

Coalitions Against Change: The (Real) Politics of Labor Market Reform in Spain¹

KENNETH A. DUBIN

Titular Visitante, Derecho Social
Universidad Carlos III de Madrid

Received: 30 July 2012 / Accepted: 7 September 2012

Abstract: Conventional wisdom attributes the persistence of labor market rigidities in Spain to the power of insiders, typically identified as unions and permanent workers whose interests they supposedly represent. In this article, I take issue with this definition of the insiders, showing that in fact the robustness of existing labor market institutions in the face of long-standing problems of precariousness and unemployment can only be explained if the definition of “insiders” is expanded to include a far larger group of cross-class actors.

Key Words: social partners, labor market institutions, authoritarian legacies, Spain, labor market reform, social dialogue.

I. Introduction

The labor market reforms introduced in February 2012 and confirmed in July 2012 by the conservative Popular Party government under the leadership of Mariano Rajoy may well prove to be the most radical changes in the regulation of the Spanish labor market since the timid introduction of collective bargaining by the Francoist dictatorship in 1958.² The legalization of independent labor unions and the introduction of effective constitutional protections for workers’ rights with the Transition to democracy in 1977 shifted the balance of power in the workplace. However, much of the Francoist institutional legacy with respect to collective bargaining and the content (if not the substance) of individual worker rights remained largely in place. The latest labor market reforms, by contrast, include measures that are likely to first, transform the structure, logic and reach of the current collective bargaining system and second, radically reduce the historic protections enjoyed by permanent workers that have contributed to persistently high rates of precarious employment.

The law sharply reduces the costs of dismissal for permanent workers and greatly expands employers’ abilities to reorganize work, reassign workers and reduce salaries. It also introduces a one-year training contract (for firms with less than 50 employees) during which time workers can be fired at any moment at no cost. Judicial and Labor Inspection Corps oversight of management decisions concerning both internal flexibility and layoffs has been reduced in ways that are wholly unprecedented, sparking claims of unconstitutionality from certain quarters of the judiciary and perhaps reinforcing the very un-

¹ Research funding for this project has been provided by the Spanish Ministry of Science and Technology’s National Project for Research, Development and Innovation. Project no. DER2009-09001, “Derecho del Trabajo y objetivos empresariales de competitividad y productividad: Exigencias del ordenamiento laboral en un nuevo entorno económico”. An earlier version of this article was presented at the ECPR Joint Sessions Workshop, “The Politics of Labour Market Policy in Times of Austerity,” Antwerp, April 10-15, 2012, organized by the author and Susan Milner.

² Royal Decree Law 3/2012, 10 February and Law 3/2012, 6 July.

certainty surrounding judicial rulings that the reforms seek to reduce.³ The reform also seeks to promote a radical decentralization of collective bargaining and the rapid readjustment of the contents of collective agreements: it inverts the historic privileging of sectoral over firm-level collective bargaining agreements and puts an end to the ultraactivity rules that left in place indefinitely any collective bargaining clause unless both sides agreed to its revision or elimination. Finally, the reform seeks to promote more effective labor market intermediation by requiring employers to provide training to workers whose jobs have been changed significantly, by obligating 20 hours of paid training leave for workers with at least one year's seniority and by removing remaining restrictions on private labor market intermediaries.

Given the depths of the current economic crisis in Spain and the growing chorus of demands for significant labor market reforms from key actors at home and abroad, it is hardly surprising that a newly arriving center-right government with an absolute majority would make comprehensive labor market reform a pillar of its agenda. More surprising, given historically poor labor market performance and a relatively weak labor movement, is the fact that change has taken so long. This is the puzzle motivating this article: why has labor market reform long proved so difficult in Spain?

Across the "Bismarckian" welfare states of continental Europe, historically low activity rates among women and significant unemployment problems dating back to the 1970s have been corrected over the last two decades through a variety of largely incremental reforms, structural economic changes and strategic shifts in employer strategies that have been collectively labeled processes of "dualization."⁴ In many of these countries, one important element in the explanation for better—if generally much more unequal—labor market performance has been the declining influence of the social partners over workplace outcomes. In Spain, however, the social partners' influence (albeit in many ways limited) over workplace outcomes has remained largely constant until now, despite the fact that the main labor unions and employer associations are far less able to coordinate actions across organizational levels than their counterparts in most other Bismarckian political economies.⁵

Spanish labor market reform efforts since the return to democracy have centered around a process of "flexibility on the margins" that has encouraged employers to achieve competitive adjustment through an enormous expansion in temporary employment that has failed to alter a decades long pattern of employment boom and bust (Toharia y Malo 2000). The evidence that Spanish employers adjust via employment levels rather than wages or working hours is incontrovertible. Official unemployment figures rose from 8.3% in the fourth quarter of 2006 to 22.85% in the fourth quarter of 2011,⁶ while temporary employment rates dropped in corresponding fashion, from 34% of the active population in 2006 just before the crisis began to "only" 24.9% in 2010.⁷ Inevitably, then, as the world's capital markets turned bearish on the solvency of both public and private sector debt in Spain, labor market reform was considered by many observers to be just as essential as retrenchment in public spending.⁸

Conventional explanations for the longevity of the Francoist institutional legacies point a finger at labor market insiders. The literature broadly identifies the insiders in Spain as workers with permanent contracts who enjoy significant protections from either dismissal or the unilateral introduction by employers of major changes in their working conditions. The dominant unions, so the argument continues, have strong institutional incentives to defend the interests of these insiders. These widely repeated claims significantly overstate the protections enjoyed by permanent workers in Spain and the ability of the major unions to defend labor market institutions that they supposedly alone support. In so doing, they almost entirely ignore other collective actors and employers who have had every bit as large a stake in the current labor relations system.

³ Comunicado de JpD ante la Reforma Laboral (Statement by Judges for Democracy regarding the Labor Reform), 16 Feb. 2012. Downloaded 28 Feb. at <http://www.juecesdemocracia.es/txtComunicados/2012/16febrero12.htm>. My discussions with employer-side lawyers suggest that this concern may well limit changes in employers' behavior, particularly in larger firms likely to be held to a higher standard than their smaller counterparts.

⁴ For an excellent overview of these processes, see Patrick Emmenegger et al., eds. (2011).

⁵ For comparative data, see Traxler, F. (2003).

⁶ Encuesta de Población Activa, www.ine.es

⁷ Eurostat Labour Force Survey.

⁸ See *inter alia*, Wölfl, A. and J.S. Mora-Sanguinetti (2011) and International Monetary Fund (2011).

In this article, I will develop a more nuanced definition of labor market insiders in Spain and define the key power resources that have enabled them to maintain and even strengthen their control over critical institutions in the face of the worst labor market crisis in Spain since the era of the democratic Transition. I argue that reform in Spain has been so slow in coming because the cross-class coalition that favors the current regulatory framework has remained far more cohesive than the forces that continued to defend Bismarckian frameworks of labor market regulation in many other countries. The robustness of this coalition has rested on four critical foundations. First, its members broadly share a belief that Spain's labor market problems, serious as they are, have less to do with the regulations themselves than with the ways they are applied —by the labor administration, by the social partners and by employers and workers themselves. Second, the complexity of Spanish labor market regulation has enabled the coalition's members to define themselves as a privileged epistemic community uniquely capable of managing the labor market in an orderly fashion. Third, the symbolic importance of social dialogue has made politicians reluctant to challenge the privileged position that the members of this coalition have adjudicated for themselves. Finally, those firms best positioned to organize challenges to the existing regulatory framework have, in fact, been able to pursue successful competitive adjustment; in other words, the Spanish regulatory regime has long been far more flexible than is conventionally understood.

The article will proceed as follows. Section II offers my definition of the insiders in the Spanish labor market while Section III provides an analysis of the ways and extent to which Spanish firms have been able to pursue competitiveness adjustment in the face of such supposedly rigid labor market institutions. Section IV defines the major institutions of the Spanish labor market and the incentives that bind together the insider coalition in support of these institutions. Section V seeks to resolve the paradox that animates this article —the persistence of these institutional rigidities despite the weakness of the main producer organizations—, that is, how the dominant coalition has managed to impose its preferences until now. It is followed by a brief conclusion.

II. The Vanguard of the Status Quo

The classic explanation for why Spanish labor market reforms have taken the form they have —flexibility on the margins— is twofold. First, because the unions' median member is a permanent worker, they are reluctant to accept legislative changes that prejudice their core constituency. Second, while affiliation rates in Spain are quite low, unions have organizational links to a far larger number workers through two key institutions: on the one hand, through formally independent but generally union-linked worker representatives on works councils in most medium- and large-sized firms; on the other, through high rates of worker coverage for the automatically extended sectoral collective bargaining agreements negotiated in the overwhelming majority of cases by the two dominant unions. Because union seats at sectoral bargaining units are distributed based on the number of delegates they obtain on works councils, unions have strong institutional incentives to defend the interests of works council voters, not only in sectoral bargaining but also in political negotiations regarding the future of labor market regulation and social policy (Dolado et al., 2010).

Thus, the argument goes, the key median supporter of Spanish unions is not necessarily an affiliate, but rather a voter in the shopfloor elections —in other words, Spanish unionism is electoral rather than organizational unionism. While ties to the electorate may be weaker than those of a more conventional union organization with its members, the unions do possess a substantial capacity to mobilize this broader “electorate” against legislative initiatives contrary to their members' interests, as demonstrated by their recourse to the general strike and relatively high levels of labor conflict, especially around the negotiation of collective bargaining agreements (Rigby and Marco Aledo, 2001).

This, at least, is the conventional story, one in which labor market rigidity in Spain is almost entirely attributed to unions' successful defense of labor market insiders' interests. However, this argument significantly overstates the capacity of Spanish unions to resist legislative changes in labor market rules. While some general strikes have led to the withdrawal of proposed reforms, others have not. Indeed, even when legislative initiatives have been revised in the wake of a general strike, many of the changes

disputed by unions have remained in place.⁹ Critically, Spanish general strikes have always been one-day affairs—nothing like the weeks-long public sector strikes that form a critical piece of the French labor conflict repertoire. Spanish governments may at times prefer to modify legislation to avoid mass demonstrations, but unions have proven singularly incapable of successfully resisting legislative change to which governments are strongly committed.

The conventional wisdom also grossly understates the ability of employers to achieve the labor market flexibility they desire through unilateral action and, in some cases, negotiated settlement. As I shall show in the next section, the Spanish labor market is far less rigid than is conventionally depicted. In fact, the relaxation of restrictions on external flexibility dating back to 1984 has enabled many employers to achieve high levels of both external and internal flexibility through a manipulation of contracting categories.

The fact that real levels of flexibility in the Spanish labor market are far higher than is often recognized, does not, however, prevent employer associations and their allies from joining the long-standing chorus of international agencies demanding substantial labor market reforms. Even heterodox critics who endorse many of the claims made here about the effective levels of flexibility in the Spanish labor market, would agree that the inefficiencies and inequities created by a model of competitive adjustment through employment levels cries out for reforms to reduce repeated cycles of intensive creation of precarious employment followed by equally intensive job destruction (for example, Navarro et al., 2011 and Fishman, 2012).

If unions' effective abilities to resist legislative reforms are far more limited than is often claimed, how is it that labor market reform efforts in Spain have not been more extensive? Quite simply, the web of actors committed to maintaining much of the extant regulatory framework goes far beyond the main union organizations and the labor market insiders they supposedly represent. These actors share not only a readily identifiable set of common interests in the status quo regulatory framework, but also two further elements that are critical to the maintainance of their unity and their ability to repel efforts to build alternative coalitions: a set of common beliefs that strengthen unity within a coalition of actors who are constantly managing major differences among themselves and a credible claim to exercise an almost exclusive monopoly on the professional expertise required to manage critical regulatory aspects of both collective and individual employment relations—contracting and separations, job classifications, the structure of compensation and the workweek, and, critically, the resolution of conflicts regarding the application of rules derived from both legislation and collective bargaining. Moreover, as detailed in the next section, leading Spanish firms that would be best positioned to press for comprehensive labor market reforms have largely been able to adjust, reducing their incentives to invest their political capital in pressures for reform.

III. The Economic Consequences of Spanish Labor Market Regulations

Handwringing about labor market rigidities aside, many industrial firms in Spain have proven to be quite capable of meeting world-class productivity standards, with autos (including a large domestic auto parts industry), chemicals and machine tools demonstrating particularly robust performance.¹⁰ These employers would of course prefer to pay lower severance for long-term employees than is *de facto* required; many would also prefer not to have to negotiate internal flexibility with works councils and union sections. The critical point, however, is that these firms have consistently achieved world-class productivity standards in highly competitive businesses.

Why are Spanish aggregate productivity numbers so low, then? First, low value-added sectors like tourism, construction and commerce have long constituted a relatively large part of the Spanish

⁹ The 14 December 1988 general strike declared by the two majority unions pushed the Socialist government to withdraw its proposal for a low-cost youth employment contract. However, strikes on 28 May 1992 against a reduction in pensions and on 27 January 1994 against a far more ambitious set of labor market reforms than in 1988 had only limited impact on the final legislation; the same fate befell the general strike held on 29 September 2010. Even the much heralded withdrawal of the Aznar government's 2002 reform proposal after a general strike on 20 June 2002 was in fact only a partial trimming back of the government's proposal.

¹⁰ For autos, see Guillén (2000), for machine tools, Kohler and Woodard (1997). See also Antràs, (2010a, 2010b and 2011).

economy. Second, Spanish firms frequently have an especially short-term focus. During years of economic bonanza, they record higher profit taking and reinvest far less in research and development than most of their European counterparts. Third, service sector, utility, and construction firms are overrepresented among the largest domestic firms and have a long-consolidated competitive advantage in winning public sector contracts or gaining regulatory approval for comparatively high tariff rates. They have successfully managed their relationships with central, regional and local administrations in ways that have effectively shuttered their markets from international competition. Such strategies have obviously minimized pressures for labor productivity-enhancing innovations. Fourth, the SME sector occupies a comparatively high proportion of employment, and many of these firms suffer from limited managerial skills and compete largely on price. It is precisely these politically weak SMEs whose productivity is most compromised by the current regulatory framework (OECD, 2010).

A final, obvious, source of low aggregate productivity is the explosion of temporary employment after the 1984 labor market reform. Given the historic cost-based strategies of smaller (and many not so small) Spanish firms, it is not surprising that precarious employment emerged as a pivotal element in many companies' human capital strategies. The relative inexperience of temporary workers negatively impacts their productivity. Moreover, as a considerable body of research demonstrates, temporary employment undermines incentives to investments in training by both employers and workers (Wölfl and Mora-Sanguinetti, 2011).

Bigger employers in Spain are by and large able either to adjust or to pass on the costs of low productivity to their customers.¹¹ This fact provides us with a first approximation towards an explanation for the absence of more thoroughgoing labor market reforms: for large firms, the extant regulatory framework is workable. The story for many—if not most—smaller firms is quite different. For these firms, easy recourse to temporary employment reduces incentives to abandon traditional, cost-based competitive strategies. At the same time, smaller firms where there are frequently no worker representatives or union links must resort to informal and often outright illegal practices in order to obtain the flexibility they seek with respect to wages, working hours and job assignments. They are also burdened by the same layoff costs for permanent workers and rules governing sickness, disability and maternity leave as those facing larger firms. These complications make many SMEs extraordinarily reticent to add permanent staff, effectively discouraging them from building competitive strategies around investments in human capital.¹²

Two aspects of Spanish labor market regulations have been particularly onerous for the firms that fall into this latter category: the relative scarcity of exemptions from labor market legislation for smaller firms and the automatic application of sectoral collective bargaining agreements to all firms within the geographical footprint of the agreement (with little margin for opting out of agreements). Both of these elements have been significantly altered by the latest labor market reform, perhaps marking a radical transformation of the Spanish labor relations model. Given the enormous productivity costs imposed by the absence of significant reforms until now, the remainder of this article will discuss why the many firms and sectors that have been especially disadvantaged by the extant regulatory framework have proven so powerless to achieve more thoroughgoing reform, and offer some final conclusions on the politics underlying the latest regulatory changes.

IV. The Politics of Labor Market Regulation in Spain

The collective actors charged with setting and administering labor market and labor relations rules in Spain have long enjoyed an extraordinary degree of autonomy from both political authority and other economic actors. This autonomy derives not from exceptional organizational strength but rather from their common interest in and ability to defend a near-total monopoly over a key set of highly institutionalized functions whose origins can be traced back to the peculiarities of the Spanish transition

¹¹ My research reveals that large firms that relied on individual or small group side-payments to obtain flexibility while marginalizing worker representatives during flush economic times have also run into difficulties in the present environment. I will return to this point later. See Dubin, 2012.

¹² Roundtables with small-business administrators, spring 2011.

to democracy. The dominant unions and employer associations in Spain negotiate sectoral collective bargaining agreements that are automatically applied to almost 90% of Spanish workers. In exchange for their services, the main producer organizations long held a virtual monopoly over public funds for on-going training in the workplace and significant public subsidies to support their operations. They are also the only organizations recognized by the State to engage in bipartite or tripartite negotiations with respect to both labor market and social policies. These same organizations, along with a large number of SME advisors and law firms, interpret labor market rules on behalf of employers and workers (whether derived from legislation or collective bargaining agreements) and serve as representatives in the highly judicialized conflict-resolution process.¹³ For both workers and their employers in firms without a significant union presence, these intermediaries provide an authoritative definition of the rules governing the workplace.

Collective Bargaining Institutions

Most workers in Spain are covered by a sectoral collective bargaining agreement. Most of these agreements are provincial, giving rise to literally thousands of bargaining units.¹⁴ As I discussed above, unions gain access to negotiate sectoral agreements based on the number of delegates they obtain in works council elections. An employer organization is considered representative at the sectoral level when it represents at least 10% of the employers in the sector who employ at least the same percentage of workers within the geographical territory of the bargaining unit.¹⁵ However, absent a correlate of the works council elections for employers, there is no clear test of an employer associations' real representativeness. In practice, in those sectors with a relatively strong culture of employer organization, this is rarely a controversial matter. In others, however, significant disputes may arise regarding the legitimacy of the employer association.

These complex criteria and the problems associated with them reflect the highly unusual origins of the current structure of collective bargaining. At the beginning of the Francoist dictatorship, independent unions and collective bargaining were prohibited, with wages and working conditions set by the Ministry of Labor. Both workers and employers were required to join the vertical syndicates of the Spanish Syndical Organization (Organización Sindical Española, OSE); however, for many years the OSE provided only social services and relatively ineffective legal representation for workers in the case of disputes. In 1958, the regime introduced limited collective bargaining. Larger firms could bargain over a narrow range of issues (wages and little else) with workplace representatives in the *jurados*, precursors to the current works councils (*comités de empresa*). At the same time, sectoral agreements could be reached within the vertical syndicate itself, with the organization's bureaucrats representing both parties.¹⁶

When the vertical syndicates were dissolved during the transition to democracy, they left a legacy of thousands of sectoral collective bargaining units without bargaining agents. In the context of severe economic crisis and high levels of worker conflict, finding interlocutors to renegotiate these agreements was a key political priority. Recognition of the most representative union organizations through works

¹³ In 2009, there were 348,106 conflicts resolved by the Spanish labor courts. However, contrary to the claim repeated incessantly in the Spanish media from left to right in recent times that this is the number of "collective" conflicts, the actual number of collective conflicts resolved in the courts was only 2,263 (which amounts to about 40% of the total number of agreements in force).

¹⁴ In 2006, there were more than 5000 collective bargaining agreements in force in Spain. Firm-level agreements were of course the most numerous, but only affected 9.25% of workers, while the 900-odd provincial (sectorial) agreements affected 55.5% of all workers. 27.4% of workers were covered by one of the 60-some national agreements. See Márquez Sánchez, 2008.

¹⁵ Workers' Statute, art. 87.3. Note that this criterion allows an association of small firms in a given territory to exclude from the bargaining table a single large employer that provides more than 50% of all employment in the region or province. The 2011 reform changes these criteria to make an association representative when its members employ at least 15% of all workers in the unit. This change was a response to pressures by large firms in certain sectors excluded from the provincial bargaining table by associations of SMEs seeking to impose costs on their larger competitors in the form of wages and working conditions that the smaller firms would simply not enforce. Interviews with human resource directors of large firms, members of executive committee CEOE, Spring 2011.

¹⁶ In a limited number of cases, worker representatives connected to the democratic opposition were successful in infiltrating lower levels of sectoral bargaining, a strategy that was largely repressed after 1968. See Amsden, 1974.

council election results provided a relatively transparent heuristic at a time when no objective data existed on membership in the many fledging unions.¹⁷

The identification of employer representatives followed an altogether different script. Except in a few sectors in regions characterized by intense industrial conflict during the waning years of the dictatorship, most of the employer representatives for sectoral agreements were not truly independent associations of leading employers but rather small law firms created by former employees of the vertical syndicates who previously had been responsible for negotiating these agreements. In a minority of cases, these opportunistic former bureaucrats would end up building effective forums for the coordination and aggregation of employers' preferences. In many others, however, these new employer associations' activities would be largely limited to resisting as best they could unions' demands for higher wages and fewer working hours and copying into their sectoral agreements, often word-for-word, changes in legislation or agreements reached by the peak inter-sectoral organizations.¹⁸ Indeed, in sectors where employers' associational activities were (and generally still are) particularly weak, sectoral (provincial) collective bargaining agreements are often negotiated by territorial rather than sectoral organizations; in these cases, those representing employers at the negotiating table often have no experience in the sector.

Collective Bargaining Agreements as Law

One important consequence of the structure of collective bargaining in Spain is that, for all but the largest employers or the exceptional entrepreneur who saw a business opportunity in taking over the regional employer association in his or her sector,¹⁹ sectoral collective agreements are virtually indistinguishable from labor legislation. This gap between employers and their putative representatives is reinforced by the institutional mechanisms through which collective bargaining agreements are communicated and applied. On a largely symbolic level, all sectoral and most firm-level collective bargaining agreements have the status of laws rather than private contracts and, as such, are published in the official state bulletin announcing legislative changes, regulations and public tenders. This practice, an artefact of the dictatorship, may well reinforce the impression that those negotiating sectoral agreements are officially-sanctioned technocrats setting rules to which all but a few especially influential firms must conform. As the president of the Economic and Social Council from 1992 to 2001 explained, "It's surprising that employers and unions legislate. However, this situation is unlikely to change over the short term because *many people make a living from collective bargaining*."²⁰

The second factor distancing employers from the process of collective bargaining is the way in which collective agreements are applied. The management of labor relations in Spain is a narrow professional specialization. Most large firms, whether they have a firm-level agreement or apply a sectoral accord, have dedicated labor relations staff responsible for managing discussions with worker representatives in the firm and overseeing the application of collective agreements. Until at least the mid-1990s, human resource policies in Spain were generally managed by "personnel directors" (*directores de personal*) rather than specialists in human resources. Most of these directors were trained as lawyers or "social graduates" (formerly a three-year technical degree program and now a four-year university degree focused almost exclusively on employment law and labor relations); in either case, it was extremely unusual for these managers to have any significant training in human resource management (Guillén, 1994 and Consejo General de Colegios Oficiales Graduados, 2011). To the extent that human capital played a role in firms' strategic thinking at all, their concerns were almost entirely restricted to minimizing labor costs

¹⁷ The 10% figure was arrived at by the governing center-right UCD as a way to ensure that both the Socialist party linked UGT and the then-stronger Communist party linked CC.OO. would both be recognized as most representative organizations, ensuring a divided union movement and, hence, a weaker Left opposition in parliament. See Fishman, 1982.

¹⁸ This can be easily confirmed by even the most cursory review of sectoral agreements.

¹⁹ A typical employer association at the provincial level will charge annual dues of some 20-30 Euros/employee. Given the extremely limited services offered, staffing is minimal at best, meaning these associations can be extremely lucrative for their promoters. Personal communication, senior labor relations manager, participant in multiple collective bargaining units across Spain.

²⁰ Comments of Federico Duran. *Expansión*, July 21, 2006. The italics are mine.

and increasing flexibility, particularly through the use of temporary contracts to minimize the number of workers eligible for the seniority rights spelled out in the law and in collective bargaining.

Today, human resource directors in most larger firms are not labor relations experts; however the divide between labor relations and human resource concerns remains largely in place. During the years of economic resurgence from the mid-1990s through late 2007, there was often little integration of the existing labor relations function into the new concerns of the human resources department—the structure and content of employee development, incentive compensation for key personnel, and the like. Indeed, my research suggests that human resource directors often express little interest in labor relations questions, considering collective bargaining and works council relations to be a largely technical matter setting limits on salaries, hours and working conditions (Dubin, 2012). Business education in Spain reinforces this limited coordination between human resource and labor relations specialists. Given the density of the regulatory framework governing employment in Spain, there is an almost shocking lack of attention paid to labor relations and labor law in general business education (MBAs and the like).²¹ The historical consolidation of both the labor relations profession—social graduates, labor lawyers, union negotiators, labor inspectors, judges and their staffs in the labor courts—and the degree programs managed by these same professionals prior to the creation of human resource education and the correlative profession in Spain goes some way toward explaining this bicephalic structure of human capital management.²² This profound division within the world of human capital management has only been deepened by the fact that Spanish MBA programs, first developed in concert with leading U.S. universities during the 1960s, provide human resources management training that mimicks the American curriculum's indifference to labor relations (Puig, 2003).

In smaller firms (to the extent that the human resources position exists at all), a similar division of labor exists. In fact, the separation between the labor relations function and human resource management in smaller firms is often even starker than in their larger counterparts: firms delegate labor relations functions to small business administrators (*asesorías* or *gestorías*) that are a prominent feature of the commercial infrastructure in even the smallest Spanish town.²³ Interviews with these intermediaries reveal that they are the only direct link between sectoral collective bargaining agents and most small firms.²⁴ The unanimous view of the advisors interviewed is that their clients do not make any distinction between employment law and collective bargaining agreements; both are simply viewed as external constraints on their freedom to manage.

The Consequences of Distance

The significant distance between the negotiators of most sectoral collective bargaining units and the employers and workers they claim to represent conditions the contents of bargaining. Although the range of topics open to collective bargaining (i.e., no longer legally mandated) was expanded substantially in 1994 (contracts, hours, job categories, probationary period, etc.), many sectoral agreements continue to include little more than a list of job classifications and the salaries associated with each category, the total hours to be worked, a list of sanctionable worker actions with their associated penalties and the occasional direct transcription of legal changes or agreements reached by the national level social partners.²⁵

²¹ Specialists in labor relations almost never teach Human Resource classes at the major business schools and labor relations are almost entirely absent from the content of these classes. Labor relations specialists are generally trained in separate, specialized programs.

²² The publicly sanctioned, self-regulating professional association—the College of Social Graduates—was created in 1956. General business education programs in Spain were not really launched until the early 1960s. Consejo General..., 2011.

²³ There are almost 50,000 firms of this type in Spain. Escobar, 2011.

²⁴ Two roundtables carried out during early 2011 in the context of the project cited in fn 1 and many more informal conversations.

²⁵ The 2011 reform may well augment this distance in regions with little associative activity, as it permits the national employer association to negotiate sectoral, provincial agreements on behalf of local employers when there is no local association that can certify a membership level of at least 10%.

Even in sectoral negotiations led by employer associations that are relatively responsive to the firms they represent, it is extremely rare for the employer side to present unions with a platform of key demands. The so-called “employer offensive” widely documented in collective bargaining across Europe has been conspicuously absent in most sectors in Spain.²⁶ The leaders of employer associations have precious little to gain from engaging in dialogue with their members, as automatic extension of collective bargaining agreements guarantees their income. Closer examination of the details of the bargains they conclude might well threaten their positions of leadership and even give rise to challenges from newly created organizations. The limited dialogue between most sectoral employer associations and the employers on whose behalf they bargain places an obvious limit on the associations’ abilities to aggregate interests and develop cohesive bargaining positions; the typical association’s almost purely defensive negotiating strategy is a logical consequence of the dynamics of this relationship.

Union Disincentives to Organizing

Union representatives at the sectoral bargaining table often face similar incentives to minimize dialogue with their base. Most union bargaining agents are partially or fully “liberated” from their full-time positions in other organizations (firms, the public administration, private educational institutions, etc.). The term derives from the fact that works council representatives are entitled to dedicate a certain number of work hours to council and union business. Because these hours can be distributed irregularly among the members of the council, one or more works council representatives in larger firms often dedicate all of their time to union business. These *liberados* form the backbone of the full-time union staff; many negotiate sectoral collective bargaining agreements, and they may often do so for sectors about which they know quite little.

While union officials may claim to be committed to increasing affiliation rates, the reality is more complicated. The activities of works council representatives face far less scrutiny in firms where union affiliation is low (or non-existent) than in those where worker organization is significant; as a result, union elections in these low-affiliation sectors are rarely competitive affairs. Given the importance of works council elections to sectoral union officials’ accountability, limited contestability at the firm level also implies less pressure on sectoral union officials (especially at the provincial or regional level).²⁷ In sum, in many sectors the low interest-aggregation equilibrium described with respect to employers also applies to the union side of the equation. Not surprisingly, the collective bargaining agreements in these sectors are largely limited to the most basic issues outlined above, as no party at the negotiating table has strong incentives to press for significant changes.

Conflict Resolution

During the Francoist era, workers’ (individual) rights could only be defended legally by labor inspectors or through the specialized labor courts that were significantly expanded from the earliest days of the dictatorship.²⁸ Despite the significant reach of the opposition labor movement during the final years of the dictatorship, these courts were the only real recourse available to the overwhelming majority of Spanish workers before the transition to democracy.²⁹ When limited collective bargaining rights were reintroduced in the late 1950s, the agreements reached were considered to be laws. Not surprisingly, the juridification of employment relations quickly expanded to include collective as well as

²⁶ The absence of employer-side sectoral negotiating platforms was commented by numerous labor relations and human resource directors in our study.

²⁷ These dynamics do not apply in traditionally unionized sectors of the economy (although they may certainly exist at the provincial level in such sectors when there is little economic activity in the sector in that area).

²⁸ The fascist Falange that was most powerful within the Francoist regime at its very beginnings, was the main force behind the creation of the Mussolini-inspired *Fuero de Trabajo* (Workers’ Charter) in 1938 while the Civil War was still far from decided. They were also the main proponents of the expansion of the Magistraturas de Trabajo, or Labor Courts. See Babiano Mora, 1998, Chapter II.

²⁹ Even today, 25 years after the name of the courts was changed to *Juzgados de lo Social*, many Spaniards continue to speak about going to “Magistratura” to defend their employment rights.

individual rights. The highly juridicized culture of employment relations consolidated under the Franco regime continues to cast a long shadow over contemporary dynamics.

For my purposes here, several points related to the management of collective relations are particularly relevant. Despite their claims to the contrary, the representative unions and employer associations demonstrate that they often view the labor courts as the most effective way to resolve their conflicts. Since 1989, these organizations have developed bipartite institutions for conflict resolution at the national (1995) and Autonomous Community levels. However, their greater confidence in the courts can be measured by comparing the relative utilization of these institutions for extrajudicial conflict resolution with the labor courts. At the national level, where the courts have far less jurisdiction than the bipartite institution (SIMA), in a typical year the national court resolves dozens of times the number of conflicts solved through arbitration in the SIMA (in 2010, the ratio was 273:3) (CGPJ, 2011 and Fundación SIMA, 2011).³⁰ The extraordinary level of juridification in contemporary Spanish labor relations can be seen in the fact that the approximately 5000 collective agreement in force currently generate more than 2000 court disputes in a given year.

In my discussions with legal representatives of all the major producer organizations, they have repeatedly expressed their confidence in the ability of the courts to resolve juridical disputes regarding the interpretation of their collective bargaining agreements. Ironically, this confidence has created a culture in which bargaining agents frequently leave the language of their agreements purposefully ambiguous because they find it easier to delegate the resolution of their conflicts to the courts. This confidence in the courts and the subsequent obscurantist language that it encourages reinforce the autonomy of the bargaining agents from their bases; if they themselves cannot easily interpret their own agreements, it is extraordinarily difficult for others to contest the positions they adopt and, thus, to dispute their authority. Perhaps not surprisingly, the minutes of the negotiations of sectoral agreements are not public documents; in a telling detail, however, they are frequently used by the bargaining agents themselves as they attempt to resolve their differences in the labor courts.³¹

V. From Incentives to Resources: The Politics of the Status Quo

Figures regarding the exact number of bargaining agents for sectoral collective agreements and those involved in the administration of the legal framework of labor relations in Spain are impossible to come by; however, several experts consulted suggest that the number of those involved in collective bargaining alone is likely to exceed 10,000. These actors comprise a cross-class coalition in favor of the existing structure, process and, in many respects, contents of collective bargaining. While common interest alone does not provide actors with the organizational and political resources necessary to impose their preferences on others, these bargaining agents have managed—at least until the most recent labor market reform—to defend the status quo against all challengers.

The above discussion has already described a number of the most critical resources deployed by these bargaining agents in the defense of their interests. First, their accountability to those employers or workers on whose behalf they negotiate is often quite limited. The rules governing representation at the sectoral bargaining level and the automatic extension of collective bargaining agreements to all firms reduce incentives for building closer ties with most employers and workers and, as a result, for the development of innovative content. Collective bargaining agreements that assume (albeit implicitly) continuity in forms of work organization and employment relations in general and, therefore, focus on a limited range of issues like the size of overall salary increases and total working hours avoid raising the stakes of bargaining in ways that might encourage more organized opposition to the privileged position currently enjoyed by so many of these bargaining agents.

Second, the incumbent players dominating the current labor market institutions can make plausible claims to possessing a near monopoly on the expertise required to manage the labor relations sys-

³⁰ My thanks to Francisco Gómez-Abelleira for drawing my attention to this issue.

³¹ Personal communication with multiple officials from employer associations and unions.

tem and the administrative structure of individual rights. Both the collective bargaining system and the mechanisms for resolving both individual and collective differences between employers and workers often revolve around interpretations of the law and its limits, while differences among the negotiating parties are commonly resolved through the courts. The weaker the links between the bargaining agents and the parties they represent, the more likely the parties are to resolve their differences through battles over legal minutiae. The juridification of conflicts and dispute resolution thus provides a strong competitive advantage to worker and employer representatives in the most poorly organized sectors.

If the above factors are sufficient to explain why the problems the current framework of labor relations generates for SMEs have not been addressed, the same is not true for larger firms. However, as I have discussed, larger firms are generally able to put in place the human resource policies they need to maintain their competitiveness. While they may well complain about the costs of layoffs or difficulties in achieving internal flexibility, the reality is that those firms most exposed to international competition have largely been able to maintain world-class standards of labor productivity.³² The large firms that complain about the labor relations framework and who tend to voice neoliberal criticisms regarding the rigidities of the Spanish labor market are not those competing in world markets but rather those firms whose dominant position in domestic product markets has allowed them to manage labor “ideologically” rather than pragmatically and to pass on to their suppliers and customers the costs of their resistance to institutional incentives for collectively managed labor adjustment. Only with the arrival of the current crisis and the subsequent pressures on their margins have their complaints been transformed into more active advocacy of significant legal reforms (Dubin, 2012).

Finally, the authority of the main social partners has long been reinforced by their rhetorical claims to a supposed right to manage the labor relations system without political interference. The rhetorical cornerstone of this “autonomy” is the social partners’ claim that labor market reforms should only be pursued through social dialogue. The current crisis has precipitated the repeated collapse of social dialogue and emboldened both Socialist and Popular governments to pursue major labor market reforms unilaterally. The deployment of social dialogue as a rhetorical tool to defend institutional prerogatives has apparently collapsed under the weight of a crisis that has enabled outsiders to successfully press their demands for a wholesale restructuring of the rules governing the Spanish labor market. The rapidity with which Spanish labor market regulation has been transformed can be understood more clearly when we see how little social dialogue has accomplished for anyone but its protagonists.

Social Dialogue as Power Resource

Social dialogue is defined by both unions and CEOE as an exercise in self-management, what they refer to as “autonomy” from the government. They deploy this term to denounce efforts by politicians that are assumed to encroach on issues that only *they* have the right to manage. The organizations take pains to assert their autonomy symbolically. For example, CEOE invited the Secretary Generals of both CC.OO. and UGT, but not a single politician, to the ceremony celebrating the retirement of its long-time president, José María Cuevas.³³ Similarly, they deploy the term to reject government policies they dislike as initiatives treading on the “social partners” exclusive responsibilities. Queried about the consequences of the PP’s 2002 labor market decree reforms, the Secretary General of UGT responds,

I lament that the government’s position has contaminated social dialogue between the unions and the employer association. Together we’re going to try to preserve this space. The government has acceded to one of the employers’ longtime demands [lower layoff costs], but I’m confident they are not very content with the how or the when [just prior to the renegotiation of the national collective bargaining guidelines accord].³⁴

³² See fn 10.

³³ El País, June 6, 2007. Given the frequent meetings and signing ceremonies between Cuevas and senior politicians, along with the attendance of all three organizations’ leaders at major political ceremonies, the failure to invite politicians to the event was clearly designed to send a message to the political class.

³⁴ ABC.com June 17, 2002 interview with Cándido Méndez, Secretary General, UGT.

If social dialogue means the rejection of global pacts and a commitment to protecting core values through a process in which organizational autonomy is safeguarded, it stands to reason that the process may collapse at any time. This institutional vulnerability has long been addressed by frequent assertions that social dialogue is a continual and enormously valuable process *regardless* of the results achieved. CEOE's next president, Gerardo Díaz Ferrán, declared in his inaugural speech that social dialogue with the unions and the government would be one of his main priorities because "things must be permanently renewed."³⁵ One rhetorical strategy to deflect from the scarcity of social dialogue's results is the claim that it contributes to social peace and sets a standard of civic culture for both politicians and society at large. According to the then Secretary General of CC.OO., José María Fidalgo, social dialogue provides "social cohesion" simply by bringing the parties together.³⁶ More expansively, Cuevas of CEOE declared at the signing ceremony for the 2006 reform that, "With this responsible exercise in collaboration we aim to offer a certain example for Spanish society at a moment in which attitudes of compromise, understanding, agreement or consensus are lacking. We are the *commando of calmness* [comando del sosiego]."³⁷

Events that took place over the summer and fall of 2001 provide important perspective on these comments. The government had participated actively in the development, with the participation of both CEOE and the dominant unions, of two quite radical reforms of the structure and content of collective bargaining—the Bentolilla proposal (developed by a team of highly respected, mainstream labor economists) and the Plan Durán (developed by a prominent legal scholar and employer-side defense attorney). In addition to these two proposals sponsored by the Ministry of Economy, the Ministry of Labor developing three further proposals over the months of negotiations in an effort to bring CEOE and the main unions closer together.

Why did the PP not pursue a legislative solution in the face of union resistance to some of these proposals? After all, the PP enjoyed an absolute majority after the 2000 elections, so these efforts to promote a radical decentralization of collective bargaining, to put an end to the legal status of collective bargaining agreements and to do away with ultraactivity could easily have been legislated. The answer lies in the fact that CEOE was also opposed to many of the changes that the Ministry of Economy was so anxious to put in place, particularly eliminating the legal status of collective bargaining agreements and the decentralization of bargaining. The entire effort was abandoned when both CEOE and the unions turned on the government for attempting to "interfere" in an issue that they viewed as their exclusive domain.³⁸

Asked his opinion of the new 2006 labor market reform, the former president of the Social and Economic Council and promoter of the Plan Durán declared his disappointment that the accord failed to introduce much-needed changes in the labor market, only to conclude that, "...the critical thing is that the tradition of social dialogue has been maintained."³⁹ This same position was voiced by senior officials of the Labor Ministry in the course of negotiations leading up to the 2006 reform: "It doesn't have to be a grand reform...but whatever measures we approve will be based on a consensus with the social partners."⁴⁰ This claimed reluctance to pursue reforms without consensus surfaced again as Ministry of Labor officials for the Zapatero government responded to disputes among the social partners regarding a new calculation for increases in the minimum wage: "We would not wish the process of social dialogue to become undone for this. We'll leave it to the end of the Legislature."⁴¹

³⁵ El País, February 15, 2007.

³⁶ ABC, October 11, 2005.

³⁷ Expansión, February 7, 2007.

³⁸ For a summary of these negotiations, see García-Perrote, Ignacio. 2008. "La reforma de regulación legal de la negociación colectiva: estructura y contenido," in Various Authors. *La reforma del sistema de negociación colectiva y el análisis de las cláusulas de revisión salarial* (Madrid: MTIN); 27-56. Note that, by contrast, in France, when the Right is in power, Medef does not defend in nearly so strident terms the importance of the social partners' autonomy from the government. See Pélissier et al. 2008. *Droit du travail* (Paris: Dalloz), p. 27.

³⁹ Interview with Federico Durán, May 6, 2006, *Expansión*. It should be noted that *Expansión* is the largest circulation Spanish business daily and has a liberal ("free" market) editorial line sympathetic to Durán's call for far more profound labor market reforms. The Social and Economic Council is an advisory board composed of representatives from the government, the most representative unions and CEOE, and representatives of consumer groups. It is charged with analyzing economic and social policy and the development of labor relations; it also emits opinions on relevant legislative projects.

⁴⁰ ABC, October 11, 2005.

⁴¹ El País November 11, 2006.

The grandiloquent claims of social dialogue's proponents suggest a widespread commitment to strengthening an institution that is of vital importance for the Spanish political economy. It therefore bears repeating that the only significant reforms in the regulation of the labor market since the Transition to democracy have been imposed through legislation.⁴² More perplexing still, the proponents of social dialogue have invested the institution with expectations that are fundamentally incompatible.

For CEOE, social dialogue is an institution that can contribute to the realization of their fundamental goal of a more flexible, less regulated workplace in which government intervention ceases to be an obstacle in an ever-changing marketplace.⁴³ For the unions, social dialogue is an institution that can contribute to their core objectives of increasing cohesion and equality across social classes and supporting firms' efforts to compete on quality rather than price.⁴⁴ To understand what these goals mean in practice, we need to examine specific issues that have generated disputes within the process of social dialogue.

For the unions, social dialogue is a process through which they can negotiate an increased presence at the firm level throughout the economy. They consider this presence essential for building an economy in which greater flexibility is granted employers in exchange for a substantive employer commitment to decent jobs. To this end, they had proposed to CEOE the creation of union workplace safety delegates that would be assigned to a given territory with the mission of advising workers at smaller firms without dedicated safety delegates. The unions suggested that the government legislate the obligatory assignment of a specific number of delegates for each sectoral collective bargaining unit, arguing that "...the employers [i.e., bargaining agents from sectoral employer associations belonging to CEOE] will refuse to negotiate this innovation." CEOE was radically opposed to this move, explaining that, "in reality, the unions are trying to take one step forward toward greater involvement in questions of firm management."⁴⁵

In the event, the unions managed to gain employer association support for territorial safety delegates in just one sectoral collective bargaining agreement—the construction sector in the province of Asturias. The possibility of a territorial delegate was recognized in the national chemicals agreement, but only when the lead firm or firms within a complex collaborative arrangement were in agreement. Meanwhile, several Autonomous Community governments sought to promote these delegates, but the legal status of these efforts is unclear.⁴⁶

Similarly, the unions, with the support of the Socialist government, sought to reduce firms' abilities to sweat labor by treating as subcontractors individuals who are in reality employees. The unions proposed that independent contractors who earn more than 75% of their income from a single client (and have no employees of their own) be able to pursue disputes with their "employer" through the labor law courts rather than those dedicated to commercial law. A shift in jurisdiction would have meant a faster resolution of cases and free legal counsel for the subcontractor. Moreover, the labor courts would likely be far more receptive to the subcontractors' demands than the mercantile courts. For CEOE, the proposal would have created serious problems for employers' "juridical security."⁴⁷

Underlying this dispute was the more vexing issue of which organizations have standing to speak for subcontractors, traditionally "represented" by an association within CEOE. This arrangement had been challenged by federations linked to the unions that demanded not only a change of jurisdiction for dispute resolution but also unemployment compensation, early retirement privileges and an independent seat on the Economic and Social Council.⁴⁸ In other words, the unions not only sought to keep firms from reducing worker rights through outsourcing to dependent contractors, but also to increase their uni-

⁴² The one true exception to this rule, the Moncloa Pacts of 1977, were an extraparliamentary pact among the major parties from which both the main unions and CEOE were excluded.

⁴³ Editorial by new president of CEOE. *ABC*, July 28, 2007.

⁴⁴ CCOO.es and UGT.es. See final programs from their respective last conventions.

⁴⁵ *Expansión*. November 24, 2006.

⁴⁶ I thank Patricia Nieto for her comments on these developments.

⁴⁷ *Expansión*. September 26, 2006.

⁴⁸ *Ibid.*

verse of potential members. Meanwhile, CEOE was hard-pressed to accept changes that would restrict employer rights in this field when the proposed changes would not only have reduced employer discretion but also would have challenged the very existence of an association affiliated to the organization.

That these seemingly irreconcilable disputes about jurisdiction were allowed to intrude on the agenda of social dialogue calls into question claims that it is a process designed to promote consensus. Indeed, the Zapatero government eventually adopted much of the unions' position on this issue in the Law 20/2007, 11 July, the Statute of the autonomous worker. Critically for the argument developed here, the changes were imposed wholly through the legislative process as the process of social dialogue was unable to move the issue forward.

A similar dispute raged over proposed revisions to the Law for Public Contracting. The unions, with the support of experts from the Economic and Social Council, proposed that the law prohibit firms that win public contracts from subcontracting any of the awarded contract to firms that in turn subcontract. There is a clearly established link between these subcontracting chains and a myriad of worker abuses and workplace accidents that representatives of CEOE have recognized and affirmed in public settings such as the Economic and Social Council. Yet, while supposedly committed to addressing these problems through social dialogue, CEOE bitterly opposed the proposal, arguing that it would create "juridical insecurity" and failed to take into account the evolving structure of firm organization.⁴⁹

These episodes illustrate the profound and wholly incompatible objectives that CEOE and the majority unions hope to realize through social dialogue. For the unions, social dialogue is an opportunity to gain employer buy-in for new institutional arrangements that will strengthen their ability to regulate the workplace, whether workers are union affiliates or not. For CEOE, social dialogue is yet another forum through which the "discretion" of employers to manage as they see fit can be protected and, if possible, reinforced; any proposal that gives unions an opportunity to check employer strategies, whether through a greater presence in the firm or through the promotion of new legal restrictions agreed in social dialogue is, quite simply, a non-starter. Despite public rhetoric recognizing that many Spanish firms need to be prodded away from their reliance on precarious employment and low-cost production, CEOE's primordial commitment to its members is that it will safeguard at all times employer discretion against governmental and labor incursions.⁵⁰ Critically, however, as we have seen, this does not mean that CEOE's leaders want to do away with the institutions of collective bargaining, as these institutions are critical to the survival of the organization.

Social dialogue has been presented as a vehicle for both preserving the national market and maintaining social peace. To the extent that leading business and government elites believe that social dialogue promotes these goals, they will be loathe to challenge the institution. While the economic consequences of social dialogue are surprisingly limited and the degree of consensus regarding its objectives superficial, the unions and CEOE—along with governments of both the Right and Left—have long found in social dialogue an institutional cushion shielding them from important changes in their external environment. Unable to agree about how to regulate the labor market, much less identify joint preferences with respect to welfare retrenchment, social dialogue has served as a flexible barrier that has enabled the social partners to resist efforts to encroach upon their authority and institutional privileges.

Conclusion

The Spanish social partners and successive governments have repeatedly attempted to reform a labor market that clearly suffers from numerous structural problems often linked to the formal rules governing employment relations. The substance of these reforms, particularly those agreed to by the social partners, have historically been quite limited. These limitations raise an important political question: how is it that the existing institutional framework has not been more successfully challenged by the

⁴⁹ *Expansión*. February 21, 2006.

⁵⁰ Employer discretion has been a central employer trope since the Transition to Democracy.

many employers and citizens who are clearly prejudiced by the current arrangements? The traditional answer to this question lays blame largely at the doorstep of unions and the insiders they represent.

In this article, I have shown that this answer is inadequate. In particular, the persistence of an extraordinarily complex structure of collective bargaining that has encouraged adjustment through employment levels rather than through internal flexibility has only been possible because it has been ably defended against multiple challenges by a robust, cross-class coalition of employer organizations, labor relations specialists (both within and outside the public administration), unionists and permanent workers with long tenure.

The labor market reforms imposed by the Socialist party in 2010 and 2011 over the angry opposition of the dominant unions and CEOE would likely have reinforced the dynamics that I have described in this article. On the one hand, those employers who were able to reach collective agreements with shopfloor representatives would have been able to pursue ever less expensive dismissals as they sought to respond to the shocks of the current crisis and market insecurities. Such solutions appeared to continue to be out of reach of the smaller and less sophisticated firms that have long been prejudiced by the current regulatory framework; in other words, the Socialists' reforms appeared to once again reinforce the divide between a minority of firms that is able to adjust well to new challenges and those whose competitive prospects are handicapped by labor market regulations.

Consider the critical and highly contentious issue of multi-level bargaining. The 2011 reform of collective bargaining permitted firm-level agreements to take precedence over sectoral accords absent the existence of a sectoral agreement at the national or Autonomous Community level that specifically reserved certain themes for that level. In such significant sectors as metalworking, construction and chemicals, the majority producer organizations managed to sign new sectoral agreements in record time during the fall of 2011 to avoid just such an outcome.

Similarly, the 2010 reform strengthened incentives to collectively negotiated adjustment by limiting the ability of individual workers to challenge collectively negotiated agreements in the courts. Once again, this reform in reality deepened the chasm between sophisticated and unsophisticated firms (and between larger and smaller ones) by providing the former with a major tool for imposing rapid and minimally consensual adjustment that is largely unavailable to those firms lacking access to the counsel of experienced labor relations professionals.

At the same time, the 2010 reform facilitated the constitution of ad hoc committees to negotiate collective solutions in the absence of formal workplace representatives, apparently providing a shortcut to internal adjustment for firms that have long been denied this option. The dominant unions opposed this element of the reform more than any other (CC.OO. and UGT, 2011). My analysis makes clear that this opposition was rooted in the challenge of these committees to two of the unions' core power resources—the unions' control over the content of collective bargaining and their role as intermediaries between workers and the highly judicialized system of conflict resolution. However, I believe that the unions' fears were largely overstated. On the one hand, if the employers targeted by this reform—those I have identified as *outsiders* in the current labor relations system—were to have taken advantage of this new possibility, the unions might well have found themselves forced to dedicate far greater resources to organizing long-excluded workers, something that would likely to have been good for both the unions and Spanish workers as a whole. On the other, it is highly unlikely that this reform would have led to a substantial transformation in the ways in which these outsider firms adjust in the face of competitive challenges.

One of the central resources of the dominant actors at the center of the Spanish labor relations system is, as I have documented throughout this article, their virtual monopoly over an extraordinarily complex regulatory apparatus that is rooted in highly legalistic rituals and legitimated in part by the rhetorical commitment of the political class to the institutions of social dialogue. The ever-changing patchwork of labor market reforms is so complex that only a small number of experts are able to readily interpret and take advantage of the opportunities that the law objectively offers to employers. The resulting veil of ignorance in which most employers and workers operate has long reinforced the power of the labor market insiders. At its root, the very process through which various actors have tried to transform the Spanish system of labor relations over the last 25 years has been one of its most important sources of stability.

This stability is challenged as never before by the 2012 labor market reform. A series of threats to the leadership of CEOE from within and without,⁵¹ the ascendancy of neoliberal ideology within important segments the Popular Party and the Spanish managerial class, and of course the depths of the current labor market crisis in Spain and international pressures for wholesale labor market reforms as a solution to financial crisis have all served to delegitimize the existing system of labor market regulation.

However, the incumbent beneficiaries of the system of labor market regulation as it existed before this latest reform will not go down without a fight. Judges and employer-side lawyers have suggested that larger firms that take an expansive view of their new powers do so at considerable risk. Meanwhile, it will take some time to see whether smaller firms are able to negotiate their own collective agreements. Many experts believe that firms will continue to prefer to adjust through levels of employment rather than internal reorganization: such an outcome would be truly disastrous for the Spanish people and, perhaps, the future of Europe.

Bibliography

- AMSDEN, J. (1974), *Collective Bargaining and Class Conflict in Spain* (London: London School of Economics and Political Science).
- ANTRÁS, P. (2011), El misterio de las exportaciones, *Elpaís.com*, 29 May
- ANTRÁS, P. (2010a), La Nueva-nueva teoría del comercio internacional y el comportamiento de las exportaciones españoles, (1 November), <http://www.fedeablogs.net/economia/?p=7234>.
- ANTRÁS, P. (2010b), El comportamiento de las exportaciones españolas: algunos resultados más, (28 December), <http://www.fedeablogs.net/economia/?p=8506>.
- BABIANO MORA, J. (1998), *Paternalismo industrial y disciplina fabril en España, (1938-1958)* (Madrid: Consejo Económico y Social).
- Comisiones Obreras and Unión General de Trabajadores (2011), Proposición de Ley. Empleo Estable y Derechos. Iniciativa Legislativa Popular. Available at their respective websites, ccoo.es and ugt.es.
- Consejo General de Colegios Oficiales Graduados (2011), *Historia de los graduados sociales* (Madrid, Thomson Civitas).
- Consejo General de Poder Judicial (CGPJ) (2011), *The Spanish Judiciary in Figures, 2010*. (Madrid: CGPJ), available at <http://www.poderjudicial.es/eversuite/GetRecords?Template=cgpj/cgpj/principal.htm>.
- DOLADO, J.J., F. FELGUEROSO and M. JANSEN (2010), Quiénes son los insiders, in J.J. Dolado and F. Felgueroso, eds., *Propuesta de reactivación laboral en España* (FEDEA), 68-79. E-book available at http://www.crisis09.es/propuesta/?page_id=755.
- DUBIN, K.A. (2012), Adjusting to the Law: The Role of Beliefs in Firms' Responses to Regulation. *Politics & Society* (Published Advanced Access, February 27).
- EMMENEGGER, P. et al., eds. (2011), *The Age of Dualization: The Changing Face of Inequality in Deindustrializing Societies* (Oxford: Oxford University Press).
- ESCOBAR, E. (2011), Asesoría e innovación, *Cinco Días*, 2 June, p. 19.
- FISHMAN, R.M. (2012), Anomalies of Spain's Economy and Economic Policy-Making, *Contributions to Political Economy* (Published Advanced Access, May 15).
- FISHMAN, R.M. (1982), The Labor Movement in Spain: From Authoritarianism to Democracy," *Comparative Politics*, 14: 3 (April), pp. 281-305.
- FUNDACIÓN SIMA (2011), *Memoria de Actividades 2010* (Madrid: Fundación Sima), available at <http://fsima.es/datos-de-actividad/informes-de-actividad/>.

⁵¹ Leaders of several territorial associations within CEOE (particularly the powerful CEIM in Madrid) whose membership is dominated by SMEs appear to believe that their power within the organization will be strengthened if sectoral bargaining is largely eliminated.

- GUILLÉN, M. (2000), Organized Labor's Images of Multinational Enterprise: Ideologies of Foreign Investment in Argentina, South Korea and Spain *Industrial & Labor Relations Review* 53(3) (April): 419-442.
- GUILLÉN, M. (1994), *Models of Management: Work, Authority and Organization in a Comparative Perspective* (Chicago: University of Chicago Press).
- International Monetary Fund (2011), *Spain*, IMF Country Report No. 11/215, (July), available at <http://www.imf.org/external/pubs/ft/scr/2011/cr11215.pdf>
- KOHLER, C. and J. WOODARD (1997), Systems of Work and Socio-Economic Structures: A Comparison of Germany, Spain, France and Japan, *European Journal of Industrial Relations* 3:1 (March): 59-82.
- MÁRQUEZ SÁNCHEZ, F. (2008), EL ANC Y LA NEGOCIACIÓN COLECTIVA PARA 2006, Various Authors. *La reforma del sistema de negociación colectiva y el análisis de las cláusulas de revisión salarial* (Madrid: MTIN); 97-107.
- NAVARRO, V., J.T. LÓPEZ and A. GARZÓN ESPINOSA (2011), *Hay Alternativas. Propuestas para crear empleo y bienestar social en España* (Madrid: Sequitur, ATTAC España). E-book available at www.rebellion.org/docs/138182.pdf.
- OECD (2010), *OECD Economic Surveys: Spain 2010* (OECD Publishing, Paris).
- PUIG, N. (2003), Educating Spanish Managers: The United States, Modernising Networks, and Business Schools in Spain, 1950-1975, in R.P. Amdam et al, eds., *Inside the Business Schools: The Content of European Business Education* (Copenhagen: Copenhagen Business School Press).
- RIGBY, M. and M.L MARCO ALEDO (2001), The Worst Record in Europe? A Comparative Analysis of Industrial Conflict in Spain, *European Journal of Industrial Relations* 7.
- TOHARIA, L. and M.A. MALO (2000), The Spanish Experiment: Pros and Cons of Flexibility at the Margin," in *Why Deregulate Labour Markets?* ed. G. Esping-Andersen and M. Regini (Oxford, UK: Oxford University Press,).
- TRAXLER, F. (2003), Bargaining (De)centralization, Macroeconomic Performance and Control over the Employment Relationship, *British Journal of Industrial Relations*, 41:1; 1-27.
- WÖLFL, A. and J.S. MORA-SANGUINETTI (2011), Reforming the Labour Market in Spain. Economics Department Working Paper No. 845 (OECD Publishing, Paris).