LABOR RELATIONS LITIGATION: CHILE, 1970-1972

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On the basis of data dealing with the processing of labor grievances by state institutions in Chile in the period of 1970-1972, the author argues that litigiousness—the propensity to pursue grievances—was growing during that time. This increased litigiousness may be traced to the overall process of rapid sociopolitical change, in particular the growing political awareness of certain sectors of wage earners. The Labor Inspectorate responded positively to increased demand for justice, and encouraged socially well-focused grievance behavior by providing more adequate remedies. The labor courts, in contrast, were insensitive to the process of change. They showed no interest in developing an institutional assertiveness, either favoring or impeding aggrieved workers filing suit. Developments in litigiousness and litigation rates are analyzed in the light of the macro-social process of change that took place at the time.

I. INTRODUCTION

The concept of litigiousness is widely debated. At the level of social critique it is said, about litigation in the United States, that there is too much of it, that the contemporary "adversary culture" is self-defeating, and that the "legal explosion" is the beginning of the end of liberal democracy (Manning, 1977; Ehrlich, 1976; Barton, 1975; Crozier, 1975; Riesman, 1980; Glazer, 1975; Bell, 1978a; 1978b; Sander, 1976; Huntington, 1975). On the other hand, there are those who argue that there is too little assertiveness in present-day society—that people too easily live with, ignore, or avoid disputes (Felstiner *et al.*, 1981; Merry, 1979; Abel, 1979a; 1979b; Felstiner, 1974; Buckle and Thomas-Buckle, 1980; 1981; Nader and Singer, 1977).

The discussion at the level of macro-social analysis and critique has inspired a more detailed and precise theoretical reflection on the emergence and transformation of disputes which is designed to achieve a better understanding of the

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social and psychological conditions of litigiousness (Felstiner *et al.*, 1981; Boyum, 1980; Mather and Yngvesson, 1981). Why is it that some problem situations develop into disputes while others do not? Why is it that clusters of problems such as occupational diseases and the environment generate disputes in the particular way they do, at a specific moment in time? It has rightly been pointed out that for the transition to occur from problem situation to grievance, and from there to claim and dispute, one party must perceive a possible attribution of behavior (or omission) to another. Accordingly, Felstiner *et al.* (1981) distinguish perceived and unperceived injurious experiences. Perception links the injurious experience to its causes and permits some attribution of responsibility.

Neither the advocates of assertiveness nor the critics of growing popular appetites for litigation (Kline, 1978, as cited by Abel, 1979a: 30) elaborate on the links between the psychological and other behavioral aspects of disputing. Those concerned about excessive litigiousness are first and foremost interested in overburdened court dockets,[1] delay in the administration of justice and its consequences, diversion of judges from their proper role (Bell, 1978a; 1978b; Sander, 1976), and the like. Much of the worry about excessive litigiousness is ideological and political. This litigiousness is seen as the source of cases which stimulate courts to be unduly activist and policy oriented, and which attack establishment groups such as landlords, physicians, and the producers of consumer goods. Expressed concern about litigiousness—the propensity to present grievances and actually assert and pursue claims—thus often masks the real motives of those who deplore the "legal explosion." Their real concern is about certain types of litigation as a form of dispute behavior.

By contrast, those who suggest that people are frequently underassertive are emphasizing the psychological aspect of disputing. It is the perception (or lack of perception) of injustice, of injury inflicted by a responsible person that is considered crucial in the early stages of disputing (Felstiner *et al.*, 1981). This early transformation of disputes is presented as linear. First an experience is evaluated as injurious; then, if an adversary is perceived, it may become a grievance. Later still it may become a dispute if the grievance presented to the adversary is rejected.

[1] There is at least room for doubt as to whether litigation in the United States has grown so dramatically in recent years (Johnson and Drew, 1978: 54; Lieberman, 1981; Grossman and Sarat, 1975; Friedman and Percival, 1976).

My own interest is primarily in the social manifestation of litigiousness, from the phase of claiming onwards, and in the social conditions that determine the scope and forms of dispute behavior. Social manifestations of grievances vary in their relevance for solving a problem or obtaining redress for injury. Mentioning the injurious experience to family and friends, and expressing indignation and aggression to them is less relevant than taking steps to seek redress. Ventilating anger towards those who are not responsible for the injurious experience may frequently be seen as a deviation of dispute behavior, but it may also be a step toward obtaining relevant information on more focused dispute behavior (Ladinsky and Susmilch, 1980; 1981), and thus the precursor of litigiousness.

Perception of the possibility of pursuing a claim about an injurious experience will influence the very perception of that experience as a grievance. The development is not always linear. This implies a presumption that people, by and large, will (at least unconsciously) try to minimize frustrating experiences. Another way to formulate this concept is as follows. If all socially relevant remedies (including both direct contact with the opponent and institutional remedy agents) are outside the perceptual universe of the injured person, he or she is unlikely to attribute the injurious experience to someone because he or she cannot afford, psychologically, to perceive a grievance without having somewhere to take it. One way to avoid such frustration is to desocialize the experience by blaming nature, or bad luck. In situations in which it does not seem possible to make a direct claim for redress upon the adversary, the perception of a dispute settlement institution as accessible and helpful becomes crucial to both litigiousness and focused dispute behavior. Victimization studies in The Netherlands covering the period 1974-1979 (Van Dijk and Steinmetz, 1979) have shown that considerable numbers of victims of all manner of criminal behavior do not perceive the police as helpful and accordingly fail to report the crimes. This might be especially true for crimes such as bicycle theft or minor destruction of property. A police report may be filed only to justify an insurance claim; there is little expectation of police action or recovery. The victims of violent crimes, especially those perpetrated by friends or spouses, are also less likely to report the crime, but only in part because of perceived police disinterest. More important is the fear of stigma, unsympathetic police response, and the ordeal of a trial. In all

such cases, there is little or no social manifestation of the grievance; people just chalk it up to experience.[2]

In this article I explore the social manifestations of labor grievances in Chile during the period 1970-1972. Particular emphasis is placed on forging a link between the micro level of disputing (individuals and small groups, and their strategies) and an overall macro view of the development of litigiousness as expressed in litigation over labor grievances in two institutions.[3] I am concerned with a social process—the interaction over a period of time between these two institutions and the wage earners who came to them with their grievances.

Labor grievances do not normally present problems of "naming" and "blaming." In the instance of an alleged unlawful dismissal from a job, there is clearly an injurious experience and an obvious culprit. Yet the experience may still not mature into a claim. In Chile at the time, dismissed workers could not normally approach their employers directly to express a grievance and present a claim. Furthermore, most dismissed workers were not unionized and thus lacked an effective intermediary. The patronage system also failed to provide contact possibilities for such problems. Perception of an effective institutional remedy was thus especially important to converting these injurious experiences into claims and disputes. Two institutions existed to receive such claims. One, the Inspectorate of Labor, was sympathetic to dismissed workers, and its litigation rate increased accordingly. The other institution, the labor courts, did not change its relatively unhelpful way of handling grievances; litigation rates increased briefly and dropped again.

Litigiousness—the propensity to pursue grievances—was growing in the period considered, and it was increasingly expressed in filing complaints at state institutions (especially the Labor Inspectorate). This constituted an increase in

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[2] Similar findings are reported for a French study concerning feelings of insecurity in urban areas: people tend to report to the police only if the insurance company so requires. (Ackermann, Dulong, and Jeudy, personal communication).

[3] This article is based on a study of litigation behavior and legal development on three levels (see Ietswaart, 1978): the micro level of individual disputing and the role of two state institutions as third parties; the intermediate level of aggregate individual grievance behavior and the reactions of the two institutions, considered over a period of time; and the macro level of the role of law in a period of accelerated social and political change. The present article concerns the intermediate level and uses the macro political level to explain both developments in dispute behavior and the differential institutional behavior in response to the latter. As such, its perspective on legal and political change is different than that of Ietswaart (1981b) which contains, among other things, an analysis of the role of judicial institutions in the macro political process of change. The micro level of disputing will be dealt with elsewhere.

socially relevant dispute behavior. Changes in the overall sociopolitical situation were at the heart of the initial increase in litigation. At the Labor Inspectorate, successful litigation promoted litigiousness and generated more litigation. At the labor courts no such interaction developed because of the unresponsiveness of the institution. The latter kept itself on the sidelines of the relevant social and political processes.

II. LITIGIOUSNESS IN ITS SOCIOPOLITICAL CONTEXT

The two institutions studied here reacted to sociopolitical developments during the Allende administration in different ways. Each had a number of specific jurisdictional attributes, and more vague discretionary powers, which together constituted the resources at its disposal. But a legal framework also linked the two institutions. They applied (or were supposed to apply) the same law. They dealt, by and large, with the same subject matter. For the Inspectorate, at least, the simple fact that the labor courts existed constituted an element to be used in the treatment of grievances. It is possible, therefore, to characterize the functioning of these institutions according to how they perceived the sociopolitical possibilities—and limits—of their behavior. Did they try to use all available resources? To what extent were they constrained by the legal framework? I propose to show that the two institutions differed markedly: the Labor Inspectorate increasingly tried to participate in the larger process of social change by expanding its sphere of influence, while the labor courts did not appreciably change.

A brief review of the sociopolitical changes that took place in the period 1970-1972 is in order to establish the context of this analysis. In 1970 the Popular Unity government headed by Salvador Allende had taken office. It was a center-left coalition which was to reign until September 1973. The period was one of increasing social conflict which came close to civil war before the military took power. The core of the Popular Unity government's political program was nationalization of part of the economy, with the objective of gaining management control (not necessarily title) of what were considered the crucial sectors of the economy (Stallings, 1978: 130-131, 156-157; Espinosa and Zimbalist, 1978: 46 ff). But the creation of what was called the "Area of Social Property" did not start in 1970. When the Allende government took office, there were already 43 state enterprises, of which 30 were industrial. The latter accounted for about 12 percent of industrial production and 6.5

percent of industrial employment (Espinosa and Zimbalist, 1978: 46, citing Bitar and MacKenna, 1973: 10). The Allende government sought only a gradual increase in this Area of Social Property—it expressed no interest in taking over any number of enterprises which it lacked capacity to properly manage. In fact, things got out of hand (from the government's point of view) as workers increasingly demanded to be taken over by the government (Stallings, 1978: 137).[4]

The three-year Allende administration was also characterized by a strong emphasis on the legality of its political decisions. The Constitution was never suspended; no laws were abolished, no new ones made in disregard of the established rules. Accordingly, the government used whatever legal tools it had available: expropriation, requisition, intervention (Ietswaart, 1981a; Novoa, 1972; 1978). For the expropriation of enterprises in decline, Allende's legal advisers had found an old, never-abolished decree-law on the books.[5] Expropriation on the basis of this legal instrument was infrequently applied because it seemed politically inappropriate and legally difficult to defend. It was a drastic measure which scared a good many entrepreneurs, and its legality immediately came under heavy attack. Requisition[6] and intervention[7] were less drastic measures. They did not

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[4] In the first six weeks of the Allende administration, 38 enterprises were intervened or requisitioned; in 1971, 129; in 1972 the number was 161 (through November 1972) (of which some were handed back to their owners) (Valenzuela, 1978: 64, citing De Vylder, 1976). In 1973 there were probably about 100 requisitions and interventions. Espinosa and Zimbalist note that by September, 1973 some 420 enterprises were somehow managed by the government (1978: 47). They specify that "the manufacturing enterprises of the Social Area accounted for over 40 percent of total industrial production (in sales) and employed about 140,000 workers, approximately 30 percent of the industrial labor force. In addition, social area enterprises accounted for approximately 95 percent of total bank credit, 90 percent of total mining production, and 28 percent of food distribution" (1978: 50; notes and reference omitted).

[5] *Decreto-Ley* 520 of 1932 *Jo. Reglamento* of 1954, provides for the possibility of expropriation (or less drastic measures): (1) where a commercial enterprise is in a state of decline, i.e., the economic activity concerned has stopped and (2) where the established quota is not being produced in the quantity or quality, or under the conditions established by the President of the Republic. The goods concerned have to be "of first necessity."

[6] *Ley* no. 16.464 (1966), art. 154, provides for requisition: (1) in case a manufacturer unjustifiably lowers production, thus causing scarcity of the goods he produces; (2) in case of hoarding by either the producer or the distributor (wholesaler, retailer) of articles of first necessity; (3) in case of speculation in prices of consumer goods of first necessity, causing scarcity of such items.

[7] *Ley* no. 12.927 (1958) provides, in its article 38, for a civil or a military intervention in case a strike suspends the production of goods/services essential to the health or material well-being of the people (transportation and public services are explicitly included). The function of the intervenor is to help the parties to come to a speedy resolution of the conflict. *Ley* no. 17.074 of

touch the title to property, and they were applied more frequently. Expropriation, requisition, and intervention were all, in the framework of the Chilean Constitution, typical acts of government. Their expediency was the political responsibility of the government alone. Independent of that, there was the question of their legality. In fact, heated debates in the press about the legality of these measures developed quickly. A number of owners filed suit against the government.[8] In the case of requisitions and interventions, they had two options: the ordinary civil courts and a specialized administrative tribunal called the Commercial Tribunal.[9] Through filing suit in civil court (concerning possession), these owners tried to mobilize the judiciary for their cause and thus to make the judges participate in political life. Traditionally the judiciary had systematically refused to enter into disputes between citizens and the state, on the rather formalistic basis that the Constitution provided for administrative courts (which, however, had never been set up [Frühling, 1980]).

A minority of trial judges maintained the traditional position, but many accepted the invitation to join the political game. In these, as in other issues (e.g., the application of the agrarian reform law, self-help actions of desperate peasants), the courts were increasingly active in the political arena and generally conservative in siding with opponents of the government. The logic of the "legal road to socialism" policy required the government, whenever attacked in court, to defend itself rather than ignore the suits, replace or intimidate the judges concerned, or take similar measures which would have been more likely in some other Latin American countries. Conflict between the executive and the judiciary also developed over the use of the police. The government used substantial resources (especially human resources) in the legal defense of its actions. It would be a mistake to consider the

1968, art. 4, provides for the possibility of intervention in any case of work stoppage related to some "economic demand" of the workers. Thus, it has been considered that the mere request of the workers, on the basis of a majority vote, was a sufficient reason for intervention, as long as the request was in some way related to an "economic demand."

[8] By no means all of them did so, however. Some preferred to sell to the government and entered into negotiations for the sale instead of defending their ownership rights.

[9] The *Tribunal de Comercio* had been set up in 1969 under the Frei government to provide a forum where those affected by the administrative measures of DIRINCO (Price and Distribution Control Agency) could file a complaint. Prior to 1969 they could only complain at the DIRINCO itself. The measures the *Tribunal de Comercio* was supposed to review typically concerned allegedly hoarded consumer goods, not whole enterprises—this possibility was simply not foreseen.

courthouse as the center of political activity at the time, but it is nevertheless true that these legal matters were politically important and were followed closely by the press. Political discourse was strongly colored by legal argument. Popular Unity (the governing coalition) was continuously concerned about how the government should deal with its "legal flank," and the amount of resources that ought to be dedicated to protecting it. The government's strategy, and debates about it, had their impact on popular attitudes towards law and legal institutions. Expropriations, and technical, legalistic debates about them, did not affect the daily lives of many people. But discussions about what the "legal road" should mean, and the political alternatives to it, did have an impact. The polarization of interests among the citizenry led to a greater assertiveness on the part of those who thought they had something to gain in the process. This assertiveness took several socially well-focused forms such as political action, pressure through unions, and price and distribution control of consumer goods through JAPs (Community Councils for Price and Distribution Control).

Two major sets of attitudes about law and its role in the process of change may be distinguished. First, among those government supporters who believed in the "legal road" to socialism, it was expected that access to law making processes and law administering institutions would increase. This attitude was not limited to those who had actually voted for the Popular Unity in 1970. Such aspirations were shared by a good number of Christian Democrats of modest resources.

Second, there were people who, although supporting the government on general issues like the nationalization program, did not believe in "social change through law." They advocated political self-help and class struggle on all fronts. They considered reliance on the law courts or their functional equivalents, such as the Inspectorate of Labor, to be futile and misleading. They were prepared to start administering justice themselves for minor criminal problems among relatively small groups of people, through neighborhood courts[10] (Spence, 1978; Ietswaart, 1973). It is likely that the growth of the Community Councils for Price and Distribution Control (JAPs) was also inspired by this idea of self-help in the popular sectors.

[10] On the basis of already existing experience, a bill proposing the establishment of Neighborhood Courts (which would be comparable to the Cuban Popular Tribunals) was submitted to Congress on 22 January, 1971, and withdrawn before voting, shortly thereafter (Ietswaart, 1973).

However, the latter already had a long tradition in Chile and were not the prerogative of the (extreme) left. This more radical sector, though highly vocal and conspicuous, was numerically quite small, as compared with those who expected the government to proceed within the legal framework and at the same time looked forward to increased access to law.

III. THE INSPECTORATE OF LABOR

Historical Development

The Inspectorate of Labor forms part of a larger body known as the Directorate of Labor. The present Directorate of Labor may be traced back to 1907 when a "Labor Office" was set up within the Ministry of Public Works. It was to prepare "statistics on the labor force, manpower requirements, wages and salaries," for the use of employers and the government (Morris, 1966: 117). In 1919 the Labor Office was granted separate status (Humeres, 1972: 50). Its dynamic director, Moisés Poblete, contributed greatly to the elaboration of the labor legislation of the early 1920s.[11] The implementation of that legislation required, in the opinion of the ruling classes, control over unionization. The task of achieving this control was given to the Labor Office in 1928.[12] As part of the consolidation of the labor laws into the Labor Code of 1931,[13] the functions of the Labor Office were expanded, and its name was changed to Inspectorate of Labor. This Inspectorate of Labor was charged with supervising the implementation of all labor and other social legislation. From the outset, however, the emphasis was on strict supervision and control over unions. Later, the whole body received the name Directorate of Labor, the term Inspectorate being reserved for the section that investigated complaints by workers about violations of labor law.[14] The other relevant section, for the purposes of this paper, was the legal section, which—among other things—attended to all cases pending in court.[15] In order to simplify the terminology, I shall use the term Inspectorate to refer to the functions and activities of both of these sections.

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[11] On the legislative history and an appraisal of early Chilean labor legislation, see Morris (1966).

[12] *Decreto* 2148 of December, 1928.

[13] *Decreto con Fuerza de Ley (DFL)* 178, of May, 1931; *Diario Oficial* of 28 May, 1931.

[14] See *DFL* 2, *Diario Oficial* of Sept. 29, 1967, artt, 4, 8.

[15] Idem. artt. 14, 11.

The notion that labor law (and other social legislation) was meant to "protect the weak against the strong" slowly found a degree of expression in the functions assigned, as well as the resources allocated, to the Labor Inspectorate. Until the reforms of the Frei government (1964-1970), the whole of the Directorate of Labor had at its disposal all of one car,[16] and its funds were never remotely sufficient to accomplish what was expected of it.[17] Nevertheless, with the expansion of its functions, the Inspectorate began to see, in the 1960s, increasing numbers of workers seeking its advice and assistance.

At the time the fieldwork was conducted, one of the least conspicuous, yet most basic, functions of the Inspectorate was the dissemination of information. Legal information was in high demand. At the Inspectorate office people would wait in line long before the doors opened at 1 p.m., to ask questions about all manner of labor rights. An inspector would give information all afternoon, not infrequently until 7 or 8 p.m.[18] This information function was crucial for the adequate articulation of labor grievances;[19] institutional dissemination of information, as it becomes more authoritative, is increasingly conducive to actual dispute behavior.

The Jurisdiction of the Inspectorate

The mandate of the Inspectorate of Labor was quite general: supervision over the full and proper implementation

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16 US Bureau of Labor Statistics (UBLS) 1967: 27.

17 "The complexity of the law and the low priority traditionally accorded to labor administration within the government [had] combined to hamper enforcement activities. . . . Although the manifold duties of labor inspectors are specified in various labor laws, funds for enforcement [were] seldom provided" (USBLS 1967: 27).

18 Similarly, when the Supreme Court ordered that all judges in courts of first instance should hold regular "popular hearings"—that is, establish hours at which people could just come to them and present their problems, only a few courts held such "hearings." In those that did, people would come in great numbers and endure long waits to see the judge. Also, workers demanded ever more courses in labor law, offered by the Ministry of Labor, in order to finally find out about their rights, and about how to set up and run a union (Spence, 1978; Ietswaart, 1973).

19 My evaluation coincides with the analysis of Espinosa and Zimbalist (1978: 116). In their study of the development of worker participation in the Popular Unity period they attribute great importance to the information factor in the development of worker democracy (cf. the much-used slogan, "there is no participation without information"). They demonstrate that participation, in its turn, is closely related to worker mobilization (that is, in general, assertive behavior in defense of perceived rights and interests—of which filing a complaint or a lawsuit is an instance). Thus, information and assertive worker action are considered to be intimately connected.

of labor and related legislation.[20] Accordingly, the subject matter jurisdiction of the Inspectorate consisted of grievances based on the Labor Code and/or individual labor contracts.[21] A numerically important subcategory of these were complaints about allegedly unlawful dismissal. Such dismissal grievances were essentially different from other worker complaints. Nondismissal grievances arise from an ongoing relationship; the accommodation sought is based, presumably, on a mutual desire to continue the relationship. Dismissal grievances, by contrast, usually mark the end of a relationship. This is both a statement of fact and a statement of law. The 1966 statute on dismissal[22] left the question of reinstatement to the discretion of the employer, even if it were established that the dismissal was unlawful. If an employer refused to reinstate the worker, the judge was required to order the employer to pay an indemnification of one month's salary for each year of service.[23] The dismissal statute enumerated all the legitimate reasons for dismissal,[24] and among those reasons were some which allowed broad interpretation.[25] The statute of 1966 gave the labor courts jurisdiction to decide whether a dismissal had been unlawful or not, thus explicitly taking the same power away from the Inspectorate.[26] Nevertheless, after 1966, the Inspectorate continued to act as a mediator in dismissal cases.

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[20] Formerly the Inspectorate had jurisdiction over social security legislation, particularly for checking up on whether employers paid their fees, and health and safety regulations. Later, responsibility for these matters was given to other agencies. The Inspectorate may still inquire into these matters and report violations to those other agencies. Quite commonly, work accidents were first reported to the Inspectorate of Labor.

[21] Grievances were based on either the Labor Code or individual contracts other than collective agreements. Most collective agreements were between an employer and a plant union (the prevailing form of unionization in Chile), although collective contracts for several branches of industry existed in the early 1970s (see Compa, 1973). In any case, there was a close relation between collective and individual contracts, in the sense that all those stipulations of the collective agreement that concerned obligations toward individual workers (such as wages, rates for piece work, category of work, allowances, etc.) were deemed to form part of each individual contract between worker and employer. The employer was obligated to promptly update each individual contract in accordance with any change in the collective agreement. Only obligations on the basis of the collective agreement that concerned the workers as a group (e.g., the employer shall set up a day-care center) were not incorporated into the individual contracts.

[22] *Ley* no. 16.455, of 6 April 1966.

[23] Art. 8.

[24] Art. 2. Essentially, they concern below-standard work performance, such as frequent absence from work without reason, damage done to material objects, and unnecessarily causing increased danger in the work place. Other reasons are, e.g., loss of a special skill and the "necessities of the proper functioning of the enterprise."

[25] E.g., "The necessities of the proper functioning of the enterprise," "serious non-implementation of contractual obligations on the part of the worker," and "improper behavior."

[26] Art. 5, 6.

Dismissal grievances were almost always brought to the attention of the Inspectorate by the aggrieved worker. Investigations of nondismissal grievances might be initiated on the basis of a complaint filed by a worker or a denouncement of a union, or they might be executed at the initiative of the Inspectorate itself. The Inspectorate could investigate the situation of a category of wage earners, e.g., those working in restaurants. Labor inspectors would go unannounced to any establishment, talk to the workers, inspect the payroll, wage receipts, and receipts for fees paid to the Social Security Boards, and inspect the work environment for possible health and safety violations. From the employers' point of view, such an inspection might substantially disrupt production. A careful check-up was likely to bring to light at least some irregularity. Inspectors could then summon employers to the office for a hearing. When summoned, an employer had to appear in person, and could be accompanied by a lawyer.[27] Non-appearance after a third summons, without a valid reason, might result in a fine.

An inspector who established a violation of either a contractual obligation or a prescription of labor legislation would issue specific remedial instructions, most frequently in writing. A typical instruction might order the payment of compensation to a worker, e.g., for failure to have paid the correct overtime rate. But instructions could also order changes in other behavior. For example, the employer might be required to provide the workers with copies of the updated contract if pay rates had changed, or to adhere to the 48-hour week without forcing workers to work overtime. A time limit would be set for compliance. The inspector could grant an extension of such time limit, but had no obligation to do so.

In the decade of the 1960's the powers of the Inspectorate of Labor expanded considerably. In 1963 it was established that the whole of the investigation of an alleged violation of labor legislation on the part of an employer, as described above, including the decision to levy a fine, should be considered by the courts as *res judicata*.[28] In other words, the file compiled by the Inspectorate on a case would be presumed to be the truth. However, the employer could appeal the case to the

[27] According to my observations, few lawyers participated in hearings at the Inspectorate: in dismissal cases less than seven percent of the employers and none of the workers were accompanied by a lawyer.

[28] *DFL* 2, 1967, art. 23.

labor courts.[29] If the fine was neither appealed nor paid, the Inspectorate could file a suit to enforce the decision. This was a summary procedure, the same as to collect an adjudicated debt.

With respect to dismissal, however, this policy was reversed in 1966. Exclusive jurisdiction over dismissal disputes was given to the labor courts. The law's definition of the circumstances which constituted "good cause" did not change much, however, as compared with what the Labor Code established earlier. Thus, the Inspectorate could no longer investigate allegedly unlawful dismissal in the same way as other violations. Nor could it fine employers when the dismissal was indeed unlawful. The law did not explicitly take away the power to mediate conflicts over reinstatement or the amount of severance pay, and in practice the Inspectorate continued to exercise these powers. In any case, because of the *de facto* link between the power to fully investigate employer behavior and declare it unlawful and the power to mediate between worker and employer, the change in the law meant a restriction of the domain of activities, the legal space, of the Inspectorate.[30] In this context it is important to state that dismissal complaints were by far the most numerous category of complaints filed at the Inspectorate (see below, Table 1).

Sanctions

The major formal sanction of the Inspectorate was imposition of a fine if a violation of law could be established. Within limits, the amount of the fine was discretionary. In theory, the fine was independent of the employer's obligation to remedy the unlawful behavior. But in practice the two were related. If the employer could show quickly that he had already complied with all his obligations, the fine might be lowered or even withdrawn altogether. Such decisions were within the discretion of the Inspectorate.

Another type of pressure put on employers was not recognized as such by the law. It consisted of the trouble that labor inspectors could cause employers by their control visits.

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[29] In appealing the fine, the employer had two options: (1) he might appeal the amount of the fine without contesting its basis; and (2) he might appeal the very imposition of the fine, contesting the allegations concerning infractions. In all such appeals the burden of proof was on the employer.

[30] Between 1963 and 1966, the Inspectorate had the power to treat cases of dismissal in the same way as other grievances. It is said that this had been part of the considerations to change the law in 1966. In any case, quite a few labor inspectors resented the restrictions on their powers as a result of the 1966 statute.

Those visits were bound to disrupt ordinary work to some degree, and this was likely to be considered a more serious evil than the imposition of a fine, especially by employers in relatively large enterprises.

Mediation

The Inspectorate might enforce the payment of fines but not, strictly speaking, any change in employer behavior towards workers. Fines could be high and might be repeated after a new investigation, but they were essentially related to unlawful behavior in the past, and not to future behavior. A more important function of the Inspectorate was *mediation*. In any individual dispute[31] the Inspectorate could summon the employer to the office (or go to the workplace) for a hearing in which an inspector would mediate the dispute. Obviously, the power to fine and the power to mediate are, in practice, not unrelated. In the process of mediation the fine may be used as a threat. But the two should be distinguished clearly in order to qualify and delimit the legal space in which the Inspectorate operated. The mediation function was much less quantifiable, but nevertheless a most relevant indicator of the degree to which the Inspectorate used the powers available to it.

Limits of Legal and De Facto Power

One important limit of the power of the Labor Inspectorate, already mentioned, was that it could not require actual changes in employers' work practices. Another was more practical: the Inspectorate had never been allocated adequate resources. Limited budgetary means were reflected in few employees and poor office facilities. Poor transportation facilities were also a hindrance; while I did the fieldwork in 1972, all inspectors in the external service (visiting workplaces for controls, etc.) traveled by public transport, and thus lost an enormous amount of productive time. Yet even these inadequate resources were a great improvement over the situation prior to the advent of the Frei administration which had put special emphasis on

[31] Chilean labor law distinguishes between "individual" and "collective" conflict. Individual conflict may arise between worker and employer over the proper implementation of the contract and/or general labor legislation, such as on dismissal. The term "collective conflict" is a technical term which refers to the situation in which a union and an employer have entered into negotiations but have reached an impasse. The Inspectorate has a special section to handle such collective conflicts through mediation.

upgrading the services of the Labor Inspectorate.[32]

Taking into account these practical limitations, it is not surprising that the work of the Inspectorate was largely reactive. Given the material resources available, even a limited number of complaints brought by workers would, most of the time, monopolize those resources. Inspectors, however, tended to combine reactive and proactive law enforcement as best they could. Upon a complaint brought by a worker, they would, in addition to investigating the specific complaint, check up on other points as well. This was a qualitative aspect of the Inspectorate's work which is not reflected in the statistical data available regarding its activities. There is no way of analyzing changes in these practices over the time period I considered.

Relations with Workers: Social Distance

The constituency of the Inspectorate was a middle sector of wage earners, mostly those somewhat transiently employed in services (small shops like eating and drinking places); small, rather artisanal industries; construction; and a small number of domestic servants—the latter being among the most marginal and least organized or protected.[33] I took a small sample of claims presented to the Inspectorate by workers dismissed in 1970 and 1971. In those cases about 65 percent of the plaintiffs had been employed in services (two-thirds in 1970 and 60 percent in 1971), while the rest were workers in small manufacturing industries and construction.[34] Services were

[32] Although the Frei government had been primarily interested in collective conflicts between labor and management, the whole of the Directorate of Labor had been given more resources.

[33] In March of 1972, about five percent of wage earners in Greater Santiago were employed in construction, 14.6 percent in personal services, 15 percent in commerce, 19.1 percent in "other services" (including eating and drinking places, and services to buildings) and 7.8 percent in transport and warehousing, communications and public utilities (see *Panorama Económico* #279 [August, 1973: 10]). The total amounts to 61.8 percent of the labor force—at the time, some 1,029,000 people. Data about the degree of unionization of wage earners typically resorting to the Inspectorate are equally scarce. Hurtado-Beca (1981: 44) states that of construction workers, only 8.6 percent were unionized in 1970, growing to 9.4 percent in 1972. For workers in commerce (retail and other trade), the corresponding figures were 12.8 percent and 16.5 percent; and for services they were 4.2 percent and 6.5 percent. Thus, although unionization grew in the Allende period (a phenomenon which others, also taking into account increased strike activity, have called "hypermobilization" [Landsberger and McDaniel, 1976]), it remained remarkably low in the sectors of the economy under consideration. This may have been due to the fact that it was legally impossible and practically difficult for workers in small shops (fewer than 25 workers) to unionize—the sectors concerned were precisely characterized by a predominance of such small shops (cf. also Angell, 1972: 46).

[34] My own data coincide with those from a survey conducted by Touraine and others in 1967, and elaborated by Nazar, Gurrieri, and De la Maza (1970). On the basis of answers to the question of whether employees would call upon

typically the "sponge" of the Chilean economy. In times of expansion they would grow and employ more people; in times of recession they would contract and lay off workers. The number of people employed in the manufacturing industry, by contrast, was more stable (*Panorama Económico* #273, August 1972: 11). In the latter sector the experience of unemployment was remarkably low in the late 1960s. According to data from 1967, about 37 percent had never been unemployed, and another 27 percent had not been without work for longer than six months (Nazar, 1970: 21). Strikes because of labor grievances (both dismissal and other) have not been rare in Chilean labor history: e.g., in 1967, at least one-third of all illegal strikes (299 out of 878) were related to grievances (Porcell and Villablanca, 1972: 51-52). In the manufacturing industry the figure was higher still: close to 50 percent of all illegal strikes were because of labor grievances (Barrera, 1971: 123).

The Inspectorate had little trouble relating to this constituency and its labor problems. Inspectors traveled by public transportation and might well eat lunch in the canteen of the factory where they happened to be at mid-day. Most inspectors had begun their careers in the external service; they were familiar with the nature of day-to-day labor relations. They used a language which was close to that used by the workers themselves. A number of inspectors were lawyers by training, but legal language was used only where necessary to explain the content of a law or legal procedures. Inspectors drew modest civil service pay which did not set them much apart from the workers with whom they dealt.

The style of work was relatively informal. During a visit to the workplace, an inspector talked with the workers first, about the complaint and possibly about other things. Not infrequently the inspector already knew the people from an earlier visit or a union election meeting.[35] Talks with the workers were followed by a talk with the employer or manager,

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the union if they felt wronged by their employer, Gurrieri asserts, "In general terms, the efficacy of unions as perceived by workers is greatest in modern, medium-sized ones and drops considerably, for all categories of workers, in small enterprises (25-100 workers). Workers in these small enterprises are more likely to present their complaints directly to the owner or manager, or *to the Inspectorate of Labor*" (1970: 117) (my translation, my emphasis). In fact this was one of the few issues in which the answers showed a notable difference between workers in the different types of work places considered in the survey.

[35] This is one of the other regular functions of labor inspectors in the external service. It is quite time-consuming and often requires working in the evening.

in an attempt to determine whether there was any real grievance. Information was carefully noted in order to compile a complete and correct file; there was always the possibility that the case would reach court one day. At the office, procedures were also rather informal. Dress was casual, and the whole physical appearance of the office was modest. In all hearings an inspector noted down everything that was said, and those present would be asked to sign the document afterwards. Such statements, although almost always rephrasing the spoken language, remained quite close to ordinary language, understandable to both employers and workers.

Relations with Employers

The relations between labor inspectors and employers during 1970-1972 were characterized by a high degree of uncertainty. In the 1950s and early 1960s, a clear and stable relationship had existed, but this had become progressively strained and disrupted by a number of events. As of 1963, the Inspectorate's findings in a properly conducted investigation of a labor grievance were considered to be *res judicata*. However, its authority was challenged by a 1966 statute concerning arbitrary dismissals. Even so, its overall status and power increased in the latter years of the decade. Finally, from November, 1970 onward, the profound sociopolitical changes resulting from the Popular Unity electoral victory had important implications for the Labor Inspectorate. The agency gained confidence, thought of its work as more important, and received more back-up support from the Ministry of Labor. The Inspectorate's formal authority had not changed significantly, but its informal (and real) power, *vis-à-vis* employers, for the defense of worker interests, did increase. But opposition in Congress prevented increases in the Inspectorate's resources. Its personnel decreased slightly; inspectors who left the service were not replaced because of disagreements over quotas for government agencies.[36]

Employers resented the overall increase in interference in "their" affairs. But they were not quite sure just how powerful the Inspectorate was, and thus could not be sure of the risks of noncooperation with inspectors and noncompliance with the

[36] The quota system established the number of members of all major groups to be employed in the major government services. It was adopted through negotiations between Popular Unity and the opposition. It was intended to protect the jobs of opposition civil servants and also to guarantee a *de facto* presence of the opposition in the bureaucracy.

labor laws. On the other hand, labor inspectors were also uncertain about the exact limits of their authority. The entire sociopolitical structure was in flux, and inspectors could not be sure of approval of their activities by the new administration. Nevertheless, they were prepared to experiment and test the new limits, with the result that they intervened more often and more thoroughly in labor relations, especially at the level of individual worker grievances.

How much real change took place remains debatable. The political expectations of some and the corresponding fears of others created an atmosphere of suspense. Nobody could be certain about what was going to happen next. Labor inspectors encountered employers who displayed resignation, suspicion, hostility and defiance, fear, correct (but unenthusiastic) cooperation, and even, though less frequently, excessive cooperation—all of this in rather unpredictable patterns. The informal patronage system, which traditionally offered ways and means of getting around the legal system through appropriate contacts, was breaking down. The trend was toward more "legalistic" relations which somehow seemed to promise greater predictability.

Litigation and Work Performance[37]

Data collected during my fieldwork offer an additional perspective on the role of the Inspectorate of Labor between

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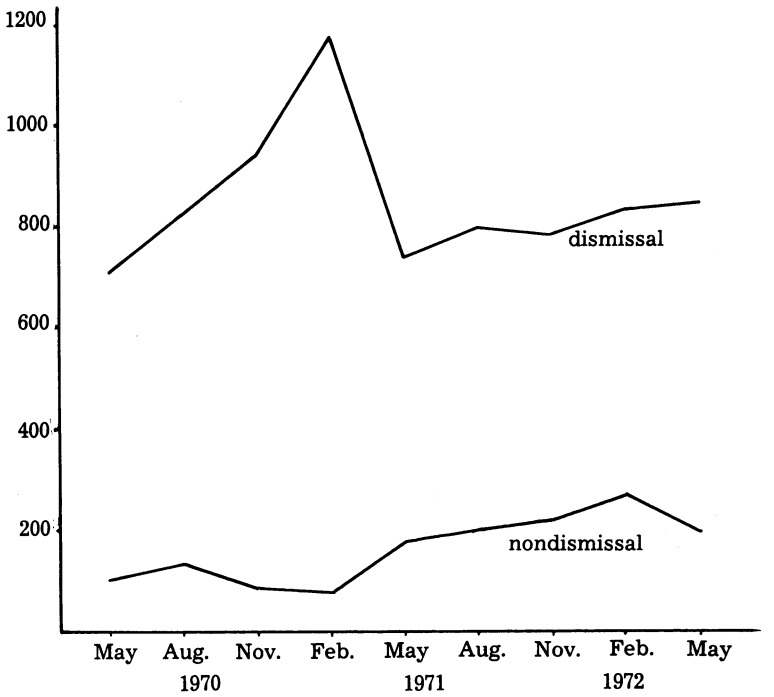
[37] Data were gathered during a ten-month stay in Chile in 1972-1973. The main emphasis of the fieldwork was on the qualitative aspects of labor grievance handling by the Inspectorate of Labor and the labor courts. In order to properly assess the quantitative relevance of these observational data, I gathered information on the demand for labor justice and the work output of both institutions. Since no public documents provided this information, I gathered it from different primary sources. Data collection was difficult (see Ietswaart, 1981b), and therefore the data are not as comprehensive as would be desirable. As regards the Inspectorate, the sources used were the monthly statistics which its headquarters in Santiago compiled for its own purposes. These statistics were not published as such but were used for the drafting of a summary Annual Report.

The data on the courts were extracted from two sources. For dismissal grievances, the monthly statistics sheets sent by individual tribunals to the Labor Appeals Court. The Court did not elaborate these data; therefore, I used the primary material. Concerning nondismissal cases, I used the information contained in labor court record books (*Libro de Ingresos*). In some courts these books were poorly kept, and extracting data was difficult, especially on "cases terminated." For practical reasons I had to limit the detailed data collection to two courts which could be considered representative of the six courts covering the jurisdictional area. Thus, the numbers indicated as "totals" for Greater Santiago are estimates based on these two courts.

The data presented for both institutions express recognized demand for labor justice. Real demand was no doubt higher, but on the basis of the data registered by the institutions themselves there was no way of assessing the magnitude of such demand.

April, 1970, and June, 1972.[38] Dismissals and nondismissal grievances are considered separately. In order to avoid complications from inevitable monthly fluctuations, the data are presented as averages per month calculated for three-month periods. A summary of the business of the Inspectorate appears in Table 1 and Figure 1.

Figure 1. Dismissal and Nondismissal Grievances Filed: Inspectorate of Labor, Province of Santiago, 1970-1972



In nondismissal cases, the category "cases filed" represents both an amount of work done by the office (one visit to a work place) and a "recognized demand" for redress. A conservative estimate of the time each visit represents would be an average of about two hours (the same applies to follow-up visits). "Cases terminated" refers to that portion of cases that ended in conformity with the legal rules—that is, the resolution of the conflict through some acceptable employer behavior such as

[38] As internal figures they may of course be suspected of intended distortions—the agency may have wanted to present low output to justify demands for more funds or high output to show its efficiency. As my data are based upon strictly internal statistics, only later to be used to draw up the Annual Report, which is a public document, there is no particular reason to assume that those statistics were already distorted otherwise than by possible plain errors which I had no way of detecting.

Table 1. Activities of the Inspectorate of Labor; Province of Santiago; averages per month, 1970-1972

Activities	1970 Apr.-Jun.	1970 Jul.-Sept.	1970 Oct.-Dec.	1971 Jan.-Mar.	1971 Apr.-Jun.	1971 Jul.-Sept.	1971 Oct.-Dec.	1972 Jan.-Mar.	1972 Apr.-Jun.	Average for total period Totals
NON-DISMISSAL GRIEVANCES										
1. Cases filed	101	134	83	74	173	199	217	269	198	161
2. Second and further visits	204	179	207	161	284	492	289	191	373	264
3. Written instructions issued	55	54	47	50	61	104	83	60	80	66
4. Cases terminated	88	95	65	101	104	163	167	141	174	122
DISMISSAL GRIEVANCES										
5. Cases filed	710	824	943	1173	736	798	782	831	848	849
6. Cases processed and terminated	768	779	872	1050	799	739	742	858	862	830

payment of a fine and the promise of correct behavior in the future; or making good faulty behavior of the past (e.g., lack of payment of social security fees). Over the whole period considered, some 25 percent of all cases did not get terminated; they got lost somewhere. A case could remain "pending" until everybody forgot about it, or until the enterprise concerned went bankrupt and nobody bothered to declare the case "terminated." There was no attempt to hide this phenomenon—work statistics were gathered each month, and obviously nobody cared about discrepancies between numbers of "cases filed" and "cases terminated" in any one month. One may wonder whether this loss of cases would have to do with occasional side payments to labor inspectors (cf. Rosenn, 1971). It is, however, more realistic to assume that cases settled outside the legal system would appear in the records as "terminated"—a note in the file indicating that all was in order. This was surely safer for the employer. But the figures on output say little about the nature of the outcome of cases.

Dismissal cases were much simpler than nondismissal cases, for various reasons. The handling of dismissal disputes was legally a marginal activity of the office, because formal jurisdiction over dismissal disputes had been given to the labor courts. But aggrieved workers continued to demand help from an Inspectorate which showed itself willing to mediate these grievances. Dismissal cases rarely implied a visit to a work place; employers were summoned to the office. Such summons were based on the general investigatory powers of the Inspectorate. Once the employer was there, pressure was exerted to either offer severance pay or reinstate the worker.

A number of cases were withdrawn before a hearing could be held; others were simply abandoned. When a hearing was held the dispute was either settled or not settled (see Table 4), but that was the end of it. Comparing lines 5 and 6 in Table 1, we note that just over two percent of all cases filed were not accounted for: they were neither processed in a substantive sense (employer summoned, hearing held) nor recorded as withdrawn or abandoned. They simply were lost somewhere in the office.

To make these figures more concrete, one may relate the numbers of grievances to the size of the labor force (i.e., wage earners). According to the 1970 census the economically active population (EAP) in the Province of Santiago amounted to about 1,150,000 people, of whom well over one million were in the city of Santiago and its suburbs (Greater Santiago). About

77 percent of the EAP were wage earners. In 1971, the Inspectorate in Greater Santiago investigated an average of nearly eight cases of nondismissal grievances per working day. This corresponds to about one per 445 wage earners per year; it resulted in an average of about 23 visits per working day to work places. In the same year, an average of about 42 dismissal grievances were filed each working day, and about 40 handled.

Such is the background for our central concern—namely, how litigation rates and litigiousness, as well as the work output of the Inspectorate, changed in the period beginning in January, 1971. Variations around the average are presented in Table 2. The period of September, 1970, to January, 1971, was one of great confusion. Economically, a recession had set in, because a number of frightened entrepreneurs had closed their businesses and left the country (*Panorama Económico* #263 [August, 1971]; Ramos, 1972: 262ff). Accordingly, unemployment grew. After the new government took office in November 1970, bureaucratic institutions adopted a wait-and-see policy. The Inspectorate of Labor was restructured under a new director. Stricter work rules were applied, and in general the political changes interfered with normally high end-of-the-year economic activity.

Nondismissal Grievances

The number of nondismissal grievances filed increased appreciably beginning in April, 1971. There is no reason to believe that the number of situations or incidents giving rise to such grievances, i.e., the "baseline" (Lempert, 1978; Miller and Sarat, 1981) had greatly increased; if anything, the contrary would be true—employers afraid of, or at least unsure about the potential intervention of the new "government of the workers" in labor relations, might be expected to regularize the work situation of their employees and avoid conflict. What we see then is an increase in litigiousness—more workers relative to the labor force (which did not appreciably increase in the period concerned) complained to the Inspectorate.

The Inspectorate responded positively to this increased demand for labor justice. It might have begun to reject cases when its docket became too crowded. Or it could have limited itself to the symbolic gesture of registering complaints, thus indicating its sympathy with the plight of the wage earners, without doing much about those complaints. Instead the Inspectorate continued to process cases in the normal manner,

Table 2. Work Load and Work Output of Labor Inspectorate. Variation of Averages Per Month Around the Mean for Total Period (in %), Province of Santiago, 1970-1972.

	1970			1971				1972	
Activities	Apr.-Jun.	Jul.-Sept.	Oct.-Dec.	Jan.-Mar.	Apr.-Jun.	Jul.-Sept.	Oct.-Dec.	Jan.-Mar.	Apr.-Jun.
NON-DISMISSAL GRIEVANCES									
1. Cases filed	−37	−17	−48	−54	+8	+24	+35	+67	+23
2. 2nd and further visits	−23	−32	−22	−39	+8	+86	+9	−28	+41
DISMISSAL AND GRIEVANCES									
3. Cases filed	−16	−3	+11	+38	−13	−6	−8	−2	0
4. Cases processed and terminated	−7	−6	+5	+27	−4	−11	−11	+4	+4
Hours worked [(1+2)x2] + [4x.5]	−21	−21	−20	−21	+4	+39	+9	+7	+24

as if there had been no substantial increase. It may be calculated from the data in Table 1 that the number of "further visits" followed, by and large, the increase in cases filed. During 1970 the average was 1.86 follow-up visits per case, while in 1971-1972 it was 1.58 (the latter figure is in part an artifact of the January-March, 1972 period in which the intake of new cases was particularly high and the number of follow-up visits unusually low.) The normality of the work performance of the office is also documented by the stability of the ratio of grievances filed to those terminated. In 1970 the number of cases terminated was 78 percent of those filed; in 1971-1972 it was 75 percent.

It is possible to estimate the impact of the increase in nondismissal grievances on the amount of work done. My observations of the process suggested that each unit of work ("visit") represented about two hours of work. Using that figure, it appears that the number of hours worked per month grew steadily: from 605 in 1970, to 944 in 1971, and to 1,037 in 1972.[39] These data leave no doubt about the willingness of the Inspectorate to respond to the increased employee demands made upon it during this period. In fact, the agency seemed almost eager to accept an increased number of cases so that it could participate more in day-to-day labor relations and help tilt the scales in favor of wage earners.

Dismissal Grievances

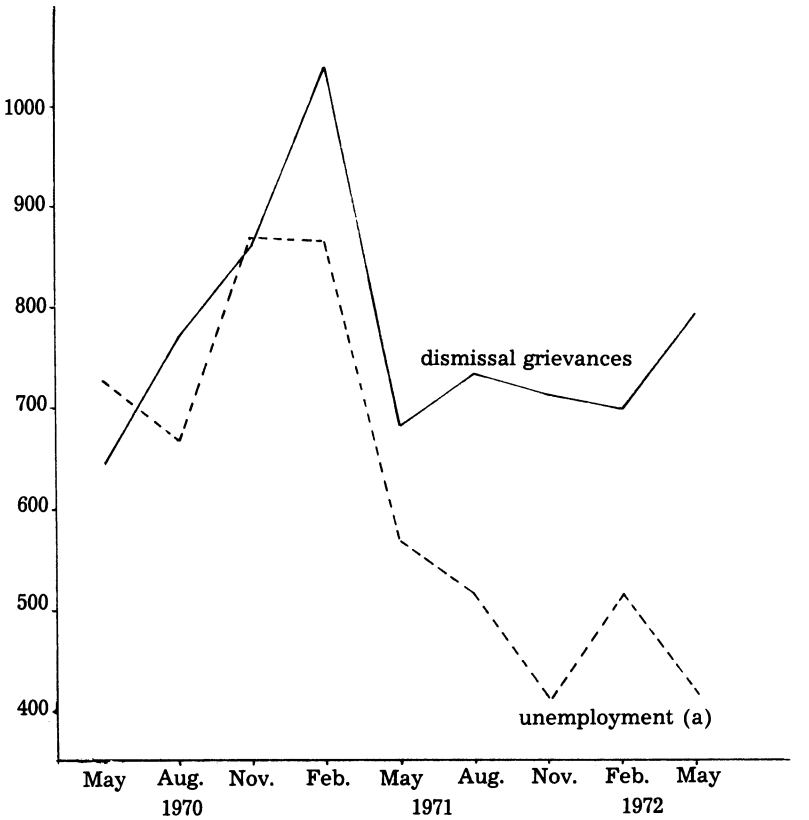
I found no *prima facie* increase in litigation over dismissal grievances (see Table 1). Nevertheless my data indicate a greater litigiousness. The number of dismissal grievances naturally fluctuates as a function of dismissal as a social phenomenon. Accordingly, its baseline is less stable than that of nondismissal grievances.

Dismissal grievances consist of all dismissed workers minus those who received full severance pay, acknowledged that proper notice had been given, or who otherwise did not contest their dismissal. I have no real baseline against which the number of dismissals can be compared. As a crude

[39] On the whole, the efficiency of the Labor Inspectorate increased. One sign of this is the ratio between written instructions issued and cases terminated. There was a notable decrease in the use of such instructions, (constituting the strongest admonition to employers to abide by the law), from 62.9 percent in 1970, to 51.5 percent in 1971-1972. These data are in conformity with information on the imposition of fines volunteered by individual labor inspectors in informal interviews. They generally felt that fines were less needed because there was more voluntary compliance with the law and with verbal orders issued by labor inspectors.

surrogate measure, however, I have utilized employment figures. In 1971-72, unemployment dropped to exceptionally low levels; it was only three percent in September, 1972 (*Panorama Económico* #273, November, 1972), and we may presume that there were fewer dismissals at this time, both in absolute numbers and relative to employment.

Figure 2. Unemployment and Dismissal Grievances Filed at Labor Inspectorate, Greater Santiago, 1970-1972[a]



[a]Unemployment in absolute numbers, divided by 100.

The number of dismissal complaints relative to unemployment in the Greater Santiago area is shown in Table 3 and Figure 2.[40] There is an overall relationship between the

[40] I will refrain from evaluating the level of litigation as "high" or "low" (unlike other authors such as Miller and Sarat, 1981; Boyum, 1980; see also Sarat, 1977 and in particular Lempert, 1978). There is no objective measure for such an absolute evaluation. In the present context such a judgment is, in any case, impossible as unemployment was measured during one week in March, June, September, and December, while the figures on litigation are average numbers per month. Those unemployed at any one moment have not necessarily been dismissed in the three-month period just preceding. The average time that people remained unemployed should be taken into account.

two curves in Figure 2, but the correlation coefficient (r = .584) is statistically significant only at the .10 level. Unemployment accounts for only 34 percent of the variance in the number of cases filed.[41] The reason for this limited explanation is that litigation increased relative to the level of unemployment. The simplest hypothesis to account for this increase in the litigation rate is that a higher proportion of aggrieved wage earners went to the Inspectorate to complain. This hypothesis has not been tested directly (e.g., by way of a survey among dismissed workers). I have used litigiousness as a hypothetical variable, assuming (for reasons of simplicity) that it increased in a linear fashion over time.[42] A multiple linear regression model including litigiousness (time) as the second independent variable is compatible with the data and accounts for 68 percent of the variance.[43]

The hypothesis of increased litigiousness makes sense in light of how the overall political process affected labor relations. The process of intervention and requisition changed the balance of power between workers and employers. Strikes precipitated intervention, and a number of workers struck deliberately for that purpose (Stallings, 1978: 137; Espinosa and Zimbalist, 1978: 49). Although the government was primarily interested in large enterprises, it could not altogether avoid taking over the management of some smaller enterprises because of pressure by the workers. Workers had a much stronger bargaining position than before, and this was widely recognized. They were less afraid of reprisals by employers, and they became more assertive. The role of the strike had changed. On the one hand it could induce the government to

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[41] I have tried to come closer to the real "baseline" of dismissal grievances by subtracting from the unemployed those looking for work for the first time. However, the level of total unemployment, i.e., total pressure on the labor market, has a higher predictive value for the level of litigation (r = .58 for the latter, as against r = .47 for the former [not significant]). These two categories of unemployment are clearly related: the category "looking for work for the first time" fluctuates not only seasonally but also (inversely) with the overall level of employment. When unemployment is low, fewer people start looking for work.

[42] I have not made possible refinements to the regression model, as they would not add to the point I am making.

[43] Linear regression models represent an attempt to estimate a dependent variable as a linear combination of independent variables. Such models take the general form: $Y = a + b_1X_1 + \ldots + b_nX_n$. In the present case, Y = number of cases filed, X_1 = the level of unemployment, X_2 = litigiousness as a linear function of time. For easier manual calculation, unemployment figures were divided by 100. The regression equation is: $Y' = 27.94 + .88X_1 + 40.05X_2$. The coefficient of determination $R^2 = .684$ (significant at the .05 level). The multiple correlation coefficient R = .83.

Table 3. Unemployment and Dismissal Complaints Filed: Labor Inspectorate, Greater Santiago, 1970-1972[a]

	1970			1971				1972	
	Apr.-Jun.	Jul.-Sept.	Oct.-Dec.	Jan.-Mar.	Apr.-Jun.	Jul.-Sept.	Oct.-Dec.	Jan.-Mar.	Apr.-Jun.
Unemployment in thousands	72.6	66.7	86.8	86.5	56.7	51.6	40.9	51.4	41.4
As % of EAP	6.98	6.43	8.25	8.24	5.19	4.77	3.79	4.76	3.68
Dismissal cases filed	643	768	859	1036	681	733	712	699	792

[a]As detailed unemployment data are available only for Greater Santiago, the data on grievances presented are those corresponding to that area, and therefore different from those in Table 1.

intervene; on the other, strikes were no longer broken by repressive government measures. Employers were more cautious and workers (both unionized and nonunionized) more daring and self-confident.[44] The latter also expressed a demand for knowledge of labor law: unionized workers requested courses, while nonunionized workers, as we have seen, resorted in increasing numbers to the Inspectorate of Labor for information. The day-to-day implementation of the "legal road" by all levels of government—making regulations, consulting with lawyers, suing and defending itself in court—was a powerful example and stimulus to citizens to "use" the law.

Dismissal grievances ended in different ways: (1) they were settled before the mediating inspector; (2) they remained unresolved; (3) they were withdrawn (through some act of the plaintiff); (4) they were abandoned (plaintiff did not show up for hearing); (5) they got lost (i.e., they disappeared from the statistics). As we have seen, the latter category constituted about two percent over the whole period 1970-1972. Cases that were withdrawn had probably ended in some sort of agreement between the parties, most often before the scheduled hearing at the Inspectorate took place. "Abandonment" indicates nothing about how a case was concluded. The categories "withdrawn" and "abandoned" together accounted for about 20 percent of those processed. This percentage did not change much from 1970 to 1972. By contrast, the number of cases settled increased as compared with those not settled, as shown in Table 4. The rate of settlement increased from 69 percent in 1970 to 82 percent in 1972.

The higher rate of settlement undoubtedly was the result of greater pressure on employers to come to an agreement. Employers were under no legal obligation to mediate such disputes. Strictly speaking, they only had to appear at the office of the Inspectorate upon summons. But I observed no employer who refused to participate in mediation merely because there was no legal obligation to do so. Inspectors fully used the ambivalence of the situation—the doubts of employers about what could legally be required of them, what legal and *de facto* powers labor inspectors actually had, and the chances that employers could successfully resist or evade grievance claims.

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[44] I am grateful to a particularly careful and helpful anonymous reviewer of the manuscript for articulating this point.

Table 4. Outcomes of Hearings in Dismissal Cases: Inspectorate, Province of Santiago, 1970-1972.

	1970			1971				1972	
	Apr.-Jun.	Jul.-Sept.	Oct.-Dec.	Jan.-Mar.	Apr.-Jun.	Jul.-Sept.	Oct.-Dec.	Jan.-Mar.	Apr.-Jun.
Settled (%)	68.3	69.8	68.9	72.3	79.2	79.7	78.1	79.9	82.6
Not settled (%)	31.7	30.2	31.1	27.7	20.8	20.3	21.9	20.1	17.4
N	599	625	668	810	650	606	579	553	578

My observation was that the mediating inspector would begin with the presumption that the challenged dismissal was not in conformity with the law (the details about which could not possibly have been clear to employers, as they were themselves ambiguous). Inspectors were also reluctant to bother with formalities potentially harmful to the cases of the dismissed workers (written contract, exact date of start of work, etc.), and they would often take the latter's side in negotiations about the indemnity to be paid. Reinstatement was sometimes suggested, but was not the normal outcome of mediation. Inspectors would not accept just any indemnity in order to close the case. My observational data indicate that over 70 percent of the plaintiffs received at least two-thirds of their claims, while no plaintiff received less than one-third. Claims frequently involved full severance pay in accordance with the 1966 statute, plus, at times, smaller amounts for unpaid salary. Occasionally the inspector's intervention came close to adjudication. More or less explicit threats would be used to secure the agreement if necessary—threats of resort to the labor courts (an acknowledged evil), or more or less vague suggestions that having a "file" at the Inspectorate was to be avoided (nobody knew what such a threat might mean, and legally it meant nothing). Thus, the *de facto* intervention of inspectors went beyond the legal limits of their assignment.

Institutional Assertiveness

The sensitivity of the Inspectorate of Labor to political changes and its consequent responsiveness to increased litigation also testify to its willingness to play an ever more prominent role in labor relations. This responsiveness and the relative effectiveness of increased inspection activity prompted more wage earners to see their injurious experiences as grievances meriting institutional redress. A fair part of the lower strata of society, least protected by more informal institutions like unions, expected the administration of justice to be "more just" now that the government had changed (Vanderschueren *et al.*, 1972: 75; Lechner, 1973: 112). Access to judicial institutions would be easier, and the quality of justice would become more favorable to wage earners and others of modest resources.

The Inspectorate of Labor was among those institutions to which these raised expectations applied. My interviews with labor inspectors and other officials confirmed that the pressure on the office to help resolve labor disputes was unusually high

in the early 1970s. People of modest resources (typically not the *very* poor) were more aware of their rights and became more assertive generally. The Inspectorate hardly ever turned down complaints on the basis of legal requirements. The most flimsy complaints of illegal dismissal were accepted for mediation; any dispute with an employer was a good occasion for confrontation which prompted assertiveness if not class conflict.[45] An ever widening circle of people came to know about the increased work performance of the office; and its reputation as an appropriate remedy agent grew accordingly.

IV. THE LABOR COURTS

Chilean labor courts have a specialized subject matter jurisdiction, but in many respects they are like other courts of more general jurisdiction. Because they are somewhat different from their counterparts in the Anglo-American and the Continental systems[46] (although more similar to the latter than to the former) a brief description of their day-to-day functioning is warranted.

A labor court in Chile is headed by a single judge appointed by the President of the Republic.[47] The court also has a secretary, a number of *actuarios*,[48] and clerical and service personnel. Practically speaking, the judge is not the central figure in the court. During office hours he (or she[49]) may and often will be present, but most frequently in his own office. In the typical physical layout of the court there are three separate spaces: the office of the judge, the office of the secretary (usually next to the judge), and the main room where

[45] Sometimes an employer would be almost as defenseless as the dismissed worker. The owner of a small coffee shop could hardly be described as the class enemy; he might take home less profit than the minimum wage, or even the wage of the employee he dismissed.

[46] Such difference may be understood historically. In colonial times law courts were found only in the major administrative centers. Cases from the outlying regions would be presented there a few times each year. The whole file had to be completely prepared beforehand, so that the administrative officer assisting the governor could decide the case solely on that basis. The lack of oral proceedings with witness examination and cross-examination, pleading before a judge, etc., in the legal tradition of Latin America, goes a long way to explain a style of law courts that is dominated by writing. Legislation to introduce simplified oral procedures in labor courts has not fared well, and has been largely replaced by ordinary civil procedure (Humeres, 1972: 252-253).

[47] I have retained the "anthropological present" in this section, although the labor courts were abolished in 1980 (Hurtado-Beca, 1981).

[48] As the *actuario* has no counterpart in the other legal traditions mentioned, it seems unnecessary to translate the term. Rather, I have opted for preserving the term and explaining the function.

[49] There are quite a few women judges and *actuarios*. As the courts have rather limited office hours, this is considered a suitable and respectable job for married women.

the *actuarios* and the typists work. There is no "courtroom" because the court does not conduct "trials." The *actuarios* do the routine court work, such as presiding over hearings to confront the parties, interviewing witnesses, receiving lawyers' briefs, filing pieces of written evidence, and the like. Whenever a new document has been added to the file (e.g., a witness declaration, a copy of the contract, or the minutes of a hearing) the whole file is presented to the judge to be seen and signed by him. Thereafter the file will be returned to the *actuario*. Generally one *actuario* is in charge of a case, but if he is absent when a hearing is to take place, another *actuario* will replace him.

When the case is finished the whole file is once again presented to the judge, who will then decide the case and write the sentence, which will be sent to the parties. The function of the judge in judicial proceedings is therefore limited to ongoing supervision over the handling of cases by *actuarios* (and even this function may be partly delegated to the secretary of the court) and to deciding the case. Theoretically, the judge may give concrete instructions to *actuarios* about the proper handling of any case, but this tends to be rare, at least in labor courts. *Actuarios* may be law graduates, law students, or individuals with no formal legal training. Many older *actuarios* have been wholly trained on the job.

The Jurisdiction of the Labor Courts

Labor courts were originally designed to be the enforcement mechanism of the labor legislation enacted in 1924 and the years following. According to art. 497 of the Labor Code (formally in force until May 1978), the subject matter jurisdiction of the labor courts consisted of "all disputes that may arise from the application of the provisions of [the Labor Code] and the stipulations of labor contracts, and those problems that may arise from social security legislation." In 1966 the courts were given exclusive jurisdiction to hear and decide dismissal grievances. As a result, the subject matter jurisdiction of the courts went beyond that of the Inspectorate (see Table 5 and accompanying text).

The special nature of the labor courts was expressed in "the intention of the legislature to compensate for economic inferiority with legal superiority."[50] However, when it came to

[50] This phrase has been passed on from one generation of labor lawyers to another, and its survival is taken as evidence of its inherent truth. Humeres (1972: 9) cites Walker Linares (n.d.), who cites Gallart Folch.

applying this essentially different law in special courts, the difference faded quickly; the Supreme Court managed to integrate the labor courts into the overall structure of the judiciary. It soon assumed full supervision over both their orderly procedures and the economic aspects of their functioning, which was legalized in 1933.[51] In 1942 the *recurso de queja*, through which full substantive control was exercised *de facto*, was accepted by the Supreme Court.[52] This practice, effectively undoing the "special" nature of labor law administration through the courts, was legalized in 1953.[53] The labor courts became even more similar to ordinary civil courts, thus creating special contradictions between substantive labor law (recognizing the social inequality of the parties) and procedural law (based on the presumption of equality of the parties).

The statute enforced by the labor courts was at best ambiguous in its support for the rights of workers. Workers, for example, were forbidden to renounce their right to the minimum wage.[54] But the Labor Code[55] also instructed the courts to bring cases to a speedy end through a settlement[56] between the parties—an outcome unlikely to occur without a bargaining process which rephrased the issue and produced concessions on both sides. A similar ambiguity applies to the rules regarding dismissal. There is a right not to be dismissed without good cause, and a corresponding right to be reinstated in case of an illegal dismissal. But the same statute granting these rights also permits employers to discharge their obligations to a dismissed worker by monetary compensation instead of reinstatement.[57] Yet workers challenging dismissals had to formally seek reinstatement. A mere claim for monetary compensation would undoubtedly result in losing the case. Courts were thus encouraged to consider the claims of dismissed workers as demands for money damages only. The net result of these rules and practices was that employees had

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[51] By *Ley* no. 5158.

[52] Decision of 18 May, 1943, *Rev. de Derecho y Jurisprudencia*. Tomo XXXIX, II parte, Seccion I, p. 503. See Novoa (1970: 111).

[53] By *Ley* no. 11.183.

[54] By implication, infringement of that rule is not merely a private affair between worker and employer, but also an administrative offense punishable by a fine.

[55] Art. 523. Also see Humeres (1972: 253).

[56] Translation of the legal term "*avenimiento*."

[57] Not surprisingly, the labor movement continued to press for a law which would effectively provide job stability (Ietswaart, 1978: 295).

the right to sue, but the predictable redress for illegal dismissal was a small payment.

Labor courts have never identified with workers; their functionaries, as a social group, have been closer to employers. Through Supreme Court control, their bias in favor of employers and their indifference towards workers was reinforced. The whole of their activity was oriented toward pleasing the Supreme Court, and that meant avoiding trouble. Labor courts were low-status courts in the eyes of legal professionals. The latter depended for their careers on evaluation of their work by their superiors—the Labor Appeals Court and the Supreme Court. Although the social background of some *actuarios* was modest (lower middle class), this had little effect on the day-to-day treatment of plaintiffs. *Actuarios* were easily socialized in the sociopolitical orientation of the labor courts—rather conservative and not inspired by the idea of judicial activism—that dominated daily activities.

The labor courts' policy of minimal interference in labor relations was justified rhetorically by reference to legal rules. The courts were limited to a reactive role in the enforcement of labor legislation; they could only participate in labor relations to the extent that they were invited to do sō. Furthermore, they were limited to hearing complaints about individual contract violations; they could not deal with collective contracts.[58] The labor courts were subject to the control of the Labor Appeals Court, and ultimately the Supreme Court. This type of control existed for the Inspectorate of Labor only to a lesser degree (e.g., only indirectly through appeals to the labor courts from the imposition of fines). The labor courts also lacked the physical resources to do an adequate job, although this was a problem for the Inspectorate as well. But neither the constraint of rules nor the lack of resources fully accounts for the inertial role of the labor courts. There was, in fact, a profound institutional interest in preserving the status quo and a propensity to apply needlessly cumbersome procedures (contrary to what the Labor Code prescribed[59]).

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[58] Cf. notes 21 and 31.

[59] The verbal quality of the proceedings provided for in the statute to facilitate the speedy handling of cases has practically been lost. Rebuttal—explicitly excluded so as to shorten procedures—has been introduced on civil procedure principles. Official time schedules for hearing and deciding cases were not applied. At the Inspectorate it was well known that a case of dismissal in court would not be heard within six weeks of filing, and it made sure to arrange for an earlier hearing. This occurred despite the prescription that in court the delay between filing the complaint and deciding the case should not be longer than 15 days.

Social Distance

In addition to the labor courts' demonstrated lack of interest in participating in social and economic change processes, other factors contributed to the gap between the courts and their constituency. The courts were not easily accessible. While there was an Inspectorate office in each municipality, the courts were largely concentrated in one downtown building. Five of the six labor courts of Greater Santiago functioned there, while only one was located in an outlying industrial sector of the city (San Miguel). In an urban area of between three and four million inhabitants, distances between the outskirts, where most people live and a good part works, and the center of the city, are considerable. Moving back and forth by rather poorly equipped public transport is both time-consuming and expensive.

Using the services of the courts was also costly. In all but dismissal cases, representation by a lawyer was prescribed by law.[60] There was a tax on each sheet of paper used. And the slowness of court procedures constituted an additional cost factor.

Language barriers also contributed to social distance. Court personnel consistently used legal jargon that ordinary workers, and most employers, did not understand very well. There were many ways of making a worker-plaintiff feel ill at ease, and thus discouraging him or her from persisting in the claim. It was constantly suggested that a claimant was a nuisance and a troublemaker, that the complaint was nothing special, that he or she would have to wait, that a hearing could not be held soon, etc. By and large, *actuarios*, the officials complainants dealt with, were not very well informed about working-class life, concrete day-to-day labor relations, and the problems typical of such relations, although they were not totally insensitive to the seriousness of sudden dismissal. On the whole, the largely bureaucratic and impersonal treatment of plaintiffs added to the social distance created by physical inaccessibility and cost.

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[60] The legal minimum fee charged by lawyers was two *vitales*, which was more than two times the minimum monthly wage of a worker. Large sectors of the working class did not even earn the minimum wage. Even if some lawyers charged less than the legal amount (as often happened in labor cases which were unsuccessful), and even if there were some free legal aid through union lawyers and otherwise, the norm suggests the magnitude of the disparity between the cost of lawyers and the resources of the working poor. In the dismissal cases observed in court, 27 percent of the plaintiffs-workers had a lawyer, compared to 38 percent of the defendant-employers. In only 24 percent of all cases did both parties have a lawyer.

Quantitative Measures of Court Activity

The available data on court activity concern, above all, what I have called "recognized demand." These data are much less clear about both the volume and the nature of the courts' output. While the Inspectorate made no effort to hide the discrepancy between the numbers of cases filed and those terminated, record keeping at the courts was (intentionally or negligently) so poor that it was virtually impossible to measure their output. Table 5 shows the frequency of different types of claims.

Categories 1 and 2 are similar to the complaints presented to the Inspectorate of Labor. Dismissal cases probably overlap in part with those brought at the Inspectorate. According to my observations, labor inspectors would consistently urge people to *also* file a suit in court. Suits for dismissal based on the 1966 statute were necessarily claims for reinstatement. But not all dismissal grievances were based upon that statute, because certain categories of workers were excluded from its application (e.g., workers with less than six months' seniority, and domestic personnel). These workers could not claim reinstatement but only one month's salary as severance pay.[61] According to my calculations, this latter category of dismissal cases constituted about 12 percent of the total.

Employers might also be plaintiffs, but they only rarely constituted more than about three percent of that category. Labor courts had little to offer them. If an employee allegedly did not comply with the conditions of a labor contract, the employer would dismiss him rather than go to court to enforce the contract. Employers went to court to appeal fines imposed upon them by the Labor Inspectorate and the Social Security Boards.[62] These suits were difficult; although not numerous, they represented a fair amount of work for the courts. The other category of cases brought by employers consisted of requests to dismiss union officials. Chile had very few professional union officials. As the plant union was

[61] See art 3. The fact that two types of dismissal cases were recorded separately and distinguished in statistics has a historical explanation. When the 1966 statute was to be passed, the courts protested that they did not have the resources to attend to the (expected) new litigation. The statute (art. 13) instructed the courts to report each month to the Labor Appeals Court on their dismissal caseload. This was meant (officially) to facilitate the latter's supervision and control over such matters as fast and efficient processing (cf. note 59).

[62] See note 29.

Table 5. Activity of Labor Courts, Averages per Month: Six Courts, Greater Santiago, 1970-1972

Plaintiff	Type of Suit	1970 Apr.-Jun.	1970 Oct.-Dec.	1971 Apr.-Jun.	1971 Oct.-Dec.	1972 Apr.-Jun.
WORKER	1. Dismissal+	37% (349)	44.7% (453)	41.3% (298)	24.5% (264)	46.1% (388)
	variation(%)	0	+29.3	−15	−25	+11
	2. Other grievances	15.7% (148)	19.1% (194)	23.5% (170)	12.1% (131)	14.3% (120)
	variation(%)	−3	+27	+11.4	−14	−21
	total 1 + 2	52.8% (497)	63.8% (647)	64.8% (468)	36.6% (395)	60.4% (508)
	variation(%)	−1	+28.6	−7	−21.5	+1
	Dismissal as % of total 1 + 2	70.2	70	63.7	66.8	76.4
EMPLOYER	3. Appeal Fine	1.2% (10)	1% (10)	2.1% (15)	2.1% (23)	1.9% (16)
	4. Request to dismiss union official	.8% (8)	.4% (4)	.3% (2)	.7% (7)	1% (8)
INSPECTORATE OF LABOR	5. Executory process to collect fine	4.1% (39)	2% (20)	4.6% (33)	3.1% (33)	3.6% (30)
SOCIAL SECURITY BOARD	6. Executory process to collect fees and fines	33.8% (318)	26.1% (265)	20.5% (148)	50.9% (549)	25.8% (217)
OTHER	7. Letters rogatory, etc.	7.4% (70)	6.7% (68)	7.8% (56)	6.7% (72)	7.4% (62)
TOTAL N variation(%)		942 +2.4	1014 +10.3	722 −21.5	1079 +17.3	841 −8.5

+ Includes both complaints based on the 1966 statute and dismissal cases exempted from it ("*desahucio*")

the prevailing form of unionization, union officials were ordinary workers who had a right to time off to attend to union business. They usually served for one year at a time. Because their position was vulnerable, they enjoyed special legal protection. A worker might not be dismissed from the moment he was a candidate for union office until six months after he served his term. In order to dismiss such a worker legally, the employer had to obtain the permission of a labor court. Such suits were few; employers tended to leave it to dismissed workers to initiate proceedings.

The Inspectorate of Labor and the Social Security Boards each brought a number of suits to collect fees (Social Security Boards) and fines (both agencies). As we have already seen, such suits were executory processes, and thus did not represent much work for the court. The "judicial order" which the court would issue was in fact a rubber stamp. Table 5 shows clearly that the Inspectorate used the court relatively infrequently; thus most cases in this category were initiated by the Social Security Boards. Besides being plaintiffs, the Inspectorate and the Social Security Boards were also defendants. The rest of the work of the labor courts was based on letters rogatory (requests for assistance) from other labor courts.

There was no significant difference in the processing of dismissal and nondismissal cases in the courts. Taking them together, we see that although the total number shows a fluctuation, the latter is much less than at the Inspectorate. The highest number of cases accepted was 28.6 percent above the mean. This was in the peak period of October-December, 1970. Looking at dismissal cases separately, I applied (purely for comparative purposes) the same linear regression model developed for the Inspectorate of Labor. In the courts, the variable unemployment explains only about six percent of the variance in cases filed ($r = .25$). Unemployment and the hypothesized increase in litigiousness together explain no more than about nine percent of the variance.[63] It follows that the intake of cases by the courts was characterized by a high degree of stability, and was rather immune from economic and sociopolitical forces. With respect to nondismissal cases there was a peak in the period October-December, 1970; after that the litigation rate went down and stayed below the mean. This peak would be consistent with the findings of opinion studies at

[63] Cf. note 43. In the case of the courts, the equation is: $Y' = 213.35 + .21X_1 + 7.48X_2$. $R^2 = .09$; $R = .30$ (not significant).

the time which gave high ratings to the judiciary, both in terms of confidence in the courts as state institutions and raised expectations of access and proper treatment. The peak is all the more interesting because it occurred in a period of rising unemployment which is, generally speaking, not conducive to bringing complaints about employer behavior.

The overall decrease in the rate of litigation may be explained by two factors. First, the increasing responsiveness and efficiency of the Inspectorate offered an attractive alternative to going to court. Those not backed by a union, who would therefore have had difficulty securing the services of a lawyer, preferred to go to the Inspectorate. I would hypothesize that those filing suit in court would increasingly be workers who could afford to pursue claims at different levels of disputing, and that behind those individuals would be interest groups which collectively wanted to use the courts to further their social objectives.[64]

Second, the relatively frustrating experience of going to court, especially in view of raised expectations, would have had a dissuasive effect. As the courts did not change their ways and means of handling grievances, plaintiffs were likely to be easily disappointed. Cases had to pass through many filters, delays were considerable (and longer after the period of high intake), some cases disappeared entirely, and the atmosphere of the courts was not sympathetic to worker problems.

V. LABOR COURTS AND THE INSPECTORATE COMPARED: THE ROLE OF POLITICS

It has been observed that the focus of research and reflection on the dispute at the more or less individual level has tended "to isolate and concentrate on what is manifest. It has thus ignored larger, more complex clashes that explicitly concern social policy, conflict among socioeconomic, ethnic, and political groups, and other polycentric conflict" (Steele, 1977: 667). In the Chilean context of rapid sociopolitical change, it seems especially relevant to consider labor grievances as part of a larger conflict between workers and employers over working conditions and the worker's right not to be dismissed in an arbitrary manner. This perspective is especially appropriate because, first, quite a few workers themselves saw their grievances this way. Second, we have not been dealing

[64] Obviously, there are other categories of complainants. There is the querulous person and the socially isolated person who takes the opportunity to be heard, among others.

with what happened to individual disputes but with litigation rates—that is, aggregate dispute behavior—and with the assertiveness of institutions dealing with labor grievances. In Chile increasing numbers of people believed that mobilizing the strength and authority of state institutions would positively affect their interests. This is not to say that the individual dispute lost importance. On the contrary, it was considered by the plaintiffs as most important to win those suits, both for personal benefit and as a contribution to the more general struggle.

The initial increase in worker assertiveness as described above, was the result of a growing political awareness on the part of large sectors of the population, a process that had begun years earlier and had culminated in the election of a socialist president, Salvador Allende. That political strategy led to the attempt to mobilize, or at least utilize, state institutions as part of the legal road to socialism. This assertiveness, as expressed in increasing numbers of labor grievances presented to state agencies, met with two different responses. The Labor Inspectorate was eager to increase its participation in labor relations. It became more effective. It got more work done, and worker plaintiffs accordingly were more satisfied. A dynamic interaction set in. As more grievances were presented, more people were exposed to this relatively positive experience of redress, and the agency became more confident and assertive towards employers. The Inspectorate, unlike some civil courts, was not subjected to public attacks against the legality of its activity. To the best of my knowledge, no employer (during the period of the fieldwork) questioned such legality. There was a degree of apprehension and doubt, but there was no discrediting of the Inspectorate as such. This was to the clear advantage of the Inspectorate's image among its constituents, an image of sympathy for workers which had begun to develop during the Frei administration (1964-1970) and which further developed during the Allende years.

The labor courts, however, did not respond to the changing political and social conditions. They maintained their tradition of being relatively inhospitable to worker grievances. They developed no particular institutional interest in being actively involved in day-to-day labor relationships. They continued to be inaccessible, indifferent to workers' problems, slow in their procedures, and rather obsessed with the internal procedural order of their work and with their relatively low status in the hierarchy of courts. Their most important point of reference

was the Supreme Court. Their policy of systematically sending litigants back to the market place ("make a deal, bargain, and defend yourself in the process") had the inevitable effect of turning off worker-plaintiffs who had nurtured the expectation that a court of law would help them to assert their claims. The impact of the labor courts on labor relations was thus one of reinforcing and legitimizing the status quo. It is not easy to explain this negative phenomenon: why is is that the labor courts did not participate more actively in the process of sociopolitical change? Three factors may have contributed to the continued aloofness of the courts from the "real world." First, there was the negative feedback from the courts on wage earners as a group. At the outset of the Allende administration, more workers had gone to court with high expectations, but were frustrated because the courts did not respond positively. Information networks made sure these experiences were known to peer groups. And the Inspectorate became an ever more attractive alternative.

Second, as access to the courts was relatively difficult, it is likely that the constituency of the courts was not exactly the same as that of the Inspectorate. It consisted of the more organized sectors of workers, and these had stronger unions to help them assert rights. Also, in three sectors of industry new grievance procedures had been developed since the late 1960's as part of newly introduced collective contracts.[65] Third, the very marginality of the labor courts in the judicial hierarchy impeded experimentation with role performance. Being a judge in labor court carried low status, and promotion was important. Promotions continued to be controlled by the judiciary itself. So the important reference point of labor judges (both labor courts and the Labor Appeals Court) was the Supreme Court, and they preferred, naturally enough, not to rock the boat.

VI. CONCLUSIONS

I have argued that changes in individual grievance behavior and institutional responses to it in Chile from 1970 to 1972 were rooted in sociopolitical developments. The three-year Allende administration was not a revolution, but a strong push in the political direction that the country had already taken in the preceding decade. Institutional continuity was the

[65] These sectors were textiles, construction, and shoe and leather industries.

basis, or at least the framework, of the Allende administration. This institutional framework was used to support and help bring about social change.

The litigation which resulted from increased assertiveness by workers must be seen as a part of the developments which also brought a center-left government to power. Heightened political awareness induced certain sectors of wage earners to seek redress for individual grievances at state institutions, at the same time enlisting them as allies in their struggle—just as dispossessed entrepreneurs went to court to reclaim their property *and* to involve the judiciary in the political battle. This increased litigation was well received by the Inspectorate of Labor, which took the opportunity to become more actively involved in labor relations. The Inspectorate became a more helpful remedy agent for wage earners, and thus contributed to the litigation spiral. The image of the Inspectorate as a helpful and accessible remedy agent was a factor in the process of transforming clearly injurious experiences into grievances and claims for redress.

The labor courts responded quite differently. They expressed no overt desire to become more involved in day-to-day labor relations, or to play a different role in such matters. Grievants who did bring their cases to the labor courts reported negative experiences which persuaded others to avoid them. Unions began to provide more effective remedy agents and procedures. Several industrial sectors developed special labor grievance procedures, and the Inspectorate seemed ever more attractive. As much as anything, however, it was the marginality of the labor courts in the judicial hierarchy that made them reluctant to experiment with an alternative role.

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