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

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

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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.
Rethinking the Employee Representation in Taiwan: the Role and Future of Trade Unions

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The Taiwanese government has introduced the representation systems since 1929 when the Trade Union Law was stipulated. So far, different mechanisms of employee representation have been implemented in many businesses and the outcomes vary as well. Trade unions and collective bargaining take place in most state-owned or privatised enterprises, but private-owned companies are often in favour of non-union representative mechanisms that become the only channel of workers’ voice in non-unionised workplaces. In 2000, the government proposed the new ‘labour-management partnership’ to encourage the harmony in workplaces whilst the systems of worker representation have been re-examined and promoted. Therefore, the first aim of this research is to outline as well as to investigate experiences and challenges of the employee representation in Taiwan.

According to the official statistics (Council of Labour Affairs, 2009), the total number of trade unions in workplaces has been slightly declining for the past decade and so was the total number of collective agreements, but at the same time, the total number of labour-management committees, which are one kind of representative mechanism regulated by the state, has dramatically increased. As a result, whether trade unions would be replaced by mechanisms of non-union representation has become a current debating issue. The second but more important aim of this study is to discuss the role and future of trade unions in Taiwan.

By combining the two foci, this research deals with this question: how the Taiwanese representative systems have been structured and implemented whether trade unions played an important role or not. To answer it, methods of qualitative research were conducted in one major case company ‘C’ and two supplementary case companies ‘S’ and ‘F’ in Taiwan.

The case ‘C’ is a privatised corporation with the largest single-plant trade union in Taiwan, where the data were collected between July 2003 and December 2007 by doing participant observation, in-depth interviews with union president, union officers and worker representatives, a survey of ordinary workers, and documentary analysis of meeting minutes, official letters and internal documents. The case ‘S’ is a state-owned enterprise with a federation of workers unions, and the case ‘F’ is a private-owned and non-unionised company implementing some non-union mechanisms; and in-depth interviews with worker representatives were conducted in both ‘S’ and ‘F’ between April and August 2007.

In terms of the representation systems in Taiwan, the comparison between three research cases illustrates a full view of representative mechanisms in businesses. Non-union representation is gradually developing in all kinds of corporations because of mandatory regulations, business needs, and even
worker and union demands. No matter how an enterprise is state-owned, privatised or private-owned, mandatory committees are held accordingly, and the implementation of legal mechanisms is regarded as some good impression and social responsibility of companies. Besides, corporations usually treat non-union mechanisms, especially those management-oriented committees, as the replacement for trade unions.

From the case ‘F’, the absence of trade unions results in an incomplete system of representation whilst workers’ voice cannot be efficiently passed to the management who does not always respect their voice. Moreover, experiences of the case ‘C’ shed light on the role and future of trade unions. Trade unions propose new kinds of representative committees and start manipulating non-union representation as a strategy to expand their influence and importance in workplaces. By electing employee representatives and organising internal committees to provide support to representatives, the union recognition has been re-strengthened.

To sum up, the dynamic systems of worker representation provide Taiwanese trade unions the possibility of significance and influence in the future. Rather than viewing the non-union representation as the obstruction, unions embody those mechanisms in their own structures and organisations. Whilst the decline of trade unions is ongoing, there are more ways for trade unions to redefine their own roles and offer more functions in the near future.

Reference
Proposal for
Employee Representation in the New World of Work: The Dynamics of Rights, Voice, Performance and Power

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“Employee representation in China:
Does ownership structure make a difference?”

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China’s new Labour Contract Act, which has been in force since January 2008, engage employers to consult employee representatives or, if there is no formal system of representation, all employees on any proposed changes to work rules that may affect them. This provision has provoked much debate. A number of scholars are convinced that this legal provision cannot bring voice to Chinese workers. Several scholars have highlighted the weakness of the legal institutions that are supposed to protect workers’ rights, the complex bureaucratic command and control system and the inadequacy of the compliance system (Cooney 2007, Gallagher 2005). Others have insisted on the localized and fragmented nature of labour mobilization and the inability of trade unions to build effective collective representation (Lee 2007, Taylor and Li 2007). Taylor and Li (2007) argue that the ACFTU (All-China Federation of Trade Unions) is not a union but a state organ and as such it cannot build effective collective interest representation.

Our paper examines patterns of employee representation in state owned, Chinese private owned and foreign owned enterprise. Drawing on multiple cases studies, we argued that there is much experimentation going on in many workplaces. However, labour institutions in China, that is formal and informal rules, monitoring and enforcement mechanisms, and systems of meaning that define the context within which actors operate and interact limits the prospect for change and engage them in path dependence, a process that constrain the range of future options and lock them into particular actions. In our conclusion we highlight the prospects and limits of employee representation in China.
Identifying and assessing alternatives: exploring possible solutions to problems and issues identified; research agenda and methodologies on representation, rights, voice, performance and power at work.

What kinds of public policy, actors, experimentation, strategies, capabilities, and research are necessary to rethink employee representation for this new world of work?

Introduction
The Caribbean is being redefined into Caribbean Community and Single Market Economic area in an era where change in the world economy is occurring at a rapid rate. The impact of such change can be a blessing and a curse, and provides the labour movement with the potential to be involved in the dynamics of the labour market and government interventions, thereby playing a pivotal role as challenges emerge into positive developments for Caribbean societies.

The underlying factors impacting on the Caribbean trade union movement (CTUM) can be identified as the Caribbean labour market becoming more flexible accompanied by variations in hours of work, growth in non-standard employment, entrepreneurship, part-time and temporary employment. These emerging occupational changes highlights the need for Caribbean trade unions to understand what are the dynamics at play in this new world of work and, of necessity, redefine the accepted meaning of trade unionism and trade union representation. This paper will therefore seek to address in the narrow sense the role of the Caribbean Labour Movement (CLM) as it relates to the defence and protection of workers’ rights within the workplace, and in the wider sense the defence and protection of workers’ rights in the society.

The Problem and its Setting
The trade union movement of the Anglophone Caribbean has passed through a number of phases in its relatively short lifetime. One of the most recent phases is that of the world recession. This has resulted in a number of Caribbean island states implementing structural adjustment programmes (SAPs) imposed by the international capital interests and put in place at the expense of labour.

SAPs have been a feature of the Anglophone Caribbean economic environment during the 1990s and into the early 21st century and it is the view of the International Labour Organisation (ILO) that the performance of Caribbean labour and by extension the performance of the Caribbean trade unions during this period is a direct result of these SAPs that were implemented to cope with the economic crises of the 1980s and 1990s. The Public Services International in supporting this
view added that the continued drive to privatise public services has been a major component of SAPs.

The CTUM of necessity must as a consequence redefine the accepted meaning of worker representation. Accordingly, these labour organisations will be enabled to become more relevant through the adoption of innovative approaches in their representation of the varied constituents that comprise the CLM

**Focus and Objectives**
The new world of work is about the development of human resources together with building the resilience of the labour movement. This in itself is a challenge as the development of the CLM is based on the varied island cultures, industrial relations environments, social and economic challenges, history and traditions of dealing with conflict where fairness and equity has become a commodity that all employees seek, and workplace fairness is the key to motivating workplace productivity.

It has been opined that that the best thing to happen to was the trade union movement falling “into a coma of cooperation with its former foes” as a result of the working class inability to fight (Moody 1997, p 9). One cannot agree or disagree with this statement as it relates to the CLM; however it does lend credence to the argument that “changes in the political and economic environment have had a negative impact on the strength and influence of trade unions” (Jose 1999, p 5). Such challenges must be addressed through strategically targeted research resulting in new/redefined methods of worker representation.

The objectives of this paper is therefore to examine and identify the issues surrounding alternatives in worker representation from a Caribbean perspective, with a view to tabling recommendations that will provide for a more meaningful, influential and sustained CLM. The movement must become the master of itself to be a viable agent of change, and to ensure a decent work agenda is achieved in the world of work for future generations.

**Methodology and Sources**
An overview of the realities in worker representation will be considered followed by a more detailed assessment of the current situation in Barbados, Jamaica, Trinidad & Tobago and Guyana. A brief socio historical background will also be provided as this is considered to be germane to an understanding of the current difficulties facing the CLM

The sources utilised for this paper are varied. Information will be obtained from the worldwide web, books, briefing papers, official and unofficial publications, and newspapers. In addition the viewpoint of labour leaders from the identified island states will be elicited through interview. Equally the views of government and private sector will also be sought.

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