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**Between the Party and the European Union?**

**The Regulation of Working Time in France**

*Dionyssis Dimitrakopoulos*

Do parties matter when EU policy is implemented in France?\* This article examines this question first in the context of cleavage theory and the literature on party positioning on European integration that draws attention to the origin and the nature of party preferences, and second in light of empirical evidence from the implementation of the Working Time Directive in France. It shows that, when faced with the same issue, governments of different ideological orientation responded in a way that reflected their historically defined *référentiel* rather than an EU *Diktat*. The argument here, then, is that far from ending domestic political contestation on the Left-Right axis, European integration and its concrete domestic manifestations in France are in fact subject to it.

**Party Government and International Governance**

The growing involvement of international fora (such as the G20), regimes, institutions, organizations or even regional quasi-polities (such as the European Union) in an increasing number of policy areas ranging from agriculture to defense is often thought to have contributed to the erosion of both the autonomy of the nation state and the traditional distinction between the political Left and Right. Recent research on France highlights both a *course au centre* amongst the mainstream parties and a growing belief amongst citizens that the differences between the Left and the Right are diminishing in part due to globalization and, more importantly, as a result of

membership of the EU.<sup>1</sup> The fact that EU law is binding and takes precedence over national legislation, combined with EU's propensity to produce "relatively centrist"<sup>2</sup> policies, might appear to lend support to the notion of curtailed national autonomy and increasing convergence between the Left and the Right, at least in terms of socio-economic policies. This is particularly important in France since the autonomy of the government and the capacity of parties of different ideological persuasion to make a difference at the national level was a central component of the debate within the Parti Socialiste and the wider French electorate with regard to the ratification of the Constitutional Treaty.

There are, however, three reasons to challenge this argument. First, voter de-alignment and other factors might well have promoted a move to the center, but domestic political (especially electoral) contestation coupled with distinctive historically defined *référentiel* are counterveiling forces inducing the main parties to pursue policies that *distinguish* them from their competitors in the domestic political arena.<sup>3</sup> Second, when national governments implement EU policies at the national level, they make consequential choices, rather than act as *automata*, because much of the EU's activity in socio-economic regulation leaves room for discretion, at least when it comes to the pursuit of *higher* standards. Finally, despite its pivotal role in the process of integration, France's record in implementing EU policies made under the old 'first pillar'—the Treaty of Rome, which established the European Economic Community—is far from impeccable.<sup>4</sup> The analysis of the mere transposition<sup>5</sup> of EU social legislation into French law has led scholars to categorize France as "a prime example of [the world of] neglect motivated by a kind of national 'arrogance'" because of the predominance of domestic policy considerations, which implies that "compliance with EU law is no goal in itself".<sup>6</sup>

Taken together, these three points indicate that an analysis that focuses on the partisan composition of the French government might help paint a more nuanced and accurate picture of the implications of EU membership for the autonomy of French governments. Yet the welcome focus of much of the existing literature on domestic factors<sup>7</sup> does not extend to the partisan dimension.<sup>8</sup> It does not, for example, take into account the change of party in government, which is an eminent expression of political change at the domestic level and a central attribute of advanced liberal democracies such as France. This is surprising since it is precisely in this political space that policy agreed upon beyond the state is implemented. A change of party in government can lead to a change of priorities or the use of different ways and means of dealing with a given policy issue.<sup>9</sup> The scholarly discussion of the “parties matter” thesis pre-dates the intensification of globalization in general and European integration in particular,<sup>10</sup> but the logic that underpins it has re-surfaced in recent research dealing with core EU policies, such as competition policy,<sup>11</sup> and overall attitudes towards European integration.<sup>12</sup> However, this central proposition has not been tested on the basis of detailed qualitative case studies focusing on the stage of policy *implementation* (“the continuation of politics by other means”<sup>13</sup>) which is when governing parties can make a difference through how they choose to allocate their attention and resources.

The empirical evidence I utilize in this article is drawn from the transposition and implementation of the Working Time Directive<sup>14</sup> by governments of different political persuasions in France. This directive exemplifies the EU’s style of socio-economic regulation, thus it allows us to draw wider conclusions.<sup>15</sup> It involves specific common minimum standards that must be met within a concrete time frame, while individual member states retain a degree of discretion mainly with regards to

pursuing higher standards. The Working Time Directive is particularly important because it directly relates to the most salient issue dimension in French politics, namely the socio-economic domain.<sup>16</sup> A controversial piece of legislation, the directive pitted neo-liberals against the supporters of regulated capitalism. If parties matter, one would expect the handling of this issue in France—the country where the distinction between the Left and the Right was born—to vary as a function of the party in power. In addition, France's long-established system of labor inspectorates<sup>17</sup> could reasonably be expected to cope with the exigencies of a Directive that did *not* depart radically from French domestic policy.<sup>18</sup> Moreover, the regulation of working time has been a key policy area for governments of both the Left and the Right in France and a contentious matter between them at least since the 1930s due to employment and income policy considerations, their *projet de société*, or both. Nevertheless, socio-economic issues are precisely the policy domain where Left and Right are thought to have converged in the last two decades in Europe in general and in France in particular. So how have governments of the Left and Right—faced with the same set of issues in the same political, social, economic, and institutional *milieu*—handled the issue of working time in general and the Working Time Directive in particular?

The next section draws on cleavage theory and the literature on party positioning on European integration in order to demonstrate in theoretical terms why party preferences should be expected to differ in a given member state in terms of their location in the EU political space. The third section focuses on the comparison of the behaviour of French governments of the Right and Left since the adoption of the directive so as to demonstrate empirically that when they exercise power, parties actually behave in different ways. Using process tracing<sup>19</sup> to analyze this case

diachronically, and drawing on a broad range of sources including twenty-nine interviews conducted in 2009 with elite participants (including politicians, trade unionists, and several labor inspectors with experience from different policy areas and parts of France) analysis shows that first, each political family's historically defined "prism" filters new challenges and leads to diverging attitudes and second, the change in government led to differences in the domestic pattern of implementation. This change is consistent with the partisan hypothesis: since parties rely on different *référentiels* and are located in different parts of the EU political space, their action reflects these differences in the context of the implementation of EU policy at the domestic level. To illustrate the point about partisan influence on the politics of implementation, it is important to demonstrate precisely how party behavior is linked to their respective *référentiel*. The next section draws on cleavage theory and outlines how these prisms come about.

### **Between the Party and the Nation? Political Contestation in the EU**

Two dimensions define the structure of political contestation in the EU.<sup>20</sup> 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 organizing principle of political contestation in European states.<sup>21</sup> On issues of redistribution and the regulation of capitalism, parties of the Right aim to reduce taxes, government spending, regulation, and the role of the government 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.

Where are parties located in this structure of political contestation and why? In the study of European integration, national governments<sup>22</sup> and the “national interest” were core features of theories derived from the study of international relations. Since European integration is thought—from that perspective—to proceed on the basis of bargaining between national governments, the *national* location of a political party would be expected to determine its preferences. Comparativists, on the other hand, have taken issue with this view. Marks and Wilson have sought to explain the position of national political parties on European (political and economic) integration between 1984 and 1996<sup>23</sup> on the basis of cleavage theory (put forward by Lipset and Rokkan) and new institutionalism. In their classic examination of political development in Western Europe Lipset and Rokkan 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 (center-periphery, church against the state, primary against the secondary economy and, finally, the class cleavage pitting labor 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”<sup>24</sup> as well as national variations in party systems. Second, as institutionalists have claimed, organizations handle new issues on the basis of existing schemes and standard operating procedures.<sup>25</sup>

On the basis of these two claims Marks and Wilson hypothesize that these cleavages constitute institutional frameworks or “prisms” through which political parties respond to new issues such as European integration. Using empirical evidence from an expert survey, they 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.<sup>26</sup>

Mainstream parties (Social Democrats, Liberals, Christian Democrats, and Conservatives) are divided into two groups, namely those who support *regulated capitalism* and the proponents of *neo-liberal capitalism*.<sup>27</sup> Right of Center parties support market integration—in other words, “they support European integration in general terms—but they oppose policies, particularly concerning the environment, cohesion, or employment, that regulate capitalism.”<sup>28</sup> 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 decisionmaking 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 and workers, as well as governments. The latter compete in an effort to attract mobile factors of production, especially capital.

On the other hand, economic realities gradually led the Social Democrats to a less sanguine view vis-à-vis the social democratic model at the national level. Social Democrats now lend their support to European integration as the means to pursue the political regulation of capitalism. Its supporters accept the notion that markets—instead of governments—ought to allocate resources, but they also stress the need for positive and negative regulation which, in many cases is more effective at the European level. They also support social dialogue and active policies that seek to



enable the less well-off to compete more effectively. Finally, unlike many of their opponents, supporters of regulated capitalism favor the enhancement of democratic institutions at the European level, which is where many consequential decisions are made.<sup>29</sup> As a result, the Left—Right dimension is associated with differences in support for EU action in a number of policy areas.<sup>30</sup>

On that basis it is possible to define the “partisan hypothesis” regarding the implementation of EU public policy at the domestic level: the historically defined party preferences on European integration shape a party’s stance on the implementation of individual policies. 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 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 the aforementioned “prisms.” In other words, the implementation of EU policy at the national level reflects long-standing, historically defined cleavages. Political parties use these prisms to make sense of what is at stake, define their position and shape outcomes. The next section examines this hypothesis in the context of the implementation of the Working Time Directive in France.

### **The Working Time Directive in France**

#### *Plus ça change?*

The Directive is a complex piece of legislation, originally proposed in 1990 but adopted in amended form in 1993. While it explicitly stipulates that individual member states reserve the right to apply *higher* standards, it establishes compulsory

minimum standards regarding the amount of time a worker can be required to work (forty-eight 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 twenty-four hours of work) coupled with record-keeping requirements regarding the regular use of night workers, a right for night workers<sup>31</sup> to receive free health assessments before their employment in night shifts and at regular intervals thereafter. In addition, it creates the right to eleven consecutive hours of rest per day and (when the working day is longer than six hours) the right to an in-work rest break, a weekly rest period of thirty-five consecutive hours, 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 keep the Conservative British government "on board." 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 forty-eight-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 short, the Working Time Directive sets minimum standards in some key areas, which are coupled with considerable scope for discretion in others and an emphasis on the involvement of the "social partners."<sup>32</sup> It deals with value-laden issues such as 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. The directive also symbolizes an uneasy compromise between neo-liberals who oppose the intervention of public

authorities in this area on grounds of efficiency, and the supporters of regulated capitalism, who support it because of its social considerations and its implications for employment, productivity<sup>33</sup> and health.<sup>34</sup>

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, starting from the legislative protection of children working in new industries such as textile and mining in the mid-nineteenth century. However, this broad trend does not obscure major differences between the Left and the Right. The Left often promoted the reduction of working time first as a means to create jobs, and second, as an expression of its *projet de société*, highlighting the importance of the *temps choisi* and quality of life as exemplified by the introduction of a two-week paid holiday entitlement by the Léon Blum-led government in 1936 (and its subsequent extension by the Socialists to three and five weeks in 1956 and 1982, respectively). The Right, on the other hand, often introduced reductions that were defensive and aimed at job protection. The French Left and the Right have operated in a context underpinned by the prevailing culture of collective bargaining,<sup>35</sup> but the Left—unlike the Right—has used legislation extensively so as to set higher standards.<sup>36</sup> This is so because for parties of the Left the relationship between employers and employees is an unbalanced one. As a result, the Left is much more willing than the Right to intervene.

There are both differences and similarities (be they of degree or principle) between the French Left and Right on the regulation of working time. Although their respective positions until and during the 1990s should be placed on different parts of a continuum (rather than a clear dichotomy) the reforms introduced after the Right's return to power in 2002 mark a clear break with the past. The forty-hour week

introduced in 1936 by the government of the *Front Populaire* and the reduction of the *durée légale* to thirty-nine hours without salary reduction in 1982<sup>37</sup> are emblematic examples of the Left's belief that the *mandatory* reduction of the *durée légale*<sup>38</sup> is not beyond the remit of the state, as well as a greater concern with the duration of working time as a key determinant of productivity, employment levels, and the availability of labor.<sup>39</sup> A key implication of the Left's greater willingness to reduce the *durée légale* was the treatment of overtime as a problem that required a solution, rather than a practice that ought to be encouraged. Moreover, unlike the Right that supports part-time work, the Left considers it as *temps subi*, not the kind of employment that is chosen genuinely freely.<sup>40</sup> Also, both the Left and the Right have been willing to finance working time reductions and deal with the *organization* of working time (i.e. choices regarding its use such as flexibility clauses etc), the Right was much more generous in terms of the former<sup>41</sup> and keener in terms of the latter. The latter is mainly an issue of degree, rather than principle. Indeed, in 1982 the Socialists introduced legislation that allowed collective agreements reached at the sectoral or firm level to diverge from legislative provisions.<sup>42</sup> Until then, agreement at two levels, both sector and firm, was required. The trend towards further decentralization was subsequently enhanced by governments of the Left<sup>43</sup> but much more energetically by the Right.<sup>44</sup> However, the key difference remains unaltered: for the Left intervention is necessary to rectify the inequality between workers and their employers—a decision that is also linked to the weakness of trade unions in France.

### *The politics of transposition*

Before the transposition of the Directive the weekly *durée légale* was thirty-nine hours in addition to up to 130 hours per annum of overtime while the daily working

time limit was ten hours.<sup>45</sup> Nevertheless, collective agreements reached set different limits (between thirty-seven and forty-eight hours per week and up to twelve hours per day) with between seventy and 130 hours of overtime per annum, regulated rest breaks, and allowed the use of longer reference periods (up to a year) and compensatory rest for overtime worked. As regards weekly rest, there was a statutory limit of twenty-four hours that included Sunday.<sup>46</sup> Finally, there was a ban on night work for women. These arrangements differed from the provisions of the Directive in terms of night work, the absence of a statutory limit regarding daily rest and an eleven-hour difference in terms of weekly rest. However, the combined effect of the aforementioned provisions and those contained in collective agreements meant that—despite these legal differences, there was no major conflict between the French arrangements and the directive,<sup>47</sup> except in terms of night work. For example, given the limit<sup>48</sup> placed on overtime (130 hours), workers in France would not exceed forty-two hours (on average) per week.

Although the directive had been proposed and negotiated while the Socialists were in power in France, it was formally adopted eight months after the Center-Right's return to power following the elections of March 1993. Unlike the Conservative British government, the new French government of the Center-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 the fact that a major law was adopted in the same policy area during this period. While the *loi Robien* of 1996<sup>49</sup> promoted the Right's preferred approach—including “annualization”<sup>50</sup> (which furthers flexibility), trading reductions in salary and/or working time for job protection backed with generous state-funded incentives—it did not seek to transpose the Working Time Directive. An attempt made by the Balladur

government in 1994 to begin the process of transposition did not bear fruit. The draft of the *décret Giraud* remained dormant as it coincided with mass demonstrations against other aspects of the government's employment policy, namely the *contrat d'insertion professionnelle*. In the meantime the European Commission had contacted the French authorities as a result of the French government's failure to transpose the Working Time Directive—in particular the provisions regarding weekly rest periods and the duration of night work.<sup>51</sup> In its response of March 1997 the French government acknowledged this lacuna and stated that this would be remedied by the end of June 1997, after the surprise election called by President Chirac.

The Socialists had not lost faith in the policy relevance of the reduction of working time. It was shared more widely within the French Left, including trade unions,<sup>52</sup> who saw it as a way of sharing the proceeds of technological and other forms of progress that had led to major increases in productivity. Lionel Jospin's platform for the presidential election of 1995 included the reduction of working time to 37.5 hours but his defeat delayed his ambitions until 1997 when the *Gauche plurielle* won a resounding victory. The radical (but gradual) reduction of statutory working time from 39 to 35 hours without salary reduction featured prominently in the Socialists' election manifesto.<sup>53</sup> Once the government had defined the direction and, subsequently, the calendar for the implementation of this major reform, it would be up to the social partners to negotiate the practicalities so as to ensure that sectoral and other idiosyncracies would be taken into account. Combating working time abuses and the use of overtime was—in addition to the fight against unemployment—the explicit aim of this reform.

This policy differed from the policy pursued by the Center-Right in two senses. First, the *Gauche plurielle* opted against salary reductions (in line with the

Socialists' decision of 1982) so as to maintain the employees' purchasing power and, as a consequence, their capacity to contribute to growth. Second, the new policy combined the reduction of statutory working time with a determination to drastically discourage recourse to overtime, which was a major innovation. Allowing employers and employees to make extensive use of overtime would reduce the pressure for job creation thus undermining the central objective of this major political decision.

The government of the Left took action that involved both domestic policy change and the transposition of the Directive through the enactment of the *lois Aubry*, despite ferocious opposition from the major national employers' associations and their political allies<sup>54</sup> and criticism from some economists.<sup>55</sup> The first Aubry law<sup>56</sup> abolished the system introduced by the Robien Law, dealt with issues regarding the transposition of the Working Time Directive<sup>57</sup> and set out the basic parameters of the major policy reform. It left room for negotiations between the social partners on practical details—notably major issues such as the definition of overtime, part-time work, and minimum wage. In that sense, faithful to its tradition, 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. As a Socialist former Prime Minister put it, “avec un taux de syndicalisation de 8.5 pour cent, il n’y a que la loi. On n’a pas le choix.”<sup>58</sup>

The full transposition of the directive<sup>59</sup> 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, the adoption of the second Aubry law<sup>60</sup> that resolved the problem of the twenty-four-hour weekly rest period and a law<sup>61</sup> that dealt with issues regarding night work. The first Aubry law offered a new

definition of actual working time and reduced statutory working time to thirty-five hours per week. This would apply from 1 January 2000 to firms employing twenty persons or more and two years later for the rest. The same law also encouraged firms to negotiate with their employees a more rapid reduction of working time. The provision of financial aid was conditional on job creation (at least 6 percent for a 10 percent reduction of working time) 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<sup>62</sup> and guaranteed the income of minimum wage workers for five years, 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.

Although France was not amongst the problematic EU member states in terms of the length of working time, 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 (see below). Although both of the main political camps in France traditionally place significant emphasis on the role of the social partners in this policy area, the Right—unlike the Left—was willing to do so without using legislation to frame the substantive decisions that would subsequently be made by the social partners.<sup>63</sup> This implies a belief in the neutrality of the state that is not shared by the Left. For the Left, negotiating power is not divided evenly between the social partners, thus the state has a duty to intervene. As will be demonstrated below,



the Right returned to these arrangements in an effort to alter the balance of power between employers and employees in the opposite direction.

The Jospin government significantly reduced the incentives for overtime—any time actually worked over and above thirty-five hours—in an effort to boost job creation. Until then—and after the return of the Right to power in 2002—these incentives were strong. Despite the premium rate of pay, employers preferred utilizing their existing workforce instead of recruiting and training new staff.<sup>64</sup> On this thorny issue, the Jospin government's decisions reflected an effort to find the middle way between trade unions and employers. The former, by and large, supported the reduction of overtime while the latter preferred its expansion. The second Aubry law left the limit intact except in cases of collective agreements that contain flexibility clauses enabling firms to deal with seasonal variation in their workload.<sup>65</sup> In addition, the option of utilizing the individual opt-out—the most controversial aspect of the directive—was rejected 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.<sup>66</sup> Finally, the Aubry laws dealt with the contentious 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, usually senior executives whose tasks involve a significant degree of autonomy.<sup>67</sup> The second Aubry law formalized this arrangement specifically for this narrow category of executives as a response to the wishes<sup>68</sup> of the trade unions CFE-CGC and CFDT that are well-represented amongst unionized *cadres* and to the employers' attempt to extend the exemption to non-executives. It allows the conclusion of collective agreements that set a limit of 217 days per annum (*forfait en jours*, a working time package calculated

in days rather than hours) for these executives, thus accepting that they could exceed the daily and weekly limits but ought to comply with the minimum daily and weekly rest periods (eleven and thirty-five consecutive hours respectively) introduced by the directive. The government's recognition of the specificity of the role of modern executives (in line with the directive) has had significant implications<sup>69</sup> at the stage of the implementation of these provisions (see below) partly because it has not been accompanied by safeguard measures.

*Beyond transposition: the impact of alternance*

Although the actual implementation of the framework put in place by the government of the Left has been marked by enduring (not party-specific) features of the French system (such as the complexity of legislation), 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 itself 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.

France was not thought to be associated with excessive working hours<sup>70</sup> at the time of the transposition of the Working Time Directive, on account of its labor legislation as well as the presence, since the nineteenth century, of the *Inspecteurs du travail*—who are responsible for its implementation on a day-to-day basis. They have wide-ranging powers to police the implementation of these provisions including the power to enter premises and obtain information that they can then use to initiate legal proceedings against employers suspected of breaches. They also provide information and advice to employers and employees, and facilitate the amicable resolution of

differences. Nevertheless, the implementation of the Aubry laws mirrors both market realities and political priorities. After the return of the Right to power in 2002, this pattern became more pronounced in a manner that confirms the partisan hypothesis outlined above.

The implementation of the Aubry laws has three basic characteristics. First, it led to the creation of a significant number of jobs<sup>71</sup> as a result of reduced working time, salary moderation, and increased flexibility. Second, it promoted the diversification of the workforce, even within the same firm. Finally, it further promoted flexibility and has 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, whereas the post-2002 drive towards liberalization introduced by the Right transformed the directive into a safety net for employees.

By the end of 2001 average weekly working time had been reduced to thirty-six hours<sup>72</sup> and approximately 300,000 jobs had been created, though the impact was greater in the firms that used the incentives offered by the laws than those that did not. This trend was not focused on part-time jobs. Finally, the introduction of the new system reduced the pace of recourse to fixed-term jobs.<sup>73</sup> The reduction of working time and the concomitant creation of jobs were largely based on increased flexibility (in line with the options offered by the Working Time Directive) and wage restraint<sup>74</sup> both of which were accepted by the employees and their representatives in conjunction with the initiative taken by Socialist-led government of the *Gauche plurielle*. Flexibility took two forms: modulation<sup>75</sup> and further recourse to the calculation of working time on an annual basis (“annualization”).<sup>76</sup> 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 more transparent trade-off that also involved reduced working time as well as job creation. Though this part of the trade-off can be said to have operated in the way foreseen by the government, increased flexibility also generated problems in some sectors of the economy, including the problem of non-payment of overtime due to the extension of the reference period to a year.<sup>77</sup> It thus enhanced—at least initially—the appeal of the Right’s response to the Aubry laws, especially in the run-up to the 2007 presidential election, in which the Right’s candidate (Nicolas Sarkozy) campaigned on the slogan “travailler plus pour gagner plus.”

Unlike executives and other employees with higher qualifications, less qualified staff (especially women) were much less satisfied<sup>78</sup> due to the use of modulation, employers’ unilateral decisions regarding their new working time arrangements, and the overall intensification of work. Workers in this category often have even less autonomy in determining their work schedule and holidays, have to perform the same (or more) tasks in shorter periods of time and have often remained unaffected by job creation within the firm because new posts have not always been allocated to the units where work had intensified.<sup>79</sup> Other problems that were amplified after the return of the Right to power in 2002 occurred while some of the flexibility-related provisions of the Aubry laws were in force.

*Cadres* were working long hours even before the adoption of the Aubry laws<sup>80</sup> in part because their roles involve a degree of autonomy that is absent from the roles performed by other employees. To that extent, the Aubry laws recognized a concrete reality by introducing cadre-specific clauses such as the *forfait en jours*. The extension of the logic of these more flexible clauses to wider groups of employees

after 2002 corresponds to the Right's determination to undermine as much as possible the framework introduced by the government of the *Gauche plurielle*, but in reality the problem originates not so much from the inconsistency of the law itself (or whether the daily and weekly rest limits are observed) but the relative autonomy of the employer to designate who falls into that category. This was at the heart of reforms introduced by the Right after 2002.

Two important sources of problems were structural: first, the weaknesses of the trade unions, and second, the complexity of the law. Trade unions were not always in a position to play an active role in the implementation of agreements even when these agreements allowed them to do so (as was often the case). Also, union officials acknowledged that even health and safety committees at firm level were not always in a position to fill the gap.<sup>81</sup> This problem is directly linked not only to the low levels of unionization, especially in the private sector, but also the increasing individualization of the workforce—which the Aubry laws inadvertently encouraged. The second problem that preceded the adoption of the Aubry laws<sup>82</sup> but was exacerbated by them (and much more so by the reforms introduced by the Right after 2002) is the complexity of the law. This is linked to simple issues of legislative drafting and the adoption of several clauses that derogate from, partly amend, repeal or extend previous arrangements. It is also a result of key substantive choices such as the recourse to annualization and increased emphasis on the level of the firm and the individualization of work timetables. The combination of these factors undermines the capacity of labor inspectors to perform their duties. This problem has been exacerbated by conscious decisions made by the governments of the Right after 2002, but it was present as early as 2001.<sup>83</sup>

The response of the Right after its return to power in 2002 was a direct and sustained<sup>84</sup> effort to turn the regulation of working time into a core aspect of competition between firms. Whereas in the past the differences between the two main political camps 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 pushes standards 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—the duration and cost of overtime and—more importantly—flexibility. As regards overtime, the Right's choices contradict those of the *Gauche plurielle*. In terms of flexibility, the Right has promoted it even further. While not explicitly abolishing the thirty-five-hour week, these changes have transformed it beyond recognition in a manner that directly corresponds to the wishes of the *patronat*. As early as 2000 the Mouvement des Entreprises de France (MEDEF), France's biggest union for employers, was calling for a radical reform that would turn the firm into the core of the system, reversing the hitherto existing hierarchy of norms. This amounted to major changes in the mode of the regulation of working time and the balance of power between employers and employees. This is precisely what followed the Right's electoral victories in 2002 and, especially, in 2007.

In one of the first measures of the Raffarin government, François Fillon—then labor minister—left the *durée légale* intact but dramatically increased the overtime quota,<sup>85</sup> thus effectively raising weekly working time from thirty-five to thirty-nine hours<sup>86</sup> despite opposition from trade unions. This was a victory for the employers whose representatives had unsuccessfully sought to obtain the same result when the

second Aubry law was being prepared.<sup>87</sup> The *loi Fillon* also significantly reduced the cost of overtime and generalized the system of *forfait en jours* that had hitherto been limited to executives. The reduction of the cost of overtime is couched in the belief (widely shared amongst politicians on the Right of the political spectrum) that job creation under the Aubry laws owes much more to the reduction of labor costs than the reduction of statutory working time.

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.<sup>88</sup> Until then agreements reached at one level of collective bargaining (e.g. the firm) could derogate from an agreement reached at a higher level (e.g. the sector) only if these derogations were beneficial for the workers. This fundamental principle of French labor law reflected the notion that the relationship of employment was not balanced and—as a result—the weaker party (i.e. the individual worker) ought to be protected and this was part of the role of the state which, clearly, was not (indeed, *should not* be) neutral. The new arrangement allows such derogations in most aspects of employment relations unless the agreement reached at the higher level explicitly excludes this possibility (which effectively offers employers veto power). Crucially, the new law allows<sup>89</sup> agreements at the level of firms to cover issues—such as overtime quotas and the premium paid for overtime—that had hitherto been reserved for negotiations at the sectoral level where the bargaining power of the employees' representatives is greater. In short, the new arrangements decentralized bargaining towards the firm and enhanced the bargaining power of employers vis-à-vis employees. 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 reforms that followed amplified the trend towards more flexibility, especially after the elections of 2007. Nicolas Sarkozy had campaigned vigorously on the need for economic reform along neo-liberal lines.<sup>90</sup> The *loi en faveur du travail, de l'emploi et du pouvoir d'achat* (*loi TEPA*)<sup>91</sup> and the law enacted in August 2008,<sup>92</sup> further amplified the key features of the policy of the Right—flexibility and recourse to artificially cheaper overtime. Finally, in a move of great symbolic importance, since 2008 the working time-related provisions of the Code du Travail appear in the part that concerns the salaries rather than the working conditions as had hitherto been the case.

Increased autonomy for employers has been associated with problems regarding the flexible use of the workforce, particularly in sectors marked by low-skilled and often precarious jobs and low levels of trade union membership—logistics, retail, cleaning, and security, for example.<sup>93</sup> 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* remains 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.<sup>94</sup> These problems in the aforementioned sectors are linked 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”<sup>95</sup> where the task of labor inspectors has become much harder because facts have to be compared to a much more complicated and highly individualized<sup>96</sup> set of arrangements. This renders controls much more time-consuming, uncertain, and cumbersome. Though complexity is not a



new feature of French labor law, it reached unprecedented levels after 2002 and, especially, after 2007.

In addition to undermining the credibility of the law and—often—the workers' understanding of the rules that apply to them, complexity increases the importance of the operational *autonomy* and *capacity* of French labor inspectors. Labor inspectors have seen their autonomy reduced indirectly as a result of the growing significance of firm-level agreements whose complexity (coupled with additional duties) increases the demands made on inspectors' limited time.<sup>97</sup> In addition, increasingly complex legal and, more often, sector- and firm-specific arrangements increase the demand for (and the importance of) the inspectors' advisory service. In addition, the reduction of support staff means that inspectors are compelled to deal with administrative matters to the detriment of their core function, which is to conduct inspections at the level of individual firms.<sup>98</sup> These developments undermine the inspectors' capacity to carry out their duties in the effective way that is required.

Although the promotion of flexibility was not its exclusive trait, the Right significantly amplified it by reducing the gap between the hitherto higher level of protection offered by French domestic arrangements and the provisions of the directive, effectively turning the latter into a safety net. This is exemplified by the case of cadres. Under the governments of the Right what initially was a cadre-specific arrangement was transformed into a mechanism for the promotion of flexibility for much wider (and substantially different) groups of employees. The nature of this change owes a lot to the logic that permeates the directive's opt-out clause. Although that option was not used when the directive was transposed into French law, the governments of the Right have promoted the logic that underpins it without explicitly

espousing it<sup>99</sup> so as to avoid the associated political cost. This has led to the emergence of the opt-out *à la française*. Employers have used the flexible cadre-specific arrangements as an opportunity to avoid meeting some of the requirements of the directive by extending them to a category of employees who—among labor inspectors—are known as *faux cadres*, employees who do not have the executives' autonomy and receive a salary that is significantly inferior to that of a real executive. Rather, they were either arbitrarily classified as “cadres” or were initially attracted to this status as a result of the several additional days of paid holidays that are linked to it prior to realizing the problems that were associated with it (such as the safeguards that the unions wanted to see introduced and the fact that they can be legally expected to work up to 78 hours per week). The Right-wing governments' subsequent extension of the scope of the *forfait en jours* has reduced the employers' incentives to have recourse to this practice. It recognizes the reality on the ground and serves as a mechanism for the promotion of flexibility across the workforce and at the same time, it turns the directive into a real safety net since its provisions regarding daily and weekly rest periods (eleven and thirty-five hours respectively) apply. This broader trend does not eliminate sectoral differences. Large supermarkets and other similar chains (collectively known as *grande distribution*), the retail sector and IT services are more problematic than others but the root cause is not dissimilar to the one found elsewhere: these relatively new sectors are not permeated by the culture of trade unionism that exists elsewhere and collective negotiations take place at the level of the firm, rather than the sector.<sup>100</sup>

## **Conclusion**

Partisan government is at the heart of the four key choices that have characterized the implementation process in France. First, while the Jospin-led government explicitly avoided the introduction of the individual opt-out into the domestic arrangements, the post-2002 governments of the Right introduced it albeit in all but name. Far from exemplifying their attachment to the domestic arrangements, the fact that the French governments of the Right chose a less transparent approach owes a great deal to their determination to minimize the mobilization of opposition to their decision. Second, unlike the governments of the Left, those of the Right have reduced the capacity of labor inspectors to devote the required attention to policing the implementation of domestic legislation. Third, the decision of the governments of the Right to reverse the hierarchy of norms in employment law has undermined the capacity of the trade unions to promote the interests of the weaker party in employment relations. In contrast, this central decision has effectively turned working time arrangements into an element of competition between firms. Finally—and most crucially—unlike the governments of the Left, those of the Right have—since 2002 and more so since 2007—treated EU policy as one that sets standards from which French arrangements should not depart drastically so as to ensure that French firms are not disadvantaged in comparison to their competitors from abroad.

None of the alternative explanations can provide a better account than the partisan hypothesis. First, a culture-based account would not offer a convincing alternative because it does not explain the differences between the two parties. The culture did not change in 1997 or in 2002. The parties in government did. Second, the key changes did not result from the inability of the French politico-administrative machinery to cope with the exigencies of this directive. While it is true that a part of the pattern observed in the post-transposition stage can be attributed to the capacities

of the *administrative* actors involved in this process, these capacities have been shown to reflect clear *political* decisions of the government thus confirming the partisan hypothesis.

This article reveals that a better understanding of the preferences of the ruling parties can shed light on the dynamics of this process. Much of the preceding analysis might indirectly be taken as an indication of the predominance of domestic policy considerations—the essence of the so-called “world of neglect”<sup>101</sup>—since compliance with the directive was not the primary objective of the Aubry laws or the legislation enacted by the Right after 2002. But if analysis ended with this assertion, it would be both misleading and incomplete since it would imply that domestic and EU policies can (or even should) be treated as separate constructs and one can (or does) operate in isolation from the other. In reality, EU policy is actually implemented not in a vacuum but in a specific socio-political milieu where ruling parties make consequential decisions and, potentially, a difference. There is evidence that the applicability of the partisan hypothesis is much broader than one might think.<sup>102</sup> Instead of replacing one sweeping claim with another, we need detailed comparisons within and across sectors that will help paint a more nuanced and accurate picture of the conditions in which parties make a difference.

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### Notes

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<sup>1</sup> Sally Marthaler, "La Course au Centre: Policy Convergence and Partisanship in France, 1981–2002," *French Politics, Culture & Society* 28, 2 (2010), 90–91.

<sup>2</sup> Simon Hix, *What's Wrong with the European Union and How to Fix it* (Cambridge: Polity, 2008), 44.

<sup>3</sup> The distinction between the Left and the Right also offers voters helpful cues that enable them to make sense of political reality. Oddbjørn Knutsen, "Expert Judgements of the Left-Right Location of Political Parties: A Comparative Longitudinal Study," *West European Politics* 21, 2 (1998), 63.

<sup>4</sup> Hussein Kassim, "France and the European Union under the Chirac Presidency," in *Developments in French Politics* 4, eds. Alistair Cole et al. (Basingstoke: Palgrave, 2008), 273; Muriel de l'Écotais, *Europe: La France Qui Triche?* (Paris: Belin, 2008).

- <sup>5</sup> This is by far the most visible element of the broader implementation process but governments make enduringly consequential choices when they subsequently put these rules into effect.
- <sup>6</sup> Gerda Falkner et al., *Complying with Europe: E.U. Harmonisation and Soft Law in the Member States* (Cambridge: Cambridge University Press, 2005), 323, 338–39.
- <sup>7</sup> It highlights the relevance of several explanatory factors including institutions, culture, and, finally, material factors such as reputation costs and the role of domestic interest groups. See Oran R. Young, “The effectiveness of international institutions: hard cases and critical variables,” in *Governance without Government*, ed. James N. Rosenau and Ernst-Otto Czempiel (Cambridge: Cambridge University Press, 1992); Oran R. Young, *Compliance and Public Authority* (Baltimore: Johns Hopkins University Press, 1979); Peter F. Cowhey, “Domestic Institutions and the Credibility of International Commitments: Japan and the United States,” *International Organization* 47, 2 (1993). For a useful review of the large literature on member states’ “compliance” with EU law see Oliver Treib, “Implementing and Complying with EU Governance Outputs,” *Living Reviews in European Governance* 3, 5 (2008), <http://europeangovernance.livingreviews.org/Articles/lreg-2008-5/> (accessed on 9 September 2010).
- <sup>8</sup> For discussions amongst EU scholars of this dimension but with a focus on its most visible part, i.e., the mere transposition of EU law, see Falkner et al., *Complying with Europe*; Oliver Treib, *Die Bedeutung der nationalen Parteipolitik für die Umsetzung Europäischer Sozialrichtlinien* (Frankfurt: Campus, 2004).
- <sup>9</sup> In that sense, policy (or even institutional) misfit (the notion that permeates much of the literature on “compliance” with EU law) is also a political construct. On the notion of misfit see Tanja Börzel and Thomas Risse, “When Europe hits Home:

Europeanization and Domestic Change,” *European Integration online Papers* 4, 15 (2000). On the notion that the domestic response to international challenges ought to be construed as the result of domestic struggle see Peter Gourevitch, “The Second Image Reversed: The International Sources of Domestic Politics,” *International Organization* 32, 4 (1978): 881–912.

<sup>10</sup> This literature is vast. For two early examples see Douglas A. Hibbs, “Political parties and macroeconomic policy,” *American Political Science Review* 71, 4 (1977); Francis G. Castles, ed., *The Impact of Parties* (London: Sage, 1982).

<sup>11</sup> Nikolaos Zahariadis, “State Aid and Partisan Government in the European Union,” *Social Science Quarterly* 91, 2 (2010).

<sup>12</sup> Simon Hix, “Dimensions and Alignments in European Union Politics: Cognitive Constraints and Partisan Responses,” *European Journal of Political Research* 35, 1 (1999); Gary Marks and Carole J. Wilson, “The Past in the Present: A Cleavage Theory of Party Response to European Integration,” *British Journal of Political Science* 30, 3 (2000); Robert Rohrschneider and Stephen Whitefield, “Representation in New Democracies: Party Stances on European Integration in Post-Communist Eastern Europe,” *Journal of Politics* 69, 4 (2007).

<sup>13</sup> Eugene Bardach, *The Implementation Game* (Cambridge, MA: MIT Press, 1977), 85.

<sup>14</sup> 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, 18–24.

<sup>15</sup> On the broader usefulness of small-N studies see Alexander L. George and Andrew Bennett, *Case Studies and Theory Development in the Social Sciences* (Cambridge, MA: MIT Press, 2004), 80–81, Dietrich Rueschemeyer, “Can one or a few cases yield theoretical gains?” in *Comparative Historical Analysis in the Social Sciences*, eds.

James Mahoney and Dietrich Rueschemeyer (Cambridge: Cambridge University Press, 2003).

<sup>16</sup> Arend Lijphart, *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries* (New Haven, CT: Yale University Press, 1999), table 5.3. For a recent analysis of the relative importance of old and new issues on the political agenda in France which concludes that “postmodern value orientations have not displaced left–right ideology” despite the challenges they have generated, see Sally Marthaler, “‘New’ Politics for ‘Old’? Value Change and the Voter-Party Relationship in France,” *French Politics* 6, 3 (2008): 187–213.

<sup>17</sup> Paul Ramackers, Laurent Vilboeuf, *L’Inspection du travail* (Paris: PUF, 1997).

<sup>18</sup> Falkner et al., *Complying with Europe*, 101.

<sup>19</sup> Some aspects of the process examined here—such as the speed of transposition—can be studied on the basis of quantitative methods. However, the broader implementation process unfolds over a much longer period of time, involves a larger group of actors and a more complex sets of choices. “Small-N” case studies such as this are particularly apposite for the fine-grained analysis of the politics of implementation (especially the part sub-stage that follows the formal transposition of EU into national legislation).

<sup>20</sup> Liesbet Hooghe and Gary Marks, “The Making of a Polity: The Struggle over European Integration,” in *Continuity and Change in Contemporary Capitalism*, eds. Herbert Kitschelt et al. (Cambridge: Cambridge University Press, 1999).

<sup>21</sup> Seymour Martin Lipset and Stein Rokkan, “Cleavage Structures, Party Systems, and Voter Alignments: An Introduction,” in *Party Systems and Voter Alignments: Cross-national Perspectives*, eds. Seymour Martin Lipset and Stein Rokkan (New York, Free Press, 1967).



<sup>22</sup> Andrew Moravcsik, *The Choice for Europe* (Ithaca, NY: Cornell University Press, 1998).

<sup>23</sup> Marks and Wilson, "The Past in the Present."

<sup>24</sup> These cleavage structures begun to unfreeze in the late 1960s with the rise of what Inglehart referred to as 'postmaterialism' and new parties on both the Left and Right challenging traditional party-voter alignments. Contestation along this "new politics" (cross-cutting) dimension pitched the green/alternative/libertarian (GAL) pole against traditionalism/authority/nationalism (TAN) but in Western Europe the affinities between the Left and GAL and between Right and TAN are strong. See Gary Marks et al., "Party Competition and European Integration in the East and West," *Comparative Political Studies* 39, 2 (2006), 157. In the case of France, despite the emergence of new parties (such as the Front national and the Greens) and the spread of votes beyond the confines of the "bipolar quadrille" (PS/PCF on the Left, UDF and the Gaullists on the Right), an increasing "rebipolarization" has occurred "amounting to something approaching an imperfect two-party system" with the Socialists and the UMP as the main party of the Left and the Right respectively. Andrew Knapp and Frédéric Sawicki, "Political parties and the party system," in *Developments in French Politics* 4, ed Cole et al., 44.

<sup>25</sup> James G. March and Johan P. Olsen, *Rediscovering Institutions* (New York: Free Press, 1989).

<sup>26</sup> Marks and Wilson, "The Past in the Present", 458–59.

<sup>27</sup> Hooghe and Marks, "The Making of a Polity."

<sup>28</sup> Liesbet Hooghe, Gary Marks, and Carole J. Wilson, "Does Left/Right structure party positions on European integration?" *Comparative Political Studies* 35, 8 (2002), 975.

This does not mean that these are totally coherent groups. Rather, it means that there

is much more in common between them than they do with other parties in the same country.

<sup>29</sup> Neither of these groups is completely homogenous.

<sup>30</sup> Hooghe, Marks, Wilson, “Does Left/Right structure party positions on European integration?” 970, fig. 2. It is worth noting that the level of support varies across policy areas.

<sup>31</sup> Certain kinds of night work can be made subject to certain guarantees under conditions laid down by national legislation and/or practice, in the case of workers who incur risks to their safety or health linked to night-time working.

<sup>32</sup> The directive allows member states to comply by means of agreement between the social partners though national authorities are responsible for guaranteeing at all times that the provisions laid down by the directive are fulfilled.

<sup>33</sup> Frederic S. Lee, “Is the Eight-Hour Working-Day Rational?” *Science (new series)* 44, 1143 (1916).

<sup>34</sup> A. E. Dembe et al., “The Impact of Overtime and Long Work Hours on Occupational Injuries and Illnesses: New Evidence from the United States,” *Occupational and Environmental Medicine* 62, 9 (2005).

<sup>35</sup> Jacques Freyssinet, “La transformation des enjeux et des modes de régulation: 1978–1996,” in *La France et le temps de travail, 1814–2004*, eds. Patrick Fridenson and Bénédicte Reynaud (Paris: Odile Jacob, 2004), 140.

<sup>36</sup> The two sides of industry could go beyond these standards subject to an agreement at the appropriate level.

<sup>37</sup> Ordonnance n° 82-41 du 16 janvier 1982 relative à la durée du travail et aux congés payés, *JORF*, 17 January 1982. This was enacted after negotiations at sectoral level had broken down.

- <sup>38</sup> The concept of *durée légale* is used to distinguish between overtime and partial unemployment. It is also the reference point for the definition of part-time employment.
- <sup>39</sup> Interview with former official of the Ministry of Labor with experience from a ministerial *cabinet* in governments of the Left and the Right, Paris, 7 May 2009.
- <sup>40</sup> Interview with senior Socialist member of the National Assembly, Paris, 8 July 2009 and interview with former senior official of the Ministry of Labor, Paris, 7 May 2009. On the significant impact of the *loi Robien* (enacted in 1996) on part-time employment see Chris Howell, "The State and the Reconstruction of Industrial Relations Institutions after Fordism: Britain and France Compared." Paper prepared for the 99<sup>th</sup> Annual Meeting of the American Political Science Association, Philadelphia, PA, 28–31 August 2003, 49.
- <sup>41</sup> The *loi Robien* entailed a significant reduction of labor costs guaranteed for seven years though firms retained the right to sack the relevant workers after just two years. Jonah D. Levy, *Tocqueville's Revenge* (Cambridge, MA: Harvard University Press, 1999), 253.
- <sup>42</sup> Chris Howell, "The Dilemmas of Post-Fordism: Socialists, Flexibility and Labor Market Deregulation in France," *Politics & Society* 20, 1 (1992).
- <sup>43</sup> Catherine Bloch-London and Jérôme Pélisse, "Avant-propos," in *La Réduction du temps de travail: Des politiques aux pratiques*, eds. Catherine Bloch-London, Jérôme Pélisse (Paris: La documentation Française, 2003), 5.
- <sup>44</sup> Catherine Bloch-London, "Les normes de temps de travail à l'épreuve des négociations: Le cas des lois Aubry de réduction de la durée du travail," *Travail et Emploi* 83 (2000), 28.
- <sup>45</sup> Art. 212-1, *Code du Travail*, version consolidée le 1<sup>er</sup> novembre 1996.

- <sup>46</sup> Art. 212-2 and 212-5, *Code du Travail*, version consolidée le 1<sup>er</sup> novembre 1996.
- <sup>47</sup> Interviews with former senior official of the Ministry of Labor, Paris, 7 May 2009 and current ministerial adviser, Paris, 15 June 2009. See also Falkner et al., *Complying with Europe*, 101.
- <sup>48</sup> Overtime beyond 130 hours automatically triggered compulsory compensatory rest and required authorization from the *Inspection du Travail*.
- <sup>49</sup> Loi n° 96-502 du 11 juin 1996 tendant à favoriser l'emploi par l'aménagement et la réduction conventionnels du temps de travail, *JORF*, 12 June 1996.
- <sup>50</sup> This entails the use of a much longer reference period (year) for the calculation of working time.
- <sup>51</sup> C-46/99 Commission des Communautés européennes contre République française.
- <sup>52</sup> This was one of the enduring demands of the unions that were linked to the Left, though not one that was constantly voiced. Interview with former leader of *Force Ouvrière*, Paris, 6 May 2009.
- <sup>53</sup> Parti socialiste, *Changeons d'avenir, changeons de majorité*, Paris, 1997.
- <sup>54</sup> *Le Figaro*, 14 October 1997.
- <sup>55</sup> Antoine Autume and Pierre Cahuc, "La faille du projet des 35 heures," *Le Monde*, 10 March 1998.
- <sup>56</sup> Loi n° 98-461 du 13 juin 1998 d'orientation et d'incitation relative à la réduction du temps de travail, *JORF*, 14 June 1998.
- <sup>57</sup> Art. 6 resolves the issues regarding the eleven-hour daily rest and rest breaks.
- <sup>58</sup> Interview, Paris, 7 July 2009.
- <sup>59</sup> As a result of the delay the ECJ condemned the French government (case C-46/99) in June 2000. The Jospin government had, in the meantime, acknowledged the delay in

the transposition of the provisions of the Directive that concern night work and the 24-hour weekly rest period and the eleven-hour daily rest period.

<sup>60</sup> Art 7, loi n° 2000-37 du 19 janvier 2000 relative à la réduction négociée du temps de travail, *JORF*, 20 January 2000.

<sup>61</sup> Loi n° 2001-397 du 9 mai 2001 relative à l'égalité professionnelle entre les femmes et les hommes, *JORF*, 10 May 2001.

<sup>62</sup> This amounted to 1600 hours per annum which gave much greater flexibility to employers with regards to both the deployment of the labor force and the cost of overtime (see below).

<sup>63</sup> This was so throughout the 1990s and was supported by Jean Gandois, then head of CNPF. Interview with former official of the Ministry of Labor with experience from a ministerial *cabinet* in governments of the Left and the Right. Paris, 7 May 2009.

<sup>64</sup> The premium rate of pay was the reason why many workers welcomed opportunities for overtime.

<sup>65</sup> In those cases overtime was limited to ninety hours per annum.

<sup>66</sup> As a ministerial adviser put it, it was politically unthinkable. Even the most fervent amongst the liberals did not even imagine it since it would have indicated the absence of real limits. Interview, Paris, 15 June 2009. This did not prevent the Right from gradually introducing the opt-out *à la française* after its return to power in 2002 (see the next section).

<sup>67</sup> Philippe Askenazy, Catherine Bloch-London, and Muriel Roger, "La réduction du temps de travail: 1997–2003," in *La France et le temps de travail, 1814–2004*, eds. Patrick Fridenson and Bénédicte Reynaud (Paris: Odile Jacob, 2004), fn. 27.

<sup>68</sup> Interview with CFE-CGC officials, Paris, 18 June 2009.

- <sup>69</sup> “Ils ont ouvert la boîte de Pandore” as a labor inspector put it. Interview, Paris area, 7 July 2009.
- <sup>70</sup> Christine Erhel et al., *La R.T.T.* (Paris: Presses Universitaires de France, 2003), 12.
- <sup>71</sup> Matthieu Bunel and Stéphane Jugnot, “35 heures: évaluations de l’effet emploi,” *Revue économique* 54, 3 (2003).
- <sup>72</sup> Mireille Bruyère et al., *Comparaisons internationales de la durée du travail pour sept pays en 2004: La place de la France* (Paris: INSEE, 2006).
- <sup>73</sup> Erhel et al., *La R.T.T.* , 56.
- <sup>74</sup> Vladimir Passeron, *35 heures: 3 ans de mise en œuvre du dispositif ‘Aubry I’* (Paris, Ministère du Travail/DARES, 2002).
- <sup>75</sup> Modulation entails an effort to optimize the use of the workforce by matching the cycles of working time to the fluctuations of demand and workload.
- <sup>76</sup> Jérôme Pélisse, “Le temps des négociations: douze accords de réduction du temps de travail,” *Travail et Emploi* 82 (2000).
- <sup>77</sup> Interviews with labor inspectors, Paris, 15 and 16 June 2009.
- <sup>78</sup> Many amongst them were already unhappy about the use of irregular work timetables. Dominique Méda and Renaud Orain, “Transformations du travail et du hors travail: le jugement des salariés sur la réduction du temps de travail,” *Travail et Emploi* 90 (2002).
- <sup>79</sup> Despite the transition to the thirty-five-hour week the overall number of accidents at work has not been reduced. This is linked not only to the intensification of work but also the introduction of new management techniques and the emphasis on the damages awarded rather than the prevention of accidents. Philippe Askenazy and François Chérèque (joint interview), *Les Echos*, 3 June 2004.

- <sup>80</sup> Marc-Antoine Estrade, Dominique Méda, and Renaud Orain, *Les Effets de la RTT sur les modes de vie: Qu'en pensent les salariés un an après?* (Paris: Ministère du Travail, 2001), 3.
- <sup>81</sup> Commissariat Général du Plan, *Réduction du temps de travail: Les enseignements de l'observation*, rapport de la commission présidée par Henri Rouilleault (Paris, 2001), 363.
- <sup>82</sup> Interviews with former official of the Ministry of Labor, Paris, 7 May 2009 and labor inspectors, Paris, 17 June 2009, Paris area, 18 June 2009 and 7 July 2009.
- <sup>83</sup> Cited in Commissariat Général du Plan, *Réduction*, 365.
- <sup>84</sup> This happened in 2003, 2004 (twice), 2005, 2007, and 2008 (twice).
- <sup>85</sup> A year later the limit was raised to 220 hours per annum.
- <sup>86</sup> Loi n° 2003-47 du 17 janvier 2003 relative aux salaires, au temps de travail et au développement de l'emploi, *JORF*, 18 January 2003.
- <sup>87</sup> Askenazy, Bloch-London, Roger, "La réduction," 185.
- <sup>88</sup> Loi n° 2004-391 du 4 mai 2004 relative à la formation professionnelle tout au long de la vie et au dialogue social, *JORF*, 5 May 2004.
- <sup>89</sup> Art. 43.
- <sup>90</sup> On the post-2002 ideological turn within the French Right more generally see Florence Haegel, "Le pluralisme à l'UMP: structuration idéologique et compétition interne," in *Partis Politiques et Système Partisan en France*, ed. Florence Haegel (Paris: Presses de Sciences Po, 2007): 219–54.
- <sup>91</sup> Loi n° 2007-1223 du 21 août 2007 en faveur du travail, de l'emploi et du pouvoir d'achat, *JORF*, 22 August 2007.
- <sup>92</sup> Loi n° 2008-789 du 20 août 2008 portant rénovation de la démocratie sociale et réforme du temps de travail, *JORF*, 21 August 2008.

- <sup>93</sup> Interviews with labor inspectors, Paris, 18 June and 7 July 2009, Île de France, 7 July 2009, Lyon, 10 July 2009.
- <sup>94</sup> Interviews with labor inspectors, Paris 6 and 8 July 2009, Lyon 10 July 2009.
- <sup>95</sup> The proportion of firm-level agreements that deal with working time has increased by more than 10 percent between 2007 and 2008 (unlike the trend observed in previous years). *Liaisons sociales*, 10 June 2009, 1.
- <sup>96</sup> “On fait du sur mesure” as one of them put it. Interview, Aix-en-Provence, 17 June 2009.
- <sup>97</sup> In 2005 the French Ministry of Labor estimated that less than half of an inspector’s time was spent on conducting actual controls in firms. See Ministère de l’Emploi, *L’Inspection du Travail en France en 2004 - Les chiffres clés: Rapport au Bureau International du Travail* (Paris: Ministère de l’Emploi, du travail et de la cohésion sociale, n.d.), 213. The emphasis that the governments of the Right place on the quantity rather than the quality of controls is acknowledged both by experienced and inexperienced inspectors. Interviews, Paris, 6 and 10 July 2009.
- <sup>98</sup> Interviews with labor inspectors, Paris, 6 July 2009, Paris area, 7 July 2009, Lyon, 10 July 2009.
- <sup>99</sup> However, the government of the Right supported the compromise reached in the Council of Ministers in June 2008 which maintains the opt-out in the Directive.
- <sup>100</sup> Interview with CFE-CGC officials, Paris, 18 June 2009.
- <sup>101</sup> Falkner et al., *Complying with Europe*, 338–39.
- <sup>102</sup> Zahariadis, “State aid,” 449. See also Brian C. Rathbun, *Partisan Interventions* (Ithaca, NY: Cornell University Press, 2004), Chapter 5.