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THE JOINT NEED FOR AN ANALOGOUS REGULATION OF INDUSTRIAL RELATIONS AND GLOBALISED MARKETS

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The market for goods and services, its operation and mechanisms for keeping entrepreneurs' and consumera' interests in balance tend to be considered separately from the labour market and its ability to keep employers' and employees'interests in balance.

At best, the two perspectives are seen as independent from one another. The construction of law on a discipline-by-discipline basis tends to encourage this view: that is, the experts who analyse commercial law are not the same as those who analyse labour law.

In the 1960s and 1970s, however, the dividing lines between disciplines were less clear-cut than they are today. Then, commercial law evolved into corporate law with the enterprise seen as an entity based on a union of forces working towards the same goal: development through the interweaving of capitalist and labour forces.

Since then, however, commercial law has moved in a very different direction, towards market law. The "market" is a notion relatively alien to that of "enterprise". The market operator is thought of as an opaque entity and the enterprise as the market's "black box", within which it is not useful to look. Consequently, the Gloser commercial law cornes to market law, the more important competition law becomes and the more it moves away from labour law.

This two-fold misunderstanding sows the seeds of antagonism.

From ignorance, it is an easy step to aggression. At worst, the two perspectives appear in opposition so that we are on one side or the other and must choose one over the other. A number of key events point in this direction. For example, when the announcement of redundancy decisions pushes up the shares of a quoted company. . or, on the other hand, when employees receive compensation for their labour at the expense of compensation to shareholders for their investment.

Labour relations specialists may well blame market mechanisms and the theories on which they are based for this opposition and they are right. The market is a process that draws its power from the ability to make different things exchangeable through the instrument of money. This exchange neutralises differences so that they can be substituted, making mass supply and demand possible in order to obtain a fair market price that, in return, governs individual agreements. Not only the specific features of goods are neutralised, but those of people as well. For instance, the consumer is a concrete person in consumer law; whereas, in competition law, he is but a simple instrument for measuring pertinent markets and anti-competitive practices. Similarly, in economic law, which works by masses and ratios, the worker is an instrument for measuring prosperity and not a concrete person.

It has therefore been postulated that antinomy exists between the nature and interests of markets and industrial relations. As a result, they are then viewed in terms of compensation or pressure. Compensation implies that social policies are responsible for offsetting the damage caused by market practices and for distributing this burden through a political act. Pressure involves finding a compromise between two different interests, those of operators and those of workers, isolated from one another in independent theories, in order to breathe life into "social justice" in the market. Here again, pressure is of a political nature. Law is required in both cases. From this point of view and as a result of the globalisation of markets, the breakdown is immediately evident: how can pressure be brought to bear if no global political power capable of doing so exists?

At this point, we reach what seems to be a conflict between labour law and the natural forces of the market, between workers' rights and operators' might. If this is so, the confrontation is lost before it begins from the point of view of the satisfaction of social imperatives. Binding, external legal forces are required for the former, whereas the market can rely on its natural forces to resist, circumvent and dorninate. Law is always more difficult to implement than nature. The decline of sovereignties and the secular arms that accompany them exacerbates the problem.

The market, it is usually argued, operates without external legal regulation, since suppliers and buyers of goods, particularly in the case of monetary goods and securities, naturally adjust their demands. The labour market, on the other hand, has to be regulated from the outside or the interests of workers will be crushed. This means, or so the reasoning goes, that the law must be on the side of labour subject to the pressures of globalisation in order to combat the sheer force of the markets. Law would, therefore, in all likelihood act in favour of workers (who need external and binding law) and against markets (which do not need it).

In a relationship in which the markets have force on their side and the workers have law on theirs, globalisation is crucial. It is chiefly the State that has the power to provide the external quality of law. this law that necessarily and a priori organises working hours and the division of work, since only the State has the necessary impartiality and public force to do so. Lengthy explanations are not needed to show that the domination of frontiers by zero-colt relocations and the elimination of frontiers through the establishment of global enterprises sap the power of State law. If it is true that market relations, similarly globalised, achieve their objectives without this secular arm, social regulation will run out of steam when it cornes up against the natural and anti-legal power of markets.

The anti-globalisation movement sometimes gives credence to this picture and relays it to public opinion.

The picture is false, however, and can no longer be perpetuated. While market regulation had Little effect on the regulation of internal labour relations, each enterprise could develop within its own sphere. This was possible as long as a distinction, or even opposition, could be drawn between enterprise and market. The enterprise appeared to be a relatively self-contained place, constructed according to complex series of contracts and governed from within, with managerial power that could be held and identified, even if it was necessary to organisé protection in response. The market, on the other hand, appeared to be a free and open space where the interplay between operators meant that power did not need to be given to any of them in particular, with competition law preventing excessive market power from being built up.

Of course, this impermeability between enterprise and market was always relative, because an enterprise's activity in the market necessarily had repercussions on power relations within the enterprise, just as coordination within the enterprise and the economic implications of the way in which work is organised affect firms' competitiveness on the market. Today, however, things are becoming positively porous. The first shift — of the market towards the enterprise — has been described many times: enterprises are becoming governed from without, and the extreme fragmentation of the markets has triggered a similar fragmentation in the enterprise. The enterprise is becoming as changeable a structure as the market on which it operates, so that the structure of the markets is now reflected in the structure of enterprises. Moreover, the domination of lenders in financing the economy is tending to bring market mechanisms into play in the balance of power within firms, whether the company is quoted (the well-known "tyranny" of the financial markets) or not (as a result of the growth of private equity). The market is thus importing its own regulations into enterprises, with the financial market authorities becoming involved in the government of firms.

The second, opposite, shift tends to be highlighted less often, and consists of the appropriation of the markets. This has become the general rule for the financial markets: they are now products in themselves, competing with each other through competition between financial centres. Even more, stock exchanges are assets owned by private enterprises. In quoting their stocks, companies generate a sort of financial marketing of the financial markets. This mirroring effect tends to fence in the markets, just as enterprises are fenced in. Moreoever, many markets operate through concessions, with the private ownership of infrastructures enabling operators to govern access to the market. This is the case with all network industries, telecommunications, the audiovisual sector, energy, transport, banking and insurance. Because firms own the distribution networks, the markets are becoming closed. A foret of regulation is becoming established to force access to the market for third parties, the historical source of regulation in the USA. This form of regulation is increasingly similar to that goveming the relationship between enterprises and their individual shareholders and employees.

This general similarity means that we can consider methods of regulation in a more unified manner. It also brings a more specific imperative: the need to establish points of contact between forms of regulation. The porousness between enterprises and markets, between the risks borne by the markets and the risks borne by the social partners, is ultimately creating common risks. These risks can only be overcome by organising the practical interlinking of the two types of regulation, in other words by considering interregulation. The collapse of Enron, the American electricity trading specialists whose bankruptcy is the biggest of the century in the USA, is a prime example. Without interregulation, the lack of effective sectoral regulation and of linkage between the various types of regulation can generate a disaster that spares noone — banks, investors nor workers. Through pension funds, the workers had invested 60% of their savings in the company itself, so the collapse robbed them not only of their jobs, but also of their pensions. We are coming to realise that the scale of the collapse was only possible through an accumulation of inadequate regulation: regulation in the energy sector, regulation in the financial sector, internal regulation by the auditors and regulation by workers' rights.

We must therefore firmly resist the idea that law must govern labour relations, if there is to be a balance in power relationships, whereas the markets need no regulation. On the contrary, the inadequate regulation of the one brings imbalance, risk and failure for the other.

This conception of the market as a new natural state resisting the intervention of law is so current that it is, in most cases, implicit in any thinking in this area. It is no match for the argument that markets need to be legislated from outside and increasingly so. Regulation is an increasingly vital imperative for markets and it takes a similar form in labour relations. This link, or community of objectives and methods, makes it possible to think in less confrontational and aporetic terras about the regulatory and institutional articulation of regulations on trade and on industrial relations at a worldwide level. This line of reasoning necessarily leads to the issue of the relations between the WTO and the ILO.

THE NEED FOR REGULATION OF GLOBALISED MARKETS

It is taken for granted here that industrial relations require regulation from outside, over and above a general framework. What is less accepted and worth looking at further, is that both financial and goods and services markets are also and increasingly in need of such regulation, but do not have the wherewithal to generate such mies.

Basic legal instruments are, of course, required for a market organisation, i.e. the right to dispose of things — ownership — the right to market them securely — the contract — and the assurance of effectiveness through access to the courts. These instruments are, however, the prerequisite of a commercial society that has to be differentiated from a market society. As we shall see, the regulation of the markets goes beyond this legal framework, with competition law providing a general regulation of the markets by preventing them from being destroyed by

competitive forces, and with regulatory law operating in sectors that are not strong enough to generate their own internal equilibrium.

Taking general regulation first, the market is in practice a process that organises commercial exchanges on a mass basis by permanently merging ("market liquidity") and adjusting them. The effect of the market is to neutralise the actual power relationships, since weak purchasers will benefit from a price that a previous strong purchaser may have been able to push down. It is possible, then, to see the market as the agent that neutralises the relationships of violence between the powerful and the less powerful. We should bear in mind that Adam Smith's theory of markets had this goal. In this respect, the market is much more than laissez-faire. Laissez-faire is a condition of the market alone, but not of regulated markets in which not only just trade between market operators is administratively controlled, but also entry into and exit from the market. This neutralisation of dominant relationships is, therefore, the goal and the effect of a market. lt is similar to the neutralisation of the imbalance of power between employers and employees that labour law is intended to bring about. Likewise, this neutralisation cannot take place outside of a law that imposes limits on the market in order for the latter to survive.

Everyone knows the adage - competition kills competition - which establishes a liberal basis for supervision of the markets by law. Competitive performance and the recompense for its competitive dynamism should enable an enterprise to preserve and exploit the fruits of its abilities, thereby increasing its power in this market. Ultimately, this power allows the enterprise to evade market cules, to obtain an advantage that the free functioning of the market would not have enabled it to obtain. Competition generates pôwer, which facilitates anti-competitive practices, which destroy competition. Competition law, which is drawn up politically and whose implementation is entrusted to courts or ad hoc administrative authorities, is supposed to break this vicious circle. But regulation of the market by competition law raises problems when enterprises are global, as we can see from the discussions about whether it is appropriate and possible to apply competition law through the World Trade Organisation.

Markets now require more than the safeguard of competition to survive. If they are to develop, they need regulation. Without arguing about definitions, we can define economic regulation as the technical and legal machinery that markets need for their organisation and development when they do not possess the intrinsic force to generate and maintain the pconomic balances required for their maintenance and expansion. This regulàtion is imposed from outside. In this respect, globalisation raises problems for markets in exactly the same way as it makes the organisation of industrial relations less stable. The need for regulation relates to the telecommunications, energy, audiovisual, financial, stockbroking and banking sectors - in other words the key sectors of the globalised economy.

Economiç regulation, requiring external and binding worldwide law, may partly be provided by competition law. The purpose of such law is not just to counter the adverse effects of market powers, by punishing anti-competitive practices, but also to control market powers themselves. This is the purpose of controls on mergers and acquisitions, which are a direct form of market regulation, since they make it possible to decide what future structure is acceptable for the market. This was less clear-cut when such controls took the form of a pure and simple acceptance or refusai of the increase in power resulting from the concentration of two companies. Now, controls on mergers and acquisitions involve negotiations between the authorities and companies to agree on the assignments and undertakings on the basis of which the concentration is to be authorised. This control is, therefore, full regulation, in which external constraints and negotiations are now linked, as in collective labour bargaining.

The rules and the application of controls on mergers and acquisitions have reached a crucial phase in Europe as current events show. They increasingly have to articulate North American theories and practices, on the one hand, and European theories and practices, on the other.. This is not the place to examine this point in further detail, but we would simply stress that the spontaneous operation of markets needs to be limited and that legal mechanisms for the construction of markets need to be introduced.

The truth of this can be seen from the fact that the world trading economy is now more network than market. The global company is itself designed as a network within which workers circulate via an initial form of permanent mobility. Networks are both independent from markets and cling to markets, in the case of both the Internet and distribution networks. Networks are, by their nature, fatal to competition since their owners can simply refuse access to them. Free trade can withstand anti=competitive practices and abuses of market power, assuming the absence of barriers to entry. The tank of the WTO, moreover, is to combat tarif and non-tariff barriers, and this seems enough for the time being.

The access of third parties to networks, consequently, needs to be regulated, especially when it is accepted that they may be subject to private ownership. It is precisely because the privatisation of networks is allowed that access to them is regulated: regulation is the essential corollary to the private ownership of networks. This is even truer of essential infrastructure networks in which rare goods circulate, as is the case with the energy or telecommunications sectors.

Who, however, is going to draw up worldwide rules regulating markets? + Who is going to compel private operators - in a position of power because they own networks - to open them up without discrimination? And who is going to ensure that worldwide regulation law, for which there is tell to be a need, is effective?

There is no need to examine this further. It is merely necessary here to show that markets are not at ail outside the scope of the law and that, in contrast, their security, their dynamism and their expansion depend on effective regulation, which must take the form of a law which places constraints on them.

The second step in this analysis is not just to show that markets, like labour relations, need binding and external regulation, but also that this regulation could well be constructed from principles that are to be found in the thinking and initiatives of labour relations.

REGULATION PRINCIPLES COMMON TO MARKETS AND LABOUR RELATIONS

There are a number of different regulation principles that we should try to unify, both for markets and for labour relations. This is the second point of similarity. But they can ail be seen as forming part of one single concern: security. The security that regulation is required to generate in markets and labour relations that are growing increasingly fluid and uncertain over time is now largely ail about confidence-building: the confidence that operators can have in the market mechanisms; the confidence that employers and workers can have in each other. Such confidence is generated primarily through organising information, and reliable information lies at the heart of the theory of regulation.

Today, security is no longer a given. Rather, it seems inaccessible in that it appears to be completely incompatible with two fondamental trends more or less encouraged or tolerated: mobility and uncertainty. It is for the law to try to ally security with mobility and uncertainty. In both cases, the main issue is how behaviour is rooted in time, since the law can, through the mies it introduces, remove the uncertainty that cornes with time while also taking advantage of the flexibility it offers. The more the markets need stability over time, particularly because of the scale of the investments needed in the regulated sectors, the more operators are going to want the tale of law.

Let us look first at the alliance of security and mobility. Security is normally the opposite of mobility, since security is provided by the permanence of a situation. What is secure is something that does not change, that is from the outset guaranteed not to change. The more a situation is mobile, the more it is left to mobility, the less secure it is; while the more secure a situation is made, the less mobile it becomes. In a kind of division of preferred objectives, labour relations placed the emphasis on security, through the inflexibility of the permanent contract, while the market placed the emphasis on mobility, through the ever-changing sequence of one-off contracts. These opposing principles, supported by labour relations and the market, explain the antagonism between market rights and non-competition clauses binding on former employees, since the latter give priority to experience as an asset (which is retained by the enterprise) and not to the mobility of commercial initiative.

Markets are built on the power generated by mobility and serviced by the instantaneous nature of the trade in goods and services and the liquidity of the financial instruments markets. Nowadays, security is becoming a paramount concern. This concern is reflected in the legal framework surrounding the security of products circulating on the market, whether real (food safety, for instance) or virtual (security of derived financial products, for instance). It also takes the form of a wish to provide a time-frame for commitments, either between operators or between those drawing up rules.

At the same time as the concern for security was supplementing the paramount principle of mobility in the markets, the concern for flexibility was supplementing the paramount principle of security in labour relations. In both cases now, a conceptual and practical issue is therefore to achieve security and mobility at one and the same time. It is common: markets, like labour relations, need to be given a time=frame while keeping their flexibility. As the market was provided with mobility through the spontaneous adjustment of interests, regulation will provide the time-frame.

Let us now consider the need for security not as it relates to mobility, but as it relates to uncertainty. The situation is even more difficult here, because while mobility may possibly be reduced (since what the Iaw has given, the law may take away), it is almost impossible to combat uncertainty in itself, since it results from our very imperfect knowledge of how the world is going to change. Uncertainty is, therefore, the new natural state, and the law will be needed to lirait it, since it can impose rules which will apply over lime even though the things to which they apply have changed. *This is* what legal certainty is all about, and it is becoming a guiding principle in legal systems and is even generating a sort of universal right to legal certainty. This was the reason behind the recent cases where businesses disputed the European Commission's power to regulate mergers.

It is, thus, up to the law to establish between these twin evils of security and uncertainty the thing that is going to link them in the long terra: confidence. How can there be confidence if the rules are not stable over time? There are two ways, largely to do with the two types of regulation, social regulation and market regulation: first, by bringing a third party into global relations to act as a reliable intermediary, and, second, by generating information to make it easier for everyone to anticipate what is going to happen.

A second imperative of regulation is, therefore, to organise intermediation and ensure that it functions. In the mass economic relationship between suppliers and denianders, the market is supposed to generate adjustment through no more than the expression of the interests of both. In contrast, in the mass industrial relationship between employers and employees, the need for intermediation is accepted and is embodied in the existence and the power of the unions.

However, such intermediation seems nowadays to be becoming an imperative for markets as well. First and foremost, there is intermediation in all financial markets and banking is, by definition, an intermediation activity. The imperative of organising and controlling intermediation is spreading to all markets. Markets have, in practice, become very uncertain. If they are to have a time-frame, on the one hand, long-term commitments are needed, and, on the other hand, it must be possible to trust those who have entered into these long-term commitments. Who to trust? This is the first question of games theory, whose importance in economic and financial theory is known. This will bring about markets whose development is based on the trust that can be placed in certain organisations or certain people. What could be called "fiduciary markets", of which banking and insurance are epigones, but which are spreading. This intermediation is, moreover, being globalised. It is regulated according to the same principles and raises the same problems, whether it involves market or industrial relations practitioners.

Not only do intermediaries have the task of ensuring the security of the market, but they are also the partners to whom it is possible to turn or who can speak when it is necessary to find out what interests are at issue or to express them. *This is* the role of the unions in industrial relations and the role of financial analysts and bankers in markets.

Lastly, regulation through the use of external constraint is required when binding mechanisms of information need to be imposed, the traditional markets being based more on private than public information. The mechanisms of transparency are now being superposed on the classic mechanisms of the market, and it is through the external order of law that they can be imposed. Rights to information are proliferating and becoming structured, to the benefit of both shareholders and employees. Information generates concerted action and protest - new ways of regulating power.

Information is what feeds regulation and the means by which it is exercised, with the regulator acting on information that he obtains and producing factual and normative information. Information is also what holds the balance in power relations, since dominance is often based on one person holding information and not passing it on to another. The same idea applies when company managers are required to provide information, whether for the shareholders (in other words, the market, if the company is quoted) or the workers and the organisations representing them.

Three qualities characterise information that is likely to promote good regulation. First, it has to exist. This truism is not devoid of meaning: in most cases the relevant information has not been generated because those in a position to do so had no interest in doing so. This is why any source of observation and expert assessment is a factor of good regulation. The rights of workers' councils to be consulted before important management decisions are taken, and their power to consult accountants or to ask the courts to appoint one, all foret part of this need to generate information. Through these legal mechanisms, we can see that if labour relations are well-regulated, with a direct beneficial effect on the markets that may even make up for their own inadequate regulation. The bodies that defend workers' interests can alert investors and inform the market authorities. This porousness between forets of regulation corresponds to the porousness described earlier between the structures of the markets and enterprises.

The second quality which information must have if it is to contribute to regulation is an ability to circulate, to become common to all operators in the system. Here, too, the trade unions can act as transmitters of information to all the workers concerned. It can become problematical when the law of the financial markets and labour law overlap, such as when the first prohibits the dissemination of, say, privileged information abouta future market operation, while the second involves communicating it to the staff representatives, who are normally in charge of passing on information.

The third quality of information that produces good regulation is reliability. If information that has been generated and become common knowledge is reliable, it prevents economic reality from becoming divorced from its representation, particularly in financial terms, and thus creates security. When the reverse happens, it can be disastrous. The reliability of information is what enables people to have confidence in it. The credibility of the person providing or verifying the information – the auditor, trade union, analyst, or market authority – is crucial here. So, as we can see, the question of the reliable third party cornes up again and again.

Even more, information may be needed so that the third party established by law can use it, whether it be information for the trade unions to be able to exercise their rights to negotiate and dispute, or information for analysts or market authorities to bring legitimate pressure to bear on enterprises.

Taking a more optimistic view (and a more North American one), we might think that information is, in itself, regulating, without having to be relayed by a third party or used for a particular action. If we assume that consumers are rational, information about the product will influence their behaviour and the overall demand for the product. An analogy may also be drawn with requirements to provide information about the composition of products, the effects of using them and also the conditions in which they were manufactured. The consumers' economic and also ethical rationality, of which the Nike case is just one example, can be enough to generate a certain regulation of power relations in the markets and in industrial relations.

If we accept first that the markets are in disarray because of their increased need for regulation by law and, second, the fact that globalised relations are being legally regulated using similar methods, whether they are commercial or industrial relations, we can then move to the third issue, i.e. the interregulation of both perspectives together in the analogous relationship mentioned above.

THE INTERREGULATION OF MARKETS AND LABOUR RELATIONS

The two spheres can be more readily interregulated if it is accepted that needs and methods are similar. Methodological interregulation and institutional interregulation can be differentiated, but not without first having taken care to define here what interregulation is.

Regulation takes the form of a set of binding, external an l a priori legal mechanisms, coupled with permanent monitoring, principles that can be contested and flexibility in the application of rules. Regulation is justified because there are imperatives that competition on its own (even when flanked by the safeguard of competition law) does not manage to satisfy in a sustainable way. Thus, regulation has always had to do with the structural: it is specific to a situation (for instance structural market change through the prospect of enterprise concentration) or to a sector (air transport, energy, telecommunications, insurance, finance, banking), or draws consequences from phenomena that are other than technical or economic. From this latter point of view, it may be moral imperatives that are involved.

In principle, regulations are therefore self-contained, with energy regulation in the energy sector, bank regulation in the banking sector, financial regulation

in each of the stock markets, etc. We need, however, to think in terms of interregulation in two possible scenarios. First, there may be principles common to different sectors, especially when ethical imperatives are at issue. Such examples include decent work and the prohibition of slavery or child labour. It is primarily a moral rule that generates them. It is logical here for commercial regulations to take them up and it is undoubtedly in this way that the regulation of industrial relations will most quickly and most readily find its place in the regulation of markets. However, this presupposes a strong business ethic, a constructed and shared senne of duty, which may not even be effective.

There may, however, be interregulation even when there is no common principle at work. This is the result of interference: sectors interfere, for instance telecommunications with the audiovisual or finance with ail the others. Even if technical spheres are autonomous, this in no way prevents them from interfering with enterprise practice in markets. Acts regulating one sector have an impact on other sectors. In this way, social rules obviously have an impact on competitiveness and competition. In so doing, social rules, as a result of this effect, are necessarily subject to the law of free trade and competition, even though they retain their internai coherence in the sphere of labour relations. Interregulation is, thus, needed, since the mies of one are taken up by the regulatory procedures of the other.

It is therefore necessary to translate this interregulation institutionally to avoid the two vices, deficiency and antinomy, of a legal system that nowadays needs to be envisaged at a global level. Deficiency is the inadequacy of the legal system when no judgment can be given in a situation that needs to be brought before a court. This inadequacy may due to the lack of mies, or to the lack of an instrument for interpreting the law or even to the lack of a court able to settle the problem pursuant to the rule of law, or lastly, to the lack of a way to enforce the judgment.

Although the international regulation of industrial relations exists, it is rather lifeless. Rules and techniques to interpret them are available but no judicial body exists from which an enforceable judgment could be obtained.

At this point, we should go back to the trusted third party that the law needs to incorporate into systems characterised by mobility and uncertainty so as to regulate by inspiring security. The trusted third party may, as we stressed in the second part of this study, be an intermediary to which parties refer because he represents individual and collective interests and forms a link with them. The third party draws his legitimacy from his representativeness, that he speaks for the people whose interests he represents. This system of representation is running out of steam today because of the problems of representativeness, particularly in the case of the trade unions.

Another type of trusted third party is becoming more powerful, that is, one who does not need to be representative, since his legitimacy is based instead on the distance he keeps between himself and the parties and interests involved. The judicial figure closest to this description is the judge, whose legitimacy is based a priori on his impartiality and a posteriori on the reasons he is required to give for the manner in which he exercises his powers. The gagging of the regulator, thereby ending his impartiality, destroys the entire system of regulation. The collapse of Enron shows that this failing is not just the unfortunate prerogative of the developing countries, but is a fundamental and ever-present risk in any system of regulation.

For this reason, the regulating authorities, which are usually independent of governments so that they can retain their impartiality, but which always have to deal with this imperative, are currently giving the courts control over how they exercice their powers. The unique power held by the World Trade Organisation is due, above ail, to its Dispute Settlerfent Body. ,

Of course, it may seem paradoxical to present the WTO as the available model of a trusted third party when there is no more disputed institution! However, we can put this statement in perspective. The WTO is going through what any organisation that primarily processes information goes through: by making its decision-making processes more transparent and, thus, giving them greater democratic legitimacy, it invites challenges. Its previous methods, at the time of GATT, were diplomatie and, thus, secret, and did not give rise to challenge. Moreover, work still needs to be done on procedures, particularly so that enterprises and operators can understand how decisions are made and so that legitimate third parties can express views during the procedures. Thus, the two types of trusted third parties could tend each other greater legitimacy.

The loyers of institution-building could take this as a starting point. It may be that such a structure for settling disputes could be included in the ILO, although its tripartite structure undoubtedly places an obstacle in the way.

One idea could be to give the WTO the power to say something about social regulations, if only because some litigation would be appropriate and measures to protect workers could be'attacked if they take the form of non-tarif barriers to entry. Could there be a rejection of competence? Such a refusai, which is possible when treaties are being renegotiated and which we saw again at Doha, is no longer possible in the context of a dispute. If a dispute arises between two States and the State challenged argues that the barrier it is accused of creating is justified by the working conditions in which the rejected product is produced, the argument is put forward at a hearing and the panel in the Dispute Settlement Body is required to respond to it. It is also the mark of a judicial body that it is obliged to respond, whereas sovereign States can get out of doing so, or industrial bargaining may not corne to any conclusion.

There is Little doubt that WTO law contains social law in the provision that recognises the legality of barriers on products that are the result of forced labour.

This provision, although precise in terras of its scope, is potentially very comprehensive. Its ratio legis is alien to market processes since no such feature is attached to the circulation, purchase and sale and consumption of such a product. Social heterogeneity is, therefore, to be found in the WTO treaties. The conditions under which a good is produced, even though there conditions do not affect the product from the point of view of its safety or its ability to be consumed, are envisaged. Nor is the emphasis placed on unpaid labour, which

would involve unfair competition, but on forced labour. To the extent that in slavery, as this is the first case that tends to be envisaged, labour is both unpaid and forced, it is important that the criterion of forced labour has been highlighted rather than that of unpaid labour.

Reasoning by analogy, if it is said that prison labour is only one example of the prohibition of such labour because it is forced, then child labour could be regulated by the WTO, at least from the point of view of its condemnation on grounds other than moral grounds, as export restrictions may offer major incentives in the domestic markets of the countries in question.

This interregulation would be tantamount, however, to a dispossession of the ILO by the WTO. WTO panels are obliged to give rulings at the end of hearings that have specifically challenged social regulations. This obligation must be made compatible with its Jack of legitimacy to express a globalised social doctrine. More balanced interregulation needs to be devised. The ILO must, therefore, keep its primacy of interpretation and application of social regulations, not only because it has the legitimacy to do so (an important argument in the political construction of globalisation) but also because it has the experience and expertise (a key argument in the technocratic construction of globalisation). The alliance could then be forged by means of the "deciding opinion" procedure that has been proposed, under which the WTO, when faced by a daim based on a social regulation in a commercial dispute, would have to request the ILO's opinion. The WTO panel would be obliged to take up this opinion in its overall reasoning, or put forward reasons explaining why this social perspective should not take precedence.

Lastly, this interregulation is not merely regulatory or institutional. Interregulation also has to do with the compatibility of environments and cultures, if they are not shared. For this purpose, and we shall return here to our starting point, it is already essential not to set the principles of markets against the principles of industrial relations. Both require regulations served by a law held partly in common and whose effectiveness undoubtedly remains to be constructed or consolidated.

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