

Latin America: Revolution or Regulation?

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We clearly stand at a turning point in Latin American economic and social policy. The markers of that turn are the growing list of successful presidential candidates who have run against neo-liberalism—Chavez in Venezuela, Lula in Brazil, Vazquez in Uruguay, Kirchner in Argentina, Bachelet in Chile, and Evo Morales in Bolivia, among others. The turn is away from the “Washington Consensus,” with its commitment to the market and market mechanisms, as the arbitrators of economic activity. But exactly what will replace the Washington Consensus in directing economic and social policy is by no means clear. Will these new regimes simply revive the old programs and institutional structures which neo-liberalism and the Washington Consensus sought to dismantle? Or will they create new institutions and invent alternative policies, different from those of the past? And if they do indeed innovate, what will these new institutions look like? What political philosophy and economic theory will guide their development? What will be their impact upon the kind of economic efficiency and growth which the Washington Consensus sought to promote?

It is hard at this juncture not to be reminded of Karl Polanyi's *The Great Transformation*.¹ Polanyi viewed the economic policies of industrial society as the product of a “double movement”. One movement was toward a free market, particularly in labor and land, and free trade. The second movement was an attempt to protect society from these pressures. The movement toward the market is guided and directed by a coherent theory and ideology, the ideology of political and economic liberalism, of which the Washington Consensus is but the most recent expression. However, the reaction to these demands, the second movement, is visceral, the instinctive effort to rescue society from the ravages of unfettered economic competition and the way in which the constant redeployment of resources which it entailed destroyed the context in which people understood themselves and created meaning and purpose in their lives. It is not associated with a single alternative vision, which could point the way toward specific institutions or suggest the terms around which a compromise between the economic and the social might be achieved. Such visions have guided policy at particular moments, of course, but they are not of a piece. Polanyi himself saw the makings of an alternative in Robert Owen's factory organization, in the early nineteenth century, and in the International Labour Organization, in the early twentieth. Another, much more articulated, vision was, of course, Marxism. When Polanyi was writing, fascism also constituted an influential alternative. By the time his book was actually published, however, Keynesian economics had captured the public imagination and seemed not only to complete his argument but to provide a framework for the reconciliation of social and economic forces which avoided the twin pitfalls of Marxism and fascism. But each of these philosophies has since been discredited. The new regimes in Latin America have emerged in an unprecedented intellectual vacuum—one that makes Polanyi's second movement look coherent by comparison and provides an inauspicious context for the region's democratic and developmental hopes and aspirations.

Given the existence of this vacuum, how should we approach the era into which we are moving? One answer would be inductive: To identify what institutions are actually emerging; what social and political forces are promoting these institutions; to seek to

¹ Karl Polanyi, *The Great Transformation: The Political and Economic Origin of Our Times* (Boston: Beacon, 1944).

understand how the institutions, or the forces which stand behind them, conflict with the operation of the economy; and, finally, to try to understand how those conflicts might be reduced and the two movements which Polanyi identified could be reconciled. A number of different domains of activity lend themselves to an inquiry of this kind, but Polanyi devoted a good deal of his attention to the construction and regulation of the labor market, and to the birth of factory inspection in particular, and we therefore follow his lead.

The labor market recommends itself for several reasons. First, the operation of the labor market affects workers concretely and immediately, and hence clashes directly with the social forces which resist continual adjustment and redeployment in response to the exigencies of the economy. Other dimensions of economic activity which have been the focus of deregulation may have a similar effect upon workers' abilities to create and sustain social ties, but they tend to do so indirectly and operate ultimately upon social solidarity through the labor market. Second, and probably for this very reason, while many of the policies promoted by the Washington Consensus are only now beginning to encounter determined resistance, Polanyi's double movement has been underway for some time in the labor market—and labor law reform therefore constitutes something of a Waterloo for the forces of neo-liberalism. In fact, the labor law reforms anticipated by proponents of the Washington Consensus have not only been “limited to a few countries,” according to Eduardo Lora and Ugo Panizza of the Inter-American Development Bank, but have arguably been more likely to expand than to curtail the scope of worker protection.² For example, Brazil, Chile, Costa Rica, and the Dominican Republic have rededicated themselves to labor law enforcement in recent years. And potentially more fundamental reforms are underway in countries ranging from Argentina, where they are motivated by domestic party politics, to Central America, where they are a product of transnational pressures emanating from the campaign for a U.S.-Central America Free Trade Agreement.

The results are neither trivial nor cosmetic. In the 1990s, the Chileans hired new inspectors, and thereby doubled the size of their enforcement division. And the

² Eduardo Lora and Ugo Panizza, “The Future of Structural Reform,” *Journal of Democracy* 14 (2) 2003, p. 128..

Dominicans not only tripled the size of their own enforcement division but simultaneously adopted new hiring criteria—including legal credentials and competitive examinations—as well as wage and employment guarantees. By the early twenty-first century, therefore, one of the Dominican Republic's least reputable regulatory agencies had been transformed into a model of administrative reform, and the island nation's inspectors were fanning out across the region to impart their lessons to their neighbors.

Reactions have been predictable. Employers decry the ostensibly ruinous costs of the regulations. The International Monetary Fund blames persistent “labor market rigidities” for the growth of poverty, inequality, and informality.³ And Latin America continues to run in place.

By examining the process of labor inspection in greater detail, however, we can begin to talk in a specific way about how these reforms might be reconciled with economic efficiency and what kinds of compromises it is reasonable to promote. The first and most important point to appreciate in an endeavor of this kind is the difference between the institutional form of labor market regulation prevailing in the United States and that prevailing in Latin America. It is important because the Latin model offers, as we shall see, very different possibilities for reconciling regulation with the exigencies of economic efficiency. But it is also important because the pressure for deregulation—and, more broadly, for institutional reconciliation in the process of globalization—has emanated from the U.S. and from international agencies in which the U.S. plays a dominant, if not totally commanding, role. Hence, there is some danger that a failure to appreciate the differences between the two systems will obscure opportunities for adjustment—although thus far, interestingly enough, this does not appear to have happened.

The Latin approach originated in France and was subsequently adopted by Spain. Labor inspection systems in Central and South America are basically variants of the Spanish model. They differ from the U.S. institutional model principally in the fact that they

³ Anoop Singh et al., *Stabilization and Reform in Latin America: A Macroeconomic Perspective on the Experience since the Early 1990s* (Washington: IMF, 2005), p. 18.

constitute general or unified systems of inspection. Virtually the whole of the labor code is administered by a single agency, the Inspeccion de Trabajo. The inspectors also enforce various provisions of private collective bargaining contracts. In the U.S., by contrast, each regulation, or type of regulation, falls under the jurisdiction of a separate administrative body [the Department of Labor's Wages and Hours Division (minimum wage and overtime regulations), OSHA (occupational health and safety), ERISA (pension regulations), the U.S. Citizenship and Immigration Services (formerly the INS), the National Labor Relations Board (protection of the right to organize unions), the Federal Mediation Service, etc.]. There is a separate and totally private system for the enforcement of collective bargaining agreements.

General work inspection agencies operate as “street-level bureaucracies.”⁴ These are bureaucracies in which the line officers have considerable discretion and decision making power and are very difficult to control and direct from above. Policeman on the beat, classroom teachers, and social welfare case workers are typical street-level bureaucrats. In the U.S., street-level bureaucracies typically arise in regulatory agencies inadvertently because when the agency is under-funded relative to its mission and the regulations it administers are too complex or too extensive to be applied literally. The U.S. immigration service is essentially a street-level bureaucracy; its agents choose each day which handful of the roughly eleven million undocumented aliens they will apprehend and try to deport. But in the case of Latin American labor inspection, the discretion is present by design and gives the inspectors the capacity to adapt the system to the exigencies of particular enterprises. It also allows the inspector to judge the burden which the sum total of regulations imposes on the enterprise and where this is excessive, or constitutes a threat to the enterprise’s very solvency, to balance the regulations off against each other and against the broader social role of the enterprise in providing employment and goods and services to the economy. In the U.S., where each regulation is essentially considered in isolation, there is no place in the system where the total burden is weighed.

⁴ Michael Lipsky, *Street Level Bureaucracy: Dilemmas of the Individual in Public Services* (NY: Russell Sage, 1983).

The tendency for labor market regulation to function as a street-level bureaucracy is reinforced by a second characteristic which distinguishes the Latin system from the North American system. The U.S. has a sanctioning approach to labor market regulation. Violations are punished, usually by paying a penalty, and the employer's obligation can generally be discharged in this way. In the Latin system of regulation, the enterprise is expected to come into compliance. Its obligations cannot be discharged by paying a penalty. Compliance is viewed as a process and the inspector is empowered to work out a plan that brings the enterprise into compliance gradually over time. Penalties are viewed as an instrument designed to force compliance. But they are only one instrument, typically invoked when the violations involved are willful and deliberate. Where violations are inadvertent, growing out of ignorance or lack of technical background, or, as is very often the case in Latin America, the attempt to remain competitive in an increasingly inhospitable environment, the inspector operates more as an advisor or consultant than as a policeman. Inspectors are in a good position to play this role because in their work they visit a wide variety of different enterprises and are in perhaps a better position than any other economic actor to compare business behavior and disseminate best practices. But unified labor inspection agencies do not rely on the experience of the inspectors alone to develop compliance plans. They usually also have specialists who play a staff function, providing expert advice when called upon by the line officers. Typically, these specialists include lawyers, engineers and doctors with degrees in occupational medicine.

These characteristics give the Latin model of regulation considerable flexibility to adjust to variations in economic and social conditions, despite the apparent rigidity of the law itself. The flexibility is inherent both in the inspector's discretion as to which rules to actually enforce and in his or her ability to develop a plan of compliance which comes into force over time. The flexibility contradicts the image which has been painted of labor market regulations, especially in Latin countries, in the debate about deregulation, but mainly because there is so little literature about how the regulations are actually administered. A telling example comes from an interview with inspectors in France, where the Latin model originated, but where it is currently under attack for its alleged rigidity. One inspector discussed his approach to the limitations on the use of temporary help, a constraint

frequently cited in discussions of the rigidity of French labor law, and gave as an example the case of a large firm in his department which he knew to rely excessively on temporary employees. He also knew, however, that it had an informal agreement with its unions to periodically move a certain number of temporary workers onto its permanent payroll, and in light of this agreement, he simply ignored the temporary help violations. His reasoning, he explained, was that the goal of the temporary help restrictions was to expand permanent employment, and he thought he would be unable to obtain more permanent jobs by enforcing the existing regulation that grew out of the informal arrangement with the union. The law, he pointed out, is a means, not an end in itself.

Other interviews in France and Spain suggest that the exercise of this kind of discretion gives the system considerable flexibility over the business cycle. In applying the rules governing economic layoffs, for example, the inspectors weigh the cost to workers of unemployment against the burden which their continued employment poses to the viability of the enterprise and its capacity to create and maintain jobs over the long run. In this sense, it has some of the flexibility of the market; but it does not simply mimic a market system. Both of these costs rise in a downturn and the balance might favor easing restrictions, as it would in a market system, or it might favor tightening them.

In Latin America, the chief problems have been adjustment to the global economy and the pressures of the international marketplace. The issue is less one of flexibility than of ignorance. The Washington Consensus emphasized putting the firm under competitive pressure, internally through deregulation and globally by opening the economy to trade and investment. The economic theory upon which the Consensus rested had very little to say, however, about the adjustment process, and the policy implicitly assumed that firms would know or learn how to respond to these pressures on their own. In reality, however, many firms were completely overwhelmed by competitive pressures. Unable to survive in the international marketplace by adjusting production and marketing techniques, they responded almost inadvertently in a blind attempt to lower costs, and this led to health and safety violations, longer hours, the use of unqualified labor, etc.

This is very noticeable in small family firms, where the shop is often in the household or in outbuildings directly connected to the household, and work and family roles are narrowly intertwined. Because the shop is in the household, the work space is typically full of young children who are watched over by women who are also engaged in income-generating activities. But as the shop struggles to survive, the women work harder and harder, providing less supervision for the children, and the children themselves are often drawn prematurely into production. The result is both child neglect and child labor.⁵

In larger industrial enterprises, particularly those operating directly as subcontractors for international clients, adjustment was aided by professional consultants or engineers sent from the client abroad to upgrade quality and insure compliance with delivery schedules. But there too, labor standards have frequently deteriorated.⁶ Recent studies of efforts by large transnational companies to monitor labor standards among their subcontractors (which are not family enterprises) suggest that their own business practices are heavily implicated in the deterioration of working conditions which has taken place, especially those associated with the pace of work and with working time. The transnationals wait til the last moment to place their orders, in order to keep up with the latest turn in fashion or work from last minute data on consumer buying, which they track daily in their stores. They then demand rapid delivery of orders that often exceed the subcontractor's capacity and can only be met by pressuring the labor force to work at an excessive pace and for inordinately long hours.⁷

It is precisely in these areas of structural adjustment that the compliance model of labor inspection should be most effective. It offers the inspectors the power to help the companies identify the business practices that are the underlying cause of the problem, and then the latitude to allow the time and space to correct them. What is needed is the expertise required to make these corrections. We have argued that part of this expertise

⁵ Michael Piore, "Rethinking International Labor Standards," in William Milberg, ed., *Labor and the Globalization of Production: Causes and Consequences of Industrial Upgrading* (NY: Palgrave, 2004).

⁶ Yevgeni Kuznetsov, Michael Piore, Clemente Ruiz Durán, and Charles Sabel, "Thing Globally, Act Locally: Decentralized Incentive Framework for Mexico's Private Sector Development," World Bank Informal Research Report 22643 (Washington: World Bank, 2001).

⁷ See Richard Lock, Dara O'Roark....

already resides in the inspectors themselves, who see a range of business practices as they move from worksite to worksite than perhaps any other actor in the economy. They are thus already in a position to pick up on the best practices and spread them to non-compliant enterprises. The ability to use what is now essentially a kind of tacit knowledge, acquired inadvertently and informally, could be increased through specialized training, and augmented by a growing body of research on the relationship between standards and business practice of the kind just cited. The underlying Latin model allows for additional expert support in the staff functions to which the line inspectors turn for advice and specialized assistance. And one sees the traces of this model in almost all of the labor inspection organizations in Latin America. The range of policy instruments available to the labor inspectors in promoting compliance could be broadened still further by enabling them to draw on the full range of programs for economic adjustment which are now housed in other parts of the government: labor force training and education programs, financial assistance and tax credits, and industrial extension services.⁸

This last step crosses the threshold from a conception of labor inspection narrowly focused upon work standards to a notion of labor inspection as a much broader approach to social and economic policy. The agency then becomes a bridge between economic and social forces, at least one piece of an alternative to the Washington Consensus, or rather to the vacuum in which the reaction to the Washington Consensus is emerging.

There are actually signs of movement in precisely this direction. In Guatemala, the national labor inspectorate has established a special maquila division which is developing a proactive approach to labor standards and labor relations more broadly. To facilitate a collective bargaining agreement, the inspectors have actually designed in-plant experiments on the effect of shortening the work week and lengthening the work day on labor productivity and worker satisfaction. In the Dominican Republic, the inspectors have begun to use government training programs to facilitate compliance planning. For example, training was recently used as a key instrument in an agreement with a large

⁸ See, e.g., IADB, *Competitiveness: The Business of Growth* (Washington: IADB, 2001); and Andrew Schrank and Marcus Kurtz, "Credit Where Credit Is Due: Open Economy Industrial Policy and Export Diversification in Latin America," *Politics & Society* 33 (4) 2005.

Italian firm to create a cadre of skilled nationals as substitutes for illegally hired Chinese immigrants. And in Mexico, the Ministry of Labor is working with the ILO at the Volkswagen plant in Puebla to train labor inspectors to upgrade both production practices and labor standards in the company's Mexican suppliers.

These examples, it is to be emphasized, are of interest not because of their quantitative significance. Indeed, their number is actually quite limited. But they point to the ways in which the Latin model of labor inspection might constitute the vehicle for a much broader approach to economic development—one that brings firms up to the standards imposed by their regulatory obligations rather than bringing regulatory obligations down to the productivity levels characteristic of firms. As examples, moreover, they are particularly noteworthy because the inspectors offered technical assistance to sophisticated transnational companies that presumably had access to the best of international consultants. The fact that they have emerged even in countries with a relatively weak government apparatus, like Mexico and Guatemala, suggests that this approach is consistent with, even in some sense inherent in, the logic of the system. But before it could play this role more generally, most Latin American countries will have to combat a legacy of studied neglect in which these governmental functions have been starved for highly qualified and well trained personnel and the resources they need to do their jobs honestly and effectively. Low salaries and insecure tenures constitute threats to inspector integrity throughout the region and operational resources are at best scarce. In Mexico and in most countries of Central America, for example, inspectors have neither transportation nor computer facilities of their own. They are obliged to take public transportation when visiting companies and to write up their reports on manual typewriters. And Mexico, in particular, suffers from the draconian and arbitrary way in which the government has sought to control expenditures: The number of posts has been reduced through a system of special incentives for early retirement, but the remaining staff has been redeployed neither functionally nor geographically. The results are that Federal offices, like that in Yucatán, have staff positions (doctors in occupational medicine and safety engineers) that are filled with experts, but almost none of the inspectors whom they are supposed to advise are left.

As we have noted, however, the effort to revitalize labor inspection has actually been underway in a number of Latin American countries for some time, and collectively there is a fund of experience with innovative ways of overcoming resource constraints to upgrade the caliber of the personnel who are attracted to the service and to provide the missing infrastructure. In the Dominican Republic, the constraints implied by the salary structure have been circumvented by informally linking the careers of young inspectors to more lucrative positions in the private sector which take advantage of their early government experience. In Guatemala, the labor ministry obtains educated inspectors at low cost by hiring the equivalent of law students who have yet to be admitted to the bar. And, in Costa Rica, an agreement with the social security inspectors who collect revenue, and therefore have claim to greater physical infrastructure, provides labor inspectors with transportation that their own budget does not cover. The question is: Can all of these still dispersed and uncoordinated efforts to revive labor market regulation and the so far sporadic and isolated forays into an expanded role in upgrading production and management be consolidated in a way that is coherent enough to be articulated by the political class as an alternative to the Washington Consensus and visible enough to be perceived in this way by an electorate exasperated by the impact of twenty years of neo-liberal policy on their daily lives?

To realize this potential would require a concerted and organized effort to articulate the broader implications of existing practice and to disseminate both the practices and the underlying model of labor market regulation out of which they grow. What is called for is leadership which can play a role in developing and disseminating the new model analogous to the role played by the World Bank and the IMF in the diffusion of the Washington Consensus. The obvious agency to play this role is the International Labour Organization.

The ILO is the oldest of the UN agencies. It was founded with the League of Nations “partly,” according to Polanyi, “in order to equalize conditions of competition amongst the nations so that trade might be liberated without danger to standards of living.”⁹ It is thus older than the UN itself. It is also unique among international organizations in having a tripartite structure in which each country is represented not only by its government but also

⁹ Polanyi, 1944, p. 26.

by delegations composed of employers and of unions. Over the years, it has promulgated a series of workplace norms and regulatory standards, and is historically the repository of expertise in how labor regulations are administered. The long list of legalistic norms is in many ways a caricature of the kind of government regulations which the Washington Consensus fought with its campaign against “labor market rigidities,” and the debates among lawyers at meetings in Geneva often seem to validate this view. But, as we have seen, the administration in the field is much more complex and subtle. And even casual contact with inspectors in the field in Latin America reveals that the ILO retains the respect and allegiance of the officials on the ground and the political appointees who supervise them, who look to the Organization for advice and leadership and closely follow the pronouncements and publications that come out of its headquarters in Geneva. If it were to articulate an approach of the kind we are suggesting, it would definitely have an audience.

However, the ILO has not sought to do so. Instead, it has reacted to its neo-liberal critics by retreating from its historical role. It has not repudiated the accumulated body of labor standards. But it has attempted to shift the focus of the debate toward a set of “core” labor standards, most notably against child labor and slavery (forced labor), upon which it appears possible to achieve a consensus that encompasses even its critics. It has also promoted the notion of “decent work,” a much more ambiguous concept but one which holds the promise of rising above the bare minimum suggest by the “core.” In the process, it has moved resources and personnel within the organization away from labor inspection and tried to reshape its external image around these new concerns.

It is almost impossible to argue with these concepts; indeed that is the point of focusing on them. And it has in fact proven possible to find shocking examples of child labor and forced labor even in advanced developed economies, notably the United States. But these are hardly the central issues in labor market regulation that touch the daily lives of the bulk of the labor force in an industrial society, and certainly not the points which have triggered the political reaction in Latin America. Ironically, to play a role in the newly emergent global economy, the ILO must reclaim its core mission. Of course, nothing in all of this insures that we can escape Polanyi’s classic dilemma; perhaps in the end we will have to

choose between the social and economic. But even here, we would have to develop a new social consensus; and the tripartite structure of the ILO and the debates which take place within it would appear, at least in labor market regulation, to be a better forum for doing so than the boards of bankers and businessmen governing the World Bank and the IMF.