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PARTY FAMILY OR NATION STATE? THE POST-DECISIONAL POLITICS OF SUPRANATIONAL SOCIO-ECONOMIC REGULATION

INTRODUCTION

The erosion of both the autonomy of individual states and the differences between the political Left and Right are often seen as the result of the increasing internationalisation of governance. Due to the legally binding nature and supremacy of its legislation over national law and policy, the European Union is often seen as principal cause of these developments in Europe. However, national officials play a major role in the formulation and national governments make important choices in the domestic implementation¹ of these policies. This article focuses on the latter aspect and examines the impact that the partisan complexion of government has on that stage of the policy process.

In the area of European integration ‘compliance’ with EU legislation has been linked to a wide range of factors, including institutional capabilities, culture, veto points, issue salience and the organisation of domestic groups (Duina and Blithe, 1999, Haverland, 2000, Börzel and Risse, 2000, Tallberg, 2002, Sverdrup, 2004, Falkner et al., 2005a, Linos, 2007, Börzel et al., 2010, Mastenbroek and Kaeding, 2006, Sprungk, 2013, Versluis, 2007). These are associated with either the enforcement (Downs et al., 1996) or the management perspective (Chayes and Chayes, 1993) on compliance found in the international relations literature. Scholars who touch on the relevance of party government (and, in effect, follow the call by Mastenbroek and Kaeding to go beyond the static notion of ‘goodness of fit’ by examining the preferences of key players) focus overwhelmingly² on the transposition of EU directives into the national statute books - or even one aspect thereof, such as timeliness (see, e.g. Toshkov, 2007, Spendzharova and Versluis, 2013) - rather than the more challenging task of analyzing how these preferences are acted upon in subsequent stages³, do not problematise the origin of party preferences and, finally, disagree on their impact⁴.

A change of party in government may alter the domestic pattern of implementation. First, domestic political contestation and their distinctive *référentiel* induce the main parties to pursue policies that distinguish them from their competitors even in the era of traditional voter de-alignment. Second, the governments of EU member states have the right to pursue higher standards than those stipulated by EU legislation in policy areas such as socio-economic regulation and the protection of the environment. Finally, the ‘parties matter’ thesis (see, e.g. Castles, 1982) has been called into question due to globalization and European integration, but more recently comparativists argued that parties of the Left and Right that operate in the same country vary on European integration and have more in common with other parties of the same family in other countries (Marks and Wilson, 2000, Marks et al., 2002).

On the other hand, cross-national differences between parties of the same political family can also be expected due to a range of factors such as the political salience of membership of the EU, policy legacies, domestic institutions, etc. So, instead of

separating the partisan dimension from the specificities of the domestic context, the two ought to be examined together.

This analysis necessitates two kinds of comparisons reflecting the logic of both the most similar and the most different systems. A *within*-country analysis facilitates the discussion of the ‘parties matter’ thesis since in this way the context is kept constant and only the parties in government vary. A *cross*-country comparison facilitates the exploration of the applicability of the ‘parties matter’ thesis in different settings. This article examines the implementation (i.e. transposition and carrying out) of a typical example of EU socio-economic regulation (namely the original Working Time Directive⁵) by governments of the Left and the Right in Britain and France. Several factors motivate these choices and allow broader conclusions to be drawn⁶.

Rather than being confined to a narrow policy area, this Directive directly relates to a broad range of policy considerations since it affects the availability and cost of labour, health, safety and other social considerations such as work-life balance and family life. Second, it exemplifies the EU’s style of socio-economic regulation: it involves specific common minimum standards that must be met within a specific time frame, while individual member states retain a degree of discretion mainly with regards to pursuing higher standards. In addition, it directly relates to the socio-economic domain - which is the most salient issue dimension in Britain and France (Lijphart, 1999: table 5.3) - i.e. precisely the broad policy area where the Left and the Right are thought to have converged in the past two decades. This is why it cannot be construed as a ‘most likely case’⁷ where few or insignificant differences between governments of different ideological orientation can be expected, given the argument regarding policy convergence between the Left and the Right (Caul and Gray, 2000).

The selection of Britain and France reflects the logic of the most different systems design. Despite their similarities in terms of their association with the Westminster model and their level of economic development, they differ in several ways, namely the political salience of membership of the EU (thus producing different structures of incentives for parties), their policy traditions in this area (legislative interventions in the case of France unlike the UK where post-1979 break with the tradition of collective *laissez-faire* in favour of the autonomy of employers and the individualisation of the workforce), patterns of interest organization (trade union membership, organizational coherence party-union links on the Left), and the extent of change that the Directive in question would bring to pre-existing domestic policy. These will inform the cross-national comparison.

Using process tracing to analyse this case diachronically, and drawing on a broad range of sources including documentary material and 64 interviews with three sets of stakeholders⁸, analysis here focuses on the comparison of the behaviour of governments of the Right and Left between 1993 and 2010. These are government decisions that relate not only to the legislative domain (such as the scope of the legislation that transposes EU directives, the level of protection offered by means of rights etc.) but also the broader mobilisation of the tools of government (including public agencies in charge of enforcement, instructions to them, efforts to address problems during the post-transposition stage etc.) in an effort to cope with the exigencies of the directive. Is the partisan complexion of government reflected in these decisions? That is this article’s central question. The next section outlines the

theoretical framework, the third presents the empirical material, the fourth discusses it and the final one concludes.

CLEAVAGE THEORY AND THE IMPORTANCE OF ‘THE NATIONAL’

In the original formulation of the argument by Marks and Hooghe, two dimensions were thought to define the structure of political contestation in the EU (Hooghe and Marks, 1999). The vertical dimension relates to the issue of sovereignty: those who support deeper integration are distinguished from those who seek to preserve the nation state. The horizontal dimension reflects the conflict between the Left and the Right that remains an enduring organising principle of political contestation in European states (Lipset and Rokkan, 1967). On redistribution and the regulation of capitalism, parties of the Right aim to reduce taxes, government spending, regulation and the role of the state in the economy while parties of the Left hold the belief that government should remain a significant actor in the economy. More broadly, unlike the Right, the Left supports intervention to promote equality and a more substantial conception of liberty. Though subsequent work has demonstrated the relevance of a non-economic, cultural or ‘new politics’ dimension (Hooghe et al., 2002) distinguishing between Green, alternative and libertarian parties on the one hand and traditionalist, authoritarian and nationalist parties on the other (GAL/TAN), they have also demonstrated that ‘basic structures of party competition in the East and West are fundamentally and explicably different’ and in Western Europe (the focus of this article) ‘there are strong affinities between Left and Gal and between Right and Tan’ (Marks et al., 2006: 155, 157).

Where are parties located in this structure of political contestation and why? From the perspective of the IR-inspired liberal intergovernmentalism (Moravcsik, 1998), the *national* location of a political party can be expected to determine its preferences. On the contrary, drawing on cleavage theory and new institutionalism, Marks and Wilson sought to explain the position of national political parties on European (political and economic) integration between 1984 and 1996. Lipset and Rokkan – key exponents of cleavage theory - construed modern European party systems as the products of historical conflicts that took place between the Protestant Reformation and the Industrial Revolution that created dichotomies of interests (centre-periphery, church against the state, primary against the secondary economy and, finally, the class cleavage pitching labour against capital). The interactions between these cleavages subsequently shaped political alignments. Enduring and distinct identities, institutions and patterns of political conflict have been created that explain the ‘freezing’ as well as national variations in party systems. Second, as institutionalists have claimed, organisations handle new issues on the basis of existing schemes and standard operating procedures (March and Olsen, 1989). On the basis of these two core claims and drawing on empirical evidence from an expert survey, Marks and Wilson conclude that parties assimilate the new issue of European integration into pre-existing ideologies that are shared by party leadership, activists and constituencies and mirror enduring commitments on core domestic issues. As a result of their use of these historically defined ‘prisms’ – a form of shared *référentiel* - parties develop preferences on European integration that have much more in common with other parties in the same political family than they do with other parties in the same country (Marks and Wilson, 2000).

Mainstream parties (Social Democrats, Liberals, Christian Democrats and Conservatives) are divided into two (not necessarily homogenous) groups, namely those who support *regulated capitalism* and the proponents of *neo-liberal capitalism* (Hooghe and Marks, 1999). Right wing parties support market integration – i.e. ‘they support European integration in general terms - but they oppose policies, particularly concerning the environment, cohesion, or employment, that regulate capitalism’ (Hooghe et al., 2002). Neo-liberal capitalism seeks to insulate markets from the political sphere. Support for the single market project under narrowly-defined supranational supervision is combined with decision making in fora where national governments retain a privileged role unlike the national arena where they are faced with historically rooted social groups (such as unions) and directly elected parliaments. Competition extends to firms, workers as well as governments.

The ‘partisan hypothesis’ can thus be defined with regard to the implementation of EU public policy at the domestic level. Since the issue of European integration is assimilated into pre-existing ideologies that are shared by party leadership, activists and constituencies and mirror enduring commitments on core domestic issues, these historically defined prisms come into play when EU policy takes precise meaning, i.e. when it is implemented at the national level. When in power, parties are expected to deal with the exigencies of EU policy implementation in a manner that reflects their commitment to one of the aforementioned ‘prisms’. In other words, the parties use these prisms to make sense of what is at stake, define their position and shape outcomes.

However, variations *within* political families (across borders) can also be expected (Marks and Wilson, 2000). Amongst social democrats initial differences relate to domestic achievements and the development of the process of integration. Social democratic parties that have been successful at the domestic level initially adopted a negative stance on European integration (which they originally saw as a threat to their domestic achievements) while their counterparts in countries where social democracy was weak or hard to sustain had a more positive stance. Subsequent developments at the national and the European level have led these two groups to converge to a much more positive attitude towards European integration. Conservative parties stand on the class cleavage like their social democrat opponents but unlike them, they appeal to middle and upper class voters. Variation in their positions on European integration reflects the relative strength of two ideological strands that permeate these parties, namely neo-liberalism (which entails support for free markets and minimal state intervention) and nationalism that rejects the notion that class is relevant to the major political issues facing the nation. Neo-liberalism leads them to support European integration as a mechanism that can weaken national market regulation, coupled with minimal institutions that ensure the credibility of the European market without constraining competition between national regimes that seek to attract mobile factors of production. Nationalists, on the other hand, whilst sharing with neo-liberals opposition to political integration at the European level, disagree with them on the notion of weakening national sovereignty even if this is required for the advancement of economic integration.

There are additional reasons why variation can be expected from parties of the same political family that operate in different states. The political salience of EU

membership (Steenbergen and Scott, 2004) might induce them to adjust their action in the implementation stage so as to avoid paying the price in electoral terms. Moreover, the autonomy of political parties may be affected by the distribution of power between domestic groups (trade unions, employers). In that respect, the degree of centralization, internal coherence, and representation among these groups might be particularly influential (Menz, 2003) as is the party-union link on the Left. Finally, in the socio-economic domain the status quo ante might also account for differences within political families since change creates winners and losers. As a result, the margin of discretion (and political outcomes) may vary across states, despite a common ideological basis shared by parties of the same political family.

THE WORKING TIME DIRECTIVE IN BRITAIN AND FRANCE

The Directive explicitly stipulates that individual member states reserve the right to apply higher standards, establishes compulsory limits regarding the amount of time a worker can be required to work (48 hours per week on average including overtime) and the amount of time a night worker can be required to work (an average of eight in 24 hours of work) coupled with record-keeping requirements regarding the regular use of night workers, and creates a right for night workers to receive free health assessments before their employment in night shifts and at regular intervals thereafter. In addition, it creates rights to eleven consecutive hours of rest per day and (when the working day is longer than six hours) a right to an in-work rest break, a weekly rest period of 35 consecutive hours and a day off each week and four weeks' paid leave per annum. The Directive also offers the possibility of various derogations and exemptions, in part as concessions made in an effort to appease the Conservative British government. The most important concession was the 'opt-out' clause whereby member states have the right to introduce legislation that allows individual workers to exceed the 48-hour limit. Other concessions include derogations (without compensation) from the provisions on daily and weekly rest periods, breaks, limits to work at night, the weekly work limit and the reference period used to calculate working hours for various groups, activities and occupations (such as executives, family workers and clergymen).

In other words, the directive deals with value-laden issues (the autonomy of the market, the individual as a worker-economic unit or a multi-faceted human being, the autonomy of intermediary institutions and the role of the state in the management of economic affairs) and symbolizes an uneasy compromise between neo-liberals and the supporters of regulated capitalism. Chief amongst the issues raised by the directive are the scope (i.e. the workers covered) of its transposition into domestic legislation, the day-to-day action by national implementing authorities, the issue of flexibility and, finally, the relationship to unions and employers.

UK: From the neo-liberal Tories to New Labour

In Britain these provisions were seen as a precursor of significant change. During the last quarter of the 20th century Britain had moved away from the tradition of 'collective *laissez-faire*' (i.e. the prevalence of collective agreements and the concomitant confinement of legislation to an auxiliary role) (Davies and Freedland, 1993) and a basic 48-hour week that had been established through collective agreement in the trend-setting engineering industry in the 1920s and had subsequently

been reduced to 39 hours. Premium rates of pay for overtime and unsocial hours of work - rather than restrictions on working hours as such - was a central concern for unions and their members throughout the 20th century, to a large extent because low basic pay rates meant that paid overtime had become institutionalised both for employers and entire households that relied extensively on it. As a result, the actual hours worked regularly exceeded the basic working week (*Financial Times*, 13 November 1996:20, 10). In addition, there was no statutory annual paid leave entitlement.

While the Conservatives opposed the draft directive as well as the EU's right to be involved in this area (instead of leaving the regulation of working time to employers and individual employees), Labour supported it. These preferences mirrored party stances on the regulation of the economy, rather than membership of the EU⁹. Consistent Tory support for the single market was a means to cement domestic neo-liberal reforms. In contrast, the Labour Party seized on the opportunity and supported the Directive already since the submission of the Commission's initial proposal in the summer of 1990. Under both Neil Kinnock and John Smith, Labour and the leadership of the trade union movement consistently supported regulated capitalism at the European level as a way of promoting 'the creation of a high-productivity, high-skill and high-wage economy in Britain and in the Community, instead of seeking to compete on the basis of low costs and low skills' as John Smith put it (*Hansard*, 23 June 1993:cols. 311-12).

After managing to dilute the draft directive, the Tory British government unsuccessfully sought to have the Directive annulled by the European Court of Justice but lost (C-84/94 *United Kingdom v. Council*). The Labour Party remained committed to the Directive despite the policy reforms that followed Tony Blair's election as party leader in 1994. These were meant to help shed the image of 'old Labour' in favour of decidedly business-friendly preferences, including emphasis on a flexible labour market.

The Conservative government's determination to undermine the operation of the Working Time Directive in Britain was evident in the consultation document it issued in December 1996. This effort was so resolute that in parts the intentions of the Tory government fell far short of the requirements of the Directive (Barnard, 1999) in line with the partisan hypothesis. The Conservative government sought to reduce significantly the scope of the application of the Directive through an excessively broad understanding of the excluded sectors. It also refused to offer a substantive interpretation of the Directive's provisions that required it in a calculated attempt to limit its scope (DTI, 1996). Finally, it did not offer a mechanism for the establishment of 'workforce agreements' in workplaces where there was no recognised trade union. Despite the deadline of November 1996, the transposition of the directive had to wait until after New Labour's landslide victory in 1997.

The transposition of the Directive by the new government offered clear evidence in support of the partisan hypothesis in two ways. First, it differed clearly from the intentions outlined in the Conservative government's consultation document. Second, it echoed the centrist moderation of the entire New Labour project. The New Labour government's proposals - and ultimately the Working Time Regulations 1998 whereby the Directive was transposed into the domestic legal order - differed from

those outlined by its Conservative predecessor in a number of important respects (Hall et al., 1998), including the following: Their scope is much wider and their provisions more generous to workers. The regulations apply not to ‘employees’ but to ‘workers’ which is a broader category (Barnard, 1999), explicitly reject the mechanism of exclusion by association used by the Conservative government and opt for an expansive definition of night work thus bringing under the Directive’s protective shield a much wider group of night workers. They establish a shorter qualification period for paid annual leave and employ a more generous formula for the calculation of holiday pay than the method used even in the engineering industry where pay rates were not problematic. “The government’s formula includes bonuses and allowances in the calculation of a week’s pay that most firms did not include in order to calculate and pay the holiday pay entitlement” as an official of a major employers’ organization put it (interview, London, 16 January 2009). In addition, the regulations establish a longer in-work rest break and a mechanism so that ‘workforce agreements’ can be reached where there is no recognised independent trade union while the notion of ‘workforce’ is defined in a manner that protects the outcome of collective agreements. Finally, they provide for a dual system of enforcement involving employment tribunals for cases regarding rest and leave entitlements and the Health and Safety Executive (HSE) and local authorities in cases that concern mandatory limits and (when it comes to night workers) health assessments.

Nevertheless, some *similarities* were also evident, the most important being the actual use of the individual opt-out, making Britain the first and, for years, only member state to do so, in part as a result of ‘triangulation’. Thus, the government rejected calls from the unions to transpose the Directive in a minimalist, i.e. declaratory, manner (so as to give unions “flexibility in negotiations with difficult sectors or industries”), and phase out the opt-out (interview with former trade union leader, London, 21 November 2008). Like its predecessor, the New Labour government used – though only until November 1999, in line with the Directive – the right to restrict to three weeks the statutory entitlement to paid annual leave.

Evidence indicates that the New Labour government’s decisions reflect an enduring wish to make the Directive work in practice but the effect of its efforts has been mitigated by the determination to remain as faithful as possible to its business-friendly profile - a cornerstone of the entire New Labour project. Involving formal institutions in implementation was seen, in the words of then Prime Minister Tony Blair’s words, as “the corollary of the protection of the individual opt-out”, i.e. an effort to ensure that individual choice would be exercised genuinely freely (interview, London, 27 March 2009). In reality, though, the pattern of implementation reflects the government’s (often implicit) preference for much ‘softer’ tools such as advice and conciliation through the Advisory, Conciliation and Arbitration Service (ACAS), the Vulnerable Worker Enforcement Forum, creating a helpline and showcasing examples of companies that successfully met the challenges posed by the long hours culture. After the transposition of the Directive in 1998, the HSE created a network of seven regional Working Time Officers (WTOs) who handle only non-risk-based cases. They offer advice and have the power to investigate complaints by visit but no power to take enforcement action. The initial number of WTOs reflected their expected workload and – more importantly – a key decision made directly by the government, in line with its broader preferences: it instructed the HSE (and, as a consequence, local authorities) to adopt a reactive approach to enforcement and not to

treat working time as a matter of high priority (Health and Safety Executive, 2000). This reduced the unscrupulous employers' incentives to adapt to the new working time-related legislation.

The opt-out is another key choice that has affected the pattern of implementation. The regulations have had marginal or no impact on the organisations that used it extensively (Neathey and Arrowsmith, 2001). Numerous firms have indicated that they have introduced changes with the aim of 'working smarter' – thereby leading to improved efficiency and improved customer satisfaction (Neathey and Arrowsmith, 2001) but the impetus to do so would have been far greater in the absence of the opt-out. Furthermore, the opt-out has weakened the employers' incentive for reform through workforce agreements. It can be seen as an 'insurance policy' for employers, but there is evidence of abuse. Indeed, 'many have signed it without realising it, as part of their employment documents' or because they feel compelled to do so, e.g. when employers turn it into a condition of employment or when workers feel that their income will, or might, suffer if they do not sign it (Commission of the European Communities, 2003). Although the New Labour government supported its retention on grounds of 'individual choice', this choice is often exercised in ways that reflected the unequal distribution of power between employers and individual workers as well as lack of awareness on the part of employees and - as the CBI acknowledges, employers. Indeed, 68% of those who work long hours were aware of the legislation regarding working time limits but only 28% of them were able to cite the right weekly limit and no employees have signed the opt-out in approximately three quarters of the workplaces that are characterised by sustained long working hours (DTI, 2004). Despite the opt-out and the unions' enduring weaknesses, unions and employers have been negotiating in the shadow of the law in an effort to reduce reliance on overtime. Several agreements have been reached that meet the unions' objectives in terms of pay, working hours and productivity. Examples can be found in sectors as diverse as the food industry, financial services and energy (interview with TUC official, London, 27 November 2008) and the printing industry.

Following the change of leader in 2005, the Tories singled out the Directive as an example of policy areas that a future Conservative government would seek to bring back under national control (*The Times*, 9 November 2009: 5), unlike the New Labour government that supported the status quo both at the European and the national level. After the general election of May 2010 the coalition government of the Tories and the Liberal Democrats vowed to 'work to limit the application of the Working Time Directive in the United Kingdom' (HM Government, 2010).

France: From the moderate Left to the neo-liberal Right

The regulation of working time has been a major political issue for decades in France. In substantive terms, the French policy tradition entails the gradual reduction of working time. This broad trend does not obscure differences between the Left and the Right. While the Left often promoted the reduction of working time as (i) an expression of its *projet de société* and (ii) a means to create jobs, the reductions introduced by the Right were often defensive, i.e. they were aimed at job protection. The French Left and Right have operated within a culture of collective bargaining, but the Left has used legislation extensively so as to set higher standards. This is so because for the French Left the relationship between employers and employees is unbalanced. As a result, the Left was much more willing than the Right to intervene.

The Right has been much more willing than the Left to (i) finance working time reductions from the public purse and (ii) focus on the *organization* of working time (i.e. choices regarding its use such as flexibility clauses etc). In contrast, the Left has been much more concerned with the duration of working time (since this is a key determinant of productivity, availability of labour and employment levels) and it considers part-time work as *temps subi*. Nevertheless, as regards the organization of working time, these are differences of degree.

Despite limited legal differences¹⁰, there was no major conflict between the French arrangements and the Directive. “Il n’y avait pas de conflit majeur sur le fond entre la directive sur le temps de travail et la législation nationale française” as a former senior official of the Ministry of Labour put it (interview, Paris, 7 May 2009; also interview with French ministerial adviser, Paris, 15 June 2009). This is due to the combined effect of domestic provisions and collective agreements. In addition, France was not thought to be associated with excessive working hours in part due to the presence (since the second half of the 19th century) of the *Inspecteurs du travail* who are responsible for the implementation of employment legislation on a day-to-day basis.

Although the Directive had been proposed and negotiated while the Socialists were in power in France, it was formally adopted eight months after the Centre-Right’s return to power following the elections of March 1993. Unlike the Conservative British government, the new French government of the Centre-Right did not oppose the Directive, nor did it transpose it during the three-year transition that ended in November 1996, despite having a robust majority in Parliament and passing a major law (*loi Robien*) in the same policy area during this period.

The radical (but gradual) reduction of statutory working time from 39 to 35 hours without salary reduction featured prominently in the Socialists’ election manifesto ahead of the 1997 election that led to the victory of *Gauche plurielle*. Combating working time abuses and the use of overtime was, in addition to the fight against unemployment – the explicit aim of this reform. The government of the Left took action that involved both domestic policy change and the transposition of the Directive through the enactment of the Aubry laws, despite ferocious opposition from the major employers’ national associations and their political allies. The first Aubry law (Loi n° 98-461) dealt with the outstanding issues of the 11-hour daily rest and rest breaks and set out the basic parameters of the major policy reform, leaving room for negotiations between the social partners on practical details. In that sense, the government of the Left restored the pre-eminence of the legislative route and encouraged negotiations between the social partners. These two methods were combined because of the weakness of the French trade unions.

The full transposition of the Directive entailed the introduction of a new definition of working time, the modification of the *Code du travail* by a series of decrees covering rest periods in specific sectors (such as agriculture, the civil service etc.), the adoption of the second Aubry law that resolved the problem of the 24-hour weekly rest period and a law (Loi n° 2001-397) that dealt with issues regarding night work. The first Aubry law reduced statutory working time to 35 hours per week. This would apply from January 2000 to firms employing 20 persons or more and two years later for the rest; it also encouraged firms to negotiate with their employees the more rapid reduction of working time. The provision of financial aid was conditional on job

creation and the commitment to maintain these jobs for at least two years. The second Aubry law built on the agreements that had been concluded in the meantime, guaranteed for five years the income of workers on the minimum wage, significantly reduced the conditions for the provision of financial incentives to firms and did not make particular demands on firms with regards to the calculation of the time actually worked.

The transposition of the Working Time Directive contributed to the re-balancing of the relationship between the social partners. Between them, the Directive and domestic French legislation defined boundaries that curtailed the employers' autonomy whilst strengthening the employees' (collective) bargaining position. This contrasts markedly with the reforms introduced by the Right after its return to power in 2002. In an effort to boost job creation, the Jospin government significantly reduced the hitherto strong incentives for overtime, i.e. the time actually worked over and above 35 hours.

In addition, the option of utilising the individual opt-out – the most controversial aspect of the Directive – was rejected by the government of the Left because the corresponding clause of the Directive was seen as a temporary measure and, above all, its utilization was construed as unacceptable in the French context. “L'utilisation de la clause opt-out était impensable politiquement” as a French ministerial adviser put it (interview, Paris, 15 June 2009). Finally, the Aubry laws dealt with the thorny issue of the working time of *cadres*. Until the late 1990s, their working time was covered by the general arrangements regarding other employees but French courts had acknowledged the exception of those whose pay is independent of their working time, i.e. usually senior executives whose tasks involve a significant degree of autonomy (Askenazy et al., 2004). The second Aubry law formalized this arrangement specifically for this narrow category of executives.

Evidence also indicates that the orientation of the parties in power directly affects the pattern of implementation even in a country where the Directive per se was not controversial. In other words, who is in power matters, in line with the partisan hypothesis. As will be demonstrated below, decisions made by the government of the day in pursuit of domestically-defined policy priorities have affected the implementation of the Directive.

The implementation of the Aubry laws led to the creation of a significant number of jobs but it also promoted flexibility and the diversification of the workforce even within the same firm and, finally, it affected the quality of working conditions. The combination of reduced working time and increased flexibility deployed by the government of the Left was compatible with the Directive. During this process the active French framework remained above the level stipulated by the Directive, whereas the post-2002 drive towards liberalisation introduced by the Right transformed the Directive into a safety net for employees.

Flexibility took two forms, namely ‘modulation’ (i.e. matching the cycles of working time to the fluctuations of workload) and further recourse to the calculation of working time on an annual basis (‘annualization’). Workers and their representatives accepted the combined recourse to these forms of flexibility only after the government had turned them into parts of a broader and transparent trade-off that also

involved reduced working time as well as job creation. However, increased flexibility also generated problems, including the non-payment of overtime – “il y a le problème d’heures supplémentaires travaillées mais non-payés” – in some sectors due to the extension of the reference period to a year (interviews with labour inspectors, Paris, 15 and 16 June 2009), thus enhancing (at least initially) the appeal of the Right’s response to the Aubry laws, especially in the run-up to the 2007 presidential election which the Right’s candidate (Nicolas Sarkozy) fought on the basis of the slogan ‘travailler plus pour gagner plus’ (work more to earn more).

The Right’s extension of the *forfait en jours* to wider groups of employees after 2002 corresponds to the determination to undermine the Jospin government’s reforms and turn the regulation of working time into a core aspect of competition between firms – a key trait of neoliberalism. Whereas in the past the differences between the two main political families allowed the domestic regulation of working time to remain clearly above the standards stipulated by the Working Time Directive, the post-2002 reforms introduced by the Right effectively turned EU legislation into a safety net for French employees. The Right’s pursuit of liberalization pushed standards down, i.e. much closer to (or, at times, even below) the level stipulated by the Directive. These reforms focus on three core elements of the Aubry laws, namely the duration and cost of overtime and – more importantly – flexibility. Whilst not explicitly abolishing the 35-hour week, these changes have transformed it beyond recognition in a manner that directly corresponds to the wishes of the *patronat*.

More specifically, the *loi Fillon* dramatically increased the overtime quota, significantly reduced the cost of overtime and generalized the system of *forfait en jours* that had hitherto been limited to executives. After Sarkozy’s victory in 2007, the *loi TEPA* encouraged recourse to overtime by abolishing taxes on earnings from it and reducing the corresponding social security charges both for employers and employees in an effort to stimulate demand by increasing purchasing power. The other central aspect of the reforms introduced after 2002 concerns the hierarchy of norms in the area of employment legislation and the extension of the scope for derogations (Loi n° 2004-391) and the significant enhancement of the power of employers. Finally, the role of street-level implementers has become a great deal more difficult because an already complicated set of arrangements has been rendered even more complex.

The employers’ increased autonomy has been associated with problems regarding the flexible use of the workforce in particular in sectors marked by low-skilled and often precarious jobs and low levels of unionisation such as logistics, retail, cleaning, security (interviews with labour inspectors, Paris, 18 June and 7 July 2009, Île de France, 7 July 2009, Lyon, 10 July 2009). Although the second Aubry law stipulated that changes could be made to an employee’s work schedule only after a week’s notice had been served, meeting this *délai de prévenance* has remained problematic – despite the fact that the same principle was reiterated in 2008 - as frequent and sudden changes are made to work schedules and employees (or their representatives) are not always consulted (interviews with labour inspectors, Paris, 6 and 8 July 2009, Lyon, 10 July 2009). The occurrence of these problems in the aforementioned sectors is linked to a large extent to the precarious nature of these jobs and the fact that low-skilled employees can be easily replaced. More importantly, the reversal of the hierarchy of norms has had a profound effect on the ‘ground’¹¹. The task of labour inspectors has become much harder because facts have to be compared to a much

more complicated and highly individualized set of arrangements - especially those that have been created at the level of firms. This renders controls much more time-consuming, uncertain and cumbersome.

PARTY FAMILY OR NATION STATE?

The preceding analysis reveals differences both *between* party families (in line with cleavage theory) and *within* them. First, each within-country comparison confirms the partisan hypothesis derived from cleavage theory. Both cases reveal that parties of the Right sought to maximise the autonomy of employers, while parties of the Left sought – to varying extent – to channel it. In other words, not only do ‘[p]olitical cleavages give rise to ideological commitments or “prisms” through which political parties respond to new issues, including European integration’ (Marks *et al.*, 2002:585) thus shaping party preferences, but the influence of the same prisms extends to the implementation of EU public policy.

Second, the *cross-country* comparison reveals a more complex (and, in the case of the Right, dynamic) picture: the range of options that is available to ruling parties is country-specific. The national context affects the scope of the validity of the partisan hypothesis though differences are more significant within the Left than they are amongst conservative parties in Britain and France. Among conservative parties, although the rhetoric is much tougher in Britain than it is in France, there is growing similarity between the substance of their views not on the issue of the competence of the EU but in regards to the role of the state. After its return to power in 2002 the French Right moved clearly and decisively in the direction of deregulation by means of successive legislative reforms that dismantle the *acquis* of the Left. In doing so it followed the British Conservatives. Both parties firmly (and when in power actively) support the autonomy of employers and flexibility in the labour market and now share the willingness to turn working time into a key element of regime competition. This is why both parties now accept the logic of the opt-out. On the other hand, although the PS and New Labour agree on the fundamental issue of the EU’s involvement in this area of policy, when in government the latter was timid in comparison to the former. Eager to maintain and further promote flexibility in the labour market, the New Labour government made full use of the opt-out and ‘soft’ tools in the implementation phase unlike the PS which remained faithful in the deployment of a much wider range of tools. So, what accounts for this cross-national picture?

Cleavage theory helps shed light on the dynamics within the right of the political spectrum. The UMP does not share the Tories’ scepticism towards the involvement of the EU in the regulation of working time but it has certainly come to share their deregulation agenda. In line with cleavage theory (Marks and Wilson, 2000), the UMP’s gradual turn from Gaullism to a clear neo-liberal stance was already evident since the 1980s in its forerunner (RPR) (Baudouin, 1990) and even more so after the election of Nicolas Sarkozy as party leader in November 2004 against his *souverainiste* main rival, and the ascendancy of economic liberals - such as François Fillon (who served both as employment minister and prime minister in post-2002 governments of the Right) and Jean-François Copé (budget minister and later on leader of UMP’s parliamentary group in the National Assembly) - reflect a change in the balance of power between the two ideological strands (free marketeers and the

nationalist strand) that permeate the main French conservative party (as it does elsewhere in Europe). The neo-liberal wing of the party has spearheaded the attack on the 35-hour working week in addition to promoting tax cuts for higher revenues (Haegel, 2007). The most telling piece of evidence is the transformation of the regulation of working time into an aspect of competition between firms and, by extension, between governments that seek to attract capital which is a key component of ‘the European project of neo-liberalism’. This marked a clear break with the French Right’s past. In addition, since France has been ruled largely by governments of the Right or the Centre-Right since the end of World War II, they have been associated with the development of the role of labour inspectors but the evolution of their role after the Right’s return to power in 2002 and, in particular, 2007 is another indication of the increasing strength of neo-liberal strand. By the same token, the rise of neo-liberalism within the British Conservative Party in the 1980s has weakened ‘one-nation Tories’ and has led to a break with the previous paradigm (collective *laissez-faire*) and the collective agreements that it entailed. The common thread that links these developments is the determination to promote the autonomy of employers and the individualisation of the workforce in the relentless pursuit of a neo-liberal conception of competitiveness.

Cleavage theory cannot explain the differences between the PS and New Labour in the case examined here. New Labour adopted a much more *laissez faire* stance than the PS did on the key issues of (a) the individual opt-out and flexibility more generally and (b) the use of a standard or a light-touch style of enforcement. New Labour chose to respond largely in the terms of the Right’s *acquis* and its own commitments to business organisations. In addition, the equilibrium point chosen by New Labour could be defended vis-à-vis competing interests, namely the unions (since it was better than the *status quo ante* and what the Tories were willing to do), businesses organisations (since Britain had to comply with the Directive and the problem of excessively long hours was widely recognised) and low-paid individual workers who needed the extra income generated by overtime and thus were sceptical of the weekly working time limit in the context of the UK’s residual welfare state. In addition, while New Labour could always highlight the progress made *because* of the Working Time Directive, the PS did not have this option (until the *alternance* of 2002) because the level of protection offered by domestic arrangements was higher than that offered by the Directive.

Patterns of interest organisation and party-union links appear to be inversely correlated with the action taken by the PS-led and New Labour governments. Membership levels¹² and organizational coherence are much lower in France and party-union links are much closer in the UK where the unions are Labour’s main financial supporters. Yet, the PS saw the low level of union membership as a reason for legislative intervention in this area of policy whereas for New Labour the pattern of declining (though much higher than in France) union membership in Britain was a factor that weakened the position of trade union leaders, especially in terms of the individual opt-out which remains an emblematic difference between the two parties. As regards density and centralization of membership in employers’ organisations, these are higher in France than in the UK. Yet, it was the New Labour government that made formal use of the opt-out and soft tools as part of its ‘business friendly’ stance, while the Jospin-led government introduced the 35-hour working week which

the CNPF/MEDEF vehemently opposed. MEDEF has supported the neo-liberal reforms introduced, since 2002, by the French governments of the Right.

The *political salience of membership of the EU* cannot explain cross-national differences within political families. The gradual dismantling of the 35-hour working week – done in a way that also affected the implementation of the directive – in France coincided with the deeply polarized debate on the ratification of the EU's constitutional treaty and the adoption of the controversial 'Bolkestein' (services) directive. If salience mattered, the French governments of the Right would not have adopted the deregulatory measures described above. The French Right also opposed the reforms introduced by the Jospin governments when European integration was not an active political issue in France. In Britain the Conservatives remained opposed to the directive throughout the period examined here, i.e. both when the issue of Britain's membership of the EU was active and when it was not. Labour supported the Directive and opposed the UK's opt-out from the 'social chapter' when a clear majority of British citizens opposed EU-level decision making on health and safety issues (Eurobarometer 39, fig. 3.9).

CONCLUSION

The impact of party government on domestic patterns of EU policy implementation has been contested, extant literature that deals with this issue is overwhelmingly focused on the analysis of transposition and does not problematise the origin of party preferences. In relation to that literature, two broad claims are advanced on the basis of the two sets of comparisons presented in this article, both of which reflect the acknowledged (Mastenbroek and Kaeding, 2006) need to go beyond the static notion of the 'goodness of fit'. First, each of the two within-country comparisons shows that parties matter not only in transposition - contra Linos (2007: 563) but more in line with Falkner *et al.* (2005: 322-3) - but also in the more complex *post-transposition* phase. This conclusion is in line with a growing body of literature that demonstrates that the internationalisation of policy making is not necessarily antithetical to party government (see, e.g. Jensen and Spoon, 2011, Zahariadis, 2010, Milner and Judkins, 2004, Rathbun, 2004) and also shows that the distinction between enforcement and management perspectives found in international relations literature can be exaggerated. This is so because the calculus on which the former relies is not fixed and the capabilities that the latter highlights are at least partly the result of domestic decisions reflecting ideological sensitivities. Moreover, unlike existing literature which had not problematised the origin of party preferences, this article shows the relevance of cleavage theory since (a) its core hypothesis has been confirmed and (b) provides a powerful theoretical underpinning as to the origin of these preferences. Second, the cross-national comparison reveals a more complex picture, demonstrating that there are more than one ways to 'comply' in the context of party government. While membership of a political family indicates the direction of the preferences of individual parties, the range of options that is deemed to be available to them (when in government) and the chosen equilibrium point are country-specific, mainly on the Left. On the right of the political spectrum, cleavage theory is useful also because it highlights the implications of the balance of power between the two strands that permeate conservative parties.

In other words, evidence indicates that the national context (the status quo ante, patterns of interest organisation and party-union links but not the salience of EU membership) in which ruling parties implement EU public policy affects the scope of the validity of the partisan hypothesis. In that sense, the autonomy of the nation state in the context of the implementation of EU policy in the socio-economic domain is not as restricted as it had hitherto been thought – rather, it is channeled - and far from ending domestic political contestation on the Left-Right axis, European integration and its concrete domestic manifestations remain subject to it. This conclusion is drawn from the study of two examples of the Westminster model and one type of policy. However, since (a) new governments cannot be expected to change everything and (b) policy-specific (as opposed to the more generic issue of EU membership) issue salience is likely to vary, comparisons across categories of public policy offer a promising angle for future research.

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¹ This process involves (a) the transposition of these rules into national statute books and (b) the subsequent action taken by national authorities aiming to give concrete meaning to the transposed rules. Compliance is a state of affairs and only one of a range of possible results of the implementation process.

² However, see (Jensen, 2007) on infringement proceedings and (Schmidt, 2014) on reactions to ECJ rulings.

³ Implementation research is a painstaking process requiring significant resources, which is why the authors of an extensive study of transposition covering 15 member states and several EU social policy directives acknowledged they 'could not conduct an in-depth study of application and enforcement' (Falkner *et al.*, 2005: 327).

- ⁴ While Linos argues that the government's position on the left-right scale does not 'seem to be of import' (2007: 563), Falkner *et al.* identify a 'world of domestic politics' where 'fit' with the government's preferences facilitates transposition (2005: 322-3).
- ⁵ Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organization of working time, *Official Journal of the European Communities*, L 307, 13 December 1993.
- ⁶ On the broader usefulness of 'small-N' studies see (Rueschemeyer, 2003).
- ⁷ The Working Time Directive was one of several employment-related directives that the UK had opposed in the early 1990s but at the same time it had a very good implementation record throughout the 1990s (Börzel, 2001: tables 2 and 3) and had also managed to secure concessions in the context of negotiations in the Council of Ministers (Falkner *et al.*, 2005b: 75-7, 122-3, 143-4). In addition, given how successful the Conservatives had been in presenting themselves domestically as the economically competent party, departing from their view was a risky route for Labour and in the specific case of working time one that may not have yielded political benefits since 'it was not a big demonstration, anger on the streets kind of issue' as a British former leading trade unionist put it (interview, 19 January 2009). So, from the UK perspective this is not a 'most likely case' in relation to the research question discussed in this article.
- ⁸ These were politicians (including members of parliament, a former prime minister of France, a British employment secretary and a shadow employment secretary), ministerial (and two prime ministerial) advisers, civil servants (a total of eight serving and former central government officials) and officials of parties, trade unions (including four former leaders of trade unions in France and the UK) and business organisations. These included 20 interviews with labour inspectors operating at central, regional and local levels in France (9) and health and safety as well as local government officials operating at the local and regional levels in the UK (11) with (i) a geographical coverage that included the two capitals and at least two regional centres of significant economic activity and (ii) levels of seniority that includes one junior, five mid-ranking and five senior officials in the UK, and two senior and seven junior officials in France.
- ⁹ It remained in place both when the employment portfolio was held by a Eurosceptic (Michael Howard) and a pro-European (David Hunt) Tory minister.
- ¹⁰ These differences concerned a ban on night work for women, the absence of a statutory limit regarding daily rest and an eleven-hour difference in terms of weekly rest.
- ¹¹ The proportion of firm-level agreements that dealt with working time has increased by more than 10 per cent between 2007 and 2008 unlike the trend observed in previous years (*Liaisons sociales*, 10 June 2009, 1).
- ¹² According to the OECD trade union density dropped from 18.3 per cent to 7.8 per cent and from 50.7 to 28 per cent respectively in France and Britain between 1980 and 2007.

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