

Beyond De-Centralization: the Erosion of Collective Bargaining in Spain during the Great Depression

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Abstract

Social partners in Spain have since the early 1980s worked to consolidate strong collective coordination capacities. Particularly important in this regard have been the efforts since the mid 1990s to strengthen collective bargaining at sectoral level to consolidate a top-down mechanism of organized de-centralization. Peak bi-partite agreements on collective bargaining, conflict resolution and lifelong learning have also contributed to these goals. The article first of all shows the difficulties to develop autonomous coordination mechanisms in a context of significant statutory regulation of industrial relations and permanent threat of unilateral state regulation. Moreover, it is also argued how in the case of Spain, the state does not only supplement the coordination deficit of social partners but very often substitutes them. The reform trajectory since the 1990s is accordingly characterized by the lack of institutionalized social dialogue and hence the discretionary intervention of the state in critical junctures as developments in the Great Recession shows. Social partners, in a Sisyphus like process, have to rebuild their self-regulatory capacities and adapt to the new framework imposed by the state.

Introduction

The sovereign debt crisis not only has led to the implementation of far reaching fiscal austerity packages in the peripheral countries of the Eurozone, but it has also triggered significant reforms of labour market and industrial relations institutions. Labour law reforms implemented in many EU countries during the 2010-2013 period have been justified by the argument that, irrespective of the causes of the crisis, making labour markets more flexible is the best response and will guarantee a softer landing for future economic downturns (European Commission 2010). Relying on this reasoning, changes in labour laws in Southern Europe and Ireland have involved far-reaching modifications of labour codes (Clauwaert and Schömann, 2012), including further moves towards decentralisation of collective bargaining, easy firing processes etc. This has been accompanied by a downsizing of the welfare state (Heise and Liese, 2011) with particularly significant impacts in unemployment benefit systems, old age pensions but also active labour market programmes. Higher labour market flexibility was thus combined with significant cuts in social protection in a number of countries, which has 'de facto' meant the abandonment of the 'flexicurity' paradigm in these countries (Heyes 2013).

The political and economic context where reforms have occurred has certainly been propitious to the abandonment of tripartite social dialogue (Regini and Pedersini 2013, Molina and Miguélez 2013). The explicit or implicit exogenous imposition of these reforms on governments under strong pressure to comply with certain fiscal requirements, has led in many cases to push forward reforms of the labour market or industrial relations without even having negotiated them with social partners. The general impression is that executives feel they're no longer accountable to their citizens but to international organisations and as a consequence, there is no need to look for the domestic legitimacy provided by social partners. In other words, there is no space for domestic social dialogue under the technocratic model of macroeconomic management imposed on member states.

Even though Spain was not officially under the assistance program and supervision of the Troika, the reforms undertaken in this country have been as far reaching as in the Memorandum countries. Shortly before the executive headed by Mariano Rajoy announced a new labour market reform in 10 February 2012, the finance ministry re-assured Mr. C. Juncker at an Ecofin meeting in Brussels that the changes in labour market regulations would be "extremely aggressive" (El País 2012). A leader of the main employer organization in Spain affirmed that it was the most profound reform since the 1978 constitution was approved, and expected to be very useful in order to create new jobs and reduce the unemployment rate. The reform was approved without having maintained any dialogue with social partners, and it didn't take into account the agreement signed just some days before by trade unions and employer organizations that contained a wide range of measures, including mechanisms to introduce higher degrees of flexibility in collective bargaining. The way in which the reform was passed, together with its content has led some authors to talk of a de-constitutionalization of work (Baylos 2013).

The unilateral change in labour market regulations and collective bargaining in Spain does not however constitute a novelty (Bentolila 2013). There have been at least three more occasions since the return to democracy where the Spanish executive has regulated without previously reaching a consensus with social partners. However, there are two aspects that make this latest episode different from previous ones. First, preceding unilateral reforms of industrial relations and the labour market had been preceded by negotiations among social partners that failed to reach an agreement. Secondly, the reform goes well beyond the employers' historical claim of further collective bargaining decentralization and enhances the capacity of employers to unilaterally modify employees' working conditions by opting out of the clauses contained in collective agreements. In other words, the reform erodes the protective capacity of collective bargaining in Spain.

As a country belonging to the so-called Mixed Market Economies group within varieties of capitalism, it is been argued how social partners lack the organizational and coordination capacities necessary in order to build complementarities across institutional domains (Molina and Rhodes 2007). These institutional deficiencies were particularly worrying in the context of Monetary Integration, as they left the country's economy in a vulnerable position before the requirements of the Euro (Hassel 2007). In order to overcome these weaknesses, the state in these countries has played a compensating role in order to strengthen the position and capacities of socio-economic actors (Royo 2006). However, this supplementary intervention constitutes an unstable equilibrium as it very often undermines the incentives actors have to invest in specific assets, whilst opening the door to a discretionary use of state's legitimate capacities to govern a specific policy field. Institutional developments in MMEs are accordingly more sensitive to exogenous development as well as highly dependent on the political system and the veto power capacity of domestic actors.

Developments in industrial relations in Spain are a clear example of the contradictions inherent to MMEs. Social partners, and trade unions in particular, have worked to consolidate strong autonomous collective bargaining institutions. Particularly important in this regard have been the efforts since the mid 1990s to strengthen collective bargaining at sectoral level to consolidate a top-down mechanism of organized de-centralisation. Peak bi-partite agreements on collective bargaining, conflict resolution and lifelong learning have also contributed to enhance coordination and autonomous governance of industrial relations. The article first of all shows the difficulties to develop autonomous coordination mechanisms in a context of significant statutory regulation of industrial relations and permanent threat of unilateral state regulation. Moreover, it is also argued how in the case of Spain, the state does not only supplement the coordination deficit of social partners but very often substitutes them. The reform trajectory since the 1990s is accordingly characterized by the lack of institutionalized social dialogue and hence the discretionary intervention of the state in critical junctures. Social partners, in a Sisyphus like process, have to rebuild their autonomous regulatory capacities and adapt to the new framework imposed by the state.

The paper is structured in four sections. The first section shortly discusses the role and characteristics of industrial relations in Mixed Market Economies using the Varieties of Capitalism framework. Section two provides a general overview of the evolution and characteristics of industrial relations in Spain. Two aspects are paid particular attention: changes in the structure of collective bargaining and the regulatory intervention of the state. Section III then moves into the recent period of economic crisis and austerity policies. A discussion of the main developments on industrial relations and social dialogue is complemented with a focus on the two aspects analysed in section II. Finally, section IV discusses the main impact on industrial relations of the changes occurred.

Section I. Industrial Relations and Institutional Change in Mixed Market Economies

Some consensus has been built in recent years around the state being the defining trait of the political economies of Southern Europe (Amable 2003, Schmidt 2003, Molina and Rhodes 2007). Even though disagreement persists as to its role and significance, it is acknowledged how state coordination constitutes another important form of coordination alongside the market and strategic types found in LMEs and CMEs respectively. In these countries, the state supplements the coordination failures of socio-economic actors, thus supporting and enhancing their strategic capacity.

Functional explanations have occupied a central role in the debates about state's role in industrial relations (Molina 2014). Common to all these explanations is the idea that state intervention will be inversely related to the coordination capacity of other non-state actors and their capacity to create institutions that support companies' competitiveness. In the specific case of MMEs of Southern Europe, Gerschenkron (1962) noted how heavier state regulation in Southern Europe contributed to consolidate markets in countries where the late industrialization had hindered the consolidation of an adequate regulatory framework for the consolidation of capitalism. In the specific case of industrial relations, Howell (2001) notes more recently how the state plays a particular important role in moments of change and re-negotiation of industrial relations. Confirmatory evidence of Howell's insights came with the experience of concertation and social pacts (Hancke and Rhodes 2005; Hassel 2007). These experiences made clear how in countries lacking the institutional and organizational

preconditions for successful concertation and adaptation to the requirements of EMU, the state provided a favourable ground for tripartite negotiations.

Within the functional approach, Varieties of Capitalism contains two main implications for the study of differences and changes in the role of the state in industrial relations. First, this role differs according to the needs of the specific variety of capitalism we observe. Thus in those countries where both market and non-market (strategic) coordination mechanisms are weak, the state will be particularly present in industrial relations (Hassel 2007). A second implication refers to the pace and direction of change. Following VoC, we can expect institutional change in pure LMEs and CMEs to be incremental and self-referential in order to maintain existing complementarities (Hall and Thelen 2009). Moreover, we can expect the state to play a secondary / monitoring role. This means that the differences we observe across countries regarding the role of the state in industrial relations will persist, or at maximum will adapt to gradual transformations in the form of capitalism dominant in the economy. However, in MMEs change will be more responsive to exogenous shocks and contingent upon government colour and the veto power of other actors. Thus two aspects make the institutional equilibriums in MMEs inherently weak. The first one is that in its supplementary role, state intervention does not necessarily contribute to enhance existing institutional complementarities or deliver new ones. This implies, following the VoC logic, that institutional equilibriums in MMEs will fail to create / generate actors' incentives to invest in specific skills and/or develop institutions capable of locking in actors' strategies. As a consequence, MMEs will be characterized by higher degrees of institutional instability and state's role will be a hindrance for socio-economic actors to autonomously develop non-market forms of coordination.

In the case of Spain, the consolidation of democratic institutions and the opening up of spaces for autonomous self-regulation and interaction amongst social partners characterized industrial relations developments since the early 1980s. However, this process has been characterized by a comparatively higher degree of state intervention in order to overcome some of the coordination problems among social partners that appeared in the early years of the return to democracy. This is a differentiating trait of the Mediterranean or Mixed Variety of Capitalism (Amable 2006; Molina and Rhodes 2007). In return for cooperation in the early stages, the state has very often provided institutional compensations to social partners and especially trade unions, including their participation in public decision-making, extension mechanisms for collective bargaining, etc. As a result of these, social partners have acquired political veto powers that by far exceed their real influence in terms of membership or company level representation. Moreover, a production structure that makes it difficult to reach many of the workplaces by unions has hindered the development of a strong bargaining coordination. Laws extending collective agreements have accordingly played a key role in governing industrial relations.

The instability and political contingency of industrial relations has become clear in the context of the recent economic crisis where unilateral state rulings have been the norm and social partners have played a marginal role in governing change in spite of having reached important agreements. One of the arguments used by executives to intervene has been precisely the weakness of self-regulatory mechanisms to provide profound and effective responses in a critical juncture.

Section 2. Industrial Relations in Spain: Characteristics and Evolution

In order to better assess the relevance of changes occurred during the crisis, this section summarises the main stages in the evolution of industrial relations in Spain. Two episodes are particularly important in this evolution; the 1994 reform imposed by the Socialist government in the middle of the economic crisis and the 1997 interconfederal agreement in the run-up to EMU. Moreover, two characteristics of the industrial relations framework receive particular attention because of their significance: the regulatory role of the state and the multi-level collective bargaining structure. The analysis of these two key aspects will contribute to shed light into the most recent developments.

Even though there is a clear discontinuity between the Franco dictatorship and the democracy when it comes to industrial relations, two important aspects of the authoritarian system need to be considered in order to understand later developments. First of all, state control of the employment relation through extensive regulation of collective bargaining as well as employees' rights and working conditions. Even though some attempts at liberalization occurred in the last years of the dictatorship, the new democratic industrial relations edifice opened new spaces for autonomous regulation by employers and trade unions. But the state still regulated very intensively many aspects of the employment relationship and maintained a pervasive role (Del Rey and Falguera 1999). This became clear with the 1980 Workers' Statute (Estatuto de los Trabajadores) that contained very detailed procedural and substantive regulations of industrial relations and collective bargaining more specifically.

One of the explanations for the significant statutory regulation of industrial relations in Spain is precisely the need to create 'ex novo' an institutional framework that would make for the organisational weaknesses of social partners. In particular, the late consolidation of employers associations, together with the weak organisational articulation of trade unions, would have made it extremely difficult to develop autonomous collective bargaining in the early years of democracy without significant regulatory support. Moreover, social partners in the transition years lacked the trust necessary to develop adequate collective bargaining at all levels of the bargaining structure. The existence of a legal framework contributed to enhance the predictability of social partners' behaviour hence allowing repeated interactions and by implication, building trust amongst them.

This process should contribute to the gradual extension of self-regulation. However, the regulatory edifice became the main obstacle in this process and contributed to perpetuate the traditional organizational weaknesses of social partners in Spain. The regulatory characteristics of the industrial relations system became also under attack from all actors in the late 1980s. For trade unions, an excessive statutory regulation of industrial relations hampered the vitality and scope of collective bargaining. The automatic and mandatory extension of collective agreements and a dual structure of workers' representation reduced union membership and provided incentives to win votes rather than members. CEOE was also very critical of statutory regulation of industrial relations in Spain that introduced excessive rigidities in collective bargaining. Moreover, in their view this also explained the problems encountered to develop innovative forms of collective self-regulation and conflict resolution.

The second characteristic of industrial relations in Spain is the existence of a multi-level bargaining structure, with a historically weak articulation between levels (Martin Artiles and Alos Moner 2003). In the early years after the transition to democracy, collective bargaining occurred at several levels, with negotiations at territorial (provincial) sector level being the most significant in terms of workers covered. However, negotiations took place at several instances, and the issues were very often re-negotiated at lower levels, hence leading to cascading negotiations. The hierarchy principle in the Workers' Statute made it very difficult

for company level agreements to lower the conditions negotiated at higher level. Peak agreements in the early 1980s contributed to maintain a formally high level of centralization, but after its abandonment since the mid 1980s, a process of gradual de-centralization occurred due to the lack of a clear articulation between bargaining levels. Bargaining took place at several levels, but the main bargaining locus became the sector at provincial level (Del Rey 2003). The limited presence of unions at enterprise level hindered the efficacy of collective negotiations at higher levels because only occasionally they affected workers in small and medium-sized establishments. As a consequence of the above, collective bargaining was very sensitive to changes in the strategies, preferences and power of actors, hence lacking stability and becoming a source of permanent conflict, as showed by the comparatively high conflict rates.

Before this situation, both trade unions and employers converged on the need to reform collective bargaining, but they nonetheless differed on the strategy to be followed. Whilst trade unions wanted to strengthen national sector agreements establishing clear rules for lower level agreements, employers' confederation CEOE heralded a simplification of bargaining levels, regulations and procedures, preferably through the elimination of higher-level bargaining instances.

The problems encountered to reach consensus around the direction of industrial relations reform became clear in the context of the early 1990s crisis and the adjustment required meeting the Maastricht criteria. The Socialist government tried several times to negotiate an agreement on wage moderation and the reform of the labour market (including collective bargaining), but failed on every attempt. It then passed unilaterally a bill aimed at promoting employment and including an important reform of the Workers' Statute. One of its most important aspects was the extension in the use of opting out clauses that contributed to enhance the regulatory role of company level bargaining. The decentralisation of collective bargaining based on the extension of these clauses adopted a disorganised character. Trade unions criticised very strongly the reform and the fact that the government had unilaterally regulated on aspects reserved to the collective autonomy of social partners (Martínez Abascal 1995).

Trade unions learnt from this episode that the passive defence of the *status quo* was no longer a viable and safe course of action because the government had made credible its threat of unilateral regulation. Their only alternative was to counteract the dynamics opened with the reform by strengthening collective bargaining and social dialogue with employer organizations in order to build new consensus and bi-partite institutions. As a consequence, a new process of social dialogue started soon after the unilateral reform and delivered the 1997 agreements on collective bargaining and the labour market: the AIEE (Agreement on Employment Stability), AICV (Agreement on the Extension of Collective Bargaining) and AINC (Agreement on Collective Bargaining). The AICV helped to speed up and give greater coherence to the substitution of the Labour Ordinances by collective agreements. The AINC focused exclusively on the reform of collective bargaining processes and structure.

These agreements marked a turning point regarding both collective bargaining structure as well as the regulation of industrial relations. First, they emphasise the idea of enhancing the regulatory role of national sector agreements in two different ways. First, agreements at this level have competence over a series of issues which cannot be (re-) negotiated at lower levels. This is because trade unions wanted to retain control over a series of issues in order to guarantee higher uniformity and minimum employment standards. Secondly, the national sector would establish guidelines and recommendations for lower level negotiations. Accordingly, the 1997 agreement promoted a top-down, organised form of de-centralisation

through the recovery of bargaining power of national federations whilst preserving firms' capacity to adapt the conditions set at higher levels to their specific needs (Sanguinetti 1999). This contrasts with the bottom-up disorganised de-centralisation model imposed by the government in 1994.

When it comes to industrial relations regulation, the 1997 agreement opened up a new period of strengthened social dialogue in Spain and provided the basis for creating and consolidating bi-partite institutions at sectoral level, including employment observatories, conflict resolution mechanisms and lifelong learning strategies. In this way, trade unions and employer organisations promoted the shift away from the old statist government of industrial relations. Even though the effective impact of the reform on collective bargaining was less significant than initially envisaged by social partners, it nonetheless made clear their determination to autonomously govern industrial relations. Finally, the reform had a very important symbolic value as the Spanish economy was those years in the final stages in the run-up to the Euro. With this agreement, social partners made clear their commitment to contribute to the low inflation target and prepare collective bargaining institutions to the new framework (Perez 2000).

The momentum of bi-partite social dialogue became clear in 2001, when the centre-right government and social partners started negotiations for a reform of collective bargaining. Government proposals' differed from those by trade unions in significant ways and threatened social partners to impose it. However, some weeks later an agreement between unions and employers was finally signed -the so-called AINC 2002. Even though the agreement did not introduce reforms in the structure of collective bargaining and limited its content to joint guidelines for developing collective bargaining in 2001, it nonetheless showed the determination of unions and employers to avoid external state interference in regulating industrial relations. The AINC was re-negotiated on an annual basis until 2008, hence consolidating a move away from a weak system of collective bargaining with strong state and legal interferences towards a new form of governance of industrial relations, characterised by greater autonomy of unions and employers (Molina Navarrete 2002).

Section 3. Industrial Relations and Social Dialogue in Austerity Times

Social Dialogue

As pointed out in section II, previous to the Great Depression there had been two major turning points in industrial relations: the 1994 reform and the 1997 bi-partite agreement. The former promoted a process of bottom-up disorganized de-centralisation via opting-out clauses and showed the unstable character of industrial relations under the permanent threat of unilateral state regulation, whilst the later made clear the determination of social partners to build strong autonomous regulatory capacities and develop a top-down process of organized de-centralization through devolving clauses in collective bargaining.

Contrary to the vitality exhibited by bi-partite social dialogue before the 2008 crisis, tripartite social dialogue proved to be much more unstable. Thus the second term (2000-2004) of the right wing executive headed by Mr. Aznar coincided with increasing conflict and new attempts at unilateral regulation of the labour market and social protection. Tripartite social dialogue was revitalised since 2004 with the election of the left-wing executive headed by Mr. Rodriguez Zapatero. The ups and down in tripartite social dialogue are certainly related to its late and weak degree of institutionalization. Only in 1991 a tripartite Social and Economic

Council was created which provided a stable forum for relations amongst trade unions, employer organizations and the government. However its role is limited to consultations and as a consequence, tripartite social dialogue has always developed in a non-formal sphere. It is accordingly more exposed to exogenous shocks, socio-economic conditions and political discretion. This notwithstanding, there is no clear correlation between the colour of government and tripartite social dialogue (Molina and Rhodes 2011). Explanations based on political exchange have also figured prominently in the analysis of policy concertation and social dialogue in Spain (Oliet 2005). The idea behind this perspective is that in a context of weak institutionalization, the resources (financial, institutional or strictly political) available to actors determine their willingness to engage in tripartite social dialogue and its success. In a context of crisis and little room to manoeuvre, tripartite social dialogue will accordingly be under stress, as was the case in the early 1990s and the current crises.

Social dialogue during the great depression has evolved along two well differentiated periods. The period of stimulus response in 2008-2009 was characterized by a significant involvement of social partners, though with little results in terms of agreements signed those years. The 2010 debt crisis led to the adoption of a more unilateral policy making approach that meant the abandonment of tripartite social dialogue and the unilateral reform of the labour market and collective bargaining in January 2012. The only exception in this process was the January 2011 Tripartite Social and Economic Agreement.

In addition to the inherent weakness of tripartite social dialogue in Spain, several explanations have been provided for its collapse in the context of the Great Depression. One of the arguments expressed by both the employers as well as PSOE and PP executives is the little capacity of social dialogue to keep pace of real economic developments and be able to provide quick and meaningful responses. Another recurrent argument is the little efficacy of measures negotiated in the context of social dialogue. This is because by their very nature, negotiated reforms reflect the equilibrium between the positions of actors involved and are accordingly less effective. The limited room for manoeuvre of the executive due to fiscal policy constraints has also hindered the possibilities to sign tripartite agreements because the political exchange required to sign a tripartite agreement is less likely when there are no resources that can be used for compensating the 'sacrifices' made by the other actors. Finally, the legitimacy dimension of tripartite social dialogue is also important. From the point of view of input legitimacy, the criticism from some sectors of the population to the role of trade unions and employers in the context of the crisis and austerity policies have certainly reduced the incentives for executives to rely on this form of governance. Thus as the following section shows, in the case of the 2012 labour market reform the party in government expressed the view that the real legitimacy comes from the parliament and as a consequence, there is no obligation, nor need to validate agreements through social dialogue. If we add the supra-national dimension to this picture, i.e., the mandate by the EU to undertake fiscal adjustment together with other reforms, we find also the perception that executives are more accountable regarding economic policies to supra-national actors rather than to citizens or collective actors representing their interests.

It is nonetheless important to stress how bipartite social dialogue, which had been revitalized since the late 1990s, has delivered more than twenty agreements in ten years (Molina and Rhodes 2011). As a matter of fact, in addition to the tripartite social pact signed on February 2011, two important bi-partite inter-confederal agreements for collective bargaining have been signed during the crisis, hence following the practice initiated in 2002. In addition to providing some general guidelines for the (re-) negotiation of collective agreements, these pacts have also contained guidelines for the development of bi-partite and tri-partite negotiations around collective bargaining and wage-setting. The prominent role of bipartite

social dialogue has been reinforced by the emphasis placed by labour market reforms in 2010 and 2011 on enhancing negotiated forms of adjustment and restructuring through functional flexibility. Thus social partners' strategies in order to mitigate the effects of the crisis on employment have focused on strengthening collective bargaining capacities at company level by opening greater spaces for negotiation.

Industrial Relations and Collective Bargaining

One of the institutional domains where the reforms undertaken during the great recession have been more radical and/or profound has been industrial relations. This is paradoxical given first of all that the crisis' triggers had very little to do with employment relations. Moreover, collective bargaining in Spain was characterized since the late 1990s by an increasing governability and articulation between the sector and company levels, in line with the recommendations of the EC (Nonell et al 2006). In this vein, the reform of industrial relations in 2012 has meant another turning point, similar to the one in 1994. In both cases, strong exogenous pressures in the context of economic recession led governments (left-wing in 1994 and right-wing in 2012) to pass the law without the consensus of social partners. However, two characteristics of the most recent episode make it qualitatively different from previous ones. First, it goes well beyond the goal of collective bargaining decentralization contained in the 1994 reform. Thus it not only brings back mechanisms of disorganized bottom-up decentralization, but it also empowers employers to unilaterally modify working conditions. Secondly, for the first time, a government passed a law with significant implications for industrial relations without any previous dialogue with social partners.

Three main episodes of industrial relations reform occurred during the crisis before the one in 2012. The first one is the Inter-Confederal Agreement on Employment and Collective Bargaining 2010-2012 (AENC-I) signed in February 2010¹. This came after the failure in 2009 to renew the bi-partite agreements on collective bargaining that had been signed on a yearly basis since 2002. Both employers and trade unions acknowledged the need for mechanisms allowing a quicker adjustment of in collective bargaining of issues like wages or working time. However, some significant differences remained regarding other important issues. One of them was the automatic extension of collective agreements upon expiry (the so-called *ultraactividad*), which according to employers, imposed excessive rigidities, particularly in times of crisis. After three months of negotiations, an agreement was reached that dealt with several aspects including the transformation of temporary into open ended contracts, internal flexibility, teleworking, wage guidelines (2010: 1%; 2011: 1-2%; 2012: 1,5-2,5%), use of opting out clauses and the beginning of negotiations around collective bargaining reform.

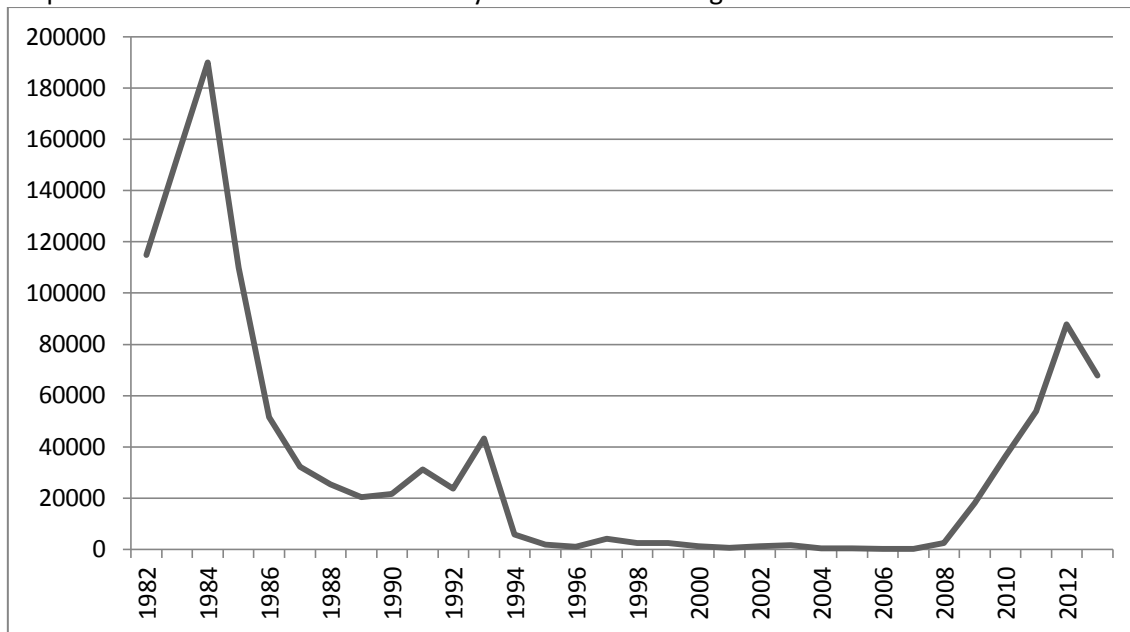
Following the commitment contained in the AENC-I, trade unions and employers engaged into the negotiation of a reform of collective bargaining. However, no agreement was finally reached and the Socialist government decided to pass a law in September that same year (Law 35/2010). The main goal of the law was to increase the possibility for companies to rely upon a negotiated adjustment via functional / internal flexibility without necessarily resorting to quantitative external adjustment. For this reason, the reform enhanced the capacity of company collective agreements to introduce mechanisms of internal flexibility whilst at the

¹ See full text at

http://www.ccoo.es/comunes/recursos/1/doc17657_Acuerdo_para_el_Empleo_y_la_Negociacion_Colectiva_2010,_2011_y_2012..pdf

same time opening more spaces to the opting out from higher level agreements on wage and other working conditions. One of the issues that the government introduced in the text was the extension of short-time working scheme clauses as a mechanism to maintain employment. These clauses, that had a limited use by Spanish companies, have increased during the crisis, though the reform does not seem to have had a significant impact and its extension and the use of this mechanism has followed a pattern similar to the one exhibited in other crisis periods (see graph 1).

Graph 1: Number of workers affected by Short-time working schemes



Source: Boletín de Estadísticas Laborales, Ministry of Labour and Emigration

Even though trade unions agreed with the general orientation of the reform, they nonetheless criticised very strongly the decision of the government to regulate unilaterally. Thus the main logo of the general strike organised some weeks later was '*Así No*' (not in this way), and made explicit reference to the form, not the content of the reform. After the general strike, bi-partite negotiations amongst social partners resumed in the context of the 2011 Social and Economic Agreement² that included a commitment by social partners to start negotiations to reform collective bargaining³. After four months of talks between unions and employers, consensus was only possible to a limited extent and no pact was accordingly signed. The government had urged social partners to reach an agreement and decided again to unilaterally regulate by approving a Royal Decree Law on Urgent Measures to Reform Collective Bargaining in June 2011 (Law 7/2011)⁴. Even though the content of the reform reflected the limited

² The 2011 Social and Economic Agreement was signed by employers, trade unions and the government and the main content consisted in a reform of old age pensions, including an increase in pensionable age.

³ See full text at

http://www.elpais.com/elpaismedia/ultimahora/media/201101/28/espana/20110128elpepunac_1_Pes_PDF.pdf

⁴ See full text at:

consensus reached between trade unions and employers, social partners were critical as it was considered a new violation of their collective autonomy. The law introduced changes in the structure of collective bargaining by establishing a series of issues whose negotiation at company level has priority. Moreover, it also modified the procedures and timing to denounce and re-negotiate a collective agreement, with the aim of avoiding an escalation of conflict and speeding up the process.

In January 2012, employers and trade unions signed the second inter-confederal agreement on Employment and Collective bargaining 2012-2014 (AENC-II)⁵. The objective of this bi-partite agreement was to bring back changes in collective bargaining and the labour market into the autonomous sphere of negotiations of trade unions and employer organisations. Failed attempts at reaching an agreement and the executive's unilateral regulations in 2010 and 2011 forced social partners to agree on the direction collective bargaining had to move and impede further attempts at unilateral intervention. The most innovative aspect contained in the AENC-II compared to AENC-I consists in an explicit demand for the decentralization of collective bargaining within the framework provided by sector-level agreements. In this regard, social partners agreed on developing a process of organised top-down decentralisation where sector-level agreements must provide the rules for articulation whilst enhancing the role played by company-level agreements. Moreover, it also contains the obligation by collective agreements to include plans to develop internal flexibility by clearly distinguishing between its three elements: wages, working time and functions. It accordingly constitutes another step in the attempt to enhance internal flexibility with a view to safeguard jobs in the short term, but with a longer-term objective of changing the mechanisms to adjust the labour market and move from external (numerical) to internal (functional) flexibility.

Notwithstanding the successful attempt of trade unions and employers to bring back the reform of collective bargaining to the field of autonomous negotiations through the AENC-II, the executive regulated again unilaterally and without any previous contact with social partners just some days later. As a matter of fact, most of the innovations and specific guidelines for developing internal flexibility in collective bargaining that were included in the bi-partite peak agreement were overlooked by the government in the 2012 labour market reform. This fact caused perplexity not only in trade unions but also amongst the employers that couldn't understand why the government did not take into consideration the AENC-II.

The reform approved by the centre-right PP government in February 2012 contained several modifications of regulations concerning industrial relations and collective bargaining. Probably the most important one has to do with the enhanced unilateral capacity of the employer to change working conditions. Even though the law already established this possibility in the case of wages, the 2012 reform extended it to other issues such as working time. Moreover, the law also reduced the notice period of this decision to the employee. Thus it goes beyond the decentralization through opting-out clauses and introduces a qualitatively new element. Similarly, the employer is given more capacity to decide unilaterally on issues related to collective redundancies. Another aspect where the law enhances the role given to the employer in regulating working conditions refers to the temporary non application of the collective agreement on a number of issues and significantly relaxes the conditions under

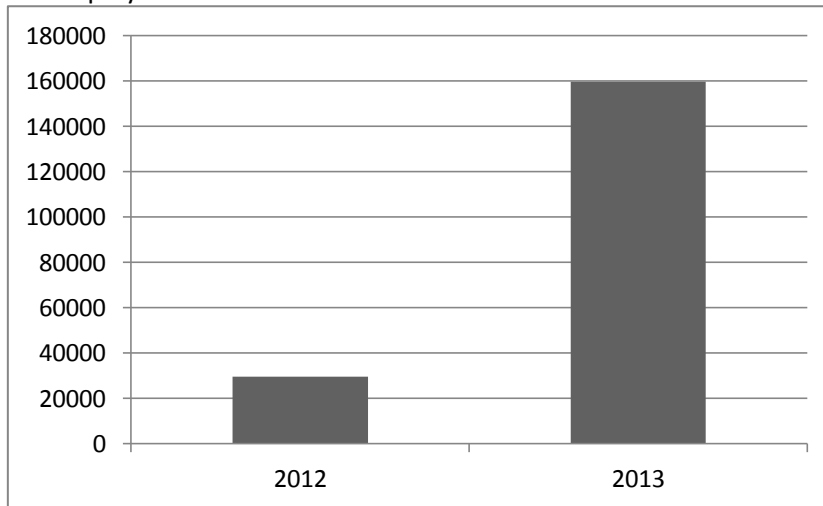
<http://www.boe.es/boe/dias/2011/06/11/pdfs/BOE-A-2011-10131.pdf>

⁵ See full text at:

http://www.ccoo.es/comunes/recursos/1/doc96566_Boletin_Oficial_del_Estado,_II_Acuerdo_para_el_Empleo_y_la_Negociacion_Colectiva_2012,_2013_Y_2014..pdf

which this can happen. Graph 2 shows how the reform has triggered a significant increase in the number of non-applications, even though the economic context was more favourable in 2013 compared to 2012. Around 90% non-applications by company level agreements related to wage issues (CCNC 2013). In this vein, the employer can decide to temporarily not applying the terms of the collective agreement whenever the company registers falling benefits during six consecutive months.

Graph 2: Workers Affected by the Temporary Non-Application of the Collective Agreement by the Employer



Source: Boletín de Estadísticas Laborales

One of the most contested characteristics of collective bargaining in Spain, the so-called 'ultraactividad' of collective agreements (the extension of the terms of a collective agreement even after its expiration whenever trade unions and employers failed to sign a new agreement) has been reformed by establishing a two year limit to negotiate a new agreement. In case no agreement is finally signed, workers in those companies will be covered by a higher-level agreement and in case no agreement exists, by the terms established by law. As the law establishes only minimum conditions that are then improved by collective agreement, with the abolition of ultraactividad the reform exposed many workers to a sudden deterioration in working conditions (Olarde 2013).

Finally, a very important issue regulated in the 2012 reform is the structure of collective bargaining. The reform not only confirms the priority attached to company-level agreements, but it also establishes the impossibility for higher-level agreements to contain clauses establishing the prevalence over lower level agreements. In other words, the reform reduces the regulatory and governance capacity of sector level agreements in the collective bargaining system.

Trade unions condemned most of the contents of the reform as it departs from what had been agreed with employers in the AENC-II only some days before. Moreover, they also criticized the absence of any attempt at engaging in a process of social dialogue in the drafting of the proposal. Some employers also complained about the introduction of pure de-centralization. In this regard, there is coincidence amongst trade unions and employers on the need to maintain sector-level agreements, though they differ in the degree of flexibility company level agreements must have as well as the most adequate mechanism to achieve this goal.

The impact of the crisis on tripartite social dialogue has been very important. In particular, it has taken a long time to recover from the February 2012 reform. Only in July 2014, social partners and the government signed a memorandum of understanding for tripartite social dialogue (*Acuerdo de Propuestas para la Negociación Tripartita para Fortalecer el Crecimiento Económico y el empleo*)⁶. It is still to be seen whether the general orientations provided in this document will set the foundations for developing a fruitful process of tripartite social dialogue. The general impression is that the repeated unilateral regulations by governments during the crisis have very negatively impinged upon social dialogue among unions and employers. They again face the task of rebuilding social dialogue and collective self-regulation, particularly at sectoral level, but in a regulatory context that makes more difficult this task.

Section III. Impact of the Adjustment on Industrial Relations and Social Dialogue

Even though it is probably too early to properly assess the institutional and long-term effects brought by the changes outlined in section II, there are some indications that nonetheless confirm their significance. The most important one refers to the capacity of collective bargaining to provide additional protection to workers. The 2012 reform introduced two main elements that limited this role. First, the capacity of the employer to unilaterally modify working conditions of employees as laid out in the collective agreement, as seen in the remarkable increase in the unilateral non-applications of collective agreements. Secondly, the non-extension of collective agreements upon expiry also implies that many workers may be left without the additional protection provided by collective agreements, and their working conditions will then be regulated by the legal minima established in the Workers' Statute. There is some evidence pointing out to the use of delaying tactics by employers in order to let the collective agreements expire and blocking the development of negotiations with workers around a new collective agreement. However, a recent report by the tripartite National Advisory Board on Collective Bargaining (CCNC 2014) showed how there is a diversity of mechanisms used by employers and workers' representatives to negotiate the temporary extension of the collective agreement upon expiry whilst engaging into the negotiation of a new one. Thus there is a commitment by employers and trade unions, especially at sectoral level, to use collective bargaining in order to alleviate some of the most disrupting effects (either for workers or companies) of the non extension of collective agreements.

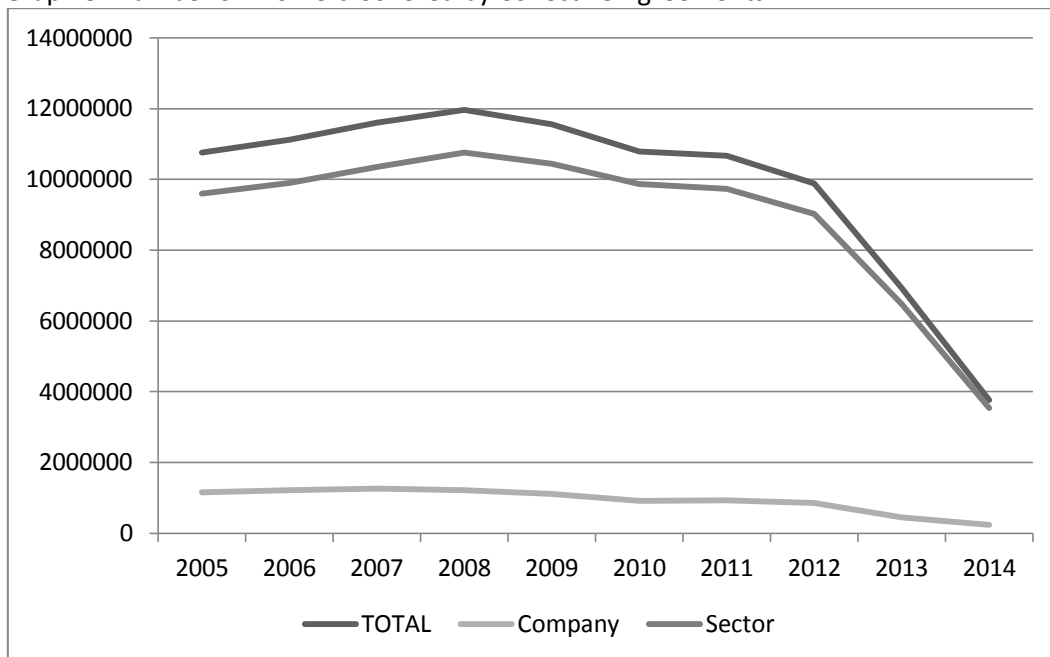
When we look at the evolution in the number of agreements signed and workers covered, we observe a decline as a consequence of the crisis. In the case of workers covered, the decline is almost entirely due to the increase in unemployment. In the case of collective agreements signed, it is not possible to argue with the data available that there has been a reduction in the number of collective agreements, as some agreements have not been registered yet and the data is still provisory. However, several cases have been reported of difficulties to renew many collective agreements. One of the reasons given is the expectation by employers of changes in the regulation of collective agreements that could be more favourable to their interests hence leading them to block negotiations. As graph 3 shows, there has been a sudden fall since 2012 in the number of agreements signed or renewed. The crisis certainly has an effect on negotiating dynamics as showed by the decrease in the early 1990s in a context of another economic crisis. However, the size of the fall is remarkably higher in the new economic crisis.

⁶ See the agreement at

http://www.lamoncloa.gob.es/serviciosdeprensa/notasprensa/Documents/Documento%20Acuerdo%2029%20de%20julio_DEFINITIVO.pdf

This probably reflects the existence of a number of collective agreements that have expired but haven't been renewed.

Graph 3: Number of Workers Covered by Collective Agreements

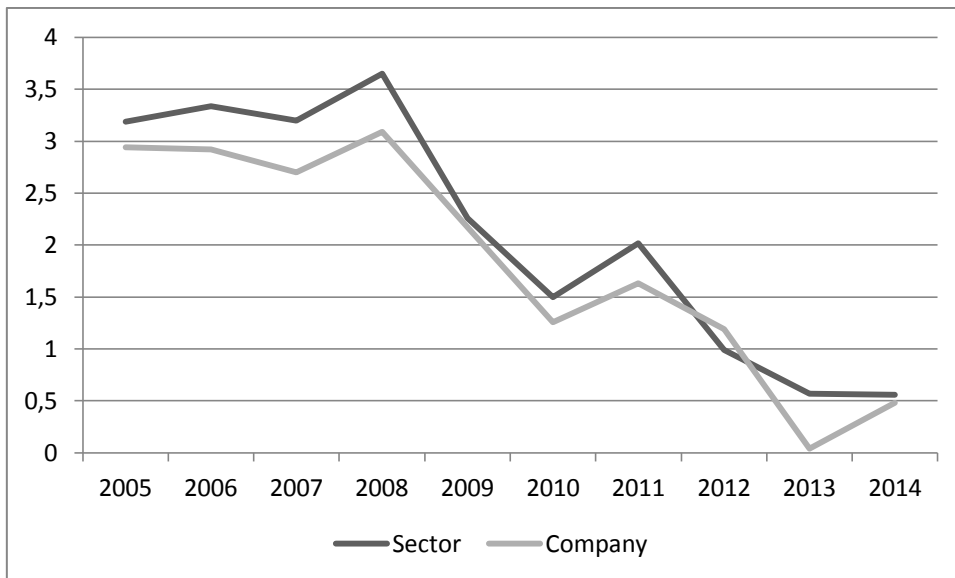


Source: Boletín de Estadísticas Laborales. Data for 2013 and 2014 is not consolidated yet

However, what we can certainly confirm is that the main impact of labour market reforms during the crisis has been the erosion of the regulatory and protective capacity of collective agreements. Thus it is not so much about how many collective agreements have been signed, or even how many workers are formally covered by them, but to what extent those collective agreements provide additional effective protection to employees. Even though the predominance of SMEs in Spain had already been pointed out by some authors as a hindrance for the efficacy of collective agreements (due to the lack of workers' representation structures in most of them), the changes introduced in 2012 opened up a new scenario where the unilateral decision to temporarily not apply the terms of collective agreements has now legal support.

Negotiated wage increases have experienced a downward trend during the crisis, with the only exception of 2011 (graph 4). It can also be observed how in 2013 there is a sharper fall in company level negotiated wage increases compared to sector level. Even though company level agreements do tend to contain more moderate wage settlements compared to sector agreements, the 2013 figure probably reflects the changes introduced by the 2012 reform.

Graph 4: Negotiated Wage Increase by Level



Source: Boletín de Estadísticas Laborales

Finally, when it comes to conflict, the imposition of austerity policies, including unilateral reforms of labour market, has led to several general (political) strikes affecting both the private and public sectors of the economy (table 1). More specifically, there have been three general strikes and one strike of public sector employees. In addition to this, there have been general strikes in some specific areas such as education, health etc. But an increase in ordinary (non political) conflict can also be observed in the months following the approval of the 2012 labour market reform. The tensions created around the passing and implementation of this law, are probably the main explanation for this increase. Higher conflict is accordingly a result of the overhaul in many aspects of the traditional bargaining framework between employers and trade unions, which opens up a new scenario and may contribute to a temporary increase in conflict.

Table 1: General Strikes in Spain 2008-2012

Date	Scope	Motivation	Participants
June 2010	Public Sector	Against the May 2010 austerity package	CCOO + UGT + CSIF
September 2010	All the economy	Against the labour market reform and austerity package	All trade unions
January 2011	All the economy	Against the Social and Economic Agreement and pension reform	All trade unions except for the two largest confederations CCOO and UGT that signed the agreement
March 2012	All the economy	Against the labour market reform passed in February 2012	All trade unions

Source: Molina and Miguélez 2013

Concluding Remarks

The Great Depression has triggered an overhaul of the industrial relations edifice in Spain. The trend towards collective bargaining decentralization has accelerated in the context of the crisis and has adopted a clear bottom-up, disorganised character. Thus the 2012 meant a breakdown with respect to the previous episodes as it not only enhanced the regulatory capacity of company level agreements, but it also gave more regulatory power to employers whilst diminishing the regulatory capacity of sector level agreements. Other changes will certainly contribute to make collective bargaining a more adequate instrument to face economic downturns. These include mechanisms in order to facilitate and speed up the renewal of existing agreements, including collective dispute resolution mechanisms.

The vitality exhibited by bi-partite social dialogue since the late 1990s has not impeded an attack to the collective autonomy of social partners as showed by the repeated unilateral regulations of collective bargaining by governments of both centre-left and centre-right. This has made clear the unstable equilibrium in industrial relations of statist varieties of capitalism. The threat of unilateral state regulation is always present and increases with exogenous shocks. As a consequence of this, social partners' incentives to build strong self-regulation capacities may decrease. This will at the same time generate new demands for government regulation. Thus industrial relations change in MMEs will accordingly be characterised by being most of the times induced exogenously, state-driven and radical.

However, there is some evidence point out to the resilience of pre-crisis collective bargaining dynamics and the capacity of social partners to adapt to the new framework. Thus for instance, bi-partite social dialogue has remained well alive during the crisis and has contributed to an increasing awareness of the need to enhance the capacity of collective agreements to adapt to changing conditions through internal flexibility. Moreover, the implementation of some of the most controversial clauses introduced by the 2012 reform is being negotiated, hence reducing its potentially disrupting impact. Even though it remains to be seen the long-term impact of recent changes, it becomes clear how in non coordinated economies social partners face a difficult task in order to consolidate a strong self-regulatory sphere.

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