

## **MOVING TO BOTTOM-UP REPRESENTATION: A COMMENT ON GOMES AND PRADO, “FLAWED FREEDOM OF ASSOCIATION IN BRAZIL,” FROM THE PERSPECTIVE OF THE DEVELOPING NEW UNIONISM IN ISRAEL**

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### I. INTRODUCTION

Real freedom of association barely exists in Brazil, as Gomes and Prado claim in their fascinating article, due to a corporatist trade union system in which the big trade unions act to prevent meaningful change. Having put this claim on the table, Gomes and Prado search for ways to make the Brazilian system more representative of workers and so more pluralist; to make the workers’ voices and preferences an integral part of the system.

Though much less extreme in form, Israel, too, has strong corporatist elements that have controlled the trade union system from its establishment up to the present. This has left the Israeli work force, the workers’ voices, largely silent and peripheral in the administration of the system. Recently, however, there has been a dramatic change. Since 2007, a new and democratic trade union has started intensively to challenge the corporatist regime. Presenting a classic bottom-up unionism, the new union is encouraging worker demands for a more representative system, demands that, in turn, might change the way the Israeli trade union equation works.

This comment aims briefly to explore that development: Israel’s move away from a corporatist notion of freedom of association, reminiscent of the Brazilian case, toward a more accessible and democratically-based freedom of association. This comment also tries to suggest, cautiously, that this new, even pioneering, experience in Israel might serve as a source of inspiration for the suggested piecemeal reforms in Brazil, at least for the “demand side of reform” as Gomes and Prado define it.

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## II. THE FLAWED FREEDOM OF ASSOCIATION WITHIN BRAZILIAN CORPORATISM AND THE SEARCH FOR CHANGE

Under corporatism, trade unions (and employers' associations) are seen as essential for handling and eliminating conflicts between labor and capital. The elimination of conflict, to enable social peace and economic growth, is perceived as key to the national interest. Because trade unions are the corporatist state's tools for achieving these national goals, they are subject to considerable state influence and even control.

In Brazilian corporatism, as described by Gomes and Prado, the state plays the strongest role in the trade union system; it assures that union membership has no meaning but rather insures that unions mainly help to govern the work force. According to them, the Brazilian 1988 Constitution and CLT Code base the trade union system on a *unicity rule*. In this system, there is mandatory representation by a single, legally recognized, union on a first-come-first-serve basis, regardless of any actual representativeness. The organization of unions is set by occupational categories; and dues are compulsorily paid to the recognized union from all workers in each category, regardless of individual choice or any union's achievement for them.

Consequently, there is almost no room for replacing a recognized union and therefore very little place for pluralism or union competition. Indeed, and the main incentive for creating new recognized-by-category unions is financial, so that most of the Brazilian unions are weak in terms of representativeness, though strong financially. In other words, when union membership is mandatory and state controlled, freedom of association, though constitutional, is declared, but is narrowly implemented: the worker cannot choose not to be a union member; workers cannot unionize on their workplace level, only on an industry or occupational level; and, workers' voices have no formal relevance for the unions, which in turn lack sufficient incentive to fight for gains for their members.

Accordingly, Gomes and Prado look for ways to make the Brazilian trade union system more pluralistic and democratic, mainly through the abolition of the *unicity rule* and mandatory dues, so to enable a more representative system with much more weight for worker choice and preference. Gomes and Prado suggest piecemeal reforms in which different actors might play different reformative roles. A necessary (though not sufficient) condition for these reforms is that there is a clear and considerable public demand for reform. In order to have such public demand Gomes and Prado suggest the need for extensive informational activity—letting workers know about the disadvantages of the current system and of the advantages of a more pluralist system. They also

mention a willingness or even possible actual attempts for unionizing “outside the trade union system.”

III. THE ISRAELI CORPORATIST REGIME AND ITS IMPLICATIONS:  
RELATIVELY INACCESSIBLE FREEDOM OF ASSOCIATION AND A SEVERE  
LACK OF DEMOCRACY

A different version of corporatism, far less extreme in most of its components, has long existed in Israel more or less coextensive with Brazilian corporatism. Despite major differences there are many similarities between these two regimes; and both result in a flawed freedom of association.

Whereas in Brazil there are around 24,000 trade unions, 620 federations and thirty confederations, the Israeli trade union system is based on a single, essentially monopolist trade union federation called the *General Histadrut* (“Histadrut”). The Histadrut was founded in 1920 and served as the central Zionist civilian institution designated for building a nation, i.e., for establishing the Jewish state in Israel. The Histadrut was a national rather than a socialist institution, constituted on ethnic (Jewish) rather than class-oriented lines. With a goal of supplying work for the Jews and developing the Jewish work force in Zion, the Histadrut itself became the biggest employer in the then developing nation. It enjoyed a national monopoly in health care and pension services and was an integral part of the largest political party that governed for decades. The overlap between the state and the single trade union built strong corporatist elements into the Israeli trade union system. Two of the system’s characteristics are particularly relevant to this discussion.

A. *Relatively Inaccessible Freedom of Association*

With its enormous state-like power, the Histadrut set wages and working conditions from top to bottom, i.e., through collective agreements on the national level, applying either to the whole of the Israeli work-force or by division into different industries. These agreements promised wide and equal implementation; and they also supplied the Histadrut with compulsory dues payments regardless of union membership and of any active union participation in the particular workplace. In addition, until 1995 most Israelis had to have membership in the Histadrut in order to receive health care insurance. Given the architecture of the system, the Histadrut was never interested in bottom-up unionizing, i.e., in actual membership-based organizing on the workplace level. Consequently, no

experience, knowledge, or even awareness of bottom-up unionizing developed; although a legal possibility, it was a tool almost unused.<sup>1</sup>

*B. Severe Lack of Democracy*

The state helped to fortify the Histadrut as a monopolist trade union, supported the Histadrut's superior authority over potential challengers and helped silence these challengers. Throughout Israeli labor and employment legislation the single defined partner to the government and the employers' organizations in making labor-related national decisions was the trade union "representing the largest number of workers in the country," de facto the Histadrut. After a decade of several incidents in which spontaneous local workers' struggles resulted in wild cat strikes, strikes called without Histadrut permission, in 1969 the state and the Histadrut initiated the establishment of the Labor Courts System aimed at handling these incidents by "replacing the strike with judgment." Later, the labor courts acted to strengthen the Histadrut's position by ruling, *inter alia*, that the authority of local workers' committees' is inferior to the Histadrut's (and so are basically meaningless), that the doctrine of "Improper Representation" (by the Histadrut) would be rarely implemented and narrowly interpreted, and that the federal structure of negotiations—and of bargaining—units built by the Histadrut throughout the years would be the structure for the future, leaving little opportunity for trade union pluralism. As a result, the vast majority of trade union activity in Israel was subject to exclusive regulation by the Histadrut.

There is very little place for the workers' voice under these regulations. Negotiating with employers, declaring labor disputes, signing collective agreements (national, industry-wide, or local), or ending strikes are all activities and decisions exclusive to the Histadrut; no official voice for any workers' committees, not to mention workers' assemblies, would be allowed. Moreover, workers in the workplace have almost no influence over the identity of the Histadrut's officials who make these decisions because the electoral rules are mostly disconnected from the workplace.

The two characteristics of Israeli corporatism described above, reflected a very centralized, paternalistic, and top-to-bottom trade union system. Koach Laovdim set out to challenge these two key features.

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1. In 1995, health care entitlement was separated from membership in the Histadrut. As a result, membership declined very radically, an effect that underlined the absence of meaningful support or commitment to Histadrut as a workplace presence.

#### IV. THE “KOACH LAOVDIM” REVOLUTION IN ISRAEL: PRESENTING AN ACCESSIBLE AND DEMOCRATICALLY-BASED FREEDOM OF ASSOCIATION

Initially based on the unionizing activity of a first-of-its-kind project in Israel run by the Workers’ Rights Clinic in Tel-Aviv University (“the Legal Clinic”) since 2006, “Koach Laovdim” (from Hebrew: “power to the workers”) was established in 2007 as a new general, nationwide, independent trade union. At the time there were several occupational trade unions (for medical doctors, school teachers, journalists, and academic staff), and there was the *National Histadrut*, which was established in 1934 by right-wing dissidents from the General Histadrut. The former were, obviously, of limited scope. The latter had long been accused of being a trade union of the employers with very few achievements to show for workers. It rarely ran general elections and was also accused of financial corruption.

##### A. *Making Freedom of Association Accessible*

The main goal that the Legal Clinic and, later, Koach Laovdim sought to achieve was to make freedom of association truly accessible for all workers, to create a perception and a reality in which initial organizing on the workplace level is an accessible and relevant tool for non-organized workers. At the time, relevant professional opinion saw workers’ organizing as irrelevant and outdated. Starting from scratch, the Legal Clinic began offering such workers guidance and assistance in organizing their workplaces outside the Histadrut. First came security workers from a single workplace. Then came security workers from another workplace, and after they were successful, security workers came from a third workplace. The Clinic began developing contacts with a growing number of social activists who showed interest in the issue and the project got its first publicity. Different kinds of workers’ groups started to turn to the Clinic, asking it to organize their workplace. It turned out that many deprived workers in Israel did wish to unionize, but prior to the Clinic there was no body to work with, hand in hand, on the arduous and risky road of unionizing. The Clinic developed legal and organizational methods for initial organizing. In 2007, it led a first of its kind campaign, including the first Israeli strike of waitresses, and a successful boycott with community cooperation. The workers achieved enormous success; the case got massive national media coverage and served as a model for further organizing. Subsequently, more and more workers’ groups sought the Clinic’s assistance, now from larger and more established workplaces.

By the end of 2007, Koach Laovdim was founded and took the Clinic activity to a larger scale, now presenting a formal, corporative, and holistic

trade union alternative to the Histadrut. Starting with zero members, the new union grew rapidly, despite challenges and threats. Challenged by Koach Laovdim, the Histadrut, for the first time since its establishment, began to encourage and assist initial unionizing and founded a special department for it. The *National Histadrut* also started to unionize non-organized workers. At the same time, Koach Laovdim grew to represent 10,000 workers, achieving several collective agreements and running dozens of campaigns simultaneously. Thus, within three years, workplace unionization became relevant, accessible, and usable by tens of thousands of workers across Israel. The developing availability of freedom of association and the bare fact of a contest between general trade unions began to effect changes in the labor market and to reshape the Collective Labor Law after decades of stagnation.

### *B. Presenting Democratic Trade Unionism*

Aspiring to present a democratic alternative, and inspired by Scandinavian trade unions, Koach Laovdim created an organizational structure and regulations that are much more democratic than the Histadrut's, giving workers the greatest influence over their campaigns and over the trade union in general. Authority in Koach Laovdim is built from the bottom-up. The supreme governing body, the Assembly of Representatives, is composed of representatives directly chosen from every workplace, one representative for every fifty workers. The Assembly of Representatives chooses the Union Team for managing the union between Assembly of Representatives' conventions; at least half of Union Team members must be Assembly of Representatives' members. The Assembly of Representatives can change any Union Team decision and some decisions are reserved exclusive to the Assembly of Representatives. The two most important trade union decisions—on signing collective agreements, and on ending strikes (longer than forty-eight hours)—cannot be taken by any union body other than the assembly of workers in *that* workplace. In addition, the workers' workplace committee (and not any superior union body) is in charge of negotiating with the employer. Although the Union Team has the final word regarding declaration of strikes and labor disputes, the workers' committees' (or workers' assemblies') decisions in these matters are respected and customarily approved. Finally, Assembly of Representatives' members, Union Team members, and workers' committee's members are all subject to annual election and are subject as well to possible impeachment during their terms of service.

This democratic approach, practiced at all workplaces unionized under Koach Laovdim, reflects a bottom-up, non-paternalistic, and much less centralized form of trade unionism. This trade unionism is starting to have a ripple effect as many workers and workers' committees under the Histadrut are now considering moving to Koach Laovdim while others are realizing the severe implications of the lack of democracy. In sum, Israeli labor relations are in the beginning stage of a dramatic development that includes the breaking of the Histadrut's monopoly and the weakening of the negative elements within the Israeli corporatism. Can something from this development be relevant to Brazil ?

#### V. THE POSSIBLE RELEVANCY TO BRAZIL

A strong reservation must first be made as to the relevance of a development in one labor regime, with its unique circumstances, to another labor regime situated in a totally different national, cultural, legal, and political setting. Nevertheless, there are points of similarity that may make the Israeli experience relevant for Brazil. Both systems are (or have been) characterized by:

- A monopolistic (by region or by country) labor regime, in which there is almost no place for real trade union pluralism;
- A top-to-bottom labor regime in which workers' organizing on the workplace level is perceived as irrelevant to the system's equation, and is therefore restricted or non-existent; and,
- A systematic democratic deficit in which workers are excluded and can barely influence the trade union decisions taken in their name.

The new Israeli experience shows that movement away from these features is possible. It shows in particular that if a realistic alternative is presented on the "supply side," one in which workers are the primary decision-takers at the workplace level, then the "demand side" might gradually appear and, in turn, start to bring about relevant legal, cultural, and political change. In Brazil, by Gomes and Prado's account, it might be harder for such a movement to take root. Trade union pluralism (by region) is legally prohibited unless an occupation-wide subsection of the regional bargaining unit is approved. Unionizing on the workplace level cannot be legally recognized in any case; and the exclusion of workers' voice derives from the state. The legal reform that is needed in Brazil is more profound than the one needed in Israel and the needed political power for making this reform would consequently have to be that much stronger.

In their search for ways to bring about required change Gomes and Prado suggest different potential change agents, but they focus mainly on

elements external to the Brazilian trade union system, the ILO, and NGOs, or within the Brazilian state authorities, the Labor Ministry or the labor courts. It seems that the repeated efforts of the big Brazilian trade unions to block required change cause Gomes and Prado to focus much less on the workers' or trade unions' side of the equation. Gomes and Prado are fully aware of the political power that would be needed for reform; they say that a necessary condition for the reform to take place is public demand for it. In my opinion, this public demand should be given the first priority. The ILO or NGOs can guide and assist from the outside, the state authorities might follow, react positively, or even initiate here and there, but the leading power, the instigating and catalytical power, should be the workers' public demand, instigated by new trade unions. Gomes and Prado do suggest the value of informational activity—letting workers know about the disadvantages of the current system and the advantages of a more pluralist system. This effort is necessary and important, but surely not sufficient. That is probably why Gomes and Prado also suggest a possible unionizing “outside the trade union system.” But this suggestion remains largely unexplored. Whatever Gomes and Prado exactly mean by it, from my perspective, it points, rightly, to a course of action that might gradually and eventually serve as a central catalyst for change.

At some point Gomes and Prado wisely, and perhaps ironically, suggest that the government will move from legislation to negotiation between the parties so that workers will be able to see how much their collective bargaining possibilities are restricted. I agree that such “illustrations” can be very effective as catalysers for social change. But I think such a development would have to come from the bottom-up, from workers' and/or trade union initiatives that, like Koach Laovdim, will present the idea, the justification, and the practice of workers unionizing on the workplace level, demonstrating democratic trade unionism in which workers have greater influence over trade union decisions. Indeed, starting from scratch, such initiatives might be built in different shapes. For example, it might start with relatively small workers' campaigns demanding recognition for a certain workplace as a bargaining unit or against a big trade union demanding involvement in its decisions regarding a certain workplace. Whatever shape the campaigns take, the idea is basically not to stay only on the informational level (raising awareness for the system's disadvantages and for the advantages of an alternative system), but also to present an actual alternative model of trade union activity. Such worker-initiated campaigns might illustrate the system's injustice, gradually attract more workers to take similar initiatives, encourage trade unions to change ideas and practice, and have transformative effects. Eventually, these efforts might gather appropriate political power for achieving at least part of



the needed policy and legal reform. Gomes and Prado wisely suggest that the right way for change should be piecemeal reforms—a legal reform that will give the system (including trade unions) time for a gradual process of preparing for a regime of authentic trade union representation. In my opinion, this preparation must start long before any legal reform can take place in reality. Unions that will lead it will surely act uneconomically in the short run, but might gain the larger share of workers' support (and non-compulsory union dues) in the long run.

One of the many challenges such initiatives might face is the lack of a clear immediate interest for workers to join in them as long as the legal framework does not include bargaining on the workplace level. It might be, though, that many workers don't have much to lose within the existing system and might be willing to invest considerable effort to try to change it, for themselves as well as for others. Of course, such initiatives can develop after successful informational activity of the sort Gomes and Prado suggest; and be based on long-run ideological, social, and political motivations residing in new trade unions that might be established for this purpose, or, who knows, perhaps even in a few of the existing trade unions, though that seems rather remote. Undoubtedly, this suggested outside-of-the-system unionizing, though a necessary condition, is certainly not a sufficient one for needed reform: it should be only one course of action out of others Gomes and Prado suggest.

## VI. CONCLUSION

Corporatism has advantages and disadvantages. Among the advantages is the capacity for assuring a broad and equal application of fair wage and labor conditions that do not depend on the happenstance of union presence in the individual workplace. In this article, however, I have dealt with disadvantages of corporatism, the intensity of which varies according to the kind of corporatism implemented in any national setting. The corporatism implemented in Brazil is apparently much more intense than the corporatism that has been implemented in Israel. Nevertheless, due to similarities that exist between labor regimes in these two countries, in reference to a search for reform, the comparative method might have some value, despite major differences in the political and cultural context. In the search for ways to overcome the disadvantages of Brazilian corporatism, the new unionism starting to develop in Israel, and the way it has and is being created, might supply some relevant ideas for promoting a process to grow demand for democratic and pluralist reforms. If Israel's experience is relevant, this demand, if consolidated, can catalyze other courses of action and later join them in achieving true freedom of association in Brazil.

