mutually exclusive, and it is not unusual to find agreements that introduce more than one change.

The fact that the overwhelming majority of these agreements deal with changes in compensation schemes prompts us to provide some explanation. One could have expected a higher level of agreements to include other types of clauses, given that the restructuring of companies in the nineties with an exchange rate that was overvalued implied moving into other aspects of production besides cash compensation that would lead to increases in productivity, such as changes in work organization and training.[112] Why then, were these agreements still reflecting the old pattern of agreements in Argentina in which the main discussion was still around wages? We can only hypothesize here some plausible explanations until more information can be collected on these agreements. For one, the information gathered about changes introduced through these agreements is limited, given the nature of these agreements. As stated previously, the language that could be used in these agreements had to conceal as much as possible the fact that the agreements were going beyond the letter of the law or the previous collective bargaining agreements, since they were not allowed to do so. Second, in many agreements, we noticed that even though the main purpose of the agreements was to instrument a new productivity bonus, or some other form of additional payment, the counterpart for that was a "general restructuring" or "changes in work organization" that the company would introduce as necessary, but the paragraph about the changes was quite vague. In these cases, the agreement was recorded as introducing changes in compensation schemes, given that the counterpart was so vaguely stated and not actually negotiated.

The information collected through the database can be complemented with the qualitative information collected through interviews to get a better picture of the reason why the agreements mainly refer to changes in compensation schemes, although not exclusively. At the same time, we have to always bear in mind that these agreements signed at the labor department are not the only form in which negotiations and agreements are carried out at the company level. Given the institutional framework of Argentine unions and the strong presence of delegates at the company level, it is not uncommon to carry out negotiations that remain behind the companies' doors. Many of the negotiations that end up at the labor department are the ones that get stalled within the

[112] In fact, the few formal agreements signed.

company for some reason, and are about to become a labor conflict. In those cases, the labor union takes the employers to the labor department before they take action against the company. The STIA-Córdoba (Union of the Food Processing Industry),[113] that has signed many of the agreements in the food sector, finds that many of agreements signed in the 1990s were drafted after a labor conflict that arose out of stalled negotiations over changes that the company wanted to implement without giving a monetary compensation to workers and did not want to negotiate the content of it either. As a result of the negotiation at the department of labor, they always got some kind of compensation, generally not incorporated into the direct wage and often times also unrelated to the real change it was supposed to compensate. For example, as a result of an intended change in work categories, a company offered to raise the percentage of the wage paid for perfect attendance to work (*presentismo*).

The UOM-Córdoba,[114] a union that was responsible for the signing of 15% of agreements during the nineties (see table 4.2), and that represents workers from around 1,200 companies in Córdoba that produce a wide range of products from machinery, electronics and auto parts to metal carpentry and railroad materials, and have different sizes and types of ownership and management, testifies that it is very common in this sector to sign agreements at the company level. Often times, these agreements contradict the formal agreement, and local unions engage in these negotiations in clear opposition to the mandate of the national union that does not want to formally negotiate at the company level. Companies in this sector have introduced new categories despite the fact that the formal agreement does not allow them to do so, and that at the company level they have introduced several changes in regards to compensation schemes to make them more flexible for employers and as a way to get wage hikes that were not occurring at the sector level. Sometimes they would exchange more money for changes in work organization and sometimes they would get lesser benefits than they were entitled to, according to the old agreements as a guarantee to keep their jobs in a context in which companies were heavily restructuring in order to remain competitive.

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[113] Personal Interview, Morcillo, Secretary of STIA-Córdoba

[114] Personal interviews: Augusto Varas, Ignacio Tello, Ruben Urbano (UOM-Córdoba); Ricardo Gueill, ADIMRA (employers' association);

Table 4.3
Type of change in company agreements, Córdoba (1990-2000)

Change	Number	%
1	1294	89
2	23	1.5
3	5	0.3
4	181	12
5	34	2
6	85	5
7	34	2
8	7	0.4
9	36	2.5

Source: Personal database from files at Córdoba department of labor, 1990-2000
Change 1=compensation schemes
Change 2=change of categories
Change 3=approval to sign short-term contracts
Change 4=work hours
Change 5=vacation/leaves
Change 6=productivity premiums
Change 7=conflict resolution rules
Change 8=training
Change 9=others

In sum, the agreements seem to reflect what unions are in fact able to negotiate with companies, that is, monetary rewards in exchange for more flexibility in compensation schemes, in work times, and categories. In many occasions, even in the middle of a bad situation that did not promise to deliver too many goods for workers, unions and workers were able to negotiate better conditions for workers than it would have been otherwise. For example, in many of the negotiations registered at the labor department, a company needed to dismiss workers for a certain period of time during production shortfalls. In those occasions, the law allows for employers to dismiss workers temporarily without pay. Collective bargaining agreements do not provide for that situation either. In those occasions, unions and workers negotiated dismissals of workers with up to 75% of their wages paid, in order to preserve jobs. Employers could perform the necessary readjustments at the company level without disturbing the social peace. For employers, in general, negotiations at the company level constitute a good way to introduce the flexibility required, despite rigid labor regulations and formal collective bargaining agreements, and keep social peace with their employees.

8. How did the provinces get involved with the parallel system of decentralized collective bargaining?

Labor inspections and enforcement had gone through different phases in which the federal and provincial governments had taken turns in their administration. There were periods of centralization in which the federal government took over all administrative functions in regards to labor, and others in which the provinces had claimed their right to administer labor disputes autonomously. In general, during periods of *de facto* governments (date-date; date-date) as well as during Peronist governments (1946-52; 53-55; 73-76) the labor administration was centralized at the federal level[115].

However, during the 1980s, when democracy was again recovered after a long struggle against the previous dictatorship, provincial authorities decided that they wanted to regain what they felt were some of their natural duties, such as the administration of labor enforcement and inspections. Apparently, there was no hidden intention behind the recovery of these powers that provincial authorities felt should naturally fall in their hands, given the federal nature of the Argentine system of government, although later on they used them more purposefully, at least in the labor arena.

The process of negotiation between the federal government and the provinces around the issue of labor ended in a series of agreements signed with each province, and the general agreement that the province could enforce labor laws and deal with labor conflicts that happened within their provincial boundaries, provided that the federal government still reserved the right to promote negotiations of collective bargaining agreements and validate them. In practical terms, what this meant was that the *formal* system of collective bargaining had to go through the federal government, in order to be considered formal and be entrusted with all the rights and obligations that the formalization of this process entails. The general agreement between provinces and the

[115] That this could have happened is not surprising, despite the fact that Argentina has a federal system. There was a long period of civil war right after the declaration of independence from Spain, around the issue of centralizing or not many government functions in the capital city. Also, regardless of this historical tendency to centralize, labor laws in Argentina are federal, which means that the same laws apply in the modern capital city as they do in the backward regions of its interior, and only their implementation is managed locally. Collective bargaining agreements were created during the Peronist administration to reinforce the centralization of the labor movement. Even if labor laws on collective bargaining do not prohibit decentralized agreements, the national Ministry of Labor has contributed to keep this tendency to centralize, if only on paper, as I have argued throughout.

federal government was sanctioned formally through Executive Order No. 2646/90, and the provinces engaged in the process of sanctioning laws that established how the provinces were exactly going to carry out this process of inspection.

Provinces amended their constitutions to include some paragraphs about their rights in administering labor inspections and sanctioned specific laws and regulations to carry out this process. In many provinces, departments of labor had to be created from scratch, given that local branches of the federal Ministry of Labor at the provincial level had been in charge of the process of monitoring of labor laws up until then. In theory, the local branch of the Ministry of Labor and the newly created department of labor had to coordinate their activities to produce a more effective process of monitoring labor laws, but this coordination did not take place in practice, arguably because the federal government did not have the political will to have a strong system of enforcement at the provincial level. The process of decentralization of the monitoring of labor laws and collective bargaining agreements varied in each province. Some of them were particularly aggressive in defying the power of the center, such as the case of Córdoba.

10. The case of Córdoba: defying the center

Córdoba was the last province to claim its rights to administer labor conflicts and enforce labor laws, but it became one of the most adamant advocates for provinces to become autonomous, not only in their enforcement powers but also in the promotion, negotiation, and validation of collective bargaining agreements. In their formal negotiations with the center, Córdoba's authorities did not succeed in their objective, and the center retained the power to negotiate and ratify formal collective bargaining agreements and carry out the whole process of administration of union formation and functioning. However, Córdoba was the province that went the furthest in defying the power of the center by getting involved in promoting new collective bargaining agreements far beyond its administrative attributions.

Córdoba made a strong move by appointing Jorge Sappia as minister of labor.[116] He was not only a highly respected labor lawyer in Córdoba who had worked for many years as a legal advisor for unions and employers, but was also a personal friend of the governor, Eduardo Angeloz. Córdoba was one of the few provinces that created a "ministry" of labor, while most of the provinces set up a department or secretariat. The Ministry of Labor was created from scratch because the province never had one before, and the minister of labor participated in cabinet meetings with the governor on an equal footing with other ministers. As a result, the Ministry of Labor then had considerable financial resources to carry out its operations, and a strong minister of labor who had political backing of the governor to carry out their plans.

Sappia believed that the province needed to have a pivotal role in promoting negotiations between companies and workers/unions as a way of promoting employment and regional development, and he also believed that it was the provincial administration that was able to carry out that role better, given that they were closer to the actors and the local problems. However, Argentina's legislation was clear about not allowing provinces to get involved in the process of formal collective bargaining. They could only enforce but not promote collective agreements, as a way of avoiding the decentralization of the union movement and possibly its fragmentation with the corresponding loss of power.

However, labor authorities in Córdoba found a loophole in the legislation that allowed them to pursue their objective. The law established that the provinces could get involved in the "administration" of collective bargaining agreements, that is, once the process had been started by the local actors (employers and unions), they could help in the administrative process of getting their agreements ratified by the federal government. But they could not guide the process, least of all provide a free interpretation of what labor laws dictate, or introduce changes not allowed by collective bargaining agreements, or ratify agreements that should be ratified by the federal authorities. As Sappia and his collaborators put it: "they interpreted the word 'administer' in ample terms" and went

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[116] Sappia was Minister of Labor from April 1985 to December 1987 when he resigned from public office to return again as advisor to the governor in labor issues. He became Minister of Labor again in August 1988 and remained in office until July 1995, when the province entered into a deep financial crisis that led to the ousting of governor Angeloz. Sappia was called on again by the De la Rúa administration to draft the labor reform of 2000 that ended in the federal Law 25.250 passed by Congress that year, and which tried to decentralize collective bargaining unsuccessfully.

ahead with their objectives. As they confirmed later, the federal government was not coming after them for overstepping their boundaries, and was in fact doing the opposite when it ratified some agreements that had been born and ratified at the provincial level. And social actors reacted very positively to the provincial government's idea, as they participated in hundreds of agreements every year and sought the technical assistance of the provincial labor ministry to disentangle some of their labor conflicts[117].

[117] The federal government was well aware that not only Córdoba but all the other provinces were overstepping their boundaries in promoting and ratifying collective bargaining agreements. In fact, the federal government was participating in the Federal Labor Council (*Consejo Federal del Trabajo*) in which all provinces participated, and Córdoba led the Council for many years. The federal government, however, decided to turn a blind eye on what was happening, which gave more of a green light to provincial administration to carry out these processes. Personal interviews with Nora Verde, a labor lawyer in charge of mediating negotiations between companies and workers since 1980s to the present; Enrique Deibe, secretary of employment at the federal level, and previously a representative of the federal government on the Federal Labor Council; Dr. Sappia, Córdoba minister of labor; Carlos Tomada , current Minister of Labor and former legal advisor for the CGT and other unions, held several positions as a public servant in the Ministry of Labor.

CHAPTER FIVE
Origins of the parallel system and the shaping of labor relations

1. Introduction

In this chapter, I explore the origins and endurance of the parallel system of negotiations, and highlight its importance in the process of transformation of labor institutions and regulations in Argentina. At the same time, even though the origin of the parallel system has similarities across sectors as a general trend, labor relations vary in each sector, depending on specific characteristics and features. Given that not all sectors engage in the parallel system of negotiations to the same extent, different subsystems of labor relations are created at the sector level. Thus, I explore what factors lead to these differences. . This means that even though the labor regime in Argentina was modified in the nineties from a more rigid and centralized system to a less rigid and decentralized one, in which informal negotiations play an important role, not every sector ended up adopting the same position on labor relations.

The fact that in Argentina the differences manifest themselves at the sector level is consistent with the influence of previous systems of labor relations in the transformation of these institutions, as I claimed in my general argument. If the parallel system of negotiations was shaped by the dual nature of the system of labor relations in Argentina, which consists of highly centralized unions at the top and highly decentralized *comisiones internas* at the company level, it makes sense that the specific shape of industrial relations systems vary by sector. The Argentine labor movement has the characteristic of being highly centralized by sector at the national level, that is, every sector has a national union that is responsible for declaring strikes and participating in collective bargaining in every single company nationwide. These national unions have shaped the history of collective bargaining and union activity in each sector, and have also imprinted the characteristics of the retreat of centralized agreements in each particular sector.

2. The parallel system of negotiations

As the parallel system of negotiations plays such an important role in transforming labor institutions and regulations, an explanation of its origin and endurance

is in order. It is probably fair to assume that other countries in the region will exhibit the presence of similar parallel institutions, although their shape and specific operation will depend on the characteristics of the formal systems of industrial relations. Thus, the explanation developed for the case of Argentina could be useful for other cases as well.

Informal institutions are often assumed to exist, in particular in the context of developing countries with weak systems of law enforcement. Their origin, however, is rarely accounted for. Explaining the origin of informal institutions is crucial to understand their connections to formal institutions, and to further comprehend a phenomenon that pervades weak democracies.

In the case of a collective bargaining system, such as the parallel system of collective bargaining in Argentina, a pervasive informal system sets up conditions in the labor market, and ultimately creates conditions for productivity increases and income distribution that need to be unveiled, if its fairness and efficiency is to be evaluated.

Also, when governments in developing countries are determined to carry out reforms in their formal labor market institutions, as has been the case since the 1980s, the political economy of these reforms and their viability needs to take into account the role of informal institutions in their implementation. In the case of the labor reforms pushed forward in most of Latin America, the role of informal systems of collective bargaining will undeniably affect the course of the implementation of formal reforms. As in the case of Argentina, the presence of these systems deflates the interest of business in pursuing a more formal reform, and creates an incentive for governments to stay away from politically costly changes.

In this chapter, I explore the origin of the parallel system of negotiations and the conditions for its endurance, and assess the relevance of theories for the origin and endurance of informal institutions in broader terms for the specific case of industrial relations.

3. The parallel system and informal institutions

The parallel system of collective bargaining could be considered an informal institution. There are different definitions of informal institutions to distinguish them from formal institutions, based on three criteria: 1) Whether the institution belongs to the

society or state spheres; 2) Enforcement responsibility (self-enforcing or enforcement by a third party); and 3) The existence of written rules (formal rules). However, informal institutions show a diversity that does not allow for classification in a narrow set of criteria, except that they all share the fact that they are primarily constituted by *unwritten rules and procedures.*

As for the criterion of where the institution is located, it has been found that some informal institutions are in society but others are embedded in state institutions. Regarding enforcement responsibility, the same problem emerges with cases in which there is informal third party enforcement, as for example with "bosses" in the mafia, and cases in which the state enforces informal rules. Finally, the criterion of the existence of written rules seems to be the one that upholds in all cases. Thus, *informal institutions are unwritten rules and procedures, rooted in shared expectations and some mechanism of social sanction, that shape actors' incentives and structure social interaction.*[118]

The parallel system of collective bargaining is an institution in the labor market, with rules and procedures that are unwritten, to the extent that they are not covered by the formal regulations of collective bargaining. This type of negotiation is outside the boundaries of what the law on collective bargaining defines as formally proper. However, it is an institution because actors follow similar procedures for their use and conduct themselves as if the rules had been written. There is also a mechanism of social sanction, which in many cases involves the direct participation of the provincial state authority as a third party enforcer. These criteria would place the parallel system of collective bargaining within the category of an informal institution.

It is important to bear in mind, however, that the fact that the parallel system of collective bargaining in Argentina can be classified as an informal institution, does not contradict the fact that some of the agreements signed in this system are recorded through civil law contracts. This legal instrument does not make the signing of these agreements fall under formal collective bargaining according to the law that regulates it, and as shown, it imposes limitations on what these agreements can legally revoke from "continuity by default" agreements. However, they are *de facto* modifying the previous collective bargaining agreements, because workers, unions, and companies abide by

[118] For this literature review, I am following the work of Helmke and Levitsky (2002).

them. Also, as shown, the fact that the state in many cases is involved in enforcing these agreements is not unusual in other cases of informal institutions, as well.

In the last decade, there has been an outpouring of studies in the comparative politics of institutions literature. This literature has concentrated mainly on the causes and effects of formal institutions, and has only recently moved towards the study of the origin and evolution of institutions. Moreover, studies on the origin and evolution of informal institutions constitute a very incipient research agenda, despite the fact that the importance of these types of institutions (particularly in developing countries) has been stressed already. Most of the studies have concentrated on political institutions,[119] but recently there has been an attempt to apply the literature on the origin and evolution of institutions of the labor market, such as the skill formation institutions.[120]

There are different approaches for the understanding of the origin of informal institutions. One approach comes from rational choice and game theory and posits that informal institutions are an unintended product of strategic spontaneous interaction among groups of individual actors. The idea is that there is no intention of creating the institution, but actors behaving in a strategic way create them. Another approach comes from historical institutionalism. Institutional structures are often viewed as a product of unintended consequences, resulting from a configuration of often historically contingent factors, which may be reinforced or "locked" in a process of path dependence.[121]

Both approaches have in common that they see the origin of informal institutions as unintended consequences, that is, there is no purposeful action from an agent that is trying to create this institution. The difference resides in the factors that prompt the creation of these institutions. In the case of historical institutionalism, contingent factors play an important role, while in the case of rational choice the strategic behavior of actors seems to be historically unbounded. Also, in the case of historical institutionalism, there seems to be a specific mechanism through which these institutions tend to reproduce themselves over time.

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[119] Siavelis (1997, 2002); Helmke (2002); Eisenstadt (2001, 2002); Langston (2002); Levitsky (2003); Brinks (2002)
[120] Thelen (2004)
[121] Pierson (2000)

There are also several approaches for the endurance of informal institutions. The equilibrium models refer to the idea of self-enforcement.[122] The institutions get perpetuated over time as in the game of repeated interaction. In this case, the conditions under which this game will continue to reproduce itself are not clear. Axelrod (1986) believes that the perpetuation of informal institutions comes as a process of social learning in which those with a poor performance imitate those with a successful performance. In this case, the endurance of these institutions seems to be related to the success of those who use them. Finally, historical institutionalism, as mentioned, posits that informal institutions reproduce themselves as a result of path dependence. North (1990) thinks that as social and political actors develop skills and organizations that are appropriate to existing informal arrangements, they develop both a stronger stake in those arrangements and a greater capacity to defend them. Thus, in this case there are some actors that have developed some self-interest in keeping these institutions alive. For Pierson (2000) these informal institutions may generate "increasing returns" that over time become increasingly difficult to change.

Finally, another important question about informal institutions is why and when they change. There are basically two broad explanations for change. One refers to a change in formal rules that make informal institutions no longer adequate.[123] Related to this approach, if the informal institutions were created in response to the weakness of the state or formal institutions, they may be expected to change if the formal institutions become stronger. The other approach comes from Knight's theory of self-enforcing equilibrium. If informal institutions are in a self-enforcing equilibrium, it is expected that they would change if any of the conditions that sustain that equilibrium changed. .

In the next section, I will turn to my own explanation of the origin of the parallel system of negotiations, how it is sustained over time, and what makes it change. I will come back to these theoretical approaches to put my own explanation in the context of the literature.

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[122] Knight (1992)
[123] Shepsle and Weingast (1987); North (1990)

4. Tracing the origins and endurance of the parallel system

What accounts for the appearance of a parallel system of collective bargaining in Argentina? The creation of this system has been a piece-meal process developed over time, since the regulation of the collective bargaining system in the 1940s. As I will show, even though its origin can be traced back to the 1940s, the parallel system of negotiations blossomed in the 1990s.

The process of creation of the system seems to have been a spontaneous one, as the literature points out it is the case for most of the informal institutions. Business and workers created the system in response to business demands for more customized agreements at the company level, and the need of workers to have an immediate response to concrete problems that arise only at the company level. As Rimoldi[124] puts it "these *acuerdos* with the *comisión interna* always existed because the collective bargaining agreements were very general" "...the *comisión interna* knows better than the unions the problems of the workers and wants to negotiate with management."

The fact that the *comisión interna* was getting involved in negotiations at the company level with management about specific problems with workers at that location was part of their role. To deal with specific problems at the company level with management and represent the union within the company was part of their job description. However, the question was on what issues they could negotiate and the extent to which they could modify what management had previously accepted on collective bargaining agreements with unions. The *comisión interna* had to make sure the collective bargaining agreements signed with their unions were being upheld. At the most, the *acuerdos* at the company level could improve on the conditions stipulated on collective bargaining agreements, but never contradict them.

The extent to which the *comisión interna* did not exceed its specific responsibilities changed over time. The factors that turned the *comisión interna* and its negotiations with management into what I termed a parallel system of negotiations are

[124] See interview with Alberto Rimoldi (8/16/2002), who worked as a labor lawyer for companies in various sectors of the economy, since the 1960s. He worked for the meat industry in the 1960s and the banking sector in the 1970s and 1980s.

precisely the factors that led to the creation of this informal institution. I argue that two elements shaped the development of this parallel system of negotiations.

On the one hand, *contingent historical factors* played an important role in expanding the role of *comisiones internas* and made them become the main negotiators in the process of collective bargaining. There are basically two main contingent historical factors that played a role in making *comisiones internas* the center of the parallel system of negotiations. First, the prohibition of collective bargaining during the 1976-1983dictatorship, and at several points in time during other *de facto* governments in the 1950s, 1960s and 1970s, prompted companies to continue their negotiations with "*comisiones internas*" or "*delegados*" representing workers at each workplace.

The suppression of formal institutions of collective bargaining, which always occurred during a military dictatorship, prompted the *comisión interna* to take the place of the union in negotiations at the company level. . The series of military dictatorships that began with the so-called *Revolución Libertadora* that ousted Perón in 1955, had a strong anti-union stance. Ironically, even though during these periods Peronism was banned from politics, it was not uncommon that the unions would start a dialogue and negotiations with military governments to try to continue with business as usual. . It is a well-documented fact that the labor movement split up into different factions around the issue of being in favor or against having a dialogue with military governments.

During the periods in which military governments were in power, union activity was banned and unions were *intervenidas* (intervened) by military officers—military officers were appointed to the national unions in each sector to control the activity of that specific union. However, even though strikes and other more overtly political activities were banned, the role of *comisiones internas* was not completely suppressed and they continued negotiating with management. As I will show later, their role was particularly important during the last military government between 1976 and 1983, even though many unionists who were on *comisiones internas* suffered political persecution and repression.

Another *contingent historical factor* that helped to give an important role to the *comisiones internas* in negotiations with management was the fact that in many sectors, business associations are not representative of the main companies. . Big corporations tend to form their own organizations separate from smaller companies. The relative

disorganization of the business sector occurred alongside the vertical organization of the labor union movement, which made it more difficult for unions to find a business counterpart with which to sign an activity agreement,[125] especially in the 1990s. In the 1990s, with the arrival of foreign companies in many sectors, this problem grew when multinationals decided not to join the existing business organizations, but rather represent themselves..

In addition to the historical contingent factors, in order for the parallel system of negotiations to exist in a decentralized fashion, a certain *institutional infrastructure* of the union movement was necessary. As I mentioned all along, the *comisiones internas* have been the main player of the negotiations in the parallel system. . It is difficult to imagine the emergence of the parallel system of negotiations at the company level if the union movement did not have a regular presence in companies through the *comisiones internas.*

Although Argentina's union movement is usually depicted as highly centralized, *comisiones internas* have a strong presence at the company level throughout the country. These *comisiones* have legal rights and protections that made it more difficult for companies to implement changes in wages, work conditions, and the like, without risking a confrontation with workers, and possibly with unions, given the high level of control that leaders of Peronist unions had always had over the rank-and-file.

Thus, the parallel system required a certain institutional infrastructure that would favor its decentralization at the company level, and contingent historical factors that skewed the negotiation with management at that level. However, another factor is essential both for its appearance and its sustainability over time: This informal institution should be serving the *interests* of the main stakeholders in the labor market, that is, unions, business, and workers.

Both business and unions may have an interest in engaging in informal negotiations as opposed to more formal ones, or in informal negotiations as opposed to none, depending on the historical circumstances. In the next section, I will show that variation in historical circumstances and interests. In general, for workers, informal

[125] This feature of the business sector does not make collective agreements at the industry level impossible. Argentine legislation on collective bargaining has made provisions for the state to decide which business organization or group of businesses could serve as the counterpart of a given union for collective bargaining purposes. Nonetheless, this makes who is in government crucial to promote collective bargaining when actors would not be so willing to engage in it by themselves.

negotiations constitute an effective means, even if not legally valid, for solving immediate problems that are specific to their workplace, and for improving their welfare. For business, it is an effective and efficient means of carrying out daily operations or implementing changes while preserving social peace at the company level. . As for the unions, their interests are more contingent, and interests of local unions or *delegados* can differ from the interests of national unions. In general terms, unions have an interest in representing workers against employers to justify their existence and preserve their power.

It seems that the three factors before mentioned are essential for the creation of the parallel system of negotiations. Its emergence is clearly rooted in some contingent historical factors that skewed the negotiations at the company level repeatedly. In fact, in the climate of institutional political instability that is so characteristic of Argentina, the parallel system became common practice, so much that specific legal instruments started to be used to record the negotiations, and these negotiations became part of the work routine at many law firms.

The use of the parallel system even created a debate among labor lawyers. Some attorneys argued that the results of these negotiations should be considered proper collective bargaining agreements, because unions were involved. [126] However, the courts never upheld that position, and it remains the dominant view that these agreements do not fall under the regulations of proper collective bargaining. .

It is almost obvious that during military dictatorships it would have been a lot more difficult for management to negotiate at the company level, if *comisiones internas* had not been present in every company. Therefore, the particular institutional infrastructure of the Argentine labor movement played an important role in the creation of the parallel system as a decentralized system.

In conclusion, as historical institutionalism posits, historical contingent factors play an important role in prompting the creation of this informal institution. The suppression of the formal system of negotiations, or the difficulty to implement it, given the characteristics of the business associations, seemed crucial to make the parallel

[126] For an example of arguments in favor of considering these agreements as legal collective bargaining agreements, see Adrogué (1997).

system become alive. Moreover, the long periods of suppression of democratic rule and instability as a constant in the political landscape contributed to the consolidation of the system, which started to develop, as North points out, its own legal instruments and regular procedures. In addition, it is clear that certain traits of the formal system of industrial relations shape the way in which the informal institution is created. Finally, as rational choice approaches have pointed out, the strategic interests of the main stakeholders play an important role, not just in the creation of the system, but for its sustainability over time.

5. Phases of development of the parallel system of negotiations

The characteristics of the system of industrial relations and the need to make adjustments at the company level have, in fact, made the emergence of the parallel system of negotiations possible from the very beginning. I have identified four stages in the development of the system. The observation of the evolution of the system over time in a period of 50 years, allows us at the same time to tease out the factors that sustain and break the parallel system.

Some informality in negotiations at the company level, in addition to formal negotiations, existed since the inception of the formal system of collective bargaining in the 1940s. This represented the *first phase.*. Although this first phase has been usually neglected by academic studies of the union movement, based on a handful of manuscripts and testimonies of actors involved in those negotiations, we know that only minor issues were discussed, either because a specific conflict had arisen at the company, or the company was in need of some kind of restructuring.

Unions tolerated negotiations at the company level, but formal collective bargaining continued to be considered the main channel to establish wages and labor conditions, in addition to state intervention in this area, which cannot be considered irrelevant. Informal negotiations during this first phase 1940-1970 can be considered only complementary to formal negotiations, and their importance in setting labor conditions negligible.

A *second phase* in the development of the parallel system of collective bargaining occurred between 1973 and 1975.[127] During this phase, the parallel system of collective bargaining at the company level took full force and became a real "challenger" to the formal system of activity level negotiations. The potential to become the main system of collective bargaining was based on an ideological split in the labor movement. This development was short-lived, due to the fact that the Peronist government was ousted by a military coup in 1976, and the dictatorship persecuted and killed precisely the leaders of the labor movement, who had been crucial in the consolidation of the decentralized system of collective bargaining at the company level.

In 1973, Perón returned to Argentina after eighteen years of exile. He flew from Spain, the last country where he had lived, and was elected president by a landslide. In the 1960s and 1970s when the Peronist party was banned, a significant ideological split occurred within it, which also took place in the ranks of the union movement. A left-leaning sector became critical of the practices of the union old-guard, and accused traditional labor leaders of being too "detached" from the rank-and-file and indifferent to their everyday needs.

The internal dissident movement was opposed to what became known as the "*burocracia sindical*" (union bureaucracy) charged with being more concerned about their self-preservation than the needs of their constituency. With the return to democracy, and moreover with the return of Perón to power, there were expectations in some sectors of the union movement that the government would provide opportunities to improve their socio-economic status, and that the union movement would become more democratic and responsive to the rank-and-file.

However, with Perón in power, the so-called "*burocracia sindical*" strengthened their ties with the party and became stronger.. The more radical wing of the labor movement reacted organizing the rank-and-file at the factory level around workers' unfulfilled demands, and the parallel system of collective bargaining blossomed as a result. The result of many of the strikes and conflicts initiated at the company level by militant *delegados,* were informal agreements signed at the company level. There are examples of these conflicts and negotiations from some of the largest companies that

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[127] Moreno, op. cit

produce edible oil and process cotton and from different companies in the metallurgic, mechanic, and food processing sectors. But according to one of the few works on the subject, these experiences took place in many different sectors simultaneously.

To illustrate these kinds of conflicts and their resolution, I will extract some pieces from the cases of Buyatti SAICA and Vicentin S.A. in the edible oil processing industry as collected by Moreno. Workers gathered around what they considered to be "unjust situations", which could be the result of the non-compliance of employers with regulations or specific situations at a particular factory that had gone unresolved and deteriorated over time.

New leaders appeared spontaneously to adopt these demands and bring them before the employers. These leaders were opposed to the labor leaders of the time, considered to be "traitors" and indifferent to the everyday needs and problems of workers. The issues raised as demands ranged from wages to safety conditions and work organization schemes. They came up with these issues through gatherings and discussions with workers, either at the workplace or in the neighborhood.

Employers ignored these demands at first, but finally negotiated with workers when they realized that their leaders were more representative of the workers than the official union leaders, and that the movement was not going to go away. Employers attempted to negotiate with the official union, with which they had always had a good relationship, and only after that attempt failed they turned to the representatives of the workers.

Informal negotiations that took place between 1973 and 1975 were not welcomed by the traditional sector of the labor movement. Leaders associated with the dissident faction were fired from their posts, sometimes under pressure from the official union, and they were discouraged from running in union internal elections. The traditional labor movement continued to support negotiations at the activity level and to fight against negotiations below that level.

In 1975, the state promoted the formal negotiation of collective bargaining agreements in all sectors of the economy, and the negotiations covered 100% of the salaried workforce. Needless to say, these negotiations did not take into account informal negotiations at the company level when they had occurred. The 1975 round of

negotiations is considered a triumph of the union movement, one in which concessions to workers had reached a peak.

In 1976, a military coup ousted María Estela Martínez de Perón from the presidency. She had replaced Juan Perón as president after his death in 1974. The military established one of the bloodiest dictatorships that Argentines ever had to endure. One of the main objectives was to kill all left-leaning activists in party politics, community organizing and union activism. As a result, many of the spontaneous labor leaders that had appeared associated with informal collective bargaining agreements at the factory level were murdered, and the movement they had launched also disappeared.

As in previous military dictatorships all union activity was banned, including collective bargaining. This period gave rise to a *third phase* of the parallel system of collective bargaining. All actors involved agreed that during this period, negotiations between workers and employers would continue at the factory level, albeit informally, provided that it was the only alternative. However, it is also true that since formal collective bargaining was prohibited, none of the actors had the obligation to bargain over wages and working conditions either. By now, bargaining at the factory level making use of civil law contracts or other alternative means had become the norm. Nonetheless, negotiations were not as radical as in the 1970s, because the representatives at the company level were not part of a wider movement within the union movement, with an alternative political view opposed to the "burocracia sindical.[128]"

Negotiations between workers and employers revolved mostly around wages. Since wages had been agreed on during the formal negotiations of 1975, and after that year and until the 1990s inflation was constantly present, workers were always interested in reviewing wages agreed upon during the 1975 negotiations. Also, during the period in which Alfredo Martínez de Hoz was finance minister, between 1976 and 1981, the military dictatorship took quite radical measures to liberalize trade and the country was flooded with imported goods. As a result, many small and medium size companies went bankrupt, but also many decided to adopt new technology and restructure. Therefore,

[128] Interviews with several labor lawyers representing very different types of actors and with a considerable portfolio of clients, as well as active in legal discussions on the issue, have asserted the abundance of informal agreements at the company level during this period. For example, interviews with Tomada, Carlos, Adrogué Javier and Cavallero, Julio. Also several actors involved in negotiations on both sides, that is, workers and employers, have provided concurrent evidence on the subject.

some of the negotiations with workers also revolved around issues of restructuring and use of new technology.

In 1983, with the return to democracy, president Alfonsín (UCR) restored all legal rights to unions and collective bargaining. Legislation that regulates unions and collective bargaining was almost the same as the one passed during the 1940s under Perón. Moreover, some changes were introduced to the collective bargaining legislation to make it more centralized, in order to gain support of the unions. Due to the "continuity by default" clause that regulates collective bargaining agreements in Argentina, all formal agreements signed in 1975 became current again to regulate all activities until new ones were signed. A handful of new agreements were signed in the 1988 round of negotiations, mainly to put in writing modifications to wages that had occurred during the prohibition of collective bargaining.

Between 1983 and 1991, there was a transition period in terms of collective bargaining characterized by the expectation that formal collective bargaining could resume in most sectors. Therefore, informal collective bargaining continued at the company level, as had existed during the military dictatorship to respond to workers' immediate needs.

However, in 1991, with the passing of decree # 1334/91 a *fourth phase* sped up the process of informal collective bargaining, when formal collective bargaining negotiations were stagnant. This phase has been the subject of the previous chapters, but I will mention some of the main events to draw some conclusions in regards to the elements that appeared over time in the different phases to elicit the appearance of the parallel system. The *fourth phase,* as well as the third phase, has the characteristic of occurring during a democratic period.

As I have shown in the case of the third phase, what seemed to elicit the creation of the parallel system of negotiations was the appearance of a new faction within the labor movement that had control over the *comisiones internas*. The system, however, was inherently unstable. One of the conditions that I have mentioned as key in sustaining the system is that it has to satisfy the interests of the main stakeholders, namely, unions, workers, and business. In this case, business and national unions were opposed to the endurance of the parallel system. Neither business nor the national unions welcomed the

left-wing movement within the ranks of organized labor that was at the center of the informal negotiations at the company level. Moreover, as shown, in this case the state did not want to promote the parallel system of negotiations but to crush it, as the Peronist government sided with the national unions.

In the fourth phase, the state clearly wanted to promote the type of change that the parallel system of negotiations already represented. Therefore, it had a very lenient attitude towards the violations of the labor code that these negotiations entailed, and did not impose any sanctions. Moreover, as shown, the Menem administrations implemented a series of policies that had the effect of weakening the monitoring system for labor regulations.

The government also enacted a series of decrees that favored the orientation of collective bargaining towards negotiations at the company level. As shown, decree 1334/91 and the numerous decrees decentralizing collective bargaining all pointed in the same direction. Decree 1334/91 that based wage hikes on productivity increases was only partially successful in eliciting formal negotiations at the company level, but it clearly showed the policy orientation of the government in this matter. The effect was sending a clear message to unions and business about where the government stood in terms of collective bargaining.

The other important policy in regards to collective bargaining was the privatization of state-owned companies. As a result of the process of privatization, the government forced public unions to sign agreements at the company level with the new owners. Besides the obvious effect of increasing the number of formal agreements at the company level, it had a profound impact in weakening the ideological position of national unions, which had always been in favor of the centralization of collective bargaining.

Thus, in this fourth phase it was not the interruption of democratic rule and the normal functioning of collective bargaining that skewed the negotiations towards the company level. In fact, in this case, the formal system of negotiations competed with the parallel system. The parallel system turned out to be the path of least resistance for business and the state to adjust to the new conditions of international competition, in the face of resistance from national unions to the relaxation of labor laws and the decentralization of the collective bargaining system.

In this phase, business, the government, and in part local unions favored the sustainability of the parallel system over time. As for national unions, in the cases in which they had a strong ideology in favor of centralized bargaining, they would just allow company level negotiations in the parallel system to happen, as they did not have the power to impose their view. The balance of power between business and unions was clearly in favor of business, and the Peronist party, unlike the 1970s, was not supportive of the national unions and their positions. Therefore, even if national unions were not supportive of the parallel system, they chose not to interfere. .

Moreover, in this fourth phase of the parallel system of negotiations, the federal government found it an easier way of implementing a relaxation of labor codes, and there was also another actor that was interested in sustaining these agreements. While the federal government contributed to the sustainability of the parallel system of de-centralized collective bargaining through refraining from enforcing current legislation and further dismantling the system of labor inspections, provincial governments helped legitimize agreements signed using the parallel system of collective bargaining through the registration of these agreements at the departments of labor.

Public officials at the national Ministry of Labor, which was in charge of drafting proposals for the labor reform, had been always aware of the existence of the parallel system of collective bargaining, and they knew that if they refrained from pushing the system formally one way or another, the actors would find a way to negotiate labor conditions. Ministers and their advisors work in the private sector before becoming public officials, and through their practice as labor lawyers, either working for business or workers organizations, they knew about the parallel system of collective bargaining. They knew things would continue their course, even if no formal reforms were implemented.

The role of provincial governments has been crucial in sustaining the parallel system of collective bargaining over time. On the one hand, provinces had cut down spending assigned to labor inspections within their jurisdictions, further contributing to the weakening of the monitoring system. On the other hand, they also helped to legitimize the parallel system of labor relations by allowing workers and business to register agreements at the provincial labor departments or ministries.

6. Bargaining Restructuring at the Micro Level. How, When, and Why Sectors Get Involved in the Parallel System of Negotiations

In the previous chapters, I have explained why, how, and when the parallel system of decentralized negotiations emerged underneath the surface of formal centralized negotiations and failed state reforms to decentralize. I explained that interests, and institutions, as well as historical factors, have all contributed to generate and lock in a system of decentralized negotiations, and that both the federal and state governments are involved in the creation and sustainability of such a system.

I showed that the system is not unique to any particular sector of the economy or any particular geographic area of the country, but that it is widespread, it has a systemic character, and it is available for any union or company to use it. In order to show the generalities of the system, I chose not to explain the peculiarities and differences among sectors. Neither did I make clear that the development of this system meant a negotiation between unions and companies at the micro level.

However, understanding the political dynamics embedded at the micro level is crucial to understand how they shaped labor relations in every particular sector of the economy. The level, intensity, and type of negotiation had to be fought over between the union and the company in each sector, and this allowed for differences among sectors in terms of the volume of these negotiations, their quality and scope, with potentially important consequences for the workers' welfare and the company's productivity level.

This chapter attempts to explain how these informal negotiations around labor conditions emerged in particular sectors of the economy, and draws some conclusions about the similarities and differences among them. The ideal situation to compare sectors in their engagement in informal negotiations at the company level vis-à-vis more formal negotiations, either at the company level or above it, would be to choose particular sectors for an in-depth and longitudinal examination, using qualitative methods that would unravel the dynamics of their political economy of negotiations before and after the critical juncture of the nineties.

In order to choose cases of particular sectors and examine the causes and forms of their engagement in these types of negotiations, one would have to draw them from a

comprehensive and complete map of the engagement of all sectors of the economy over time in different types of agreements. Unfortunately, as I have previously discussed such a complete database is not available at this stage of research. In fact, this investigation has made a considerable effort to gather more systematic evidence at the provincial level in this subject. Given the constraints in financial resources and time, this research has drawn from several sectors to try to answer some of the questions.

I have gathered information about informal and formal agreements in different sectors through different means. I have conducted interviews with business representatives and union leaders in several and distinct sectors such as insurance, banking, steel, autos, commerce, and food processing. I have also gathered information about other sectors of the economy through interviews with labor lawyers who belong to law firms that have a diverse portfolio of companies in different sectors, such as mining, chemicals, beer production, and autos, who could give me an overview of what the situation was like in other sectors with respect to the negotiations of formal and informal agreements. When possible, I have also drawn information from previous in-depth studies, particularly from companies in sectors such as the metal and auto industries. All the information has been drawn from different actors involved in the process, with different and sometimes opposing points of view, in order to guarantee the accuracy of the data.

The fact that the exact shape of labor relations was defined at the sector level is consistent with my argument of the importance of the previous institutional arrangements in the labor relations system. In the case of Argentina, the labor movement is organized by sectors with only one union for each sector having the right to represent all their workers at the national level. So, for example the UOM at the central level represents all workers in the metallurgic sector throughout the national territory. This means that each sector negotiates at the top with one union. For that reason, the history of that union plays an important role in shaping the way in which negotiations take place in that particular sector.

6.1. Business Interests

The micro politics of negotiation had to be fought in a background in which business wanted to implement changes in work organization and compensation schemes without the intervention of unions, if at all possible. Business considered that the restructuring of companies even if it meant rearranging work organization schemes, work time, and compensation schemes that altered the way work was carried out and compensated, they had the right to advance these changes without negotiating them with workers. This position is actually common among business in many parts of the world. In the nineties, this ideological view had a strong backing from market-oriented reformers and governments. That this was the view of business is the consensus among the most diverse actors, from unionists and their legal advisors, to business and their legal advisors, and it is consistent with the experiences at the factory level.

If confronted with strong unions in their sectors that wanted to negotiate changes at the industry level, the struggle would ensue for the level and type of negotiation. Up until the mid nineties, several sectors managed to negotiate at the industry level, although as I have shown, for the bulk of the workers these negotiations did not occur at the company or industry levels.

When negotiations occurred at the industry level, they were always formal negotiations, which meant that unions and business formally sat down for a discussion in the presence of their legal advisors, and their negotiations were ratified by the Ministry of Labor to ensure their consistency with labor laws and lack of interference with the course of the economy as a whole. After the mid nineties, there was an increasing tendency to sign more informal agreements than in the past. In any case, there was a variation among sectors and within them, to the extent that they engage in informal negotiations in the parallel system of agreements.

Understanding the logic of these different paths to negotiation can be confusing, if one considers only the official discourse of the actors, of both unions and business, in particular in their political lobbying. In order to understand the final result of labor relations in different sectors, one needs to look at their actual behavior and views in concrete negotiations in their sectors and companies. They can be profoundly

contradictory with their views in the big scene of politics, as they are extremely pragmatic.

Business, in its political lobbying either through the UIA (*Unión Industrial Argentina*) or the G-8 (*Grupo de los Ocho*), has put forward a view in which they wanted formal company level agreements in addition to a liberalization of labor laws in general.[129] However, in their concrete negotiations with unions in their respective sectors, even though the preferred level of agreements has always been consistently the company, business has not always preferred a formal agreement. Several reasons can make this decision a rational one, in terms of maximizing their interests. Companies can get involved in informal agreements with the *comisión interna* or the local union without having to get involved in discussions with the national unions or having to deal with mechanisms of discussion established by the unions' statutes. In many cases, the local union and the *comisión interna* will be more willing to sign the agreement and be more aware of the companies' situation and needs than national unions and their lawyers, who are further removed from the situation.

Also, the agreements can have more leeway, without having to be articulated to previous ones in that sector, which might be at odds with what the company wants to implement. It can even introduce certain changes that are in contradiction with current legislation or previous formal agreements with the unions. This flexibility allows them to change these agreements easily and on demand. Last but not least, signing informal agreements as opposed to formal ones can bring some temporary but substantial economic advantages, such as a reduction in the amount for severance payments. These

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[129] The UIA is the oldest business organization in the country, and represents a wide array of companies of different sizes. It has always had a presence in the lobbying for business before the government. However, within the UIA, the view of big business predominates over small and medium business, represented by other business organizations such as the CAC (*Cámara Argentina de Comercio*) and others. The G-8—*Grupo de los Ocho*—was a coalition of big corporations that got together in the mid nineties to lobby for their interests before the government. It comprised the most modern and largest corporations of different sectors of the economy. To be sure, small and medium size business did not have a clear view of the level at which collective bargaining should proceed, but feared that a decentralized collective bargaining would be disadvantageous, given that in many sectors the unions would have more power than their own management if confronted in negotiations. On the other hand, highly centralized negotiations could also be disadvantageous to small and medium size firms if the conditions agreed upon in those negotiations imposed standards that were too high for companies of their size to comply with. In any case, the view that predominated in formal negotiations with the government over their proposals has been the decentralized view of collective bargaining, which is reflected in all the proposals that the government tried to advance, even in the specific regime designed for small and medium size firms which also devised decentralized agreements at the company level.

are linked to the salary agreed through formal collective bargaining, so the employer can also reduce the amount of labor taxes paid, if wage hikes are shown as some form of additional and temporary compensation.

6.2. Unions' ideology, new investment and union competition

In all cases, the nature and level of the agreements would be dependent on the characteristics of the unions and sectors. The new labor relations are shaped at the sector level and not at the federal level through legal changes, so that sub-regimes within the national system of labor regulations would occur. In what follows, I will try to uncover these patterns and the factors that shape them.

From the information gathered on different sectors of the economy in addition to the database gathered on informal agreements in Córdoba by sector, several conclusions can be drawn in regards to what determines when, how, and why different sectors have dissimilar levels of participation in the signing of agreements in the parallel system of collective bargaining. Briefly, I have identified three main factors that seem to play a major role in how unions behave when confronted with the alternative of signing a formal agreement or engaging in an informal one: the union's ideology in regards to collective bargaining, the arrival of new and substantial investment in the sector, and the level of competition among unions.

The *ideology* of the union in regards to the centralization of collective bargaining, which tends to be associated with the centralization of the union itself, plays a role in increasing the number of agreements signed informally at the company level. The stronger the union's commitment to an ideology of centralized collective bargaining as the only way in which negotiations between companies and unions should be carried out, the more likely it is that underneath the surface of stalled centralized negotiations, there will be a high volume of informal negotiations at the company level. The comparison between U.O.M. and S.M.A.T.A clearly shows the importance of this factor in eliciting a different level of engagement in formal or informal negotiations. It explains why UOM has the highest volume of informal negotiations across sectors. Ideology appears to be the explaining factor in a comparison that involves two unions that belong to the same sector,

with similar type of companies, but whose main difference is a stark contrast in terms of their ideology of how collective bargaining must take place.

A second factor that plays an important role in eliciting the signing of formal collective bargaining agreements at the company level is the *arrival of new and substantial investment* in any given sector. This factor explains the fracture of informal agreements if that has been the *modus operandi* in a certain sector of the economy. In any given sector, if the central union has chosen not to engage in formal collective bargaining agreements at the company level, it will most likely engage in such an agreement with a new company that proposes to make a big investment in the sector. The company can be either of foreign or national capital, given that the installation of new operations provides substantial benefits for unions that previous investment does no offer. This can be observed in many different sectors of the economy, from industry to services, and with different types of technology, workforce skills, and unions.

A third factor plays an important role in pushing central unions that would otherwise not sign a formal collective bargaining agreement at the company level, and that is the *level of competition among unions* that could potentially sign the agreement. As mentioned, in Argentina, the different national unions monopolize representation at the industry level. Therefore, in principle, one company should be able to sign an agreement with only one union that represents workers in its particular activity. This is reinforced by legally prohibiting employers the choice of which union they sign the agreement with. However, competition among unions for the signing of a formal agreement with a given company can occur, and that was the case in the nineties, after drastic changes occurred in the economy that transformed the landscape in many sectors. In particular, one of the changes that had an important impact in defining the competition among unions for a given company was the appearance of new activities that cannot be put clearly under the heading of one union. Since unions defined by activities in the 1940s were not redefined, some of them do not capture the changes that have occurred within a specific sector. This situation is reflected in the number of cases of disputes presented to the Ministry of Labor over the issue of which union has the legitimate right to represent workers in a specific sector, called *encuadramiento sindical* (union affiliation), which increased considerably in the nineties.

In addition to the changes in the sectors' landscape that introduces disputes over to which activity a certain company belongs, it could also be said that in particular cases, for historical reasons, within the same sector there are two different unions that could potentially represent workers (UOM-SMATA). In those cases, if a company wants to enter a specific sector, it could potentially sign an agreement with two different unions. This competition, as mentioned, will add additional pressure for central unions to sign a formal agreement with a new company, in order to increase their share of workers in the sector, gain representation with a company, and show success with old workers in that the union is capable of taking actions that create new jobs in the sector.

In fact, this competition brought UOM, one of the most stubborn unions in Argentina when it comes to signing formal agreements at the company level, to the brink of signing a formal company agreement that included several flexibility clauses with FIAT, which wanted to relocate operations to Argentina. In the end, when negotiations between FIAT and UOM reached a stalemate, SMATA stepped in and signed the agreement.

Finally, when looking across sectors, one tendency emerges in terms of the entering into informal agreements. Companies seemed less interested in signing formal agreements, and show a preference towards the signing of more informal ones. This tendency emerged around 1995-96 and it can be observed that companies resist the pressure to sign more formal agreements coming from unions that want to raise wages or negotiate around labor conditions.

This period coincides with the rise of unemployment levels and the emergence of an economic and ideological model in which business interests are favored over union interests. As the economy was slowing down the pace of growth and the unemployment level was rising to unprecedented levels, the preservation of jobs started to take precedence over the improvement of conditions. Power shifted clearly in favor of business, and corporations avoided giving concessions to workers in formal agreements, circumvented the labor costs associated with doing so, and created agreements that had the flexibility to be changed at will, in a context in which the political cost for not signing formal contracts seemed lower than ever.

The factors mentioned above, i.e. ideology, new investment, and competition among unions, are consistent with the main argument about changes in the labor regime. The ideology of central union in regards to collective bargaining in each specific sector is relevant, given that the *system of labor relations* is organized along sector lines. As for the new investment and competition among unions, they act as "incentives" that change the *alignment of interests at the local level.* What they do is to align the interest of central unions in the signing of formal decentralized agreements, which was previously only in the interests of local unions and business. It formalizes what was only possible to do informally before.

In what follows, I will first show the dynamics of negotiations between unions and business at the micro level through a more in depth look at the evolution of negotiations in the metallurgic sector. Then, I will turn to the comparison of different sectors, to illustrate the conditions that lead to the involvement of unions and companies in the signing of informal or formal agreements.

6.3. Bundles of Agreements by Sector

In the 1990s, and despite government attempts at formally decentralizing collective bargaining agreements, different sectors reached diverse combinations of agreements between workers, employers, and unions. The bundle of agreements could contain a combination of formal or informal agreements and within the formal agreements, the level at which they were reached could vary as well, being some more centralized than others. (Table 5.1)

Table 5.1
Types of Collective Bargaining Agreements

	Centralized	Decentralized
Formal	1	2
Informal	3	4

The bundles of agreements have different consequences for the national unions' power, the legitimacy of unions before their constituency, the level of competitiveness of companies, and the benefits reached for workers. Informal agreements are always reached at the *company level,* and they are therefore always decentralized. They almost

always involve the *presence of the comisión interna* in the negotiation and the signing of the final agreement, as well as an active role of the local union, with a more hands off presence of the national union, if at all. In this regard, informal agreements can potentially reinforce the power of local unions vis-à-vis national unions, with consequences in the internal balance of power within the union, which might lead in the end to the split of a local union, as has been the case with the local union of the chemical sector in Bahía Blanca, in the province of Buenos Aires. But even if the local union does not split from the national union, tensions between them may arise, leaders of the local unions can gain internal power so that they can dispute the national union leadership, and local unions earn more legitimacy before their constituency.

As with any process of decentralization, it could potentially harm the power of the union if negotiations at the company level imply a severe imbalance of power between a specific employer and the workers represented by the *comisión interna*. The potential loss of power will depend on the extent to which the power of the national union can compensate for the atomization of power at the company level.

Another feature of the informal agreements is that they are targeted to resolve a specific problem at the plant level, and they are therefore, *less comprehensive* than what formal negotiations tend to be. This is an important point, because it allows employers to negotiate over specific issues related to their company without having to negotiate over other aspects of the work process that might have otherwise been discussed in a formal negotiation, even if only because they were included in previous agreements.

The process of negotiations is also *more contingent*, since there are no formal rules that regulate them, although over time there might be some kind of procedure that is followed regularly by the actors involved, but there is no formal procedure to turn to in case of disagreements or disputes. The content of these agreements provides more *flexibility with regards to preceding formal agreements and labor laws,* given that they are not ratified by the Ministry of Labor and do not comply with the procedures and regulations ascribed to collective bargaining negotiations.

Type (1) in Table 5.1, that is, centralized formal agreements, was characteristic of many sectors in the economy in 1975 when most of the workforce was covered by industry level agreements. However, as previously discussed, a small percentage of

sectors had agreements by company as well. Type (2)—decentralized formal agreements—always existed although their presence was marginal. They were predominant in some specific sectors like the automotive industry (SMATA) and the textile sector. Type (3)—centralized informal agreements—does not exist in practice, although some form of informal coordination among different company agreements through the local union could exist. An example is the food industry in Córdoba, in which wages set through company agreements in the parallel system of negotiations set the standard for any entering company in the industry, and guide negotiations with companies that come after the first agreements. Type (4)—company agreements signed in the parallel system of negotiations—, as previously explained, blossomed in the 1990s underneath the surface of more formal agreements.

Ideologically, unions positioned themselves in favor of type (1) while employers positioned themselves in favor of type (2), which was also the general orientation of government reforms. Actually, negotiations within sectors between employers and unions, with the tacit consent of the government, were moving in a different direction. Although in the formal system of negotiations there was in the 1990s a growing tendency to move from type (1) to (2), most sectors had some kind of combination between (1) and (4). For the purpose of this study, I will use the comparison of paired cases to draw some conclusions about the factors that explain what specific bundle of agreements one sector will get, in particular, the level of informality and the distribution of centralized vs. decentralized agreements that predominated in each sector. The relevance of this comparison is the fact that these different types of agreements vary according to unions' strength, workers' welfare, and company competitiveness.

Types (1) and (2) suppose a higher level of compliance with labor regulations, and therefore can be more constraining than type (4), given that the formal procedure supposes the presence of the Ministry of Labor in the ratification of these agreements and the explicit compliance with current labor laws and preceding collective bargaining agreements if applied to a smaller jurisdiction, i.e. a company agreement in a sector that has a more centralized collective bargaining agreement. These formal agreements usually call for the presence of national unions in the negotiation, even if local unions or *comisiones internas* have any say in them, given that the national unions usually have the

exclusive rights to bargain. National unions are strengthened by participating, but their presence is also more likely to constraint the content of negotiations at the company level. As mentioned, however, reaching agreements at the company level, even if only within the parallel system of collective bargaining, avoids further deterioration of the legitimacy of unions before the workers, given that the union takes some kind of action to gain benefits for workers. Table 5.2 offers a summary of these features:

Table 5.2.
Features of different types of agreements

	Local vs. Central	Level of stringency[130]	Comprehensive[131]	Legal liability[132]
Type1	Central	High	Yes	No
Type 2	Local	High/more customized	Yes	No
Type 3	--	--	--	--
Type 4	Local and comisión interna	Low	No	Yes

The following tables offer a schematic representation of the attempts to reform the centralized system of industrial relations (Table 5.3.), as well as the actual changes in collective bargaining practices at the sector level (Table 5.4):

[130] Extent to which the content of collective agreements has to follow closely what legislation ascribes and complements previous collective agreements.
[131] How many aspects of the labor contract are negotiated, i.e., it includes not only wage increases but also negotiations around other labor conditions.
[132] Liability refers to the extent to which a certain violation of current legislation results in a lawsuit against the company.

Table 5.3. Attempts to Reform the Centralized System of Industrial Relations during the 1990s

Direction of Policy Reform Attempts	**Instances**
Towards a completely decentralized system (Type 2)	1991, 1994, 1996
Towards centralized sector agreements coordinated with decentralized agreements at company level (Type 1 + 2)	1998, 2003
Towards a decentralized system with mechanisms to force negotiations (Type 2)	2000

Table 5.4.
Changes in Collective Bargaining Practices at the Sector level during the 1990s (*)

Sectors	**Before 1990s**	**During 1990s**
Retail, Metallurgic, Banking	Type 1	Non renewed 1 + 2 + 4
Food	Type 1	Renewed 1 + 2 + 4
Insurance	Type 1 +2	Renewed 1 + 2
Autos	Type 2	Types 2 + 4
Privatized Companies	Type 1	Type 2

Note: (*) Of all the Collective Bargaining Agreements signed in 1975 for all sectors of the economy, 95% of the workforce was covered under Type (1) and 5% under Type (2).

6.4. Unions' ideology

One of the factors that explain why some sectors get more involved in the signing of decentralized agreements in the parallel system of negotiations than others is their respective unions' ideologies with regards to how collective bargaining should be conducted. As explained before, each sector in Argentina has only one union that is legally authorized to engage in collective bargaining on behalf of the workers in that sector. This centralization permeates how companies in the sector approach the issue of bargaining with their workers or the extent to which they can shape the form of that exchange.

By union ideology I refer to the ideas that unionists have in regards to how collective bargaining should be conducted. It is more related to the "ought to be" of collective bargaining than to the reality of it. In this regard, unions' ideology could be placed in a continuum that ranges from the view that collective bargaining should be centralized and that the presence of national unions in any collective bargaining agreement is indispensable, to the opposite view in which collective bargaining should be decentralized and local unions have to play a crucial role in it.

These strongly held views that national unions brought with them when the government initiated the reforms of labor market institutions in the early 1990s, shaped their actions in concrete negotiations with employers at the company level. In many cases, these views were strongly connected with their identities and their successful struggles of the past, and they were not willing to give them up even if reality was not showing signs of accommodating to them. The traditional role of these ideologies was reinforced by the fact that the leadership of the national unions was not renovated, and most of the union leaders of the 1970s were still in charge of the same unions in the 1990s.

Unions with a strong ideology of centralized bargaining, of which the UOM is one of the best examples, had arrived at the conclusion that it was this feature of their organization, along with their centralized structure, that had brought them political and organizational strength and provided their members with important benefits through the centralized agreements signed up until 1975.

However, while preserving centralized collective bargaining, national unions were also aware of the fact that they had lost rank-and-file membership, and that their link with local unions had been weakened. As shown, in the 1970s, a process of political radicalization of local unions had occurred, and national unions in conjunction with the Peronist government persecuted the political dissidents, in order to reinforce the power of national unions. The political repression of the opposition was successful, and a fluid and healthy communication between local and national unions was not completely restored.

Once collective bargaining was legally permitted again with the return to democracy under president Alfonsín, unions put in motion their own internal processes of discussion on how to proceed in regards with these negotiations. Unions like UOM that

had a strong commitment to centralized agreements pushed for this type of negotiations within their sector, while others were more flexible to consider other types of agreements below the level of the industry, and were more willing to sign less comprehensive collective bargaining agreements. Overall, however, few agreements were signed under the presidency of Alfonsín, in part because of the inflationary pressures that forced unions and employers to constantly focus on adjusting wages, the difficulty to make a commitment on the part of employers in such a volatile environment, and the speculations at the end of Alfonsín's presidential term that if a Peronist government won the next term, unions would have a more favorable environment to pressure employers in their negotiations at the sector level.

In 1990s, once Menem was elected president and the Peronist party was in power, and the economy reached a certain level of stability and inflation was halted, the possibility to re-negotiate old agreements was again a reality. Even though the government was pressuring to reform labor institutions to make them more flexible and decentralized, every sector shaped its own industrial relations through negotiations within that sector among specific companies, business associations, unions and workers. Industrial relations were reshaped at the micro level, despite attempts at changing them at the macro level, and the common pressures to make work organization and wages more attuned to the demands of a volatile market at the company level.

As shown, the degree to which different sectors were involved in formally decentralizing labor relations, signing more centralized agreements or engaging in the parallel system of labor relations, was related to the previous ideology of the unions authorized to engage in collective bargaining in each sector. In general terms, unions with strong ideologies of centralized negotiations engage more often in the signing company agreements through the parallel system of negotiations. To illustrate this point, I draw on the comparison of two unions, SMATA and UOM, which could be considered emblematic of two opposing views on how to proceed in collective bargaining.

There are a number of methodological reasons for choosing these unions as opposed to other possible pairs. As a result of their different historical experiences, they represent two extremes in a continuum from an ideology of centralized agreements, to an ideology of decentralized ones. They belong to two important sectors within

manufacturing, that is, the automobile sector and the metallurgic sector. Both unions have been politically important within the labor movement, to the extent of stirring the course of significant political events within the labor movement and in the national politics scene at different points in time. Finally, both sectors have been exposed to strong pressures to change work organization patterns and compensation schemes, as a result of their increased exposure to international competition.

6.4.1. The UOM (*Unión Obrera Metalúrgica*) and a tradition of centralization and political influence

The UOM occupied a central position in the labor movement in Argentina up until the seventies, and continued to gravitate politically within the labor movement and to lobby before the government up until the nineties, despite the fact that the metallurgic sector lost some of its economic importance between the 1970 and 2003[133]. During the period when the Peronist party was banned from politics and could not compete in elections (1955-1973), the union movement became its political representative before the state and other political parties and actors, and its political importance grew dramatically. This political and organizational rise of the labor movement had the metallurgic union as its clear leader[134]. The centrality of UOM in the political lobby of the union movement is such, that one could narrate the history of the labor movement from 1955 to 1983 by telling the history of the UOM during that period.

With the leadership of UOM and its leader Augusto Vandor, after the 1955 military coup that ousted the Peronist party,the labor movement devised a new method of negotiation known as "hit and negotiate" (*golpear y negociar*) that consisted of mobilizing the rank-and-file to upset social peace, to then negotiate with business and the state from a stronger position. The control of the rank-and-file to avoid a mobilization that could grow out of their hands required an effort to centralize authority in the national union and establish a rigid system of control and command. The result was a very

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[133] Between 1970 and 2000 the succession of policies of trade liberalization and privatization hit the metallurgic sector very hard, and provoked the loss of many jobs, which impacted the union with a shrinking of its membership of 50%. Since 2002, and with the devaluation of the peso, this sector has seen a slow but steady recovery, with an important increase in its exports.

[134] For an analysis of this period and the growing political and organizational importance of the labor movement within the political system see McGuire, James; James, Daniel.

disciplined union that could be mobilized at the command of the national union but did not radicalize strikes to the point of not being able to negotiate with their business counterpart and government mediation. The strategy proved very successful, and UOM became the benchmark for negotiations in other sectors and the main interlocutor for the government to negotiate changes in legislation and policies that could benefit the labor movement[135].

Even though during this period the labor movement witnessed the creation of what was known as a "union bureaucracy", the connection between the national unions and the rank-and-file was strong and fluid. The national unions needed the mobilization of the rank-and-file to show their ability to upset the social peace and be able to negotiate with business and the state. In turn, the rank-and-file needed the national unions to obtain economic and organizational concessions and gains. In addition to the mutual gains for national unions and the rank-and-file, the metal workers union shared the ideological connection of workers with the Peronist movement, which acted many times as an antidote against the radicalization of the labor movement and a shift to Socialist or Communist ideologies, which surfaced from time to time.

That this centralized, monolithic organization proved successful is reflected in the many additional advantages that the labor movement managed to gain even during periods of anti-labor ideology. One of the most advantageous pieces of legislation ever negotiated by the labor movement was passed precisely during this period. Under one of the most authoritarian and labor repressive military governments that Argentina suffered between 1955 and 1983, in 1969 the labor movement negotiated with the government of General Onganía the management of health insurance for workers in all sectors of the economy based on a compulsory contribution from both workers and employers known as *obras sociales (Law No. 18.610.)*. The funds obtained through the management of this system and the strengthening of their organization that it brought, was unprecedented and it changed the landscape of the labor movement forever.

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[135] The political and organizational power of UOM under the leadership of Vandor grew so much that Vandor tried to dispute the political leadership of Perón (who was at the time in exile) in the elections for governorships in 1965. If successful, this could have changed the history of the labor movement and the political system in Argentina, but Perón managed to upset this attempt and Vandor lost the elections in Mendoza. From then on, he was under the vigilant eye of Perón, who did not want a political competitor. Vandor was later assassinated in an internal political infighting within the union.

From this period the UOM inherited a vertical and centralized organization that was at the root of its tremendous success in negotiating up until the seventies, and came to be regarded as an important trait of their organizational identity. In fact, the UOM and the union movement in general inherited two important traits from this period, that would remain part of their strategic and organizational approach throughout the nineties: those are the centralization of authority, with its associated practices of election fraud and political manipulation, and a strong willingness to negotiate with business over wages and labor conditions, despite their sometimes rigid political postures in regards to the reform of labor codes and institutions, and of collective bargaining in particular.

The leadership of the UOM within the union movement came about because of the economic importance of its sector, but most of all, because of its extraordinary leadership that managed to control the political arm of the labor movement during the proscription of Peronism, known as the *62 Organizations—Las 62 Organizaciones*. Of all of its leaders, Augusto Vandor was one of the most prominent and one that imprinted an indelible mark in the negotiating approach of the UOM and others who followed them. His strategy of negotiating from the opposition and an aggressive rank-and-file mobilization proved superior to other strategies tried by other sectors in the labor movement, namely, the strategy of "collaboration" (without opposition) and "opposition" (without negotiation). This strategy was carried through by the organization even after Vandor was killed and others occupied his position as leader of the UOM—José Rucci, and later Lorenzo Miguel until his death in 2002.

The political importance of UOM within the labor movement and its close connection to the Peronist party and the government of Perón and his wife, Isabel Perón after his death, is almost legendary. Lorenzo Miguel, who was the leader of UOM for more than twenty consecutive years, was a key ally of the government of Isabel Perón, and suffered the consequences when the military dictatorship that overthrew her government put him in jail along with other union and party leaders.

During the government of Perón first and then his wife after his death, Lorenzo Miguel as leader of UOM, the CGT and 62 Organizations, played a pivotal role in linking the labor movement with the Peronist party in the 1970s. Despite the prominent role that Lorenzo Miguel had in government and as an intermediary between the government and

the labor movement, political infighting within UOM put his leadership and his centralized approach to the organization to a difficult test. During the proscription of Peronism from politics, the Peronist movement and the union movement had witnessed the rise of Leftist factions in its rank-and-file, delegates and other union leaders at the local level. These sectors were very critical of the "union bureaucracy" represented by the national unions, which from their perspective worried too much about their political alliances at the top to the detriment of pushing forward the demands of workers[136].

In 1968-69, when Argentina witnessed an unprecedented mobilization of workers and university students known as the *Cordobazo*, which ended with a brutal repression by the military government, several UOM locals had leaders who professed a clear antagonism to the "union bureaucracy." In La Matanza and San Martín, in the province of Buenos Aires, and in Villa Constitución in the province of Santa Fe, in which several important plants were located, militant leaders had emerged that questioned the strategic approach of the national union. The national union, led by Vandor at the time, was confronted with such an internal opposition, that the leadership risked losing the union's elections. Vandor's faction finally won once again but the internal infighting led to his assassination in July of 1969.

In March of 1970, UOM was facing internal elections again, and given its importance within the labor movement and the rise of a militant and critical faction within it, its results had important consequences for the labor movement as a whole. Lorenzo Miguel faced a strong opposition from a left-wing competitor, Avelino Fernández, but ended up winning the election because the Ministry of Labor intervened and got Fernández out of the electoral competition on charges of fraud. The military government shared the goal of the "union bureaucracy" of eliminating left-wing unionists, and used legislation, persecution, and the intervention of the Ministry of Labor on union affairs whenever possible.

Lorenzo Miguel traveled frequently to Madrid to have conversations with Perón and bring back orders from the General to the rest of the movement. At the same time, he handled matters within the union in a top-down fashion, silencing any dissent within it.

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[136] For a detailed account of this period and the role of Lorenzo Miguel as a political intermediary and the leader of the movement against the rise of the Leftist leaders within the union, see Santiago Senén-González and Fabián Bossoer (1993.)

Negotiations between business federations and the national union were handled in his presence behind closed doors, and the results were expeditiously sent to the Ministry of Labor for proper ratification. Lorenzo expelled dissenters from the union, tightened up centralization and established an excellent relationship with the Minister of Labor, who handed out UOM a contract with FIAT Concord in Córdoba, as a way of preventing SMATA, a more leftist union, from attracting new members.

In 1972, Lorenzo Miguel won elections again, reaffirmed his power within the union, and in January of 1973 signed a very favorable collective bargaining agreement for the metallurgic workers, who obtained the highest wage hike. The government had called unions and business to sit down for negotiations, and three hundred negotiating tables were established. Within this framework, UOM obtained the highest raise with 35%, which covered 350 thousand workers in the metallurgic sector.

In 1973, Lorenzo Miguel helped General Perón in the establishment of the FREJULI coalition, and this was the electoral ticket that Perón, still in exile in Spain, instructed his followers to vote for. FREJULI ran the Cámpora-Solano Lima ticket for presidential and vice-presidential candidates. Lorenzo managed to include 33% of unionists on the lists for Congressional candidates, and also included unionists on the lists for governorships, expanding the influence of the union movement in the next government. At the same time, he continued supporting the political struggle against the Leftist factions within Peronism and the labor movement, and helped create the *Juventud Sindical Peronista* (JSP), to compete with the *Juventud Trabajadora Peronista* (JTP) formed by the Leftist groups.Once the FREJULI ticket won the presidential election, UOM also managed to place one of his men, Ricardo Otero, as minister of labor.

In May 1973, the government of Campora-Solano Lima signed a tripartite agreement with the CGE (*Confederación General de Empresas*)—a business association that represented mainly medium and small size companies—and the CGT led by Rucci (who belonged to UOM), in order to reduce inflation and propel economic growth. Unions promised to keep a wage freeze after obtaining a small raise and to suspend negotiations for two years, and business made a commitment to maintain prices. However, the unions were pressed to sign because Perón asked them to do it, but what the unions really wanted was to open up negotiations between them and their business

counterparts in all sectors, and to regain authority and prestige before the rank-and-file now that Leftist leaders were competing with them for their membership. It was their expectation that with a Perón-backed government, business would be more willing to give in during negotiations and they could count on Ricardo Otero from UOM, who was the minister of labor at the time, to solve sector conflicts in their favor.

However, the militancy at the local level continued, and there was a succession of 120 strikes between June and September of 1973 only. Unions at the local level, backed by the mobilization of the rank-and-file, pressured for improvements in labor conditions, at a time when they could not negotiate for higher wages. In many cases, the leaders of union locals could not contain labor conflicts, as the delegates inside the companies that opposed their own unions were responsible for organizing the protests. This tension between local unions or delegates and the national unions continued, even after Perón returned from exile and was elected president in July 1973 with 62% of the vote. Two days after the election, José Rucci, who came from UOM and was the leader of the CGT, was assassinated. This prompted Perón to choose sides and back the "union bureaucracy" in the ideological and political struggle.

To reinforce the power of national unions vis-à-vis the power of local unions, the Peronist government passed a reform of the Law of Professional Associations (Law No. 20.615, 29/11/73). This strengthened national unions considerably through the extension of union leaders' mandates from two to four years, obligated unions to have general assemblies with members only once every two years instead of once a year, and gave national unions the right to take over local unions and cancel the delegates' mandate.

Despite these institutional changes that reinforced the power of national unions, local unions and the rank-and-file organized by delegates at the company level continued to pressure for better wages and labor conditions, while the Social Pact between the CGT, the government, and the CGE was showing signs of exhaustion. Many local unions and delegates were getting much better conditions at the company level, than the ones agreed upon through centralized collective bargaining. The economic plan based on price and wage freezes was clearly not working, and the CGT decided to side with the president in cutting off the attempts at raising wages through grassroots mobilizations. . Perón tried to stop this agitation through a decree for a one time only compensation, but to no avail. In

July of 1974 Perón died and his wife, vice president María Estela Martínez de Perón, became president of Argentina.

As grassroots mobilizations continued, national unions, through the 62 Organizations still led by Lorenzo Miguel, got closer to the administration of María Estela Martínez de Perón. Her government passed an important law that gathered in one volume all the legislation regarding individual contracts that had been used since the forties, but with significant improvements for workers (Ley de Contrato de Trabajo-20.744.)

At the same time that it passed this legislation, the government devised, with the acquiescence of national unions and the CGT, a legal tool that would help in the repression of mobilizations by locals. . Law No. 20.840 on issues of security established that unionists who continued a strike after the Ministry of Labor declared it illegal, had to go to prison for a period of one to three years. In fact, after this legislation was passed, the number of strikes at the company level diminished considerably. In addition, the more institutionalized opposition was also eliminated through authoritarian means such as interventions, police raids, and detentions. Many leftist union leaders were removed from their positions, among them Salamanca (SMATA), Ongaro (Graphic Arts Workers) and Tosco (Electrical Workers Union).

One of the most difficult and ugly confrontations between national unions and mobilized local unions occurred precisely within the ranks of UOM. It happened in Villa Constitución, in the province of Santa Fe, where several large and important companies in the steel industry are located. In March of 1975, police forces occupied the area, based on information that there was a subversive plot intended to paralyze production. As a result, hundreds of militants and all the leaders of the local union led by Alberto Piccinini, that opposed the national union, were arrested. The conflict lasted for two full months and ended with many of these labor leaders and militants fired or in jail.

Finally, after intense pressure from the union movement, the government conceded to call for negotiations between business and unions in all sectors by March of 1975. These negotiations took place in a general climate of economic chaos and political and institutional crisis. The finance minister declared that wage raises could not exceed 25%, while the union movement pushed for a 40% increase. Finally, they reached

consensus on 38%, and signed agreements by sector. When negotiations seemed to be getting to a closure, several cabinet changes, accompanied by a drastic change in the direction of economic policies, including a devaluation of 100% that caused a reduction in real wages, the union movement stepped back and renegotiated the agreements. As a result, wage raises reached 160%.

The president decided that she would not ratify the agreements, but in the middle of a government crisis that ended with a military coup, she finally conceded the ratification. As a result, all sectors of the economy and 100% of workers in formal employment got covered by these agreements, which would last until the nineties in several sectors. In this case, it happened again because of UOM led by Lorenzo Miguel, who personally convinced the president that it was a mistake to leave the unions unprotected without a ratified agreement for the different sectors.

In March of 1976, days after the military coup, Lorenzo Miguel was captured by the military junta, tortured, and imprisoned. Even from jail, he continued to influence the labor movement. Unions split depending on their position towards the military dictatorship and their willingness to negotiate, and depending on whether they had been taken over by the military or not (*intervenidos* is the term used when the unions' authorities were replaced by someone designated by the military junta.) The movement continued to function and sent delegates to the different groups that were formed, even if union activity was banned. The labor movement even organized a series of strikes under the military dictatorship. In 1978, the junta put Lorenzo Miguel under house arrest, in which he remained until the military set him free in April of 1980. At Miguel's house, many union leaders discussed who the next head of the CGT should be, and managed to unite the different groups in which the labor movement had been divided. The 62 Organizations, as the political arm, of the labor movement resurfaced, and Lorenzo Miguel was responsible for operating many of these changes from behind the scenes.

During this period, UOM lost many members due to the implementation of liberalization policies that affected the metallurgic sector particularly hard. In 1979 alone, UOM had lost seventy thousand members due to the recession and the closing of companies. However, the political influence of this union and its leader did not decline

throughout this period, and this influence would be particularly important during the transition to democracy in the eighties.

After British forces defeated Argentina's military in the Malvinas war in 1982, the union movement, human rights organizations, and political parties got together and pressured firmly for a return to democracy. In 1983, Miguel recovered his political rights and negotiated with Luis Guerrero, his political adversary within UOM, to get back his position as UOM leader. The military intervention of UOM ended in 1983, and Miguel became its leader once again. In 1984, he validated his position as leader of UOM through elections. Since this time and until his death in 2002 Lorenzo remained as the head of UOM, with between 70-90% of the votes of all the delegates from the 65 union branches throughout the national territory every time he run for re-election.

During the transition to democracy, Lorenzo continued to actively participate in the drawing up of lists of candidates for the Peronist party, and the union movement had a decisive role in the running of campaigns in general. The presidential election meant a resounding defeat for the Peronist party and led to a decline in the participation of the union movement in party politics. Some party members saw the participation of the labor movement in party politics as one of the reasons for the defeat of Peronism in the 1983 election.

While participating with the labor movement in a fierce opposition to the government of Raúl Alfonsín (UCR), against which unions declared numerous general strikes (thirteen in total) that defeated Alfonsín's intentions to democratize unions and reduce the influence of Peronism , Lorenzo Miguel participated in the Peronist primaries supporting the Menem-Duhalde ticket. In fact, during the Alfonsín government, and as a way of building a bridge with a confrontational labor movement, all previous labor legislation was restored and all the privileges of national unions were in fact strengthened.

In 1989, Carlos Menem of the Peronist party was elected president of Argentina. For the following ten years he carried out a market reform agenda that was a complete reversal of what the Peronist party stood for in the previous decades. His policies, that included privatization, reform of social security, liberalization of trade, and the reform of labor market policies and institutions, put the labor movement on the defensive, while

unions were in the awkward position of having to defend a Peronist government. For UOM in particular, which still had Lorenzo Miguel as its leader, Menem's policies meant the loss of more jobs, although UOM was able to get some concessions thanks to the personal relationship that Miguel had with Menem.

In sum, the beginning of the 1990s when the first attempts at the liberalization of labor regulations and institutions took place in Argentina, UOM still had a vertical and centralized organization, with Lorenzo Miguel as its leader. This meant that the ideology of centralized collective bargaining as something necessary for strong unions remained unaltered within UOM, even if the pressure to decentralize negotiations and introduce more flexible forms of work organization and compensation schemes was forcing a change of course. In the next section, I will show how this ideology influenced the way in which labor relations were shaped in this sector and resulted in the end in "continuity by default" centralized agreements at the top, with an explosion of company level agreements in the parallel system of collective agreements underneath.

6.4.2. The UOM and labor relations in the metallurgic sector

1. The 260/75 as the "umbrella agreement"

When in the 1990s UOM and the business associations that represent all the sub-sectors within the metallurgic sector[137] started to discuss the possibility of re-negotiating the "260/75"[138] agreement, which as explained remained current through the "continuity by default" clause, a struggle erupted among the union, the employers' associations, and the companies in the sector to decide the level at which the agreement would be re-negotiated. While the national UOM leadership felt that it was only natural to re-negotiate the agreement at the activity level, and to provide some kind of umbrella

[137] The metallurgic sector has a number of sub-sectors within it, represented by different business associations. These sub-sectors are: 1) Steel, represented by CIS (Cámara de la Industria Siderúrgica), which constitutes one of the most dynamic sectors, with internationally competitive companies such as the Techint group and the companies under Acindar; 2) Electric appliances, represented by AFARTE, located mainly in Tierra del Fuego, the southernmost province of Argentina; 3) Autos, that comprises Peugeot and several auto-parts firms represented by AFAC; 4) The Metal-mechanic sector, with many medium and small size companies, represented by ADIMRA; and 5) Aluminum, represented by one big company ALUAR and many small sub-contractors, all located in Puerto Madryn, province of Chubut.

[138] "260/75" was the number assigned to the agreement by the Ministry of Labor, in which 260 refers to the number of agreement and 75 to the year in which it was signed.

to the sector as a whole, business associations disagreed with that view, and felt confident they could demand agreements at the company level.

The view of the national union was that employers wanted to negotiate at the company level in order to override all the "acquired rights" that workers had gained through the 260/75, and that local unions would not have enough power at the company level to preserve these rights. Therefore, they saw negotiating at the activity level as their only chance to negotiate on an equal footing with concentrated and powerful employers. Even if they agreed to negotiate at an inferior level, although always on condition of having a superior agreement as an umbrella, they were not willing to compromise on who was the actor that had to negotiate the agreement, that is, the national unions.

On the other hand, employers did not think an activity agreement was necessary or feasible, given the stark contrasts among the different sub-sectors of the activity, and even within sub-sectors of different companies. It was the large companies in particular that pushed the union to have company agreements, which would introduce radical changes to the previous "continuity by default" agreement, the 260/75, but to no avail. As I will show later in the chapter, the UOM finally decided to sign some formal contracts at the company level, but there seems to be a systematic explanation for these exceptions.

These negotiations within the sector took place while the government was trying to push decentralized negotiations. As mentioned, in 1991, while the Menem administration was passing a comprehensive reform of labor regulations and institutions through the National Law of Employment, it also passed a decree that dictated that negotiations had to include the specific demands at the company level.

The employers took the cue and pushed for company level agreements only to find in many sectors the resistance of the unions to do so. At the same time, however, unions that pushed for the re-negotiation of central agreements were not successful at doing so either. The government, in turn, remained neutral on these maneuverings at the micro level, neither pushing for the implementation of decentralized agreements in favor of employers, nor helping the unions to bring employers to sign centralized agreements, as it had done in the past.

In this dispute about the level of negotiation, the Ministry of Labor had to finally intervene when business and unions brought the issue forward, and it resolved that unions

and business associations had to negotiate at mid level, that is, negotiations had to be done at the sub-sector level, to split the difference between what employers and national unions wanted respectively.

Nonetheless, the steel sector refused to negotiate at this level, arguing that the only possible solution was to negotiate at the company level, despite the fact that the sub-sector was quite homogeneous, with only four large companies. Negotiations lasted for two years and in 1994 each sub-sector reached an agreement that remained nonetheless tied to the 260/75, the umbrella agreement. According to labor lawyers that advised the unions in these negotiations, the discussion of these agreements was not a true comprehensive renegotiation of previous agreements, but rather a mere incorporation of previous wage raises that were made informally into a formal agreement. However, only between 30-60% of wage raises were adopted. In addition, three or four clauses were also discussed and included in the new agreement, which as said, remained officially tied to the previous "continuity by default" agreement[139].

This apparent lack of change in rigid regulations and the unyielding stance that the national unions adopted in regards to what the union would allow in terms of labor conditions and rights, contrasted with the engagement of most companies and workers, from the most competitive to the more modest ones, in the signing of company level agreements, in what I termed the parallel system of negotiations.

As companies insisted on introducing changes in work organization, work time, and compensation schemes to adjust to a more competitive environment, the best chance for workers to get some part in negotiating these changes, or getting some compensation out of it, was to negotiate at the plant level. In these negotiations, it is the *comisión interna*, which represents the union inside each company that participates in the name of workers and establishes agreements with company representatives. These are multi-individual agreements that could be taken to a court of law in case of violation but are not recognized by the Ministry of Labor as collective bargaining agreements, remaining unregistered. As shown, however, the agreements registered at the Córdoba ministry of labor, have UOM at the top of the list in signing these types of agreements, which is consistent with my arguments about the ideology of centralization.

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[139] Interview with Mr. Calvo, legal advisor for UOM, 11/6/03

The rationale for central unions for refusing to sign company agreements in lieu of the 260/75 umbrella agreement was that this would force them to sign agreements that would clearly imply a loss of benefits for workers, and as they see it, of "acquired rights". Some of the new regulations that introduce flexibility for companies were visualized as a loss of rights, such as introducing flexible working hours according to changes in demand, changes in categories that tended to incorporate more obligations for workers, taking vacations in off season periods, or introducing compensation schemes based only on productivity. As Francisco Gutiérrez, a leader of the national union put it, that vacations are to be taken in the summer is an acquired right and it should be the norm, if companies want to give vacations at any other period of time it can be granted as an exception in exchange for due compensation, but should not be transformed into a norm. In any case, the national unions thought of signing flexible company agreements as giving in to business pressures, and as a defeat of the bargaining power of the union. As the 260/75 was seen as a political conquest of the labor movement, they preferred to stick to an old contract than negotiate below it.

There was another reason why national unions were reluctant to open up negotiations at the plant level, and that was the power struggle that could ensue for positions in the national unions, once local unions gained recognition and power through negotiations at the plant level. In the steel sector, for example, large companies can have up to 5,000 workers. These modern, internationally competitive companies can offer good wages and benefits to their workers because they do not compete on the basis of cheap labor. Negotiations at the company level can reap benefits for local labor leaders, who gain recognition vis-à-vis other workers, and can therefore shake up the power of the national union as a result. In fact, three of the representatives of large companies in the steel sector have representation in the national union in the present[140].

While negotiations between national unions and business were stuck in the 260/75 with some minor modifications through the sub-sector agreements in 1994, internal commissions and company managers were busy writing civil contracts in which new labor norms were created. National unions did not ignore this trend, which blossomed in

[140] These representatives are: Brunelli, who represents workers at SIDERAR in San Nicolás, Piccinini, who represents workers at ACINDAR in Villa Constitución, and Recúpero, who represents workers at SIDERCA in Campana.

the 1990s when the economic environment increased the level of competition for companies in the sector, but chose not to intervene. The reasons for not intervening were multiple. On the one hand, they did not think they had the political strength or government backing to stop it, as the ministers of labor had shown to be unwilling to support the unions' position. On the other hand, they did not see the participation of the *comisiones internas* in these negotiations as threatening, as they did not represent opposing political views within the union. In addition, they thought that they might later capitalize on these negotiations at the company level if they meant improvements in workers' benefits, and turned them into formal agreements at a more aggregated level, as it had happened in the past.

At the same time, the *comisiones internas* were receiving all the pressures from workers to negotiate some of the changes that managers wanted to implement at the plant level. Since the national unions were unable to force employers to negotiate above the level of company all around or in a more comprehensive manner, the *comisiones internas* had to respond to workers' demands at the company level, if they did not want to become irrelevant. All in all, the whole negotiation process including all the actors created several layers of contracts that run in parallel channels and did not interact well with each other.

For business, engaging in negotiations at the company level through the parallel system seemed to be a good choice considering other possible alternatives, including forcing unions to negotiate formally, not negotiating, or lobbying the government for more radical reforms. All these options had different costs and benefits and different levels of efficaciousness.

Overall, even though engaging in company agreements in the parallel system of collective bargaining had some costs, mainly that since these agreements tended to contradict previous agreements and they could also go against current labor laws, they could create a monetary cost if employees or unions brought them to court. However, these occurrences were infrequent and the agreements seem therefore quite safe, and brought economic benefits that largely offset the potential costs. This alternative was also the path of least resistance, given that the *comisiones internas* inside each company were willing to participate in them, as well as workers, unions gave tacit approval, and the

government did not interfere with it. This had been exercised in the past, there were legal instruments to execute them, and it led to the objective that companies were after.

2. The parallel system of collective bargaining in the metallurgic sector

Although the exact number of company agreements signed in the parallel system of collective bargaining is unknown, all parties involved in the signing in this sector agree that the volume of agreements is considerable, and basically the main channel through which changes in work rules and regulations were introduced. The database gathered at the Córdoba ministry of labor shows the metallurgic sector at top of the list, accounting for 18% of all signed agreements between 1990 and 2000, representing 266 agreements in total. If this is the case in Córdoba, we should expect to find even more agreements signed in other provinces, given that Córdoba is not the main location of investments and companies in this sector. In fact, interviews conducted at the departments of labor in Santa Fe and Buenos Aires confirmed that UOM was one of the main unions that signed agreements during the 1990s.

Businessmen and union leaders in the sector agree that the system started to function during the years of the military dictatorship when collective bargaining was prohibited. During that time, the *comisiones internas* continued to work in the shadows and many multi-individual agreements were signed.

A good example of this is provided by the privatization of SOMISA, one of the biggest companies in the steel sector, privatized during the 1990s. When the Techint Group took over, it found out that even though the company was in principle governed in its labor regulations by the 260/75 umbrella agreements, 400 agreements had been signed underneath it to modify it, and it was impossible to make them compatible with the umbrella agreement according to the current labor regulations, as they contradicted each other in many labor rules and conditions. It was necessary to start the process anew, if formal agreements were to rule what happened in this company from that time on. As in other privatization processes, the state had to step in and overrule all previous agreements in a very top down fashion to create a blank slate for negotiations between the new owners and the workers. The state had to use a legal instrument called "*laudo*" which

implies an interference of the state in the private sphere in order to abolish previous agreements.

Another interesting example is the case of ACINDAR, one of the largest and oldest private companies in the steel sector. In the 1990s ACINDAR wanted to introduce a new work organization scheme. The local union agreed, but requested that a technical commission had to be formed to evaluate along with management the creation of new categories. Management agreed to create this technical commission, but the union and management could not reach agreements in the implementation of these changes. Given that situation, the company decided to dismiss all workers, provoking a conflict with the union that would last for three months. The union got the support of the local community and turned the strike into a national event with extended press coverage. As a result, the state intervened with a mandatory arbitration and business and unions reached an agreement. Once the workers were rehired, the company reached a series of informal agreements with the workers to implement changes in work organization.

As shown, decree 1334/91 passed in 1991 regulated that wage negotiations could only be based on productivity increases, as a way of avoiding inflation hikes, while the government tried to implement a macroeconomic policy that tied the dollar to the peso to stall inflation. According to CIS, that represented business in the steel sector, the effect of this policy was in practice to stall formal agreements, and further promote the signing of informal agreements in the parallel system of negotiations. In several occasions, if productivity increases could not be demonstrated clearly, the Ministry of Labor would not approve a specific agreement, leading to the signing of that agreement at the company level without the government's validation.

CIS represents some of the largest, most competitive companies in the country that also influence the views of business in lobbying the government. Informal contracts in these companies, which can have up to 5,000 employees, can be quite sophisticated and complex. In their view, these agreements create a situation that locks in the parallel system of negotiations, making it difficult to break it. As these agreements grew and became the norm, many of the wages negotiated were linked to performance, which was not the case with the 260/75-umbrella agreement.

The advantage of signing these wage agreements was not only that they depended on performance, increasing the productivity of workers, but also that since they did not appear as the basic salary but as a bonus, corporations did not have to pay labor taxes on them. They estimated that at least 70% of the total salary paid had this character. Needless to say, this type of convenience made the use of informal agreements even more palatable to companies. In addition, in an effort to increase external flexibility, the government tied severance payments to wages agreed through formal collective bargaining negotiations, in this case the old 260/75, making it in the interest of business to stay away from renegotiating.

Moreover, as the new government of Néstor Kirchner elected in 2003 has adopted a more pro labor stance, and has put income redistribution and social policies at the top of its priorities, , business are even less willing to formalize previous wage raises, as the labor costs added to them would be unknown and possibly higher than in the 1990s. Corporations anticipated that even if the government were willing to push for new negotiations between employers and unions, the costs associated with formalizing previous agreements would make them unlikely to occur. In fact, even though the Kirchner administration has been trying to promote negotiations between unions and employers, the number of negotiations has not changed much from previous years, and the government has stepped in on several occasions to decree wage increases, which unions had a hard time making employers incorporate in formal agreements.

In the 1990s, wage raises given through informal agreements were tied to changes in work organization. Employers agree that the opening of the economy forced them to become more productive to remain in the market. Many companies chose to upgrade their technology, and many chose to introduce radical changes in work organization to increase performance and productivity. As the introduction of these changes implied a higher commitment from workers and cooperation, it lent almost naturally to discussions between managers and the *comisión interna* at the company level and to the signing of informal agreements.

Employers always offered monetary compensation in exchange for the acceptance of the new rules of work, which made these changes more palatable to workers. In the case of the steel sector, large companies employ highly qualified workers. These workers

in general understand that the changes are a necessity for companies that compete internationally. In fact, these workers are in touch with workers in other localities outside Argentina, such as Mexico, Venezuela, and Europe, where the same type of changes are taking place. Usually, the local union is also well aware of the level of activity of the company, and is savvy in negotiating better wages and conditions for their workers. According to the legal adviser of the Techint Group, when companies have above 500 employees, the negotiation processes can become quite complex, and generating a good climate for participation is indispensable to the success of the restructuring process that the company wants to undertake.

In fact, these informal contracts provide the type of instrument that was required for companies to undertake the transformation necessary to compete. The reduction of labor taxes and severance payments, as well as the introduction of temporary contracts were among the main accomplishments of the labor reform carried out by the government. However, these kinds of flexible norms were not useful for large, competitive companies that do not compete on the basis of cheap labor with a high level of turn over.

These companies compete on the basis of quality and need highly trained and committed employees. Thus, they do not see high rotation of personnel as an asset, but as a loss in their investment in training. But they do need, for example, to make use of suspensions, given the fluctuations in demand. In this regard, the LCT that regulates individual contracts was very stringent and did not allow for suspensions based on demand fluctuations. But these arrangements could be made through informal agreements, and personnel could be suspended temporarily with monetary compensation to adjust to demand without having to fire and hire again as the law required.

Local unions agree that the national union does not intervene in the signing of agreements in the parallel system of negotiations, although they are aware of them and let them happen. They do not always register these agreements with the provincial labor departments. Sometimes these agreements are just kept by the company and the union respectively or they could even be un-written agreements. The agreements can include a number of diverse issues such as categories, compensation, and outsourcing. They could take up from several months to years. For example, in the case of ACINDAR the

discussion of counting work hours monthly instead of daily to give more flexibility to the company, took up four years of discussion to finalize the agreement. Different agreements can be reached in different sectors of the same company.

Local unions report the same kind of trend either in the large companies of the steel industry in the provinces of Santa Fe and Buenos Aires, or in the thousand medium and small companies of the metallurgic sector located in province of Córdoba. As the head of UOM in Córdoba puts it "the national union determines our position nationwide, but local unions forced by reality try to improve workers' conditions at the local level." Even though the wage established by the national union is the point of departure, they try to improve on it through non-wage compensations that give the benefit to employers of not paying labor taxes on them. Unions negotiate with employers to pay workers for transportation, meals, and special bonuses tied to increases in productivity. They also use informal agreements to change categories that are supposed to remain unchanged according to the umbrella agreement. These category changes can be compensated through disguised payments towards perfect assistance to work.

Employers represented by ADIMRA that gathers 24,000 companies in the metallurgic sectors of which 10,000 are small companies, also found that the use of informal agreements was essential to update the work conditions and compensation schemes of their workers in the 1990s. Even though many of these companies found the use of temporary contracts to reduce labor costs useful, other changes were necessary that were not covered by changes in labor legislation, and the formal collective bargaining agreements did not cover them either. In fact, ADIMRA was one of the business associations that participated in drafting the legislation that was passed in the 1996 reform for small and medium size corporations, and that gave companies and unions the ability to deregulate many aspects of the labor contract by mutual consent. However, the legislation was never used given that it never had the approval of UOM.

In this particular segment of the metallurgic sector, many of the negotiations were carried out behind closed doors between management and the *comisión interna*. These negotiations result in agreements that are incorporated into internal manuals that companies use to regulate their own activities. These companies find it extremely difficult to negotiate their agreements through formal collective bargaining, given the

rejection of unions to do so, but they find no resistance to re-negotiate agreements with their own personnel and the *comisión interna* that represents the union. Registration with provincial labor departments can occur, and the more these agreements take on a more formalized character, the less likely they are to be broken by either unions or employers.

As in the case of the steel sector, formal negotiations seemed unlikely to resume despite some attempts at doing so. In 2003, and after the financial and institutional crisis that left Argentina at the brink of chaos, business were eager to return to the table on the assumption that negotiations with unions could bring them closer to the pro-labor government and the possibility of getting subsidies tied up to those negotiations. However, the president of ADIMRA was weary of these negotiations and of the possibility that they could actually be resumed. The experience of 2001, when the government tried to push negotiations and called both business and unions to the negotiating table had proved unsuccessful, in part because the Minister of Labor, Patricia Bullrich, made the mistake of calling indiscriminately business associations that did not have actual representation and set up negotiation dates in a top-down fashion.

In 2003, the government was careful not to make the same mistake, but basically the problem of business representation through associations remained, and it was not clear that the union was going to have a unique counterpart with whom to renegotiate. In all likelihood, if negotiations were successful, informal talks were likely to continue at the company level to fine tune the restructuring.

6.4.3. SMATA and labor relations in the auto industry

The auto and metal industries have similarities. They share a mix of large and modern companies with some small and medium size companies. Large metal corporations are basically in the steel sector, in the aluminum sector, in the electric appliances sector, and in the auto sector, where UOM used to have a 30% of its workers' representation. Multinational corporations dominate the auto parts sector. These companies are technologically modern and competitive, and they hire highly skilled workers for their operations.

Both SMATA and UOM are consolidated unions, with long traditions of organizing, with high political visibility and ties to the Peronist party. If UOM is the icon

of centralization and political influence in party politics, SMATA is the icon of the labor militancy of the 1960s, and influence in politics at large. However, these two influential unions have opposing approaches in terms of collective bargaining ideology. When their sectors were struck in the 1990s with an increased level of competition and companies moved into introducing changes in technology and work organization, they reacted in quite different ways.

While the UOM national union kept on rejecting the idea of officially accepting the negotiation of agreements at the local level and introducing changes to make working conditions more flexible, SMATA continued with its tradition of signing company agreements, and signed some of the most radical agreements in terms of the number and the depth of changes introduced to make work conditions and organization as flexible as possible for companies.

SMATA was born in the tradition of business unionism, with a different history from the highly politicized UOM. They both emerged from the same sector, in fact, initially in competition with one another. They both were quite successful in terms of rates of unionization, and wages and working conditions provided to their workers (the metallurgic, chemical, and auto sectors were always among the ones with the highest wages) but UOM and SMATA pursued opposing strategies in terms of collective bargaining. In fact, while UOM always pushed for a centralized collective bargaining, SMATA always signed company agreements.

1. The history of decentralized bargaining

The auto industry took off in Argentina during the presidency of Arturo Frondizi (1958-62.) Vehicle production had been extremely limited prior to this period. The only foreign company that had set up production facilities in Argentina was Kaiser, which had opened its Córdoba plant in 1955, after being forced out of the North American market. Some other foreign companies like Mercedes Benz and Fiat had made limited investments, but the industry as a whole remained embryonic, with production growing from 108 vehicles in 1951 to 6,391 in 1955. Frondizi's policies facilitated a massive influx of foreign capital, and one of the favored areas of investment was the auto industry.

The industry's growth was dramatic. Output more than quadrupled between 1959 and 1961. By the mid-1960s, the industry had consolidated its position and was dominated by eight large foreign producers: Mercedes, Peugeot, General Motors, Chrysler, Ford, Citroen, and Fiat in Buenos Aires, and IKA-Renault and Fiat in Córdoba. In addition, a large network of other industries had grown to service those plants. It was calculated that in 1966 the jobs of one in nineteen Argentines were tied directly or indirectly to vehicle production.

The period between 1965 and 1966 had been calm regarding labor relations, and the industry consolidated itself. The labor conditions were characterized by high wages and relative stability. During this time, UOM and SMATA competed for representation in the sector, a matter that was decided in favor of SMATA by the Ministry of Labor. This decision coincided with the wishes and needs of the large companies. While the UOM dominated the entire metalworking sector and was the most powerful Argentine union, SMATA was a weak union that had emerged in 1946. Composed largely of garage workers, SMATA was isolated and had little national influence. It was also apolitical in the sense that it was not involved in the power politicking among Peronist unions (led by UOM), governments, and the military.

Thus, the likelihood of pure business unionism in the auto industry was far greater with SMATA than with UOM. In the early 1960s, the Ministry of Labor authorized the creation of plant unions at the FIAT factory and the introduction of company agreements in the industry as a whole. With these two decisions, the Ministry of Labor thus permitted the fragmentation of bargaining and hindered the development of a unified workers' response on wages and conditions.

By 1966-67 the calm was coming to an end. A clear threshold appears to the expansion of the industry. In addition, by the mid 1960s SMATA had achieved the formal organization of a respectable portion of the workforce. Membership figures for 1973 in the main plants (excluding FIAT) show 19,603 union members, or 56% of the workforce. Among production workers alone, the rate of unionization was considerably higher. At both the Ford and Citroen plants, for example, where white-collar workers were not unionized at all, 73% of Ford production workers and 81% of Citroen production workers were unionized. As it was getting representation of workers in

different companies, SMATA sought recognition from the Ministry of Labor to exclusive representation, therefore adhering to the pattern of organization of other unions in Argentina.

However, collective bargaining remained by company. The only exception was FIAT, which had company unions. Recognition meant that SMATA received not only the dues paid by its members, but also worker and employer contributions for its social welfare fund. The sums of money involved were large, with assets approximating $3.8 million in 1974. This enabled the union to offer its membership a wide variety of social and medical services.

Between 1965 and 1972, SMATA unions participated in many conflicts both in Córdoba and Buenos Aires. An increasing number of these disputes were led, especially after 1968, by *comisiones internas* of shop floor delegates. The majority of these delegates were hostile to both the military government and their own union leaders. During the Onganía government, and because it prohibited collective bargaining and imposed tight regulations on wage increases, there was a split in the labor movement at the Conference of March of 1968.

The *CGT de los Argentinos* (CGTA) emerged, representing that section of the leadership that advocated a policy of outright opposition to the military regime. This body provided a focus for the growing rank-and-file discontent with government policy and union leadership inactivity in 1968-69. Automobile workers were in the vanguard of this reawakening of the labor movement, with mobilizations of IKA-Renault workers in Córdoba and conflicts over rationalization and layoffs in most of the Buenos Aires plants. Most of the plant committees that led these conflicts supported the *CGT de los Argentinos*. In contrast, the SMATA leadership favored the more conservative CGT Azopardo, although it officially expressed its neutrality in the dispute.

SMATA rank-and-file often supported radical, often non-Peronist alternatives, primarily in Córdoba but also in Buenos Aires. Left-wing groupings of militants, such as the *Tendencia Activista Mecánica* (TAM), were a strong influence in the Citroen, Peugeot, and Chrysler plants by 1968, and General Motors after 1970. The reasons for the emergence of such a militant rank-and-file are several.

First, SMATA had a reputation among militants as a soft bureaucracy with relatively limited control over its membership compared to the UOM. In part, this reputation reflected the leadership style of the group that won the union elections of 1968 on a platform of increasing internal democracy. The new secretary general, Dirk Kloosterman, was strongly influenced by the AFL-CIO-backed *Instituto Americano para el Desarrollo del Sindicalismo Libre*. Kloosterman advocated a style of union *caudillismo* with its attendant features of power politicking and rigorous repression of internal dissidence. Kloosterman's ideal was an efficient, responsible business unionism purged of the intra-Peronist political maneuverings typical of other unions.

SMATA's reputation also reflected the actual situation in the auto plants. The SMATA leadership lacked the long-established internal apparatus of control that existed in the UOM, as well as the construction and textile unions. Its internal structure permitted a degree of autonomy—particularly for those plants outside Buenos Aires—that was in sharp contrast to other unions. For example, article 107 of SMATA's by-laws in its Estatuto Social provided the locals with a measure of autonomy and internal democracy in running elections that was unthinkable in the UOM. With each contending group having a representative on the local's electoral committee, it was difficult for incumbents to steal elections through open fraud, increasing the chances of opposition groups' replacing discredited leaderships as occurred in Córdoba in 1972. Kloosterman, for example, suffered constant defeats in plenary meetings of delegates in 1968, which would have been inconceivable for a leader like Vandor in the UOM. The SMATA national leadership certainly did take counter-measures, adopting anti-democratic procedures to maintain their positions. Perhaps most significant was their impugning of opposition electoral lists. In the 1970 and 1972 national SMATA elections, the membership was provided with only the official list for which to vote. Nevertheless, at most of the main plants, absenteeism generally outran support for the official list, while in Córdoba write-in candidates exceeded it. Similarly, in 1968 the national leadership instituted a new electoral provision requiring 2,000 members' signatures before a list of candidates could be presented in an election. While these and other measures were sufficient to ensure permanence in power for the union leadership at the national level, its power at individual plants remained limited.

Another feature affecting the emergence of rank-and-file militancy in the auto plants was the collective bargaining system used in the industry. While plant bargaining fragmented the unity of the automobile workers, it also had a more positive implication. The determination of conditions and wages at the plant level provided a concrete focus for plant activity. This focus was missing in factories in the metalworking industry, for example, where these issues were determined at the national level by national negotiators and then handed down to the localities. By contrast, the automobile workers could hope to influence and even to determine issues of crucial importance to their working lives; their own activity, their own choice of shop floor representatives, could have some impact on their wages and conditions. A militant negotiating committee could hold out successfully for wages and conditions beyond what the national union leadership would have accepted.

In addition, Córdoba local unions enjoyed a significant degree of financial and operational independence from the national union leadership. While in most Argentine unions dues flowed directly to the central leadership, which controlled their distribution, a very different practice prevailed in SMATA. Article 78 of SMATA's Estatuto Social granted that 90 percent of basic union dues went to the local from which they had been collected; only the remaining 10 percent went to the national leadership. This gave them a capacity to resist financial pressures used in most other Argentine unions to control dissident locals. SMATA's statutes also provided the locals with authority to initiate independent actions that again contrasted with the centralized practice of most other unions. Article 128(b) gave the leadership of the locals the authority to determine measures of direct action for locals as a whole, as well as in particular plants within their locals. .

In 1973, Pacto Social wage bargaining was eliminated for two years and negotiations focused on issues of working conditions and reinstatement of dismissed workers. In a favorable political and economic climate, workers sought to resolve long-held grievances in these areas. The internal commission led many of these struggles, and its capacity to mobilize was aided by the generally flexible attitude adopted by the union leaderships and the new Ministry of Labor.

By the end of 1973, with the ascent of Perón to the presidency, relative tolerance for nonofficial working-class mobilization came to an end. Perón moved to concentrate control of the workers' movement within the formal hierarchical structures of the CGT and national union leaderships. The new Law of Professional Associations of November 1973 greatly increased the powers of these organizations to intervene in their locals, increased their financial powers, and extended their mandates from two to four years. The effect of Perón's attempt to restrict rank-and-file initiatives was apparent in the auto industry. In early 1974, for example, a plant occupation at Mercedes Benz led by "neoclasistas" was crushed, as the Ministry of Labor declared the action illegal; thugs beat up the militants, and SMATA replaced the plant leadership with its own officials. Similar events occurred at Ford.

The chief concern of SMATA leadership and the Ministry of Labor was to crush the power of SMATA's Córdoba local. Kloosterman's attempted intervention with officials from Buenos Aires backfired, as automobile workers mobilized to defend their elected leaders and expel the would-be interventors. The issue became even more important for the national leadership with the drift of events in the Fiat plants. There, despite the former minister's decision to place them within the UOM's jurisdiction and the Peronist minister's indecision in regard to their fate, workers at the three FIAT plants joined SMATA. Assemblies of workers voted overwhelmingly in favor of joining SMATA, and their elected delegates joined the body of delegates of SMATA in Córdoba, collecting dues from their members and handing the money over to SMATA.

The crushing of the independent leadership in SMATA Córdoba and similar events in Luz y Fuerza Córdoba and the Buenos Aires Print-workers were key stages in the reassertion of centralized control over the union movement by the Peronist union hierarchy. Activists, who challenged Peronist labor policy, were increasingly subject to officially backed terrorism and intimidation.

Developments in the auto industry reflected this general process. It soon became clear, for example, that the national leadership's ability to control the Córdoba local was more formal than real. Although intensive repression of militants temporarily cowed IKA Renault, in other companies the major internal commissions remained faithful to their old leaders. By mid-1975 IKA Renault was ignoring the official Córdoba leadership and

negotiating directly with the unofficial plant committees. During the military dictatorship, 1976-983, with unions intervened, strikes made illegal, and activists persecuted, the level of activity inevitably declined. Nevertheless, resistance persisted. In late 1976, reports of drastic cuts in production due to slowdowns and sabotage were leaked to the media.. These actions seem to have occurred on a broad front. General Liendo, the minister of labor, went to the General Motors Barracas plant and deployed troops inside the plant to ensure that production speed picked up. It would seem clear that given the general situation, production slowdowns was the most viable tactic. Capacity to engage in these actions also seems to have depended on the particular plant. For instance, in 1978, Mercedes Benz workers were able to pressure management to concede cost-of-living-related increases. This success seems to have been possible at Mercedes because it produced for the truck and bus market, which remained buoyant compared to the car market. Thus, the economic conditions were more favorable toward pressure for higher wages than in other plants. This success, however, must be placed within the general context of fierce repression, which limited how far even the Mercedes workers could pressure the management.

2. The history of decentralization in the 1990s

In the 1990s, employers hailed SMATA as a model union which was at the forefront of signing agreements at the company level that incorporate all aspects of flexible work organization and compensation innovations. SMATA captured a considerable number of new investments and new companies that came to Argentina in the 1990s to take advantage of a favorable business environment. Labor defenders, however, have criticized SMATA for signing company agreements even before the plants hired their workers, such as in the case of General Motors, Toyota, and FIAT, although SMATA argues that workers ratified these agreements later on in general assemblies. As a result of these negotiations and agreements, SMATA went from representing 30% of all auto part companies to representing 50% of them.

SMATA was at the forefront of a new wave of decentralized negotiations in the 1990s, accounting for more than 60 formal agreements per year, and clearly over-represented in the total number of agreements. As explained, this is what SMATA has

done since its creation. The art of negotiating agreements constitutes an important aspect of the training that it provides every year to its members, using a methodology that has been passed down from generation to generation. A brief conversation with Manuel Pardo, second to the secretary general of the union, will provide you with plenty of information on many economic facts about the industry and important data that he uses constantly in negotiations with companies.

However, because SMATA is also inserted within a labor movement with a strong tradition of centralization, over the years it has gone from company unions that bargain separately to a union structure that bargains at the company level but with the presence of three levels of hierarchy: the Executive Committee, with central operations in Buenos Aires, the local union and groups of delegates at the plant level chosen by all members.. Once the agreements are discussed with employers, they are submitted for approval by a majority of workers in a general meeting. .

This coordination allows for the participation of a more centralized power in company negotiations, avoiding the risk of atomization of power on the workers' side, but at the same time incorporating the views of representatives at the plant level. . Even though power struggles do occur in this interaction, participation of both levels is formally ensured and negotiations are open and transparent with employers every year over all aspects of the labor contract.

The national union sees the role of delegates at the plant level as essential to the negotiations. They argue that the union is usually on the defensive when it comes to changes, and that understanding how to negotiate over them usually takes several rounds and learning from experience how they actually operate on the ground. For example, in one of the companies they wanted to implement the *kanban* method of continuing improvement. The company wanted to move at a fast pace into the adoption of new forms of work organization, introducing quite flexible rules. The union wanted to slow down the implementation of these changes in order to evaluate their effects in practice and be able to re-negotiate accordingly. The company agreed to move more slowly and as a result the productivity clause changed several times, moving from the company's position of paying a bonus only if they reached the exact quantity of production established, to paying according to the level of production reached whatever this level might be.

As argued, SMATA is the union that has most clearly been open to negotiation at the company level and to incorporate changes and innovations in work organization and compensation schemes as needed. However, given that SMATA is embedded in a centralized labor movement tradition, they have different deals with different sectors within the auto industry, depending on the characteristics of companies. Thus, SMATA signs centralized agreements in several sub-sectors within the auto industry that are usually comprised of small and medium size companies, and which share commonalities. For example, it signs three nation-wide centralized agreements with ACARA (car dealers) which comprises 15,000 workers, FAATRA (garages) which comprises 25,000 workers, and ACA (gas stations and road service) which comprises 3,000 people. Also, with a group of companies that operate only in three localities (Mar del Plata, Bahía Blanca, and surrounding areas) and have gas stations and parking spaces, they sign a regional collective bargaining agreement, and only with the MNCs that assemble cars and auto parts they sign company agreements.

Negotiations with SMATA have changed in content and response to the demands of employers. Negotiations used to revolve mostly around wages and dismissals, but now they focus more on productivity issues and employment. The issue of job security has moved to the forefront, and the union finds itself negotiating around suspensions with a reduction in wages, or reductions in wages in lieu of keeping job posts. Unlike other unions that embrace centralized collective bargaining as a non-negotiable position, and that find that high unemployment rates make negotiation impossible because unions are in a losing position, SMATA finds that collective bargaining is the only way to get better conditions for workers in a situation of high unemployment.

But even a willing union such as SMATA, that is accepting negotiations at the company level as part of their role, find that employers would rather avoid negotiations altogether and implement change without the presence of the unions. Unions have to fight long and hard to get concessions. Over time, they also find that giving in to the employers demands of flexibility does not guarantee that companies will stay for the long haul, and they have become more weary of giving in to the flexibility discourse. The most flexible agreements were signed with new investments from General Motors, Chrysler, and Delfa and Packard. Of these companies, two of them closed their operations in Argentina, and

one of them moved to Brazil. Notwithstanding, they managed to negotiate the payment of twice the amount required by law in severance payments with General Motors. Unlike other sectors in which neither employers nor workers make the move to negotiate formally, SMATA forces employers to sit at the negotiation table when they refuse to do so. By law, when one of the parties wants to negotiate, the other one is obligated to negotiate as well, and this is known as "denouncing your agreement." This is what SMATA did with ACARA when they refused to negotiate. They brought the cause to the Ministry of Labor, and in the end ACARA had to negotiate with SMATA.

6.5. New Investments and Union Competition

In addition to the union's ideology in predicting the propensity of a certain sector to engage more in formal negotiations vis-à-vis the parallel system of collective bargaining, there are other two factors, which act as "incentives" for the alignment of central unions with local unions and business, that explains why within sectors some of the decentralized agreements are formal while others are not.

Sectors have different configurations in terms of the labor relations, and adopt different bundles of informal/formal agreements. Thus, while UOM is the extreme case of engagement in the parallel system of collective bargaining, they also have isolated instances of formal company level agreements that need to be explained. Why does a union like UOM that has adopted a rigid position in terms of centralized collective bargaining which is not willing to compromise, make exceptions with certain companies and sign formal collective bargaining agreements at the company level?

Answering these questions will help us understand the conditions under which the parallel system of negotiations breaks down, or at least what the incentives are for the different actors to move from the parallel system to a more formalized agreement within the boundaries of legislated collective bargaining.

Looking across sectors, two aspects stand out as creating strong incentives for unions to sign more formal agreements if they have been in the more informal path of negotiations. One of them is the arrival of new and large investments in a given sector. This factor seems to actually make most of the difference in pushing a previously unwilling union to sign a more formal company agreement. The other factor functions as

adding even more pressure to sign in a more formal agreement, but it does not work unless the new investment is present in the sector. This factor is the competition between two or more unions for the same investment in a given sector.

The arrival of new and large investments in a given sector creates economic and political incentives for unions to sign a company, formal, flexible agreement, as these companies usually demand. These types of companies that require new forms of work organization, flexible hours, and compensation schemes can offer compensations, such as good wages and the creation of a considerable number of jobs in the sector. But more importantly, if the union does not sign a formal agreement with them, they miss an opportunity to get more members, and with it more membership dues, an increase in the number of people to be mobilized, dues that are generated through the signing of new contracts, and the opportunity to build more power for the union through the representation of workers who are employed by important and prestigious companies in a given sector.

These incentives to sign in are compounded when the company has the possibility of signing the contract with another union. As explained, unions in Argentina usually have a monopoly of representation within a certain sector, but there are exceptions, like the case of SMATA and UOM in the automotive sector. Also, it could be the case that the same company can be considered as belonging to more than one sector, and in that case they can play unions against each other to get their contract.

This trend generates inequalities within a given sector because some companies do not have to deal with the liabilities associated with contracts signed in the parallel system of collective bargaining, they do not have to fight over every change they want to implement, and they get many of the changes in work organization and compensation schemes since they start operations in the country. In fact, after the reforms of labor law, many more changes could be legally introduced if agreed between companies and unions, than if they were only to follow the law without agreement, through a clause known as "collective availability" (*disponibilidad colectiva.*) As shown, however, this clause has been seldom used in practice. This is the legal instrument that these companies could use to sign new agreements with their sector unions.

It is important to notice that the reason why unions sign formal company agreements with these companies is not that these companies are foreign and have a different way of conducting business. In fact, these new investments could come from either national or foreign capital, and many of the domestic companies use many of the same work organization techniques and compensation schemes. Large domestic companies that are not generating new investments in the sector can be as modern and dynamic as the new investments that are arriving in the country, so the origin of the capital does not really explain the difference. The type of sector does not make any difference either, since the phenomenon is observed in many different industrial sectors, as well as in commerce and banking.

6.5.1. The cases

As shown, UOM represents an extreme case in the use of the parallel system of collective bargaining, driven by a strong ideology of centralized bargaining. However, it is striking that even in an extreme case like UOM we observe some isolated cases in which it decides to sign formal company agreements. One of these cases is that of the Marcopolo, a new and large Brazilian company that arrived in the 1990sin Córdoba, to assemble long distance buses. Another case is ALUAR, a long-standing company of national capital that produces aluminum products, located in Puerto Madryn, Chubut, a southern province in Argentina. ALUAR decided to create a new company in the same location. Finally, they signed formal agreements with a company that opened up in Córdoba for the production of tires.

These are specific events in a long-term trend of signing agreements in the parallel system of collective bargaining, and there are clearly not enough of them to provoke a breakdown of the parallel system. However, the fact that a union that is so strongly committed to centralized collective bargaining decides to sign company agreements with a handful of them, shows that a change in the incentives for getting involved in different types of agreements could break the equilibrium in the use of the parallel system. The incentives come from the gains that are derived from a "new" investment in the sector that brings extra economic and power resources, which is not the case with large companies that are already established in the sector, even if they employ

many workers and are powerful players. The metallurgic sector has many of these powerful players, with large companies that compete internationally and make investments abroad with a strong interest in signing formal company agreements, such as the case of Techint or SIDERCA, but UOM has never conceded to signing a company agreement with them.

The fact that the signing of these formal company agreements is not an easy step for the union is reflected in the terminology they use to refer to them. Within the union, these company agreements are known as the "articulated agreements" to give the impression that they remain articulated under the umbrella agreement of 1975 that covers all companies in the sector. Through the use of this language, they try to convey that these companies have not invalidated the previous agreements in the sector and their arrangements do not contradict what had been signed in the central agreement. However, in reality, labor lawyers that represent the union agree that these company agreements are a complete departure from the old agreement. The use of the concept of "articulated agreement" tries to convey two main messages. One is that the union has not given up in its ideology of centralized agreements and of signing agreements at the company level that might mean giving up acquired rights. The other message is to the employers, to imply that formal company agreements are not an option unless they are connected to an overall agreement for the sector.

The same pattern can be observed in other sectors in which unions also have centralized collective agreements that have already expired, but still maintain a regulatory effect in the industry ("continuity by default" agreements.) Even though these unions continue to negotiate through the parallel system of collective bargaining introducing important changes in labor regulations, they make exceptions and sign formal company agreements totally anew with new and large investment that arrive in the sector. The union that represents health care workers, FATSA, signs agreements with clinics and pharmaceutical companies, and had agreements in different sub-sectors within the industry. However, when Procter and Gamble arrived in Argentina and requested to sign a company agreement with flexible rules and regulations for their workforce, the union agreed to do it. Once the union signed the agreement with Procter and Gamble, the pharmaceutical laboratory Bago-Roemmers, a multinational company that had had

operations in Argentina for 20 years, asked the union to sign a flexible company agreement with them as well, but the union refused to sign it. It is likely that the company ended up signing a more informal agreement with its own workers to produce the desired changes.

7. Conclusion

In this chapter, I explained the conditions that favor the creation of the parallel system of negotiations in Argentina, which has been one of the main channels for the relaxation of labor codes and the decentralization of collective bargaining. I have argued that despite the fact that the parallel system of negotiations in its more formal version utilizes civil law contracts for the signing of agreements, it can be considered an informal institution. The main traits of what defines an informal institution are present in this parallel system.

I have explored the literature on informal institutions, which is quite incipient. The study of informal institutions, particularly in developing countries, is part of a new research agenda. The origins and sustainability of these types of institutions over time have been identified as aspects of the phenomena that need further study. At the same time, considering that many countries in Latin America are following the same policy agenda for the reform of labor institutions, it would not be difficult to imagine the emergence of similar types of institutions in other countries as well.

I have identified the factors that lead to the creation and sustainability of the parallel system of negotiations in Argentina. I have found that although conditions in the 1990s favored a more extensive use of these types of contracts, this institution had been available and in use for quite some time. I identified four phases in the development of the parallel system and shown how the different factors that lead to its creation and sustainability have been present in each of these phases.

Also, in this chapter, I have shown that at a more micro level, the specific way in which labor relations are shaped also depends on the previous institutional arrangements. In the case of Argentina, that is reflected in the specific characteristics of the sub-systems of industrial relations by sector, given the particular characteristics of the national unions in each of them. Within each sector, the ideology of the union in regards to collective

bargaining, that is to say, its tradition of centralization or decentralization and how the union perceived its internal politics, greatly affects its involvement in the parallel system of labor relations.

However, ideology does not explain why in some cases even highly centralized unions seem to make an exception and sign formal agreements with specific companies. In those cases, the strategic evaluation of an opportunity to enhance organizational and financial resources plays a role in making an exception to the rule. New and substantive investments bring organizational and financial resources that national unions do not want to miss. However, even in those cases, the ideological position towards bargaining is so strong that they try to disguise the breakdown of the umbrella agreement and present the new agreement as "articulated" to the old one.

This breakdown of the parallel system of negotiations also provides some hints on what sustains the system and what could dismantle it. It is clear that if either unions or business found enough incentives to sign formal agreements, the parallel system could virtually disappear. However, as long as the costs of breaking the laws that regulate collective bargaining continue to be low, it seems likely that this process will continue. The main reasons will be the lack of interest on the part of the state to punish transactions in the parallel system, the poor efficacy of the monitoring system, and the benefits of the parallel system being higher than the costs for the main stakeholders. For now, the actors take the parallel system of negotiations as a viable alternative to the more formal system when they evaluate them vis-à-vis one another.

CHAPTER SIX
Conclusions

This study has asked two fundamental questions: (1) what factors lead to the transformation of labor institutions and regulations in previously rigid and interventionist systems of labor relations in the 1990s? and (2) what explains the difficulty of changing the system through legislative reforms and the subsequent delay in legal changes in regulations and institutions through legislative reform? Even though the implementation of labor reforms has been tried throughout the Latin American region and in other developing economies, I have chosen to investigate these questions through the study of one single case over a period of ten years. For the reasons stated in chapter I, the case of Argentina can be considered a crucial case in the study of these reforms, and the need to generate an in-depth country study of this reform was clear from the limited results of more comparative approaches. My intuition was that an in-depth case study could help unravel the puzzle of a locked reform in a context of increased competition, which did not seem to favor the sustainability of rigid systems of regulation and centralized collective bargaining agreements. As the results of this study have shown, the intuition turned out to be right, and the study of the case of Argentina has shown that the changes did in fact occur, but not in the usually assumed form in studies of this reform, that is, through legislative changes in the general legal frameworks that sustain the labor regimes. The new insights and hypotheses generated by this study can be used to generate new comparative studies through a different theoretical framework.

In this chapter, I will first present my answers to the main questions in this study and the proposed theoretical framework that resulted from it. I will then discuss the implications of these conclusions for the study of the politics of economic reform, for the generation of a new approach to the specific study of the politics of labor reforms, and I will finally explore the possibilities for a future research agenda.

1. Theoretical framework

This study has found that three main factors seem to explain the changes that have taken place in the old labor regimes in the new economic and political context of the

1990s, none of which have been previously considered in the dominant explanations. As I have stated, the first element that needs to be present is a change in the balance of power between labor and business. In the case of Latin America, this change in the balance of power needs to be assessed not only regarding market power, but also, and particularly, political power. Labor unions ties to populist parties have strengthened them beyond their market power, which is usually weaker than in the case of their European counterparts. Therefore, the weakening of these ties brings important consequences for the unions' ability to bargain with employers at the company level. As shown in different studies, party-union alliances in Europe and Latin America weakened over the 1980s and 1990s (Burguess, 2000.) The change in balance of power is particularly relevant when a change in business preferences has occurred, in regards to the relaxation of labor regulations and the decentralization of collective bargaining. As the opening of previously closed economies took place throughout the region in the 1990s, the change in preferences is highly likely. The change in the balance of power allows then for the enactment of the change in preferences.

The change in the balance of power is a necessary factor, but cannot account for the direction and shape of the change that takes place in the labor regime. Also, even though the idea that a shift in the balance of power between business and labor is not the most original contribution of this study, it is important that it is stated that its presence is essential, for two main reasons. For one, because in a long-term view of the labor regime, it would be impossible to explain why a change occurred in the 1990s and not before when other attempts had been made to change the regulations. It was only in the 1990s that two drastic changes took place simultaneously that reshaped the balance of power between labor and business in a way that had not occurred before, while simultaneously affecting business preferences in favor of more deregulation. One of the changes is the opening of previously closed economies to unprecedented levels, and the other one is the weakening of the historical ties between populist parties and labor unions. On the other hand, it is important to highlight the importance of this factor in pushing for the deregulation of labor institutions, given that the previous literature on the subject had portrayed this balance of power in favor of unions, in the case of labor reform. Previous studies showed that unions had been strong enough to deter the deregulation of the labor

regime despite important pressures coming from the opening of the economies, making exceptions of the Latin American case. As shown, this misrepresentation came about as previous studies ignored changes on the ground and in real practices between business and unions, and focused exclusively on changes in the legislative arena.

However, the shift in business preferences and the balance of power between business and unions could not explain the final outcome of the changes in the labor regime. Many possible outcomes would be possible to imagine, including the unilateral implementation of changes from the business side. I have argued that it is essential to take into account the characteristics of the institutional infrastructure of the previous system of labor relations to understand how they shape the new labor regime. As the disputes over the new labor arrangements and institutions takes place within the previous framework of labor relations, its particular institutional infrastructure influences the final outcome. In addition, the practices that come out of the regular interactions between unions and business reshape these institutions and regulations over time, sometimes in ways that were not predicted by the legal framework that supports them. Moreover, a different economic environment pressures business to introduce changes that often times cannot wait for modifications in those legal frameworks, and that therefore supersede them.

Thus, the second factor that shapes the change in the labor regime is the characteristics of the institutional infrastructure of labor relations that existed before, since it is within these boundaries that the change takes place, and this conditions the responses of business and labor within a new economic and political context. This factor opens the door to diversity in the route that different countries can take in adjusting to a new economic and political environment, because industrial relations systems present variations in the region despite some common political origins of the so-called corporatist regimes. So, in the case of Argentina, the existence of mandatory *comisiones internas* at the company level helped to stir the change in collective bargaining towards greater decentralization, without having to change the entire institutional edifice. At the same time, the presence of unions at the company level forced management to negotiate their proposals for restructuring which would have otherwise been implemented without consultation. The fact that these *comisiones* were mandatory in every sector of the

economy allowed for the widespread use of what I termed the parallel system of negotiations, which otherwise could have been restricted to particular sectors. At the same time, the fact the Argentine labor movement is organized along sector lines, affected the extent to which the particular ideology in regards to centralization/decentralization had in the final shape of industrial relations in each particular sector.

Nevertheless, the institutional infrastructure in itself cannot stir the direction of change, if the main stakeholders involved in the reform do not benefit from the new labor regime constituted within its boundaries. Somehow, the interests of business, unions, and even the state have to be satisfied by these new institutional arrangements if they are to survive. It is those interests that originate the changes in the labor regime on the ground, consolidate them, and sustain them over time.

Finally, the state also pushes the deregulation of labor institutions, even if the legislative changes are limited. At the federal level, the state acts as an "enabler" generating good conditions for the parallel system of negotiation to flourish. It does so, by ignoring its clash with current regulations and with the formal system of collective bargaining; but also through the dismantling of monitoring mechanisms that lower the costs of circumventing current regulations. At the federal level, the state also takes advantage of its administrative powers to enact presidential decrees, with important implications in the functioning of the labor markets but lower political costs. At the local level, governments also get involved in pushing for more deregulation through implementation agencies. However, given the local character of the social upheaval that can result from unsettled labor disputes, government can be more actively involved in promoting parallel systems of negotiations and somehow become "third party" enforcers of such agreements.

2. Implications for the study of the politics of economic reform

The study of the reform of labor institutions and regulations has several theoretical implications for the study of the politics of economic reform in general. In line with other recent studies of "second generation" reforms, this study has found that this type of reforms needs a different theoretical framework than the "first generation"

reforms, to capture the extent of the changes that actually occur, the ways in which they occur and the politics of it. It is clear that the study of "second generation" reforms needs to incorporate the study of the implementation phase of the reforms in which bureaucratic agencies and local actors can have a greater role in shaping reforms, than politicians and interest groups in their exchanges in the scene of national politics and through formal political channels, such as the legislatures. In this regard, it is clear that it is important to evaluate the nature of each reform independently of each other, instead of lumping them together under the general label of market-oriented reforms. In addition to this common finding in the "second generation" literature, this study has also found that in the case of the reform of labor institutions and regulations, not only the bureaucratic agencies and the Executive may play a greater role than previously thought of, but also, and in particular, main stakeholders in the reform, that is, unions and business, can modify the workings of the labor regime beyond the changes implemented through governmental actors and agencies.

This study has also shown that the definition of the "interests" that might have an effect in the formation of coalitions in favor or against the implementation of certain changes proposed in the reforms needs to be researched at different levels and not just at the national, aggregated level. The same actors may have different interests, depending on the level at which they are pursuing these interests, resulting in the possibility of finding support at the local level for certain changes that do not seem possible when evaluating those same interests at the national level. Thus, for example, in the case of labor reform, local unions were willing to go along with the negotiation of agreements at the company level, when their national unions were opposed to them in negotiations with government for legislative changes. In fact, the same national unions that opposed changes in legislation to decentralize chose to ignore those same agreements in their own sectors.

Another implication is that the blockage of certain reforms at the legislative level does not necessarily imply that some of the main tenets of the reform are not carried out through other means. In particular, it is clear that the emergence of informal institutions that perform similar functions to the frustrated reforms is possible, and that the existence of these alternative arrangements can in fact be responsible for deflating the interest of

possible winners for integrating a coalition for reform. This is particularly the case if the implementation of the reform at the legislative level has political costs that are avoided by implementing it in a less overt way. In fact, even the same government that is pushing for formal reforms may find it convenient to go along with the more informal changes.

Therefore, governments that pursue reforms that seek to make legal changes in regulatory frameworks need to take into account the existence of alternative ways in which the main stakeholders could be getting the same results through informal institutions. If that is the case, the change in formal regulations needs to make a more attractive offer than the one represented by the informal institutions; involve other actors that may have an interest in more formal changes in regulations, and do not benefit from the existence of the informal system; or raise the costs of making transactions in informal institutions as opposed to more formal ones.

3. New approach for the study of politics of labor reform

The theoretical and methodological implications of this study point to the need of a new approach for the study of the politics of labor reform. The new approach needs to consider the different levels at which the reform takes place, and move beyond the narrow focus of the legislative changes in the national politics arena. Considering the interests of business, unions, and even the state at the local level and not just their aggregated interests at the national level would be important, given the discrepancies between the interests expressed at these two levels. The interests of business and unions at the local level, along with the different priorities of local governments, allows for the implementation of changes in labor regulations and the creation of institutions that are not possible at the national level. The methodological implication is that it is necessary to gather data at the sector and even company level in addition to the national level, in order to get a complete picture of the reform.

The fact that at the local level, some of the main tenets of the reform are in reality being adopted, does not only have implications in terms of understanding the factors that move those actual changes forward. It also affects the fate of the reform at the national level. Once some of the changes that business wants to push forward at the national level actually take place at the local level, its interest in participating in a coalition for reform

at the national level, at the price of confronting national unions, is deflated and the likelihood of the reform declines. In fact, not only business loses interest in pushing for the reform at the national level, but the federal government, which is trying to push for these reforms, also finds an interest in creating conditions for the local reforms to flourish, even if in a parallel system, rather than pressure for the implementation of reforms at the cost of upsetting the support of national unions. Thus, understanding the local politics that lead to reform also helps understanding some of the puzzling results of the derailing of labor reform at the national level.

A new approach to the study of labor reform should include a better understanding of the workings of the industrial relations systems in which these reforms take place. In fact, the literature on industrial relations in the Latin American region is still underdeveloped. Studies in political science and sociology of the labor movement in the region have rarely incorporated the dynamics of the industrial relations systems, and have been predominantly focused on the politics of unions at the national level. The systems of labor relations and the functioning of labor regulations need to be further researched, to create more accurate and comprehensive typologies in the region that complement our knowledge about some of the more salient and formal characteristics of these systems. As this study showed, important aspects of the new labor regime were shaped by the characteristics of the previous system of labor relations, and the presence of *comisiones internas* allowed more flexibility within the system and the forging of alliances at the local level.

The role of the state in the reforms needs to be researched casting a wider net, and not limit it to the role of the Executive and the legislative in the passing of new labor laws. The use of presidential decrees and other more administrative actions that can modify the workings of the labor regime should be evaluated more closely. State actions in regards to the functioning of the labor inspections system are particularly relevant, both at the federal and state levels, because the dismantling of these mechanisms produces a relaxation of current laws even if a new legal framework does not take effect. Finally, state and local governments deserve special attention, given the local nature of some of the arrangements of new labor regimes, as they act as key players in consolidating these new agreements.

Finally, even though more data gathering is still lacking at the national level, and more efforts should be done to render more accurate country pictures of the politics of labor reform, this study has found some insights in regards to the role of "resistance" and the "policy change scenarios", that should be particularly useful in a cross country comparison. On the resistance from interest groups in society in shaping the outcome of the reform, this study has found that even though unions managed to stop some of more formal reforms of collective bargaining, one of the key aspects of the reforms, they were not able to stop the advancement of decentralization on the ground effectively. Also, it is important to note that resistance did not come exclusively from unions, as most previous research seemed to assume, but from other actors as well, such as legislators both from labor-based parties and middle class parties, and public officials in charge of drafting the reforms. Therefore, resistance can originate in different places, making it possible for countries in which unions are strong, to still experience resistance to the reforms from other social and political actors.

In a comparative view, however, I hypothesize that the type of "policy change scenario" that is characteristic of a certain labor reform has an effect in the type of change that will predominate. The main feature that distinguishes different "policy change scenario" is the presence or not of strong resistance from societal actors. If a change in preferences in business has occurred in favor of greater deregulation and the balance of power shifted in its favor, change in labor regulations and institutions will likely take place. If there is resistance from social actors to change the legal framework that regulates them, then reforms will proceed in subtle and less politically visible ways and more decentralized, local, informal changes will be likely. Otherwise, if there is little resistance, then changes in the legal framework are more likely. The hypothesis seems to work for a number of cases, with the evidence that is available. Chile under Pinochet and Peru under Fujimori would be cases of reform through legislative means and in which resistance from societal actors was suppressed. Mexico, Argentina and Brazil would be good cases in which resistance to introduce changes through legislation leads to the introduction of changes through other means.

4. Future Research Agenda

This study has concentrated on a most likely case for legal reform. It has made some strides in the generating of new hypotheses, as well as the discovery of the role of informal institutions in the deregulation of the labor market. However, it is important to extend these hypotheses to the analysis of other cases in the region and beyond. I have hinted at other cases and suggested that these hypotheses could be extended, but more research is necessary to uncover how the changes have proceeded, in which areas, and if the hypotheses for the case of Argentina can be extended or need to be modified.

An effort should be done in collecting more systematic information in the existence of more informal institutions in the labor market if they are extensive and systematic. Informal mechanisms and institutions that run parallel to the more formal rules are known to be widespread in developing economies, but only recently have scholars in political science made more systematic efforts in collecting data and analyzing this phenomenon. If more data were collected, it would be possible to test theories on the origin and sustainability of these institutions across countries, and a general theory for the emergence of these institutions could then be developed.

Finally, this study could not explore the implications of these more informal arrangements for workers' welfare and companies' productivity. I have pointed at some of the differences between formal and informal collective bargaining agreements, and the costs and benefits for unions and business for engaging in them. However, it would be important to do more systematic studies that focus exclusively on the effects of informal negotiations for the welfare of workers and companies' productivity. This is clearly very important, if these systems are supplementing the formal system of regulations, as it is the case in Argentina.

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ANNEXES

Annex 1. Number of private companies with formal workers by province (1)

	1996	1997	1998	1999	2000	2001	2002	2003	2004
Buenos Aires	119,105	122,228	131,328	131,155	119,096	114,787	104,748	109,152	126,832
Cordoba	31,838	32,969	34,274	33,454	32,459	32,283	29,942	31,823	36,370
Santa Fe	31,970	33,047	34,061	34,500	34,481	33,806	31,406	32,884	36,621
Total	182,913	188,244	199,663	199,109	186,036	180,876	166,096	173,859	199,823
Nation	381,467	398,308	427,230	423,083	388,310	378,463	347,802	361,267	408,677

(1) These are companies that pay social security taxes

Annex 2: Selected List of Interviewees[141]

- *Carlos Etala*
  Advisor to Ministry of Labor Rodolfo Díaz
  Secretary of Labor for Enrique Rodríguez and Armando Caro Figueroa

- *Carlos Tomada (4 interviews; key informant)*
  Minister of Labor since 2003
  Advisor to the *Confederacion General del Trabajo ("CGT-oficial")*
  Legal advisor to several unions, among them UOM
  Professor of Industrial Relations at the University of Buenos Aires

- *Armando Caro Figueroa*
  Minister of Labor 1994-97

- *Daniel Funes de Rioja*
  UIA representative on labor issues
  Director of Daniel Funes de Rioja y Asociados

- *Enrique Strega*
  Sub-secretary of labor for Enrique Rodriguez 1992-93

- Francisco Gutiérrez (2 interviews)
  UOM-Central, UOM-Quilmes

- *Mr. Gasparri*
  Labor movement historian, CGT

- *Gerardo Juara*
  Director of Secretary of Union Affairs, Ministry of Labor

- *Jorge Colina*
  Advisor to Armando Caro Figueroa, 1994-97

- *Juan Bour*
  Labor economist, FIEL, think-tank for business groups

- *Julieta Miró*
  National Program for the Monitoring of Social Security, Ministry of Labor

- *Julio Caballero* (2 interviews)
  Director of Legal Department, Techint Group
  Labor counselor, CIS

[141] Name, Most significant role, 1990-2006.

- *Manuel Pardo* (2 interviews)
  Union leader, SMATA

- *Nora Martinelli*
  Communication team for Minister of Labor Antonio Erman González (1998)

- *Oscar Cuartango* (2 interviews)
  Advisor to Labor Committee in the Chamber of Deputies (1991-98)

- *Pedro Galín*
  Coordinator of Research Unit at Ministry of Labor

- *Enrique Rodríguez*
  Minister of Labor, 1992-93

- Silvio Feldman
  Professor at University of General Sarmiento, consultant ILO

- *Patricia Arnalda*
  Advisor to the president of the Labor Committee at the Chamber of Deputies, 2000-2001

- *Rolando Bonpadre*
  Advisor to the president of the Labor Committee at the Chamber of Deputies, 2000-2001

- *Carlos Theiller*
  Union leader, SMATA

- *Elena Palmucci*
  Union leader, Insurance Workers' Union

- *Alberto Tommasone*
  Legal advisor for the *Retail Workers' Union*

- *Rodolfo Díaz* (2 interviews)
  Minister of Labor, 1991-1992

- *Adrian Goldín*
  Legal advisor to Minister of Labor, 2000
  Professor of Industrial Relations, Universidad de San Andrés

- *Julio Carcavallo*
  Labor lawyer, Law Professor, Specialist on Collective Bargaining

- *Jorge Triaca*, Minister of Labor, 1989-1991

- *Noemí Rial*
  Legal advisor of the CGT, 1990-2000

- *Hector García* (2 interviews)
  Labor lawyer, Daniel Funes de Rioja y Asociados

- *Alberto Rimoldi*
  Legal advisor on labor issues, Banking and Meatpacking sectors
  Advisor the Ministry of Labor, 1994-96

- *Lucio Garzón Maceda*
  Legal advisor to the CGT
  Legal advisor of the Food-Processing Industry Labor Union

- *Roberto Izquierdo*
  Under-Secretary of Labor, 1994-97

- *Javier Adrogué* (2 interviews)
  Labor lawyer, Julio de Diego and Associates

- *Carlos Aldao Zapiola* (2 interviews)
  C.E.O, *Loma Negra* Group.

- *Cecilia Senén-González*
  Researcher, specialist on labor relations

- *Antonio Erman González*
  Minister of Labor, 1998-1999

- *Marta Novick*
  Director of Research Unit, Ministry of Labor, 2003-

- *Rosalia Cortés*
  Researcher, FLACSO, specialist on labor market issues

- *Adriana Marshall*
  Researcher, IDES, specialist on labor market issues

- *Emilio Tadei*
  Researcher, CLACSO, specialist on sociology of work

- *Eduardo Basualdo*
  Researcher, FLACSO

- *Enrique Mantilla*
  President of CIS (Business Chamber of Steel Industry)

- *Horacio Batistini*
  Researcher CEIL, specialist on labor unions

- *Pedro Mathew*
  Labor Relations Division, Ministry of Labor

- *David Trajtenberg*
  Labor Relations Division, Ministry of Labor

- *Horacio Meguira*
  Legal advisor for the CTA (Confederation of Argentine Workers)

- *Horacio Palomino*
  Researcher, specialist on labor unions

- Dr. Angulo
  Director of Department of Labor-Córdoba

- *Jorge Tobar* (3 interviews)
  Assistant to the Director, Department of Labor-Córdoba
  National Committee on Labor Inspection

- *Carlos Ferrero*
  Labor Relations, Department of Labor-Córdoba

- *Enrique Deibe*
  Secretary of Employment, Ministry of Labor, 2003-

- *Pablo Gambero*
  President of ADIAC (Business Chamber for the Food Industry)

- *Nora Verde*
  Labor Relations, Department of Labor-Córdoba

- *Ricardo Gueill*
  President of ADIMRA (Business Chamber for the Metal Industry)

- *Silvia López*
  Director of Department of Labor, Santa Fe

- *Dr. Colombo*
  Labor Relations, Department of Labor-Santa Fe

- *Tomás Calvo*
  Labor lawyer, UOM

- *Jorge Sappia*
  Minister of Labor, 1988-1995, Córdoba

- *Omar Dragún*
  President of CGT-Córdoba, 2003

- *Rodolfo Capón Filas*
  Judge, Labor Courts, City of Buenos Aires

- *Marcela Marconi*
  Labor Relations, Department of Labor-Santa Fe

- *Victorio Paulón*
  Labor leader, UOM, Villa Constitución, Santa Fe

- *Pedro Parada*
  Labor leader, UOM, Villa Constitución, Santa Fe

- *Hugo López*
  Labor leader, UOM, Villa Constitución, Santa Fe

- *Daniel Cabrera*
  Labor leader, UOM, Villa Constitución, Santa Fe

- *Héctor Morcillo*
  Labor leader, Food-Processing Industry, National level

- *Augusto Varas*
  Labor leader, UOM-Córdoba

- *Ignacio Tello*
  Labor leader, UOM-Córdoba

- *Rubén Urbano*
  Labor leader, UOM-Córdoba

- *Elba Picciola*
  Labor lawyer, Department of Labor-Province of Buenos Aires