Changing bad institutions: the case of trade union reform in Brazil

Title of the paper
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Theme 1: Assessing different representation systems

Abstract
In this essay, we use political economy analysis to understand why a country endures a bad institution and to examine ways in which this institution can be reformed. We choose an 80-years old bad institution from Brazil: the corporativist trade union. This trade union structure denies labour-capital conflict by considering trade unions as organs that must cooperate with the State to achieve public goals, such as social peace and economic development. In order to turn trade unions into State collaborative organs, a number of State interventions in trade unions and, as a result, of restrictions in the freedom of association are justified. In the course of the past 80 years, different groups have benefited from this structure: the government, employers, and political parties. However, the most surprising group to benefit from the corporativist structure is the trade union itself that takes advantage of workers’ lack of freedom of association to maintain its own benefits guaranteed by the corporativist law: mandatory trade union dues and mandatory workers’ representation.

The essay begins by analyzing the trade union system and its pitfalls. The main claim is that the Brazilian system could benefit from a reform toward freedom of association. Two questions frame this analysis: whether institutions matter for a country’s development and why countries endure bad institutions. Concerning the first question, examining the corporativist trade union structure in Brazil, we suggest that freedom of association would matter for the country’s development. A trade union structure founded on the principle of freedom of association both from an instrumental or deontological view is considered to be a good institution. From an instrumental perspective, a freedom of association system is more efficient than a non-freedom of association system, because the former works through trade unions that effectively represent workers. From a deontological view, as freedom of association reinforces autonomy and freedom of choices, it is a means that can help to promote development.
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The paper then analyzes the reasons why the corporativist model survived in Brazil since the beginning of the last century, focusing on economy policy analysis of the origins of corporativist trade union law and of its survival through different periods of the Brazilian history. The study will emphasize that even though there were windows of opportunities for changes, the trade union reform did not happen. In addition, this essay will analyze the reasons for this inertia, focusing on the groups that had opposed to the reform of the corporativist law.

The paper concludes by focusing on possible ways to allow the country to build new labour laws that foster freedom of association, identifying the groups that can play a role in the reform process and how the reforms should take place. For this, the essay will use the model developed by Trebilcock and Daniels (“The political economy of rule of law reform in developing countries” 26 Michigan Journal of International Law, 99, 2004-2005). This model identifies a “lack of effective political demand for reforms” and “vested supply-side interests” in situations where political economy issues obstacle institutional reform. We suggest that, in order to initiate the reform process, it is necessary to identify the groups that can play a role in the reform and the condition by which they can act, that is, some groups can get involved with the reform if some conditions that allowed them to disconnect themselves from the corporativist institutions are met. These groups can be divided in “insiders” and “outsiders”, and they play a different role in promoting the reforms. In the Brazilian trade union reform, the government, employers’ associations and trade unions can be identified as the “insiders”, while the ILO is the most active “outsider”.

Concerning how the reforms should take place, we suggest that the trade union reform cannot be made in one step only for two reasons. First, the corporativist system cannot be replaced immediately by a freedom of association system. Second, there is no “one size fits all” trade union model concerning freedom of association. The way to delineate its own system is by experiencing the changes and challenges that will be brought by the initial reforms.