

Against the dismantling of France's labor code: A French Spring

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Popular protests have erupted against efforts to dismantle France's labor code.

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A new movement against labor market deregulation is taking shape in France. Since February, when the Socialist Party (PS) government of François Hollande and Manuel Valls announced a proposed reform of the French labor code (*code du travail*), a wave of protests has swept across the country [1]. On March 9, 500,000 people participated in a national day of action; an additional 1.2 million joined trade union demonstrations on March 31; and on April 9, tens of thousands more marched in Paris and other French cities against the law.

One of the impressive aspects of the new movement is the sheer number of cities and towns where protests have been organized: more than 250 on March 31 alone. That day, bad weather depressed turnout in the French capital. But despite the rain, hundreds of protesters gathered that night in Paris's Place de la République, in the first of the "Nuit Debout" occupations.

In the weeks that followed, copycat Nuit Debout events started popping up all over France. Tens of thousands flocked to République to participate in nighttime mass meetings.

The occupation polarized French political opinion. The conservative philosopher Alain Finkielkraut denounced the Nuit Debout protesters as "fascists," after he was loudly insulted when he tried to slip into one meeting [2]. Marine Le Pen's National Front (FN) released a statement demanding the movement's suppression, calling it a "source of violence and degradation." [3]

And just this week, former President Nicolas Sarkozy gave a speech in which he attacked the protestors as "brain-dead," and labeled them "thugs." Never one to mince words, Sarkozy compared the occupation of République to a "burning fire which undermines the state's authority."

All of this comes at a time of heightened repression and police violence. Despite the "state of emergency" [4] that's been in force since the November 13 attacks in Paris, officials have so far shied away from an outright ban on the gatherings. But the government's suspension of civil liberties has given France's famously violent national police a green light to crackdown on protests against the labor law.

Demonstrations have been tear-gassed; protesters have been violently dispersed; in many cities, activists have been beaten and arrested, High-school students have faced particularly harsh measures: in late March, video of one student at a north Paris high school being beaten by the CRS sparked national outrage (leading prosecutors to file charges against one of the officers involved).

On the Anglophone left, there has been a great deal written on the Nuit Debout protests [5]. Many observers have pointed out the similarities between these gatherings and Occupy Wall Street or the Indignados in Spain. Less attention has been paid, however, to the struggle that launched Nuit Debout — the movement against the French government's proposed reform bill.

That's surprising, because the two are so closely connected: Nuit Debout emerged out of the protests against the draft labor law, and it has fed off the popular energy they unleashed. In the end, its fate is linked to the success of that movement.

Much depends, then, on what happens to the draft labor law. So far, public opinion has favored the protests against the bill: according to a late March survey, almost three-quarters of the public opposes the draft labor law, and over 50 percent want to see protests continue.

With a union-led day of action against the proposal set for tomorrow, and parliament scheduled to begin debating the measure on May 3, the movement against the labor law is entering a critical phase.

Reversing the Hierarchy

The stakes of this fight are high. The government's proposal (known as the El Khomri law, after Labor Minister Myriam El Khomri) would revise much of France's labor code.

For instance, it would alter the rules on working time by giving companies greater flexibility to exceed the legal cap on employee work hours. Currently, France's statutory thirty-five-hour workweek permits overtime of up to ten hours a day and forty-eight hours a week for full-time workers. The government's proposal would raise the daily legal maximum to twelve hours, "in case of increased activity or for reasons related to the organization of the company."

The El Khomri law would also allow the labor ministry to temporarily increase the weekly limit to as much as sixty hours if "exceptional circumstances" require it. Meanwhile, the legislation would considerably reduce the bonus paid to employees who work more than thirty-five hours in a week.

Of equal significance are provisions in the law that would lower the cap on legal damages for "unfair dismissal." In France, workers who lose their job without "just cause" are eligible to seek compensation through the labor courts. That means that if you are laid off because your company isn't making money, your employer has to pay you a settlement commensurate with your length of employment.

The El Khomri law would lower the legal limit on damages, so that, for instance, a worker with twenty years of service could end up collecting just twelve months worth of salary.

The proposal would also change the rules on dismissals, making it easier for companies to lay off employees for economic reasons. French law requires that businesses that want to layoff employees without cause provide a valid justification — with the El Khomri law a claim that it is economically necessary would be enough.

Perhaps most controversially, the proposal would permit firms to negotiate “offensive agreements” at the company level. These agreements will be allowed to undercut existing standards on pay rates, working hours, and other aspects of the employment contract. In the past, companies that wanted to negotiate these kinds of company agreements had to prove that they were necessary to prevent bankruptcy or avoid layoffs.

Now, companies that want to expand their operations or enter new markets could demand concessions from their workers, even if these givebacks would violate the terms of established collective bargaining agreements or existing labor laws. Furthermore, the law would make it easier for companies to negotiate agreements with employee representatives, as long as they were backed by 30 percent of the workforce.

Collectively, these changes would be highly beneficial to employers.

From business’s perspective [6], French labor law is filled with “rigid” legal restrictions and costly regulatory requirements: from the statutes on dismissals and working time to the high minimum wage, business sees the labor code as an intolerable burden. The El Khomri law would be a major step toward alleviating that burden.

That doesn’t mean that business likes everything in the government’s proposal, especially as it’s been revised since the proposal was first announced. More recent versions of the proposal incorporated a number of concessions to opponents of the measure.

To placate critics, for instance, the second version of the law included a tax on temporary work contracts. This provision, intended to discourage over-reliance on short-term employees at the expense of full-time workers, has drawn the ire of France’s main business lobby group, MEDEF.

MEDEF is now demanding that the government revert back to its original proposal. It has threatened to refuse cooperation over proposed changes to France’s unemployment system if Hollande doesn’t meet its demands, as seems likely.

MEDEF’s attitude to the labor law reflects the hard-line attitude of employers’ representatives in France — who at this point don’t want to give up any of their demands. If conservative opposition to the bill was strong enough, the government could be forced to resort to extraordinary procedures to get the bill through parliament.

That would be a blow to the government. But it wouldn’t change the fact that the bill is, unambiguously, a victory for business opposition to the *code du travail*.

For labor, the El Khomri law would be a catastrophe: if passed, the measure would destroy hard-won social gains achieved over decades of struggle. It would undermine job security, encourage concessions on wages and work conditions, and make the statutory thirty-five-hour workweek practically meaningless.

Worst of all, the law would eviscerate the *code du travail*, by permitting employers to circumvent its statutory regulations through company-level agreements. For French labor organizations, this is the biggest problem with the proposal. As Phillipe Martinez, head of the CGT (France’s leading labor federation) notes, “The main principle of our opposition to this law is that it allows each company to have its own labor code.” [7]

In this way, El Khomri would reverse the “hierarchy of norms” in the French labor market. Traditionally, employment regulations ran from the *code du travail* downward: labor law set the framework for the employment contract, which was further regulated by collective bargaining

agreements negotiated at the sectoral level.

Now, that hierarchy would run in the opposite direction: company agreements, reached with workers who may or may not be represented by a union, would become the central terrain of collective negotiations. Decentralized bargaining would rule over legal regulation and sectoral negotiations. The bill would thus allow for a sustained assault on the employment standards established by the *code du travail*.

Hollande's Gamble

No wonder the proposal has provoked such a strong backlash. Even within the Socialist Party, the extent of that opposition has been impossible to hide. One striking example was opposition from Martine Aubry [\[8\]](#), the former labor minister and leader of the PS in the northern French city of Lille.

In the late 1990s, during her tenure as minister of the “Plural Left” government of Lionel Jospin, Aubry sponsored the legislation introducing the thirty-five-hour workweek. In recent weeks, she’s made her disgust with the current administration’s reform proposal plain: after attending a meeting at Socialist Party headquarters with El Khomri and others, Aubry told the press that the law was fundamentally flawed: “I explained to Myriam El Khomri that the reform of the Labour Code does not improve business competitiveness and does not increase the protection of employees, it is extremely dangerous.”

Unsurprisingly, in the two months since the bill was announced, the Socialist Party has been steadily hemorrhaging members. Meanwhile, the government has succeeded in alienating many of its former allies: for instance, UNEF, France’s main national student union, which traditionally had close ties to the PS, has been at the forefront of the movement against the law, and helped to organize the March 9 day of action.

In the absence of a viable alternative to the left of the PS, none of this is likely to split the party — at least not in the short term. But the depth of the anger that the law has sparked is indicative of where public sentiment lies.

The fallout from the bill has thus exacerbated the decline in public support for the government. Surveys show that President Hollande’s approval ratings, already at historic lows before February, have now dropped to just 15 percent.

All of this is a bad sign for Hollande’s prospects of winning reelection, were he to run again next year. Given how unpopular he is, many have wondered whether Hollande will really be the Socialists’ candidate in 2017 — in a campaign that is currently being led by the FN’s Marine Le Pen, and in which the conservative former prime minister Alain Juppé would appear to be the favorite.

Hollande has repeatedly said he will seek reelection, but most Socialist voters, and much of the PS leadership, seem to prefer other contenders from the PS (with Valls and Finance Minister Emanuel Macron, an ex-investment banker, emerging as the favorites to replace Hollande).

Hollande’s staggeringly low approval ratings reflect widespread anger over the economic policies he’s pursued since taking office. At a time when France has yet to recover from the effects of the 2008 financial crisis, his administration has been unable to cut into chronically high joblessness.

Earlier this year, the unemployment rate hit 10.6 percent (up from just over 9 percent when

Hollande took office), a twenty-year high. Young workers, in particular, have felt the lack of employment opportunities: youth unemployment now sits at over 25 percent.

In response, Hollande has adopted a strategy of labor market liberalization. The key to boosting stagnant economic growth, he argues, is creating a more favorable climate for business.

To that end, he pushed through a series of reforms designed to increase employment “flexibility,” and reduce the regulatory burden imposed by the *code du travail*. These measures have made it easier and less costly for business to fire workers, allowed ailing firms to negotiate company agreements undermining work standards, and provided significant tax subsidies to employers (with little or nothing to show for it).

Hollande’s reform agenda has proven to be intensely unpopular with voters — not to mention with the PS’s own parliamentary delegation. Indeed, just last year, when the government tried to pass the Macron Law [9] — which among other changes, eliminated job protections for a variety of occupations, and relaxed statutory limits on night and weekend work — the proposal was met with so much opposition from Socialist legislators that the administration was forced to use an arcane constitutional provision allowing it to bypass parliament.

The president’s already-damaged reputation has taken another beating as a result the fallout from the government’s labor law reform bill. Compounding that weakness, the government suffered another important setback last month, when it was forced to give up plans for a constitutional amendment allowing dual-nationals to be stripped of their French citizenship for terrorism-related activities [10].

That legislation, announced in the aftermath of the November 13 attacks, had run into strong opposition, in particular from members of Hollande’s own Socialist Party.

Economic and Social Emergency

Given the obvious political costs, why is Hollande accelerating his reform efforts?

He himself has described his proposals as an unavoidable response to the desperate straits in which the French economy finds itself. As the president put it in January (while announcing a proposed measure that would give two billion euros worth of extra tax subsidies to business), France is facing an “economic and social emergency” due to the “uncertain economic climate and persistent unemployment.” “Our country,” Hollande continued, “has been faced with structural unemployment for two to three decades and this requires that creating jobs becomes our one and only fight.”

Yet there is little reason to think that the government’s latest labor law reform will do much to boost job growth, especially in the short term. How could reforms that make it easier for employers to force their employees to work longer hours, and allow them to fire workers whenever they wish, increase the employment rate?

A plausible explanation is that Hollande is gambling that he will be able to split the right-wing vote in next year’s presidential election. By peeling off a section of the Right’s electoral base, Hollande could make it to the run-off with Marine Le Pen — at which point anti-FN voters will have no choice but to coalesce around him to prevent her from winning.

If that is indeed his strategy, it doesn’t seem to be working. Polls show that if the election were held today, Hollande wouldn’t come close to making it to the second round.

But his mission goes beyond these immediate career ambitions. He wants to transform the political terrain for future reform debates in France. In many ways, Hollande sees himself as the French counterpart of Germany's former prime minister, Gerhard Schroeder, whose Red-Green coalition government was best known for its controversial economic reforms. Schroeder's Hartz welfare reforms have made him something of a model for Third Way social-democratic governments across the continent.

For the French president, Schroeder's example is one he'd like to emulate. Hollande explained his admiration for the ex-German chancellor in 2013, in a speech he gave at the German Social Democratic Party's 150th anniversary celebration in Leipzig. Schroeder, Hollande said, was a "true social democrat," whose decision to push ahead with labor market reforms, at great political cost to himself, had been vindicated by Germany's rapid recovery after the 2008 financial crisis.

From Hollande's perspective, Schroeder's great virtue was that his ability to recognize that "progress" for the Left is not simply about pursuing traditional social-democratic goals such as expanding social protections or raising wages: it "is also a matter of making difficult choices in tough times...and to anticipate industrial change."

In reality, Schroeder's reform efforts contributed to a spike in poverty and inequality. While employment grew in the years after the Hartz reforms [11], the new jobs created were almost all part-time, low-wage or precarious jobs: a growing number were temporary "mini-jobs."

Many reform proponents in France see the German example as a model worthy of emulation. But so far, the public has resisted efforts to follow Germany's path to labor market deregulation. If Hollande really wanted to kick-start job growth, he would be better off returning to a strategy adopted by previous Socialist governments in France: work-time reduction. This was the inspiration behind the move to the statutory thirty-five hour workweek at the end of the 1990s (through the two Aubry Laws, passed in 1998 and 2000, respectively).

By subsidizing a cut in full-time work hours — without any reduction in wages — the "Plural Left" government hoped to boost job growth. To a degree, that effort was successful: in the half-decade after the thirty-five-hours law was instituted, France experienced the greatest period of employment growth since the 1970s. Of the roughly 2 million private-sector jobs created in these years, 300,000-500,000 were generated by the legislation on working-time reduction (according to government estimates).

Of course, almost from the moment the Plural Left government instituted the measure, it began to backtrack from this strategy. The Aubry Laws themselves contained a number of provisions that undermined the thirty-five-hour legal standard. Later, the rules on employee working time were weakened even more by a series of changes introduced by governments of the Right.

Labor's Response

But the strategy of promoting job growth through a reduction in employee work hours remains relevant today. That strategy is embodied, for instance, in the CGT's call for a move to a thirty-two hour workweek — a move that CGT head Phillipe Martinez says would create 4.5 million new jobs — as well as changes to alter the rules on collective bargaining, to make it harder for companies to negotiate agreements with unrepresentative unions.

If the French left were stronger, those kinds of proposals could be used as the basis for a radical policy agenda. Today, however, it is far too weak to seriously pursue such a program. Over the past

few years, while Hollande's approval ratings plunged, the French radical left has only gotten weaker and more fragmented.

Whereas just a decade ago it was able to lead real struggles (like the successful 2005 campaign against the European Constitutional Treaty), its influence is now more limited, and its activist base smaller. In recent years, the organizations of the Left have been mired in stagnation, punctuated by bouts of internal crises.

In this context, the far-right National Front has been able to position itself as the only viable alternative to the establishment parties. The FN appeals to voters through its racist attacks on immigrants, Muslims, and the like, but also through its denunciations of cosmopolitan elites, economic "globalism" and unfettered capitalism. It promises to defend French workers from the twin dangers of unchecked immigration and economic deregulation.

This brand of economic nativism has resonated with voters concerned over rising economic insecurity: thus, in the past few years, the extreme right has made strong gains in the former industrial regions of northern France, once a bastion of working-class support for the PS, but now home to a growing number of far-right voters.

All this is indicative of the difficulties the Left faces. But in the context of the rising tide of protests this spring, the Left's fortunes seem to be changing for the better. Just how much will depend on whether or not the struggle against the government gains steam.

France's recent history offers plenty of precedents for a sustained struggle against austerity governments. During the last two decades, French governments have repeatedly seen their reform efforts defeated by explosive social protests: for instance, in the public-sector strike wave of December 1995, when the Juppé administration's pension reform bill sparked weeks of protests and work stoppages, which eventually compelled Juppé to withdraw the measure. More recently, student-led demonstrations against the neoliberal First Employment Contract in the fall of 2006 led another conservative government to pull back the proposal.

In 2010, an even bigger movement developed in response to another pension reform, this one proposed by then-President Sarkozy. In the end, however, it failed to stop the legislation: despite strikes and demonstrations involving millions of people, Sarkozy refused to back down from his proposal, and the measure was eventually passed.

That defeat was a major blow to the French left — a setback from which it has yet to fully recover.

The struggle over the government's proposed labor law reform seems to offer an opportunity to reverse the Left's decline [\[12\]](#). But this movement also faces a number of significant challenges.

One is the lack of any obvious social force that could be an engine for the struggle against the labor law: in 1995, for instance, the public-sector strikes against the Juppé reform were spearheaded by the rail workers; in 2006, it was the student movement that pushed the struggle forward; and in 2010, the striking oil refinery workers who briefly halted gas deliveries at stations around the country.

Today it isn't clear just who could play that role. There is no obvious social force with the capacity to spearhead a movement like this. Popular organizations are weak, and after years of falling union density and economic restructuring, labor has lost much of its capacity to mobilize in the workplace against management.

Compounding that decline is the growing split at the heart of the labor movement, between the more

moderate, “reformist” unions, led by the CFDT (France’s second union confederation), and the more militant federations, led by the CGT.

Since Hollande’s election, the CFDT has remained a close ally of his administration, and the confederation has consistently signed on to his most controversial reform proposals. That has allowed Hollande to frame his reforms as triumphs of “social dialogue” and class collaboration.

The CGT, on the other hand, has been a vocal critic of the government’s reform efforts. Today, the CGT remains the largest and most visible force on the radical left in France. It is strongly opposed to the draft labor law. Since February, CGT head Phillipe Martinez has insisted that his union won’t accept anything less than the “withdrawal of the text.”

At the same time, the CGT has proposed a “union convergence” to block the labor law — an offer targeted mainly toward the CFDT. But after initially opposing the proposal, CFDT head Laurent Berger reversed himself, commenting that the second draft of the law was “potentially” a step toward “progress for the youth and for employees.”

The CFDT’s refusal to join the struggle means that organized labor won’t be able to present a united face to the government. Inevitably, that will lead to questions about whether the militant wing of the labor movement can wage a real fight by itself — something the CGT hasn’t been able to do in the past when its been isolated in its opposition to contentious reforms.

This was one of the central points of discussion at the CGT’s national congress last week. The one thousand delegates who gathered in Marseilles were frustrated by the confederation’s inability to put forward a clear strategy for defeating the labor law.

Many of them wanted the union to put out a call for an ongoing general strike (that is, more than a one-day work stoppage). The Confederated leadership proposed to put out a more limited call, for workplace meetings to discuss next steps for the struggle.

Martinez questioned whether the federation could pull off a general strike call, telling delegates “every social movement to be amplified, raising the question of the general strike . . . Everyone agrees on that . . . But let’s be honest between us, the general strike will not be decreed in Montreuil [where CGT headquarters is located].”

In the end, the delegates voted to put out a compromise text, calling for participation in today’s day of action, as well as mass meetings in each workplace to decide how best to deepen the struggle — and, potentially, to consider sustained strike activity to compel withdrawal of the bill.

Turning Point

Whether anything will come of this call isn’t clear. Today’s turnout will be an important test: if the demonstrations are big enough to be visible to the public, it will be a sign that the movement is on the ascendency. A small turnout, however, would lead many to conclude that the struggle against the labor law is losing steam.

The coming weeks are pivotal. If the government is able to push through its reform bill relatively easily, it will depress hopes for a left revival. Such a defeat would reinforce the belief that mass social movements — of the sort that broke out repeatedly between 1995 and 2010 — can no longer slow the tide of liberalization. The biggest beneficiary would likely be the FN, whose claim to being the only alternative to the establishment parties would seem to be confirmed.

On the other hand, the movement has a number of things going for it right. The government is not in a strong political position — caught as it is between hardliners on the Right and its many critics on the Left. Opponents of the draft labor law are swimming with the tide of public opinion right now. That opposition has been strengthened by the events of the spring.

If the movement against the labor law can chart a way forward, it has the potential to transform the political situation in France. A defeat for the government would mark a dramatic shift. It would create a context in which the radicalization embodied in the student movement and Nuit Debout could be deepened and extended.

Getting to that point is no easy task. But the events of the last two months have shown that there is still enough popular outrage for French capital to be challenged.

Jonah Birch

P.S.

* “A French Spring”. Jacobin. 4.28.16. “Between the Risings,”:
<https://www.jacobinmag.com/2016/04/france-labor-code-hollande-nuit-debout/>

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Footnotes

[1] <http://www.reuters.com/article/us-france-protests-idUSKCN0WX1EE>

[2] <http://tempsreel.nouvelobs.com/societe/20160417.OBS8684/finkelkraut-face-a-nuit-debout-pauvre-conne-contre-fascistes-la-polemique-en-3-actes.html>

[3] http://www.liberation.fr/france/2016/04/13/le-fn-demande-la-dissolution-de-nuit-debout_1445883

[4] ESSF (article 37827), [The French Emergency – Colonial Past and Post November 13 Present](#).

[5] <http://www.theguardian.com/world/2016/apr/08/nuit-debout-protesters-occupy-french-cities-in-a-revolutionary-call-for-change>

[6] <http://www.economist.com/node/17421434>

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[8] <http://www.leparisien.fr/politique/loi-el-khomri-martine-aubry-veut-beaucoup-de-modifications-au-texte-07-03-2016-5606165.php#xtref=https%3A%2F%2Fwww.google.com%2F>

[9] <http://blogs.wsj.com/briefly/2015/03/09/5-things-about-the-macron-law-2/>

- [10] <http://www.aljazeera.com/programmes/insidestory/2016/01/stripping-dual-nationals-french-citizenship-160104175244811.html>
- [11] <http://www.theguardian.com/commentisfree/2013/jan/01/germany-hartz-reforms-inequality>
- [12] ESSF (article 36297), [What Happened to the French Left? – Mélenchon, the rise and crisis of the Parti de Gauche](#).