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Calderón, José-Angel

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What is the nature of the crisis in French unionism? A reading from the perspective of models of production

José-Angel Calderón¹

Introduction: A somewhat paradoxical crisis in French unionism

The crisis in French unionism has been a commonplace in the literature for decades, to the point that it has become hard to even think about unions in France apart from the crisis that besets them. Objectively, this crisis is undeniable if you go by the trend in membership rates in French unions. In 2010, they represented only 7.8% of French employees and 5% of public employees, the lowest unionization rate in the OECD besides Turkey, whereas the membership rate in 1973 was 23%.

It is true that France has never been a country of mass unionism, for reasons stemming from its history of slower industrialization and from the emergence there of a less urbanized working class than in England or Germany, for example. Additionally, it never adopted the Ghent system, as did the countries of Northern Europe. Still, union organizations have long had an extensive, involved activist base in business and government, and this decline in membership raises concerns.

The image of unions as measured by public opinion polls since the 1970s has also changed over time. This research surveys representative samples of wage earners about their confidence in unions to defend their interest. Though confidence prevailed in the late 70s — more than 6 employees in 10 trusted the unions to defend their interest in 1979² — this level has dropped sharply since then. Just relying on CSA figures, only 4 employees in 10 on average claimed to have confidence in unions during the 1993-2001 period,

¹ Assistant professor of Sociology, Lille University of Science and Technology, France.

² Baromètre annuel du Conseil Supérieur de l'Audiovisuel, 2004 - 12th wave.

although the level rose back slightly in the subsequent period.³ Compared to the other OECD countries, French employees' mistrust of unions is also more pronounced. Figures from the World Value Survey in 2007⁴ reveal that, although 35% of French employees say they trust the unions (vs. 37% on average in the OECD), 51% of French employees say they have “no confidence” in unions to represent them, vs. 8% in Norway and 20% in Sweden. This last indicator is interesting in that it suggests a sharper polarization in France than in other countries between employees who consider themselves rather well protected by their unions and those who feel rather neglected.

Contrasting these findings with the DARES⁵ data on union presence, we see that despite the decline in unionized workforces in the last two decades, unions have slowly but increasingly set up in more companies and government bodies where they had been absent. In 2005, 56.0% of employees stated that one or more unions were present in their company or government body, as against 50.3% in 1996. And taking as the variable union presence in the workplace, 41% of private and public employees said they were covered by a union in 2005, as against 37.5% in 1996. If the number of members is down over the long term, that does not mean that France is the country where unions have less contact with employees—quite the opposite, since in the most recent period the unions have gained representation in workplaces to a greater degree than the European average.

The debate in France about the (false) problem of institutionalized unionism

Employees' distrust of unions has been a hotly debated issue in France, though not always very scientifically. On one hand, you have lower membership; on the other, an increasing presence in companies and government bodies. A number of analysts and commentators on the crisis in unionism have attempted to resolve this paradox by pointing out the supposedly “excessive” institutionalization of French unionism, and this criticism came from both the Left and the Right. In France, as Karel Yon describes it, institutionalization is often taken in a negative sense, to mean the unions are becoming self-sufficient, closed off and bureaucratic.⁶ Since the 1980s France has seen an endlessly repeated debate growing, in which

³ Ibid.

⁴ World Value Survey (2007), <http://www.worldvaluessurvey.org>

⁵ DARES (DARES REPOSE, 2008)

⁶ YON, K. “Représentation du travail et représentativité syndicale aux marges du salariat: le cas de la distribution directe”. *Travail et Emploi*. n. 31, 2012.

the institutionalization of the unions is thought to be the cause of their crisis of representation. In the view of Pierre Rosanvallon,⁷ if representing workers functions doubly as social agency and social movement, what we see now is an imbalance between social agency, which is to say all social functions inhering in an institutional role that has largely been developed and made self-sustaining, and social mobilization, which has languished. As Rosanvallon sees it, the union is becoming a sort of social civil servant, a quasi-public organization that allegedly no longer has the capacity to be a force in negotiations or grievances. It does not matter if reality undercuts his thesis: the massive strikes of November-December 1995⁸ can be explained as a mosaic of defensive battles and corporate push-backs that hamper the necessary process of making the French economy more flexible, thereby revealing that unionism basically continues to be viewed by certain segments as an impediment to the “modernization” of France. In the opposing camp, Pierre Bourdieu, who was heavily involved in the demonstrations of 1995, called for an overflowing of the unions and the production of new leadership to reinvent anti-free market unionism⁹. But the work that has most sharply questioned the institutionalization of the unions was published by Dominique Andolfatto and Dominique Labbé in 2006, in which they relentlessly attacked the “weakness of the social roots of unionism”.¹⁰ Pointing to “increasingly problematic authority to represent”, they paint the union officials as “professional representatives . . . who no longer have ties, beyond elections, to the employees they are supposed to represent and who now have only a rather theoretical knowledge of the actual situation and of the wants and needs of those employees”.¹¹ One should be aware that the thesis of Andolfatto and Labbé greatly influenced

⁷ ROSANVALLON, P. *La question syndicale*. Paris: Hachette, (1st ed. 1988).

⁸ The 1995 strikes in France against the Juppé plan to reform the social security system and retirement benefits were the largest seen since May 1968. The number of strikes in 1995 was six times greater than the annual average from 1982 to 1994. BÉROUD, S. and MOURIAUX, R. *Le souffle de décembre*. Paris: Syllepse, 1997. Starting in 1995 the first SUD unions were formed in the largely unionized sectors (education, railroads, metallurgy, etc.) by activists leaving the CFDT and the CGT whose orientation was towards producing an organizing tool for structuring battles in the social arena. SUD-Solidaires would manage to unionize 60,000 members—still, far below the so-called historical unions. A new political cycle began in 1995 (the Jospin government, radical reform of the Ligue Communiste Révolutionnaire, etc.), which would culminate in France's No vote to the European Constitution.

⁹ In this regard, see the article by BÉROUD, S. “Un renouveau de la critique syndicale”. *Mouvements*, n° 24, 2002.

¹⁰ ANDOLFATTO D., LABBÉ, D. *Histoire des syndicats (1906-2006)*. Paris: Seuil, 2006; ANDOLFATTO, D. and LABBÉ, D. “La transformation des syndicats français. Vers un nouveau modèle social?”. *Revue française de science politique*. Vol.56, n.3, 2006.

¹¹ Ibid.

French lawmakers, who in the new Union Representativity Law (2008) repealed the “unshakable presumption of union representation” by the five traditional labour federations in favor of a procedure that bases representation on voting, thought to be the best way to bring the union organizations *closer* to their membership and encouraging them to establish themselves on a strong activist base. (See Text Box 1)

Text Box 1: Unionism in France and measuring representativity

In France, until the Union Representativity Law of 2008, five “historical” labour federations were recognized as “lawful” representatives (Decree of March 31, 1966): the CGT (Confédération Générale des Travailleurs, or General Confederation of Workers, the leading French labour organization, founded in 1895, heir to la Commune and the A.I.T.), the CFDT (Confédération Française Démocratique du Travail, or Democratic French Labour Federation, currently the number two organization in number of members, which split off from the CFTC in 1964 and has swung from defending worker management and control by the base to much more reformist, co-management positions currently), the FO (Force Ouvrière, or Labouring Force, which split from the CGT in 1945 with a minority of non-communists), the CFTC (Confédération Française des Travailleurs Chrétiens, or French Confederation of Christian Workers, founded in 1919 in the tradition of Social Catholicism) and the CGC (Confédération Générale des Cadres, or General Confederation of White Collar Workers, created in 1944 by managers and engineers who wanted recognition of their particular jobs in the business economy). Only these unions could sign national or trade agreements, and within a company any trade union affiliated with one of these representative organizations was considered an official representative. Other organizations existed, but with more limited rights. The main ones were the UNSA (Union Nationale des Syndicats Autonomes, or National Union of Independent Trade Unions, founded by five union organizations not in the confederations), Solidaires (which includes the various SUD unions, which split from the CFDT in the late 1980s and lay claim to the worker-management tradition) and the CNT (Confédération Nationale du Travail, or National Labour Confederation, an anarchist group dissenting from the CGT and founded in 1946).

Since the Law of August 20, 2008, representativity has been measured based on the results of employee elections. Union organizations are given

authority to represent if they receive over 10% of the votes at the company level and over 8% at the trade or industry level. These organizations, moreover, must satisfy all six criteria. A labour organization recognized as representative at the national and industry level will be deemed representative of all trades, no matter its level of support in those trades. Following the employee elections of 2013, five organizations that reached the 8% threshold (the five historical organizations) were declared representative at the industry level. The consequences of this representativity are significant, for only organizations so designated are authorized to sit on joint management bodies and sign collective agreements.

Recent empirical studies, however, show another face of institutionalization. Based on a study in the threatened retailing sector, and in contradiction with the analyses that link institutionalization with de-unionization, Karel Yon shows clearly how getting into an institutionalized negotiation process at the trade level, instead of separating unions from their base, has led them to build “bottom-up” support that ended up putting “top-down” pressure on negotiations. These are similar conclusions to those I was able to draw from a long observation work that I made of the nuclear power industry. A struggle by the direct employees of a government organization to set up an on-site CHSCT [health and safety committee] became an opportunity to enter into a union relationship with the subcontracted workers, who then were able to organize and have a say in the companies they respectively worked for.¹² Comparable observations were made with regard to developing unionism in a legal sense—use of employment courts, expert legal reports, use of layoff plans, etc.—which “far from substituting for what was already there, instead supplemented it, while broadening the scope of activity” and the activist base.¹³ Lastly, an interview with Fabien Gâche, CGT union delegate at the Renault plant, clearly shows how the unions might well make use of the CHSCT's expert healthcare reports, for which they have to hire outside consultants, to “de-institutionalize unionism, that

¹² CALDERON, J. “Démantèlement de l'autonomie responsable et repositionnement des salariés”. In: Bouquin, S. (dir). *Les résistances au travail*. Paris: Syllepse, 2008.

¹³ WILLEMEZ, L. “Quand les syndicats se saisissent du droit. Invention et redéfinition d'un rôle”. *Sociétés contemporaines*. n.52, 2003.

is, bring it closer to its base and key off the expertise of the employees to contest management's reorganization plans".¹⁴

These experiences in terms of unions using institutions or institutional tools to build an opposing force where there is no union or to encourage greater participation by employees in the actions undertaken by the union put into perspective this notion that union people have somehow settled into place in the institutions. But more fundamentally, the criticism of union institutionalization overlooks the historical aspects of a process that actually preceded unionism itself. In a certain sense, if we track the recent research by historians of law and employee relations, it is not that unionism has been institutionalized so much as the employer-employee relationship, whereby power relationships have been transformed into legal relationships.¹⁵ From this viewpoint, unionism was for very long time a powerful force for including workers in the social, economic and political environment. And the unions established themselves by establishing labour laws¹⁶, which at the same time largely determined what they would become.¹⁷ Thought of in this way, institutionalization cannot be said to be *simply* what separates the union organizations from their social base, but the space in which forces are generated and the relationships, sometimes contradictory, between the unions and the employees are woven. That is to say, the institutions of wage-earners have been both a framework for inclusion and a framework for dispute that has tested, in various historical phases, the sometimes difficult relations between union leadership and a certain, ever-changing class make-up.

Return to an analysis in terms of models of production

The problem of the institutionalization of unionism is in reality a false problem that cannot be resolved in terms of theory, but rather in action. That is, in the ability of unionism to play in a variety of keys, to penetrate sectors hitherto off-bounds and to broaden its scope and its array of actions. To judge from a number of recent union efforts in sectors previously indisposed to collective action¹⁸, these efforts show that the crisis in unionism is not

¹⁴ GÂCHÉ, F. "L'expertise doit venir en complément de l'action syndicale, pas s'y substituer". *Nouvelle Revue du Travail*. N. 3, 2013. Interview conducted by S. Fortino and G. Tiffon.

¹⁵ SUPIOT, A. *Les Juridictions du travail* (in *Traité de droit du travail*, Vol. 8). Paris: Dalloz, 1987; FERRETTE, J. "Au-delà de l'action directe et de l'institutionnalisation, les conseillers du salarié". *Travail et Emploi*. n. 122, 2010.

¹⁶ BORENFREUDN, G. and SOURIAC, M.-A. *Syndicats et droit du travail*. Paris: Daroz, 2008.

¹⁷ Friot, B. *L'enjeu du salaire*. Paris: La Dispute, 2012.

¹⁸ See, for example, in fast food: CARTRON, D. "Engagement dans le travail et dans la grève chez McDonald's". In: DENIS, J.-M. *Le conflit en grève? Tendances et perceptions Workers of the World*, Volume I, Number 9, May 2018, p. 79-92

basically a problem due to spinelessness. The point is not to deny there is a crisis, but to think within the power relationships that underlie economic arrangements¹⁹, which assumes, among other things, imagining the unions in an institutional framework where they strive to maximize the resources available. To do this, it seems to me essential to return to an analysis of unionism in the context of the transformations of production arrangements that France has undergone in recent decades. We possess, moreover, a rather significant body of research and analysis about the transition the French economy has made towards a model of production based on a seeming intensification of work and that tries to articulate labour relations on the premise of reconnecting the workload and the wage earned.²⁰ These strategies actually reflect in their thinking a disciplining of the workforce in a way that requires informalizing, or de-institutionalizing, the wage relationship—a necessary condition for which is weakening the union.

Analysing the institutionalization of the wage relationship from the perspective of models of production allows us to broach the contemporary union crisis in a different way. This institutionalization by degrees²¹ had made possible a socialization of the wages, i.e., a formal separation between

de la conflictualité contemporaine. Paris: La Dispute, 2005; in luxury hotels: GUIBERT, P., LAZUECH, G., TROGER, V. “Les femmes de chambre de l’hôtellerie de luxe ou le déclassement d’une élite invisible”. *Formation Emploi*. n.123, 2013; in home care providers (April 2009) and the strikes by undocumented workers: BARRON, P., BORY, A., CHAUVIN, S., JOUNIN, N., TOURETTE, L. *On bosse ici, on reste ici ! La grève des sans-papiers, une aventure inédite*. Paris: La Découverte, 2011.

¹⁹ SALAIS, R. “Conventions de travail, mondes de production et institutions : un parcours de recherche”. *L’Homme et la société*. n. 170-171, 2008.

²⁰ DURAND, J.-P. *La chaîne invisible. Travailler aujourd’hui : du flux tendu à la servitude volontaire*. Paris: Le Seuil, 2004; BOISARD, P., CARTRON, D., GOLLAC, M. and VALEYRE, A. *Time and work: work intensity*. Luxembourg: Office for Official Publications of the European Communities, 2003; BOYER, R. and FREYSSENET, M. *Les modèles productifs*. Paris: La Découverte, 2000.

²¹ In France this institutionalizing was at first done within the company, with staff representatives (1936), works councils (1945) and union delegations (1968). But in France it very early became associated with the “creation of two-party and three-party co-management bodies enabling the unions to take part in the political life of the country”: CAIRE, G. “Syndicalisme”. In: *Encyclopedia Universalis*, 2008. Unionism then became an integral part of the welfare state. It involved itself in “handling governmental matters (*Comité économique et social régional* or regional economic and employment committees), quasi-public matters (Social Security, the *Caisse d’allocations familiales* or child benefits agency)”: BOUDESSEUL, G. *Vitalité du syndicalisme d’action: la CFDT de Basse-Normandie*. Paris: L’Harmattan, 1996. It was also involved in an array of organizations across the nation: “the *Conseil économique et social* (economic and employment council), the ‘Plan’, the *Commission nationale de la négociation collective* (national collective bargaining commission) and the *Conseil supérieur de la fonction publique* (civil service board)”: MOURIAUX, R. *Le syndicalisme en France*. Paris: PUF, 2009. Mouriaux, 2009). This collaboration did not occur without counterparties, of whom the unions took a certain advantage’. See CAIRE, “Syndicalisme”. Op.Cit.

the wage received and the individual workload, which in reality was consistent with an accumulation regime based on relative surplus value. That is, the gradual development of institutional wage bargaining fit with work arrangements whose guiding principle was to increase worker productivity.²² The economic crisis of the 1970s, in which the real value of the labour force fell below legally established wages (owing to the decreased cost of reproducing the labour force, to decreased productivity and more), had made this one-size-fits-all manner of setting working conditions dysfunctional; and as we know, the statutory value of wages was adjusted to the actual value of the workforce by deregulating the labour markets. The new, lean model of production that has gradually come to pass is constructed on an intensification of labour as its organizing principle. Specifically, the strategies of businesses have consisted of re-organizing production processes by breaking them down into simpler tasks and by outsourcing entire jobs to other industries (subcontracting) or other geographic regions (off-shoring) to take advantage of new forms of hiring permitted by the successive reforms to the labour code.

In other words, the gradual change in the model of production since the 1970s produced a heterogenization and polarization of workers' terms of employment—between, on the one hand, a segment of workers with stable employment, legal protections and good representation by the unions and on the other hand, an increasingly populous segment of peripheral workers who were cut of collective bargaining and whose terms of employment were “negotiated” individually when they were hired.

By this analysis, it is not so much the institutionalization of French unionism that lies behind its crisis as the de-institutionalization of the wage relationship, one of the conditions of which seems to be the weakening of the union itself. The unions find themselves in a situation where they alone are opposing an increased riskiness in labour relations that, while distancing them from the peripheral segments of the workforce, is locking them into defensive positions.

Unionization and efforts to individualize labour relations

The extension of the “netlike firm”²³ or the “SME-ization”²⁴ of the great diversified multinational corporations makes it possible to characterize this process simultaneously as business concentration and downsizing,

²² BOISARD, P., CARTRON, D., GOLLAC, M. and VALEYRE, A. *Time and work: work intensity*. Op.Cit.

²³ DURAND, J.-P. *La chaîne invisible*. Op.Cit.

²⁴ VELTZ, P. *Le nouveau monde industriel*. Paris: Gallimard, 2000.

outsourcing and division into autonomous, market-oriented units, which have greatly contributed to a reduction in membership rates and in union presence in companies.

The workers in public organizations have been privatized. Excluding finance, these employed 7.8% of the workforce and generated 11.5% of value added in 2000. In 1985 their influence was measured as 19.3 % of the workforce and 25% of value added.²⁵ Private sector employees today work for larger corporations than they did thirty years ago. These corporations include one or more businesses (making what is called a group), which themselves include one or more sites. But if companies as centres of decision-making and strategy setting have grown larger with time (along with growing more remote from the influence of the employees), the same is not true of job sites, which are now smaller. Companies have grown, then, by assembling more and more sites or facilities. Thus, employees now work at smaller production facilities (the sites), but belong more often to a very large organization (the company). In 2006, 33% of employees worked in a company of over 1,000 employees as compared to 27% in 1985. Against that, 38% worked at a site of less than 20 employees compared to 34% in 1985.

The development of large organizations went along with the many transformations in the French economy, including the increased fraction of service sector jobs. While the large industrial sites were declining, the large services companies have boomed. Now, every industry has its own way of organizing; and service sector sites are smaller than industrial ones, so the average size of job sites has decreased. Nevertheless, between 1979 and 2006 these sites have increasingly been merged into large corporations.²⁶

With a general trend towards concentration, three major sectors illustrate differentiated structural changes: manufacturing, which has lost employees every year for 30 years (since 1978, 150,000 jobs have been created on average each year in retailing and wholesaling while 60,000 were lost in manufacturing), business services, which since 1979 have shown great growth due to IT and the outsourcing of support staff (cleaning, accounting, R&D, IT, advertising, etc.) and, thirdly, retailing, which has been completely made over by the emergence of the big box stores.

These three sectors accounted for 7 million employees in 2006. In the other sectors, which are food, energy, construction, wholesaling and automotive

²⁵ INSEE, 2002. www.insee.fr

²⁶ INSEE, 2008. www.insee.fr

sales, other business services, personal services and finance and real estate, the same changes are underway, with a few specificities. Thus, for example, the finance and insurance sector is the most concentrated. Manufacturing and information/communications are organized into large companies. SMEs including micro-enterprises (i.e., companies of less than 10 employees) employ the majority of employees in personal services.²⁷

These changes have not been without effects on union membership and union presence in companies. We know, for instance, that unions are more strongly established, relatively speaking, in the public sector. From 2001 to 2005, with 15.2% of workers unionized, the unionization rate in the public sector is three times greater than in the private sector, where it is 5.0%. Of every ten unionized workers, five work in the public sector, four in the private sector and one in a government organization. Similarly, there are proportionately more employees in the public sector than in the private sector who say there is a union at their workplace: one in two in the public sector and one in three in a private company. But taking a closer look, the gaps between the public sector and the private sector have to be put in perspective. The greater unionization of government workers is partly explained by the size of work sites in this sector. In the public sector (civil service and government-owned organizations taken together), the portion of large sites is greater than in the private. But whatever the sector, the bigger the site, the more likely a union presence. In reality, in facilities of over 100 employees, the proportions of employees belonging to a union are nearly the same in the public and private sectors. On the other hand, in facilities of less than 100 employees, employees belonging to a union at their workplace are proportionately much less numerous in the private sector than in the public sector and government organizations, at 15%, 39% and 58% respectively. Though the presence of unions is lower than in the public sector, this is because more than two employees in three work in facilities of less than 100 employees.

Presence of a union in the workplace

By size of site (2001-2005)

	Civil Service	Gov't Organizations	Private Companies
Under 10 employees	15.0%	17.0%	2.4%
10 - 49 employees	34.7%	57.9%	16.0%
50 - 99 employees	64.9%	77.2%	43.6%
100 to 499 employees	73.5%	80.6%	64.8%
Over 500 employees	75.5%	87.8%	79.3%

Sources: Ongoing surveys on household living conditions.²⁸

²⁷ INSEE 2008, 2010, 2011. www.insee.fr

²⁸ INSEE 2006. www.insee.fr

The presence of unions and whether employees belong to them are also explained by the way the trades are structured in relation to each other within the different sectors. In industry and banking/insurance, employees are represented by unions at their workplace in proportions comparable to those in the public sector. In industry, 54% of employees state there is a union at the workplace, even though few of them are members. By contrast, in personal services or business services, where small sites are very common, few employees are represented by a union at their workplace, and despite the unions' activities and demonstrations in the sectors described above, the unionization rate is lower. Traditionally unionized to only a small degree, retailing and construction industries are the sectors where unionization rates are lowest, at 2.8 % and 2.2 % respectively. These latter two sectors, moreover, are ones where business survival rates are lower and which, along with transportation and personal services, have experienced the most massive growth in self-employment (1 million people had this status in 2014²⁹).

The fluidity that has gradually taken over work and employment has brought with it a gradual dissolution of the border between work and personal life: tele-commuting, flextime and part-time, for instance—all forms and fashions of these new, fluid and hard-to-regulate work arrangements that impede or tightly restrict broader unionization. It is not surprising that all these transformations have been accompanied by the appearance or dissemination of various forms of work intensification, which came late to France but faster than to other European countries. It took place in the latter half of the 1980s due to increased competition among employees, from persistent high unemployment and de-unionization.³⁰ The multiplication of constraints placed on the pace of work was central to the transformations of economic relationships and business management. According to a survey by the French Ministry of Labour and INSEE on working conditions, the fraction of employees saying that their pace of work depended on an external request needing to be filled immediately went from 28% in 1984 to 54% in 1998. At the same time, the fraction of those whose pace depends on the automated movement of a product or part, on the

²⁹ The legal category of “self-employed individual”, which is not unlike the Spanish “independent worker”, was created in 2009. At the border between wage-earner and freelancer, it actually serves as a tool for managing under-employment and often allows customers to cloak dependent relationships while outsourcing costs to the self-employed person. See in this regard, ABDELNOUR, S. “L’auto-entrepreneuriat : une gestion individuelle du sous-emploi”. *La Nouvelle Revue du Travail*. n. 5, 2014.

³⁰ GOLLAC, M. and VOLKOFF, S. “Citius, altius, fortius. L’intensification du travail”. *Actes de la recherche en sciences sociales*. Vol. 114/1, 1996, p.55.

automatic rate of a machine, on production standards or daily (or less) time limits, or who worked on an assembly line increased from 23% to 45%. And the number of people whose work rate was determined by management oversight, the needs of co-workers or the vagaries of the production process increased in a similar fashion.

As Gollac and Volkoff wrote: “The weakness of the unions and the limited ability of employees to express themselves not only prevent them from opposing manpower reductions and increased work rates, they also worsen working conditions after organizational changes carried out in complete ignorance of the realities of the work”.³¹ *Citius, altius, fortius*³²—this is the Latin motto Michel Gollac and Serge Volkoff use to describe the demands of management on their employees. Workers with more endurance, involvement and enthusiasm. And if possible, not too unionized. Since 2003, we have stopped keeping statistics on union suppression by companies. However, we do know, for example, that 25% of sites with over 20 employees have no representative bodies for employees. This means that in France nearly one employee in five has no representation at his or her company. This is also the case in 10% of sites with 50 to 100 employees. Either the employer did not set up elections, which is illegal, or no list was presented. The existence of anti-union pressures also comes up in monograph surveys conducted in small and medium enterprises. According to the barometer of workplace discrimination created for the *Défenseur des Droits* (French ombudsman) and the International Labour Organization (ILO), in 2013 48% of private sector employees and 37% of civil service workers thought it was a disadvantage to be unionized.

Change in union activity over time and the problem of “negative freedom”

Union activity in companies was greatly disrupted by the remoteness of corporate decision-making as well as by changes in corporate governance. The gradual privatization of business capital and the expansion of equity financing since the early 1980s put an end to “managerial capitalism”³³ in favor of strategies whose purpose is to meet the constraints of competition and return on equity. The unions have therefore found themselves deprived of a means during negotiations to weigh in on company strategy. These highly unequal relationships have moved union activity, on the one hand,

³¹ Ibid., p.56.

³² In English: Faster, higher, stronger.

³³ BACHET, D., FLOCCO, G., KERVELLA, B., SWEENEY, M. *Sortir de l'entreprise capitaliste*. Paris : Éditions du Croquant, 2007.

towards monitoring working conditions and changes in the work (relations with supervisory personnel, improper penalties or dismissals, unpaid time, difficult conditions, etc.), thereby considerably helping to move the core of union efforts from the works council to the health and safety committees (French acronym: CHSCT); and on the other hand, the gradual deregulation of traditional labour law and social law has created a broadening of union responsibility in a number of areas that hitherto were not negotiated within the local site: arranging work schedules, individualized pay, job classification, ongoing training, supplementary retirement, etc. This importance of collective bargaining at the company level is explained in part by an aspect particular to France, where an agreement may under certain circumstances supersede the law. This French particularity received a decisive push when the Aubry Law concerning the 35-hour week was first applied, as it provided benefits to companies that signed an agreement.

But the agendas of negotiations are very largely decided by management, which sets the content of the negotiations and forces the unions into often defensive postures. Unions are increasingly pushed into a corner, whether on the shop floor or in site or company negotiations, standing up to the slightest wrong to the employees. I remember having done a survey in a metal-working company in which the staff representatives had petitioned to have a timer installed so they could prove that the work rates that the workers at their stations had to endure were intolerable. When the demands of management are hard to meet, the union organizations can bet on a broadening of the demonstrating activities, often trying to get their struggle onto media to attract public and media attention. The experience of workers at Cellatex, a factory under court-ordered liquidation whose workers threatened to use chemicals to blow up the plant and pollute the Meuse River, exemplifies the combativeness that often overcomes company negotiations and how the employees and their representatives are themselves in a highly unfavourable position. The relative success of this experience (the employees were able to obtain more significant assistance programs) inspired other types of action such as the marches of Lorraine workers and the confinement of bosses, which for the first time in many years resulted in a court order, sentencing 8 employees of the multinational Goodyear to prison terms. This was largely reported in the union press as an unprecedented intent to criminalize union actions in a country that for years has been judicializing labour relations.³⁴

³⁴ PÉLISSE, J. “Judiciarisation ou juridicisation ? Usages et réappropriations du droit dans les conflits du travail”. *Politix*. n. 86, 2009.

Nationally, after the failed reforms of 1995 and the so-called First Employment Contract (Contrat Première Embauche, CPE), in 2006, the major national reforms have very much been part of the discussion in what is called “the social dialogue”. In accordance with the Law of January 31, 2007 known as the Larcher Law, before preparing a bill affecting labour law, the government must call in employer and employee representatives to consult on the topics in question, to negotiate, if they wish, an agreement, the contents of which will be included in the bill submitted to Parliament. In the event, the unions act as “pre-legislators”. This prerogative has resulted in a large number of laws over the last few years, having to do with reform of the labour market, occupational training and union representativity. The problem, of course, is that the unions do not necessarily choose the areas in which they must get involved and are often in the position of having to soften “reforms” whose effect on employees would have been much more severe had the unions not participated in these pre-legislative committees. Furthermore, and given the disintegration and discordance of the unions, the government retains very broad leeway on these committees. It was not surprising that as a presidential candidate François Hollande made “constitutionalizing” the Larcher Law—i.e., the “social dialogue”— part of his platform.

Unionism in France has always been a force for liberal democracy, but it finds itself today in a position where its participation in the various places where negotiations are carried out legitimizes the systematic attacks on labour law and social law. Even so, should unionism give up on profit sharing and co-management, as Pierre Bourdieu asked in 1995, to “transform itself into an agent of disruption and anti-free market criticism, thereby rediscovering its original nature”? If it is true that co-management opens it up to increasing porosity to the dominant ideology, rejecting participation in the system condemns it to accepting its own marginalization by the great majority of wage earners.