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LABOR LAW IN GREAT BRITAIN AND FRANCE IN THE 1980S: THE UNINTENDED EFFECTS OF LEGAL REFORMS ON ORGANIZED LABOR

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This paper compares two instances where the political use of law, specifically labor legislation, was used to effect broader social change during the early 1980s. The two cases focused on are the Thatcher administration in Great Britain and the Mitter and government in France. These divergent cases are instructive as much for their similarities as for their differences. Though the two governments had opposite intentions in terms of the role that organized labor would play in their respective societies, each relied on extensive labor law reform as a means to achieve their objectives. The eventual outcomes of these two political experiments were also similar: power of organized labor was undermined in both countries, albeit in the one case intentionally and in the other unintentionally. Overall this comparison provides insight into the problematic nature of state projects, particularly when law is used to achieve specific social and political aims.

INTRODUCTION

Comparative research on postwar industrial relations in North America and Western Europe usually converges on a singular narrative of historical development. The tale typically goes as follows. After World War II many Western nations tentatively established what have been labeled as "postwar settlements" (Altvater et al, 1986) or "labor accords" (Edwards and Podgursky, 1986). Though their specific character varied widely across national boundaries, these institutional arrangements commonly entailed collaborative mechanisms allowing

leading representatives of labor, capital, and the state to work in concert as they strove to rationalize and stabilize the frequently tumultuous arena of industrial affairs. Embedded within and ultimately dependent upon a broader context of robust economic growth, these settlements were however destined to a precarious existence. Not surprisingly, when the space for political and economic compromise was reduced by the crises of the early 1970s, great strain was put on the labor accords as well (Krieger, 1986:22-38).

As this familiar story continues, political experimentation with alternative industrial relations policies thus became a pressing requirement for many capitalist democracies during the 1970s and early 1980s. Government leaders typically followed one of two divergent paths as they tried to restore economic growth and industrial stability to their respective nations. A corporatist tack was pursued by some, which relied on extending the state's role in economic coordination and further institutionalized postwar Keynesian practices. A neo-liberal course was followed by others, which involved a political retreat from industrial relations management and a greater reliance on market discipline (Jessop et al, 1986:8-9). Regardless of the particular path chosen, state-driven transformations of industrial relations during this era were usually multifaceted endeavors entailing variable arrays of policy initiatives and differing levels of reform. Indeed, while some state projects entailed piecemeal attempts at either buttressing or dismantling what remained of the institutional frameworks of the original postwar settlements, others tried to fundamentally restructure national industrial relations systems as a whole.

It is state ventures of the latter type that are the subject of this paper. Specifically, my primary focus is on the extensive labor law reforms implemented in Great Britain and France during the early 1980s. I feel comparing these two historical cases is instructive not only for their differences but also for their similarities. In terms of differences, the two governments had opposite intentions with respect

to the role they saw organized labor playing in their respective national political economies. The neo-liberalist Thatcher administration hoped to significantly diminish, if not entirely eliminate, the influence of labor unions in Great Britain, while Mitterrand's socialist government tried to enhance the position of labor unions as it moved France further in a corporatist direction. Despite contrary goals, however, political actors in both countries relied on sweeping changes in labor law as a primary means to achieve their objectives. Furthermore, the outcomes of these two political experiments were also remarkably alike, with the power of organized labor being undermined in both countries; though in the one case this indicated success and in the other it signaled failure.

LABOR LAW REFORM IN GREAT BRITAIN: NEO-LIBERALISM AND 'THE ENEMY WITHIN'

To understand the far-reaching labor law reforms enacted by the Thatcher administration throughout the 1980s, three things about British politics and industrial relations during the previous decade need to be considered. First, due recognition must be given to the relatively strident version of neo-liberal ideology that permeated virtually all facets of the Thatcher government's policies and practices. While in opposition to Labour's James Callaghan administration from 1974 to 1979, the Conservative Party rallied fervently around a pro-market platform premised on the assumption that government de-regulation, privatization, and related policies would best stimulate British economic growth. This contrasted sharply with the incumbent party's state-directed approach to economic recovery, which with each passing year was proving to be more and more unsuccessful (Krieger, 1986).

A second point of consideration involves the Thatcher administration's pointed position on organized labor, a stance broadly forged by neo-liberal predilections but also sharpened in the fires of historical experience. Though the Conservative Party's relationship with labor unions had traditionally fluctuated "between co-operation and confrontation" (Johnson, 1993:217), a more staunch anti-unionism

developed as the 1970s progressed. This was in part the product of Thatcher's particular brand of neo-liberalism, which drew heavily on the writings of the economist F. A. Hayek. Hayek (1980) had argued that organized labor was the primary culprit in Britain's long-term economic decline because it undermined the "natural" operation of labor markets and artificially inflated wages. From this vantage point, labor unions were viewed by many Conservatives as the "enemy within"(e.g. MacGregor, 1986). This primarily ideological opposition to organized labor was further fortified by the practical failures of the Callaghan government, most notably its inability to control trade unions. The tumultuous "Winter of Discontent" in 1978-79, m.rked by large-scale strikes and widespread disruptions of public services, served to convince the electorate that the Conservative Party's diagnosis of the country's ills was on the mark. Consequently, Thatcher easily captured office in the general election of 1979 (Krieger 1986:10).

The Callaghan administration was not the first British government to suffer electoral defeat because of an inability to curtail trade union militancy. This leads to a third point of consideration with respect to understanding the nature of the Thatcher labor law project. Long characterized by a "voluntaristic" system, wherein labor and capital resolved employment issues relatively free from political intervention, British industrial relations witnessed greater government involvement as the 1960s and 1970s progressed. Culminating this trend, Conservative Prime Minister Edward Heath passed the Industrial Relations Act of 1971 shortly after his election to office in 1970. This sweeping piece of legislation required unions to register with the government for legitimate recognition, transformed collective bargaining agreements into binding legal contracts, and made unlawful a wide range of unions practices, including the closed shop, secondary boycotts, and sympathetic action (McCarthy, 1992:20). Organized labor essentially ignored these legal provisions and responded with widespread strikes to protest the Act as well as other facets of the

administration's policies. In 1974, Heath "used the occasion of a national miners' strike to call an election" (Krieger, 1986:107), in effect asking the electorate who governs Britain, the unions or his Conservative administration? The election of Labor's Callaghan signaled the public's answer, and the 1971 Act was immediately repealed (McCarthy, 1992:26).

With this historical background in place, I now address specifics of the Thatcher administration's labor law reforms. During its three terms in office, the Thatcher government implemented five pieces of employment legislation affecting the activities of labor unions. The first piece of legislation, the Employment Act of 1980, included provisions targeting three key areas. First, Sections 1 and 2 of the 1980 Act facilitated the use of secret ballots by unions with respect to such issues as industrial action, officer elections, and organizational procedures. Section 1 allowed for government reimbursement of "trade unions for some of the expenditure incurred in holding certain ballots" while Section 2 required employers to allow unions to use workplace premises to conduct such balloting (Mackie, 1981:6-7). Though seemingly beneficial to union interests, the underlying rationale of the Thatcher administration's efforts in this area was the belief that "the existence of undemocratic procedures [within labor organizations allowed] unrepresentative militants excessive influence" (Shackleton, 1998:588). More importantly, as will later become evident, these initially moderate reforms were to lay the foundation for more extensive balloting provisions in subsequent legislation.

Two other areas addressed by the 1980 legislation were the closed union shop and union industrial conflict strategies. Section 7 "widen[ed] the grounds for claiming unfair dismissal when a person is dismissed for non-membership of a trade union where a [union membership agreement] applies" (Mackie, 1981:7). In particular, individuals could not be fired from a closed union shop if their lack of membership was based on personal convictions or if employment by a particular firm began before union membership requirements were put in place. With respect to industrial conflict, Section 16 narrowed the

definition of legal picketing to workers picketing at their own place of employment or union officials picketing at places where they represented workers. Under the new law, union members were now open to court injunctions and monetary damages if they picketed illegally. Section 17 of the 1980 Act also restricted unions from encouraging others to engage in sympathetic actions such as "blacking", or refusing to handle, materials and supplies destined to an employer in dispute (Mackie, 1981:9-10).

Compared to the 1980 legislation, the Employment Act of 1982 was slightly narrower in focus but had deeper effects on union practices. In terms of the closed shop, Section 3 of the 1982 Act made more stringent the conditions under which non-union employees could be dismissed from a workplace covered by a union membership agreement. Sections 4, 5 and 6 represented significant changes in labor law by introducing "a new regime of compensation for employees who are deemed to be unfairly dismissed for reasons relating to union membership" (Lewis and Simpson, 1982:236). Other sections of the 1982 legislation further curtailed labor union activities relating to the closed shop. Specifically, Sections 12 and 13 prohibited the establishment of commercial contracts that contained language pertaining to union membership requirements, while Section 14 effectively outlawed strikes designed to protect existing, or to impose new, closed shop agreements (Mackie, 1983:89-90).

While the 1982 Employment Act indirectly undermined the closed shop by encircling the practice with a variety of restrictions, strikes by unions were attacked directly in this piece of legislation. Section 18 fundamentally narrowed the realm of legitimate strike activity to only those disputes between workers and their employers and to only over issues relating to the employment conditions of the workers involved. Strikes between groups of workers, unions and employer associations, or unions and the government were no longer legal, nor were strikes over political issues or closed shop practices (Dunn, 1985:102). More significantly, Section 15 now made unions

liable for damages stemming from industrial disputes and other activities. Prior to the 1982 Act, unions as collective entities were traditionally considered "immune" from tort actions and only individual members or specific leaders were open to lawsuits (Ewing, 1982:218-219). Though opening labor organizations themselves to lawsuits, Sections 16 and 17 of the 1982 Act did place restrictions on the conditions under which unions could be sued and for how much (Mackie, 1983:90-91).

With the Trade Union Act of 1984, the Thatcher administration's labor law project turned its attention back to balloting, an issue initially addressed in the 1980 Act. The 1984 Act contained three parts, each of which ostensibly promoted greater union democracy. Part I set a variety of requirements for the periodic election of union leaders. Section 1, for example, required that positions on a union's national executive council be open to electoral competition every five years. Other provisions in Part I set guidelines on election procedures, eligible voters, and the legal measures that individual union members could take if they felt that their union had not complied with election regulations (Mackie, 1984:94-95).

Part II of the 1984 legislation contained two sections pertaining to balloting on industrial action by unions. Section 10 required that all union industrial actions be voted on and approved by a majority of the membership. If no ballot was held, the specific industrial action was considered illegal and exposed the union to possible court injunctions and damage claims (Mackie, 1984:96). Section 11 addressed the specific procedures that were to be used in conducting a ballot. Many of these requirements were so rigorous that unions ran a high risk of having the ballot rendered illegitimate. For example, the wording on ballots had to explicitly forewarn workers that by engaging in industrial action they would be in breach of their employment contracts and possibly subject to dismissal. Further, if all those involved in a specific action had not been balloted, or some workers not involved in a particular action were balloted, the ballot would become invalid (Mackie, 1984:86-87). Finally, Part III of the 1984

Trade Union Act contained a number of provisions dealing with the political funds held by most unions. The amount paid into these funds and to what use they were put was now subject to balloting requirements similar to those that had been imposed on other union activities.

After the enactment of the 1984 legislation, the principal components of the Thatcher administration's labor law project were fundamentally in place. The last two pieces of labor legislation implemented under Thatcher, the Employment Acts of 1988 and 1990, essentially represented elaborations of provisions introduced earlier. The 1988 Act, for example, contained responsive adjustments to requirements pertaining to balloting, the closed shop, and industrial action that were deemed necessary in light of problems and "experiences of union resistance to earlier legal controls" (Mackie, 1988:265). The 1990 Act was also primarily "a logical extension of the industrial relations laws post 1979", with incremental changes being added to many earlier provisions (Carty, 1991:12).

When taken as whole, the incremental legislative reforms of three successive Thatcher administrations over the course of the 1980s eventually culminated in a revolutionary restructuring of British industrial relations. Unions had been forcibly democratized by an array of balloting provisions, and the ability of unions to protect and maintain the closed shop had been effectively nullified. And, as noted by Carty (1991:12-13), by 1990 it had become decidedly clear "that the very basis of trade union power--the ability to take effective industrial action--[was] rejected by the Government". The labor law reforms of the Thatcher administration were thus designed with an eye toward strictly curtailing the role played by organized labor within British industrial relations. The degree to which this objective was successfully met is an issue that I will address shortly.

Like their British counterparts, French voters responded to the economic crises of the early 1970s by electing to power an administration promising a marked departure from recent governmental practices and policies. Under the rule of President Valery Giscard d'Estaing from 1974 to 1981, "France took a step back towards laissez-faire not unlike that taken by the Thatcher Government in Great Britain after 1979" (Hall, 1986:189). France's neo-liberal detour proved relatively short-lived however. The Giscard government's retreat from economic management did not restore growth and French voters concluded that they may have chosen a wrong path to economic recovery. The political compass swung back toward the country's more familiar statist tack, and indeed went beyond to uncharted territory. In May of 1981, Francois Mitterrand became the first Socialist elected President of France, and in June of that year his Socialist Party achieved a majority in the National Assembly. In light of this popular mandate, Mitterrand eagerly pursued the implementation of the party's interventionist platform in the hope of leading France in a grand "Socialist experiment" (Hall, 1986:191-192).

The Mitterrand government's 'Socialist experiment' initially took the form of a fairly robust "redistributive Keynsianism" (Hall, 1986:193). Throughout the latter part of 1981 and early 1982, economic demand was stimulated by raising family allowances and housing allocations, by expanding health and pension benefits, by raising the minimum wage, and by the creation thousands of government jobs. However, in addition to the Keynesian thrust, Mitterrand's project also included "a radical agenda [for] modernizing and humanizing the workplace, and [a promise] to strengthen trade unions in their conflict with employers" (Howell, 1996:147). Driving this particular agenda was the ideology of *autogestion*, "a new kind of socialism" that many in the French Socialist Party had become enamored with while in opposition during the 1970s (Smith, 1987:46).

Integral to this *autogestionnaire* ideology was the notion of democratic self-management, both by workers and employers within the firm and by unions and employer representatives at the industry level (Hall, 1986:193).

In pursuit of its *autogestionnaire* program, the Mitterrand administration enacted five pieces of labor legislation between 1982 and 1983. Labeled after Jean Auroux, the Minister of Labor who helped author them, the "Auroux Laws" transformed and "almost completely [rewrote] the French Labor Code" that was originally implemented in 1950 (Glendon, 1984:450). There were four primary objectives of the new legislation. One was to stimulate and expand collective bargaining practices throughout French industrial relations. A related goal was to strengthen and further institutionalize existing organizations representing worker interests. A third objective involved the creation of worker expression groups within the firm. The extension of many of the legal rights and provisions, both old and new, to public sector industrial relations was the final goal (Gallie, 1985:208; Smith, 1987:53).

The first piece of legislation, titled *Liberties of Workers within Enterprises* ("Law I"), was adopted on August 4, 1982 and addressed the rights of individual workers in three key areas. Changes in the first two areas, that of work rules and disciplinary procedures, effectively represented elaborations of earlier provisions already in the French Labor Code. Specifically, requirements for written rules and procedures governing selected firms with twenty or more employees were now "extended to cover almost all private and public employers" (Glendon, 1984:452). The hope was that a greater formalization would limit employer discretion and arbitrariness.

The third area addressed by Law I drew directly on *autogestionnaire* ideology and granted workers "the direct and collective right of expression" with respect to both working conditions and the content of work (Smith, 1987:49). In effect, all French firms were to create employee participation groups that allowed workers to

air grievances, share ideas, and express concerns with management representatives without fear of reprisal. Other than mandating that such workplace expression groups be created, the new legislation did not however set any specific requirements on their particular form. Rather, the law simply required that in firms with two hundred or more employees, "negotiations between employer and unions must take place in order to specify [the] frequency, size, duration and organization" of the expression groups (Smith 1987:49).

Auroux Law II, titled *Development of Employee Representative Institutions,* was adopted on October 28, 1982. Changes embodied in this legislation not only addressed the role of unions, but two other means of representing worker interests as well: employee representatives and shop committees. While these three different institutions converged in the same general interest, they did serve different functions within the French workplace. Employee representatives were elected by firm workers and acted as intermediaries in firm-level grievance procedures. Shop committees, consisting of elected employees and union representatives, served a consultative role on a wide range of issues, but had no decision-making power. Labor unions were directly involved in establishing collective bargaining agreements, though such negotiations were typically done at the industry, not at the company or firm, level (Glendon, 1984:460).

Changes enacted by Law II pertaining to employee representatives and shop committees were for the most part "only minor" and "relatively modest", essentially extending these mechanisms to smaller firms and expanding their power in limited areas (Glendon, 1984:461-62). With respect to unions, however, Law II "was designed and seem[ed] likely to appreciably strengthen the presence of unions within companies and to promote unionization generally" (Glendon, 1984:466). In particular, union rights were expanded in two key areas. First, the right to form a union section, originally limited to firms with fifty or more employees by a 1968 addendum to the French Labor Code, was now extended to all firms

regardless of size. Second, union leaders and members were given more privileges in terms of workplace activities, such as the right to collect dues during working hours, the right to more hours set aside for union activities, and greater protections against dismissal for union activities (Glendon, 1984:466-469).

Collective Bargaining and the Regulation of Labor Conflict, the title for Auroux Law III, was enacted on November 13, 1982. Designed to facilitate greater collective bargaining throughout French industrial relations, provisions in this legislation "elicited the greatest number of both favorable and hostile reactions" (Glendon, 1984:472). Law III effectively mandated periodic negotiations between unions and employers at both the firm and industry levels. At the firm level, if workers were unionized, negotiations had to take place at least once a year with respect to wages and hours. At the industry level, negotiations over wages and hours had to take place once a year if that particular industry was already covered by a collective bargaining agreement (Smith, 1987:49). In each of these cases, however, there was no legal obligation to reach a collective bargaining agreement. Unions and employers simply had to meet and discuss in good faith issues of concern to them. The Mitterrand administration's rationale was that such periodic meetings would "encourage a movement away from confrontation and negotiation under crisis conditions toward a continuing dialogue between what it viewed as 'the social partners'" (Glendon, 1984:472).

Auroux Law IV, titled *Committees on Health, Safety, and Working Conditions,* and Law V, labeled *Democratization of the Public Sector,* were enacted on December 23, 1982 and July 26, 1983, respectively. Law IV empowered individual workers with respect to health and safety issues in the workplace by mandating that companies with more that fifty employees establish committees to monitor, inspect, and improve such conditions. Law V focused specifically on public sector employees and extended earlier private sector provisions to this sphere. Law V also entailed provisions expanding the amount

of employee representation on the governing boards of public enterprises (Glendon, 1984:481-482).

These five pieces of legislation constitute the Mitterrand administration's labor law reforms of the early 1980s. While more legislation was in the works, specifically regarding the form and functioning of the expression groups, political fortunes did not allow the realization of these plans. In 1986 the Socialist Party lost its majority in the National Assembly and Mitterrand was forced to work with more conservative elements that did not have the empowerment of workers and unions high on their agenda. Regardless, the main elements of the *autogestionnaire* project had been implemented, with over one third of the existing French Labor Code having been revised and amended (Smith, 1987:48). In the next section, I address the effects that these policy reforms had on the French organized labor movement.

THE EFFECTS OF LABOR LAW REFORM ON UNIONS IN GREAT BRITAIN AND FRANCE

When cast in a comparative light, striking similarities and differences are revealed about the labor law reforms taking place in Great Britain and France during the 1980s. In terms of convergence, the labor law programs of the Thatcher and Mitterrand administrations were each embedded within broader state projects deemed fairly radical at that particular historical juncture. Specifically, Thatcher's 'neo-liberal revolution' and Mitterrand's 'socialist experiment' each represented significant policy departures in terms of recent political economic practices within the two nations. More significantly, each government also converged in their reliance on the substantial *legislative* reform of industrial relations as a means to facilitate national economic recovery. In addition, the legislation passed by both governments specifically targeted the role of organized labor as one means to achieve broader policy objectives.

Of course, these surface similarities pale in comparison to the significant substantive differences in terms of the content of the two

labor law projects. Though the Thatcher and Mitterrand governments each utilized similar political tools to restructure the conduct of industrial relations within their respective countries, the specific effects that each hoped their labor law reforms would achieve were, as noted above, starkly in contrast. Thus, the question now is: how did the two administrations fare in attaining the desired outcomes of their respective labor law projects? With some important exceptions that are addressed in the next section, I would argue that the Thatcher administration's labor law project was fundamentally successful in undermining the British organized labor movement. In looking at union density, for example, an often used but by no means comprehensive indicator of union strength, there is a significant decline from 1980 through the present. In 1980, 45% of private sector employees in Great Britain and 69% of that country's public sector workers belonged to unions. In 1999, only 19% of British private sector workers were unionized, while the proportion of public sector employees in unions fell less markedly to 60% (Visser, 2000:4).

There are other factors contributing to this decline in British unionization levels however. Broader structural economic transformations, the changing organization and composition of labor markets, and business cycle factors, for example, each played a part in decreasing union membership rolls and thus reduced overall density (Shackleton, 1998:589-91). Indeed, these same forces negatively impacted union density in a wide array of Western capitalist democracies (e.g. OECD, 1997). Nevertheless, even when these broader variables are taken into account, the effects of Thatcher's labor legislation still remain significant. Freeman and Pelletier (1990), for instance, assessed the impact of legislative changes on British union density between 1945 and 1986 while systematically controlling for economic and other relevant factors. Their conclusion was that *"the vast bulk of the observed 1980s decline in union density in the UK is due to the changed legal environment for industrial relations"* (Freeman and Pelletier, 1990:156; emphasis in original).

Other indicators concerning the vitality of the organized labor movement in Great Britain also point to a successful outcome for the Thatcher labor law project. Labor union recognition in workplaces with twenty-five or more employees fell steadily, from 64% in 1980 to 53% in 1990, and down further to 47% by 1995. The percentage of workers covered by collective bargaining contracts also declined, from 71% in 1984 to 54% in 1990 (Shackleton, 1998:591-592). Closed shops also suffered marked setbacks. Covering over five million workers during the late 1970s, only 400,000 were employed in closed shops by 1990. Indeed, the future looked quite bleak for workplaces with restrictive union membership agreements, since after "the 1990 Employment Act they have no legal basis and a worker who could show that he or she was excluded by such an arrangement would be eligible for substantial compensation" (Shackleton, 1998:593).

Industrial action by unions, in particular strike activity, was another area singled out by the Thatcher administration's labor law policy. The strike is one of organized labor's most important bargaining tools, and the ability for effective strike action clearly has implications for union power in other areas as well. As noted by Brown and Wadhwani (1990:60), British strike data "demonstrates [a] substantial decline in the number of stoppages in the 1980s" as well as a decrease in the number of working days lost due to strikes. Whereas the number of strikes over five year periods was consistently well above 2000 from 1960 to 1979, the number of stoppages reported between 1980 and 1984 dropped to 1363. Only 943 strikes occurred between 1985 and 1988, a pace that indicated a further downward trend. The number of working days lost per 1000 employees also declined significantly during the 1980s (Brown and Wadhwani, 1990:60).

I am fully aware that, just as in the case of union density, factors beyond changes in labor law policy also influence the aforementioned indicators. However, particularly when it comes to the closed shop and industrial action, I would maintain that the Thatcher administration's labor law project certainly had a significant negative

effect on labor union power in Great Britain. Thus, the Thatcher administration could be said to have been largely successful in attaining its intended objectives. There are of course a few exceptions, which I will address in the next section.

What then about the success of the Mitterrand government's labor law project, designed to empower French labor unions and promote the spread of collective bargaining? To begin, if union density figures are again taken as broad indicators of organized labor's strength, it would have to be concluded that the Auroux laws did not have their intended effects. In 1981, 18% of workers in France's private sector and 44% in its public sector were unionized. By 1993, density rates had dropped dramatically, with only 4% and 25% of French employees belonging to unions in the private and public spheres, respectively (Visser, 2000:4).

The effects of the Auroux Laws become more evident if one looks at their impact in key areas specifically addressed by the legislation. Recall that central to Law I was the attempt to further workplace democracy by mandating the establishment of employee expression groups within firms. In looking at this objective, the overall problem appears not to be in establishing such groups, since by the mid-1980s worker expression programs had existed "in one half of the applicable firms" (Moss, 1988:325). Rather, the key trouble spots emerged with respect to who established the expression groups and how they functioned. In terms of the creation of expression groups, the law called for a collaborative process between management and unions or other employee representatives. For the most part, however, unions and workers "were timid and skeptical" about the groups (Ross, 1987:212), and "[i]nitiative almost invariably belonged to management, which trained staff in leadership techniques, scheduled the meetings and explained their purpose" (Moss, 1988:324). More significant than how they were established is how the expression groups functioned once in operation. As one observer found, "employers...largely 'contained' expression groups and...harnessed

them to a broader management policy of building employee identification with the firm" (Smith, 1987:53). In effect, a strategy was pursued that "undercut the unions' traditional role as mediating agent between employees and management by 'individualising' the worker-management relationship" (Smith, 1987:53). The tactic apparently worked, as evidenced in part by declining union membership but also by the tum-around in employer attitudes toward the 'right of expression' provisions of the new legislation. Initially opposed to the expression groups, employers became increasingly satisfied with their performance as the 1980s progressed (Moss, 1988:326).

Another objective of the new labor laws was to reinforce and expand the role of existing mechanisms for worker representation. Law II extended the right to form a union to smaller firms; allowed union leaders the right to perform more tasks within the workplace on company time; and strengthened the position of shop floor committees and employee representative institutions. Ironically, these provisions had two unanticipated effects that further undermined the vitality of French unions. One effect was that union membership became less necessary as other forms of representation, expression groups included, became more institutionalized (Smith, 1987:55). Another was that "the reinforcement of representative institutions in the workplace ...enmeshed already overtaxed union militants in deeper levels of bureaucracy" (Ross, 1987:212).

Collective bargaining was another area addressed by the Mitterrand government's labor law reforms. Recall that Law III required annual negotiations between unions and employers at all firms where there was at least one union section, even if there had been no previous collective bargaining arrangements, and at the industry level if an agreement was already in existence. As intended, collective bargaining did in fact increase throughout the French industrial relations system (Ross, 1987:212; Smith, 1987:56). Two important points need to be made in this regard however. First, since there was an "obligation to negotiate" but not an "obligation to reach agreement",

relatively few collective bargaining agreements were ever established (Ross, 1987:212). Indeed, by the mid-1980s only about 10% of the labor force was covered by a collective bargaining agreement (Smith, 1987:56). Second, the majority of agreements that were established were at the level of the firm rather than covering an entire industrial sector (Moss, 1988:325-327). The end result was that the French organized labor movement, which traditionally exercised its strength at the industry-wide level, was slowly transformed into a less effective type of "enterprise unionism" (Howell, 1996:153).

Overall, then, trade union power in France declined significantly throughout the 1980s and beyond. Factors other than labor law, most notably a similar array of structural and cyclical economic forces that were evident in the British case, clearly played some role in this waning of union influence as well. But the labor law reforms implemented by the Mitterrand government in the early 1980s, despite the intention of strengthening the role of labor unions in French industrial affairs, also contributed to the decline because of the various paradoxical and unintended effects recounted above. Inthis regard, the labor law project of Mitterrand and the Socialist party would have to be deemed a fundamental failure.

THE PROBLEMATIC NATURE OF LABOR LAW REFORM

The British and French labor law projects of the early 1980s had problematic outcomes that were sometimes very marked and often very difficult to anticipate. While the labor law policies of the Thatcher administration were widely successful in achieving the primary objective of weakening labor unions, there were also effects, addressed below, that may have unintentionally empowered British organized labor. The problematic character of the Mitterrand government's Auroux project is glaringly evident, for as I have described above, its intended aim of strengthening French unions did not occur and it can be argued that the new legislation ultimately served to further undermine organized labor. Overall, such outcomes

should not be entirely surprising, for any state project, whatever its character or goals, is inherently marked by contingency, contradiction and conflict as attempts are made at its ideal realization. I would argue that this especially true in the case of state projects that entail strategic manipulations of the law.

In light of the comparative analysis presented above, problematic outcomes with respect to attaining broader political objectives through the use of legal reforms appear to spring from two key sources. One source is internal to the character of the legislation being implemented. For example, the rational coherence of a particular legislative initiative is by no means given, and there may often be conflicting, if not contradictory, potentials embedded within the same law. The National Labor Relations Act passed in the United States in 1935 is a case in point. This legislation was "marked by indeterminacy, openness and divergency" and could have just as easily led to a robust form of industrial democracy rather than the contractualist business unionism that eventually developed (Klare, 1978:291). Along these same lines, Howell (1996:148) notes that the Mitterrand administration's Auroux reforms "contained two distinct and coherent, but incompatible, logics". One logic, the one that the socialist government hoped would be realized, could lead toward more widespread collective bargaining with strengthened trade unions having a "critical role [as] privileged representatives of the working class" (Howell, 1996:148). The other logic, and the one that came to dominate, involved worker expression groups and other employee representative institutions becoming *"alternatives* to union organization" and producing a "microcorporatist" enterprise unionism (Howell, 1996:149; emphasis in original).

The internal character of legislation can also lead to problematic outcomes even in the relative absence of contradictory potentials or tendencies within the law. For example, the Thatcher administration's provisions concerning the democratization of unions generally had an overriding coherence and consistency. However, the British government miscalculated that greater input by the rank and file would

attenuate industrial conflict because it had falsely assumed that it was union leaders who were excessively militant and not the rank and file. As the 1980s progressed, union ballots on industrial action often received widespread membership support and attained greater legitimacy because the issue had been voted on (Dunn and Metcalf, 1996). The same pattern was evident with respect to ballots on union political funds, for membership voting "had the unexpected effect of commanding a high level of support for such funds" (Brown and Wadhwani, 1990:61).

Another source of contingency when it comes to state-directed legislative programs has more to do with external factors rather than with those internal to the law itself. As Ross (1987:212) put it with respect to the Mitterrand government's labor law project, "[t]he final outcomes of reforms like the Auroux Laws depend on the relative strengths and intentions of labor and capital over the long run". Two related issues make themselves evident here. One concerns the *intentions* of actors to whom the law applies, specifically if and how they use the new legislation. For example, in the case of Britain, the Thatcher administration's stringent restrictions on strike activity were not initially taken advantage of by many employers. However, as the 1980s progressed, more and more employers did become aware of their effectiveness and began using them more frequently. One can only speculate that if this change in management's use of the law did not occur, would the Thatcher labor law project have ended in failure? In the case of France, I noted above that it was employers who first took advantage of the provisions concerning workplace expression groups. The relative inaction of unions in this regard resulted in expression groups being primarily designed and run by management. Had French unions taken a more proactive role earlier on, perhaps the 'logic' inherent in the Auroux Laws that empowered unions would have been realized, and not the 'logic' that ultimately displaced unions. Again, one can only speculate on this historical possibility.

A second issue pertains to the relative *strength* of the parties involved. For example, part of the reason why French employers were able to achieve their vision for how expression groups would function in the workplace may have been because the Auroux Laws were implemented in an economic context where capital had a significant advantage over labor. Thus, even if they had pursued their new legal rights more vigorously, unions in France may not have been able to realize the full potential of the law in the face of employer opposition (Howell, 1996:149). In the case of Britain, employers also had a similar position of power over organized labor, and they were able to use the new management-friendly laws with great effectiveness to further undermine the organized labor movement. Of course, when labor legislation very similar in content to that of the Thatcher administration was implemented in a context where unions were relatively more powerful, such as occurred with the Heath administration's Industrial Relation Act of 1971, recall from above that a totally different outcome ensued.

Overall, then, a wide array of factors can make it exceedingly problematic for political actors to easily accomplish specific policy objectives through the use of legislative means. The two cases of labor law reform that I have described here perhaps exemplify two extremes toward which such state projects can gravitate. On the one hand you have the relatively successful realization of the Thatcher administration's neo-liberal project to weaken the British organized labor movement. On the other you have the fundamental failure of the Mitterrand government's socialist project, which ultimately further debilitated the unions it had hoped to empower.

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