

WAGE BOARDS AND LABOR REVITALIZATION: U.S. ASPIRATIONS AND URUGUAYAN REALITIES*

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State-supported sectoral bargaining through wage boards is gaining traction among some U.S. reformers interested in revitalizing unions, collective bargaining, and labor law. New York has become a celebrated case, but the recent experience there left some activists disappointed.

Theoretically, revitalization through wage boards is also complicated. Labor law doctrine, which favors labor union autonomy from the state, might endorse state-created wage boards, but only in a qualified manner. Moreover, reformers consider union membership growth to be important for labor revitalization. And yet, empirical studies have shown that sectoral bargaining has an indeterminate impact on union membership.

Given New York's uneven results, and theoretical qualifications and indeterminacies, this article presents Uruguay as an exploratory study of wage boards to understand what we could learn from the South American country. This article describes how Uruguay's wage councils, convened in various periods since 1943, revitalized labor unions in the South American country. However, specific economic, institutional, and political conditions facilitated the success of the wage councils, pointing at the socio-historical specificities needed for successful wage board strategies. In that light, this article concludes with hypotheses on the possibility of wage board success in the United States and issues for further research to better comprehend the

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promise of sectoral bargaining through wage boards.

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I. INTRODUCTION

U.S. union membership is at about 6% density in the private sector, placing unions and labor law into deep crisis.¹ Given this predicament,

1. Union density typically refers to the number of union members as a proportion of the overall number of employed workers in non-agricultural industry. James T. Bennett & Bruce E. Kaufman, *Introduction to THE FUTURE OF PRIVATE SECTOR UNIONISM IN THE UNITED STATES* 3, 4 (James T. Bennett & Bruce E. Kaufman eds., 2002); *see also* Richard Bales, *Union Trends*, in *THE CAMBRIDGE HANDBOOK OF U.S. LABOR LAW FOR THE TWENTY-FIRST CENTURY* 3 (Richard Bales & Charlotte Garden eds., 2020) (noting that union density decline has reduced unions’ capacity to use the strike as an economic weapon and their overall political power); JAKE ROSENFELD, *WHAT UNIONS NO LONGER DO*

American think tanks,² legal scholars,³ Harvard Law School's Clean Slate for Worker Power project,⁴ and the Service Employees International Union (SEIU),⁵ among others, have been boldly advocating for legal changes that can revitalize labor unions through a wage board strategy that spurs sectoral bargaining.⁶ Sectoral bargaining, typically associated with many continental European collective bargaining systems, aims to cover entire industrial sectors and its workers. It contrasts with enterprise-based collective bargaining, generally set at the firm level, which pervades in the United States and in some other jurisdictions. Sectoral bargaining can be a useful tool to compress wages and curb income inequality.⁷ It could also be, although the evidence here is less clear, a tool to recruit new union members.⁸ Wage boards—one way by which to institute some form of sectoral

68–83 (2014) (explaining how union density decline has contributed to the fall of wages for union and non-union workers alike, exacerbating U.S. economic inequality).

2. See, e.g., David Madland, *How to Promote Sectoral Bargaining in the United States*, CTR. FOR AM. PROGRESS ACTION FUND (July 10, 2019, 12:01 AM), <https://www.americanprogressaction.org/issues/economy/reports/2019/07/10/174385/promote-sectoral-bargaining-united-states/>; KATE ANDRIAS & BRISHEN ROGERS, ROOSEVELT INST., *REBUILDING WORKER VOICE IN TODAY'S ECONOMY* (2018). *But see* OECD, *OECD EMPLOYMENT OUTLOOK 2018* § 3.3.1 (2018) (advocating principally for “organized decentralization” and explaining how traditional extension policies lacking coordination promote free riding and stifle productivity growth).

3. See generally Kate Andrias, *The New Labor Law*, 126 *YALE L.J.* 2 (2016).

4. See BENJAMIN SACHS & SHARON BLOCK, *CLEAN SLATE FOR WORKER POWER, CLEAN SLATE FOR WORKER POWER: BUILDING A JUST ECONOMY AND DEMOCRACY* 37–45 (2020), https://uploads-ssl.webflow.com/5fa42ded15984eaa002a7ef2/5fa42ded15984e5a8f2a8064_CleanSlate_Report_FORW_EB.pdf.

5. See Nicole Berner & Dora Chen, *SEIU Conditions 2020 Presidential Endorsement on Demand for “Unions for All,”* ONLABOR (Aug. 21, 2019), <https://onlabor.org/seiu-conditions-2020-presidential-endorsement-on-demand-for-unions-for-all/>.

6. See generally DAVID MADLAND, *RE-UNION: HOW BOLD LABOR REFORMS CAN REPAIR, REVITALIZE, AND REUNITE THE UNITED STATES* (2021). One telling fact of labor law's demise is that U.S. labor law once contributed to a system where one third of U.S. workers were union members and were covered by collective bargaining agreements, while also supporting conditions where many non-union workers benefitted from similar conditions. Today, at less than 6% density in the private sector, labor law can no longer deliver for most U.S. workers. Rather than trying to mimic union contracts, employers shun union conditions and terms. See, e.g., Bruce Western & Jake Rosenfeld, *Unions, Norms, and the Rise in U.S. Wage Inequality*, 76 *AM. SOC. REV.* 513, 518–19 (2011) (explaining U.S. union decline).

7. Madland, *supra* note 2; OECD, *supra* note 2, § 3.3 (discussing wage dispersion in countries with diverse systems of collective bargaining).

8. See Lyle Scruggs, *The Ghent System and Union Membership in Europe, 1970-1996*, 55 *POL. RES. Q.* 275, 283 (2002) (stating that labor market centralization is ambiguously related to union membership); Joelle Sano & John B. Williamson, *Factors Affecting Union Decline in 18 OECD Countries and Their Implications for Labor Movement Reform*, 49 *INT'L J. COMP. SOC.* 479, 492–93 (2008) (showing that the relationship between bargaining centralization, corporatism, and union membership is not significant unless one also considers historical contexts of collective bargaining and representation); OECD, *supra* note 2, § 3.5.1 (“The use of administrative extensions and *erga omnes* clauses . . . may have weakened the incentives to join a union (as non-union members enjoy the same rights as union members).”).

bargaining—are arrangements where government, management, and labor jointly set minimum wages within an industrial sector.⁹

One specific event that kindled recent U.S. interest in sectoral bargaining was New York State’s 2016 activation of a wage board to increase minimum wages in fast food. The wage board was convened at the insistence of the Fight for \$15 movement and under the authority of the state’s seldom-used minimum wage legislation.¹⁰ It was to some extent successful, given that the state was able to increase wages to fifteen dollars an hour in the sector by 2021, which was one of the goals of the activists.¹¹ Shortly thereafter, Professor Kate Andrias published an influential article in the *Yale Law Journal* making the case for sectoral bargaining through wage boards, taking New York State as important inspiration.¹²

But while sectoral bargaining may revitalize U.S. labor, the New York experience still left some labor advocates wanting more.¹³ First, the wage board convening did not produce the organizational and institutional results sought by some activists.¹⁴ Restaurant industry leaders resisted singling out fast food employers for a wage hike, eschewing any sector-based wage regulation.¹⁵ McDonald’s expressly stated that it would not meet with the Fight for \$15 or the union that backed it, the SEIU, because neither group formally represented McDonald’s employees.¹⁶

One factor that might explain the disappointing results is that while the New York wage boards must represent management, labor, and the public interest (i.e., the government), they do not need to represent the specific employers and workers directly affected by the minimum wages.¹⁷ Actual fast-food employer and worker representatives did not bargain with each

9. See generally Andrias, *supra* note 3.

10. *Id.* at 64–67.

11. *Id.* at 66.

12. See *id.*

13. See Tom Juravich, *Fight for \$15: The Limits of Symbolic Power—Juravich Comments on Ashby*, 42 LAB. STUD. J. 394, 395 (2017) (criticizing merely “symbolic” successes); Jonathan Rosenblum, *Fight for \$15: Good Wins, but Where Did the Focus on Organizing Go?*, 42 LAB. STUD. J. 387, 388–89 (2017) (noting that the Fight for \$15 has yet to organize a union).

14. A new group called “Fast Food Justice” grew out of the campaign to represent fast food workers. The group, however, cannot engage in collective bargaining because it has not organized itself as formal labor organization. It has 2,000 members, out of 65,000 fast food workers in New York City. STEVEN GREENHOUSE, *BEATEN DOWN, WORKED UP: THE PAST, PRESENT, AND FUTURE OF AMERICAN LABOR* 249 (2019).

15. See Patrick McGeehan, *New York Plans \$15-an-Hour Minimum Wage for Fast-Food Workers*, N.Y. TIMES (July 22, 2015), <https://www.nytimes.com/2015/07/23/nyregion/new-york-minimum-wage-fast-food-workers.html>.

16. GREENHOUSE, *supra* note 14, at 248.

17. See N.Y. LAB. LAW §§ 653(2), 655(1) (Consol. 2021).

other.¹⁸ Board members heard the public, including representatives of fast-food workers, on whether wages in fast food were sufficient to “provide adequate maintenance and to protect the health and livelihood” of workers—the standard mandated by law.¹⁹ However, such feedback hardly counts as bargaining over terms. Despite some claims to the contrary by the Fight for \$15 leadership who argued that there was “collective bargaining” in that experience, it was the Board—not the affected parties—who provided the wage recommendation to the Commissioner of Labor, who then adopted it.²⁰ In this sense, the New York wage board did not facilitate the kind of meaningful collective bargaining where labor unions negotiated wages with management.

Concerned about U.S. labor union decline, recognizing the benefits of sectoral bargaining, but also acknowledging the underwhelming results of the 2016 New York experience, this article seeks to understand the conditions under which sectoral bargaining through wage boards can revitalize labor unions in the United States. By revitalization we mean (1) increase union membership, (2) foster new labor and employer organizations that can bargain collectively, and (3) encourage new spaces where labor unions and employers set wages and other conditions of employment. To answer the question, this article offers a case known for the success of wage boards in revitalizing labor: Uruguay.²¹ Uruguay’s wage boards, called

18. *See id.*

19. *See id.* §§ 653(1)–(2), 654, 655(3).

20. Andrias, *supra* note 3, at 64–65.

21. *See* Sebastián Etchemendy, *Uruguay and Contemporary Theories of Wage Coordination: Origins and Stabilization of Segmented Neocorporatism, 2005–2019*, 63 *LATIN AM. POL. & SOC’Y* 51, 57 (2021) (“[Uruguay] is simply the only instance of stable democratic neocorporatism in any historical pattern of interest representation in Latin America.”). In the political science literature, sectoral bargaining systems are associated with so-called corporatist or neocorporatist regimes. *Id.* Some other countries set minimum wages through tripartite boards and could be studied to better understand the relationship between wage boards and labor union organization. These include Estonia, Lithuania, Slovakia, the Czech Republic, and Hungary. Thorsten Schulten & Torsten Müller, *Between Poverty Wages and Living Wages: Minimum Wage Regimes in the European Union*, 1 *EUR. STUD. FOR SOC. & LAB. MKT. POL’Y* 1, 7 (2020). Parts of China might also have such boards. *See* Sarah Biddulph, *Responding to Industrial Unrest in China: Prospects for Strengthening the Role of Collective Bargaining*, 34 *SYDNEY L. REV.* 35, 51 (2012) (noting tripartite collective bargaining in the woolen knitwear industry of Xinhe township). The U.K. was also known for its wage councils. *See* Susan Hayter & Jelle Visser, *The Application and Extension of Collective Agreements: Enhancing the Inclusiveness of Labour Protection*, in *COLLECTIVE AGREEMENTS: EXTENDING LABOUR PROTECTION* 1, 25 (Susan Hayter & Jelle Visser eds., 2018). Puerto Rico had tripartite wage committees from about the 1940s through the late 1970s. *See generally* César F. Rosado Marzán, *Can Wage Boards Revive U.S. Labor?: Marshaling Evidence from Puerto Rico*, 95 *CHI.-KENT L. REV.* 127 (2020). Chile also had tripartite wage commissions. *See* Lance Compa, *Labor Law and the Legal Way: Collective Bargaining in the Chilean Textile Industry Under the Unidad Popular* 32 (Yale Law School Program in Law and Modernization, Working Paper No. 23, 1973), <http://digitalcommons.ilr.cornell.edu/workingpapers/98/>.

salary (or wage) councils (*consejos de salarios*), have helped strengthen union organizations in some periods since the 1940s.²²

Case studies like this one are “especially useful to examine causal mechanisms; that is, the sequence or pathway that connects x with y in a plausible fashion.”²³ Here, the pathway that we are trying to examine is the connection between sectoral bargaining (x) and labor union revitalization (y). In making such inference from the “extreme case” of Uruguay, which contains all elements of so-called “neocorporatist” countries, or countries where economic matters are negotiated by organized groups, rather than determined by markets, we can also start to comprehend whether sectoral bargaining has any hope for the United States. In other words, we are trying to understand whether the United States has, or could have, conditions such as those observable in Uruguay that made sectoral bargaining successful in Uruguay, and that might also make sectoral bargaining successful in the United States.

Because the main task of this article is theoretical, it summarizes doctrine, or normative theory, regarding collective bargaining, as well as positive theories that try to explain when the specific form of collective bargaining studied here, sectoral bargaining through wage boards, contributes to labor union revitalization. After reviewing the theories and analyzing how they help us make sense of the case of Uruguay, this article argues that Uruguay’s success stems, importantly, from a system that authorizes representative parties to set sectoral minimum wages. As we explain, its system provides labor and employer representatives with collective autonomy to bargain, giving unions institutional power that complements the economic, or structural power of workers. But perhaps more importantly, social democratic forces, including Uruguayan *batllismo* and *neobatllismo*²⁴ and the Frente Amplio (FA) established the political

22. See generally Sergio Gamonal Contreras & Pablo Arellano Ortiz, *Negociación colectiva, autonomía y abstención legislativa* [Collective Bargaining, Autonomy, and Legislative Abstention], 3 REVISTA IUS ET PRAXIS 173 (2018) (describing the Uruguayan wage councils).

23. Etchemendy, *supra* note 21, at 57.

24. “*Batllismo*” is a term inspired by the legacy of President José Batlle y Ordóñez. He was leader of the Colorado Party and was president from 1903–1907 and 1911–1915. See José Pedro Barrán & Benjamín Nahum, *El batllismo uruguayo y su reforma “moral”* [Uruguayan Batllismo and its “Moral” Reform], 23 DESARROLLO ECONÓMICO 121 (1983). Likewise, the Uruguayan version of a welfare state, subsequently developed in Europe and elsewhere, was developed in Uruguay, in great measure, by *batllismo*. See Aidan Rankin, *Reflections on the Non-Revolution in Uruguay*, 211 NEW LEFT REV. 131, 135 (1995). Typically, *batllismo* is associated with the first two decades of the 20th Century, during the presidencies of José Batlle y Ordóñez. *Neobatllistas* are associated with the 1940s and 1950s Colorado governments that focused on industrializing Uruguay through an import substitution strategy. See GERARDO CAETANO & JOSÉ RILLA, *HISTORIA CONTEMPORÁNEA DEL URUGUAY: DE LA COLONIA AL SIGLO XXI* [CONTEMPORARY HISTORY OF URUGUAY: FROM THE COLONY TO THE 21ST CENTURY] 237–54 (2005).

bases for an effective wage board system. The wage council system was created by parliament in 1943. Governments that generally adhered to a *neobatllista* social democratic political program then convened the wage councils in the 1940s, 50s, and 60s. Then, after several decades of dictatorship and neoliberal governments refusing to convene the wage councils, the FA—Uruguay’s contemporary social democratic party—reconvened the wage councils in 2005. This article thus strongly posits the importance of politics for effective sectoral bargaining through wage boards.

This article further argues that doctrine, positive theory, and the Uruguayan case bring some bad news to U.S. advocates who favor wage boards. The United States lacks the conditions present in Uruguay that made its wage boards effective. It lacks a national social democratic party with programmatic interests in favor of giving unions and employers collective autonomy to bargain for wages at the sectoral level. Without such a party, it is unlikely that, even if legislated, wage boards will be convened in the United States. U.S. economic openness also works against a wage board strategy. However, not all news is bad: some U.S. states and localities with economic, institutional, and political conditions different from those generally existing in the United States might be able to institute an effective sectoral bargaining approach.²⁵ Moreover, U.S. political conditions may change in ways difficult to predict, so keeping sectoral bargaining in a menu of options remains important if the winds of change open opportunities for it to flourish.

This article proceeds in the following manner:

Part II summarizes doctrinal foundations in international and U.S. law regarding collective bargaining systems; these are built on the principle of collective autonomy. Labor law recognizes the need for government to support autonomous collective bargaining agents (labor and management). Government can take a more intrusive role in those subjects or sectors where collective bargaining cannot reach, but, even then, the bargaining agents should be afforded a role in setting those terms.

Part II also argues that the principle of collective autonomy matters because it compels us to assess the relative role of government in a bargaining system, especially in a wage board arrangement where government might be taking a heavy hand. It is an issue that Uruguayan policymakers and government leaders had to deal with as they shaped their system of wage councils, continuously trying to provide significant autonomy to labor and management despite the state-supported nature of

25. In fact, some analysts are optimistic, if at least cautiously, about bringing progressive social change to the United States through legal strategies in “Blue” cities. See SCOTT L. CUMMINGS, AN EQUAL PLACE: LAWYERS IN THE STRUGGLE FOR LOS ANGELES 501–03 (2021).

their system. Labor law doctrine should thus compel us to pause when we observe a system such as New York's, where the bargaining agents are not representative of the sectors being regulated, where the regulated parties are merely consulted alongside other members of the public, and where an important party—management—may refuse to participate.

Part III reviews the social science literature on union revitalization. The three main positive theories described are structural, institutional, and political. This literature helps us to assess the relevant conditions that make a system of sectoral bargaining effective.

Part IV describes the U.S. case, or more on point, the New York case that recently inspired the law and policy commentary favoring sectoral bargaining in the United States. It describes how that experience helped increase wages in the fast-food sector through the convening of a tripartite board and helped labor groups to form a non-union worker collective to keep the organizing momentum going. It also describes the New York case's limits, including the absence of significant growth of union membership, formation of new labor and employer organizations that can bargain collectively, and new spaces where labor and management can meaningfully set wages and other conditions of employment.

Part V describes the Uruguayan case, starting with the enactment of the wage councils law of 1943. It shows how, despite being opposed by parts of Uruguay's labor movement (given its anarchist leanings), the labor movement came to embrace the wage councils. The councils helped to increase union membership in some key periods, supported the construction of new union organizations, and expanded collective bargaining in new spaces. Nevertheless, in the late 1960s, and through the 1980s, economic crisis and dictatorship led to the demise of the wage councils system. Governments adhering to neoliberal prescriptions also failed to convene the wage councils from the late 1980s through the first half of the 2000s. It was not until 2005, with the advent of the social democratic FA victory, that the wage councils were reconvened. The FA convened the wage boards during its concurrent administrations, which lasted from 2005–2020, successfully aiding labor unions to revitalize.

Part VI analyzes the Uruguayan case considering the historical evidence reported in Part V and the theories described in Parts II and III, arguing that Uruguay's implementation of collective autonomy principles effectively institutionalized sectoral bargaining, which contributed to unions' institutional power. Economics played some role. For example, Uruguayan manufacturing, experiencing more external competition, contracted. Employment numbers fell in that sector and, as a result, union membership also diminished. On the other hand, workers in more shielded sectors

experienced higher increases in labor union membership. Additionally, the triumph of the FA was key in making the wage boards work, just as the *neobatllistas* were central for the wage boards in the 1940s and 1950s. Union membership grew, new labor and employer organizations were created, and new spaces for collective bargaining surfaced. Minimum wages also increased.

Part VI also articulates some hypotheses for the possible success of sectoral bargaining in the United States. First, if the U.S. government passed a law that grants collective autonomy for labor and management to bargain wages sectorally, then unions' institutional power should increase, and union revitalization might prove more likely. Second, if U.S. economic policy better protected workers from competition, be it through trade laws or by better training and educating U.S. workers, U.S. workers' structural power would increase, making them more capable of organizing and effectively using the wage boards in their favor. However, a wage board law, progressive economic policy, and the very convening of wage boards will depend on some type of organized social democratic political party, perhaps a Democratic Party with significant influence from progressives. Since at the time of this writing it is not realistic to expect that progressive Democrats will hold the reins of power in Washington, national sectoral bargaining remains aspirational in the United States. That said, some progressive Democrats have sway in places such as New York City, Chicago, Seattle, and San Francisco. Therefore, local or state-level sectoral bargaining could prevail in some U.S. locations assuming they enact meaningful wage board legislation and workers enjoy some degree of structural power.

Finally, Part VI lists several issues that could be explored further to better understand the successes and failures of sectoral bargaining in Uruguay and beyond. These include the role of the strike, the organizational strategies undertaken by labor unions, and the importance of social and norms in making sectoral bargaining desirable.

Part VII concludes.

II. COLLECTIVE AUTONOMY: THE PRACTICAL WISDOM OF LABOR LAW DOCTRINE

This article is mostly concerned about *how*, or under what conditions, a country can institute sectoral bargaining to revitalize labor. This question is mostly answered with positive theory, which is tackled directly in Part III. However, it is also worth clarifying what labor law doctrine typically recognizes as “collective bargaining” per se in order to gain a common understanding of this practice. Additionally, labor law doctrine, based on over a century of experience in labor relations around the world, is also

sensitive to what should work for effective labor relations. We will see, especially once we discuss the concept of institutional power and the case of Uruguay, that labor law doctrine contains some practical wisdom regarding what makes for an effective bargaining system. Thus, the section starts with international doctrine, as contained in international labor standards, and particularly the concept of “collective autonomy,” given its particular influence over labor law. It then discusses U.S. doctrine, which used to fall more in line with international standards but has since deviated.

A. International Standards

International labor standards, as set by the International Labor Organization (ILO), strive for *effective* collective bargaining.²⁶ Guided by this goal, and as summarized doctrinally by Professor Ruth Dukes, labor law’s defining characteristics include “independence of the class organizations from the state, and []distinguish[ing] the ‘autonomous’ ‘social’ law created by those organizations from ‘state’ law”²⁷ Hence, the autonomous parties of management and labor—free from the state, but formally recognized as bargaining agents that can set terms for themselves, typically with *erga omnes* effects—form the cornerstone of labor law.²⁸

As Professor and Italian Constitutional Court Judge Silvana Sciarra has also explained, labor law doctrine gauges labor union autonomy by comparing how much governments (1) support “voluntary negotiating systems,” (2) act as “substitutive regulatory instrument[s],” or (3) fulfill “purely alternative and subsidiary role[s] with respect to solutions freely adopted by the collective actors.”²⁹ On one end, national systems could give collective bargaining agents broad authority to set all or most terms covering the employment relationship. On the opposite end, other systems might let the state supplant bargained-for standards, quashing most autonomy. A third type might simply fill gaps that collective bargaining left behind. Minimum wage setting, as generally recognized, would thus likely fall into this third

26. *See generally* Convention Concerning Freedom of Association and Protection of the Right to Organise (No. 87), July 9, 1948, 68 U.N.T.S. 17. Among the most important instrument for effective bargaining is the right to strike. *See generally* JEFFREY VOGT ET AL., *THE RIGHT TO STRIKE IN INTERNATIONAL LAW* 51 (2020).

27. Ruth Dukes, *The Autonomy of Labour Law*, 37 *COMP. LAB. L. & POL’Y J.* 223, 223–24 (2015) (reviewing ALAN BOGG ET AL., *THE AUTONOMY OF LABOUR LAW* (2015)).

28. *Id.* at 224 (discussing collective autonomy in the work of Otto Kahn Freund). *But see* Martine Le Friant, *Collective Autonomy: Hope or Danger?*, 34 *COMP. LAB. L. & POL’Y J.* 627 (2013) (discussing ambiguities in the meaning of “collective autonomy” and how the principle is less recognized in French law).

29. Silvana Sciarra, *The Evolution of Collective Bargaining: Observations on a Comparison in the Countries of the European Union*, 29 *COMP. LAB. L. & POL’Y J.* 1, 7 (2007).

category, where the state steps in to legislate wages for the lowest paid workers when they fail to set their own terms through collective bargaining. In this light, for example, the British wage councils, which used to set standards in “sweated trades,” were supposed to do so only until “true collective bargaining” emerged in those industries.³⁰

Evidence of international labor law’s preference for a broad supportive role for collective bargaining, even in the case of minimum wages, lies in the ILO Convention 26 of 1928, and related conventions.³¹ It reserves state-mandated minimum wage setting for workers who are not covered by collective agreements or workers whose wages are “exceptionally low.”³² In this sense, Convention 26 likely extends what Professor and Judge Sciarra referred to as a “purely alternative and subsidiary role” for government. Additionally, even while Convention 26, like other conventions, grants legitimacy to state-mandated minimum wages, it also establishes that member states should consult with the “most representative organizations” of employers and workers, or at least with any of such representatives, before setting minimum wages.³³

B. U.S. Labor Law

U.S. federal labor law and policy also once recognized the importance of the collective autonomy of bargaining agents, even when setting minimum wages. The 1935 Wagner Act, which provided labor organizations the right to bargain collectively, and, concomitantly, employers with the duty to so bargain with unions, was understood to be the principal way employees and employers would set wages and other terms and conditions of employment for themselves.³⁴ The 1938 Fair Labor Standards Act (FLSA), legislated three years later, came to supplement the Wagner Act by providing a system of minimum wages for workers who were not covered by collective bargaining.³⁵ The FLSA, as originally enacted, provided for a tripartite minimum wage setting machinery where existing labor organizations could

30. Hayter, *supra* note 21, at 25.

31. See Convention Concerning the Creation of Minimum Wage-Fixing Machinery (No. 26) art. 1, June 16, 1928, 39 U.N.T.S. 3 [hereinafter ILO Convention 26]. *But see* Convention Concerning Minimum Wage Fixing (No. 131) art. 1, June 22, 1970, 825 U.N.T.S. 77 [hereinafter ILO Convention 131] (providing that minimum wages should apply to “all groups of wage earners whose terms of employment are such that coverage would be appropriate”).

32. ILO Convention 26, *supra* note 31, art. 1.

33. *Id.* arts. 2, 3(1)–(2); ILO Convention 131, *supra* note 31, arts. 1(2), 4(2)–(3).

34. See generally Kate Andrias, *An American Approach to Social Democracy: The Forgotten Promise of the Fair Labor Standards Act*, 128 YALE L.J. 616 (2019).

35. See *id.* at 624–26.

participate.³⁶ Hence, the original New Deal labor law system, complemented by the FLSA, fell in line with international labor standards, which presumed the primacy of autonomous, bilateral collective bargaining and, if required, a supplementary government-orchestrated, tripartite minimum wage machinery for unrepresented workers.

However, the tripartite system was eliminated by a Republican-controlled Congress in 1949, who were able to further change the law when the New Deal coalition broke up.³⁷ Then, Southern Democrats began to oppose any increase to minimum wages.³⁸ The American Federation of Labor also started to oppose the industrial committees, maintaining its preference for bilateral collective bargaining.³⁹ This break left the Congress of Industrial Organizations practically alone in defending the tripartite system.⁴⁰ In the end, labor leaders agreed to trade the industry committees for a 75-cent minimum wage.⁴¹ Congress legislated for the wage increase and amended the FLSA to extricate the industry committees from its text.⁴²

The current arrangement still comports with the principle that the state serves a subsidiary role in setting minimum wages. Collective bargaining could be used to set wages over the ones in the law. However, the relative disappearance of collective bargaining in U.S. life, where barely 6% of private sector U.S. workers are covered by collective bargaining agreements, and the absence of industry committees to set minimum wages have in practice eviscerated collective autonomy. Similarly, and as we describe below, the New York experience also came short in respecting the collective autonomy of bargaining parties.

III. WHEN CAN WAGE BOARDS REVITALIZE LABOR?: A BRIEF OVERVIEW OF POSITIVE THEORY

Doctrinal precepts help us understand the normative contours of a body of law, in this case labor law, and meaningfully speak about its elements, such as collective bargaining, regardless of its level (enterprise or sectoral). Doctrine does not, however, necessarily help us predict whether union membership will result if rules prescribing sectoral bargaining are included in the law books. To understand when sectoral bargaining can be effective

36. *Id.* at 625.

37. *See id.* at 686–87.

38. *Id.* at 687.

39. *Id.*

40. *Id.*

41. *See id.* at 687–88.

42. *Id.* at 688 (citing Fair Labor Standards Amendments of 1949, Pub. L. No. 81-393, 52 Stat. 1060; H.R. Rep. No. 81-1453, at 17 (1949)).

requires us to consider positive theories of labor union revitalization. Hence, this section defines theories that have been used by social scientists to understand the conditions under which workers organize and gain new rights—structural, institutional, and political.

A. Structural power

Since Karl Marx, analysts of labor relations have understood working class organization to be a product of workers' relative position in production dynamics.⁴³ Workers with stronger bargaining positions due to low unemployment, or capital's incapacity to replace them with other workers or machines, have better opportunities to organize and strike, and thus improve their lot. Heavily inspired by the Marxist tradition, sociologist Erik Olin Wright argued that economic organization provides workers with "structural power."⁴⁴ He defined structural power as: "power that results . . . from the location of workers within the economic system. The power of workers as individuals that results directly from tight labor markets or from the strategic location of a particular group of workers within a key industrial sector would constitute instances of structural power."⁴⁵ For some analysts of the Marxist tradition, structural considerations are the ones that matter most for working class organization.⁴⁶

Marxists are not the only ones who study structural power. Other students of socioeconomics have shown that the structure of the economy, observed through national industrial composition ratios, matters in order to understand the phenomenon of labor union organization as it pertains to membership, the organization of new labor organizations, or, as we argue, attaining rights. Social scientists Henry Farber and Bruce Western, for example, showed that the relative displacement of traditionally unionized industry with non-union industry in the United States best accounts for the steady downwards slide of private-sector union membership since the 1950s.⁴⁷ Research studies in other countries that focus on the way that finance capital makes investment decisions that disfavor unionized industry

43. See BRUCE WESTERN, *BETWEEN CLASS AND MARKET: POSTWAR UNIONIZATION IN CAPITALIST DEMOCRACIES* 4–5 (1997) (describing Marxist reservations with labor institutions).

44. Erik Olin Wright, *Working-Class Power, Capitalist-Class Interests, and Class Compromise*, 105 AM. J. SOC. 957, 962 (2000). Note that Wright also considers "associational power," which this article refers to as "institutional power," to be independently important to structural power. *Id.*

45. *Id.*

46. See WESTERN, *supra* note 43, at 5.

47. Henry S. Farber & Bruce Western, *Accounting for the Decline of Unions in the Private Sector, 1973–1998*, in *THE FUTURE OF PRIVATE SECTOR UNIONISM IN THE UNITED STATES*, *supra* note 1, at 28–29.

similarly helps explain union decline.⁴⁸ Hence, an important determinant of labor union organization, both in terms of membership and the actual number of unions in existence, might be the relative power that workers have to stave off their own replacement and leverage that power to press for their interests. We can thus predict that workers who sharply compete with other workers in their own country or with workers in other countries will be less capable to join unions, organize themselves, and open new spaces to bargain with employers.

B. Institutional Power

A perspective on union membership that is too narrowly economic or structural can crowd out other important explanations. Hence, analysts of labor union revitalization also focus on institutional determinants.⁴⁹ Sectoral bargaining systems, for example, have sometimes proven significant in helping workers maintain higher levels of organization despite economic conditions imposed by labor markets or globalization.⁵⁰ A sectoral approach facilitates union organizing because in sector-based bargaining, unions try to equalize conditions across heterogeneous groups of workers.⁵¹ They are less concerned about bargaining plant-level issues and “job control.”⁵² As such, in systems of sectoral bargaining, unions do not get into adversarial relationships with plant managers who want to retain control over jobs (to determine who to hire and fire and how to direct the workforce in the day-to-day), or at least not to the extent unions and employers typically do in systems of enterprise bargaining. Eased tensions between management and labor should thus be conducive to less workplace friction and employer opposition to unions.⁵³ Moreover, once wages are sectorally set and all employers must pay the same wage, wages are “take[n] . . . out of competition.”⁵⁴ Employers become indifferent to the price of labor, further lowering their opposition to unions. In fact, employers might favor sectoral bargaining, once in place, as sectoral bargaining could help employers

48. See Christopher Kollmeyer & John Peters, *Financialization and the Decline of Organized Labor: A Study of 18 Advanced Capitalist Countries, 1970–2012*, 98 SOC. FORCES 1, 20 (2019) (finding that financialization contributes to union decline through liberalization of labor markets).

49. See WESTERN, *supra* note 43, at 7–9; see also Wright, *supra* note 44, at 962 (discussing “associational power,” defined as “the various forms of power that result from the formation of collective organizations of worker,” closely resembling what this article calls “institutional power”).

50. See Rosado Marzán, *supra* note 21, at 152 (discussing how wage boards in Puerto Rico helped labor organize the garment industry in the 1950s–70s); see also WESTERN, *supra* note 43, at 64–65.

51. See generally Matthew Dimick, *Productive Unionism*, 4 U.C. IRVINE L. REV. 679 (2014).

52. See *id.*

53. *Id.*

54. *Id.* at 700 (internal citations omitted).

consolidate managerial control over their firms and better dominate the market.⁵⁵ Given less employer opposition to unions in sectoral bargaining systems, labor unions should be able to recruit more members than in jurisdictions focused on enterprise-based bargaining.⁵⁶

The practical wisdom of labor law doctrine complements a positive, institutional view of working class organization. As explained by the positive theory, formal rules that provide labor and management the right to set sectoral terms through collective bargaining should provide institutional power to the bargaining agents. This power would ease enterprise-based tensions, set sectoral terms, and help unions be perceived as mass organizations where worker interests are represented in crucial matters such as wages, thereby helping unions recruit members, build new unions, and bargain collectively.

Law might not be necessary to provide unions with institutional power if a country can otherwise sustain sectoral bargaining through social norms.⁵⁷ However, in countries where social norms are more individualistic or have been more solidly entrenched in enterprise-based bargaining, such as the United States, formal rules might be required.⁵⁸

C. Political Power

Despite the hypothesized relevance of institutional power, empirical studies have shown an ambiguous relationship between sectoral bargaining and union membership, which might dampen a union revitalization strategy based on sectoral bargaining.⁵⁹ The indeterminate relationship might be due to intractable collective action problems.⁶⁰ Structural power, as already explained, might also interact with institutional power, explaining divergent trends. In other words, we could observe that despite sectoral bargaining, workers facing competition will have more difficulties organizing themselves than those who do not.

55. See generally KEITH SISSON, *LOS EMPRESARIOS Y LA NEGOCIACIÓN COLECTIVA: UN ESTUDIO INTERNACIONAL COMPARADO* [BUSINESSMEN AND COLLECTIVE BARGAINING: A COMPARATIVE INTERNATIONAL STUDY] (1990) (discussing how employers react to collective bargaining through a comparative study of seven countries).

56. See Paul Weiler, *Promises to Keep: Securing Workers' Rights to Self-Organization Under the NLR Act*, 96 HARV. L. REV. 1769, 1769–70 (1983) (explaining that employer opposition to unions results in union decline).

57. See *infra* note 127 and accompanying text (discussing legislative abstentionism).

58. See *infra* note 258 and accompanying text (discussing individualism in the United States).

59. See Scruggs, *supra* note 8, at 283; Sano & Williamson, *supra* note 8, at 492–93; OECD, *supra* note 2, § 3.3.1.

60. OECD, *supra* note 2, § 3.5.1. See generally MANCUR OLSON, *THE LOGIC OF COLLECTIVE ACTION: PUBLIC GOODS AND THE THEORY OF GROUPS* (1965) (laying out the theory of groups and public goods).

Moreover, and very importantly, political power also seems to matter.⁶¹ The social democratic literature has argued for the importance of politics, as political parties can relocate industrial disputes from the workplace to the polity.⁶² By doing so, workers, through universal suffrage and parliamentary representation, may get an important say in what eventually happens at work.⁶³ Hence, “Left”⁶⁴ parties can promote policies that directly impact workers’ conditions and buttress their power.⁶⁵

We can extend this idea to wage boards. If political parties can help unions use state institutions, such as wage boards, then workers can gain power that makes those institutions work in their favor. In other words, political power seems paramount for effective institutional power.

Scholars typically recognize a “Left” party as one with significant union members in its ranks.⁶⁶ However, more contemporary scholars have identified “pluri-classist” or “catch-all” parties that can also promote traditional left-leaning agendas as effective political instruments for workers.⁶⁷ In light of this literature, in this article we relax the definition of Left parties from those parties composed mainly of union members to a pluri-classist political organization committed to progressive and perhaps even “left” political programs. We refer to such a party as “social democratic” to mark our break with the traditional concept of Left parties. We find it necessary to focus on social democratic parties given the general breakdown

61. Walter Korpi & Michael Shalev, *Strikes, Power, and Politics in the Western Nations, 1900-1976*, 1 POL. POWER AND SOC. THEORY 301, 308 (1980); see also Rosado Marzán, *supra* note 21, at 145-47, 153 (noting how U.S. unions strong-armed the Puerto Rican government to get a seat in its minimum wage committees and to resolve wages with management politically).

62. Korpi & Shalev, *supra* note 61, at 308.

63. *Id.*

64. By a “Left” party we mean a party with significant membership from labor unions. WESTERN, *supra* note 43, at 66, 92-93. According to some social scientists, pluri-classist parties, such as the traditional Christian Democratic parties of Europe, might classify as “Left,” but to the extent that they must resolve too many internal contradictions, they are less effective in using state institutions (like wage boards) to support union growth. *Id.* at 80-82.

65. See *id.* at 66, 80-82; see also David Brady, *Institutional, Economic, or Solidaristic? Assessing Explanations for Unionization Across Affluent Democracies*, 34 WORK AND OCCUPATIONS 67, 80-82 (2007) (finding that higher left-wing share of governments increased union membership, while right-wing controlled cabinets diminished unionization). *But see* Scruggs, *supra* note 8, at 283 (explaining left-wing political party strength is not clearly conducive to unionization).

66. WESTERN, *supra* note 43, at 66.

67. Jorge Lanzaro, *Continuidad y cambios en una vieja democracia de partidos. Uruguay 1910-2010 [Continuity and Change in an Old Party Democracy]*, 100 CUADERNOS DEL CLAEH 37, 37 (2012); see also Gerardo Caetano & José P. Rilla, *Raíces y permanencias de la partidocracia uruguaya [Roots and Permanency of Uruguayan Party Democracy]*, 22 SECUENCIA REVISTA DE HISTORIA Y CIENCIAS SOCIALES 143, 145 (1992); Daniel Chasquetti & Daniel Buquet, *La democracia en Uruguay: una partidocracia de consenso [Democracy in Uruguay: Party Democracy Consensus]*, 42 POLÍTICA 221, 221 (2004).

of traditional Left parties around the world,⁶⁸ and their transformation to more pluri-classist parties with “rights agendas.”⁶⁹

Normative and positive theory on sectoral bargaining and labor union renewal share some commonalities, or at least complement each other. Normative theory prefers autonomous bilateral bargaining, perhaps aided by, but never subordinated, to state control. Normative theory would support institutional sources for worker power, such as wage boards, if these helped to support autonomous bargaining agents. But positive theory raises further questions, as it hypothesizes that structural power matters for union revitalization, which dampens or neutralizes institutional power. Institutional power might also only be accessible through political power. This explains why sectoral bargaining might not always produce membership gains; social democratic parties in certain countries might not have a sufficient presence to create wage boards or, even if wage boards exist on the law books, social democratic parties might not be able to exert sufficient influence to help labor unions and other worker representatives make effective use of them. As we will see below, a comparison of the U.S. and Uruguayan cases can help us better understand the relationship between these theories to explore how wage boards can be effective in the United States and beyond.

IV. USA: NEW YORK AS INSPIRATION

In 2016, the governor of New York, at the insistence of some organized labor groups, including the Service Employees International Union (SEIU), decided to increase minimum wages in the fast-food industry significantly above the federal minimum wage.⁷⁰ He did so by calling on the state’s Commissioner of Labor to convene a minimum wage board, as the Commissioner is empowered to do under the state laws.⁷¹ That board is, under law, supposed to have a representative of employers and workers, in addition to a member representing the public.⁷² It is supposed to hear

68. See generally ADAM PRZEWORSKI & JOHN SPRAGUE, *PAPER STONES: A HISTORY OF ELECTORAL SOCIALISM* (1986) (discussing the history of electoral socialism in liberal democratic political systems in Western countries).

69. See generally Mariana González Guyer, *Nueva agenda de derechos en el Uruguay: los procesos de reconocimiento y sus actores* [*New Agenda for Rights in Uruguay: The Process of Recognition and its Actors*], 220 *L’ORDINAIRE DES AMÉRIQUES* 1 (2016) (discussing three laws in Uruguay that represent a new rights agenda by providing additional protections to marginalized citizens).

70. Andrias, *supra* note 3, at 64–67.

71. N.Y. LAB. LAW §§ 653(1)–(2) (Consol. 2014).

72. *Id.* § 655(1); see also *id.* § 653(2) (stating that labor and employer representatives shall be nominated by the American Federation of Labor, Congress of Industrial Organizations, and the New York State Business Council, respectively).

members of the public on whether wages in a sector are sufficient to “provide adequate maintenance and to protect the health and livelihood” of workers and, if not, recommend to the Commissioner wage levels that can do so.⁷³

The 2016 fast food Board representatives were the mayor of the City of Buffalo, representing the public interest; the secretary-treasurer of the SEIU, representing labor; and the former CEO of Gilt, the online apparel company, representing employers.⁷⁴ Many groups provided testimony to the wage board, including the activists with the Fight for \$15.⁷⁵

After the public gave its opinions and the Commissioner issued a report and advised on the level of minimum wages for fast food, the Governor signed a law establishing that fast-food establishments in New York City must increase their employees’ rates of pay until they reached fifteen dollars an hour by December of 2018, and different rates for other areas of the state until they reached fifteen dollars an hour by July 2021.⁷⁶

The Fight for \$15 aimed not only to get fast-food workers a better wage, but also “a union.”⁷⁷ Hence, after New York increased minimum wages, the SEIU created a new not-for-profit organization, Fast Food Justice.⁷⁸ It was a voluntary association of fast-food workers that advocated for themselves and their interests.⁷⁹ New York City also passed a new law, commonly referred to as the “Deductions Law,” that helped fund the new organization by giving fast food employees the right to demand that their employers send dues directly from their paychecks to non-union, not-for-profit groups like Fast Food Justice.⁸⁰ At least 500 workers must pledge to send money to the group before employers are obligated to send the funds to the group.⁸¹ Fast Food Justice sought to maintain worker voice in future minimum wage studies and

73. *Id.* §§ 653(1)–(2), 654, 655(3).

74. Andrias, *supra* note 3, at 65–66.

75. *Id.* at 65.

76. N.Y. COMP. CODES R. & REGS. tit. 12, § 146-1.2 (2020).

77. Andrias, *supra* note 3, at 8 (internal citations omitted).

78. See FAST FOOD JUSTICE, <https://www.fastfoodjustice.org/about-us> (last visited Sept. 22, 2021); Max Zahn, *The Future of the Low-Wage Worker Movement May Depend on a Little-Known New York Law*, IN THESE TIMES (Aug. 15, 2017), <https://inthesetimes.com/working/entry/20429/low-wage-worker-unions-fight-for-15-New-York-workers-rights-fast-food>.

79. FAST FOOD JUSTICE, *supra* note 78.

80. See N.Y.C., N.Y. Admin. Code § 20-1302 (2020). This law was part of a package of laws enacted by New York City in 2017, commonly referred to as the “Fair Workweek” laws. While these laws dealt mostly with scheduling rules, they included new rules giving employees of fast-food employers the right to have part of their paychecks sent directly to not-for-profit organizations of the fast-food industry. Eli Z. Freedberg et al., *New York City Enacts Laws Limiting Employers’ Flexibility to Staff Employees*, LITTLER NEWS & ANALYSIS INSIGHT (June 2, 2017), <https://www.littler.com/publication-press/publication/new-york-city-enacts-laws-limiting-employers-flexibility-staff>.

81. N.Y.C., N.Y. Admin. Code § 20-1303(3) (2020).

hearings, and perhaps in other forums.⁸² It also sought to advocate for workers' immigration, housing, and transportation concerns.⁸³ The group counted 2,000 dues-paying members.⁸⁴ Its goal, however, was to recruit at least 10,000 of the 65,000 fast food workers of New York City to build a \$1.8 million treasure chest to run its campaigns.⁸⁵

The Fight for \$15 movement has also been successful in getting local and state governments to increase minimum wages substantially, including in Washington D.C., Illinois, California, and many other jurisdictions,⁸⁶ albeit not through a wage board method. Because of these and other successes at the local and state level, economists noted that the gap between minimum wages and the U.S. median wage has recently narrowed.⁸⁷

But despite real gains, both by increasing wages for many workers and building a new organization, fast food worker activists seem to be trying to find an institutional foothold in New York.⁸⁸ A deal struck by the parties to extend the fifteen dollar minimum wage to the state level curtailed the power of the Commissioner to set wages for some occupations.⁸⁹ Moreover, while many sectors of civil society participated in the process to determine wages in the fast-food industry, labor and management did not negotiate and decide a wage hike that directly concerned them both.⁹⁰ Unlike traditional tripartite arrangements where management and labor, in conjunction with the state, agree on and set the terms of employment, including wages,⁹¹ the New York system is one in which the Commissioner has the final say on wages.⁹² The

82. See FAST FOOD JUSTICE, *supra* note 78.

83. GREENHOUSE, *supra* note 14, at 249.

84. *Id.*

85. *Id.*

86. DAVID ROLF, THE FIGHT FOR \$15: THE RIGHT WAGE FOR A WORKING AMERICA 193–94 (2016).

87. *The Federal Minimum Wage Is Becoming Irrelevant*, ECONOMIST (Apr. 27, 2019), <https://www.economist.com/united-states/2019/04/27/the-federal-minimum-wage-is-becoming-irrelevant>.

88. See Kalena Thomhave, *Fighting for \$15—and a Union*, AM. PROSPECT (Oct. 16, 2018), <https://prospect.org/article/fighting-15-and-union> (detailing how workers still lack a bargaining agent in fast food).

89. See Kate Andrias, *Social Bargaining in States and Cities: Toward a More Egalitarian and Democratic Workplace Law*, 12 HARV. L. & POL'Y REV. ONLINE 1, 9 (2017).

90. Andrias, *supra* note 3, at 66–67.

91. For example, and as explained by Professor Anne Trebilcock, “[I]n the tripartite context of the [International Labor Organization], the term ‘Member States’ encompasses the representatives of Employers and Workers, who alongside those of government take the decisions about which items will be considered for possible standard-setting.” Anne Trebilcock, *Putting the Record Straight About International Labor Standard Setting*, 31 COMP. LAB. L. POL'Y J. 553, 554 (2010).

92. The New York Wage Board is appointed only to “inquire and report.” N.Y. LAB. LAW § 653 (Consol. 2021). It can conduct public hearings, report, and make recommendations to the Commissioner. *Id.* § 655(3)–(5). On the other hand, the Commissioner has the authority to order minimum wages and regulations. *Id.* § 657. Hence, the Commissioner sets the wages.

tripartite wage boards can only provide a report and a recommendation.⁹³ Moreover, employers have resisted attempts to raise wages and to organize workers, and still do.⁹⁴ McDonald's expressly stated that it would not meet with the Fight for \$15 or the SEIU because they do "not represent any employee in a McDonald's restaurant."⁹⁵ Hence, while the New York case was heralded as some sort of model for sectoral bargaining in the United States, its results have left some labor advocates wanting more.⁹⁶

V. URUGUAYAN REALITIES

This section provides an overview of how Uruguayan wage boards have revitalized labor with much better success than New York's recent experience. It shows how the wage councils facilitated relatively autonomous collective bargaining.⁹⁷ Moreover, the wage councils did not appear out of thin air. A social democratic party, the *neobatllista* wing of the Colorado party of the 1940s, was important for their convening.⁹⁸ The wage boards initially worked in a manner that seemed to closely follow that established by law, or in an "orthodox" fashion. As things progressed, Uruguay's executive started to gain some control over the process and the wage boards started to function in a more "heterodox fashion." But the executive always respected the parties' collective autonomy, providing an effective system for bargaining in the country.⁹⁹ In more recent years (2005–2019), and after periods of dictatorship and neoliberal reform, the wage boards helped to reinvigorate labor, but not without the help of another social democratic political party, the FA.¹⁰⁰ Some sectors, such as manufacturing, which experienced a sharp contraction in employment, have seen a correlative fall in union membership. Therefore, reinvigoration through the

93. *Id.* § 655(4)–(5).

94. In the case of New York, some employer representatives did participate and provide testimony to the wage committees, even supporting some increases. However, the New York State Restaurant Association did not support an increase to fifteen dollars. While stating that some employers supported the full increase to fifteen dollars, the official government report only provided one employer name that supported the full increase to fifteen dollars—the Vermont-based, openly-liberal company, Ben & Jerry's Ice Cream. FAST FOOD WAGE BD., N.Y. DEP'T LAB., REPORT OF THE FAST FOOD WAGE BOARD TO THE NYS COMMISSIONER OF LABOR 11–12 (2015). It is safe to conclude the wage hike lacked meaningful employer agreement.

95. GREENHOUSE, *supra* note 14, at 248.

96. See Tom Juravich, *Fight for \$15: The Limits of Symbolic Power—Juravich Comments on Ashby*, 42 LAB. STUD. J. 394, 395–96 (2017) (arguing that the Fight for \$15 focused on a limited strategy of symbolic power that requires building "structural power" against employers); see generally Rosenblum, *supra* note 13 (noting lack of union gains by the Fight for \$15).

97. See *infra* Part IV.B.

98. See Pedro Barrán & Nahum, *supra* note 24, at 121.

99. See *infra* Part IV.E.

100. See *infra* Part IV.I.

wage councils has proven less effective there.¹⁰¹ Wage boards, as instruments of institutional power, can help reinvigorate labor, but not without other conditions—specifically political and economic ones—present.

A. The Formal Architecture of the Current System

The Uruguayan structure of collective bargaining wage-setting presently has at its highest level a Tripartite Superior Council (*Consejo Superior Tripartito*) that is convened by the executive of Uruguay.¹⁰² It determines the sectoral bargaining groups, among other things.¹⁰³ The Council first started as an ad hoc body and has existed for decades, albeit under other names,¹⁰⁴ and was ultimately formalized by Law 18.566 of 2009.¹⁰⁵

At an intermediate level lie the wage councils, which are sectoral and tripartite. Bipartite sectoral bargaining, which exists parallel to the wage councils, also exists at this intermediate level. Wage councils negotiate wages and at times other terms and conditions of employment.¹⁰⁶ They were created by Law 10.449 of 1943 and have been in operation some years since then.¹⁰⁷

At a lower, third level of bargaining lies plant-level collective bargaining, which can be tripartite or bipartite.¹⁰⁸ Bipartite, plant-based collective bargaining existed prior to and during the eras of the wage councils. As more fully explained below, it becomes more salient when the wage councils are not convened, or when sector-wide collective bargaining is harder to maintain.

101. *Id.*

102. Ley de Negociación Colectiva [Law of Collective Action], Law No. 18.566 ch. II *et seq.*, Noviembre 11, 2009, DIARIO OFICIAL [D.O.] (Uru.).

103. *Id.*

104. Hugo Barretto Ghione, *La Negociación Colectiva En Uruguay* [Collective Bargaining in Uruguay], in ESTRATEGIAS SINDICALES POR UNA MAYOR Y MEJOR NEGOCIACIÓN COLECTIVA EN AMÉRICA LATINA Y EL CARIBE [TRADE UNION STRATEGIES FOR MORE AND BETTER COLLECTIVE BARGAINING IN LATIN AMERICA AND THE CARIBBEAN] 446, 454 (Confederación Sindical de Trabajadores y Trabajadoras de las Américas & Confederación Sindical Internacional, eds., 2013).

105. Law of Collective Action, Law No. 18.566 arts. 7–10.

106. Consejo de Salarios [Wage Council], Law No. 10.449 art. 5, Noviembre 10, 1943, DIARIO OFICIAL [D.O.] (Uru.).

107. See JORGE NOTARO ET AL., LAS POLÍTICAS PÚBLICAS EN LA REESTRUCTURA DEL MUNDO DEL TRABAJO: URUGUAY 2005–2009 [PUBLIC POLICIES IN THE RESTRUCTURING WORLD OF WORK: URUGUAY 2005–2009] 49–96 (2009) (detailing the history of the wage councils from 1943–2009).

108. See Law of Collective Action, Law No. 18.566 art. 15 (providing that bipartite bargaining can be done by sector, corporation, establishment, or any other level the parties deem appropriate, and that lower levels bargaining shall not reduce the minimum wages agreed upon in higher levels of collective bargaining except if otherwise provided by the applicable Salary Council).

B. The Cornerstone 1943 Law

Law 10.449 of 1943 gave birth to the country's wage councils. It was enacted by the parliament at a time when the country was oriented towards an Import Substitution Industrialization (ISI) model.¹⁰⁹ Uruguay crafted the law after a 1939 parliamentary commission denounced the poor living conditions of industrial workers and proposed measures to improve those conditions.¹¹⁰

The 1943 Law defined minimum wages as those wages that workers require for a "sufficient standard of living" in a particular place to meet the workers' physical, mental, intellectual, and moral needs.¹¹¹ It created wage councils to determine those minimum wages for each industry and occupation in the private sector.¹¹² Under the 1943 Law, the executive could convene the wage councils *sua sponte*, or if a party, management, or labor petitioned for their summons.¹¹³ The executive also had the authority to determine the sectoral bargaining groups.¹¹⁴ Each wage council would have seven members: three representing the public interest, two representing labor, and two representing management. One of the public representatives would serve as president of the wage council. All employers and workers had to formally register to vote for employer or labor members (formally called "delegates") of their respective wage council.¹¹⁵ However, the law gave the executive the power to appoint delegates if a party, or both parties, decided not to vote for delegates.¹¹⁶ In 2009, the law was amended so that the executive could appoint the wage council members after receiving recommendations from the most representative employer and worker organizations.¹¹⁷

Wage councils had the authority to determine professional and occupational categories within a sectoral bargaining group.¹¹⁸ Under the 1943 Law, the councils also had the right to inspect employers' books and premises, as well as to summon parties as witnesses.¹¹⁹

109. NOTARO ET AL., *supra* note 107, at 9.

110. Álvaro Rodríguez Azcúe, *Los métodos de fijación del salario en el Uruguay y los particularismos del Derecho del Trabajo* [*The Methods of the Fixation of Salary in Uruguay and the Particularities of the Right to Work*], 31 REVISTA DE LA FACULTAD DE DERECHO 247, 251 (2011).

111. Wage Council, Law No. 10.449 art. 1.

112. *Id.* art. 5.

113. *Id.*

114. *Id.* art. 6.

115. *Id.*

116. *Id.* art. 8.

117. Law of Collective Action, Law No. 18.566 art. 13.

118. Wage Council, Law No. 10.449 art. 9.

119. *Id.* art. 13.

All decisions made by the wage councils required a majority vote to pass.¹²⁰ No council could issue a decision without the representatives of all parties present to vote.¹²¹ However, the executive could always set a higher wage with its Council of Ministers if it determined that the agreed wage was too low.¹²² Moreover, parties could request the executive to review any decision of the wage councils, unless a council's decision was agreed to by the employer and worker delegates.¹²³ Wages set by the wage councils became binding thirty days after being officially published in the *Diario Oficial*.¹²⁴

C. A Cold Welcome

Despite the way that the 1943 law handed minimum wage bargaining rights to unions, the law was not enthusiastically greeted by many sectors of the Uruguayan labor movement, which had been inspired by anarchism. Some of these union sectors perceived the law as a top-down imposition on their movement.¹²⁵ Therefore, in the ideological context of the times, the 1943 Law was unpopular among many labor leaders and even some academics.

It is also worth noting that Uruguay, unlike other countries in the region, has historically lacked systematic collective bargaining rules.¹²⁶ Uruguay has been stylistically characterized as a jurisdiction where “legislative abstentionism,” i.e., a lack of positive law, predominates in collective labor law.¹²⁷ However, for individual labor relations, legislation has been numerous and detailed.¹²⁸ The first collective bargaining law, strictly speaking, was passed in 2009.¹²⁹

120. *Id.* art. 14.

121. *Id.*

122. *Id.* art. 15.

123. *Id.* art. 19.

124. *Id.* The executive may also order that the wages be published in other newspapers in addition to the *Diario Oficial*. *Id.*

125. INT'L LAB. ORG. & INSTITUTO CUESTA DUARTE [CUESA DUARTE INST.], PLENARIO INTERSINDICAL DE TRABAJADORES - CONVENCION NACIONAL DE TRABAJADORES [INTER-UNION PLENARY OF WORKERS – NAT'L CONVENTION OF WORKERS], LAS RELACIONES LABORALES EN URUGUAY: 10 AÑOS DE CAMBIOS [LABOR RELATIONS IN URUGUAY: 10 YEARS OF CHANGE] 11 n.2, 12 n.5, 52 (2014), https://cuestaduarde.org.uy/sites/default/files/media/2020-11/Relaciones_Laborales_10_anos_de_cambios_2014.pdf [hereinafter ILO & PIT-CNT]; Rodríguez Azcúe, *supra* note 110, at 250.

126. NOTARO ET AL., *supra* note 107, at 49. Some commentators have said Uruguay's labor legislation is “systematic, fragmentary, and punctual.” Gamonal & Arellano, *supra* note 22, at 178.

127. *But see* Gamonal Contreras & Arellano Ortiz, *supra* note 22, at 178 (noting Uruguay merely has “apparent” legislative abstentionism because its wage council law has provided effective legal support for collective bargaining).

128. *See id.* at 177 (listing Uruguay's scarce collective labor legislation).

129. Law of Collective Action, Law No. 18.566. The government also enacted Law 18.508 in 2009

D. Critics Eventually Warmed Up to the Law

Despite initial qualms with the 1943 law, union advocates—even those with anarchist leanings—scholars, and others eventually acknowledged that the 1943 Law was favorable to workers and their organizations.¹³⁰ In 1966, at a conference that took stock of the experience of the councils, the most representative labor organizations of various ideological currents substantially agreed that the law strengthened the labor movement.¹³¹ Some scholars, who had been suspicious of the wage councils, also recognized that the government, by convening wage councils, helped to provide labor unions with resources to represent workers and improve their salaries or compensate for inflation.¹³² They also recognized that the wage councils gave workers access to higher-quality jobs.¹³³

The 1943 Law also had consequences for the formation and organization of labor and management groups. The law required that representatives from each sector constitute themselves to bargain for the sector.¹³⁴ To no surprise, the labor movement has reported that a great part of the labor organizations that today exist in Uruguay formed between 1930 and 1949, with the wage councils serving as important promulgators of those unions.¹³⁵ It became accepted that the wage councils consolidated labor as an actor, centralized collective bargaining, promoted union membership, and increased real wages.¹³⁶

Students of Uruguayan industrial relations defined the post-1943 period as the “institutionalization phase” of trade unionism.¹³⁷ In the words of Uruguayan labor law scholars, the wage councils traced a particular “‘Uruguayan profile’ of collective bargaining, becoming the true axis and support of the system.”¹³⁸ For Professor Óscar Ermida Uriarte, they were a

to provide for collective bargaining in the public sector. *Negociación Colectiva en el Marco de las Relaciones Laborales en el Sector Público* [Collective Bargaining in the Framework of Labor Relations in the Public Sector], Law No. 18.508, Junio 26, 2009, DIARIO OFICIAL [D.O.] (Uru.).

130. Rodríguez Azcúe, *supra* note 110, at 252.

131. *Id.* (citing Héctor-Hugo Barbagelata, *Evolución de la negociación colectiva en el Uruguay* [The Evolution of Collective Bargaining in Uruguay], in ESTUDIOS SOBRE LA NEGOCIACIÓN COLECTIVA EN MEMORIA DE FRANCISCO DE FERRARI [STUDIES ON COLLECTIVE BARGAINING IN MEMORY OF FRANCISCO DE FERRARI] 477, 488 (1973)).

132. NOTARO ET AL., *supra* note 107, at 50–51.

133. *See id.*

134. *See* ILO & PIT-CNT, *supra* note 125, at 17.

135. *Id.* at 17 n.17.

136. Oscar Ermida Uriarte, *El protagonismo de los consejos de salarios en el sistema laboral uruguayo* [The Protagonism of the Wage Councils in the Uruguayan Labor System], 229 REVISTA DE DERECHO LABORAL 27, 29 (2008).

137. NOTARO ET AL., *supra* note 107, at 53 (internal citations omitted).

138. Gamonal Contreras & Arellano Ortiz, *supra* note 22, at 178 (citing Héctor-Hugo Barbagelata,

“fundamental instrument – perhaps the most important – of participation and social dialogue in Uruguay.”¹³⁹ He believed that the wage councils had “the potential to function as a governance mechanism of the labor relations system.”¹⁴⁰

E. “Sliding” and “Heterodox” Application

Despite Uruguay’s historic respect for the rule of law, elements of the law as written and as practiced began to diverge.¹⁴¹ At first, the government applied the law strictly. It called on workers and employers to elect wage council members by secret ballot.¹⁴² Thereafter, wage councils fixed wages via majority decisions, which became known as *laudos*.¹⁴³ The term *laudo* became the colloquial, if not an extra-official, term for a “decision” or “resolution” of the wage council pertaining to wages, as formally defined by the law.¹⁴⁴

However, Professor Héctor Hugo Barbagelata pointed out that not long after passing the law, the government of Uruguay began to apply the law in a “sliding” manner (*deslizamiento*)— perhaps better translated to English as “playing fast and loose” with the law.¹⁴⁵ In some cases, rather than waiting for the wage councils to set wages, some employers and unions presented their bipartite agreements to the wage councils so that the wage councils would then issue a *laudo* containing identical terms, binding the entire sector.¹⁴⁶ It appeared that some bargaining parties preferred to freely bargain their terms outside the strictures of the wage councils, but then used the wage councils to rubber-stamp the terms for the entire sector.

El Contenido de los Convenios Colectivos [The Contents of Collective Agreements], in INSTITUCIONES DE DERECHO DEL TRABAJO Y DE LA SEGURIDAD SOCIAL [INSTITUTIONS ON LABOR LAW AND SOCIAL SECURITY] (1997).

139. Ermida Uriarte, *supra* note 136, at 34. While recognizing that the term “social dialogue” is recent and vague, we use it as defined here: “all forms of relationships between the actors (consultation, collective bargaining, participation, social agreement, information, etc.), which differ from open conflict.” Carlos M. Aloisio Duffau, *Inseguridad Económica y Diálogo Social en Uruguay: Los retos de una nueva normativa laboral [Economic Insecurity and Social Dialogue in Uruguay: The Challenges of New Labor Norms]*, 157 BOLETÍN CINTERFOR 27, 28 (2006) (citing Oscar Ermida Uriarte, *Diálogo social: teoría y práctica [Social Dialogue: Theory and Practice]*, 201 REVISTA DE DERECHO LABORAL MONTEVIDEO 11, 12 (2001)).

140. Ermida Uriarte, *supra* note 136, at 34.

141. *Id.* at 28.

142. *Id.*

143. *Id.*

144. Jorge Rosenbaum Rimolo, *Los laudos de Consejos de Salarios y su regulación por la Ley 18.566 [Wage Council Reports and Their Regulation by Law 18.566]*, 31 REVISTA DE LA FACULTAD DE DERECHO 281, 282 (2011).

145. See Ermida Uriarte, *supra* note 136, at 28 (internal citation omitted).

146. *Id.*

Additionally, as noted by Professor Ermida Uriarte, by the 1960s the executive was also applying the law “heterodoxly,” or not strictly complying with it, by directly appointing the employer and worker wage council delegates.¹⁴⁷ The executive appointed the delegates in consultation with most representative employer and worker organizations when those organizations informed him that they would not call for a delegate election.¹⁴⁸ This legally questionable practice thereafter led the executive to extend (*homologar*) the *laudos*—an act that the executive could legally do—to protect the *laudos* from judicial challenges.¹⁴⁹ But extension also contributed to exacerbating executive control over wage policy in Uruguay, as we will also examine below.

F. Authoritarianism and Its Legacy

Uruguay has been one of the most long-lived social democracies in Latin America. However, it has not been immune to dictatorship. Social and political problems began to surface when the ISI strategy started to lose steam in the mid-1950s.¹⁵⁰ Economic malaise ripened into a crisis in 1965–1966, when Uruguay suffered high rates of inflation and the existing political institutions could no longer manage intensifying social tensions, or at least part of the population believed so.¹⁵¹ In 1968, the executive power, led by President Jorge Alejandro Pacheco of the Colorado Party, froze prices and wages to curb inflation.¹⁵² It created and set wages through the *Comisión de Productividad, Precios e Ingresos*¹⁵³ (COPRIN), a new body decreed to centrally set prices and income levels for the whole country.¹⁵⁴ In this manner, the executive unilaterally set wages from 1968 to 1973 through the COPRIN.¹⁵⁵

In 1973, Juan María Bordaberry, also of the Colorado party, who was elected president in 1971, joined with the military to dissolve parliament and rule by decree. Part of the justification for the coup was the threat posed by

147. *Id.* at 29.

148. *Id.* at 28.

149. *Id.* at 28–29.

150. Alves et al., *La desigualdad del ingreso en Uruguay entre 1986 y 2009* [*Income Inequality in Uruguay Between 1986 and 2009*] 1, 2 (Instituto de Economía, Working Paper No. 03/12, 2012).

151. See Marcos Supervielle & Francisco Pucci, *El trabajo y las relaciones laborales en el Siglo XX* [*Work and Laboral Relations in the 20th Century*], in 3 *EL URUGUAY DEL SIGLO XX* [THE URUGUAY OF THE TWENTIETH CENTURY] 77, 84 (2008).

152. NOTARO ET AL., *supra* note 107, at 54.

153. *Id.*

154. *Id.*; see also Creación de la comisión de productividad, precios e ingresos [Creation of the Commission on Productivity, Prices, and Income], Law No. 13.720, Diciembre 16, 1968, *DIARIO OFICIAL* [D.O.] (Uru.).

155. Rodríguez Azcúe, *supra* note 110, at 249.

the Tupamaros, a radical left-wing political movement that at one point acted as an urban guerilla.¹⁵⁶ Bordaberry's de facto government, which lasted until 1976, reduced labor protections and promoted enterprise bargaining.¹⁵⁷ In a manner not too different from that of Pacheco's, it fixed wages through resolutions of COPRIN and its 1978 successor, the *Dirección Nacional de Costos, Precios e Ingresos* (Dinacoprin).¹⁵⁸ Later, the executive branch simply fixed wages by unilateral decree.¹⁵⁹ In this context of dictatorship (1973-1985), the executive of Uruguay did not convene wage councils.

But as the saying goes in Spanish, “[t]here is no evil that can last 100 years, or body that can withstand it.” In 1983, labor activists, new and old, created a new labor central, the *Plenario Intersindical de Trabajadores (PIT)*,¹⁶⁰ that in 1984 joined the *Convención Nacional de Trabajadores* (CNT) under the slogan “a single union movement,” thereby forming the current trade union central, *Plenario Intersindical de Trabajadores – Convención Nacional de Trabajadores* (PIT-CNT).¹⁶¹ In 1984, with the full return of electoral democracy, that labor movement started to lead a new era of intense labor conflict in Uruguay.¹⁶²

G. Democratic Opening and Second Convening of Wage Councils (1985–1990)

In 1985, the newly elected president, Julio María Sanguinetti of the Colorado party, reconvened the wage councils. The executive board (*mesa ejecutiva*) of the *Concertación Nacional Programática* (CONAPRO)¹⁶³ recommended their summons, together with the repeal of dictatorship laws, including those dealing with unions, collective agreements, strikes, and government employment.¹⁶⁴ As part of the reconvening of the wage councils, the executive, in consultation with employer and worker representatives, defined forty-eight sectoral bargaining groups (later forty-seven) for

156. Kristina Klimovich & Clive S. Thomas, *Power Groups, Interests and Interest Groups in Consolidated and Transitional Democracies: Comparing Uruguay and Costa Rica with Paraguay and Haiti*, 14 J. PUB. AFFS. 183, 188 (2014).

157. Supervielle & Pucci, *supra* note 151, at 87.

158. Rodríguez Azcúe, *supra* note 110, at 249.

159. *Id.*

160. Supervielle & Pucci, *supra* note 151, at 88.

161. See *Breve Historia del PIT-CNT* [Brief History of PIT-CNT], PIT-CNT, <https://www.pitcnt.uy/el-pit-cnt/histori/item/6-breve-historia-del-pit-cnt> (last visited Sept. 17, 2021).

162. See Rodríguez Azcúe, *supra* note 110, at 254; NOTARO ET AL., *supra* note 107, at 21.

163. CONAPRO functioned from September of 1984 through February of 1985. Its main purpose was to develop a national dialogue to restore democracy. NOTARO ET AL., *supra* note 107, at 30–31.

164. Supervielle & Pucci, *supra* note 151, at 89.

collective bargaining.¹⁶⁵

Also based on the recommendations of CONAPRO, the executive reconvened the Superior Wage Council (*Consejo Superior de Salarios*), the precursor of the Tripartite Superior Council.¹⁶⁶ But as in earlier years, the government of Uruguay applied the 1943 Law heterodoxly.¹⁶⁷ The executive power placed a ceiling over wage increases to remain vigilant of inflation.¹⁶⁸ Additionally, it set mandatory guidelines (*lineamientos*) for the parties and their agreements.¹⁶⁹ The executive also appointed the wage council delegates after consulting with the most representative organizations, making the agreements legally suspect, as in earlier years.¹⁷⁰ Therefore, the executive extended those heterodoxly arrived at *laudos* through decrees in order to “legally shield” (*blindar jurídicamente*) them, as it did in years past.¹⁷¹ The 1943 Law mattered, but it was not applied to its letter.¹⁷² In this fashion, the wage councils became a bargaining space where the parties negotiated the contents of what would later become a state norm (an executive decree).¹⁷³ Overall, the combination of mandatory bargaining guidelines, wage ceilings, and decreed *laudos* gave the executive economic and political control over the wage system.¹⁷⁴

But despite the ways the wage councils morphed in this era, they contributed to bringing back from the shadows a trade union movement that had been destroyed by the dictatorship. Wage councils reinstated collective bargaining, centralized labor union organizations, and increased minimum wages.¹⁷⁵ Hence, despite more executive control over the system, scholars and the labor movement agreed that the wage councils provided labor with institutional resources to bargain collectively and to improve workers’ conditions in the new democratic era.¹⁷⁶

While collective bargaining did see a renewal when the wage councils were reconvened, the available data on union membership—union’s self-

165. Consejos de Salarios. Clasificación por Grupos de Actividad [Wage Councils. Classification by Activity Groups], Law No. 178/985, Octubre 5, 1985, DIARIO OFICIAL [D.O.] (Uru.).

166. NOTARO ET AL., *supra* note 107, at 57.

167. Ermida Uriarte, *supra* note 136, at 30.

168. *Id.*

169. *Id.*

170. *Id.*

171. *Id.* A 1988 law also gave the executive the authority to extend the *laudos*. Modificación del Plan de Inversiones. Ejercicio 1988 – 1989 [Modification of the Investment Plan, Exercise 1988 – 1989], Law No. 16.002 art. 83, Noviembre 25, 1988, DIARIO OFICIAL [D.O.] (Uru.).

172. Ermida Uriarte, *supra* note 136, at 30.

173. *Id.*

174. *Id.*

175. *Id.* at 31.

176. *Id.*; ILO & PIT-CNT, *supra* note 125, at 22.

reports of dues-paying members—showed declining numbers from 1985 until the mid-2000s.¹⁷⁷ In 1985, unions self-reported over 250,000 members, about 200,000 members in 1990, and just over 100,000 in 2003.¹⁷⁸ Analysts have observed that the decline in union membership during those years, which occurred mostly in the private manufacturing sector, resulted from significant job losses in traditionally unionized sectors and increasing levels of unemployment.¹⁷⁹ In the 1990s, Uruguay, along with most other Latin American countries, implemented adjustment and structural change policies, as well as productive restructuring and labor flexibility initiatives.¹⁸⁰ But union decline from 1985 to the mid-2000s cannot be entirely blamed on economic policies and conditions. Around 1986, collective bargaining negotiations began to slowly but consistently decentralize for several complex and interrelated economic and political reasons.¹⁸¹ Adding to this decentralizing trend, in 1988, the executive branch, under the leadership of President Sanguinetti, established new criteria for wage council negotiations that included the need to discuss a number of issues at the plant level, such as the introduction of new technologies and wage-setting based on productivity. With these and other measures, government policy started to unravel tripartite negotiations. By 1991, one year into the government of Luis Alberto Lacalle of the center-right “Blanco” National Party, sectoral tripartism almost completely gave way to bipartite bargaining at the plant level, starting a new “flex” period described below.¹⁸² This is all to say that economic and institutional reasons appear relevant to explain union decline during the late 1980s through the early-2000s. And given the relative absence of social democratic currents in the Colorado party, political conditions also mattered greatly.

H. The “Flex” Period (1991–2004)

In 1990, a period of deregulation and flexibilization was intensified with the presidency of Luis Alberto Lacalle. The executive branch, under his leadership, refused to convene the wage councils. Hence, while in 1985–1989 there were a total of just forty seven enterprise collective agreements of any sort¹⁸³ in all of Uruguay, and 745 that covered a branch of industry,

177. Francisco Pucci & Mariela Quiñones, *Uruguay: políticas públicas y regulación laboral* [*Uruguay: Public Policies and Labor Regulation*], 32 CUADERNOS DEL CENDES 173, 180 (2015).

178. *Id.*

179. *Id.* at 179–80.

180. NOTARO ET AL., *supra* note 107, at 62

181. Supervielle & Pucci, *supra* note 151, at 90.

182. *Id.*

183. Bipartite (“typical”) collective bargaining agreements or *laudos* of the wage councils.

by 2003 there were 208 enterprise collective agreements of some sort and a mere twenty five that covered a branch of industry.¹⁸⁴ Sector-based collective bargaining, i.e., the remaining twenty five agreements or so that covered a branch industry,¹⁸⁵ were mostly in non-tradable goods—health, construction, and transportation.¹⁸⁶ Sectors with historically high union membership and strong unions were also capable of maintaining sectoral bargaining. These included banking, frigorifics, drinks, and dairy.¹⁸⁷ Thus, it appears that workers with sufficient structural power, independent of the institutional power provided by the wage councils, could preserve their sector-wide agreements.

It became clear that government refusal to convene the wage councils, together with many other measures of flexibility and deregulation, weakened labor unions.¹⁸⁸ According to some scholars, a strong individualization trend began to characterize labor relations during those years; collective bargaining also descended into the enterprise level.¹⁸⁹ Work became more precarious.¹⁹⁰ Workers and their organizations gave priority to the defense of jobs, suspending their traditional demands for higher wages.¹⁹¹ Collective bargaining unraveled and real wages fell.¹⁹² Overall, these were tumultuous times for labor as union membership almost halved.¹⁹³ Union density spiraled down from 38% in 1987 to 16% in 2000.¹⁹⁴ This decline was especially severe in the private sector, where it fell from 28% to 8% in the same period.¹⁹⁵ As a result, public employees became relatively overrepresented in unions, as happened in many other jurisdictions; public sector employees' share of overall labor union membership increased from 49% in 1987 to 69% in 2003.¹⁹⁶ In their absence, the wage councils showed

184. Pucci & Quiñones, *supra* note 177, at 178.

185. *Id.*

186. ILO & PIT-CNT, *supra* note 125, at 24.

187. *See id.*

188. Pucci & Quiñones, *supra* note 177, 176–81. Additional structural reasons for union decline included transformations in the economy, plus a shift to outsourcing (what we now called “fissured” work) and other marketization schemes. *Id.*; *see also* DAVID WEIL, THE FISSURED WORKPLACE (2014) (discussing fissured work generally).

189. Ermida Uriarte, *supra* note 136, at 31.

190. NOTARO ET AL., *supra* note 107, at 67.

191. *See id.* at 65.

192. *Id.* at 62–64.

193. *Id.* at 65; Pucci & Quiñones, *supra* note 177, at 180.

194. Pucci & Quiñones, *supra* note 177, at 180.

195. NOTARO ET AL., *supra* note 107, at 65. Other reasons for union decline include changes in industrial composition and a more open economy.

196. *Id.*

that they were more than simply wage-fixing bodies.¹⁹⁷ They supported the collective bargaining system.¹⁹⁸ Given other conditions, they also fomented unionization.

I. The Third Convening (2005–2019)

Despite the fact that labor unions lost heft during the flex period, they repositioned themselves as the clearest opposition to the neoliberal reforms of the Colorado and Blanco parties alike.¹⁹⁹ They also gained new legitimacy as a symbolic representative of a broadly-defined working class, as an actor capable of mobilizing large segments of the population, and as an actor that could channel other popular claims not exclusively related to work and the concerns of wage-earners.²⁰⁰ Labor unions also became allies of the FA,²⁰¹ a left-wing political party where communists, socialists, national-popular groups, and others that broke with the *Colorados* and *Blancos* coalesced.²⁰² While the FA was sometimes reticent to fully support the more clearly anti-neoliberal stances of the PIT-CNT, the increasing share of votes that the FA started to receive in the 1990s raised expectations about the end of neoliberalism among significant sectors of the labor movement.²⁰³

In 2004, the FA's candidate, Tabaré Vázquez, was elected, ushering in a new era for Uruguay, the labor movement, and collective bargaining.²⁰⁴ The FA quickly reconvened the wage councils.²⁰⁵ As part of the FA's reconvening of the wage councils, the executive also constituted and convened the Superior Tripartite Council to, among other things, define the sectoral bargaining groups, and to give advice for amendments to the 1943 Law.²⁰⁶ The Senior Tripartite Council established twenty sectoral bargaining

197. Ermida Uriarte, *supra* note 136, at 31.

198. *Id.*

199. NOTARO ET AL., *supra* note 107, at 66.

200. Marcos Supervielle & Mariela Quiñones, *Las nuevas funciones del Sindicalismo en el cambio del milenio [The New Functions of Syndicalism in the New Millenium]*, in EL URUGUAY DESDE LA SOCIOLOGÍA [URUGUAY FROM SOCIOLOGY] (Departamento de Sociología, Facultad de Ciencias Sociales eds., 2002).

201. *Id.*

202. Sebastián Etchemendy, *The Rise of Segmented Neo-Corporatism in South America: Wage Coordination in Argentina and Uruguay (2005-2015)*, 52 COMP. POL. STUD. 1427, 1434 (2019).

203. NOTARO ET AL., *supra* note 107, at 66 (citing Natalia Doglio et al., *Izquierda política y sindicatos en Uruguay (1971-2003) [Leftist Politics and Unions in Uruguay (1971-2003)]*, in LA IZQUIERDA URUGUAYA ENTRE LA OPOSICIÓN Y EL GOBIERNO [THE URUGUAYAN LEFT BETWEEN THE OPPOSITION AND THE GOVERNMENT] (Jorge Lanzaro ed., 2004)).

204. NOTARO ET AL., *supra* note 107, at 71.

205. *Id.*

206. See Consejos de Salarios. Clasificación por Grupos de Actividad [Wage Council. Classification by Activity Groups], Law No. 105/005, Julio 3, 2005, DIARIO OFICIAL [D.O.] (Uru.).

groups, reorganizing them according to the new economic and labor realities of Uruguay.²⁰⁷ Likewise, the executive created and convened for the first time a Rural Superior Council (*Consejo Rural Superior*) with the purpose of determining criteria to establish wage councils in the country's rural sector, which includes agriculture, livestock, poultry farms, swine, forestry, and other related industries, as well as to carry out the classification of the groups of that sector.²⁰⁸ Also, the executive convened a bipartite roundtable to discuss a regulatory framework for public sector collective bargaining, which had not been sanctioned yet by law.²⁰⁹ Later, the legislature formally established collective bargaining in the public sector through Law No. 18.508 of 2009.²¹⁰

Hence, a very important distinction between this latest period and previous periods was that there were multiple convenings, not just one. These multiple convenings sought to extend the labor relations system to sectors that had been previously excluded. The wage council system now distinguished three areas of negotiation: the private sector (the sector traditionally convened), the rural sector (never convened), and the public sector (also previously excluded).

Then, in 2008, the domestic service sectoral bargaining group was also convened for the first time, becoming Group 21 of the private sector.²¹¹ Additionally, the wage council guidelines established in 2005 were no longer mandatory.²¹² Hence, under FA, the wage councils were provided with an additional level of autonomy, different from the second period.

Beyond these important differences, Uruguay repeated practices of the second period. The executive, in consultation and agreement with the most representative organizations, appointed the delegates of the wage councils.²¹³ It also extended the *laudos* by decree, as it did during the second period.²¹⁴

Regarding the contents of the wage council agreements, the main ones pertained to wages.²¹⁵ However, as in prior periods, the wage councils agreed on other terms. They established occupational categories, set procedures for conflict resolution, and accorded labor peace clauses, gender equity clauses,

207. Graciela Mazzuchi, *Labour Relations in Uruguay, 2005–08* 18 (ILO, Working Paper No. 6, 2009).

208. Wage Council. Classification by Activity Group, Law No. 105/005.

209. Mazzuchi, *supra* note 207, at 19.

210. Collective Bargaining in the Framework of Labor Relations in the Public Sector, Law No. 18.508.

211. ILO & PIT-CNT, *supra* note 125, at 69.

212. NOTARO ET AL., *supra* note 107, at 76–79.

213. Ermida Uriarte, *supra* note 136, at 32.

214. *Id.* at 30–31.

215. *Id.* at 35–36.

family care clauses, professional training, among others.²¹⁶ Additionally, one of the pressing and novel challenges posed during this latest call was how to structure negotiations by sector and enterprise because lower-level bargaining had spread considerably in the 1990s.²¹⁷

Scholars and other analysts have argued that because of this third period, labor issues reestablished themselves in the national political agenda and public opinion.²¹⁸ First, labor unions regained their prominence.²¹⁹ Second, there was a notable increase in collective bargaining. Almost all sectors started to bargain centrally, at the wage councils, once they were reconvened.²²⁰ Third, the minimum wage, which had been losing purchasing power for over thirty years, increased by a whopping 57% in 2005.²²¹ The effects on wages were most noticeable in the lower rungs of the salary scales, helping to narrow income inequality in the country.²²² Additionally, the wage councils, alongside other strategies, helped to formalize work, reversing worrying trends from earlier years.²²³

Union self-reports also show that union membership increased almost three-fold from 2005 to 2013.²²⁴ According to PIT-CNT, official membership statistics²²⁵ show that there were 110,000 dues-paying union members in Uruguay in 2003 (before the FA's government), 240,000 in 2008 (three years after the FA assumed power), 330,000 in 2011, and 353,000 in 2013.²²⁶ The PIT-CNT estimates that these gains meant that union density was at 15% in 2003 and doubled to 30% by 2013.²²⁷ Hence, one study concluded that the coming to power of the FA marked a period of union revitalization.²²⁸ Considering that unions had started campaigns to increase union membership ten years before the FA won its first election in 2005, with meager results, the positive outcomes after the FA came to power testify

216. *Id.*

217. See ILO & PIT-CNT, *supra* note 125, at 127.

218. NOTARO ET AL., *supra* note 107, at 81–96.

219. Ermida Uriarte, *supra* note 136, at 33.

220. *Id.*

221. Alves et al., *supra* note 150, at 9.

222. *Id.* (noting that wage councils contributed to narrowing income inequality from 2007–2009, shortly after the FA won the elections).

223. JUAN PABLO MARTÍNEZ & PABLO CASALÍ, *INFORMALIDAD Y POLÍTICA PARA LA FORMALIZACIÓN LABORAL EN URUGUAY 2005 / 2016* [INFORMALITY AND POLICIES FOR LABORAL FORMALIZATION IN URUGUAY 2005 / 2016] 151 (2019).

224. ILO & PIT-CNT, *supra* note 125, at 107.

225. Available membership statistics count as members only those workers who are employed in the formal economy and who pay membership dues. *Id.*

226. *Id.* at 107.

227. *Id.* at 108.

228. Pucci & Quiñones, *supra* note 177, at 182.

to the importance of that political victory for Uruguayan labor unions.²²⁹

We should note, however, that union membership did not only increase because of the FA's victory and its reactivation of the wage councils. Since 2005, the country's economy underwent a sea change. First, unemployment decreased dramatically during this period of significant economic growth,²³⁰ which increased the pool of workers who can join unions. The drop in unemployment also likely increased overall bargaining power and, hence, workers' structural power.²³¹ Moreover, the economy grew in specific sectors where unions have been traditionally strong, such as in construction. So, while in 2003 only 2.4% of all union members were in construction, by 2011 the number jumped to 6.5%.²³² It had also been higher in 1990, at 5.5% when the Uruguayan economy was in better shape.²³³ Manufacturing, on the other hand, saw a dramatic fall of its total share of union membership. In 1990, before neoliberal reform had taken full force in Uruguay, manufacturing had almost one-quarter of all union members of the country, or 22.7%.²³⁴ Its share subsequently fell to 13.3% in 1997 and to 11.8% in 2003.²³⁵ However, by 2011, six years into the FA's governments, the share remained at 13.5 %, a relatively lower level.²³⁶ Hence, the available data suggests that union membership in Uruguay, like almost everywhere else, is sensitive to economic or structural conditions despite institutional supports.

J. Looking Ahead

On September 11, 2009, Uruguay enacted Law 18.566, which established that employer or worker representatives may request the executive to convene the wage councils, and, if so, the executive *must* convene them within fifteen days of the request.²³⁷ In this manner, wage council convenings no longer depend, at least by law, exclusively on the executive and the government of the day. This is an important change. It attempts to make collective bargaining less dependent on partisan politics.

The 2009 law is being put to the test now. It appears to be working. In

229. *Id.*

230. NOTARO ET AL., *supra* note 107, at 81.

231. *See generally* Orley Ashenfelter & John Pencavel, *American Trade Union Growth: 1900-1960*, 83 Q.J. ECON. 434 (1969) (explaining the negative relationship between unemployment and union growth).

232. ILO & PIT-CNT, *supra* note 125, at 109.

233. *Id.*

234. *Id.*

235. *Id.*

236. *Id.*

237. Sistema de Negociación Colectiva [Collective Bargaining System], Law No. 18.566 art. 12, Septiembre 11, 2009, DIARIO OFICIAL [D.O.] (Uru.).

2020, a new right-of-center government headed by president Lacalle Pou took the reins of the country, after almost fifteen years of social democratic governments of the FA. The results remain mixed and still uncertain, especially given the complexities posed by the COVID-19 pandemic. Given the pandemic, the government, in consultation with employer and worker representatives, extended the prior agreements without bargaining for new terms. In June of 2021, the government then convened the Tripartite Superior Council. On the one hand, the 2021 convening has amounted to good news, since a center-right party, not a social-democratic party, was convening the Tripartite Superior Council. On the other hand, the government has also been advocating that special consideration be given to those sectors most affected by the COVID-19 pandemic. Special terms include: extension of the old agreements; guidelines that moderate, if not freeze, wages in those sectors; and special dispensation to employers hit especially hard by the pandemic to be released from new sectoral standards. We think, although it might be too early to accurately determine, that the new convening might lead to significant decentralization, as happened during the “flex” period.

VI. ANALYSIS

The case of Uruguay shows that wage boards can help to revitalize labor. While union membership numbers were not available for us to evaluate the first convening (1943–1968), qualitative assessments, especially by initial critics and skeptics of the wage councils, provide evidence that the wage councils helped to organize new labor unions. The law also helped labor organizations centralize and consolidate. Some union revitalization did occur. And all of this required that the wage councils be convened, which in turn needed a political party in power willing and capable of doing so. In the first period described, this meant the social democratic *neobatllistas* of the Colorado party.

Refusal to convene the wage councils by the dictatorship exposed the underbelly of state-managed wage councils. Once democracy resurfaced, labor unions reasserted themselves, consolidated into a new central labor organization, the PIT-CNT, and demanded the reconvening of the councils alongside other sectors of civil society as part of a larger set of demands to democratize the country. By then, the social-democratic *batllista* wing of the *Colorados* had lost influence in the party, while the center-right had been gaining ground. However, the *Colorados* convened the wage councils due to democratization pressures.

The second period had several mixed qualities. On one hand, despite the return to democracy, the executive retained significant control over the wage council system. It set mandatory guidelines and could, in theory, refuse

to decree the *laudos*. However, in practice, the executive never exercised that refusal authority. Hence, analysts commented that collective bargaining experienced a boost—workers regained a space to bargain collectively and real minimum wages increased. Overall, the autonomy of the parties was de facto honored. But despite the return to democracy and the reconvening of the wage councils, union membership slid. Economic restructuring weakened unions. Moreover, decentralization, itself a product of government economic policy, eroded unions' institutional power. Both conditions fared ill for union membership, one of the key determinants we have focused on to analyze labor revitalization. The absence of a social democratic government, and the presence of a government promoting neoliberal policies, had a negative impact on overall union power. Eventually, Uruguayan governments refused to convene the wage councils, sending labor unions into crisis.

Crisis, however, forced the labor movement to reorient itself as a more symbolic representative of workers, to lead popular protests, and to become a vocal participant in public debates. It also became an important ally of the growing FA.

After its victory in 2005, the FA reconvened the wage councils, marking a historic third period of those bodies, and again showing the importance of a social democratic party. Real wages improved. Union density also increased from about 15 % to 30 %.²³⁸ New organizations, such as domestic worker and employer organizations, formed as a consequence of the government's convening regarding the negotiation of minimum wages. However, the increase in union membership was not the same for workers of all sectors. Manufacturing, for example, lost its relative share of union membership given the openness of the sector.²³⁹ Political power seems very important for unions to wield institutional power, but structural power also matters.

A. Seven hypotheses for the United States

What lessons can the United States, and perhaps others, learn from Uruguay? First, we must start by noting that Uruguayan law extended bargaining authority and autonomy to the parties—labor and management—to bargain for minimum wages in a sector, thereby extending institutional power to unions and employers. The state of New York, as described in Part IV of this article, does not. New York State law gives authority to labor and

238. ILO & PIT-CNT, *supra* note 125, at 108.

239. Workers have lost jobs in manufacturing while construction has seen a spike in new hires, thereby also contributing to the relative increase in labor membership share in construction.

management agents that are not necessarily representative of the sectors in question to recommend minimum wages to the state authorities. The New York executive retains the final word on wages. Hence, the first major difference between Uruguay and the United States (if we use New York State as a proxy) is that the United States does not afford bargaining parties with authority and autonomy to bargain for minimum wages in a sector. This lack of institutional power in the United States explains a lot of the spotty results in 2016 that led some labor advocates to feel underwhelmed by the wage board strategy in New York.

Of course, advocates of sectoral bargaining, including Professor Andrias, want to see new laws giving workers and employers the authority and autonomy to bargain for minimum wages in a sector. After all, Professor Andrias calls for a “*new labor law*.”²⁴⁰ We could thus hypothesize that (1) if a U.S. federal, state, or local jurisdiction gives labor and management formal authority to bargain sectorally for minimum wages, then the probability of the parties’ sectoral convening increases; and (2) if the probability of the parties’ convening increases, the probability of union revitalization also increases.

However, this article has shown that even when such laws are put on the books, it may not be put into practice without a social democratic party in power and willing to convene the wage boards. At first blush, the absence of a national social democratic party and a strong socialist tradition in the United States spells trouble for U.S. sectoral bargaining.²⁴¹ The Republican party is not remotely social democratic. While some social democrats such as Bernie Sanders and Alexandria Ocasio-Cortez hold some sway in the Democratic Party, they do not define the party; they lie more at its margins than its center. The current-day Democratic Party is not a *neobatllista* or FA grouping.

Absence of a social democratic party in the United States might not end the political analysis for wage boards, however. First, one piece of good news for U.S. labor advocates and reformers, as evidenced by the case of Uruguay, is that wage board arrangements need not require a traditional Left party with extensive labor union membership. A pluri-classist party, like the U.S. Democratic party, could do the job. Second, while Uruguay showed that a party committed to convening wage boards due to its ideological and programmatic proclivities is necessary for the wage boards to exist in practice, the correlation between board convenings and social democratic

240. Andrias, *supra* note 22, at 8–11.

241. See generally SEYMOUR MARTIN LIPSET & GARY MARKS, IT DIDN'T HAPPEN HERE: WHY SOCIALISM FAILED IN THE UNITED STATES (2000) (explaining the relative absence of socialism in United States history).

parties was not 100%. In the 1980s, when the country returned to democracy after a period of brutal dictatorship, wage boards were convened by governments that were no longer social democratic. The new *Colorado* democratic government convened the councils after it was recommended by CONAPRO to restore democratic governance. Moreover, a center-right party is convening wage boards as of this writing. In this sense, particular political conditions, especially those marked by breaks from politics of labor repression as occurred during the dictatorship, or strong pressures from a robust labor movement and electorate to convene the wage councils or boards might compel a non-social democratic party to convene wage boards. Hence, a third hypothesis: (3) if a U.S. federal, state, or local jurisdiction, with a government with legal authority to convene wage boards, is governed by a political party with a government program identified with the wage boards, then the probability for a wage board convening in that jurisdiction increases, and the probability for union revitalization also increases. However, (4) if a U.S. federal, state, or local jurisdiction is governed by a right-of-center party, and that government has legal authority to set bargaining guidelines, and that government convenes wage boards, then the probability that the government will use the boards to decentralize bargaining increases. Relatedly, (5) if government uses wage boards to decentralize bargaining, then the probabilities for union revitalization decrease. The Uruguayan experience of the late 1980s and 1990s, and perhaps, to some extent the 2021 experience suggest these latter two hypotheses.

Moreover, while U.S. federal wage boards might still appear utopian for the United States, some states, cities, and other localities with strong progressive Democratic support might be ripe for sectoral bargaining through wage boards, as Professor Andrias and others have argued.²⁴² Sectoral bargaining could also prevail nationally for limited bargaining issues, such as to set occupational health and safety standards during a pandemic.²⁴³ We could thus hypothesize that (6) in those states and localities where the Democratic Party holds more complete control of government, including executive, legislative, and judicial powers, and where progressive Democrats have more sway, the probabilities of implementing an effective wage board increases, and probabilities for labor revitalization also increases.

Finally, we should remember that institutional and political power are

242. See, e.g., Andrias, *supra* note 89.

243. See Sharon Block, Brishen Rogers & Benjamin Sachs, *A Safer, More Equitable Reopening*, ONLABOR (May 20, 2020), <https://onlabor.org/a-safer-more-equitable-reopening/> (discussing the Essential Workers Bill of Rights bill, which calls for a similar proposal).

not the be-all and end-all for effective wage boards that can help to revitalize labor unions. Economics also matter. The United States is recognized as one of the most open world economies,²⁴⁴ making it more challenging for workers to unionize and combine without fearing replacement. U.S. policy could thus help protect U.S. workers from markets or make workers stronger market players (by investing in their skills and education, for example). Hence, we can hypothesize that (7) if U.S. policy helps protect U.S. workers from markets, or promotes investing in their education and skills, the probability of labor union revitalization would increase.

B. One Pending Issue: The Strike

One key issue not discussed in this article is the strike. In Uruguay, workers have ample rights to strike, which are guaranteed by the Uruguayan constitution and the international instruments it has ratified, such as Convention 87 of the ILO and the Mercosur Declaration.²⁴⁵ Moreover, Uruguay's legislative abstentionism in collective labor law has meant that the strike remains mostly unregulated; as a result, the constitutional right to strike is very broad.²⁴⁶ Given U.S. legal restrictions to the right to strike, including limits on secondary strikes and boycotts (which are crucial for solidarity actions) and sanctions on permanent strike replacements,²⁴⁷ the U.S. and Uruguay are worlds apart on the right to strike. Uruguayan unions seem to better enjoy this important institutional source of power. Further

244. According to the Heritage Foundation's index of economic openness, the United States shows a high level of trade freedom, scoring about 86 of 100 points. Uruguay is relatively less open, receiving about 80 points. Singapore, one of the world's most open economies, stands at 90 points, while Chad is among the less open, receiving about 52 points. *Trade Freedom Score*, WORLD BANK, https://tdata360.worldbank.org/indicators/trade.free.scr?country=USA&indicator=757&countries=URY,SGP,TCD,MMR&viz=line_chart&years=2014,2018 (last visited Feb. 6, 2021). However, some important analysts, such as the former director of the World Bank and Nobel Laureate, Joseph Stiglitz, have challenged the view that the U.S. is an open economy, given how its trade agreements have favored U.S. corporations over others. See Joseph E. Stiglitz, *Joseph Stiglitz: US Trade Deals Were Designed to Serve Corporations at the Expense of Workers*, CNBC (Apr. 21, 2019, 9:19 PM), <https://www.cnbc.com/2019/04/22/joseph-stiglitz-us-trade-deals-helped-corporations-and-hurt-workers.html>.

245. Gamonal Contreras & Arellano Ortiz, *supra* note 22, at 182 n.46.

246. *Id.* at 182. We should note, however, that a very recent law includes language that appears to limit the right to strike. See Poder Ejecutivo Consejo de Ministros [Executive Power of the Council of Ministers], Law No. 19.889 art. 392, Julio 9, 2020, DIARIO OFICIAL [D.O.] (Uru.). Commonly called the *Ley de Urgente Consideración (LUC)*, this law, among other things, limits worker occupations of workplaces. Article 392, titled "Freedom of work and management rights to the enterprise," establishes that "[t]he State guarantees the peaceful exercise of the right to strike, the right of non-strikers to access and work in the respective establishments, and the right of the management of the enterprises to enter the facilities freely." *Id.* The FA and the labor movement are currently gathering signatures to seek rescission of article 392 of the LUC.

247. LANCE COMPA, UNFAIR ADVANTAGE: WORKERS' FREEDOM OF ASSOCIATION IN THE UNITED STATES UNDER INTERNATIONAL HUMAN RIGHTS STANDARDS 38–39 (2000).

research on Uruguay, and perhaps other jurisdictions with wage boards, could focus on how workers' rights to strike and their strike actions might affect the efficacy of the wage board model.²⁴⁸

C. Another Pending Issue: Organizational Strategies

Another issue left untouched by this article is how unions organize workers within a system of sectoral bargaining through wage boards. As we stated in passing here, Uruguayan labor unions engaged in membership campaigns. In the flex era, those campaigns did not yield too many new members, but once the FA convened the wage councils, the membership campaigns gave fruit. But other than the facts stated here, we could not provide detailed information about organizing campaigns in Uruguay, mostly because the evidence is not available; obtaining it requires original research.²⁴⁹

However, other researchers have provided evidence showing that organizing matters. Professor Guy Mundlak, for example, in a study of hybrid (i.e., social or sectoral and enterprise bargaining) systems in four countries has shown the challenges, but also the need, for proactive union member organizing under any system of collective bargaining.²⁵⁰ And in prior work, one of us showed that despite Puerto Rico's sectoral minimum wage committees, U.S. unions had to engage in old-fashioned, plant-by-plant organizing in the territory in order to recruit union members.²⁵¹ Purely top-down strategies thus do not appear effective to organize new union members. Details about how Uruguayan unions organize workers would help explain how organizing matters.

D. A Third Pending Issue: Social Norms

We should also underscore another point not addressed above, but which may matter to better understand the relative success of Uruguay: how its political culture and social norms of its people facilitate sectoral bargaining. Other research has shown that social norms favorable to collective bargaining matter.²⁵² And Uruguay's unions function in a national

248. We thank Professor Kate Andrias for suggesting this point.

249. And the fact is that workers do not automatically flock to unions once the sectoral system is in place. See generally Matthew Ginsburg, *Nothing New Under the Sun: "The New Labor Law" Must Still Grapple with the Traditional Challenges of Firm-Based Organizing and Building Self-Sustainable Worker Organizations*, 126 YALE L.J.F. 488 (2017) (discussing numerous other challenges to labor organization efforts).

250. See GUY MUNDLAK, ORGANIZING MATTERS: TWO LOGICS OF TRADE UNION REPRESENTATION 217–18 (2020).

251. Rosado Marzán, *supra* note 21, at 149–52.

252. *Id.* at 149–52, 154 (noting how pre-existing relationships between garment employers and

context where social dialogue pervades.²⁵³ It might be true that Uruguay does not have the high levels of consensus that exist in Nordic countries, where sectoral bargaining is well-institutionalized.²⁵⁴ Uruguay's system of wage boards has been opposed by the political Right and by business groups, requiring FA victories in recent years for the wage councils to be convened.²⁵⁵ However, "social dialogue" is a recurring catchphrase in Uruguayan public discourse,²⁵⁶ alongside "citizen participation" (*participación ciudadana*), which contrasts with the political culture in more liberal contexts such as in the United States where individualism is more highly valued, and libertarianism seems to have taken firm hold of some political sectors. Similarly, Uruguayan historians have identified Uruguay as a country of "closeness" (*país de cercanías*)²⁵⁷ where one could presume that civil society, including labor unions, may participate in associational life to a greater extent than in more "arm's length" jurisdictions, such as the United States. In fact, U.S. social scientists and other commentators have argued that individualism pervades where a liberal market economy bereft of significant coordination is dominant.²⁵⁸ In more recent years, a deeply concerning politics of polarization has become the new norm in the United States, further corroding cooperation between competitors and rivals.²⁵⁹ But the U.S. has not always been fragmented. Sociologist Robert Putnam, for example, described a post-World War II era when U.S. associationalism was high, which is the same era when U.S. unions were at their cusp.²⁶⁰ Future

unions in Puerto Rico facilitated collective bargaining); *see also* Western & Rosenfeld, *supra* note 6, at 517–19 (discussing a vast literature on how social norms structure industrial relations systems and arguing that U.S. unions supported a "moral economy" where norms of equity reduced inequality in pay).

253. *See generally* Marianela Boliolo et al., *Diálogo Social en los Consejos de Salarios: El caso del Grupo No. 8, Subgrupo 1 y las Categorías Laborales* [*Social Dialogue in the Wage Councils: The Case of Group 8, Subgroup 1 and the Labor Categories*], 157 BOLETÍN CINTERFOR 47 (2006) (noting Uruguay's history with social dialogue).

254. Etchemendy, *supra* note 202, at 1457.

255. *Id.*

256. *See generally* Ana Laura Ermida & Sofía Manisse, *Experiencias de diálogo social y nuevas formas de gobernabilidad* [*Experiences in Social Dialogue and the New Forms of Governing*], SECOND ISA F. SOCIO. (Aug. 3, 2012, 10:45 AM), <https://isaconf.confex.com/isaconf/forum2012/webprogram/Paper21620.html>.

257. CARLOS REAL DE AZÚA, *EL IMPULSO Y SU FRENO: TRES DÉCADAS DE BATLLISMO Y LAS RAÍCES DE LA CRISIS URUGUAYA* [THE IMPULSE AND ITS BRAKES: THREE DECADES OF BATLLISMO AND THE ROOTS OF THE URUGUAYAN CRISIS] 7 (1964).

258. *See, e.g.*, Peter A. Hall & David Soskice, *An Introduction to Varieties of Capitalism, in VARIETIES OF CAPITALISM: THE INSTITUTIONAL FOUNDATIONS OF COMPARATIVE ADVANTAGE* 1–8 (Peter A. Hall & David Soskice, eds., 2001) (describing coordinated market economies and the institutions they require).

259. *See generally* EZRA KLEIN, *WHY WE ARE POLARIZED* (2020).

260. *See generally* ROBERT PUTNAM, *BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY* (2000).

research could try to understand how a project promoting sectoral bargaining could tap into associational traditions that, while perhaps dormant, are not entirely antithetical to the American creed.

VII. CONCLUSION

This article was motivated by the question of whether sectoral bargaining through wage boards can help increase union membership and reinvigorate labor unions. We raised the question because U.S. labor advocates and academics, inspired by the 2016 experience in New York State, are now interested in the issue. There, the state used its seldom-convened wage board to increase minimum wages in fast food to fifteen dollars. Labor advocates also formed a non-union, worker advocacy group called Fast Food Justice. However, as this article explains, some labor advocates were left wanting more, as the New York experience did not promote union membership growth, the formation of new labor unions, or the expansion of spaces for meaningful collective bargaining. This article thus summarized normative and positive theories to help us better comprehend basic elements of collective bargaining and when we could expect sectoral bargaining to promote labor revitalization. It also used the case of Uruguay, a successful case of labor union revitalization through wage boards, to lend empirical support to the theories. We learned that Uruguayan law provided unions and employers with collective autonomy to bargain in the wage councils, which in turn extended institutional power to unions and employers, thereby complementing workers' (and employers') structural power. Social democratic parties were also key in convening the wage councils, thus making the whole system politically viable.

This article did not exhaust all conditions that might have made Uruguayan wage boards effective. Strikes and strike rights, organizational strategies, and social norms of the country might also be worth exploring to better understand the success of the Uruguayan wage board system, and perhaps those of others.

The evidence presented offers a sobering picture for the United States in comparison to Uruguay. The U.S. lacks a strong social democratic party. Moreover, practically no state or local authority truly affords labor and management the right to bargain sectorally over minimum wages. And, being in a relatively open, liberal market economy, many U.S. workers are in a weak structural position to use wage boards effectively.

But not all the news were negative. Some states and local governments, where progressive (social democratic) politicians prevail, might give unions and employers the right to set sectoral wages. Even where progressive Democrats do not prevail, the complex nature of politics might compel any

government administration to enact a wage board system if wage boards were somehow linked to a larger and desirable political program, such as was the case for democratization in Uruguay in the 1980s.

In closing, and perhaps in an additional effort towards optimism, we encourage U.S. policymakers, advocates, and scholars to discuss out-of-the-box ideas, such as sectoral bargaining through wage boards, not only because they could be implemented at the state or local levels, but also because they might, at some unknown time, be feasible nationally. Sectoral bargaining through wage boards has had a past in the United States, such as during the first years of the FLSA. That tradition could be revived. As Professor Harry Arthurs has remarked when reflecting on the future of labor law, and citing historian Daniel Rodgers, “One of the most important consequences of crises . . . is that they ratchet up the value of policy ideas that are waiting in the wings, already formed though not yet politically enactable.”²⁶¹ Developing ideas thus remains an important task independent of the political and social conditions necessary to make those ideas real.

261. Harry Arthurs, *Labour Law after Labour* 413–16 (Osgoode Hall Law School, Comparative Research in Law & Political Economy, Research Paper No. 15/2011, 2011) (citing DANIEL RODGERS, *ATLANTIC CROSSINGS: SOCIAL POLITICS IN A PROGRESSIVE AGE* (1998)).