

**The Makings of a Paradox:
Unionization of Subcontracted Labor in Chilean Copper Industry**

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Abstract

Latin American labor power has decreased dramatically in the 1990's. In spite of this phenomenon, Chilean subcontracted laborers in the copper industry organized and forced the government to increase social protection for temporary workers. What circumstances allowed for the successful unionization? I argue that the unionization of subcontracted workers is due to a change in the labor institutions and group solidarity. I evaluate the case of subcontracted laborers in the Chilean copper industry from 1990 until 2008, demonstrating how the interaction of endogenous circumstances at the El Teniente mine with national political changes created favorable conditions for the unionization of subcontracted workers.

In the face of labor repression and a weak labor movement, a group of subcontracted laborers at Codelco's El Teniente mine unionized and forced the Chilean government to fundamentally rethink the role of subcontracted labor in businesses.¹ This autonomous unionization of informal workers is exceedingly rare as subcontracted workers have no employment protections, and can be dismissed without cost to the firm that fired them. The organization of subcontracted workers is inhibited by the structure of subcontracted labor. Subcontracted workers are disconnected from the traditional labor markets. They lack the sense of identity of contracted workers, steady employment, and organizational resources of formal sector workers. The paucity of resources and temporary nature of subcontracted work serve as barriers to solidaristic organization.

I argue that change in Chilean labor institutions and an increase in solidarity among the subcontracted workers explains the mobilization of the subcontracted workers.² The spread of organization to Codelco's Salvador and Andina mines signifies that variances in local conditions cannot fully explain labor organization. Moreover, solidarity by itself cannot generate autonomous organization if it is not coupled with national institutions that allow for organization. In arguing this, however, my argument places more weight on proximal causes than distal causes. Thus, my argument focuses on how national institutional changes catalyzed local organizational strategies. The interaction of factors that are unique to copper mines and national institutional factors led to the creation of conditions that were both necessary and sufficient such that subcontracted workers could organize, strike, and unionize.³

What factors account for the evolution of labor law, including subcontracted labor, since 1990? Using the stages approach Liesbet Hooghe and Gary Marks employed to analyze stages of influence in the creation and implementation of structural funds in Europe, I have designed a

table that reflects the power of the principal actors in the development of Chilean labor law: the government, the military, the peak association for unions (CUT), and the employers association (CPC).⁴ The stages in my model refer to the stages of negotiating, promulgating, implementing, and enforcing laws. The crux of Hooghe and Mark's analysis is that the influence of actors differs as stages progress. In this manner one actor can have significant influence in one stage, and almost no influence in another (Hooghe and Marks 2001).⁵ My model shows that the Concertación (the center-left governing coalition) and the CUT gained influence at the expense of the Alianza (the center-right opposition) and the CPC (the peak association for businesses).

The Concertación gained leverage over the Alianza following the Concertación's 2005 election victory and the removal of the Pinochet designated senators.⁶ The Pinochet designated senators served as an institutional veto for the right, allowing the Alianza to retain effective control of the Chilean congress in spite of being the minority. The upshot of the right's entrenched institutional advantage was that substantial labor reform did not occur, as prior labor reforms reinforced elite confidence in democracy and subverted social democratization (Haagh, 2002).⁷ Since the Alianza used the power of the designated senators to prevent significant anti neoliberal labor reform, their removal increased the Concertación's leverage over labor market institutions.⁸

The evolution of Chilean labor law is nested within several greater trends in Chilean politics since the return to democracy in 1990. The first is the institutional advantages given to the right in the constitution and labor plan.⁹ The institutional advantage was further codified by the visible presence of the Chilean military in politics until 1998, as Pinochet remained head of the army. The right used the implicit threat of violence to institutionalize the constitution and labor plan in the democratic context.

The change in the labor rights regime began in 1998, following the removal of Pinochet as a senator and as commander of the army.¹⁰ The 2001 labor reforms expanded labor protection, resulting in a subtle shift in Chilean labor reform from titular reform to reform that encouraged social democratization and labor rights.¹¹ Reforms under the new labor relations regime resulted in a real increase in workers' rights, setting the stage for effective worker mobilization. For example, the reduction of the minimum required number of workers to form a union from 20 to 8 resulted in the creation of 1,024 new unions with some 37,000 members in 2002 (Botello et al, 2004 and USDOL, 2003). The political changes are reflected in the reorientation of Chilean labor institutions from preserving democracy to promoting workers' rights. The change can be measured in a series of protections for workers, such as prevention against the unfair dismissal of unionized workers. The increase in formal sector workers' rights coupled with the removal of the threat of military intervention enabled subcontracted workers to organize.

I argue that in addition to a change in the national political climate, a set of unique endogenous circumstances created solidarity amongst the workers, allowing subcontracted laborers to unionize. Solidarity is based on the Weberian concept of social groups, which form due to common interests. The roots of worker solidarity lie in Codelco's desire to cheaply increase its productive capacity. During the 1990's and 2000's Codelco increased its productive capacity by hiring subcontracted workers. Hiring subcontracted workers gave Codelco a de facto form of labor flexibility, as the workers were only tied to Codelco through a commercial contract, allowing Codelco to fire the workers should the economic climate change. By 2006, subcontracted workers made up 57 percent of the workforce (Caputo and Galarce, 2007). The subcontracted workers were largely shunned by the contracted workers, both on the mines and in

the towns (Moya, 2008). Since the workers had comparable skills and comparable interests, they formed social groups. CUT took advantage of the endogenous organization and spearheaded the formation of Coordinadora Nacional de Trabajadores Contratistas de Codelco (CNTCC) to fight for the rights of subcontracted workers.

The autonomous organization of subcontracted labor is rare and unexpected in Latin America. The organization is unexpected because of the impediments neoliberal reform places on the formation of unions. Neoliberal reform impedes union formation by augmenting the power of employers to increase labor flexibility (Patroni and Poitras, 2002). Liberal hiring and firing regulations shift the burden of risk on to the workers, as the firms can partially shield themselves from a downturn in global business cycles by adjusting their workforce. The neoliberal economic model eroded social protections leading to the growth of the informal economy and to the informalization of the formal economy (Itzigsohn, 2003). Prohibitions against the formation of unions by temporary employees in Chile further reduced the power of unions. Informal labor arose because labor market policies were designed to favor the interests of the capitalists, as the capitalists dominated the political system (Montero, 2005). As a result labor law changes have reduced social legal protections for formally employed workers whilst failing to extend social protection for the rest of the population (Cook 2005). The direct consequence is massive growth of the informal sector.¹²

The structure of the informal market poses impediments to the formation of labor unions. Neoliberal reforms engendered a shift in Latin American economies away from manufacturing towards service sector work. The structural adjustment resulted in a decline in the power of unions, as the manufacturing sector was heavily unionized (Anner 2004). Anner's empirical

findings demonstrate that reforms can resonate more in particular areas of the economy than in others.

The decline in unionization rates has resulted in a consequent decline in the political influence of unions, as the unions lack a large base with which they can force leftist parties to vote for their policies by voting in elections. Etchemendy finds that the more organized labor is repressed or excluded, the more labor law will be deregulated (2004). In Chile, deindustrialization entailed a shift away from highly unionized sectors and contributed to a weakening and fragmentation of the labor movement (Etchemendy and Collier 2007). Service sector work has higher turnover than the manufacturing sector. Higher turnover hinders the formation of solidarity and social trust, factors required for unionization.

Some Latin American scholars argue that structural impediments undermine the capacity of autonomous labor organization. Viviana Patroni and Manuel Poitras argue that the transformation undergone in labor markets and the structural changes in the economy have implied major setbacks in the capacity of unions to organize workers in defense of their rights (2002). The setbacks, they argue, result from a steep decline in public employment and the failure of the formal market to create jobs. Moreover, Anner argues that reforms facilitating union formation did not strengthen unions but instead increased union fragmentation (2008). Further, he argues that the lack of resources dedicated to enforcement of existing laws contributed to the decline of union power. Thus, institutional factors in addition to structural factors contributed to the decline of unions.

Despite declining unionization rates, unions still wield considerable influence in Latin American politics. Maria Cook argues that the central variable in determining the success of neoliberal labor law reforms is the strength of unions (Cook, 2006). Countries with strong

unions, such as Mexico and Argentina, tempered the impact of neoliberal labor law reforms. Countries with weak unions cannot resist the implementation of neoliberal labor laws. Thus, economic reform is compatible with the adoption of union friendly reforms (Murillo and Schrank, 2005). The impact of the reforms depends on the strength of the unions.

In Chile, scholars agree the union movement has been weakened by neoliberal reforms. Durán-Palma, Wilkinson, and Korczynski argue that significant labor reform was prevented by the alliance between the Concertación and the Alianza over the predominance of the neoliberal economic model (2004). These findings were corroborated by Haagh and Cook, who argue that the absence of union influence in Chile has led to an un-conducive emphasis on employer flexibility over rights (2005). Haagh and Cook base their argument on the progressive exclusion of union leaders from party influence. Moreover, in Chile the interests of the capitalists are reflected in the new labor laws because the capitalists are the dominant political actors in the neoliberal era (Barrett, 2001). This analysis has been augmented by Irazno and Patruyo who argue that trade unions have been limited by the growing power of the international capital and the restructuring of the state (2002).

This project analyzes the organization of Chilean subcontracted laborers at the El Teniente mine. This project is based on interviews conducted in Santiago, Chile in July 2008. I interviewed prominent labor leaders, academics, government officials, and businessmen focusing on the realities of subcontracted labor in Chile. I augment the interviews with an extensive analysis of scholarly articles garnered from scholarly journals and the library of the Chilean national congress.¹³ I use the data to show how political change manifested itself in changes in Chilean labor institutions and how these institutions aided the solidarity of the subcontracted

workers. I also use the data to show what factors led to worker solidarity, and how this solidarity was used to unionize the workers.

I used a comparative methodology in this study. The comparison focuses on the subcontracted workers before and after labor organization in the copper sector. The treatment variable is national labor legislation change and then worker solidarity in the case. I selected the El Teniente case because El Teniente represents an easy sector for labor mobilization, where *contracted* workers have a history of collective disobedience. However, the organization did not spill over to the *subcontracted* workers. The subcontracted workers were organized by the CUT. The organization did not spillover from the contracted workers unions because the unions saw the interests of the subcontracted workers as a threat to their own interests, specifically their job security.

The Realities of Subcontracted Labor in Chile

An analysis of both the de facto and de jure structure of subcontracted labor is necessary to understand the grievances and motivations of the subcontracted workers. Hiring subcontracted workers gave Codelco a de facto form of labor flexibility, as the workers were only tied to Codelco through a commercial contract. In practice, this means that a subcontracted worker's contract is with the subcontracted company, whilst they work for another company. Moreover, permanent employees of Codelco earn an average of 808,016 pesos per month (US\$18,884 a year) whilst subcontracted workers earn 300,000 to 600,000 a month (US\$7000 to \$14000 a year) (Contrares, 2008).¹⁴ Thus, subcontracted labor reduces overall labor costs.

The institutionalization of the abuse of subcontracted labor in the Chilean copper industry is due to the structure and norms of subcontracted labor in Chile. Figure 1 demonstrates the reality of subcontracted labor in Chile. There is one principal relationship in subcontracted

labor: the relationship between the principal company and the subcontracted worker. All other relationships are secondary, for this reason they are denoted by dotted lines.

The relationship between the subcontracted worker and the principal company is obfuscated by the legal structure which surrounds subcontracted labor. Although the working labor relationship is between the principal company and the subcontracted worker, the subcontracted worker *legally* works for the subcontracted company. Thus, de jure, the subcontracted workers work for the subcontracted company. De facto the subcontracted workers work for the principal company. For this reason the relationship between the subcontracted company and the subcontracted worker is denoted 'formal labor relationship' on the diagram whilst the relationship between the principal company and the subcontracted company is labeled 'real labor relationship.'

The subcontracted companies are largely titular in nature, and do not play a significant role in the lives of the subcontracted workers. Moreover, in the case of Codelco, many subcontracted companies are owned by former executives of Codelco (Martinez, 2008). The result is that the subcontracted companies exist to support Codelco's demands rather than the workers demands. From 1998 to 2004 the number of subcontracted companies increased 44%, yet the number of jobs only increased 17%. This signifies that subcontracted firms are getting smaller, reducing the power of the subcontracted workers by reducing the size of unions and by increasing the competition the companies have to face. The result is a race to the bottom, as companies can negotiate with several firms to get the lowest price (Echeverría, 2005). Labor leaders refer to this problem as the problem of a thousand RUT's (tax identification numbers) (Martinez, 2008). For example there were 2,033 subcontracted companies compared to 341 principal companies in the copper industry in 2004 (Echeverría, 2005: 48).

Subcontracted labor reduces the labor costs at the firm level, because the legal structure around subcontracted labor favors employers over employees.¹⁵ Under Chilean labor law, subcontracted workers who work for different subcontracted companies cannot legally be part of the same union nor can they join the same unions as contracted workers (Dirección de Trabajo, 2008). Thus, subcontracted labor is an effective method for breaking the power of the unions.

Subcontracted labor increases labor flexibility for firms, by allowing them to adjust their labor force at little cost. The only relationship between the subcontracted workers and the company that hires the subcontracted company is a commercial contract. If the principal company no longer wants the services of that particular subcontracted company, they can terminate the commercial contract. Since the contract is a commercial contract rather than a work contract, there are no protections for the workers. Workers are technically still employed by the subcontracted company. This legal loophole is critical for Codelco, a government corporation, because it allows Codelco to thwart Chile's high employee termination costs (Ricaurte, 2005). Codelco can substantially reduce labor costs through the subcontracting system.

The institutionalization of the abuse of subcontracted labor fomented a sense of resentment amongst the subcontracted laborers. As a result of the aforementioned norms and structures, subcontracted workers make one half to one third the salary of contracted workers and have fewer benefits (Moya, 2008). Moreover, the subcontracted workers are forced to work alongside contracted workers (Martinez, 2008). These grievances ultimately lead to the unionization of the subcontracted workers.

Modeling the Change in Labor Laws

The removal of the Pinochet designated senators in 2005 is the most significant event in Chilean labor legislation since the return to democracy in 1990. The removal of the senators, who were staunch opponents of labor reform, allowed for the passage of the subcontracted labor law. In the subsequent paragraphs, I present a historical model which demonstrates how shifts in the power of the Concertación, Alianza, the military, and labor unions allowed for the passage of labor-friendly reform. The model begins in 1990, following the tripartite agreement between the Concertación, the CPC, and the CUT which allowed for the reintroduction of unions into national level politics.¹⁶

The removal of the Pinochet designated senators in 2005 marks a change in the model, because the removal of the senators marks the removal of an institutional veto given to the right by the 1980 constitution. After the reform, the right needed to build a consensus to defeat a proposition rather than simply relying on superior numbers or implicit threats of violence. The removal of the senators ensured that the Concertación had a true majority, and did not need the support of the Alianza to reach the 50% threshold required to pass a law. Immediately following the passage of the law, the Concertación negotiated with CUT which resulted in the passage of a law making employers co-responsible when subcontracting labor services (Falabella 2008). The removal of the institutional veto allowed the unions to gain power, despite declining union density rates (Falabella 2008).¹⁷

A comparison of the two models underscores the transition of power from the right to the left. The model has three stages: negotiation and promulgating the law, the implementation of the law, and monitoring. During the first stage of the 1990 to 2005 model, the interests of the right dominate. The interests of the right superseded the interests of the left because of

institutional and ideological factors. Institutionally, the right was protected by the Pinochet designated senators and the presence of Pinochet as the commander in chief of the armed forces. Ideologically, Haagh notes that the CUT's unwillingness to endanger the democratic regime proved crucial for democratic consolidation, but was a detriment to CUT's legislative goals (Haagh 2002: 96).

Structural changes to the Chilean congress in 2005, coupled with the strengthening of the labor movement and the removal of the military from the political landscape, altered the dynamics of labor reform in Chile. The decision had a negative effect on the employers' associations as they could no longer rely on the support of the military and the willingness of CUT to put the consolidation of democracy ahead of real labor reform (Haagh, 2002).

Since the right lost their institutional advantage, their artificially high level of influence declined, resulting in a noticeable gain for the Concertación.¹⁸ The labor unions gained influence after 1990, as many of the institutional limitations placed on the unions in the 1979 labor code were overturned. The CUT, however, suffered from several structural weaknesses. Collective bargaining was set at the shop or occupation level, rather than the industry level. Industry wide bargaining was rare as labor legislation provided for numerous forms of contracts on the shop floor (Buchanan, 2008). Union dues were paid only to shop unions, leaving the CUT dependent on state and party subsidies (Buchanan, 2008). As a result of these structural deficiencies, CUT was marginalized from the policymaking process in the late 1990's as the CUT and CPC abandoned tripartite negotiations. CUT further distanced itself from the policymaking process by electing a non-Concertación communist leadership in 1998 and 2000 (Durán-Palma et al., 2004; Buchanan 2008). The CUT regained national prominence following strikes in the copper industry in 2006.

The firms were the dominant political actors during the implementation of the law because they are the actors which ultimately have to implement the law. Further adding to the power of the mining companies in the implementation of the laws is the remoteness of the mines.¹⁹ A contracted worker for Codelco noted that:

The mines are their own insular worlds which provide housing for the workers for the time they work on the mines. The isolation is compounded by the fear of being fired. Workers often do not report minor infractions, as they fear they will be fired if they report labor code violations to the Ministry of Labor (Moya 2008).

The corporations lack incentives to properly comply with the labor laws because the costs of defying the laws are much greater than the costs of complying with them. For example, in 2006 the Ministry of Labor mandated that mining companies directly hire their subcontracted workers. The labor mandate would have forced Codelco internalize 5000 subcontracted workers, which Codelco claims will cost \$308 million annually (Mines and Communities, 2008). For comparison, the fine for a violation of the subcontracted law is a minimum of 10 UTM (USD\$62) for every subcontracted worker per offense.²⁰ As a result of the incentive structure, the CTC tried to gain leverage with a massive strike in April 2008. The strike lasted three weeks and caused \$100 million in losses (IHT, 2008). Given the monetary incentives, Codelco is willing to defy the law, as long as the costs of doing so are below the costs of complying.

In the final stage of the model the unions became the strongest actor as they were the ones that organized strikes and lobbied the government for sanctions. The unions provided a better forum for the workers to express their displeasure as the unions were not obligated to report the violations, but had the capacity to do something about them.

Labor Law Changes in Chile

Changes in Chilean labor law are critical to the formation of the unions of subcontracted workers, because the labor law reforms institutionalized the rights of the subcontracted laborers, effectively permitting unionization. Nevertheless, the proximal causes carry more weight than the distal causes. Thus, the subcontracted labor law is more important in assessing the causality of the unionization than the labor reforms in the 1990's. The distal causes remain *part* of the causal chain, because they created the conditions necessary for the proximate causes.

The labor legislation had particular resonance in the El Teniente mine because of its proximity to the CUT and Santiago.²¹ Though the El Teniente case is unique in its enduring unionization, I argue that a change in labor laws served as necessary but not sufficient conditions for successful unionization. For example, following the organization of the subcontracted workers into the CTC after the promulgation of the subcontracted labor law of 2006, the subcontracted workers of Codelco struck four times. Before the promulgation of the law, the workers struck twice. The changes in labor laws created the incentives for subcontracted organization. Since the level of and strength of the subcontracted workers unionization differs with the imposition of the subcontracted labor law, I argue that changes in labor laws are a significant variable.

Without the changes in labor regimes and labor institutions, CUT would never have taken the risk of organizing subcontracted workers. Up until the labor reforms of 2001, CUT was more interested in securing a place in the policymaking process than actively unionizing new sectors. As a result Haagh and Cook argue that the unions acquiesced to unfavorable labor reforms (2005). The acquiescence occurred as CUT maintained strong ties with the Concertación, until CUT fragmented following the withdrawal of the Christian Democrats and moderate Socialists

from the CUT. Following the departure of the moderates, the communists and socialists took control of the CUT, pushing it leftwards towards a more militant stance on labor rights (Buchanan 2008). This change occurred as the radicals were unsatisfied with CUT's direction (Buchanan 2008). This breakdown explains the disappearance of CUT from the national labor process until the 2006 reforms. The new leadership pursued a more active policy of unionization, and a greater push for labor rights, which they believed stagnated in the late 1990's (Falabella, 2008). The new leadership is exemplified in the 2006 subcontracting law, which the unions negotiated with president elect Bachelet (Falabella 2008).

The Pinochet labor code was institutionalized and legitimized in the democratic era by the Aylwin government. The institutionalization came from the government's support of the neoliberal economic model. This is not to say, however, that the government made this choice freely. Under pressure from the military, the Aylwin government refused to make significant alterations to the Pinochet labor code, keeping the emphasis of labor law on protecting the interests of businesses rather than workers. Thus, the unions needed to overcome not only the right, but also the left which supported the institutionalization of the neoliberal model. Since the return to democracy, unions focused on undoing the Labor Code and the Constitution (Buchanan, 2008).

The incremental change in individual labor rights during the 1990's gave the subcontracted workers a basis for which to fight and push for greater labor rights. Labor reforms in the mid 1990's expanded individual labor rights, rather than collective rights (Buchanan, 2008). For example, the 1995 reform extended the coverage of the pension program (Buchanan, 2008). Moreover, the combination of institutional framework and structural shifts added to the political divisions of the labor movement as whole, prevented Chilean unions from defending

against the purposely debilitating impact of the labor market reforms begun under the Pinochet dictatorship and largely continued by his democratic successors (Buchanan and Nichols, 2002). The transition to collective rights in 2006 allowed the workers to take advantage of all the individual rights granted in the preceding period. The subcontracted workers demands are nested in the rights given to contracted workers in the labor reforms since the return to democracy. Thus it is imperative to understand the rights of the contracted workers, because these rights become the basis for the organization of the subcontracted workers.

Beginning in 1995, Chile embarked on a process of revision of its labor code to address many of the outstanding concerns and complaints of workers. For instance, employers are now required to specify a cause of dismissal for employees, other than the infamous ‘economic needs of the company’ clause. This reform served to increase the strength of unions *within* firms, as union members could no longer be dismissed en masse. Prior to the 1995 labor reform, employers also were seen to have an advantage during collective bargaining, as they were not required to disclose corporate information unless it was relevant to the workers’ proposal (USDOL, 2003). Thus, the 1995 labor reform marked a significant change in both labor institutions and the labor rights regime, as the government sought to give the unions more leverage in contract negotiations. The 1990 reform, by contrast, was simply a titular labor reform which did not offer the workers any significant labor rights (Haagh 2002).

The roots of subcontracted labor mobilization lie in the protection unions gained following the 2001 labor reform. The 2001 labor code reform expanded protection against dismissal of union officials, substantially increased penalties for unfair dismissals, provided for the reinstatement of trade unionists dismissed unjustly, and strengthened the laws governing disclosure of corporate information (USDOL, 2003). The reforms also required that companies

respond to petitions from trade unions. This development marked an important step in labor reform, because companies could no longer legally ignore unions. The laws codified a shift in the labor regime and labor institutions towards supporting labor rights. Moreover, the reform signaled the end of the domination of capitalist interests, as the law protected union members.

The subcontracted labor law marked a significant change in labor institutions and the labor regime, as the law marked a paradigm shift in the government's position towards subcontracted labor and the law actually empowered workers to fight for their rights. The workers at El Teniente were instrumental in bringing about the labor law reform. During the presidential campaign in 2006, the subcontracted workers engaged in a 17 day work stoppage, forcing the issue of subcontracted labor on to the national stage. This strike led to commitments of both presidential candidates to modify the subcontracted labor laws, leading to the eventual passage of the subcontracted labor law (Congreso Nacional, 2006). Moreover, following the unionization of the workers at the El Teniente mine, subcontracted workers in other mines have formed unions or joined the CTC. Thus, the workers struck *before* the passage of the subcontracted labor law.

Subcontracted workers in the copper industry were able to bring about a change in labor law, because they had significant leverage over the government. The presence of a large number of subcontracted workers is a critical condition for unionization, but the mere presence of subcontracted workers does not guarantee unionization. For example, in 2006, subcontracted workers outnumbered Codelco contracted workers 24,028 to 17,936 (Caputo and Galarce, 2007). This ratio of contracted to subcontracted workers in manufacturing, for comparison, was 43% in 2004 (Echeverría, 2005). Subcontracted workers employed by Codelco hold leverage over the government because of the value of the Codelco to the Chilean government. Since Codelco is a

state owned company, a portion of its profits go to the state. In 2006 Codelco contributed US\$ 4.564 billion to the state coffers (Codelco, 2007). A work stoppage, therefore, could have a significant effect on both government and company revenue. Consequently, the workers had leverage workers in other industries lacked.

The subcontracted labor law revolutionized subcontracted labor relations by making the principal company responsible for subcontracted workers health and safety. The law also prohibits companies from subcontracting functions that are not core business activities (Congreso Nacional, 2006). For example, a mining company cannot subcontract the extraction of copper ore. This requirement is intended to end the permanent nature of subcontracted labor in Chile. The new law contains two principal obligations not found in previous subcontracted legislation; solidarity and subsidiary responsibility. The solidarity responsibility requires that the principal company respect the concerns of the workers. The subsidiary responsibility ensures that the principal company responds whenever a contracted or subcontracted firm does not complete their labor or provisional obligations with respect to their workers (Congreso Nacional, 2006). The law revolutionizes labor relations because it eliminates the subcontracted company from the negotiation process by allowing workers to make demands directly to the principal company.

An analysis of the changes in Chilean labor law since 1995 reveals distinct paradigm shifts in the government towards organized labor. The 1995 labor reform marked a change in the labor institutions, as it gave some institutional protection to the unionized workers. For example, workers could appeal the causes of their dismissals. The labor rights regime, however, remained stagnant, as the reforms only served to increase the individual rights of the workers, and not their collective rights. The 2001 reform marked a change in the labor institutions in Chile, as it resulted in a tangible increase in rights for the workers. Union members gained greater

institutional protection. The institutional protection of unions, gave the unions greater freedom to act.²² Union strategists saw illegal strikes as the only way to achieve significant gains for the workers, as their previous attempts to strike legally failed to yield the gains desired (Martínez, 2008). The 2006 subcontracting law marked a paradigm shift in elite attitudes towards workers. The law significantly undercut the neoliberal model, signifying a shift away from the emphasis on labor flexibility over labor rights.

The Evolution of Worker Solidarity

Worker solidarity can be attributed to both local and national institutional factors, as workers need both the motivation and the ability to mobilize. The subcontracted laborers were motivated to organize by gross differences between the subcontracted workers and the contracted workers. The ability to organize, however, depends on both exogenous and endogenous factors from information sharing amongst the subcontracted laborers to a growth in demand for copper from the Chinese construction boom. National labor reforms resonated with greater force at the El Teniente mine because the workers were in position to take advantage of the national labor laws.

Assessing the motivations of the subcontracted workers is critical because it underscores *why* the workers are organizing. The substantial difference between the working conditions of the subcontracted and contracted workers motivated the subcontracted workers to mobilize. The differences include discrepancies in labor conditions, housing, social security, negotiation rights, contracts, salary (Martinez, 2008). The subcontracted workers were aware of the working conditions and privileges of the contracted workers as the subcontracted workers work alongside the contracted workers.²³ These differences created a sense of animosity between the contracted and subcontracted workers, fueling the subcontracted workers' desire to strike and unionize.

The evolution of worker solidarity at the El Teniente mine can be explained using Max Weber's concept of social groups. Weber argues that groups are based on neighbors with similar characteristics, such as shared ideas. The key for group formation, Weber argues is that there are no obvious outsiders in the group (Weber, 1978). Subcontracted workers have common ideas, as they have similar experiences, jobs, backgrounds, and similar educations (Moya, 2008). Moreover, they have similar economic statuses, as their salaries are much lower than their contracted brethren. Thus, in Rancagua (the town closest to El Teniente), the subcontracted workers have settled in similar areas (Moya, 2008). Workers bonded through similar experiences. For example, Etiel Moya, a contracted worker for Codelco, reported:

Subcontracted workers are not allowed to live at El Teniente. Because of this, they have to take the bus to work at 4 am each morning. Whilst they are working the subcontracted workers have to work alongside contracted workers, albeit with inferior safety equipment. Further, in the evenings they are not allowed to shower in the mines, bringing contamination into their homes (Moya, 2008).

These experiences build trust and confidence between the subcontracted workers, which is a necessary precondition for organization.

The proliferation of subcontracted labor in the copper industry bred solidarity amongst the subcontracted workers. Codelco expanded rapidly in the 1990's.²⁴ To reduce labor costs, Codelco expanded its workforce using subcontracted workers. Codelco increased the number of subcontracted workers from 1,371 in 1989 to 24,028 in 2006 whilst decreasing the amount of contracted workers from 25,674 in 1990 to 17,936 in 2006 (Caputo and Grace, 2007). The ratio of subcontracted to contracted laborers was particularly profound at the El Teniente mine where there were 4,000 contracted workers and 12,000 subcontracted workers (Congreso Nacional de Chile, 2006).

By 2003 whilst the subcontracted workers exhibited solidaristic tendencies, they lacked the leadership necessary for organization. The subcontracted workers were largely shunned by

the contracted workers, both on the mines and in the towns. Thus, the subcontracted workers gravitated towards one another, as they shared similar experiences. As Codelco hired more subcontracted employees, the groups of subcontracted laborers grew. Since the threat of government violence in response to unionization decreased following the removal of Pinochet from the army command in 1998, the workers were able to entertain thoughts of organization. Etiel Moya, a contracted worker for Codelco, observed that the fear of being fired prevented the workers from overt attempts to unionize the subcontracted workers (Moya, 2008). Thus, an outside force was needed to organize the workers.

In 2003, Cristian Cuevas, head of the Andes division of CUT, led the formation of the Coordinadora Nacional de Trabajadores Contratistas de Codelco (CNTCC) to fight for the rights of subcontracted workers. The CNTCC, however, operated in secrecy because contracted companies fired organized workers (Puntofina, 2007).²⁵ Nevertheless, subcontracted workers struck on July 20, demanding a minimum salary of 333,000 pesos a month, the right to negotiate collectively, improved working conditions, and compensation for previous years of service (*El Mercurio*, 2003). A day after the strike, Codelco suspended the activities of the contracted companies involved in the complaint for 48 hours.²⁶ The companies retaliated by threatening to fire the subcontracted workers (*El Mercurio*, 2003). Moreover, the subcontracted workers forced tripartite negotiations between Codelco, the contracted companies and the department of labor. The CNTCC was excluded from the negotiations, as the union had not operated publicly during the strike. The exclusion of the CNTCC ensured that the negotiations did not produce any substantive results. Nevertheless, the strike succeeded as it demonstrated the substantial organizational capacity of the CNTCC.

The 21 day strike in January 2006 during the presidential election was the most important event leading to the change in the subcontracted labor law. The timing of the strike forced the issue of subcontracted labor into the national spotlight, as both presidential candidates supported the strikers. The socialist candidate, Michelle Bachelet, promised to strengthen the rights of the subcontracted employees (*Les Echos*, 2006). Surprisingly, Sebastian Piñera, the right wing candidate, proposed that the government should make concessions to the subcontracted workers (*Les Echos*, 2006). The fact that Pinera offered concessions demonstrated that the right was willing to negotiate concessions that broke with the neoliberal model.²⁷ Eleven months after the strike, the government promulgated the subcontracted labor law, which fundamentally changed the relationship between employers, contracted companies, and subcontracted workers.

The subcontracted workers secured the passage of the subcontracted labor law, but they lacked any overt mechanisms to preserve their gains, as the CNTCC remained an underground organization. In July 2007, Cuevas made the CNTCC official and rebranded it the confederation of copper workers (CTC). The CTC's *raison d'être* was to fight for 'ethical' salaries for subcontracted workers, labor reform, collective negotiation rights, political reform, and for the government to enforce the application of the subcontracted labor law (CTC, 2006). During an interview, Cristián Martínez, a CTC official, explained their strategy:

We have accomplished our goals so far by building a representative social movement to raise the conscience of not only the subcontracted workers, but all of Chile. This organization (CTC) rose up to help alleviate the problem of the abuse of subcontracted labor. We have done this with clean hands. Our organization is independent of religion, parties, and profession. We simply seek equal compensation for equal work (Martínez, 2008).

The CTC, however, lacked the leverage to force the government or Codelco into negotiations. To gain leverage, the CTC promptly engaged in a 37 day general strike on June 25 to force Codelco to improve conditions for subcontractors and give subcontracted workers a 2.4

million peso bonus (*Metals Week*, 2007). Official unionization of subcontracted laborers, however, remained illegal under Chilean labor law. Nevertheless, the workers gained leverage in negotiations, because the workers demonstrated their ability to strike en masse to fight for increased labor rights. Moreover, the workers could not be fired because a sharp reduction in subcontracted personnel would reduce the productive capacity of Codelco and would invite a crippling strike. The strike worked, as the CTC forced Codelco to negotiate (*Metals Week*, 2007). The strike ended with a deal that gave a productivity bonus of 450,000 Chilean pesos, a payment for days lost during the strike, and reinstatement of sacked workers (*Metals Week*, 2007).²⁸

As worker solidarity has evolved, and the workers have successfully unionized under the CTC, the motivations for strikes have changed. A CTC official explained:

The first strikes of the subcontracted workers in 2006 and 2007 were designed to create a base to generate new labor relations between contracted workers, subcontracted workers, and Codelco. We succeeded in this goal, by forcing the government to pass the subcontracted labor law and later, the May 2nd accord. Now, our goal is to force the government to enforce the subcontracted labor law (Martinez, 2008).

Codelco, however, is a government owned company, so a redefinition of labor relations with Codelco requires a change in government policy. Thus labor relations between the workers and the management are regulated not only by the company itself, but also by national labor legislation. In this manner the subcontracted workers unionized under the CTC sought to redefine labor legislation through a redefinition of labor regulations. The organizers of the strike believed they could put enough pressure on the national government to force labor law changes (Martinez, 2008).

Conclusion

I argue that the organization of subcontracted laborers at the El Teniente mine can be explained by changes in labor institutions and worker solidarity. Taken by themselves, these variables are necessary, but not sufficient conditions. For example, without the change in national labor legislation subcontracted workers at El Teniente could not organize successfully, as they would have been crushed by the government. Without solidarity, unionization would be impossible. Finally, in the absence of a change in the labor institutions, the subcontracted laborers would have nothing to fight for, as the contracted workers would not have any desirable labor rights.

This study has shown that the government plays a critical role in structuring unions and unionization. By recognizing CUT in 1990 and the CTC in 2007, the government gave de facto approval for the unions' actions. National labor legislation structures unions, because it creates an incentive structure which unions can exploit. Since labor rights in Chile were relatively weak at the beginning of the 1990's, the unions needed a radical change if they were to gain any significant concessions. Part of the success of the unionization of the CTC, was the takeover of CUT by the communists and socialists in 1996. The communists and socialists brought a more radical agenda which focused on labor rights rather than the preservation of democracy. Following the labor reforms of 2001, the CUT actively sought to unionize disenfranchised groups. Officials in CUT learned that overt unionization without significant leverage was dangerous for the workers.

The subcontracted workers were the perfect target for unionization. They had struck in 2003, they were organized, and they were close to CUT's base in Santiago. The strike in 2006 proved to be a perfect opportunity for CUT, as the CUT helped the subcontracted workers and

simultaneously negotiated a pact with Bachelette which provided for the subcontracted labor law. Whilst the workers at the El Teniente mine have managed to become an oasis of labor solidarity in a sea of labor repression, the trend of subcontracted labor organization is just beginning. According to the CTC, the government is sending out mixed signals to the subcontracted workers (Martinez, 2008). A lawyer for the CTC argues that the law is not complete, as it does not offer equal rights for equal work (Díaz, 2008). Moreover, the enforcement capacity of the government has declined. Paradoxically, this has helped workers because it has strengthened unions such as the CTC, because the unions are needed to report the abuses to the government.

As the subcontracted laborer unionization phenomenon is just beginning, future research should look at the business implications of subcontracted labor organization. Ultimately, the organization of subcontracted laborers is going to raise the operating costs of Codeco. This change could enhance the drive to increase the level of technology, to eliminate workers. What is certain, however, is that the subcontracted laborers at El Teniente fundamentally changed the relationship between subcontracted workers and the businesses they work for.

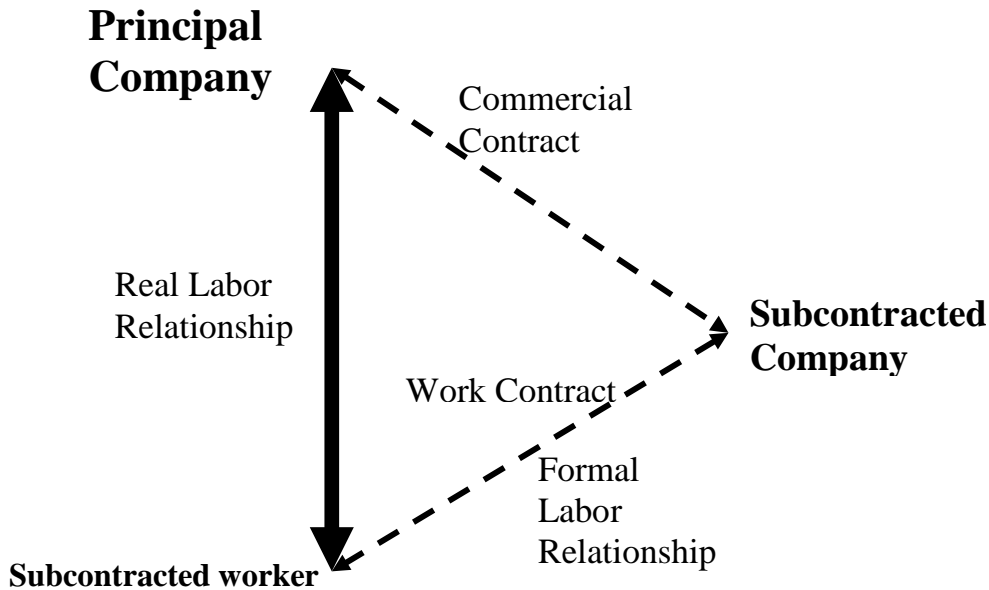
Table 1: 1990 – 2005

Stage	Government	Unions	Business Associations/Firms	Military
Negotiation	Medium-Weak (Concertación)/ Strong (Alianza)	Low	Medium	Medium
Implementation	Medium/Weak	Medium	Strong	N/A
Monitoring	Weak	Medium/Strong	Medium	N/A

Table 2: 2006 – 2008

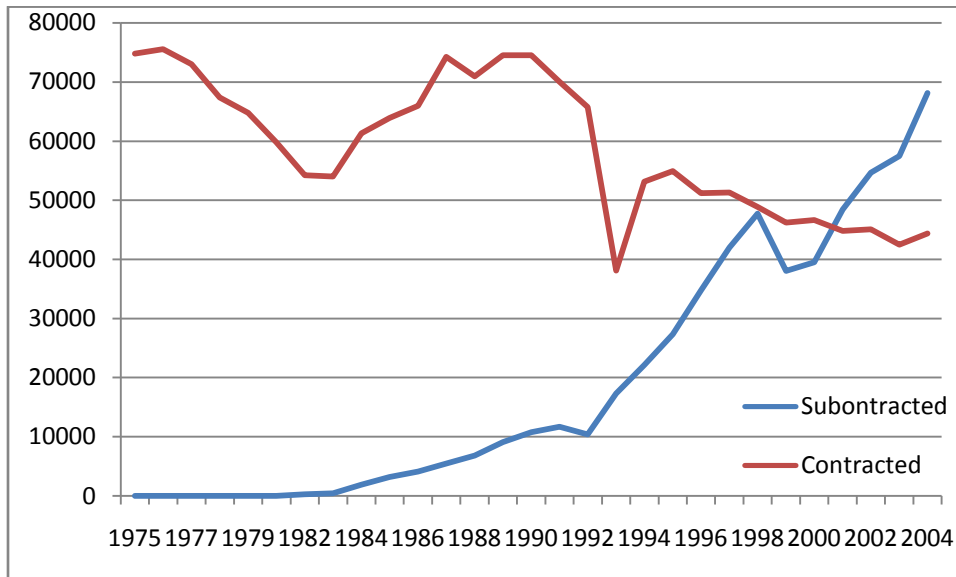
Stage	Government	Unions	Business Associations	Military
Negotiation	Strong (Concertación)/ Medium (Alianza)	Strong	Medium	N/A
Implementation	Medium/Weak	Medium	Strong	N/A
Monitoring	Weak	Strong	Medium	N/A

Figure 1: How Subcontracted Labor Works in Chile



Note: Subcontracted labor is often described as an equilateral triangle with the subcontracted laborer on the top. The common model is misleading as it implies that subcontracted workers are equal to subcontracted companies and the principal companies. As this is not the case, I have changed the model to better reflect the power differential between the three actors.

Figure 2: Growth of Subcontracted Labor in the Copper Industry



Source: Echeverría (2006)

Note: This graph was created using data from Echeverría's 2006 report on subcontracted labor for the Chilean government.

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*Pseudonym used to protect the identity of the interview subject, pursuant to IRB requirements.

Notes

¹ Law 20.123 (la ley de subcontratación), the May 2nd Accord (el acuerdo del segundo de mayo), and the recent increase in the minimum wage in Chile were all helped, in large part, by the CTC, the organization of subcontracted workers in the copper industry.

² Subcontracting is defined as the practice of having work that is normally performed or could be performed by the company undertaken by an outside contractor (Barres, 1967).

³ Individually, the variables are necessary conditions for unionization. Collectively, the variables are necessary and sufficient.

⁴ I include the military in the discussion, because the military remained a dominant force in Chilean politics until 1998 when Pinochet stepped down as the commander in chief of the military. While Pinochet retained control over the armed forces, violence remained a viable option, thus limiting the policy prescriptions of the Concertación and the CUT.

⁵ This model, presented in tables 1 and 2 in the appendix, helps to explain the recent developments in Chilean labor law pertaining to subcontracted labor.

⁶ The Pinochet designated senators are a product of the 1980 constitution. They are called Pinochet designated senators because the Pinochet regime handpicked these senators. The senators constituted almost 1/5 of the senate (Oppenheim, 2007). Section 5 Article 45 sets out who may become a designated senator. They include: former Presidents of the Republic (i.e. Pinochet), two former Ministers of the Supreme Court, a former Comptroller General of the Republic, a former Commander-in-Chief of the Army, one of the Navy, another of the Air Force, and a former General, Director of the Armed Police, a former Rector of a State University or of a University, and a former Minister of State.

⁷ Haagh defines social democratization as rights concerned with employment and human developments within labor markets and include collective rights to trade union organization and collective bargaining, and individual rights such as unemployment insurance (Haagh 2002).

⁸ Even the 2001 labor reforms were resisted heartily by the Alianza. The only reason the Lagos administration passed the reforms is due to the Concertación's majority in the Senate for the first time since the return to democracy.

⁹ The Alywin government was bound by the right via the military on several issues, most notably the persistence of neoliberal reforms and the prohibition of attempts to try the military for its participation in human rights violations during the dictatorship

¹⁰ Pinochet was not technically removed as a senator until 2000, though his arrest and detention in London in 1998 effectively ended his reign as a senator.

¹¹ The reforms expanded protection against dismissal of union officials, substantially increased penalties for unfair dismissals, provided for the reinstatement of trade unionists dismissed unjustly, and strengthened the laws governing disclosure of corporate information (USDOL 2003).

¹² An International Labor Organization report estimated that the informal economy concerns some 75 per cent of workers in Latin America, contributes to some 40 per cent of the gross domestic product and over the last 15 years has accounted for 70 per cent of the total number of jobs created (ILO, 2007).

¹³ I have limited my analysis to the subcontracted workers in the Chilean copper industry because little information exists about failed unionization attempts in other sectors of the Chilean economy. For example, in the forestall industry in southern Chile, the workers benefit from the same labor law changes, yet the duration of their employment is too short to properly form a union (Camera de Diputados, 2007). The same problem exists in the Agriculture sector, where most employees are temporary.

¹⁴ These figures are calculated from the Compendio Estadístico by averaging the average income from all sectors. The US dollar amount is calculated using an exchange rate of 513.45 (Exchange rate on January 1, 2006 from xe.com). Moreover, this figure reflects only the salary of the workers, not the benefits.

¹⁵ Subcontracted workers have limited employment protection, as they are temporary workers. The emergence of temporary workers is part of the emergence of the predominance of the neoliberal model in Latin America. The neoliberal economic model hindered significant labor change until the formation of the alliance between unions and the socialists before the 2006 presidential election. Berry attributes the durability of the subcontracting model to the efficiency of the small firms which do the subcontracting work itself (1997). Berry argues that the efficient small firms are those that restrict the range of functions they perform, relying on market transactions to supply the other required products and services (Berry, 1997).

¹⁶ From 1973 to 1989 national level unions were banned, ensuring that unions had no influence on national labor legislation. Even though the unions gained few concessions in the 1990 tripartite agreement, they gained the ability to bargain at a national level.

¹⁷ Union density was 8.6% in 2001 down from 15.4% in 1991.

¹⁸ The right still maintains a high degree of institutional protection via the electoral laws, though.

¹⁹ For example, the mine Radomiro Tomic is 1670 kilometers from Santiago at an altitude of 3000m (Codelco, 2008). The mine El Teneite is only 80 kilometers from Santiago, but is situated at an altitude of 2500m, making it fairly inaccessible.

²⁰ The Unidad Tributaria Mensual (UTM) is an inflation adjusted unit used to pay fines in Chile. The UTM is adjusted every month. Values can be found on utm.cl. The text of the law is: la usuaria será sancionada administrativamente por la Inspección del Trabajo respectiva, con una multa equivalente a 10 unidades tributarias mensuales por cada trabajador contratado. Additionally, the fine for not reporting accidents has increased to 340 UTM (12,437,540 pesos or US\$24,191).

²¹ The proximity to Santiago facilitated reporting abuses of Codelco.

²² Indeed, in the El Teniente case, the workers illegally struck three times following the between the 2001 labor reform and the 2006 subcontracted labor law. This is operationalized by an increase in illegal strikes following the 2001 labor reform (Espinosa 2007).

²³ For example, subcontracted workers were given inferior safety gear and were not allowed to shower at the mines (Moya, 2008). Moreover, the subcontracted workers were largely shunned by the contracted workers (Moya, 2008)

²⁴ Nishiyama attributes the decline in price to the sudden surge in mining technology which caused production to exceed consumption levels (2006). The technology included the opening of new mines and advanced technology such as SX-EW and information technology. Moreover, Nishiyama attributes about 70% of the world's increase in 1990–1999 period to Chile, mainly based on production of new large-scale mines like Escondida, Collahuasi, Los Pelambres, Candelaria and El Abra (2005).

²⁵ Cuevas himself had been fired by Sodexho in 2003 for organizing the Sindicato Sodexho Chile División Andina which fought for the rights of the subcontracted workers.

²⁶ The companies involved were Aura, Aura Con-Pax, Gardilic, Geovitta, Mas Errazuriz, Solentache-Bachy, Tecsca, and Zublin (El Mercurio, 2008).

²⁷ Pinera's concession is even more surprising he is the majority shareholder in LAN, which extensively uses subcontracted labor.

²⁸ The strikes caused losses of about 40 million dollars due to damages and lost production (Estrada, 2007)