The Politics of Employment Policy in Europe: Two Patterns of Reform

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Abstract

The late 1970s represents a turning point in the evolution of employment policy in Europe. Up until that point in time, the direction of reform had been one where employment protection continuously had been reinforced. However, the combination of a sharp rise in unemployment, acting as an impetus, and a growing consensus over new economic ideas switched the course of reform on to the track of deregulation and flexibility. The changes introduced into the employment protection legislation varied in character across countries. The argument of this paper is that Europe can be roughly divided into two ideal-typical groups of countries which have experienced two different patterns of reform. In the UK and in Ireland, the employment protection legislation has been deregulated for both regular and temporary workers whereas in Continental Europe and in the Nordic countries the legislation has only been deregulated with regard to temporary workers. The result is a higher amount of short-term jobs in the former group of countries, and fixed-term contracts in the latter group of countries. The two patterns of reform will, here, be given the terms: full reform and dual reform. Using the cases of France and Sweden, the paper will seek to explain what are the causal factors that lie behind the dual reform pattern in these two countries, or put counterfactually, why France and Sweden did not follow the route of the UK.

1. Introduction

The late 1970s represents a turning point in the evolution of employment policy in Europe. Up until that point in time, the direction of reform had been one where employment protection continuously had been reinforced. However, the combination of a sharp rise in unemployment, acting as an impetus, and a growing consensus over new economic ideas switched the course of reform on to the track of deregulation and flexibility. The changes introduced into the employment protection legislation varied in character across countries. The argument of this paper is that Europe can be roughly divided into two ideal-typical groups of countries which have experienced two different patterns of reform. In the UK and in Ireland, the employment protection legislation has been deregulated for both regular and temporary workers whereas in Continental Europe and in the Nordic countries the legislation has only been deregulated with regard to temporary workers. The result is a higher amount of short-term jobs in the former group of countries, and fixed-term contracts in the latter group of countries (see graph below). The two patterns of reform will, here, be given the terms: full reform and dual reform. Using the cases of France and Sweden, the paper will seek to explain what are the causal factors that lie behind the dual reform pattern in these two countries, or put counterfactually, why France and Sweden did not follow the route of the UK.

In essence, there exist three explanations in the literature for what in the paper is referred to as dual reform. First, the dual labour market theory and the selective corporatism literature put the focus on the firm level and argue, respectively, that dual reform can be explained by firm strategy (Doeringer et al. 1971; Reich et al. 1973; Goldthorpe 1984) or by the cooperation between unions and employers within the core economy as a response to economic restructuring (Esser and Fach 1981; Palier and Thelen 2008). Second, the insider-/outsider theory of unemployment directs the attention to labour market institutions, such as the employment protection legislation, wage bargaining practices and firm-specific training, and argues that they protect insiders from the underbidding of the unemployed in terms of pay and employment conditions (Lindbeck and Snower 1988; Blanchard and Summers 1986). Third, in the political economy literature dual reform has been explained by the vote maximization strategies of political parties in general (Saint-Paul et al. 1996) or by social-democratic parties in particular (Rueda 2005). This paper will argue that what is missing in the literature, in general, are policies and the political context in which they are made. The first two types of explanations do not give sufficient attention to the political level and the influence of employers and unions in the process of the reform of labour market institutions. The third type of explanation, on the other hand, focuses solely on political parties and omits their interaction with the social partners in the reform process.

The role of the social partners is crucial in the area of employment policy. By analysing key reforms in the two case studies, France and Sweden, I will show that the employers and the unions have had significant influence over outcomes, having in many cases “pre-negotiated,” new legislation. The inclusion of the social partners in the reforms is due, primarily, to employment policy being perceived as a legitimate area of concern for the social partners and that their involvement in the process of deliberation and negotiation ensures the stability of the new legislation over the long-term. The UK is presented as a counter example where the social partners were gradually being increasingly excluded from the political process, also with regard to employment policy.

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2 For the purpose of this paper, employment policy will be restricted to refer to employment protection legislation. In my PhD dissertation, the unemployment insurance is also included. Europe refers to the EU-15.

3 N.B. the cases represent work in progress and should be judged accordingly.

The paper is structured as follows. The next section briefly outlines the theoretical framework of the paper. Thereafter follows section three where the empirical evidence from the case studies is presented. The UK will be presented less intensively, more as a counter point to the other cases. The last section will conclude the paper.

**Graph 1 – Relationship between % fixed-term contracts and % job tenure < 1 year (2000)**

![Graph 1](image)

Source: own calculations from Eurostat (LFS) and OECD Employment Outlook 2002

**2. Theoretical framework**

The argument of the paper is the following. The timing of the shift in the trajectory of reform is related to the rise in unemployment as the increased salience of the issue provided governments with the impetus for reform. The combination of macroeconomic constraints and the emergence of new ideas influenced the direction of the reforms, which in turn have been refracted by the varying strengths of the unions’ institutional power resources.

**Ideas**

Several authors have studied the causal impact of ideas on macroeconomic policy (e.g. Hall 1986; Blyth 2002; McNamara 1998). Faced with the uncertainty that comes about when the old and tried solutions no longer seemed to work, political actors became more open to new ideas. Just as the shift in the influence from Keynesian economics to neoclassical economics provided direction for the changes in the area of macroeconomic policy, I will argue that the belief that labour market flexibility creates job growth has come to determine the direction of reform in the area of employment policy.
I will hypothesize below that it is likely that ideas have had a causal influence on policy when the following is true (cf. Berman 1998):

- Actors’ preferences and policy choices do not correspond to what we normally would assume given their structural position. Here, the introduction of labour market flexibility measures by the political left.
- Actors with different structural positions introduce policies that move in the same direction. Here, both the political left and right introduce flexibility measures.
- Actors are following the same set of ideas over an extended period of time and under different economic condition.
- The emergence of the ideas predates the reforms under examination.

Institutional power resources
In its original definition power resources referred to the political mobilization of labour in trade unions and political parties (Korpi 1983; Esping-Andersen 1985). With regard to unions, which is the main focus here, power resources have most often been measured in terms of membership density, unions have more power in negotiations with employers the larger the part is of the workforce that are union members. However, we can also look at the influence of the unions in the political process, what some authors have called the secondary power resource (Traxler et al. 2001) and what I will call institutional power resources.

Looking at membership density, we would expect that in France where membership rates are low unions would have a much weaker influence on politics than in Sweden where the rates are high, but as will be shown in the case studies below that has not proved to be true. Instead, I will hypothesize in the paper that it is the institutional power resources, the participation of unions in the deliberation and negotiation of new legislation, that have determined the patterns of reform in the evolution of employment policy in Europe.

- In countries where the unions have weak institutional power resources, we will see a full reform.
- In countries where the unions have strong institutional power resources, we will see a dual reform.

3. The Evolution of Employment Policy – The Cases

France

In France, unemployment began to rise from the mid-1970s and onwards. When the Socialist Government (coalition between the Parti socialiste and the Parti communiste français) came into power in 1981 its first policy response was a fiscal stimulus package. But rather than creating growth and lowering the unemployment levels, the policy led to rising inflation and a balance-of-payments crisis. The Socialist Government had to decide between opting out of the EMS, moving to a floating currency, or to tighten fiscal policy. They chose the latter. With the level of unemployment continuing to rise, new ideas became influential.

The 1984 debate on flexibility
Negotiations between the social partners seemed inevitable given the political climate in 1984. Unions in most European countries, including the European Trade Union Confederation
(ETUC), were receiving demands for legislation increasing labour market flexibility. Given the continually rising levels of unemployment, it was difficult for the unions to reject a proposal for negotiation on employment policy when put to them by the employers. But there were also other reasons for accepting. First and foremost, the negotiation offered a possibility to influence future legislation that seemed inevitable given the support of the PS for flexibility. In that way, the unions could seek to minimise the damage during the negotiations. Second, the unions wanted, as did the employers, to guard their privileged position in the process of policy making. It is somewhat of a paradox in France that although the state plays a key role in the regulation of the labour market, as the voluminous Labour Code is a testament to, there is at the same time a strong attachment to include the social partners in the formulation of new policy, which is especially true with regard to employment protection legislation. The employers, besides sharing with the unions an interest in retaining such influence, had two reasons to initiate negotiations: first, the Socialist Government had made clear that they would not legislate on the issue of flexibility leaving collective negotiation as the only alternative for the time being to advance the agenda. Second, and perhaps more importantly, the negotiation about flexibility could serve as a means to habituate the public to the new ideas (Soubie 1985).

The opening salvo of the negotiations and the CNPF's campaign for flexibility was the announcement of its proposal for the empois nouveaux à contraintes allégés (ENCA). The ENCA stood for new jobs that, according to the proposal, should have less legislative constraints attached to them: a softening of the regulation surrounding temporary work, the elimination of the requirement for administrative authorization for lay offs, partial exemption of social charges, and a delay for the increase in charges and workers representation imposed on companies who reach the threshold levels of 10 and 50 employees. If the proposal was introduced in its entirety, the president of the CNPF, Yvon Gattaz, promised that it would lead to the creation of close to 500 000 new jobs (Le Figaro, 23.01.1984).

Going into the negotiations in the early fall of 1984, the unions were on the back foot since the Government had made it clear that they wanted a result. On the TV show L’heure de vérité in early September the Prime Minister, Laurent Fabius, declared that he wanted the social partners to “aller vite et loin” (quick and far) in the negotiations. The position of the Government was that they saw the need of increased flexibility, but that they did not want to shift the balance of power too much in the direction of the employers. As Fabius puts it in October 1983, for the PS the goal was to find “the equilibrium point between the legitimate protections of the rights of workers and the necessary flexibility for the functioning of the economy and the firms.” (cited in, Howell 1992, 191) According to the newspaper Libération (25.05.1984) the ideal compromise from the perspective of the Government would consist of an increase in the reduction of working hours to satisfy the unions and the reduction of social contributions and a softening of the regulation for fixed-term contracts to meet the demands of the employers. Members of the Government had already before expressed a willingness to discuss a softening of the 1982 ordinance on temporary work. The Minister of Trade, Édith Cresson, had for example since a year ago advocated a special contract for the export industry (Le Monde, 26.05.1984). The press announcement following the Cabinet meeting on June 1984 includes Minister Cresson’s proposal (Les Echos, 13.06.1984). However, during the Pierre Mauroy Government the proposal was blocked by the Minister of Labour and member of the Communist Party (PCF) Jack Ralite (L’Express, 05.04.1985). In September, Jean-Paul Bachy, the Secretary of Industry of the PS, revealed in an interview that the Government

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5 This represented a complete reversal of position. As Howell writes: “The PS came to power deeply concerned about the growth of ‘precarious’ forms of work. The fear was that the growth of such types of work would not only create a more precarious and vulnerable existence for workers but would also lead to a fragmented, dualistic labor force.” (p. 197) – Howell, Chris. 1992. Regulating Labor: The State and Industrial Relations Reform in Postwar France. Princeton, N.J.: Princeton University Press.
(Fabius) was holding talks with the social partners relating to a revision of the 1982 ordinance
(Le Monde, 20.09.1984). The Government was willing to initiate discussion concerning future
legislation, but they decided together with the social partners to await the coming negotiations.
Arguably, this indicates that the legislation surrounding temporary work was less contro-
versial than the other proposals from the CNPF; the Government firmly defended the prin-
ciple underlying the administrative authorization of lay offs although being open to shortening
the delay (L’Express, 14-20.09.1984). This position was close to that of the more moderate
unions, such as the CFDT (Le Matin, 8-9.09.1984) and to a lesser extent the FO (Le Monde,

Although most of the unions (CFDT, CGC, and with reservations, FO and CFTC)
seemed to be in line with the Government, accepting the introduction of more flexibility
through a softening of the regulations surrounding temporary work, the Communist union
(CGT) refused to accept any changes that would put into question what the labour movement
had obtained up to this point in time, the so-called: *droits acquis*. What united the different
unions, and what was also the strongest point of discord with the employer side, was the
shared refusal to accept the ENCA or any other proposal that would soften the dismissal rules
contained in the 1969 and 1974 legislation (Le Monde, 10.10.1984). When the CNPF had
brought the issue to the table in their discussion with the Government, the unions, including
the CFDT, had exerted pressure to block any potential initiatives (La Croix, 27-28.05.1984).
If it is true that the unions’ primary strategy was to minimise the gains of the employers’ side,
they also brought their own agenda. The defensive strategy of the left, since the problem of
unemployment moved to the centre of public debate, had been to advocate work sharing.
Continuing in that spirit, the unions made the reduction of working hours the central theme of
their bid during the fall negotiations. Part-time employment was interpreted as being part of
the policy of work sharing rather than being a threat to the *droits acquis*. The CFDT argued
for the promotion of part-time work as being a right of the worker (L’Express, 14-20.09.1984).
In addition, they wanted new legislation mandating sector-level negotiations between the
parties in advance of the introduction of new technologies.

For the employers, the CNPF and the CGPME, the most important issue was the
hiring and firing rules. In January, the CNPF had explained that the lion share of the 500 000
new jobs promised (370 000) would come as a result of a repeal of the legislation on admini-
strative authorization for lay offs and the softening of the 1982 ordinance on temporary work.
The importance of that issue to the CNPF stemmed from their desire to use the unemployment
crisis to undermine the institutions that were the result of earlier political victories of the left.
Addressing the General Assembly of the CNPF in January 1983, its President Yvon Chotard,
declared that “[this] should be the year of the struggle against the restrictions introduced into
legislation during the ‘trente glorieuses’ which are inexpedient today: the year of the struggle
for flexibility.” (Weber 1986, 344) In addition to the above, the employers put to the
negotiating table a reduction of social contributions, a delay for the threshold levels to take
effect, lower requirements for workers’ representation, and more flexible rules for organizing
working time. With regard to unions’ demand for reduction of working hours, the employers
were sceptical towards any proposal that required companies to compensate for the lower
earnings.

Both constellations of social partners entered the negotiations in September with the
intent to partake in constructive dialogue with the exception of the CGT who while sitting in
on the discussions openly stated that they would make no compromises and criticized the
other unions for their preparedness to make concessions. The CFDT chose the opposite
strategy and claimed that there were no taboos concerning flexibility (Le Matin, 05.11.1984).
Not all unions have to agree in order for an agreement to be made, hence the negotiations
continued between the employers and the four unions CFDT, CGC, FO and CFTC.
The first major breakthrough came in early December when the employers decided no longer to demand a repeal of the administrative authorization for lay offs as a precondition for an agreement (Le Figaro, 04.12.1984). However, a few days later, the unions received the first written document which was supposed to serve as the basis for the final negotiations scheduled for the middle of December. The reaction was overall negative. Although the employers had excluded the call for the repeal of the legislation concerning administrative authorization of lay offs, their proposal went far in the other areas under discussion: the maximal duration of fixed-term contracts should be extended to 18 instead of 6 or 12 months (36 months for the long-term unemployed) and they should be renewable; agency-work contracts should also be renewable one time; workers representation should be cut back and a delay of two years of the implementation of such representation should be introduced for companies that have passed the threshold levels of 10 and 50 employees; working time should be organized on a yearly instead of on a weekly basis; and finally, delays for the administrative authorization of lay offs should be shortened (Libération, 10.12.1984). The unions deemed the document to be unacceptable. The major part of their criticism centred on the reduction of workers’ representation in the discussion of the thresholds. Additionally, the unions’ demands for sector-level negotiations were missing from the proposals, which demonstrated a disregard for the spirit of compromise undermining the position of the moderate unions in relation to their base (Le Croix, 10.12.1984).

The final negotiations were held a week later on the 16 December. After a full night of bargaining the negotiations came to an end with the employers and the unions, with the exception of the CGT, endorsing a protocol agreement. The unions, however, included the proviso that the agreement had to be ratified by each union, at the latest on the 27 December, in order for it to take effect.

With regard to the unions’ demands, workers representatives on the firm level should be consulted and actively involved in the elaboration of an adjustment plan when new technology was introduced, but there should be no legal obligation of sector-level negotiations. The agreement encouraged sector-level negotiations concerning working time reduction and flexible organization. However, if no agreement was made at the sector level, negotiations should continue at the firm level. Hence, the agreement contained no legislative proposals that would increase the unions bargaining power in those two areas. The same is true for the employers with regard to the administrative authorization of lay offs where the work place committees and the administrative authority should work towards a shortening of the delays, but that the role of the work inspector should remain unchanged. With regard to the threshold levels, a compromise was reached: the employers had asked for a two year but got a one year delay. The rules governing the institutions of worker representation should be changed, limiting the number of meetings and simplifying the procedure by which the worker’s committees were being informed about the activities of the company. The real victory for the employers’ side came in the area of temporary work. The duration of fixed-term contracts should be extended from 6 or 12 months to 18 months. Additionally, the motives for the recourse to hiring on such contracts should be expanded. For the unemployed, no motivation should be required. The duration of agency-work contracts should be expanded from 6 months to 12 months in certain cases (Soubie 1985). From the result of the negotiations it is clear that the unions did not regard a softening of the regulations surrounding temporary work as a threat to the droits acquis, a reversal compared to the position the unions, and the Government, had taken at the time of the passing of the 1982 ordinance. As one commentator put it: “In 1982 they wanted to mark the success of the workers, in 1984 they wanted to find them work.” (Roudil 1985, 84)

6 The French Labour Code makes the distinction between contrats à durée déterminée (fixed-term contracts) and contrats d’intérim (agency work).
The protocol agreement had been concluded on the 16 December. The same day the CGC announced that they would sign the agreement. The negotiators for the CFDT and the FO expressed themselves favourable to the agreement while those from the CFTC were more reticent in their comments. At the same time the member base of the three unions were building a political momentum for the refusal of the agreement. After the negotiators of the four unions had consulted with their confederate and/or regional member organizations they decided to refuse to sign the agreement. The CGC, for their part, deemed it impossible to sign alone an agreement that would have an affect on the work force as a whole (Le Nouvel Obsevateur, 21.12.1984). In the process, the unity that the four unions had shown in the later part of the negotiations had broken down.

The reasons for the refusal were the following. First, those who rejected the agreement argued that it was one sided. As the front figure of the no campaign within the FO, Alexandre Hébert, put it: “I was against the UNEDIC agreement [the agreement on the reform of the unemployment insurance], but at least, as compensation, we had preserved the system. Here, there was nothing.” (Le Matin, 20.12.1984) Second, they did not share the leadership’s understanding of the need for more flexibility on the labour market. Third, there were strong reactions among the base in relation to the proposed reduction of workers’ representation. The CGT did not cease to repeat this argument; it was the most effective way to stir up resent since those affected by the reduction, the elected workers representatives numbering in the excess of 500 000, made up the lion share of the active members of the unions in France (Le Matin, 27.12.1984).

In the spring of 1985, the unions tried to initiate a new round of negotiations in the hope that the employers would make the necessary concessions in order for it to be possible for them to sign an agreement. Laurent Fabius also called for the re-opening of negotiations (Le Matin, 11.01.1984). However, the employers were reticent as it became all the more likely that elections of 1986 would bring a new Government to power which would be open to legislate and to legislate in the favour of the employers. Negotiations on flexibility took place in May, but they did not lead to any agreement.

During the spring, the Government, led by the Minister of Labour Michel Delebarre, considered the possibility of legislating in order to soften the regulations on temporary work contained in the 1982 ordinance. Already in 1984 a decree was ready that was constructed around the Minister of Trade, Édith Cresson’s, proposal for less strict rules concerning temporary work in the export sector. As mentioned above, the proposal was blocked by the Minister of Labour, and member of the PCF, Jack Ralite. After the reshuffle of the government in July 1984, Laurent Fabius and Michel Delebarre wanted to reiniciate the legislative proposal. However, in talks with the social partners it was decided that the Government should wait and see what would be the outcome of the negotiations on flexibility before proposing legislation. After the failure of those negotiations and the attempts made to reiniciate them during the spring, the Government decided to return to the legislative track (L’Express, 05.04.1985). However, they did so continuing the dialogue with the social partners. In July 1985 the law was passed softening the regulation on temporary work: the duration of fixed-term contracts should be extended from 6 or 12 months to 24 months for the long term unemployed. Further, in the last stages of the Fabius Government, in February 1986, the loi Delebarre was introduced which allowed companies the possibility of a more flexible organization of working time. As they had demanded in the negotiations the regulation of working time should be made on a yearly instead of what had previously been a weekly basis. The quid pro quo was that the new regulations should only apply if the company reduced the average work week to 38 hours.

The two legislative initiatives follows the PS’s strategy in the talks they had with the social partners before the negotiations on flexibility, the reduction of working hours versus
the introduction of flexibility. In this sense, it is further proof of the position of the Socialist Government.

Having followed the process of negotiation and legislation in relation to flexibility we have been able to glean the positions of the actors and the dynamics of the policy making: the employers began a campaign in 1983 pressuring for more flexibility, but it was not entirely a case of forcing the hand of the Government and the unions, since the moderate left acknowledged the need for more flexibility in order to solve the unemployment problem. However, there was still a power struggle over the administrative authorization of layoffs. The unions used their institutional power resources in the negotiations, and in contacts with the Government, to veto any changes to the employment protection legislation for regular workers.

The right returns and subsequent developments
The 1986 elections would prove the employers right in not agreeing to restart negotiations. The right-wing alliance of Rassemblement pour la République (RPR) and Union pour la Démocratie Française (UDF) was campaigning on a platform that with regard to employment policy was close to that of the CNPF. They promised to repeal the administrative authorization for layoffs and to soften the regulations on part-time and temporary work. Additionally, they wanted to reduce the “unwieldy union apparatus” in relation to workers’ representation and to reduce the levels of the minimum wage (Quotidien de Paris, 8-9.02.1986). The right-wing alliance won the election in March 1986 and Jacques Chirac was installed as Prime Minister. The new Minister of Labour, Philippe Séguin, introduced legislation in 1986 that, as promised during the campaign, repealed the administrative authorisation⁷ for layoffs and significantly softened the regulation of temporary work: the duration of fixed-term contracts of 24 months were generalized and could now be renewed at two occasions, also the restrictions for the motive of recourse to such contracts was softened.

In 1988 the right-wing alliance lost their parliamentary majority and Michel Rocard (PS) became Prime Minister. The left returns to power, but does not in any real sense overturn the far-reaching reforms of the Chirac Government. They did not reintroduce the administrative authorization for layoffs. However, they introduced an obligation of a social plan for the employees in case of collective dismissals. In 1993 this obligation was reinforced; the social plan had from then on to be made out in detail. With regard to temporary work, in 1990 the loi Soisson, named after the Labour Minister at the time, reduced the duration of fixed-term contracts to 18 months and restricted their renewal to one time. In 2005, the right-wing Government introduced the contrat nouvelle embauche (CNE) which extended the trial period to two years for permanent contracts during which the employer did not have to justify a dismissal.

Negotiating flexibility – déja vu?
In the twenty-odd years that followed the debate on flexibility, the issue was not at the forefront of public debate. Some reforms had been made as outlined above, but there had been no real debate until the late 1990s and the early 2000s when the discussion of flexibility resurfaced again. It was two different policy perspectives that triggered the debates in the years ahead and later in the collective negotiations and the legislation.

First, as had been the case in the early years of the Socialist Government, in the discussions about precarious employment, there was a growing sense that the employment protection legislation did not, and could not, ensure the workers against the risks on the labour

⁷ N.B. there was still protection against unfair dismissal.
market. In the later part of the 1990s, two public reports proposed reforms to deal with this problematic (Supiot 1999; Boissonnat 1995). They suggested the introduction of measures to ensure the continuing development of workers’ competences and to secure them in the process of changing from one job to another. The same idea that in the science community is referred to as transitional labour markets (e.g. Schmid and Gazier 2002).

Second, economists argued that the protection of regular employment have had the perverse effect of creating a secondary labour market in which workers are less well protected (e.g. Lindbeck and Snower 1988; Saint-Paul et al. 1996). The significant increase in fixed-term and part-time labour since the early 1980s had given proof to that argument. The proposed solution was to create one single type of employment contract, contrat de travail unique, and thereby putting an end to the separation between regular and temporary contracts. The new contract should have less strict dismissal rules, there should no longer be more difficult to dismiss on economic grounds. The contrat de travail unique was proposed first in a report by the two economists Pierre Cahuc and Francis Kramarz (2005; see also Camdessus 2004). This idea was, for obvious reasons, more appealing to the political right and the employers. Taken together, the debates make up the two sides of the flexicurity argument (Gaudu 2008). It was around these issues that the negotiation between the social partners came to revolve.

To set the stage, preliminary talks had begun between the social partners on the initiative of the employers’ organization Medef (formerly CNPF) in the fall of 2006 relating to what has been called the modernization of the labour market. In May 2007, Nicolas Sarkozy, who represents the right-wing political party Union pour un Mouvement Populaire (UMP), assumed the office of President. During the election campaign he had been advocating the contrat de travail unique (Le Monde, 08.09.08) and had emphasized that he would not be held back by the unions in his reform efforts. However, the law on the modernization of social dialogue, which was passed in January 2007, obliged the Government to propose the opening of negotiations between the social partners before legislation was made in the area of employment policy.

At the start of negotiations in September 2007 both the unions and the employers’ organizations rejected the proposal of the Government of the contrat de travail unique. The unions wanted to protect the existing protection for regular employment, but they were prepared to make compromises, particularly in light of the fact that they now had to face a right-wing Government that had made employment their key election issue. But, there had also been a change within the union movement where flexibility had become more accepted, at least as part of the compromise implicit in the concept of flexicurity (Bernard Gazier, 12.11.08; Jean Kaspar 05.03.2009 – interview with the author). The rejection of the employers can best be understood from their experiences of the CNE. Even though the CNE afforded employers the right to dismiss a worker on a new regular contract during the first two years without having to justify the action, the Courts had made use of article 158 of the Convention of the International Labour Organization to reinstate a demand for “valid reason.” (Gaudu 2008) The same could easily happen to the contrat de travail unique. Hence, the employers’ organizations wanted to limit the possibility of having recourse to the Courts. They therefore proposed to create the possibility of dismissal by mutual consent, which would circumvent the jurisdiction of the Court and the need for valid reason. The CGPME also proposed an extended trial period for up to two years, which in practice would be the equivalent of the CNE, but which would avoid the possibility of a legal process. Additionally,

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8 Flexicurity takes as inspiration the Danish model of employment policy where the flexibility in hiring and firing rules is compensated by a generous social security system and highly developed active labour market measures. The policy of flexicurity was approved by the EU member states in a decision taken by the Council of the European Union on 14 December 2007.
the employers wanted to create a new type of fixed-term contract that would have a duration of 36 instead of 18 months.

The unions were very critical of the dismissal by mutual consent and the extended trial periods. They were more open to negotiate on the issue of temporary work, although with reservations. The CFDT, for example, held as condition the approval of the new fixed-term contract by way of sector-level collective negotiations (Le Monde, 16.01.08). In the negotiations they asked for, as compensation for the increased flexibility, new measures that would better assure the security of workers in the transition between jobs such as higher compensatory damages for unfair dismissals and the transferability of rights and benefits (Le Monde, 08.09.08).

The context of the negotiations was different compared to in 1984 in that the President and the Government played a much more active role. At the beginning of the negotiations in September 2007 Sarkozy declared that if no agreement was reached by the end of the year it was up to the Government to legislate on the issue. Additionally, it was clear that the government supported the proposals of the employers. As the number one at CGT, Bernard Thibault, put it “The negotiations are unbalanced from the beginning since the employers can count on the support of the President” (Le Monde, 08.09.07).

The national collective agreement, Accord national interprofessionnel (ANI), was concluded on the 11 January 2008 and transferred into legislation on the 25 June 2008. The agreement was signed by all of the social partners except for the CGT. The comments made by the social partners after the agreement was reached all echoed the sentiment that this was the first step towards a flexicurity à la française. However, not much progress had been made either with regard to flexibility or security (Fabre et al. 2008): the unions were able to preserve the distinction between permanent and temporary contracts with the rejection of the contrat de travail unique. Additionally, no change was made to the process of dismissal for economic reasons, which still requires consent by the Court. The agreement contained the proposal for dismissal by mutual consent, where the dismissed worker would get compensatory damages and be eligible for the unemployment insurance, but it requires the consent of the employee. The dismissal by mutual consent is likely not to reduce the cost of the dismissal for the employer, since there is little reason for the employee to agree to lower compensations than s/he would receive if dismissed under the normal procedures. The agreement also extended the allowed duration of the trial period, but only to a maximum of two, three or four months depending on your profession. The period could also be doubled in length by a sector-level collective agreement. Additionally, the agreement contained the new fixed-term contract with a duration of up to 36 months, but limited with regard to its applicability; it only concerns engineers and higher level white collar workers. As compensation, the agreement contained higher compensatory damages for unfair dismissals and the partial preservation of certain rights during unemployment, for example health insurance.

Pierre Cahuc, who had been one of the major advocates for the contrat de travail unique, regards the outcome of the negotiations as a failure of the policy-making style of Nicolas Sarkozy and the continuation of the practice of reforms made at the margin (Cahuc and Zylberberg 2009).

The negotiations on the modernization of the labour market followed in general, although couched in the terms of flexicurity, the pattern of the 1984 negotiation on flexibility. It is the same ideas concerning employment policy that have been dominant since the early 1980s: increased flexibility is seen as necessary in order to solve the problem of unemployment. The unions have accepted this assumption, but are also trying to defend the droits acquis, during the negotiations. The outcome of the reform was only marginal changes.
The institutional power resources of the unions were greatly reinforced with the law on the modernization of social dialogue in 2007. What had been before a tradition of including the social partners in employment policy reform now have become law.

Sweden

Since unemployment had been held at bay through the use of repeated currency devaluations all through the 1970s and the 1980s, there had been little pressure for reform. However, the financial crisis of the early 1990s produced a rapid rise in unemployment, from 1.5 per cent in 1990 to over 9 per cent in 1993 and macroeconomic policy no longer seemed as a viable policy response. As a result the trajectory of reform shifted in Sweden a decade later than most of its European counterparts.

The flexibility debates in the early 1990s

In 1990, before the financial crisis, the social-democratic party, *Socialdemokratiska arbetarpartiet* (SAP), appointed a committee on to review the existing employment protection legislation. The directive, which set out the task of the commission, reflected demands from the unions such as a reinforcement of the co-determination act and increased protection for temporary and part-time work (Dagens Nyheter 31.08.1991). Before the work of the committee resulted in any form of legislation there was, however, a shift in power. After the election of 1991, a right-wing coalition came into office and issued a new directive for the committee largely based on the employers’ organisations demands for deregulation of the employment protection legislation. The work of the committee resulted in far reaching proposals including the right of the employer to determine which workers to retain during collective dismissals for economic reasons (SOU 1993:32).

That proposal challenged the principle contained in the 1974 legislation which held that the length of the period of employment should be the determining factor. For the unions, the so-called “last in, first out” principle represents employment security for their constituency, but perhaps even more importantly, it increases the unions’ bargaining power since they could agree to exceptions to the principle in return for concessions from the employers such as redundancy payments. The unions therefore strongly criticised the proposals.

The bill that the Government finally presented to parliament included more moderate changes. The “last in, first out” principle was kept intact, but the employer won the right to exempt two employees from the formal procedures. Additionally, the maximum duration for temporary employment, and the trial period of employment, was extended from 6 to 12 months (Prop. 1993/1994:67). The directive for the committee had stated that it “… should consider extending the right to hire on a temporary basis.” (Dir. 1991:18)

The reactions from the unions and the SAP were strongly critical. The SAP wrote in their counter-bill presented to the parliament that there was no evidence that increasingly flexible employment protection legislation would lead to job growth, it would create “… more insecurity for people, not more jobs.” (Mot. 1993/94:A8) Accordingly, after the SAP returned to power in 1994 they repealed the legislation that had been introduced only a year before. However, it was not long before the continually rising levels of unemployment forced the party to reconsider its position.

In 1995, the Government appointed a commission which should support the social partners in their negotiations in view of a common agreement on labour market reform. Members of the commission included both employers’ organisations and unions. The goal was include the social partners in order to create an employment protection legislation that was stable over the long-term. Kurt Junesjö, a lawyer for Sweden’s largest union, *Lands-
organisationen (LO), states that the idea behind the commission was that the social partners should pre-negotiate the reform of the legislation and if they would not reach an agreement the Government would act on its own (Dagens Nyheter 27.11.1995). Additionally, the directive included express instructions to find a new balance between the security of workers and the business sectors’ need for flexibility.

“The need for the employees of development, influence, freedom and security should be weighed against the firms’ need for flexibility, decentralization, competence and efficiency. The increasing international competition puts great demands on the firms. It is important that the rules are constructed in such a manner that the firms can be competitive on international markets. The commission should take this into consideration.” (Dir. 1995:30)

The positions of the actors were the following. The Social-Democratic Government wanted a more flexible and decentralized legislation (Dagens Nyheter 27.11.1995). The main employers’ organisation, Svensk arbetsgivarförening (SAF), wanted a liberalisation of the employment protection legislation (Dagens Nyheter 24.01.1996). They sought primarily to get rid of the “last in, first out” principle or at least to reintroduce the exceptions from 1993 legislation. In addition, they sought an extension of the trial period for employment. The LO was strongly critical of any changes to the principle and wanted for their part a right of leave of absence to try out a new job and increased protection for workers on part-time contracts (Ibid.). For the unions the protection of regular workers, which they believed to be threatened by the extension of the trial period and the wish to remove the “last in, first out” principle, was first and foremost a question of power. Hans Karlsson, negotiator for the LO (also a member of the SAP and later Minister of Employment, in 2002), writes in a press article during the discussions between the employers and the unions and with reference to their proposals that “[i]t would be unforgivable if the high rates of unemployment made us give up in fundamental questions of power.” (Dagens Nyheter 30.03.1996)

The combination of an aggressive employers’ side and the categorical refusal of the unions of any changes in the employment protection for regular workers explain the failure of the negotiations. The key point of discord was the “last in, first out” principle (Nycander 2008). During the spring of 1996 the commission was dissolved. Soon thereafter, the government appointed a group of mediators, but negotiations were never restarted. The idea was that if the employers’ organisations and the unions could not strike an agreement on the national level, maybe they could do so on the branch level. However, the LO refused to allow its member organisations to begin branch-level negotiations. In summary, even though the social partners were negotiating under the shadow of legislation, little headway was made.

When the failure of the negotiations and the attempts at mediation was a fact, the Minister of Employment, Ulrica Messing, announced that the Government now would turn to legislation. At the same occasion, she stated that it was the intention of the Government to make changes to the “last in, first out” principle (Dagens Nyheter 30.05.1996). The announcement created strong tensions both in relation to the LO and to the base of the party. Many of the members of parliament of the SAP have a close relation to the LO and sometimes still holds positions within the union organisation. Before the group of social democrats in the parliament was to discuss the proposal of legislation from the Government, the LO used every possible means at their disposal to influence the outcome. They threatened to withdraw 20 million skr from their contributions to the SAP (Dagens Nyheter 07.09.1996) and made clear that those who held positions within the union organisation, often elected chairmen at the
local level, might lose the support of the central organisation when seeking re-election (Dagens Nyheter 05.09.1996).

In the end, however, the social democratic members of parliament accepted, after an intense debate, the new proposal that the Government had negotiated with Centerpartiet. One of the MPs, Hans Karlsson (not the same as above) who held a position within the LO organisation, and who had up to this point been one of the most critical voices, explained his decision to vote yes in the following manner “[t]he ‘last in, first out’ principle, which is the fundament of the labour law, is being retained and with that I believe that I can say that we have got a good compromise.” (Dagens nyheter 06.09.1996)

The bill introduced to parliament, with the title: A New Employment Protection Legislation for Increased Economic Growth (Prop. 1996/1997:16), restored the maximum duration of temporary employment to 12 months (limited to 5 employees per company) and 18 months for first-time hires. Additionally, the new law made it possible for collective agreements concluded at the local level to derogate from legislation. Earlier, such derogation was only possible with the consent of the parties at the national level.

The gradual acceptance of the idea of flexibility of the SAP mirrors that of the PS in France. After having appointed a committee in 1990 to limit what was seen as the abuses of temporary and part-time employment, and having repealed in 1994 the legislation introduced by the right-wing Government, faced with unyielding unemployment the Government reversed their position. It is also clear that the influence of the unions affected the content of the reform. Pushed to accept reform of the existing legislation, the LO choose to defend its institutional power resources while allowing increased flexibility at the margins.

Negotiating a new principal agreement
The right-wing Government that came into power in 2006 declared early on, to the disappointment of the employers’ organisation, that they had no intentions to introduce changes into the employment protection legislation concerning regular workers during the first four years in office, this was a promise made in the election campaign. They did however increase the maximum duration of temporary employment and removed the requirement for the employer to justify the need of temporary work (Prop. 2006/07:111). Instead, they focused their attention on the unemployment insurance system where they introduced stricter qualification requirements, reduced replacement rates and lowered state finance, increasing the individual fees in the insurance (Prop. 2006/07:15).

Realising that the Government would not legislate on the protection for regular workers, the employers’ organisation, first and foremost Svenskt näringsliv (SN), approached the unions in 2007 with the proposal to start negotiations of a new principal agreement. The hope was that such an agreement would usher in a new spirit of cooperation in the same way as the Saltsjöbaden agreement had done in 1938. From their perspective, the employment protection legislation that was introduced in the 1970s had been the main reason for the worsening relations between employers and unions (Nycander 2008). The employers’ side put forward two demands: first they wanted remove the “last in, first out” principle, in its place they wanted to give the employers the right to decide the order of selection, which was to be based on competence, second they wanted to introduce restrictions to the unions’ right to sympathy/secondary action. However, they also made clear that there would be no return to centralized wage bargaining (Dagens Industri 22.09.2007).

In a speech that was made in the summer of 2007, the chairwoman of the LO Wanja Lundby-Wedin, expressed that she was open to discuss the second point, changes in to the rules governing industrial action (Svenska Dagbladet 16.07.2007). As a result, discussions began between the parties in the fall. The demands from the unions centred on more security
for workers in their transition between jobs; they wanted, for example, increased redundancy payments and more funds for vocational training. Additionally, the base for an agreement should be a shared commitment to the collective-agreement model with a view to expand its coverage (LO Press Conference 11.03.2009) and an attempt to find a common response to the decision of the European Court of Justice in the Laval case.

The more formal negotiations began in the fall of 2008 and it soon became evident that the main point of discord was the “last in, first out” principle. In their proposal for an agreement, the employers offered increased support for laid off workers and the commitment to solving the Laval issue in negotiations between the unions and the employers. In return, they wanted progress to be made on their two key demands (SN Press Release 11.03.2009). In February 2009, the unions put forward a proposal in which they agreed to a “delay mechanism” for sympathy/secondary action, but refused any changes to the “last in, first out” principle. This was not enough for the employers and in early March they withdrew from the negotiations and called for the Government to make legislative changes. Jan-Peter Duker, the chief negotiator for the SN stated that “…when the parties have not been able to come to an agreement it is the political responsibility of the Government that the rules are adapted to modern conditions” (Svenska Dagbladet 12-03-2009). The Minister of Employment, Sven-Otto Littorin, has responded by saying that “…all along I have said that I am prepared to consider legislation if the parties issues a common request. As they now are not in agreement, we will not act.” (ibid.)

We can see that the negotiations have followed a similar pattern of reform as during the social-democratic Government in the mid-1990s. Both the political left and right have delegated the issue of employment protection legislation to negotiations between the social partners and both have only been prepared to introduce legislative changes with regard to temporary work. It is also clear that in both cases, increased flexibility has been the driver behind the negotiations.

The UK (shadow case)

As mentioned above, the case of the UK will be treated differently. I will limit myself in this section to try to highlight the main differences that exist between the full reform in the UK and the dual reform in France and Sweden primarily in terms of the influence of unions in public policy-making.

In the post-war decades the social partners were included in policy making, for example through their participation in the National Economic Development Council (NEDC) and the Manpower Service Commission (MSC). Between the political parties there was also a consensus around the encouragement of collective bargaining (Visser and Ruysseveldt 1996). Additionally, as was the case also in France and Sweden, employment protection was introduced into legislation during the 1970s. An act against unfair dismissal was passed in 1971 and strengthened in 1974 (Hyman 1995).

When the Conservatives came into power under the leadership of Margaret Thatcher in 1979, the Government sought to reduce the influence of unions in politics and undermine their position on the labour market “…it introduced a whole string of legislation which gradually reduced the national role of unions and of collective bargaining. It favoured and promoted individual over collective bargaining. Contacts between Cabinet ministers and union leaders were limited though not suspended, the effectiveness of union lobbying was greatly reduced and access of unions to the political process restricted.” (Visser and Ruysseveldt 1996, 47-48)
In the legislative changes that followed the tendency was to limit the ability of unions to use the strike weapon, to discourage collective bargaining and to undermine the protection against unfair dismissal. With regard to the latter the qualification for unfair dismissal was extended from six months to two years (ibid.)

Even though employment protection legislation was always weaker in the UK, in comparison to France or Sweden, the evolution in the three countries followed a similar reform pattern where employment protection was reinforced up until the late 1970s after which the trend shifted towards deregulation and increased flexibility. What makes the UK different is the disenfranchisement of the unions of their political influence. New legislation in the UK was not the result of compromises made between the social partners, or between the social partners and the Government.

4. Conclusion

Looking back on the case studies we can see that the hypotheses presented above has bore out. The shift in the direction of employment policy reform coincided with the rise of unemployment. The new direction of reform has been the same in all the countries studied and has been consistent over time with the idea that labour market flexibility is the solution to the problem of unemployment. Finding that old solutions no longer worked, also left-wing political parties came to seek the introduction of flexibility measures. What explains the difference between the countries that have experienced a full or dual reform in the area of employment policy is the strength of the unions’ institutional power resources. When the unions have had the possibility to influence reforms they have prioritized to defend the employment protection legislation for regular workers and have instead agreed on the introduction of flexibility at the margins, in the form of easing the regulations concerning temporary employment, and thereby creating a dual reform.

Studies looking at the vote maximization strategies by political parties miss the point that parties are not the only actor, and probably not the key actor, in employment policy reform. As the case studies above have shown, new legislation has often been “pre-negotiated” by the social partners. What stands out in the case of the UK is the successful attempt of the Government to undermine the influence of unions and thereby not having to make compromises with them.

An implication of the argument in the paper is that there exist significant institutional obstacles to the realization of the official policy of the EU with regard to flexicurity as the unions will use their institutional power resources to repel any attempts to reform the employment protection legislation.
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