

RÉSUMÉ

Le processus de réforme de la loi fédérale du travail au Mexique, 2001-2003

Jean François Mayer

La loi fédérale du travail (LFT) représente un facteur déterminant dans les relations de travail au Mexique. Entre autres, plusieurs articles de la LFT contribuent à perpétuer des mécanismes corporatistes de contrôle par l'État de la force de travail, et restreignent de manière formelle la flexibilisation du travail. À la suite des élections transitionnelles de juillet 2000 –lesquelles mirent fin à 71 ans de régime autoritaire et portèrent Vicente Fox à la présidence du pays—le nouveau gouvernement mexicain convia les principaux représentants des secteurs ouvrier et des affaires à des négociations tripartites visant à réformer la LFT. Suite à de profondes dissensions parmi les participants, ces discussions générèrent deux projets de réformes opposés dans leur contenu. Le Congrès mexicain refusa subséquemment d'approuver l'un ou l'autre de ces projets. Cet article présente une analyse des principaux facteurs qui causèrent le déraillement de ce processus de réforme de la LFT. Nos résultats indiquent que cette réforme avorta à cause de la marginalisation des syndicats autonomes du processus de négociation; du rôle inadéquat joué par le président Fox dans ces discussions; et du manque de volonté politique de même que de la fractionalisation des partis politiques présent au Congrès. Par ailleurs, nos résultats suggèrent aussi que l'administration Fox a rompu avec les pratiques profondément ancrées des gouvernements autoritaires passés, en incluant les syndicats autonomes dans les négociations pour la réforme de la LFT, de même qu'en tentant d'accommoder leurs principales revendications. Ces derniers résultats indiquent donc qu'un changement important est survenu dans les dynamiques préexistantes de relations entre l'État et les syndicats autonomes au Mexique.

The Mexican Federal Labour Law Reform Process, 2001-2003

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Introduction¹

In July 2000, Vicente Fox became the first opposition candidate to compete successfully for Mexico's presidency, thus ending 71 years of authoritarian rule by the *Partido Revolucionario Institucional* (Institutional Revolutionary Party, PRI). Shortly after this transitional election, Fox – who ran under the banner of the conservative *Partido Acción Nacional* (National Action Party, PAN) – and his governing team began implementing a reformist policy program, which proposed sweeping social, economic, and judicial transformations (Schedler, 2000: 11-12; Shirk, 2000: 30-32). Among other things, the Fox administration intended to overhaul the legal structures regulating labour relations in Mexico, by modernizing the *Ley Federal del Trabajo* (Federal Labour Law, LFT).

The LFT plays a critical role in shaping the country's socioeconomic structures, and its reform has been an important political issue for many years already (Bensusán, 2000: 30-42; Zapata, 1995: 121). For instance, transforming the Federal Labour Law by allowing for greater flexibilization of the labour force – a central demand of the domestic and foreign business communities

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in Mexico – could significantly affect the balance of strength in labour-capital relations, the national investment environment, as well as regulations of working conditions and minimum wage standards (Bensusán, 1995: 71-73; Ortega and Solís de Alba, 1999: 146-148).²

A successful LFT reform could also bring about the democratization of unions' internal operations, as well as of state-labour relations. Indeed, the LFT represented one of the main legal tools utilized by PRI leaders to constitute the corporatist framework that played a central role in insuring their party's monopoly over political power between 1929 and 2000 (Berins Collier, 1992: 10-11; Teichman, 1996: 150-152).³ Several LFT provisions de facto limit Mexican workers' freedoms of association and organization, as well as their labour rights. Hence, as Zapata (1998: 167) indicated, the removal of corporatist structures – in particular through a comprehensive reform of the Federal Labour Code abolishing the aforementioned provisions – is central to the effective democratization of Mexico's socio-political system.

In August 2001, the new federal government invited organized labour and private sector representatives to begin tripartite negotiations seeking to update the Labour Code. This process concluded with the introduction of two reform initiatives to the Mexican Congress by the end of 2002. Nevertheless, both projects subsequently failed to receive legislative approval. A brief second

² The concept of labour flexibilization refers to post-Fordist methods of production, and aims mainly at the reduction of the cost of labour. Among other things, flexibilization advocates broadly defined job descriptions allowing the assignment of employees to various tasks; favours greater freedom in the scheduling of work days and working hours; permits a reduction in the costs of training and firing; bases promotion and salary increases upon demonstrated technical abilities and production performance; and generally seeks to reduce the influence of worker unions on the management of the labour force (Bensusán, 1995: 73; Teichman, 2001: 225 n.3).

³ The concept of corporatism is understood here in accordance with Schmitter's (1974: 93-94) influential definition, i.e. as "a system of interest representation in which the constituent units are organized into a limited number of singular, compulsory, non-competitive, hierarchically organized, and functionally differentiated categories, recognized or licensed (if not created) by the state and granted a deliberate representational monopoly within their respective categories in exchange for observing certain controls on their selection of leaders and articulation of demands and supports".

round of negotiations followed during the summer of 2003, but yielded few concrete results.

This article seeks to analyze the main causal factors that led to the failure of the 2001-2003 LFT reform. Results indicate that these proceedings were unsuccessful due in particular to the marginalization of autonomous unions from the negotiations; President Fox's inadequate involvement in the reform process; and the lack of political will as well as the fractionalization of political parties. In addition, findings suggest that the Fox government's official invitation of autonomous unions – i.e. non-corporatist labour organizations – to participate directly in the LFT reform negotiations may signify the end of these organizations' marginalization from the country's policy-making process. In turn, this would represent a crucial transformation in state-autonomous union relations.

In the following pages, I first examine briefly the origins and evolution of the legal framework regulating labour relations in Mexico. I then describe the organization and functioning of the institution which fostered the first round of LFT reform negotiations between the state, workers, and entrepreneurs in 2001-2002. Thirdly, I analyze the two reform proposals that have stemmed from these discussions, and I present several lines of explanation for their failure to receive Congress' approval. I subsequently recount and examine the second round of negotiations, which took place in the summer of 2003. Lastly, I summarize the findings of this research, and underline the continuing need to transform the legal framework regulating labour relations and worker organizations in Mexico.

In order to support, supplement and complete existing information, my article relies on a series of twenty original interviews conducted during the months of July and August 2003. The interviewees were Mexican senators and deputies as well as government, labour and business representatives involved either directly or indirectly in the LFT reform negotiation process. I would like to thank them for their time and enlightening answers.

Labour Legislation in Mexico: the Federal Labour Code and Article 123

Labour relations and worker organizations in contemporary Mexico are essentially determined by the, 1917 Mexican

Constitution – in particular Article 123 – as well as by the, 1970 Federal Labour Law that operationalizes it. By comparison with other countries' labour legislations, Article 123's comprehensive, progressive and generally pro-worker prescriptions placed Mexico in a category of its own at the time of its creation –and for several years thereafter—with regards to labour relations, wages and work environment (LaBotz, 1992: 43). However, Article 123 set only general legal guidelines, which created jurisdiction overlaps and generated confusion among decision-makers, union officials and businesspersons.

In order to solve these jurisdictional difficulties, the federal legislature promulgated in August, 1931 the *Ley Federal del Trabajo*, a law establishing the federal Congress' exclusive competence in legislating on labour issues and codifying labour relations. Whereas Article 123 sets “ideal standards” for labour relations in Mexico, the LFT constitutes the principal mechanism shaping the labour market as well as structuring relations between workers, capital owners and the state. One of the LFT's main functions is to clarify the modalities of work contracts, especially with reference to the nature and duration of labour, the frequency of holidays and weekly day(s) of rest, restrictions on child labour and prohibitions of harassment and discrimination in the workplace as well as procedures and compensations regulating termination of employment. What is more, the LFT specifies the conditions under which unions are created and gain legal status, the process by which collective contracts are negotiated, and the procedures to be followed by unions in order for them to exercise their right to strike (*Ley Federal del Trabajo*, 1970).

In theory, the Federal Labour Code represented a positive advancement for Mexican workers, since it offered them significant formal guarantees for adequate wages, decent working conditions, sufficient vacations, and a range of additional benefits. In practice, however, the manner in which successive PRI administrations implemented the legal provisions of the LFT since 1931 led to the creation of a non-democratic corporatist system of interest representation. This corporatist framework profoundly impacted Mexico's labour relations and internal union dynamics until 2000.

The Mexican corporatist system was underpinned by several elements. On the one hand, the PRI controlled most unions through

a variety of positive and negative incentives, which stemmed from its monopoly over state resources. Indeed, in exchange for their political support during and between elections, the PRI offered state-derived economic and political rewards to the leaders and members of compliant unions – also known as “official” unions (Burgess, 2003: 75-78; Cook, 1995: 78-79; Patroni, 2000: 255-256). For instance, corporatist union leaders were guaranteed a certain number of seats in state and federal Congresses, thus improving their upward political mobility. Also, corporatist union members enjoyed exclusive access to superior healthcare services, union stores offering subsidized prices on a range of consumption goods, and state-sponsored housing programs. By contrast, more critical labour organizations wishing to assert their autonomy from the PRI’s control were the target of various legal vexations, marginalization from the policy making process, and, at times, outright repression by the state apparatus – often with the help of corporatist unions, and in particular of their leading organization, the *Confederación de Trabajadores de México* (Confederation of Mexican Workers, CTM).⁴

On the other hand, the Federal Labour Law gives the state power to restrict worker organization by denying legal registration to unions, or refusing official recognition of their executive officers (De la Garza, 1998: 198-200; Patroni, 1998: 113-114). The latter scenario is typically carried out when the government rejects a union’s *toma de nota*, i.e. a report periodically submitted by every union, which indicates the composition of its leadership. These two provisions constitute crucial elements of labour control, since the LFT insists that a union cannot engage in collective contract negotiation unless it previously obtains legal recognition from the state and receives official approval of its executive committee. Autonomous unions –those organizations that did not wish to participate in the PRI’s corporatist framework – were especially negatively affected by both these legal constraints until 2000.

⁴The most important confederations of corporatist unions are: the CTM, the *Confederación Revolucionaria de Obreros y Campesinos* (Revolutionary Confederation of Workers and Peasants, CROC), the *Confederación Regional de Obreros Mexicanos* (Regional Confederation of Mexican Workers, CROM), and the *Confederación General de Trabajadores* (General Confederation of Workers, CGT) (Grayson, 1989: 44-47).

Furthermore, the LFT sanctions state regulation of labour conflicts. Hence, quarrelsome collective contract negotiations and individual grievances are to be resolved by the appropriate *Junta de Conciliación y Arbitraje* (Board of Conciliation and Arbitration, JCA) or by the *Secretaría del Trabajo y Previsión Social* (Ministry of Labour and Social Welfare, STPS). Labour Boards are tripartite organizations present at both the federal and regional levels, which are comprised of representatives of business owners, labour organizations (generally corporatist unions), and the state. Government officials preside over the *Juntas'* workings, which gives the state a central role in orienting these institutions' decisions. In addition, even though their strategic functions of interpreting and adjudicating the country's Labour Law would naturally place them in the sphere of the Judiciary power, *Juntas* respond directly to their respective level of government's executive power, which ultimately manages labour relations (Middlebrook, 1995: 56, 181-182, 201-202; Samstad, 2002: 4). As such, labour boards were politicized institutions under the PRI's successive governments, and were typically used by the state to curb labour militancy and political participation.

Finally, the Federal Labour Law offers the state various legal instruments to limit the workers' right to strike (Burgess, 1999: 121; Franco, 1991: 111-115). In particular, unions must file a strike petition with the corresponding *Junta* before engaging in actual work stoppage. Under the PRI's rule, the state often utilized its influence over the *Juntas* to reject such petitions. Thus, *Juntas* frequently declared strikes "non-existent" or "illegal" during that time, decisions which carried substantial legal, financial, and at times physical consequences – due to periodic occurrences of repression of workers by the state – for contravening unions and their members.

It must be noted that Constitutional Article 123 also limits the labour rights of a particular category of workers. Indeed, Article 123 is comprised of two *Apartados* (sections). Whereas *Apartado A* deals with private sector employees according to the terms specified above, *Apartado B* regulates the labour rights of the roughly two million individuals employed by the federal government and of bank workers. Among other things, *Apartado B* effectively abolished these workers' right to strike by subjecting the

work stoppage process to a series of stringent conditions, further specified in the Federal Labour Law, which are extremely difficult to meet (Constitución Política de los Estados Unidos Mexicanos, 2004: 81-83; Cook, 1996: 80-81).

In 1970, a modification of the LFT granted workers a few additional benefits concerning vacations and access to subsidized housing, but left untouched the aforementioned essential principles of the 1931 LFT (De Buen, 2003: 146). Since then, there have been various initiatives seeking to reform the Federal Labour Law, but none of these proposals were ratified by Congress (Bensusán, 1998: 20; Zapata, 1995: 125-126).

As such, between 1931 and 2000 the Labour Code was utilized by the PRI to effectively promote its socio-political and economic priorities, rather than defend and further workers' rights. Still, it was necessary for the PRI to control the state in order to provide legal, economic, and political incentives to loyal labour organizations, and thus to sustain the corporatist system. The election of PAN candidate Vicente Fox to the country's Presidency in 2000 disrupted the PRI's supply of resources at the federal level, and debilitated its ties to official unions (Camp, 2003: 12-14). Nevertheless, the LFT remained untouched by this regime transition. Therefore, the government still holds the legal and institutional capabilities to impose its policy goals on labour relations and to limit workers' rights and organization. For many segments of Mexico's civil society – in particular entrepreneurs and autonomous unions – this situation is intolerable and requires the revision of the Labour Code and, for some groups, of Article 123 (Fernández, 2003: 5-7; UNT, 1998). These demands, along with the Fox government's reformist orientation, led the PAN federal administration to initiate in 2001 a process seeking to revise Mexico's Labour Law.

The First Round of Negotiations (2001-2002): the “Process of Worker-Entrepreneur Dialog and Negotiation for the Reform of the Labour Law”

In July of 2001, President Fox put Secretary of Labour Carlos Abascal in charge of the LFT reform process. In order to facilitate negotiations, the Ministry of Labour resorted to a system of tripartite consultation between the state, entrepreneurs, and worker unions. This institutional mechanism was formally named the

Proceso de Diálogo y Negociación Obrero Empresarial para la Reforma Laboral (Process of Worker-Entrepreneur Dialog and Negotiation for the Reform of the Labour Law). Discussions in the *Proceso* were led by the *Mesa Central de Decisión* (Central Decisional Group, MCD), which consisted of twenty-two individuals: eleven business representatives and eleven union spokespersons.

Tripartite negotiations were often utilized as part of the PRI's corporatist system (Grayson, 1997: 21-23, 38-40; Middlebrook, 1995: 298). However, in an attempt to break with past corporatist practices, the Fox administration claimed that it would not impose its views on participating groups, but rather that it would act as a neutral facilitator of dialogue between labour and entrepreneurs (Martínez, 2001). So as to further alleviate the prospective participants' doubts, Secretary Abascal – himself an ex-leader of the Coparmex, one of the most powerful business associations in Mexico – claimed that the *Mesa* would only reach a final decision through consensus, thus making an eventual marginalization of any group highly unlikely (MLNA August 2001).

In order to guarantee the inclusiveness of the talks, the Fox government formally invited the *Unión Nacional de Trabajadores* (National Union of Workers, UNT) to the negotiation process as the representative of autonomous unions. Since its inception in 1997, the UNT has constituted the main confederation of Mexican autonomous labour organizations. It is comprised of several high-profile unions, among which the *Sindicato de Telefonistas de la Republica Mexicana* (Union of Telephone Workers of the Mexican Republic, STRM), the *Sindicato de los Trabajadores de la Universidad Nacional Autónoma de México* (Union of the National Autonomous University of Mexico's Workers, STUNAM), the *Sindicato Nacional de Trabajadores del Seguro Social* (National Union of Workers of the Social Security, SNTSS), and the *Frente Auténtico del Trabajo* (Authentic Labour Front, FAT). The confederation's constituent unions are active in diverse sectors of the economy – from the service industry, to garment manufacturing, to high technology, to higher learning – and vary widely in terms of their memberships and organizational capabilities. This situation has at times limited the UNT's ability to proceed with extensive and coordinated mobilizations, such as staging wide-scale

demonstrations and strikes. In that context, the STRM has constituted the most dynamic segment of the UNT since co-founding it in 1997. In fact, telephone workers leader Francisco Hernández Juárez is often depicted as the natural leader of the *Unión Nacional*. Nevertheless, the UNT's leadership is officially based upon a power-sharing arrangement headed by three co-presidents (UNT, 1997). For the 2001-2004 period, the co-presidencies were occupied by the secretaries-general of the STRM, SNTSS and STUNAM.⁵

This invitation by the Fox government signified a departure from the model of state-labour relations supported by past PRI federal administrations, which had typically marginalized autonomous labour organizations from the country's policy-making process. Indeed, these groups' demands for enhanced democracy in internal union dynamics and in state-labour relations constituted a direct threat to the very existence and continuity of the PRI's corporatist system, as well as of the authoritarian regime it underpinned. As a result, autonomous unions were the target of various forms of legal, political and economic intimidation, in addition to physical repression exerted by the state through the police, the armed forces, and thugs controlled by the corporatist unions' leadership (Caulfield, 1998: 7; De la Garza, 1991: 153-154; Middlebrook, 1995: 141-145).

Still, the numerical weight of the UNT at, and therefore its influence upon, the *Mesa Central* was not equivalent to that held by the *Congreso del Trabajo* (Labour Congress, CT), the umbrella organization encompassing most PRI-affiliated corporatist unions. Out of a total of eleven delegates from worker organizations at the *Mesa*, eight were from the CT and only three from the UNT. The Ministry of Labour considered that this arrangement was an accurate reflection of these confederations' respective membership

⁵ Other autonomous unions, which are not members of the UNT but rather of the *Frente Sindical Mexicano* (Front of Mexican Union, FSM), argue that there is no need for a transformation to the actual LFT. Instead, they believe that "in order to safeguard and advance the interests of workers, the most important issue is to implement the Labour Law correctly, so that the government does not use in an anti-workers manner, as the PRI often did" (Personal interview with Ramón Pacheco, Secretary of External Affairs for the Union of Mexican Electrical Workers (SME), the FSM's leading union). Perhaps for that very reason, the FSM was not invited to the 2001-2003 reform negotiations.

size: the UNT represents 1.5 million workers, about a quarter of the CT's official number of members (Personal interview with Carlos Treviño, Ministry of Labour, Director of Communications and *Mesa* negotiator).

Delegates from the Senate and House of Deputies were only attributed the role of observers at the *Mesa*. According to Secretary Abascal, this was done in an attempt to de-politicize the reform process (Martínez, 2001). Indeed, there was a widespread feeling among Ministry of Labour officials and *Mesa* participants that past LFT reform initiatives were derailed due to the “contamination” of the process by political parties and their electoral concerns. By allowing only business and labour spokespersons to participate in negotiations, without interference from political parties, it was hoped that a reform project could be crafted that would genuinely address the goals and demands of workers and business owners. Nevertheless, this arrangement caused uneasiness among Congresspersons, who resented being excluded from the negotiation. Many felt as if the Executive was perpetuating previous PRI governmental practices of bypassing Congress' influence on major policy issues (Personal interview with PAN Senators Francisco Fraile García and Rafael Morgan Alvarez, and PRD Senator José Castro Cervantes).

Two Proposals to Reform the Federal Labour Law

Secretary Carlos Abascal had originally hoped to conclude negotiations swiftly, so that the MCD could submit a reform initiative to the federal Congress by the end of the year 2001 (Martínez, 2001). However, talks between the *Mesa*'s various parties proved quite problematic and were punctuated by repeated clashes. As a consequence of these quarrels, discussions lasted much longer than anticipated. Also, talks yielded two distinct and mostly divergent LFT reform proposals instead of producing one consensual initiative, as promised by Abascal.

The first project was introduced to Congress on 31 October 2002. It was crafted by the UNT in collaboration with the PRD, and accordingly benefited from the support of that party's Congressional representation. In a nutshell, the UNT-PRD reform initiative proposed the following elements: constitutional reform abolishing Article 123's *Apartado B*; elimination of the *Juntas de Conciliación y Arbitraje* and transfer of their authority to

independent Labour Tribunals under the jurisdiction of the federal Judiciary Power; abolition of the state's control over union registration through the creation of a National Public Registry of Unions and Collective Labour Contracts, accessible to the general public; creation of a National Institute of Minimum Wage, which would determine a fair and adequate minimum level of wages for the entire country⁶; elimination of the "exclusion clause"⁷; free, direct and secret voting for union leadership elections and referenda⁸; improved accountability of union leaders to the rank-and-file, especially with regards to union finances; severe penalties in the case of infringement by the state or entrepreneurs on union liberties and internal functioning; and a flexibilization of the labour force based on a consultation process guaranteeing the labour rights of workers and their adequate compensation (UNT, 2002a).

The second reform initiative, introduced to Congress on 12 December 2002, was produced by representatives of the *Consejo Coordinador Empresarial* (Entrepreneurial Coordinating Council,

⁶ Mexico's minimum wages are currently set by a national tripartite commission comprised of state, business and (generally corporatist) labour representatives. Minimum wages are established according to the economic activities and development of three regions (Middlebrook, 1995: 409 n.3). The real value of minimum wages has fallen by close to 70% between, 1980 and 2003 (Dussel Peters, 2004: 4).

⁷ The exclusion clause is a legal device comprised in the great majority of collective contracts, which makes it mandatory for workers to hold formal affiliation to a union. Concurrently, this provision requires that a worker be fired if she leaves voluntarily or is excluded from her union. This clause is generally used in tandem with another provision of the LFT, which grants the union representing the majority of a plant's worker exclusive rights over the negotiation of collective contracts (LaBotz, 1992: 47-48). These legal stipulations essentially result in the monopoly of workers' representation by one union in any given plant, and are frequently utilized to discourage the emergence of groups openly challenging the union's leadership – unruly workers are typically expelled from the union and dismissed by company managers.

⁸ The LFT currently allows for voting through a show of hands during general union meetings. The leaderships of corporatist labour organizations have often used this provision to consolidate their power. Indeed, a public vote of that sort allows for the easy identification of potential opponents to union officials in place, and for the intimidation of recalcitrant workers through, among other things, the threat or use of physical violence and expulsion from the union – and therefore loss of their jobs as a result of the aforementioned exclusion clause (Alcalde 2003: 21; Bensusán, 2000).

CCE)⁹ and of the CT. Although this proposal was supported by some Congresspersons of the PRI and PAN, these political parties never officially backed the initiative. This second project was much less ambitious in the scope of its proposed modifications than the UNT-PRD initiative, essentially because the former rejects any changes to Article 123. As such, the CCE-CT initiative advocates the following changes: greater flexibilization of the labour force through enhanced capability of employers to resort to part-time and short-term contracting of workers, longer trial periods for new employees without legal obligations on the part of employers to provide them with permanent status, much less significant compensation measures in the eventuality of worker dismissal by the employer, looser definition of tasks assigned to employees in their work contract, and more flexibility in the scheduling of work hours; stronger protection for workers against discrimination and sexual harassment; more transparency in strike and unionization processes through a series of new requirements demanding that unions should provide more justificatory paperwork, more data, and a clear and complete list of workers supporting the proposed strike or unionization drive;¹⁰ and the continuation of tripartite *Juntas* (Coparmex, 2003a; Natividad, 2003).

Ultimately, this first round of Labour Code reform failed twice: once when the MCD did not generate a consensual proposal for change – despite Secretary Abascal’s assurance – and again when Congress refused to support either the UNT-PRD or the CCE-CT reform initiatives. As a result, these projects were shelved and will likely not be reconsidered by Congress. In the following pages, I examine the main causal factors leading to this result.

Causes for the Failure of the First Round of LFT Reform (1): Marginalization of Autonomous Unions

There is unanimity among the twenty MCD participants and observers I interviewed that the creation of two LFT reform

⁹ The CCE is comprised of all Mexican entrepreneurial confederations, although large business representatives have generally dominated this group since its foundation (Valdés, 1996: 138).

¹⁰ It should be noted that this provision would make available to business administrators (and to the leadership of the already-established union) the identity of workers supporting strikes or the creation of a new union. As a result, these workers could become victims of acts of intimidation, in addition to losing their jobs.

proposals resulted mainly from the marginalization of autonomous union spokespersons from the *Mesa*'s talks. However, the interviewees' interpretations of the causes of this marginalization vary considerably, as shown below.

On the side of autonomous labour, UNT co-president Agustín Rodríguez, FAT leader Erik Quesnel and labour lawyer Arturo Alcalde indicated that corporatist union and business representatives refused to consider the UNT's demand to terminate the *Junta* system and create independent labour tribunals, as well as remove *Apartado B* from Article 123 in order to dismantle corporatism, promote union democracy, and extend constitutionally guaranteed labour rights to state employees. Alcalde added that the Ministry of Labour invited the UNT to the *Mesa* only to boost the legitimacy of the process, and without any intentions of allowing UNT delegates any significant influence over the negotiations. UNT co-presidents Francisco Hernández Juárez and Roberto Vega Galina observed that the CCE-CT proposal seeks mainly to obtain the labour flexibilization without proper worker compensation that big businesses demanded. According to these interviewees, corporatist unions supported this proposal because their leaderships were assured that LFT legal provisions allowing them to control the rank-and-file would not be affected by the proposed changes. As a result, the UNT rejected the CCE-CT initiative. Agustín Rodríguez also revealed that "since there [were] no guarantees that the CCE-CT reform proposal [would] not be approved by Congress, the UNT presented its own reform initiative, in a pre-emptive legislative strike against the CCE-CT proposal".

Not surprisingly, business and CT representatives hold a perspective that contrasts markedly with that expressed by UNT negotiators. Leading corporate lawyer Tomás Natividad Sánchez insisted that the UNT alienated itself from the MCD's talks because representatives of autonomous labour organizations "had goals that were totally different from, and at odds with, those of the other participants at the *Mesa*" – in particular with regards to the necessity to abolish the *Junta* system and remove *Apartado B* from Article 123. According to Natividad, entrepreneurs generally considered that such demands were a step backwards in furthering the flexibilization of Mexico's labour force, in removing barriers to investment, and in enhancing the country's competitiveness on the

world market. Furthermore, he explained that UNT spokespersons were unreliable participants at the *Mesa*, given that “they appeared more worried about their labour confederation’s public image than anything else, and they seem to always seek confrontation with CT representatives”. Natividad and Gabriel Aguirre, Director of Communications at the *Confederación Patronal de la República Mexicana* (the Employers’ Confederation of the Mexican Republic, Coparmex), explained that, ultimately, the UNT marginalized itself from the negotiation process, since it refused to base the discussions at the MCD upon the principles of the New Labour Culture, described below. By contrast, they believed that “CT and business representatives, as well as Ministry of Labour officials, worked hard and moved the *Mesa*’s work forward until they reached an accord”.

For his part, José Ramírez Gamero, CTM leader and spokesperson at the *Mesa*, insisted that the main goal of the CT at the reform negotiations was to seek the modification of the Federal Labour Law so that it would be impossible for *sindicatos blancos* (“white unions”, i.e. unions controlled by business owners) to emerge in the future.¹¹ Ramírez explained that the “CTM welcomed the presence of the UNT at the *Mesa*, because [we] could unite forces to better defend the rights of workers”. However, he believed that the UNT chose to remove itself from the negotiation process in order to promote its own reform agenda, thus jeopardizing the efforts of the MCD and the interests of workers in general.

Finally, Congressional observers as well as Ministry of Labour officials held mixed views of the split between the UNT and other participants. Carlos Treviño, one of the Ministry’s main negotiators, thought the UNT had a double agenda, so that “while the UNT was present at the *Mesa*, it was also planning an attack against the reform project being prepared by that very negotiation committee, in order to create political capital for itself and for its ally, the PRD, for the elections of 2003 and 2006”. Treviño considered that “this was all purely political calculations on the part

¹¹ “White unions” are typically created by business owners before the actual opening of their plant, in order to prevent the eventual emergence of an autonomous union that could organize and mobilize the labour force, potentially leading to strikes for increased salaries and bettered working conditions. Often, workers at the plant are not aware that a white union is in place, as the union does not provide them with any services or support (De la Garza, 1998:, 196-197; Cook, 1995: 88-89).

of [UNT co-president] Hernández Juárez. No one marginalized the UNT from the talks”. Senators Fraile García (PAN) and Nezahualcóyotl de la Vega García (PRI, also a leader of the CTM) considered as well that it was the UNT’s own choice to cease participation in the *Mesa*’s negotiations. By contrast, PRD Senator Castro Cervantes indicated that the UNT was indeed marginalized from the *Mesa* by CCE and CT representatives, who wished to advance their interests by preserving LFT provisions which allow for corporatist controls over unions.

Closer analysis reveals that the marginalization (whether self- or externally-imposed) of autonomous unions from the *Mesa*’s work is attributable to two main factors. First, labour and business representatives entered the MCD’s talks in pursuit of very different objectives. Arguing that they wish to further foreign investment and job creation, entrepreneurs favour greater labour flexibility, enhanced worker efficiency, and increased competitiveness in production cost and quality (Coparmex, 2003b). In fact, successive PRI administrations since 1982 had already created – through their pro-business interpretation of the LFT and utilization of the *Juntas*’ powers – a socio-political and economic context that allowed for a de facto flexibilization of the labour force and a liberalization of the labour market. Nevertheless, the Coparmex, the CCE and many other business interest groups consider it necessary to modify the LFT in order for those past practices to effectively become part of the legal arrangements regulating labour relations. Otherwise, they believe that LFT provisions lend themselves to widely diverging utilizations by different federal administrations (Middlebrook, 1995: 298; Patroni, 1998: 125). With regards to corporatist unions belonging to the CT, their leaders seek principally to preserve the legal provisions of Article 123 and the Labour Code – such as the exclusion clause – that allow them to retain control over their unions’ rank-and-file and to prevent the contestation of their leadership by pro-democracy groups (Bellin, 2000:, 197-199; Zapata, 1998: 156).

By contrast, autonomous labour organizations support an increase of internal union democracy and the elimination of union corruption; freedom from the control of the state on processes of union registration and choice of union leadership; improved legal protection for entrepreneurs and workers; as well as the replacement

of *Juntas* by independent labour tribunals, which would enhance the efficiency and impartiality of institutions habilitated to implement the Federal Labour Law (UNT, 1998; UNT, 2002b). The disparity between the goals of these three groups hence inevitably led to severe clashes of interest, and favoured the marginalization of UNT representatives.

The second explanatory factor – which flows in part from the previous causal element – concerns disagreements between MCD participants on the conceptual framework which would underpin the negotiations. Autonomous union spokespersons believed that talks should be based upon the *Veinte Compromisos por la Libertad y Democracia Sindical* (Twenty Commitments for Union Freedom and Democracy). This document, which was crafted by prominent labour lawyers and autonomous unions during the 2000 electoral campaign, asked the federal government to effectively implement the workers’ constitutionally guaranteed freedoms of association and organization, the right to strike, genuine collective contract negotiations, as well as impartial labour tribunals. The authors of the document believed that this goal could only be reached through a reform of the existing Federal Labour Law, as well as a constitutional amendment ridding Article 123 of *Apartado B*.

To be sure, such a transformation of state-labour relations would, among other things, reduce state infringement on unions’ internal dynamics and external activities. In particular, this would allow for much greater ease in the creation of autonomous unions by workers. Also, existing autonomous unions could then compete more freely with corporatist organizations for the representation of workers across Mexico – a situation likely to favour autonomous unions given their reputation for greater membership representativity and legitimacy of their leaderships. These scenarios currently remain improbable, due mainly to the Labour Code’s provisions which allow *Juntas* to effectively limit union registration and executive committee certification. As such, autonomous unions arguably stand to gain the most from an eventual democratization of the LFT.

In a June 2000 public letter, Vicente Fox stated that he was in agreement with the *Veinte Compromisos*’ premises, and that he would “fight to obtain the measures necessary to ensure the amelioration of the living conditions of all the workers in the

country, as well as the full implementation of their union and labour rights” (Author’s translation, from “Apéndice” (2003: 228)). Once Fox gained the presidency and the MCD was established, there was hence widespread expectation among autonomous unions that this document would comprise the backbone of eventual transformations in the country’s labour legislation.

However, Labour Secretary Abascal, as well as entrepreneurial and CT representatives, considered that talks should proceed based upon the central notions underpinning the New Labour Culture (Cervantes, 2002a, 2002b). The New Labour Culture refers to a 1996 agreement between the Coparmex –then under the leadership of Carlos Abascal – and the CTM, which essentially considers labour flexibilization as a central element to the enhancement of the productivity and efficiency of Mexico’s economy. The New Labour Culture also rejects the concept of class struggle to define labour relations, suggesting instead that these should be based upon individual solidarity and the conception of the enterprise as a community (STPS, 2004a). However, the New Labour Culture tends to ignore the *Veinte Compromisos*’ principal concerns, i.e. the democratization of state-labour relations and internal union procedures. Notwithstanding this serious problem, the Ministry of Labour imposed the New Labour Culture’s principles as the starting point and conceptual framework of reference for the *Mesa*’s talks.

Given these significant variations in, and oppositions between, the objectives of the MCD participants, it appears doubtful that the *Mesa* could ever have reached a consensual final resolution, despite the Ministry of Labour’s original claim to the contrary. In theory, there were certainly *prima facie* possibilities for reconciling business and autonomous unions’ interests regarding labour flexibilization, Article 123’s *Apartado B*, and the democratization of labour relations. Nevertheless, as explained above, this potential soon proved illusory, as each side showed reluctance to compromise on the conceptual foundations of *Mesa* negotiations. Furthermore, the Ministry of Labour’s imposition of the New Labour Culture as a basis for MCD negotiations contradicted Carlos Abascal’s earlier claim that his Ministry did not wish to impose its viewpoint on the *Mesa*, but rather sought to facilitate a non-political discussion between the “factors of production” and promote consensus on their final decision. These elements contributed significantly to the

alienation of autonomous unions. Ongoing clashes between autonomous union representatives and business, CT, as well as Ministry of Labour spokespersons further aggravated this situation, eventually causing the departure of UNT members from the MCD in the fall of 2002, and the drafting of two divergent reform initiatives instead of a single consensual one.

Causes for the Failure of the First Round of LFT Reform (2): Lack of Political Will, Cohesion and Support

Whereas the marginalization of autonomous unions appears to be the main reason accounting for the incapacity of the *Mesa* to generate a consensual LFT reform proposal, at least three main factors account for Congress' subsequent refusal to approve either the UNT-PRD or the CCE-CT initiatives. The first explanatory element deals with the position adopted by President Fox during the negotiation process. UNT co-president Hernández Juárez, like most autonomous union representatives I interviewed, explained that President Fox's decision to leave the Labour Law reform in the hands of Secretary of Labour Abascal and remove himself from the process took away much of the negotiations' credibility. In doing so, President Fox allowed Abascal to impose the New Labour Culture as the main basis of discussions at the MCD, which contributed significantly to derailing the negotiation process, as shown above. On that theme, labour lawyer Alcalde added that Fox's original support of the *Veinte Compromisos* should have been sustained throughout the MCD's negotiations in order to pressure *Mesa* participants and Congress into adopting a reform proposal that would permit the effective democratizing of labour relations. Furthermore, Fox abstained from officially granting his support to either of the initiatives, which would have considerably increased the legitimacy of the chosen proposal and improved its chances of being approved by Congress. This point was forcefully made during personal interviews with Senators Jesús Ortega Martínez (PRD), Netzahualcóyotl de la Vega García (PRI), Francisco Fraile García (PAN) and Rafael Morgan (PAN), as well as with CTM leader Ramírez and UNT co-president Hernández Juárez.

In fact, the decision by the Fox administration to proceed with a Labour Law reform was characterized by a fundamental tension inherent to the new PAN government's ideological orientation and

policy program. Indeed, on the one hand, this project is congruent with the Fox government's reformist and democratizing policy agenda, which sought to dismantle the authoritarian structures – among which corporatism – that underpinned past PRI-government, develop administrative efficiency, further economic growth, alleviate poverty, and strengthen the rule of law through a reform of the judiciary system (Elizondo, 2003:29-38; Shirk, 2004: 180-181, 201). Among other things, these policy priorities emphasize the need to protect individual citizens as well as labour organizations from “intervention and manipulation by the state” (Shirk, 2000: 26). In that perspective, it is plausible that the Fox government would aim to guarantee labour rights and basic freedoms of organization and association for Mexican workers through a reform of the LFT, which would remove the aforementioned non-democratic provisions allowing for state control over labour relations.

On the other hand, President Fox chose to continue the economic model developed by past PRI administrations (Shirk, 2004: 206). This model sought to further the country's economic development by maintaining a quiescent labour force and perpetuating low salaries, as well as favouring labour flexibilization in order to attract foreign investment and increase the competitiveness of Mexican industries on the international market (De la Garza, 1998: 203; Ortega and Solis de Alba, 1999: 83-84, 147). Therefore, reforming the LFT to remove its non-democratic stipulations may have appeared less appealing once Fox's team acceded to power. Indeed, greater degrees of democracy in labour relations and internal union functioning would have likely favoured the proliferation of autonomous unions, which have been quite vocal in their opposition to the Fox administration's economic policies (MLNA, 2003: September, November). In that perspective, it was tempting for the Fox government to seek to preserve some elements of state control over organized labour – such as the Labour Code – to limit union resistance to its economic policy orientation.

This tension, stemming from the PAN administration's very ideology and policy goals, may explain the aloof behaviour of President Fox during the LFT reform process. Furthermore, if Fox genuinely believed in the principles enunciated in the *Veinte Compromisos*, he was eventually confronted with an unsolvable

dilemma, leading to his decision to withhold his support. On the one hand, Fox may have found the CCE-CT's proposal objectionable due to its lack of provisions aiming at the democratization of state-labour relations. On the other hand, supporting the UNT-PRD initiative could have been interpreted by civil society and opposition parties as a disavowal of Fox's own Secretary of Labour, since that project had not resulted from the works of the *Mesa* and therefore did not benefit from its backing. PRD Senator Castro indicated during a personal interview that this latter scenario would have amounted to "President Fox and his government losing face before his opponents". This constituted a politically untenable alternative for Fox.

Secondly, it is important to note that no political group held an absolute majority of seats in Congress during the 2000-2003 period (IFE, 2004). Hence, President Fox's party – the PAN – could not impose an LFT reform initiative on Congress. Negotiations between parties and with the administration were thus mandatory. In that perspective, PRD federal Deputy Alejandra Barrales and PAN Senator Alfredo Reyes Velázquez explained during personal interviews that parties were reluctant to approve a major reform to the LFT just before the legislative elections of July 2003. Interviewees said that such reform could have proven generally unpopular, in which case the citizenry could have chosen to punish parties responsible for the LFT modification by withdrawing electoral support. Indeed, interviewees indicated that the President's lack of backing for a particular proposal meant that parties would have to fully assume the responsibility of enacting the LFT reform, and could not share the blame with the Executive in the eventuality that such reform was generally rejected by the population. This further substantiates the thesis holding that Fox's decision not to support either of the initiatives reduced the pressure on Congress to proceed with the LFT reform.

Thirdly, the main political parties present in the Mexican Legislature – the PRI, the PAN and the PRD – have all suffered from fractionalization in recent years, and particularly since the transitional elections of 2000 (Camp, 2003: 205-211; Tulchin and Selee, 2003: 10). This has weakened party discipline in Congress and led to divisions over the LFT reform initiatives. In particular, it seems that several PAN members were opposed to the CCE-CT

reform, despite the fact that some of their colleagues publicly supported it (Granados Chapa, 2003; Pedrero, 2003). Indeed, several PAN Congresspersons were uncomfortable with the lack of provisions in the CCE-CT proposal to increase internal union democracy and democratize state-labour relations. Similarly, even though their party still holds close ties with CT-affiliated union leaders, several members of the PRI found the CCE-CT proposal to be too pro-business and detrimental to workers. The PRD was perhaps the only party to achieve unity on this theme, its members in Congress unanimously supporting the UNT-PRD reform project. Nevertheless, in the end, the lack of cohesion within and among parties in Congress, added to the presence of two conflicting reform proposals, made it impossible for either initiative to receive the support of a majority either in the Chamber of Deputies or in the Senate.

A Rapid Second Round of Negotiations (Summer 2003)

The Federal Labour Law reform process hence reached an impasse by spring 2003, when the main parties in Congress split over the CCE-CT and UNT-PRD initiatives, and negotiations between political representatives stalled. Nonetheless, in a remarkable move, the Fox government decided to renew discussions during the summer of 2003 between entrepreneurs, corporatist unions, and autonomous labour organizations. This time, the administration also invited the Congressional Committee on Labour and Social Welfare to participate in the talks. Fox's team believed that the Committee could act as a facilitator of dialog between the other groups, thus enhancing the chances of obtaining an agreement on an LFT reform initiative. The possibility of reaping such benefit apparently outweighed the government's aforementioned reluctance to involve Congresspersons in the negotiations (Muñoz Rios, 2003). However, contents of the deliberations were not publicly disclosed in order to promote more candid discussions and avoid an over-politicization of the process.

This second round of negotiations is cause for questioning. In particular, why were talks reactivated so soon after the disappointing outcomes of the MCD's work? Personal interviews with negotiation participants revealed that the explicit goal of the

second round of talks was to produce a new and fairly consensual LFT reform proposal, which would benefit from the UNT's support. This begs another, crucial question: why would the Fox government specifically seek the UNT's backing this time, even though only a few months before the Secretariat of Labour had elected to continue with the original MCD talks, despite the estrangement of autonomous union representatives? Labour lawyer Alcalde explains that the UNT benefits from a high degree of popular legitimacy since it is perceived by the citizenry and the Fox government as the only labour organization – with the exception of the *Frente Sindical Mexicano* – that is truly representative of its rank-and-file's demands and interests. This is mostly due to the generally democratic internal functioning of its member unions, and to its public discourse and past behaviour in support of workers' rights and the country's democratization. Therefore, according to Alcalde, the Fox government realized after the debacle of the first *Mesa* that a Labour Law reform proposal needs the UNT's backing if it is to be considered legitimate by the citizenry. Alcalde believed this would in turn put much more pressure on Congress to promulgate such an initiative.

This perspective is supported by PRD Senator Castro Cervantes and by PAN Senator Fraile García, the creator of the working document utilized by this second incarnation of the negotiation process. The Congressmen explained that the key to this second round of discussions resided in the fact that Senator Fraile's working document contained as a starting point two of the UNT's principal demands: secrecy of the voting process in union elections, and the creation of a public registry of unions and collective contracts. Most importantly, Senator Fraile supported Alcalde's interpretation, explaining that "it is extremely important to obtain the support of the UNT to a reform proposal, because without it there can be no legitimate changes to the LFT".

Government negotiator Carlos Treviño recognized that the Ministry of Labour was indeed working closely with the UNT in order to increase the legitimacy of the LFT reform process. To that end, he confirmed that the Ministry of Labour approved the utilization of central elements of the UNT-PRD proposal as a starting point to the second round of discussions. This was corroborated by UNT co-president Vega Galina, who also indicated

that the Ministry of Labour and most members of the Congressional delegation had proven quite receptive to the demands of autonomous unions during this second round of talks. In fact, Treviño admitted that, “given its own pro-democracy orientation, the government would much rather see a strengthening of autonomous, democratic unions as opposed to the development of the old corporatist organizations”.

In the end, no agreement was reached between the various participants of this second round of LFT reform negotiations, due to two main factors. First, comments from business and CT representatives suggest that their groups hindered the discussions. CTM spokesperson Ramírez claimed that the Fox government granted the UNT too much influence during the second round of talks, which caused reluctance on the CTM’s part to negotiate in that context. Furthermore, Coparmex official Gabriel Aguirre indicated that his organization rejected from the start any attempts made during that subsequent round to modify the essence of the original CCE-CT proposal. Second, the July 2003 legislative elections strengthened the PRI and PRD delegations in Congress, and weakened that of the PAN. This reinforced the aforementioned divisions between and within political parties in Congress, and effectively put an end to the summer 2003 LFT reform discussions.

Still, these findings suggest that there has been a significant change in Mexico’s socio-political dynamics, away from the context prevalent during the PRI-led authoritarian regime. Indeed, as mentioned above, autonomous unions were systematically excluded from the country’s policy-making process for the better part of the PRI’s 71 years rule. By contrast, since the transitional elections of 2000, the federal government has appeared reluctant to utilize the instruments of labour control at its disposal – and especially those regulating the workers’ right to strike and restricting union registration – which stem from the current LFT configuration (STPS, 2004b). Moreover, the Fox administration has ostensibly sought to include autonomous unions in national policy discussions of relevance to the labour force, as illustrated by the UNT’s participation in the 2001-2003 LFT reform process. Furthermore, it appears that the government renewed negotiations in the summer of 2003 with the specific goal of gaining the UNT’s support to a prospective reform proposal. Although this latest round

of negotiations ultimately failed, these recent developments suggest that a new pattern of state-autonomous union relations may have emerged in Mexico.

Conclusion: The Road Ahead

This article indicates that the failure of the 2001-2003 process to transform the legal framework regulating labour relations in Mexico was due first to antagonistic relations between business groups, autonomous labour organizations, and CT-affiliated unions, which led to the marginalization of autonomous union representatives from the *Mesa's* work. In particular, findings indicate that corporate union and business representatives showed little willingness to compromise on issues dealing with the autonomous unions' central demands and interests – such as improving wages, working conditions, and in particular job security and union democracy. This stance is likely attributable to the perception of corporate union leaders and the entrepreneurial elite that admitting some of the major elements of the UNT-PRD's proposal constitutes a threat to their respective interests concerning the flexibilization of the labour force, increasing the competitiveness of Mexican production on the world market, and insuring a quiescent work force (De La Garza, 1998: 210, 218-223; Murillo, 2000: 159-164; Samstad, 2002: 5-9). By contrast, the UNT was prepared to accept labour flexibilization – a central point of business representatives' demands – provided that such measures were accompanied by a democratization of labour relations and improved salaries and working conditions for workers. These tensions, reinforced by the Ministry of Labour's imposition of the New Labour Culture as a starting point of the negotiations, eventually led to the marginalization of autonomous unions from the *Mesa* and to the negotiation process' failure.

Furthermore, results point to three additional factors leading to the failure of the 2001-2003 LFT reform process. First, it seems President Fox's aloof behaviour during the reform negotiations and his refusal to support either one of the reform initiatives lessened these proposals' legitimacy and reduced political pressures on Congress to approve an LFT reform. Second, political parties showed a lack of political resolve, as they were unwilling to take responsibility for the LFT reform in the face of an eventual negative

reaction of the population. Thirdly, fractionalization in the three principal political parties prevented them from reaching a Congressional majority in favour of either one of the reform initiative.

Finally, findings suggest that the Fox government allowed autonomous unions to play a genuine and – at least in the second round of negotiations – important part in the LFT reform process. This was likely done in a bid to increase the reform process' legitimacy in the eyes of the citizenry and Congress. This constitutes a significant result, indicating a shift in government attitudes towards greater democracy in state-labour relations. What is more, the interviewees' comments suggest that autonomous unions in general, and the UNT in particular, could now have considerable impact upon the country's policy making process. It remains to be seen whether and to what extent autonomous labour organizations can effectively utilize their prestige and legitimacy to actually influence the federal government's policy orientation. Further research should be conducted in order to find out whether these new dynamics in state-labour relations represent a sustained tendency.

In any case, there remains a pressing need to reform Mexico's Federal Labour Code. This study reveals that several elements are necessary for such an endeavour to succeed. First, the federal government should guarantee a genuine, inclusive and respectful dialogue between all parties involved, and prevent the marginalization of autonomous labour and its democratizing concerns. Also, business representatives have to recognize that a *sine qua non* condition for the modernization of the Mexican labour force they so aspire to is the democratization of state-labour relations, as well as of internal union dynamics. CT-affiliated unions perhaps face the biggest challenge, as their leadership is still generally dominated by non-representative and pro-corporatist leaders. Therefore, the rank-and-file will have to find ways to replace these leaders – a task made more difficult by the LFT's non-democratic provisions. In addition, given the current demands of the world market and the particular profile of the Mexican economy, autonomous unions have little choice but to continue making some concessions with regard to flexibilization of the labour force while protecting the basic interests of workers. Finally, adequate

Congressional support is required for the ratification of any LFT reform initiative. To achieve this goal, improved party discipline is required, as well as the establishment by the Fox administration of a durable and respectful dialogue with Congresspersons – an exercise at which Fox’s government has unfortunately proven rather inept so far.

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