Right-Wing Populism and the Deconstruction of Labour Laws in the Americas: Old Wine into New Wineskins

Renan Kalil, Mauro Pucheta, Matthew Bodie

1. Introduction

Populism developed in Latin America in the 1930s and 1940s. Vargas in Brazil, Perón in Argentina, and Cárdenas in México – considered by some authors as 'classical populists'[1] – played a decisive role in reshaping the political, economic, and social landscape of their countries. These charismatic leaders implemented what then was considered a modern and nationalist economic agenda and strengthened labour laws in their countries.[2] Traditionally, populist leaders adopted import-substitution industrialisation (ISI) strategies and policies, which entailed the adoption of inward-looking economic policies.[3] Their relevance made this topic a central subject of research among many political science scholars in the region since the 1950s.[4]

Through *coup d'états*, a large number of military regimes ruled Latin America from the 1960s to the 1980s, defeating populism (and democracy, as well). Nonetheless, a new wave a populist leaders emerged in the 1990s.[5] This new movement, which some authors called 'neo-populism', relied on personalistic leaders at the expense of the already existing institutions and organisations, such as the judiciary, parliaments and social partners. Notwithstanding some similarities, these new leaders radically departed from the traditional classical populists' economic policies. Influenced by the Washington Consensus, the *air du temps* was the adoption of neoliberal policies that would permit developing countries to enter the global economy. This

[1] Kurt Weyland, *Neoliberal Populism in Latin America and Eastern Europe*, 31 Comparative Politics 379-401, n. 4 (1999).
[2] Lorenzo Gnecco, *Populismos, derechos sociales y democracia,* RC D 695/2022 (2022); Cristóbal Rovira Kaltwasser, *Dealing with Populism in Latin America: Lessons for Donald Trump's Populist Presidency in the United States in When Democracy Trumps Populism: European and Latin American Lessons for the United States* 35, 37-38 (Kurt Weyland & Raul Madrid eds., CUP 2019); Angela de Castro Gomes, *A invenção do trabalhismo* (FGV Editora 2005).
[3] Alberto Chong and Luisa Zanforlin, *Inward-Looking Policies, Institutions, Autocrats, and Economic Growth in Latin America: An Empirical Exploration,* 121 Public Choice 335-361, n. 3/4 (2004).
[4] Torcuato di Tella, *Populism into the Twenty first Century*, 32 Government and Opposition 187–189, n. 2 (1997); Francisco Weffort, *O populismo na política brasileira*, 61-63 (Paz e Terra 1978); CNT, *O que é adhemarismo?*, Cadernos do Nosso Tempo 129–149, n. 2 (1954). For an historiography of populism in Latin America: Michael L. Conniff, *A historiography of populism and neopopulism in Latin America*, 18 History Compass 9 (2020).
[5] Conniff, *supra* 4.

certainly had an impact on the way labour markets should be regulated and, consequently, the need to implement major labour law reforms. Despite right-wing populists presenting themselves as the people's champions, particularly working classes, they implemented neoliberal policies that failed to improve - and even worsened - working conditions and workers' rights.

Populism in the United States has a more variegated history. A left-wing strain of populism was able to gain some popularity in the late 19th and early 20th centuries, especially in the midwest.[6] The relevant issues have maintained some degree of durability even since that time: the protection of farmers and the rural economy; fear of Wall Street elites and international competition; concern about traditional religious values and the influence of a more decadent, less godly urbanity. However, in the mid-20th Century U.S. populism began aligning itself more with conservatism. In the 1968 presidential campaign, George Wallace ran on an overtly white nationalist blend of populism, while Nixon used more subtle populist themes, hearkening to his support from the 'silent majority' and 'forgotten Americans'.[7] The Cold War, the dominance of a relatively stable mainstream media, and relatively positive economic fortunes kept populism away from power from the 1980s through the early 21st Century.

The early 2000s saw the rise of left-wing populists in Latin America who embraced ISI policies and challenged the neoliberal consensus. Furthermore, strains of both left and right populism emerged in the US in the wake of the 2008 financial crisis, with Occupy Wall Street and the Tea Party Movement taking advantage of non-traditional communication outlets to spread their messages.[8] Nonetheless, due to multiple factors - such as the economic, financial and fiscal crises and the re-emergence of a discourse based on moral values and the politics of social difference - since the 2010s there has been a considerable development of right-wing populists in western nations, including the Americas, particularly in Brazil and the United States of America.[9] Drawing upon an anti-elite rhetoric, despite their backgrounds, leaders such as Jair Bolsonaro in Brazil and Donald Trump in the USA claimed that their voice is the people's voice, which resonated with the working classes.[10]

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[6] Joseph Lowndes, *Populism in the United States,* in *The Oxford Handbook of Populism* 232, 233 (C. Rovira Kaltwasser et al. eds., OUP 2017).
[7] *Ibid.*
[8] *Ibid.*
[9] Carlos de la Torre and Treethep Srisa-Nga, *Global populisms* (Routledge 2021); Lowndes, *supra* 6, at 234-36.
[10] Thomás Zicman de Barros & Miguel Lago, *Do que falamos quando falamos de populismo* (Cia das Letras 2022).

The phenomenon of populism in the Americas has been studied in significant depth. Nonetheless, little attention has been paid to the role of right-wing populism in liberalising labour market regulations despite claiming to be the voice and 'saviours' of the working class. By adopting a comparative approach, we explore how diverse right-wing populists from Argentina, Brazil and the United States veered away from progressive labour agendas and implemented neoliberal policies that aimed to liberalise labour market regulations, and partially succeeded in doing so. To shed light on this, this contribution first explores the conceptual dimension of populism and the main features of right-wing populists in the 1990s and the 2010s. It then examines the experiences of Argentina and Brazil during the 1990s, in which right-wing populist governments, relying upon the Washington Consensus, embraced neoliberal policies. It analyses how they attempted to liberalise labour regulations through the deconstruction of the traditional contract of employment, and the attack on trade unions and trade union legislation. Furthermore, this contribution delves into the return of right-wing populism in the region, particularly in Brazil and the United States, and describes how, despite their diverse economic policies, they adopted a neoliberal approach regarding labour regulations. We conclude that, despite their pro working-class rhetoric and the refusal of the existing political elites, right wing populists implemented traditional neoliberal policies, which pursued the liberalisation of labour market regulations to the detriment of the working class they - claimed to - represent.

2. Right-Wing Populism in the Americas

2.1. Populism: Conceptual Elements

Populism is a trending concept. In the last ten years, a large range of authors have used this concept to understand and explain the outcome of unexpected electoral results - such as Trump in the United States and Bolsonaro in Brazil, popular decisions - such as Brexit in the United Kingdom, and the emergence of extremist leaders in many countries, such as Orban in Hungary, Modi in India, Bukele in El Salvador, Duterte in the Philippines.[11]

There are a myriad of definitions and approaches that attempt to unpack the notion of populism. However, for the sake of clarity, what follows is supported by the work of two

[11] Barros & Lago, *supra* 10; James Putzel, *The 'Populist' Right Challenge to Neoliberalism: Social Policy between a Rock and a Hard Place*, 51 Development and Change 420, n. 2 (2020); Cas Mudde, *The Populist Zeitgeist*, 39 Government and Opposition, 541 (2004); Weyland, *supra* 1.

authors who have explored right-wing populism in the Americas. Kurt Weyland considers populism as a political strategy, which has three main features: first, personal leaders appealed to a 'heterogeneous mass of followers who [felt] left out'; second, these leaders preferred direct contact with their followers/supporters, which explained the bypassing of intermediary organisations, such as trade unions or business associations; and, third, populism explains the low levels of institutionalisation, leaving parliamentary institutions playing a secondary role.[12] Thomás Zicman de Barros and Miguel Lago argue that populism is characterised by three main elements: first, it is based on a discourse that opposes 'the people' and 'the elites', those 'on the bottom' and those 'on the top'; second, it is aesthetically transgressive, irreverent, culturally popular; and third, it (re)shapes institutions. These features vary depending on the context, which explains why the notion of populism is not univocal. It is closely linked to vulnerabilities that affect all people, which results in different types of populism. There is an inclusive populism (or a left-wing populism), such as Lula during his first two terms (2003-2010) and the Kirchners in Argentina (2003-2015), and a reactionary populism (or a right-wing populism), such as Bolsonaro in Brazil (2019-2022) and Trump in the USA (2016-2020).[13]

The opposition between 'the people' and 'the elite' resonates - to an extent - with the heterogeneous mass that feels left out. This opposition can be seen from two different angles. Either 'the elite' is an immoral and corrupt group that should be eliminated for the good of 'the people'. The main goal is to settle the conflict – in other words, putting an end to liberal democracy. The working class - part of 'the people' who do not need to organise themselves through intermediary bodies such as trade unions - may follow a strong leader who may 'bring back some order' and re-establish an 'idealised' traditional social hierarchy to ensure a sense of security against social and economic precariousness. Or, 'the elite' is an opposition group in a dispute in the political arena. It is not an enemy that needs to be eradicated. This opposition transpires a conflict in which the main objective - at least of the working class and their representatives - is to fight against inequality and expand rights.[14]

The aesthetic transgression puts into question what can and cannot be part of the public arena. It aims to break the regular order and the usual way of doing politics. Transgressions can take different forms. One occurs when a leader addresses the people directly and informally, using elements of the popular culture (such as football and food). It also can take

[12] Kurt Weyland, *supra* 1, 379-381.
[13] Barros & Lago, *supra* 10.
[14] *Ibid*.

form when a working-class person occupies an important leadership role disrupting politics. Their critics focus excessively on so-called unrefined behaviour rather than their policies. Detractors would hide their real political divergences. Its main effects include universalising citizenship, enhancing liberal democracy, and giving a stage to marginalised groups. A different type of transgression aims to establish a dialogue with voiceless sectors who feel threatened by changes happening in the world through resentment. It defends freedom as an absolute value - including the freedom to discriminate against women, black, indigenous and LGBTQIA+ people. It has an exclusionary feature because it wants to reaffirm the traditional order and impose a social hierarchy that maintains violence against subalternate sectors.[15] Labour law is seen as an obstacle to socio-economic development and does not have space in this perspective, in which workers should choose between jobs or rights.

Populism reshapes the role of institutions. Institutional transformations cover public entities, laws, policies, and unwritten social norms. For instance, one type of transformation intended to undermine distinct forms of domination, such as racism and misogyny, highlighting and including subalternate sectors. The other type wishes to reinforce models of domination and erode autonomous institutions of control. From this angle, right-wing populism promotes low levels of institutionalisation, leaving parliamentary institutions to play a secondary role and undermining the function of judiciary and the prosecution by eroding their independence.[16]

It is worth mentioning that there is no specific economic policy that brings all types of populist leaders together. They can range from extreme protectionists to intransigent neoliberals. Usually, left-wing populists have adopted heterodox economics, such as Lula's second term in Brazil, Evo Morales in Bolivia, Néstor and Cristina Kirchner in Argentina. Conversely, as it is explored here, right-wing populists such as Collor de Mello and Bolsonaro in Brazil, and Menem in Argentina, have implemented orthodox and neoliberal economics. Trump, as examined below, embodied a unique mix between protectionist and neoliberal policies.

2.2. The Neoliberalization of Populism

There was a re-emergence of populist leaders in the 1980s and the 1990s. They chose the 'political class' that ran the long-established political parties as their enemy to prove their

[15] *Ibid*.
[16] *Ibid*.

leadership credentials and to boost the adversarial 'us versus them' narrative. These leaders built an image of political outsiders and independents, framing their opponents as ineffective, elitist, and corrupt. This allowed the centralisation of power and the use of a top-down approach to implement - or at least attempt to - their economic policies and labour law reforms.

Unlike economic policies adopted by classical populists, which preferred state interventionist measures, especially ISI policies, this new wave of right-wing populist leaders pursued market-oriented policies.[17] They privatised public enterprises, deregulated and liberalised labour market regulations, and reduced taxes. Populist leaders such as Menem, Collor de Mello, Fujimori, and Carlos Andrés Pérez in Latin America are paradigmatic examples of the pursuit and implementation of these neoliberal policies.[18]

The affinities between these leaders and neoliberal policies were unexpected.[19] Traditional political populism and economic neo-liberalism challenged contemporary understanding of populist theories and policies.[20] Neoliberalism found in this new wave of populists the perfect means to implement drastic economic reforms.[21] This synergy between this new wave of populism and neoliberalism was reflected in the rejection of egalitarianism, global economic equality, and solidarity beyond borders. Both identify capitalism as the only mode of production viable and mainly use the standards of productivity and efficiency to evaluate one's performance.[22] This, indisputably, had an impact on industrial relations and labour laws. It was considered that the state should promote market values, create flexible labour markets, restrict trade unions' power, reduce social spending, and commodify social policies.[23]

Unsurprisingly, classical populists and the 1990s populists differed partially in their constituencies. Whilst the former relied on labour movements – especially strong trade unions,

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[17] Kurt Weyland, *Neopopulism and Neoliberalism in Latin America: How Much Affinity?*, 24 Third World Quarterly 1095, 1098, n. 6 (2003).
[18] *Id*., 10-13.
[19] Contemporary populists and neoliberals support each other's efforts to transform the status quo and combat organised groups through drastic market reform. The initiation of neoliberal programs is facilitated by political outsiders' attaining government power. See: Weyland, *supra* 17; Kenneth Roberts, *Neoliberalism and the Transformation of Populism in Latin America*, World Politics 82-116, n. 48 (1995).
[20] Weyland, *supra* 17.
[21] Weyland, *supra* 17. This paper acknowledges the diverse definitions of neo-populism. However, for the purposes of this paper, neopopulism falls under the category of right-wing populism.
[22] Quinn Slobodian, *Hayek's bastards: The populist right's neoliberal roots*, Tribune (15 July 2021), https://tribunemag.co.uk/2021/06/hayeks-bastards-the-populist-rights-neoliberal-roots (last accessed 12 November 2022).
[23] Slobodian, *supra* 22; Putzel, *supra* 11, 420.

this new wave of populists focused more on informal and rural workers who rejected intermediary organisations.

The implementation of neoliberal policies entailed a major risk - which unfortunately became a reality - for workers in the formal sector, particularly industrial workers, and in the public sector, who were organised around strong trade unions. They suffered job losses, wage reductions, and cut-back of their labour rights.[24] Populist leaders attacked intermediary groups, particularly trade unions - sometimes through legislative and/or executive decrees - to reduce their power, and so to implement neoliberal policies and to reform protective labour market regulations.[25]

At the other end of the spectrum, informal workers did not have much to lose. Labour laws and traditional unions provided them with limited protection and representation. This permitted 1990s populist leaders to establish direct communication with them at the expense of traditional workers' representatives. They gained their support through the implementation of neoliberal-targeted social policies. Populists also emphasised the entrepreneurial culture as an option for the considerable informal sector in Latin America. Consequently, informal workers did not resist the demands for the deregulation of the labour market.[26] Even though the adjustment programs caused significant economic hardship for the poor and the working and middle classes, the partial control of hyperinflation made them consider these policies as a lesser evil.

2.3. *Reactionary Right-Wing Populism*

Neoliberalism and right-wing populism crossed paths again in the Americas in the second half of the 2010s. Neoliberal policies implemented over 30 years fuelled people's anger due to the worsening of their living conditions. The economic, political, and social consequences of neoliberalism hit people hard and caused a return of extreme levels of inequality and the end of stable industrial employment. It promoted private companies' provision of public services (such as health, education, water, transportation, and energy), which performed very poorly and led to the discredit of public authorities. It also changed the nature of the relationships between the transformed states' organisations and people, who were considered 'service providers' and 'customers', respectively. Granting market-friendly

[24] Weyland, supra 17.
[25] *Ibid.*
[26] *Ibid.*

individual rights to political minority groups, such as women, immigrants, and the poor, instead of adopting a universalistic approach, facilitated the rise of resentment amongst middle-class and working people hurt by the economic and financial crises of the late 2000s/early 2010s.[27]

This negatively affected workers. The precarisation of working conditions meant a significant change in terms of the usual contractual features of labour relationships. Workers did not have any predictability about having work, making enough money, and ensuring a place to sleep. They would need to accept any kind of work at any wage. Unsurprisingly, this considerably undermined workers' right to health and safety in the workplace.[28]

This context has allowed right-wing populists to explore to appeal to emotions of fear, uncertainty, and anxiety among many people left behind. During electoral campaigns and when in office, right-wing populists opted to gather support not through the implementation of social programs or the enhancement of working conditions, but through demonisation of religious and ethnic minorities, women, "illegal" immigrants, 'lazy' or 'criminal' poor, and indigenous people.[29]

The discourse of freedom as an absolute value fuels how right-wing populists address the needs of the working-class. They defend a maximum freedom of enterprise and a minimum intervention of the state in the labour relations. The best policy would be to let entrepreneurs carry out economic activities with as few rules imposed by the state as possible. In this way, companies would grow and, consequently, jobs would be created.[30]

An ongoing superficial discourse about meritocracy, which has publicly supported the disproportionately wealth of rich people even in highly unequal societies, and politics of demonisation of the "undeserving poor", were the main elements that justified the implementation of social policies that end up hurting the 'losers' of neoliberalism, that is, the

[27] Putzel, *supra* 11, 422-427.
[28] Paul Apostolidis, *Desperate Responsibility: Precarity and Right-Wing Populism*, 50 Political Theory 119-121, n. 1 (2021).
[29] Putzel, *supra* 11, 428-429.
[30] Roberto Fragale Filho & Jerry Davila, *Quo Vadis Labor Law? Labor Regulatory Trends in Bolsonaro's Kakistocracy*, 42 Comparative Labor Law & Policy Journal 89-114, n. 1 (2022); William McGurn, *Trump's Republican Populism*, Wall St. J., Nov. 5, 2018, https://www.wsj.com/articles/trumps-republican-populism-1541464783 (last accessed 13 November 2022); Christopher Wylde, *State, Society and Markets in Argentina: The Political Economy of Neodesarrollismo under Néstor Kirchner, 2003–2007,* 30 Bulletin of Latin American Research 446, n. 4 (2011).

poor and workers, resulting in further social exclusion. Unsurprisingly, these policies were aligned with neoliberal tenets.[31]

3. Neo-populism in the 1990s in South America: The Washington Consensus and the Liberalisation of Labour Laws

3.1. Neoliberalism and Labour as an Adjustment Tool

In 1990, John Williamson coined the term *Washington Consensus* and argued that radical reforms were necessary to adapt the countries' economies to globalisation. Macroeconomic discipline, liberalisation of the economy, privatisation of public companies and structural reforms would improve competition.[32]

In this context, labour laws were seen as obstacles to economic growth. The reduction of workers' protection and the liberalisation of dismissal rules were considered a potential payoff.[33] It was argued that 'rigid' labour market regulations caused labour market segmentation, which resulted in a 'privileged minority' who fully enjoyed labour rights while the large majority of the workforce was in a precarious situation.[34] The weakening of these 'rigidities' would therefore reduce the disparity between insiders and outsiders and would 'improve productivity, increase employment, and attract investment'.[35]

Two types of measures were put forward to achieve these goals: first, internal flexibilization, which would increase employees' adaptability to the constant changes of the dynamic labour market. Legislation should provide companies with the necessary tools to ensure that they could make as many changes as necessary.[36] Second, external flexibilization, which would entail the reduction of protective legislation that governed the hiring and dismissal of workers.[37] Particularly, neoliberal reforms aimed to liberalise part-time and temporary

[31] Fragale Filho & Davila, *supra* 30.
[32] John Williamson, *What Washington Means by Policy Reform*, in *Latin American Adjustment: How Much Has Happened?* 7-20 (John Williamson ed., Institute for International Economics 1990).
[33] Lydia Fraile, *Lessons from Latin America's neo-liberal experiment: An overview of labour and social policies since the 1980s*, 148 International Labour Review 215-23, n.3 (2009); Williamson, *supra* 32.
[34] Indermit Gill, Claudio Montenegro and Dorte Domeland, C*rafting Labor Policy: Techniques and Lessons from Latin America* (World Bank and OUP 2002).
[35] Efren Cordova, *The Challenge of Flexibility in Latin America*, 17 Comparative Labor Law Journal 314, n.2 (1996).
[36] María Lorena Cook, *The Politics of Labor Reform in Latin America: Between Flexibility and Rights* 33, 44 (Penn State University Press 2007).
[37] *Ibid*., 9.

employment contracts; to make more flexible working time regulations; to reduce severance payments; and to reduce the scope of protection of unfair dismissal and redundancies.[38]

Whilst classical populist leaders relied on labour movements, which resulted in the enactment of relatively strong labour regulation, this new wave of populist leaders adopted a different approach. The latter considered the role of the state to promote market values, to create flexible labour markets, to restrict trade unions' power, to reduce social spending, and to commodify social policies.[39]

It is worth mentioning that 1990s populists implemented neoliberal policies in the region under significant external pressure of international financial institutions, particularly the IMF. They pushed national governments to liberalise labour markets regulation to achieve greater integration into the world economy.[40] Loan conditionality was also a tool used by the World Bank and the IMF to 'encourage' governments to adopt and implement labour market reforms.[41] This hollowed-out the capacity of the state to freely adopt labour market policies, which resulted in trampling workers' rights.[42]

3.2. Argentina and Brazil: Populism embraces Neoliberalism

Having recently restored a democratic regime in the 1980s, Argentina and Brazil faced similar economic and political challenges. After decades of ISIs economic policies and military regimes, a 'new' world that was seeing the light of the day required different policies.

During the 1989 Argentine presidential campaign, Menem, a 'traditional' Peronist, pledged '*revolución productiva*' (productive revolution) and '*salariazo*' (a boost in wages). Relying upon his strong leadership, his rejection of neoliberal policies and his 'outsider' nature – he was a governor of a poor rural province in the west of Argentina – he succeeded in appealing to large parts of the Argentine poor population.[43] His high popularity encouraged Menem to ignore the traditional institutional system. Menem's administration sidelined the

[38] Arturo Bronstein, *'Labour Law in Latin America: Some Recent (and not so Recent) Trends*', 26 The International Journal of Comparative Labour Law and Industrial Relations 17, 26-29 n. 1 (2010); Cook, *supra* 36*,* 35-41.
[39] Slobodian, *supra* 22; Putzel, *supra* 11*,* 420.
[40] Katrina Burgess, *Global Pressures, National Policies and Labor Rights in Latin America*, 45 Studies in Comparative International Development 198, 214 n. 2 (2010); Bronstein, *supra* 38, 25.
[41] Gerry Rodgers et al., *The ILO and the Quest for Social Justice, 1919–2009* 231 (Cornell University Press 2009).
[42] Bernhard Reinsberg et al., *The political economy of labor market deregulation during IMF interventions*, 45 International Interactions 532, 534, n.2 (2019).
[43] Leslie Wehner, *El neo-populismo de Menem y Fujimori: desde la primera campaña electoral hasta la reelección en 1995*, ENFOQUES 25-56, n. 2 (2004); Weyland, *supra* 17; Roberts, *supra* 19.

Argentine Congress by issuing '261 emergency decrees and 22,537 ordinary decrees in his 10-year presidential term – more than all previous Argentine presidents had issued together'.[44]

In a similar fashion, during his campaign, Fernando Collor de Mello, the first president elected in Brazil after the end of the military rule, adopted a rhetoric of modernity focusing on economic and moral issues, and presented himself as an anti-elite, anti-establishment and anti-Communist candidate. Even though he was clearly a right-wing candidate,[45] he stressed that the real dispute was around a modern-archaic division. Unsurprisingly, Collor de Mello introduced himself as a political outsider, even though he had a long career as a politician.[46] He presented himself as the people's saviour who would be capable of bringing inflation down and reducing misery and poverty. Consequently, the main audience of his message was unorganised workers (especially in the informal sector, often known at that time as *descamisados*).

Given the particular historical, political and economic background, both leaders abandoned traditional ISIs policies and adopted, instead, policies that aim to 'integrate' both countries into the global economy.[47] Unlike traditional populists and Peronists, the gravity of Argentina's economic crisis led the Menem administration to implement neoliberal policies, specifically, a privatisation and trade liberalisation programme that had a major impact upon labour regulations.[48] This did not suffice, though, to tame high levels of inflation. In 1991, under the pressure of international financial institutions, following the main tenets of the Washington Consensus, Menem implemented 'the Convertibility Plan' – designed by the high-profile Minister of Economy, Domingo Cavallo – that marked the implementation of radical neoliberal reforms. It included the liberalisation of domestic and external markets, the strengthening of the privatisation programme, and the pegging of the Argentine peso to the American dollar.[49] Despite this ideological about-turn, these reforms brought stability to the economy and a short period of prosperity, which transformed Menem into a very popular

[44] Wolfgang Muno, *Populism in Argentina*, in *Populism Around the World* 16 (D Stockemer ed., Springer, 2019).
[45] Márcio Moraes Valença, *The Politics of Giving in Brazil: The Rise and Demise of Collor (1990-1992)*, 29 Latin American Perspectives 115, 117, n. 1 (2002).
[46] He had been appointed mayor of Maceió (capital of Alagoas) by the military in 1978 (at that time, he was 29), was elected federal deputy in 1982, backed the military candidate in the 1985 indirect presidential election, and was elected governor of Alagoas in 1986.
[47] Celia Szusterman, *Carlos Saul Menem: variations on the theme of populism,* 19 Bulletin of Latin American Research 200, n. 2 (2000).
[48] María Lorena Cook, *Labor Reform and Dual Transitions in Brazil and the Southern Cone*, 44 Latin American Politics and Society 1, 14 n.1 (2002).
[49] Juliana Bambaci, Tamara Saront & Mariano Tommasi, *The Political Economy of Economic Reforms in Argentina*, 5 The Journal of Policy Reform 75, 76, n.2 (2002).

figure.[50] He was re-elected for another term (1995-1999). Nonetheless, having been severely affected by the Tequila crisis (1994) and the Asian financial crisis (1997), Menem's second term was less successful in implementing reforms.[51]

The reduction of the excessively high 'labour cost' was one of the most crucial aspects of Menem and Cavallo's labour policies. They considered that the outdated and 'too protective' labour legislation was the main cause of high unemployment rates and high percentages of informal work.[52] It was, therefore, necessary to 'modernise' Argentine's industrial relations legislation and to adapt it to the pressing global competition to ensure job creation. On top of that, the privatisation of public enterprises such as *YPF*, a state-owned oil and gas company, *Aerolíneas Argentinas*, the state-owned airline, resulted in the layoff of a significant number of public employees.

In the same vein, although Collor de Mello's economic proposals were rather vague, he stood up for the opening up of the economy, privatisation, the end of public corporation monopolies, and reducing the number of ministries and personnel.[53] As soon as he was sworn in, he implemented the 'Collor Plan', a set of economic measures that intended to drive inflation down and stabilise the economy, which included freezing financial assets, increasing taxes, suspending subsidies, and cutting the budget. Another feature of Collor de Mello's economic policies was the so-called 'subordinated integration' of Brazil in the economic global order. Trade liberalisation was one of its most important tools, and the government deregulated foreign trade and reduced import tariffs. Like Menem, Collor de Mello considered the high 'labour cost' as one of the main problems of the Brazilian economy.

Despite the initial success of this plan, by the end of 1990 inflation had increased, GDP had fallen 4.4 percent, and per-capita income had fallen to 1979 levels.[54] His administration (1990-1992) is known as the beginning of the implementation period of the neoliberal policies in Brazil.[55] Following investigations and accusations of corruption, Collor de Mello was

[50] Muno, *supra* 44, 16; Wehner, *supra* 43, 44.
[51] Bambaci, Saront & Tommasi, *supra* 49, 77.
[52] See: Roberto Frenkel and Jaime Ros, *Desempleo, políticas macroeconómicas y flexibilidad del mercado laboral. Argentina y México en los noventa*, 44 Desarrollo Económico 33-56, n. 173 (2004); Eduardo Lora and Carmen Pagés, *La legislación laboral en el proceso de reformas estructurales de América Latina y el Caribe*, Banco Interamericano de Desarrollo, Oficina del Economista Jefe (1996).
[53] Alfredo Saad-Filho & Marco Boffo, *The corruption of democracy: Corruption scandals, class alliances, and political authoritarianism in Brazil*, 124 Geoforum 300-309 (2021); Valença, *supra* 45, 123;
[54] Ricardo Antunes, *A desertificação neoliberal no Brasil: Collor, FHC e Lula* (Autores Associados 2 ed. 2005); Ben Ross Schneider, *Brazil under Collor: Anatomy of a Crisis*, 8 World Policy Journal 325, n. 2, (1991).
[55] The consolidation period of neoliberal policies in Brazil occurred during the Fernando Henrique Cardoso administration (1995-2002). See: Andréia Galvão, *Neoliberalismo e reforma trabalhista no Brasil* (Revan 2007).

impeached and ousted from power in 1992. Unsurprisingly, he failed to implement the ambitious legislative reforms he had defended during his short presidency. However, Collor de Mello's approach regarding labour market regulations influenced successive leaders. He successfully paved the way for the labour law reforms implemented during the presidency of Fernando Henrique Cardoso (1995-2002) who successfully implemented neoliberal policies and some labour law reforms.[56] Furthermore, Collor de Mello's proposals laid the foundation to the major labour law reform implemented by Michel Temer in 2017.[57]

3.3. Populism and Neoliberalism versus Trade Unions

1990s right-wing populists focused on workers in the informal sector to gather popular support. Labour laws provided - and still provide - limited protection to this considerable percentage of underprivileged members of the society who were - and still are - not represented satisfactorily by traditional unions. These leaders reached out to these workers through direct communication, avoiding intermediaries, particularly trade unions. They succeeded in gaining their support, to some extent, through neoliberal social policies, such as targeted social benefits. Whilst these measures were often insufficient, this was the first time in many decades that a government had listened to informal workers' demands. Moreover, these populist leaders emphasised the importance of the self-made person and the entrepreneurial culture, which was presented as an option for the considerable informal sector in Latin America. Informal workers, consequently, did not resist the demands for the deregulation of the labour market.[58]

Both Argentina and Brazil built a 'state corporatist' system characterised by relatively protective labour legislation developed by the state and supported by the main trade, which had close connections to the ruling parties.[59] Despite that, trade unions suffered as a result of the privatisation programmes, which destroyed public companies. This meant a decline of the unions' membership and their power. This had a negative impact on worker representation as well as collective action.[60] Trade unions were also attacked on the legislative front. Both countries intended to adopt labour law reforms that reduce trade unions powers, and to some

[56] Although Cardoso is not considered as a 'populist' - his leadership style was less verticalist and his rhetoric less grandiose and salvific, on labour matters his policies were heavily influenced by Collor de Mello's 'failed' policies.
[57] José Dari Krein & Ana Paula Fregnani Colombi, *A Reforma Trabalhista Em Foco: Desconstrução da proteção social em tempos de neoliberalismo autoritário*, 40 Educação & Sociedade 5 (2019).
[58] Weyland, *supra* 1, 383.
[59] Joel Wolfe, *The Faustian Bargain Not Made: Getúlio Vargas and Brazil's Industrial Workers, 1930-1945*, 31 Luso-Brazilian Review 77-95, n.2 (1994).
[60] Chris Howell, *Regulating class in the neoliberal era: the role of the state in the restructuring of work and employment relations*, 30 Work, employment and society 573, 578, n. 4 (2016).

extent succeeded in does so, by authorising the implementation of productivity clauses, as well as the decentralisation of collective bargaining in favour of the enterprise level.[61]

Despite his Peronist origins, one the most salient aspects of Menem's labour policies was his conflictive relationship with social partners.[62] Given the traditional link between the Peronist party and the labour movement, Menem did not attempt to challenge the 'trade union personality' system, which grants a broad range of exclusive rights to the most representative trade unions.[63] However, the neoliberal approach of Menem policies led to the division of the trade union movement.[64] The traditional CGT (*Confederación General de los Trabajadores*)[65] - the historical ally of the Peronist party - navigated between active support for and passive acquiescence to Menem's labour reforms.[66] Trade unions were and still are key actors in the Argentine health system. Through their *obras sociales,*[67] they manage social welfare programs funded by a percentage of formal workers' salaries and employers' contributions.[68] Despite their support, the Menem administration intended to introduce private health companies to reduce the power of trade unions. As a consequence, some unions adopted a 'subordination' strategy to keep this important source of funding at the expense of making concessions to liberalise labour market regulations.[69] Another part of the CGT adopted an 'organisational survival' that decided to negotiate the content of the structural reforms imposed by the Menem Administration.[70]

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[61] John Weeks, *Wages, employment and workers' rights in Latin America, 1970-98*, 138 International Labour Review 151, 163-165, no.2 (1999); Cook, *supra* 36.

[62] Sebastián Etchemendy & Vicente Palermo, *Conflicto y concertación. Gobierno, congreso y organizaciones de interés en la reforma laboral del primer gobierno de Menem (1989-1995)*, 37 Desarrollo económico 559-590, n.148 (1998).

[63] This system, consistently challenged by the ILO Committee on Freedom of Association, was declared unconstitutional in a 2008 landmark Argentine Supreme Court judgment, see: Adrián Goldin, *A Supreme Court challenge to Argentina's trade union model*, 148 International Labour Review 163, n. 1-2 (2009).

[64] Hernán Fair, *Del peronismo nacional-popular al peronismo neoliberal: transformaciones de las identidades políticas en la Argentina menemista*, Colombia Internacional 107, 127, n. 86 (2016).

[65] Maurizio Atzeni, Fernando Durán-Palma & Pablo Ghigliani, *Employment Relations in Chile and Argentina, in Research Handbook of Comparative Employment Relations* 129-152 (Michael Barry and Adrian Wilkinson eds., Edward Elgar 2011).

[66] For further details regarding the major strikes against Menem's reform in his first term (1989-1995), see: M. Victoria Murillo, *Del populismo al neoliberalismo: sindicatos y reformas de mercado en América Latina*, 40 Desarrollo Económico 179, 208, n.158 (2000).

[67] *Obras sociales* are "social insurance funds financed by employers and formal workers and run by the trade unions." Marcello Natili & Angelica Puricelli, *Expanding Welfare State Borders: Trade Unions and the Introduction of Pro-Outsiders Social Policies in Italy and Argentina*, Journal of Social Policy 1-19 (2021).

[68] Héctor Palomino, *Los cambios en el mundo del trabajo y los dilemas sindicales,* in *Nueva Historia Argentina. Dictadura y democracia* (Juan Suriano ed., Sudamericana 2005); Cook, *supra* 36.

[69] Natili & Puricelli, *supra* 67; Sara Niedzwiecki, *The effect of unions and organized civil society on social policy: Pension and health reforms in Argentina and Brazil, 1988-2008*, 56 Latin American Politics and Society 22-48. n. 4 (2014).

[70] Murillo, *supra* 66*,* 419, 430-436.

On the other side, the 'rebellious' *Central de Trabajadores Argentinos* (CTA) and the *Movimientos de Trabajadores Argentinos* (MTA), amongst others, opposed staunchly most of Menem's labour law reforms.[71] Privatisations resulted in the loss of many jobs and the consequent reduction of trade unions' membership.[72] This impact was felt unevenly between unionised and non-unionised workers. Whilst the former was protected through transfers or voluntary retirement packages (*retiro voluntario*), the latter were less fortunate.[73] Unsurprisingly, the losers of Menem's policies galvanised the development of the CTA and the MTA.

This ambivalent relationship between the Menem administration and trade unions was also reflected in the reform of the collective bargaining system. The government preferred an enterprise-level rather than a sectoral-level approach regarding collective bargaining. It adopted the small enterprises collective agreement regime, which meant that collective agreements would not have *ultraactividad* (losing validity once they expired), unlike the traditional sectoral agreements. Furthermore, these agreements could no longer modify enterprise agreements. It also introduced the *disponibilidad colectiva* mechanism whereby collective agreements could liberalise labour market regulations. Relying on an agreement signed by social partners in 1994 (*Acuerdo Marco para el empleo, la productividad y la equidad social*), the Menem administration enacted legislation that authorised collective agreements to adopt provisions that could leave aside legally binding legislation. This reform particularly affected the well-established '*aguinaldo*' (the 13th salary paid in two instalments in July and December) and the paid holidays regime.

This conflictive relationship with trade unions was also observed in the interventionist approach adopted by the Menem's administration, which did not respect trade unions' freedom of association. It first enacted a controversial decree that implemented restrictions on strikes in essential services. Moreover, it would not approve wage agreements if they did not include a productivity clause (Decree 1334/1991). It also authorised the Ministry of Labour to withdraw the approval (*homologación*) of collective agreements whenever it considered that their content was not in line with the subsequent legislation (Decree 1553/1996). This legislation was not in line with the International Labour Organisation standards, particularly Conventions 87 and 98.

[71] See: Cook, *supra* 36; Murillo, *supra* 66, 196.
[72] Murillo, *supra* 66, 426.
[73] Perride K. Blind, *Democratic Institutions of Undemocratic Individuals Privatizations, Labor, and Democracy in Turkey and Argentina* 124-125 (Palgrave Macmillan ed. 2009).

Despite the division of the trade union movement and the several attacks on the collective bargaining regime, Menem did not succeed in implementing any labour reform without the agreement of the main trade union confederations and the biggest business organisations.[74] The loss of popularity of Menem further exacerbated the dependence of his government on the implementation of labour regulations, as seen in the final major piece of labour legislation adopted by his administration in 1998 (the Labour Reform Act, Ley 25013), which repealed most of the previous Menem's individual labour law reforms, and whose content was heavily shaped by social partners.[75]

A similar trend was observable in Brazil. In the 1980s, during the military dictatorship, trade unions were fighting for a substantive freedom of association that would reduce state control and interventionism, and to expand the possibilities of collective action under democratic rules.[76] However, in the 1990s, this notion took a different meaning. The rise of neoliberalism encouraged employers to frame the concept of freedom of association and freedom to negotiate as a means to dismiss and remove labour legal protection. They took advantage of that particular political context in which less state intervention in labour relations equated to 'deregulation/liberalisation'. Paradoxically, freedom of association and freedom of negotiation were now tools to liberalise labour standards.[77]

A comprehensive labour law reform was discussed to adapt working conditions to the political and economic landscape of the early 1990s. Some workers' representatives – especially the *Central Única dos Trabalhadores* (Single Confederation of Workers, 'CUT') – asked for freedom of association and changes in the trade union system. On the opposite side of the spectrum employers' representatives clamoured for the abolition of labour protections.[78]

Two main projects were subject of debate: first, bill no. 821/91 - the most significant project during the Collor de Mello administration - that aimed to radically reform the trade union organisation and collective bargaining system and implement '*novo sindicalismo*'. Arguing that there would be a reduction of the state's intervention in collective labour law, the government intended to boost the options to flexibilize labour markets. Trade unions voiced their critiques and the Collor de Mello administration split the bill into two projects: Bill no. 1231/91 on trade union organisation, which would regulate trade union funding and disputes

[74] Etchemendy & Palermo, *supra* 62, 560.
[75] Cook, *supra* 36, 44.
[76] Galvão, *supra* 55, 110; Armando Boito, *Política neoliberal e sindicalismo no Brasil* (Xamã 1999), 9.
[77] Galvão, *supra* 55, 115.
[78] *Ibid,* 104.

among different organisations. And Bill no. 1232/91 on collective bargaining, which would authorise the adoption, via collective bargaining, of clauses that would dismiss the existing legally-binding labour legislation. CUT and CGT staunchly opposed both bills.[79]

The year of 1992 was turbulent. Collor de Mello was accused of being part of corrupt schemes, involving bribery, extortion, influence-peddling, and other serious offences. This resulted in a congressional inquiry, which would investigate the accusations. In September, the Chamber of Deputies approved the start of impeachment proceedings. Collor de Mello was replaced by his vice president Itamar Franco. In December, the Senate voted for his impeachment and Franco took office.[80] Although none of the aforementioned bills were adopted, they certainly influenced subsequent labour policies during the presidency of Cardoso - who had replaced Franco - and trade union legislation, particularly the major labour law reform adopted by Temer.[81]

3.4. The Development of Precarious Employment Contracts

Another key aspect of the 1990s right-wing populists was the deconstruction of the traditional protective labour legislation. In this regard, during the first administration (1989-1995), Menem aimed to make the hiring process more flexible. The 1991 National Employment Act (*Ley Nacional de Empleo, 24013*), introduced several fixed-term and temporary contractual options.[82] These new types of contracts, so-called 'garbage contracts',[83] brought two significant benefits for employers: firstly, workers were not entitled to severance payments in case of unfair dismissal; and, secondly, employers did not have to pay any employment tax. These types of contracts, though, could only be used if sectoral collective agreements authorised them. This constituted a major hurdle. As a response, the Menem administration passed the Contract of Employment Act (Ley 24465, 1995), which introduced new types of precarious contracts to make the hiring process even more flexible and to further reduce the employers' social charges pertaining to the employment contracts. In the same vein, the 1995 Small and Medium Enterprise Act (*Marco Reegulatorio de la Pequeña y Mediana Empresa, Ley 24467*) further

[79] *Ibid*, 121.
[80] Valença, *supra* 45, 130.
[81] Krein & Colombi, *supra* 57; Luiz Henrique Vogel, *Negociar direitos?: legislação trabalhista e reforma neoliberal no governo FGC (1995-2002),* PhD thesis 124 (Universidade do Estado do Rio de Janeiro 2010); Galvão, *supra* 55.
[82] Adrián Goldin, *Reforma y contrarreforma laboral en Argentina, crónica simple de un proceso pendular*, 68 Revista de la Facultad de Derecho PUCP 63-92 (2012).
[83] Cook, *supra* 48, 44.

liberalised the hiring process for SMEs, gave employers more power to change the terms of employment contracts, and reduced the employers' notice period to dismiss employees.

After securing re-election in 1995, and during a major global economic crisis, the International Monetary Fund (IMF) put more pressure on the Argentine government to further liberalise labour market regulations.[84] Nonetheless, the high turnover of employees, the high percentage of informal workers, and the stark opposition from the main trade unions led the Menem administration to partially follow IMF's recommendations. The Labour Reform Act in 1998 (*Reforma Laboral, Ley 25013*) changed the initial approach, which had focused on the hiring process, and intended to liberalise the dismissal process. Although employers were no longer authorised to use the 'garbage' contracts, severance pay in case of unfair dismissal was drastically reduced.

One of the most troubling examples of the Menem Administration's approach is the 1995 Occupational Health and Safety Act (*Ley de Riesgos del Trabajo, Ley 24557*), which sought to reduce the number of claims brought by workers. Unlike previous OHS regulations, this new piece of legislation prohibited workers from initiating civil proceedings, which resulted in a considerable reduction of workers' compensations due to more stringent evidence rules in labour proceedings. This was even more damaging to workers' rights because the legislature decided to include a system, which limited workers' entitlement to lodge a claim for occupational health only for diseases identified in an authoritative list. Moreover, it introduced a new administrative body (*Comisión Médica*), composed of doctors and partially funded by employers' contributions, which was placed in charge of dealing with occupational disease claims and deciding on workers' compensations. This reform forced workers to go through a relatively costly and lengthy mandatory administrative procedure, which significantly deterred workers from making complaints. Unsurprisingly, some years later, the Argentine Supreme Court held several of the OHSA provisions to be unconstitutional.[85]

Collor de Mello had similar objectives as Menem. He intended to implement major labour law reforms. However, his impeachment frustrated its adoption. Despite his short term in office, Collor de Mello did have an impact upon labour regulations and labour relations in Brazil. First, the implementation of radical neoliberal policies that allowed the access of significant foreign competition into Brazil ushered in a substantial deindustrialization process.

[84] Cook, *supra 36,* 78-80.
[85] Argentine Supreme Court of Justice, *Castillo, Ángel c/ Cerámica Alberdi SA*, [2004]; Corte Suprema de Justicia de la Nación Argentina, *Obregón, Francisco Víctor vs. Liberty ART*, [2012].

This resulted in the bankruptcy and disappearance of many industrial private companies.[86] Given these dire circumstances and the need to be competitive, companies 'felt' authorised to implement considerable restructuring programmes to reduce 'labour costs'. This sparked a wave of redundancies as well as the reduction of wages.[87] Second, Collor de Mello privatised public companies to solve the state's fiscal crisis. This led to mass redundancies of public employees.

Collor de Mello's labour policies outlived his short term in office. Fernando Henrique Cardoso, who intended to fight informality in the labour market, the persistent poverty, and, importantly, to reduce the *custo Brasil* (labour cost)[88], implemented important labour law reforms inspired by Collor de Mello's approach.[89] Cardoso abolished the Wage Adjustment Law that was a piece of legislation that allowed the update of the minimum wage. He then implemented some major reforms 'that aimed to flexibilize work contracts by allowing greater latitude in hiring of part-time staff, easing procedures for temporarily suspending or terminating work, and modifying work contract durations and the vacation time bank system'.[90]

In short, despite their 'close' connection with the *descamisados,* both Menem and Collor de Mello adopted a neoliberal approach, which considered labour laws as an obstacle to economic growth. Their initial results were different: whilst Menem successfully introduced important reforms during his first term and less ambitious during his second term, Collor de Mello abrupt end meant that his labour law reforms were truncated. In spite of that, Cardoso (1995-2002) and Temer (2016-2018) who successfully implemented major labour law reforms in Brazil were heavily influenced by Collor de Mello's ideas. Likewise, despite the repeal of most of Menem's reforms in the 2000s, the current centre-right, which tried to implement similar reforms in 2017/8 and far right political parties in Argentina, advanced similar projects.

4. 21st Century Right-Wing Populism, 20th Century Right-Wing Labor Law

4.1. *Trump and Bolsonaro: Populism in Power*

[86] Giovanni Alves, *O novo e precário mundo do trabalho: reestruturação produtiva e crise do sindicalismo* (Boitempo 2000); Boito, *supra* 76.
[87] *Ibid*; Vogel, *supra* 81, 116.
[88] Jean François Mayer, *The Limits of Labor Legislation Reforms: Rigidity, Growth, and Employment in Brazil (1995–2010),* 8 Journal of Politics in Latin America 96-97, n. 1 (2016).
[89] Galvão, *supra* 55.
[90] For further analysis, see: Mayer, *supra* 88, 104-107.

Both Donald Trump and Jair Bolsonaro represent real breaks from the conservative traditions in their countries. Both appealed to a group of disaffected and relatively disempowered followers to speak directly as their champion and representative against a corrupt ruling class. Both established their power independent of, and in some cases despite conflict with, their party's leadership, and sought to remake the parties in their own image. Both shunned institutional support in favour of direct communication and simple political messages centred around the empowerment of their 'people'.[91]

Donald Trump is one of the few populist politicians to win the U.S. Presidency. Although some commentators, including former President Barack Obama, have challenged the populist label as applied to Trump,[92] his political style fits within the overall populist narrative of a morally virtuous people and a corrupt elite.[93] As with other populist politicians, Trump identified 'a political problem—in this case, the elites' abandonment of the common good in favour of their own self-interest' and also offered 'a solution, namely the acquisition of political power by the populist politician or party on behalf of the people'.[94] Once in office, he then fell into the common populist pattern of persistent delegitimization of democratic institutions, culminating with the attack on the U.S. Capitol on January 6, 2021.[95]

The candidacy and then presidency of Donald Trump well illustrate the conflict between a nationalist populism and the pre-existing Republican Party. Before President Trump, 'populism did not entirely comfortably exist within the Republican Party'.[96] Just four years earlier, GOP Presidential nominee Mitt Romney ran on a traditional Republican economic platform of lower taxes, less regulation, and free trade.[97] Trump's 2016 campaign, however, was more overtly nativist, anti-trade, and anti-globalist. His crude rhetoric and willingness to scapegoat minorities and foreigners was something of an embarrassment to many in the Republican establishment.[98] But this caustic style earned him a devoted and vocal following among white working-class and rural voters who felt neglected by GOP elites. Increasingly,

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[91] See: Weyland, *supra* 1, 379-381; Barros & Lago, *supra* 10; Leo Vrana & Gerold Schneider, *Saying Whatever It Takes: Creating and Analyzing Corpora from US Presidential Debate Transcripts*, Corpus Linguistics Conference 2017, https://doi.org/10.5167/uzh-145668.
[92] Bart Bonikowski, *Three Lessons of Contemporary Populism in Europe and the United States*, 23 Brown J. World Affairs 9 (2016).
[93] Cas Mudde, *Populist Radical Right Parties in Europe* 23 (CUP 2007).
[94] Bonikowski, *supra* 92, 11.
[95] *Ibid.*
[96] Lowndes, *supra* 6, 232, 234.
[97] In fact, Romney criticised the Obama Administration for failing to execute any trade deals. https://www.cnn.com/2012/10/08/politics/fact-check-romney-trade (last accessed 13 November 2022).
[98] Vrans & Schneider, *supra* note 91 (discussing Trump's more simplistic and transgressive speech).

the Republican establishment has made a Faustian bargain with Trump's ethno-nationalism and his anti-democratic authoritarianism.[99]

President Trump's 2016 campaign was populist to the extent that it saw the 'people' as white workers and small business owners who felt shut out of the halls of power on Wall Street and in Washington, D.C. Observers have largely latched on to the white nationalistic aspects of this populism, with good reason: Trump expressed sympathy for even the most revanchist racists, and he repeatedly attacked non-white ethnic groups on a variety of policy and rhetorical fronts. He focused on cultural and social issues important to white working-class Christian Americans, such as religious freedom, traditional marriage and family, and a curtailing of efforts to combat racism.[100] Although Trump's slogan—'Make America Great Again'—showed the traditionalist nature of his worldview, he and his followers saw themselves as rebels against a rich and powerful globalist network. Like Bolsonaro, Trump's repeated exhortations to remove the elites entrenched in government – 'Drain the Swamp', in his words – were populist in nature, focusing on the power of lobbyists and longtime legislators to maintain control over the rest of the country.[101] [102] Although his presidency largely failed to undertake any substantive reforms in political campaign financing,[103] his rhetoric continued in the vein of the little people, the less important people, fighting against the media and the political system.

During the 2016 campaign, Trump's proposed economic program was a mix of new populist policies and traditional conservative capitalism.[104] Cutting taxes for both individuals and companies was high on his list, and he frequently told working-class voters that they would pay nothing.[105] However, he also diverged from traditional GOP orthodoxy by promising not to touch the big federal entitlement plans of Medicare and Social Security.[106] And his anti-

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[99] Bart Bonikowski, *Trump's Populism: The Mobilization of Nationalist Cleavages and the Future of US Democracy* in *When Democracy Trumps Populism: European and Latin American Lessons for the United States* 110, 130-31 (K. Weyland and R.L. Madrid eds., CUP 2019).
[100] *Ibid*. at 113.
[101] Ted Widmer, *Draining the Swamp*, New Yorker, Jan. 19, 2017.
[102] Trump claimed early in his campaign that he was entirely self-funded to avoid any influence from wealthy donors. Rebecca Ballhaus, *$100 Million? How Trump's Self-Funding Pledges Panned Out*, Wall St. J., Nov. 7, 2016, https://www.wsj.com/articles/BL-WB-66493 (last accessed 12 November 2022).
[103] Josh Dawsey, Rosalind Helderman & David Fahrenthold, *How Trump Abandoned His Pledge to 'Drain the Swamp,'* Wash. Post, Oct. 24, 2, 2020 at 2:26 p.m. EDT, https://www.washingtonpost.com/politics/trump-drain-the-swamp/2020/10/24/52c7682c-0a5a-11eb-9be6-cf25fb429f1a_story.html (last accessed 12 November 2022).
[104] Sean Sullivan & Jim Tankersley*, Trump calls for excluding child-care costs from taxation as he tries to turn the page on a bruising week*, Washington Post, Aug, 8, 2016. *("*Trump's plan is designed to accelerate economic growth, largely in classic conservative fashion: by reducing taxes and regulations on businesses and by opening vast new swaths of federal lands and waters to drilling.").
[105] *Ibid.*
[106] Michael D. Schear*, Taking Page From 2016, Trump Claims Democrats Will Destroy Safety Net, N.Y. Times, Sept. 14, 2018.*

immigration and anti-free-trade stances supported his desire for protectionism in the service of the "American" worker.[107]

In contrast to Trump, Jair Bolsonaro has a long political record. Despite presenting himself as a political outsider, he was elected city councilman in Rio de Janeiro in 1988, and was federal deputy for seven terms (1991-2018). Before starting his political career, Bolsonaro was a military officer who retired after facing charges of plotting a bomb in military facilities as a strategy to demand higher salaries.

During the presidential campaign, his economic proposals were based entirely on neoliberal tenets, particularly freeing enterprises from regulations and limiting the role of the state as much as possible. He promised to stabilise the economy, to control government spending, and to open the economy. He intended to raise the minimum retirement age, reduce taxes, and make labour markets more flexible.[108] During the campaign, Bolsonaro said repeatedly that workers should choose between rights or jobs.[109] His main economic advisor, Paulo Guedes – who studied at the University of Chicago – became a powerful Minister of Economy and picked up graduates from that school and conservative businessmen for positions in the Ministry.[110]

Bolsonaro made extensive use of social media to spread his message. An analysis of his Facebook page between 2015 and 2018 showed that he had an expressive set of interactions with his followers, advertised negative propaganda on a regular basis against those he considered his main adversaries (mainly, the left and the media), and promoted his public image. He spent four whole years in a permanent campaign.[111] The main targets for his messaging were white men who were at least 35 years old, evangelical/Pentecostal, and conservative.[112] As Trump, he also addressed cultural and social matters relevant to Christian Brazilians.

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[107] Carlos de la Torre*, Populism Revived: Donald Trump and the Latin American Leftist Populists,* The Americas 733, 741 (Oct. 2018).

[108] Jair Bolsonaro, *O caminho da prosperidade: Proposta de plano de governo*, 2018, https://divulgacandcontas.tse.jus.br/candidaturas/oficial/2018/BR/BR/2022802018/280000614517/proposta_1534284632231.pdf (last accessed 13 November 2022).

[109] Rodrigo Tolotti, *Bolsonaro diz no JN que trabalhador terá de escolher entre direitos e emprego*, Infomoney (28 august 2018), https://www.infomoney.com.br/politica/bolsonaro-diz-no-jn-que-trabalhador-tera-de-escolher-entre-direitos-e-emprego (last accessed 12 November 2022).

[110] Amon Barros & Sergio Wanderley, *Brazilian businessmen movements: Right-wing populism and the (dis)connection between policy and politics*, 27 Organization 400, n. 3 (2019).

[111] Ícaro Joathan & Hébely Rebouças, *Campanha permanente em busca da Presidência da República: As estratégias de comunicação de Jair Bolsonaro no Facebook entre 2015 e 2018*, 11 Educação, Cultura e Comunicação 380, n. 22 (2020).

[112] Mark Setzler, *Did Brazilians Vote for Jair Bolsonaro Because They Share his Most Controversial Views?*, 15 Brazilian Political Science Review 4, no. 1 (2021).

Bolsonaro joined the Social Liberal Party (PSL) for his nomination as a presidential candidate. The PSL was a small political party (in 2018, it had one federal deputy out of 513) and at the time was an unknown entity.[113] He had significant support from employers and their representatives. During the campaign, he was stabbed in a rally, which gave him justification to stay away from debates with other candidates.[114]

The 2018 presidential election between Bolsonaro as the anti-PT candidate and the Workers' party candidate, Fernando Haddad, was very polarised. Bolsonaro kept making extensive use of social media to establish direct communication with his supporters after winning in October 2018. He is very active on Facebook, Twitter, and Instagram, and currently goes live weekly on Facebook. An analysis of Bolsonaro's Instagram account shows him trying to build his public image as a mirror of the people, someone extraordinary and quick to appropriate symbols of power.[115]

Both Trump and Bolsonaro ultimately emerged as populist politicians within a conservative tradition. But while their policy platforms differed in significant respects from mainstream conservative thought in their respective parties, their labour policies hewed more closely to the conservative neoliberal framework.

4.2. *Liberalisation of Labour Market Regulations*

During his presidential campaign and while in office, Trump's populist appeal seemed to stem from his advocacy for nativist policies and his willingness to embrace them in all their ugliness. As president, Trump moved the GOP towards more populist positions in two main areas: liberalisation of immigration and international trade. The Trump Administration endeavoured to stop unauthorised immigration into the country and to limit authorised immigration significantly.[116] Trump cited the need for law and order in enforcing these limits, as well as the notion of preserving a traditional 'American' culture. But his appeals were also grounded in the idea that native workers should not face competition, either from immigrants willing to work for lower wages or from goods produced by foreign workers willing to work for lower wages.[117] In this respect, Trump's protectionist-oriented populism echoed the appeals

[113] Wendy Hunter & Timothy J. Power. *Bolsonaro and Brazil's Illiberal Backlash,* 30 Journal of Democracy 69-72 no. 1 (2019).
[114] Saad-Filho & Boffo, *supra* 53, 303.
[115] Ricardo F. Mendonça & Renato Duarte Caetano, *Populism as Parody: The Visual Self-Presentation of Jair Bolsonaro on Instagram*, 26 The International Journal of Press/Politics 220, n. 1 (2021).
[116] Bonikowski, *supra* 98, 125.
[117] H. Otterbein & M. Cassella, *Rank-and-file union members snub Biden for Trump*, Politico, Sept. 22, 2020, 4:30 A.M., https://www.politico.com/news/2020/09/22/donald-trump-union-support-snub-joe-biden-418329 ("'He

of other nationalist-oriented movements such as Brexit, Movimento 5 Stelle, and the National Rally.

Trump also bucked the prior neoliberal elite consensus on trade. Republicans and neoliberal Democrats had essentially taken that issue off the table ever since the passage of NAFTA early in the Clinton Administration. Trump firmly rejected this position and frequently emphasised the need to renegotiate NAFTA. He lambasted the pending Trans-Pacific Partnership (TPP) between the U.S. and countries around the Pacific Rim. Senator Bernie Sanders, who was running for the Democratic nomination against Hillary Clinton in 2016, also vigorously opposed the TPP and eventually succeeded in changing Clinton's position on the issue. Her earlier support remained a liability, however, as Trump continually attacked her for it. While in office, Trump abandoned the TPP. His signature trade policy was an agreement with China that imposed a new round of tariffs on goods from China; described as only 'phase one', it did not significantly change trade patterns.[118] His administration also negotiated a new North American trade agreement, which seems largely similar to the original NAFTA.[119]

Another area in which Trump's message, at least, differed from recent Republican orthodoxy was on spending for social programs. In this respect, Trump's rhetoric matched up with more progressive strains of U.S. populism. Unlike Republican legislators in the past, Trump did not instinctively seek to cut social programs. In his election campaign, he emphasised that he would not cut Social Security or Medicare. While he repeatedly stated that he would eliminate the Affordable Care Act, he said that he would replace it with something much better—in theory, with even more coverage.[120] And he so often mentioned plans to pour money into national infrastructure that his 'Infrastructure Week' rollouts became a running joke. Republican control of Congress may have stymied Trump's preferences; he seemed very willing to engage in deficit spending so long as the money would be directed to his base of supporters.

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has a very, very, very solid foundation of our members,' said James Williams, a vice president of the International Union of Painters and Allied Trades, whose surveys of members painted a similar picture. 'They connect with his messaging and a lot of the fear-mongering going all the way back to when he was first elected with, "Be afraid of the immigrant. The immigrant's here to take your job." That resonated with our membership.'") (Last accessed 12 November 2022).

[118] BBC, What has Donald Trump actually achieved on trade?, Jan. 20, 2020, https://www.bbc.com/news/business-51055491 (last accessed 12 November 2022).

[119] *Ibid.*

[120] S. Harris, *Trump: I'll replace ObamaCare with 'something terrific,'* The Hill, July 29, 2015, https://thehill.com/policy/healthcare/249697-trump-replace-obamacare-with-something-terrific (last accessed 12 November 2022).

In terms of labour policy, however, the Trump Administration was largely a traditional conservative Republican. His two Secretaries of Labor were both part of the GOP establishment: Alexander Acosta, who had been a Member on the National Labor Relations Board (NLRB) under President George W. Bush as well as a U.S. Attorney; and Eugene Scalia, who was a long-time management attorney and Solicitor for the Department of Labor in the Bush Administration. Peter Robb, Trump's choice for General Counsel for the National Labor Relations Board, had worked for the Reagan Administration and participated in the Reagan Administration's termination of striking air traffic controllers — a decision largely credited with giving the green light to private employers to fire or permanently replace their striking workers.[121] These appointees all pursued policies that carried over from earlier Republican Administrations: pro-management, anti-union, anti-workers' rights, and anti-regulation. Examples of their labour and employment agenda include: categorising platform employees as independent contractors, rather than employees; giving more leeway for employers to enforce workplace civility policies that could chill employee expression;[122] and rolling back Obama Administration regulations on pay protections and workplace safety regulations.[123] The administration's handling of the novel coronavirus pandemic was seen as largely callous to the fates of workers: the Occupational Safety and Health Administration (OSHA) failed to produce any regulations on workplace safety, and Trump issued an order requiring meatpacking plants to stay open despite the rampant contagion present in the plants.[124] His overall approach was deregulatory: one of his earliest and most often discussed executive orders was that administrative agencies had to eliminate two regulations for every new one they proposed.[125]

The Trump Administration took the standard Republican fixation on the stock market and amped it up considerably. American populism in the late 1800s was firmly arrayed against large trusts and the Wall Street bankers that financed them. Similar themes are certainly in play today: large tech companies have amassed huge fortunes and control over data and commerce, leaving small companies to struggle. Given Trump's strength in rural areas, one might have expected his administration to lead a fight against these companies and U.S. financial institutions. Instead, Trump's signature legislative accomplishment was a tax cut for

[121] Joseph Norelli, *Permanent Replacements: Time for A New Look?*, 24 Lab. Law. 97, 99 (2008).
[122] Boeing Co., 365 NLRB No. 154 (Dec. 14, 2017).
[123] E. Press, *Trump's Labor Secretary Is a Wrecking Ball Aimed at Workers*, New Yorker, October 25, 2020.
[124] U.S. unions filed a complaint with the ILO over Trump's handling of the pandemic for workers. E. Rosenberg, *U.S. accused of violating international labor laws, forced-labor protections in new complaint*, Wash. Post, Oct, 8, 2020, https://www.washingtonpost.com/business/2020/10/08/international-complaint-worker-protections/ (last accessed 12 November 2022).
[125] U.S. Executive Order 13771, 'Reducing Regulation and Controlling Regulatory Costs', January 30, 2017.

corporations from 35 percent to 21 percent. Trump continually referenced the stock market, particularly the Dow Jones Industrial Average (DJIA), as a metric of his economic success, and he panicked at the beginning of the pandemic at the significant losses in share prices.[126] Trump's base of businesspeople—traditional Republicans—were delighted by Trump's concern for their success, whilst the working-class members of his base did not seem to mind. Nor were rural voters significantly turned off by the "optics" of his ties to Wall Street, his fancy Manhattan lifestyle, or his seemingly blithe ignorance of farmers' interests. Up until the coronavirus pandemic, the U.S. economy had been extremely strong under the Trump Administration, withe unemployment falling to its lowest in fifty years.[127]

As Trump, Bolsonaro aimed to dismantle labour protections. In his first year in office, Bolsonaro measures aimed to deepen the reforms approved by his predecessor, Michel Temer, in 2016-2018. Temer promoted three wide institutional modifications: (i) a constitutional change to limit increases in public spending to curb fiscal deficit, having a huge impact on mandatory health and education funding; (ii) a labour law reform that altered more than 200 articles of the *Consolidação das Leis do Trabalho* (Brazilian Labour Code – CLT), of which its main objectives were the flexibilization of working time, remuneration and types of contract; undermining public institutions and trade union organisation; and individualization of risk; and (iii) promotion of policies reducing the State role to boost economic growth.[128]

Two months after his inauguration, Bolsonaro sent to Congress a proposal to amend the Constitution to advance pension reform. After eight months of discussion in the Congress, it was approved in October 2019. The main alterations were the imposition of a minimum retirement age for private sector workers regardless of their contribution time, and changes in the contribution and minimum age requirements in relation to some professions, especially rural workers and professors. In other words, it made it harder for workers to retire and it harmed vulnerable groups such as the rural workers.[129]

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[126] William Watts, *Stock-market performance under Trump trails only Obama and Clinton, Market Watch,* Jan. 21, 2021, https://www.marketwatch.com/story/stock-market-performance-under-trump-trails-only-obama-and-clinton-11611161401 ("Like no president before him, Donald Trump used the stock market as a scorecard, arguing that sharp gains were a vindication of his economic stewardship.") (last accessed 13 November 2022).

[127] *What Happened to the Economy Under Trump Before Covid and After,* Wall St. J. Noted, Oct. 14, 2020, https://www.wsj.com/articles/what-happened-to-the-economy-under-trump-before-covid-and-after-11602713077 (last accessed 13 November 2022).

[128] Krein & Colombi, *supra* 57.

[129] Esther Dweck, *A agenda neoliberal em marcha forçada in Governo Bolsonaro: retrocesso democrático e degradação política*, in *Retrocesso democrático e degradação política* 243, 250 (Leonardo Avritzer et al. eds., 2021); Maria Fátima Lage Guerra & Regina Coeli Moreira Camargos, *Reformas trabalhista e previdenciária: o desmonte da regulação das relações de trabalho e da seguridade social in Governo Bolsonaro: retrocesso democrático e degradação política*, in *Retrocesso democrático e degradação política* 304-307 (Leonardo Avritzer et al. eds., 2021).

In 2019, as part of the Privatisation National Plan, the Bolsonaro administration sold the government's shares in 67 companies, with the eventual goal of selling important state-owned companies. Bolsonaro also sent other bills to Congress: tax and administrative reforms (the latter aiming to reduce civil servants' rights) and a proposed constitutional amendment to reduce social rights spending.[130]

The role of the National Bank for Economic and Social Development (BNDES) had been largely reduced, aiming to open space for the private market. The current main activities of the BNDES are coordination of privatisation and the acceleration of the prepayment of loans to the Treasury, which leads to its decapitalization. [131]

Roberto Fragale Filho and Jerry Dávila point out that Bolsonaro's social agenda has four main axes: (i) the reduction of social solidarity (as the end of the Ministry of Labour and the pension reform); (ii) unions' dismantlement (as favouring individual bargaining); (iii) economic freedom (as the limitation of state action); and (iv) new contractualities (as the 'green-and-yellow' work card).[132]

On labour matters, the Bolsonaro administration had two main proposals on labour law in 2019. The government wanted to set up obstacles for trade union funding by prohibiting employers from collecting trade union dues through payslips, and to create a new type of contract – the 'green-and-yellow' work card – that established fewer rights than the regular employment contract and reduced labour costs for employers. Both were sent to the Congress as provisional measures. None of them were approved.[133]

The failure to approve provisional measures does not mean that the issues addressed are doomed to failure. The trajectory of the proposals presented by Collor de Melo in the early 1990s, approved at the end of the same decade and in the 2010s provide a good example of this.

During the COVID-19 pandemic, the Bolsonaro administration established measures to make labour regulations even more flexible. It enacted provisions on telework and working time, and prioritised individual agreements – employee/employer – over the law and over collective bargaining. Moreover, it created a programme that provided the payment of a benefit for employees who have a reduction of salary and working hours, or suspension of their employment contract. Both were also sent to the Congress as provisional measures (MP 927

[130] *Ibid.*, 245.
[131] *Ibid.*, 249.
[132] Fragale Filho & Davila, *supra* 30*,* 110-111.
[133] Guerra & Camargos, *supra* 120, 310; Saad-Filho & Boffo, *supra* 53, 304.

and MP 936) and only the latter passed (Law 14020).[134] In April 2021, the government reissued these provisional measures (MP 1045 and MP 1046), though the Congress did not approve any of them.

Many of the measures enacted by the Brazilian government were demanded by employers' organisations, such as the Industry National Confederation. The Minister of Economy had several meetings with 10 employers' representatives before enacting both provisional measures. In contrast, little attention has been paid to workers' representatives. The main trade union federations presented 33 proposals to protect employment and workers' health and income. None were considered.[135]

The Brazilian 'Labour Reform' took little account of the proposals presented by trade unions. Jair Bolsonaro's administration marginalised workers from political decisions. In 2019, the Ministry of Economy created the High Labour Studies Group, which proposed a new set of pro-business legislative changes. None of its members had any link with trade unions.[136]

International organisations have been following the modifications of labour laws in Brazil. The Committee of Experts on the ILO Application of Conventions and Recommendations (CEACR) released its reports between 2017 and 2020, analysing changes promoted by labour law reform, especially the general possibility, by means of collective bargaining, of derogations that reduce the rights and protections afforded by labour legislation for workers. The CEACR stated that this reform could violate ILO Conventions 98, 151 and 154.[137]

In a nutshell, despite the fact that Trump and Bolsonaro claimed to be real representatives of the people, both adopted a pro-management, anti-union, anti-workers' rights, and anti-regulation agenda. Their strategies were different: Trump successfully implemented his agenda via administrative regulations, and Bolsonaro preferred the adoption of provisional measures, which were in force, in the hope of being enshrined in law by the Congress. These measures were not approved, and neither president was re-elected. However, their ideas have reshaped the mainstream approach of their conservative and pro-business political parties in

[134] Renan Kalil & Mauro Pucheta, *COVID-19 in South America: Contrasting policies*, Futures of Work (13 July 2020), https://futuresofwork.co.uk/2020/07/13/covid-19-in-south-america-contrasting-policies (last accessed 12 November 2022); Guerra & Camargos, *supra* 120, 311.
[135] Kalil & Pucheta, *supra* 125.
[136] *Ibid.*
[137] Associação Nacional dos Procuradores do Trabalho, Nota de esclarecimento - "Lista curta" da Organização Internacional do Trabalho, 29 July 2021, https://www.anpt.org.br/imprensa/noticias/3925-nota-de-esclarecimento-lista-curta-da-organizacao-internacional-do-trabalho (last accessed 12 November 2022).

Brazil and the United States. It is unlikely that these parties will return to the free-wheeling laissez-faire neoliberalism that had characterised them since the fall of the Berlin Wall.

5. Conclusion

Populism has upset the existing political templates across the Americas, creating new dynamics within established parties and reopening debates that were assumed to be closed. Within right-wing and conservative movements, fixed ideologies on trade, immigration, state power, and nationalism have twisted and warped from the strains of populist pressures. Despite these changes, however, right-wing populist leaders in the Americas have largely left the traditional neoliberal and managerially oriented labour and employment regulation in place. This paper has documented the labour policies of right-wing populist leaders in Argentina and Brazil in the 1990s, and in Brazil and the United States in the 2010s. Paradoxically, although they claimed to be the representatives - the saviours - of the 'forgotten' and 'abandoned' working class, right-wing populists demonstrated a particular attachment to conservative policies within a neoliberal framework. This was reflected in the liberalisation labour laws that these leaders have implemented during their time in office. Authorising the use of precarious contracts, attacking trade unions, and reducing the 'cost of labour' were the main objectives of right-wing populist leaders in the 1990s and 2010s in Argentina, Brazil and the USA.

The reforms implemented by right-wing populists - or at least inspired by them - trampled workers' rights. The inclusion of precarious contracts led to the development of a particular phenomenon that has had a significant negative impact upon workers: uncertainty. There is no predictability about having work, about making enough money, and ensuring a place to sleep. Workers face a time flow with a relentless and oppressive continuity, accepting any kind of work at any wage. Precarity does not only have an impact on these aspects of working conditions; it also undermines occupational safety and health standards.[138] On top of the political will from right-wing populists, their attack on trade unions made possible the adoption of this regressive labour law reforms.

What does the future hold? Notwithstanding the electoral results, which rejected both Trump and Bolsonaro, the risk of right-wing populism has not disappeared in the Americas. Although Lula has won the 2022 Brazilian presidential election as this contribution is concluded, the results have confirmed that Bolsonaro and right-wing populism are now an

[138] Apostolidis, *supra* 28, 119-121.

established major actor in the political arena. Similarly, the Democrats won the 2020 election and did not suffer a catastrophic defeat in the midterm elections in 2022. However, right-wing populists did not disappear and stand a chance in the next presidential election. The risk seems to be even more concrete in Argentina. After a disappointing centre-left government, the centre-right party has proposed policies for the next general election in 2023 that have moved dangerously close to far right ideas, including a major liberalisation of labour markets regulation. In this regard, this paper and its findings help to understand how right-wing populists - despite their rhetoric - embraced neoliberal policies, which resulted in the - at least attempt - deconstruction of labour laws. Given the current political context, it may also contribute to understanding the possible reforms that may take place if right-wing populists were to be (back) in power.