

TABLE RONDE N°3

THE ROLE OF THE FRENCH STATE IN THE POST-FORDIST RECONSTRUCTION OF INDUSTRIAL RELATIONS INSTITUTIONS

Chris HOWELL, Oberlin College

This is a draft. Please do not quote or cite without permission of the author.
Comments are very welcome. Please recycle after use!

1. INTRODUCTION

The last quarter century has seen a remarkable transformation of the postwar system of French industrial relations as the once hierarchically-ordered set of collective bargaining institutions, and rigidly regulated labor market have given way to a decentralized system of bargaining in which firms enjoy far greater autonomy from both legislative and negotiated forms of labor market regulation, in a process nicely characterized as “the contractualization of society.”¹ This transformation has taken place in fits and starts, though its trajectory is clear, and, while the subject of much political conflict, there has in fact been a high degree of partisan continuity in the direction and nature of change across Gaullist and Socialist governments. It is the scale and ambition of this restructuring of French industrial relations institutions and practices that is the subject of this paper.²

There are broadly three main elements to the changes of the last two decades or so.³ First,

¹ Michel Lallement, “New Patterns of Industrial Relations and Political Action Since the 1980s” in Pepper D. Culpepper, Peter A. Hall and Bruno Palier, eds., *The Politics that Markets Make: Social Change in France* (Palgrave Macmillan, forthcoming 2006), p. 1.

² This paper builds off research begun for a chapter that involved a comparison of French and British industrial relations reform in Jonah D. Levy, ed., *The State After Statism: New State Activities among the Affluent Democracies* (under review at Harvard University Press). I am grateful to the participants in that project and to Michel Lallement, Jonah Levy, Olivier Mériaux and Mark Vail for searching and helpful comments on earlier drafts.

³ The most comprehensive collection of analyses of recent industrial relations changes in France is contained in Christian Thuderoz and Annie Giraud-Héraud, eds., *La Négociation Sociale* (Paris: CNRS Éditions,

there has been a shift in the locus of industrial relations regulation towards the firm, as both the quantity and the scope of firm level bargaining has expanded, and that bargaining has become de-linked from the wider system of industrial relations. Second, the subject-matter of collective bargaining has shifted from wages to employment and production issues, in part reflecting a change in the terrain of bargaining away from the agenda of workers and unions towards that of employers.⁴ Third, and no less important, there has been a re-definition of the legitimacy of labor representation, that has questioned who represents workers, and indeed how workers are represented, permitting the creation of new actors and institutions inside the firm, and the investing of new functions in existing actors and institutions.

The paper seeks to explain these changes through a focus upon the role of the French state. It does so because there is an element of paradox in the transformation summarized above. On the one hand, change has involved decentralization, greater firm autonomy, and a relaxation of rigid, centralized labor market regulation. On the other hand, the French state has remained a central actor in the reconstruction of the industrial relations system. Its role has changed: rather than directly regulating industrial relations it has sought legislative and other reforms that encourage the emergence of autonomous bargaining, and it has repeatedly prodded class actors to “modernize” their strategies and practices. Nonetheless, as this paper will elaborate, change could not have taken place without an active role on the part of the state, and the French state remains deeply implicated in the regulation of class relations.⁵ Thus the paradox is of a simultaneous “double movement of ‘privatization’ and of ‘publicization’ of labor relations.”⁶

The explanation sought for these developments in this paper is one that can take account both of the specificity of French political economy and of wider changes in the advanced capitalist world. The next section suggests a theory of institutional change that is comparative, permitting an analysis that moves beyond a reliance upon French exceptionalism or unique features of French history and political economy that set it apart from other countries. To the extent that we can find theoretical approaches which “travel,” in the sense of being genuinely comparative, cross-national research in the social sciences benefits.

To preview the argument of this paper, two main explanations are used for the continued centrality of political action in the development of industrial relations, and the particular form that reform has taken in France. The first focuses upon the relationship between economic restructuring and institutional change. By the end of the 1970s, the crisis of the dominant Fordist postwar regime of accumulation had become painfully obvious across the advanced capitalist world, even if the severity and symptoms of that crisis varied from country to country, with France appearing particularly hard hit. In the labor market, Fordism came to be associated above

2002).

⁴ This point is made by Olivier Mériaux, “Éléments d’un régime post-fordiste de la négociation collective en France” *Relations industrielles/Industrial Relations* 55: 4 (2000). Mériaux’s focus upon the link between post-Fordist economic restructuring and industrial relations reform is similar to a central argument of this paper, and this article has clarified my thinking on the subject.

⁵ See also on this subject, Pierre Mathiot, “La régulation étatique de la négociation sociale ou quand l’État dit encore son mot” in Thuderoz and Giraud-Héraud eds., *La Négociation Sociale*.

⁶ Lallement, *New Patterns of Industrial Relations*,” p. 3.

all with a range of *rigidities*: in the ability to hire and fire workers; in the deployment of labor; in work organization; in skill sets; in work time; and in pay and benefits. Unsurprisingly, with that diagnosis of the problems facing capitalist economies, the logical prescription was labor market and workplace flexibility. By the early 1980s a steady drumbeat of employers, their political allies, and even traditionally social democratic parties were urging a wide-ranging post-Fordist restructuring of work.

It is essential to understand that, because economic growth in capitalist societies is neither a natural nor a spontaneous process, a set of social institutions operating alongside the market serve to regulate capitalist growth so as to limit industrial conflict and economic instability. Of particular importance, and the subject of this paper, are industrial relations institutions, which regulate relations between business and labor – both inside and outside the firm. The role of industrial relations institutions is important not only during periods of relative economic stability, but also when one regime of accumulation enters into crisis and pressure for change appears. At this point, industrial relations institutions play a crucial role in the capacity of economies to restructure. To put it crudely, and at this point in a somewhat functionalist formulation, during periods of economic transition, existing industrial relation institutions may act as obstacles to economic restructuring, creating pressures for institutional change. Indeed, it is a remarkable feature of recent years that industrial relations reform and the introduction of flexibility, particularly in working time and labor contracts, have been closely tied together in France; often the same pieces of legislation have simultaneously sought to change industrial relations institutions and introduce greater flexibility.

Thus industrial relations reform in France in the period since the early 1980s has been a precondition for post-Fordist economic restructuring and the introduction of flexibility into the labor market and the workplace: change in the institutions of social regulation had to occur before economic restructuring could take place. It is the contention of this paper that the French state not only played a central role in the process of institutional reform, but that such reform could not have occurred without the active intervention of the state because employers and trade unions were unable to undertake major projects of institutional reform or to create durable industrial relations institutions without state action; indeed, trade unions and employers were often hesitant or hostile to industrial relations reform, even where they knew that economic restructuring is necessary.

There is, however, a second reason for the continued centrality of the French state's role in the management of industrial relations. To the extent that successive governments, Socialist and Gaullist alike, have sought to create the institutions and practices necessary for self-sustaining decentralized bargaining between business and labor in order to permit a withdrawal of the state from the active regulation of class relations, those efforts have largely failed. Class organizations, particularly those of workers, have simply not been strong enough to ensure that, were the state to withdraw, the result would be anything other than a one-sided unilateral imposition of managerial power.

Much of the apparent incoherence of state policy in the last quarter century follows from this basic contradiction: the state has urged greater autonomy and responsibility upon employers and trade unions, but those elements of civil society lack the legitimacy, organizational capacity, and embeddedness within their respective classes to take on the task expected of them by the state. The result has been an oscillation of state policy between deregulation and withdrawal on

the one hand, and re-regulation and intervention on the other. State policy has even on occasion exacerbated this dilemma, creating conditions under which employer and union organizations can act irresponsibly, safe in the knowledge that state intervention is a last resort.

The set of industrial relations institutions that had been put in place (again with the state playing a central role) in the decade or so after the mid-1960s, in response to an earlier period of economic and industrial crisis, came to be associated by the early 1980s with labor market rigidities and to be perceived as obstacles to post-Fordist economic restructuring. In response to the crisis of May-June 1968, the French state had extended its *dirigisme* from the arena of state planning to the labor market and the system of social welfare. French industrial relations were marked by extremely weak firm-level industrial relations institutions, high levels of class conflict, and a deeply interventionist form of regulation of employment relations, as the French state, in effect, substituted for fragmented and poorly institutionalized trade unions. Thus in France the rigidities of the Fordist period were associated with the state and its regulation of the labor market.

A combination of the institutions inherited from the past, and the weakness of civil society in France, ensured both that the state remained integrally involved in the management and reform of industrial relations in the period under discussion in this paper, and that state policy exhibited a certain incoherence as it attempted to navigate its contradictory goals. This dilemma has been nicely characterized as “Tocqueville’s Revenge.”⁷

The rest of this paper is organized as follows. Section 2 offers a theoretical discussion of the importance of institutional regulation for capitalist economies and the centrality of state action in institutional change. Section 3 provides a brief background discussion of the system of French industrial relations that was put in place in the 1960s and 1970s in order to highlight its implications for post-Fordist restructuring and industrial relations reform in the intervening decades. Sections 4 then outlines the major elements of the reform of industrial relations institutions in the 1980s and 1990s in France, and examines the consequences of state reform projects for both industrial relations institutions and the spread of flexibility. Section 5 offers an assessment of the successes and failures of state policy in the sphere of industrial relations in France since the arrival of the Socialist government in 1981.

2. STATES AND INDUSTRIAL RELATIONS INSTITUTIONS

This section outlines the main elements of a theoretical framework for understanding the role of the French state in the reconstruction of industrial relations institutions in the period since the end of the long postwar boom and the advent of the crisis of Fordism. It seeks answers to three central questions about the relationship between politics and industrial relations during a period of economic restructuring. First, why do states act to manage class relations? Second, how do they act? What is the nature and specificity of state action in this sphere that distinguish its mode of intervention in industrial relations from those of non-state actors? Third, how

⁷ Jonah D. Levy, *Tocqueville’s Revenge: State, Society, and Economy in Contemporary France* (Cambridge: Harvard University Press, 1999).

successfully do states act? What are the conditions under which state projects on industrial relations reform succeed, and when do those projects fail or lead to unintended and perhaps contradictory outcomes?

The discussion in this section will take place at a fairly general theoretical level, and each of the three questions outlined above will need to be re-examined in later sections in the specific context of post-Fordist France. Modes of state intervention, and degrees of success in state reform projects can be expected to vary across capitalist states and over different growth regimes. Nonetheless, this paper asserts an irreducible centrality to state action which transcends time and space: both the institutional needs of capitalist economies, and the nature of industrial relations institutions themselves, ensure the continued importance of the state in the regulation of class relations.

While it is beyond the scope of this paper, it is worth noting that the dominant theoretical approaches in contemporary Anglo-Saxon political economy stress institutional durability and continuity in the face of economic change, and anticipate a fairly limited role for the state, one of institutional maintenance rather than institutional construction.⁸ It becomes difficult, from this perspective, to explain moments of institutional transformation, as occurred in French industrial relations after 1980, or the continued importance of state action.

In contrast, this paper argues that sharp ruptures, in which sets of institutions are rapidly replaced or transformed in function, are every bit as important a feature of institutional development as continuity and path dependence. It is changes in the pattern and nature of the economic growth regime that trigger these moments of institutional transformation. Furthermore, this account assigns a central role to states in explaining institutional development. States have a set of distinctive capacities when it comes to the construction and “embedding” of industrial relations institutions.

The point, simply put, is that certain forms of economic restructuring require institutional change and that the construction of new institutions requires an active state role. Far from a limited or shrinking role for the state in an era of rapid economic change, heightened competition, and new global pressures, the role of the state becomes more important because of the institutional transformation that accompanies economic change. This process is of particular importance in the sphere of industrial relations, where institutions inherited from the earlier Fordist period have come under challenge, and struggles over institutional change among industrial actors (employers, workers, and their organizations) have generated high levels of conflict.

In offering an explanation of change in French industrial relations institutions, this section draws on several theoretical literatures. It seeks to embed developments in the theorization of institutional development within the Regulationist tradition of political economy: an arranged marriage, perhaps, of French and Anglo-Saxon political economy. The benefit of bringing these two broad theoretical literatures together is that it offers a more political and institutional reading of Regulation Theory, one which creates space for contingency, conflict, and political action in the Regulationist account of the transformation of late capitalism. Properly understood, the Regulation approach is, above all, an institutional account of capitalism,

⁸ For an exception, see Wolfgang Streeck and Kathleen Thelen, eds., *Beyond Continuity: Institutional Change in Advanced Political Economies* (Oxford University Press, 2005).

something which makes it especially appropriate for the project of this paper.

While it is important to recognize that there is no single Regulation theory, and there has been a certain dissipation of the original shape of Regulation theory,⁹ nonetheless one can identify several shared assumptions which make it clear why this approach should be valuable in the task at hand. First, Regulationist accounts understand capitalist growth to be a profoundly contradictory, unstable and crisis-ridden process which will not occur “naturally.” Left to its own devices, subject only to regulation by invisible hands, capitalism will exhibit a range of crisis tendencies and generate high levels of social conflict. Change within capitalist economies is therefore the product not only of exogenous shocks, but more often of a steady accumulation of internal contradictions. It is for this reason that capitalism requires institutions to regulate or stabilize growth; it is the very “improbability of capitalist reproduction” ensures its “socially embedded, socially regularized nature.”¹⁰

Second, Regulation theory goes beyond identifying crisis tendencies to offer a historicization of capitalist development centering on the different growth dynamics (or regimes of accumulation) of different phases of capitalism. While economic restructuring, instability, and crisis are permanent features of capitalist economies, distinct patterns of growth lasting longer than one or two business cycles can be identified. This suggests that, while core features of capitalist growth remain, the precise relationship between production and exchange, the role of financial capital, and so on, undergo change. Jessop has suggested that we think of broad growth regimes as families, composed of several (national) variants, differing in many ways and sharing only a basic underlying growth dynamic.¹¹ For Fordism the common core is the link of wages to productivity and the spread of mass production and mass consumption, while for post-Fordism, it is the emphasis upon supply-side flexibility.

Institutional theory has been a growth industry in recent years, with vibrant debates concerning the institutional preconditions of national models of capitalism, and the sources of institutional change.¹² Of particular significance has been the “Varieties of Capitalism” approach (henceforth VofC). It is distinctive in identifying interlocking institutions, at the national level, which reinforce and undergird particular patterns of strategic behavior on the part of economic actors. The importance of institutions within the VofC approach is less that they distribute power or sanction behavior, and more that they facilitate deliberation and information flows among

⁹ For a survey of the Regulation field, see Robert Boyer and Yves Saillard, eds., *Régulation Theory: The State of the Art* (New York: Routledge, 1995). I am heavily indebted, for the account of the development of Regulation Theory that follows, to Bob Jessop’s paper, “Twenty Years of the Regulation Approach: Has It Been Worth It?” presented at the Twelfth Conference of Europeanists, Chicago, IL. March 2000.

¹⁰ Jessop, “Twenty Years of the Regulation Approach,” no page numbers.

¹¹ Bob Jessop, “Fordism and post-Fordism: A Critical Reformulation,” Lancaster Regionalism Group working Paper, number 4 (March 1991).

¹² For a small sample of the literature on institutions see: Herbert Kitschelt, Peter Lange, Gary Marks and John D. Stephens, eds., *Continuity and Change in Contemporary Capitalism* (New York: Cambridge University Press, 1999); Iversen, Pontusson and Soskice, *Unions, Employers, and Central Banks*; Peter Hall and David Soskice, eds., *Varieties of Capitalism* (New York: Oxford University Press, 2001); Streeck and Thelen, eds., *Beyond Continuity*; and Kathleen Thelen, *How Institutions Evolve* (New York: Cambridge University Press, 2004).

actors, permit “decentralized cooperation”,¹³ and solve familiar collective action problems, such as the under-provision of training. Institutions are rarely able to perform these roles in isolation; rather, there are likely to be interactions and complementarities among institutions such that one set of institutions functions more effectively, or indeed may only function effectively, when accompanied by other institutions. These institutional complementarities imply that there is a tendency for institutions to reinforce each other, forming an interlocking *ensemble* of institutions spanning the spheres of industrial relations, the welfare state, finance, and so on, which makes the set of institutions resistant to change. Change in the sphere of industrial relations, for example, may be resisted because of its implications for corporate governance or the training regime.

Among capitalist economies, this approach identifies two broad ideal-typical types of political economy: liberal market economies and coordinated market economies. The former rely primarily upon unregulated labor and capital markets to solve coordination problems, and is exemplified by the United States, while the latter rely more heavily upon non-market forms of coordination (collective bargaining, long-term financial relationships between banks and firms, and so on), and is exemplified by Germany. It is worth noting that France has never easily fit this typology, not least because of the central role played by the French state.¹⁴

For my purposes, the significance of the VofC theoretical framework is twofold. First, it introduces a comparative dimension. The Regulation approach is primarily synchronic, explaining broad shifts in the regime of accumulation over time. The VofC approach is diachronic, explaining differences in the functioning of national political economies in terms of the particular set of interdependent institutions. Second, this approach helps to explain the constraints acting upon states in their ability to successfully implement reform projects. The implication of the VofC literature is that because coordinating institutions are extremely difficult to construct, and interlocking institutions have an inherent resistance to change, states will find it difficult to engage in the wholesale reconstruction of political-economic institutions. Certainly, adherents of the approach are dubious of the ability of countries to “jump tracks” from liberal market economies to coordinated economies, or vice versa.

It should be said that the VofC approach does not anticipate a major directive role for states in the organization and management of capitalist political economies. The VofC theoretical framework offers an extremely thin notion of politics and state action, in which governments act largely at the behest of employers, and whose function is essentially that of encouraging coordination among economic actors. States do not appear to have interests distinguishable from those of employers, nor do they have the capacity to act independently, still less against, employer interests, and managing the political economy is a fundamentally cooperative venture, involving facilitating information flows and the coordination of activities.

¹³ Pepper D. Culpepper, “Employers, Public Policy, and the Politics of Decentralized Cooperation in Germany and France,” in Hall and Soskice, *Varieties of Capitalism*.

¹⁴ Peter A. Hall and David Soskice, “An Introduction to Varieties of Capitalism,” in Hall and Soskice, *Varieties of Capitalism*, p.21, suggest the possibility of a Mediterranean form of capitalism, encompassing Spain, Italy, France, and others.

This is not the position taken in this paper.¹⁵ Nevertheless, it is helpful to recognize the extent to which existing institutions, and the support of class actors for those institutions, constrain the construction of new institutions. It is also the case that the absence of coordinating institutions creates space for states to be more interventionist. As I have argued elsewhere, a greater state role in the regulation of class relations appears to be a distinctive policy adaptation of center-left governments in weakly coordinated liberal market economies.¹⁶

In contrast to the somewhat static character of the VofC literature, there are alternative approaches that imply a more dynamic institutionalism, one which anticipates greater degrees of institutional change over time. My own previous work has emphasized moments of institutional rupture, but more recently, the notion of “incremental transformation” has appeared.¹⁷ Here, small, little-noticed and often unintended changes can have transformative effects on the functioning of existing institutions. This literature may be more appropriate for coordinated market economies than liberal market economies, but it is a useful reminder that when institutions change, they may do so for reasons other than the intentions of class and political actors. Furthermore, existing institutions, created for a particular purpose at one point in time, may come to function quite differently at some later point.

The argument so far can be summarized in a series of propositions:

- 1) The unstable, crisis-ridden nature of capitalist growth requires regulation by institutions constructed through politics.
- 2) Different growth regimes requires different forms of regulation, and therefore different institutional sets. Thus, periods of transition between different growth regimes – periods when the process of economic restructuring accelerates – put pressure upon existing institutions, as they become increasingly ill-suited to the task of stable regulation.
- 3) The mis-match of institutions and growth regime is likely to produce economic crisis, changed class interests and expectations, and social conflict. With regard to industrial relations institutions, strikes are the most likely indicator of economic crisis and social conflict.
- 4) Institutional reconstruction is therefore a precondition for successful economic restructuring. To be explicit here: reform of French industrial relations since the beginning of the 1980s has been a fundamental requirement of the process of creating a more flexible, post-Fordist political economy.
- 5) Over quite long periods of time, countries construct interdependent and interlocking institutions to regulate economic growth. Those institutions are difficult to change, not

¹⁵ See my review and critique of the VofC approach: Chris Howell, “Varieties of Capitalism: And Then There Was One?” *Comparative Politics* 36: 1 (October 2003).

¹⁶ Chris Howell, “Is There a Third Way for Industrial Relations?” *British Journal of Industrial Relations* 42: 1 (March 2004).

¹⁷ Streeck and Thelen eds., *Beyond Continuity*, chapter 1.

least because class actors have sunk costs in these institutions, producing a tendency towards incremental change and path dependence. This raises the possibility of prolonged economic failure and social conflict.

6) In capitalist democracies, a crisis in the economic sphere is displaced onto the political sphere, creating a “legitimation crisis” for the state that demands some political response.¹⁸

This is the point at which it becomes necessary to bring politics and the state back into the argument. This paper argues that neither “the economy” nor class actors will spontaneously produce the industrial relations institutions needed for new patterns of economic growth. The state is a site of experimentation, and it is best positioned to select successful regulatory experiments, institutionalize them, and extend them throughout the economy. That process is both one of concrete institution-building and a discursive one in which crisis is narrated, and new institutions and practices are discursively constituted and naturalized.¹⁹ Above all, through its legal authority, the state alone can create a system in place of a set of scattered experiments. The role of the state is likely to be most significant in the movement from crisis to a new set of institutions designed to manage crisis; thus a state role is most visible in the constructive phase of institution-building and may be less necessary or visible for the maintenance of existing institutions.

States will become involved in the process of reforming industrial relations institutions for broadly three sets of reasons. First, states intervene in the restructuring of industrial relations institutions because they cannot afford not to. The industrial relations system is the collective form, and regulatory mechanism, of the basic unit of the capitalist mode of production: the wage relationship. That relationship is inherently conflictual, and the social, economic and political consequences of industrial relations failure — in the form of strikes, unemployment, inflation, political crisis — make it implausible that any state can adopt a non-interventionist stance for long.

Second, states also intervene because business and labor may be unable to construct institutions themselves, even though they may want them and see them as beneficial. States can institutionalize practices, generalize them beyond a few leading sectors of the economy, and limit defection from institutions on the part of business and labor organizations. States may act against the wishes of industrial actors, for their own reasons. But more often, states will act because other actors cannot: because they are timid, divided, concerned with short-term interests, have sunk costs in existing institutions, or are generally unwilling to challenge existing industrial relations institutions.

Third, and closely related to the previous point, state actors play a central role in the

¹⁸ The term and argument come from Jürgen Habermas, *Legitimation Crisis* (Boston: Beacon Press, 1975).

¹⁹ For a discussion of the importance of the discursive construction of crisis, see Colin Hay, “Rethinking Crisis: Narratives of the New Right and Constructions of Crisis” *Rethinking Marxism* 8: 2 (Summer 1995). Jane Jenson’s early work pointed in the direction of incorporating a discursive element into the Regulation approach, but scholars have largely ignored that promising direction of research. See Jenson, “Representations in Crisis: The Roots of Canada’s Permeable Fordism,” *Canadian Journal of Political Science* 24: 3 (1990).

construction of industrial relations institutions by virtue of a set of unique public capacities that are unavailable to interest groups: to enforce and systematize institutional change; to narrate an authoritative interpretation of industrial relations crisis; to solve collective action problems for class actors; anticipate potential alliances between segments of business and labor by crafting policy in such a way as to increase the chances of its eventual acceptance by business and labor interests;²⁰ a monopoly on political coercion.

As noted above, all these reasons for state intervention in industrial relations are likely to be that much more important in countries lacking strong, well-established coordinating institutions. The capacity of class actors to construct new industrial relations institutions, and to limit industrial conflict over their construction, is severely limited under these circumstances creating an opportunity (though not a requirement) for the state to substitute for class actors and take a more central role in the construction of new institutions. Regardless of where on the liberal market economy-coordinated market economy spectrum a country lies, however, the central argument here is that a state role is crucial to institutional reconstruction, which is itself a precondition for economic restructuring.

It is important to be clear about the limits to the somewhat deterministic formulation employed thus far. A crisis of a particular pattern of economic growth does not cause a new set of regulatory mechanisms to come into being, still less can any new regulatory institutions be guaranteed to ensure stable, orderly economic growth. But the transition from one distinct type of economic growth to another will create a set of problems that are not easily resolvable using existing institutions. This dilemma will encourage the search for new regulatory mechanisms, a search in which the state will play a central role.

However, there is no assumption here that state actors will act in a coherent, far-sighted, omniscient fashion; states are rarely “ideal collective capitalists.” States are often forced to respond to short-term narrowly political/electoral pressures, such that their actions may exacerbate institutional failure. State actors may mis-perceive the source of economic crisis. It is also entirely possible that the simultaneous pursuit of contradictory state policies may produce incoherence, not least because the state is not a unified actor. There is always the potential for different elements of the state to follow conflicting approaches and projects of industrial relations reform. Of particular importance in this regard is conflict between the judicial branch and executive departments such as labor ministries. To the extent that courts are partially insulated from changes in governmental power, they may place obstacles in the way of the industrial relations projects of newly-elected governments.

That said, I want to insist that a coherent set of industrial relations institutions can emerge from the apparent incoherence and absence of an overarching project that often characterize state policy: institutional coherence may appear after the fact, and as the result of unintended consequences. In France, the strikingly limited nature of partisan difference in projects of industrial relations reform in recent years is suggestive of this coherence. That is because, as the discussion of Regulation theory and the Varieties of Capitalism approach above suggested, states operate within a field of economic, social and institutional forces that shape and constrain the effects of policy. The emergence of a new growth regime (the transition from Fordism to post-

²⁰ Peter Swenson, “Arranged Alliance: Business Interests in the New Deal,” *Politics & Society* 25:1 (March 1997).

Fordism) changes the interests of class actors and exerts pressure on them to modify their strategies. The social organization of class actors (the structure and power resources of employer and trade union organizations) shapes the kinds of collective action available to them. And the set of industrial relations institutions inherited from an earlier period encourages certain developments while closing off others.

The next section will provide a brief examination of the institutional legacy and constraints inherited by post-1981 governments, in order to set the stage for the discussion of reform efforts in the quarter century since.

3. INDUSTRIAL RELATIONS PRIOR TO 1980

The character of industrial relations reform in France in the last two decades has been shaped not only by the imperatives of post-Fordist economic restructuring, but also by the institutional legacy of the industrial relations systems inherited from the past. France had earlier experienced important efforts to reform the industrial relations system, in the late 1960s and 1970s, efforts in which the state took the leading role. The reform of industrial relations then was triggered by the massive strike wave of May-June 1968. Paradoxically, the goal of institutional reform during that earlier period was somewhat similar to the decentralized form of collective bargaining that became the goal from the mid-1980s onwards, a case of history repeating itself, though with different results.

Repeatedly, in the course of the 1970s, an assortment of different governments sought to encourage regular collective bargaining practices between employers and trade unions at the level of the firm.²¹ In 1970, the government of Chaban-Delmas launched the “New Society,” which stressed the need for a reformed set of modern industrial relations as a precondition for economic modernization. It built upon the provision of legal protection for unions, won in the heat of the 1968 strikes, by amending the 1950 framework legislation on collective bargaining to make it easier to sign firm-level agreements.

In 1974, newly-elected President Giscard d’Estaing set up the Sudreau Commission charged with reforming firm-level industrial relations. The resulting report recommended a wide range of measures, including: a right of worker expression in the firm; new economic powers for works councils; an obligation for firms to present an annual *bilan social*; a requirement that managers recognize unions and treat them as partners; and an experiment with *co-surveillance* (a watered-down version of German co-determination). It is worth noting that with the exception of the last element, every one of these recommendations was eventually put in place after 1981 by a Socialist government through the Auroux Laws.²² In 1978, after the unexpected defeat of the Left in the legislative elections, the new government of Raymond Barre sought to “re-launch”

²¹ For this section, and the later section on the Auroux Laws, see Chris Howell, *Regulating Labor: The State and Industrial Relations Reform in Postwar France* (Princeton: Princeton University Press, 1992).

²² Actually, even this element did appear in the public sector industrial relations reforms of the Auroux Laws.

collective bargaining by encouraging employer and union organizations to bargain over a range of issues. The strategy was one that would become familiar after 1981: to promise employers a withdrawal of the state from regulation of the labor market, and hence greater flexibility, in return for agreement to engage in decentralized collective bargaining with trade unions.

State authorities in France therefore responded to an acceleration in industrial conflict in the 1960s by attempting to encourage the expansion and better implantation of firm-level collective bargaining institutions, in the hope that grievances linked to large-scale economic restructuring would be channeled into peaceful wage bargaining. This strategy, however, was an almost total failure in France, primarily because of the weakness and politicization of French trade unionism, a point to which I will return below. The reforms were predicated upon union organizations that were strong enough to entice employers to the bargaining table and both willing and able to exercise some degree of control over their members so that collective bargaining would indeed limit industrial conflict. French unions were never up to this task, and it is noteworthy that few of the reforms directly strengthened unions themselves. The result was that outside the public sector (where the state could mandate collective bargaining and offered quite generous wage contracts in order to keep unions at the table) and a few large Fordist firms, firm-level collective bargaining remained rare.

The failure of the firm-level project did not mean a return to the *status quo ante* 1968, however. As private industrial actors failed to take the strain of regulating industrial relations through collective bargaining, the French state became more and more directly involved in the regulation of the labor market. In effect, the state came to substitute for the weakness of trade unions and collective bargaining through a more aggressive use of the minimum wage, the requirement that large-scale lay-offs receive administrative authorization, and generous unemployment benefits and public sector wage contracts. It was the state, rather than labor organizations, that partially decommodified the labor market in France. All of this was done by governments of the Right, anxious to avoid another social explosion like May-June 1968, and concerned about the electoral danger posed by parties of the Left.

The result, for the purposes of this paper, was that as post-Fordist restructuring gathered pace, and labor market and workplace flexibility moved to the top of the agenda of both employers and politicians in the second half of the 1970s, the obstacle to that flexibility was not perceived to be primarily trade unions and collective bargaining, as in so many other countries, but rather the direct regulative efforts of the French state. All projects of industrial relations reform that sought flexibility had to tackle this problem and to find some route that would permit a withdrawal of the state from industrial relations. In practice this meant trying to encourage firm-level social dialogue – with independent trade unions or perhaps with alternative institutions representing workers – a strategy that had failed miserably in the 1970s.

Of central importance to understanding the fate of industrial relations reform in France, in both the 1970s, and the period that is the focus of this paper, is the organizational weakness of class organizations, particularly those of labor. This is well known and need not be rehearsed in detail here. Nonetheless, it is worth noting one aspect of the peculiarity of French trade unions because it will become relevant to the manner in which the notion of labor representation was redefined after 1981. While it is true that French trade unions are weak by almost every conventional standard – membership, resources, density, collectivity – they remain remarkably influential within public discourse, and they have legitimacy bestowed upon them by the state.

They are also heavily dependent upon the state for the resources and influence that they enjoy, with large numbers of union officials serving on para-public bodies or relieved from ordinary work in order to carry out union duties enshrined in law, and an estimated 60% of trade union income coming in the form of direct or indirect subsidies from the state.²³ It is hard, from an Anglo-Saxon perspective, to understand how organizations representing less than 8% of the workforce remain the privileged interlocutors of both business organizations and the state.

There is an important sense in which the French state invented the social partners at the end of the 1960s,²⁴ and Couton has argued that the weakness of labor has historically been offset by its high degree of institutionalization in the administrative and political structures of the state.²⁵ For example, labor courts offered unions the opportunity to achieve through legal action what they could not win through collective bargaining, and they encouraged the perception of unions as representatives of a generalized labor interest, as opposed to membership organization.

Elsewhere, I have argued that French trade unionism can be usefully characterized as “virtual unionism,”²⁶ in which the influence of organized labor rests not upon class power (in the sense of control over labor’s collective capacities), nor any of the conventional measures of labor strength, but rather upon two functions: as a vehicle representing labor interests to the state (deployed by workers, who are rarely union members, to bargain with the state during moments of social crisis); providing the state with an institution to legitimize economic policies that cause social dislocation. In this latter function, French governments have tended to seek out trade unions during moments of industrial conflict and social crisis to negotiate the terms of change. That French unions do not represent actual members matters less than that the state be seen to be bargaining with the “labor interest.” It is worth noting that in both cases, the importance of trade unions is a function of their relationship with the state rather than with employers, something that emphasizes the centrality of the French state in labor regulation.

The nature of trade union organization in France is therefore important for two seemingly contradictory reasons. First, it reminds us that institutional legacies constrain state reform projects. As the VofC approach suggests, industrial actors are organized in different ways and have different capacities for coordinated action. A simple withdrawal of the state from active economic regulation does not guarantee that civil society will be able to take on the task of economic regulation itself.²⁷ But at the same time, the French state has historically played a role in the construction and legitimization of interest groups, thereby structuring their relationship with the state. As we will see in next section, these two factors were both of importance after 1981. The weakness of trade unions limited the ability of the French state to promote

²³ Lallement, “New Patterns of Industrial Relations,” p. 14.

²⁴ This formulation is used in *Le Quatre Pages*, number 1 (March 16, 2004), p. 2.

²⁵ Philippe Couton, “A Labor of Laws: Courts and the mobilization of French Workers” *Politics & Society* 32: 3 (September 2004).

²⁶ Chris Howell, “Virtual Unionism in France,” in Harrick Chapman, Mark Kesselman and Martin A. Schain, eds., *A Century of Organized Labor in France* (New York: St Martin’s Press, 1998).

²⁷ This argument is copiously illustrated in Levy, *Tocqueville’s Revenge*.

autonomous collective bargaining. In response, governments came to redefine who represented labor, shifting legitimacy from unions to non-union institutions inside the firm, and even to the entire workforce of a firm through mechanisms of direct democracy.

4. RECONSTRUCTING FRENCH INDUSTRIAL RELATIONS

The system of French industrial relations has been transformed in the last two decades. Firm-level institutions designed to negotiate and facilitate economic restructuring and flexibility have proliferated, and the firm has become the primary locus of collective bargaining. This process has occurred as trade unions continued to weaken so that those representing workers in these discussions and negotiations are either non-union, workplace representatives, or union locals that are functionally indistinguishable from enterprise unions. The result has been the emergence of a micro-corporatist system of industrial relations, heavily tilted towards the interests of employers. The term micro-corporatism is borrowed from Streeck,²⁸ who used it to refer to the strong incentive that decentralized, firm-specific collectivities of workers have to engage in “wildcat cooperation” with their employers. Just as national corporatism tended to involve a *quid pro quo* of wage restraint in return for full employment, so micro-corporatism tends to involve a *quid pro quo* of workplace flexibility for job security. However, while the spread of firm-level bargaining has permitted some deregulation of the labor market, the weakness of employee representation has prevented a large-scale withdrawal of the state from its regulatory role in the labor market.

Reform efforts that took place between 1968 and 1981 created a more state-centered set of industrial relations institutions, while efforts to encourage autonomous collective bargaining institutions largely failed. That period was dominated by crisis: the regime crisis engendered by the events of May-June 1968; the economic crisis accompanying the oil shock of 1973-74; and the political crisis of heightened electoral competition between the *Union de la Gauche* and the Right. In this context, industrial relations reform was driven more by the desire to bring social peace, demonstrate social progress, and manage inflationary pressures than to construct institutions appropriate to an emerging regime of accumulation, the contours of which were, in any case, murky. Already in the efforts of the Barre government after 1978, flexibility had appeared as a goal of industrial relations reform, but it was still a minor theme.

After 1981, the compatibility between the industrial relations system and post-Fordist restructuring of the French economy became of central importance.²⁹ For reasons discussed in some detail elsewhere, the initial Socialist economic project was quickly abandoned in the face of domestic and international economic pressure,³⁰ and after the adoption of *rigueur* in 1982-83,

²⁸ This is Wolfgang Streeck’s famous formulation, “Neo-Corporatist Industrial Relations and the Economic Crisis in West Germany,” in John H. Goldthorpe, ed., *Order and Conflict in Contemporary Capitalism* (Oxford: Clarendon Press, 1984).

²⁹ Mériaux, “Éléments d’un régime post-fordiste.”

³⁰ David Cameron, “Colors of the Rose: On the Ambiguous Record of French Socialism,” *Center for*

the Socialist government underwent what Singer has appropriately termed a “conversion” to the market.³¹ From then on, there was little political disagreement about the goals of monetary stability, labor market flexibility, and privatization of state-owned industries. Rather the questions became how industrial relations institutions could contribute to this form of economic restructuring and what precise balance between social protection and flexibility was appropriate.

During this period, the state has remained “at the heart of the organisation of relations between capital and labour.”³² The emergence of labor market and workplace flexibility could not take place without the active role of the French state and a state-led restructuring of industrial relations institutions. In the first place, state regulation and state industrial relations institutions were the primary obstacles to flexibility. And in the second place, private industrial actors, particularly trade unions, were simply too weak to take on the burden of negotiating flexibility. Nevertheless, the role of the French state in industrial relations reform after 1981 cannot be understood within the familiar category of *dirigisme*. As Vail has pointed out, state action has increasingly involved delicate and careful negotiation with business and labor organizations as the state has tried both to encourage class actors to take on more of the regulatory burden of industrial relations and “to shore up societal support behind unpopular and often painful reforms.”³³ The central problem facing the French state in its efforts to reconstruct industrial relations institutions in a manner appropriate to post-Fordist economic restructuring was how to withdraw from direct regulation of the labor market in the absence of labor actors at the firm level capable of ensuring that the introduction of flexibility was genuinely negotiated rather than imposed unilaterally by employers.

The core of the state’s strategy, under both governments of the Left and the Right, was to create legal obligations inside the firm that would have the effect of generating autonomous and self-sustaining social dialogue that would in turn permit deregulation of the labor market. Opportunities for employers to enjoy greater flexibility in the deployment of labor were tied to a legal obligation to negotiate change at the level of the firm. Given the weakness of trade unions inside the firm, this obligation in turn required a re-definition of who could legally bargain with the employer, or at least formally ratify workplace change. Thus the three consistent elements of industrial relations reform after 1981 were the decentralization of bargaining to the firm, the creation of new institutions of worker representation, and linkage between the use of these micro-corporatist institutions and practices and the achievement of flexibility.

The Auroux Laws

The Auroux Laws rewrote fully one-third of the French labor code and represented the

European Studies Working Paper Series (1988), and Peter Hall, *Governing the Economy*, chapter 8.

³¹ Daniel Singer, *Is Socialism Doomed? The Meaning of Mitterrand* (New York: Oxford University Press, 1988), p. 189.

³² Steve Jefferys, *Liberté, Égalité and Fraternité at Work: Changing French Employment Relations and Management* (New York: Palgrave MacMillan, 2003), p. 128.

³³ Mark Vail, “The Delicate Politics of Negotiated Political Change: The State and Social Partners in Contemporary French Social-Protection Reform,” paper presented at the Southwest Political Science Association’s annual meeting, San Antonio, Texas, 16-19 April 2003, p. 3.

most thorough-going state industrial relations reform project since 1936. There were diverse inspirations for the reforms, and one of the interesting features of the package as a whole is that so many of its elements had been proposed in one form or another in the past. As mentioned above, the Sudreau Commission advocated a right of worker expression in the firm, greater economic powers for the works council, and an annual *bilan social*, all of which found their way into the Auroux laws. Similarly, in 1978, at the point at which the Barre government was proposing to re-launch collective bargaining, Jacques Delors set out a reform agenda that involved strengthening trade unions and extending and regularizing collective bargaining inside the firm. It should also be recalled that Delors, the first economics and finance minister of the 1981 Socialist government, had also in an earlier incarnation, been the architect of Chaban-Delmas' New Society project of industrial relations reform. So the Auroux Laws combined some fairly conventional (though nonetheless radical in scope) measures aimed at encouraging decentralized collective bargaining with a series of micro-corporatist elements: strengthening firm-specific industrial relations institutions that are largely autonomous from, and unarticulated with, industry or national institutions of labor regulation.

The central elements introduced by the Auroux Laws were as follows. First, a right of self-expression for workers inside the firm, in the form of regular meetings to discuss social relations within the firm. This provision was experimental in the Auroux legislation and limited to firms employing 200 or more workers. Legislation in 1986 made the right of expression permanent and extended it to firms with 50 or more workers. Second, works councils received new rights of mandatory consultation over a wide range of economic issues, greater resources including the right to hire outside experts, and, in very large firms, a special economic delegation was created. Third, an annual *bilan social* (a report on the social responsibilities of the firm) was made mandatory. Fourth, trade union delegates received legal protection in all firms, not simply those employing 50 or more workers, as had been the situation since 1968. Unions also gained greater resources (office space, time off for union duties) in firms employing 50 or more workers. Fifth, an obligation to bargain annually (though not to conclude an agreement) at both the firm and branch level was created in firms employing 50 or more workers and having a union delegate. Firm-level agreements could derogate from legislation and higher-level agreements as long as a union or unions receiving a majority of the votes in the last works council election did not veto the agreement. And the process of state extension of collective agreements was made easier. Sixth, a series of reforms of public sector industrial relations decentralized works councils, provided a right of self-expression, and extended a limited form of worker representation on the boards of public companies to firms employing 200 or more workers.

Two main points need to be emphasized about this package of legislation. The first is that it did very little to directly strengthen French trade unions. Union delegates received legal protection in small firms and some additional resources in larger firms (resources were not provided in small firms because of the fear of burdening small firms), but for the most part, the legislation created the obligation to bargain with unions where they were present without encouraging the spread and implantation of unions. The hope was that unions would be indirectly strengthened by their the increased powers given to workers councils and the right of worker expression. This was a vain hope at a time when employers were at best ambivalent and

often deeply hostile to trade unionism.³⁴

Second, the Auroux Laws contained within them a whole series of micro-corporatist elements, whose logic pointed away from articulated collective bargaining between independent trade unions and employers, instead encouraging an assortment of forms of social dialogue inside the firm with firm-specific institutions of worker representation, unconnected to either outside trade unions or higher levels of collective bargaining. These elements included: the possibility for firm-level agreements to derogate from legislation and branch agreements; the increased powers of consultation for works councils (which had the effect of blurring the line between consultation and negotiation); and the right of expression inside the firm. In the latter instance, the expression groups were made mandatory at a time when managerial practices that emphasized direct communication with the workforce, unmediated by trade unions, were spreading within French firms, and an assortment of institutions such as quality circles and worker-management groups were appearing.³⁵ Thus, the legislation had the effect of a forced modernization of managerial practices, extending their reach beyond the leading edge of French firms to the rest of the economy.

The results of the Auroux reforms on the industrial relations institutions of France were made clear by an exhaustive study ten years after their implementation.³⁶ While branch-level collective bargaining had stagnated, there had been a substantial increase in the scale of firm-level bargaining to the point that it has become “the privileged mode of social regulation.”³⁷ But at the same time, the weakness of trade unionism had not been reversed and indeed appeared to have accelerated, though the study was ambivalent about the degree of responsibility of the Auroux legislation for trade union decline. The number of union delegates had fallen, especially in smaller firms, and employee representation of all types was limited in these firms. Indeed, one-half of all workers were employed in firms with no employee representation of any kind.³⁸

So how to explain the paradox of a dramatic expansion of collective bargaining at a time of growing trade union weakness? In practice, employers were signing agreements with union delegates who represented very few actual members, in order to gain dispensation (or derogate) from legislation or branch agreements. At the same time, a blurring of the lines of employee representation was taking place. The distinction between union delegates negotiating collective agreements and works councils or worker expression groups consulting over work reorganization or lay-offs collapsed in the context of an acceleration in the process of economic restructuring.

³⁴ One indication of this employer ambivalence came from a SOFRES survey conducted as part of the review of the Auroux Laws. See Michel Coffineau, *Les Lois Auroux, Dix Ans Après* Paris: La Documentation Française, 1993), annex XI.

³⁵ Alan Jenkins, *Employment Relations in France: Evolution and Innovation* (New York: Kluwer Academic/Plenum Publishers, 2000), chapter 3.

³⁶ Coffineau, *Les Lois Auroux, Dix Ans Après*.

³⁷ *Ibid.*, p. 93. Translation from the French by the author.

³⁸ The findings of the Belier report were summarized in Coffineau, *Les Lois Auroux, Dix Ans Après*, p. 77.

There was instead confusion and competition among forms of employee representation.³⁹

New Forms of Worker Representation

A decade after the Auroux Laws were put in place, they had indeed encouraged an assortment of forms of social dialogue inside the firm and a significant expansion of firm-level collective bargaining. But in the absence of strong, independent trade unions, that dialogue and bargaining were of the micro-corporatist variety. In the 1990s, the role and form of employee representation inside French firms underwent significant change that had the effect of deepening and broadening the construction of a set of firm-level institutions that regularized social dialogue with largely non-union employee representatives.

The 1990 Belier report on employee representation in small- and medium-sized firms, which had identified the paucity of such representation, even in firms where employee delegates or works councils were legally required, recommended a simplification of employee representation to permit a merging of function. The Five-Year Employment Law (which also had important provisions relating to work-time reduction and flexibility, see below) permitted the merging of the employee delegate and works council function in firms employing fewer than 200 workers and simplified the information that employers were required to provide to works councils.

In October 1995, employers and several of the trade union confederations (but not the CGT or FO) issued a general statement about collective bargaining and signed two interprofessional agreements (the other one concerned work-time reduction and flexibility, indicating the linkage between workplace industrial relations institutions and the introduction of flexibility). The general statement called for the autonomy of bargaining and decried “social interventionism” on the part of the state.⁴⁰ The agreement relating to collective bargaining launched a three-year experiment during which time firm-level agreements on single issues could be signed by either mandated or authorized delegates in firms employing less than 50 workers in which there was no union delegate. This permitted either an elected employee representative or an employee mandated by a national trade union to sign collective agreements.

Arguing that levels of collective bargaining should be complementary rather than hierarchical, the accord also permitted firm-level agreements to be signed that contained clauses less favorable than branch or inter-professional agreements. This “favorability principle” (to the employee) had been the cornerstone of French collective bargaining law since 1950. It was first breached by the 1982 Auroux legislation in order to permit derogatory work time agreements, but it was now extended more broadly. The 1995 accord was sanctioned by legislation in 1996, then extended for another five years in 1999, when the initial experiment expired. As will be discussed below, the Aubry 35-hour workweek legislation also incorporated the principle of agreements signed by non-union employee representatives into the process by which work-time

³⁹ Coffineau, *Les Lois Auroux, Dix Ans Après*, p. 78.

⁴⁰ “Joint employer/union declaration,” *European Industrial Relations Review*, 255 (April 1995), p. 6.

reduction could take place.

However, the most substantial incorporation of these piecemeal reforms of collective bargaining into French labor law took place in the 2004 *loi Fillon*. This is not the place for a detailed account of this enormously complicated piece of legislation,⁴¹ but some discussion is necessary. The legislation incorporated two sets of changes,⁴² mirroring the original 1995 accord by recognizing the clear link between flexibility and worker representation. One set of changes permitted wider recourse to derogatory collective agreements, while the other attempted (much less successfully) to incorporate the so-called “majority principle” into bargaining. The logic of the linkage was simply that there should be some assurance that derogatory agreements would be signed by organizations or institutions that were genuinely representative of workers. To put it crudely, the employer demand for greater flexibility should be balanced by a trade union demand that labor signatories represent a majority of the relevant group of workers.

The first part of the changes did involve a significant modification of the favorability principle, essentially ending it by permitting derogation unless explicitly denied in collective agreements or legislation. Only in four areas, including the minimum wage, did the legislation prevent derogation. Thus sectoral agreements could now be less favorable to workers than interprofessional agreements, and firm agreements could be less favorable than sectoral agreements. Furthermore, in firms without a union delegate, firm-specific bodies such as the works council could be authorized to sign agreements, and in the absence of any elected employee representative, a union-mandated worker could sign an agreement and the workforce then ratify it. As Mériaux has noted, the ratification process introduces direct democracy as a parallel, possibly rival, principle to representative democracy.⁴³

The second part of the reforms, however, was implemented in much weaker fashion. MEDEF never fully supported the majority principle, for the obvious reason that it limited the ability of employers to sign agreements with weak, non-representative trade unions, and successfully lobbied to undermine the majority principle in the final version of the legislation. Two models were created, one involving ratification by majority unions, and the other involving the mere absence of opposition from unions representing a majority. In both, minority unions retained significant power because, at sectoral and interprofessional levels, majority and minority were defined in terms of the number of officially recognized trade union organizations, regardless of the relative size of those unions or the membership they represented.

The result, therefore, of the 2004 reform of collective bargaining was to both enhance the autonomy of the firm from the wider industrial relations system,⁴⁴ and encourage the shift in

⁴¹ For detailed analysis of the *loi Fillon*, see several articles in a special issue of *Droit Social* number 6 (June 2004): Jean-Emmanuel Ray, “Les curieux accords dits “majoritaires” de la loi du 4 mai 2004;” Marie-Armelle Souriac, “L’articulation des niveaux de négociation;” Georges Borenfreund, “La négociation collective dans les entreprises dépourvues de délégués syndicaux.” My analysis of the effects of the legislation is also heavily influenced by the article “Loi sur le Dialogue social” *Le Peuple* (May 17, 2004??) Author???

⁴² In fact the *loi Fillon* also involved a far-reaching reform of vocational training.

⁴³ This point was made by Olivier Mériaux in a personal communication with the author, July 9, 2004.

⁴⁴ It is still too early to evaluate the effects of this legislation, not least because, to a certain extent, it simply

worker representation from trade unions to non-union, firm-specific institutions, while doing little to counter-balance this shift with a strong assertion of the need for majority representation where unions existed.

Faced with the weakness of French trade unionism but the need to use collective agreements in order to introduce flexibility, governments of both the Left and the Right, employers and some of the trade union confederations chose to permit a delegation of trade union responsibilities onto employees, who had no necessary connection to a trade union, in firms that had no union representative nor any necessary union membership. For the unions that did support this practice (and all the union confederations participated in the mandating process even if they did not sign the original interprofessional agreement), the hope was that the mandating process, would help unions get access to smaller firms and eventually create union delegates out of mandated employees. For employers and the state, these representatives provided an employee interlocutor with whom to negotiate flexibility, and it is therefore no coincidence that legislation and interprofessional agreements on employee representation always went hand-in-hand with measures encouraging flexibility. With the development, legitimization and expansion of the mandating process, virtual trade unionism has been taken to its logical conclusion and endpoint: national trade union confederations without any necessary presence or power in the workplace are now called upon to bestow legitimacy upon firm-level flexibility agreements.

Negotiating Layoffs

In 1986, the requirement that mass layoffs for economic reasons receive administrative authorization, introduced in the 1970s and a symbol among employers of rigid bureaucratic obstruction to economic restructuring, was abolished. But what emerged in its place was a greater emphasis upon the obligation of employers to negotiate in order to provide alternatives to lay-offs or compensation through a Social Plan presented to the works council.

Again, there was little difference between governments of the Left and the Right, with a Socialist government giving the Labor Inspectorate a greater role in regulating Social Plans in 1993 and the Gaullist government that replaced it also emphasizing that firms had an “obligation of means” to avoid lay-offs wherever possible. In 1995, a court of appeal decision required that Social Plans contain “real and serious” redeployment measures,⁴⁵ a decision that led employers to argue that administrative authorization for lay-offs had been replaced with judicial authorization. This concern was given credence after the passage of the Robien Law in 1995, when it appeared that Social Plans that did not include work-time reduction as one option for avoiding lay-offs would not be approved. Thus, the Social Plan became a tool for state influence

ratified and extended earlier developments. However, there is one early study of ten sectors: Annette Jobert and Jean Saglio, *La Mise en Oeuvre Des Dispositions De La loi Du 4 Mai 2004 Permettant Aux Entreprises De Déroger Aux Accords De Branche* Rapport pour la Direction des Relations du Travail, Ministère de l'Emploi du Travail et de la Cohésion Sociale (May 2005). It argues strongly that strengthening the autonomy of firms inevitably weakens sectoral bargaining.

⁴⁵ *European Industrial Relations Review*, 258 (July 1995), p. 6.

over economic restructuring at the firm level and for obligating employers to engage in some dialogue with their employees over the process of restructuring. In Jenkins words, state action fostered “a more proactive HR” [human resources] approach.⁴⁶ In practice, this obligation was likely to encourage the negotiation of flexibility in order to minimize job loss.

In 2000 the Socialist government introduced “social modernization” legislation whose purpose was to make it harder for firms to layoff workers for economic reasons unless the social partners had first exhausted all alternatives through firm level bargaining.⁴⁷ Alternatives included negotiating a work time reduction and redeployment within the firm. Social Plans had to have explored these options in order to be accepted, and works councils were given new informational powers in the case of layoffs. In the context of high unemployment, and the announcement of layoffs from high profile employers such as Marks & Spencer and Danone, this legislation was subsequently amended before passage in mid-2001 in order to further restrict the conditions under which layoffs can take place.

In 2002 parts of the social modernization legislation were declared unconstitutional by the Constitutional Court, and then the new Gaullist government suspended seven clauses of the legislation pending talks between MEDEF and the trade unions. For more than two years, these talks failed leading to the introduction of new legislation in January 2005.⁴⁸ This had broadly two elements – both of them familiar in the context of the argument made in this paper. First, the process of economic layoffs was simplified and streamlined, providing employers greater flexibility. Second, that flexibility was accompanied by a new requirement that employers and workplace representatives negotiate future employment, training and redeployment measures every three years. Thus flexibility was once again tied to an obligation to engage in decentralized social dialogue.

The Debate over Work Time

The industrial relations developments noted in the last section were a precondition for the introduction of greater workplace and labor market flexibility in France. In the last two decades discussion of flexibility have come to dominate industrial relations, with changes in the institutions of industrial relations justified on the grounds that they facilitate greater flexibility. Two forms of flexibility have been the focus of attention: flexibility in the form of work contracts, with the issue being the extent to which temporary, fixed term, and part-time contracts were permissible; and flexibility of work time, where debate centered upon the relationship between more flexible work time and reduced work time. In both cases, the obstacle to more flexible deployment of labor was state regulation rather than collective agreement. Thus, the

⁴⁶ Jenkins, *Employment Relations in France*, p. 140.

⁴⁷ For details of the legislation see “Employment Reforms Bill,” *European Industrial Relations Review* #318 (July 2000).

⁴⁸ For details of the legislation see “Draft Law on Redundancies,” *European Industrial Relations Review* #372 (January 2005).

central question facing governments of the Right and Left was under what circumstances they would permit a deregulation of the labor market. French authorities sought to permit flexibility as long as it was negotiated, which in turn depended upon the creation and legitimacy of firm-level institutions for bargaining and dialogue discussed in the last section. Given the weakness of trade unions, this was always a delicate balancing act, as the state could never fully withdraw from regulation of the labor market in the absence of strong, independent, counter-veiling institutions of worker power inside the firm. The result was a tentative, crabwise process of introducing flexibility.

This section focuses upon work time because it came to dominate discussions of flexibility in the 1990s and because it demonstrates most clearly the relationship between state intervention, industrial relations reform, and flexibility. Despite the derision that greeted the 35-hour workweek legislation of Lionel Jospin's 1997 Socialist government outside France, work-time reduction was a bipartisan strategy, though operationalized in different ways. Faced with high levels of unemployment and having handed over control of monetary policy and exchange rate policy to European Union institutions, and with severe external constraints upon fiscal policy, creating employment through work-time reduction was one of the few policy options available to French governments.⁴⁹ For two decades after 1981, the recipe for modifying work time remained remarkably consistent: greater flexibility in the use of work time was offered to employers in return for a reduction in overall work time and a requirement that collective bargaining be the privileged mode of implementing changes in work time. While governments of the Right emphasized voluntary work-time reduction and widened opportunities for work-time reduction to be combined with great flexibility of work time, governments of the Left made work-time reduction mandatory and tried to regulate the forms of flexibility that it accompanied. But what all legislation on work time in the 1990s shared was a requirement that a precondition for flexibility was collective bargaining or some alternative form of social dialogue at the level of the firm. Thus, widespread changes in work time required an expansion of the decentralized industrial relations institutions that had begun to emerge in the 1980s in response to the Auroux Laws. Every government initiative in the area of work time was accompanied by an increase in the quantity of firm-level bargaining.

The Socialist government elected in 1981 had promised a reduction in the workweek to 39 hours, and bargaining took place between employers and unions on the implementation of that pledge. That bargaining was short-circuited, however, by legislation in 1982 that reduced the workweek, provided a fifth week of vacation time, and required full compensation to workers for reduced working time. It did provide, however, an additional 130 hours over the legal annual limit to be worked without administrative authorization, as long as the outcome was collectively negotiated. After this experience, employers shifted their focus from national bargaining with unions to firm-level bargaining, where unions were weaker (and agreements could be signed with minority unions) and where the 1982 work-time reduction legislation (presaging the later Auroux Laws in this regard) permitted derogation from legislation and branch agreements. The effects were two-fold: first a spike in the amount of firm-level bargaining; and second, one-sided agreements that provided far more flexibility to employers than reduced work time or alternative

⁴⁹ This argument is made by Gunnar Trumbull, "Policy Activism in a Globalized Economy: France's 35 Hour Work Week," *French Politics, Culture & Society*, 20:3 (Fall 2002).

forms of compensation to workers.⁵⁰

Work-time reduction re-appeared on the legislative agenda at the beginning of the 1990s. In fact, as early as 1992, the Socialist government proposed offering reduced social security charges to employers in return for work-sharing in the form of part-time work and reduced hours, to be based upon a model agreement. But the real impetus came from two pieces of conservative legislation. In 1993, the Five-Year Employment Law of the Balladur government permitted much greater flexibility in work-time, with particular emphasis upon encouraging part-time work and the annualization of hours, in return for minimal work-time reduction. Agreements had to be signed at the firm level, and the government offered reduced social security charges to sweeten the deal. The Robien Law of 1996 went further, making it easier to reach agreements on flexible and reduced work time and offering a more generous reduction in social security charges in return for agreements that promised either to create new jobs or save existing jobs. This legislation had a particularly large impact on part-time employment because reductions in social security charges were available for the creation of part-time jobs or the transformation of a full-time job into a part-time job if that led to the creation of a new job. Jenkins has argued that the Robien Law had a “dynamic role in workplace experimentation and negotiation” and “catalyzed a search for *broader organizational flexibilities*.”⁵¹ As with the Auroux Laws, state action encouraged and subsidized the modernization of employer practices in a manner that promoted post-Fordist restructuring.

This was the backdrop to the more radical proposals of the Socialist government elected in 1997 on a pledge to reduce the workweek to 35 hours. What emerged was a three-stage process. The first law (Aubry I), passed in 1998, set out the terms under which voluntary work-time agreements could be reached. A second law (Aubry II), enacted in 2000, made work-time reduction mandatory, where agreements had not already been reached, for firms employing 20 or more workers. The third stage was to have applied the legislation to smaller firms in 2002, but the left was ousted from power, and that stage of the reform was dropped by the new conservative government.

Aubry I permitted a large assortment of ways in which work-time reduction could be introduced – including annualized hours, a shorter workweek or work day, longer vacation periods or additional days off – and enormous flexibility in the use of work time as long as the result was the product of collective bargaining.⁵² The experience of the voluntary agreements reached under Aubry I also demonstrated that employers were less interested in the reduction in social security charges than in flexibility in the implementation of work-time reduction. As a result, Aubry II permitted greater innovation in the forms of flexibility permissible, so long as the outcome was subject to a collective agreement. Indeed, Aubry II provided very strong incentives for reducing work time through collective bargaining.⁵³

⁵⁰ Howell, *Regulating Labor*, p. 194.

⁵¹ Jenkins, *Employment Relations in France*, pp. 165-66, emphasis in the original.

⁵² Supiot, *Beyond Employment*, p. 82.

⁵³ Without a collective agreement, the reduction in work time had to be on a monthly or weekly basis, but with an agreement, there were a range of other options, including annualization, a wage increase offset against

The legislation also sanctioned the use of the mandating procedure and other alternatives to traditional collective bargaining. In smaller firms where there was no union delegate, firm-level agreements could be signed on behalf of employees by a worker who was either mandated to sign by one of the five national trade union confederations or, if not mandated, the resulting agreement had to be approved by a majority vote of employees and approved by a local labor-business commission.

What have been the results of the legislation? First, like the Auroux Laws, the legislation has survived its controversial beginnings. When the Right swept to power in 2002, it blocked the extension of the 35-hour requirement in small firms and gave employers more latitude in meeting the 35-hour requirement in firms where it already existed, notably through the expansion of allowable overtime.⁵⁴ Nonetheless, three years on, with continued concern about unemployment, new legislation continued to endorse the principle of the 35-hour week while offering greater opportunities for employees to work beyond the legal limit and continuing the derogation of smaller firms from the legislation for a further three years (until 2008).⁵⁵ Most of the Aubry legislation has been left in place, suggesting that despite the denunciations of the Right and of employers, the legislation had a less damaging effect on French firms than commonly claimed.⁵⁶

Second, the impact upon firm-level collective bargaining has been undeniable. The number of firm-level agreements signed each year remained stable from 1987 until 1993 (after rapidly rising in the aftermath of the Auroux Laws), then increased steadily between 1993 and 1998, roughly doubling during that period. The number of agreements then accelerated sharply after 1998, increasing from a little under 15,000 to 35,000 in 1999. The number remained roughly at that level in 2000 and 2001 before beginning a rapid decline, to 23,000 in 2002 and 16,000 in 2003.⁵⁷ Thus the quantity of firm-level bargaining was tied directly to the impact of work time legislation; this can hardly be interpreted as indicating the growing autonomy of collective bargaining from the state. Work time was reduced in two phases: prior to 2000, firm-level agreements led to reduction, while in 2000 and 2001, the changeover to 35 hours was much

overtime, additional days off, and so on. The existence of a collective agreement also permitted a simplified lay-off procedure. The reduction in social security charges was also only available if a collective agreement were reached, ratified by one or more unions that had received a majority of the votes in the last works council election. Agreements signed by minority unions were valid, but could not benefit from the reduced charges.

⁵⁴ “New Law Relaxes Implementation of 35-Hour Week,” *European Industrial Relations Review*, 346 (November 2002).

⁵⁵ For details of the proposed legislation see “Reform of the 35-Hour Week,” *European Industrial Relations Review* #373 (February 2005). The primary mechanism for permitting greater flexibility was an expansion in the use of the *comptes épargne-temps* (CETs), but, in familiar fashion, greater flexibility in work time was tied to an obligation to bargain, in this case a “double” agreement comprising both a firm or sectoral agreement, and the further agreement of the worker(s) concerned.

⁵⁶ A study of the effect of the 35 hours legislation, undertaken by Hervé Novelli, was presented to the National Assembly in April 2004: www.assemblee-nationale.fr/12/dossiers/temps_travail_mission.asp. It drew some strong conclusions about the negative effects on employment of the 35 hours legislation. The surprising gains of the Left in the regional elections has probably prevented any further legislative action in response to the report.

⁵⁷ “La Négociation Collective en 2003,” *Ministère de l’emploi, du travail et de la cohésion sociale*, p. 111, but note that there was a change in methodology in 2002 that makes comparison with earlier years difficult.

more likely to result from the direct application of a branch agreement, in the absence of firm-level bargaining.⁵⁸ By the end of June 2003, 58.4% of all employees were covered by the 35-hour week.⁵⁹

Third, it is difficult to know who exactly was signing agreements, and how representative of employees they were. The mandating procedure was widely used for firm-level work-time agreements; fully 70 percent of such agreements were reached using this procedure in 2001, and unsurprisingly, the smaller the firm, the more likely it was to reach agreement without the signature of a union delegate. The promise that mandating would open non-union firms to unionization does not appear to have been fulfilled.⁶⁰ Even in 2002, when only one-third of agreements dealt with work-time reduction, less than half of firm-level agreements were signed by a union delegate, the rest being the result of mandating, ratification by employees, or signature from a firm-specific body.⁶¹ At the branch level, a large number of agreements were signed – 112 of 180 bargaining sectors had work-time reduction agreements by October 1999 – but they tended to be signed by a small number of unions. By mid-1999, only 22 percent of branch agreements had been signed by either all five confederations or by four of the five. One-third had been signed by only one or two national unions.⁶²

Finally, work-time reduction has been accompanied by work-time flexibility, and with it, work reorganization. Firms have taken advantage of the wide range of options for how to introduce reduced work time, and how to calculate work time, so as to experiment with different kinds of shift work, and scheduling that corresponds better to demand. In this respect, the widespread introduction of annualized hours – more than one-third of employees saw their work time reduced in this way⁶³ – offers tremendous flexibility to firms. By creating a greater financial disincentive to use overtime, the 35-hour week legislation forced employers to contemplate a more fundamental reorganization of work.

5. CONCLUSION

In the last quarter century, the political economy of France has been transformed, in part

⁵⁸ “Government Issues Assessment of 35-Hour Week Legislation,” EIROOnline, at www.eiro.eurofound.ie October 24, 2002.

⁵⁹ “Reform of the 35-Hour Week,” *European Industrial Relations Review* #373 (February 2005), p. 30.

⁶⁰ Trumbull, “Policy Activism in a Globalized Economy,” p. 31 (of Brookings version).

⁶¹ “Collective Bargaining in 2002 Examined,” EIROOnline, at www.eiro.eurofound.ie September 25, 2003.

⁶² Steve Jefferys, “A ‘Copernican Revolution’ in French Industrial relations: Are the times a’ Changing?” *British Journal of Industrial Relations* 38:2 (June 2000), p. 50.

⁶³ “Government Issues Assessment of 35-Hour Week Legislation,” EIROOnline, at www.eiro.eurofound.ie October 24, 2002.

as a result of ambitious projects of state institutional reconstruction that began in the early 1980s. This transformation took place along several dimensions but none was more important than the realm of the labor market and the institutions of industrial relations. At the end of the 1970s, extensive state regulation and predominantly industry-level bargaining had combined to ensure a high degree of labor market rigidity, limited autonomy on the part of firms in the organization of work, and the likelihood that industrial conflict would rapidly become politicized. Yet by the end of the 1990s, a remarkable degree of labor market and workplace flexibility had appeared as firms enjoyed much greater autonomy from both state regulation and higher levels of collective bargaining.

This paper has argued that the introduction of flexibility, and hence a broader post-Fordist restructuring of the French economy, was possible only because of the reconstruction of the institutional architecture of industrial relations: flexibility and industrial relations reform were intimately connected. Broad shifts in the growth regime put a premium upon greater flexibility and made the existing institutions of industrial relations, formed during an earlier period, and designed to manage Fordist growth, increasingly dysfunctional. Even as employers became aware of emerging growth conditions, their ability to introduce flexibility of various kinds into the workplace depended upon a fundamental reform of the institutions of industrial relations. Post-Fordist economic restructuring was therefore hostage to institutional reconstruction.

Shrinking trade union membership, union dependence upon employers, and the process whereby firm-level agreements can be signed by non-union employees and representatives of firm-specific employee institutions, have contributed to the emergence of micro-corporatism in which, without access to resources and capacities beyond the walls of the firm, workers are likely to reach cooperative agreements with their employers. Set alongside the expansion of firm-level bargaining and the ability of local agreements to derogate from legislation and branch agreements, this has been an institutional environment conducive to the negotiation of flexibility.

It was the state that created the conditions for that process of institutional transformation. In the 1970s, even as the much-vaunted planning process began to deteriorate,⁶⁴ France remained the archetypal *dirigiste*, heavily regulated economy, and nowhere more so than in the sphere of the labor market. The organization of work, the deployment of labor, wage levels, and exit and entry into the labor market were all subject to administrative regulation. The last twenty years have seen a remarkable “acceleration of changes” in work organization and the labor market,⁶⁵ the net effect of which has been to introduce high levels of flexibility. This has been apparent across a range of areas: the diffusion of individualized payment arrangements; the spread of total quality programs of various types; dramatic increases in contractual flexibility that have led to a large expansion in the number of workers on part-time, temporary, or fixed-term contracts; and, of course, the opportunities for reorganizing work made possible by flexible work time.⁶⁶ In all

⁶⁴ Hall, *Governing the Economy*, chapter 7.

⁶⁵ Jenkins, *Employment Relations in France*, p. 63.

⁶⁶ The best source for the spread of various forms of flexibility in France is Jenkins, *Employment Relations in France*, chapters 4-6. Page 115 has a table showing the individualization of wages, and pp. 174-176 have tables showing the rise in number of “precarious” jobs.

these areas, state intervention has under-written change, either by creating the institutional preconditions for negotiating flexibility or by providing strong incentives for firms to introduce flexibility. The common theme to all these developments has been state-led modernization of industrial relations practices.

The recent past has not been a simple story of state withdrawal from industrial relations, with private industrial actors taking over responsibility for regulating the relations between business and labor. Rather, institutional developments have been driven by state actors, and to the extent that firm-level bargaining takes place, it is largely underwritten and guaranteed by the state. Despite its best efforts, the French state has been unable to withdraw from its central role in regulating industrial relations. Autonomous and self-sustaining collective bargaining has never occurred; each instance of its invigoration depended upon an active role by the state in promoting social dialogue. It is important to emphasize “the roles that French elites have played in stimulating and promoting innovation during the last thirty years,”⁶⁷ and to recognize the “extremely important catalytic effect of the law.”⁶⁸ Paradoxical as it may sound, creating the institutional conditions for post-Fordist economic restructuring has been a state-led process in France.

In a post-*dirigiste* age, the role of the French state has changed, but it is no less important. Unlike the heyday of planning, the state no longer directly organizes economic activity, and its direct regulatory role has lessened; it no longer substitutes for business and labor. The importance of the French state now is its capacity to reform institutions in such a way as to encourage different, modernized practices on the part of class actors. These actors enjoy greater autonomy in the organization of work, but how they use that autonomy remains heavily shaped by the industrial relations institutions for whose emergence the state has acted as midwife. It is this contradiction, or perhaps tension is the more appropriate word, between autonomy and constraint that is the most marked feature of the evolution of industrial relations in France in the recent past. This conclusion examines, therefore, the reasons for both the successes and the failures of the industrial relations reform projects of the French state.

State strategy has been remarkably consistent over the last quarter century. It had three elements: 1) to decentralize negotiation to the level of the firm; 2) to create new institutions legally able to speak on behalf of workers; and 3) to link the achievement of flexibility and deregulation to the use of these new decentralized industrial relations institutions. These three elements were logically tied together: once it became clear that trade unions were unable or unwilling to engage in decentralized collective bargaining, it became necessary to find, or to create, firm-level interlocutors who could. Again and again, state actors have created legal obligations in the sphere of industrial relations which have the effect of forcing private actors to construct firm-level institutions that permit social dialogue: the Auroux Laws created an obligation to bargain and to enhance communication within the firm through expressions groups and consultation with works councils; Social Plans required discussion between employers and worker representatives on alternative forms of economic restructuring; the reduction of the

⁶⁷ Jenkins, *Employment Relations in France*, p. 206.

⁶⁸ *Ibid.*, p. 165.

workweek “was held out as bait” in the process of “state modernization of industrial relations.”⁶⁹

The French state performed a set of tasks, made possible by virtue of a set of capacities not enjoyed by private industrial actors, in the transformation of the institutions of industrial relations as follows. First, it helped to dismantle existing industrial relations institutions by removing the legislative supports that underpinned them. This primarily involved permitting ever wider opportunities for derogation from both legislation and industry bargaining. Beginning as part of the Auroux reforms in 1982, this “small revolution”⁷⁰ fatally undermined the hierarchical organization of industrial relations that had been the cornerstone of industrial relations since 1950.

Second, the French state created the space and the institutional conditions for the emergence of a set of new industrial relations practices. This was done by making the availability of various forms of flexibility conditional upon a certain form of social dialogue. In the Auroux legislation at the beginning of the 1980s, in revised requirements for economic layoffs and the loosening of state regulation on labor contracts from the mid-1980s through the mid-1990s, and in the multiple iterations of work time reform from the early 1990s onwards, an explicit linkage was imposed between flexibility and decentralized negotiation. This linkage had an explicitly micro-corporatist logic, emphasizing the emergence of institutions within the workplace that encouraged firm-specific negotiation.

Third, and most difficult to evaluate, the French state played a role in redefining the very notion of worker representation, in the process bestowing legitimacy upon new forms of employee representation. As Mériaux has pointed out,⁷¹ two competing logics of representation emerged during this period: representative democracy which relied upon recognized trade unions to act as interlocutors inside the firm; and direct democracy which used forms of referendum or post-hoc endorsement of managerial actions. To these we can add “virtual” representation through the innovation of the mandating process. The emergence of decentralized, firm-level bargaining and social dialogue was only possible once the notion of who represented workers and their interests had been redefined, and the micro-corporatist logic of French industrial relations followed in part from this process of redefinition as firm-specific forms of representation were privileged. Trade unions are quasi-public actors in France, and the state had to be involved in any change in the legitimacy of labor’s representative institutions. However, and I will return to this below, this was also an area where the contradictory nature of state policy – and its unintended consequences – are clearest.

Fourth, the state provided incentives to employers and unions to take advantage of the new institutional architecture in order to permit the emergence of greater workplace and labor market flexibility, or at least to minimize resistance to it.⁷² It was not only workers and unions,

⁶⁹ Jefferys, *Liberté, Égalité and Fraternité at Work*, p. 142.

⁷⁰ Lallement, “New Patterns of Industrial Relations,” p. 10.

⁷¹ Mériaux, personal communication with the author, July 9, 2004.

⁷² It is worth noting that one study of firm-level agreements demonstrated that the state is indirectly involved in virtually every firm agreement by virtue of the vast range of employment, training and compensation schemes that it has put in place. See Pascale Trompette and Olivier Mériaux, “Accords d’entreprise sur l’emploi:

but also employers who were dubious about industrial relations reform. Throughout the 1980s and 1990s, the welfare state was used in this manner, as governments of both the Left and the Right offered incentives and compensation in the form of reduced social security charges for employers and a panoply of new forms of social protection for workers. Employers were promised exemption from labor market regulations, while unions were guaranteed a role in negotiating flexibility, and workers were offered reduced work time.

A fifth task has been only alluded to in this paper, but it was no less important. It was to narrate economic and social crisis in such a way as to build public support for the reform of industrial relations. The legacy of May 1968, the weakness of the union confederations, the rivalry between the Socialist and Communist Parties, and the longstanding hostility of employers to sharing power inside the firm, made the crafting of industrial relations reform enormously complicated. A perception of prolonged economic crisis after 1981 further complicated this task, but also created the opportunity to use crisis to encourage reform. Governments of neither the Left nor the Right have been entirely successful in creating a privileged narration of crisis. Nonetheless, the discursive and institutional plasticity of the Auroux legislation, with its ability to point simultaneously towards radical *autogestion*, conventional collective bargaining, and modern managerial personnel practices, created political space for a micro-corporatist reconstruction of French industrial relations. This balancing act, appealing on the one hand to social solidarity and dialogue in the workplace, and on the other to the imperatives of a flexible, global post-Fordism, was repeated throughout the ensuing two decades, with varying degrees of success.

There are obvious dangers in emphasizing both the centrality of the state in this process of institutional reconstruction, and the coherence and intentionality of its reform projects. The French state did not act alone, nor was the motivation behind reform projects always narrowly economic, in the sense of being driven by the imperatives of bringing industrial relations in line with the imperatives of post-Fordist restructuring. States are rarely unitary actors such that competing projects may exist in different state agencies, nor are they omniscient, able to discern economic imperatives that are opaque to private actors. Indeed the very notion of state autonomy is implausible in capitalist economies.

Changing employer interests and the political mobilization of employers helped to shape the reform projects of French governments after 1981. Employer mobilization was most marked in response to Socialist initiatives in the realm of industrial relations, and governments found themselves crafting legislation that provided enough incentives for employers to participate, hence the importance of the compensating elements noted above. In both the early 1980s (in response to the Auroux laws) and the late 1990s (in response to the 35-hour week legislation), the national employers' organization mobilized aggressively on behalf of flexibility. First the CNPF and more recently the MEDEF have been radicalized in the course of the past two decades, though it is unclear to what extent it represents the views of employers, and has sought a more active political role in an effort to reduce state intervention on the part of both governments of the Left and the Right. Indeed, in the context of a Gaullist President and Gaullist

quels processus d'échange?" *La Revue de l'IREES* number 23 (1997). See also a similar argument in Michel Lallement, "Public Action and Industrial Relations in France: About Some Recent Changes," paper presented at the conference on "Transforming the Democratic Balance among State, Market and Society," Harvard University, May 17-18, 2002, pp. 17-18.

governments that have emphasized the need for social solidarity and limits to the spread of a market logic, MEDEF has at times become a kind of *de facto* liberal opposition party.

The main French employers' organization has repeatedly called for more radical decentralization and flexibility than is currently permitted under French law and at the same time to try to insulate industrial relations developments from state regulation. MEDEF's *refondation sociale* emphasized giving priority to the firm, generalizing and decentralizing collective bargaining, and ensuring the autonomy of bargaining from the state.⁷³ It has proposed new forms of limited-time employment contracts, exempt from current restrictions, and the final form taken by the 2004 *loi Fillon*, permitting greater freedom of bargaining to derogate from legislation and lower level bargains to derogate from higher ones, was a substantial victory for MEDEF

However, while employer pressure in France played some part in shaping state action, the state remained the central actor in reconstructing industrial relations institutions. Employers were by no means united in a recognition of the need to reform industrial relations. Employers were hesitant and often hostile to the reform process, concerned about disrupting established relationships with unions or creating opportunities for the development of independent worker-controlled institutions. Few employers were willing to see the creation of micro-corporatist institutions inside their firms, both because of the challenge such institutions might pose to managerial authority, and because of the potential collective action problems had some but not all firms experimented with new social relations inside the firm. The state led, introducing industrial relations reforms, often over the objections of employers, and only later did employers come to endorse those reforms. The state, in other words, anticipated employer acquiescence.⁷⁴ That was the case for the Auroux legislation and even for the 35-hour legislation: vociferous initial opposition from French employers gave way to wary acceptance after implementation.⁷⁵ The use of legislation to generalize certain industrial relations practices and give strong incentives to employers to engage in social dialogue with their workforces had the effect of a forced modernization of employer practices.

An account has emerged in this paper that appears to attribute remarkable powers of omniscience, coherence, and effectiveness to the French state over the last quarter century. This is clearly to overstate both the extent to which state managers were deliberately engaging in a broad industrial relations reform project, and the degree of success that they have had in creating an autonomous system of decentralized collective bargaining.⁷⁶

Industrial relations reform was driven in part by narrow political and electoral

⁷³ The best account of the *refondation sociale* and its implications for French industrial relations is Michel Lallement and Olivier Mériaux, "Status and Contracts in Industrial Relations, "La Refondation sociale", a New Bottle for an old (French) Wine?" *Industrielle Beziehungen* 10: 3 (2003).

⁷⁴ Swenson, "Arranged Alliance."

⁷⁵ Vail has noted a "discrepancy between Medef's public reaction to the law and its private support for its provisions." Vail, page 22 of chapter 5 of doctoral dissertation.

⁷⁶ The remainder of this section owes a great deal to comments and critiques on an earlier paper by Mériaux in a series of personal communications with the author. I am deeply indebted to Mériaux for pushing my thinking on the limits and contradictions of state policy, even if I doubt my responses will have satisfied him.

considerations. The Socialists, while intellectually committed to labor market flexibility from the mid-1980s onwards, were forced to maintain both a rhetorical and substantive commitment to protecting workers from the social consequences of flexibility. These political and electoral calculations help to explain why governments (of both the Left and the Right) were unable to distance themselves from the outcomes of industrial relations reform, why they found themselves heavily involved in managing industrial relations throughout the period under review despite efforts to withdraw and permit civil society to regulate itself, and why French workers continue to receive a high degree of protection, in the form of compensating social programs or continued legislative regulation of the labor market.⁷⁷

It is also the case that industrial relations reform was subordinated to, indeed overwhelmed by, employment policy from the early 1990s onwards. Indeed this is consistent with a central argument of this paper, which is that industrial relations reform was undertaken not as an end in itself but as a response to the crisis emerging from the mis-match between industrial relations institutions and the imperatives of post-Fordist economic restructuring. But the more important point, as Mériaux has suggested, is that the subordination to employment policy contributed to the incoherence and failure of industrial relations policy: legislation undermined the legitimacy of recognized trade unions in order to permit work time agreements to be signed by non-union actors, and state intervention repeatedly undermined the autonomy of class actors, and hence the likelihood that some form of self-sustaining social dialogue would appear.⁷⁸ To the extent that French governments were driven to achieve substantive changes to the labor market that promised greater flexibility and employment growth, they overrode and undermined the process of collective bargaining, and the autonomy of the actors.

This point is well taken, and there is no question but that state policy had contradictory effects on industrial relations institutions. Nonetheless, those contradictory effects were the product less of policy incoherence than the structural constraints facing state managers. The radicalism of employer projects of industrial relations reform could not mask the fundamental problem of the weakness of worker organization in the workplace. In the absence of strong, independent labor organizations, with deep roots in the workplace, every effort to enhance the sphere of autonomous collective bargaining and to offer deregulation of the labor market, risked producing unilateral managerial imposition of highly inegalitarian forms of flexibility. The danger has always been that increased autonomy may be associated with increased dependency and inequality on the part of workers.⁷⁹ As Lallement and Mériaux put it, “Behind the fiction of an autonomous social order which triumphs over the political sphere, what we actually... witness

⁷⁷ Note also that increased labor market flexibility does not appear to have been accompanied by markedly greater levels of income inequality. See Mark Vail, page 30 of chapter 5 of doctoral dissertation.

⁷⁸ It is worth noting that, in an earlier article, Mériaux himself suggested that, while the social partners frequently blame the state for the weakness of collective bargaining, one could just as easily “reverse the causal schema and impute the interventionist impulse of the state to the incapacity of the ‘social partners’” (translation by the author), Mériaux, “Éléments d’un régime post-fordiste,” p. 614.

⁷⁹ Lallement, “New Patterns of Industrial Relations,” p. 3.

is the return of employers' unilateral power."⁸⁰ It is this dilemma that explains both the mixed success of industrial relations reform over this entire period, and the continued centrality of the state in the regulation of class relations. The state, whether governed by the Left or the Right, has discovered that it must remain the guarantor of economic change if it is to avoid a unilateral employer imposition of post-Fordist restructuring.

The broader point is that the fact that governments are motivated by political considerations should not distract attention from the manner in which industrial relations reforms can develop an economic coherence and point in the direction of a particular economic logic. The way in which the Auroux reforms had a series of unintended consequences that had the effect of encouraging the emergence of micro-corporatist elements while limiting the development of articulated collective bargaining, illustrates how political projects can be refashioned by the institutional and class context within which they are implemented. One of the things that is striking about an examination of industrial relations reform in France in recent years is the degree of policy continuity across Socialist and Gaullist governments. The industrial relations projects of both have been fundamentally micro-corporatist. As Regulation theory and the Varieties of Capitalism approach would suggest, institutional legacies and the imperatives of post-Fordist restructuring have shaped the reform projects of governments in ways that often overwhelmed political motivations.

⁸⁰ Lallement and Mériaux, "Status and Contracts," p. 434. Note I have corrected an error in the original by leaving out the word "see".