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AN ANALYSIS OF THE EL KHOMRI LAW AND ITS EFFECTS ON THE FRENCH NORTH AFRICAN POPULATION

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ABSTRACT

Despite efforts by the French government to eliminate labor market discrimination, it still persists today, and perhaps even more so with the passing of the most recent labor law: The *El Khomri Law*. The *El Khomri Law*, passed under the Minister of Labor, Myriam El Khomri, reformed the French Labor Code, the country's rule book. The law made the following changes to the French Labor Code: increase in the work-week under the permission of administrative authority, increase in employer power, and employee dismissal effective if a firm experiences low turnover or profits. However, the *El Khomri Law* did not address the present labor market discrimination that still remains in France. Research studies by Eric Cediey, Fabrice Foroni, and Marie-Anne Valfort suggest that the French North African population faces the worst effects of labor market discrimination. It is possible that the effects may increase with this new labor reform.

This research examines the *El Khomri Law* and the possible effects it may have on the French North African population in the labor market. To analyze this law, I examine the *El Khomri Law*, and critique how the recent changes to the French Labor Code may have an adverse effect on French North Africans. I postulate the effects of this law by reviewing Eric Cediey & Fabrice Foroni's ethnic based discrimination study, and Marie-Anne Valfort's religious discrimination study. I will also review a study testing the Anonymous Curriculum-Vitae (résumé in American English) policy that was designed to combat labor market discrimination in France. These studies may be indicative to the effects the *El Khomri Law* may have on the French North African Population.

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Chapter One

Introduction

Historical Perspective

France has experienced decades of labor reforms that modified the country's rule book called *Le Code du Travail* or the French Labor Code. This book contains a set of rules applicable with respect to labor relationships (employment contract, collective bargaining agreements, staff representatives, etc.) (Grange & Grange 2012). These labor reforms were laws passed by the government and designed to improve the French economy. However, each law that was passed was met with constant criticism and opposition by the French labor force. For instance, during May 1968, a movement in which students protested the university system, challenged the social strata when it grew to become an employee-wide movement and pushed for more employee expression (Jenkins 2000).

The most recent law reform is a law called *loi travail* or the *El Khomri Law.* It was named after the Minister of Labor Myriam El Khomri who served under the President Francois Hollande and Prime Minister Manuel Valls cabinet. The *El Khomri Law* was designed to reform parts of the French Labor Code (*Code Du Travail*). Although the law had the intent to create a better labor market, it became the center of controversy in France (Matsas 2017). *Nuit Debout*, a protest in response to the law, grew to be a strong political movement in opposition to the *El Khomri Law*. Unfortunately for these protesters, the government was able to bypass parliamentary voting procedures (Matsas 2017), and use the third paragraph of Article 49 of the French Constitution (see below)

> "The Prime Minister may, after deliberation by the Council of Ministers, make the passing of a Finance Bill or Social Security Financing Bill an issue of a vote of confidence before

the National Assembly. In that event, the Bill shall be considered passed unless a resolution of no-confidence, tabled within the subsequent twenty- four hours, is carried as provided for in the foregoing paragraph. In addition, the Prime Minister may use the said procedure for one other Government or Private Members' Bill per session."

The reform was passed on August 8, 2016. The reform has provided additional bargaining power to employers in decisions concerning the workforce employment. For example, if an employer sees that turnover or profits decrease, the employer may dismiss their employees (Art. L. 1233-3). The reform focuses on areas concerning the work-week, severance payments, and employer bargaining power, but failed to consider the present labor market discrimination.

The Problem

Given, employers have additional bargaining power, this reform may have an adverse effect on ethnic groups such as the North African population living in France. In research studies, North Africans, who are considered of immigrant origin in some studies, have concluded that there is high percentage of labor market discrimination towards this ethnic group (Cediey and Foroni, 1991). Their chances of getting hired are not as favorable as native French citizens or even practicing Catholics. Other studies have shown that given that 95% of the hiring managers are French-native, they would be more willing to employ French North Africans if their contract lasted for a limited amount of time (Valfort, 2012). Although measures to combat labor discrimination have been made, it still exists.

Research Questions

This research will focus on questions pertaining to this neo-liberal reform and its possible effects on French North Africans.

1. Why would the French government fail to consider discrimination as part of the *El Khomri Law?*
2. Why would the French government allow to pass a law that may have adverse effects on the French North African population?

Both questions are results of failure to consider labor market discrimination against the French North African population.

Definition of Terms

Articles referencing the reformed French Labor Code under the *El Khomri Law* may appear as follows: (Art. L. 1233-3). The reference follows a particular sequence. I will use the previous example to detail the sequence used to finding articles in the French Labor Code:

- Art = Article
- L = *Partie Législative* (Legislative section. There is also a *Partie réglementaire* or regulatory section)
- 1 = *Premiere Partie* (First Part)
- 2 = *Livre II* (Second book)
- 3 = *Titre III* (Title III)
- 3 = *Chapitre III* (Chapter III)
- "-3" Is the third section of chapter III.

Framework

I postulate that belonging to a certain ethnic group will have additional discriminating effects against French North Africans, and argue for considering labor market discrimination in the *El Khomri Law***.** Other areas that the reform has affected will be argued in consideration for the marginalized ethnic group in question. Additionally, I will review within this research the extent to which French North Africans suffer under this neoliberal reform.

Chapter 2 will be a literature review of the past labor reforms. These past labor reforms will be used to analyze the newest reform in question and how it can induce labor market discrimination. Chapter 3 introduces the *El Khomri law*. There will be an analysis of each aspect of the new law in question followed by responses to the law. This chapter will also aim to critique the reform's failure to curb discrimination in the French Labor Code. Chapter 4 will feature two studies that assess labor market discrimination, proposed policies on labor market discrimination, and why they have failed in the past. These insights provide a perspective on why ethnic groups should be considered in view of the present labor market discrimination in France.

Chapter Two

History of Labor Reforms and Literature Review

The May 1968 Movement

One of the most impactful labor reforms in French history begins on May 1968. A group of students from the University of Nanterre in Paris launched a movement that grew to be the largest strike in French history. It became known as “May 68”. The movement became so large that it grew from a university-wide movement to a factory-wide movement all over France. It consisted of nine million workers, who lost 15,000,000 working days, and university students (Singer, 1970; Touraine, 1971; Reader, 1993; Jenkins, 2000).

Up until this event, students and workers shared a growing discontent and called for political action. Although the Second World War had provided a period of growth socially, technologically, and economically, the students and workers felt they were not part of this growth. Students believed they were being exploited by a university system that did not meet their needs as students and were being trained to be either future teachers or future researchers. Undergraduates, Ph.D. candidates, and young professionals joined together to speak against the flawed system, in which both students and skilled labor were facing. The issue was a result of rising social class struggles that became evident in this new era of growth. “May 68” did this by putting an end to the belief that the social order was healthy and free of contradiction and representative of the past. In this way, the movement sought to challenge the social strata, by rejecting the bourgeoisie and appealing to the proletariat. By struggling against technocratic domination and calling for worker management of industry, the movement relived the social struggles of the past, and discovered those of the future (Reader, 1993; Touraine, 1971).

In addition to challenging the social strata, the 1968 labor reform also challenged French managerial authoritarianism (e.g., bureaucracy), and moved towards more employee autonomy, expression, and representation in the workplace. On one side of the social issue were the bureaucratic executives, and on the other side were the skilled workers. Throughout the month of May of that year, the movement became so inspiring that workers from all over France joined the movement and participated in marches. (Singer, 1970; Touraine, 1971; Jenkins, 2000).

By the time President Charles De Gaulle addressed the nation on May 24th, more than eight million workers were on strike. In addition, there was no public transport and little petrol. Eventually, the protests garnered positive feedback. On May 25, 1968, the "Grenelle" negotiations began between the French government, employees, the labor unions involved in the movement, and Georges Pompidou, the Prime Minister during this period. These negotiations took place in the Ministry of Labor in a street called Rue de Grenelle. This explains why they were called the "Grenelle" negotiations. The following changes were made: an increase in the minimum wage, a reduction of work hours to a 40-hour work-week, employment security, providing professional training, and the extension of social security provisions on all employees. Social security provisions meant that under the French Medicare system, all wage and salary earners were insured. This allowed for social relations and the previously mentioned negotiations to be included in the *Code du Travail* (Singer, 1970; Touraine, 1971; Reader, 1993; Jenkins, 2000).

The Auroux Laws of 1982

A second impactful reform was The Auroux Laws of 1982. In 1982, a program called the Auroux program of legislation was designed to gradually reform work and industrial relations. The program featured a set of laws named after Jean Auroux, the Minister of Labor under the Francois Mitterand administration. The Auroux Laws of 1982 had four primary objectives:

1. Stimulate and expand collective bargaining practices throughout French industrial relations
2. Strengthen and further institutionalize existing organizations representing worker interests
3. Creation of worker expressions in the firm
4. The extension of many of the legal rights and provisions, both old and new, to public sector industrial relations

These objectives were made possible by the following Auroux laws:

- Law of August 4, 1982 (*Liberties of Workers within Enterprises*)
- Law of October 28, 1982 (*Development of Employee Representative Institutions*)
- Law of November 13, 1982 (*Collective Bargaining and the Regulation of Labor Conflict*)
- Law of December 23, 1982 (*Committees on Health, Safety, and Working Conditions*)

The Auroux Laws of 1982 were so impactful that they led to a full one-third rewriting of the *Code du travail* that was originally implemented in 1950 (Nash 2004; Jenkins 2000). These are explained below.

Liberties of Workers within Enterprises changed the work rules and disciplinary procedures as well as allowed for employee expression in regard to work content, organization, etc. This was the perfect introduction for collective bargaining. Collective bargaining allowed for an open exchange between workers and management in which workers can express their grievances and their ideas without fear of reprimanding. In the 1970s, there were previous attempts to strengthen collective bargaining through legislation. For instance, the law of 30 June 1971 attempted to alter

the balance of the French system of collective bargaining by formally establishing collective bargaining agreements to run parallel with those at the industry level. (Nash, 2004; Jenkins, 2000)

Development of Employee Representative Institutions, added on to collective bargaining agreements by addressing the role of unions, employee representatives, and shop committees. Although all three shared a common goal, they differed in certain respects. Employee representatives were elected by firm workers and acted as intermediaries in firm-level grievance procedures. Shop committees, consisting of elected employees and union representatives, took on a consulting role on a wide range of issues, but no power to make decisions. The labor unions were involved with collective bargaining agreements at the industry level. *Development of Employee Representative Institutions* extended the power of both shop committees and employee representatives, while labor union rights were expanded through membership expansion to all firms, and more privileges in workplace activities. (Nash, 2004)

Collective Bargaining and the Regulation of Labor Conflict, strengthened the legal apparatus that was governing collective bargaining at both the industry and firm levels by imposing compulsory annual negotiations on real wages and the length and organization of working hours. The last law ties in everything together. *Committees on Health, Safety, and Working Conditions* empowered individual workers by mandating companies to ensure health and safety conditions for employees. Both the laws of *Collective Bargaining and the Regulation of Labor Conflict* and *Committees on Health, Safety, and Working Conditions* modified existing systems of representation to strengthen them. (Eyraud & Tchobanian 1985; Jenkins, 2000; Nash, 2004). In retrospect, an increase in labor rights seemed more favorable to the working class.

The 35-Hour Work-Week

The "Robien" Law of 1996

The "Robien" Law of 1996 introduced the famous "35h," which was a reduction of the work-week from 39 to 35 hours. "35h" refers to the 35-hour work-week, which was the ultimate outcome of this law. In efforts to reduce mass unemployment, the conservative government adopted the "Robien" law in June 1996 (Askenazy, 2008). This measure incentivized firms to participate in this experiment by offering employers generous reductions in their social charges in return for either redundancy avoidance pledges or new recruitments. The law featured a "*defensive*" and "*offensive*" component. The "*defensive*" component required firms to sign collective agreements stipulating the number of jobs saved, the period of commitment to maintain a given level of employment, and lower pay for those in the firm would be compensated for. The "*offensive*" component required a signed agreement and the state allowed for a period of one year for recruitments to take place. (Jenkins, 2000).

After a few tries, and many agreements signed later, the law became increasingly controversial in France. Many doubted the range of application, cost, its effectiveness and effects on collective bargaining, but after studies done by the Ministry of Labor showed the opposite, there was a differing opinion. Rather than cause damage, this law was in fact the catalyst for broader organizational flexibilities in job design, remuneration, and coordination. (Jenkins, 2000, p. 163-166). This set up the foundation for the 35-hour work-week.

The "Aubry" Laws

After 1996, more firms were making adjustments to their work-weeks. These were simultaneous with the government's efforts to reduce unemployment. Prime Minister Lionel Jospin became convinced that all employers should eventually move towards a 35-hour work-

week to reduce unemployment. In June 1998, he announced the reduction from the previous 39-hours to 35-hours with the goal of lowering unemployment to 12%. The reduction of work time became known as "RTT," *la réduction du temps de travail* (the formal French name). However, like the "Robien" law, this also caused controversy as the employers saw another state-intrusion into company autonomy. This new policy recognized possible reduction in firm profitability and the evident opposition, so they included alleviation costs and measures to ease into the new policy gradually. Thus the "Aubry Laws" were passed. (Jenkins, 2000; Estevao and Sa, 2008; Askenazy, 2008).

The "Aubry Laws" were a set of two laws. The first "Aubry Law" of June 1998 (effective September 1998) focused on the following:

1. Firms with more than 20 employees would have a fixed 35-hour work-week starting January 1, 2000. Firms with less than 20 employees would start the 35-hour work-week on January 1, 2002.
2. The state would award aid to firms that moved towards the 35-hour work-week before 2000.
3. Overtime, part-time work, etc. The threshold for overtime payments have increased as the working time decreased.
4. Negotiation and control would be under a representative who will negotiate work time. (Jenkins, 2000)

As the government prepared to implement the second "Aubry Law," 122 private sector firms covering nearly ten million employees had signed RTT agreements that fixed a global scheme for firms that decided to implement the 35-hour work-week. By the time the government

was ready to pass the second "Aubry Law," 30 thousand companies employing two million workers had adopted the 35-hour week.

The second "Aubry Law" in October 1999 defined the conditions for working time. With the aim to exclude "unproductive" breaks, holidays and training periods, the second "Aubry Law" defined actual work time as time during which the worker was at the employer's disposal and must conform to his orders without being able to take care of personal matters. Additionally, managers were classified into three broad categories: "cadres dirigeants" (top managers), "cadres intégrés dans une équipe" (managers whose hours match those of a unit, team, or department), and "other managers". Top managers would be exempt from legal rules relating to work periods and reset times. Managers whose hours match the unit would sign an individual agreement on hours in lieu, and "other managers" would be covered by collective agreements specifying the number of hours worked and rest period. In addition to these regulations, the second "Aubry Law" instituted 1,600 annual work hours as a legal norm, meaning the employer could ask workers to work fewer hours some weeks than others. This provided a way for employers to avoid overtime pay as there was no required method of counting hours or jobs created as per the agreement of the "Aubry Laws". (Askenazy, 2008; Jenkins, 2000)

35 Hour Work-Week: 2002-2008

Contrary to what the "Aubry Laws" hoped to achieve, the unemployment rate in France remained high. In fact, the "Aubry Laws" were never fully applied in France, and the new conservative government at the time was blamed for the economic slowdown. Some companies that signed the previous agreements were "punished" by receiving lower state subsidies as compared to those of their competitors that stayed at the original 39 hours and received social insurance. This issue forced contenders of the 2007 presidential campaign into a hot debate about

the merits of the 35-hour work-week law. Socialist candidate Ségolène Royal thought that employers had too much power and flexibility in implementing the shorter workweek, while center-right candidate (and eventual winner) Nicolas Sarkozy called the 35-hour work-week ‘the worst mistake France has ever made” (Estevao and Sa, 2008; Askenazy, 2008).

Chapter Three

Examining the El Khomri Law

The literature review on the previous chapter focused on how reducing the work-week affected the labor population. Next, I will focus on how the *El Khomri law* not only reformed the *Code du travail*, but how it also brought about changes that affect an already marginalized group in France: The French North Africans.

How does the French government work?

In order to understand how the law was passed, it is important to understand how the French government works. Under the fifth republic of France, the government operates under a semi-presidential democracy, in which it is governed by a President and a Prime Minister. This system does not take away from the president being elected into office. He or she is elected by popular vote, but appoints the Prime Minister to serve alongside him or her. This is why the administration in question is known as "Hollande-Valls." The president during the passing of the law was François Hollande, and the Prime Minister was Manuel Valls. Unlike the American democratic system, the cabinet does not only answer to the president, but also to the legislature. (Clark et al, 2013)

Both the President and Prime Minister have power granted to them by the Constitution. For instance, under Article 21, the Prime Minister is responsible for national defense, while under Article 15, the President serves as the commander in chief of the Armed Forces. Furthermore, the cabinet requires the support of a majority of legislature (Clark et al, 2013). Under both the President and Prime Minister exists another executive body called the Council of Ministers. It is composed of ministers appointed by the president under the recommendation of the Prime Minister (Article 8). The President of the Republic presides over the Council of Ministers as stated in Article 9 of the Constitution.

The Council of Ministers deliberate over any decrees and ordinances (Article 38) and hold the same functions as a parliamentary cabinet. Additionally, Article 39 states how government bills are discussed under the Council of Ministers. This is critical for understanding how the *El Khomri Law* was passed. Within the Council of Ministers, the ministers represent each ministry. The ministry I will focus on for our purposes is the Ministry of Labor, headed by Myriam El Khomri during the passing of the *El Khomri Law*.

The *El Khomri Law* was passed on August 8, 2016 under its formal name, *LOI n° 2016-1088 du 8 août 2016 relative au travail, à la modernisation du dialogue social et à la sécurisation des parcours professionnels* (*Law n° 2016-1088* of 8 August 2016 on labor, the modernization of social dialogue, and securing professional careers.). It was named after the Minister of Labor, Myriam El Khomri. It is a product of the Hollande-Valls administration. The law itself mentions how it was able to succeed. A statement by the Senate notes that the law was adopted by the National Assembly (L'Assemblée Nationale) under Article 49, paragraph 3 of the Constitution. Article 49, as previously mentioned, grants the possibility of issuing a vote of confidence before the National Assembly. Thus, a bill may be passed under a vote of confidence, which is a vote that shows support of the policy in question. To annul the passing of the law, a vote of no-confidence would have to take place under the 24 hour timeline. Furthermore, Article 49 grants the Prime Minister to use said procedure on another Government or Private Member's Bill per session. This made the creation of the law more feasible. Under these conditions, Prime Minister Manuel Valls was able to pass the law to the National Assembly.

The *El Khomri Law* bill details the intentions of the labor code as an attempt to redesign the legislative part of the labor code. A committee specializing in social relations was set up to work with professional organizations on an interprofessional and multiprofessional level. This

committee also worked on the terms of the labor code. The rest of the draft details the changes made to the labor code such as the fight against discrimination, job protection, etc.

Savas Michael-Matsas in *The French Spring and the Crisis in Europe*, states that it was meant to revise the French Labor Code with the aim of removing the protections workers once enjoyed. This caused discontent for a period of time. The changes that have caused controversy are laying off workers easily, reducing severance payments, and the reducing overtime payments beyond France's statutory 35-hour week (Michael-Matsas 2017). In the next section, we examine all of the changes introduced by the law in question and its effects on labor in France.

The Changes to the French Labor Code

In this section, I will explore the changes to the labor code that have caused controversy. Among the changes, the focus will be the following: weekly hours, increase in employer power, any redundancy in the law, and discrimination. Each subsection will review the changes within these respective categories. An analysis of the law itself will be done to assess the effects of this law on French North Africans.

Weekly Hour Limit

One of the changes to the labor code was the maximum number of hours worked per week. Prior to the law, the maximum amount of hours worked per week in France was 35 hours. Though this remains the legal limit under Section 3 of the labor code (Art. L. 3121-27), the law extends the work-week under certain conditions. Subsection 3, section 2, paragraph 1 (Art. L. 3121-20) extends the maximum weekly hours to 48 hours over the course of the same week. The same paragraph (Art. L. 3121-21) states that in the event of exceptional circumstances, exceeding the maximum duration to 60 hours may be granted by an administrative authority. Paragraph 2 of the subsection (Art. L. 3121-23) raises the work-week to 44 hours under either business or

establishment agreement. This may last for a period of 6 weeks. Paragraph 3 (Art. L. 3121-24) extends the maximum hours worked to 46 hours by an administrative authority under determined conditions by the Board of State. The set number of hours may be exceeded under conditions determined by the decree (Art. L. 3121-25).

Section 4 details the legal duration of the work-week and overtime. Subsection 1 (Art. L. 3121-30) states that overtime hours completed above the annual quota shall be complemented by mandatory days off, rather than by a salary increase. The firm holds the right to control wage increases after working overtime. Under Subsection 2 (Art. L. 3121-33), the rate may not be less than 10%. Subsection 3 (Art. L. 3121-36) states that in the absence of an agreement, overtime hours worked result in a wage increase of 25% for the first 8 hours, with an additional 50% thereafter.

Increase in Employer Power

Under the new labor reform, employers now possess more bargaining power. For example, the *El Khomri Law* allows employers to determine how the overtime hours are counted and the corresponding allowance of resting periods following the overtime hours (Art. L. 3121-1). Under the same principle, they can organize and distribute the work hours and rest periods (Art. L. 3121-68). Thus, a worker's salary may depend on the judgment of the employer. The expression "accord d'entreprise" or business agreement can be found all throughout the new revised labor code.

Notice how in most articles, bargaining power is between the employer and the company. There is no mention of the *salarié,* or workers under these articles. The employer decides how long it will take for an employee to receive the distribution of work hours (Art. L. 3123-24). They can even decide the length of the daily rest period (Art. L. 3131-2) or the number of vacation days

(Art. L. 3141-15). Not too many people may be in favor of granting such power as some may abuse it, or feel that the employee rights have now diminished.

Redundancies

. The *El Khomri Law* bill details how employers may dismiss employees through under Article 30 of the reformed French Labor Code. In the event that the firm experiences economic difficulties whether it is a decrease in orders or turnover for several consecutive quarters, the employer may reserve the right to dismiss employees (Art. L. 1233-3). The first paragraph of Article 30 explains that dismissals cannot be for personal reasons. This part was not modified, except for the modification of the words "including economic difficulties or technological changes". To stress the notion of dismissal on the grounds of economic efficiency, the reform added the paragraph that explains the economic indicators to justify dismissal.

In the case of an unfair dismissal, severance payments are given in the amount of the same periods of work completed (Art. L. 1235-14). This may be in the fixed amount as stated in Article L. 1235-3. Under this article, the judge may grant the employee indemnity, or severance pay, through a trial. If the employer is found guilty of dismissing an employee for the following reasons: discrimination (Article. L. 1132-1 & Art. L. 1153-2), medical condition, or maternity leave (Art. L. 1125-4), then the judge can grant the employee indemnity. The indemnity cannot be less than the wages received in the last six months, and must be payable without prejudice.

Discrimination

Discrimination is an area that has not yet been critiqued in relation to the *El Khomri Law*. The labor code itself states that no person may be disqualified from access to an internship, training, or recruitment procedure directly or indirectly (Art. L. 1132-1). This includes under the

basis of sex, sexual orientation, gender identity, family status, pregnancy, ethnic group, etc. Further, Article 225-1 of the French penal code states:

> Discrimination comprises any distinction applied between natural persons by reason of their origin, sex, family situation, physical appearance or patronymic, state of health, handicap, genetic characteristics, sexual morals or orientation, age, political opinions, union activities, or their membership or nonmembership, true or supposed, in a given ethnic group, nation, race or religion. Discrimination also comprises any distinction applied between legal persons by reason of the origin, sex, family situation, physical appearance or patronymic, state of health, handicap, genetic characteristics, sexual morals or orientation, age, political opinions, union activities, membership or nonmembership, true or supposed, of a given ethnic group, nation, race or religion of one or more members of these legal persons." (French Penal Code)

Article 225-2 states the following punishment for such offenses:

> "Discrimination defined by article 225-1, committed against a natural or legal person, is punished by three years' imprisonment and a fine of €45,000 where it consists: 1° of the refusal to supply goods or services; 2° of obstructing the normal exercise of any given economic activity; 3° of the refusal to hire, to sanction or to dismiss a person; 4° of subjecting the supply of goods or services to a condition based on one of the factors referred to under article 225-1; 5° of subjecting an offer of employment, an application for a course or a training period to a condition based on one of the factors referred to under article 225-1; 6 ° of refusing to accept a person onto one of the courses referred to under 2 ° of article L.412-8 of the Social Security Code. Where the discriminatory refusal referred to under 1

° is committed in a public place or in order to bar the access to this place, the penalties are increased to five years' imprisonment and to a fine of €75,000." (French Penal Code)

If discrimination against anything mentioned in article 225-1(e.g., race, religion) is illegal, then why does this form of labor market discrimination still exist?

The *El Khomri Law* bill addresses the fight against discrimination under Article 37 of the reformed French Labor Code, but in regard to state of trade union discrimination. The reform did not modify the articles regarding discrimination much. In fact, discrimination is a little ambiguous as it is grouped with sexual harassment under the first article. It is unclear as to what form of discrimination is prohibited under the new labor reform.

Responses to the *El Khomri Law*

The *El Khomri Law* received a lot of negative feedback from the public before the law was even fully passed. Many *manifestations* or demonstrations in La Place de La République, a square in Paris, have taken place in order to fight for labor rights. The voice of the oppressed have taken upon themselves to form movements in response to this law. In this section, I will discuss on the responses to this law, and explain the overall effects on the marginalized population in question.

Nuit Debout

After the rise of the new labor reform, citizens have responded by taking action through a political movement called Nuit Debout. Nuit Debout translates to "Standing Night" or "Up all night" in French. The movement was designed to send a message to the Hollande-Valls administration and to express the discontent about the government passing this law. Nuit Debout began at the end of March 2016 and continued through June 2016. Citizens protested against work conditions, ecological questions, education, etc. (Bats and Pain 2017). The new conditions left citizens feeling as if they were not taken into consideration prior to implementing this new law.

The citizens would gather around La Place de la République to strongly channel the revolutionary spirit from 1830, the year for the French Revolution. Michael-Matsas (2017) suggests that this movement was so strong, they changed the calendar time to count the days Nuit Debout remained alive. For instance, April 1st was instead referred to as March 32. The new reform was seen as a catalyst, focusing all the pent-up grievances of the working class and other sections of society that have accumulated during the long period of crisis (Michael-Matsas, 2017). Sophie Wahnich in *L'Homme et la Société* explains that the purpose of the movement was designed to resist the same kind of servitude imposed on the citizens by the king during the French revolution. Wahnich (2016) adds that this movement was intended to fix what has been undone: a democratic state in which one can deliberate about issues that affect the entire group and then vote on such matters.

The revolutionary spirit that Wahnich describes shows the rebirth of a movement carried out through centuries. They not only changed the calendar counting the course of time, they also figuratively changed the name of the central Parisian square from La Place de la République to La Place de la Commune. La Place de la Commune in this case implies a contributing community. Although Michael-Matsas connects this to Marx's observations of worker power in 1871 Paris, the intentions of this "revolution" were to bring back democratic values to a flawed system. Supporters of Nuit Debout utilized this movement to urge the government to create policies that considered citizens of all classes (Michael-Matsas 2017).

Unfortunately, not many viewed it this way. The conservatives and socialists misrepresented Nuit Debout as a parisian *bo-bo* movement. *Bo-Bo* is a nickname for Bohemian Bourgeois. It was really seen as a worker's movement as they are known to strike almost every other week about working conditions. The birth of the movement was during the height of the state

of emergency that was declared following the terrorist attacks of November 2015. Mass gatherings of protesters such as those who participated in Nuit Debout were frowned upon by the French government. It sent a strong message to the Hollande-Valls administration by having it at such a particular time, making it a political confrontation of labor with capital's political state power (Michael-Matsas 2017).

Chapter Four:

Labor Market Discrimination

How Randomized Control Trials Work

Before I introduce how researchers have measured labor market discrimination through statistical measures, in the following section I will explain the specific measure they used called: randomized control trials. Among these control trials, I will focus on Curriculum Vitae (CV) (or résumé in American English) based trials and elaborate on their purpose. Randomized control trials are often used in an area of economics called econometrics. They provide measurement to collect data. With econometrics, it is easy to measure the relationship between any variable. For instance, an economist can measure variables that affect earnings such as weight, height, race, gender, etc. With CV-based trials in particular, researchers can measure to what extent employers discriminate against minority applicants.

To conduct a randomized control trial, researchers first gather data from either phone interviews or surveys. As it is hard to measure the population, an estimate can be calculated by gathering the sample of the population. After gathering the data, researchers randomly assign the observations (in this case, the applicants) to either a control group or a treatment group. If placed in a control group, the individuals receive the default effects, or no treatment. The treatment is defined as the variable we are trying to measure and its effects. If placed in the treatment group, the individuals receive effects of the treatment. By having a treatment and a control group, it helps compare the difference between the effects the treatment group receives and effects the control group does not receive. For instance, if doctors wanted to measure the effects of a pill, they would give a placebo to the control group, and the real pill to the treatment group. The control group is

thus held constant in this way, and doctors can measure the effects of the pill on randomly selected individuals. (Torgerson & Torgerson, 2008).

Randomly selecting the individuals is emphasized in randomized control trials, because when measuring the groups, it is important to have the most accurate results as possible. By randomizing the data, researchers avoid econometric disparities known as endogeneity. Endogeneity is when one of the variables is correlated with the error term. We will move to define what this concept is, as it will help in the analysis of each study in later sections.

In econometrics, the following linear model is used to measure relationships between variables (also known as a regression) (Stock & Watson, 2011):

$$y_i = \beta_0 + \beta_1 x_i + \beta_2 x_i + \varepsilon_i$$

Table 1 shows what each variable represents. The equation above is the model for the true value of a regression.

Table 1: Defining variables in a linear regression

Variable	y_i	β_0	β_1	x_i	ε_i
Meaning	Dependent Variable. The variable we are looking to measure	Intercept variable. In standard linear model: Y = ax + b. β_0 would be the **ax**.	Slope. In a standard linear model: Y = ax + b, this would be **b.** β_1 may be followed by β_2, $\beta_3$and so on. This also measures **the extent** to which the variable affects y_i	The variable in question.	The error term. We assume that ε_i= 0 for simplification.
Example	Earnings	Usually remains β_0, because it is the intercept in the linear model.	Usually remains asβ_1, but is attached to $x_i$to make $\beta_1 x_i$. Adding on more variables creates $\beta_2 x_i$, $\beta_3 x_i$ and so on.	Variables that could affect earnings: race, weight, height, sex, marital status	Unobserved variables that cannot be accounted for, such as discrimination (for race and sex), preference towards an appearance, etc.

Table 1 explains the purpose for each variable in a linear regression. When studying the relationship between earnings and variables such as race, sex, gender, height and weight, for instance, we acknowledge that there are other relevant factors, or repressors', but they cannot all be listed. The error term may also be defined as our uncertainty of the linearity of the model. Sometimes the model when shown as a scatter plot, could be a giant circle or a square shape. The error term accounts for this (Stock & Watson, 2011).

Thus, when it comes to identifying endogeneity, if one of the variables is correlated with the error term, it affects our regression model, and how we study y_i. The idea is for the variable to be exogenous. Formally, exogeneity is defined as follows:

$$E[x_i \varepsilon_i] = 0$$

Endogeneity can be treated by reducing selection bias. Data is biased if not collected or assigned at random. Randomized control trials eliminate the possibility of selection bias, and thus make the results more accurate. (Stock & Watson, 2011)

In CV-based trials, selection bias was avoided by sending the CVs randomly to different vacancies after being placed into a control or treatment group. The design of each is different, but they yield similar results. Fabrice Foroni and Eric Cediey (2008) from the International Labor Office categorize CV-based trials under "discrimination testing". This term is "defined as a method of identifying discriminatory behavior by conducting similar and successive discriminatory tests on behalf of people who differ only with respect of their 'origin' or some other prohibited criterion." (Cediey & Foroni, 2008, p.9). Thus, other variables are held constant to measure the discriminatory factor as defined under Article 225-1 of the French penal code. While survey inquiries about race are still prohibited under the French legal code, the 2006 law on equal opportunity legalized the practice of unannounced audits, also called "testings", as a method of providing eventual discrimination (Cediey & Foroni, 2008). In the next section I explain the nature of each study and how researchers such as Foroni and Cediey reached their conclusions.

Curriculum Vitae Based Trials

The following CV based trials will aim to measure the extent to which ethnic groups are discriminated. The first study will be from the religious angle. The second study will review the labor market discrimination of two ethnic groups. Both studies will be compared thoroughly and reviewed for effectiveness.

Religious Discrimination

Marie-Anne Valfort, an Associate Professor at the University Paris 1 Panthéon Sorbonne, studied labor discrimination through religion. This gave an interesting angle on measuring immigrant-origin French citizens as most of them are Muslim. In *Religious Discrimination in Access to Employment: A Reality*, Valfort (2015) argued for anti-Semitism and Islamophobia in the French labor market. In Valfort's (2015) study, she ran a CV-based trial with six applicants. **Table 2** lays out the characteristics of all six applicants.

Table 2: Applicant Profile (Valfort 2015)

Name	Dov	Esther	Michel	Nathalie	Mohammed	Samira
Sex	Male	Female	Male	Female	Male	Female
Religion	Jewish	Jewish	Catholic	Catholic	Muslim	Muslim

Dov, Esther, Michel, Nathalie, Samira and Mohammed from Beirut applied to the same jobs as bookkeepers. All applicants' characteristics are identical including their last name, "Haddad," (a common Lebanese name), their career goals, the high school diploma, and each had about four years of work experience. Valfort in essence observed the following variables: three religions, two genders, two religious profiles (practicing and non-practicing), and two qualities (Valfort, 2015).

In Valfort's (2015) CV-based trial, her findings between the six applicants were interesting. With respect to gender, women in all three religions had higher call back rates than men. Between the three religions, both Jews and Muslims faced labor market discrimination. Out of the two groups, practicing Muslims, as opposed to more "secular male Muslims," faced the worst effects of discrimination. This may not necessarily reveal that religious discrimination against practicing Muslims means that employers are discriminating against French North Africans. In fact, Valfort

(2015) found that managers have made an improper amalgam between North Africans and practicing Muslims. A few reasons may explain this disparity. Notice how in Valfort's (2015) study, male Muslims were the group that suffered the most in the trial. Male Muslims, particularly from North Africa, are found to be too complicated to manage compared to their female counterparts. Unfortunately the stereotypes and prejudices are one of the drivers of discrimination against Muslims. (Valfort, 2015).

For some employers, concern about Muslim employees include religious practices in the workplace and the possibility of dealing with a male chauvinist culture (Valfort, 2015). Another improper amalgam is made between the religion's missions and male chauvinism. For example, employers may believe that women are forced to wear a *hijab* (or any voile/*foulard/headscarf*), and thus confirming their belief of male chauvinism in Islam. However, the true meaning behind a woman wearing a headscarf is to represent modesty, and an embrace of one's natural self. Women wear them by choice, which counter argues the male chauvinist belief about the religion. Unfortunately, in Valfort's (2015) results this mentality seems to not be understood. Even if the candidate shows in their profile that they are secular and an outstanding candidate, it does nothing to combat the discrimination they face.

At the conclusion of Valfort's trial, she proposes a solution to reduce discrimination in the labor market. One action that could be taken is to increase national awareness of the issue, reducing the discriminatory behavior of all employers, and recommend enforcement for the benefit of the entire country (2015). Valfort's study provided an interesting overview of job discrimination through religion. Additional studies looked at ethnic group discrimination

Ethnic Based Discrimination

Eric Cediey and Fabrice Foroni (2008) from the International Labour Office (ILO) in Geneva have taken a slightly different approach to studying labor market discrimination. In *Discrimination in access to employment on grounds of foreign origin in France*, Cediey and Foroni (2008) conducted a survey in Lille, Lyon, Marseille, Nantes, Paris and Strasbourg of North African origin, Sub-Saharan origin, and French origin applicants. The North African and Sub-Saharan origin applicants were placed into the minority applicant group, and the French origin applicants were placed into the majority applicant group. The tests covered vacancy notices for little to some experience in the following sectors: hotel & restaurant, commerce, public services, communities and enterprises, transport, reception & secretarial services, health & social work, and building & public works (Cediey & Foroni, 2008). The results were similar to Valfort's: employers preferred the non-immigrant origin French applicants, compared to the other immigrant-origin applicants at each recruitment stage.

Cediey's and Foroni's (2008) results calculated the extent to which the minority applicants were marginalized. Employers selected the majority applicant nearly four out of five times compared to minority applicants. Through a calculation called Net Aggregate Discrimination, Cediey and Foroni (2008) were able to measure the extent to which employers favored the majority applicant over the minority applicant. The procedure was as follows: they took each stage of the recruitment process (e.g., the Initial Contact, Standby, and Interview), and took the difference between the percentage in favor of the majority applicant, and the percentage in favor of the minority applicant at each stage (2008). They added up all of the percentages from each stage and calculated the Net Aggregate Discrimination rate to measure the extent of the discrimination for each industry and each city they conducted surveys. Cediey and Foroni (2008) found that the Net

Aggregate Discrimination was between 40%-70% depending on the form of initial contact (telephone call, resume sent by mail or in person). Minority applicants in this study were mostly discriminated in the Hotel and Restaurant industry, followed by Commerce, and then other fields (Tourism, social work, etc.). The results of an employer favoring the majority applicant is provided below:

- Four out of five times in all the tests taken together, regardless of the form of contact
- Four out of five times in the hotel and restaurants sector
- Three out of four times in commerce and sales
- Three out of four times in the other occupational fields tested
- Four out of five times when the applicant was of "sub-Saharan" origin
- Three times out of four when the applicant was of "North African" origin

Religious vs. Ethnic Discrimination

Although Article 225-1 of the French Penal Code identifies both race and religion as a factor of discrimination, it is common to make an amalgam between belonging to a certain ethnic group and belonging to the religion that supposedly "corresponds" with membership of that certain ethnic group. Valfort's (2015) study acknowledged the negative stereotypes about Muslims, particularly the fear of male chauvinism, a false component of Islam. Valfort (2015) focused on the behavior of recruiters, and noticed the discrimination was clear when practicing Catholics were receiving a higher callback rate than secular Catholics. Cediey's and Foroni's experiment was no different in their attempt to estimate labor market discrimination. Although it was directly estimating discrimination towards an ethnic group, their approach focused more on the discrimination at each level of the recruitment stage. Both models gave an insight to the measure of discrimination French North Africans received in France.

In economics, it is important to note that we can only estimate the true model that measures discrimination. It is hard to measure unobserved variables such as feelings, because they are intangible and immeasurable. Factors such as feelings towards an ethnic group could have helped the estimates, but it is hard to account for every single factor. Both studies provided different results on discrimination by offering a perspective on what recruiters may postulate, and how they may differ by industry, region, and religion. Combining all of these factors may give policy makers an idea of how to treat labor market discrimination and on what level. Efforts to eradicate labor market discrimination towards ethnic groups have been made. In the next section, I will discuss the results of implementing this policy, and how labor market discrimination changed.

The Idea of Anonymous CVs

A possible solution to eradicate forms of discrimination were to put policies in place in which the employers select their future employees fairly. However, by reviewing anonymous CVs, would these policies have put immigrant origin applicants at a bigger disadvantage? The Equality of Chances Act made anonymous CV mandatory for firms with more than 50 employees. The anonymous CV was an attempt to implement "French diversity" measures while avoiding a quota system. This program was intended to combat labor market discrimination. The idea was to allow for greater transparency in hiring decisions by focusing the attention on objective rather than subjective elements. However, by removing certain qualities from the CV, it caused an adverse effect on the candidature of the minority applicants. We look to Behaghel, Crepon and Le Barbanchon's (2015) study to see the effectiveness of this law (Becker & Musselin, 2013; Behaghel et al, 2014).

What Was Never Intended

Luc Behaghel, Bruno Crepon, and Thomas Le Barbanchon (2015) in *Unintended Effects of Anonymous Resumes* analyzed labor market discrimination under the Equality of Chances Act. The authors noted the government did not specify who should adhere to anonymous CV policies nor did it provide sanctions for those who did not comply. Several studies (such as Cediey's & Foroni's, 2008) reveal that discrimination begins at the first step of the recruiting process when recruiters sort through CVs (Becker & Musselin, 2013). When an applicant's name, age, gender, address, and marital status are eliminated from the CV, in theory it would simultaneously remove all bias the employer may have towards the applicant. However, Behaghel, Crepon and Le Barbanchon (2015) deduce that if there is a correlation between a minority's status and other elements in the CV, it may not be difficult for recruiters to reconstruct missing information and continue to discriminate (Behaghel et al, 2015).

Behaghel, Crepon and Le Barbanchon (2015) received resumes from the Pôle Emploi, a government agency where employees seek employment, then matched the CVs with the vacancy provided by the Pôle Emploi, and sent the CVs to their research assistants for randomizations. In the randomization stage, the CVs were randomly assigned to a control group or a treatment group, with a probability of one out of two to receive the treatment (Behaghel et al, 2015). Treatment group applicants were kept anonymous, but control group applicants contacted the employers directly, thus allowing Behaghel, Crepon and Le Barbanchon (2015) the chance to study the effects of applying the Anonymous CV policy on applicants through the treatment group. The authors note the following are omitted from an applicant's CV: name, address, gender, nationality, ID picture, age, marital status, and number of children. However, some identifying factors on the bottom part of the CV could help potential employers identify the candidate regardless. For

example, the authors note that ethnicity could be identified from foreign language skills. Additionally, anonymous CVs were only sent to participating firms, and were treated identically when passed to the recruiter from Pôle Emploi. The randomization was made after matching CVs to vacancies to study the effect of applicants in the treatment group compared to applicants in the control group. A total 1,005 have self-selected themselves to participate, a factor that is analyzed further by the authors.

Behaghel, Crepon, and Le Barbanchon (2015) concluded that although the upper portion of the CV was blocked, minority candidates received adverse effects of the policy. Looking at the recruitment stages, the Behaghel, Crepon, and Le Barbanchon (2015) found that the gap in interview rate declined by around 10 percentage points when CVs were made anonymous. Furthermore, the hiring gap widened by four points. Behaghel, Crepon, and Le Barbanchon (2015) conclude that the study lead Pôle Emploi to stop the program, and the government abandoned the idea of making anonymous CVs mandatory. The authors commented that firms who usually do not interview many minority applicants, did not participate. This brought into question why they did not, but also confirm that this policy was not an adequate form of fighting discrimination in the labor market.

Evaluation of the program

The anonymous CV was a thoughtful attempt by the government, but lack of participation by certain employers raised suspicion. When measuring the effects of anonymous CVs on hiring rates, there may have been some endogeneity in the data as the policy allowed for firms to self-volunteer for the program. This caused selection bias within the data sets. Behaghel, Crepon, and Le Barbanchon (2015) note that they may have selected more minority applicants than normal in order to perform well. This behavior led to additional bias in the data. Behaghel, Crepon, and Le

Barbanchon (2015) found no evidence that Employers were purposely acting more favorably to minority applicants.

Furthermore, the anonymous CV policy assumes there is only one labor market where one recruitment norm is in place for all businesses and all jobs (Becker & Musselin, 2013). This is not a good assumption as there are many markets and each firm has different recruitment tactics. Researchers may have reduced the model to adhere to one tactic for simplicity. It is also found through other studies that anonymous CVs not only suggest that labor market discrimination exists, they suggest the policy had an additional adverse effect on minority applicants, whereas, minority applicants were better off revealing the top portion of their CV rather than omitting it. This initiative is similar to the United States' Affirmative Action plan as it ensures that minority applicants are given a fair chance during the recruitment stages. This information may present other unobserved variables such as identifying whether minority applicants were truly discriminated against, because of their ethnicity, or because they did not have strong applications. Though this provision had good intentions, it failed under the Sarkozy administration. Measures to combat labor market discrimination should consider all possible reasons why an employer might discriminate against an employee.

Relevance to the *El Khomri Law*

It is evident labor market discrimination indicates that hiring rates favor French-native citizens as opposed to immigrant origin French citizens. Valfort's (2015) study found that 95% of all hiring managers are French-natives, and they are more willing to hire minority applicants if the term on their contact is limited. The *El Khomri law* now gives employers the liberty to fire employees without reason. Though the intention of this law reform is to reduce the French unemployment rate, it may also have an adverse effect on minority employees, whether they are

Muslim or North African. Acknowledging the existence of this labor market discrimination is an essential component of adhering to the possible effects the *El Khomri law* may have on the minority population in France. Across all industries, French North Africans are disadvantaged economically, and perhaps even subjected to an unfair employment system.

Chapter Five:

Conclusion

Prior labor reforms have attempted to reduce the unemployment rate by increasing the work-week, and increasing the collective bargaining agreements between the employer and the employee. Although these past labor reforms, including the *El Khomri Law*, have met negative responses from the labor force in France, the *El Khomri Law* did not follow the same trend as the previous labor reforms. The *El Khomri Law* increased the hourly work-week limit, reduced severance payments, increased employer power, and increased an employee's possibility of dismissal if the firm's turnover or profits were low. Although all of these reforms were designed to improve overall work conditions and make the economy more flexible, they, particularly the *El Khomri Law*, failed to consider and include the French North African population in their economic plans.

Given the present labor market discrimination that exists for the French North African population in France, the *El Khomri Law* may potentially add increased discriminatory effects, thus putting this group at an additional disadvantage. Although the French Labor Code explicitly prohibits discrimination, studies show that labor market discrimination still exists. However, as they are permitted to dismiss employees if the turnover and profits are low, employers may exploit this clause, and thus further discriminate against the French North African population. Past policies such as the anonymous CV law have made an effort to reduce labor market discrimination in France, but the results have shown minority applicants still experience discrimination when their identity was hidden from their CV. These studies could serve as a predictor for possible marginalization that French North African employees may experience under the *El Khomri Law*.

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