

Collective rights, deliberation and capabilities

An approach to collective bargaining in the Belgian retail industry

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Although the industrial society is overcome by the so-called “post-industrial” society, collective bargaining still remains the institutional reference for the construction of Social Europe in the 21st century. Policy labels such as “social dialogue » --integrated in the EU official language and Treaty, refer mainly to this paradigm. Nevertheless it is obvious that we now have to tackle the challenge of rethinking the scope and the meaning of collective bargaining. The socialist inspiration which served as a theoretical backdrop for collective bargaining throughout the industrial era has lost its strength of conviction. Economic liberalism however is equally unlikely to offer an alternative intellectual framework to capture the essence of an institution which it regards merely –at best- as an aggregation of individual interests. A new conceptual framework is required to explain what is becoming of this institution in our post-industrial economies.

In order to meet this objective, we propose to cast an “institutionalist” glance at collective bargaining and the attendant collective rights. This very general designation is intended to indicate that we take account, in our socio-economic analysis, of (institutional) norms which cannot be reduced to strategic interests or systemic functions. Social action is infused, made possible and limited by such norms. The question we wish to address is as follows: how can an “institutionalist” theory of collective bargaining be renewed by means of an approach which centres on the question of capabilities? The central intuition which we shall develop is that a capability-based approach to socio-economic development², akin to that of Amartya Sen, forces us to reconsider seriously the role of deliberation in a just society. We more than ever need a theory of *socio-economic deliberation*, both empirical and normative in scope, which is sadly lacking in mainstream approaches to socio-economic development nowadays. We shall set out this intuition in three stages. Firstly we shall attempt to demonstrate the conceptual linkages between collective

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² For a presentation of the outlines of such a framework, see the introduction of this volume by Salais and Villeneuve.

rights, capabilities and deliberation. Secondly we shall construct the concept of “bargaining conventions”, the initial element in a theory of social deliberation. Taking a specific industry (retailing in Belgium) as an example, we shall show how useful this concept is in identifying changes and tensions in specific collective bargaining mechanisms. **Finally**, we shall systematically link these bargaining conventions with *collective, cognitive and political capabilities*. Thus the concept of “capability” becomes an analytical tool **for describing** and **assessing**³ socio-political reality. We shall **try** to outline the importance of these capabilities and their recent historical transformations **in order to envision** the future of collective bargaining.

Section 1. Collective rights and capabilities

In what way does a capability-based approach lead us to reconsider the question of collective rights in our democratic societies? In this first section we should like **to follow the path opened by** Amartya Sen **in order** to show how the notions of collective rights and of capabilities sustain and complement one another, **and go past** a purely deontological theory of freedom and a purely utilitarian theory of capacities (“human capital”).

1. Capability development necessitates collective deliberation and collective rights

A capability-based approach has far-reaching consequences for the theory of justice and for the compilation of an informational basis of judgments. Let us stress just one of these consequences here: the crucial importance of *contextualised deliberation*. Indeed, the development of individual capabilities requires an extension of the capability for effective decision-making. In the absence of this link between capability and free deliberation, **one** would be **mistaking** capability theory **for** human capital theory. Fashionable “human capital” theories are interested in capacities as productivity factors subject to adjustment constraints. By contrast, a capability theory such as the one we are defending aims to highlight the importance of deliberation as a factor of freedom.

In his writings, Amartya Sen often gives a purely individual version of this capability for deliberation. But such a limitation is by no means necessary. Freedom of choice is in fact not just a matter of personal virtues (caution, desire, reflexiveness...) and is not limited to an absence of censure. Over and above these conditions, it **assumes** that, for individuals, the real world opens

³ We consider, as Sen suggests, the “description” as a “choice”. Our vocabulary is evaluative. On this epistemological point, cfr. the contribution of Robert Salais in this volume.

out onto a variety of *effectively possible* worlds. The juxtaposition of these alternatives obviously presupposes a collective deliberation on ends and means, which goes beyond the solitary, internalised playing-off by individual consumers (or producers) of their own preferences in view of the state of the world. This is why Sen attaches great importance to political rights. “Political and civil rights, especially those related to the guaranteeing of open discussion, debate, criticism, and dissent, are central to the processes of generating informed and reflected choices” (1999: 153). The argument in favour of democracy is not merely instrumental here, as when it is said that political rights allow for a faster and safer circulation of relevant information among economic agents. On the one hand, the possibility of real choices in the *objective* social world presupposes co-ordination among individuals involving public deliberation. On the other, from the point of view of capability theory, individual *subjective* preferences never constitute raw data, as they do for utilitarians, but are likely to be the object of deliberation and subject to revision⁴.

Whereas, in the political sphere, liberal political rights constitute rights to collective deliberation, in the socio-economic field, collective social rights are the ones which take on this role. Many social rights are of course strictly individual: the rights to health or rest, against unfair dismissal etc. In their contribution to this volume, Simon Deakin, Jude Brown and Frank Wilkinson show how we can develop a capability-based approach of such individual social rights. But the rights which create a space for *collective deliberation on the common world* can rightly be described as “collective rights”. Political rights to deliberation are not on the same level as liberal rights (ownership, privacy etc.); collective rights are not similar to individual social rights. One could say that collective social rights are to second-generation rights as political rights were to those of the first generation: their reflexive and procedural counterpart. Just as the rights of political expression, association and representation, the rights to strike, trade union representation and collective bargaining are rights which determine the democratic means of contextualising the implementation of other economic and social rights, including themselves. They open up a public space of citizenship in business, hinting at a realistic response to the age-old challenge of economic democracy.

In a remarkable article written from the perspective of capability theory, James Bohman (1997) explores the conditions for deliberative equality. He suggests that deliberative capability depends on the “social capacity to initiate public deliberation about their concerns”. This capability of

⁴ Sen’s economic theory allows not only for a classification of preferences but also for meta-classifications, thereby opening up the reflexiveness of the economic agent to moral values, be they individual or collective. For a commentary on this point, see (De Munck, 1999: chap. 1).

initiative would seem to rely on a number of conditions: for instance, one must be able to speak without fear, especially the fear of being censured or of **sparking off** a conflict leading to the possible loss of an advantageous (even slightly advantageous) position. Another condition is undoubtedly the capability to represent a particular issue *symbolically*. This presupposes educational resources and cultural socialisation. Even once this symbolisation capability has been acquired, another condition is the capability to formulate arguments in **an** appropriate language, **considering** the structure, history and intelligibility of **the** public debate. **And as** public deliberation does not take place overnight but implies **an ongoing** process, there is also a need for the capability to be present throughout an entire discussion, by means of associations likely to collect, process and react to new information. And inasmuch as collective *deliberation* is closely connected with collective *decision-making* structures, the effect of the latter on the former must be assessed: an election by universal suffrage does not lead to the same type of deliberation as collective bargaining, even if the same subject is under discussion.

James Bohman **understandably** came up with the concept of *political poverty* to refer to the situation of groups **that do not cross** the threshold of public deliberation --even though they have the right to legally protected means of expression, **and access** to institutional mechanisms, and though parties, trade unions and associations claim to speak on their behalf. It is not just a matter of **information** asymmetry **such as** discussed by economists: "When citizens are so unequal in capacities to acquire and use information, exclusion is a direct result of the resultant inadequacies of functioning. However, information is best understood as a resource for public deliberation. It is the capability to make use of information and to convert it into convincing public reasons, and not merely to have it, that determines deliberative success" (Bohman, 1997 : 342).

Unless deliberation is **dealt with** as a specific act of social co-operation, structured by institutions and dependent on capabilities, there is a risk of falling back on an overly formalistic conception of public space or of the contract. This is without doubt the potential flaw in the theory of Jürgen Habermas, as well as in the different versions of classical liberalism. Democratic public space is a cooperative activity with its own organization and division of labour.

This type of problem must be addressed, in our opinion, when reflecting on collective rights. Evaluating a right as a capability does not only mean measuring its legal scope or asking what standard resources should be distributed to everyone **in order for it to become** accessible to all; **it** also means examining its *effective* use, in a given context, in the light of its possible uses. The

question worth raising from this perspective is: in today's socio-economic context, does or does not the effective institutionalisation of collective rights foster equality in deliberation? Or does it **rather** promote the development of (at least relative) political poverty? An answer to these questions cannot be either purely normative or purely descriptive; nor can it be general and out of context. A critical diagnosis of collective bargaining as a multi-layered social and historical institution is therefore required.

2. Collective rights necessitate bargaining institutions

Collective rights to deliberation can only be exercised through institutions. Collective bargaining institutions form a complex edifice which both *allows for* and *limits* the use of collective rights. These institutions shape the possible outcomes of the socio-economic deliberation. It is here that the normative thinking of philosophers and economists has need of the insights of sociological investigation. How can collective bargaining as an institution be regarded in terms of institutionalising capabilities?

We shall outline below an analytical framework which, in our opinion, lends itself to an interpretation of collective bargaining mechanisms. Our thinking is predicated on a concept put forward by Niklas Luhmann (1987): the "**thematization**" threshold. Political or social deliberation is a process of explicit thematization of the norms of an interaction. For the players directly involved, however, this thematization process is without doubt a risky process. As Luhmann points out, any offer of thematization encounters the thorny problem of the "negation potential" which it risks arousing, interrupting the normal course of interaction. In fact it breaks the **routinized** nature of the social exchange, thereby opening up a zone of uncertainty. When, confronted with an offer of thematization of a norm, the partner rejects the proposal, the proponent may or may not maintain his proposal. **When** he sticks to his guns, a conflict erupts. Anticipating this risk and the means of tackling it determines a thematization threshold. Democracy is the system most suited to lowering this threshold as far as possible, in all spheres of social life.

The level of this threshold undeniably depends on the nature of the norms at stake. It may be very high: it is for example very difficult to thematize agreements as fundamental as those studied by Garfinkel, since they are constituents of communication itself. But it may equally be very low: such is the case for points of detail which do not threaten the fundamental harmony **of an**

interaction (e.g. a meeting arrangement between two people in daily life). But this level depends above all on the propensity for disagreement. Propensity for deliberation is linked to propensity for conflict. This in turn is linked to the existence of institutional mechanisms for discursive conflict resolution which are *accessible* to the parties to a disagreement. The less the interlocutors fear conflict and its consequences, the greater the potential space for deliberation. It is therefore essential to have tools to analyse institutions of collective deliberation so as to gauge the degree to which capabilities have developed in a given economic world, such as that of Europe in the year 2000.

In order to analyse this mechanism for resolving potential conflicts, we propose to distinguish between three notions: those of *bargaining conventions*; *cognitive learning capability*; and *political control capability*. **Thus analysed**, these dimensions should enable us to **study** the actual social configurations of real deliberation mechanisms.

We shall **support** our theoretical considerations **with** the lessons learnt from a very specific case of institutionalisation of collective rights: collective bargaining in the Belgian retail industry. This industry is particularly representative of the crisis and transformations of the typical “Fordist” bargaining process currently being experienced by the Belgian and other European economies. Indeed collective bargaining is in crisis in many respects whilst still remaining the standard means of determining wages and working conditions. We conducted some research into the retail industry: we held interviews, observed joint committee negotiations in the run-up to the 1999-2000 collective agreement, and brought together groups of trade union representatives belonging to the two main unions⁵ in the industry. The quotations in italics are excerpts from statements made to us during fieldwork carried out between March 1998 and December 1999.

Section 2. Bargaining Conventions in crisis

Collective bargaining is first and foremost a negotiation **over** *rules*, as was strongly emphasised by Flanders in a famous article (Flanders, 1968). Although **related** to these rules (which, once the process is complete, will become the rules of the *collective labour agreement*), the negotiations themselves are not narrowly circumscribed by explicit rules. Rather, they coalesce around

⁵ These are the *Centrale nationale des employés* (CNE) on the Christian side, and SETCA on the socialist side.

conventions (understood here not in a legal sense but in the meaning **given by the** sociologists and economists who advocate the so-called Economics of conventions⁶ programme).

1. *Bargaining conventions*

To be clear about terminology, then, we shall distinguish in this article between *conventions* and *rules*. Where this distinction proves unnecessary, we shall use the more general term **of** “norms”. A rule is by definition explicit, whether it be formulated orally or written down. The texts of bargaining agreements, signed by the parties to negotiations and perhaps sanctioned by the State, are therefore sets of rules. As Benedicte Reynaud (1992:48) puts it, a rule quite simply takes the form of a prescription: “if X, then Y”. But, like a sentence or succession of sentences, a rule is never complete. It has to be interpreted in order to be understood in context. Propositions are not fully complete semantically, and implicit knowledge - in principle, it can never be entirely explicit - must be brought to bear on them. When this knowledge is shared between the partners in dialogue, and when they (implicitly) know that it is shared, we are dealing with *conventional* knowledge. This conventional knowledge allows for co-ordination among players in various aspects of social life; it constitutes a set of shared references, enabling what Parsons called the “double contingency” of interaction to be removed.

Therefore the implicit nature of a convention distinguishes it from a rule. This does not mean that it is totally ineffable: it can be partially thematised in the form of rules. All **this** means is that **a convention** cannot be *totally* thematised. Like every other convention, a bargaining convention has two intimately connected aspects, which we shall analyse separately for the sake of clarity.

Firstly, a bargaining convention determines the *semantic framework* for negotiations. We shall refer to this semantic framework as the *field of the negotiable*. Psychologically, this framework enables the protagonists to **focus on** a common horizon. Logically, it offers a series of categories establishing a discussion *topic upon* which basic *problems* can be constructed. Materially, this framework can be embodied by objects or equally well by the signs exchanged, the lay-out of the location, etc.

Secondly, bargaining agreements also determine a system of normative expectations defining a *pragmatic framework* of interaction. Whereas the semantic aspect of the agreement determines *what* may be negotiated, its pragmatic aspect determines *where* the negotiations take place, *who* is a

⁶ See particularly (Batifouflier, 2001; Salais, Chatel and Rivaud-Danset, 1998; Salais and Storper, 1997)

“valid interlocutor”, *when* and *how* they take place. Seen from this angle, bargaining conventions establish expectations of expectations in the form of normative⁷ benchmarks.

2. Changes in the “field of the negotiable”: semantic aspects

By **focusing on** bargaining conventions, we can identify one of the key changes in collective bargaining over the past twenty years. Let us refer for this purpose to the retail industry in Belgium we chose to investigate. Bargaining agreements suffered severe turmoil during the 1980s and 1990s. In a nutshell, one fundamental aspect of the Fordist collective agreement was gradually eroded: negotiability **of the wages**. The effect of the pay restraint policy introduced in Belgium as early as 1976 by government recommendation was to restrict wage rises to 3% when the multi-industry collective agreement was signed in 1978, falling to 1% in 1981. A “competitiveness norm” was imposed in 1983 and extended in the following years; it has since been institutionalised in the form of an “marge salariale disponible”, a ceiling placed **over** multi-industry bargaining which is calculated with reference to trends in wage costs in three neighbouring countries (Arcq, 1991; Lamas, 1997).

As a result of this fundamental change in policy, employment took centre-stage. In this new scenario the trade unions reformulated their claims in terms of number of jobs, social compensation to **mass lay-offs** and reduction in working time. A *new convention* has been established - not without some tension - setting out the interests at stake in terms of social security contributions on the **employers’** side and employment levels on the **unions’** side. **Wage issues**, once a key concern, have since become somewhat secondary, even if **everything suggests** that they have not disappeared entirely.

In this new « field of the negotiable » it still remains uneasy to raise questions relating to the work organization. Regarding this aspect the new bargaining convention doesn’t depart from the classical Fordist convention. Indeed many representatives complain that they are increasingly coming up against managerial stakes not taken into account by the trade union apparatus. Thus the limitation of the field of the negotiable via new bargaining convention seems to have somewhat frozen the collective learning process.

⁷ “Normative” is to be understood here as meaning both “normal, routine, regular” and “mandatory, required, demanded”.

For instance, certain **representatives** raise a major problem: the introduction of purely financial norms relating to work organisation (WO). *WO norms seem to respond to only one requirement: maximum economic efficiency. They are in fact budgetary norms, explains a SETCA representative, because the unit of measurement isn't working time but an amount of money. The question is always "what does it cost?" No-one says "such-and-such a task takes 10 hours"; they say "we'll spend 1000 BEF on it". That's why when someone is off sick he can't be replaced, because the budgetary norms and not the WO norms - in the true sense of the term - have been fulfilled: the person is in fact being paid. So his colleagues have to do his work as well as their own.* The working environment is faced with an "aberration", in that this apportionment and quantification of labour misrepresent the problems faced at work. They lead to *absenteeism, "the poor person's strike weapon", and aggressiveness, because employees are expected to serve customers, stock shelves and carry out checks all at the same time. They should give us an extra pair of hands!* It would seem however that union representatives regard such matters as **being** not negotiable, **and** subject to a productivist logic which nothing can counteract.

And yet certain **practical** initiatives have been taken, which could perhaps sow the seeds of new bargaining practices, thereby reconfiguring bargaining conventions. A cautious experiment - very localised but very significant - has been under way in a Belgian hypermarket, Bigg's Continent (situated in Waterloo, near Brussels). With support from workplace union representatives, the work of check-out staff is being reorganised **according to the so-called** principle of "check-out islands".

This is a new means of setting the working hours of the store's various check-out assistants. Each assistant is assigned by management to a group (the "island") responsible for certain check-outs. Working hours are negotiated within the island. Considerable attention is paid to the requirement that each island consist of staff with different profiles (mothers with young children, single women, students, women over 50, etc.), all of whom have different time concerns (some prefer to work early in the morning, others at the end of the day, weekends or no weekends, Wednesdays, etc.). The check-out assistants themselves are ultimately responsible for negotiating their hours *among themselves*, **under** two constraints: they must comply with their contractual number of hours and with the opening hours laid down by management.

The check-out island principle was implemented - at store level - by negotiation between the employer and workplace union representatives. It undeniably constitutes a new topic of collective bargaining, thereby extending the field of the negotiable. It is worth pointing out that such a

“proceduralisation” of bargaining about working hours could have quite a different meaning if it were incorporated not into an institutional collective bargaining mechanism, but into a flexible management system ultimately subject to unilateral control by the employer.

2. *Changes in bargaining conventions: pragmatic aspects*

If we are to move towards a theory of institutionalised bargaining, it is worth pointing out that the *place* where negotiations are held is as crucial to the bargaining outcome as their *content*. Conventions laying down the place of collective bargaining have been particularly explicit in Belgium. Economic life in this country is dominated by industry-wide “joint committees” consisting of employers’ associations and trade unions (*commissions paritaires*, abbreviated to CP), instituted by the 1968 Act on the structure of collective bargaining in Belgium. This mechanism has resulted in the creation of five separate joint committees for the retail trade⁸.

Such fragmentation opens the door to a general lowering of pay standards by means of a trade-off between joint committees. Two examples will suffice. When the GB-Inno-BM group embarked on its huge restructuring programme in 1991, its restaurants immediately formed themselves into an independent subsidiary and went over to the *Horeca* (hotel, restaurant and catering) industry. The entire workforce of the GB-Inno-BM group had until then fallen under the “large stores” joint committee. Given that *Horeca* rates of pay were 30% lower than those for large stores, one can understand the strategy of recategorising the company’s restaurant service. Our second example concerns franchisees, whose labour costs are significantly lower than those of traditional supermarkets since they elude CP 312, the joint committee for large stores (belonging instead to CP 202 c or 201). This situation gives the employers the upper hand.

The segmentation of contract conditions resulting from this institutional medley of bargaining arrangements has no legitimacy in the view of trade union representatives. As they see it, all employees in the industry do roughly the same type of work, so that their experience of the

⁸ These five joint committees are: CP 312 for “large stores” (at least 2 ranges of goods, food and/or non-food, more than 50 workers) concerns companies such as GB (bought by Carrefour in 2000), Cora, Inno, Hema and Bigg’s; CP 311 for large retail sales outlets (non-food, one specialisation, more than 50 workers) concerns Casa, Ikea, Blokker, Brantano, Brico, Disport, Paris XL, etc.; CP 202 a & b for food retailing employees (multiple branches, more than 50 workers or a business having at least three shops with the same name, belonging to the same proprietor and employing more than 25 workers) concerns Delhaize Le Lion, Colruyt, Aldi, Match, Barras, Mestdagh, Lidl, etc.; CP 202 c for food retailing employees (companies employing between 20 and 50 workers, moving from 37.5 to 36.5 hours per week on 1.5.2001) concerns Unic, Nopri, Intermarché, AD Delhaize, GB Partner and other franchises; CP 201 for the independent retail trade groups together, in the food sector, small independents and the same names as those listed for CP 202 c where these shops/businesses employ fewer than 20 workers, as well as non-food retail businesses with fewer than 50 workers.

working world is the same; this fragmentation is therefore improper and serves only to exacerbate what is already **an** extremely fierce competition among shops, leading in the long **run** to downward pressure on working conditions and wages. *Equal pay for equal work*, say the workplace representatives interviewed about this matter.

Furthermore, hiving off integrated shops into the franchised sector has major implications in terms of control and learning capabilities, since that sector does not recognise the right to workplace trade union representation. Franchises now constitute the *black hole* of collective bargaining in the retail industry (an obvious case of “political poverty”): they are absent from the bargaining scene, leaving trade union organisations without a foothold⁹. It is therefore very difficult to find out what is happening in this sector of employment, which is why the union movement has not as yet taken up its cause.

It would nevertheless appear extraordinarily difficult for even the trade unions to challenge such a cornerstone of the collective bargaining edifice as the convention setting out the CP (joint committee) system. A conflict over the bargaining *framework* is more risky than a conflict over bargaining *content*. Whereas a few representatives raise the idea of a single joint committee for the whole industry, it has never been the subject of an official claim, let alone of a campaign. Instead, the union side opted in 1999 for the strategy of putting a *single “cahier de revendications”* (list of claims) to all five joint committees in the industry, as a strategic means of overcoming the segmentation of bargaining contexts. This strategy did not however succeed in harmonising conditions. On the contrary, when reading the 1999 final bargaining agreement, one is struck by the fact that as far as weekly working hours are concerned the gap has widened between all the CPs on the one hand and, on the other, a marginal group of small retailers (CP 201 companies with fewer than 20 staff); these, in actual fact, are franchises.

Section 3. Learning and control capabilities

The above analysis of bargaining conventions, illustrated by means of our selected example of the Belgian retail industry, does not give a complete picture of the institutional use made of collective rights. It needs to be complemented by an examination of the associated *collective capabilities*. Without claiming to **comprehensiveness**, we shall distinguish below between cognitive capabilities and political capabilities.

⁹ Following the first major conflict involving franchises in this sector, a regional dialogue committee for franchises was created in Wallonia in 1996. But this committee has remained a consultative body.

1. Cognitive and political capabilities

Although conventions are relatively arbitrary (in the sense that they could be different), they are not unmotivated: they are in fact based on *shared knowledge* which is likely to justify them, demarcate their scope and ensure their implementation. This shared knowledge is of course **not** given once and for all, constantly available to the players, **or** devoid of historicity. That is why the protagonists in collective bargaining must be endowed with collective *learning capabilities*. Inasmuch as these capabilities cannot be reduced to individual capabilities, we can speak of a collective cognitive mechanism¹⁰.

Whereas a norm **refers** to background knowledge, it also depends on the existence of *control capabilities*. The process of establishing the norm and the process of applying it are both distinct and interconnected. On the one hand, the establishment of rules within the negotiating body *anticipates*, more or less realistically, the possibility of their application being effectively controlled within companies. On the other, the possibility of controlling production processes (in particular through strike action) **weighs** very heavily on the bargaining processes themselves. That is why any theory of collective bargaining must extend to an analysis of control capabilities.

In a collective bargaining process a **key**-question is to know which group will be *mobilised* as a back-up in case of conflict. The existence of such back-up solidarity largely determines the thematization threshold. It acts as a “filter” in any discussions, since solitary risk-taking calls for a certain amount of courage. As Luhmann (1987:243) reminds us, in primitive segmental societies this role is almost automatically played (for certain types of conflict) by family and clan solidarity, lending a degree of predictability to the future. The same no longer applies in modern democratic societies, however, where solidarity is precarious and has to be constantly rebuilt as a bulwark against individualisation. The indisputable success of industrial trade unionism was that, after the massive breakdown in corporatist allegiances, it managed to rebuild solidarity at a **level** transcending **the firm** in such a way that mobilisation could **reasonably be relied upon**. The *legitimate reference authority* which will intervene to settle a conflict also determines the thematization threshold. One particular feature of collective bargaining is that it takes the form of **a third decision-making authority which** is *always dual*, unlike other mechanisms which institute a single, remote, independent authority such as that of the judge at law or the arbiter appointed jointly by

¹⁰ This notion of “dispositif cognitif collectif” is borrowed from Olivier Favereau (1989). The point is developed further in (De Munck, 1999: chap. IV).

the parties in the case of arbitration. Generally speaking, the *technical and institutional means* of control are absolutely crucial¹¹. That is of course why an analysis of collective bargaining calls for a theory on *strikes* and *lock-outs*, factors overlooked by game theory when applied to collective bargaining (Favereau, 1996). Other control processes are no less important, however, such as the daily presence of trade union representatives in the workplace, the works inspectorate, alliances within the internal company hierarchy, etc.

2. Redistribution of capabilities

The Fordist bargaining convention operated on the basis of a specific distribution of cognitive and control capabilities, but is today in a state of turmoil owing to the introduction of new individualised, flexible and non-bureaucratic management techniques. We shall give two examples, one relating to managerial control capabilities and the other to trade union control capabilities.

On the management side, this transformation is symbolised **in supermarkets** by the figure of the *Area Manager*. The duties of this addition to the usual staffing hierarchy of integrated stores are direct supervision of all the stores in a given region and involvement in the life of these stores on behalf of the commercial group owning them, even though each store continues to have its own manager.

This way of working is deemed by the workforce to be *pernicious*, explains a CNE union representative. The Area Manager *works as an individual and speaks to each worker separately*, his aim being to find solutions to *problems he can't deal with at regional or national level*. This individualization of bargaining activity is deemed by the trade union apparatus to have a disastrous effect on the working environment, because the Area Manager acts outside of the habitual times and places of company bargaining; he individualises labour relations and the solutions to problems by negotiating *as and when they arise*, which is felt to be a real threat to cohesion in the workforce. In terms of both learning capabilities and control capabilities, collective bargaining channels are *short-circuited* by such practices, which are far more destabilising than the traditional practices of the authoritarian "immediate boss".

¹¹ For instance, in the conflict on the collective dismissal of Renault's workers (Vilvorde, 1997, Belgium) analysed by Didry in this volume, the mobilization of workers and of the judicial system were important elements of the bargaining process.

The trade union reaction to this destabilisation of control reveals their failure to grasp what is really at stake, rather than providing an authentic response. Protests against the practices of Area Managers in various Belgian chains have until now amounted to no more than demands for the **dismissal** of the persons concerned, but have never targeted the organisational model behind the use of this managerial technique. Responding to the individualisation of management practices by personalising the problem will certainly not enable employees to win back control and learning capabilities consonant with the transformations under way.

A transformation of **the structures favouring the development of capabilities** is taking place *on the trade union side too*. Their knowledge and capacity to act **used to be** provided from “above” (**so to speak**), from the trade union apparatus. Action is therefore dictated by a political mandate; its cognitive resources (training, meetings, research units, etc.) and political resources (support, funding, communication channels, etc.) are provided by the trade union apparatus. The union agenda is prioritised according to the industry and the national issues, mostly influenced by the crisis of **unemployment** and not by the new challenges arising from the organizational transformations.

Yet the unions must, on the other hand, get to grips with unvoiced difficulties caused by flexible working. Many of the workplace representatives we interviewed spoke of a very real change in the “job”: far from seeing themselves as activists, they now regard themselves as social workers, having to solve a wide range of individual problems in the workplace. They have to handle problems concerning insecure contracts, case-by-case negotiations, time management, etc.

In such a situation, representatives rely very heavily on *local* cognitive resources accumulated through their own experience or that of their predecessors within the company (more than *central* cognitive resources stored by political leaders); and the balance of power depends largely on their personality or even charisma. *A lot of representatives don't command respect on the field*, said a SETCA Union representative. *So the manager doesn't listen to them*. He added: *In branches where there are representatives who won't take any nonsense, there's no problem putting together a list for the Union elections, because everyone wants to do as the rep does - it's highly regarded. Elsewhere, where the reps are weak, there's no one to fill the lists. It's all to do with the rep's personality.*

One strategy of local representatives may consist in a **kind** of company patriotism. In the absence of favourable trade union relations at industry level, representatives place their trust in co-

operation with their managers. However, the obvious limitation of this strategy is that it depoliticises the **role of** the trade **union**, turning it into “in-house unionism”, which is rejected by the trade unions’ **official** policy.

Another strategy may be for representatives to put themselves forward not just as a capacity for conflict, but at the same time as the “third party” needed to resolve the conflict. Here the workplace representative (or, in the following example, the trade-union officer called to the rescue) sets **himself** up as an arbiter or mediator. A CNE full-timer from the Charleroi region recounted the following incident, which occurred in a franchise: *In a store in Chimay, the boss insulted a shop assistant. She answered back and the boss decided to sack her. The workers made it perfectly plain that if the boss went ahead with his decision there could be trouble. Because there were union reps on site I was told what was going on. I turned up in the morning and met with management in the early afternoon. We tried to reason with the boss and tell him that he surely didn't mean to dismiss someone who'd been working for him for four years and whose work had been totally satisfactory, just over a trivial personal argument. At the end of the day they both apologised. Management wasn't very happy about this at first, but it accepts this practice of its own free will, even though it does occasionally provoke slight increases in expenditure or headaches of this kind. In my view it's the most basic form of grass-roots trade unionism, nothing to do with putting forward claims.*

Are any truly innovative practices **rising in front of** such contradictions? Perhaps the “flying” - or “roving” - union representative might form the basis of an approach aimed at reconstituting learning and control capabilities for negotiated regulation. Such representation is a new and original form of trade union action: representatives are no longer attached to a single company but are responsible for a site, a region or a group of shops including integrated stores where union representation is recognised and others - franchises - where they carve out a role for themselves even without legal protection. These “mobile reps” constitute an attempt to combine in one person the capacity for action belonging both to the union apparatus and to the local area to which they are delegated. Although the only legitimacy they recognise is that conferred **upon** them by their grass-roots, these representatives are highly professional, full-time employees of the union staff. At the same time, the “flying reps” have a collective memory of their company's industrial relations. They are familiar with all of its workings and are permanent partners in ongoing negotiations with management.

Concluding remarks

We have attempted **in this paper** to outline the **main** thrust of a possible theory of collective deliberation centring on the notion of capabilities. This theoretical approach illustrates more effectively than others that the capabilities of individuals and groups are central to the reconfiguration of regulatory practices in post-industrial democratic societies. It structures the contextualised use of collective rights into both descriptive and normative categories, thereby identifying some of the very tangible problems to be addressed by collective bargaining in the years ahead: redefining bargaining conventions to tackle problems caused by flexible working; developing organisational cognitive capabilities which are unprecedented in the trade union movement; devising new, egalitarian systems of reference in the context of a coherent conception of justice; and developing new control capabilities which are very localised, flexible and individualised, tailored to company downsizing and to new management techniques. Without this attention to the practical and qualitative problems of collective bargaining as an institution, the European social dialogue may well remain nothing **more** than a rhetorical formality, ineffectively papering over the cracks in what passes for a European social model.

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