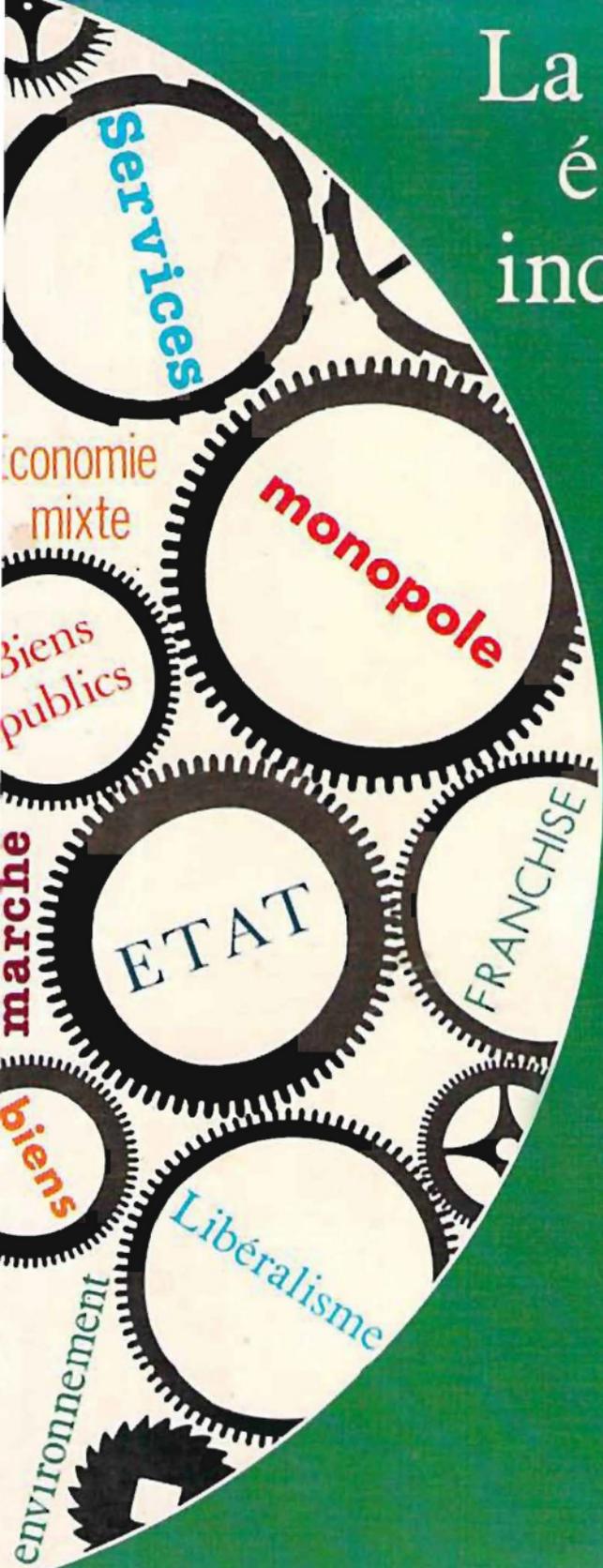


# La nouvelle économie industrielle

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**The industrial “new  
economy”**

HATCHET



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## Introduction

Who n / A Never heard this speech?" Obviously that I am a convinced liberal! I have always been an ardent fighter for the cause of free enterprise... The economy of walk? GOOD on that I am For; in so much as a business manager I know what it is! *But... But* it's normal that he y have of the rules of game. THE people born can't TO DO anything What. He must GOOD that he there is A little state. For "moralize » THE walk... To prevent THE "abuse"... "Protect" the weakest... Avoid competition ence " savage "... Encourage there research... Promote see investment... Regulate economic cycles... Defend the environment... And Then he y has the essential "public services": electricity, telephone, telecoms, transport... We can "privatize" them THE functioning, but Who can deny that he This is an area where we cannot do without "regulation" public?... He y has Also agriculture: Who would consider contesting that the protection that the State grants to our farmers is not not In OUR "interest collective?"

It is This *But...* Who shape THE subject of the pages that follow. This book takes up the difficult cases of liberalism; all these borderline problems where even those who believe in the values of free enterprise and the market economy agree to recognize the *prima facie need* for intervention of State. He analyses THE limitations, defects, And

the inconsistencies of the scientific arguments used to justify the inevitability and necessity of the intervention of the powers public.

All of the chapters are a bit disparate. Brought together here are works, articles and notes written over the last four years, in very diverse circumstances and for very diverse purposes. Some have already been published. Others have retained a confidential circulation. But behind the multiplicity of subjects lies a basic unity. This is to illustrate how the most recent developments in economic science calls into question the mostly of the concepts founders of contemporary public economy .

### « *Tea New Olympic Games* »

The approach is the same as that adopted in previous works, published in the same collection (*Demain le capitalisme*, 1978; *Demain le libéralisme*, 1980; *Why property*, 1985). The objective is to familiarize the French public, firstly the university public, but also - why not? - all those who pride themselves on being "informed", with work remaining little known In our country, has with the exception of a small nucleus of teachers liberals.

An important event is indeed occurring in the small world of academic thought. Through the handling of a certain number of new concepts (as THE Notions of "passenger clandestine", "specific investment", "quasi-rent"...), we are witnessing has the emergence analyzes microeconomic of which there particularity East to offer Finally an explanation rational to a range of industrial and commercial behaviors for which economic theory has until now been unable to account satisfactorily. making (except has imagine there trace of a behavior "doubtful" of the companies).

This new discipline has Already A name. THE eco-

mists from Los Angeles (who play a leading role: Armen Alchian, Harold Demsetz, Ben Klein, Bruce John son...) have already named it *The New JO* - 1. and O. speaking for *Industrial Organization*. Through this work, it seems that a major step is currently being taken in the advancement of a field of research that until now remained barely cleared. : that of a general theory of production and exchange capable of taking into account the variety of forms of property and contracts that we encounter directly in the real industrial world. For the first time, economists' theories appear on industry, its structures, its behavior, competition... which converge with the internal intuition that men of industry have. This is, in the world of economic theory, a sufficiently important novelty For be putting in value.

*THE TRUE role of the state: create of the " annuities »*

This book is made up of several blocks. The first concerns what I called: " The deceptions of the economy mixed."

Chapter I takes up elements taken from a report written in 1986 and relating to " industrial policy", to which were added reflections presented during a conference organized by Alain Madelin and the Republican Party on the "mixed economy", in April 1989. I remind you of this that the same problem of knowledge and knowledge which makes total planning by a central body impossible, also makes vain any hope of improving the functioning of the economy by me methods partial of " guidance » of walk. THE terms of "mixed economy ", of " policy industrial » are of the " anticoncepts", notions which don't want ultimately say nothing since they express the idea of an objective (to do better that THE walk) of which we demonstrates that it is by challenge-

unachievable nition, beyond the reach of human beings who do not take not For of the gods.

HAS What do they serve SO? Moon of the ideas strong of there

“new industrial economy” is that regulations public, far from being put in place to serve THE interests of the consumers And of the users, respond to a political market logic and are a form of protectionism, of artificial restriction on production of which there purpose East of TO DO appear of the “scarcity rents” which are then shared between the companies thus protected against the entry of new, more dynamic competitors, and the supervisory authorities responsible for implementing place then administer the application of regulations. It is this hypothesis which is developed in the next three chapters dedicated to

« myths And realities of the services public ». At bottom nothing has Really exchange Since the Elder Diet. Alone the method of granting “rents”, their nature, and their beneficiaries have evolved. But the State remains fundamentally the one which has the power to create and monetize distribution. of annuities.

### *How reintroduce there property?*

Chapter II recalls that the justification for the monopoly of public services and numerous regulations is linked At postulate that he exist of the “ monopolies natural”. It is shown that the theory is based on the description of a world exactly the opposite of reality, and that we absolutely cannot draw from it the principles of economic policy which justify the economy mixed. By taking up the history of the great public monopolies (electricity, telephone), chapter III suggests that its true role is not to offer us the means to fight against gas pillage (Who do not exist not), but of legitimize to in the eyes of public opinion the permanence of certain professional pensions and corporate of which existence is obscured speak reasoning usual. He do clearly appear THE

unnatural character of public monopolies, and the essential role of the factors institutional in their birth of this that we have instead tendency has considered today as going of itself. We born are not far from thinking that the traditional theory of “natural monopoly” is not one alibi, a kind of “theory cover” offered by the economists to pressure groups whose acquired advantages were thus found, at one point of their history, politically protected.

THE chapter IV examines more specifically the case of the monopoly of radio waves. He demonstrates that this is not because monopoly is, in the field of telecommunications, a more or less universal reality, that it is necessarily, in this industry, the only conceivable form of organization. In reality, there was nothing really to prevent telecommunications from developing according to market procedures. If this was not the case, it is because political and institutional factors, and not of a technical nature (as is usually believed), blocked the emergence of the property rules which would have been necessary. This chapter thus gives a concrete example of the way in which private property rights could be recreated in a domain. Or All THE world believes that impossible.

*THE “goods public”, That does not exist not...*

A consequence of this demonstration is to call into question the very concept of “collective goods”, dear to our colleagues economists. A “collective good” is a good which we consider cannot be produced by private markets due to indivisibilities which mean that there is no way to distinguish between users and non-users. The presence of such assets is effectively the consequence of the absence of exclusive and freely transferable property rights. However, the whole question is whether this absence is the consequence natural characteristics or techniques

to which he is not not possible to remedy, or if it is not All simply THE product of a impossibility legal And contingent. When he in East Thus (as this is the case with waves radio), we find in front A system of thought of which there structure internal East " tautological " : This that we present as A " GOOD audience", At economic sense of term, don't East one that because the legislator has decided A day that he in would be from now on Thus. In using The example of a network local of cable TV, We let's show that this affirmation can be generalized to practically all the " public goods" traditionally listed by the specialists of the public economy, even THE case apparently THE more difficult. OUR conclusion East that he no has in do of " GOOD public" that there or some the origin, the context legislative limit in a way Or of a other there freedom to contract. There restoration cause of there notion theoretical of " GOOD collective" is without doubt mon of the aspects THE more wrong known of the developements recent of there science economic.

*Haro on THE right of there competition!*

THE second block concerns the theory And the practice of politics of competition. He resumes two texts (chapters V and VI) which were published by the care of the Institute There Boetie in 1987, And updates of the developments that featured already partly in *Tomorrow THE liberalism*. THE first of these two chapters attacks At " myth of concentration growing". Drawing on data American Who carry on close of a century, he watch No only that THE level of industrial concentration in the United States is rather lower than it was At beginning of the century, but also that the concept of a concentration constantly growing East logically inconceivable. The key idea East that, in economy of free business, there growth external East A process

Who possesses his clean boundaries And born can continue indefinitely due to the progressive deterioration of the system of information that it introduces into the management of the company. He as a result it's not that in mixed economy regimes already strongly socialized that very large companies are likely to represent a real danger (due to the capacity of the State to block the mechanisms self-limiters of free walk).

Chapter VI goes further. He recalls that the contemporary way of approaching competition problems only really gained currency relatively recently, in the 1950s and 1960s, after a series of statistical studies seemed to support the validity of the empirical hypotheses which resulted from it. **However, for around ten years these studies have been subjected to a series of critical analyzes which have demonstrated that their results were ultimately only the product of a defective methodology.** Redone with donated more complete and more realistic, And of the more rigorous methods, these same studies give very different results. Hence the emergence, among economists, of a new attitude which resolutely turns its back on the classic approach to competition through the static study of market situations, and replaces it with a vision competition mainly seen as a dynamic process of rivalry, contestation, but also cooperation between independent firms. Her conclusion is that today no one can anymore continue to act and speak as if there were irrefutable proof of the need to entrust authorities with the task of controlling developments of the structures industrial.

These two chapters are accompanied by an annex (annex 3) Or East put forward the idea that the The renewed interest in competition law and policy is in fact just another manifestation of the eternal mercantilist temptation to which the established industry too often indulges.

*THE walk And there « production of trust »*

Chapter VII has two objectives. It's all about firstly to show that a number of commercial practices traditionally assimilated to "restrictive", and deemed incompatible with the requirements of "healthy competition", are nothing other than private contractual arrangements whose purpose is to improve the functioning of the market (in particular by strengthening the fairness of transactions); then challenge the scientific relevance of concepts as classic as those of "market power", "dominant position", of "abuse of position dominant", And even of "barrier has entry".

Certain passages have already been published as part of another brochure published by the La Boétie Institute. The two annexes which are linked to it (appendices 4 and 5) are a resumption of two texts published, one in an issue of the *Revue de la Concurrence et de la Consommation* (July 1987), the other in the *Revue de legal research - Law prospective* (1987 - 2).

This is a topic of study so far practical ment blank in France, although of very concrete application. When we study in the field how transactions are practically established and how the industrial or commercial contracts which serve as their vehicle appear, we discover that these contracts are already structured by manner to take into account most of the problems that the State precisely claims to solve by its regulations. By example, In THE field of modern distribution systems (selective, exclusive distribution, franchise, etc.), we realize that most of the commercial and contractual practices most often viewed with the greatest of suspicion corresponds in reality to contractual clauses whose role is to reduce the disadvantages of there nature collective of there communication. Likewise, at condition of reasoning and to be interested

less to the letter of contracts and more to the internal logic of contractual systems, we discover that many features of our contemporary industrial universe (the more character in addition complex of connections and interpenetrations financial, certain integration movements, the development of brands, the explosion of communication expenses) are nothing other than the product of the contractual means put in place by economic agents to defend themselves against undue costs that their imposes the unfair behavior Or unfair of the others.

Using fictitious, but also real and concrete examples, this chapter reminds us that the market is a system so constructed that it effectively forces everyone to police their own excesses without the need to call on a “center » having a “ eminent domain” (as in the time of the Ancien Régime) over the property And there freedom of the others.

### *Liberalism And agriculture*

THE Chapter VIII explores another “difficult” aspect of liberal thought. He develops a text which has already been partly published in the form of an article in Patrick Wasjman's review, *International Politics* Uuin 1989). It shows that if we most often reason as if agriculture were a separate activity, which, due to certain characteristics, cannot like the others be regulated by free markets, this argument has today lost a lot. of her strength.

From THE generalized floating of coins, there liberalization of financial circuits and the globalization of markets, exporting companies have to face exchange rate variations whose pace and amplitude are entirely equivalent, if not greater, to the risks experienced by the farmer. But they have adapted to it. Markets have given rise to a large number of modern technologies of management Who offer to companies

means of reduce their risks individual. Some are already widely used for materials pre mining and agriculture (*see* for example the success of *future markets* of Chicago).

OUR feeling East that in refusing of answer positively to proposals of “disarmament multilateral agricultural » advances by Washington in 1987, as part of the news negotiations of GATT, Europe has passed has side of a big occasion. The billions of subsidies spent for THE support of price agricultural, Or modernization of the farms, represent A great waste of which the effect is, paradoxically, to have favored there desertion of territory rural, And by there even contributed At development of effects pervert (pollution, degradation of the environment) to which we looking now has to carry remedy by others “policies”. The approach liberalization of the environment, this is precisely the theme of Chapter IX. This is a resumption of a contribution presented has A conference organized in may 1989 by EURO 92. The attitude there more current East of consider that there would exist a sort of natural antinomy between concern croissant of struggle against there pollution And THE harm of all kinds, And there logic of functioning of a system based on the primacy of property private and the game of the interests individual.

We let's remember that this proposal is not true that because that We live In a society Or, of do of the influence of the doctrines “utilitarians » and “industrialists » of the last century, we do not respect more fully there discipline of the responsibility civil individual.

*This of which We have need : more of right And less of laws*

A liberal must remember that the concept of “property” is inseparable from the notion of “responsibility”. Property is not the right “to do what one wants with This that we have”, but the the right to decide freely on the use of the resources we has the control under the condition

not to infringe on the similar rights of others. From this perspective, polluting is nothing other than an "aggression", an "invasion of property". If this principle were respected to the letter - what it is no longer since the judges have also been contaminated by supremacy doctrines "utilitarians" -, the sensitivity of our companies pollution problems and of degradation of the environment would be GOOD less big.

This analysis leads us to the hypothesis that the environmental problems with which we are now confronted are less the product of an alleged congenital failure of liberalism, than the consequence of a relaxation of the law whose effect was to empty the regulatory system of the liberal economy of a large part of its effectiveness. What is in question is not the intrinsic logic of capitalism, but the fundamental failure of the state to do his job. The origin of this lack is historically dated : it dates back to the end of the first half of xlx<sup>e</sup> century. The solution is not to make more laws and regulations, but to reintroduce In our institutions more of right.

**Last difficult case : the protection of industrial property And intellectual.**

**Since I published *Why Property?*, hardly a conference goes by where someone doesn't ask me my opinion on patents and industrial property.** This is how, with the contribution of Professor Bertrand Lemennicier, we We we are particularly interested to the paradox which wants the liberal to denounce in principle the harmful character of "monopolies granted by the State", but nevertheless admits an exception: that of the inventor on her invention.

The results of this investigation are taken up in chapter X. From an essentially philosophical and conceptual analysis, we arrive at the conclusion that no creator has ever held a "natural right" to the full value of its creation. The only "right" of which We can to claim us is to demand others

let them not hinder the efforts we make by our own means to avoid being copied. In other words, the role of the State is not to “protect property”, but to guarantee the right of everyone to “appropriate” what is rightfully his. This is the “right of appropriation”, as studied and conceptualized by Locke (and on which many people are reflecting today). certain number of “libertarian” philosophers » whose names have not yet crossed the Atlantic), which is the subject of public protection, not “the right of property”. It is up to the creator to organize himself, from the design stage, to avoid that the concrete object which serves as material support to his idea falls into the hands of someone likely to make personal commercial or industrial exploitation of it without that he could have negotiate with him the commitment of nothing TO DO.

This approach leads us to doubt the moral legitimacy of system of the patents industrial. This is not one “privilege » like a other, cause, to our notice, of a for pitiable waste. It is consistent with empirical observation. The data we have drawn from the literature clearly show that, contrary to usual intuitions, the use of the patents born plays one role relatively secondary in there strategy of protection of innovative firms. There is no has that two sectors Or patent protection remains truly essential: chemistry and pharmacy.

### *Rigor And consistency*

In student these “case boundaries” of liberalism, he only one thing be GOOD clear. The objective of this book is not of serve has the establishment of a program of government. I leave alone that to specialists of there policy. My about East strictly intellectual: push approach liberal until end of his entrenchments. It is THE left that I have adopted In THE works carried out since five years. That my led has to agree a go of

more in addition important has there socket in account of problems of a legal nature, and to adopt a type philosophy "natural law" which I will explain in a future channel work.

The result is this mosaic of texts who does not will not satisfy those who seek *a priori* the arrangement of beautiful Cartesian constructions giving the illusion that the author is able of redo THE world has him alone.

I will content myself with soliciting the interest of those who have as a rule to not se let stop by THE stereotypes. It seems to me that from these different works emerges a unity of thought sufficient for the goal that I am pursuing. : demonstrate that most of the speeches which claim to defend a liberal conception of society, at the same time as they recognize the legitimacy of a large number of state interventions, are in definitive the fruit of incoherent thinking. I am one of those who think that a little analytical rigor can't hurt, even if it displeases many serving interests by THE institutions current.

Henry The page  
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## **THE impostures of the economy mixed**

The same problem of knowledge and knowledge which makes total planning by a alone central agency, also makes vain any hope of improving the functioning of the economy by partial methods of « guidance » of walk. THE expressions of « economy mixed » and « industrial policy » are anticoncepts; notions which mean nothing since they express the idea of an objective (to do better than the market) which can be demonstrated to be by definition unrealizable, beyond the reach of human beings who do not claim to not be of the gods.

The great ambition of the socialists of 1981 was to prove that, without resorting to the most restrictive forms of planning, it was possible to put in place a new model of national development reconciling the autonomy of Management companies and the guiding role of a State serving as a spur, support and synthesizer for collective action of mobilization and industrial reconversion<sup>1</sup>. Let's look at what happened to it.

From a total of 17 billion of francs in 1980, THE trans budgetary measures for the benefit of businesses and of the industry sorts rose to 29 billion in 1981 and 47 billion in 1983. The record has summer achieved by fiscal year 1986 with more than 86 billion of francs. Of this total, 41 billion are

went to general aid to industry, and 45 billion to so-called structural aid. However, if we look at the evolution of there structure of the helpers general between 1984 and 1986, we see that aids specifically intended for funding of the companies in difficulty have do a gigantic Leap Forward: of 7 billion in the budget of 1984, they are past has 21.7 billion in 1985. Knowing that three quarters of sectoral aid was itself concentrated on a little number of sectors and of companies notoriously in loss of speed, of which they have served has fill the holes of management (20 billion for the alone steel industry, 7.5 billion For THE coal mines, 3.5 billion for there construction naval, 5 billion for the automobile), both third of the credits were used has help sectors in crisis And companies Who were going wrong. Morality : there policy industrial of the years nineteen eighty one to 1986 has looks like more has the action of a hospital of campaign serving mainly to to compensate the damage provoked by the absurd policy economic and social of the period 1981-1982, than to the expression of a ambitious strategy of preparation of future And of radical reorientation of the device of production. The explosion spending of « policy industrial » intervened At during these five years ago reflection of a skillfully constructed technological strategy and thought (Who fed the speech And served of justification to nationalizations), that THE product circumstantial And cyclical of a whole series of errors economic and social Who have at the time put industry French in semi-bankrupt, And have delayed sanitation of a big number of sectors

of activity.

This is ancient history. Optimism has returned to businesses. Their financial situation has recovered well. The socialists admitted their mistakes and made clear progress. They recognize that the market is not a choice but a given. “ Seek to abolish it as in THE savings administered of ballast, admits Laurent Fabius, It is ensure her resurgence below there shape of mar-

ches black Or gray, decorated of long Waiting lines<sup>2</sup>.  
»

There is no longer any question, as in 1981, of nationalizing companies “ the spearhead of the economy. With THE back in strength of theme of the “economy mixed”, it is only a matter, explains Jean Peyrelevade, of “correcting” THE weaknesses of walk And of liberalism French confidently notably to the State the mission of intervening as that “shareholder ultimate” of the companies threatened by of the taken of control foreign<sup>3</sup>.

Very good. The fact remains that if these new forms of “gradual” interventionism and more limited are apparently less dangerous, they come up against the same reviews Who allow to affirm that the idea of an industrial policy conceived as a proactive and global vision, applying to a set of activities Also vast And miscellaneous that industry French, was from the start an absurdity; something which, in any case, could not pa walk, and will never be able to walk Dear. Believing that the State could, through appropriate interventions, “to guide” industry towards of the goals more

“desirable ” than those to which would lead spontaneously a free market, is the same impossibility as the more extreme forms of planning. For two reasons: the first linked to the concrete conditions of operation of a representative democracy; the second, to problems of philosophy of there awareness.

### *A vision angelic of the state*

Like those who make plans or construct policies industrial, those Who believe to virtues of I “mixed economy » reason in, function of a naive and angelic representation of the State. They systematically ignore the concrete conditions that govern political or economic decision-making in THE democracies Western.

Let's admit that the state either compound of people by-

completely devoted to the common good, totally disregarding of their interest staff, and who are so expert that they have Effectively this knowledge that would allow them to find the solution for each problem adequate. He don't follows not necessarily that the policy implemented will be the best possible, that which will be the better suited to problem in question. For what? Because, between the moment when the "theoretical" solution germinates in the minds of civil servants, who are responsible to elaborate there policy of the state, And the moment when this policy is translated into decisions on the ground, se place A process development of texts of law and regulations administrative, level from which a series of diverse influences of political origin will manifest themselves, union, confessionnal, etc.

Policy development is never a simple linear process where you start with an idea and then simply codify and implement it. At all stages of design, then implementation, there are always a multitude of choices between various options. These choices are made by people who we can imagine to be independent and honest. But we can only exclude by doing, in eliminating such or such solution, born would it be for example that for the choice of a word, or that of an attribution procedure, they se let them be influenced by their own preferences ideological, THE ideas of medium from which they come, the contacts they maintain with this or that professional environment or even this or that political environment. There is necessarily a "subjective" aspect to any decision. Even the most honest technician cannot avoid the fact that his choices incorporate an imprecise element of subjectivity which reflects either his own prejudices or those of the people with which he East THE more frequently in contact.

Furthermore, as soon as the State considers that it is fair that a majority policy can impose of the decisions which result, either directly (subsidies) or indirectly (exemptions tax), "transfers" to profit from

some populations, of some businesses, of certain industries Or professions, he East inevitable that people react And get organized of manner has in to pull most big advantage. It is Thus that we creates professional unions whose role is to maintain contact with administrations whose behavior they try to influence. Labor unions use the weapon of strike For TO DO pressure And get of the powers public that they take decisions more compliant to their worries horn poratists than to This that requires truly there pursuit of the common good (which cannot be defined in any case of a manner "objective"). It is THE phenomenon of *lob bying* of which we has A little too trendy has believe it is a line sociological And policy American Who would not apply not with there even wingspan has there France. This idea, shared by of many men polite ticks, that they be of RIGHT Or of LEFT, East false. These behaviours of research of "annuities » there unfold only of a manner different. They are more apparent, more official in the United States. They are more unofficial, more camouflaged in France Or THE */obying* se unfolds No not At level audience of there scene speak mentally, but At level more felt of the ministerial antechambers, And Above all of the contacts with THE sand manager of the administrations local And regional. This are the friends of promotion with, which we guard the contact; THE role of the body of the state Who are as much little ones "mafias" maintaining A network of relations between the state And THE private. It is Finally THE game subtle that are playing one towards the other, on the one hand the public authorities, on the other hand the different components movement union, with the call regular to the consultation, the comedies of the consultation, regular and no less regular arguments reconciliations, including the object East quite simply to allow has A certain number of groups of pressure formed of to weigh on THE decisions government For y TO DO take in account their interests corporate (in invoking as alibi there presence of a interest embarrassed

ral» any).

We will be told that this is the game of democracy. But is it really the one most of us imagined? It could be if there was balance between organized groups and common interests or likely to be organized. But, by definition, it is impossible. Common interests are like particular interests : a way in permanent evolution that, in any case, we born can Never define objectively. THE

“benefits” that result of the interventions and state decisions are found generally concentrates At benefit of small groups of people. Conversely, their “costs” fall on A very big number of taxpayers or consumers. The advantage that each took of with an effort collective of organization East a lot more greater for the former than for the latter; hence their motivation tion has get organized. Result : THE “ walk policy” is of a fundamentally unequal nature. The polite market tick, at a given moment, is necessarily dominated by the action of certain collective groups, certain professional ions, certain professions, certain professional, ideological, religious or other interests which have, in the past, accumulated in the art of seeking particular “rents” a capital of know-how and experience than others don't have not. It is as In there competition between companies: some benefit from the advantage of being gone more early In the competition For the distribution of the “rents” of the action state; and that regardless of the intrinsic merits of their claims. The product of interactions in the political arena cannot not reflect these inequality.

Consequence : of the during that we admits that he East legitimate that the state used her monopoly of there constraint legal for take to some This that he longed for give has others, it is inevitable that these transfers are influenced by the way of which East distributed THE power policy relevant interest groups. Hence a hiatus that we can never avoid between, on the one hand, the conception that the expert has of This that one policy “ effective” should be,

and on the other what will be the real impact of the concrete decisions allegedly taken in application of the doctrine officially displayed.

### *Economy policy And policy industrial*

If we cease of reason by report has a design "angelic" (even magical) of the State and political decision, it It thus appears that even the best designed industrial policies have, in experience, no reason to prove " effective ". It can only be done by chance. Industrial policy decisions, decisions concrete, those Who are Effectively taken by the services of the ministries concerned, will convey less concern of true consistency economical and of respect for efficiency criteria, that a sort of poorly crafted arbitration between the demands and pressures of a multitude of groups competing to capture the state subsidies. It is because of this phenomenon that, in the industrial field, the great dream of the socialists of 1981 of coherent action, giving priority to the expression of a vision and a overall strategy, could only give your place to one action to the day THE day of which the objective was more than seal of the explosive situations that the State does not controlled more (but which he himself had contributed to creating through his errors in the period 1981-1982), than to implement a set of large, consciously planned projects. In a democratic society with a majority system, this drift is the destiny of all public intervention.

Let's push more far the analysis. Let's look Who were the main beneficiaries of industrial aid during the first socialist period. Answer: the steel industry, the coal mines, the shipyards; that is to say, sectors that were losing momentum, where businesses were no longer able to survive and where a majority of jobs were doomed. Of the industries in crisis, of the companies in difficulty, he y in had has the time a lot others.

Yet, they have not, and of far, benefited from the same attention from the public authorities. Why this difference in treatment, for example between the steel industry and THE textile?

The approach by taking into account the "political market" provides us with elements of explanation. Subsidies are preferably directed towards sectors whose problems are most politically apparent, where there are groups of pressure organized with greater experience, and above all having effective weapons to signal to public authorities, and impose, their design of This Who must be do.

The steel industry, coal mines and shipyards have several common features. This are activities where employees have long had a strong tradition of activism union. This tradition there explain herself by fact that these are industries requiring significant groupings of labor on specialized production sites. This are Also of the industries which gave rise to regional and local mono-industrial structures; therefore industries whose difficulties, when they appear, immediately take a visible political dimension. Finally, these very characteristics give a power policy of particularly strong pressure on unions because of the national repercussions that generates All movement of strike.

From this perspective, the explosion of industrial policy spending that occurred during the first five-year socialist government can be interpreted as the logical consequence of the political change of 1981. Knowing that the large power plants unions including ministers socialists came from, or felt politically close to, were in general controlled by THE federations of the industries in crisis (because they are precisely the oldest and therefore the most experienced), it was inevitable that what was apparently based on a major overall industrial policy project, would transform over the years into a banal transfer policy bene-

fice of those to which THE new staff policy should her arrival At power.

In THE democracies Western, This that we calls "industrial policy" is in reality only one of the methods by which certain organized interest groups impose has. there community of the efforts of redistribution that they would not be able to justify by more traditional means And more direct (but too visible). Of the same way, the notion of "mixed economy" is only one ideological screen with variable geometry used to allow some to secure "rents" at the expense of taxpayers Or of the consumers, without that these have there lesser idea from there resist<sup>4</sup>.

The presence of the automobile among the major supported sectors of the time is consistent with this analysis. The automobile industry is a sector with very high political visibility due to the size of the workforce working there, and especially the leadership role it has played within the French industry for more than thirty years. It is a geographically and financially concentrated industry. An industry dominated by powerful unions. So an industry around which it was easy to bring together a political consensus (in y adding At passing a zest of demagogu national).

Electronics has also benefited considerably from public subsidies. This massive support would be justified by its nature as a "high-tech industry". But this argument does not don't say why one industry Who incorporates a high research coefficient should necessarily be the subject of all there solicitude of the powers public.

,When you look closely, there is no reason to justify the State getting involved in financing the research and innovation, and that he East SO of his duty to help in priority high value-added activities and R&D (research and development green). The arguments usually used to explain that these are areas where the "failures" of the walk And THE « savings external » justify A resort to the state, have Above all a function of legitimation corpora-

tiste: it is about satisfying the desire - very natural - researchers And of the scientists to get that there community dedicate a lot more silver At business development Who make them live and satisfy their ego, their taste for prestige, their need for social advancement, or quite simply their quest of there prowess technical; but for that he must succeed to be accredited In opinion the idea that there research And innovation are of the investments "different".

Our conviction is that scientists form one of the few major professional lobbies that have the best know exploit the new opportunities of transfers and rent captures that brought Development contemporary forms of democracy. The discourse that has developed since the war around the research and of innovation covers an analogous phenomenon has the one that we knows In the domain of health : we find there a logic of waste dictated by a technical discourse controlled and imposed by producers Who, under the alibi of the general interest, are especially concerned with promoting their market. To succeed, they We must ensure that we put aside the only mechanism that allows us to say "objectively" what consumers want. The means are the economists who gave it to the community of researchers and scientists, as they had already provided it to trade union action professionals, or to farmers, with the theory of "externalities" and " public goods. And if they brought it, it is because they themselves found their counts to the extent that the theory of "failures " of the market also had the effect of giving them a role dominant and essential In there " Good » organization of there Company 5.

Aeronautics represents a fairly similar case, with however an additional factor: the living illustration of what, as soon as an economic activity is found helped of the THE departure (supposedly For facilitate her " lift-off ), She se sees condemned to stay dependent on supports public.

The reason is simple. Firstly, there is the pressure of international competition. Each manufacturer draws pretext from distortions of competition introduced by the aid distributed to manufacturers of other nations, to obtain ever greater regular aid itself. There second reason comes of the inevitable collusion which is woven between producers and the administrations responsible of manage the distribution of subsidies. By a phenomenon osmosis very human, these latest gradually marry little THE theses of their clients, And in are coming has THE ide,nti proud in the general interest, that as employees of the State they believe sincerely defend. This mechanism is reinforced by the fact that administrations find it normal and consistent with efficiency to recruit their staff in ranks of those who seem to them better able to know the sector in which they are in charge : professionals of this industry, particularly those Who come out of his schools.

Thus, from the day the State assumed the right to seize the property rights of some to redistribute the advantages to others, a relentless mechanism was set in motion which necessarily had to justify the exclusion of market mechanisms from an increasing number of activities. Since the end of the last century, it is mainly on the creation of this justification that economic science has worked. And that's how what is born THE myth of the "economy mixed"<sup>6</sup>.

### *THE virtues cognitive of walk*

This analysis, however, leaves a significant zest of angelism. She maintains the illusion what if THE men were perfect, if THE men of the State were totally devoted to the common good, and if we took the trouble to neutralize the " dysfunctions" of the political market, it would become possible to design interventions public really effective. In reality, This is not not only THE role groups of pressure Who

is in question; it is the very concept that there can be economic interventions by the State which, under certain conditions, would produce results superior to those of a free market, which is fundamentally unrealistic .

That we in have awareness Or No, THE concept normative "economy mixed" East related has a philosophy on THE role of the State in the economy which unfolds according to the following diagram. We accept the assertion that market mechanisms constitute an effective system for satisfying THE needs of the consumers All in avoiding waste. Then we ask ourselves the question: what conditions must be met for such a situation to actually be carried out? Response from economists: such a result is only guaranteed if the following conditions are simultaneously met: homogeneity and uniqueness of products, presence of a big number of buyers And of sellers including none is not aware of the influence that he exercises on prices, perfect information of agents, existence of a number sufficient of markets has term, perfect plasticity of prices... These are the famous conditions of the " competition pure And perfect". Noting that they born are never united, and even that the tendency of modern economies East of go away remove, we in deducted that It is the role And there function of the state to intervene For to correct THE " imperfections" of the market. These imperfections originating because the sole play of individual motivations does not always allow one to arrive at the ideal state which serves as a reference ence, we conclude that it is legitimate for the State to be concerned to act on these behaviors individual For do in sort that they be different.

This is the conceptual basis of modern state interventions, whether antitrust laws, nationalizations, planning, short-term demand regulation policies, and all the regulations that govern wages, profits, prices, the functioning of the labor market, the behavior of financial markets, standards pollution and

safety, product quality control, regulatory consumer protection, etc. This is the approach that we find very explicitly below the pen of Laurent Fabius in his article entitled "Who is afraid of the economy mixed?". The economy mixed, We it is explained there, finds its legitimacy in the fact that "we know from experience that, left to themselves, the forces of walk born emerge not on the optimum economic <sup>7</sup>". Even the debate over the need to increase the regulatory powers of a body like the Commission operations of Sotck exchange East implicitly linked to an approach to financial phenomena thought with reference to the theoretical framework of "pure and perfect competition".

But, for state interventions to improve<sup>8</sup> the results of the market, it It would be necessary to assume that the individuals who make up the State have access to some sort of knowledge superior whose private agents, them, born would not benefit. Gold, there's to all chances that This or the opposite.

In the traditional economic theory of "opti mum", the market presents itself as a "cyber netic" system where, without the need for external intervention, the sole pressure of personal interests guides resources towards those of their uses possible Who have the greatest value. From this perspective, the market is essentially an allocation instrument whose superiority comes from the fact that it is the system where individuals unwittingly find themselves the most motivated to do this. who is good For all.

The market conceals another property, even more fundamental although it remains largely unknown. Exchange is not only an act by which ownership of a good is transferred to another person. The exchange is part of a continuous series of actions and personal experiences. To buy, you must first find out about the qualities, the places where the product is available, the costs proposed by the different sellers... A

the opposite, if we have something to sell, we find out about competitors' prices, we test customer reactions... The price that prevails on the market is the result of all these behaviors and learning personal and competitors; a sort of synthetic message which incorporates and communicated to others all of the information and individual experiences, conscious or unconscious, that every buyer or seller has gleaned by searching has realize his plans personal.

However, most of the knowledge that we allow to act And of TO DO, East A know that there most of us do not know that we know, and that we are therefore incapable of clearly formulating And of to transmit has others. By example, if business leaders make more more use of sophisticated techniques of marketing and management, he the fact remains that "tacit" professional knowledge, that which is the fruit of know-how and skill accumulated, more than a true scientific knowledge of facts and means, continues to play an essential role In their decisions (there go of what called 'intuition').

Consequence: since market prices are "informed" by our actions And that our actions integrate GOOD more than we are personally capable of articulating consciously, This that they integrate And convey reflects has there times All the knowledge "Speak clearly" that We uses, but also all the "tacit" knowledge that we do not know that we know, but which nevertheless plays a role determining role in our ability to make decisions. In doing so, the market is not only a place of confrontation between supply and demand, according to the dictionary definition. It is a mechanism, a procedure which, through the competition of human actions, makes it possible to bring out and disseminate a whole sum of information, knowledge and knowledge which is much more than the sum of the personal knowledge that each person has. of We East able of formulate And of to transmit

to others by the sole means of scientific or technical knowledge constituted. THE walk given birth has a kind of knowing superior of order "systemic", of which the system of the price free East has there times the support, the synthesizer, And the instrument of communication Who "informs" our personal decisions without our knowing it, but that it is not given to any individual mind, even highly gifted, to independently reproduce personal experiences and competing procedures. ties Who him have served of vehicle <sup>8</sup>.

*A content "informative" impoverished*

Now consider a society where there are no longer free markets who set the prices, but of the planning agencies equipped with huge models and computers that, in principle, allow them to instantly process all the information that local business managers provide them. What is going on? In the minds of pianists, the results should be at least identical, if not better, than those obtained spontaneously with free prices (since this should make it possible to "duplicate" the functioning of the market while eliminating its "imperfections"). But in reality, things are going to be very different.

In fact, the computers and models only work using data from human beings (the statisticians, economists and econometricians) have introduced. They can only operate with information that is completely explicit and explained, formalizable, and therefore reducible. However, as we have seen, the market is a system of telecommunications whose characteristic is to convey for the benefit of each, much more information, knowledge and knowledge than we are aware of, and which we can therefore explicitly formulate. As a result, even the computer more efficient, even the most complicated model designed by of the spirits humans, born will be able to Never repro-

lead completely and duplicate the functioning spontaneous of the market system, since even the most scientists and technicians will never be able to introduce more than a tiny part of all the knowledge, signals and information transmitted in reality by market procedures and which serve as a basis for real decisions of the agents economic.

Morality : Planner prices are prices that reflect only here only part of OUR know Who East explicitly articulated. An economy guided by planned prices (or manipulated by an external authority which obtains its information by means of procedures beyond the control of competition) is a economy guided by of the price whose informative content is much poorer than that of free market prices. Planning cannot lead only to one impoverishment of the procedures social coordination and cooperation. Which is the opposite of the desired result. The ideal of a planned economy is a utopia which corresponds purely and simply to a impossibility epistemological.

This critique was designed to refute the planning ambitions of centralizing socialism. But it applies just as much to more limited, and supposedly more benign, forms of state intervention. It applies to all modern forms of interventionism, whether they set themselves the objective of planning all production, Or only some of its aspects, whether direct interventions (subsidies, nationalizations, policies industrial) Or indirect (actions by macroeconomic aggregates, policy of the price And of the wages, the imposition of standards and of regulations).

The same problem of knowledge and knowledge which makes total planning by a alone central body, in fact also renders vain any hope of improving the functioning of the economy by partial methods of " guidance " of the market. For this to be possible, it would be necessary to assume that those who have the

responsible for such a task find themselves "more informed" than the entire system that they are responsible for guiding. It would have to be assumed that those responsible for this policy have, through their personal intellectual capacities alone, with the support of this single part of human knowledge that constitutes scientific knowledge, the means to gather in them more of intelligence than this

"intelligence collective" Who, by THE mechanism of the market price, informs the decisions of private agents. It should in sum that they be of the "supermen".

Even when they remain partial and limited, State interventions have the characteristic of impoverishing THE content informative of the signals conveyed by THE system of trades. SO to make it less efficient. Aiming to guide the market, even partially, is no less an epistemological impossibility than wanting to reproduce its results without competition.

It is important to understand the nature of the argument. The most classic attitude is to criticize the increase irresponsible of the interventions of the state under the pretext of the perverse effects that they inevitably cause. In reality, what is involved goes a long way more far; He is of incapacity of principle of men of the state And of those Who THE advise to forever acquire the knowledge, information and knowledge that would be necessary for them to have the slightest chance of succeed has "to guide" the economy towards of the goals considered *has priori* as more "desirable" than those to which the free market would spontaneously lead. This inability does not result from inherent technical limitations by example At functioning of the machines to treat information; but of do that, by construction, we will never have the intellectual means necessary to simulate, predict, and therefore correct the functioning of an economy industrial complex.

This conviction of 1: " Industrial State East independent of do of know if the state East himself in measure of

now what is "good" for the community. It's about of an impossibility relating to the means which would be necessary for that the state either Effectively in measure of TO DO This that we believes generally that he can TO DO.

Moon of the implications of this analysis is that an industrial policy will have all the more chances of success if it is in will do less. A lot of politicians And of civil servants who call themselves "pragmatic" have the attitude next. They leave d11 observation that, in any case, whether we like it or not, the State has a considerable weight on the life economic, do of the importance of his purchases, the assets he has accumulated over the years, etc. They in deduce that the modern state cannot avoid exercising effects of distortion on the market, and that he cannot SO not avoid any further having a "policy".

"The real question, we are told, is not to eliminate policies industrial, but of THE give back more effective. » Analysis Who precedes suggests that if such East the goal, THE best AVERAGE of reach it, THE best way of making the state more efficient, is quite simply to introduce more of walk free in the economy, And therefore reduce the state...

*THE walk financial, brain of there industrial dynamics*  
*THE*

If the market has established itself as the dominant institution of Western society, it is because it is the instrument which allows, without our being aware of it, to introduce into the coordination of human activities infinitely more intelligence than 'no human mind, even super gifted, is individually or collectively capable of this. Justify the use of industrial policy measures, and therefore a certain amount of planning, out of a desire to improve the coordination of human industries, East SO For THE less paradoxical.

There " theory cognitive of walk" led has denounce the ridiculous of the visions leaders. He East All simply

absurd to believe that we can entrust to a few experts, even in the context of democratic institutions, the choice of industries that should be promoted and helped to develop (because it would be of "industries of the future"), or opposite the choice of those whose withdrawal should be organized (because condemned has disappear).

How can we know if it is of industries future or of sectors definitely condemned? It is THE height of all human pretension to believe that a few very gifted experts, even with the most advanced scientific and technical observation tools, can emit A judgement " certain ". If they are so gifted that that, that born do they take themselves THE risk of the investment? Even if they don't have the money, they will always find someone more fortunate to lend it to them...

How do we know which industries have the greatest chances for the future? There is only one way of THE know: look there Sotck exchange.

The verdict of the stock markets is no more certain than the verdict of any expert specializing in financial analysis or technology auditing. But it nevertheless incorporates all the intelligence that contain not only one, not only two, but all the people who have specialized in the acquisition and practice of such knowledge. Hence a synthetic result which, without claiming any certainty, nevertheless reflects " the most probable probability" of evolution future.

Why would the Stock Exchange allow you to obtain an estimate of there value future of the activities industrial "better" than that which would be given by a *think tank* bringing together the most gifted specialists and experts of the nation (this *think tank* could be the Plan)? The answer to this question is given to us by the analysis of cognitive processes when it shows how the existence of mechanisms of price of competitive nature allows of put

n these prices more information, of knowledge and knowledge that we could not put from knowledge And of knowledge purely scientists.

The difference between THE assessments of the financial market and those of a *think tank* comes from what The first are the product of interactive processes of a competitive nature where people, every day, play their own fortune, their own career, or their own prestige by selling "competing" estimates with other specialists who also play their own prosperity by competing with them. It is this process of "competitive rivalry" through market procedures based on the sale and purchase of services having a monetary value, which allows financial markets to incorporate into prices infinitely more knowledge and information about the relative values present and future of the firms, which it would not be possible to obtain by calling on the independent expertise of the experts, even the most brilliant and learned in the world.

It is true that when we have poorly developed or closely compartmentalized stock and monetary markets, as was the case in France until 1984, stock prices do not have much significance. But from the moment the interconnection between the different financial and monetary markets takes place in almost satisfactory conditions (let us give thanks to the socialists for having accepted a major reform in this regard : THE decompartmentalization of markets), these preventions and precautions no longer have any reason to exist. It is on the Stock Exchange that we have the best chance of seeing the image of the future take shape, and this certainly in a better way than through the most scholar of all INSEE and Plan studies. Nothing, not even the most sophisticated computers and information systems, can replace what the presence of competitive decision-making mechanisms based on the community brings to the community. on A exercise decentralized of the responsibilities financial.

If, by "policy industrial", we hears all decisions industrial And financial having For object of proceed has a reallocation of company assets such that the chances of economic agents are increased national efforts to make more productive use of available resources, it is clear that it is the financial markets which are at the same time the heart, the lungs and the brain.

By creating a second market on the Stock Exchange, the great merit of a man like Pierre Bérégofoy was not only to make the public call for savings accessible to new categories of companies, but above all to significantly expand the number of French companies subject to the supervision of these specialized firms which provide life at walk financial - And SO to improve her

" quality ". But the decision to strengthen the control of **takeover bids** and financial transactions (in particular for the monitoring of "insider trading") will have the opposite effect. By increasing THE cost of the taken of control, She will reduce its frequency, and will have the consequence of affecting the advantage competitive private markets by reducing intensity of the process of rivalry industrial.

### *Language of drink And language incapacitating*

These remarks apply to all the justifications used to legitimize state intervention in industrial decisions, that he for some, it is about strengthening the offensive potential of national industry; or, for others, to soften the economic consequences and social of operations inevitable of fallback.

Any policy involves criteria to define which industries, or which companies are entitled to the aid provided by administrations as part of their big choice strategic.

We have seen that the best technique for cutting see which companies or sectors have the best odds of future consists No not to proceed has

an in-depth scientific audit, but quite simply to follow stock prices. Values which, individually or in groups, present sustainably high ratios, indicate areas where the community has an interest in developing its investments. The superior character of this information comes from the fact that it incorporates not only what the scientific community knows about the conditions future devolution of there technical, but also what markets know about the “opportunity costs” involved in THE development of these productions by relation to that would report others assignments of the resources. The extreme value of information stock market wants her to achieve what no one cannot do, nor will it ever be possible to do: the synthesis of technological and “economic” information. This is the very meaning of the notion of walk.

But it goes from itself that men of the State can hardly recognize it, to the extent that this would amount to accepting the uselessness of their role. Hence the very natural search of all kinds excuses to justify that we go away hand over has others indicators that there alone “value economic » expressed by THE markets.

If we leave alone to fall there value economic as selection criterion, by what other industrial action criteria are we going there replace?

Since these are criteria which will give access to the public windfall, while others will find themselves excluded from the distribution, it is inevitable that their definition becomes a political affair. Each pressure group, depending on its position, its interests, its problems, will have its preferences. The result is that the extremely sophisticated vocabulary attached to industrial policy decisions is in reality nothing more than a smokescreen, to hide THE choice eminently political produced by the competition what the various organized interest groups do on the political market. The speech will insist on THE do that THE industrial choices must not to be the only one reflection of the economic rationality, but to integrate

also of the dimensions such that independence national, protection against the penetration of interests foreigners, the impact on employment, income distribution, regional inequalities, etc. All these arguments are, before all thing, of the instruments wielded by each to advance their own interests. These are so many excuses and alibis, used by the pressure groups which are well established in the street and have been most successful in getting their fellow citizens that they arrogate to themselves the right to dip into their pockets, to give back to the companies whose future concerns them the most (because it is decisive for their own professional future). This is how so many diverse justifications coexist, all of which appear equally legitimate to us. that THE others, good that they be often contradictory, even radically in conflict.

It is has this fair grip between groups of interest that responds, depending on the circumstances, to the pompous and warlike vocabulary of "offensive" or "defensive" strategies. sives ". This is a ready-made language, which strictly does not mean say nothing, but whose content, because of its impact on our emotions, and through the play of completely irrelevant analogies or correspondences, nevertheless ends up winning our support, without further critical examination.

As In so much others areas of analysis economic, the language that revolves around industrial policy And of his different functions, is in reality an incapacitating language, a wooden language whose final role is none other than us have bladders taken for lanterns; to make ourselves unconsciously complicit in our own behavior in slavery for the benefit of all those who, playing the messiahs, claim For them And their friends the monopoly on the representation and expression of our different common interests. The very fact that the debate on industrial policy drive it more often to proposals of a "corporatist" nature, reflects this dimension collectivist implicit of language Who y East attached .

Those who want, at all costs, to find virtues in industrial interventions of the state, are people who, either know that they have no chance on the free market anyway, or people who are not happy with the results of the free market because they do not correspond to what they feel they should be. They then turn to the State to get it to change the result to profit of their clean preferences.

## Notes

1. At the time, Jean-Pierre Chevènement thus defined the objectives of an industrial policy : • It is first of all a will : that light privilege In all THE areas technological development and industrial of France, This Who implies a complete reversal of trend by report has the period previous... It is then a vision overall and consequently consistency in the allocation of resources devoted to the industry according to three main criteria : the trade balance, the technological shortcut, employment; finally, it is, for each sector, choices of structures, and for the whole, clear rules of the game and not revocable. » The passage of Jean-Pierre Chevènement is lying to the ministry of the industry will last until March 1983, moment of his resignation motivated by the final adoption of the planned austerity plan by Jacques Delors.

2. •Who has fear of the economy mixed?• by Laurent Fabius, *THE World* of 28 FEBRUARY 1989.

3. *THE Figaro economy*, THURSDAY 2 March 1989.

4. • At strict plan of the opportunity, we understand that THE term "mixed economy" "has always been successful with many politicians. He has, indeed, to get to please has I opinion public : when we propose to "mix "the state and THE market, not only do we demonstrate moderation and a desire for "unity", but the basic voter does not imagine that it could be something other than taking what is best in each of the systems... In technical terms, THE debate suffer often vague surrounding a term that few people really take the care to define. To tell the truth, any economy being by "mixed" definition, with a public sector and one private sector, mixed economy " can, *a priori*, match any type of economic policy or any <1.,ual mode of organization society THE •, Jean Dominique LAFAY, professor the university in le *Figaro Economy* of 18/19 March 1989

5. THE public funding of there research And the call has the state for to favor innovation is fundamentally based on there theory economics of • public goods • And of the • externalities •. Gold he must know that these two concepts see them relevance scientist discount in caused by of the tra-

worth little known In France. Even the famous Professor Arrow's definition proves on examination questionable. On This subject see the items by Kenneth GoLDIN, • Equal Access Versus Selective Access: A Critique of Public Goods Theory •, in *Public Choice*, Spring 1977; and Daniel KLEIN, • Ties in and tea Market Provision of Collective Goods •, *Harvard Newspaper of Law and Public Policy*, spring 1987. Their thesis a summer summarized by Bertrand LEMENNICIER In *Inventions, Patents, Intellectual property and protection of ideas: a re-examination of the historical, philosophical and economic foundations of contemporary legislation*, chapter 3, report written under the direction of Henri Lepage for THE account of the National Institute of Industrial Property, February 1989. The idea central is that- the public nature of a good is not an intrinsic characteristic linked to the nature of the good itself; but something thing Who is a function of the way of which, of the THE departure, we decides to produce the good and make it available to the customer. For these authors, everything is linked to the initial choice concerning the distribution of the good. We will find illustrations of this thesis In THE two chapters of this book dedicated to the criticism of the concept of natural monopoly, as well as to the way in which a • privatization • of the radio wave system could be achieved. For our part, in the chapter on intellectual property, we suggest that the contemporary race for R&D is likely a sign of genuine waste linked to the characteristics of there legislation on THE patents industrial.

6. For a complete presentation of the founding intellectual schemes of I• economy mixed• such that we there practical In there most Western democracies, see the book by Professor James MEADE from Cambridge (GB) : *The Intelligent Radical's Guide to Economic Policy: Tea Mixed Economy*. For her refutation, see THE little book of SC LITTLECHILD, *Tea Fallacy of tea Mixed Economy*, published by the Institute of Economy Affairs has London in 1978 (second editing 1986).

1. *THE World of Tuesday* 28 FEBRUARY 1989.

8. For a presentation of the epistemological foundations of this Hayekian approach • of the market, see the remarkable book by Phi Lippe NE o. *There Company of right according to FA. Hayek*, PUF, collection

• Free Exchange •, 1988.



## He no has not of monopoly “ natural

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The justification for monopoly public services and many regulations of state East linked At postulate that he exist of the “ monopolies natural”. This chapter shows that what the theory describes is an exactly opposite world of there reality And that we born can absolutely not draw from it principles of economic policy which would justify the economy mixed. Her true role is not not to offer us the means to fight against waste (which does not exist), but to legitimize in the eyes of public opinion the permanence of certain “ annuities » professional and corporate of which existence East hidden by THE reasons .

We let's start by tell the story from a classic example of monopoly public, that of the telephone. He there is All just a century that the phone lives under the diet of monopoly audience. But This is not It was only around ten years after the appearance of the first telephone lines that it really began to be applied.

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• The content of this chapter was the subject of a communication at the conference organized in november 1988 by electricity of France in memory of Pierre Massé. It takes up arguments presented in the appendix to our report • EDF and pricing at marginal cost”, given to Alain Madelin, Minister of industry, in February 1988 (publications of the ministry of industry, There Documentation French).

The telephone was born in 1876 when the American Graham Bell presented her prototype at the exhibition of Centenary of UNITED STATES, in Philadelphia. In France, the law of 1837 on the monopoly of signals immediately means that its industrial development cannot take place without nationalization of the State. At the time, most of the telegraphic network was already completed. It is managed by a powerful centralized administration for which we come to create a brand new ministry (the Ministry of Posts and Telegraphs), and which sees in the construction of telephone networks a natural extension of its traditional activity. However, in the East in full in this period "liberal" of the new Republic. THE context political has changed : we no longer fear conspiracies; the military and police argument which had campaigned for the handover of the telegraph networks to the State is fading. The economic context has also evolved : in all cities gas, electricity, tramways and water distribution networks are being developed, in most cases in the form of concessions to private operating companies. THE beginnings from the phone are going so naturally flow in THE even mold.

### *THE beginnings of phone*

In the flow of the year 1879, THE minister of the PTT announces that the networks will be licensed to companies private companies who request it. Immediately, three companies applied for the Paris network, all three holders of American patents. But they merge quickly in only one: the Société Générale des Téléphones. SGT also acquires the concession of the Lyon network, as well as a number of other provincial towns. Although there is no real competition, there France go through the experience during ten years of a private telephone (the State installing its own networks in THE cities Or he no has not of concession private ask-

deated, and reserving, upon their appearance, the implementation of the connections long distance).

The terms of the concession provide for a sharing of tasks accurate between the Administration and Company: SGT is responsible for subscriber installations up to the entrance to the building as well as for central offices; the Administration is responsible for laying the cables. This arrangement allows compliance with the letter of the monopoly law. But cohabitation quickly turns out to be very difficult. In 1889, the State decided to ensure the recovery of existing networks. The non-renewal of its concessions having led to the nationalization of its networks, SGT did not disappear, but specialized its factories in the production of equipment sold to the Administration, and became the Société Industrielle des Télécommunications, distant ancestor of CIT-Alcatel.

The French telephone is now a public service financed by public funds, directly administered by the ministry of the **PTT**.

The status of the telephone within the Administration has evolved considerably since its origins. In 1923, the budget of the Ministry of **PTT** became an "autonomous" budget. independent of general state budget. The day after After the war, in 1946, the General Directorate of Telecommunications was created, which took the form of an industrial and commercial administration. At the same time, CNET - National Center for Telecommunications Studies was born. - which, in addition to internal research and development, provides an expertise and assistance mission technical.

Since 1970, the **DGT** itself has benefited from a increased autonomy within the Ministry of Posts and Telecommunications. As an exception to the general rules of the civil service, its budget is the subject of a separate account within the ministry's budget. This privilege allows him Finally of finance the expansion of the telephone using external resources from borrowing issued on THE markets national and foreigners.

But this also means that its management can be modeled more on that of a private company (strengthening the powers of the hierarchy on lower levels, for example). Finally, in 1974, an Industrial Affairs Directorate was created within the DGT itself, whose aim is to use the leverage power of purchases from the DGT to promote among its suppliers a real policy industrial.

For several years, the General Directorate of Telecommunications, now known as "France Télé coms", stands out from other Post Office services by resolutely adopting a more "commercial" attitude (establishment of "teleboutiques", commercial agencies separate from post offices). Its subsidiary policy mixed economy, he give a big flexibility of functioning. THE phone left However Not less fundamentally a administration.

### *A monopoly here everywhere*

With a few exceptions (the case of Italy), and however with some changes over several years (the deregulation American and the breakup of the ATT monopoly), it is the same structure that we find in there mostly of the big country.

In Germany, where second-Marckian centralism triumphed, the telephone was immediately entrusted entirely to the postal administration. This organization is still the one that prevails today with much greater interpenetration between the Post Office and Telecommunications than what we know in France with the relative autonomy of the DGT. Despite lively debates on the need for a certain "deregulation", it is above all conservatism which still marks the evolution of the telecommunications Germans.

Historically, the English experience is very close of that experienced in France. Faithful to his doctrine of liberalism economic, England gladstonian begin

by practicing a policy of concessions to a large number of different companies which, each in a given region, build urban networks corresponding roughly to the plates of economic activity. But the administration which manages the telegraph, the Post Office, quickly became aware of the competition that these new services made for telegraph revenues; And all the more so since the prohibition which is in principle made to companies private of build of the lines long distance, quickly turns out to be illusory due to there particular geography of industrial England (where the distances between centers urban are relatively weak).

“ The Post Office, not content with theoretically reserving the connections long distance, We tell Catherine Bertha,

is therefore also starting to equip local networks. But competition between companies, and soon between companies and the State, quickly gives disastrous results...

<sup>1</sup> » We would like to know more on nature and the origin of these “disastrous results”. Are they due to the principle of competition itself, or simply to the fact that we then find ourselves in a situation of “unfair” competition? where private companies entirely responsible for their financing see their activities compete with public investments which are themselves subsidized by taxpayers? The author does not pose not there question. Imperturbably, She concludes: “ As it had done for the telegraph, the Post Office was led to nationalize the networks and to do so proceeded in two stages: first, in 1899, interurban lines, then, in 1912, there totality of the networks. »

In 1980, the Telecommunications have summer separated of the post office, with the creation of British Telecom, a public company that the government of Mrs. Thatcher privatized by selling to the public 51 % of its shares. Furthermore, since 1982, a private company, Mercury, has been authorized to build and operate a competing network of specialized lines with high added value. Despite everything, in his large lines, THE monopoly stay intact. So-

but falling under a private law commercial status, British Telecom nevertheless remains a highly regulated firm, placed, like Mercury, under the authority of a new supervisory body, inspired by the American example of the FCC : the OFTEL Telecommunications Office .

In the United States, the telephone remained theoretically a matter for private companies. But there as elsewhere, until the change in policy in the 1970s and 1980s, its exploitation was organized around the domination of a gigantic monopoly . regulated »: that of ATT (American Telegraph and Telephone) and its Bell Companies. Who more East, even there deregulation and dismantling of the empire of ATT in seven independent companies (1982), do not prevent the fact that even today, in terms of serving local networks, the rule remains that of monopoly, with substitution of regulations imposed by local jurisdictional authorities in place of the former federal regulations administered by the Ferlerai Communications Commission.

These institutional similarities, the fact that everywhere the exploitation of the telephone and telecommunications gave rise to constitution of public or private monopolies (but under close control of the public authorities), lead us to say that if this is the case, it is because it cannot be otherwise; that, despite recent technological innovations which call into question certain, generally marginal, parts of the monopoly, there is a sort of *natural necessity* which imperatively leads to an organization of This kind.

What this comparative history demonstrates, we say economists, it is because the telephone and telecommunications are A monopoly natural.

*The argument of "monopoly natural"*

Whether they are monopolies directly implemented by public administrations (France, **West Germany**), or monopolies granted to private firms, but under the supervision of public supervisory bodies (case of the United States, the Great Britain since privatization; but Also, In a certain measure, of Italy 04, until a period not very Ancient, Before unless the State takes control through a subsidiary of **the IRI**, three quarters of telephone traffic was provided by private regional companies, the argument THE more frequently used For explain and justify this situation - And SO For to oppose See you later modification of *status what* institutional - is the one of monopoly natural.

Briefly analyzed, this argument is presented as follows. We says we are in the presence of a "natural mono pole » when the existence of *diminishing returns* in production and the size of the market only allows the maintenance of a alone and unique firm. Natural monopoly appears when, in an industry or activity, exist of such potentialities *savings of scale*, that if we leave her free competition play, some either the number of firms present at the start, a only company will end up eliminating all others, and will establish itself as the alone and sole producer of the product or of service concerned.

By economies of scale, we mean the fact that the greater the production of a good, the more the average production cost of this good decreases. When such a scenario arises, it is inevitable that whoever has the production there more high finish by eliminate the others.

But when it has eliminated its competitors, what stops it from raising its prices and thus abusing his situation of producer unique? If he traced back his price of

manner important, we could think that that will encourage new competitors to re-enter the market. But so that they can do it with some luck to be successful, they would have to enter straight away with a size at least equal to that of the producer who holds the market. In there mostly of the case that East unthinkable. The existence of decreasing average costs therefore constitutes a technological barrier has the entrance enough important For than which is thus found in position monopoly either measure to "exploit" sustainably THE consumers. And this phenomenon will be all the more important if it is a product or a good for which there are few possibilities of substitution.

Such situations, we are told, are characteristic of activities such as water and gas distribution services, electricity, rail transport, air transport, telephone, telecommunications... that is to say all activities which are the subject of public regulations .

These regulations are justified by two considerations. First of all, it is natural that where a monopoly reigns, the public authorities are concerned with controlling prices. This objective can be achieved in three different ways: by transferring to companies totally under the control of the state care to produce and sell these goods Or services (technical of nationalization); by leaving the property to the community investments, but by entrusting the management of exploitation to private contractual companies on which the respect maximum price (technical French for "concession"); finally, by requiring companies that produce these goods not to exceed certain profitability maxima (system of "regulation" in the American style which differs from the European concession system in that it is the private company which ensures control of all investments, and which remains full owner, despite the public service constraints that we forced her of respect).

However, continues the argument, that born enough not.

« When the features of the offer And of Requirement are such that the production se do has A lesser cost if She is carried out by a single company rather than being distributed among several of them, significantly explains the economist David Encaoua in a summary report on the problems of natural monopoly and destructive competition, *it seems normal* (It is We Who underline), if we wanna TO DO benefit the community of production conditions at minimum cost, to regulate entry into the activity and to confer on a company unique A Status of monopoly of right<sup>2</sup>. »

In other words, when a market leads to a situation of natural monopoly which seems to respond to of the technological data of a structural nature, it is necessary to ensure mastery of the prices charged by the company, but in at the same time it must benefit from legal protection against the appearance of any competitor. He is logic, we are told, of transform what was until then only a de facto monopoly, in a legal monopoly based on the power of constraint of the State. And this to allow us of continue to benefit from price most down...

*opportunistic* behavior of certain potential competitors; for example in sectors where economies of scale do not play so much at the level of a product particular, as well as a whole range of complementary services. When we East in presence of such *cost subadditivities* (term learned used For describe there property of “economies of scope” according to which the isolated production of each good by specialized firms would be more costly than the production of all of these goods by the same firm), and if entry is left free, potential competitors risk being tempted to take away from the natural monopoly the most profitable of its productions, and therefore deprive it of these cost savings which 'he can not realize that if he product everything at once.

If this happens, its production costs will increase, depriving the community of the advantage of these lower prices including her benefited Before the arrival of This "pirate".

This gender of hazard, We explain THE economists, is bigger there where the extent of the investments to realize And THE strong variations anticipated of there demand impose of the phases of strong abilities of surplus production. " This, REMARK David Encaoua In a passage which summary clearly the structure of reasoning of the analysis economic traditional, born lack not to increase temporarily the costs of the installed firm causing Thus the entrance of competitors Who they search to exploit opportunities of short profits term. To prevent that advantages long term of the production At cost minimum by a alone firm born are destroyed, a entry regulations imposes itself SO. » Finally, last madly : monopolies regulated (or state monopolies) se see generally impose by their supervisory authorities a *service constraint public* who THE obliged has practice of the structures of prices different of those Who would prevail if was only wanted the objective efficiency economic. These obligations translate by practice cross subsidies taking advantage has some categories of clientele. If we left the entrance free, these pricing structures deemed "socially desirable" » born could not be maintained. From where a new reason of protect those Who have Already eliminated all competition, against there competition "potential" that could their TO DO of new outsiders. THE plan East in appearance perfectly consistent. That should we in think? This gender of reasoning born worth actually not much. For two reasons. First, because we *absolutely cannot* draw from the traditional theory of competition and monopoly the institutional and economic policy principles that the supporters of monopoly deduce from it. Then, because *all* this would only make sense if we could imagine a State do of men perfectly good, selfless,

*omniscient* and completely transparent. Which is an absurd hypothesis by definition. Our belief is that the argument economic traditional in favor of “monopoly natural” is based on reasonings of nature *ad ok*, Who don't have summer invented that For protect hardnesses of there competition A certain number industrial, professional or administrative interests benefit ciant from a privileged political position. The monopoly theory natural is not one alibi, a cover theory, offered by economists to pressure groups whose acquired advantages were thus socially legitimized, And in even time politically protected.

### *1. there false excuse of the “savings scale »*

There is no question of denying the existence of market situations where the conditions of supply and demand are such that it turns out that the production from some goods or services returns cheaper when she is assured by a single firm. That there are activities and markets marked by the presence of decreasing cost structures and savings scale of a magnitude atypical by relation to standards averages Of the industry, is undisputed table. When an activity is characterized by costs means which decrease the more we increase production, it is inevitable that a single company will replace all the others, either by forcing them into bankruptcy and the closure of their establishments, or by progressive mergers. The position of “monopoly” is then reached either at the end of a process of so-called “wild” competition, or through a cooperative strategy of alliance and union between firms that were rivals. It then seems “normal” to intervene to prevent this firm from “abusing” its position. to impose obvious prices on its customers is lying unreasonable.

However, as soon as we get into the concrete, things are a lot less simple And crystal clear.

When we speak savings scale, we think in

priority to technical economies of scale which are due to the presence of investments indivisible fixed assets, or the implementation of equipment that requires levels of production very students (compared to there dimension global of the market solvent). But he y Oh good other forms of economies of scale. The integration of several operations on the same site, the grouping of different production phases within the same decision-making group, or the association of diverse activities, but presenting common synergies in the frame of hierarchical coordination structures, can give rise to the appearance of significant economies of scale of a " entrepreneurial », benefiting of " system effects ".

It is Besides Thus that there theory modern organizations explain the emergence of This that we calls " there firm<sup>3</sup> ". She We taught that THE borders of the company are THE product of strengths complex noting the some savings (Or of savings) scale related to process physical of production And of distribution, THE others, savings (Or of organizational diseconomies usually described by the specialists below THE term of " costs agency » - costs specifically related has there putting in artwork of a relationship chic hierar of addiction And of commandment. She teaches us also that these latest born are not independent pendants of frame institutional And legal Who determined THE fashion of functioning of there firm (private enterprise, business public, cooperative, firm individual, Company by actions, etc.); else go that the size "optimal" of a firm East a notion Who can not in none case TO DO the object of estimates *has priori* by of the observers exteriors No committed In decision, And Who born can We be revealed *that ex post*, from of observation of the results of a walk free. By elsewhere, moon of the gaps THE more serious of there theory economic traditional East of born not see that, on a walk free, such East precisely there function of the

agreements, of the cartels, of the mergers, concentrations, but also of all THE shapes modern industrial and managerial cooperation, as well as helping business managers to discover where the potential for economies of scale to be exploited can be found; to also check if they are not offset by diseconomies linked to information and management problems (04 control) posed by any large human structure. Given the complexity of the factors involved, this is information that we can only discover as the product *a posteriori* of free functioning of there competition.

The result is that even if the notion of economies of scale plays an important role in the conceptual analysis of the firm and network phenomena, it is a concept which, in terms of economic action and of the political decision, has no operational value. A concept which cannot in any way serve us to discover whether a any activity necessarily aims to be shared between several rival companies, or integrated into a only firm has which he would therefore be justified to grant a privilege of legally protected monopoly

To illustrate this point, we will take an example from of America.

Walter J. Primeaux Jr is a professor of *Business Administration* In a university of the state of Illinois. In 1968, he taught a course in elementary economic theory where he taught the basics of monopoly theory. natural. A day, A pupil originating of a small city Texan, Lubbock, him do to remark that That's not how things happen at his house. There, he explains, people have the choice of subscribing to two electricity companies offering competing contracts. Curious, the professor inquires and learns that there is beautiful and well, in this locality of Texas, and that since 1916, two rival production and distribution companies of electricity.

Information taken with of Desk Federal of

Energy, he discovered that on January 1, 1966 there were forty-nine more localities in the United States of two thousand five cents residents Or the electricity supply was ensured by at least two firms in direct competition. Among them, cities as important as Anchorage, Alaska, Portland, Oregon, and Cleveland (Ohio). A Good opportunity for check on the ground the theory according to which electricity could not not function without privileges monopolistic.

The basic argument of the theory is that electricity, like telephone and telecommunications, is an industry with increasing returns such that if we have two companies competing, they will operate with higher costs than only one serving the same market.

Primeaux composes another sample of companies with the same characteristics but benefiting from exclusivities territorial 4. Theoretically, he should to present A cost AVERAGE of production less pupil that previous. Gold This is not This that he observed. Certainly, the calculations confirm that firms whose monopoly is protected benefit from a range of increasing returns more important; but they also show that, despite this advantage, when there is competition, companies operate with significantly lower average cost prices. Everything happens as if the advantage represented for the former by benefiting from greater economies of scale was more than offset, for the latter, by more efficient management.

This result is confirmed by another statistical observation. Theory tells us that competition should lead to surpluses of capacity greater than when there a monopoly, and SO has of the costs higher financial costs. **However**, the statistics obtained do not reveal any indication that would suggest that competition has the effect of leading to higher capital expenditures .

In total, Walter Primeaux observes that the prices charged to domestic consumers are on average 33% lower in cities where there is competition. compared to localities where electricity is distributed by monopolies regulated. None of the hypotheses empirical predictions by the theory of natural monopoly are not verified. There is, he concludes, absolutely nothing to prove that competition between companies serving the same markets is, by nature, impossible in industry. electric.

Most of the time the monopoly of "services public » we appears naturally justified by THE savings of "duplicate" that allows you to achieve compared to a situation Or he y would have several producers.

If we has two businesses, each will install its own network, its own lines, its transformers, etc. Everything will be installed in duplicate, or almost. Competition leads SO, are we tempted of conclude, A waste of investments which can be saved by imposing A server unique.

Walter Primeaux's study reminds us that by reasoning in this way, we forget that the security of the monopoly is not neutral in terms of economic efficiency; that it leads to management and organizational waste which may prove to be greater than that implied, for example, by competition in the layout of lines or the digging of trenches in the roadway. Under these conditions, it is not obvious that the single server is necessarily the one who will get the prices of returns more down.

THE even reasoning applies At transportation as well as to effects of networks (interconnection). For justify the monopoly national of the PTT Or from EDF, he should in all rigor demonstrate that THE savings of scale acquired at the level of there distribution born are not compensated, and beyond, by a lower management efficiency and organization linked At Status particular of the company. So, contrary to At role that there theory of mono-

natural pole would like to make it play, the notion of economies of scale is an analytical concept which can help us to understand what is, and why it is like that but Who cannot be used to tell us what must be, and therefore justify that certain companies benefit from legal privileges protecting them against competition from others.

## *2. Of the words Who describe of the things Who do not exist not*

Let us admit that economies of scale can be the subject of quantified and "objective" estimates. We would have studies that would tell us that, in this or that area, it is "natural" (i.e. "optimal") that a single firm monopolizes all the production of a market. But this would not yet make it possible to establish that it is a good thing or bad, desirable or reprehensible .

When We let's use the expression "monopoly natural", we are not only referring to an industrial situation defined by there presence savings scale or "subadditivity" phenomena. By using these two words, we simultaneously emit a negative value judgment which is dictated to us by the "monopole theory", And Who We said that one such situation East source of a "social cost" which can be saved through intervention appropriate of there power public.

This result only exists because traditional monopoly theory ignores the property rights structures within the firm, and the implications that this implies at the level of process of revelation of the costs.

Imagine a firm that benefits from significant economies of scale industrial. She maximize her pro fit by producing the quantity  $Q$  sold at price  $P$ . It then makes profits which should encourage other producers to enter the market. But, here, the mechanism does not work not because of the presence of "decreasing costs"

sants": a company producing only small quantities of even product se would find with of the price of come back unitary superiors.

Pest the limit price that the firm can ask for tenuous of his curve of request. But This is not not THE price which, of point of view of the community, would be " optimal". For that L' " optimum social" either accomplished, he should that the quantities produced and the selling price correspond to the intersection of its demand curve with its cost curve marginal.

When this is not the case, this translates for consumers by a loss of " well-being " Who results from the situation of " monopoly natural ". It's here presence of such " social cost" which, in the theory of public economics, justifies the intervention of the state.

That can TODO there power public? Constrain the company has take of the decisions Who se come so close that possible, nOl}S say THE manuals, of the " opti mum".

By example, the state can him to forbid of sell has a price superior has her cost AVERAGE; that's to say At point where profits disappear. The " social cost" than the monopoly natural imposed has the community East less important. However, if THE " cost social" has decreases, he is not Not yet totally eliminated. For that, he should that the firm adopted a policy of price corresponding has aligning its selling price with its cost price marginal. But we se find SO In a area Or THE price charged East lower At cost AVERAGE, And Or THE compliance with such a rule results in by losses. For solve This conflict between requirements individual financial balance and collective optimum, there is a solution: fill there difference with subsidies. What implied that we begin of preference by pass the company below THE control direct of the powers public. Such East there solution THE more often adopted In France. There regulation of " monopoly natural » y is sought has through of the companies public of which the ideal, We say THE economists of sector audience,

would be that their management is based on a pricing principle At “ price of returns » marginal.

This reasoning presents a characteristic feature : he rests on the hypothesis that THE passage of a institutional situation to another does not change the costs of the firm. But can we isolate the two elements in this way? Can we reason with impunity as if there were no connection? between prices returns from the company and the internal structure of its property rights? By accepting this fiction, the traditional theory of monopoly commits an error of which there result East of TO DO appear A “ cost social » there Or he don't exist in reality none.

### *We forget THE rights of property*

The textbook curves are intended to describe entrepreneurs' knowledge of ways to achieve their minimum production costs. But how do they know them? They are not given to them *a priori* as a stock of exogenous knowledge which would be communicated to them by a kind of intelligence exterior. This is something they must discover for themselves, by putting has contribution no only their personal, but anything that can inform them about what is happening with others. Therefore, there is no “ costs ” which are the reflection of a cognitive activity necessarily marked and limited by THE system of motivations and of sanctions individual In which activates the mind human.

Let's compare a bureaucratic service with a monopolistic nature (like the Post Office) to a private firm in the competitive sector. Each administration or public service has a production function implicit who determine mine THE cost of production unitary. But how is this cost determined? Through an iterative process similar to that experienced by any company. Management sends instructions to its departments so that they indicate their needs budgetary. These guidelines are has their round

decentralized at office level. Then all traced back towards THE high.

As In the company each forecast budget is deduced of accounting cost services rendered in the past, updated

For hold account of the requirements And circumstances news. As In THE private, there trend of offices East always of complain that THE envelopes are insufficient, THE equipment too much old, etc. The

rise of the forecasts budgetary accompanies thus arbitrations successive of which there function East of make compatible of the requests Who, *has a priori*, born THE are not. THE role of arbitration East of challenge THE service reviews on their costs of production. Amputate a prediction budgetary come

back has say has his subordinates :  
 “You must produce as much while costing us less.” In the negotiation, knowledge of possible production costs is decisive. But how does a leader of service, Or THE boss of a ministry do they know the possible production costs of their services? Their only source of information comes from the very services whose spending they are supposed to control. In the same way, how can the supervisory power know whether the budgetary estimates which reach it reflect the maximum effort of its administrations to seek the costs THE more down possible? Him Also depends on his information on what comes back from the services whose activity he controls. THE bureaucratic system is thus a decision-making system where the power of those who produce

- whose personal interest is to produce more expensively: more spacious offices, thicker carpets, lower workloads, more secretaries, company cars, expense reports, etc., - is much greater than that of "buyers" whose interest is, conversely, that the product is manufactured at the lowest costs possible (For there even quality).

Private enterprise works the same way. Each workshop or factory tent to get as much as possible from direction general. But there position of CEO is not not

identical to that of the administrative director. If information always depends on data transmitted by lower levels, there is a counterbalance : competition. This provides information on competitors' costs. If their prices are lower, it is because they produce less Dear, And SO that THE data Who rise from the bottom of the company do not reflect what could be achieved if everyone really did their best effort For produce THE less Dear possible.

Furthermore, there is profit. If someone personally “owns” it, any situation where the company does not product not At cost the lower represents a personal cost of which THE Rising East equal to savings that per would put of realize A more big effort.

From this it follows that the CEO is more directly motivated to demand effort from his colleagues and subordinates the greatest to achieve the truly lowest costs down. His decisions will be more “informed » that This cannot be the case in the context of a mono-political organization. They will also be accompanied by much more great effort by all to ensure that any new information either immediately followed of effects.

Result: private enterprise will be more efficient and will operate with lower cost prices, not because the men are different, but simply because the distribution of property rights is not the same .

As public regulation results in a dismantling of the firm's property rights, we must no longer wait for managers to feel as motivated that were their predecessors. They born will no longer provide the same research, they will no longer direct it in the same directions. The effectiveness of their management will deteriorate. Limited in their ability to derive greater personal monetary benefit from better management of their equipment, their temptation will be to overinvest in order to find compensation either in an expansion of there base of calculation of their rate of margin (case

American), or in the pursuit of great technological achievements reporting “psychic” gains from career, notoriety and power (case of French public companies). In both cases, the logic of public intervention is to lead to a general shift of the costs of come back. •

*He no has not of « cost social »*

What must therefore be taken into account to judge the merits of public intervention in the management of companies is not the curve of average cost representative of the private company, but the higher cost curves which are likely to accompany the transition from the status of a private firm free of its management to that of a company private but “regulated”, even business “nationalized”.

How far can this upward shift in the cost system go? The limit point of the drift corresponds to the level of production previously selected by the private “monopolist” before the State intervenes. For force him has produce more. He is not qdifficult to explain Why.

The State intervenes in principle to restore to consumers the availability of an economic surplus which would be subtracted by the policy of “private monopolist. However, it is not enough to tell leaders that they must sell At price of returns average (Or At marginal cost price). It is still necessary to ensure that these directives are indeed respected. But what data does the supervisory body have? Those who sit there are no more omniscient that those of which they have to monitor management. They have no way of having cost estimates other than those based on information provided to them by the management and staff of the companies under their supervision. The latter, as we have seen, have no interest in showing maximum zeal. As long as they had A

private boss, their appetites remained limited by his demand for the greatest possible profit margin. From that time has disappeared, everyone can do more freely let him go to his favorite demons. The engineer finds himself calmer to insist on technical prowess, whatever that or its price. The general management team more easily ratifies its choices in favor of a head office whose architectural characteristics, although costly, will add to the prestige of the company and those who operate it. The CEO who neat his look social sector obtains more easily the means of a high-wage policy. Unions more easily obtain the advantages of representativeness and status that they dream of to better supervise their troops. Taking advantage of the asymmetry of information which characterizes the relations of the company with its official guardians, each acts in such a way as to appropriate in the form of higher costs a part of the surplus that the State wanted to return to the consumer. This doing so, there is no didn't reason for the drift in costs to stop before the entire share of available surplus has been appropriated: that is to say before arriving at the point where the "regulated" (or nationalized) firm find THE levels of price And of production of "monopolist" No r regulated.

The intervention of the State thus primarily serves the interests of personal And leaders companies regulated which "capture" has their advantage THE surplus that there policy led was supposed report to consumers. But if the alternative concrete has A monopoly natural private and unregulated is a regulated private firm, or A public monopoly practicing policies offer and price identical has, those of "monopolist" private before the intervention of the state, he in results that the idea same as a business private in position of offeror unique on its imppe market to the community a "cost social" that he would come back has the State to correct, is irrelevant. It is a simple question of Good sense and conceptual rigor. There simply not of "cost social". He is of a pure invention of there theory.

Consequently, the expression "natural monopoly", with all of its connotations negative and its justification for the control of certain industries by the State loses also any real meaning. This what we say about is only a "fake concept". We We are prisoners of words that describe things that "do not exist."

### *Imperialism of the services public*

Let us now imagine that the technological conditions technologies evolve and radical innovations modify the cost price structure, so that new competitors can now find their place without having to align with prices lower than their cost price. If we remain faithful to the usual terminology, we East past tense of a situation of "monopoly natural" to that of a monopoly "No natural". Attracted by THE possibilities of profits Thus offered, of new producers should enter on THE walk, And THE authorities of guardianship should not not oppose it. But there is little chance of this happening, for reasons that we will understand. easily.

There Again, THE problem is the one of there knowledge of cost prices. How will the authorities know that the conditions under which the monopoly operates have changed? Even with competent staff, the supervisory authority remains dependent on the data coming back from the monopoly. We know to how much is nothing more artificial, and therefore more conducive to manipulation, or truncated presentation, one calculation of price of come back.

When disappear data techniques Who explained the existence of a single company to serve the market, what interest do the managers and employees of this firm have do they have has reveal there truth? None.

The global experience of deregulation shows that, fortunately, no one can oppose indefinitely has there putting in artwork of innovations upsetting

the traditional economics of a monopoly. But experience shows also to what point is strong, And often cleverly conducted, there resistance of the monopolies.

For avoid seeing the related personal benefits to the monopoly privilege called into question, they just need to persuade the supervisory authority that the progress of there science and technology do not lead to any change in the fundamentally decreasing nature of their costs. To do this, they can cheat in the presentation of technical and economic accounts. But fraud is only ever effective limited and temporary. Safer and more profitable in the long term is the strategy Who consists of investing massively in other peripheral, capital-intensive activities, which also have significant potential for economies of scale. Once aggregated into the mass, they will maintain the illusion of an activity which remains persistently in an area of decreasing costs (even when this is no longer the case for the basic activity for a long time on which is based the initial attribution from *pri vilège* of monopoly).

It is Thus that THE public services take a mentality “ imperialist . This extension of their activities brings them the advantage policy to to present as of the “companies”, they are also subject to competition. But we arrived SO has a situation where more no one has no means or point of reference, even approximate, to check whether an existing monopoly actually corresponds to “ natural ” data explaining the presence of a single supplier, or is only the artificial perpetuation of a situation which one day perhaps its reason for being economic, but which has not had one for a long time (except that of allowing a certain number of people to realize, sheltered from the umbrella of the State, and at the expense of their fellow citizens, a certain number of purposes personal).

*A abandonment of context characterized*

So what describes the theory is a world very far from reality. We absolutely cannot draw from it the principles of economic policy that can be deduced from it. the parties without public monopolies. Its real role is not to offer us the means to fight against waste (which does not exist), but to legitimize in the eyes of public opinion the permanence of certain " annuities » professional and cor poratives whose existence is obscured by the reasoning held.

However, let us get along well. He ... not It is not a question of claiming that the neoclassical theory of prices, of which the monopoly theory model is an extension, is false. We let's just say that we make him say things that it cannot say or, more precisely, that we deduce from it conclusions that we do not have the right to deduct without commit a mistake logic.

Price theory is only a methodological instrument whose function is not to reproduce the functioning of a concrete economy, but, using the fiction of a limiting case (a situation of "competition pure and perfect"), to make the coordinating role of price mechanisms perceived in its greatest conceptual purity. It was never designed to "explain" competition. Wanting to explain competition from a model whose logic is to exclude *a priori* any form of competitive behavior (due to the hypothesis of perfect information) would be absurd. It follows that it's a major lack of logic to use it for in deduct of the rules concrete And operative organization And of management of there competition.

This Who East in cause is not THE neo-classical model of theory of the price himself, but THE extensions that we have data in the form of a theory of competition which is the product of what logicians call an "abandonment of context characterized".

### 3. *The imposture of "calculation economic audience"*

Specialists in public economics do not seem happy not to determine the circumstances who would require state intervention. According to them, the economic science also provides those responsible "public services" simple and objective tools to manage their companies in terms compatible with their research of a "optimum" economic collective. It would be enough for public companies to price their services "at marginal cost".

Their approach is, broadly speaking, as follows. We start from the assertion of "liberal" economists for whom an economy of individual initiative, when there is competition "pure and perfect", leads to a situation characterized by the absence of waste in resource allocation rare in society. This "optimum", we are told, is reached when we can no longer find economic modifications "which increase satisfaction of some without decrease that from no other" (definition of Pareto).

This is where the mathematicians come in. Having established, at the term of a demonstration rigorous, that to reach the "optimum" any good or service must necessarily be exchanged at a price equal to its "marginal cost" of production, they draw the conclusion that it is sufficient to instruct the managers of public enterprises to sell their products "at marginal cost". The problem of monopoly, they tell us, is then resolved. Thanks to the grip by the State, it becomes possible to recreate in activities where the market does not function, price structures as close as possible to those to which competition would have led if it were not hampered by the presence of certain industrial particularities (such as economies of scale). Hence their affirmation - undoubtedly sincere - that this mode of intervention is perfectly compliant in mind of a

economy « liberal » (since he is of « reconstitute» the results of liberalism there Or he born can function).

*We have no way of " guess" what what would be the price of walk*

This approach raises the problem of the sincerity of the performers. Define precisely what the concept applies to of « cost marginal » 'is not Already not stain easy. Any calculation of « marginal costs» implies inevitable is lying a large part of imprecision and even arbitrary. Won't company managers take advantage of the asymmetry of information that exists between them and the supervisory authorities to include in the « costs» expenses for personal purposes that should not appear there? It is there question that raised there theory of the

« rights of property" (theme of the pages Who previous).

But We will go more far. This that We let's contest this is the very validity of the intellectual foundations of this approach, For of the reasons identical has those used ar Harek to denounce the myth of economic planning .

An economy guided by planned prices (or manipulated by an authority external to the market and not subject to competition) is an economy guided by prices whose information content is much poorer than that of market prices; an economy which, even managed by the most sophisticated optimization techniques, can by definition never lead to the same results as a free market. Affirm that thanks to modern techniques of econometrics and economics mathematical, he would be From now on possible of THE

« reconstitute» outside of any competitive market procedure, amounts to mystification, or even imposture.

This criticism was designed to refute the planning ambition of centralizing socialism. But it applies just as much to more limited forms of inter-

invention of the state by of the monopolies public. THE same problem of knowledge and knowledge which makes impossible a planning global of the economy makes also vain All hope from there get by there alone power of calculation economic audience, of the price Who “would reproduce”, to uncertainty near, those to which would drive In their domains THE functioning of procedures of walk. When THE leaders of these companies public announce that THE price that they provide At audience are price “optimized”, It is TRUE ; he no has not of reason to put it questioned; but these are of the “optimized” prices by. report to information, to knowledge And to perceptions particular of those who have do work And made the decisions required For achieve it. He there is no logic none reason, except THE chance THE more pure, For that price Thus calculated correspond has those to which we would have successful with of the mechanisms of walk. Are they more students? Less students? The gap is it weak, Or on the contrary important? So much that we remains within the framework of a structure of monopoly audience, We we don't have All simply not THE way to find out. In the absence of market, we born have strictly of none AVERAGE of " guess " what would be THE price of walk, And SO I opted mom » corresponding.

So when a company like EDF, for example, claims that thanks to its “scientific” optimization methods, She given has his clients of the signals of price equivalent to those of a competitive organization, it announces something it cannot achieve. Its forecasting and calculation methods are not in question. We only affirm that this is an objective which, also desirable be it, She born can And born will be able to gasoline never reach.

*He no has of "cost" that there Or he y has decision*

When you have undertaken to read This book, YOU had the choice of devote your hour of time has All other

thing. You could read another document, keep some time to think, work on other projects yourself. THE "cost" of this reading East represented by her

"opportunity cost": that is to say the "value" that you, the reader, attributed to the moment when you made your decision to that of all of these options that YOU would have preferred if you hadn't chosen what you then chose of TO DO.

If we make the hypothesis that you behaved To be one of them "rational", It is this "value" Who has determined your choice. But if we YOU THE asked, YOU would be hard-pressed to give the slightest "evaluation". If in fact when you decided, you had considered that reading of a other document had to YOU "bring back" more, you would never have known what was in it, and you would therefore never have been able to verify after the fact (*ex post*) that what your decision actually brought you was "more big" (or "better") than this what YOU "has cost". He in go of even In the other direction. When YOU will have finished this reading, he it will be possible for you to "evaluate" the benefits you get from it, but you will never be able to compare them to the contribution you would have benefited from if you had selected the second best option available to you and which presents her "cost of opportunity".

He in results that THE "costs" born are Never that of the personal, instantaneous and fleeting "value judgments" for which he is by definition excluded that others can give some an evaluation "objective" (has the way of the sizes physical).

There is only a "cost" where there is a choice, where there is a decision. The "cost" of an action is what we sacrifice when we choose one term of an alternative over another. "Cost" is what opposes choice; what could be avoided by not making a decision. This is a concept that must be radically distinguished from the related and only accounting notion of "cost price". The term se refers has A "judgement" individual And subjective,

source of a decision in which is located in definitive source of all "value" <sup>6</sup>.

The engineers who designed the pricing doctrine public at "marginal cost" born are not distant of this definition. The lineage is very apparent by example in the importance they attach to reasoning from of "costs economic" that they carefully distinguish of the acceptances accountants usual.

Their representation conceptual of there theory choices remains faithful to the "subjective" foundations of the theory of there "value". read are even on This point very in. advance on most textbooks (where the founding principles of there theory economic of the costs are THE more often wrong formulated).

Those who hold the power to decide have a large number of decisions to make at any time regarding on possibilities for action in competition between they. The logic of rationality requires us to retain the option including the "opportunity cost" is the lowest. This (defined by the "value" of what the decision maker considers that he would have reported the product obtained from of there second option immediately the most interesting) is actually a "marginal cost" whose evaluation involves comparisons of "future" revenue and expenditure flows on the part of the person making the decision, but in which THE "past" expenses And irreversibly committed have strictly none role has play.

For example, it is a question of planning how we will go about coping with the increase in electricity consumption anticipated at deadline  $t$ , and if we wish that that either done in the best way economical, the only What is important is to evaluate and of compare what the sums invested in the construction and commissioning of each planned power plant should yield; cost and average revenue possibly intervening only afterwards to verify that the selected investments are compatible with the financial constraints imposed by THE owners.

In This sense, the importance central that THE economists of public economic calculation, notably those of EDF, in their pricing consider the notion of “cost marginal of development » (defined as THE “ cost » of the additional power plant necessary to satisfy the anticipated increase in consumption) is well consistent with the foundations of liberal market theory .

However, everything changes when these same engineers deduce rules “ normative” from which, they claim, it would be possible to “ reconstruct » the signals economic of walk there where we considers that he born can not function.

### *Optimum of organization against optimum competitive*

Let us briefly recall how these signals arise. In a capitalist economy, each company is an autonomous decision-making center. Each entrepreneur makes his decisions based on a personal and subjective “ evaluation” of the “ opportunity costs” of the options that present themselves to his company at any time. Unlike what textbooks teach, it is not competition, when it is “ pure and perfect”, which requires it to set its price at its “ marginal cost “. As long as we don't lose view that the “ value” is always a “ subjective” phenomenon whose origin is located in the conceptual activity of human minds interacting through exchange, this equality is only the logical consequence of the very definition of the notion of “ opportunity cost” : All price, even that of monopolist, is equal to “marginal cost” (as “subjectively” appreciated by the entrepreneur who, *a priori*, when setting its conditions of sale, has no way of determining where his curves of costs definitive).

But the entrepreneur may discover that his assessment of “ opportunity costs” was wrong. He will modify her management, will change of plans, will decree that he

savings must be made, guided by new "evaluations".

In a decentralized economy, everyone behaves as an autonomous center of "optimization" where what is optimized is the use of resources for which everyone has legal right. control in relation to a system of "values" strictly personal and not objectifiable. Through exchange, everyone tests and compares their evaluations of the "value" of things with those of others. And this is how a price system emerges forming a "competitive optimum" where all THE possibilities of earnings has the exchange have summer exhaust- seated, but who does not corresponds itself to the "optimization" of none system of values "in particular".

Now let's put ourselves in the place of the public monopoly. THE desire of his leaders, We they say, East of dream

provide the public with the prices that would be those of the market if the presence of unavoidable economies of scale did not prevent there competition. How will they there take?

The method consists of accumulate the most possible large volume of information on production, available techniques, innovation prospects, market developments, their transformations, consumption elasticities, uses of substitution, the price of the resources And of the raw materials, etc. Of the functional relationships are Next calculated between data And variables which give rise to the construction of simulation models. And It is all of this "model" of which it's about to optimize THE functioning.

For that it is necessary a "valuation" factor " common and homogeneous which allows everything bring back to the same unit of measure monetary And Who serve has introduce in the functions of production there socket in account of there

"rarity economic". There solution detention consists to be adopted as a "standard" for valuing technical costs THE model mathematical of there competition " pure and perfect", with market prices as coefficients of which we Assumed that, even if they are not not Really of the "equilibrium price", they nevertheless never move away from a manner Really significant.

There theory neo-classical of the optimum teacher that the product THE bigger is obtained when THE price and the costs marginal of production of the different goods sold due are equal, THE principle East, a times known Requirement anticipated, to fix her rate At level of " marginal cost of development " of the abilities necessary for serve THE extra charge of consumption Thus foreseen. THE system being based on there socket in account of the price of walk, and therefore on the " value economic » of resources such what can be "objectively" observed on THE markets, Then anticipated has leave of techniques projection complex but proven, we consider that the process optimization Thus put in artwork East socially " neutral" : he born can what to bring there best assessment possible, taking into account the volume of information processed, on This that would be THE price if he was possible having a competition perfect.

Apparently there Steps stay In there logic of " liberalism", would it be that to the extent that it is based on very great confidence in the evaluative effectiveness of free markets (where the State does not prevent them not work, or even appear). But in reality it is a illusion.

### *A Steps of "planner"*

Let us take up again this central rule of price equality and marginal opportunity costs. Let us then ask ourselves what conditions should be met so that, placed In A environment economic identical, firms private in competition and a public monopoly, managed according to their own logic, display the same prices.

Let us admit that the calculation models of the public enterprise are so efficient that they actually make it possible to approximate what the equilibrium values of the market will be (hypothesis of quasi-omniscience of planners). of which Hayek We has said This that he had to in think).

Identity decisions would imply that “*ex post* costs” decisions of entrepreneurs (i.e. the value of projects displaced by these decisions, but calculated in THE price final of walk) be equal to “costs *ex ante*” of these same decisions (evaluated this time at the time even from taking decision in the value system and of perception Who was then the one of each entrepreneur in particular). What East absurd because it would imply that the problem had been solved even before of to start. He should that THE system of values And of weighting costs *ultimately* revealed by THE. market movement is equivalent to what was from the start the universe subjective of choice of the decision-makers private.

We have a circular, tautological reasoning, which neglects the role of the market as a cognitive procedure of discovery, and eliminate everything who does the real world. For equality to be possible, men would have to be automatons (*homo perfect oeconomicus*), that time no longer exists, neither does uncertainty, whether the information is perfect, etc. In a word, we would have to have a perfectly determined world; a world totally deprived of this human freedom essential to the formation of any value judgment! (We find all the restrictive hypotheses of the famous competition model pure And perfect.)

Let's remove NOW the hypothesis of omniscience of planner. The prices announced by the public monopoly are “optimized” prices, but in relation to particular values, information, knowledge and perceptions of the people of the organism planner. These “marginal costs” calculated by its study services have nothing to do with the costs of economic theory which only deals with those which are subjectively perceived by the authors of the decisions. What we have is a “optimal organization”, similar has the individual optimum of any person who behaves in a rational and maximizing manner. But it has nothing to do with the “economic optimum” *stricto sensu* which would be the result of actors

left free to maximize their utilities under the constraint of a system of property private.

For equality to be achieved, this time it would be necessary that THE private actors have as soon as THE departs the even particular system of values, informed by the same perceptions and the same knowledge, as the planner of the public enterprise. In other words, it would be necessary for the latter and the entrepreneurs don't do one. That he there is identify between private and public. Let everyone have the same identity. May the universe be populated by identical beings. What n / A obviously none sense!

Morality : the prices of a public company like EDF are in no way the " economic prices" that they claim to be. Their " signals " serve other purposes than the pure search for economic efficiency. They simply translate the vision of the universe as perceived by the EDF organization, and have the function of encouraging (and not forcing) people to conform to it. In this sense, it is GOOD of price of planning, And No of price " neutral" as we would like make us believe it. There's no of " planning liberal ." It is a contradiction in THE terms.

In wanting transform THE theorems deducted of the pure logical analysis of choices in operational tools of economic policy, the engineer-economists have committed an irreparable error: their reasoning introduced A divorce radical between THE concept of " cost" and all concept of decision individual. Without transition, and without in to have awareness, we East pass of a universe where all conceptual representation of there " value " was based on the " subjective" choices of human beings, to a different world where the " opportunity cost" is considered to be a notion " objective" And quantifiable has the way of the sizes physical independently of All process devaluation individual. THE two concepts being mutually exclusive and irreconcilable, it must not of the during not to be surprised if their Steps leads to a construction which ultimately turns out, despite beliefs, perfectly inconsistent.

Consequently, we think that fundamentally “public economic calculation” is only a discourse which amounts to giving economic science powers that it does not have, and to ask economic theory what, by definition, She born can not bring. His methodology reflects the confusion in which economic thought lives Since between two wars.

#### 4. *All THE markets would be questionable if...*

Because it is closely conditioned by the paradigm of there pure competition and perfect, traditional economic analysis is linked to the idea that if there is nothing left that a small number of companies (*a fortiori* only one), this necessarily leads to negative effects that belong has there power public of to correct.

This overly systematic vision is giving way to a new approach which recognizes that, when certain terms are united (i.e. when we has to do to “contestable markets”), the fact that there is only one firm on a market is not incompatible with the maintenance of competitive pressures sufficient to impose compliance with “balance price” levels (excluding the presence of any “monopoly profit”).

This approach, has which are basically associated with the names of professors Baumol, Panzar and Willig 7, occupies an increasing place in current thinking on competition. In particular, it represents the main theoretical justification for (partial) deregulation policies of large public service sectors. : for example the American policy of deregulation of air transport, or the policy, again American in matter of telecommunications.

*There theory of the markets questionable*

What is a "contestable" market? "We say that the market for a good or service is contestable if, on the one hand, entry into this market is completely free and if, else go, the release of this walk is done without cost<sup>8</sup>. » The appearance central of this theory is holding has there distinction introduced between "costs fixed recoverable » And "costs fixed irreversible" (*Sunk Costs*).

Entering a market requires investments. They can be relatively light (as in the case of the opening of a new supermarket), or on the contrary extremely heavy. But to this is added an additional distinction : in the event of closure of the company, these are either installations which can be easily converted to other uses; or equipment of such a specific nature that their value for other users is practically zero. In the first case, the company which closes its doors for a few months only after its opening only has to bear the share of depreciation which corresponds to the effective duration of use of the equipment; in the second, it is practically the full value of the initial investment what must pass in losses And profits.

A such dissymmetry In THE "costs of exit" cannot but have important consequences on the attitude of manufacturers who plan to enter a new market. The decision depends on the chances that the entrepreneur has of succeed; but Also of risk that he takes by committing in investments that have, or do not have, a significant resale market. If we are in a profession that requires facilities such specialized that there is practically no market che, he there will be very little of candidates has the entrance. If we is in a profession whose equipment can easily be reconverted, he y has At opposite all chances for that we have plethora of candidates.

Let's take a situation Or THE free game of there competition led to the elimination of all but one competitor. Let's imagine that he is about of a industry Who implied, to start production, a high percentage of expenses nearly irrecoverable. The one Who has survived to the initial competitive process can live on its own two ears. Seen THE risks incurred, he y has little of chances for that others producers try the adventure of delight him her "monopoly", and that What that he do. In that case, savings scale of which he benefits constitute beautiful And GOOD a barrier has the entrance And we has a situation of "natural monopoly" which justifies intervention by the public authorities to prevent it from practicing abusive prices .

Let us now imagine an activity that does not require at least contrary to light investments of a non-specific nature. Even if her situation explains itself by there presence of savings scale real, the monopoly" will have to permanence to defend oneself against the risk potential to see new companies enter its market and try to sell cheaper than him. When we meet again ve In A such case of figure, We said Baumol, we demonstrate that the " monopoly" cannot do otherwise than to practice a pricing policy consistent with the requirements of an "optimum of second rank" (with alignment of selling price on average cost and absence of " surprö fits"). We have a "contestable" market where the potential nature of competition is enough to discipline behavior of " monopoly natural ", And Or he East SO no need to appeal to the State and regulations to obtain the equivalent of a " price of competition".

*There strategy of « pre-contract conditional »*

The notion of « contestable markets » represents undeniable progress on traditional approaches to competition and public economics. However, this analysis retain Again there mostly of the defaults of para-

static digne of pure and perfect competition. In particular, we continue to reason as if there existed "objective" knowledge Who would allow to men of the State of TO DO *has priori* there difference between THE "good » And THE

"bad » monopolies, And as if they had their only concern is to put into practice the advice given to them by professional economists. We would like to demonstrate that the discipline of potential competition can, under certain conditions, continue to be exercised even when we se find in presence of a

"monopoly natural » authentic whose activity implies the care of important irrecoverable fixed costs. Let's take a activity presenting all THE features of a "monopoly natural » kind : there distribution of programs of television wired.

Let's imagine THE case of a area geographical served by a business Who must her "monopoly" has This that she was the first to be interested in serving this community. This position as a unique supplier, in an activity with decreasing costs, allows it to charge prices generating comfortable income. These profits should attract there lust of the companies rivals and encourage them to offer people the facilities region And of the programs competitors. But this entry does not take place because the importance of fixed investments that he must necessarily engage, in front of a competitor already there, makes the operation economical is lying too much hazardous. We se find, it seems, in front of a example almost Perfect of "monopoly natural".

In reality, this monopoly is less perfect than it seems. If the barrier to entry results from a combination of economies of scale and investment constraints, there is in fact a possible strategy to get around the obstacle.

Let us assume that another company is convinced that it can provide the customers served by the first with better quality service (greater choice of channels, possibility of use news technologies

interactive, access to new telematics services, etc.), for a price that is also more competitive (more close of long-term average cost). The direct entrance is closed to him. But she can do it differently. For example, send his agents canvass the residents of The area served by the other, And offer them contracts long term by which they undertake to subscribe a exclusive subscription for several years to the company's services, for the day when it will actually be able to of function.

If the service offered is better than that currently provided, and if the company offering it has already proven itself elsewhere and has acquired a positive brand image there (a sign that it can be trusted), the interest of each customer is to sign and thus promise to give up its previous connection. THE day Or his starters have accumulated a sufficient number of contracts to ensure financial coverage of the operation, the company can safely begin installation work of her network.

### *How A "monopolist" se do expel*

But her interest is it really se throw In of such work? THE lines And THE connections installed by the first one business born can not be disassembled and transferred elsewhere. He is of assets unrecoverable, who will lose nearly all value the day when the competitor will put in service his own facilities. Their owner has every interest in negotiating the transfer to the competitor happy Who will be able to Thus realize of the investment savings considerable by report has his original plans. This last has especially more interest has accept this negotiation that in redeeming THE equipment of the network of his rival, he reduced THE risk duty the other will later repeat the bad blow he has just dealt him. THE round East plays. THE first has interest has sell, to limit his losses And reinvest elsewhere. THE second has interest

to purchase to reduce the threat posed by the existence of equipment susceptible to be at everything moment reactivated. A transaction is possible, for profit common of the two interested. When THE process ends, we have a situation where a " private monopolist" was quite simply ejected from its market by a competitor more efficient. Which, in theory, is impen sand come Yet of se produce.

There lesson of This scenario East that if he y had In our countries a true freedom and guarantee contracts, it is not not because that someone would enjoy apparently of a position of " monopoly natural" that it would be necessarily has the shelter of all competition. As any business, he y would run always THE risk commercial to see appropriate her customer base by someone of more effective which knows to propose to consumers some thing of better adapted has their preferences; And that without train necessarily duplication and investment waste what evoke those Who, At name of a design naive about services public, ask the State to ensure both the regulation, but also there protection legal of the " monopolies natural » against the entrance of others competitors. When THE contracts are free, he is improper of talk of barrier has the entrance, even technology. All THE markets would be " questionable", even those Or there go costs fixed irreversible East most big. And THE price practice on these markets would not not less of the " price of competition » that those recognized by there theory in the case of markets " table tales" - that's to say of the price by report to which we can not TO DO better that of to leave TO DO THE companies<sup>9</sup>. It is Why We let's think that THE issue is not no control, Or of nationalize THE " monopolies ", but it is that of the obstacles and restrictions that States modern don't have Never totally stopped to erect against contractual freedoms. What is in question, is not neither of order economic neither of order technological, but policy And institutional.

The question is to know why the “services public » remained outside this problem. The theory traditional economic propose a explanation involving a kind of technological determinism which, in certain circumstances, would prevent market mechanisms from functioning satisfactorily. We are coming from highlight the conceptual weaknesses of this approach. This criticism leads us to suggest a other explanation : there characteristic of the “services public” East simply to belong has of the activity cities or sectors of activity where, from the beginning, legal and institutional obstacles have prevented freedom contractual of lavish his benefits.

### Notes

1. Catherine BERTHQ, *History of the Telecommunications in France*, ERES, 1984.

2. David ENCAQUA, *Regulation And competition: THE problems of natural monopoly and destructive competition*, Forecasting Department, ministry of the Finance, 1986.

3. See Ronald CQASE, *The Nature of the Firm*, Economica, 1937. Armen ALCHIAN and Harold DEMSETZ, • Production, Information, Costs and Economics Organization ", *American Economic Review*, 1972. Olivier WILLIAMSON, *Markets and Hierarchies: Analysis and Anti-Trust Implications*, Free Press, New York, 1975.

4. Walter PRIMEAUX Jr, • Competition Between Electric Utilities •, In J.C. MQRHQUSE, *Electric Power: Deregulation and tea Public Interest*, Pacific Research Institute for Public Policy, San Francisco, 1986.

5. See THE first chapter of This book.

6. See Jim BUCHANAN, *Cost and Choice: An Inquiry in Economic Theory*, Markham Publishing Co., Chicago, 1969. See Also : • LSE Cost Theory in Retrospect , in *LSE Essays we Cost*, collected trials by James BUCHANAN And GF THIRLBY, Weidenfeld and Nicolson, 1973. Or : • Is Economies the Science of Choice •, in James BUCHANAN, *What Should Economists Do?*, Liberty Press, Indianapolis, 1979.

7. See BJ BAUMQL, John PANZER And Robert WILLIG, *Questionable Markets*, Harcourt Brace Jovanovich, New York, 1982.

8. David ENCAQUA, *op. eyelash..*

9. This example is taken of Thomas HAZLETT, • Private Contracting Versus Audience Regulation ". In Robert POOLE, *Unnatural Monopolies*,

Lexington **Books**, 1986. It can in fact be generalized to all "goods public" to demonstrate that he does not have no good which is "by nature" audience. For an elaboration of this concept, and a systematization of the reasoning pursued here, see Bertrand LEMENNICIER, "Property intellectual and the public goods argument", in *Inventions, patents, intellectual property and protection of ideas: a re-examination of the bases historical, philosophical and economic aspects of legislation contemporary*, Report under the direction of Henri THE PAGE for the Institut of the Property industrial, 1989.

However, such assertions risk arouse disbelief strong mental hold of traditional theories of the competition (even among those who claim born Never TO DO of theory). Also it is important of answer has some of the objections possible.

*The first* is to wonder how it is that the "monopoly" in place has not thought of protecting its market by taking the initiative itself to block its customers by signing subscription contracts exclusive?

The answer is very simple: because this is not the interest of customers to adhere to such contracts. If in any state of cause the company taxes them price THE more strong possible, they don't have Nothing has earn has y subscribe.

When THE challenger comes to present his contracts, THE things are different. What it offers to subscribers is certainly an exclusivity contract, but in return for this commitment it provides the customer with a significant advantage: that of committing itself to prices and services more advantageous. In other words, he offers them a business: in se binding on several years, they give up a certain part of their freedom of choice, but they y gain the freedom to more se TO DO ripped off by someone who charges them a high price, but whose service is nevertheless less efficient.

For the subscriber, this This offer is all the more attractive because the challenger actually has no other choice than to offer the lowest possible price. If he does not do so, it will provoke the appearance of counter-offers even less dear who will come to him cut the grass below THE foot. And THE will be forced, if it wishes to stay in the race, to align its price proposals with its long-term average cost. Anyone can indeed make proposals, at a relatively low opportunity cost. weak. In this case we find ourselves in front of a market characterized by a offers almost perfectly elasticity. There situation is very different from that of a market where competition only begins to play if the goods are already produced, and therefore a lot of money has already been spent (which necessarily reduces the number of possible suppliers). By moving competition a notch upstream, to a level where the production of projects still only involves limited costs, the system of long-term option contracts provide the opportunity to find a market with competitive prices really competitive.

*Second objection*: if the one who invests in the production of "public services" thus risks being ransomed by a clever "raider" as soon as during that he se find stuck by THE significant fixed investments that its activity requires, no one will dare to invest in this sector anymore - except if we him offer a protection legal against This gender of

misadventure. The analysis would therefore not invalidate the idea if it is a domain Or he is necessary for THE authorities d intervene to protect investments against THE effects destructive of a competition • excessive

li is right that the one Who invests heavily in building a network of services public takes THE risk to offer a prey tempting has an aggressive competitor. But he will necessarily hold taken into account in its calculations, like everything other risk (by example THE risk of become technologically obsolete due to the appearance of an unanticipated invention). For run THE minimum of hazard, he will try of se protect, by agreeing, for example, to only provide its services if it obtains from consumers a promise of an exclusive subscription for a period of time sufficient.

For THE customer, a such constraint East A inconvenience. That reduced its possibilities of choice future, And THE private by example of some options that would be made possible tomorrow by unexpected progress of technology available. He is normal that he does not have hardly envy of se bind by such commitments. But, Conversely, if he refuses to take into account count the problems of producer, he It will not be of service of All, because this will not be produced. There is therefore room for negotiation which must lead to has A compromise.

We are faced with a classic arbitrage problem in the choice of product characteristics as exists on all markets. li is of determine there Good dose of flexibility (Or inflexibility) on which both parties are likely to agree, account tenuous of the counterparties (in particular price) that THE producer can to offer has her customers to encourage them has accept her offer. In all that's nothing that of very classic. It is Exactly there main function of the market and competition than to bring out, through adjustments progressive, THE content contractual • optimal •

Once the product is launched, and that the system is running, every time that a subscription arrives has deadline, the producer contract enters compete with everyone THE others contracts that would be susceptible to suggest other companies able to make a better offer. To avoid see each other one day expropriated against his willingly, the company has no other solution than to be vigilant, and to adjust the content of his contracts permanently function of developments that it detects in The preferences of his consumers. We have a market competitive framework whose logic is to lead to the most appropriate contract structure to preferences of there customer base, that Who, by definition, East the best has even of to discourage THE raiders potential.

*Third remark:* when there has competition between several firms offering contracts different, that is happening for THE subscribers who have sign with moon of the firms losers?

Initially, we will have several firms in the running, each proposing its own project. When the results of the first campaigns of marketing will be available, THE less GOOD placed hole will see in their interest in merge with one of the two firms of head. These resume SO THE contracts of their new associates.

For to prevent that their customers do not se find has there THANKS of good you-

their competitor's bill if he wins the race, companies have an interest in including in their contracts a clause insurance which guarantees potential subscribers that in any event, whoever wins, they will be served to the best promised conditions to clients of this one. For example, we can imagine that companies carry out a deposit of guarantee (a bail), whose Rising would be calculated on the base of the difference between the monopoly price and the competition price, multiplied by THE number subscriptions. This sum would then be paid to the person who wins the market to compensate them for having to serve all the subscribers local. At even rate, even those who do not have treaty has move forward with him. Such a system would have the effect of avoiding fanciful applications, and would therefore also serve to "moralize" the market.

*Last review*, the most important: that of • transaction costs". This would be an unrealistic and utopian reverie which would seriously underestimate THE difficulties concrete of functioning of such completely private mechanisms. do we imagine by example one dozen competing firms simultaneously lining up at the doors of houses in order to survey their residents and carry out their surveys? So much waste! The extreme atomization of the customer base, the extremely strong assumptions in matters individual information and of rationality that suppose it signing of contractual commitments of long term, all this, we they say, makes more than unlikely the organization at a reasonable cost of such process of negotiation Merchant.

This is how Victor Goldberg points out that if the public services" born se are never developed on THE model of these private markets, it's quite simply because he these are social procedures that are too costly; and that, all things being equal, the past e through the mediation of public authorities (in the form of regulated markets, or a taking in each direct of production and marketing) allows significant savings • transaction costs. We find the institutional thesis according to which the mere fact that the State has (almost) always been involved in the management of certain activities would be enough to prove (in the strong sense of the term) that these are areas where the mechanisms of walk born can not function.

Hazlett responds in showing that even then that he claims provide an explanation positive in terms of • costs transaction » of the development of the intervention of State, THE own diagram of Goldberg paradoxically continues of think THE relationships between consumers And public authorities in a conceptual framework still as angelic of the State which excludes the taking into account of any "bankruptcy" specific to the logic of operation of there decision policy. Gold, there Again, the approach by the theory of • property rights" allows us to think that there is every chance that intermediation of supposedly • representative • political or administrative bodies results in • transaction costs • significantly higher than in a competitive private market logic (arbitrary incentives for overinvestment in contracts preferentially favoring categories of clients which present the greatest risk aversion, ultra-conservative policies slowing down the introduction And THE development of new technologies and of new calves products...)

This problem of • costs of transaction • is a affair who has nothing specific At domain of the services public And has the organization of the

• monopolies natural • All THE markets know of the problems of • transaction costs•. And this is precisely the very virtue of competition and of system of walk, when we leave THE people free to contract between them, that of naturally lead to the emergence of institutions, systems Golden anization and private contractual procedures whose function is to help individuals solve information problems, of choice and of risk that arises them in a universe of increasing complexity, in of the terms of costs more effective possible.

Let us think, for example, of the stock market. Here too we have a problem of extreme atomization of demand and information needs. And yet, in the opinion of even economists, it is the closest thing conditions of a truly perfect market. If this is so, it is because THE development of walk, In A climate of free competition and freedom of contracts, has enabled an entire population of agents to specialize in this very particular task of collecting, researching and using financial information, and to benefit of their services all those Who are loans has THE buy.

### III

## **There true history of the “ services public »**

The theory of natural monopoly is a normative theory : we look for situations likely to give rise to “ failures ” in the functioning of market mechanisms, and we are studying how public authority could remedy this. But it is also a positive theory: we consider that it is according to this approach that historically State intervention developed and that the public services and monopolies that we know today were created. 'today. Criticism of the normative model necessarily leads to a questioning of the positive explanatory model linked to it. We do not think that it is in traditional economic theory that we must look for the historical explanation of territorial franchises and state regulatory systems which characterize the contemporary economy of industries say of “ service audience”.

There is another way of looking at things. It arises from the “ capture theory ” developed by George Stigler as part of his work on the economics of regulation <sup>1</sup>. The central idea is that regulations public, far away to be bets in place to serve the interests of consumers, respond to a political market logic and are a form of protectionism, of restrictions on production, the aim of which is of TO DO appear of the “ annuities of rarity » Who are

Next shared between THE companies Thus protected against the entrance of new competitors more dynamics, And THE authorities of guardianship loaded of put in place Then to administer the app of the regulations. We in let's deduce that there theory traditional (or modern) of monopoly natural is not in do one alibi, an "cover theory", offered has their unknowingly by the economists to pressure groups including the advantages acquired were Thus found socially legitimized and politically protected. We we are not not far away of to think that his arguments rest on of the reasonings Who don't have summer invented that For protect of the hardnesses of there competition some number of industrial interests, professionals Or administrative benefiting, has A certain moment of the story, of a position policy privileged. He y has a around twenty years, the historian American Gabriel Kolko added to the credit of this thesis by demonstrating that there creation of the interstate Trade Commission (ICC), At beginning of this century, did not have Nothing has see with a any worry of government American of protect THE users against abuses monopolistic interests of large corporate cartels of path of iron, but was at contrary, the product of the efforts of these cartels to get of the State that he imposed by the constraint of the public force there discipline that they were not arriving not has TO DO free is lying accept by their members<sup>2</sup>.

Since then other studies have been carried out. A former *Wall Street Journal reporter*, Ida Walters looked into the story, of the origins of regulation of the Telecoms in the USA<sup>3</sup>. Ronald Coase studied the process which led, in the twenties, to the nationalization of American radio space<sup>4</sup>. Economists have undertaken to reconstruct the climate which surrounded the beginnings of the intervention of public authorities in the regulation of the production and distribution of electrical energy<sup>5</sup>. Their work put strong undermines the traditional thesis according to which the offer of regulation would answer priority At worry of serve

the general interest. They finally clearly show the “unnatural” character » of the monopolies studied, and the essential role of institutional factors in the birth of this that we tend today to consider as going of self.

*There true history of “Ma-Bell”*

If traditional economic theory is true, if the objective of public interventions indeed respond to a logic which is to impose on private companies decisions different from those which would normally correspond to the interests of their shareholders, we are in right of assume that these have of Many people oppose their introduction. We should, in the newspapers and the declarations of the time, find trace of This conflict. However, when we do this work, that is not at all what appears. When we look at the history of the telephone in the United States, we discover that far from opposing measures which should in principle impose political supervision on it, it was the Bell Company itself which, in beginning of century, sought and desired the intervention of the legislator. For what purposes? Quite simply to re-establish a dominant position which, following the lifting of the exclusivity of its patents, had naturally tendency has crumble.

The story of the Bell Company begin February 16, 1876 by a extraordinary coincidence. This that day, Graham Bell se present At desk of the patents of New York for there submit the plans of a device that we will call you later. Two hours more late, one another inventor of genius, Elisha Gray se present In the same offices for him too deposit there THE device patents likely to transmit the human route to distance. There law American being This what East, these two o'clock in advance are going TO DO there fortune of Graham Bell. The Bell Telephone Company was created in 1877.

But the company knows very quickly important difficulties finan-

cières. Its founder then turned to the powerful and extremely wealthy Western Union Telegraph Company Vanderbilt brothers. He offers him his patents for 100 000 dollars. Not believing in the future of this new device, the Western Union declined the offer. She will wake up too late. Having bought THE patents by Elisha Grey, She is being sued by the Bell Company which claims its prior rights. Rather than initiating uncertain legal proceedings, two companies prefer to negotiate. After an initial refusal by Bell to accept an equal sharing market, Western agrees to cede all of its telephone interests to Bell in exchange for a promise not to compete with it in its field own, THE connections telegraphic.

In these early years of the telephone, protected by its patents, Bell reigned supreme in the American market. Of the 188 L, he no has Already more a alone city of more of 15,000 inhabitants who do not have at least one telephone exchange. In 1884, despite considerable technical difficulties due to poorly resolved amplification problems, the first long-distance lines appeared, linking New York to Boston, Providence and New Haven. In 1885 East trained the American Telephone and Telegraph Company, holding central And administrative band Bell.

### *A application of there « theory of there capture »*

However, the Bell patent monopoly expired in 1894. With its industrial and commercial advances, Bell continued to dominate the market. In 1907, half of the six million telephone lines installed East a line Bell. But the competition explodes. Alongside Bell, thousands of small businesses are forming which are creating their own local TV networks. phone. In 1900, we in counted Already 6,000 has through all the territory American. Seven years more late, he y in at 20,000. It is there period of competition "savage".

Technically speaking, in terms of quality, the services are worth. There alone difference comes of This that Bell offers its customers the advantage of being connected to a number of subscribers four to five times greater than what the more big of the small networks. From where of the prices which are also four to five times more expensive. But as at the time, this what is he looking for? customer is more of a local connection than being able to telephone far away, a sort of division of tasks is established : small companies have the advantage of a low price, to Bell the advantage of making part of a network more extended.

With the progress of interconnection However, a new stage begins. Bell only agrees to connect local companies to its long distance network that are willing to abandon their independence and integrate. to one of the group's telephone companies. Some accept. Others refuse. In response, independents group together, create their own interconnection exchanges, and even begin to lay lines and look for customers in areas served by companies local members of network Bell.

It's 1907. What's happening then? For the first time we see the argument appear that such competition is contrary to the interests of users, that it leads to waste, and that it can only delay the equipment of the entire country. Who makes these criticisms? A politician devoted At GOOD common? A renowned economist? Neither. Quite simply Theodore Vail, the president of ATT. " The doubling of lines and equipment," he explains, is a waste that costs investors dearly; doubling of charges East A waste Who it's expensive to ysagers »

Addressing to members of state legislatures he them calls for measures to be taken to protect subscribers against actions of those he designates as " promoters without scruples ."

Leaning on of the theories economic recent, judged has there tip of progress of the knowledge, such

statements have a power of conviction well above average. The politician is incapable by force of the things of judge the validity of a such theory. He can only bow to scientific authority and follow the advice given to him in the name of the general interest.

*If we had leave alone TO DO THE walk...*

As in any industry in full technological expansion se pose of the questions complex of standards and harmonization. Integration within the Bell system was noon of the possible answers, but This was not surely not here alone.

History shows that, face At challenge that Vail asked them, American independents reacted by organizing. They founded an association. She worked actively to develop its own connection standards. It is probable that if they had been given time, they would have gradually formed an interconnection network rival. There value economical more balanced the link capacities offered would then have forced Bell's staff to abandon its traditional policy boycott of independents. A national interconnection network would be created without the need to go through the monopoly of a alone.

If THE things born se are not past Thus, It is Between 1907 and 1910, members of state legislatures heeded the call addressed to them. I.,their answer is a law which, in turn, in each of the states Americans, authorizes representatives of local authorities to grant to a company *the exclusivity* of telephone equipment for his territory. The objective of the maneuver is clear. We invoke the constraints of " natural monopoly ". It's officially about fighting against doubles jobs, and therefore save investment. But the truth is that by doing so we now prevent independents of come compete Bell by their prices

lower where Bell is already present, while where everything remains to be built Bell retains its advantage of guaranteeing access to a larger network of correspondents. The balance between Bell And his competitors East broken.

Furthermore, what are the municipal authorities doing? Their natural tendency is to choose Bell over other companies, precisely because of the advantages it offers. offer in matter interconnection; And that even if the value economic real of this interconnection for the users is, at that time, Again very weak (but we don't ask them not their opinion). When it comes to choosing a company, the local elected member of a selection commission is in a different position from the user. Whatever his final choice, the decision will have no consequences for his wallet staff. It does not matter to him whether he prefers the most complete or the most modern service, even if that means higher communication rates. This is not not him Who THE will pay.

In return for the exclusivity rights, the concessionaire is subject to the constraint of not exceeding a certain maximum financial return. But that's precisely what Bell's managers want. According to a now classic calculation in the theory economics of regulation, they prefer that their margins be monitored by commissions of civil servants and elected officials local, rather than of see their price controlled by competition of rivals commercial.

### *The alibi of service audience*

The reason of This behavior is not hard to find. Free market discipline applies to *all* elements of cost price - that is, to all cost sources without exception, including investments of any kind. A company that invests more than necessary to meet the demands of its customers, or that invests poorly, for example in economic operations No directly profitable but producers

personal advantages for those who undertake them ( private *Concordes* ), is mercilessly punished by the competition if users do not share the same preferences that is responsible.

In a firm "regulated", THE things are different. THE control basically has margin beneficiary, what that either THE level And there nature of costs really necessary. THE staff commissions local is not not team, neither intellectually, neither technically, For judge of there value real economic equipment or investments whose spent figure In THE accounts of the entrepreneur. How, by example, can he be on that THE projections self-financing that we him request to approve by accepting the setting of new rates will serve good to improve the service provided to users of the constituency, and will not go not gain weight the flow of resources invested by THE holding central In there diversification of group towards of the different activities not having nothing more to do with . the satisfaction of the subscriber, but paid for by him? The symmetry of information between THE controller And THE control is such that the first cannot actually be sure of anything. The probability is very high that it will happen "entourloupiner" by the know-how of the person he is supposed to supervise activities .

It is Exactly This Who se pass with Bell. Having put its local rates sheltered from any competition, Bell used the profits thus generated to finance important research and development activities which, for the time, represented a real innovation. The new products thus developed do not always have much to see with THE service of base of the subscriber who bears the financial cost, but they allow it to strengthen its technological advance, and thus to definitively end its monopoly on the control of American telephone networks. This is how Bell Labs were born in 1925, which have since played an essential role in the emergence of modern telecommunications (notably with the invention of transistor).

That said, stay A last issue. If AIT also dominates THE walk of the supplies of materials phone calls through its subsidiary Western Electrical, her position y stay nevertheless fragile. It is an area where, due to the difference in the nature of entry costs, there is always the risk of a powerful potential competitor appearing. How can we counter this threat? By taking up the notion of “public service”.

In 1909, THE President Vail takes up his baton of pilgrim for develop the notion of “universal service”. THE phone, he explains in his conferences across America, is a service whose value lies In her ability to connect a very large number of people residing anywhere, at any time. But, he adds, he can only provide this service if everyone (or at least every household) has a telephone, and if all telephones are interconnected thanks to the establishment of a large standardized national network. But such a goal has obviously a counterpart. So that all world may se pay THE phone, he must that THE connection costs and the price of communications (essentially local) remain sufficiently low. And for the company to find its way, it is essential that it finds the necessary compensation elsewhere. In other words, it is essential that it be authorized to make price adjustments based on a system of subsidies crossed (impossible has sustain on A walk “disputable”). Long link users say tance, but Also THE users of materials specialists (companies for example) must pay more to make the telephone accessible to the most modest households. But it is still necessary that these higher prices do not not flee there customer base towards A competitor. “Providing the best service at the best cost,” concludes Vail, requires that the company network owner benefits from a privilege which protects its “juiciest” markets against all competition.

Once again, Theodore Vail will have been able to convince his interlocutors. In the name of this philosophy which aims to be resolutely "social" and generous, ATT will be recognized by its supervisory bodies (first the Interstate Commerce Commission, then the Federal Communications Commission from 1934), the right on the one hand not to have competitors for long distance telephone connections, on the other hand to impose on its subscribers the exclusive use of materials manufactured by its own factories.

What is prohibited to others in the name of antitrust legislation, Bell is granted most legally in the name of "public service". That's it: the arguments Who Today Again are used by those who want to preserve public monopolies against threat of "deregulation", in the name of the fight against private monopolies or imperatives of "industrial policy", are Exactly those who, he there is two third of a century, have summer used Before All THE world by THE boss of the largest private monopoly of all time to reconstitute And weld definitely a situation which was precisely in the process of escaping from him under the natural effects of there competition industrial.

### *The example of there nationalization of the waves terrestrial*

The adventure of radio begins with the advent of the xx<sup>e</sup> century. It was in 1896 that Guglielmo Marconi filed his first patents has London. In 1899, For there first time, a ship hit by a cargo ship was rescued thanks to the calls it managed to make via TSF. From 1910, all THE liners leaving the ribs American are obliged to equip themselves with TSF. Two years later, on April 14, 1912, the tragedy of the *Titanic* accelerated the movement to equip boats and strongly contributed to the discovery there radio by THE big audience.

At this time, wireless telegraphy was essential is lying used as instrument of communication husband-

time. But the staff of !The US Navy complains that its transmissions are more in addition frequently troubled by interference from private transmitters. The Navy calls on the US government to take of the measures.

While in France the law of 1937 prohibits an individual from transmitting radio signals without prior authorization from the public authorities, and therefore makes the State "the owner" of the terrestrial space, in the United States nothing is planned. Anyone with enough money to buy a radio transmitter can broadcast signals on any frequency without anyone asking. Given the basic technology of the time, this resulted in frequent traffic jams. of the waves.

Congress therefore passes a law which provides that all issuers must be subject to a declaration and registration with the services of the Secretary of State for Commerce. But the law does not entrusted to the administration no police power over the use of frequencies. Nothing is planned to revoke their license from those who abuse it and cause too much inconvenience to others. The terrestrial space retains its status of *res null/us* (in the literal sense : "the thing of no one »). THE waves are a "very free" who does not do legally the object of none right of property.

However, with the end of The First World War saw the arrival of the first commercial radio stations. In 1920, the Westinghouse electric company launched the first station in Pittsburgh to broadcast reports, concerts and operas. The following year **ATT** began setting up a network of around forty regional stations, interconnected thanks to its long distance telephone lines. Very quickly, several hundred commercial transmitters covered the American territory, and simultaneously revealed a gigantic problem of harmonization and coordination In the use of the frequencies.

With the rise of the radios commercial, THE problems

interference takes an increasingly critical turn. Herbert Hoover, then Minister of Commerce, tried to impose discipline on station owners concerning their distribution of the waves, their sharing of slices and schedules, thus that the setting of the power of their transmitters. But, in 1923, his decisions were invalidated by their justice. Who then learned that the government does not have in this matter of non-power legal. In 1926, another trial confirms the validity of the first decision if we.

#### *A walk free was in train of to be born*

Generally the story goes directly from this episode to the passing of the law of February 1927, establishing the FCC (Federal Communications Commission), as if it were the direct product of "chaos" on the airwaves in the early twenties. In doing so we are deprived of what is actually more interesting in experience putting in place of the American telecommunications regulatory system.

During that conference and commissions reunite in Washington to imagine legislative solutions, the owners of commercial stations are not remaining inactive. The absence of legal property rights clearly defining the conditions of access and use of radio frequencies indeed represents a loss of income. When a broadcast is too frequently jammed or made inaudible by interference from another transmitter, advertisers become rarer. That's so much money that's not coming in. The solution is to turn to the courts and ask them to order those who disturb your broadcasts, or to modify the technical conditions of their clean broadcasts (change of schedule, frequency, modification of the antenna, reduction of power), or simply to cease their activity. This is what the operators of a certain number of radio resorts.

For the courts, the problem is not easy to resolve, because it is completely new. When two stations in the same region fight to use the same frequencies, on what basis should we decide who is entitled to what? It is precisely the advantage of the system of private property that facilitate the solution of such Conflicts. But, here, there is no "property". What to do? American judges will find the solution in an old tradition of Anglo-Saxon Common Law, erected by John Locke as the philosophical foundation of property, and regularly applied throughout the period of colonization of Western lands: the law *of first occupant (Homesteading Principle)*. The right of property must be recognized to those who has been the first regular user of the frequency which is the subject of the dispute. Thus, at the beginning of 1926, the court of a small town in Illinois ended its judgment by recognizing the ownership of the frequencies that he was the first to own to the operator of a local radio station. to occupy, this giving it the right to require other stations to carry out their activity in conditions which do not disturb its broadcasts.

However, this judgment comes at a time when another court decision definitively annulling the administrative measures that Hoover was trying to impose, caused a real boom In there creation of new radio stations. In nine months, more of two cents news stations are created. Airwave congestion is getting even worse. Congress panicked and, after an initial decision in which it decreed that " ether is the inalienable property of the people of the United States", he passed another law in July 1926 which provides that from now on no radio station will be able to continue to broadcast if its owner does not obtain from the Administration a license whose duration of validity is limited, And whose renewal is linked to the signing of a document by which the operator renounces the exercise of any private right over the property and the use of the lengths waves. America come of

“nationalize” to his tower ownership and use waves. This commitment is still required today of all those who, in one capacity or another, benefit from an authorization to emit.

Is there a link between the sudden speed with which Washington finds THE AVERAGE of to go out of a political impasse which had lasted for years, and the decision of certain courts, a few months before, to recognize the exercise of *private property rights* over the use of the airwaves? Is it just a coincidence? It is nevertheless disturbing to observe that it is at the moment when the operation spontaneous of there Company civil left between seeing the establishment of a system of property rights allowing to courts of TO DO there police of the waves, in application of a, n right of which efficiency was not more has demonstrate that the state its suddenly rushed to impose its solution regulatory.

He is tempting from deduct that was less to put an end to the “chaos” which reigned on the airwaves (and which was precisely in the process of finding its solution within the framework of market institutions), and to abort the movement to extend the field of private property Who was in train of se draw.

Since then, studies have been carried out which demonstrate that a such system of property was perfectly viable and did not raise technical problems more difficult to resolve than those that the law encounters daily in the problems a lot more classic of property <sup>6</sup>. Which clearly establishes the “artificial” character of the monopoly.

### *THE monopoly of the companies electricity*

The origin of the monopoly of electricity companies lies In there encounter enters, from a go existence of a “public domain” whose use for private purposes is subject to authorization, else part of an industry that has

need to obtain access to the public domain to distribute directly his products has his clients.

However, this meeting alone is not enough to explain the monopoly. One could imagine that local authorities would grant "road authorizations" to several companies competitors, even has all company which would do there request. It was a situation relatively current in America in the all last years of x,x• century. Thus, between 1882 and 1905, we had forty-five electricity production and distribution companies in Chicago, only one of which benefited ciait of a clause of exclusivity serving Besides A

neighborhood limit. Sixteen licenses had summer assigned to companies to serve areas of the city where other producers were already operating. Three companies had a activity Who covered all there city.

Let's put ourselves in the place of the local authority authorized to issue these authorizations. They represent a potential source of income from which we do not see why local elected officials would not seek to obtain the maximum return.

For this, one response consists of linking the road authorization to the simultaneous allocation of a concession of territorial exclusivity. If an industrialist obtains the guarantee of remaining the only one to sell electric current for several years, he will agree to pay more for his license (officially or secretly). By making market access rights scarce, the concession regime creates a scarcity, therefore a "rent" which will be shared between the protected industrialist and the political authority which holds the rights. of property on the part of public domain thus used.

To maximize the return on this annuity, the duration of the concession must not be too long. short (otherwise, given the irreversible nature of most investments, it will be worth almost nothing). But you should not either what either too much long. If the market developed, if THE product takes of more in more of value,

the reconsideration of licenses at the end of each contract, the blackmail of non-renewal, but also the threat of granting new authorizations to competitors, allow of go back up periodically THE auction.

It seems that these practices were common in America at the beginning of the century <sup>7</sup>. Many local authorities had a policy of actively stimulating competition for the placement and renewal of their concessions. Despite the exclusivity regimes, despite the very important movement of mergers and concentrations which then appear (and eliminate many situations where several distributors cohabited in the same territory), electricity remained, thanks to these practices, a very competitive market. They derived a double benefit: prices to the consumer lower, but Also a « annuity » more important.

*THE concessions And there competition For the hoarding of the annuity*

NOW, let's ask ourselves a question : Why there « annuity » Would it remain the property of the municipalities? Why not THE canton, Or THE department, see the state? In the United States, why not the county, or the state? The making of regulations is an industry where several hierarchical levels of political and administrative authorities are in competition For the hoarding appropriable rents. A profitable activity excites desire, even on THE walk, policy.

From 1907, certain American states recognized that the control of road use is a constitutional prerogative which belongs to them by right, the implementation of which is only delegated to the municipalities. That year, New York and Wisconsin were the first two states has vote one legislation which eliminates the great freedom that municipal authorities enjoyed For the attribution of the licenses And concessions

of distribution. Their management is transferred to a administrative commission of the State where the real power now lies. By 1914, more than half of the American states had adopted legislation copied from the same model. The others will only join in much more late.

Why this change of heart? There is no shortage of official explanations. There was disorder, anarchy of prices, general extortion. THE, municipalities, we are told, were not not tooled For ensure effectively control and management of concessions. Where they pursue an active policy of competitive bidding, they are criticized for opposing essential industrial groupings And to prevent industry of to pull left of its yields scale croissants. Elsewhere, It is the same policy that we accuse of leading to human and industrial waste. When the authorities show themselves favorable to big companies, they are criticized of to be do buy. All THE pretexts are good at demanding that municipal "amateurism" be replaced by the control of an administration of "professionals". This is how the regime of " regulation » of the American electrical industry Again in force Today.

What is true? The dominant ideology assures us that the public authorities intervned to defend electricity consumers against the development of large monopolistic structures which were beginning has to invade THE sector. It is has this time that there theory of " monopoly natural" takes Besides her growth. But if this assumption East just, we East place of assume that yes firsts " regulations » have been adopted In THE States Or THE practice in matter concessions were most favorable to the monopolies And has there big industry; And that It is In these States that price relative of energy electric were to be most students.

*There theory "falsified" » by THE statistics*

A teacher American has started to check these hypotheses. He has divided THE States Americans in two groups : on the one hand the states where the diet "regulation" has been established Before 1917; the other, all others States which do not there are rallied that more tardily. His study reveals two statistical series quite astonishing<sup>8</sup>. We discover in effect that in 1912, THE electricity companies Who exercised their activity In THE first group of states practiced of the price in average lower of... 45 % has those of second band.

THE benefits were lower of 30 % And there productivity per head superior of 25 %. Otherwise said, the opposite of what we expected. The first ones States to place the industry under there guardianship of commissions administrative to powers THE more wide are those where there competition was most strong and more effective ! Those who born there are rallied that tardily are THE States Or industry was according to all likelihood there more cartelized.

The author then focused on the first sample to study how se are behaved THE price of electricity after the introduction of the legislation. His work shows that less of ten years THE price have increases by 25 % on average, with increasing profits of 40 % ! While the dispersion of results between companies was very large at the beginning of the period, ten years later it had nearly disappeared.

Interpretation : these numbers crippled there thesis of the state "angelic" and defender primarily of the weakest. They corroborate the hypothesis reverse of the "capture" of power to regulate by an industry that has become adult and is keen to definitively put its acquired positions into effect. sheltered from all competition. This "capture" was accompanied of a sharing of there "annuity" » Thus created with a power policy And administrative For Who manipulate the rules of the "regulation" has become a way usual of "buy" of the votes.

We think that it's more in this guy of explanation and gear, much more that in traditional theory of the savings scale, of " natural monopoly" or market failures, that we must seek the origin of our monopolies and " public services » contemporary .

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## IV

### How And Why privatize THE waves

This is not because that THE monopoly East, In THE field of telecommunications, a reality more Or less univer saddle, that it is necessarily, in this industry, the only form of organization possible. Nothing opposed \_ This that telecommunications se develop according to market procedures. If it was not Thus, it's that institutional factors, and not of a technical nature (as is usually believed) blocked the emergence of rules of property Who had summer required. This chapter gives A example concrete of there manner of which of the rights private property can be recreated in an area where everything THE world believes that *has priori* impossible.

What that either her origin historical <sup>1</sup>, THE monopoly telecommunications East generally defended below THE pretext that this is an area where it would be technically impossible of TO DO operate a system of legal responsibilities based on the concepts of private property. Hence the grip by the state. Whether in the form of direct management (such as the monopoly on the construction and operation of networks attributed in France to the General Directorate of Telecommunications), or by there way apparently more flexible and more" liberal" of market regulation by specialized public agencies, endowed with very broad powers of control and regulation.

Usually taken for granted, and therefore requiring no further demonstration, this idea is vigorously contested by a group of liberal authors who, the name of economic efficiency and the interest of users, not only require that the Management networks is left as much as possible to of the private companies running freely according to competitive criteria, but also that market procedures involving principles of private appropriation be reintroduced at the very heart of decisions on the allocation and use of radio resources .

The first to publicly raise the idea of privatizing the airwaves were, in the 1950s, two professors from the University of Chicago : Leo Herzel and Ronald Coase. Their two articles are now classics in the literature on property rights <sup>2</sup> . Ronald Coase was notably the first to rediscover the truth about the origins of the American system of telecommunications regulation. In 1963, in collaboration with Jora Minasian and William Meckling (from the University of Rochester), he circulated a manuscript, widely disseminated in professional circles and policies of the American capital, where the outline of a system completely deprived of property rights is presented applicable to frequencies terrestrial.

From during, these ideas have summer amply debated has many times. In the late 1960s, when Richard Nixon appointed a presidential commission to consider And TO DO of the proposals concerning the future of telecommunications policy. Then, of course, in THE years 1970, with THE development of all the discussions on there deregulation.

One of the most precise and comprehensive proposals was that put forward in 1969 by Arthur DeVany. This text was republished in 1980 by the Cato Institute, a libertarian *think tank* in Washington <sup>3</sup> . Another description in-depth of This that could be A sys-

theme legal to rights private property applied on telecommunications, is that published in 1975 by Jora Minasian 4.

Last contribution to the debate thus launched, the article by Milton Mueller, initially published in 1983 by the Cato Institute also, and whose originality is to base privatization on significantly different legal mechanisms of the previous 5 .

What do these authors propose? How can their systems work? What benefits should we expect? Designed with reference to the American institutional framework, what What value does their reflection have for us? These are the questions we will address .

### *1. there rarity of the waves*

Why reintroduce of the private properties there Or, in all countries, the institutional solution chosen is that of public ownership? Because there is scarcity; and that experience, as well as theory, teach us that when there is scarcity, the most effective way to solve this economic problem is to adopt the technique legal of there property private.

Before going any further, it is necessary to specify how the concept of scarcity applies in the particular field of telecommunications. It is not possible to go more Before In there presentation of proposals “ liberals” without starting by recall some data techniques And economic essential.

### *THE dimensions techniques of there communication radio*

Electromagnetic energy is in the form of oscillations electric And of magnetic fields which move at the speed of the light. It's in se providing the means techniques appropriate For control there source

emission of these waves that we acquire the capacity to make circulate of the messages without that he either need to go through the support of physical means of connections, such as son.

To identify communications by radio waves, we essentially use three attributes: *the schedule*, which defines the daily period of time during which we proceed with the broadcasts; the geographical *field* covered by the diffusion of waves; finally the *range of frequencies* used to ensure transmission. Taken together, these three dimensions somehow determine the issuer's minimal footprint or identity card.

Let us add that the frequency East A term which measure rhythm of the oscillations, And Who expresses himself in hertz (or number of cycles by second). Each emission mobilizes not a frequency, but a *band* (or Beach of frequencies Who East more Or less wide according to there technical implementation in artwork : relatively narrow for broadcasts radio A.M. (10 kilohertz), very wide At opposite For television (6 megahertz, Or 600 times there band AM). The *spectrum* complete of the frequencies observed In the universe will of 0Hz has  $10^{25}$ Hz (THE rays cosmic). But range frequencies usable, and indeed used, East a lot more restraint : She go in fat of 10 kHz has 300 000 MHz, there portion there more used of the spectrum terrestrial situated between 50MHz And 1000 MHz. HAS there basis of a connection radio, he there is A phenomenon resonance between A issuer And A receiver centered on the same frequency. Vibrate a crystal glass, and all THE others glasses located has proximity se put to vibrate in unison. In radiocommunications, THE principle is the same, except that instead of being conveyed by vibrations mechanical air, energy putting in movement is transmitted by interaction phenomena electromagnetic. For to transmit of the signals intelligible, just modify the course of the frequency cycle chosen in him printer" of the variations  
left-

*modulation* code defined in advance, And decoded by THE receiver.

A receiver does not receive not only radiation which are specifically intended for him. It receives many others, even if only the natural emissions which come from of sun, galaxies, Or, more prosaically, myriads others sources resignation Who character OUR environment modern (by example THE

« parasites » automobiles which sometimes disrupt the reception of television images when the electrical installation of vehicles is insufficiently insulated). So that a connection can se TO DO In of the conditions of sufficient intelligibility, it is necessary that the instantaneous energy of the signal captured has its place of reception is greater than the cumulative power of all the other signals likely to be picked up at the same location, and transmitted on identical or similar frequencies. The ratio of one to the other measures the intensity of the *interference* suffered. The higher this ratio, the better the conditions of reception. Conversely, the closer this ratio gets to unity, the more difficult it becomes to differentiate between the signals received : communication becomes indecipherable And inaudible.

To escape interference, the solution is to modify the features techniques of the show. For example, change location and move the transmitter away from other competing sources; give it more power, modify its antenna, change the broadcast times, finally, adopt a new frequency (or another frequency *channel* ). However, selecting another frequency is not as simple as it may seem. Due to technological limitations specific to electronic equipment, it is inevitable that a part of the energy emitted on a certain frequency band somehow exceeds the range assigned to it, and interacts with other signals emitted on other frequencies and intended for other users. Result: if we want minimize THE risk of interference suffered by

users (when it comes to commercial telecommunications), or listeners (in the case of radio and television), it is not enough to play on the power, it is also necessary that the gap between the frequency implemented and the frequencies used by other stations transmitting in the same geographical area with neighboring powers, either enough so that the probabilities of overlap be reduced At minimum.

### *THE origins of there rarity*

State intervention in telecommunications East often presented as the consequence of This that the radio spectrum would be a "scarce resource " of which it would be appropriate of control thoroughly usage.

That there is "scarcity" is indisputable. But we must be careful not to imagine behind this term a physical phenomenon analogous to the exhaustion of a natural resource of a non-renewable nature, such as oil or coal. What is at issue is of a radically different nature. This is a compatibility problem, where the scarcity effect is a consequence of interference phenomena clean to broadcasts radioelectric.

To understand how interference phenomena give rise to "scarcity", the best is to take A example.

Let's imagine A network of devices receptors located in A Ray of 100 km around of a station T1 transmits both on a T'l frequency. As long as they're all connected has listening of there even frequency, THE modulated signals issued by T1 se find reproduced In amplifiers R posts. Let us now admit that another issuer T2 used there even frequency with his own system of modulation. He East inevitable that the presence of the broadcasts T2 affected there ability of the receivers R has reproduce, And SO has decode THE signal You l.

Intensity of the interference depends of report exists so much At place of reception between there power of signal T1

and that of the T2 signal. If the two transmitters are located at the same place And work with there even power (or a similar power), the ratio T1 /T2 will be everywhere identically equal to unity. The interference will be general. No receiver will be able to distinguish a signal of the other.

If T1 and T2 emit from two places clearly separated, things will be different. Receiving devices who find more relatives of T1 that T2 will receive A signal T'1 more powerful that THE signal coming of The source T2. More THE T1 report /T2 East higher, the more becomes possible, Otherwise to ignore completely T2, of less to adapt THE equipment required For filter the signals received, and obtain a reception clear of T'1. The situation reverse will prevail For THE receptors geographically closer of T2. GOOD that THE two stations use the same frequency, this does not prevent not the two systems of cohabitation, as long as their locations geographical be enough distant. We then have three populations: the receptors which receive T1 but not T2; those Who receive T2 but not T1; finally, the receptors who, because they are located equidistant from the two sources, do not can distinguish neither neither the other.

Moral: it is not the fact of using identical frequencies Who, in self, laid a problem. THE Incompatibility phenomena only appear when the emission sources are physically too close to each other on the other, or when their messages are presented in an insufficiently differentiated manner due to the use of frequencies too much neighbors. For ensure there compatibility of communications (and therefore confer on them a market value ), *it is necessary that the transmitters differ by sufficiently wide margins of separation both in terms of geographical location and in terms of frequency selection.* Which implies that, for a given territory, and for each group of available frequencies, there necessarily exists a limited number of links possible - And SO a *rarity*.

This presentation is obviously very succinct. She does not exhaust not THE field of the problems techniques posed by the transmission of radio waves. But it is enough to better understand the nature of economic problems that raise THE telecommunications.

### *The allowance of the frequencies*

When the owner of a station discovers that his broadcasts are encountering unwanted interference that reduces the scope of their broadcast, he has a choice of several policies. It can, for example, increase its power to find instantaneous energy ratios. locally more favorable. He can Also increase the height of its antenna so that, without affecting the operation of the transmitter, the reception of its signals are better assured. He can finally acquire other, more sophisticated broadcast equipment which works using beaches of frequencies more narrow.

His problem has a technical aspect: it involves determining there combination technological Who him ensures level of diffusion (Or THE level of quality of reception) on higher possible. It is A work engineer. But this is not enough. From the manager's point of view, the preferable combination is not the one which makes it possible to cover the largest broadcast area, or to guarantee the best reception conditions, but the one which achieves the most effective arbitration between what costs changes to the emissions system, and the costs or benefits of resulting changes in trade balance. It is also an economic problem. THE choice of the solutions techniques born can not be separated of there socket in account others elements such as the evolution of relative prices of equipment, the variation of the rate listening, etc.

The same is true at the level of a community and its communications networks. It is tempting to consider the rarity as A issue of nature basically

technique: determine, by frequency groups, the number and “optimal” location of a network of transmitters compatible with a communications system minimizing the risk of interference. Although already very complex, the solution would be deduced from a series of technical equations dictated by the nature and performance of the competing equipment. to provide the desired service. This is how the public administrations responsible for managing the monopoly most often reason. A times defined THE optimal plan » occupation frequencies, all that remains is to designate the operators: either the monopoly administration itself (as is most often the rule in European countries), or private concessionary companies (the American system ), or even formulas mixed (what we are moving towards more in more with there deregulation).

But, again, this approach does not not enough. Rarity means that all connections Or communications available nible in the current state of technology are coveted both for different and competing uses, and by users who are also in competition. If there is scarcity, it is because not everyone can be satisfied. Services For which some clientele would be ready to pay a certain price, will not be produced simply because that THE channels of communication necessary are already busy with other functions. Entrepreneurs with the idea of providing a new service, or a new quality of service, to their customers, will not be able to do so because there are no more frequencies available, and increasing the number of communications would be to the detriment of there quality of the connections because of worsening interference. Scarcity causes lines to form waiting.

However, all THE services in competition For the use of technically possible connections do not have the same *value*. Certain needs are more ardently desired than others. The difference is measured by the price that the users are loans has pay. II in results that *there*

*value attached to the provision of the right to use a certain frequency* (or a certain band of frequencies) to proceed with the emission of radio waves, will itself vary following that the service that uses the support of this show is more or less request. THE same right attached to the exploitation of a frequency has a greater or lesser value depending on whether the services which are thus provided meet needs benefiting from a monetary preference more Or less strong.

The interest of all is, on the one hand, that the rights to use the frequencies are held as much as possible by those who grant the highest market value big; on the other hand, that there is a mechanism that guarantees as much as possible that those who hold the rights, but THE apply has there production of services less desired, be encouraged to give way to those whose intention is to assign them to jobs of greater value. It is only if these two conditions are simultaneously filled that we can be sure that the community is making the best possible use of its technological communication capabilities, and that it is resolving the problem of the scarcity of the radio spectrum in conditions of efficiency optimal.

We find a issue classic of choice And allocation of scarce resources that cannot be effectively resolved that by a system of private property Or THE rights to the use of resources and goods are personal rights, exclusive And freely transferable.

### *The assignment of the progress*

As long as we were dealing with relatively simple telecommunication systems, whose services were clearly differentiated and compartmentalized, these problems allocation remained boundaries.

This is no longer the case today. We live in a world of rapid innovation where the exploitation of frequencies is the subject of a competition from more in more long live

between multiple technologies and communication media providing very different services, at different costs themselves extremely variable. Under these conditions, is it tolerable to see certain groups of frequencies continue to be systematically under-exploited, while elsewhere the queue of candidates is lengthening? Which media these beaches should they to come back in priority? THE concern for economic efficiency would like frequencies to go as a priority to those of their possible uses offering end users the most great value for money / costs. But we then fall into an area where spatial planning of a nature purely technical n / A nothing more to say. We must have economic data which we cannot access without the presence of a market on the exchange authentic rights of property.

In the same way, saying that the radio spectrum is a rare resource does not mean that the number of technologically possible links, in a given territory, is necessarily fixed of rigid manner. He it is a conditioned data by evolution of the technologies. More we progress in the mastery of new very high performance technologies, the more it becomes possible to reduce the spacing conditions necessary to avoid interference. Consequence: these are all new capabilities of communication which are thus freed for other uses. He becomes possible to insert simultaneously, in the same geographical or radio space, a greater number of connections and services. But to what uses should the frequencies thus released be put? Here again, we come back to questions that we cannot answer. in the absence of a system of price free allowing to measure the value that users finals grant to different services that are offered, and therefore, indirectly, to the techniques that serve them of support.

With there proliferation of the news technologies, THE telecommunications are not only in the process of to change of nature but their development laid of the pro-

problems of *economic calculation* than public monopolies, whatever whatever there quality of their engineers, born can't to treat mistake of dispose of these eyes And radars vigilantes that are THE systems of price free.

But for this to happen, there must still be a market, and therefore clearly defined and freely defined property rights. transferable.

## 2. *How privatize*

Private property owes its economic efficiency to two legal attributes: the exclusivity of rights and their free transferability. Privatizing consists of reintroducing these two characteristics into the system of allocation of rights has the use of the frequencies.

As soon as there is scarcity, it is essential that the individual decisions of those who hold the rights of control be directed by taking into account the relative *value* of the different uses to which the disposal of this resource can give place. Gold that is not possible that if we have a legal system where everyone can freely transfer and negotiate the exchange of his rights.

We successively describe two plans possible. e first is that of Arthur DeVany. Designed for the United States, its merit is to start from what exists, and therefore to pose relatively few transition problems. The second proposal is more radical. It was formulated by Milton Mueller. Paradoxically, it seems that she would be technically more easy has administer.

### *THE system of there FCC*

In the United States, by federal law, the radio field is public property. Emission rights are not however not exploited directly by public power. This one in delegate the use has of the private companies benefiting of a *Licence* has duration limited.

These licenses are assigned by a federal agency, Ferlerai Communications Commission, Who, in counterparty, In THE case of the radios And televisions commercial, acquires A right of control on THE content of the programs broadcast. If these do not respect not certain standards And obligations (by example, in case of controversy, the need to grant A equal airtime to the different parts; Or Again the obligation of born not harm the good morals, etc.), the FCC may refuse to renew her Licence, And withdraw Thus the right to emit. The approach followed by there FCC is bulk there next.

For each group of frequencies, we define the number of stations that can be exploited without causing interference problems. The national space is divided into as many territories for which the right to broadcast on a given frequency (or frequency band) is subject to obtaining an operating license issued by the federal agency for a limited period, but indefinitely renewable. This license confers a personal and exclusive right to broadcast on the specified wavelength, but it cannot be the subject of any transfer, even temporary, to a third party. This is an *intransferable right*.

For that THE plan overall occupancy of waves guard its consistency, he East necessary that THE resorts of emission respect certain terms of functioning And of then ance, so that their signals do not overflow too much in the territory of adjacent concessions. This is why the licenses issued by the FCC do not carry only on the allocation of wavelengths, but also on the specification of technical standards to be respected such as the power of the transmitter, the height and direction of the antenna, the transmission techniques implemented. This last point implies that the licenses are not general-purpose, but awarded for the exploitation of a duly specified service or technology, has exclusion of All other.

There result of This system East very different of

the desired effect. In principle, it involves organizing the rarity. The mission of the federal communications agency is to set up and manage a *plan rationing* which guarantees that all THE citizens have access at most large number possible of canals of communication, compatible with the production of minimum noise. But we get the opposite. The rationing system being designed with an essentially spatial distribution perspective, based on exclusively technical factors, without taking into account economic data (for example differences in population density, or the level of industrial development), the result is huge regional disparities in blanket of the needs.

Normally it is in the most populated areas And THE more developed that THE needs are THE more important. But the frequency division and allocation procedures are exactly the same as those implemented in desert or underpopulated areas. Result: while in the former, users face a chronic shortage of available wavelengths, in the latter, it is the opposite: number of frequencies remain unused due to lack of customers sufficient For attract THE candidates.

It is true that it would be absurd to imagine that the acquisition of a license serving a remote area could serve to alleviate the shortage suffered by a center located a few hundred kilometers away. Emission rights are not "goods" that could be freely transported with self. However, if these rights, once acquired, could freely be the subject of purchasing operations and resale, he it is likely that number problems in over-urbanized areas would be spontaneously attenuated. For example, if we allowed those who, following technical progress or innovation, find themselves having a width of more frequencies larger than they actually need to meet the criteria of noises Who their are imposed, of to sell has

others the right to exploit the released ams1 wavelengths, not only we would increase the instantly available supply, but we would also encourage operators to do themselves a plus great effort to reduce their needs. The presence of a market where the broadcasting rights would make it possible to reduce the shortage of channels, At place of se satisfy of organize it.

Because that it makes it impossible to such exchanges, the American legislation leads to the opposite result : it slows down innovation and the arrival of new, more efficient products (all things being equal); it prevents us from seeking better adjustments of supply to request; paradoxically *She maintains there shortage.*

### *THE system DeVany*

It is precisely to remedy these defects that the system proposed by professors DeVany, Eckert, Meyers, O'Hara And Scott.

The project takes up the idea of an initial *map defining a certain number of geographical rights* distributed throughout the country. But the definition of these rights, as well that the content of the initial licenses allocated to ensure their materialization meets very principles different

Once the geographical borders of the zones giving rise to concessions have been fixed (we can simply take the existing zones), the definition of the rights allocated to operators se do of two manners :

THE « owner » of there Licence se see recognized the right to freely use the frequencies allocated to it, regardless of the service it intends to establish, or the transmission system envisaged. But he undertakes that, outside the borders of the perimeter territorial attached has authorization to emit, the power received from its emissions, measured in volts/meter, born exceeds Never a certain standard maximum

X v/ m, registered In her Licence. HAS the opposite, THE even

document establishes her right, has the interior of perimeter which him East recognized, has born point see his shows wheat holes by radiation exteriors of a power received superior has there even standard X v/m.

Obviously a right is not a right if there is no possible sanction. Consequently, the granting of the license entails the right, for the person who receives it, to bring before the courts any owner of an external transmitter whose signals received within its protected perimeter exceed the authorized power. , and to claim compensation according to the principle of civil courts. In the same way, if it turns out that its emissions are too powerful and that their radiation exceeds the maximum authorized level from during passes into the territory of a neighboring transmitter, the license holder is exposed to legal proceedings and requests of repair.

The same principles apply regarding attribution of the frequencies. All emission overflows necessarily on other frequencies, and leads Thus there presence of noises, at detriment of the owners from other transmitters. All THE issue East to know in which measure the intensity of these phenomena stay eligible, Or represented A trouble of enjoyment component a violation of the rights of others. The proposed system resolves this dif ficulty by recognizing the licensee's right to freely use there beach of lengths waves Who him East assigned, but below there condition that THE level of noises detectable on any other band does not exceed not a certain threshold of Y v/m. In

return, the authorization to broadcast recognizes THE right of hang out in front THE courts THE owner of All other issuer of which he would be established that activities resignation interfere with THE his by one intensity of noises superior has there margin Y v/m.

HAS leave of moment Or THE operators se see impose the respect for such margins of functioning, he there is no longer any need to intervene at the level of the definition of features of the systems resignation. THE owner of a

license can adopt any transmission system, produce anything what power, Or still adjust his antenna as he sees fit, as long as his choices do not have the consequence of causing its radiation exceeds the intensity limits imposed on it by her CONTRACT.

Furthermore, the law provides that the rights thus defined are definitely acquired, that they they have a duration of life unlimited, but that they can be, in whole or in part only, the subject of commercial transfer operations to some thirds. For example, it is specifically stated that the definition of operating perimeters can make the subject of developments or contractual exchanges, once the first rights have been distributed: the owner of a station can “ buy » to its neighbors the right to cover part of their territories with radiation whose captured power exceeds the limits originally set. In the same way, the owner of a license can negotiate with another the increase in noise margins that the latter agrees to tolerate on its frequencies. If the license holder does not exploit all of the emission rights granted to him, the law authorizes him to transfer the right to implement them to others. In this case, they become the full and complete *property* of the new purchasers, whose rights and obligations are strictly deduced from those which were associated with the license original.

### *THE back At walk*

As in matter of property land And real estate, the system only assumes that all private contracts concerning the transmission of the right to exploit frequencies are the subject of a declaration to a registration office, to which would be obligatorily *notified* . fied all modifications affecting the data of the initial contract. The attribution of the first rights (the first licenses), could se TO DO either by simple

renewal, of current situations - attribution of firm and definitive property rights, where we currently only have simple concessions of limited duration -, or by updating public auction. In return, from then on, the State only has to be present as a registration office, And as an instrument for guaranteeing respect for acquired property rights (which is THE role And there function traditional of there justice).

We has A authentic diet of *property private*, in the strong sense of the term, with all its characteristics of flexibility.

The initial frequency map no longer needs to be truly "optimal". The freedom that initial beneficiaries have to freely renegotiate between them there distribution of their rights, both terrestrial and geographical, allows it to spontaneously correct inadequacies and gaps, without the community having to bear the high costs of studies, research of information and time which would have been necessary to draw up a card showing a guarantee of life sufficient. The presence of a market where these property rights are freely exchanged will adjust according to changes occurring in there distribution of the population, the economic growth of various regions, etc.

Imagine a region whose population is declining to the point that there are no longer enough people left to obtain the advertising revenue necessary to support a local radio or television program. This is a situation that is not uncommon in the United States. As part of the status regulatory current, there station n / A not other outcome than of file for bankruptcy, to close its doors and cease his shows, everything while remaining the holder of a license which is worthless, which no one wants, and which now remains unused. Through the fault of those who left, those who remain are private of their service local.

With a DeVany mechanism, things would look significantly different. If there is no more enough of customers advertising For TO DO live a station

complete local, the one that remains is perhaps sufficient to justify that a neighboring station is interested in recovering it, in return for certain expenses such as increasing the power of its transmitter, purchasing a new antenna, and establishment of a local editorial team. In this hypothesis, the Rights which are the property of the old station retain a value which it can negotiate by putting its neighbors in competition. Everyone is happier : the shareholders (who do not lose all their money), the listeners (who retain a local service of which they would otherwise be deprived, and therefore greater freedom of choice), the host of the neighboring radio station who sees his figure increase business increase, etc. Furthermore, the very existence of a market for the resale of broadcasting rights means that more investments will be directed towards this activity that this is not the case In a diet where the concessions, due to their non-transferable nature, have not no market value. Those who wish the development of local radio stations, if they are sincere, should memory of This little detail.

Finally, let's take the problem of border zones. In their project, DeVany And his associates specify that THE division of territories must not be done based on electromagnetic measurements allowing to follow as closely as possible the force field corresponding to the authorized power of each transmitter, but using a much simpler technique where we would simply draw on the map a series of hexagons of approximately equal value, fitting together THE some In THE others.

The reason for this proposal is simple. If the allocated perimeters are of the hexagonal type, due to the physical characteristics relating to propagation radio waves, the obligations of the contract imply that the location of the electromagnetic points responding to the maximum authorized power is located substantially within the recognized legal boundary. When we takes two areas of diffusion neighbors, there

even constraint Finds himself of the two sides. Se laid herefore the issue of there desert of the marginal populations who, they, se find between THE two borders electromagnetic ticks real.

These populations will experience reception conditions that are much worse than others. At the limit, where the force of two signals neighbors balances (exactly at there border of two zones, if we East in flat terrain), no reception is possible. What to do? In the current system, there is no solution, if not the remedy, for television, cable networks. Therefore are served in the United States communities isolated by cut of unlucky pencil of the FCC experts, for particular topographical reasons. In THE DeVany system, not difficulties. These populations represent commercial potential of a certain value. As long as this market potential is judged more high as This that he can in cost one of the stations located on either side of the border to to modify his terms techniques resignation And to carry thus the standards of service of this population at a level commercially sufficient, this one has interest in discuss with your neighbors to get them to agree, in return for financial compensation, to revise the standards of power authorized.

There Again, a times THE process contractual finished, everything THE world se find winner. THE economic potential of the region is better exploited. THE terms techniques of desert are less unequal. There annuity commercial created by the improvement of service rendered to marginal populations is shared between THE two resorts transmitters. But All this is not possible that because that the system is Thus designed that he restores there freedom of transfer of the rights.

*there proposal Molt/First*

In the system which come to be propose, All the effort of definition of the rights of property door on *THE beam*

*of spread of signal radio.* We stay In a very vision territorial of property, where space, conceived as a rare physical resource, East split in as many small areas private, And Or THE main problem East of define borders And of THE TO DO respect.

Conceptually simple and attractive, this approach poses however extremely complex application problems, which lead some to question its possibilities of practical implementation. By example, in due to the naturally *unstable nature* of radio emissions (extra-atmospheric influences, climatic conditions, obstacles topographic, effects of reflection, intermodal interference phenomena, etc.), it is to be feared that THE " boundary disputes » which would be brought before the courts do not give rise to extremely long, difficult, uncertain And expensive - from where a reluctance growing to address to justice, and therefore less security for the property titles thus allocated. In theory, it is possible to find a rule of attribution of responsibility adapted to each technical question raised; but THE cost pupil of the harsh procedures (while waiting for the case law either stabilized) risks depriving the system of any validity. We would have a situation Or THE level too pupil of the *costs of transaction* to enforce property rights, would deprive them of All character concrete.

Hence the idea of Professor Milton Mueller to leave of another definition system which would also make it possible to reintroduce market allocation procedures where bureaucratic arbitrariness usually reigns, but without se to hit to same problems of police.

Definitively abandoning the principle of a reference "map", its idea East of make them wear rights of propriety susceptible to be trades and negotiated, on THE transmission instruments and their technical characteristics ("inputs"), and to apply traditional rules to transmissions of responsibility civil used by THE tribunals in cases of disturbances of enjoyment or effects of neighborhood (problems "externalities" and nuisance).

In this scheme, every citizen would regain the freedom to emit signals using telecommunication devices, has there double condition however : 1. of not hinder the reception of others; 2. to declare to the registration administration the characteristics of its devices (location, transmission technique, power of the transmitter, wavelengths, direction of the antenna, etc.).

Concretely, the courts would apply the principle of *right of first occupant* : THE first has operate regularly a frequency from a certain location, thereby acquires *the right* to demand from any other issuer whose THE radiation create of the harmful interference with his own, that he amended her technology, or moon any of the features techniques of its equipment, so as to make them stop. This right is personal and freely transferable. He can be transferred to a third party, free of charge or by means of consideration financial. In the event of a dispute or conflict, the role of the court would be, of a go, to establish identity of " first occupant" (And SO of to validate his rights); else part, to establish there reality of the interference And of judge of their seriousness; finally, if necessary, to enjoin to the one whose emissions encroach on THE rights *previous* of the other, of cease, Or of to modify THE terms of her activity.

That said, before going to court, each party retains the possibility of negotiating a amicable arrangement: one who knows that he is interfering with the signals of a source whose rights are previous to his own, can offer to compensate his "owner" so that he agrees, for example, to voluntarily modify his frequency system, to change his principle of modulation, to shorten his antenna, adjust differently the power of its transmitter, etc. If the latter accepts the exchange, the contract is transmitted to the registration which accordingly modifies the content of the *descriptive title* of there property. We has an identical process has This Who se has been happening since of the generations in matter of property land

or real estate. As in this area which is more familiar to us, the object of ownership is in reality presented as a basket of elementary rights relating to the different elements necessary for the operation of a transmitter, defined by their physical properties. These rights Elementals are also personal, exclusive and freely transferable. They can be combined and recombined according to any technically possible formulas .

### *A property as THE others*

This system legal East more simple that THE previous. Is it more passable? Is it For example realistic to ask of the judges of right civil that they se mix with technical matters as complex as those which regulate the phenomena electromagnetic?

Milton Mueller's answer is worth repeating In her almost entirely.

“ We generally believe,” he explains, “that it is something much more convenient to administer a system of rights of propriety in matters of radio, that this is in THE areas that are more familiar to us such as ownership of land, ownership of a house, a car, a river, etc. In reality, when we hold comete of the nature of the externality problems which burden the administration legal of the systems of property, it appears to be the opposite. In many respects, he points out, the problems of external effects involved in radio transmissions are simpler than many those to which THE courts have daily affair.

“ GOOD that the property of land, he observes, involves often extremely complex problems of external effects, for example in matters of pollution or public health, nature mathematics of there propagation of waves electromagnetics, at least, has the advantage of giving rise to effects whose consequences we can predict with fairly great certainty. OUR knowledge of the physical phenomena accompanying the propagation of waves is certainly far from being perfect, but We in soaps certainly GOOD more on This subject only to about of a lot others types of externalities.”

Who is responsible when the noise of a nearby bar disturbs the tenants of an apartment located nearby? What to say when families of immigrants who do not have the same lifestyle habits nor the same hygiene, compromise the value of a neighborhood? What happens when a chemical company buries its residues, sells the land, and that twenty years later we realize that there is pollution of the groundwater? Where do they start and where do the rights of property of the some and of the others? As such questions are often extraordinarily complex for which our Company has gradually built a legal device which allows us to give answers, and to resolve the conflicts to which this kind of situations gives place.

In view of these questions, the externalities which disturb radio transmissions appear simple and elementary. You just need to know the different elements that serve as inputs to a radio transmitter, to add topographical data available, to obtain a relatively reliable and testable propagation model. Certainly, radiation is not stable, and is subject to the influence of numerous external conditions that cannot be controlled. But it is enough to have a probability model to take this into account. Given our scientific and theoretical knowledge of wave propagation, discovering what to do to minimize harm to others is certainly easier for the user of a radio or television transmitter, as for the architect, the developer or the constructor of buildings who, for their part, deal with areas where the definition and forecast of civil risks represent an infinitely more difficult task and uncertain.

Replaced in this perspective, the definition and TO DO respect of property rights relating to the exploitation of radio waves does not appear as an insurmountable enterprise. In the end, our courts and

jurists have repeatedly demonstrated their ability cited to adapt to problems of an infinitely more complex nature.

By elsewhere, he East probable that if of such rights were freely negotiable, we would see se form firms specialized doing job of put in buyers report and sellers of rights, and ensuring Thus A private role of coordination. As on financial markets, these brokers specialized born would be not only agents, but Also advisors of which expertise contributed has to lower THE costs of functioning of walk.

Two examples will show that these ideas born are not only of there speculation pure.

### *A coordination private*

The first is historical, and takes place in the years twenty. In 1923, there Company editor of *Chicago Tribune*, "Tea Tribune Company", based a station of radio, WGN, which broadcasts on 990 kHz. In September 1926, another radio station in the same area, *The Oak Leaves Broad casting Company*, suddenly dropped the wavelength of 1200 kHz, For se recalibrate between 990 And 950 kHz, creating severe interference. At the time, the FCC does not exist not Again. THE conflict resulting in front a judge of county.

The Tribune Company maintains that it has a property right to the canal it operates. His adversary's lawyers reply that a wavelength does not can TO DO the object of a property.

In his judgement, the magistrate doesn't say not only the gallery Company East "owner" of her frequency, but he agrees with him by ordering the opposing company of respect A gap from to less 50 kilocycles by report has there length wave exploited by WGN.

" There Court, precise THE judgement, estimated that one such separation East necessary For avoid THE interference. " This previous legal n/ A not had of the following day, THE

airwaves having been nationalized shortly after. But by recognizing WGN as a protected perimeter within which the station could operate sheltered from interferences of others, the court made a decision which amounted to creating an intangible property right, opposed to third parties. For a market to appear, there was no longer any than to create A system recording.

The second example is contemporary. It concerns the ultrashort wave market, between 4 and 6 GHz, used for example for links with satellites, or as service heads for local networks. cable TV. This is an area where FCC regulations are much more lenient. Contrary to its usual practice, it allows users to negotiate among themselves the necessary adjustments to eliminate THE problems interference.

When a new connection is planned, the only obligation there is imposed on the company is to determine the contours of its problem area, where there is a potential for damaging interference, and to communicate the technical details to all existing stations which may be affected. Then commits a negotiation where a certain number of technical modifications are exchanged between stations, so as to obtain better coordination of the channels used. It front of problems that one new facility risk to ask them, existing stations can ask the newcomer to change its installation site, to modify the characteristics of its antenna, to install protective equipment, to provide additional electronic protection, etc. Conversely, the newcomer can offer to compensate others financially so that they agree to move their station, modify its structure, change frequency, or even improve their elimination system. tion of the interference.

“The system,” observes Milton Mueller, “works; and it works GOOD. It is A domain Or we born detects practical-

no more interference. Private firms offer their services to companies to carry out the calculations, and possibly the negotiations for them. The experience taking place there, he concludes, refutes the idea according to which such private coordination processes involve such high transaction costs as to remove any practical interest from them.

*Conclusion: A fake "GOOD, collective"*

A *collective good* East A good which we consider cannot not be produced by private markets due to indivisibilities which mean that there is no way of discriminating between users and non-users and of requiring the former to pay for their share of consumption

For there mostly of the economists, THE waves make part of these collective goods which born could not be "products" if there power public born taking not directly in hand their "production".

The above shows that this statement is erroneous and that it is a false justification mono pole.

He East TRUE that there revolution of the fibers optics broadband will completely change the problem of terrestrial scarcity. In many areas of communication these will be less sensitive due to the fantastic new capabilities that the cable brings. It nevertheless remains very important to demystify the collective good argument so often used to justify All And anything What.

The existence of so-called collective goods is the consequence of the absence of rights of property exclusive And freely transferable. All there question East to know if this absence is the consequence of natural or technical characteristics from which we cannot escape, or if it is not quite simply the product of a purely legal and contingent impossibility. When he in East Thus (as In the case studied), we se

found before a system of thought whose structure is tautological: what is presented as a *public good* is not A GOOD audience that because that THE The legislator decided one day that this would be the case from now on. Which means that he no has, in the circumstances, no public good out (in the technical sense of the term, used to justify the State).

Last REMARK. Recall there privatization waves brings back the image of "chaos" which, supposedly, in the historiography usual, would have justified there socket in charge by the state. He is not not question of deny there reality. has a certain era, of a such "chaos". But if he there was chaos, It is that he did not exist none system of property rights likely to benefit from protection clear And explicit of the courts. We born can therefore not to pull of this episode there conclusion that all returns At walk must necessarily TO DO return anarchy of the waves.

This is an image that has no scientific value. Private property is the most rigorous system of discipline that is. The only issue is to arrive to base it on criteria legal appropriation which are not more difficult to administer than those which constitute OUR universe familiar.

## Notes

1. If the word • telecommunications • is barely a century old (it appears in 1885, below the feather of a certain Edward Estaunié, SO director of the Ecole Supérieure des Télégraphes, which created it to bring together in one term THE different disciplines taught in her school : telegraphy, there telephony, THE transmissions radio), the origin of monopoly is of a half century more Ancient. She date of 1837, And is linked has the history of the telegraph air of the Chappe brothers.

Designed during the Revolution (1793), this is used exclusively for military and political needs. However, the pressure from business circles to have access to a rapid communication system is becoming more and more pressing. In 1834, a case of fraud occurred on there line of telegraph air between Paris And Bordeaux, puts the government excited. Men business make pass THE course

of the Stock Exchange, and in particular of the state rent, to provincial speculators before the arrival of the mail coach. However, when the administration of telegraph discover the stratagem And wanna translate into justice authors of there maneuver, we perceives that he does not exist none law to condemn them: the fact that the use of the telegraph air force is reserved for public power is purely customary and is not included in any text. The Ministry of the Interior then passed the law of 1837, of which the article unique East THE following: • Anyone transmits signals from one place to another without authorization, either using telegraph machines or by any other means, will be punished with imprisonment of A month has A year And of a fine of 1,000 at 10 000 f. The tribunal furthermore will do demolish there machine and the means of transmission. •

As Catherine Bertha recounts in her fascinating book *History of telecommunications in France* (ERES, 1984), this editorial team which establishes the monopoly of construction and operation network by public authorities (but which provides for the possibility authority to grant •authorizations•, which opens the way to the regime of concessions), is that which we find in barely modified terms fied in article 39 of the current PTT Code: • Anyone who transmits signals from one place to another without authorization, either to I using telecommunications devices, or by any other means, is punishable by imprisonment of A month has A year And of a fine of 3 600 at 36 000 f. • Like most great laws of x lx• century, due to its great conciseness, the law of 1837 showed itself capable of integrating the arrival of all the great technical inventions, then still unknown.

At the time, three theses clashed. That of the Minister of the Interior, haunted by the clandestine development of the republican movement, and for whom accepting freedom of access to telegraphy amounted to taking a dangerous political path. The thesis of the liberals who demanded that we leave it to the entrepreneurs the freedom to build their own lines, and who considered that the telegraph monopoly should no longer be conceded to the government than the monopoly of the press. The thesis of the circles of business finally, who were content to ask for access to the state network, even if their dispatches were controlled. The government decided in favor of the first : there will be no more freedom to create private networks than there will be free access for people connected to the state network. • A communications network, explained the minister, tends by nature towards monopoly. » Result : if it is a private company which has this monopoly, it will not be able to help favoring this or that commercial enterprise by giving it priority news. All there defense classic of monopoly audience East Already there!

2. Leo HERZEL, • Audience interest and tea Market m Color TV vision Regulation •, *University of Chicago Law Review*. 1951. Ronald H. CoASE, • The Federal Communications Commission •, *Journal of Law and Savings*. 1959.

3. Arthur DEVANY, Ross EcKERT, Charles MEYERS, Donald O'HARA And Richard Scorr, *A Property System Approach in the Electromagnetic Spectrum*. Cato Institute, Washington, 1980 (first published, *StanJord Law Review*, 1969).

4. Jora MINASIAN, "Property Rights in Radiation, an Alternative Approach to Radio Frequency Allocation ", *Newspaper of Law and Economics*. 1975.

5. Milton MuELLER, *Reforming Telecommunications Regulations*, Cato Institute, 1983.

## THE myth of there “ concentration growing

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A postulate gradually took hold of minds : the capitalist regime would necessarily lead to an increasingly strong concentration of economic power. THE figures show that, overall, the level of industrial concentration has changed little. It would rather be lower than it was at the beginning of the century. The concept of constantly increasing concentration is logically inconceivable.

We live all with the idea that the intensity of process competitive is closely linked to the degree of concentration In industry; And SO that THE maintenance of competition need a monitoring active mergers and absorptions by THE powers public. But he y has another postulate Who, of manner more Or less implicitly, took hold spirits: the diet capitalist would *necessarily* lead has a concentration of more in addition strong power economic between THE hands of a number moreover in addition restricted from big groups industrial private. This thesis of there “ concentration growing » East one of the dogmas central of Marxism Who gives him THE Status

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• This chapter is a resumption of a text already published by the Institut La Boétie, in 1986, but Today exhausted. THE data cited are extract your of little book of teacher Yale BROZEN, of there Business School from the University of Chicago: *Mergers in Perspective* (American Enterprise Institute, 1982).

of a law scientist. She East THE foundation of there theory of state monopoly capitalism, economic doctrine mic official of left Communist. Home would have wrong of believe that he is of a exclusivity Communist. It is not that to open A course university Or even a contemporary school textbook to discover that there is probably no idea more unanimously shared by a mass of people with the most diverse ideologies. He seems self-evident that capitalist concentration is a process *inevitable* to which alone the intervention active of the powers public East susceptible of TO DO failure<sup>1</sup>.

What evidence do we have of there veracity of this affirmation? Paradoxically, none. THE authors se most often content themselves with invoking the "obvious" nature of the phenomenon, taking as witness what everyone can see: the continued increase in the size of large companies, there complexity growing of the connections industrial and financial... Some developments giving the list of the most spectacular industrial clusters in recent history are generally assumed to be sufficient to carry there conviction And establish there truth "scientific" of postulate<sup>2</sup>. HAS there rigor, we do reference has some statistical study giving the evolution of concentration rates At course of ten Or fifteen latest years. But a real investigation covering a sufficient period of time long For be Really significant, none. Because the 1960s and 1970s were a period rich in often spectacular industrial groupings, we extrapolate to the point of saying that this is a long-term trend linked to the very essence of the economic regime in place. Very curiously, we are in a field where subjectivity is king, where the critical spirit of the man of science seems to resign. Everything happens as if it were a question of a "law" whose evidence is such that it would absolutely not be no need to bother testing it.

Y does he have Really, In a long period, tendency has a concentration growing of the structures industrial?

As often in economy, America is the paradise of researchers. The United States is the only country Western countries where we have sufficiently long and detailed statistical series to test such a hypothesis in satisfactory scientific conditions. It is also one of the only countries where real research has been done companies For answer has This gender of question.

Half a century ago, in 1932, two famous teachers Americans, Adolf Berle and Gardiner Means, based on their observations over the period 1909-1929, predicted that it would take less than thirty years for the first two hundred American companies to come to monopolize almost all production by themselves. manufacturer of the country <sup>3</sup>. This prophecy, like all those of the same like, don't never happened realized. And it is even far from it, as we will see.

### *Three large waves of concentration Since A century*

Since the end of century last one United States has known three big waves of concentration : 1898-1902, 1926-1930 and 1966-1970. The years 1980-1984 probably constitute a other.

A first operation consists of comparing the amplitude of these different phases by taking, for example, the overall value of industrial assets which have been the subject of merger operations. or absorption. It has been calculated that all industrial assets absorbed during the first wave at the beginning of the century represented a value of 6.3 billions of dollars. For the following period, the equivalent figure is 7.3 billion of dollars. According to estimates from the Ferlerai Trade Commission, the wave of 1960s wore on more of 46 billion. Finally, even before what not start the big Du Pont's transaction on Conoco, the total value of the industrial assets which were the subject of of operations of grouping Or of socket of

control during THE alone first six month of the year nineteen eighty one.

The growth in numbers is spectacular. But he Obviously, the effects of inflation must be taken into account. We then return to more modest perspectives. Translated into today's money, the 6.3 billion at the beginning of the century would make a total sum of... 80 billions of dollars. Furthermore, these 6.3 billion dollars represented at the time 53 % of total market capitalization of US companies. In the 1920s, the proportion was only 9 %, and 8 % for the movement of 1960s. Compared to the economy of the time, the movement of concentration and rationalization at the beginning of the century represented an industrial cataclysm infinitely more violent that All This which was experienced afterwards. A cataclysm that we can hardly imagine today, even with the experience of there present crisis.

That said, the figures thus cited still overestimate the extent real of the changes intervened In THE property structures. If mergers, regroupings and takeovers of companies give rise to major press headlines, all these operations are not final. Industrial restructuring is often carried out in several steps : of the companies are grouped between them and then merge into a single group. Of the same way, all operations are neither definitive, nor necessarily a success. Part of what has just been acquired is often resold by the purchaser in THE month Or THE years Who are coming. We knows THE case of absorbing companies put in difficulty by overly ambitious acquisitions, and quickly constrained to get rid of what they intended to swallow. It follows that when we simply add THE numbers of the acquisitions recorded during a given period, there are necessarily repetitions and duplication which inflate the results. These duplications are far to be negligible : in 1967, THE

“ resales » represented 11% of the number of operations merger And absorption carried out this that year. In 1973, the proportion mounted has 39%, And 54 % in 1975. In 1979, she East Again of 35%.

Over the years, the nature of concentration operations has evolved. Mergers and absorptions at the beginning of the century are for most large part of operations *horizontal* in nature : competitors, manufacturing identical or similar products, often for different local markets, se group together for to give birth has of the entities consolidated with a commercial power more big. The groupings of 1920s have a more *vertical* and conglomerate character: we no longer group together, it is companies that take control of other firms located upstream or downstream to integrate their activities into their own organization. While from 1895 to 1905, two thirds of the firms which disappear are firms which merged with others, in the 1920s the proportion was only a third, the rest relating to pure and simple absorptions. For the contemporary period, we attend a near disappearance of all real operation of merger between independent units. Large industrial operations are essentially *conglomerate* operations whose characteristic is to serve as support for financial diversification strategies

It is likely that antitrust legislation played a role important in this evolution, the merger of directly competing firms having become almost impossible since the vote of famous Celler Kefauver amendment At beginning of the years 1950.

*American industry is not more concentrated today what born was At beginning of century*

HAS there END of the years 1940, Ferlerai Trade Commission is sounding the alarm. America, she says in a thick document published in 1948, East submerged by a

new wave of concentration of magnitude comparable to those of the beginning of the century and the 1920s. We urgently need TO DO some thing if Onne wanna not that there prediction of Berle And Means se accomplished<sup>4</sup>

As soon as they were published, the FTC's assertions were contested by several economists. Lintner and Butters show that THE restructuring industrial the period of 1940-1947 had no influence on the rate means concentration of American industry. Of his side, Morris A. Adelman demonstrates that the study is based on erroneous concepts that can only lead to false results<sup>5</sup>. The figures given by the Administration, he explains, are overvalued compared to reality. But nothing works. The dramatization effect desired by the authorities responsible for enforcing antitrust laws has been achieved its goal. Congress reforms expected from the Clayton Act so as to extend its prohibitions to horizontal mergers and concentrations. The era of anti-trust repression begin truly (1950).

Who was right? The alarmist speech of the Administration or those who criticized its conclusions? Today we know with absolute certainty that evil that denounced the FTC was than a ghost. THE data published in 1975 and 1981 by the very official Bureau of Census show that despite more than two thousand shots of less control and mergers of ten years, the average rate of concentration of American industry did not vary between 1935 and 1947 - and this regardless of the industrial nomenclature used (two hundred and eighty-one or four hundred and eighty-three sectors). Moreover, the same work makes it possible to establish that where the degree of concentration was the highest, this tended to decrease, while the opposite was observed for the sectors where the concentration rate was lowest in 1935 - THE All converging towards there average standard. If we take the sectors where the concentration rate is the highest (where the first four firms in the sector alone make more than 75 % of the deliveries industrial), we

notes that the average degree of concentration has decreased in 53% of cases, and increased in only 24% of observations. Conversely, if we take the sectors where the concentration is the lowest (where the first four firms do not no more than 25% of sales), we see that the rate means of concentration decreased in 20% of cases, and increased in more than half. A situation that is difficult to reconcile with the image of a blocked economy by huge cartels.

“ Of such numbers, notes Walter Adams, demonstrate better than all other observation force competitive of the economy American, And this very has a era Or THE authorities do not were very concerned about blocking the road to mono-political concentrations . ,.

There same experience repeats itself around twenty years later when, in 1979, not content with prohibiting horizontal mergers, the American authorities undertook to strengthen legislation to curb large concentrations financial. There Again, THE The most recent data published by the Bureau of Census show that, notwithstanding their spectacular nature, the major operations of the 1960s ultimately had little influence on the ,average rate of concentration of American industry. Estimated at 37% in 1935, it is rising has 40.2% in 1972, And goes back down has 39.1% in 1977. If we take a weighted average, and no longer a simple average, the results are as follows: 40.2% in 1935, 39.1% in 1972 and 38.4% in 1977. Furthermore, the figures obtained confirm the permanence between 1947 and 1977 of the scissor movement observed during the previous period between the sectors with high concentration and the sectors has weak concentration.

Overall, American industry today would be less concentrated than it was half a century ago. Exactly the opposite of what we are generally led to believe ; THE opposite of This that believed those who, there a few years, before the news arrives

administration Reaganian, wanted to harden even more THE role of there legislation antitrust.

“ When we look carefully numbers, concludes the Yale professor Brozen, we notes that all THE waves real or supposed of concentration involved Since THE beginning of century do not have resulting in an increase in the average concentration level. »

These conclusions are comforted by others work which uses the methodology inaugurated in the 1930s by Berle And Means. That are become THE two hundred first companies which supposedly had to swallow everything?

In 1978, one of the heads of the Ferlerai Trade Commission, John Shenefield, then head of the anti-trust office, did not hesitate to assert that the top two hundred American companies already control at least 60 % of total manufacturing assets of the country (compared to only 46 % in the late 1940s) <sup>7</sup>. We are then in the middle of a political battle for the strengthening of legislation on mergers. His problem is to convince the deputies Americans of the necessity to expand the powers of its administration. A year later, Shenefield saw his assertions refuted by research by one of his colleagues, William Comanor, head of the FTC's economic studies bureau. Called to testify before the Congressional commission of inquiry, he presents the figures following:

“ If we takes THE companies no financial, he explains, we discover that in 1958 the first fifty US companies controlled all and for all 24.4 % of the assets of this population. In 1972, the figure dropped to 23.4 % then at 23.3 % in 1975... We gets results identical if we also take the first fifty but THE two cents first firms : the concentration rate declines by 41.1 % in 1958 at 39.9 % in 1972, and 39.5 % in 1975... Finally if we refer to the share of these companies in THE total profits made by THE non-financial companies, the drop in the ratio is even more spectacular : there go of the fifty pass of 46.2 % of the profits

After taxes has 36.5 %, Then 24 % ; there go of the two cents by 73.9% in 1958 has 55.8%, Then 39.2 % only...<sup>8</sup> »

These figures should be compared to 49.2 % which, according to Professors Berle and Means, represented the share of the top two hundred non-financial companies in 1929 (57% in 1933, according to THE calculations of Comanor).

A economist scrupulous will object that the index used (the share of the largest companies in *the total assets* held by all US companies) is a bad one indicator of « economic power » real. This is not what that who do we have, in the modern world, best describes the power of control a company has over its prices, its workforce, its subcontractors, etc. A more realistic index would consist of weighing the share of large companies in relation to production figures total. Let's look This that that given.

If we rely on the value added figures, as these result from data published by the Bureau of Census, it appears that the share of the fifty largest companies (compared to the total manufacturing industries) pass of 20 % in 1937 (L 7 % in 1947) at 24 % in 1977. The share of the first hundred increased from 26 % (23 % in L 947) has 33 % In years 1970; and that of the top two hundred US companies of 32 % (30% in 1947) has 44% in 1977.

That there go hundred (+ 10 points between 1947 and 1977) and two cents (+ 14) increases faster that that of the first fifty (+7) is itself a sign that there is a reduction in the size disparities among America's largest companies. THE The first fifty become relatively smaller compared to the next hundred and fifty. There is somehow less inequality within the group of first two hundred. It not remain that these numbers go into the sense of the thesis of those who believe in the existence of a continuous movement of concentration. How is this compatible with THE others results Already cited?

There answer East simple. These numbers don't have none sense.

We can not not hold them back For measure evolution of concentration. For two reasons purely techniques.

Production figures are a better clue than those concerning their value of the assets immobilized. It's true. But this hint has himself A fat default : he does not hold not account of internationalization growing economy American intervened Since there war. From 1960 THE level of the exports American almost tripled, going from 4.6 % see you of 12 % of the national product. If what we seek to measure East the evolution of power relative of different American companies, on THE walk American, he must remove the sales do has the foreigner. If THE more large companies are also those who export THE more (which is the case), the reports observed risk to be noticeably modified.

Furthermore, these figures can only have meaning if we assume that all US companies have a "value added/turnover" ratio which evolves in a roughly similar way over the entire period. observed. However, it is not the case. Studies show that at the beginning of the period the group of the first fifty companies was characterized by an average rate of value added significantly lower than the national average - which would be explained by the fact that at this At the time, the largest companies are also those whose activities are the least vertically integrated. This who is no longer true for years most recent, the largest companies having today caught up average degree of internal integration of others. Result: we are in the right to se ask whether the growth in the share of the largest companies in the total value added of manufacturing industries could not be explained quite simply by this phenomenon of catching up at the level of the internal organization of production structures .

For escape has these two pitfalls, he exist a solution : born se refer neither to assets immobilized, neither has there value add-

ted, but at the value of *domestic deliveries*. Only this statistical category can give us valid information on the evolution of the degree of concentration of American industrial structures. We then obtain the following results. We observe that the share of the first fifty companies in the total domestic deliveries of products manufactured is of the order of 28 % in 1937, decreases in the 1940s, then rises again to stabilize around 25 %. The share of first hundred is the same in 1937 and 1963 (34 %), and has only increased by one point since then (35 % in 1977). The share of the first two hundred is 41 % in 1937; it increases from a point between 1937 and 1963, from another point of the 1963 to 1967, then two additional points between 1967 and 1977, to then be around of 45%.

These percentages confirm the presence of a phenomenon of reduction in height inequalities within the population of the bigger businesses. That said, even if the relative share of the top two hundred increases a little (compensated by the drop in the share of the top fifty, and the stability of that of the top hundred first), all given instead the image of a very big stability of concentration relationships. We are very far from the Epinal imagery which would like the biggest companies to never stop becoming ever more larger than those which are behind. It is the opposite which we product.

« The only really worrying thing in this picture, comments Yale Brozen, is that the share of first fifty has thus stopped increasing while these are the companies where the levels of productivity are THE more students... »

This stability is all the more remarkable and significant because it concerns a sufficiently long period of time. course of which public authorities have changed several times changes in attitude towards trusts And of the concentrations. This Who allow from conclude that there

antitrust legislation ultimately had no effect on the structures of American industry. It's not hers that the United States must have today the the most competitive market in the major industrialized countries. Again a idea received has put At closet...

*Market and industrial birth rate: the explanation of the paradox*

The above leads to a paradox. The United States has experienced three major phases of economic concentration. Since the beginning of the 1980s, they have been experiencing one fourth, equally spectacular as THE previous ones. And they want us to believe that the degree of concentration would not have increased. How is this possible?

There is no mystery. The two things are perfectly compatible. The error that We we often commit is to focus on the event represented by the announcement of a merger, the triggering of a takeover bid or the merger of two large firms, and generally forgetting to then ask ourselves what happened of these projects a few years more late.

Not all mergers or concentrations necessarily result in viable businesses. There is acquisitions which do not make the buyers happy, companies which disappear because one day their leaders have had the eyes more fat that The belly. One must keep account of chess, of the errors of management and strategy, failed mergers, etc. The American experience shows that any period of rapid concentration then gives way to a phase of digestion marked by the liquidation of a certain number of operations. The most adventurous disappear body and property. Others only survive by restructuring and selling back what they come from. precisely to acquire. It is the life industrial...

There question Who se laid East of know if we can se TO  
DO

an idea of the magnitude of this ebb wave. This is obviously very difficult to measure. The only figures we have are those already cited at the beginning of this chapter. It is roughly estimated that each year between 30 and 50 % of industrial acquisitions correspond to the resale of assets which themselves were already part of a recent acquisition. Which would mean that in terms of mergers and business combinations the probabilities of failure are between one in three and one On two. Among the major recent examples, we can recall the misventures experienced by certain of the big American conglomerates of the late 1960s : Ling-Temco Vought, American Brand, **W.R.** Grace, etc.

Another element that is often forgotten is that periods of concentration are favorable phases for industrial birth rate: the more companies are sold and bought, the more this is favorable to the creation of companies news.

This connection between concentration and industrial demographics deserved to be some little explained.

When we creates a business, Or when we enters like partner In a society, we takes a big risk. No only THE risk of the activity industrial (an uncertain income), but also an enormous risk <the i/li *quidity*. We born knows Never This that the future reserve. Once your capital invested and unavailable, you may find yourself in a situation where this money is cruelly default. He must SO liquidate. But we still need to find a buyer. It's not very difficult when you only have a few actions. It becomes more so when we have a big package, where we are owner of her business.

The greater this risk of illiquidity, the fewer entrepreneurial vocations we will have. And the opposite. The degree of liquidity or illiquidity of industrial investments is therefore a key variable in business demography. To United States this problem is solved no only by presence of a walk of the actions very developed And

sophisticated, benefiting from the activity of a large number of specialized agents; but also by the existence, at the very level of industrial property, of a real *second-hand market* today largely driven by the activity of conglomerates - these famous professional teams of "business hunters" who specialize in making profits by taking over poorly managed industrial assets.

To those who would like clip the wings of conglomerates by regulating their activities, Yale Brozen rightly responds :

"Prevent companies to freely sell their assets to others firms eager of THE to resume Or of THE absorb, can only reduce the "marketability" of their fixed assets. This which can only have negative effects on the entry of new companies. Those who feel a vocation and would like to create their own businesses will be less encouraged to do so and will have more difficulty finding the necessary financing. Reduction of the "marketability" of assets increases risks incurred by those who could finance the efforts of new entrepreneurs, And reduces the hopes of earnings death last.

"In this perspective," continues Yale Brozen, "the activity of conglomerates is in reality a favorable factor for better industrial demography. When businesses can be freely bought and sold, with the minimum of state interference, a *secondary market develops*, both for successful businesses and those which are less, which allows their owners to capitalize the fruit of a lifetime's efforts at a price enough remunerative, and that, in case of difficulties, without having to know the high and traumatic cost of an official liquidation. A powerful secondary market, fueled by a continuous movement of mergers And absorptions is thus a powerful stimulating to development of the mind business, has the one of risk And of innovation industrial.

"When such a market exist, those who want se throw in the industrial adventure find it easier to finance THE help, because when they know that they take less of risks, banks lend more easily. S1 a business is growing And reached a dimension which exceeds THE know-how of its creators, the shareholders do not are not stuck by management who does not knows more TO DO face has his news responsibilities.

There company can be resold to another company which, She, has the *know-how* that current managers lack. All this makes it possible to have a more fluid, more liquid and therefore more attractive capital market. Which makes the innovative activity more remunerative and interesting than if this secondary market were more narrow and less active. That's all domain of the little and medium-sized industry which can only benefit and prosper from the activity of such groups. Contrary to what we are naturally tempted to think, the presence of very large private financial and industrial groups is an important factor in industrial demography, and not only through their orders And of their policies of subcontracting. »

Let's take an example. The late 1960s were a period active of mergers, groupings And concentrations of companies. Normally we should to expect has what this translates into a reduction in the number of companies. But this is not not All what we observe in the statistics. *Between 1960 and 1970, the total number of companies operating in the United States increased of 1.1 million to 1.6 million - i.e. an increase of more than 40 %.* If we limit ourselves to companies exceeding the 10 million dollars, we find A result identical with A increase of around 40%. Paradoxically, the great wave of concentration of the 1960s led to an industrial world more decentralized And more miscellaneous...

Let's come back has there great period of beginning of century (I 898-1902). This episode in American economic history is exceptional in that in a few years it has really led to the appearance of an impressive list of giant companies (at least for the time), benefiting from monopoly positions that are staggering by current standards. This is how at the beginning of the 1900s there were no less than twenty-six large companies with shares of market higher than 80 %. Seventy-eight industrial sectors have a degree of concentration (measured by the market share of the first four firms) greater than 50% - compared to only nineteen in 1947. This shows the intensity of the phenomenon of concentration Who has brand there Beautiful Era.

Let's look NOW what are become there most of these large trusts, only a few years later. American Strawboard, created in 1889 and who occupies then 85 % of the market, does not represent more that... 33 % in 1919. In 1898, sixteen pulp manufacturing companies came together to found International Paper, And bring him THE two third party of walk North American. In 1911, the firm did not more than 11 %. In 1895, American Sugar Refining represents to, She alone 95 % of there production capacity of sugar from the United States. Two years later the figure already drops to 75 %. The fall continues until 1907, date has which there firm do not do more that 49 % of the market, And that despite the contribution of news mergers which are came to grow the group. In 1918, American Sugar doesn't more than 28% of walk<sup>9</sup>. We know more history of there Standard Oil. In 1898, the company by John D. Rockefeller (I<sup>9</sup>) represents 88 % of the abilities American refining companies. His techniques of management are so superior to those of its competitors that Rock feller can se allow of redeem their companies has a price clearly higher than their simple value venal. It is Thus that Rockefeller built her power. Prosecutions are brought against him, In THE frame of the new legislation antitrust, voted in 1896. There harsh procedure of the years. She resulting Finally in 1911 when Standard Oil sees condemned and forced to explode into eleven firms independent. In the meantime there go Steps of the Rockefeller group fell to less of... 65 %. In his little book *Mergers in Perspective*, the teacher Yale Brozen given a list of sixty-five businesses, issues of there big wave of concentration years 1890-1905, of which THE shares of walk have strongly declined has there following of their constitution.

Obviously, these examples are now old. It is doubtful whether they still have any value in the contemporary world. It seems impossible that such industrial misadventures could be repeated today. But it is not not at all what the facts show, as soon as we takes A hindsight sufficient.

Take for example this extremely rich source of information represented by the list of the top five hundred US companies published each year by *Fortune magazine*. A careful examination of the collection reveals that of the first fifty that appeared on the list in 1947, only twenty-four remained in 1977. Thirteen of the first fifty in 1947 simply disappeared from the list of the top hundred American companies. On the other hand, seventeen of today's top fifty did not even appear in there list of the hundred firsts companies of 1947.

Having a large market share, or being the leading firm in your sector, does not protect against any reversal of fortune and this is confirmed by figures from the Bureau of Census concerning the evolution of sectoral concentration rates. We discover that in ten years, or even in five years, variations of the market share of so-called "dominant" companies (the first four in each sector) can be relatively considerable. Let's take a few examples:

<i>Go of walk of the four firsts companies of each sector</i>						
	1947	1958	1963	1967	1972	1977
machines to calculate			83%		73%	59%
phonograph tubes	78			58	48	
electronic boxes canned				70	55	
Fibers organic		80			66	
turbines – and generators			94	84	74	
			93	76		

Once again, it is clear that it's not about doing more of 90 % of a market that is enough for you

protect from all competition <sup>10</sup>. Furthermore, additional studies confirm that the group of the first four marketing firms each sector is very far to form a club as stable and as closed as is often assumed: we observe that in 1958, in one hundred and sixty industrial sectors (out of two hundred and four), the list of the first four firms includes a name which did not appear not ten years more early. A such mobility, over such a short period (on the scale of industrial life) contradicted the classic opinion according to which it is “inertia” which dominates the evolution of sectoral structures <sup>11</sup>.

*THE laws antitrust don't have not exchange much \_*

All these data match. They suggest that competition is a much more present and pressing industrial reality than most people usually believe, even THE economists professionals. It is not enough to have economic power to believe that we are definitively safe from any threat. Many managers have had the sad experience of this. The story East full of fallen down of companies Who were A day “giants” and leaders, but which have not survived the aggression of competitors, not necessarily larger, but all THE less more skillful And more efficient. It shows that it is not enough to ally, to merge, to concentrate For dismiss with success of such threat. Size is only an economic asset if it is accompanied by sufficient industrial dynamism. In in no case can it replace it. It's not not because that we are big and big, that we have the guarantee of all succeed. The law of increasing concentration is not inevitable. It's an illusion. A false law is contrary to the truth, even if the majority of us continue to believe in it reason for the myopia that affects us in relation to any phenomenon whose time scale exceeds our small horizon to be human.

Conclusion of the American studies: mergers and concentrations are not a problem. The state does not have to regulate them. If these operations do not bring any real benefit to the customers of the merging companies, nothing will prevent their overall market share, and therefore their "power economic", of shrink like skin of sorrow; and this regardless of the size of the firm resulting from their merger. A high market share can be defended in a sustainable manner only if the company watch effective enough to maintain his price at levels that do not encourage new competing producers has enter on THE walk what dominated.

Banning horizontal mergers can only lead to one result: imposing additional costs on companies in their search for the optimal industrial structure - the one which, in a given sector of activity, makes it possible to obtain the the best production costs, take in account the technical, commercial and institutional data that characterize this sector. Regulations of the **Takeover bid** has THE even effect.

The first victims of such a prohibition are none other than the small firms whose market value is thus reduced to nothing. Lack of power freely sell to leaders in their profession, these companies are cornered has there voluntary liquidation, Otherwise has there bankruptcy. Equipment, machines, trained and experienced human teams, which would have had value if they had been taken over by other firms in the same profession, are thus scrapped, dispersed, at starvation prices. At the same time, since they can no longer expand by taking over the equipment and teams of their failing competitors, the leading companies find themselves forced to build factories that se find scattered elsewhere. Result : A vast waste of money and resources, which gives rise to an economic accumulation of doubles jobs and of capacities cited redundant.

A example of This kind of effect pervert: THE breweries

American. Beer is a sector where, in the 1930s, a number of factors completely modify the technological conditions of manufacturing (decrease in the importance of sales in barrels to drinking establishments, growth of metal bottles and cans, growth in regulations, etc.). Result : a considerable increase in thresholds production minimum. Small local breweries are doomed. It's time for regrouping. But beer is a sensitive sector that the FTC's antitrust department monitors. This systematically blocks all projects of reconciliation And of redemption of companies.

What happened pass? Thirty years later, we see that the strict application of there Antitrust legislation did not prevent the process of industrial concentration from taking place at a pace roughly equal to that observed at the same time in other countries such as Canada or the United Kingdom. The number of companies increased from seven hundred and fifty-six in 1934 to forty-nine in 1976, and the average rate of concentration of 11 has 63 %. But while in Canada and Great Britain business growth occurs largely through external processes of merger and absorption, in the United States this path is blocked. THE companies that se develop the fastest and monopolize the market are forced to opt for infinitely more expensive internal growth. The elimination of weakest companies is done little by little, but according to a process which, in the meantime, involves the appearance of excess production capacity estimated at one point at more than 40 % of total production capacity of the sector: so many wasted resources plundered Who could have be used of manner more professional table in other activities. The intervention of the antitrust authorities has only changed the terms of an inevitable industrial rationalization which, in any case, has been accomplished, but at a social and individual cost for companies, very high compared to to what is would be pass

if we had allowed the owners of American breweries to act as they wished (instead of imposing on them a mode of growth which is not the one they would have spontaneously selected). Much better : it is estimated that this policy had the consequence of leading to a higher concentration rate than that which would normally have prevailed (these are the FTC experts themselves which recognize). How? Of two manners : on the one hand by in some way condemning large companies to set up new production capacities that are more modern and more productive than those with which they would have been content if they had been able to develop through external growth, rather than through new investments ; on the other hand, by preventing small breweries from accessing the productivity gains that their merger with more competitive units would have allowed. This example reminds us that, whatever we do, if we take a period of time long enough to be significant, we do not prevent competition from leading an industry towards the structure imposed on it by its technical data and its environment. The intervention only results in this development do In of the terms more expensive.

At any time, there are sectors where the evolution of tastes, progress of technology, management and management, institutional changes impose a process of concentration of structures; there are others where the same factors nourish on the contrary, a reverse movement of reduction in the dominance of leading companies. Much often depends on the particular stage of development in which the industry in question finds itself, as well as the particular conditions which have governed has His birth. But the story And experience teaches us at least one thing: overall, except for periods of limited time, there is no didn't evidence of a continued movement towards ever-increasing concentration rates more students.

*THE concept of a concentration indefinitely increasing is logically inconceivable*

In her bulky work *Man, Economy and State*<sup>12</sup>, Murray Rothbard develops the following idea: imagine that a firm could, with its resources alone, grow uninterruptedly, to the point not only of absorbing all its competitors, but also to become the sole producer of everything it needs (for example intermediate goods, machines and capital goods), is inconceivable and it can be demonstrated that it is epistemologically *impossible*. For what? Because that, answers Rothbard, At first And has measure that one such firm expands and becomes the only manufacturer of intermediate goods of which she has need, she private by any means "rational" of manage economically his activities what there do little has little sink in chaos and, on a walk free, prevents it GOOD obviously of continue her growth) costs of the others businesses.

Rothbard's argument is only an extension of Mises's demonstration of the epistemological impossibility of socialism - or rather, the reason why socialism, by definition, cannot support (and therefore achieve) levels of economic complexity and material well-being as high as those that the free market can achieve. What has enabled the material achievements of our civilization - notably its technical and scientific achievements, it is the development of "rational calculation", that's to say increasing capacity of man, thanks to institutions like money, THE price system and loss account discipline and profits, to measure and appreciate the relative value of its different actions<sup>13</sup>. The claim of socialism is to use the scientific knowledge accumulated by man to reproduce, without private property, economic results to which the institutions capitalists made it possible to arrive (but without their "costs social"). To what

Mises responds that such a goal is unattainable because in removing private property goods of production we do that there is no more of " calculation "rational economic" possible. Without private property, no more exchanges, and without exchanges more of " price ", more of AVERAGE of know the relative value of things. Without private ownership of production goods, without a free market where exchanges and sell THE materials first, THE tools, THE machines, goods intermediaries, etc., more average to know there "economic value" of the different technical solutions available For produce such or such final consumer good. There is no way to know which one is really the least "costly", the most economical in scarce resources. Of course, we can use a multiplicity of artifices accountants to compare the "technical efficiency" of different methods of production. But without free market and private ownership of capital and production goods, not AVERAGE of compare their " efficiency economic ". This doing THE socialism led necessarily to chaos economic, has a tremendous social regression, in reason of this that THE " price" Who are there practice And Who born are not of the price "free" (but of the price " administrative ), there are only *numbers* private any informative content true on the real structure of relative production costs. It is true that socialism exists, that it has functioned for more than sixty years in Union Soviet, And that this one n / A not dark In disorder and chaos total economic that Mises announced in his book from the 1920s. But if he This is how a last element of economic rationality survives in the Soviet Union: the fact that the basic prices which serve has there planning are in definitive of the price "imported " from the capitalist world, prices that Gosplan planners "borrow " to major international markets materials firsts. THE socialism on lives like a parasite that grafts itself onto a thriving body. For exist, the world Soviet has need of capitalism; he has need that survive around from him A universe capitalist

and market economy which serves as a sort of compass.

The trick of Rothbard (who was a student of the Mises seminar in New York) is to extend this reasoning to the capitalist company which, because it feels so much more efficient than the others, would give itself to a strategy of absorbing everything, competitors, suppliers, subcontractors, etc. An entrepreneur who would set such an ambition, replies Rothbard, has no more chances of achieving your goal than a socialist dictator who, like Khrushchev, would set himself the goal of "catching up" with capitalism; and this for reasons of the same nature: because by behaving like this, by wanting to swallow everything to remain the only one, he would deprive himself of all the elements of calculation which precisely allow him to express his entrepreneur donations.

Let's take an example. Let's imagine a business done of three workshops. In the first, workers transform a raw material purchased externally into a basic product X. This product is then transferred to workshop 2 which, at the cost of some manipulations involving new supplies exterior, transforms it into an intermediate good Y. In its turn, this semi-finished product is delivered to workshop 3 which develops the final article Z sold to customers of the company. We assumed that setting in place of this production device cost the entrepreneur an investment of 1 000 (depreciable over 10 years, with an annual interest rate of 10%), and that its operating account for the end of year presents as follows:

Amortissements	100	Recettes	750
Salaires	300	Dépenses	630
Achats	130	Bénéfice	120
Intérêts	<u>100</u>		
Total dépenses	630	<i>Soit un rendement annuel de 12 % sur le capital investi.</i>	

At the end of the year, our contractor undertakes his review of awareness. The case is she profitable? Should he continue? Apparently the answer is rather positive. since her business cleared A profit. But things are not that simple. What is important For the entrepreneur East of know if the case like this created him reports At less as much that if he had made another choice (for example to invest his 1,000 in bonds at 10%, and to use his personal time working for others). He must calculate the "opportunity cost" of her decision of create And TO DO function a such business. In assuming that on THE walk of work his abilities of administrator (working for THE account of others) him report A salary of 150, This "cost of opportunity" East of :

Interests (10 % on 1 000)	100
Salary	<u>150</u>
Total	250

For his business to earn him at least as much as he could earn using his money otherwise, it would have to generate at least a return of 25 % per year. Knowing that the profit made only represented a return of 12 % on capi metal invested, by managing its own business our entrepreneur actually loses money, even if the account results operating are apparently positive.

Will he give up? If it is "rational", apparently it is better not to continue. But if he is a good entrepreneur, before making his decision, he asks will provide additional information to know more precisely the relative profitability of its various workshops.

Suppose that the distribution key for the various budget items either there next :

	<i>workshop 1</i>	<i>workshop 2</i>	<i>workshop 3</i>
investments	300	300	400
salaries	100	100	100
purchases	70	50	10

He gets THE accounts operating following :

	<i>workshop 1</i>	<i>workshop 2</i>	<i>workshop 3</i>
depreciation	30	30	40
interest	30	30	40
salaries	100	100	100
purchases	<u>70</u>	<u>50</u>	<u>10</u>
total expenses			
merchants »	230	210	190

What we have here gives the expenses caused by THE functioning of the three workshops, but born tells us nothing about the economic efficiency of each. Cost is a wrong measure. This is that each production, At breast of his "integrated" business, really makes a profit for the owner? There solution consists has put in glance of the total expenses borne by each workshop what each intermediate production (the **basic** product THE product intermediate Y) would have reported if, instead to be sold of way internal For there manufacture of the final product Z, it had been sold directly to other external companies at the prevailing market price.

Suppose our entrepreneur discovers that he could have sold product X 240, And the product Y 550. The detail of the operating account is transformed as follows :

	<i>workshop 1</i>	<i>workshop 2</i>	<i>workshop 3</i>
Depreciation	30	30	40
Interest	30	30	40
Salaries	100	100	100
JQ		—purchases	..!Q
Total expenses	230	210	190
Market value of product of base <b>x240</b>			
Profit (implicit)	—10		
<i>Yield</i>	3%		
Price of transfer internal of product x240			
Expenses		210	
Cost total of manufacturing of product Y450			
Market value of product intermediate Y550		—	
Profit accountant		100	
<i>Yield</i>		33 %	
Price of transfer internal of product Y550			
Expenses		190	
Recipes finals		750	
Profit accountant		10	
<i>Yield</i>		2.5%	

The economic performance of the three workshops is respectively 3 %, 33 % and 2.5 %. If he seeks the best possible allocation of his financial resources and his personal skills, in order to maximize his hopes of gains, the interest of the contractor does not consists neither of continue the manufacture of product Z, nor to drop everything for a job elsewhere, but rather to redeploy its resources by abandoning the manufacture of product Z as well as that of the basic product concentrate essentially on the production of intermediate product Y. This is apparently where he is best equipped and most talented.

It is true that all these calculations were made with very hypothetical figures. Nobody knows *a priori* what would be THE salary that he would touch if he was employed by someone else. All This that we can to have is a subjective approximation, depending on what we know of the wages practice on THE walk of work by other companies. In the same way, no business manager knows precisely at what price he could sell abroad the intermediate products he produces for his own account. All he knows is the price charged by other manufacturers from whom he could obtain supplies himself if he knows these to ensure this manufacturing by his clean means. The fact remains that this type of calculation and estimation remains irreplaceable if we want to ensure that our resources are allocated to those of their potential uses where their development is greatest, And there better has even of generate THE earnings the highest possible. It is thanks to this type of calculation, practiced daily by all entrepreneurs and their teams, that the economy of walk East in measure of give to consumers This that they research in conditions of effectiveness maximum. It is thanks to this kind of calculation, Also imperfect be it, that the West has acquired its capacity to produce the material wealth which are Today THE ours.

That said, This calculation "rational" is not possible that because we assumed, firstly, that there exists a "free" labor market, then there are other companies that manufacture the same intermediate products X And Y.

Let's imagine that our entrepreneur has little by little absorbed all those who also produced the intermediate product Y, may it now be the only manufacturer cant, And that he reserve her production For his only needs of manufacturing of product Z. not having more of price of walk outside to which se refer to know there "value Merchant" of Y, he born him East

no more possible to individualize the results of the workshops 2 and 3. The only analytical accounting he now has East there next :

	<i>worksho</i> <i>p 1</i>	<i>workshops 2</i> <i>And 3</i>
Amortization Interest		
Purchasing	30	70
Salaries	30	70
	100	200
	<u>10</u>	<u>60</u>
Internal transfer	230	400
price of		
product X Cost total		240
of manufacturing of		
Z Profit		640
<i>Yield</i>		110
		15 %

These figures indicate to him that if he wishes to continue his exploitation, he has every interest in se get rid of workshop 1 and buy its basic material from external suppliers, even if it has to pay more for it than it costs currently costs him to make it. They also tell him that he might be better off thinking about doing something else, unless he feels that his independence as an entrepreneur " is well worth a sacrifice of gain - or even if we put it at 10 % of his investment monetary cost" of the uncertainty over the salary that could be paid to him. But there is a thing that does not appear more : the fact that he had an ultra-competitive workshop in his company, the workshop 2. More nothing him signals that he y had At less A element to be preserved, which he rotated remarkably, and which was likely to bring him high earnings, much higher than anything he can claim by becoming a simple employee again. By pursuing a policy of internal integration of suppliers and subcontractors who delivered intermediate product Y, our entrepreneur did not realize that he was depriving himself of an essential source of information to manage better his business. Born not knowing that it would be in his interest to

redeploy its industrial resources instead towards the production of Y and Z, its economic results will be less brilliant. Her business will show less efficiency. And consumers will lose all the gains of well-being that they could have benefited from if the company's resources had been better managed. *In their race for growth which pits him against his colleagues, he loses places because his business is now less effectively managed. Paradoxically its policy of expansion by integration vertical has for consequence of limit its further development possibilities.* We end up with an internal process of self-limitation of the dimension of the company.

If we now imagine that it also includes all the manufacturing of commodity X, it is clear that its decline will only be accentuated more quickly. In the absence of any price external reference with which to compare the results of his workshops, the entrepreneur no longer has any means of knowing how he should possibly redeploy his internal resources so as to achieve them. To pull THE best possible benefit. It's like if he were to put a blindfold over one eye, then over both. To follow a policy of frenzied integration, the entrepreneur makes himself blind; he deprives himself of a mass of information which can only be communicated to him through mediation of a system of market prices, fueled by the permanent rivalry of competing companies, and without which its analytical accounting efforts no longer have any meaning " economic ". His numbers don't are more only numbers with extremely poor information content. The mediocrity of his overall results hides the truth from him on the state of health of its sickest members. Gangrene sets in. Little by little the monopoly positions that it so dearly acquired during its period of great expansion are being called into question by the appearance of new producers who take advantage of its internal sclerosis. In a free enterprise economy, growth external East A process Who possesses his clean

limits and cannot continue indefinitely due to the progressive deterioration of the information system that it introduces into the management of the company. That does not exclude no possibility of giant firms. However, this excludes the possibility that a company can grow continuously until it absorbs She alone all one economy. This idea is absurd, completely absurd. It corresponds to a total epistemological impossibility. We will have giant companies, achieving turnover colossal (if we take as reference the **GNP** of some small countries). But these firms will almost always be multi-product firms, only very exceptionally having a true monopoly position on intermediate product markets. For such a firm to keep his rank, he is essential that it keeps on all his lines of manufacturing of intermediate goods of independent competitors, likely to carve out croupiers for it where she would show herself the most negligent. In other words, the very large company has no interest in using its "power" to stifle all external competition, because acting in this way can only stifle it itself, without that for as much competitors are definitely muzzled. In a free market regime they will wake up as soon as the big company has shown its weakness. Such a company, can survive sustainably only with the complicity of the State which generously grants it subsidies (at taxpayers' expense), or which legally prohibits all competition (" public monopolies"). "). We find nationalizations - but with very different motives from those that we usually asserts. There has that in a socialist society - or already marked by strong elements of socialization - that such a business can prosper without ever risking being called into question. It is only in regimes that are already strongly socialized - *the mixed economy* à la Mitterrand - that the large companies represent a real danger. Only the State can block the mechanisms self-limiters of the free market. The size is not

in itself, a threat, as big be it. This who is dangerous, it is the way in which it is acquired, and preserves.

This analysis suggests that the real cause of the disorders of the Western economy is found in the continuous extension of a privileged sphere of state economy, the consequence of which is, in accordance with the diagram of Rothbard, to multiply and expand the areas of "incalculability", impoverishing thus constantly the content of the mass communication system which is the market price mechanism. Without knowing it, entrepreneurs, but also public authorities, make their decisions based on data whose information content is increasingly poor. Let them not be surprised not then to have more and more difficulty achieving their objectives, and if therefore, objectively, the risk of their operations appear to be increasing. We find the very essence of the "Austrian" analysis of economic processes, such as what is by example applied by Hayek to the analysis of inflation<sup>14</sup>. We also find proposals for "deregulation" - but for a significantly different reason, and more fundamental than all the reasons generally given. If less State is needed, it is not not only because it is desirable in itself, but because the extension of the State is in the process of destroy from the inside everything, which precisely made civilization possible: the State, contrary to what our spirits Cartesians And Jacobins, this is not more than "rationality" in the management of the economy, but on the contrary the disappearance, without realizing it, of All "calculation rational", by extinction information and data required.

A other consequence is of better we TO DO to input the difference between true And false Company liberal. There capitalist society introduces himself like a system Or two universes coexist and overlap in reality, two logics of choice: a universe of commercial relations of a purely contractual (THE "walk"), And A universe of

hierarchical relationships where predominates logic of Planning (L'" business"). It is there presence inevitable "information costs" and "transaction costs" which explains that the logic of market exchange stops at borders of the company, with movements going at times in the direction of increasing concentration and to others in the sense of greater decentralization of choice and action procedures. In doing so, the big difference between liberal capitalism and liberal socialism is that, in the first case, the dimension of the planned universe se find necessarily self-limited by internal processes, independent of any choice and any human intention, whereas, in the second case, there are no limits - except good will, or the resistance of (uninformed) taxpayers - to the efforts that the State can deploy to subsidize the indefinite extension of the planned era by supporting or protecting the firms which know best put the state apparatus at their service, while also putting themselves at the service of the strategies of politicians <sup>15</sup>. It is not in the private sector, nor in free enterprise, that we must find a logic of "increasing concentration". " But quite the contrary in the sector of the State and its agents. We find what shows us in the most obvious way there simple observation of the facts.

### Notes

1. An example, the *economic law textbook* by Professor Gérard FARJAT, *Thémis Droit*, 2• 1982 edition, p. 148: • Development of the international concentration and conglomerate concentration is revealing the *inescapable nature of the process* in countries with economic crumb private." (Underlines by the author.)

2. Two excellent examples of this technique: the work of the party communist on *State monopoly capitalism*, Social Editions, 1971; but also the book by Jean-Marie CHEVALIER (Hachette Littérature, 1980). We are content to recall all the major operations of concentration of recent history, to describe the complex network of relationships financial Who characterizes industry modern, to affirm :

the country's economy was gradually dominated by a number, more and more more restricted, of more and more important capitalist groups. But there is no scientific analysis or real empirical test of affirmations worn.

3. Adolf BERLE and Gardiner MEANS, *The Modern Corporation and Private Property*, 1932. By the authority of Professor Berle, due to the fact also the extremely sophisticated nature (for the time) of the statistical appendices by Professor Means, this book is undoubtedly the one Who has THE more do For accredit definitely In opinion the idea that concentration industrial is one of the major problems of the economy capitalist contemporary. We find at the house of Berle And Means Already all THE ingredients of the ideas And analyzes Who will do THE success of John Kenneth Galbraith.

A prophecy of even gender has summer formulated, he y has more of ten years, by an English professor, about British industry. At the end of a study on THE hundred firsts companies English, this one (Dr. Pais) writes: • The trend is going ever upwards. There is no sign of tailing off at garlic yet to be seen... Within 10 years I would guess from the figures that are in front of us that we must expect two thirds of the manufacturing will be in the hands of the 100 largest firms. And looking ahead has bit further, tea turn of tea century, it will be something like 85 per cent which will be in the hands of the largest 100. » (*The Evolution of Giant Firms in Britain*, 1976). The data of teacher Pais have do 1. Object of a refutation extremely critical written by THE teacher John Jewkes, and published by the Institute of Economic Affairs under the title *De/usions of Dominance* (Hobart Paper 76, 1977). It seems that there is Effectively had a sharp increase of there share of the big ones taken In industry British At course of the years 1950 And 1960. But from one share, the rate AVERAGE of concentration economy British nique was previously significantly lower than the level reached from the 1930s by America; on the other hand, the concentration seems to have Since during stabilized around of 38 % (go of the hundred firsts firms In there production) against 33%, figure equivalent For THE UNITED STATES. The book by Berle and Means has also just been the subject of a *reas session* scientist At course of a conference of which THE communicate tions have summer published In THE *Newspaper of Law and Savings* date of June 1983.

4. Ferlerai Trade Commission, *The Merger Movement: a Summary Report*, 1948.

5. Morris A. ADELMAN, « The Measurement of Industrial Concentration », *Review of Economics and Statistics*, vol 33, November 1951. The Professor Adelman is the first to have dared to question the new calf dogma from of the works of Berle And of Means.

6. Walter ADAMS, «Comment», in *Business Concentration and Price Policy*, 1955.

7. Edward CowAN, « Law for Size Limits we Mergers Sought », in *New York Times*, 30 December 1978.

8. W.S. COMANOR, « Prepared Statement for the Subcommittee on Antitrust, Monopoly and Business Rights », in *Mergers and Economics Concentration*, 1979.

9. Explanation: the emergence of sugar beets, technological innovation of which American Sugar has missed THE turn.

10. It looks good, remarks Yale Brozen in his other book (*Concentration, Mergers and Public Policy*, Mac Millan, 1982) that large operations of concentration of there END of the century last (Ameri can Can, American Sugar, United Paper, etc.) have has the origin summer designed with the obvious intention of establishing a position of dominance massive on the market, and to take advantage of it for example in the form of price more high (we East In a period of drop of the price And of disappearance margins that make pain in industrial). But, he observes, what show precisely the facts are that those who chose this strategy to defend themselves, and merged to be better in position to maintain their prices did not last long. On several occasions, groups like American Sugar or American Can were finally forced to align their price on This Who their remained of competitors, despite THE market shares massive (beyond 80% and even 90%) who were THE their, there reason being All simply that the fact of maintain their prices at levels higher resulted in extreme erosion fast of their go of walk, Also high be it. In THE case from American Can, we has seen by example there go of the independent pass of 10 % has 40 % in less than two years, quite simply because management from American Can had decided to increase his price of 25 cents. We find of the episodes similar In the story from American Tobacco.

11. "inertia" is the defended thesis by someone like the profess sister WG SHEPHERD. (*The Economies of Industry/Organization*, 1979).

12. Murray RoTHBARD, *Man, Economy and State: a Treatise on Economy Principles*, Nash Publishing, The bone Angeles, 2' editing 1970.

13. On • rational calculation • and the Mises-Hayek quarrel with the socialist economists, see the chapter • The pianist illusion ". In *For what there property*.

14. For A exposed fast of there theory Hayekian of inflation, see *Tomorrow THE liberalism*, 6' part, p.410 And following.

15. Some will object that what do problem today, it is not so much the classic industrial concentration, the one that can easily be identify, and which is linked to technical economies of scale, but • financial • concentration; the growing interpenetration of firms and groups through of the complicated networks of cross-shareholdings. That's the whole theme of the • industrial economy •, developed for several years in France under the leadership of economists and academics very marked by Marxism. All these statistics, we are told, are very good, but they are totally overwhelmed by the new realities of capitalist and financial concentration which, for its part, does not appear nowhere through concentration rate calculations. Economic theory •liberal• is very interesting. She brings views news. But she neglects This Who East became THE true nerve of there war 1\_ the true reality of contemporary capitalism : financial concentration .

Answer : the cognitive argument on self-restrictions of industrial concentration has precisely for merit that he stay also valid if we

applies it to "capitalist" concentration. That the integration of different activities se do at breast of a "cartel", of legally independent firms or companies with related and reciprocal holdings, does not change Nothing At issue describe of the during that that implied that we "sort" certain markets of there free competition And active. It is no longer the company, but all the firms which make up the cartel or which are linked to each other, which become less efficient due to the inevitable impoverishment of their internal calculation system. If a financial group is formed with the objective not of seeking savings of scale (technical but Also "transactional") THE largest possible, but to "loop" the market in order to completely control them - which amounts to internalizing it, to take it out of the game of free competition, even if apparently we continue to operate in a universe legally autonomous exchanges - a day will come when, private of the signals required For allocate At better his huge financial sources, it will end up declining, defeated by competition from firms or other less integrated groups. It is for this reason that, in economy where we respect the freedom of competition, and where THE powers public se keep to intervene For impose their design of game competitive, there has in truth Nothing of more short-lived that the cartels private. It is there logic even from their action who condemns them.

## **THE large companies born are not one hazard For there competition**

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In the United States, we are witnessing a proliferation of works radically criticizing antitrust jurisprudence, as well as all the economic theories and doctrines that inspire it. This change in attitude can be explained partly by of the reasons of circumstances. He is also the fruit of a scientific revolution linked has the recent accumulation of work whose conclusions contradict the economic dogmas on which, since the 1950s, the action of public authorities has been based. Today, no one can continue to act and to speak as if there were irrefutable proof of the need to entrust authorities with the task of controlling the evolution of structures industrial.

When an industrial sector is characterized by the presence of one or more large firms, carrying out a significant proportion of production on their own, we deduce that this is a situation where the functioning of the competition has every chance of being distorted by the "dominant" position of the most powerful companies. And this for two reasons. First, because when the number of competing producers East

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\* This chapter takes up a text already published in 1986 in an Institute brochure La Boétie under the title : • Compete III : large companies are not a danger to competition. • (La Boétie Institute, 44, avenue from Jena, 75008 Paris.)

weak, he East more easy For them to get along on THE price and resort to concerted action practices. Secondly, because such oligopoly situations, as a document from a US Senate investigative committee once put it, "tend to produce economic results equivalent to those of an agreement, even when 'there is no explicit collusion between the producers' ".

In his book *The Industrial Exchequer*, Professor Jean-Marie Chevalier summarizes the heart of this doctrine as follows :

"The structure of a given market can be assessed, as a first approximation, by the market share held by the top four producers. If this share is low, we is entitled to think that competition will take place between the different producers and that the price will be established fairly normally by the operation of the market. If, on the contrary, the share of the first four producers is high, we can think that there is a risk of collusion and that the market price will be established outside of competitive forces... When two or three companies share share a market, we can in fact think that they have no interest in vigorous price competition developing between them. Better an understanding, even an imperfect one, than a true competition by THE price<sup>2</sup>."

Jean-Marie Chevalier, using criteria established for THE account of there Commission of the European Communities, concludes that when the first four producers provide at least 80 % of sales on a market, "there is serious and probable danger" of harm to competition. When the share of first four located between 60 and 80 %, THE danger is only "serious and possible". Between 40 and 60 %, we only have one "situation to follow". Finally, below 40 %, we admit that there are few fears to be entertained regarding the functioning of competition<sup>3</sup>.

Although it is firmly anchored in people's minds, we often forget that this theory of competition has really no acquired right of quoted at the house of THE economists

that from the moment when, in the years 1930 to 1950, a certain number of empirical works seemed to provide proof that there was a close link between industrial concentration and monopoly effects. However, we are today discovering that these studies were affected by methodological biases such that this removes any scientific validity from their results. The same studies redone recently, with of the data econometrics more sophisticated, as well as with data which, at the time, were not available, lead to Exactly... opposite conclusions! Result: we see a growing number of renowned economists who, twenty years ago, did not hesitate not to advocate the reinforcement means

of control over industrial concentrations, disown their writings and their conclusions at the time 4. A real intellectual revolution is underway which completely calls into question the idea that by entrusting public authorities with the task of monitoring - and possibly prohibit - concentrations industrial judged "excessive", We could improve the operating efficiency of our economies<sup>5</sup>.

*For classical economists, competition is freedom of trade  
And of industry, It is All*

First of all A little of history. who is it than competition? who is it one "walk competitive »? When we return to the origins of economic thought, we discover that, for the authors of the 18th century (Cantillon, Turgot, Smith, Say...), talk of free competition is not other thing that se refer has this state of world who exist naturally when he there is "freedom of trade and industry » ; that's to say when are recognized the law and there freedom of each one to exercise there occupation Or the activity of his choice. In their eyes, competition is an essentially dynamic and procedural concept. What interests them are the properties of the "competitive process »

- that's to say how is carried out there coordination decade-

tralized economic activities when there is competition between producers *free* to compete with each other for satisfy THE needs of their fellow citizens<sup>6</sup>.

Contrary to what is often believed, the founding fathers of the economy classic politics have never insisted on the idea that it would be necessary to have "a large number of producers in front of a big number of buyers" so that there is real competition. As Harold points out Demsetz, monopoly is a subject that hardly concerns them. In Adam Smith, the term "mono pole" does not appear that in ten pages of nine hundred three from *The Wealth of Nations*. David Ricardo devotes only five pages to it, and John Stuart Mill two pages out of a thousand four...<sup>7</sup>.

He East TRUE that he y has there famous sentence of Adam Smith:

"It is rare that a meeting of people of the same profession does not end not by some conjuring against interest audience Or some plan For increase THE price." But we must not cut it from its context, and give it more importance what don't has In the work of !'writer. He There are two ways to approach monopoly problems. The first one East to attack THE annuities of monopoly produced by the natural play of commercial freedom. This is the one traditionally adopted by economic theory modern. The second, on the contrary, targets the "monopolistic" rents created by the regulatory interference of the State with the freedom of trade and commerce. contracts. It is this second tradition - resurrected today by THE works of the economists of Chicago on the "perverse effects" of state regulation - what is related Adam Smith. This Who THE concerned THE more is not This Who We concerned, We, Today: THE single pole Understood as there presence of a alone private producer (or a small number of private producers) in a market; but This Who characterizes the economy mercantilist of his time (and also increasingly our "economy mixed" contemporary): there generalization of "right to monopoly" by there multiplication of "franchises" indi-

individual or collective, which represent so many obstacles And of exemptions At development of a diet of freedom of trade And of free competition. For Adam Smith, like For all his contemporaries, the TRUE issue born come no there situation of "single pole" - necessarily "perishable" - of which A producer private can enjoy during A certain time in reward of her ineptitude passed, but of the corporatist protections that the State distributes, either in hard cash and stumbling (when made a way to bail out THE Treasure audience, as it was THE case under the Elder Diet), Or All simply For ensure his re-election (as It is the case in THE world modern). THE XIX<sup>e</sup> century stay true to there vision Smithian competition. However, At fur And has measure that THE economists se mathematize (there first mathematical theory of monopoly, that of Cournot, date from 1836), a evolution se draw Who led has bind competition At character more Or less "atomized" steps. A acceptance different se developed Or the concept of "walk competitive" cease of se define by reference to criteria of a legal nature (what happens when he y has "freedom" of there property And contracts), to connect From now on to abstract criteria expressing THE terms theoretical Who would be necessary For that he y have "balance" economic (theory of there "competition pure And perfect").

Gradually, we pass Thus of a design Or there competition East view And described as A "process" dynamics of choice of which we try of to understand the mechanisms, has a new definition Or competition is becoming more identified in addition to a sort of static and abstract criterion serving has compare And has calibrate of theoretical way different market structures more or less "imperfect": walk atomized (walk said "compete tiel"), market with a small number of producers (market "oligopolistic"), walk with A alone producer ("monopoly"), etc.

*The antitrust laws of 1890 owe nothing to economic theory*

With this conceptual mutation the road opens Who led has there generalization of the idea that there competition is a state linked to the degree of concentration industrial structures. And so, by ricochet, has there conclusion that the large company, the one which succeeds, which makes more profit than the others, which lastingly resists competitors because what knows stay more effective, far from being a blessing For the consumer And A factor of progress for all, is an economic and social " scourge" (... except when civil servants or judges specifically " enlightened" by Grace decide otherwise !).

When in 1890 the American Senate ratified the antitrust clauses of the Sherman Act, we are still far from such a situation. The Sherman Act is an operation exclusively policy, led by the leaders republicans of the time For to recover THE support electoral of the trades and professions most affected by technological upheavals and the second industrial revolution from the end of XIX<sup>e</sup> century. America undergoes SO a deluge of populist demagoguery that targets everything that embodies the successes of capitalist " big business". Hence the success of Sherman act, vote has unanimity less a voice. But the economists of the time, even the most liberal (In THE sense Anglo-Saxon, as Richard T. Ely, THE founder of the American Economy Association), have absolutely nothing to do with it. Their attitude is on the contrary to defend the " trusts" by drawing the attention of their fellow citizens to the fact that, in the context of the time (dizzying drops in energy and transport costs), the rise of large industrial groups is less an attack on the principle of free competition, than the brand and the product itself of competition frantic, Who n / A null need to be " protected"

8.

So that THE underlines THE teacher Thomas Di Lorenzo, of George Masan University, in a study on the origins of American antitrust law, the idea that "dominant" companies can, by "abusing" their industrial, financial and commercial power, by their alone means, set up in some sort "on leave" of competition, is completely foreign to them<sup>9</sup>. In the universe which is then theirs, where the economic intervention of the State is still very limited (although it is not or not zero at all : example of railways), what hits them is instead the extraordinary fragility of these behemoths face to strengths without cease renewed competition, even when they represent 70, 80 or even 90 % of a market. That the spectacular concentrations of capital and means of which they are the witnesses can go against the economic interests of the public is a proposition which seems absurd to them, and all the more unreal since it is precisely in the sectors where restructuring industrial activities are most actively carried out that THE drops of price (real) are THE stronger. Mergers and concentrations are experienced as the product of a Darwinian process of self-selection by the market of the most efficient forms of organization and cooperation. In their eyes, there is nothing to say whether more small companies and fewer large ones is preferable, Or the opposite.

*It's not that at the favor of the crisis of the 1930s that imposed itself there theory modern of there competition*

The transition to the modern conception of competition problems only began to become evident from the 1930s, when events led economists has wonder on THE origins of there crisis.

One in three workers is unemployed. Prices collapse, companies go bankrupt. Queues are getting longer in front of soup kitchens. Protectionism se generalizes, reducing has nothing exchanges inter-

national... Why? Today, thanks to authors like Hayek, Milton Friedman Or Murray Rothbard, we know the true origin of this drama: the extraordinary growth of statism provoked over there war And his sequels. This are THE men of the state themselves Who, in manipulating THE levers of command of the economy - notably there cash -, have led to the crisis and maintained it. This is what Hayek tried to explain to the English in 1931, in his famous conferences at the London School of Savings. But this is not at all the kind of explanation that the public of the time waits.

In 1932, appears to UNITED STATES A book which, GOOD although it is less known to the general public, it nevertheless holds a place in the history of modern economic thought at least Also important that there *Theory general* by Keynes, published four years more late. Her title: *The Modern Corporation and Private Property*. Its authors : two Harvard professors, then in their thirties, a lawyer, Adolf HAS. Berle, And A economist, Gardiner vs. Means.

There big "prophecy" of book East that he will be necessary less than thirty years For that both cents firsts US companies absorb almost all of American industry. We knows This that he East happened of this genre of projection: by 1933, eighteen of the two hundred companies cited by Means were put into liquidation; thirty years later, American industry appears rather less concentrated than it was at the time described by Professor Means' statistics. But there's more to the book than that. The work East very ambitious : of their own confession, Berle and Means do not consider no less than producing for the xx• century the equivalent of what *The Wealth of Nations* of Adam Smith represented For THE economists of x1x• century.

There thesis that they y develop makes A her familiar to all those who have attended, even for a short time, the faculties French At course of the twenty Or thirty latest

years. The “traditional” theory, they explain, that which is still taught (in their time) in universities, was adapted to the economic universe of Adam's time Smith. The “self-balancing” virtues of the market actually work when we have a universe of small, independent businesses, managed by their owners. The offer and there request adjust mechanically. He no has neither surpluses nor shortages. We have work for everyone, and an “optimal” growth rate. But, observe the two Harvard professors, this no longer has anything to do with the reality of today's industrial world. Even if she exist Again In some activities, there competition “atomized» à la Adam Smith has disappeared from major contemporary industries. From now on, the rule is the concentration of financial and industrial resources for the benefit of staffs of professional managers, themselves of more in more independent of there property.

In the Smithian universe, prices are a given that is imposed on the business manager, and is established at the point of intersection of the supply and demand curves. Anyone who does not respect this market “diktat” is eliminated - because of its insignificant size. Averaging, any change which, at one point, intervenes in the conditions of the request *ipso facto leads* to an adjustment automatic pricing. And it's this adjustment of the price which then encourages the offer to adapt to the new conditions of there request. But, insist Berle and Means, this is not anymore Thus that THE things work from during that we are dealing with industrial activities dominated by a few very powerful companies. A company that makes 50 or 70 % of the market, they reason, is a company which no longer has to fear that another will come and steal its customers since it no longer instantly adjusts its prices. sale. When we are only two or three in a market, any behavior that is even the slightest bit aggressive in relation to the competition is likely to be immediately detected, and risks triggering reactions that no one else do not wish (by example, a war of price).

Wisdom therefore commands, if not to agree directly with its competitors (cartels), of less of ban any behavior competitive too aggressive. For bou ger his price, we waits of see This that do THE " leader" of the profession, and we align ourselves. Or again, we implicitly agree to follow common rules for calculating prices. Consequence: prices are no longer as "flexible" as in the past. "Parallelism of action" means that where a few large companies dominate, industrial behavior will not be very different from what would do A true monopoly.

Even when she is not not in position of monopoly " pure ", there big business modern East a company which " control " his price, And No more a business whose price are "imposed" by there competition. This is not the more " hand invisible" of walk Who fixed THE price, but for to resume the expression of Chandler - there "visible hand" of a little number of managers For Who the concept of competition no longer has anything to do with the uncontrollable force that imposes itself on the very small entrepreneur. We then enter, Berle and Means conclude, into a new universe where these "rigidities" – which are linked to the process of industrial concentration, in the sense that it is precisely industrial concentration which makes these behaviors possible - have the effect of breaking the mechanism Who, theoretically, brings back always the economy has her

" point balance!"; A universe Or he becomes necessary to appeal to the State to correct the functioning defects of the market, and "restore" the natural play of competition ...

For men from 1985, this language is not very original. It's not just what you learn in the first year of your degree; it is also this that newspapers and politicians serve us every day. In 1932, it was very different. *The Modern Corporation and Private Property* immediately had a considerable impact - much more important than the one who will know Keynes' book moment of his published-

tian in 1936. The timing is well chosen (we are right in the middle of trough of depression). *Time Magazine* describes it as "the bible of the new Roosevelt administration." Just a few weeks after its release in bookstores, the Analyzes of the book are already mentioned in the background to a judgment of the Supreme Court <sup>10</sup>. With the almost simultaneous publication of the books by Chamberlin and Joan Robinson on the theory of imperfect competition, the work of Berle and Means marks the moment when, for the first time, the conviction settles in people's minds that the big business is an institution *incompatible* with competition. Thirty-five years later, the Sherman Act was finally given a foundation and of a justification theoretical, has claims scientists.

Begins the unchallenged reign of the equation:  
 "Concentration = Monopoly = **Price** students. »

*Nothing that competition policy makers base their speeches on has ever really been demonstrated*

Why unemployment? Why the crisis? It's simple: because we went from there competition to age of the "oligopolies". When demand collapses, companies no longer react as before, by lowering their prices, in accordance with the "classic" pattern, they keep the same prices, And reduce their production. The adjustment is no longer made by prices, but by quantities. It is the gear of there depression. Why inflation? For the same reason that companies are now more or less "mistresses » of their prices, which makes them less sensitive to unreasonable demands of their employees... Even before the war, all the elements that Galbraith would vulgarize through his works of the 1950s and 1960s were already there. With the theory of "administered competition » propped, dared by Berle And Means, THE economists servants of the State have found their sesame and their villain. On the plan of there thought we between In a new time.

In fact, Berle and Means' book contains enormous weaknesses. By For example, his argument is based on a postulate (that concentration leads to behavior and results identical to those described by the classic theory of monopoly) which, even today, has never been able to be rigorously demonstrated. Of the hundreds and of the hundreds of pages have been written on the theory of monopoly, of duopoly And of oligopoly. All the great authors have made their contribution. But, as Professor John McGee observes, all these studies (even that Who East THE most frequently invoked by supporters of control of concentrations, that of Professor Chamberlin) lead to the same indeterminacy : Onne do not know <sup>11</sup> ! Onne do not know if the fact that there have only a very small number of companies competing for a product necessarily or not leads to higher prices than when this number is larger. All depends on circumstances. According to THE hypotheses that we put in THE model, we demonstrates that oligopoly should lead to prices that are higher, equal, or even lower than those that would be obtained with a very large number of companies. In other words, this central hypothesis on which all modern competition policies are based (the theory of oligopolistic concentration) is only a simple conjecture which, even if She East TRUE, *we n / A Never summer in measure to explain rigorously Why She should be true.*

But than to that born here... When A economist cannot demonstrate why what he believes to be true must be true, he him stay a solution : demonstrate that This that he believes is true, without explaining why. How? Through empirical research: by systematically testing all the hypotheses that can be formulated from of the axiom original. If these tests are positive, and if it is thus demonstrated that the relations implied by the axiom of departure are true, It is there evidence that the axiom itself is true. This is the Baba of epistemology « positivist » defined by Milton Friedman, And practice-

quoted by the entire profession - with the exception of economists. Who are demanding of the School Austrian.

Thus, from the end of the 1930s, a research program was put in place which systematically analyzed all the data that could be had on the markets and the industry. First by multiplying the studies sectoral structures. Then, by systematizing the tests cross-references where different companies or different industries are compared with each other. A new discipline appears where the art of handling numbers and statistics counts often more than their true mastery of reasoning economic.

As early as 1934 Gardiner C. Means, during a session of the American Economy Association, presented a study which, he said, brought there evidence statistical of this that he has indeed, in the American economy, two sectors: one sector "competitive" where THE price change frequently and adjust quickly to variations of Requirement; a sector where prices appear, on the contrary, to be very inflexible and are only adjusted occasionally after enough long periods of immobility ("administered" prices). Attached to his demonstration a graphical with two coordinates: on the x-axis, the number of price changes occurring between 1926 and 1933; on the ordinate, the amplitude of each price change. The population: seven hundred and fifty series of industrial prices. Appear very clearly two groups of points located, one, in high and has the extreme LEFT of graph (the sector of the price "administered"), the other, in down and to the right (THE sector of the price "competitive"). We account to little close as much of points in A band that in the other. Which means that about half of American industry East considered by Means, like practicing a policy of "price administered". Being given the scientific authority which, at the time, surrounded the personality of Gardiner Means (he was the first to undertake work worth of research statistical of a such scale), the cause East straight away heard. Without even check if he

there is a correlation between industries that practice this kind of pricing policy and the presence of oligopolistic structures (it's only in the 1960s that this test will be undertaken, with rather negative results), this is considered to be sufficient proof of the theories that Means defends. It is definitively admitted, without further ado, that the modern capitalist economy is dominated by large companies able to shield their management from the constraints of the market and the law. of supply and demand. Because they benefit from a "dominant position" (a new concept then introduced into economic semantics), large companies are in a position which allows them to *plan* their pricing policies according to long-term growth objectives. and power, without taking much into account the immediate constraints of the demand context which weighs much more heavily on companies less powerful.

*A theory fruit of a blindly anti-scientific*

THE researchers of post-war direct their investigations towards another problem: if large companies in an oligopoly position really behave like the monopoly described by classical theory, they will sell more expensive, and do more profits than would be made by companies competing in an atomized market. Hence the search for a connection between concentration and profitability. If the correlation is positive, this will be another proof of character justified of there theory.

Thus in 1951 Joe S. Bain compared the sectoral concentration rates calculated in 1939 by the National Resources Committee and which relate to the year 1935, with the profitability statistics published by the Stock Exchange Commission for the years 1936-1940. Its sample covers forty-two industries for which he exist without ambiguity A walk "national » (to the dimension of continent American). Result : these cal-

culs, he claims, show that there is a difference between the industrial sectors where the first eight firms represent more of 70 % of their added value produced, and those where the concentration rate is lower. The former have an accounting rate of return clearly more pupil than THE seconds <sup>12</sup>.

Its study poses a certain number of technical problems of interpretation. For example, it does not reveal a significant difference in profitability between the most profitable sectors. concentrated and those who are less than because the results of sectors where the concentration rate (defined by the share of the first eight firms) is less than 20 % were amalgamated with those of the intermediate sectors. Furthermore, his results, as he himself recognizes, are biased by the fact that to calculate his average rate of return he only takes, in each sector, the results of the largest companies. But he y has more severe.

These results, like the underlines Professor Richard Miller, are compatible with two radically different interpretations. The first is that which Bain maintains in his conclusions : the profit rates of most concentrated sectors are the highest simply because it is in this type of sector, when the market is dominated by a few large companies, that firms can most easily impose their prices and achieve monopoly gains. But we could also do the opposite: when a company is particularly efficient and manages to reduce its costs beyond what its competitors can do, it will achieve high profits, but it will also tend to to gain increasing market shares; if it has sufficient innovation capacity to constantly face competition on time, this will result in both a rate of high concentration, and profits also higher than average. In this second case, the correlation between concentration and profits is not an indicator of insufficient competition, but on the contrary the result of presence of a business "overcompetitive" <sup>13</sup>.

What East the maid explanation? THE The tables presented by Professor Bain do not allow us to decide. Additional research should be done. But, In THE 1950s, when Bain made public the results of his work, the “paradigm” change economy is already so advanced that no one the question arises: if there is a strong correlation between concentration and profitability, it can *by definition* only be because concentration encourages anticompetitive behavior. This reaction is all the more unanimous since at the same period the profession became infatuated with a new theory which made advertising appear as a *barrier to entry*. Even if this is not yet based on any serious empirical observation (it was not before the end of the 1960s that the first studies suggesting the existence of a correlation between advertising expenses, profit rate and concentration rate), no one think about ask if the other reasoning would not be the right one. Everything is happening as it has already happened many times in many disciplines scientists. HAS the search for facts, economists only retain the facts and interpretations which go in the direction of their convictions, without worrying about imagining that other interpretations could be possible.

*A new generation of researchers contest the theories and empirical results that inspired distrust has respect of the large companies*

As post-war France enters the Market common, rediscover the virtues of the economy of walk, And that his leaders se worry from there put in place a modern law of there competition, the idea concentration = monopoly » is now firmly anchored in the spirits. She is part of the corpus scientist who defines the heart of contemporary economic science. She participate of a consensus that more person born can

now called into question without being called an ignorant and backward economist, a supporter of a return to capitalism savage And has there law of there jungle.

Person born suspected that *This new paradigm ("The Market Concentration Doctrine", as it is called in the United States) is based erl reality on extremely fragile theoretical and empirical foundations.* From the mid-1960s, a new development inter comes, in fact: the publication of work which calls into question most of the results acquired during previous years.

Let's take THE issue of the *price administered*. Of the Before there

war a certain number of American authors have contested whether this is a truly new fact, characteristic of the development of contemporary forms of large enterprises. One of them, Professor Mills, for example, finds that in the 1920s American industrial prices are comprised of rather less rigid way, which is exactly the opposite of the hypothesis proposed by Gardiner Means<sup>14</sup>. But, in the pro-interventionist climate of the time, no one was willing to attention.

In THE years 1950, two authors, McAllister and John Flueck puts forward the idea that Means' statistical work underestimates the degree of fluctuation of the price really practice<sup>15</sup>.

Between of the years 1960, George Stigler (who will receive the Nobel Prize in economics in 1982) and another researcher from Chicago, James Kindahl (now a professor at the University of Massachusetts) undertook to redo the study carried out by Means, but taking lists of prices actually charged , directly communicated by a sample of buyers basic industrial products. They discover that if we refer to the prices actually charged - discounts, bonuses and special purchasing conditions being then taken into account -, instead of relying on the public prices of companies alone retained by the statistical index of BLS, THE differences of behaviours in

price issues are much more attenuated. The index used by Means, they explain, underplays the number of price changes; and this especially in the sectors where, according to Means, prices should precisely be the most rigid. Averaging, they conclude, he is not not obvious that the degree of price rigidity is necessarily greater In THE sectors industrial THE more concentrated. The relationship between rigidity of the price system and concentration rate is much weaker, if not negligible, compared to the one put prominent before the war. And this for reasons of pure statistical technique<sup>16</sup>.

Stigler and Kindahl do not deny existence of price administrators. On the contrary. In the real world, they point out, the adjustment of transaction prices to variations in market conditions occurs according to a process that differs greatly from the simplistic and instantaneous schema of the theory. of the offer and demand. This one born really only works for very specific categories of standardized, very homogeneous products, subject to transactions involving of the volumes students, And involving a large number of buyers and sellers (agricultural products, raw materials, financial markets, foreign exchange markets, futures markets, etc.). Press on a theory developed by their UCLA colleague, Armen Alchian, they conclude that these are practices and behaviors that are also commonly found in industries with atomized structure that in sectors dominated by a few big oligopolies. If THE companies do not do not change their prices more frequently, this is quite simply because it would impose unnecessary information and research costs on consumers. It has nothing to do with market structures and their influence on there competition<sup>17</sup>.

Their works have GOOD heard provoked of lively controversies. But In THE 1970s, several studies confirmed the results of Stigler and Kindahl. Robert Gordon of National Desk of Economy

Research has shown that the The degree of price variability is even higher when it comes to durable goods. In 1977, David Qualls discover that instability cyclic margins is more big In THE sectors has rate of concentration higher than in the others, which does not go in the direction of the traditional hypothesis according to which there competition would necessarily be less keen <sup>18</sup>. Finally, in 1979, Steven Lustgarten and Alan Mendelowitz published a series of tables from which it emerged that, contrary to what should appear if the theory were correct, employment varies less in sectors with high concentration than in THE industries weakly concentrated <sup>19</sup>.

Furthermore, for more than twenty years, a whole series of other works have regularly confirmed the impossibility of establishing a statistical link between price inflation and industrial concentration <sup>20</sup>. Let us take of the data relating to the period 1900-1925, or those more recent years 1966-1973, we observes that the prices of the most concentrated sectors increase in average two times less quickly that those of the sectors the least concentrated, and this despite the fact that salary remuneration and profitability rates are higher<sup>21</sup>.

For this to be so, the concentrated sectors must also be those where productivity grows the fastest. What statistics published by Steven Lustgarten confirm <sup>22</sup>. But SO if the The most concentrated sectors are both those where productivity increases the most and those where prices increase the most. less, It is that there competition plays GOOD its role which is to force employers to transform their productivity gains into reductions in relative prices. A conclusion that hardly conforms to traditional hypotheses of there theory of the oligopolies...

Although the theory of administered prices" is still part of the antitrust arsenal, it does not seem an exaggeration to assert that a new consensus is being established among the economists Americans For consider

that Means and his disciples devoted their efforts and energy has to set down A fake issue<sup>23</sup>.

*A growing number of quantitative works deliver conclusions incompatible with traditional hypotheses of there theory of the oligopolies*

Second central point: *profits*. It is true that following of Bath others studies carried out In THE years 1960 confirmed the existence of a certain correlation between profitability and concentration rate - although generally of a lower degree iue that highlighted by the Berkeley professor <sup>4</sup>. However, here too, for around fifteen years, new research has been carried out which, without completely denying this connection, modifies it there meaning.

There more important East that of teacher Yale Brozen, published in 1970 to counter proposals made at the time by a presidential commission of inquiry to strengthen the *a priori control* of industrial concentrations <sup>25</sup>. Brozen notes that the works consulted by the mission share a common characteristic: their methodology is essentially static. We study there if, for a given period, it there is indeed a correspondence between the hierarchy of average profit rates achieved in the different industrial sectors and the degree of concentration. However, what matters to establish the presence of "monopoly power" is not so much that a company, or a group of companies, records at a given moment margins greater than there normal, but that it benefits from sustainable way, thanks in particular to the presence of "natural or artificial barriers to entry. As summarized in the commission's official document, "it is the persistence of high profitability rates for relatively long periods, and this for entire sectors of activity, and not at the level of firms individual, which allow of presume existence

of voluntary restrictions and artificial production, and thus to conclude has the absence of a real competition". In 1961 George Stigler looked into this question and came to conclusions intriguing. Using A number of sectors and companies wider than the one shown In THE works of Joe Bath, he "discover that he no correlation exists for the years 1938-1940 notable at the level of the whole his sample, but that a cor relation positive reappears if it limits his calculations to sixteen industries that are common to his sample and that of Bain. Furthermore, when we redone calculations with data more recent, wearing on years 1947-1954, this correlation disappears has new. Stigler in deduced, on the one hand, that the results obtained by Bain are linked to the way he has compound its sample, and in particular too few of industrial sectors which are taken into account; on the other hand, which Bain took for a general phenomenon This Who was not that the expression of a situation temporary of imbalance <sup>26</sup>.

What interests Yale Brozen is to check whether the positive correlation identified by Bain for before the war corresponds to a stable phenomenon or not. For this he takes the works and the methodology of his illustrious predecessor. But instead of being limited to the period 1936-1940, it engages in the same analysis, on the same sample of industrial sectors, for the years 1953-1957. SO that Bath had try of see what relationship existed between the concentration rates of the year 1935 and the hierarchy of profit rates for the period 1936-1940 (which allowed him to show that these were the most concentrated in 1935 Who, during of the years following, had carried out the profits most students), he uses as a reference point the average profit rates for the years 1953-1957, which it compares to the industrial structure And to profitability of 1935.

Result: it appears that the industrial sectors which, before the war, recorded the highest profit rates (And Who were those of which THE degree of concentration

was the most high), saw their average profitability decline over the twenty years observed, while conversely the industries which were the least favored in 1935 recorded a significant improvement in their relative profitability. So, he there would be, with the passage of time, a clear tendency towards a reduction in the dispersion of profit rates, while simultaneously we records a significant weakening of the correlation between profit rates and concentration rates. The fact that certain industries had a very high concentration rate in 1935 did not prevented the profitability of *converge* towards the average for the years 1953-1957. "The correlation between the concentration of industrial sectors and the hierarchical structure of profitability rates," concludes Brozen, "is not not A phenomenon stable neither permanent. »

However, Yale Brozen's study raises a new question. If the relationship between concentration and profits weakens over time years, why would the differences in profitability between highly concentrated sectors and sectors with a low concentration rate have been stronger for the pre-war period studied by Bain than for the post-war period analyzed by Yale Brozen?

In order to explain this phenomenon Yale Brozen goes back to work. He's going back of the works of Bath. But this This time he uses statistical information that was not available at the time, which allows him to work on a sample including a much larger number of industrial sectors and companies. While Bain's sample only embraced forty-two sectors, Brozen works first on a sample of seventy-five industries for which it is possible to calculate a significant concentration rate, then on another, more extensive sample of ninety-eight data points. And the answer obtained confirms George Stigler's intuition. Bain's methodology, applied to new samples more complete of Brozen, leads to a very different : there is no more no correlation

visible relationship between concentration and profit, even for THE years studied has originally by Bain <sup>27</sup>. The positive correlation obtained by Joe Bain was only the product of a defective and biased statistical technique, based on a sample not representative of the population studied.

*We discover that the old law of trend equalization of the rate of profit jdue always*

Another technique is to interrogate history and study what which happened in the past when of great waves of concentration have given rise to extremely powerful new companies with all THE features of firms " dominant ". If the traditional theory which associates concentration and profitability is correct, normally, at the following of these operations, the companies should have seen their results take a serious jump in Before.

The great II) Industrial concentration movement intervened to UNITED STATES In THE years 1890-1900 offers in this regard an exceptional field of study due to the unusual scale of the consolidation operations which have brand this era <sup>2</sup>.

Rarely we has seen se create in if little of years such a large number of companies and industrial groups representing such overwhelming market shares. Rarely have many companies made it so clear that they are merging to secure monopolistic control of their walk. What about is it happened?

Two studies from the interwar period give us the answer. In 1922, Arthur Dewing analyzed the financial results of the thirty-five largest trusts formed during this wave of concentration <sup>29</sup>. His article shows that during the ten years following the initial merger, the results of the new companies were on average lower by 16 % to what had summer THE results individual means of firms

absorbed during of the ten previous years. Thirteen years later, Shaw Livermore resumed the same work with as a sample a list of four hundred and nine companies born At course of the period 1893-1902 to there favor merger and concentration operations leading to control of very significant market shares. It shows that such a high percentage than 40 % of these companies disappeared following financial failures costing investors their entire investment. 6 % survived only thanks to the salutary test of new reorganizations. 11 % managed to hang around as best they could until. the time in which Livermore is writing. Alone 6 %, he explains, have given rise to real industrial successes <sup>30</sup>.

More recently (1979), A fierce partisan of the views traditional on there theory of there competition oligopoly list, THE teacher **W.G.** Shepherd, has recalculated what would have must have been in 1935 profits of the great American trusts trained At beginning of century if, For resume expression, " THE shares of walk And THE barriers at entry had, at the time, had an effect on the rates of profitability of these companies a influence *normal*" (that's to say equal has that that his clean studies on THE industrial world contemporary have, supposedly, put in evidence). THE results born are hardly compliant to ideas which he defends. There difference East huge : SO that THE rate profitability AVERAGE would have, according to his calculations, of be of the order of 25 %, THE rate real n / A not exceeds 9.8 % <sup>31</sup>. Conclusion : the acquisition, by growth external, of shares huge market prices, often without any comparison possible with This Who East Today observed even in THE sectors THE more concentrated, n / A not protected nor even advantage THE large companies of beginning of century. THE companies are deadly, And This is not not the presence of a rate of concentration pupil Who y changes anything. A lot more companies than we don't believe it generally have it, In THE pass, learned has their costs <sup>32</sup>.

Since 1970, other works have cross-referenced Yale Brozen's results. For example those of Stanley Ornstein, or even of Professor James Eilert <sup>33</sup>. Debate on the positive correlation or negative between concentration and profits is far from being completed : we still have a lot more large number of studies revealing a certain positive correlation than there is one affirming the opposite. The fact remains that if, contrary to popular belief, the rise of modern forms of industry does not prevent the old classic law of tendency equalization of the profit rate to play, no offense to Galbraith and the proponents of the thesis of increasing concentration, it is the whole vision of the industrial universe that we have been instilled for more than thirty years which is found terribly weakened.

*If the sectors concentrated are those where the profits are the most students, It is because that it's here that we find them companies most dynamic and the most innovative, and not because that there competition would be artificially braked*

Let's forget there quarrel on THE statistics. Let's admit that actually It is GOOD In THE sectors THE more concentrated that THE rate of profit AVERAGE East THE higher. What is that prove as to the origin of these profits? A such situation East compatible with two explanations radically opposite. There first, one gives us the theory of concentration oligopolistic: this is because we are dealing with oligopolies exerting effects of power And of domination unwanted, And that practice concerted y are rendered more easy by THE little number of actors.

The other, already mentioned: just because an industry is highly concentrated does not mean higher profits; the relationship runs in the opposite direction : it is because an industry contains better managed and more efficient companies that we earn more money there, and that consequently THE rate of concentration is increasing. There what-

tion East to imagine A test empirical For evaluate which of these two hypotheses is the most likely. The first to try to solve this problem was Professor Harold Demsetz. of the university of Los Angeles. If, he explains, the profits higher concentrated sectors are due to collusion effects and strategies, one should expect This that not only the dominant firms of these sectors realize of the rate of profits more important that there average, but also businesses "dominated" (those Who do not belong not at band of firms Who hold THE shares of walk. THE more important). For what? Because that these, even if they do not not part of the coalition, should share its effects induced by the raising of barriers to entry into the profession and the artificial reduction of competition ("theory of the effect umbrella"). If he proves Effectively that so much THE companies dominated that dominant firms obtain higher profitability has there average normal of the others less concentrated industries, there are good reasons to believe in the relevance of the hypothesis that concentration promotes development of practice restrictive braking THE free play of there competition. But if, At opposite, these companies born realize not of profits superiors has those firms of size corresponding In THE sectors less concentrated, even when THE firms leaders, they, in fact, this means that the degree of concentration high in these sectors, Thus that their strong profitability, are any further related to super-performance of firms dominant than to existence of practice restrictive.

From there, Professor Demsetz undertook a patient work of statistical elaboration, classifying industrial sectors according to their concentration, and calculating for each the average profitability rate of several samples of companies classified according to their size. Conclusion of this work: in sectors with high concentration (where four companies make more than 60 % of walk), THE rate of profit carried out by

the smallest companies (less than 500 000 dollars of capitalization) are significantly lower than the profitability obtained by the same class of companies in the least concentrated sectors. For medium-sized businesses up to 50 millions of dollars), the Profitabilities are approximately the same whether we are in a high or low concentration sector. On the other hand, when we look at large companies (more than 50 million dollars), the rate of profit is all the higher as we go from sectors not very concentrated at more concentrated sectors. Result: it is in sectors with a high rate of concentration that the gap between the profitability of large companies and that of small companies is the greatest, while conversely it is in the industries THE less concentrated that this gap is the smallest, which, according to Demsetz's diagram, invalidates the hypothesis of a correlation between concentration and collaboration since this excludes All effect of "umbrella". This conclusion East reinforced by another observation: this gap grows all the more quickly as the concentration rate of sector increase quickly <sup>34</sup>.

Demsetz in concludes that there structure current of

American industry reflects less the capacity of large companies to establish effective explicit or implicit agreements than the way in which talents and capacities to produce at the lowest cost are actually distributed. These data, he notes, puts an end to the legend that the superior performance of large firms belonging to the most concentrated sectors of the American economy more reflect the intensity of their power *monopolistic* that efficiency superior of their management. He y has a lot more chances so that the link between concentration and financial performance is made in the direction "profitability-concentration » than in the opposite causal direction "concentration-profitability. »

Other work reinforces these conclusions. In 1970, Peter Ash And Mr. Marcus discovers that, unlike

what they expected, the correlation is much stronger between the rate of profitability and the average size of companies in each sector than between profitability and concentration. This overlaps with one of the main implications of Demsetz's thesis: that the dominant explanatory factor of the correlations between the concentration rate and the profit rate is the average size of the companies<sup>35</sup>.

In 1979, Baruch Lev compared THE results financial large And of the small companies In twenty And an industry Or there firm leader represented to her only more than half of the profession's turnover. If there is collusion between dominant companies to maintain price artificially students, these should to present of the results financial more irregular that the small ones benefiting of their "umbrella". For what? Because It is precisely has these companies dominant that echoes there responsibility to do what he must, when it is necessary, For to prevent THE price of to fall below of the levels decided by agreement explicit or tacit. When he y has crisis Or recession, these are they who support most of the cost of regulation of the production. **But** the statistical results of Baruch Lev do not check not this assumption. THE performance financial large companies of the sectors concentrates do not appear not marked by of the fluctuations more important<sup>36</sup>.

At the same time, John Carter studied the relationship between margin and concentration by taking as samples, on the one hand, the first four firms of each sector, else go, the fourth following. He repeats the same operations for three different years, 1963, 1967, 1972. His analyzes reveal a correlation positive between the margins achieved and the rate of concentration when the population studied is that of the first four companies, but a zero or even negative correlation when it comes to the next four.

« This Who, he explains, suggests that THE large companies concentrated sectors, far from allowing the smallest to benefit from a situational advantage, on the contrary practice prices that are low and competitive enough to weigh on their margins and their results; on the other hand, rather confirms Demsetz's hypothesis on the justification of their financial performances by their more big efficiency economic <sup>37</sup>. »

In 1978, another economist, John Kwoka, discovered that the greater the total market share of the first two companies, the greater the average gross margin of the sector; but that, conversely, the margin tends to decrease when we take sectors where the company, ranked third, has still high relative market share <sup>38</sup>. He concludes that this goes into the meaning of the theory that explains high margins of the leading companies by there collusion And abuse of their « market power ». But for this conclusion to be imposed without discussion, it would still be necessary to show that there is no didn't of notable differences in the level of productivity between companies of different ranks. Gold, since the work of Fred Weston, Steven Lustgarten and Sam Peltzman, it is precisely the opposite that appears <sup>39</sup>. Since the war, the productivity increase faster In THE sectors industrial to high concentration or increasing. Of the same way, we observed that productivity increases more quickly in industries where the number of firms decreases than in those where it increases. Which suggests another interpretation for the data discovered by John Kwoka: margins are increasing with the market share controlled by the two most large companies, not because of their ability to impose higher prices on the market, but by the simple fact that if they have become the first two of their profession is precisely because This are the most dynamic and innovative in terms of reductions of costs.

*Far from being a factor in closing and blocking markets, The advertisement is this which helps to attenuate the power monopolistic of the producers*

The traditional theory of oligopolistic competition is based not only on the idea that the few (concentration) leads there collusion (explicit Or tacit), and therefore higher prices, but also on the hypo thesis that this ability has get of the profits more High levels are used by "dominant" companies to artificially make the entry of new competitors more expensive. It is there theory of the "barriers has the entrance » and the "abuse" of market power which interprets the published cited not as an investment whose function is to communicate information to a potential clientele tielle (and therefore thus participate in the creation of value), but as a maneuver used by the entrepreneur to increase the loyalty of his customers, increase the inelasticity of his demand, and thus make competition from others more difficult by imposing additional expenses on them that they would not have not has support In A united towards of competition "normal."

At the following day of there war, this vision integrates without difficulty In THE concert of the theories news of there • concentration industrial. Joe Bain generalize the idea that the degree of concentration of an industry is linked to the importance of the "barriers has the entrance »<sup>40</sup>. He propose even a clue of measure: there where expenses of advertisement represent less of 1 % of figure business, THE barriers remain "moderate"; between 2 and 5 %, we has affair has barriers "substantial »; beyond of 5 % he it's about industries has barriers "high".

Since the end of the 1960s, work has multiplied to test whether advertising is a creative factor. of competition, or on the contrary a factor of monopolization, a "barrier" as the dominant theory claims of there competition.

One technique for testing the theory is to investigate whether there is a relationship between the size of advertising spending and profitability. If indeed the sectors where advertising expenditure is on average the highest are also those where the concentration and profit rates are the highest, and this in a sustainable manner, we can think that this demonstrates that advertising is before All used by there big industry as a

“ barrier has entry”. It is the study what are they undertaking in 1967 THE teachers **W.S.** Comanor And **YOUR** Wilson<sup>41</sup>. Working on A sample of forty And an industrial group And on of the data provided by Tax Administration, they put in evidence the existence of a correlation positive between, on the one hand, the part of advertising expenses by report At figure business of the companies studied, else go, their level of profitability.

“ On the basis of the data obtained, they explain in their conclusion, it seems obvious that there where the products are easily differentiated, investing significantly in advertising is an extremely profitable. Industrial sectors where the share of advertising spending is the highest earn on average a profit four points higher than that of other industries, which represents a difference in profitability of close of 50 %. Such a difference cannot be explained other than by the "barriers to entry" implied by such expenditure, Thus that by THE "power of walk" that they give to businesses. »

HAS the same time, three others studies, one by Professor Richard Miller, the other by there Ferlerai Trade Association, and the third by Vernon and Nourse, lead to identical results <sup>42</sup> . The supporters of the Mark ket Concentration Doctrine " triumph.

However all these studies share A same fault : the profit rates taken into account are purely “ accounting” profit rates, calculated from tax statistics; we divide the result of the operating account by the asset value net. Gold the asset net is a quantity which takes no account of

the economic value of advertising investments. If advertising expenses are not a simple current expense which burdens the costs general but an "investment" whose function is to enrich the company's goodwill by increasing its notoriety as well as the knowledge that the public has of its products And services, For to have THE true profit

"economic", he must to integrate In THE denominator the asset " immaterial » what does the advertising expenditure invested in building a brand image represent? Or of a reputation.

"accounting" profit is data that *overestimates* the *real profits* of firms, especially since advertising expenses represent a significant part of turnover. In doing so, the studies of Comanor and Wilson, as well as the others, necessarily give us a false image based on an overestimated assessment of the statistical link between advertising and profit.

Aware of this objection, Leonard Weiss takes a new calculation Or he straighten them numbers in milk so much THE expenses of advertisement as A depreciable investment <sup>43</sup>. The study shows that there is always enough strong correlation positive between advertisement And profitability. But Weiss himself committed a another error: his calculations are founded on the hypothesis of a duration uniform depreciation of five years, whatever the sector considered. Gold, since then, new research has demonstrated that *there duration real economic* of the Advertising investments vary enormously from one industry to another. In some the rate of renewal is very short; in others, on the contrary, the economic life of the investments can be up to ten years. In his thesis of doctorate of 1974, Robert Ara nian finds, for example, that the rate of economic depreciation advertising budgets vary from 6 at 45 % according to sectors <sup>44</sup>. Then replacing THE rate flat rate depreciation used by Weiss, by an estimate of

real economic depreciation rates, it demonstrates that any association between the level of advertising expenditure and the rate of profit disappears: *the relationship that so many economists take for an uncontroversial fact would not be in reality that the product of a statistical methodology insufficiently broken in And defective.*

Since then, this conclusion has been reinforced by other work. Professor Harry Bloch reworked on the sample used by the FTC, but this time using real figures for advertising expenditure, and not simple estimates. No correlation appears anymore <sup>45</sup>. If advertising is really used by industries to increase the entry costs of potential competitors by « blocking » in some way take it out loyalty of customers, we should expect that consumer goods industries will use advertising much more, in proportion to their turnover, than manufacturers of intermediate goods. Likewise, one might think that, if there is a strong relationship between advertising and results, this link will be stronger for the former than for the latter. seconds. However, several studies show that this is not the case. The advertising intensity coefficient is roughly close THE even For THE two groups of industry.

When of the industries carry out rate profit above average, and if the « barrier to entry » thesis is correct, we should see their profitability suffer less rapid erosion in sectors where the proportion of advertising expenditure is highest. But this is not not All what is observed Demsetz (L 979) : the rate of erosion of profits is independent of This that companies use as advertising <sup>46</sup>. All these facts tend to prove that, contrary to popular belief, it is not because an industry invests a lot in advertising that it is less competitive. This that confirms Aranian's observation that the advertising rate of return is roughly identical to that which American firms withdraw of their others investments.

*THE sectoral studies reveal a reality very different from what it should be so advertising was really one " barrier has entrance »*

Another technique is to look at what happens with the entry of new firms or new products.

In his book *Concentrations, Mergers and Public Policy*, Yale Brozen points out that, if we take the thirty five sectors having concentration rates the highest (beyond of 60%), we notes that THE number of firms Who y appear has increase in average of 51 % between 1947 and 1972; if we takes NOW all the others industries with of the rate of concentration less than 60%, the increase average is not that of 12%!

The alcohol industry is often cited as an example archetype of oligopoly Or there advertisement East used massively to block any new entry. There are twenty years, James Ferguson East go see This that he in is really. His study gives a very different vision from that which one would expect. Of seventy-five distillation plants operating in 1955, twenty-two were less than twenty years old. Out of thirty-five companies producing whiskey, twelve had been created after 1944. What is more, the market share held by the first four companies fell, during of the same period, of 75 % at 54 %. THE sales of the twenty leading brands decreased by 14 % between 1951 and 1962 while during the same period their share in the overall advertising expenditure of the profession increased of 11 %<sup>47</sup>.

In 1970, the United States bans all television advertising for cigarettes. Studies have been done to see what this has changed. Before the embargo, there was an average of one new brand of cigarettes per year. In the four years that followed, not a single news brand n / A successful to establish itself, And that despite A

number of attempts quite comparable to that of years previous ones.

In a work published in 1962, Professor Lester Telser cites the example of the 1930s: in less than two years THE " Ten Cents Brands » (THE American Gauls of the time) have conquered 23 % of the market, And this despite a very strong campaign big ones brands traditional<sup>48</sup>.

If the role of advertising really was, as claimed THE theoreticians of there competition " imperfect ", to build customer loyalty and attach them to their products by making consumption more inelastic, normally we should find that the Companies spend at least as much on advertising for their old products as for their newer products. But this is not what we observe, remarks Telser in another article (1964). All statistical studies show, on the contrary, that THE expenses of advertising is focused on the products and new services. Similarly, we should expect heavily advertised products to hold their market share much better than others. But this is not what the research shows. From observations on cosmetics, toiletries, beauty products, but also the food industry, it verifies that it is not in the groups of articles where advertising expenditure are THE more weak that THE shares market are the most unstable, but on the contrary in the groups of articles Or there advertisement East there more strong<sup>49</sup>.

More recently, the same professor has also become interested in pharmaceutical products, here again one sector generally described as an archetypal oligopolistic structure. He finds that it is precisely For THE specialties Or THE efforts advertising are THE most important as the greatest number of entries are recorded news<sup>50</sup>.

Last hint : the study of William Lynk SI!r the impact of the development of television advertising in the United States. Lynk go of the hypothesis that the television reduced the costs

of commercial communication. If so, it does sound, THE first beneficiaries of the rise of television advertising should be small and medium-sized businesses, as well as lesser-known brands, which until now had difficulty accessing mass communication. Their market shares should increase to the detriment of the largest firms. Gold, Lynk remarks in his 1974 thesis, it is precisely this that we observe for the period 1952-1970 : THE statistics show a reduction in the disparity in market shares between small and large companies, especially for products where television reduces communication costs the most compared to other media. The penetration of the "television advert in THE American homes was accompanied by a noticeable enlargement of market shares held by the smallest firms while we also observe an increase in the number AVERAGE of brands marketed 51 .

Although fragmentary, this research and analysis reveals a very different reality of the image developed by the theory traditional of the oligopolies. They confirm that, far from being a factor of closure and blocking markets, the advertising is rather what makes it possible to attenuate the monopolistic power of producers. They also suggest that the notion of "barrier to entry", as well as the twin notions of "market power" and "abuse of dominant position", are not other thing than of *fake concepts*; of the concepts who would have a sense in a universe theoretical and mythical where information would cost nothing to produce or acquire, but which don't have any more since we admit that, by definition, the world real is characterized over the presence of "costs of information" positive, and that it is precisely to act on this source of costs that is developing loppent THE shapes modern of television communication massive<sup>52</sup>.

Let's admit that we observed in some sectors a strong correlation between expenses of advertisement, concentrated

tion and profits. There's has two possible ways of explaining such a phenomenon. The first is to imagine that advertising is a "artificial barrier to the entry of new competitors, therefore a factor reducing competition, which increases concentration, and allows companies to pocket monopoly rents again stronger. The second is to recognize that advertising is an essential factor in commercial success, and that if it is correlated with concentration and profitability, it is quite simply because commercial success makes it possible to gain market share and results in profits more high, without that it is necessary to imagine that there a restriction of competition. The conventional attitude to competition problems reasons as if there were only one possible explanation, the first, and systematically ignores the very possibility of the second. We find the myopia characteristic of a large number of people incapable of considering that the phenomenon they are analyzing is compatible with two radically different theories, *which only empirical analysis can separate*. What suggest the studies cited is that the facts support the second more than the first and that realism is on the side of those who contest the very notion of "entry barriers" (and all THE theories built above), And No the opposite.

*Quantitative studies on the American experience prove that in matter of cqcontrol of the mergers And concentrations /state intervention East useless, even harmful*

Of all the Western countries, America is the one has the most severe attitude towards mergers and concentrations of companies. Whereas in France and Europe, since the war, we have seen a number of important industrial groupings, often! directly encouraged by public authorities, in the United States it has become almost impossible for two large companies to merge without unleashing the thunderbolts of the

justice. Company takeovers are strictly regulated: as long as a firm represents more than 15 % of the market for a product, it is practically prohibited from purchasing or absorbing any competing company (except if this last one is At edge of the fail lite, or represents less than 1 % of the market). Even mergers conglomerates - that's to say THE redemption of companies belonging has of the sectors of activity different - are closely monitored.

It is true that in recent years we have witnessed a significant change in attitude, marked by a progressive liberalization of American legislation with regard to concentrations. It not remain that, since the vote on the Celler-Kefauver amendment In 1950, there were hundreds of operations that were stopped by the intervention of public authorities, or by court decision. As a result, the American experience offers a privileged field of observation to assess the economic impact of such institutions : THE merger control And concentrations does it allow consumers to benefit, in THE sectors concerned, price less higher than those for whom they would have to submit to the law if companies were completely free to determine the means of their strategies of growth?

Until enough recently, THE economists remained helpless when faced with such a question, due to lack of study instruments and of data adequate. From that it is accepted roughly by all the profession that THE Stock markets are indeed *efficient markets*, things are different. It is enough to observe how the stock market anticipates and reacts to the announcement of certain decisions to obtain a relatively reliable estimate of their spin off economic probable. He becomes possible to compare this who is with this who would have passed if, for example, certain decisions had not been taken. The hypothesis of " efficient markets " is a methodological tool which makes accessible studies which until then were impossible has realize.

To establish that the traditional theory of oligopolistic markets is true, it would be necessary to demonstrate: 1. that when large companies merge, this actually increases the effects of collusion; 2. that it is precisely to achieve such "monopoly gains" that firms seek concentration. It is only if the validity of these two assertions can be empirically established that state control over mergers and concentrations can be justified. How TO DO?

The solution is to first look at how the market reacts to the announcement of projects of merger. When a business is absorbed by another, or when two firms plan to merge, it is because they expect some economic benefits. The operation is business because that we wait for the results financial best. If the markets are efficient, as soon as the news is announced, or even as soon as the first information begins to circulate, we should see a rise in the prices of the securities of the companies concerned. It is GOOD This that we observed. In a study published in 1983, and covering a sample of more than two hundred and fifty mergers and merger projects between 1963 and 1973, the Economist BE Eckbo shows that during the period which goes from "D-20" to "D + 10" (the day "J" being the one of the announcement official of the operation), both the securities of the absorbing firms and those of the absorbed firms generally experience a spectacular reprise.

If the announced merger project cannot be carried out because it is contested by the courts or the public authorities, we witness the opposite phenomenon: as soon as the first information circulates announcing that there is little chance that the project reaches its end, we must see the stock exchange go down to its old level. Using the subsample of operations of which the progress was effectively compromised by antitrust intervention, BE Eckbo shows that it is beautiful and GOOD This who pass.

Two hypotheses are SO possible. The first is to respond that stock market operators are only anticipating the “monopoly gains” that the increase in their “market power” will allow companies to achieve. The second is to insist that at opposite on synergy gains and economies of scale or organization. Who make that if two companies merge, it is because that they hope to withdraw A in addition to efficiency, and therefore more advantageous costs and prices. In the first case, mergers correspond to a growth strategy “anti-competitive”. In the second, it is about the opposite of a strategy based on the growth of the firm on strengthening its competitive advantages. Which of these two hypotheses is *overall* the most likely, the one which embodies the strategy followed? by most big number of firms?

He has AVERAGE For THE know : to resume THE famous test of the “umbrella effect”, already used by Harold Demsetz. Let us admit that the profitability gains obtained at sequence of concentration operations *generally turns out to be* be any further due to this that that allow of better control its market and therefore impose higher prices, instead than to the acquisition of new possibilities of reduce AGAIN more THE costs. Logically, what should happen on the stock market when two big companies enter companies merge, or when a very large company takes over a other more small? Answer from Eckbo: as soon as information filtered to operators, THE course firms concerned put has climb. But, he adds, they born will be not alone. Logically we must to expect to this that THE securities of all THE others firms more small businesses in the sector support them in their movement. For what? Because if concentration projected actually For effect of reduce intensity of the competition, *all* THE firms of even sector in will benefit - THE small in taking advantage Besides proportionally more than the big ones. Conversely, when such concentrations are prohibited, THE trigger of the lawsuits

should be accompanied by a downward movement in *all* the values of sector from the moment the information begin has be expected.

Now let's take the other hypothesis. If we merge because this allows us to hope for lower costs and prices, and therefore because we will be more competitive, we must on the contrary expect *negative effects* on the shares of other companies. As soon as the news is announced, or the rumor begins, the securities of companies planning to merge will increase in value but will not result in not THE others In their wake.

*Concentration operations respond more to a strategy of action on costs (productivity, economy of scale, etc.) than to a concern of mastery of price*

To decide between THE two possible theories, it It is enough to compare how the actions of firms involved in concentrations behave and those of other companies belonging to the same sectors. If, in the days preceding and following the announcement of the concentration operations (or the announcement of the initiation of prosecutions), the two statistical samples reveal a substantially identical stock market development, this is the thesis of oligopoly . abusive” which is the truest similar. If, on the contrary, no relationship appears stable between the way in which the prices of shares appearing in the sample of companies participating in the concentrations evolve and the behavior of the securities of other companies in the same sectors, and if the former increase in value more than the latter, it is the indication that the concentrations analyzed represent factors of efficiency and economic progress more than maneuvers aimed at reducing competition. We for all reasons of think that these are operations which *respond more to a strategy of action on costs than a concern for controlling price.*

There are still only two studies that have ever attempted to test this model: the study by Professor Espen Eckbo, plus another work by Robert Stillman, also published in the *Journal of Financial Economics*. But both converge to confirm the intuition formulated by Harold Demsetz ten years earlier, and *to refute* the idea that, as a general rule, mergers and concentrations would be more harmful to the interests of consumers that they would not know THE serve.

The quantitative series updated by the two American authors are incompatible with the hypotheses of there theory oligopolistic of the markets.

Other observation: when we look at of more close cases where the public authorities intervened to prevent a merger or regrouping, we see that the sample thus formed brings together all the operations which, initially, had given rise to the most optimistic stock market expectations. *This* can be interpreted as a confirmation that the state would book his interventions for operations THE more spectacular, those where THE risks of « monopolization » appear *has priori* as the biggest. But For that it is true, and we draws a justification from the action of the State, the values of this subset of firms would have to display behavior different from the overall sample where find grouped together all THE operations concentration, whether or not they have been the subject of a public injunction. But this is not what we observe. Hence the conclusion of Stillman and Eckbo that *their work demonstrates not only the uselessness of the control of concentrations by the State, but even more its harmfulness*: those whose judgment of the mar che scholarship holder suggests that they have THE more of odds to effectively reduce their costs. Of all planned concentration operations, those which attract the ire of the government are those which from the point of view of consumer interests would be THE more justified.

Crowning all of the works accumulated In THE

1970s, these two studies throw away thus a doubt definitive on the traditional notions of "dominant undertaking", "abuse of dominant position", "barrier to entry", of "power of walk".

*the right attitude: neither discourage nor encourage, get over it to institutions of walk*

This which precedes certainly results of a very vision selective contemporary economic research into of competition. Furthermore, not all of these studies are themselves free from methodological problems likely to feed long disputes between experts. The fact remains that over the past fifteen years we have witnessed a proliferation of research and work which deals a severe blow to the theoretical and empirical ideas which inspire Western legislation on control. *has priori* of the concentrations.

Although it is not yet possible to definitively conclude that all the usual assumptions are false, no one can continue to act and to speak as if there were irrefutable scientific proof of the need for entrust to public authorities care to monitor and control the evolution of industrial structures. The traditional theory of oligopolies and concentrations is today too seriously questioned in question so that we continue to draw inspiration from it as a source action policy And legislative.

, That said, it must be made clear that, if State intervention deprives society of a certain number of concentrations which, far from harming consumers, would have allowed them to benefit from earnings additional of productivity, we should not deduce from this that the good policy would be the inyerse policy : "encourage" mergers and concentrations that the State considers "profitable". For what? Quite simply because apart from market judgments, such as these appear for example on daily screens of the Sotck exchange, person born can tell

pose knowledge and information that would be necessary to determine *a priori* what is the optimal size of a company. Defining this optimal dimension is precisely one of the functions of institutions of walk.

When it comes to concentrations, there are not two possible attitudes, but three : discourage, encourage, rely on institutions of walk. This chapter as the previous one shows that it is towards this third solution of a strict neutrality that se releases today a new consensus.

### Notes

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23. Here as elsewhere, the question is not to assess to what extent the practices of administered prices move us away from what would happen if the market operated according to standards closer to the ideal model of operation of price we describes the theory of pure and perfect competition, but to compare what is happening with what is happening se would pass if, In This world concrete which is the OUR, instead of let freedom of management of companies play, we adopted another system

pricing administration system - for example a permanent control system

He enough of look around of self for notice that THE firms belonging to oligopolistic or monopolistic sectors are not alone in responding only with delay and often with great inertia to changes in demand and market conditions. This kind of behavior born does not concern only the producers Or dealers \_ automobiles, Or again the manufacturers And distributors of refrigerated coolers, etc., but All as well of the services Or of the shops such as restaurants, hairdressers, tobacconists, cinemas, theaters, etc., whose prices are far from varying according to fluctuations daily the attendance of there customer base. In reality, THE • administered price • is rather the general rule of our contemporary economies, and the market price an intellectual concept which only corresponds to of the situations concrete all at do exceptional (Stock market, market changes...).

If he in East Thus, replicate the news generation of neoclassical economists from Chicago, is that price inertia is not necessarily a bad thing in itself as long as we take into account the fact that real economic decisions always take place in a universe of imperfect information . If most prices today present characters obvious of rigidity And inertia, this has nothing has see with the fact that THE entrepreneurs would be more that their predecessors able to escape market constraints. It is quite simply because, In a world where the mass of products in circulation is increasingly greater, and where companies distribute increasingly diversified ranges of articles aimed at a mass clientele, to change of rate Or of price East a decision Who implied of the

• transaction costs” more and more important (labelling, printing catalogs, campaigns advertising, etc.). For this alone reason, we can not more expect the number of products whose prices to adjust quickly to erratic variations in demand or big than before. For industry modern, play on stocks or THE terms of sale East a technical of management more effective which, certainly, leads to rigidities and inertia, but immobilizes less of resources that we don't would mobilize if he had to that THE behavior of the company is getting closer more of the ideal of competitive market. Furthermore, as has already been evoked briefly, in a universe where THE choice of the consumers becomes almost infinity, this administration formula of the price East a technical of which the advantage East to reduce THE • costs of research • of the people by report to difficulties they would experience in an economy where the prices of goods offered born would stop fluctuate. He is of a procedure of management which not only answers to efficiency interests of the company, but Who brought also A service real And valued by THE consumer. If the producers respond to variations in the demand for more by adjustments quantitative of the offer (discounts of production, bets in sleep of certain abilities, constitution of stocks, etc.) only through adjustments of price - as would like there theory-, this is not not only because that it is there technical Who serves THE better

their personal interests of profitability, but also because that it is an implicit commercial arrangement that, on balance, the modern customer prefers to the one that would correspond to the ideal scheme of the economist.

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26. George STIGLER, *Capital and Rates of Return in Manufacturing Industries*, 1961.

27. Yale BROZEN, • Bain's Concentration and Rates of Return Revisited •, *Newspaper of Law and Savings*. october 1971.

28. See our paper • The myth of concentration increasing •, Institut There Boetie.

29. Arthur S. DEWING, • A statistical Test of the Success of Consolidations •, *Quarterly Journal of Economics*, volume 31, 1921-22, pp. 84- 101.

30. Shaw LIVERMORE, • The Success of Industrial Mergers", *Quarterly Newspaper of Savings*. 68, november 1935.

31. W.G. SHEPHERD, *Tea Savings of Industrial Organization*, 1979.

32. History is full of companies that, one day, acquired a position of quasi-monopoly exclusive, but Who, a few years more later, following management or policy errors, are in turn found dominated by newcomers who are more efficient than them. The most common examples famous are those of the Standard Oil which was 88 % of the market in 1899 and only 67 % ten years later; American Sugar, 95 % in 1902, 49 % in 1907; Glucose Sugar Refining, 85 % in 1897, 45 % in 1901; American Strawboard, 90 % in 1889, 33 % in 1919; American Tin Flat, 95 % in 1899, 54 % in 1912; International Harvester, 85% in 1902, 44% in 1922; USSteel, 66 % in 1901, 33% in 1934; etc. Some economists, while recognizing that the market works well in this way, however deplore the slowness of the process and in shoot there conclusion that he must of the antitrust laws For avoid waste and social costs of the period of transition. It is there a vision angelic of the power of the judge and the law. Those who hold this reasoning forget the length of the trials involved antitrust laws. *The big ones trial Americans show that THE walk its revealed generally a much quicker instrument than the judge to reduce the power of the big trusts* (example of Standard Oil or Again from IBM, For Today).

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45. Harry BLOCK, • Advertising and Profitability: has Reappraisal • *Newspaper of Politics Economy*, April 1974.

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51. William J. LYNK, *Information, Advertising and the Structure of the Market*, Dissertation, University of Chicago, 1978.

52. For an attack in ruling against THE concept of • barriers has

entry •• see the article by Harold DEMSETZ, • Barriers to Entry •• published In *the American Economy Review*.

It is not a question of to say that it is something that does not exist. Simply, we must realize that everything that is a source of costs for the company is a barrier at the entrance, since a factor which reduces supply. Using this concept to define what which is market power, Or abuse of position dominant, THE economists suppose implicitly that there are *objective* factors which would allow to differentiate between different sources of costs, some of which are legitimate, and the others who doesn't would not be. This which typically relates to there mentality of • despot enlightened •.



**A other glance on THE organizational  
choice industrial  
And of distribution :  
there theory economic of the contracts**

“restrictive” practices, and deemed incompatible with THE requirements of a healthy competition, are nothing other than private contractual arrangements whose purpose is to improve the functioning of the market (in particular by reinforcing the fairness of transactions); then to contest the relevance scientist of concepts as classic as those from “power of market”, of “position dominant”, and “abuse of position dominant”\*.

Information busy a place of more most important aunt In OUR universe. But he East difficult of put of the “rights of property” on there value what creates. Result: THE companies invest less in the information And there communication that they born THE would do if they had means of guaranteeing *the exclusivity* of spin off financial of their decisions. We has what economists call a “externality”, a market failure Who makes the economy less effective And We cost, has all some thing (of there value No created).

Of even, A CONTRACT born worth that if he East applied And, respected. To sanction the “cheaters”, there are the tribes-

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\* The passage on • the stowaway • is the subject of a booklet published In there collection of the works of the Institute There Boetie (1988). †

courts and judges. But recourse to justice is not free. It causes procedural costs, as well as economic costs which may not be negligible. Result: the ability that we all have to appropriate a share of the value produced by others by speculating on the fact that it costs them less to resign themselves to the fait accompli than to defend their right to property. We have a second source of "externality", a second situation where the market is taken into default, with For result A "cost social".

Every time traditional economic theory encounters an "externality", it turns towards the State. It is up to the public authorities, regulations, to intervene and correct the situations where, we are told, the market se revealed ineffective.

Error, responds a new generation of economists, disciples of Ronald Coase (the inventor of concept of "costs of transaction"), And of Armen Alchian (THE founder of the modern theory of property rights). When we study in the field how THE transactions And how se present the contracts industrial Or commercial Who their serve as a vehicle, we discover that these contracts are already structured in such a way as to take into account most of the problems that the State precisely claims to resolve through its regulations. Let's take by example THE systems modern distribution (the distribution selective, franchising, etc.), we see that most of the commercial practices most often viewed with suspicion by agents of the Competition Commission correspond in reality to contractual clauses whose role is to reduce the inconveniences which result for individuals and the community from the "collective" nature of communication. Likewise, has condition of reason And to be interested less to the letter of contracts and more to the internal logic of contractual systems, we discover that many characteristics of our contemporary industrial universe (the complexity growing of the connections And interpenetrations

financial, certain integration movements, the development of commercial brands, the explosion of communication expenses) are nothing other than the product of the complex contractual means put in place by the agents economical for se defend against the undue costs imposed on them by the unfair or unfair behavior of others. In other words, assert these economists, intervention of the state East often superfluous, not because that there is didn't of problem, but because that the market has already done the work! What the State generally considers to be obstacles or attacks on competition are not the most often that the results of the procedures used by THE market for precisely resolve the problems of efficiency and loyalty which serve as a reason has her intervention.

Dated of less of fifteen years, these works are closely linked to the research of industrial economics specialists at the University of California at Los Angeles : Harold Demsetz, Lawrence Klein, Wesley Liebeler... They lead to the outline of an economic theory of contracts whose explanatory capacity is surprising, and whose field of applications extends well beyond economics ( for example the study of marital relations) <sup>1</sup>.

In This Who follows, we will use their concepts and methodological approach to : 1. show that a number of commercial practices traditionally assimilated to " restrictive" practices , and deemed incompatible with the requirements of healthy competition, are nothing other than private contractual arrangements whose purpose is to improve the functioning of the market; 2. contest the scientific relevance of concepts as classic, but ideologically biased, as those of " market power", " dominant position", Or Again of " abuse of position dominant".

If this work had been better known in France, it would have helped to dispassionate the debate which often pitted the world of production against distribution professionals .

1. *there theory of "passenger clandestine" »*

Discovered about ten years ago, a new concept revolutionizes knowledge of property relations And of CONTRACT.

Of the that we address questions of distribution, industrial or commercial organization, contracts, relationships between manufacturers and distributors, we cannot fail to mention the concept of "free rider". GOOD that introductory recent (his theorizing dates only from the early 1970s), it is a key concept that can now be found at all major intersections of there thought economic there more in point. Her emergence is linked to recent progress intervened In THE domain economic information theory; especially when taking of awareness of the problems *externalities* that creates the fact that information is an intangible production on which it is difficult to attribute and enforce *rights of property* accurate.

To fully understand this that means this expression, we will take A example inspired of a do real.

Let's imagine a company which launches on the market, and under its brand, a new model of electronic household appliance, the production of which is sold through a network of independent distributors. This manufacturer is engaging in a major national promotion campaign Who mobilizes THE newspapers, THE radios, there television, magazines, public notice boards, etc. But, given the technical specificity of the product, its newness, this action does not not enough. It is necessary that it be relayed by a local promotion activity and regional, relying in particular on the possibilities of information, intelligence, and direct demonstration offered by of the technicians approved.

This industrial between in relationship with a chain of large supermarkets under the "X" brand ... ". A contract is concluded to terms from which this chain accepted of supply

sion its stores with the new model. She undertakes to ensure the exhibition permanent in a promotion hall specially designed for this purpose, as well as offering customers a free demonstration service. Finally, it agrees to make the necessary investment to ensure maintenance and after-sales service of quality. The channel " **X...** » also agrees to devote a minimum advertising budget to this product, spent in local media in line with the manufacturer's national promotional campaigns. In return, the latter undertakes to ensure the training of staff and technicians, develop the brand image of its products, and maintain a high level of national advertising. The average delivery price to supermarket is 2 000 F. The share of services supported by the supermarket being estimated at 1,000 F (management costs, rental of space, salaries, advertising, amortization of costs tooling, plus the margin normal profit...), the price of sale has there customer base East fixed has 3 000 F.

Everything is fine. However, a second store " **T...** » is located a few hundred meters from one of the supermarkets of the "**X**" chain ... ". Her owner shows some articles but, because of Due to the small size of his premises, he sells mainly by catalog orders. This catalog includes the household appliances distributed by the string " **X...** »; but, not having obviously not the same management fees (no fees exhibition, not of staff specialized demonstration, no special tooling costs), he sells it to price of 2 500 F instead of 3 000 F requested by the supermarket neighbor.

That se does it happen SO? THE manager of store " **X...** " is satisfied: his store is always full. All day long, visitors parade by who are interested in the device, inquire of her handling, of the standards maintenance that he East recommended of respect, advantages that he present over its competitors, etc. But at the end of the day, surprise: THE crates remain desperately empty; not of

checks. It's at the "T..." , fifty meters further, that THE people pass order. We come at the house of "X..." » to find out, to find out, to see how it works, but it's at "T..." » that we buy. It's logic : the same product is worth 500 F less. And when the object breaks down, it's at "X..." , the only store equipped of the region, that we returns for demand respect for there guarantee offered by the constructor. Morality : it is thanks to promotion and investment efforts commercial agreement granted by "X..." » that "T..." » achieves its turnover. "T..." » behaves like a *stowaway* traveling on the back of "X..." . "T..." » is it that THE Americans call A " free rider ".

We can think that after all it is not there than the normal game of competition. Let us then take a closer look at what a such situation implied.

If the chain of supermarkets are committed by contract to make a certain volume of technical and commercial investments, it hopes to benefit from it, through the increase Sales, at least one some normal financial profitability; otherwise, it is better to devote your availability to other tasks. But that is not at all what is happening. Competition of "T..." » fact that its recipes remain so meager that they do not even allow to amortize the capital thus invested. Wisdom advises to stop there THE costs. We are going down THE prices for align on those of the neighbor, but, simultaneously, we start by cutting back on THE expenses of promotion And of demonstration, then on after-sales and maintenance tasks. Since they cost more than they bring in, we give up providing the services which the manufacturer considered necessary to support in order to make its product known and imposed in the face of to the competition. We aligns with the level of services provided by the person who in offer the least : the presence of a " stowaway " leads to the death of the service.

Even if in principle it should not matter to him that his products be sold by mon Or the other of the stores,

such a situation does not suit the producer. He now finds himself deprived of the additional orders and of sales that the local promotion effort ensured directly undertaken by there chain of supermarkets. But there are also other victims that we think of minus: potential consumers who, if they had been able to experience THE material in question, would have made the purchase, but who will not have no more opportunity to do so because that the communication intended for them is no longer produced. The possibility for the "T..." store to freely profit from the professional activities of its competitor deprives the market of information which would have enabled a certain number of consumers to benefit from an additional staff of "utility" higher at cost of production of this information, And Who was SO "socially efficient".

Furthermore, the defection of "X..." and the reduction of its promotional investments lead to an increase in production costs for the manufacturer due to the reduction in series. Consequence: an increase in sales prices. That for a certain time whatever buyers were able to obtain the equipment in question 500 F cheaper means that other consumers will now have to pay more for it, while this increase in prices also excludes customers for Who It is NOW too much Dear.

Result: the "stowaway" is not a competitor like any other. It is actually a para site, of a "thief of value" who grows fat on the investments and risk-taking of others. His behavior not only harms his rival, but everyone. We consumes less, we produces less, we invest less. The quality of services degraded. By his mere presence, the "stowaway" imposes on the community A "cost social" » Who do that We we are all, individually, less rich and less satisfied than we would have could being (all things equal Besides).

*Eliminate the situations of « passenger clandestine » is in everyone's interest. This assumes that industrial companies are given the freedom to demand from their customers contractual compliance with certain restrictive clauses .*

Everyone, not just the “X” store... » (or even its suppliers), has an interest in avoiding that “T ... » don't take advantage of his position as a "destiny passenger" for too long. That TO DO?

The presence of “stowaways » hacking other stores' business investments means that the producer lose there control of distribution of its manufacturing, and therefore control of part of its costs. There are some activities where it doesn't matter much. But there are others where, on the contrary, the control of promotion and distribution costs essentially determines the chances of success or failure of a commercial and industrial strategy. In this case, a simple and radical solution is to integrate sales. The company is developing its own network of exclusive distribution. Only employees or appointed managers legally have the right to sell to the customer products of the firm. No « passenger tin clans » to fear in the surrounding area. The system closes itself like a fortress. However, while this is suitable for some products, there are others for which such a solution actually creates more problems than it solves. It is This Who happens when we have affair to goods which have reached a degree of industrial maturity such that everyone expects to find the service at their doorstep. Directly administer a network of several thousand points of sale geographically scattered pose of the problems of control and internal management quickly becomes insoluble. We cannot put an inspector behind every dealer. What the firm gains from no longer fearing there competition of resellers pirates, She THE

loses its inability to closely monitor the personal activity of its thousands of local agents (except at a prohibitive cost). He East It is therefore necessary to imagine other solutions.

A formula East of to invoice THE deliveries do has " T... » 1 000 F more expensive, so as to allow the supermarket "X... » to continue its animation action and regional promotion. But this is a distinctly *discriminatory practice* which, in a world where traders are very sensitized to equality and transparency of the conditions of sale, is more likely to harm the reputation and professional brand image of the company and its product than to bring it any benefits. Furthermore, for this to be effective, it is necessary to be sure that " T ... » cannot obtain supplies from other resellers and intermediaries who, being located in markets whose penetration is older (and therefore having the advantage of having already amortized their equipment and promotion costs there), can would resell the equipment has of the price of transfer lower to costs of come back of

" X... ". This Who implied that these resellers be them even subject to contractual constraints imposed by THE constructor has *all* his distributors.

There solution there more radical consists has to agree has

" X... » the benefit of a *territorial franchise* which guarantees the exclusivity of the product for a given geographic area. In return, to avoid parallel sales Who would empty there franchise of All content,

"X... " undertakes never to resell or buy from intermediaries who are not part of the network of resellers approved by the manufacturer. If all distributors in the country are bound by an identical contract, and if these contracts are respected, it no see you of" passenger clandestines tin » possible. THE issue East resolved.

However, territorial exclusivity is not possible for all products (for example, very widely distributed items which require a commercial establishment). extremely dense). Another formula is

the obligation required by the manufacturer to respect a *minimum price*, identical For all THE points of sale.

HAS first see it can appear amazing one indus triel requires its customers to charge higher prices. This is hardly rational. The difference between the price at which THE maker gives in his goods At distributor and the price at which these are then sold to the public represents THE "cost of distribution" of producer. As with any other cost element, its interest is in principle that This cost stay THE more down possible. Selling more means that we will sell less. That's not his interest. We do not see why the producer would take the initiative of imposing on his resellers conditions limiting competition through the prices they charge among themselves. Normally, he should in be there first victim.

The explanation is not difficult. How a can the industrialist go about getting its points of sale to support the distribution of the product with a certain effort in terms of service and quality, without incurring the high costs of a direct integration policy? If he is content to conclude simple agreements with his distributors of free will has free will (as In The example some stores

"X ... "), he has a good chance of never achieving his objective due to the appearance here and there of "stowaways" behaving like "T... ". The solution is to act indirectly. How? By acting in such a way as to increase effective competition that THE distributors provide sales and after-sales services. Resellers are required to respect a uniform selling price, which forces them to rely on services to differentiate themselves from each other and compete. The margin left to intermediaries is calculated from so that it barely covers the costs of producing services and guarantee of quality that the manufacturer wishes to see supported by distributors. The competition that deliver their last fact while they find themselves forced to rebate to consumers, below form of increased benefits, the margin substitute-

ment that the imposed price guarantees them in principle. Under the effect of competition, this is dissipated into additional costs generating customer service. The producer obtains its network level of service and quality that he is looking for, without the need for an army of inspectors, and above all without fearing that its policy will be torpedoed by the presence of a few pirate stores behaving like “stowaways”. » (since the one who does not do the effort of promotion, of desired service and quality is necessarily eliminated by their competition of his colleagues).

Last solution : *refusal of sale*. Addressed directly to “T...”, This is a measure whose discriminatory appearance is difficult to accept. But if he sanctions the fact that “T... » refuses to submit to the same disciplines contractual that those to which have agreed to subscribe to the large mass of other resellers, the situation is different: the refusal to continue deliveries is only a defensive measure against the actions of a parasite which, by its insistence on going it alone, and not adhering to the common rules respected by the others, actually behaves like a predator, postman of impoverishment For all.

It is true that the distributor targeted by refusal salesman can reply that he is being deprived of the means to do his job. Some consumers will echo him by explaining that such a decision reduces their freedom of choice. But it must be replied that the consumer's freedom of choice is only justified to the extent that the consumer pays for the product at a price which covers his or her needs. costs production (including marketing and promotion costs); which is no longer the case when shopping in the store of a “passenger clandestine”.

*Some practice take a meaning new*

Let's take another example. A distributor broadcasts two goods sustainable perfectly substitutable, but put

n the trade by two different brands. The first is a national brand belonging to a large firm which invests massively to make the product known, the second is little known and makes no effort to make itself better known. It is assumed that there are no savings of scale, and that the two articles have the same production costs. What commercial strategy should the distributor adopt? to remove the income THE more students?

If I am a trader, my first concern is to get as many people as possible to come and visit at my store. For the encourage as come, to attract clients, I have an advertising budget and I do of the operations of local promotion for which I interest use as support THE product THE better known of here customer base. I will attract even more people as I highlight the product which already benefits, at the national level, the most important advertising notoriety. Does this mean that this is the item I want to sell first? Not exactly...

By adopting this behavior, I exploit the income from national brand notoriety. But when the customer enters my store, and when, undecided, hesitant, he asks for an opinion, asks for advice, demonstration, what do I do? I have two products of equal performance and value to offer. In principle, both are delivered to me has a price identical, here brand secondary having gotten into the habit of aligning its prices with those of the leader. But I never buy without negotiating the best possible purchasing conditions with my supplier. Of the two manufacturers, which one is most likely to grant me the most favorable discounts, rebates and payment terms? Answer: the one who has the greatest ability, with equal production costs, to grant me such discounts East the one Who bear it less of costs of promotion and marketing; in this case, the second. So what happens when a customer asks me advice? Both products, the one Who me will report there margin here more

big is not the one that I used to attract the client, but the other, the less known. Of course, I will mention the comparative merits of the two materials, but without the customer surrenders account, my interest is of direct him towards the purchase of this second product. This is the well-known process of *sales drift*; perfectly rational and economically legitimate behavior : I adjust my service to the gain it brings me; a low margin product only justifies a low service; a high-margin product deserves more attention and care. I born do that to proceed to a rational reallocation of my time And of my efforts.

Let's look at the results of the operation. My number business increased. I had more visitors. The store is starting to become known. Who do I owe it to? Based on my personal commercial action and the costs I incurred, this is indisputable. But these investments would never have had the same effectiveness without the significant advertising support from which the national brand used as promotional support already benefited. In other words, it is me, the distributor, who, this time, behaves like a "stowaway" on promotional expenses not of another store, but of one of my suppliers. There profitability of my expenses commercial is all the stronger as I benefit from the national notoriety capital accumulated by the dominant brand. In return, what does my supplier get from it? Nothing, since it is not his products that I seek to sell as a priority, but those of his competitor. Without having looked for it, the latter finds himself, because of me, also in the position of "stowaway » compared with to investments sales of its leader. What it sells more is due to the powerful image of the rival product. We have this paradoxical result that the producer who, because of his dominant commercial position, has contributed the most to ensuring the effectiveness of my own campaign of promotion, is the one Who in save the less of spin off. But he y has more severe.

If I am alone to live as a parasite on the success of my supplier, that doesn't matter much. The effects remain marginal. But if there are many other traders who do the same, or if my success is so dazzling that I become by far the leading buyer in the country, the situation is completely different. The more the producer invests in the promotion of his products and of their image of brand, the more he risks of seeing its capital of reputation "hacked" by the tradespeople enterprising. And dynamics, more he undergoes THE effects pervert of a derivative general sales, and less he sells. Otherwise says: the more he penalizes himself. It is he who invests, but these are his competitors who win of the shares of walk, even if they are for nothing. There profitability of its actions marketing and of communication is degraded. He himself costs moreover in addition expensive for gain some customers moreover, and for preserve there loyalty of the elders. Result: he reduces its budget. Ultimately, its interest is even of stop all investment commercial and promotional, and thereby *scuttling* the capital accumulated over years to provide buyers with a credible guarantee of quality and reliability. If other industrialists in turn convince themselves that they can do nothing to protect themselves against of such behaviours, more no one will invest. It is there END of the brands and guarantees, the trivialization of reputations, the return to the crudest forms of commerce and industry of yesteryear. Everyone there loses, including the consumer who risks of find private of a together of services to which he demonstrates all THE days that he attached a certain value by agreeing to pay more expensive products brand. The "stowaway" is not just a parasite, a pirate, a thief of value is also a destroyer.

How can the company defend itself? A method consists All just to visit to say tributes "guilty", their explain that one such situation

tion born can to have that of the consequences harmful for all, and ask them to agree to comply with certain mechanisms of *self-discipline*. How? in including in sales contracts special clauses by which they undertake, for example, to renounce call price techniques, to limit their rebates and rebates at a mutually agreed maximum rate, to consult their supplier when considering promotional campaigns, to coordinate their advertising policies with their own, etc. With such arrangements, we do not eliminate all the risks, but we limit the probabilities of seeing truly widespread perverse phenomena appear (as happened on the French market for household appliances and TV, at the end of the 1990s). 1970, during the famous Thomson-Darty affair). Unfortunately, these are generally contractual clauses considered as opposites has there free competition, and therefore *abusive* (in the legal sense of the term), because they involve a limitation of there freedom management of distributor<sup>2</sup>.

Second answer : there *distribution selective*. It is THE system of the dealers. THE reserve producer there distribution of its products to stores which undertake not to sell brands other than its own. In this way, the temptation of the "free rider" is definitively exorcised. Often coupled with agreements of territorial franchise, this distribution formula is particularly necessary for developed products which require a high level of personal and after-sales service, and for which the distributor's advice often plays a determining role in the purchasing decision ( example of the automobile). However, here again, history shows that public authorities are much more sensitive to the restrictive aspects of these contracts (which they suspect of bordering on leonine contracts) than to the advantages that we derive from them as producers and consumers.

*SO that THE authorities are tempted to see this as proof of anti-competitive behavior, these are practices whose purpose is none other than to reintroduce firm property rights and final there Or their absence leads to accumulation of effects social pervert.*

It is true that these practices (selective distribution, exclusivities, imposed prices, contractual restrictions, etc.) can be used for anti-competitive purposes. Let's take, for example, competing groups that manufacture similar products, distribute them through competing distribution networks, and decide to link themselves through an agreement of cartel. The imposed price or brand exclusivity can be used by members of the cartel to rust their association by increasing the difficulty of cheat. In the same way, imposing contracts on traders limiting their freedom of change supplier is an excellent instrument for locking in a deal. Conversely, we can imagine that dominant distribution groups take advantage of their purchasing power to obtain their suppliers that they impose on everyone resellers of constraints having the effect of reducing retail competition. All of these scenarios are possible. But they are only really plausible in a limited number of circumstances: for of the products distributed by a reduced number of retail establishments, when distribution networks are concentrated, or even when it comes to products of low distribution or aimed at specific customers (industrial products)... Which means that in reality the number of cases where such practices are actually used as cover for operations anti-competitive can what to be limit. The thesis of anticompetitive behavior is not sufficient to explain the more character in addition to being more widespread these contractual practices (including the development fast franchised store chains offer an illustration). It is that he must y to have others reasons.

THE examples used In THE pages which precede suggests that what is fundamentally in question is linked to the growing share taken in the modern economy by intangible information activities, communication, and service (compared to other components of value added).

For the buyer, A "product" does not exist not so much that he was not informed of its existence. That any material has been manufactured and is available in the stocks of a business, born enough not. For one product "exist" - in the economic sense of the term -, it is still necessary that buyers or consumers potentially interested in its use have been affected by a set of information concerning its specific "characteristics", the target customer base, the level of its price, conditions of sale, guarantees, THE places Or we can get it, etc. As a result, everything that contributes has increase information on the products that are offered, and which contributes to the development of consumer preferences, is part of the process productive in the same way as any industrial act. Resources devoted to advertising, marketing, commercial promotion, to the development brands, training sales technicians, public relations, etc., are creators of "added value". From the point of view of dynamics economic, he no has not of difference between these "commercial" activities and production activities properly say. We knows that they represent Today In GOOD cases more of there half of the value added.

Considering information as a factor of production does not mean that any volume of investment is socially legitimate. The interest of consumers and the community is that each firm does not go beyond of point has leave from which THE additional "utility" brought to the nth marginal consumer by the additional resources invested in information, becomes lower has her cost of production. HAS the opposite,

everyone's interest is that the firm continues to increase its expenditure as long as the marginal cost of producing information remains lower than the additional marginal "utility" that it brings to the consumer who would have remained ignorant of the higher satisfactions. great benefits that this product could bring if this additional investment had not been made. This is what economists call the "optimum".

However, information is not an economic good like others. All advertising or promotion indeed has a appearance Mark of "GOOD collective": All effort engaged. by a company is likely to benefit simultaneously other firms which sell either the same products or similar products. When a travel company do of the advertisement For stays in Thailand or Sri Lanka, it increases the demand for exotic travel; demand from which will also draw profit cer some agencies competitors offering of the " products » neighbors. Likewise, when a maker TV devices vision or dishwashing machines undertakes a national advertising campaign to make its brand known, THE spin off economic will be shared between the company and the numerous distributors or resellers who will also have increased their sales although not having participated in the financing of the initial investment. In THE two case, he must to expect that the company spends less money on information and communication what wouldn't do it if she had THE means of se to guarantee *exclusivity* of the spin off financial of his investment. We find the problem of " passed clandestine gers". Their presence creates a divorce between the decision that THE calculation economic dictates has the contractor and the decision he would have had to take to comply with the conditions of the " optimum". He there is an appearance of what, in the jargon of economists, we call an " effect external": a lack of investment in communication And a lesser production of information Who are coming of This that there presence of " passengers clandestine-

tins» introduced a divergence between the individual optimum of the firm and the optimum collective.

When the company manufactures a unique product, for which there is no known competitor or possible substitution, or when, vertically integrated, it itself ensures the entirety of its distribution, there is hardly a problem: the incentive to make the maximum investment is maximum. Individual optimum and optimum collective coincide. There isn't *of externalities*. He doesn't go more of even on the other hand when it comes to products which do not differ from their competitors only by a few secondary characteristics, when these products are passed through the channel of complex and multiple networks mobilizing a large number of independent resellers, or even when it comes to sophisticated products for which the prior construction of a strong brand image is an essential factor in sales success. We then find ourselves in situations where the difficulty or even the impossibility quickly identifying and eliminating all those who behave as parasites on the expenses of others reduces to a minimum the personal financial interest that the entrepreneur feels in investing in communication. Too few what is desired is produced in relation to what would be produced if the investor could be guaranteed *exclusive ownership* of the added value gains made through his spending. We said there has *market failure (market*

*failure)*. A failure which results from the incapacity of the companies concerned, for legal reasons, but also reasons linked to the nature of their production, to the technologies implemented, to the structure of their distribution systems... to assert their *right of ownership* over what is naturally theirs, but is appropriate by others.

How to eliminate, or at least limit, these externalities? The answer follows from the following reasoning: we must find mechanisms that restore the benefit of those who invest in "intangible" (in information, there communication, THE marketing, there creation of

brands, reputational capital, creativity, quality and reliability of services, etc.) greater exclusive control of products of their efforts.

There thesis that We let's defend East that this is precisely the function that industrial companies expect from the contracts (and in particular *long-term contracts*) that they negotiate with their distributors. This involves reconstructing, through private law contractual procedures, mechanisms of control and ownership in areas which were traditionally deprived of it as long as communication activities had only a very weak value economic, but Or experience shows that THE cost of a such absence East become too high today For A big number of agents.

As we have seen, the diversity of contractual methods imagined East big, but the objective stay the same: get the redefinition of *rights* (property) clearly established And of which he is possible to police effectively. This is how it is necessary to interpret in particular all the clauses which reserve to the manufacturer a direct *police right* over certain decisions and certain aspects of the management of its distributors.

Over the past twenty-five years, we have experienced a mutation industrial characterized by there communication revolution and the importance taken in growth by THE factors " intangible ". He in has resulted in a growing mismatch between the established system of rights of property and the new reality of production conditions. This inadequacy should lead to a adjustment. It is this adjustment that we experience through the *contractualization* of commercial relationships. We can not anymore reason on THE trade And there competition like We THE .let's do Before.

## 2. *THE walk And there production of trust*

The concept of " free rider " made a lot of progress there awareness of the phenomena contractual

in the field of commercial relations. But he doesn't explain not All. The contracts are documents whose structure is often very complex. To understand the logic of this complexity, he is necessary to complete THE « passenger clandestine » by three others Notions, also recently introduced: the notions of « post-contractual opportunism », «quasi-rent», and «specific investment».

*Technological development (increasing specificity of investments) led has of the relationships of power economic issues much more complex and less one-sided than traditional approaches to politics assume of there competition.*

There approach more satisfactory East of reason has leave of a example.

Let us imagine a large publishing company B which, to print its publications, usually uses the services of a printer A. To launch a new product, **B** needs a press that meets particular technical specifications, still not widely used in the profession. She consult her printer usual Who, not to not lose there customer base of B, accepted of TO DO the investment of purchasing the new machine. A contract is concluded by which printer A reserves exclusive use for B of there new press for a rental of 55 000 F per day. Of this sum, 40 000 F represent depreciation of procurement of there machine; THE 15 000 The remaining F covers the amount of daily operating costs. This machine is so unusual that if **A** did not have the assured clientele of B, he would have great difficulty finding others customers wanting to buy his services, if This is not has A price paltry (10 000 F, for example). Only a competitor of B, the publisher VS says he is ready to rent the machine to him, but for only 35 000 F by day. Knowing this, B announces a day to his subcontractor that he can no longer continue to pay him THE

agreed price. Invoking a case of force majeure (for example the unforeseen turnaround in the economic situation of his profession), he offered to renegotiate the rental contract at 36,000 F per day. What can the printer do? in front This cut of strength of her customer? At 55,000 F he go home just in his costs. HAS 36,000 F, he loses money. But he \_ lose less than if he remove the machine at B and finds himself with an investment that is unused and almost unusable by others; he also loses some less than if he there re-rent to C. Certainly, he can to carry complaint in front of a court, And pursue B For breakup abusive of contract. But how long will it take to wait for Before to get A judgement? And Then he there is always the risk of seeing judges accept the reason of "force major". During this time, the machines will remain stationary and will not report Nothing. Morality: by agreeing to make the investment in specific industrial equipment which did not have Really valuable that if used by B, and in doing naively trust to his speech, the printer put in a position Or he n / A ultimately no choice but to continue to work for B, even at a price much lower than its costs. We have a situation where, by going back on its contractual promise, B can almost with impunity appropriate a large part of the value which is normally the property of A. By behaving in this way, B is acting unfairly. He demonstrates "post-contractual opportunism" which amounts to real theft to the detriment of his partner. If the publishing company is a large company then the printer is only one SME, we will say that the first committed an "abuse" of a dominant position, that it took unfair advantage of its "power of walk".

However, let us push the analysis a little further. What has just been said about publisher B also applies to printer A, even if it is only a small company. Indeed, let us assume that the use of this press brings the publisher an additional daily profit of 10 000 F, and let's admit that his characteristics are if

news that it is impossible for him to quickly find another printer who can provide him the same service. A may be tempted to use the power of blackmail that this situation gives him to impose on his client a renegotiation of the rent such that the new price absorbs almost all the profit that B **derives** from the use of this new technology. As in the previous case, by demonstrating “opportunism post-contractual”, the printer HAS monopolizes a go of value Who Normally does not belong to him. Although of modest size, A nonetheless has “market power” over the large publisher, and can even exercise a certain power against it. of domination se Translating by grabbing everything Also unfair of a “quasi-rent” momentary <sup>3</sup>.

This simple example shows the abuse that can be made of the concept of “position dominant”, THE pillar of the systems surveillance of there competition. He born not enough to study the shares of walk respective For determine Who necessarily “depends” the most on the other. This is a subjective evaluation criterion that has less and less meaning

*The one who benefits of the circumstances for take a share of there value produced by her partner in speculating on the fact that it costs him less to resign himself to the fait accompli than of defend your right of property before the courts, commits an act which results in “cost social”.*

Let us then imagine that at the time of contract negotiation, printer A suspected that he might one day find himself forced to work at a loss for publisher B, it is likely that he would never have took the risk to buy there new machine. HAS the opposite, if B had imagined that he ran the danger of seeing the printer capture everything its profit, he ... not se would never spear In the operation. Perhaps he would have made the investment himself. But as the printing press is not not her job, that him

would be certainly income more expensive. In both case we have a loss economic, A « cost social » who would be avoided if A and B could completely trust their partner. This cost East especially more pupil that uncertainty on the word of the other is great. And as progress tends to increase situations of technological dependence conducive to this type of behavior « opportunist », it is likely that we live in a universe where this type of difficulty costs us moreover in addition Dear. How can we do it face?

In principle, this is the role of the courts. But justice is a heavy and slow machine, whose operating rhythm is hardly adapted to the demands of modern industrial life. What's more, the courts are not really effective that there Or THE disputes carry on of the material services that are easy to identify and easily measurable. Since the intangible services represent a growing share of market exchanges, it is more effective to seek other methods of protection. A choice possible East of TO DO call to the regulatory power of the state. This is how one author like Victor Goldberg explains there presence of a certain number of standards regulations in activities such as insurance, research oil, etc. 4 . « It is a question, » he tells us, « of reducing the possibilities of monopolizing *quasi-rents*. » But he y has a other solution Who born need the intervention of any third party person : he enough that THE two partners A and B get along from departure to introduce *reciprocal security clauses into their contract* with the consequence that anyone who is disloyal is automatically sanctioned and penalized by the normal play of forces of walk.

The thesis we propose is that many industrial situations and commercial practices often denounced as being contrary to the interests of "fair" competition are in reality the product of contractual systems that respond precisely to this logic.

How can A and B defend themselves against the risks of “opportunistic” behavior from the other? The solution most radical East, as In THE case of the “pass gers clandestine”, vertical integration: the publisher buys the workshop of the subcontractor printer (or creates its own printing workshop, competing with that of its former supplier).

In their joint article from 1979, Benjamin Klein, Robert Crawford and Armen Alchian recount how the takeover of the Fisher Body company by General Motors took place in the 1920s. This example offers a good illustration of the theme proposed here.

At the time, cars were still largely made of wood, and manufactured by hand in the workshops of small subcontracting companies. It was only in 1919 that the first presses allowing the manufacturing serial of metal bodies. In November 1919, GM enters into a supply contract with one of its subcontractors, Fisher Body, which stipulates: 1. that, for **ten** years, Fisher Body working at mostly For Gene Rai Motors; and 2. that in GM counterparty commits not to take other bodywork suppliers. The presence of such a non-competition clause (which, today, would be viewed with great suspicion, especially for a period Also long) explains itself easily. THE passage to the serial construction of Pre-formed metal bodies involve a large financial investment. The only way to get of her subcontractor that he accepted to take the risk is not only to give him the promise of an assured outlet, but also of provide him with the guarantee that this promise will indeed be kept. By committing not to use other suppliers during the duration of CONTRACT, General Motors se related by a clause whose non-execution is easy to detect and establish, And of which there sanction born would be SO not difficult has obtain in court. The danger that GM waits for its supplier have finished installation of his presses, for THE

TO DO Next sing And get a revision of the price planned by threatening to go to stock up elsewhere, is effectively countered. However, this industrial exclusivity clause do appear A new problem, symmetrical from the previous one: this times, it's the supplier, Fisher Body, who could be tent to abuse of the protection that him East thus assured, for extort from her customer of the price of monopoly. Hence the introduction into the contract of a mathematical formula Who defines *a priori* how the price of delivery will be calculated, and which also states that Fisher will not be able to charge prices above the average of the price practiced by THE others manufacturers. But he is of provisions a lot more difficult has put in practice, do not would it be that because that over a period of ten years, he East very difficult of to expect, In A written document, anything that may affect relative price movements. By example, no one anticipated the speed with which sedan driving would establish itself on the market to the detriment of old roadsters of there war. Result: General Motors discovers that it makes no profit from earnings scale that the industry makes made of the unforeseen increase in series. It was Fisher who, sticking to the letter of the formulas defined contractually, pocket everything. Quickly, the contractual relationship that General Motors maintains with its supplier becomes unbearable. Due to the fact of unforeseeable circumstances during of its signature, the contract failed in its mission to ensure "equitable cooperation" between them. There is no more than to in to pull THE lessons. In 1924, GM takes the control actions of there Fisher Body Corporation. Two years more late, the Company merged with General Motors, And disappears.

In THE years 1950, During a high-profile lawsuit filed against Dupont, attempts were made to support the idea that General Motors' takeover of Fisher was an anti-competitive move to establish a dominant position. on THE walk American of there window automobile. The reality was different. The merger was simply necessary because, in a young, evolving market

quickly, it was impossible to draw up contracts that can All anticipate and therefore prevent one from finding themselves one day in a position of take lasting ownership a share of the value created Who Normally should to come back has the other.

« *Joint ventures* » *And industrial cooperation, are also shapes self-police of walk*

A other shape of solution by integration East there training of a *subsidiary company municipality*: there press East purchased And operated by a new company specifically formed for this opportunity, and whose capital belongs jointly to A and B. Result: no decision can be taken without the agreement of the other. Which eliminates behavioral risks opportunistic.

Let us imagine a region rich in oil resources, but geographically isolated. The raw material is processed In refineries located to several hundred kilometers. A single pipeline, installed and operated by a independent company, connects THE two regions. Let's look This who risks of happen. The interest of the owner of the pipeline East of pay the raw that he bought to producers THE less Dear possible. Conversely, it is to charge the highest possible price for the oil it delivers to refining companies, while knowing that if he abuse too much, he risk of to stimulate there construction of another pipeline, competing with its own. Vis-à-vis producers, the pipeline is in a position of strength (mono pson). He is their only outlet. Without him, their oil is worthless. Fairly standard economic reasoning shows that, in such a situation, the owner of the pipeline East in measure to impose has those Who him deliver their oil barely a price better than This that it costs them at the margin to extract one more barrel of ground. Such a price covers current operating costs (variable costs), but born enough more For ensure amortization of research costs and well equipment. In other words, producers lose money, but they lose money when even one little less than they would lose

if, judging this price insufficient, they decided to completely stop their activity. A times THE well drilled and put in production, if they have not taken their precautions before, they have not more THE choice. They are prisoners of their customer. Or they accept its price, or they lose all their investments. If they want to minimize their losses, the only solution is to accept the price offered to them, even if it is scandalously low (but not enough to make the sale interesting). construction of a second pipe line). We has a situation Or THE owner of pipeline can appropriate the *gross margin* of the operators without necessarily that her activity stop. Why wouldn't he take advantage of it? Let's now look at the other side of there chain. We have an identical problem: as long as the price that he charge to refiners remains lower has This that he their would have to pay to find different sources of supply, the pipeline may increase its prices. If the prices oils from substitution are very high, again the pipeline can capture all gross margin Who should normally return to the refiners, without losing any deliveries.

He East clear that We have there one example of situation where *the walk born works not*: THE result is no only disastrous for the companies involved; it is also for the economy: of the resources Who Would've been usefully invested in the development of oil exploration and refining will no longer be, the supply will be less abundant, the prices students... Like the "not wise clandestine", those Who abuse the *power of walk* what gives them their position in there sector of production of a given good, are people who are expensive not only to those of which they plunder them investments, but also to all the others. Traditionally, the behavior of the monopolist is criminalized. But, in this case, it is not he who has anything to reproach himself for. This is not of her mistake if, on THE route in cause, he no has economically place that for a alone facility. He could GOOD on restrict his appetites, but he n / A not

reason to do so. If he doesn't not seizing profit opportunities additional that him provides there presence of quasi industrial rents, he risks losing control of his own company made of there competition from other managers who, to ensure their careers, will not have the same scruples. The real culprits are actually the victims themselves Who do not have know anticipate the position in which their strategy investment risked of place them, And Who, in consequently, do not have do This that he needed to better protect their *rights of property* legitimate, and thus protect yourself in advance from any future misadventure.

What could they do? How can they defend themselves against of such possibilities of blackmail? The first possible precaution was not to make firm and definitive investments before to have negotiated of the *commitments to long term* with those on whom we could know that we risked being dependent tomorrow. But since it is generally very difficult to negotiate of such contracts Who be truly effective (*see* the misadventures of GM), another solution is simply to All TO DO oneself, alone Or in association. This is integration. The best defense of oil producers is to join together to integrate transport, and therefore in control THE cost. More of risk of see THE profits of there production diverted by the intermediary <sup>5</sup> • Cepen However, if this solves the problem of producers, that of refining remains unsolved. The new transport company can, as the old owner of pipeline, maintain pressure on THE price requested to refiners. THE producers may be tempted to take advantage of their quasi-monopoly position in supplying refineries to take ownership of everything THE amount of there annuity. HAS the opposite, it is possible that This are the refineries which, in order to defend, integrate transportation. But this do than reverse the problem : they may in turn be tempted to abuse their "monopsony" situation to capture all the economic rent of oil At detriment of the companies

operators. The only technique likely to also protect two ends of the chain consists of them associate In a *subsidiary company common* of which each East shareholder. The best way to defend oneself *a priori* against the harmful actions of an intermediary benefiting from technically predictable economies of scale was to agree to build and manage the pipeline together. It is there *seal venture*, institution industrial Today so characteristic of our modern economies. Provided it is based on contracts that are sufficiently well designed to recreate the conditions for a more balanced sharing of income, this formula of *co-ownership* industrial eliminates the risks of monopolistic exploitation originating from very character specialized, And SO totally immobilized and inconvertible, certain investments; in doing so, *it also re-establishes the conditions for proper functioning normal of walk.*

It is true that the contemporary capitalism characterized by increasingly complex networks of increasingly impenetrable financial and industrial interdependencies. Many people see this as confirmation of the growing influence of "monopolies" on our daily lives, and therefore a threat to competition and consumers. The preceding examples suggest that it is on the contrary a natural form *of* market self-policing whose role becomes all the more important that evolution technological We door towards industrial sectors based on investment chains whose increasingly specific and highly specialized character favors opportunities for behavior "opportunistic".

As in the example of business practices born of there need of TO DO there hunting to passengers clan destinies ", it is a kind of spontaneous adjustment of the existing structures of "property rights » to respond to new situations created by growth<sup>6</sup>.

*The more complex and sophisticated the products, the more economic agents devote an increasing volume of resources, either to protect against fraud and the "opportunistic" actions of others, or to try to convince others of their good faith and their own credibility.*

Integration is a solution that does not is required only in a limited number of circumstances (rather capital goods, where the appropriable quasi-rents are in general important). Of the that we pass has of the activities leading to commercial relationships with a large number of partners, each of whom can only appropriate a plot of land of annuity (as it's the case In there distribution of consumer goods widely distributed), it is necessary find others solutions Who save the advantage of dealing with people who are legally autonomous, and therefore more economically motivated, because responsible.

Let's imagine that the editor B And the printer HAS have been in business for a long time. Everyone has gotten used to it from the other. We know each other. The faults and qualities of others no longer hold any secrets. B knows for example what to expect as for the average quality of A's work, the risks of delay to be expected on promised delivery times, the risks of strikes to which he is exposed by dealing with A rather than with his competitor C, etc. Conversely, A knows that B generally pays his invoices thirty, sixty, or even ninety days late on the due dates. conventional. GOOD on we will assign the other in court if a delivery is not not done, if a check comes back unpaid, or if circumstances intervene constants which undeniably represent an abusive breach of the commitments made. But most of the time, the harm is not worth the inconvenience. Knowing that this kind of problem is almost inevitable, a solution For se protect East to integrate by

advance the *cost estimated* in the calculation of the conditions purchase or sale proposed to the other. Unfortunately, as these estimates are purely “subjective” (this is the judgment staff of chief business Who intervenes, more than statistical data detailed), this behavior is generally considered a *discriminatory practice*, reprobate by laws on there competition. Consequence: because we consider that he is not not “loyal” that people make sure themselves against THE small risks commercial personal inherent has all relationship Merchant, we have this result that it is there “victim”, the one who does the costs of negligence of the other, Who must bear it THE costs, and No the one Who in East responsible. A such transfer is no less uneconomic (nothing encourages people to see me less careless) that opposite At sense THE more elementary of the justice: he there is beautiful and good appropriation by the one Who East negligent of a value of which we born can deny that she belongs legitimately has the one Who East there victim of her neglect. That This last accepted of undergo THE cost of this negligence because changing supplier or customer him would cost more expensive, imported little. We has typically a situation of quasi-rent Or, in speaker the name of a design allegedly anti-discriminatory of the trades, THE legislator in reality favors THE less serious to the detriment of others. It's the world upside down. This technique protection has however A inconvenience. If the damage feeling by B of makes behavior of A is most important that the advantage staff that A withdraw from this situation, it is impossible to find a price such that B no longer has to suffer any damage caused by HAS. This solution is not not satisfactory. **B** will continue to seek some thing For solve her issue. Another solution is to do the opposite: offer to pay more to encourage the other to cheat less or to show off. less negligent. By example, if HAS has the habit to deliver work of lower quality than that in prin expected by his contract, B can offer to pay him 10% of more if he succeeds has him give Exactly there quality

requested, but specifying that if it does not achieve this objective, he will not hesitate not has go at the house of A competitor. HAS may not perform his contract. He will not be brought before a court. But it will cost him damage equal to the cumulative and discounted sum of what the 10 % if he had kept B's clientele. The extent of the quasi-rent that A can appropriate to the detriment of B East equal to the value that it can divert to his profit by not fulfilling his specifications without B deciding to file a complaint in court because this him would cost even more Dear that he does not him in cost presently. If the extra price offered by B is calculated in such a way that in the event of withdrawal of its customers the damage imposed on A is greater than this that the benefit of this quasi-rent brings him, A is then confronted with a situation where he him in cost more Dear of cheat with THE commitments to his contract that of comply with it. The problem is solved. *We have a mechanism that encourages people to remain faithful has their commitments.*

But this solution It also has limits. The more we are in of the areas Or he East faintness of write of the complete contracts, precise and clear, and more these contracts relate to characteristics of products or services difficult to quantify (which is often of more and more THE case In industry modern, And has For consequence of raising the cost of appeal judicial normal), plus the extra of price necessary East pupil, And less THE mechanism is therefore effective. By elsewhere, this technique is not really interesting that In THE case Or THE two parties win has maintain a relationship commercial sustainable. From where use of a third method : THE *pawnshop*. Let's come back has OUR example initial of the editor And of the printer. Let's imagine that For to print her new product, B either ready has to commit For ten years In a contract with HAS, but nevertheless fears that Donkey take advantage of this security For don't always scrupulously respect THE standards quality that he him request. How to to pull, in knowing that B has For objective of reduce At

minimum possible costs of legal litigation? Answer : instead of making the investment himself of the special machine whose use he would have rented to its supplier (which is a common formula in subcontracting), B explains to A that he will only do business if it is he who acquires ownership of the machine (even if for this he must advance the money). Likewise, he tells him that he born will sign that if THE CONTRACT contains a security clause where it is provided that in the event of non-compliance with the prescribed standards during a period of reference, B reserves the right to unilaterally terminate their relationship commercial, without notice or compensation. The reason death two requirements is not difficult has justify. It all comes down to the highly specialized nature of the machine in question. **If Not** \_ does not hold his promises, and if B brings into play the unilateral termination clause, A will end up with a press that is certainly very efficient, a real gem, but practically unusable, and unsaleable (except with a very high loss on its purchase value). Failing to meet expected standards At contract entails SO For HAS a immediate financial sanction, equal to the difference between the purchase cost of the machine and its (very low) resale value. This difference represents a risk which itself can be assimilated to one sort of *bail of guarantee* that the publisher requires the printer to give him the deal. By agreeing to take the *risk of the owner*, A demonstrates that he intends to faithfully respect the standards of her CONTRACT. He asserts her Good faith And his good intentions. **B** has all THE reasons of THE believe. We has A mechanism which minimizes the risks of “ opportunist” behavior of A compared to B, And that without that he or need to involve the threat of any legal sanction. *Grace has there structure of property provided for by the contract*, we has a mechanism self-discipline Who rests on the alone interest staff of the parts. A mechanism Who make that of the contracts who would not have summer past, due to risks post-contractual too much students, THE will be has cause precisely of the reduction of risks Who in results. All THE

world benefits from it. Not only A (which will more easily carry THE walk that propose B, and has A price undoubtedly more advantageous). Not only B (who knows that he thus takes less risk in signing with A). But also the rest of the community, which benefits from the dividends generated by the reduction in risk. And the more we live in a society where goods are complex and technologies increasingly sophisticated and specialized, the more we all benefit from seeing this type of contractual arrangement se develop.

*investment in THE trademarks is there key of vault of the mechanisms by which the market agents get organized For TO DO their own police, ensure maximum loyalty in exchanges, and thus reduce their risks And their costs.*

Let us now assume that publisher B has put A in competition with a another printer, And that between THE two he has difficulty making his choice. How can A convince him that he is the one who offers the greatest guarantees serious And reliability?

A solution East that HAS propose himself of TO DO directly the investment, and thus take the initiative without waiting that we him request. But as his rival will have without doubt the same idea, a better strategy is to get ahead of it by building up *reputational capital* in advance commercial more important.

So that each THE knows, a reputation industrial, a commercial brand image, are goals that take years to build, but which, once achieved, are extremely perishable. A brand, a reputation destroy more quickly that they don't se make. Of thereby, All This Who y East dedicated (there sum cumulative of the net financial flows invested in the creation of the company's brand, then in maintaining its notoriety) represents, as THE risk of owner taken with the purchase of the machine, a sort of *bail* of which there value vis à vis of the

third party comes from high *financial risk* that the industrialist now takes if he doesn't do All This that he must TO DO to maintain the standards of quality and reliability to which it is committed in his contract. He it is a form of *self-insurance* offered by the company to its customers against its own risks of poor workmanship, the costs of which are well reflected heard in THE costs, And that THE customer accepted implicitly to finance through an additional cost (the amount of which should in principle be equal to the additional price that the buyer offers to the seller for that he renounces THE deceive).

By showing that it has invested massively in the accumulation of important *intangible assets* linked to the company's image and its history, A signals to B that it would cost him very dear if he took the fancy to try to deceive him. We find a mechanism that reduces risks of behavior "opportunistic" of HAS, And lowers THE "transaction costs" of B, but whose origin East linked this times has there presence of a competitor vs.

That said, there is still a problem. The contract that the printer is preparing to sign East heavy and restrictive. If we stick to the letter of the clauses mentioned, it is he who apparently takes all the risks. For him to sign, he must still have the assurance that once thus linked to publisher **B**, the latter will not take advantage of it, for example, to *unduly apply* the termination clause on the day the contract, for one reason or another, will no longer please him. How to protect yourself against such a risk? How to protect yourself against such makes a prince"? There are the national tribes. But appreciate the character abusive or legitimate of a contract termination is precisely the kind of circumstance Or THE appeal has there justice are THE more problematic, especially if it concerns products or services where the quality East A criteria difficult has measure has leave objective elements. So what to do? Answer: If A is a good business manager, he will not accept sign such contract only with a firm that itself has an impeccable reputation and brand image; a firm whose he knows to

advance that due to the enormous sums previously invested to establish the notoriety of his name and her products, she would take a *risk financial* himself colossal if she put herself one day to no longer behave so “loyal” with his suppliers (Or his clients)<sup>7</sup>.

THE system loops completely. He would be wrong to believe that all risk disappears. But without that he or need to call on the sanctions from an authority outside the market, we now have a situation where the probability of see THE people deceive THE others, cheat with their commitments, or even se behave in a frankly unfair manner, is considerably reduced. Everything that THE firms devote to marketing, has The advertisement, has Communication, to relationships public, has there promotion of their name and their brands... all this is not wasteful plundering, but GOOD At opposite A cog central of the implicit procedures by which, under the constant pressure of competition, agents of the market organize themselves to create their own police force, ensure maximum loyalty in THE trades, And Thus reduce At better their risks and so their costs.

*Precariousness clauses are essential for the self-discipline mechanisms of the market to work. We must stop seeing it as nothing more than a manifestation of abuse of power.*

The growing importance of communications spending tion And image of brand makes OUR Company of more and more sensitive to problems posed by there presence of the “passengers clandestine”. From where there multiplication of sys (selective) distribution and contractual practices that we find difficult to reconcile with our traditional conceptions of competition. It remains to explain the origin of the growth of these expenses; why they play such an important role today in industry and modern commerce. This which precedes suggests that this is also a consequence of the evolution

technological. More We let's orient our consumption towards goods including the characteristics are less and less directly observable (goods said of experience, according to there terminology from the economist American Nelson), more our techniques of manufacturing are sophisticated and involve there putting in artwork of process closely specialized, more We let's create this sort of issue who drives precisely THE agents economic (And SO the market) to resort with self-disciplining virtues and self-insurance of commercial investment " immaterial ". However, it is important to note that the entire mechanism born works that because that, In the contract that editor B offers to the printer A, figure one clause which specifies that at case where B would estimate that HAS born fill more his commitments of manner satisfactory, **B** se would find grounds has seek A other supplier without to have has him  
oven  
nir *neither prior notice neither compensation.*

Let's imagine Indeed that **B** behaves in a way unfair with regard to A. His director, to free himself from his obligations, invokes what is clearly a bad reason. Printer A files a complaint. As **B** is a large, nationally known publishing house, but dominated by of the interests foreigners, there press seizes of the affair. A becomes the symbol of the shamefully exploited SME, squeezed by the big capital of multinationals. The proof, it is said, is the *asymmetric content crick* of the contract: all the obligations are for the subcontractor, nothing appears which would determine what the obligations of the large firm are in return. How can we admit that, even for well-founded reasons, the principal can withdraw without having to give the slightest notice? nor the lesser compensation? Do we not have not here is an example of a *leonine contract* built on a succession of *unfair clauses* whose use reflects the situation of dependence and subjection in which the SME finds itself as soon as it specializes in services too closely linked to the activity of large businesses? Isn't this the kind of situation where he East legitimate that the legislator where the

official intervene For restore A report force more balanced, and thus bring back the conditions for real competition? Conclusion: a commission of inquiry East named. She suggests that a law is passed which gives a Commission competition the power to verify compliance of the content of commercial contracts with the requirements of healthy and *balanced competition* !

That upon reading, the contract gives the impression of *unilateral dependence* is indisputable. But there is a reason for this : this is because of the commitments and risks subscribed to by the two partners, those of the subcontractor are much more explicit and easier to describe. But THE charges of giver orders don't exist no less: this is all the risk that the company takes by giving in pledge of her Good faith THE investments she has In THE pass dedicated has to build her reputation and her credibility. From this, because they stick to the letter of the contract, and because that they don't do not make the effort to replace each one of the clauses in her global context, the criticisms do not hold none account. Let's imagine than to there following of This scan dale, we decide that in the printing industry we will no longer be able to change suppliers without owing them at least one year's notice, and compensation representing several months' worth business. THE consequences born are not difficult to identify : THE risk financial that THE subcontractor takes by committing to respect certain standards is reduced accordingly. Everything that makes the system coherent is collapsing. The risk of the editor is no longer big. And who says more of risk, said, all things equal Besides, less of value created. Perhaps the printer feels safer. But this security, we let's all pay it very expensive by less efficiency economic, And SO less of growth. The printer himself pays for it by having greater difficulty finding customers. The relative prices of one's profession have increase. li y has less of orders for everyone, less work, more unemployed, etc.

If THE contracts foresee of the *clauses of precariousness*, This

is neither a coincidence nor the expression of a abuse power; but because this precariousness, when freely accepted, is an essential factor of self-discipline. Only *commercial usage*, exercised within the framework of total freedom of contract, can tell us whether such clauses contribute or No has to strenghten efficiency of operation of our circuits economic. Deprive them companies of right of sign of the commitments precarious amounts to preventing them from mobilizing all their competitive assets. Competition is nothing more than a pretext; regulation one alibi to protect no not a competition "fair", but vested interests that really competition free would put precisely has wrong.

### 3. *An example of application: contracts in distribution automobile*

To illustrate the importance of these mechanisms, and prove that This gender analysis is not not a construction purely theoretical, we will take a concrete example of a *system contractual*: there distribution automobile<sup>8</sup>.

Through reference to the automobile market, the aim is to illustrate of manner concrete how there socket taken into account by the micro-economic analysis of new theoretical concepts such as the notions of information costs, costs of transaction, "passenger clandestine", but Also investment "specific", of "almost rent", implicit contract, etc., allows us to better understand the reason for the industrial structures observed. It is also a matter of better understanding how *the economic theory of contracts* makes it possible to move forward in the development of a general theory of production and exchange capable of *accounting for the variety of forms of property and of contracts that we meet in the world industrial real*.

*There structure of issue: avoid THE " passengers clan destinies »*

The automobile is a highly sophisticated product, manufactured in large series, where questions of *safety*, quality, reliability and *service* are essential. Except for the body line, color, interior layout, additional equipment, features of the product are not directly observable. They are only revealed to the buyer through use. The automobile is a typical *experience good*. From this arise three consequences:

1. The automobile is an industrial activity which consumes a lot of advertisement. There reason in East simple : it is precisely because that THE problems of quality and service are so important there. For such a product category, the big question is that of the conformity of the goods Effectively books to features described by the maker: what guaranteed consumer only once THE product order, the one Who him will be served will be beautiful and compliant? The answer lies in brand and reputation policies: the fact that a manufacturer invests raised to flaunt his name and extol the merits of her brand creates A *risk financial* extremely strong for the case where the products delivered would too frequently turn out to be of lower quality than that displayed. In this optical, the advertising expenses and of promotion of brand constitute both a commitment moral to deliver the promised characteristics, and at the same time a sort of possible self-sanction if what is sold no longer has anything to do with what was promised. The more intangible assets accumulated by the brand, the more there sanction And there discipline will be strong. We has Thus a sort of *implicit contract* between the company and its customers; they agree to pay more expensive for compensate the manufacturer for the sums invested in the brand, and the latter agrees to take a commercial risk of the same

more important the more he will have invested. Commercial investment represents a sort guarantor of his good faith<sup>9</sup>.

2. The automobile industry requires well-equipped, serviced sales locations by a staff competent, and of a certain commercial attraction.

3. The automobile industry is an industry where the quality of services maintenance, repair and after-sales, at the local level, is essential.

To sell its production, the manufacturer has the choice between setting up its own network of subsidiaries or branches, or go through the intermediary of resellers independent of him. If he is the owner of its stores, the industrialist has the advantage of directly controlling the level and quality of services rendered. However, he does not do enough to give of the orders, again should we that they be applied. Control is relatively easy as long as production operations are concentrated. He becomes problematic when we are dealing with a geographically dispersed activity. Hence the preference for independent, financially responsible resellers. However, there remains a problem: how get that they provide the desired services? Manufacturers can let traders know that they will only supply them if they commit to ensure a certain level and an certain quality of service. But we then come up against the problem posed by their presence possible of "passengers clandestine."

For the elimination, a formula is, like us we saw it, the price imposed. However, the effectiveness of this method depends on the intensity of competition aroused between distributors. There is less technical interest if it is about products for which exist significant economies of scale in distribution. This is precisely the case of the automobile. From where the choice of the other solution: selective distribution, with territorial exclusivity. The choice of a formula of distribution selective is explained by the problem of "drift in sales. A problem which has all the more more likely to be important

in the automobile industry that it is a sector where producers make, for the reasons we have just seen, significant efforts to promote brand image. Agree to sell your products through distributors multi-brand returns has take A risk huge to see its competitors behave in " illegal passengers on his expenses of advertisement And of promotion. From where the preference for single-brand distribution, characteristic of system of the concession.

Territorial exclusivity guarantees the reseller the benefit of a geographical rent which, normally, is designed to encourage him to make the necessary equipment effort. But She has Also his disadvantages. There annuity of situation Thus granted At distributor is THE produces commercial investments of the manufacturer. As such, it is he who is the true " owner ". If nothing is planned to affirm its " property rights » on the financial repercussions of his decisions, we has a situation Or THE distributor benefits from a position of " free rider" working free of charge on the investments of its supplier. Result : since It is someone on the other (the retailer) who reaps the fruits of his brand policy, the most economic rationality simple him dictates stopping the charges. The brand having a useful economic function (She East has there times A condensed information and a guarantee of monitoring and quality), the fact that the producer don't invest more represents a loss For THE consumer. Whether it concerns other manufacturers, or even just his private distributors, all stowaway » leads A cost social.

How to correct this situation? If THE national market is homogeneous, there is hardly any problem. It is sufficient for the manufacturer to charge retailers a transfer price which includes the payment of a charge covering the value of protected access to the brand's reputation capital. If the distributor himself makes commercial promotion efforts, the territorial monopoly guarantees that it will be alone has benefit of their spin off. So much For THE maker

than for the retailer, thus seeing their “property rights” protected, that THE decisions concerning THE objectives of sale, THE price, Or THE investments In THE points sales are taken in a decentralized manner by each independent reseller, or by the central staff of the builder, he y will have little of difference : THE vector “sales-price-services” which allows the manufacturer to obtain the highest profits students is the even that the one who max bets THE recipes retailers.

*There structure of there solution: THE CONTRACT of distribution*

If the product presents significant *geographical heterogeneities*, as is the case in automobiles (where elasticities of there request are very different according to whether you are in a rural area or an urban area), the things are SO more complicated. Sales objectives and price, for the different models, have all chances of no longer being the same depending on whether the decision is considered by someone of which there concern central East to make the most of the entire national market, or on the contrary by someone whose calculation horizon is exclusively local. In the latter case, leave the agent local freedom of its decisions amounts to recognizing the freedom to impose on its supplier a new “externality”: the shortfall that will result from what will be sold as a priority of the models others that those that he would have preferred to see sell to achieve the production objectives on which he counted to minimize his costs. If all distributors do the same, will be sold a basket of vehicles and models different from that which would have minimized the brand's costs, and therefore ensured optimal use of its resources. Result : he born enough not of to guarantee THE “property rights” of the manufacturer over its intangible assets to re-establish the conditions of an economic optimum; it is also necessary to give him some control over the distributor's decisions. You have to give him the possibility of sanction THE decisions of his concession-

naries Who enter in conflict with there strategy commercial of the brand.

The solution is to include in contracts clauses Who recognize At constructor :

1. THE right to impose has his dealers the obligation to achieve certain minimum sales objectives (quota systems);

2. THE right of their impose there delivery And there sale forced to vehicles No previously orders;

3. the right not to satisfy all of the seller's requests (abandonment of All appeal against THE constructor in the event of non-delivery of an order, or non-compliance with delivery deadlines delivery);

4. THE right of sanction his resellers in their removing the profit of the franchise territorial;

5. the right of withdraw Concession of the brand according to notice conditions freely set, and without compensation ;

6. THE right of se give of the time limit of prior notice very short. The general economy of This contract system is not difficult has justify. There franchise territorial represents a kind of compensation offered to distributors for the right recognized At constructor to impose to concession companies of the decisions different of those who would have summer freely THE their. THE three firsts clauses (quotas, sales forced, time limit of delivery) give to the manufacturers AVERAGE to impose has their lens distributors different of those that they se would be freely fixed. That allow to ensure there coordination of the local actions of the dealers with the commercial policy of the firm and of her network, and sanction especially those Who abuse of their position local of monopoly to practice, on some models, of the price too high compared with to standards desired by there policy commer cial of there brand.

The withdrawal of the territorial franchise, then of the concession itself constitutes the sanction and appeal system ultimate when what precedes is not enough not For

discipline a recalcitrant dealer. The first action consists of threatening to authorize the opening of a another store located nearby and which could then behave as a " free rider" on investments of the one that we seek to discipline. The appearance of such competition leads to a financial loss which has two aspects: on the one hand, the shortfall which, in the short term, results from the fact that the investments already made can no longer be amortized over a figure of business equal to that taken into account when deciding to invest; on the other hand, the drop in value of the business caused by the presence of a new competitor Who reduced THE future prospects of profitability. In the event of pure and simple termination of the concession, the financial penalty becomes heavier two others chefs : THE cost of brand-specific investments that will definitely be lost (Or liquidated at a value of paltry resale); the purchase cost of the balance paid to the manufacturer upon acquisition of the concession. Result: when he signs her franchise contract, and provided that the latter does not recognize overly generous conditions of notice and compensation, the distributor agrees to expose oneself has A risk financial pupil For THE case Or he would take him fantasy to pursue a commercial policy that is too far removed from that desired by its franchisor. This risk represents a sort of guarantee, a guarantee of its real desire to respect the spirit of the association contract. More the value of this bail East high, more big East insurance that THE franchisees do not will take not THE risk of " cheat" with THE defined business imperatives by THE franchiser. But has the opposite, this bail will have especially less value, and therefore fewer disciplining virtues, than the legislator will impose to parts THE respect of terms moreover more demanding in terms of prior notice and compensation of breakup.

*A asymmetry Who is not that apparent*

A reaction classic is of denounce the relationship unbalanced relationship which would thus be established between the distributor and its supplier. If the manufacturer can slow down the pace of his deliveries without to have has go away explain; if he can freely refuse to deliver certain orders, but on the other hand force the distributor to take charge of the sale of cars for which no order has been placed; if he can has discretion, with minimum notice and without compensation, deprive of their investments those who had committed themselves by trusting him, what is stopping him from doing so? abuse? If all is made for sanction the retailer who would conduct a policy too much independent, nothing is planned to sanction the manufacturer which abu would be of his position. Don't we have there A example of leonine contract whose adoption only reflects the situation of dependence and subjection in which the merchant finds himself franchise?

The answer to this objection we have already given in evoking THE mechanism of surety bond implicit what represents for customers the importance of the sums devoted by large companies to the creation and maintenance of the notoriety of their brand. When such a company offers itself the luxury of a particularly ostentatious advertising or commercial promotion action, it is as if She sent to THE market a message to tell consumers that it is committed to remaining loyal to them. This which is valid for there customer base in general, applies to relationships between THE automobile manufacturer and his franchise distributors. More though there customers of motorists in general, dealers form an environment where, by definition, information on manufacturers, their politics, their results, their practice, their behavior, their loyalty, etc. circulates quickly. There is of the organizations, of the journals, of the newspapers including there function is precisely to collect this information, from the

maintain has day, And of there communicate to members of the profession. Let's imagine one constructor abuse of her position has the encounter of a member of his network. He him took of his concession for a futile reason, Or again the punished for of the reasons apparently non-existent in him imposing quotas absurd. This gender of information born will not remain confidential for long. The news will quickly go around the network. Each colleague of the unfortunate dealer will fear that what we do to others, one day him TO DO also. He will take measures for to protect yourself - or at the very least reduce financial risk. that he has invested In her membership to the network. There The market value of brand membership will collapse. The manufacturer will have of more in addition of hurts find again dealers, And has monetize his franchises. He will get less silver. But there sanction doesn't stop there. Each agent, rather than investing in the auto mobile brand that he represents, will prefer to place his availability elsewhere. A divestment process is underway. In not contributing more as In THE pass has the interview And upon renewal of the image of brand of the network including he is a member, each distributor imposes on the unfair or defaulting manufacturer an economic and financial cost corresponding to more pupil that he him in had cost more expensive for to constitute this brand.

There Again, It is THE risk pupil Who results of the import

tance of the image of brand in so much as an intangible asset which is the best self-discipline of large modern automobile manufacturing companies, and the best guarantee of their distributors against possible abuse. This means not that there is will never of conflicts, which we will not close no establishments, that others will not lose their franchise, or their territorial protection... but at all THE less This will not be not without of ,good reasons.

The asymmetry on which the State relies to intervene in the regulation of private contracts no longer exists if we consider all of the economic and financial implications which result from the structure of relations explained.

quotes and implicit which bind the builders members of their networks. The automotive industry offers a particularly characteristic example of a contractual system Or efficiency economic of there distribution, but Also loyalty \_ of the commitments are ensured by of the market mechanisms based on a principle of *reciprocal guarantees* freely negotiated.

But when we look at how legislation is evolving, we discover that the first concern of public authorities, in the name of "equity", is precisely to impose contractual rules on partners guys who break it all efficiency. This Who favors the narrow interest of distributors, not only to the detriment of manufacturers, but also consumers.

### Notes

1. See THE book of Bertrand LEMENNICIER, *THE Walk of marriage*, Presses Academics of France, Paris, 1987.

2. The legislation has summer considerably relaxed (decriminalization of refusal sales). But these practices nonetheless remain *a priori* • suspects •. See analysis of the annex 6.

3. Strictly speaking, the *quasi-rent* is defined as there difference Who exists between the current value of the resource in its present use and value which would be its own in its second most productive use. This difference represented there go of value Who can be appropriate by the other by a behavior • opportunistic » adequate. See Benjamin KLEIN, Robert CRAWFORD and Armen ALCHIAN, • Vertical Integration, Appropriable Rents and the Competitive Contracting Process », in the *Newspaper of Law and Savings*, 1979, pp. 297-326.

4. Victor P. GOLDBERG, • Regulation and Administered Contracts », *Bell Newspaper of Savings and Management Science*, 1976, pp. 429-431 .

5. This example do immediately think has a other. He is of the problem of • super power plants • purchase. Manufacturers complain about power purchase tremendous acquired by there distribution thanks has there training of super power plants grouping THE orders of their members. These power plants blackmail industrialists with delisting, we are told. Who, account tenuous of the importance of orders in game, their permission to get of the discount And rebates that THE producers find of more and more excessive. This behavior is generally denounced as being the expression of a situation of unhealthy competition, and industries born don't miss a opportunity for ask to powers public to intervene. This that we have is one situation where the distributors benefit

of the power that their relative concentration gives them to appropriate the quasi-rents available from producers. This results in the fact that the distributors seize part of the • normal profit• which should in theory fall to manufacturers. Hence their further recriminations in more lively of do that they see threatened in their survival even. In this case, the answer consists of advising manufacturers to regroup And of form their clean cartels capable of restore a negotiating strength equal to that of their interlocutors. But such cartels are prohibited by law and would be without no doubt condemned. For what to forbid to producers This Who East of *facto* allowed to scoring distributor? In Switzerland, the Cartel Commission authorizes the formation of such cartels of defense. We has there one example of there way whose legislation, even improved by THE reforms of 1985 And 1986, favors there distribution to detriment of the device of production.

6. Let's clarify that this adjustment is not spontaneous• that because there with pressure of there competition - particularly that of the teams of financial and managers competing to acquire control of firms that do not fully exploit the profit opportunities offered by their industry. It is only through this competition, which permanently constrains managers Who hold the positions of direction to make every effort to find the solutions More appropriate has their situation, that we discover what is necessary or what is possible to do. That We brings back At role fundamental of there Sotck exchange And of the markets financial. There Or there Stock market remains A walk rump, THE adjustments se will make way extremely slow. There Or THE markets financial are GOOD structured, equipped And efficient, THE answers to situations news created by growth will happen more quickly. We will have a particularly innovative market, And SO all the more efficient. He must insist on the fact that •spontaneous• does not want not necessarily mean "automatic". It all depends on the institutional environment. Self-regulation only plays a role there Or we leave alone THE structures capitalists THE more free of function and to develop.

7. Here again it is important to emphasize the essential nature of the context competitive. If THE things se pass like this, it is because that Everyone knows that what they do not do and what they should do will encourage another to try to take their place to do what they should have done and did not do. Self-organization of the market depends on how institutions encourage Development of behaviors competitive.

8. This section East inspired of a study published in 1982 by A economist of University of Arizona, Richard L. SMITH, • Franchise Regulation , an Economic Analysis of State Restrictions on Automobile Distribution •, *Newspaper of Law and Economies*, 25 (April 1982), pp. 125-158.

9. For a theory complete of mechanism, see Benjamin KLEIN And K. LEFFLER, • Non-Governmental Enforcement of Contracts: The Role of Market Forces in Guaranteeing Quality •, *Journal of Political Economy*.

## **Advocacy For A free exchange agricultural \***

We reason as if agriculture were a separate activity which, due to certain characteristics, cannot be regulated by free markets like others. This argument has today lost much of its force. Liberalism is not anarchy. Laissez-faire is not let it go. He ... not it's not about d All suppress, but, through a return to the disciplines of the rule of law, to bring back to life markets that forty years of dirigisme have gradually do disappear.

In their famous judgment of 1982, the nine wise men of the Palais Royal have confirmed the value constitutional of the guarantee of property rights. In two ways. First of all in referring to the very text of the Declaration of human rights of 1789, now an integral part of the bloc of constitutionality of French right. Then, in se refusing to declare the nationalizations of 1982 unconstitutional under the pretext that if they actually affected the property of certain French people "in particular" (for reasons of public order whose merits can also be contested), they did not, however, put back not in question the principle even property  
" in general ".

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\* A part of This chapter a was published as an article in the journal of Patrick WASJMAN, *Policy internationale*, issue dated June 1989.

He East TRUE that, on THE legal plan, the principle of property rights today seem better assured than they are used to be. We is however entitled to wonder what East THE degree efficiency real of this protection.

When THE government socialist of nineteen eighty one undertook to to modify THE diet of the reports between THE owners of housing And their tenants, many were those who, at just title, denounced the effects harmful which were to result. Events gave them ray her. Even today we are paying the price of this disastrous law. To touch to rights of the owners generates a shortage which, a few years later, inevitably causes there rise of price. There are economic laws of which person n/A THE power of free oneself.

We know less that agricultural and land ownership is also the victim of a similar movement. More as well as real estate and urban property, property rural area has for more than forty years been the victim of a process erosion and of dismantling of his rights in which the major media have shown little interest. With the development of quota policies, this development reaches a critical threshold beyond which the very concept of ownership risks being definitively called into question (even if the institution is not touched in principle) .

### *A « basket of rights »*

This that we calls there property is not one « basket of rights » organizing there way of which are insured there possession, use, there arrangement And there transmission of the goods. Traditionally, these rights are classified into three categories inherited from the law Roman: *usus*, the right to use the thing; the *fruit*, THE right to receive income; and abuse , THE right from dispose And of alienate him freely At profit of a other person.

These rights are subdivided into an infinity of elementary attributes such that, In THE case of a business : THE right

to choose its customers, its suppliers, its techniques; the right to charge the sales prices that we consider most appropriate; THE right of refuse of to treat with someone in Who we n / A not trust; the right to change of activity, to cede the management (and/or the income) temporarily has A other, from decide there closing, etc.

In the Western conception of private property, these rights share the same characteristic of being rights perpetual, *personal And exclusive*, of which THE principle is that their control remains unfailingly attached to the person of the owner (even if the latter, within the framework of freedom of contracts, can freely temporarily transfer its use to third parties). It is the famous founding rule of *the unity of property*, the main legal innovation of the Revolution and the Civil Code and which, on the legal level, allows precisely to distinguish the one who has the ownership of a thing from one who has only bare ownership of it Or usufruct.

From the moment when, due to any legislation or regulation, the exercise of certain of these rights becomes even partially conditional, and where their implementation is now subject to decisions unpredictable others people, he no has more of *unity of control*, therefore more unity of property. It is the very structure of the liberal conception of property which is shattered, giving rise to a complex and shifting situation, where individual and collective rights now intersect, with uncertain boundaries. And wrong defined.

The organization of property rights then loses this construction and this precision in the relationships which explain the greater economic efficiency of the system. From private property survives the concept and the expression. But the institution is emptied of its substance. Little by little, without being clearly aware of it, a legal regime where rights derive from a philosophy which makes property the natural extension of the person human, we pass In A system radically

different; a system where individual rights do not appear more than as of the *rights conceded*. At the name of a personality collective. From now on, alone holder of all THE attributes of their property, and of which THE Individuals and private groups only have a more or less complete delegation of use, but always temporary and revocable.

Nothing is more revealing of this mutation than the fact that it is necessary now a administrative authorization to set up as a farmer, *including on your own property*. THE Constitutional Council in vain to affirm that the limitations don't have not a serious character such as damage to the property rights distorts its sense and the real scope of it and is subsequently contrary to the constitution" (decision of July 26, 1984), he doesn't remain no less than has exchange of order social.

### *The outcome of a long derivative*

He East TRUE that in agriculture this erosion of the property is not not A phenomenon recent.

Since the war, and more particularly the provisions of 1946 on the status of tenancy, land ownership has seen its sphere of autonomy reduced to a point that many, out of world agricultural, ignore.

For example, few people know that for more than forty years, relations between rural owners and their farmers have been governed by a statute that the socialists of 1981 only had to transpose to the field of real estate rentals. to obtain the Quilliot law: same style of clauses, same devices, same purposes.

There motivation original was of codify their drafting of rural leases in order to offer peasants protection against what was considered by I "arbitrary" owners. Who, before the war, controlled THE organizations of the profession and sometimes had, in certain regions, a position policy almost tyrannical.

HAS the time, we counted Again three times more farmers In THE fields. There majority of the farms did not reach even not THE twenty hectares (against an average of seventy hectares Today). THE rural structures were very different. As for the labor law, some expected the legislator to correct what seemed to them be a *asymmetry* obvious in the capacity of contract of the some by report to others. This is how the Rural Code set as a priority the terms and the shapes Who have to be respected to carry out there furlough or eviction of a farmer; with for consequence of severe boundaries At right of reprise of the lessor (right from the farmer to there renewal automatic its lease; the right to pre-emption priority of the policyholder on the property of lessor in the event of sale; limited right of recovery of the lessor in case where he wants to take over himself exploitation, or install there one of his children...). However, a times that we mastery THE main factors in establishing the lease, it's tempting from take the opportunity to go further. Especially, when it comes to a profession that represents A so rich pool of voters. It is This Who its pass At course of the three recent decades, of law agricultural in framework law, Or law land, with as points climaxes First of all there law of 1980, then there law Rocard of 1984. Below THE pretext of return to principles original And of to correct This Who was perceived by THE organizations of youth farmers as a lax evolution of there jurisprudence, THE provisions of the law have summer gradually hardened And are become moreover in more restrictive At detriment of the lessors. On point of take A character Frankly asymmetric, but In the other sense...

*More far that there law Quilliot...*

Since 1984 the Rural Code has contained an article which makes the status of tenancy a provision of *public order*. Otherwise said, more person n / A THE choice. Knowing that,

Since 1980, THE legislator has imposed to courts an interpretation more restrictive of the different practices which, In some circumstances, allowed escape to provisions of Coded rural (example of the sales of growing herbs), the the only authorized contractual relationship is now the farm lease, with all its restrictions, its constraints, but Also her subjugation to Meticulous and arbitrary disciplines of structural control. Let's imagine A farmer dynamic And enterprising Who longed for expand. He consider to buy (Or of rent) about twenty more hectares. Before to go before the notary, he will have to file with the prefecture a file in several exemplary, and get an authorization that the prefect will not deliver him only after advice from the Departmental Structures Commission (of which the job is to check proud that this operation born will do not pass there surface of his exploitation above of maximum number hectares planned In THE plan director of the structures agricultural department). He born should not, We we assure, that in monopolizing Thus a few hectares of more than what the agronomists And THE local unions estimate necessary For constitute a honest exploitation of dimension family sufficient For be profitable, he private another young of there region of there possibility of to establish him Also on a unit of culture viable!

A few hundred meters away, an owner-operator wants to emigrate to the city. He puts his property up for sale. Several buyers se present, but none does not want of batch in entire. Each covets only a few plots. Once again, head to the prefecture: the division of her property risk of deprive THE walk the offer of a viable farm on which SAFER could install one of the young people it intends to help get started; he agrees SO of him ask if She whether or not he wishes to exercise his right of pre-emption. She has two months to respond. If his offer is contested by the seller, A call East possible. It is THE judge Who will decide and will fix THE price who will prevail has the buyer. From 1980,

SAFER's right of pre-emption even applies to sales separated of buildings; and he East matter of broaden it to include hunting, fish, leisure interests, etc. Furthermore, if one of the buyers cannot prove that the plot he covets will be used to create a farm whose size will be at least equal to the Minimum Installation Area prescribed by local provisions, the authorization will be refused (which amounts to establishing a prior administrative control of the installations ).

If moon of the plots East sold (or rented) without that its owner has obtained the required authorization, the courts will cancel the contract on seizure of the Commissioner of the Republic Or of there SAFER. Much more : if the sale of the domain is done in contravention of the rules of control of structures, the law of 1•• August 1984 stipulates that any person can, following a formal notice that remains ineffective, obtain judicial authorization to exploit the property. THE lessor becomes SO A lessor strength!

Instead of putting his property up for sale, the owner decide to TO DO play her right of reprise For y install his son. Before the leave takes effect, he will need to bring proof that its installation projects respect THE standards of surfaces minimum And maximum imposed by THE regulations departmental (case taken in charge by there Commission said structures); Then that his son proves that he has the skills and professional experience required since the Rocard law for the validity of the right of recovery to be recognized (case examined this time by the Joint Commission of leases rural). Duration likely of there procedure, taking into account the possibilities of recourse available to the farmer against the decisions of the two commissions: three to four years. **Better** worth to expect a long time has advance! On the other hand, the farmer's son has the right to request the automatic transfer of his father's lease without having to prove that he has THE securities wanted For cultivate, neither that he intends to devote himself to culture for at least fifteen years.

We see request of which side we locate the true asymmetry! Impression reinforced when we discover that the law also requires the lessor to compensate the lessee dismissed or end of lease, either on the basis of the undepreciated book value of its investments, but the market value, whether or not there has been depreciation .

Even the Quilliot law, in its domain, had not dared to go more far.

*They reinvent THE « domain prominent »*

Let us add that if farmers benefit, for their production, of a guarantee of price minimum (of less for THE main foodstuffs benefiting of a community organization of markets), the rental prices are blocked. A procedure complex prefectural imposes on them a progression much lower than the average evolution of the price of the products agricultural (However that taxes based on land ownership, which already represent more than 40% of average gross income, are increasing significantly more quickly).

Let us also not forget the considerable increase in discretionary powers of the municipalities and town planning administration; Thus that THE easements imposed has all THE owners of land by the generalization of the procedure for land use plans (for example, the possibility since the law of 1985, from subject to *prior declaration* of all sales having the consequence of introducing a division of property). Their effect is to definitively dissociate the right to build from the right to property, and to make it, without compensation, a “ collective ” prerogative (with the result that it is no longer the individual effort of the man who gives value to things, but the arbitrary action of bureaucrats, politicians and pressure groups local).

Result : of all THE activities economic, there

property agricultural East Today probably there more regulated; the one where the logic of limiting the freedom of contracts And of autonomy of there will, And their replacement by A right administrative more and more more dra conien And of a complexity astonishing, has summer thrust the farthest. Considering the number of operations who are there now *systematically* submitted has authorisation prior, he East difficult of pretend that It is A area where reign Again a true "freedom to undertake". Moreover, SO that THE prerogatives that the free practical contractual recognized to owners se found trimmed, amputees, dismantled from a thousand ways, THE reinforcement without cease more extended And practically without limit of there security of the rights of farmer and his lineage, has for the effect of bring out kind of new *right* heritage , profit of the tenants. Everything is pass as if, in this second half of xx• century, the efforts of legislator consisted has TO DO reappear the old distinction of the Elder Regime between *eminent domain* (of owner) and the *useful domain* (of the operator); the latter doing the object of a possession heritage freely transmissible within the family lineage, but independent of the mutations affecting THE domain prominent.

The purpose of this evolution was clearly included in the land office project which was to raise the SAFER their obligation to resell their land acquisitions within five years, and authorize them to settle young farmers on land that they would rent to them. By proceeding with a progressive expropriation of private agricultural heritage, the aim was to arrive at a situation where, since there would no longer be land ownership, agricultural businesses would finally be freed from this additional and supposedly unproductive burden. what does the obligation represent, in a market economy, of remunerate the capital land. It was notably the project explicitly expressed by Edgar Pisani in 1977 in his book *Land Utopia* : the owners of

land having disappeared, he born would stay that of the individual farms linked by contract to local or departmental offices, And benefiting of leases of long duration windy kidney THE old principle feudal of there *tenure* family<sup>1</sup>

• We can smile in front a such naivete. But it was logically in line with the ideas which nevertheless inspire there policy agricultural continued Since two generations.

*There dispossession born their has Nothing reported*

The above reminds us that "structural policies" are, like all industrial policies, only a subtle form of hidden redistribution. Regulating the exercise of property rights actually amounts to stripping Rock For dress Paul (without forget posts of civil servants Or of commissions that this gives the opportunity of create).

If there property East A "basket of rights", there value of this basket depends on the list of rights which appear there. In a regime that respects freedom of contract, each of the individual rights constituting property has a value determined by the market (for example, the rental market).

All act Who reduced there list of the rights attached has a title of property in reduced there value Merchant. It is as one buys a bare property or a usufruct cheaper that one property whole. He in East of even when the reduction of "basket of rights" East there consequence of interventions regulatory Who deprive THE owner of exercise individual of some rights. HAS the opposite, All "basket of rights" enriched because one act of the power public releases you from the duty to fulfill certain obligations, Or because that he private your lessor to exercise has your against some rights, acquires one more big value And will be SO any further "request". We could imagine that restrictions on rights of the owners agricultural se justify by THE before-

floors that this policy pays off in terms of standard of living for the greatest number of farmers. But is not not THE case.

The French rural world has experienced a tremendous change. The productivity gains are almost unbelievable. The growth in production was colossal. Europe is now the world's second largest exporter of food. French agriculture has finally entered In THE century of the company.

However, the parity objectives targeted by agricultural policy have never been achieved. The income of farmers is capped at half of the income of other French people. Their purchasing power has lost around ten points in ten years. And this despite the enormous sums devoted by the European Community to supporting product prices .

The income from the "rent", for their part, was passed to roll compressor. The rents have decreases of 60 % in constant francs since 1970. The rate of return on agricultural land ownership does not exceed on average 1.5 % per year over a long period, which is half of what financial investments normally yield. Since 1980, it has even become negative in good of the locations.

It is therefore obvious that it is not enough to make the owners disappear and appropriate their rights, For give back THE farmers And THE operators more rich.

### *THE principle of there " capitalization » of the benefits*

The explanation is found in an economic law systematically neglected: when we East on A walk Or there is strong competition to acquire the means to produce (which is the case in agriculture), there consequence of this competition East of TO DO " go back up " there value of the monetary or non-monetary advantages that the State attributes to producers, in the hands of those who receive to the owners factors of production

for which supply is the least elastic in relation to demand .

Let's imagine that the state promises to grant all wheat producers a subsidy equal to 20 % of the value of their harvest, renewed each year for thirty years. On the market, the value of a hectare producing wheat corresponds to the cumulative and discounted sum of the net revenue stream that it is estimated to bring during the average working life of an owner-operator. From the next day, competition between buyers of wheat land will cause the price per hectare to tend to increase in a proportion equal to the capitalized value of the additional flow of revenue that the subsidy program must bring in throughout the entire period. these years.

There prospect of benefiting during thirty years of a such extra charge guaranteed of income slows down in effect THE departures. HAS the opposite, that reactive of the vocations. Less of young people feel discouraged by there modesty of their expectations of earnings. Competition for control of this essential production tool is intensifying. To prevent others born him blow per hectare that he covets, everyone can *ultimately* raise their bids to the point where the extra of price paid absorbed in advance the entirety of the " annuity » anticipated.

Result : a white operation. For To acquire a hectare, you must pay a price which capitalizes *in advance* all the subsidy flows that the market estimates it will bring in. Those who are in debt will receive higher incomes. But this income will be used to repay the loans obtained in anticipation of this additional revenue. ,

Let us now take the case where the State imposes regulations which force landlords to no longer require from their farmers a clause usually provided for in customary contracts. Just as they are competing for the purchase of land to sell, farmers are also being competition on THE walk land to to rent out.

An authoritarian modification, and for their benefit, of rights of the lessor reinforces the market value of the « basket of rights » individuals attached to their lease. Like the price of land, the value of a lease is estimated by reference to the net value of anticipated future income flows (taking into account the risks of termination that may occur). In doing so, it must be expected that, on a free market, as soon as the reform is announced, the advantage in principle granted to the takers finds itself capitalized in advance in a rent more pupil. And that No not because that THE lessors necessarily demand more, but because competition between lessees is enough to raise prices requirements.

This law is not not own has agriculture. She applies to all economic activities. An exemplary case, well documented, East the one of accommodation.

*Objective: avoid there ascent of there value*

This analysis allow of better to understand why agriculture has took the character of an activity of more additionally administered: from of day when they have undertaken practice THE support not massive of the price agricultural (In the 1930s), the States Western put the finger in a gear that was driving necessarily to one increasing restriction rights of the property. National differences are no longer a question of degree than in nature. Let's start again The example of government Who spear a program guaranteed subsidies during thirty years. Let's admit that THE world agricultural got there creation of a ministry of Agriculture, lawyer of his corporate interests; and, For of the reasons historical, the interests of owners earthlings be minority At breast of his organizations representative.

THE issue of his leaders East to avoid that money paid each year by the treasure born ebbs upstream and is ultimately capitalized in real estate values .

The first technique that comes to mind is to impose an authoritarian modification of the content of the leases. Legislation is introduced which regulates rental acts, creates an automatic right of pre-emption of the tenant in case of sale, reduces the owner's possibilities to give notice, limits his right of recovery, etc.

According to the presentation of the patterns, he is of restore a bigger equality In THE rights of the parts. But increase authoritarily there security of tenant, And SO there relative value of his rights, East the equivalent of a forced transfer. In reality, the operation aims has TO DO that THE operators non-owners recover » below for e advantages increased a part of there annuity paid by the state.

The intention is legitimate. But THE means is not hardly effective. In a free market, the rise of there value of leases is reflected in the increase in rents. The transfer only exists insofar as it takes a certain period of time for the leases adjust to the wire of the leave And of their renewals.

It therefore quickly becomes necessary to take a second step, a corollary of the first: control of rents. By blocking their evolution, the hope is to constrain the owners to "rebate" the exploitation so many a part, as large as possible, of this annuity which is in principle intended for them, but which seems to want their escape.

The effect is less fleeting. But the ultimate defeat of the approach is no less assured. The fall in the remuneration of land capital reduces the supply of funds rented. Demand, on the contrary, is increasing. As For THE housing, THE rationing se do by THE "under the table". Those who settle are forced to pay their lease at its real value - and in advance. Demand is shifting towards the property market, making it has her round blaze THE price.

The beneficiaries of this policy are not all owners but THE owners operators Who appro-

are looking for retirement, or who have chosen to emigrate to the city and who sold their land in time : they have capitalized in cash the annuity of situation created by the legislation, before it be reinvested in the rise resulting in land prices (or the over-equipment of farms). But, in definitive, THE income of the youth Who settle down and gain nothing. Nor those who remain faithful to their land.

*He must to break there competition For THE plots*

In despair of cause he born stay that one solution: since it is the competition of producers for the acquisition of the floors Who East responsible, he must there to break - or all of it At less seek has in reduce intensity. Then begins the third phase: that of the *policy of structures*.

The extension of the rights of operators over their farms (notably THE right almost automatic children to to resume their parents' lease) slows down the frequency of the return of land to the market. But we must go further. This is the objective of the legislation on accumulations. This is to reduce the opportunities for competition for plots to come forward. Hence the regime of prior authorizations, their hardening, but also the SAFER and the progressive expansion of their right of pre-emption whose real function is to divert as many land transactions as possible from their commercial channels usual.

By elsewhere, he agrees to avoid that of the « amateurs »  
of

the outside do not come to outbid at the expense of real professionals : hence the control of entries by the requirement for proof of SKILLS; but also the restrictive nature of the legislation with regard to, on the one hand, pluriactivity (need for authorization), and on the other hand, association capital from outside agriculture (GFA tax regime which makes it an investment formula sum all little attractive For the investor).

Below the pretext of defend a agriculture based on the family business, the aim is to break the land market And of to break THE process competitive of which he East the spring.

The idea is all the better received as the increasing burden of land assets (a legacy of previous phases) poses to operators are problems of rental income. To amortize, you have to modernize; but to amortize the equipment, it is necessary to expand. As long as no concerns arise regarding the permanence of support from public funds, and land prices continue to rise. As a result of rising, bankers do not hesitate to lend. Sure of recouping their stake, and operating with cheap money (thanks to their corporate privileges), they even solicit customers beyond any reason.

Bottom line: agriculture is sinking into debt. The national community is spending more and more, the deadlines are increasing heavier; but the relative income born improves not.

SO some wonder. HAS What good everyone these efforts to se modernize, produce any further, be always more productive, if All This Who East won pass In the treaties has repay? Is it logic that the amortization of land charges (restarted in each generation) weighs if heavily on there Treasury of the exploitations? We reach there final phase of process: the solution does it consist not, by there way of the offices, has TO DO missing

raite THE owners?

Agricultural management and corporate pragmatism are coming At end of their logic.

### *Failure of dirigisme*

From 1978, the market is return. In seven years, the price AVERAGE of the land agricultural its depreciated of more 40 % in real value. It was enough for the first rumors to circulate on an eventual reform of the CAP (Policy

Agricultural European) so that the price trend is reversed. Since the operators expected the possibility of a calling into question, even progressive and distant, the principle of capitalization started to play, but has countdown.

Falling prices are self-sustaining. Falling land values reduce bank guarantees for those who are in debt. The extreme financial fragility of farms is coming to light. The bankruptcies begin. Land returns to the market, with the paradoxical help of SAFER whose debt forces them to reduce the stocks of land put in reserve, after having for of the years led a policy of purchases excessive. But as the practice of quotas risks spreading to other crops, there is no demand. The prospect of a freeze of six million hectares (i.e. 20 % of there agricultural area current useful), between now and the year 2000, precipitates the fall of the price.

This crisis is the product of the failure of agricultural management. It would be absurd for us to incriminate the logic of the capitalist economy and the market when there are already two generations that agriculture is become a economy administered.

The origin of this failure lies in the unreality and erroneous nature of the concepts which, for so long, have served as the basis and legitimacy for the development of dirigisme in agriculture.

Everything stems from the postulate that there would be an *asymmetry* in there ability of contractual power of the lessor And of the taker. The argument is the same as that used to justify State interference in labor relations (training of right of work), Or THE consumerism.

With the evolution of production structures, this hypothesis appears much less realistic today. There are three million plot owners for eight hundred thousand farmers (including three hundred thousand part-time). In some regions, a farm operates with land owned on average at six pro-

different beneficiaries. The average surface area is ten hectares per owner. In such circumstances, it is difficult to claim that the owner is always *a priori* "THE more strong".

But there is more fundamental. Asymmetry, contractual power, power relations... so many terms which, in this case, are the subject of accompanied illegitimate use of a diversion of context characterized.

As in the company (boss-employee relationships), talking about asymmetry perhaps makes sense in terms of relationships personal between A lessor "in particular" and one of his farmers "in particular". But that don't see you none of the that we speak of the lessors "in general" and farmers "in general". Between the individual and the general is an epistemological leap which deprives reasoning of all validity.

By making the amalgam, we forget that there is not only competition between operators for rental land, but also competition between leases. For attract has them THE "good" farmers.

THE people don't are not interchangeable beings. There's some are good tenants, others are bad. Some always keep their promises, and respect the property of others; others, no. Skill levels differ. Any owner prefers if possible treat with a person who meets his idea of a "good" tenant. By definition, these people are more in demand, and therefore rarer. To have the greatest chance of attracting the best, THE lessor must arrange the conditions which it offers in such a way as to make them desirable to the kind of person with Who he longed for instead to treat.

Consequence: it is correct that the lessee, as an individual, has only negligible influence on the clauses of the contract which binds him to his owner. But this does not mean that he can impose any clause on him. Because the rental market, like the labor market, or the housing market, is never homogeneous, due to competition from others, it

is in reality no more free in its decisions than the policyholder individually has the power to modify them. In a free market, competition between tenants is what protects the tenant against the arbitrariness of its owner .

Another key idea : the owner would be a sort of para site social which would be paid for an unproductive role. Hence the conclusion that it is legitimate to force him has return to less part of his annuity” to those who make THE TRUE work of putting in value of her earth.

Although firmly anchored in the minds of many of our contemporaries, this statement is linked to a labor theory of value whose falsity conception was demonstrated more than a hundred years ago by economists. Even the idea that land ownership would carry a " annuity" whose nature would be radically different from profit of the industrial entrepreneur is false. Economic theory shows that there is always an element of " annuity » In anything what salary Or profit (the remuneration of there go of " capital human"). Else share, the rent that commands there land ownership, in a freely competitive system, is only the monetary capitalization of all efforts and services Who, In THE pass, has permit has this earth to arrive to this productive state which is his today, and to maintain it.

THE soil is a rare resource, like a other. He can be affected has of multiple uses Who born can be satisfied simultaneously: agriculture, construction, industry, leisure... OUR interest East that each plot either oriented towards that of its possible uses for which the behavior of consumers shows that they give it the greatest value.

From this perspective, one of the achievements of liberal economic literature is to demonstrate that due to the limits natural inherent has there awareness human, the owner, far from being an unproductive parasite, is on the contrary A agent active Who, in taking care of her GOOD,

and by striving to make it take on the highest values, fill A essential social role: although this not be not part of his intentions, it participates in the creation of these signals And of these information (THE price) without which he no has not of calculation economic possible.

*Europe come of pass has side of a chance historical*

In July 1987, the United States proposed to Europe of agree to negotiate, within the framework of GATT agreements , a reform program whose aim would have been to eliminate in five to ten years all traces of agricultural protectionism: elimination of government subsidies, elimination of all THE tariff barriers or non-tariff tariffs on imports of agricultural products, cessation of price support policies as well as budgetary incentives for the withdrawal of land (quotas), etc. These proposals were very warmly received. The farmers immediately denounced a diabolical maneuver by the Americans to ruin European agriculture and take their place in exports, in se camouflaged behind a primary ideology of free exchange. Result: Washington's proposals were not subject to any serious examination. Poorly informed by media where the particular interests of a privileged few dominate, the public remains convinced that the return to global free trade in agricultural products can only lead to catastrophic consequences for agriculture. European.

We born let's share not This point of view. We let's think that by turning our back on the American offer of " disarmament " simultaneous agricultural, Europe missed out of a historical luck. We risk paying the price tomorrow with the outbreak of a trade war which will see there defeat of All THE world.

The main criticism of agricultural policy is that it encourages overproduction and the accumulation of surpluses : lakes of milk, mountains of butter,

wheat or meat... regularly denounced by the press for twenty years. This situation comes from the fact that the Common Agricultural Policy (the CAP) confuses two objectives : the desire to regularize the course of agricultural prices and the search for a minimum income guarantee for farmers. Prices are set based on costs of the least viable farms ; hence an obvious premium on over-equipment and over-production for the most technically efficient companies : the more they produce, the more they earn; and that whatever either the state of walk.

This overproduction is A waste. Of the resources and energies that would have been used elsewhere to produce things desired more quickly, have been immobilized In the production of goods agricultural Who are either destroyed or exported at a loss at the expense of the national taxpayer. A few figures will give an order of magnitude. In 1987 the policy of supporting agriculture cost 34 billion of dollars to taxpayers and American consumers, and 66 billion to those in the countries of the European Community. If we add Japan and the increasing subsidies that newly industrialized countries, or in the process of industrialization, devote to the protection of their peasants, we arrive at a total of around 150 billion dollars per year (the equivalent of the entire American budget deficit). OECD experts have calculated that at the start of 1980s Japan dedicated to supporting her agriculture one sum equal total has 170 % of there value of her production agricultural. In the United States and Europe the ratio is respectively 130% And 140%.

The economic costs are high. Strictly speaking, we could consider that they are justified if the social objectives which are at the origin of these policies were achieved. : improvement in the relative income of farmers; maintenance of a family farming network; slowing down the movement of desertification of the countryside. But it is not not this who is pass. Far from improve, level

relative agricultural income has continued to deteriorate report has there average national.

From 1984, THE authorities community reacted by developing a policy of quotas and encouragement for the withdrawal of land THE less productive. He y has just one year, THE Council of Ministers has decided to impose the establishment of an automatic expenditure regulation system (called "stabilizer automatic"). Of the "quantities maximum guarantees" will be defined For all sectors benefiting from price support. In principle, their exceeding will lead automatically a reduction in guaranteed prices. The hope of those responsible is that the accelerated disappearance of marginal exploitations will allow to professions of better master the evolution of their income.

We do not share this optimism. Certainly, the oceans of milk have disappeared; the mountains of butter have melted. In France there are one hundred thousand producers of less milk than there is is four years old. Twenty thousand hectares vines are uprooted every year. The American drought of 1988 has led to an increase in 50 % of the world grain prices; which resulted in significant budgetary savings for the Community (due to the reduction in the cost of refunds necessary for exports). But he is illusory to believe that the CAP *bis* will be able to succeed there Or there former has failed.

### *Subsidies only go through the pockets of operators*

The State intervenes in agriculture to guarantee farmers A income more pupil that the one of which they would have in a diet of free market and of free trade without public intervention. Its managers do not see that as long as there company remains attached to a minimum dose of free enterprise and freedom of contracts, a such an end is mechanically *infeasible*. The money he takes to taxpayers For THE to transfer to agriculture

cultists only passes through their pockets and ends up in hands very different from those he intended to help.

The reason for this paradox is linked to the phenomenon of capitalization already described above. In a market where there competition between farmers to appropriate land resources, as soon as a subsidy or any intervention increases the expected profitability of a category farms, She East instantly

“capitalized » In there value of floors, And SO In the price of land. We have a situation where, thanks to public price support, the farmer achieves a higher turnover, but with land which now costs him more to acquire or rent. Proof of the reality of this phenomenon: the doubling of land prices in England, in less than twelve months, the day after the announcement by THE government British her decision to join the EEC. Another, *has contrario*: the collapse of 50 % intervened since the Community has been striving to moderate THE cost of her policy of grant.

The same goes for credit subsidies and other financial advantages that specialized banks offer. to farmers with THE competition of funds public. Providing cheaper credit increases the demand for loans and encourages over-equipment. We buy more equipment, more fat and more efficient, but also more expensive. After a certain time, the entire expected additional income is absorbed by an equivalent increase of the cost of production factors whose driving force is the race At yield for produce THE more possible (has guaranteed prices ).

When a regulation audience hears protect the income of drivers of Taxi in limiting their number, he se creates a black market where authorizations to practice are exchanged for money. Those who are already in the profession at the time the regulation is put in place thus benefit from a “rent” professional. But, For to drive their taxi, THE new must First of all redeem there plate of a

old at a price which “capitalizes” in advance the total nonetary benefit linked to the protection of the regulation. When they do their accounts, they see that their income net, once deducted the depreciation of the purchase of the franchise, is not no higher than he was not before. This is what has been happening with farmers since the State has undertaken to protect them against the harshness of the law of walk.

State intervention also aimed to ensure the survival of essentially family farming. But the opposite happened. Subsidy policies have aggravated the pressure of rural exodus. How? When the support is provided by prices, the farmer receives even more that he produces more. To produce more, it needs more land. They cost him more and more. But they constitute a heritage whose value appreciates in proportion to the increase in subsidies to agriculture. In these circumstances, nothing is easier than obtaining support from banks which are particularly generous. Subsidies from agricultural programs have thus fueled a sort of headlong rush in the expansion of surface areas and the outbidding in the repurchase of neighbor's land. However, the final gain depends on the returns. Their increase involves very heavy investments which can only be amortized in the context of large, maximally mechanized farms. Like guaranteed prices were calculated by reference to the costs of the technically least advanced farms, their financing was also done without difficulty by increasing bank outstandings. Result: a dual agricultural economy at odds with This Who was initially the vision of authorities ; on the one hand a hypercapitalized and hyperproductive sector of companies with an industrial mentality; on the other, a population of marginal farms whose speed of disappearance depends on the pace at which political power decides of goodbye THE policies past.

Failure East patent. THE laws of there dynamic eco-

mic being what they are, it was inevitable. Those responsible today minimize its scope by praising the hypercompetitiveness of the competitive agricultural sector. But we are entitled to wonder if the enormous sums spent For in arrive there were truly justified since the number of farmers experiencing income difficulties continues to increase, even among those Who have THE farms THE more modern.

*Income support policies through price support are A failure socially strong expensive*

It is in Japan that the absurdity of the cost of these protectionist agricultural policies appear in the most spectacular way.

In 1960, Japanese farmers benefited from a guaranteed price for their rice harvest equal to twice the world price, and the government allowed entry into the country strictly no import of foreign rice. In the 1960s, the introduction of new varieties of rice with very high yields have considerably increased the productivity of other Asian producers. But Japan has not yet opened its borders. On the contrary, the prices of support has not stopped to be revised upwards. The result was that in 1986 Japanese rice producers were paid ten times what it would have cost their country to import Thai rice. Surpluses starting at accumulate, the government decided to reduce by 20 % surfaces dedicated to the culture of rice. He could not do this by imposing quotas, the effect of which would have been to sharply increase the production costs of farmers. There only possible solution was to offer producers prices sufficiently remunerative to encourage them to substitute cereal crops to culture traditional rice. This is how that today the Japanese State guarantees its farmers producing cereals a purchase price equal to... twenty times the price global.

These gigantic subsidies are found capitalized in THE rice land. THE Japan is the country where the price of soil is the highest in the world. A hectare of rice field easily reaches a value of 100 000 dollars. Cereal lands are traded here at around 70 000 dollars per hectare. These figures are to be compared to the 2 000 at 3,000 dollars per hectare of good land in the American states of the Corn Belt. Result: real estate prices out of all proportion, even with the most expensive cities of the others big countries industrialized. HAS Tokyo, a small house in a distant suburb easily costs the equivalent of 400 000 dollars (2 500 000 F). Most people there live in apartments of less than fifty square meters. This considerably limits their ability to equip themselves with durable furniture and objects. Which also explains certain particular traits of Japanese sociology (for example the taste for saving, or the personal importance of the life at work and in the company). It is true that only a third of Japanese territory is truly cultivable. Japan is a country very cramped and overcrowded. But this not enough to explain the prices here are practiced. If THE housing is so expensive there, it is also and above all because agricultural activities benefit from commercial protection which has not in truth of equivalent nothing go elsewhere.

Another consequence: diet. The cost of proteins East, At Japan, three times more pupil that THE price my dials. The Japanese diet necessarily suffers from this. With a population representative there half of that of the United States, the Japan consumes only one million tonnes of poultry per year, compared to US consumption of 8.5 million tons. The Japanese produce and consume around 400 000 tonnes of beef per year; the Americans twenty times more. There production of milk y East only here 7.5 million tons per year, compared to 65 million in the United States. Cheese consumption is around 100 000 tons by year; THE Americans in consume 2.5 millet-

lions. Certainly, cultural and food traditions play an important role. But they cannot alone explain permanence of such differences, even though standards of living tend to converge. The other postman is the very level pupil of the price of the food, especially for all THE enriched food forms; a direct consequence of agricultural protectionism Japanese.

The same is true in Europe, although to a lesser degree. There is no doubt that Europeans would consume more protein if the price was lower. Meat consumption in the Community European is only of 77 kilos per head and per year, compared to 111 kilos in America (and 35 in Japan). Knowing that they are near of 300 million, and the production of one kilo of protein requires the equivalent of three eight times his weight in cereals of base, he East clear that the elimination of traditional barriers to agricultural trade would release considerable purchasing power capable of absorbing a large part of the current surpluses listed.

The paradox of agricultural policies currently implemented in most countries is that they encourage farmers to produce ever more, even though they have for effect of slow down the progression of there request viable soil by maintaining high prices. The consequence is a loss social dried estimated at Japan at 1.50 dollar for dollar of transfer for the benefit of its ;farmers, at \$0.50 in Europe, And 38 cents to UNITED STATES.

*The explosion in yields is shaking up the agricultural economy worldwide*

Ugly to agriculture not date from yesterday. But its budgetary weight remained relatively limited. It's no more THE case today due to the general explosion in yields, intervened Since fifteen years.

In Europe, there presence of price guaranteed For of the delivered-

sounds without limit of quantity has incited THE environments agricultural professionals to invest massively in the development of new agronomic techniques and new hybrid species that are more resistant and more productive. Thus, while they had barely changed since the end of the 1950s, cereal yields have tripled since 1970; total production increased by 60 % between 1976 and 1986. And it's not finished. While on the continent yields are around 4.4 metric tonnes per hectare, the English average is already close of 7 tons grace at the introduction from us-. new species. The latest hybrids marketed in France since 1986 allow us to hope for increases of even more than 20 % in a relatively short time short.

Simultaneously, European agriculture began to develop a large number of news crops Or until now it was hardly present. For example, oilseed production has increased fivefold in ten years. After rapeseed, the countryside discovered the invasion of sunflowers to latitudes where this product was traditionally unknown. Italy is arriving to self-sufficiency in the soybean sector with more than 900 000 tonnes in 1987, compared to only a few thousand tonnes in 1980. Where the Americans only apply one fertilizer, the Europeans go up to five Or six. THE researchers have successful has shorten the size of straws, everything in by strengthening resistance; hence less damage linked to bad weather. New fungicides significantly reduce losses caused by the cold and humidity of temperate zones. Chemical regulators ensure better drainage of the energy captured by the plant towards its grains. It has been a very long time since we have seen so much progress in agronomy made in Also little of time.

But This is not not only Europe Who see her pro ductivity explode. The Green Revolution has spread throughout of world, even at world most poor and

traditionally the most depends on ugly industrialized nations. Unprecedented in the past, today are almost 90 % global harvests which are affected by the diffusion of new cultivation techniques and the use of new species, relatively inexpensive and now accessible to as many people as possible of peasants of third party world.

More than thirty countries in the world have followed the example of the United States and Europe, and are protecting their agricultural development from high prices and difficult customs barriers. Result: a leap forward in global production which is now increasing at a double rate of its food outlets (approximately 3 % by year against 1.5 % for the global demand of agricultural products). For ten years, global food aid has no longer hardly exceeds THE ten millions of tonnes per year. In Africa, has apart from certain areas specific areas eaten away by the war, the famine of 1983-1984 is no longer just a bad memory. Since that time, most African countries have managed to meet their needs. Same thing in India where the climate catastrophe of 1987, due to a particularly violent monsoon, could be amortized using stocks accumulated in the country alone. In China, the abandonment of the large communal farms of the time of there Maoist revolution has led to a increase of 50 % of agricultural production in less than six years. Not so long ago, Indonesia was still the world's largest importer of rice. Self-sufficient thanks to investments made with oil royalties, it now encourages its farmers to move more towards the production of cereals and soya, that it continues to import massively. Even a desert like Saudi Arabia has become an agricultural country to be reckoned with. Through the mountains of subsidies drawn on THE income petrol, of the ultra-modern irrigation systems have been installed which today allow the kingdom to harvest some 2 million cereals (of which 1.8 million are sold on the market global).

This does not are that some examples. But their lesson is clear. It is estimated that at current world prices, the potential for agricultural surpluses in the world is of the order of 150 million tonnes of cereal equivalent. A figure that must be compared to the total volume of agricultural trade actually marketed : 190 million tonnes. For a long time, the potential weight of these surpluses were reduced by the American policy of quotas And of limitation of plantings. This self-discipline of producers Americans, financed by the Federal Treasury, has supported world prices, and prevented European taxpayers from having to pay more to sell their surpluses. agriculture. But these days happy are over. HAS the following of the great inflation of the years L 979-1981 which has limited agricultural and rural incomes, the United States has decided to return in force to export markets. Hence the explosion in support costs which is forcing the Community has rethink her policy.

*Farming of the years 2000 born will be not This that we fear*

Under such conditions, we are told, returning to a global agricultural free trade policy is unthinkable. Aligning European prices with world prices would mean toll of the agriculture European. Their markets would be invaded by exports of big country where reign agriculture extensive has down costs of production. The winners would be the United States, Canada, Australia, Argentina, the Chile, New Zealand... Don't There would be only a few hundred thousand large farms capable of compensating for their natural handicap through the intensive use of new agronomic and industrial technologies. Such scenario, it is then added, East inconceivable because he would imply a movement of concentration of farms incompatible with the survival of a balanced rural society. He would condemn there

most of the countryside to a socially unbearable desertification.

This is the argument usually used by Europeans to oppose to the American proposals. But, the Americans reply, it is biased by the fact that we reason mainly by extrapolation, without taking into account the changes in relative prices which would result, in terms of supply and demand, from dismantling of the protections price; i. e. s. Mon of their experts carried out a study in which he demonstrates, going against all preconceived ideas, that the liberalization of agricultural trade is in fact the best chance offered to Europe to revitalize its rural space and of bring back authentic family-based agriculture, breaking with the current drift towards companies ever more overcapitalized .

Her reasoning is roughly the following. The key idea is that, All in being accompanied of measures of transitional support, release of the price would have for consequence of reversing there logic of functioning of the businesses. In a guaranteed subsidy regime, the only hope for the farmer to improve her income consists has produce any further in investing massively In techniques and of the innovations that make it possible to increase yields physical of ground. All her management East born turn towards their maximization. The result is massive displacement factors of production At benefit from a use always more intensive of capital, And to costs of the needs of labor .

Let us now imagine that there have more of subsidies or guaranteed prices. The management principle is no longer the same. The only way to improve, or guarantee its level of income, is for the business manager to reduce its operating costs as much as possible. However, the fall in land prices is curbing its debt capacity. It reverses the movement of relative factor prices in favor of using more labor and less capital. THE companies are

encouraged to redirect their technological development towards of the techniques of production and of the fashions of culture more soft", leaving greater room for regulations of natural cycles. Grace has the use of new types of crop rotation and crop rotation, they spread less fertilizer And of pesticides. THE land released by departures retired where the cessations of activity are not left fallow, but repurchased at prices compatible with of the uses less intensive. A new agriculture is emerging, which is more respectful of ecological balance natural of our countries.

It is also obviously necessary that the commercial outlets lend themselves to this. However, precisely, argues the American expert, this is what the drop in agricultural prices will promote, has condition however whether of a truly global disarmament. How? By the revelation of a new solvent demand relating to food products with more sophisticated nutritional content. For example, with price At consumer reduced of approximately A third parties, there is no doubt that there is still room for expansion in Europe for the consumption of meat, poultry, eggs And of products dairy. That East even more true in Japan, and in the other countries of the Asian crown, Or he has summer calculated that THE back At free exchange agricultural would free approximately 6 % of power purchase annual of there population. By elsewhere, there Reducing their import rating would strengthen the growth capacity of third world countries and accelerate the process of their population's access to more advanced modes of nutrition And more rich in proteins. As he takes between three and eight times its weight to make an animal protein, after a few years such an evolution would have For effect of bringing back there request worldwide at levels more related to the abilities potential of production.

A such scenario would imply deep mutations At level of production structures and crop choices. Europe se would find constraint to abandon

the alternative crops it encouraged to reduce its dependence on the foreigner. She would specialize in the export of high value-added products, intended for a global clientele with enhanced purchasing power. But, concludes the American expert, everyone would win. A such agriculture would keep a greater number alive number of farms than we can hope for by perpetuating the perverse effects of current support. And it is not impossible that the opposite of all the diagrams 'foresight currently developed, European agriculture is a activity which, by the 2000s, is once again beginning to lack of arm.

In any case, a reorientation of this type would require the implementation support and transition mechanisms in place. The key being to decouple income support from the way prices are set (in order to allow economic signals from the price system to play their role), these transfers could, generally speaking, take the form of a minimum income guarantee recognized for all households living from the cultivation of the land. **But** this system should be supplemented by more specific debt relief measures; especially for 10 or 20 % of cutting-edge companies which, boosted by high Community prices, have become over-indebted beyond all that a free market can ever their give back.

*THE free trade would end to excess of productivism in agriculture*

!In document from the studies department of the Department of State American summary of manner more precise what would become of an agriculture deprived of public subsidies.

The expansion of the capital sector would find himself slowed down by the entry on stage of two new factors : an increasing scarcity of capital and the appearance of a risk of

price variation. Price support policies, by inflating the value of land assets, make it easier for well-managed agricultural businesses to find the financing they need for their development from banks. Their disappearance will lead to a reduction in the offer of banking system, which will not be compensated by advances and credits from suppliers (from whom agriculture will buy less to reduce its expenses).

It will be more difficult, and financially more dangerous to seek to expand all prices. With free prices, the gains in production and yields expected from an enlargement of surfaces and an intensification of their cultivation, must be put in relationship with the additional risk linked to the level of debt. Expanding becomes less advantageous. There is competition and bidding wars for control of land are diminishing. Business management is moving towards importance increased granted. At control spending and looking for less capital-intensive production choices, and doing any further call has their workforce. While the system pushed for clearing, conversion of the pastures in land of culture, thus than to the removal of hedges, we return to modes of production less monospecialized, with the return of a form of semi-extensive breeding.

In such an environment, there is more big availability of land as well as the return of livestock farming to the farm will reduce the need for chemical fertilizers purchased from outside. HAS provided they have the necessary labor, farmers will reduce their expenses. pesticides and herbicides, and will have more confidence in means mechanical. Or has the rotation of crops to eliminate weeds and to struggle against insects. THE priority will be given to all this which allows minimize the flow of exit silver.

The major trend of the last twenty years has been an increase continuous of degree of specialization of there

agri-food chain. On the one hand, single-grain companies of more in more large And productive, but only producing that and not working at full capacity intensity only a few months per year. On the other, hyper-specialized breeding workshops, feeding hundreds of heads in a limited enclosure cattle, or thousands of pigs people destined for the butchery. In the past, one complemented the other within a family production unit where part of the land's products were directly consumed on site by the livestock raised on the farm. The disappearance of policies of support will lead to a return to these forms of exploitation, without however being able to speak of an economic decline. Progress agronomic, Technological advances in mechanization or tooling will remain as intense as ever. They will only practice in one different direction. They will be designed more for farms of optimal size lower than past standards, and seeking a greater degree of self-sufficiency. Agricultural productivity will continue to increase, but it will be less linked to work capacity of the tractors And of the harvesters.

Overall, the study concludes, agriculture in industrialized countries will move towards less intensive modes of operation, but not necessarily less economically profitable. Of the farms more small, a larger and more productive working population, reduced market costs, but also cheaper food products, faster growth in the rest of the world, a higher standard of living for all, such should be the new face of the end of century in the hypothesis of a concerted elimination of public subsidies to agriculture.

*liberalism in agriculture would promote global growth more fast*

Agriculture, it is well known, is fundamentally allergic At liberalism. Even in looking for GOOD, we

would have a hard time finding a single farmer who does not agree with the principle that if liberalism is good for industry (farmers traditionally vote more to the right), it cannot in any way be applied to agricultural markets. The commonly used argument is that if agriculture returned to freedom, the result would be too much market instability to be economically viable. According to this theory, agriculture will never be an industry like any other in due to the specificity of climatic hazards and of too much weak elasticity of their response to movements of price.

We can demonstrate that this type of argument, which we find in particular in all economic works, is not robust. Also please.

The idea that the intervention of the state would be imperatively necessary to regularize prices and reduce the uncertainty of agricultural markets to acceptable proportions comes up against two objections in particular. The first is quite simply that if we remove the fluctuations natural of market, it is to replace it with a new form of risk which comes from what the perverse effects of intervention policies will necessarily impose one day or another: revisions torn rents, difficult to anticipate and therefore to integrate into the economic calculations long. To an uncertainty natural, but insurable, we substitute an uncertainty "politics" which is unpredictable and therefore totally not insurable. We have not eliminated uncertainty or risk; we simply have exchanged their nature.

There second objection East that he exist of the techniques liberal" For reduce THE degree of uncertainty supported by the entrepreneur agricultural. THE two main are, of a go there creation of markets has term functioning according to the principle of the famous American *futures* ; on the other hand, vertical integration into specialized agro-food chains. Any commodity should be listed has term, on all THE horizons of time pos-

sible. Such a system would have the advantage of authorizing a division of risks between the operator and private speculators who would voluntarily agree, by contract, to assume part of the agricultural risk. that THE Farmers do not want to take responsibility themselves, while retaining the possibility of possibly obtaining reinsurance from other investors. The development of such markets would allow, in agriculture, a diversification and a distribution of risks better adapted to the preferences of each party, equal to what happens in industry. Let us not forget that it is precisely this best “risk economy” » which, historically, allowed the industrial revolution to take off .

However, accept of such developments, would come back to admit that others, outside agriculture, come to share there financial windfall which is distributed by the state to there occupation. From where the opposition understandable agricultural communities who wish to avoid all this which would tend to erase the boundaries between agriculture and industry. We find THE effects pervert related At game of the subsidies. There fear instability of the agricultural prices was without a doubt justified has the time Or THE development still insufficient transport and equipment storage or industries of transformation limited the area geographic of the markets has of the borders more Or less national. But is not no longer an argument that we can still seriously invoke Today. At contrary, with THE means Who are those of the world contemporary, there has all odds For one true free trade promotes a more great compensation of the risks regional, And SO better regularity prices And supplies has the scale worldwide. Paradoxically it is, must it be THE emphasize, there presence of the surpluses of the community European Who, At course of the twenty latest years, has accentuated there volatility of the price In THE stay of world.

*There PAC-bis will not have not more of success that there former*

From her creation, the CAP has look for to solve the problem of income of the farmers in guaranteeing their prices and pushing for export surpluses. But the return of the Americans on the markets, as well as the extension geographical of there Revolution green, make that the weight of the restitutions East became budgetarily insup portable (in 1984, the sampling from 1 % on value added tax for the benefit of the community budget has already been increased to 1.4 %). Hence change of heading. There new policy is to seek a self-restraint of production based on a quota system combined with a mechanism of penalties of price in case of exceeding.

The objective is to gradually withdraw from world markets while in retaining a mechanism of internal regulation which maintain THE income farmers has a level politically satisfying, on there base of a production European limited to what is All just necessary For be self-sufficient. However, This system can only work if there Complete community her say positive about control of the imports into widening it For include THE products of substitution Who, until present, do not were doing the object of none hindrance tariff. From where politics of there Community to change, In THE framework of news discussions of **GATT**, THE withdrawal of its exports against the increase in Specimens on certain substitute foods increasingly used by THE manufacturers of food of cattle For turn regulation and escape to the European system of high prices. All se pass as if has the proposal of restore a system global of free exchange agricultural, Europe responded by proposing reciprocal trade agreement negotiations between blocks has vocation car sufficiency.

The stated desire to obtain a ceiling guaranteed prices And of the subsidies has Already provoked the effect that

one could expect. Land prices have fallen by almost 50 % since 1980; which weakened the financial situation of many farms too in debt. From the point of view of economic efficiency, this adjustment is welcome. The capping of budgetary aid should force companies to change their objectives. Their managers will be encouraged to stop the headlong rush in production investment, to adopt a more prudent policy of reducing operating costs. However, the core of the intervention mechanism has not always not summer amended. We stay In A system whose logic is to claim to defend the income of producers by limiting the purchasing power of their food outlets, and, for some of them, by imposing higher production costs on them. It's absurd.

The quota policy will provide respite from the difficulties of the community budget. But he doesn't will only last for a while. In In no case this regulation technology could constitute a sustainable mechanism for organizing agriculture. For a simple reason which brings us back to the principle of "capitalization" mentioned at the beginning of this work.

Any policy of self-limitation of production assumes that quotas are allocated according to a historical element reflecting the insufficient production capacities of the company. But the world is not still. Some retire, others die without heirs, or without children wishing to take over the land. Some are content with what they have, others keep ambition, are ready to work more, want to expand. All other things being equal, there are some who know how to control their spending better than others. Result: the same quota right for the same land is an asset that does not have the same value for everyone. If the quota can be dissociated from the ground on which it was originally based, an exchange market will be organized - like this was THE case with THE milk quotas. More the ceilings of pro-

production will be restrictive, the more valuable the quotas will be for those who think they are able to benefit from the same production. A income net more pupil that THE others.

In a system that distributes subsidies, what counts is the asset whose ownership opens the right to receive subsidies. Until now, it was land ownership that served as the key to the distribution of public wealth. Hence the fierce competition for the sharing of land, and the flight of subsidies towards upstream. Now ownership of land is not enough; it is still necessary that This or a land which is attached to a quota. It is the control of quotas which now constitutes the key to access to the sharing of subsidies. THE the same process will be repeated there. The competition between youth operators for the acquisition of rights to produce will cause prices to rise to the point where they will capitalize in advance earnings which they hope to achieve thanks tighter management than their predecessors. Young farmers will see their setup costs increase for the benefit of the former operators who were in place at the time of the allocation of the initial quota rights. The system will result by a transfer intergenerational which means that, even if we initially achieved the objective desired (the best hypothesis), at the end of a few years the problem of agricultural income will again arise in acute terms and will justify measures emergency.

*Europe must abandon its mentality of fortress agricultural*

So the Quotas don't solve anything. The same budgetary problems that the European Community has just been confronted with will reappear in some time. It will be necessary, under the pressure of discontent, to once again raise THE price of support. In the meantime, the relationships with other producing countries will have deteriorated further .

What is at issue is the fortress mentality with which Community leaders approach agricultural problems. This protectionism would, we are told, be justified by considerations of security and geo-food strategy. This is the ultimate argument of protectionists when they are pushed to their limits. But not more than THE previous ones, it is really not serious, and for THE same reasons. In an era of nuclear defense, true security does not lie in doing everything at home self has prices socially prohibitive; but much more in participation in the construction of a true global market of exchanges and infrastructures which is multiplying throughout the world THE homes of growth and of development.

To get out of this, it will be necessary to invent financial compensation mechanisms that make it possible to neutralize activism. Corporate of those who, in THE sectors the most productive (but also the most backward) of European agriculture, would be the main losers of a back on their road of free exchange.



## For a approach liberal of the environment \*

To protect the environment, we need more rights and fewer laws. To pollute is a "aggression ." At the beginning of the 19th century, all pollution was treated by the courts as a "invasion of property ". Thirty years later this rule disappeared. Result: the origin of contemporary problems is not a failure of liberalism, but a failure of the state, Who has missed her TRUE job.

Ecology born concerned not THE reports of the men with their environment (with THE things Who THE surroundings). Ecology concerned THE reports of the men between them as to has the use things Who THE environment. By definition, he must be At less two For that he there is "pollution". Ecology East a concern Who was born of narrowing of there planet. The explosion graphics demo of there revolution industrial has do appear of news rarities And of new risks. How THE manage? How arbitrate THE Conflicts that that gives birth between THE men? Such East the object of the policies of the environment.

There are only two possible attitudes. 1. It is the State which defines which are THE uses legitimate Or prohibited. He referees in delimiting sovereignly THE "rights » Who

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• This chapter East there reprise of a contribution presented has A ragged collar organized in may 1989 by the Institute EURO 92.

come back to some And to others has leave of economic criteria (utilitarian), of fairness (redistribution), or circumstances (deadlines elections).

2. He exist a property « natural » and objective which delimits the rights of everyone regardless the intervention of legislator. THE role of judge East to use THE principle of previous For refine their definition when a gap appears has the opportunity of a conflict. Syule there second attitude corresponds has there practical of the state of right liberal. From there, the European challenge in terms of the environment East clear. Or GOOD Brussels se includes like a sort of referee between state standards rivals - it's the principle of harmonization. Or GOOD we used the news resources of right European For reintroduce there supremacy of the principles of there democracy liberal. THE spirits being This that they are, It is a revolution which, in the best cases, will ask years. This is not, however, not one reason For born not think about how of which a Company liberal would treat ecology And the environment.

### *Pollute East a assault*

Liberalism is based on two principles : ownership and responsibility. There property is not not THE right of “do what you want with what you have” but the right to decide freely on the use of one's resources on the condition of not infringing on the similar rights of others (starting by the first of all: the right to property on yourself).

Polluting is a aggression” since this amounts to pri to others of the free enjoyment of some of their rights and some of their properties. The principle of ownership implied that All Shame of this kind give place has repair (of which the object East in principle of return there property of the one Who se find Thus attacked in sound state original).

Ideally - below there condition of a information

perfect and the absence of "transaction costs" -, a society organized according to this principle would not only be the most effective that a human organization can be, but there would no longer be any reason to speak of environmental problems, everything being appropriable and appropriate, and any external damage caused to the rights of others being necessarily found compensated. The resources - y including resources natural - y would do the object of a management

"optimal" through markets where everyone's preferences are freely expressed. Optimal management and allocation of risks would be carried out by the functioning of markets insurance.

*Externalities, goods public: of the concepts without value*

The classic justification for the appeal to the State is that there would be of the goods Who, by nature, born could to be the subject of appropriations personal (goods public).

We know today that this concept has more limited explanatory power than we believe. Appropriation is often a question of imagination legal combined with adequate use of technological possibilities (for example, privatization of the airwaves). Most of the goods classified in the category of "collective goods" only appear there because, from the outset, certain legislative or regulatory provisions prevented the opening of a process of privatization of their appropriation (case of "natural monopolies", example of the telephone and telecommunications).

For several years, the economists have progressed a lot In there discovery of the means used by the agents For adjust contractually their indivisibility problems And internalization without to have Nothing to ask has person (theory of the "clubs", techniques of "pre-contracting", organization of cartels private...). Other pretext usual: the argument of the externalities. When there satisfaction of someone East affected by

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action of someone else, We they say, THE walk

free born can more, realize the optimum. He y has failure that he come back has the state of compensate for (taxation a tax on the polluter, direct support of protection of some spaces, subsidies to companies accepting of TO DO some investments “clean”). This rationalization modern of the intervention of the State is worthless. This is indeed the essence even life in Company that to bring of the benefits has his members without CO)trepartie. Applied has there letter, she would justify that the state interferes In all THE relationships between THE people And control all their actions. There notion of “externality” East A fake concept.

By elsewhere, as the usefulness And there value born can only be appreciated by individual consciences (subjectivity of value), it follows that the “external costs” born can not be measures by THE men of the state, or their advisors, and therefore that this concept can not serve of foundation has of the decisions operational - others than arbitrary.

There justification of the intervention of the state by there taking into account “externalities” is the product of confusion intellectual Or THE questions are wrong posed.

If some interventions “authoritarian” (but limited) of the state are inevitable, that n / A Nothing has see with the arguments used by economists. This is a consequence of the difficulty of applying in all circumstances THE principle of there responsibility objective.

The functioning of restitutive justice poses effect on the judge a whole series of problems. Evidence issues : it is necessary to establish an indisputable causality between the Shame And THE behavior of the one Who in is made responsible. Evaluation and implementation issues : what do we do when is the culprit insolvent or has simply disappeared? What do we refer to to estimate the “value” of damage? What happens if the thing destroyed is not subject to any orga market nized? Problems of choice: when there is a risk of health or accident physical or death of men, compensated her



monetary policy really appropriate? The *a priori* ban of an activity is it not desirable - even if it means restricting the freedom of some ?

The environment concerns a category of risks and damages where all these problems arise with acuteness all particular (chains of causality extents and multiple, shared responsibilities, character massive and collective risks, bringing into play the people's health). This is an area where accommodations with the individualist doctrine of responsibility seem difficult to avoid. As with driving on the roads, minimizing personal risks implies acceptance of certain public rules and constraints (for example the obligation to certain professions of constitute guarantee funds to replace companies failing ).

That said, accepting the presence of such regulations does not prevent us from harshly judging the regulatory hypertrophy that characterizes today's society .

*there modern pollution reflects a failure of law*

Contrary to the assertions of welfare state advocates, there was nothing inevitable about this intervention. His origin is not part of the *ad hoc justifications* invented after the fact by economists to please the Prince, their employer. But in an already old legal evolution whose effect was to empty the liberal regulatory system of a large part of its effectiveness.

This Who East in cause East there corruption progressive of the individualist foundations of the rules of responsibility attached to the foundations of objective law by utilitarian and collective considerations linked to development of the ideology industrial.

It was only in the 20th century century that this movement reached her fullness with the rise of right social And economic law. But its origins are older. It was particularly in the field of industrial and environmental risks that it all began, at the end of the first half of the 19th century . century, under the influence of the doctrines Saint-Simoniennes.

The American history of this drift is now well known. Historians and jurists have undertaken to study how the rise of industrialist ideology has, at x1xe century, affected the evolution of law and doctrine of the courts <sup>2</sup>.

Their work revealed a general tendency of judges to arbitrate in favor of industrial interests and to absolve them, each time that a conflict of ownership opposed to other non-industrial interests. They show how the rights of local residents on watercourses located in the arid territories of the West, consecrated by the uses of Common Law, found themselves little by little sacrificed, in the name of the general interest and industrialization for the benefit of dam builders. From the medium of 19th century century, In THE Conflicts of pollution of voice involving the railways, the courts, even in the event of obvious damage, have more and more often taken up the cause of companies, invoking the idea that the strict protection of individual property should give way to the imperatives of rapid economic development. The most famous case is the one where an American court acquitted the New York Penn Central company of responsibility *for* the fire and destruction of a district of Syracuse, name of what the compensation would probably have caused its putting in bankruptcy.

In France and in civil law countries, the phenomenon has taken different legal forms. But the point of outcome East THE even.

Under the Ancien Régime, industrial pollution, discharges garbage And THE troubles of neighborhood were milked-

considered “ violations of property ” entitling the complainant to compensation. Under the Empire, the implementation of the Civil Code - notably article 544 on property - has remained faithful to this legal tradition (doctrine Roman of *immissio*).

From the 1820s to 1840s, everything changed. Under the influence of three factors : 1. the disciples of Saint Simon who see in the intangibility of the right of property a brake on industrial progress; 2. the progress of the idea - of Germanic origin - that a victim cannot claim has repair that if She East able to provide proof that she herself manages his property with sufficient attention and caution; finally 3. the triumph of the Rousseauist vision where the State is conceived first and foremost as the arbiter and synthesizer of individual interests. In 1810, an imperial law imposed the “ classification ” of unsanitary or dangerous establishments. But the legal doctrine of the time remained that the entrepreneur could not be relieved of his personal responsibility if his establishment, even duly authorized by the authorities, was a source of pollution for neighbors. Thirty years later, this rule had disappeared. If the State is the judge of the compatibility of individual interests, there can in fact be no question of considering pollution originating from an activity duly authorized by the authority as damage giving rise to the right to compensation. public.

In THE business of nuisance, there law And THE regulation se substitute SO to rules objectives of there legal tradition as instruments of implementation implementation of responsibility. There management of the risks environment escapes At right For become there responsibility direct from a State regulatory governed by considerations of opportunity economic And policy. Sets down the habit of considering that what is not not recognized as a nuisance by the right audience is not not objectionable for the device judicial At title of there responsibility civil. We will assist later on an effort of re-juridization of

treatment of industrial nuisances. But the evil is do. Legal science will prove incapable of evolving and adapting its concepts and instruments to the new forms of collective risks that appear with modern industry. This gap created a vacuum that the legislator was not ue too happy to fill with an activity redoubled .

Result: the origin of the problems contemporaries is not a failure of liberalism, but a failure of the state. The State Who has lack has her job Who East not to act directly on the sources of pollution, but to identify, of recognize, And of TO DO respect THE rights of property of those Who are wronged, that they know it Or No.

The liberal proposal consists not has determine *a priori* THE ,borders of the respective areas of responsibility of the state and walk in management matters environmental goods. Such a task is conceptually impossible. But to define the means to reintroduce any further of right.

More law means more judges and less state. But also a legal renovation giving more space to regulation by property rights, and the play of personal responsibility, to the detriment of regulatory standards. Which implies that environmental law ceases to be primarily a matter for experts, however learned they may be. Ideally, the search for what each person's rights are, the precision of their boundaries, the sanction of their violation, should become again there concern first of the judges - regardless of any theory of negligence (door opened has arbitrariness).

*In reality, property is the best ally of nature*

For many, property is linked to the idea of selfishness individual, SO antinomic with THE worry of

protection collective of the environment. She East even the more often perceived as A obstacle has a ecological action effective. From where the affirmation widely due repair that he y would have by definition incompatibility between capitalism and ecology, between liberalism And there nature. There reality East All THE opposite. The experience clearly shows that he there are only environmental problems there Or he no has not of property : there Or THE structures of property are insufficiently defined; Or Again there where the rights of property are insufficiently respected And protected 4.

*contrario* proof of this is the disastrous environmental situation in the Soviet Union and in the communist countries. from the east. All scientists recognize that, of all industrialized countries, it's in these regions where pollution is the most disastrous (examples of Lake Baikal and the Aral Sea in the Soviet Union ; acid rain Czechoslovakia and Silesia : deforestation of there China...).

On along term, when she can be implementation place, the property private is best guarantor of the protection of the environment For Exactly THE same reasons which make what East there more has even of protect any other property : She encourages there Good management. A property GOOD managed grows in value, And THE private owner receives THE profit of this capital gain. Of there same way, A owner Who leave it property deteriorate sees the value of its capital decrease. So there private property encourages THE owner has GOOD manage their goods. In contrast, state or "public" ownership most often leads has a bad management because not being not owners themselves, the civil servants born are not encouraged to pursue of the policies Who value there resource of which they control use, from where a overexploitation. They can not not benefit themselves of there capital gain that their action could result, And of a other side, they born are not penalized if this resource lose of her value has there following of a bad management.

Contrary to popular belief, private property encourages good management even when the owner seems to only care about the short term, and has little concern for the interests of future generations. As soon as the first signs of poor management become apparent - for example the first indications of an erosion of floors - the pressure of Potential project buyers will experience the repercussions of these symptoms in the future, and the value of the property will be reduced accordingly in the present. This approach which consists of capital read in updating them profits And the future costs of today's decisions, is one of the most fundamental mechanisms - but also the most poorly known - of the system of walk.

Here is a few examples For illustrate this relationship between property And environment.

Fishermen complain about depletion of resources sources maritime. We accuse there " competition wild » of the flotillas industrial. There true reason come of that the sea is a "free good", a typically collective property.

He in go of even For the air pure, Who plays of more in addition A role of garbage can universal.

If the whales are in danger, it is because they do not belong has person. None population animal "domestic" is not threatened extinction.

All the world deplores the fires which regularly ravage the Corsican maquis. The fault goes back to a law of Napoleon which exempted his compatriots from inheritance taxes provided that they remain In joint ownership.

A big part of territory Corsica East Thus become in reality A " GOOD common » 5 .

Let's take hunting. The only French departments where there is abundant and natural game are Haut Rhin, Bas-Rhin and Moselle, countries where the survival of German law avoids the application of the disastrous law of 1964 (on the impossibility for owners of less than twenty hectares to oppose hunting on their land ).

In reaction against the practices of feudal law which they considered contrary to their democratic ideal, the Americans, since the beginning of colonization, opted for a policy of free access dissociating the right to hunt from the right to land ownership. Everyone recognizes that the state of exhaustion of hunting reserves is there today. more advance that In there old Europe.

In England, rivers are private property of local residents. reunited in associations. It is in England that the rivers remain even today, it seems, the lessers polluted.

We could multiply the examples. Wherever a limited resource is treated as a collective good, that is to say where the absence of property rights leads a dissociation between authority and responsibility, between rights and homework, we find a sequence where everyone has an interest in exhausting the resource immediately before one other born THE do has her place.

*THE sector private East often accused has wrong*

GOOD of the case of pollution presented as THE product of the logic liberal, don't do in reality that illustrates the effects pervert of the systems of decision public.

A major campaign draws public attention to the irreparable damage committed in the Amazon. The rhythm too rapid deforestation is done directly linked to government policy which consists of subsidizing the creation of large livestock farms and the establishment of numerous small farmers. Without government subsidies, the rate of deforestation would be much slower. If breeders and other farmers had to pay the real cost of their installation they would realize that such a rapid pace of development is not profitable. Unsubsidized development would make the preservation of there forest Amazonian a lot more interesting.

In France, THE problems avalanche, of slip

of land, flooding... linked to the disappearance of mountain agriculture can be analyzed in the same way. The CAP is an absurd policy which is expensive, which does not achieve its goal (maintaining average agricultural income) and which has had the perverse effect of leading to desertion of the territory. Billions of subsidies going to price support and consolidation have essentially served to ensure the development of over-equipped and over-indebted farms whose operation weakens THE balances traditional of medium natural.

Most people continue nt to think that it's the industry private, And No not the state, Who has destroy, ruined and plundered the environment. For these people, private companies and especially multinationals are the culprits. Their interest and their continual search for profit pushes them to reject their toxic waste, mainly chemicals, in the atmosphere and the courses of water. It is obvious that some companies use their advantage of common resources like air and water in the same way that an individual does when he throws A bag in paper by there window of her car.

However, private companies are often wrongly accused. The example most famous is the one of "Love Canal", this case where a large American firm, the Hooker Chemical Company, was prosecuted and convicted for a case of massive chemical pollution, coming from an industrial dump. Several years later, it was shown that the Hooker Company had probably been the sole responsible party in this matter. The origin of the pollution was the decision of the local authorities to expropriate the land for construction of a school. It is At course of the demolition work that one a breach was made in the system of protection of there dump. Owner of the dump, the Hooker Company had always refused to the sale of the land. She had to give in to the constraint of expropriation "for utility public" <sup>6</sup>.

In the case from Exxon Valdez, there press has forget of

remind that THE environmentalists North Americans, he y at fifteen years old, have blocked THE project of the tankers which was to connect Alaska At rest of the continent by an oil pipeline cross slope THE North West canadian. The ban on Canadian territory forced them to evacuate the oil by ships of which there size East by elsewhere limited of do of obligation of transit by THE channel of Panama. The risks were increased by the same amount for fishermen and wildlife Marine of the ribs Who don't were asking not so much. THE administrations national born are not alone in question.

THE interventions international know the same problems. Witness the Sahel. To stop the advance of desert, A expensive program drilling of a thousand bonds of well has been undertaken. THE new water points destroyed THE system complex And traditional grazing rights on which were agreed the leaders of nomadic tribes. All herds converged towards wells and ravaged THE neighboring pastures by trample At point that each well became THE center of a little desert<sup>7</sup>.

*He must se keep of a angelic vision of role of the state*

Ecology is an area where the myth of angelic vision of the state stay firmly anchor.

It is not 9.question of challenge the good will of men of the State, nor their desire to resolve problems. It is simply a matter of recognizing that they carry out their activity in an institutional framework where the absence of private rights means that they are neither sufficiently motivated nor sufficiently informed to effectively manage environmental resources. Public action, through electoral deadlines, cannot ignore the contradictory pressures of interest groups. There is therefore absolutely no reason why public management should necessarily be more favorable for protection of the resources of medium.

A example: THE parks national Americans. Designed

to maintain a certain number of natural spaces in their purest state of virginity, they meet a ever-increasing tourist success. The number of visitors has today become too great to ensure balanced maintenance of these parks. But their status as public administration is opposed to an effective policy rationing of visits (considerations electoral lists). Result: there disaster of the immense lights of forest of summer last Who has destroy close of there half of more big of among them (Yellowstone Park 8 ).

The crisis of American public parks contrasts with the ecological success of private reserves. Ideologically marked by the angelism of state constructivism, ecological movements neglect the capacities and achievements of private initiative. Because private conservation organizations do not depend on funds coercively obtained from other individuals through taxes, and cannot use the police power of the state to control a situation, they tend to act more seriously, more effectively (stricter police standards for example) and more quickly. Their speed of reaction comes from the fact that they can act without needing to convince a public opinion, a large part of which does not feel concerned, or is sometimes downright hostile. Electoral concerns do not compromise not there regulation visits (essential for the preservation of animal sanctuaries).

Of such organizations are generally in advance of several years, if not decades, on public opinion and consequently on the concerns of the State. This is the case, for example, of the Hawk Mountain Sanctuary Association which, in 1933, in Eastern Pennsylvania, undertook of protect THE hawks wild

- at a time when the public authorities, in the interest of farmers, subsidized their destruction. Creation of a protection, reproduction and improvement center of some lepidoptera (butterflies), of which there survival

is threatened by cultural practices, farms for the breeding of crocodiles or sea turtles, bird sanctuaries (like that of the Audubon Society in Florida where ecology and oil exploitation go hand in hand), buyouts, of sites to be protected by associations etc., there are, in the United States, hundreds of private organizations of this kind.

In France too we have the Conservatory du Littoral, the Spaces for Tomorrow association. Firms are launching ecological patronage. But in this area, as for artistic, cultural or scientific patronage, the absence of an appropriate status for foundations is so cruelly felt.

Privatization means, for example, that only those who have the financial capacity to pay a high access fee. But free access (subsidies) has never been an effective policy, nor even a criterion of justice. A free good is a good for which the "request" will stay always stronger than what can be satisfied. A policy free of cost therefore a policy which not only generates perverse effects, but necessarily maintains frustration and favoritism.

*The problem is of a "reciprocal" nature, you have to pay "all" the users*

The danger of media campaigns is that they approach environmental problems in global terms. And universal (see the case of *Express*). They don't perceive that the appearance of a scientist - has he left what percentage of degradation of the ozone layer does it pose a mortal risk for all of humanity? - And not at all the dimension fundamentally economic. That is to say the management of a scarcity which results from the competition of human projects whose simultaneous realization is impossible.

This thought in shape of "All Or Nothing" arouses a

atmosphere of crisis and a feeling of the end of the world which favors authoritarian inclinations and collectivists. It evacuates the real questions. For example, the cost of protection policies: even if it were possible to recreate a pure atmosphere, would it be worth the effort there totality of **GNP**?

It neglects the subjective nature of problems and choices Who there pose. By example : should we TO DO of Corsica, a nature reserve which allows expatriate Corsicans to return to spend their holidays in a faithful country has their memories childhood? THE need of sunshine of Parisians, Germans or Swedes wishing to do there of tourism is it less legitimate?

Managing the environment means constantly putting different but equally respectable interests, visions and conceptions of life into competition. For a liberal, this competitive - and therefore reciprocal - dimension of pollution phenomena is completely essential. Polluting a river using it as natural sewer has the consequence that other users (Sunday fishermen, bathers, gardeners, walkers, nature lovers) are prevented from take personal advantage. They are imposed a " cost », an externality. Conversely, when the neighbors of a factory, the residents of a watercourse, the leaders of a local defense association obtain from the public authorities that they require a company to eliminate its discharges, they are the actors of an "externality" against the firm thus forced to operate with higher production costs. Pollution is therefore a phenomenon social has double sense .

In a democracy based on equality civil rights, industry has as much of reasons of consider that it is his "right" to use the waters of the river as a sewer natural, for local residents to ask that we respect " their right » to access has a water No polluted. We are brought back to a classic problem of power and arbitration In the allowance of the rights individual has the use

of a rare resource, coveted by competing users. The very type of problem that economic theory shows that he is more effectively resolved by decentralized market mechanisms than by procedures of distribution state And policies.

The solution is to require all users to pay For the use that they make of the environment - even if it is to leave the environment in its natural state, which is after all just a preference like any other. In terms of sanitation and control of water quality, this implies not only that polluting activities (including agriculture) are taxed but that basin agencies also involve has their financing organizations of users. This is what is happening, for example, in the Ruhr basin where voting rights on the board of directors are distributed in proportion to the financial contribution of each association. A shortcoming, however : only associations of water distribution subscribers appear in this advice. Representatives of leisure associations (anglers, canoeing and sailing sports companies, etc.) should be able to join them. We would approach then of the "optimal" system where everyone is forced to pay for the cost it imposes to others <sup>10</sup>.

*The objective: recreate of the markets, It is possible*

The mechanism of "atmospheric bubbles", experimented by certain American cities, shows how, with a little imagination, we can go very far in reconstituting authentic markets. The average rate emissions into the atmosphere from each polluting activity is frozen at the level reached. In return, each company sees itself recognized a property right over the share of pollution thus authorized. A company that cannot do otherwise than exceed the average standard, does not will be not prevented, has there condition however what

purchases the necessary additional rights. These will be resold to him by another firm in the opposite position. Or She has of more of rights to pollute than it actually uses. L main advantage is of promote the development of new depollution technologies in a much more effective manner than a regulatory police system. But also to allow much greater flexibility in local situations.

A times THE system put in place around of a agglomeration, he East possible of reduce there pollution in lowering THE standards. But that would have THE same effects pervert that one handling authoritarian of the price. There solution liberal would consist has federate THE « bubbles » local At breast of spaces more wide (national Or even, Why not, international - Europe For example) with possibility exchange of the rights between them. A such mechanism would favor a diffusion more equal of there pollution (And SO Also of industry).

A principle similar could to be applied in matters of town planning. Current policies would be replaced of planning land by the attribution of freely tradable « development rights ». These rights would confer asset owner ground the right to a certain density of construction by metre square. The owner would then be free to actually use the construction right thus recognized. But he could also not use it and resell it to someone else wishing to build a building exceeding the land use coefficient recognized for him. The first plot of land would then cease to be buildable unless its owner subsequently purchased the new ones. rights of development sold by A third party.

In A such system, THE foreigners eager loosen the surface area of green spaces and leisure areas could achieve their goal by grouping together into associations including finances would be used to compensate, by

the redemption of their building rights, the owners land voluntarily agreeing to freeze its use. We can even imagine the establishment of a system which would allow land owners to negotiate on the market their voluntary acceptance of certain environmental easements whose titles would be freely assignable, transferable and redeemable. and for which associations would acquire or some firms specialized in the realization of some goals environment <sup>11</sup>.

### *Of the auction For THE big projects*

Initially, the standards would be defined locally. Then the possibilities of exchange would be expanded to the level of a national and European market. Land prices in each region would reflect the composite basket of standards imposed in each locality. But the increase in competition territorial will lead gradually to a narrowing of their gaps. Harmonization will take place through competition, with the advantage of mobilizing all the micro-resources of technological progress, while *a priori* regulatory harmonization can only be based on existing technical knowledge known to experts public.

For large equipment - for example dams - one could imagine that projects of public origin would be the subject of competitive auction procedures. Several choices of sites would be put into competition. Local authorities would be invited to make known the price they are offering so that the project is carried out at home. The debate for the evaluation of the offer would encourage local pressure groups favorable or opposed to the project to carefully weigh their preference and not to give in to local demagoguery. Local and regional democracy in would come out reinforced <sup>12</sup>.

*For what THE organizations "environmentalists" don't want not*

Implementing such procedures will not be easy has TO DO accept.

THE gone policies will be against, because there creation of markets would reduce the importance of their intermediation in there demonstration of the preferences of the populations. THE associations national For there defense of the environment have interest has refuse there Steps For THE same reasons : more of importance And of responsibilities. For associations local, but the staffs national will not have not much anymore has TO DO. These have everything to be won at maintenance of a situation which maintains - and even accentuates frustrations (through the myth of free access). Their personal interest is in conflict with the logic of walk of which there virtue East precisely of reduce the frustrations, and so the number candidates has t e r demonstrations .

In industry training should be expected of a coalition gathering those Who have All has to fear of a reinforcement shapes territorial of the competition. A argument will be to explain that there protection of the environment is a cause too much noble for TO DO the object of procedures merchants. THE economists (of which the interests oppose has enlargement of there democracy) will object THE level pupil of the " costs of transactions " of the procedures contractual. To first, he will have to answer that it is GOOD because it is a cause noble that he must preserve the environment of the arbitrary and injustice. To the seconds, we will do notice that their analysis East biased. She gets attached to " costs" of walk, And neglected THE "costs" of system of decision audience.

The liberal attitude is not to pretend that the market is perfect. It only asks for a reversal of the burden of proof and that each specific case be carefully examined before

concluding that public management East more favorable  
For there protection of the res-



sources of medium. A such examination would be Already a change considerable by report to attitudes current.

*How give back more of importance At role of judge*

Last issue : the one of there management of the great risks, chemical And nuclear, of there protection against disasters natural, third party compensation in case accidents major... '

Direct payment by the community of compensation of the victims of large disasters is not necessarily a good thing. It encourages behavior pervert. For example : the increase of the constructions In of the areas floodable, In of the avalanche corridors, or in ecologically very sensitive areas. In return, public authorities feel justified has impose always more of regulations preventive.

The « moral hazard » also exists in private insurance. Companies guarantee themselves by imposing on policyholders their clean standards of prevention (e.g. fire insurance). But competition is a constraint that forces them to constantly refine their knowledge of risks and ways to prevent them. This motivation born se find not In THE public sector .

Number of risks deemed uninsurable due to their characteristics (low probability but considerable damage; risks of pollution or contamination with slow effects and late detection) could be covered by the insurance market. It is he who should example exercise there police of the discharges. There However, the birth of these markets is often compromised by of the regulations public industrial or financial (cases of the pollution chemical) <sup>13</sup> .

The liberal solution consists of giving back more space At game of the insurance. At the level of there management of the public funds, that imposed A priority effort to improve the operation of there justice. But that implied Also

that the courts do not let themselves be stopped by the fear of imposing reparations which put a firm into bankruptcy, Also big be it.

There sensitivity of the populations to big risks industrial sectors has increased significantly. The answer is to improve and speed up compensation procedures. It is not obvious that an administration is better at even to achieve such a goal as a well-organized internationally free insurance and reinsurance market .

Another aspect of liberalism would be to increase. the role of the judge in the prevention and detection of risks.

A village fears the arrival of a factory whose activity is present of the risks. A owner rented her ground for the installation of an industrial landfill. There are fears that chemicals will contaminate the groundwater. Other products emit radiation with carcinogenic effects. A developer installs a large building In a area has risk seismic. The architect, For of the reasons of costs, did not plan none anti-earthquake device. The neighbor fears that in the next earthquake the building will collapse and bury his house.

In the current circumstances it is the administration which East generally sovereign to judge where is really at risk or not, and decide or not to prohibit. The role of the courts is very limited. He se limit the most often to be punished THE breaches has there legislation.

Liberal legislation would strengthen the role of the injunction judicial of a plan Who could be next.

Anyone who has reason to fear being the victim of a bodily accident or dangerous contamination for his health, due to an activity located in the neighborhood, would deposit an appeal to court on the condition that it demonstrates that a first effort at a solution to the amicable agreement with the author of the alleged risk has not given none result. A first audience would strive

to assess the probability risk objective And there compared to reference standards developed by experts of the insurance and confirmed by juris prudential practice .

If the complainant is denied his complaint, it is up to him to have to assume the costs of the procedure. If the risk is deemed sufficient to justify the complaint, a real trial with a jury of specialists then takes place, the costs of which and the burden of proof would fall this time to the owner of the incriminated activity. A contradictory debate begins where everyone defends their point of view, and where possible techniques are analyzed to mitigate the risk borne by the complainant. Such a procedure would have multiple advantages. It would make a sort of quasi-market For THE problems of neighborhoods where the private insurance solution is insufficient. In all matters involving industrial or environmental risks, transparency of information is essential. This form of public debate arbitrated by professional judges, informed by juries of experts, would offer a superior guarantee to all prefectural investigations of utility public to procedures archaic <sup>14</sup>.

THE risk having has support of the costly lawsuit encourages

would encourage businesses to be more concerned about their integration into the local environment. This would encourage the development of new professions specializing in *risk assessment*, and would improve the functioning of the risk assessment market. insurance. A way of se cover against procedural risks could be taking out insurance with a company whose safety standards and inspection procedures imposed by their policies are known to be particularly strict. The need for public regulation would thus be reduced. Conversely, the potential victim can use the evidence provided in support of his complaint as an instrument of insurance coverage for the day the loss occurs. Inspired by Anglo-Saxon practice, this procedure does not seem impossible to establish in right civil.

The shortcoming of law and justice is that it has not adapted to new features of risk industrial which, at the end of the last century, created a vacuum into which regulatory law was engulfed. Labor law has its industrial tribunals. Business law has its commercial courts. For what THE right of the environment wouldn't he have his clean jurisdictions specialized?

### *Should we chain Prometheus?*

There remains the question of ecological risks adults including we were told that they call into question the very survival of the planet: nuclear power, holes in the ozone layer, the modification of fundamental ecological cycles, but also the development of genetic engineering, biotechnology, etc.

There question posed by there climb of the fears East that of the organization of scientific and technical progress: how should we organize THE development of the ideas and science? What institutional framework is most desirable to minimize the risks experienced by generations today And of future?

That these problems reflect a sense of urgency is a new manifestation of Prometheus syndrome. This comes up regularly when the world experiences phases of large innovations Who make obsolete most traditional cultural landmarks. The gods did not want the secret of the invention of fire to be revealed to men. They feared that they would misuse it. It was the tutelary and sovereign Administration of the time. Because he transmitted fire to men in contravention of their edict, Prometheus was condemned has live eternally chained has a mountain where a vulture came back every day devour it liver. The fire did indeed kill men. Some died of asphyxiation, others burned alive in the fire of their cabin due to a handling error. But, overall, much more of lives have summer saved grace to us

new food resources, but also protection, that fire brought to men. The fire benefited everyone humanity.

Today's debates on the environment are reminiscent of the conflict which, in Antiquity, pitted Prometheus against the other Greek gods.' The question posed to us is the concrete question of whether it is necessary to submit the creation, the genius scientific, the spirit of discovery, to the political control of other beings supposedly endowed with a gift of omniscience and perfect clairvoyance (but who in reality have none of this); or accept the risks (and rewards) of spontaneous order based on property And there responsibility individual.

The liberal answer is that risk reduction can only come from a system of social regulation which disseminates decisions to the level of people concerned who accept responsibly to take reasoned risks. This is unfortunately what our right.

## Notes

1. See the special issue of the *Cato Journal* dedicated to pollution, flight. II, No. 1, spring 1982. Notably the article of Richard EPSTEIN, • The Principles of Environmental Protection : tea Box of Superfund , follow up of the comments of Ronald HAMOWY And Gerald P. O'DRiscOLL. S11r there discount in cause of the foundations conceptual of the intervention of the State in the field of pollution, see in this same issue the article by Murray RoTHBARD, • Law, Property Rights and Air Pollution ”.

2. See Morton HORWITZ, *Tea Transformation of American Law: /780-1860*, Harvard University Press, 1977.

3. This analysis is taken from the work of Professor Baudoin Bou CKAERT of the university of Ghent. He developed this thesis In a series of conferences prepared for seminars of the Institute for Humane Studies from Fairfax Va. Unfortunately he did not nothing published yet on this subject.

4. For THE relationship between property and protection of the environment, see the work of J. BADEN and R. STRoup. Notably: • Property Rights and National Resource Management •• in *Literature of Liberty*, vol. II, no. 4, September-December 1979. A. SIMMONS And J. BADEN, • Tea

theory of tea NRE • In *Tea Newspaper of Contemporary Studies*, vol. VII, n° 2, spring I 984. Robert SMITH, • Privatization of the environment is lying • in *Policy Review*, No. 20, spring 1982. For a presentation in French of a summary of these theses, see Max FALQUE, • Liberalism And Environment•• in *Futuribles*, March 1986.

5. Reported by Max FALQUE in *Liberalism and Environment* at from an article by Gille BARUCH in a book entitled : *Heritage management of natural resources*, under the direction of Jean de MONTGOLFIER.

6. This affair was the subject of a remarkable report published in a number of there review *American Reason Magazine*.

7. See Max FALQUE, *op. cit.*, p. 48.

8. On the deplorable state of American national parks, see the publications of STROUP and BADEN, in particular: • The Development of Predatory Bureaucracy •• in *Policy Review*, winter 1979.

9. See Hugh MACAULAY And Bruce YANDLE, *Environmental Worn and the market*, Lexington Books, Heath and Company, 1977.

10. Information found In MACAULAY And YANDLE, *op. cit.*

11. See J.-P. BECKWITH, • Parks, Property Rights and the Possibilities of Private Law•• in *Tea Cato Newspaper*, nineteen eighty one, flight. no. 2.

12. See *Pollution of the environment: causes and solutions*, of Jane HAW and Richard STROUP, article distributed at the Summer University of New Economy, Aix en Provence, september 1988.

13. See Gerald SAUER • Imposed **Risk** Controversies: A Critical analysis lysis •, in *Tea Cato Newspaper*, flight. II, number 1, spring 982.

14. See Gerald SAUER, *op. cit.*

## **Property industrial, property intellectual and theory of there property \***

Economists see monopoly as the expression of M I the most absolute. The patent is a monopoly conferred by the State on an inventor. This monopoly only has, it is true, a limited duration (twenty years, in French legislation on industrial property). However, most of economists consider the patent as a legitimate and socially useful institution. This was not always the case. But today there is in the profession a almost unanimous consensus in favor of this institution. It's that paradox Who We has led has We interest in patents and the problems posed by intellectual property .

A second factor however, intervened. Over the past twenty years, economic science has undergone a silent revolution which leads to an in-depth critique of theoretical concepts on which se founded, since the war, the; development of regulatory interventions by the State (for example the traditional notions of "collective goods" and "externalities"). Deregulation is one of spin off news of this current of scientific thought. Furthermore, to confines of the economy, of right, but Also of there philo-

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• This chapter takes up and develops the conclusion of a research work led in collaboration with Bertrand Lemennicier, Associate Professor economy has the university of Lille.

ophie And of politics, se develops a new discipline which makes property and of the property rights its main subject of investigation. One of his lessons is that when there is freedom of contracts, markets reveal themselves much more effective as we believes in spontaneously resolving many problems of property and protection, for which it is generally assumed that they cannot find a solution. solution hat In THE frame of state regulation enlarged.

One of the first points of application of these new approaches has summer there critical lessons of there traditional economic theory of competition, and its applications to the management of antitrust policies. This work has had a certain influence on the development of American and European jurisprudence (particularly in matters of distribution law). Another area preferred study concerns "public services" and the theory of "natural monopoly" - that is to say all sectors where economic analysis states *a priori* that the mechanisms of private property and the market cannot function <sup>1</sup>. Our interest in "public service" of industrial property is placed directly in the conti overnight stay of these works.

Our main conclusions are At number of three. The first is that the economic arguments usually presented to justify modern legislation on patents do not are not scientifically convincing. They are not enough to legitimize entrusting a monopoly, even temporary, to the author of an invention in all circumstances. We now have statistical and empirical series which tend rather to reinforce the camp of skeptics on the indispensability of the institution. There are undoubtedly certain sectors where the legal protection of inventions appears more advantageous for the inventor than the contractual protection which would emerge spontaneously from the functioning of a free economy; but the y has Also of many case Or it's the opposite<sup>2</sup>. As we do not have, and we will never have there

awareness necessary For determine with Considering the relative costs and advantages of these two modes of protection, we conclude that if we had the choice, it would be better to give people the freedom to organize themselves there protection of their ideas (as we their leave her freedom to organize there protection of their House).

Our second conclusion is that the problems posed are much less economic than philosophical. The whole debate revolves around the definition of the word "property". He We East appeared that those who write, or have written on these subjects generally have only blurred vision of This that are the boundaries and the content of there property intellectual.

Our third conclusion is that unlike the economic approach, the conceptual and philosophical analysis allows us to reach *precise conclusions*. **Our diagnosis is that an idea cannot be the subject of property rights: only the material support through which the idea finds its concrete expression can. Copying an object for which one has legitimately acquired property rights cannot therefore, in our view, constitute a reprehensible act; even when it is for personal commercial exploitation.** Null creator has indeed never held a "natural right to full value" of his creation. Copying therefore does not imply that there is *ipso facto* "theft" of an idea. It is up to the creator to organize themselves to prevent the concrete object which serves as material support for his idea falls into the hands of someone likely to do a commercial exploitation or personal industrial without that he was able to negotiate with him commitment of don't Nothing TO DO.

He We appears clearly that This Who East morally reprehensible is not the act of copying an idea conceived by A other, but to **appropriate fraudulently** the object Who serves as a support and who is protected by the property rights of the author. **The role of the State is to ensure respect for property rights over material objects susceptible to be appropriate,** A point It is

All. Do of there property intellectual a particular legal category only results in granting to certain creators of the rights of property beyond of This Who must be recognized by all as their “natural property”. That creates of the privileges, At sense strict. Of This point of view, the contemporary forms of industrial property law, And even THE diet of the *copyrights* legal, we appear clearly illegitimate, even if they are valuable legal.

*who is it what to be owner?*

All THE debate turned around of there definition of word “property”: what do we put in it? What is its content? What does “ownership” mean? he can seem absurd (or pretentious) to return to such fundamental questions, and therefore apparently exhausted for so long. We don't don't think so insofar where we live in a time where the influence of relativist and positivist philosophies has the effect of obscuring the meaning of words and causing a true derivative of the concepts.

As soon as we talk about ownership, we have to make a choice between two approaches. Either we admit that property is a social artifice developed by men to resolve their problems of cooperation and maintain peace in their relationships, or we consider that the very term property is ontologically related to the concept of free will, and that it is just another way of expressing the idea of individual freedom. This metaphysical conception of property has long gone out of fashion. This is, however, no reason to authoritatively dismiss it. of a reverse of hand.

THE choice between these two interpretations East itself related to another question. Or we imagine man as a biological machine whose functioning is determined by forces external to the individual will, or we accept the Judeo-Christian schema of man conceived as a being of conscience equipped with a

moral freedom. In this second case, we can demonstrate that, contrary to the reaction of French jurists fiercely opposed to the use of such vocabulary, it is not absurd to define freedom as the made of to be recognized by others as "self-ownership" ". The first to use this expression was John Locke. It occupies a central place in its political construction. Unfortunately, Locke was read by people whose supposed philosophical preconceptions were already materialist and of the Hobbian type, that is to say very far from the theological anchoring of her own reflection.

In what follows, we will abandon the utilitarian habit which East the one of the Economist contemporary. We we will place In THE frame of a universe philosophical of kind Lockian, And We we will try from explore all the consequences, taking care never to betray the imperative of consistency who is there constraint of a thought intelligent. When, as Locke, We let's say - This of which we can bring there evidence logic, but In THE frame others works Who don't have not their place In This book - that man is the "owner" of himself, we hear by this that every human being has, due to the fact even as it is, inalienable "rights" that no other, even a majority policy legitimate, n / A THE right of transgress without committing towards him an injustice. It is the "right natural" <sup>3</sup>. These rights se limit to three rights defined by Locke in his writings, and taken back by the text of the Statement American of independence: THE right has there life, has the property And has there pursuit of happiness. We can demonstrate logically that he born can exist others rights who does not violent not these rights fundamental. And SO that he can not not y to have others rights that these rights. Since then, there list of the rights "declared" its seriously lying down. But it is not enough not just one legislative body, even confirmed by a referendum popular, declares recognition of new rights, For TODO that these rights exist has legal of the rights individual previous 4.

In Arithmetic Lockian All begin by

the affirmation (demonstrable, we repeat) that the individual "owns" itself. The man is the owner of self, of her body, of her spirit, of his ideas, his actions. Man is also necessarily the owner of his work. The reason is not difficult to understand. Contrary to the interpretation of his ideas generally detention (Mac Pherson), Locke don't think not the work necessarily as a merchandise. THE work is only the implementation of being itself, the expression in movement of its will 5 • Nobody will deny that the individual is by definition owner of his clean thoughts. But there thought is she not Also A " work "? Aren't we talking about "intellectual work"? Man is therefore the owner of his work as he is the owner of himself, Thus her work is it not no other thing that one go of her individual.

From there, Locke develops his theory of "appropriation". Because he is the owner of his work, man is also the owner of the products he has obtained by mixing his work with the natural resources which belong to everyone in common, and therefore to no one in particular. Rothbard reminds us that the demonstration is made by reasoning *a contrario* 6. It can be demonstrated that no other solution is compatible with the rule of universalization which serves as a necessary test for any proposition of legal morality to recognize its validity. (Kant).

There characteristic of this theory of appropriation is to set to all thing a right of property " natural " of which THE respect imposes itself has all because that he has been acquired by procedures which have at no time violated someone else's natural rights. Is by definition legitimate, and therefore an inviolable right, any property which has summer acquired in mixing her work (her labor, her creativity) to "free" resources, or which is the product of an exchange freely concluded with a other person who herself had legally acquired ownership time. As a thing born can not to have two creators

simultaneous, everything in this world can only be the subject of a alone property li itime, And SO do not have only one owner " natural " .

*Do we have THE right of to copy THE work of a other?*

Now let's take the man who has an idea, and see what happens. This idea is, for example, the principle of a new machine, the plan of a house, the page of a future book, the intuition of a physical principle, the project of a new building... This idea is naturally his as long as it resides in his brain. The problem appears when it leaves the brain to materialize materially in a written formulation (a plan, a letter, notes, etc.) or the production of a model. Or of a first sample.

If I put my idea to bed on a leaflet, I am uncontested proprietary table (as far as I have legitimately acquired beforehand the paper on which I write my thoughts). If someone come steal it from me during the night, and reveals its contained in the press the next day, it y has rape And flight of This Who is my property, and I am morally in right of him in ask repair.

Let's imagine that I confided this idea to a friend by asking him not to reveal to person. There is a commitment on his part to keep it confidential. If he reveals it to someone else, who seizes it to ensure its realization before I myself have had time to do so to do, there is a fault His part. It is legitimate to speak of "theft" of an idea who is mine and who se illegitimately finds "appropriate" by someone else.

I go to there beach And I'm there buildings THE castle sand of my dreams. A kid undertakes to copy it. Do I have the right to object? Can I blame him for "stealing" my idea? The answer is clearly no (unless we participate both in a competition including there rule is that each competitor must produce an "original" work. For what born can I not me there oppose? Because that if I

wish to avoid any imitation I have a possible solution : I just need to build a wall of such height that no one cannot see This Who se hidden behind. If I I own the land where the wall East erected, I will then be able to authorize people to visit my masterpiece, but on the condition express that they renounce has their freedom (their “right”) to copy what is mine and that I agree to show them - by example in their imposing to buy at the entrance a ticket where the condition is explicitly formulated. Ultimately, I can require my visitors to let At changing room their devices photo in order to that they do not even have the possibility of taking a precise image of This Who their East exposed (*see* THE regulation museums). If someone cheated And takes clandestinely of the Pictures, THE transform in cards postal And do fortune in THE selling, this fortune will be undoubtedly the product of a theft; not because he “stole” income from me that I could have received but rather which he had the idea of that Me; but because that he will have broken THE contract under there condition from which I had accepted of him show off my masterpiece. It's not not the “theft” of the idea that counts and is reprehensible, but the breaking of the commitment initial. The idea in herself born can not to do the object of property rights, but its image does. This is precisely there function of right entry acquitted, And of the contract implicit of which he is holding place.

A visitor, however, has such a memory that he faithfully reproduces what he has seen, but without ever violating the instructions displayed at the entrance. He reconstructs a faithful copy of what I created. He produces postcards that compete with those that I sell. Am I based to complain? Can I blame him for “stealing” the idea from me, as well as the revenue from the market share he appropriated? to my detriment? Yes, figuratively. But not in a moral sense. If I sued him, I would be the one committing injustice and violating his rights. If I let you avoid this risk I could ask my visitors to sign a commitment not to never reproduce This that they

were going to see. In making his copy, he did not encroach on any of my personal rights. He only applied the freedom of his mind. No one can forbid someone else from reproducing what they have seen or perceived through their senses without infringe her own freedom, that's to say without se consider him as his master, and therefore take him for a slave (unless he carries out this reproduction with material means which do not are not to him, Or if he do on someone else's property). I cannot legitimately blame him for my own negligence in not having anticipated that there had people has Memory exceptional. It was up to me to think about it. The income that his postcards bring him are legitimately the his, even if it was thanks to my idea, and he didn't steal anything from me that was has Me.

You build it long of a road a house of a exceptional architectural originality. You are very proud of it. It's a truly unique house that you were only able to build thanks to a few tricks that no architect had ever thought of before. Can you prevent someone passing by from reproducing a similar one elsewhere? *A priori* there is little risk since it n / A could be built that thanks to this secret that you yourself designed. But a super-intelligent architect comes along who, with just one careful glance, discovers your secret and has an identical building built for him. Can you stop him? The answer is clearly no. If you want the to prevent is has you to take the necessary precautions : surround the property with a wall enough high; Or still buy a piece of land around it large enough so that no one can observe it from a road or a piece of owned field to someone else. THE copier can only legitimately be prosecuted if he it is a fraudulent imitation; that is to say if we can demonstrate to the court that he was only able to reproduce what is your property because he had previously succeeded in obtaining the plans fraudulently. What is reprehensible is the theft of plans, or the fraudulent action

dule by which he obtained them. Not the act of copying itself. Copying is an act of the mind, a work, which is no less its own than the act of design an original object. Any original creation is itself most often inspired by something that already exists. If it were necessary to demand rights for the use of all who inspires us worse, there life would become strictly impossible. A a universe where everyone had property rights over the activity of the minds of others would be a surreal world where Nothing born could Never more be accomplished.

*He born can to have of « natural property » on a value*

An engineer invents a new mechanism that allows him to create a new machine. Unable to ensure its industrial and commercial exploitation himself, he contacted a company which request of carry out a private demonstration in its premises. The inventor executes. Innocent, unsuspecting, he leaves the machine at the disposal of the firm's engineers for a daytime. This declines the case. But two months later, it announced to its customers the release of an almost identical machine. A simple in-depth inspection of the sample allowed its engineers to reconstruct the principle and reproduce the mechanism. Is the inventor entitled to seek compensation for « flight » of what he was indeed the first to conceive? The answer depends on the terms of the agreement concluded with the company at the time was accepted on principle of presentation. If he didn't take any precautions to impose a confidentiality clause, too bad for him. An idea in. self cannot be the subject of property rights. The fact of developing a completely new machine does not imply not that its creator would have, speak the sole fact that he is the inventor, a priority right on all the income expected from its future marketing. The reason in East simple. The value is the result-

state of the confrontation of individual preferences of buyers in an organized market. Each preference being there property of each, null born can se pretend "owner" of what is the product of the ideas and activities of all. There cannot be natural property" on a value. All what is the being natural "owner" of our ideas gives us the right, is to exploit the privileged information represented by the possession of an invention secret, to design means which will allow us to capture and appropriate the greatest share of future value through technical mechanisms Or commercial Who will prevent others from taking advantage of it without first asking us our agreement.

The design of these means is an integral part of the invention. It is this which will subsequently allow the inventor to oppose his "rights" to possible imitators - provided, of course, that the means of protection thus designed do not at any time involve transgression of the natural property of other people. Only the material translation of an idea (in the form of an object, or a written trace) can be the subject of private appropriation procedures. But it is up to the "owner" of the idea of get organized her design to capture the maximum of the income thus created while remaining respectful of the rights of others. There is no other possible approach that either compatible with the functioning of a society based on the market principle, since if everyone had from the departure one property right over the entire value derived from its creation there is no would have more of possible competition ; so more of market, nor No more of AVERAGE devalue there value.

19th century did not understand who, like Molinari, were supporters of industrial property of a perpetual nature, like the right of ownership to land. or a house <sup>8</sup>. Their error was not to see that perpetuality cannot relate to the idea in itself; that it can only be a quality

property rights assigned to the material support for bringing the idea to fruition; and that these rights, to appear, require an act of appropriation which consists, for the creator, of imagining the technical or contractual barriers which will allow him to reserve the exploitation of what he creates against the temptation of others to benefit from it Also.

*THE alternatives merchants has there protection of the patents*

Traditionally, people reason as if the inventor had no other way to recover the equivalent value of his investments initial that to resort to the legal protection of a state monopoly. But this is false. For example, by his activity, the inventor has a source of information that he can exploit by investing before others in industries that will benefit from the commercialization and development of his invention. Of such speculation can turn out infinitely more profitable than the simple assurance of a regular flow of royalties, without presenting the economic disadvantages And moral related has there presence of a TRUE  
 « monopoly »<sup>9</sup>.

It is easy to show that in the absence of invention patents or of rights of copy it would still exist a literary production And artistic, as well as inventions. do not forget that there is a large number of ideas that are not legally protected : fashion, commercial strategies, scientific discoveries, formulas mathematics, THE jokes Or Again THE magic tricks, slogans, etc. We must also include a large number of inventions No declared Or born not the subject of a patent. And what to say patents of invention or rights of copy arrived has expiry. Let's finally think to songs where we take the text of melodies that our parents, grandparents and sometimes even great-grandparents hummed, without forgetting THE poems of Virgil

or Sapho which can be republished without paying royalties .

In fact there are an extraordinarily large number means to appropriate revenues from forests without needing to call on state protection. Most works of art, including music concerts, cinema, theater, circus, painting exhibitions, etc., require entry tickets or invitations. Most television programs are financed through a " linked product" »: advertising. Other shows are encoded and you have to pay to get a decoder. Pirate photocopies can be killed using special paper that cannot be copied (like the one put to the point by firm Nicopi International). Another company developed a paper that automatically prints on the photo copy there mention *Unauthorized Copy*. For the production of software, it is possible to link their sale to it she of a good complementary as THE manuals.

A classic solution is the use of " trade secrets ". The intensive use of contractual disciplines of industrial secrecy is sometimes criticized. He doesn't Nevertheless, the most recent studies show that the industry is relying more more widely to him, then even that companies seem to be divert from patent filing <sup>10</sup>. This is undoubtedly the result of this that a growing share of added value is today the product of ideas and know-how that are more difficult to incorporate has of the objects merchants <sup>11</sup>.

Economists obviously have a lot of difficulty imagining this that what the world would be like if there were no patents. Lawyers have even less imagination; they only know the law, and often demonstrate a marked lack of critical thinking when it comes to appreciate THE foundations theoretical.

Yet one thing is certain. Provided they benefit from freedom of contract, companies would certainly have discovered others methods For defend

their property rights to the financial benefits of their inventions.

A technique would consist of put on point contractual cooperation procedures designed to partially internalize within a pool of companies linked together by a common discipline, the "externalities" inherent to innovative activity. We have a historical example of an institution of this kind. It's about of an agreement between American fashion designers who were condemned in 1941 by the Federal Trade Commission in the name of repressing anti-competitive practices.

The story takes place before the war. It depicts industrial women's clothing and of the fabric manufacturers. The first create clothing models that they manufacture and sell to retailers. The latter develop fabrics And of the drawings originals used then by the stylists for styling at the point of collections annuals.

When these models enter the sales channels, THE competitors can in buy A copy, put it has flat, THE to copy And THE make has their round, has a price Who n / A not need to amortize THE costs of design, research, and development. This competition is judged "unfair" by those who designed the original models. In their eyes, this is a clear-cut act of piracy. But there legislation American does not offer no recourse against this form of commercial "theft". Fashion models have been expressly excluded by case law of there protection of the patents, And even of there law on THE copyrights.

To protect themselves, American manufacturers specializing in women's novelties have developed the following system. An association (guild) has been formed which brings together one hundred and seventy-six industrial manufacturers and a certain number of fabric producers who are committed to their to book all their production. There guild negotiates with retailers contracts by which they commit themselves

has born not broadcast of clothes manufactured by THE non-adherent industrial companies, and which would represent an infringement of models put At point by of the members of the guild. A central registry office

lists models manufactured by THE members. Of the inspectors, paid by the group, visit stores and ensure that that retailers adhering to the guild do not violate not their commitment of born not to do trade counterfeit copies.

They have also there charge of check that industrial members of the association book well all their production of novelty to member retailers, and don't cheat not by feeding some stores that would not have not joined At network. Of the financial penalties are planned At term of a process complex of judgement

And of possibilities call from institutions specifically constituted by THE statutes. THE group represented

Before there war 38 % of the market for moderately priced women's clothing, and 60 % of the production of luxury. HAS side of its primary mission, it also exercised other font functions : coordination of advertising actions, harmonization of the Conditions of sale, regulation of the days And schedules opening, ruler mentation of the sales...

In 1941, this agreement was summer condemned and dissolved by the American authorities on the grounds that it violated the terms of the Sherman Act : it reduced competition in industry of garment feminine.

Although condemned, this guild offers an example of a collective contractual arrangement designed to offer innovation protection that in this case state law could not not grant to its members. Due to the double commitment of manufacturers not to to copy THE models of their fellow members of group, and retailers not to sourcing from suppliers guilty of counterfeiting, the system worked in such a way as to provide each creator with a certain investment security on their new products. This protection was not maybe not as complete as

that what does the patent filing. But She was sufficiently effective to that THE members se submit good heart has his disciplines <sup>12</sup>.

This example demonstrates the market capacity of organize spontaneously to make up for the absence of a state system to protect the rights of inventors against piracy. But as contractual freedom is today constrained by a large number of legislative obstacles, we in reality only have very few means to give us an idea of the practices which would have could develop in a world without patents <sup>13</sup>.

*Person born is born with A right has born not be imitated*

Obviously those who profess to invent will have difficulty accepting such explanations. Man naturally prefers to have more than less. He always tends to prefer the legal solution which increases the value of their rights, even if it is to the detriment of rights of certain others (of whom he does not know). This is what is happening with the modern techniques of industrial and intellectual property, whether patents or rights of author (copyright). These techniques legal do not have the effect of guaranteeing the creator the enjoyment of a property right which would be "naturally" due. What they give it is very different: it's a "privilege" - that is to say a property right which goes beyond this what could be the content of this which must be recognized by all as her "property natural".

Let's take there property industrial. There thing East clear. What does the patent do? It gives the person who is the first to file a new invention the right to "exclusive" use of it for a period of twenty years. The State guarantees that, for this period, no other inventor will compete with an identical or similar product, even if it was designed independently, without that we can to reproach has her inventor to be inspired of the works of first. In a Company

which respects the law, the principle is that no one can appropriate what rightfully belongs to someone else. The first inventor is naturally the owner of what he creates, in the sense that he cannot legitimately be prevented from incorporating into his invention technical or commercial strategy that will enable it to make the most of it. But what is true of the first, applies just as much to the second. But this is precisely what the law does deprive THE depriving of right to exploit what remains of his discovery. The first depositor will increase his income by the amount of rent that the legal monopoly allows him to capture. But to the detriment of natural rights” of the second, violated by the law. It's about a law Who creates a injustice. SO of a law which cannot actually be a law if one truly believes in the liberal notion state of right <sup>14</sup>.

Let's take the right to copy. The principle is the same, although in a somewhat attenuated way. In this case, we are not stopping anyone from producing something similar to this which has already been discovered. The State does not forbid us from writing competing books on the same subject (which would be the equivalent in the field of literary property of the principle applied to industrial property with the patent monopoly, And proves it Again any further inequity). He put simply that no one may reproduce for its own commercial exploitation a work already distributed by a publisher without obtaining their authorization (or, more exactly, without buy him back rights of publication which were transferred to him by the author who owns the manuscript). The State introduced a disposition legislative which assimilates the copy of a book already published in an act of flight criminally repressed.

The principle seems self-evident. It is difficult to see how we could still write and publish books in a world where literary piracy would be legal. However, here again, THE things born are not Also obvious that he y appears to first view.

During your moments of leisure YOU write A novel.

When it is finished you have the choice between keeping it in a drawer in your desk, or selling the publication rights to a publisher. If you really want to be assured of never being copied, you better keep it safe at home. Like the inventor, it is not because that we are a writer and that we write awesome things awesome by whom?) that we immediately benefits from a

“right has born not be copied”. He no has not more human activity widespread, and probably more necessary than copying or imitation. As we have already seen, this cannot be a “natural right”. To assert the opposite amounts to consider that invention and literature are, by definition, different human activities, giving their authors a special status. It is possible to introduce such utility considerations as an economist - and again on what basis? But, from a logical point of view, this is an enormity because it would imply that there have of the people whose activity would that they would be more owners of themselves” than THE others, this Who East absurd.

You contact a publisher. In general, you will conclude a contract with him by which you transfer to him the exclusive rights to publish the manuscript of which you remain the sole owner. In return, it assures you A flow royalties calculated from of the amount of sales annuals. There clause exclusivity means that you do not give no one else permission to edit rival of your novel.

THE book East printed And broadcast by THE care of the editor. A person buys a copy in a bookstore and finds it so great that he thinks that by making a cheap popular edition of it, instead of the luxury put on the market by your publisher, there is a fortune to be made at the same time as we will be of service to a large number of readers who cannot afford to buy the original edition. The published text is identical to the first, and signed with the name of the author. So it's not a fake. THE text East undoubtedly there “property” of

the author in that Sens that null born can go away seize, alter it or publish it under another name without committing a fake, a counterfeit. The written material of the book is in some way an extension of the personality of the author which we can say than to through her power creative he y has put a part of his be. It's about GOOD of a "property natural » as well as the demonstration that the individual is naturally "owner" of his work. But this natural right does it include THE right to prohibit has A Buyer to reproduce it at its own expense and for its own commercial purposes? OUR answer East No, For of the reasons identical to those which mean that no one has, *a priori*, a right to the entirety of there creation of value rendered possible by his idea. But is this a realistic position? We think that Yes.

Let's imagine that there is no copyright law, that would happen? There would probably be "private copy rights". The publisher would include on each copy a written provision acting as a sales contract. By paying the purchase price of the book, each purchaser acquiesces to a clause imposed on him by the seller: he acknowledges that he will not use the copy thus purchased for commercial reproduction purposes, he agrees to be held for co-responsible for an edition pirate which would have originated from the copy of which he is the holder. The principle would be identical to what is currently happening with copyright legislation, except that the copyright terms would vary from a publisher to the other. One would offer reproduction reserves valid for fifteen years, the other for thirty years, a third for fifty years, etc. Sanctions for those who would violate these provisions of private character would be id nticles to what happens within the framework of state legislation: complaint in court. But there would be increased competition between publishers which would be exploited by authors to obtain better terms. exchange. Currently the authors can hardly discuss only the amount of their rights, as well as

secondary clauses. In a regime of freedom, they could also choose their publisher according to its policy of copyright. Some authors would prefer publishers with long-term copyrights ; others for policies of copyright of short duration. In all likelihood, the market would accommodate a wide variety of different terms. The system would perhaps converge towards a number of common years, but it is almost certain that this duration would be much less than that currently imposed by there law (there lifespan of the author, plus fifty years). Finally, it is likely that the authors would receive more remuneration favorable. THE system of legal copyright East a dis position which essentially works for the benefit of the profession of publishers, by improving their monopoly power vis à vis of the authors. Such East her true function<sup>1</sup> .

*Can we publish without copyright? THE previous American*

This is not a hypothesis, but a conclusion which follows directly from observation of the history of this institution since its origins in the 15th century. Copyright originated in England. All current national systems are only an imitation or an extension of it. Copyright East born under there shape of a privilege - At sense feudal of the term - attributed by the Court to the corporation of London printers (which at the time brought together around a hundred craftsmen). Royalty recognized their monopoly on the printing and distribution of books throughout the country. kingdom; in exchange for which they agreed to submit has there policy of censorship of there crown. We was in the midst of religious quarrels. While crown privileges were generally granted to bring money to the royal treasury (this was the reason for the first "patents"), this is a contract of a nature more politics: in exchange of their monopoly and of the income that he reports, THE members of there compa-

genius of the master printers of London agree to act as THE agents of there censorship royal.

THE events of the years 1620-1640 have do disappear there legal basis for their monopoly. But once the hours hot of there revolution English past, the Masters printers don't have had of cease to get its reconstruction in doing pressure on THE new Speaks sovereign. For that, he their had to of the arguments of a gender new. There recognition of there freedom of religion led abolition of there censorship. It is while appears for the first time the argument that we must be concerned about guarantee authors a decent income so that they do any further enjoy there Company of their lights. And it's under this charitable justification that the monopoly reborn At beginning of xvii<sup>e</sup> century, under there very shape diminished of a copyright of which there duration was only about fifteen years old. British publishers will devote the following century to obtain from Parliament a progressive extension of the copyright terms , up to the current conditions (most generous never granted). Every times what THE Parliament took up the issue, the problem of income guarantee for the authors was used as main defense to justify THE requests formulated. But in reality it is their own interest, in the form of a maximization gains of cartel, that THE editors English were looking for. We have Also of the education of a experience unique in her gender, that of the UNITED STATES at xix<sup>e</sup> century. Of the independence, THE Americans had adopted a copyright law modeled on the previous one tannic bri, but who did not apply than to works written in America. THE works foreign, And notably books published in England (of which America continued to TO DO a strong consumption in reason of there common nauty of language), escaped has there protecti\_pn legal. Towards the end of xix<sup>e</sup> century, the United States Congress undertook reform of his legislation, and for this he delivered himself has A certain number hearings. HAS there same time,

he British copyright regime has been the subject of criticism icks which also led to the convening of a commission nvestigation. We therefore have exceptional documents to study what were, in the last century, the consequences of the ion-protection of foreign works sold on THE territory of he UNITED STATES.

Once an English book was introduced into the territory of the Union, it could be freely copied. The editors Americans of the authors English born therefore benefited from no protection for this part of their production. We could say that this encouraged them to gradually reduce his part of their activity. But testimonies from the time show that this is not what happened. On the contrary, famous English authors have testified that their American editions brought them royalties on average significantly higher than what they received from their British publishers; and this despite the fact that American law does not require them to pay royalties. How was this possible? The explanation is that free competition is actually much more binding that tear of there law.

It happened that a book published At New York or to Philadelphia was the subject of a pirate edition in another city. But their number remained limited. The reason is linked to the structure of costs of production in publishing. The one who publishes a copy saves only the rights of author and certain costs promotion. He could deliver a inferior reissue, and this was generally the case with most pirate editions. But the initial publisher could without much difficulty respond with commercial discounts of such magnitude, or even by launching a new edition itself. of the unbeatable price conditions, so that the pirates never got their money back. Piracy has never been a big problem. But it brought with it a very important counterpart for American readers: it forced publishers to pay much more attention to the competition. that this was not the case, has he same era, In THE other countries. The threat alone-

The potential threat of competitors acting like pirates has disciplined publishers in a way not seen elsewhere. Result: American books were on average cheaper : the population of readers was, from the end of the century, much more numerous; and the number of books published, for the same population, much more important. No wonder, in these conditions, that the authors y have summer better paid.

One of the problems currently reoccupying minds East that of the property of software. The approach we have adopted allows us to better situate the real issues. The matter relates less to the logic of patents, or even copyrights, than to the area of plagiarism - that's to say fraudulent appropriation of a text written by someone else. One solution is to go to court. As in certain spectacular literary trials, the role of the judge is to define rules so that the authors can know in advance with a fairly high degree of certainty how far they can go in the partial copy without risking being attacked for plagiarism. . Jurisprudence (particularly American) is evolving towards a solution which reveals the author's property right over the algorithm of his program (without however the conflicts of " boundaries » between what is tolerated and what remains prohibited are clearly resolved). In civil law countries, we can admit that it is the legislator who intervenes to define these limits, leaving it to the courts and jurisprudence THE care to ensure its implementation. But we must not forget that the legislator is not a disembodied and transparent being, whose only concern is to restore to everyone the " natural property » who is rightly due. Important interests are at stake. Lobbies will form to influence the course of the parliamentary game and ensure that the definition of limits favors one party over another. We enter the domain of the arbitrary. An arbitrariness which means that the resulting definition of the property no longer has anything to do with there justice.

Another solution East to remind that THE producers of software have others means that the intervention judicial Or legal For protect there value of their investments intellectuals against her appropriation by others. These means, these are notably those mentioned more high. By example, when THE producer of a program is also the manufacturer of the hardware used for its reading, it is worth often better to ignore copiers and avoid of their put of the barriers in the to the extent that the greater the number of copies circulating is larger, more this has the effect to increase equipment sales. Another one. solution East THE product related. A third, technical innovation Who makes impossible there copy, Or Who warns the user that he se makes guilty of a act reprehensible. The masters of the occupation confess that this is an area where the rate of appearance of products new calves and more sophisticated is so fast that they have no need of research of protection legal against possible copiers. The essential East of understand that it is up to the producer to find what protection strategy of his investments suitable better to her situation And has that of his products. As In THE others • examples, property is none other than this individual freedom of decide of best AVERAGE technical or commercial of appropriate THE income of her novation.

### *The insufficiency of the arguments economic*

Obviously, there remain the utilitarian arguments put forward by THE economists. That he is about of work more or less sophisticated, the frame in is still pretty much the same. The central idea is that the protection of inventions through the legal filing of patents promotes economic growth. of three ways:

1. in stimulating the offer new inventions, And SO Development of there A. And D.;
2. in restrictive the inventor has give back public spring

cicipes of its discovery, which facilitates the dissemination of information technical And scientist;

3. in reducing THE costs of transaction Who would be very high in an economy where the policing of property rights would come under purely private contractual mechanisms. According to this interpretation, the company enters into a contract with the inventor: he agrees to disclose his invention, in exchange for which he is guaranteed a privilege of exclusive exploitation for a limited period, protected by the State .

Like any utilitarian argument, this one runs into a problem to which economists are wrong not to pay more attention. Let us admit that such legislation increases the pace of there growth. Very good. But we have seen that it is accompanied by a violation of the natural rights of some. Such a company, even if the growth is accompanied by a reduction of misery of the poorest, is it still a just society? Such a contract, legally legal (since established by law of a democratic society with universal suffrage), is it morally just?

We let's find THE problems philosophical mentioned at the beginning of this discussion. If we do not believe not to the reality of a right natural, there property is not nothing other than a collective agreement, fruit of a positive law. In this optics the law can do everything, and he is not shocking that the interests of some can be sacrificed to this that the legislator considers to be the general interest, or at least the interest of the most big number. Ownership is what the law says what is and he is not not forbidden of to set down that the property scientist Or intellectual are of the principles that extend well beyond what, in the preceding pages, We have defined as there " property natural ". THE Legal concepts are defined by the legislator. He who believes in existence objective of a right natural will not be obviously disagree. There justice being linked to this which defines the behavior of a just act, and not to the realization of purposes municipalities considered as

fair (by Who?), THE do that there economic growth is faster is not enough to compensate for the injustice of which some are victims. Since individual utilities are not comparable, it follows that a just society is one where the principle of justice takes priority over efficiency whenever a conflict appears between the two. This priority is all the more justified since the economic analysis itself demonstrates that when economic efficiency is sought through public interventions binding, he in results always of the

« effects pervert » Who cost more Dear that they born rap-. actually wear in terms of the objective targeted (example: the phenomenon of « dissipation annuities » Or a incentive \_ legislative East wasted Before even than to have been cashed by those to which She has summer promised <sup>16</sup>). These interventions generate Next A process cumulative triggered by THE desire of the authorities of to correct THE unexpected perverse effects of their previous interventions. In total, we has a Company Who, below THE pretext of TO DO the good, accumulated the injustices. It is paradigm lockian in which We have selected of We to place because we believe in the virtues of analysis logical, and that we do not share point of view of those who think that man can freely TO DO enter anything in his concepts.

The other objections are more classic. It is not clear that the carrot of a monopoly gain is enough to induce a greater flow of innovations and inventions. How are we going in ensure there accounting?

What measuring instrument will we use? Is the number of patent filings a good indicator of inventive activity? Data from the empirical literature allow to doubt it, and at the very least encourage us to be cautious <sup>17</sup>. The existence of patents pushes industries to invest more in activities likely to lead to patenting. But this may very well be to the detriment of other research whose promises of profitability born are not necessarily inferior

ries, but the disadvantage of which is not to result in results that are as easily patentable. In this case, the institution translated by transfers of which we have no way of knowing the overall effect on growth and efficiency economic.

No one can demonstrate that THE patents have A positive effect on there research, neither the opposite.

But that is not the main thing. Obtain that the companies spend more re sources for research, development and has the catch of patents are not in self-assurance of faster growth. It all depends on the way of which these resources are managed by THE companies that employ them. Too much investment in R&D can be just as harmful that not enough. Furthermore, if it is true that the existence of patents allows innovative companies to reduce the costs that would require them to achieve the same result of rely exclusively on the resources of a policy of industrial secrecy and of private contracts, conversely we must not forget that the management of the system is not free, and that it also entails a series of costs said of " transaction ". Mon of these costs, probably by far the most important, are in particular the additional investments in R and D resulting from the competition that companies engage in to capture the monopoly rents to which the taking of patents opens access <sup>18</sup>. If we take all these factors into account, it is difficult to believe in the economic virtues of the institution.

Such are THE reasons Who nourish OUR skepticism. There was a time where the existence of legislation on industrial patents was the subject of an almost unanimous favorable consensus among economists. It was the time when the only one to express his disagreement was the professor Arnold Plant of the London School of Economics. Today THE notice are infinitely more shared.

### Notes

1. At course of these latest years, We have had the opportunity of interest us to weaknesses epistemological of this Josition, applied for example in the domain of the telecommunications (vs . the chapter of this book dedicated has the origin of the " services public"), At transportation aerial (see the study of Bertrand LEMENNICIER led For THE account of there Foundation \_ Freedom) then to the production and distribution of electricity (see our study For THE account of minister of industry, published by the documentation French under the title • EDF and marginal cost pricing •, Paris, 1988).

2. THE speech dealing about innovation reason like if THE patent was there alone shape effective of protection industrial. All se passes like if encourage THE companies has y resort any further that they born THE. make already don't could be good For they and for the economy. But from where we come this affirmation? On What se does it melt?

After a long period where they had stopped being interested in this genre of question, THE economists rediscover that in All state of cause no patent can, nor will ever be able to guarantee to any inventor a 100% ownership % of the annuity that recognizes the law; that in the real world, instead of This as traditional textbook models claim, such a situation is not necessarily • suboptimal »; and so that in reality nothing shows us that modifying the legislation to to strenghten there value of the securities of property Thus recognized is necessarily a desirable action. However, it remains to be verified empirically how se include the companies when they have to design a policy of innovation And of protection.

There more recent of these research has summer led by a team economists from Yale University. His results were presented in an issue of *the American Economic Review* (Richard C. Levine, 1986). Six hundred and fifty senior managers, responsible for research In of large companies American exercising their activities In hundred thirty sectors industrial, have summer interviewed. THE questions concerned the nature of technological choices of the company, in relation to the expected cost/benefit return of different strategies of protection.

In moon of the questions, he The interviewees were asked to rank in order of effectiveness six techniques that the company can use to ensure the capture and protection of competitive advantages related at the setting on THE walk of new products, Or of products improved. The six techniques were THE following : 1. deposit of a patent with For main purpose of avoiding copying or imitation; 2. filing of a patent with essential motivation of maximize the flow of the royalties resulting from the sale of licenses; 3. a policy of industrial secret; 4. prioritize the commercial advantages linked to the lead time provided by innovation; 5. search as much as possible for earnings that rap carries a leading position on the experience curve; 6. push the efforts of marketing And of sale.

The main lesson that emerges is that the degree of confidence and effectiveness that THE executives specialized In there management of policies of

research grant to deposit of patent as main technique protection of innovations, varies greatly from one sector to another. Those who believe it the most belong mainly to the chemical industry And to industries pharmaceuticals. Elsewhere, THE deposit of patent is generally considered as relatively ineffective, by in relation to others techniques of protection suggested.

We find of the neighboring results In a other research bearing on the measurement of costs of development of competing products, imitating (legally) THE main features of the innovations recently introduced to the market. Published in 1981 (in *The Economic Journal*), this study by Mansfield, Schwartz and Wagner dissects forty-eight new products for which he has been possible of reconstruct what it cost, or what it would have cost in development expenses, but also in time, to develop a rival product. She watch that THE companies Who innovate do not hesitate has invest in the development of their new products even though they know that other firms can imitate them by investing only two-thirds of what the development of their own product cost them in time and money. If this is so, the authors conclude, it is because they benefit from the protection of other forms of barriers (for example the fact of having a strong brand); or quite simply because most of the time they have the feeling that the lead they enjoy over their competitors is sufficient to ensure there profitability of their investment.

3. For a presentation of large lines of This that we calls • natural law •, see our contribution: • The Return of Libertarians to Natural Law •, published in the *Review of history of the faculties of Law and Science legal*, no. 8, 1989.

For a demonstration • logic • the existence of such rights, see in particular the recent work by Hans Herman HoPPE, *A Theory of Socia/ism and Capita/ism: Savings, Politics and Ethics* •, 1988.

4. For a development of this assertion see our cont drinking from one of the Club conferences of the clock : • To origins of the welfare state: THE rights social are they rights? •, 24 October 1987. In English, see THE famous essay by Ayn RAND, • Man's Rights • In *Capita lism: the Unknown Ideal*, Signet Books, 1967 (including a translation has just been published in the new bibliographical journal *Liberalia*, no. 3, 1989). Or even the contribution by Richard Rasmussen, In RAS MUSSEN And STIRBA, *Tea Catholic Bishops and tea Economy: has Debate*, Transaction Books, New Brunswick and London, 1987.

5. See the remarkable memoir presented by Catherine VALCKE to the Institute for Humane Studies (Georges Mason University, Fairfax, Virginia).

6. See THE book of Murray RorneARD, *The Ethics of Liberty*, Humanities Press, Atlantic Highlands, 1982.

• Our contemporaries do not all admit that we can be owners of ourselves. But if We born are not owners of ourselves, of who are we then the property? Are we like a common pasture? Can everyone enjoy our work as they want or of our creation? Are we of the animals? Can we

domesticated and the fruits of our creation owned from others? For a believer we are the property of God, or more Exactly we are tenants of a body human who is there pro prayer of God. For others, we are (or they pretend to be) were) there property of the state Or of there Nation, Or of band, even others people as THE parents, Or A left of government Who, THE time of a legislature, has of the citizens (of their body as of the fruits of their work) For satisfy THE interests private of those Who brought them to power or some pressure group. don't read perceive not that way they behave towards themselves as slaves and towards others as slavers, and that they accept at the same time, through collective decisions, to have the human body of another. This position is logically untenable. • Bertrand LEMENNICIER.

7. See OUR chapter • Property And freedom • In *For what there pro-prayer*, Hachette-Pluriel, 1985.

8. Gustave de M9LINARI, 1855, • On the ownership of inventions” in the *Journal of Economists* (september). See also, • *Literary and artistic property* •, in the *Dictionary of Political Economy*, ed. Coquelin And Guillaumin, 1854.

9. See Jack HIRSCHLEIFER's pioneering article, “ The Private and Social Value of Information and the Reward to Inventive Activity •, *American Economy Review*, september 1971.

10. See notably the study of CT TAYLOR And Z.A. SILBERSTON, *Tea Economic Impact of the Patent System: A Study of the British Experience*, Cambridge University Press, 1973. We find there already conclusions very close to those verified ten years later by Richard LEVINE, “ HAS New Look at the Patent System”, *The American Economic Review*, may 1986.

11. The protective effectiveness of the patent comes from its technique which consists of transforming the idea into an object or industrial process whose all the elements are likely to be the subject of a precise and directly observable description. Starting from a necessarily abstract idea, this approach has the advantage of authorizing the attribution of exclusive rights over an object of property whose borders are therefore precisely delimited. And opposable Has third party of relatively easy. With the importance increasing taken by THE development of commercial functions, it is possible that this particular form of protection have lost a go of his benefits relative.

12. The example of there guild of fashion designers Americans provide proof that in the absence of a system of public protection of the inventions, he is not absurd to imagine that the market drive has the formation of such contractual arrangements. However, their economic value remains to be assessed. Explain that such “private cartels” would arise spontaneously don't tell us if this contractual form of protection of innovations and new ideas would give on the plan of I overall economic efficiency results above or below the current system of monopoly operating recognized by the state.

Two economists attempted to do a “cost/benefit” analysis compared. He is of Roger MEINERS And Randall HoLCOMBE, authors of

• Market Arrangements Versus Government Protection of Innovative Activity •, published in *The Social Science Review*, no. 1, 1985. Their conclusion is that it is not possible to assert that the legal regime for protecting innovations is necessarily a positive factor for the economy.

Let us admit that in principle the patent encourages companies to innovate more and that this makes the economy more competitive. The intervention of public authorities allows the industry to put implemented his capabilities of progress technological way more effective. But he there is a counterpart: the creation of greater monopoly power that This what could ever hope to achieve by its own means a private cartel. On the one hand, we have an advantage (companies innovate more and are industrially more efficient), and on the other a cost (the waste of efficiency induced by the "exclusive monopoly" recognized to innovative companies on the results of their research). In a free market, we have the opposite : a cost (firms innovate less and are less efficient), but offset by an advantage (a less exclusive monopoly). Under what circumstances is the cost/benefit balance most favorable to consumers?

The argument of Meiners and Holcombe is that the more technological evolution nological is fast, the more it is a market where the problem of the organization spontaneous has all odds of play spontaneously; And SO A walk Or the introduction of a protection legal does not add that little to what the free market is already capable of achieving by himself.

If we resumes the example of the creators of fashion Americans, their guild born had that of a power of monopoly limit. He it was of an activity where the effect novelty was very important, and where the appearance of a fashion of protection any, even limit, could se translate by significant gains. So a sector where the advantage of the solution contractual on the solution public was probably very large (same effects affected At erix of a cost monopolistic lesser).

13. These restrictions on contractual freedom penalize the search for other means of protection, And therefore impoverish our knowledge of alternative methods of protection that would have emerged within the framework of a walk free.

14. For a real-life example, see Graham Bell's History of Patents mentioned In OUR chapter on there privatization of the waves.

15. The following is taken from Arnold PLANT, • The Economic Aspects of Copyright in Books , in *Selected Economics Essays and At:fdresses*, London, Routledge & Kegan Paul, 1974, chapter 4. Also read his two others chapters : 3 • Tea Economy Theory About Patents for Inventions” and 5 • The New Commerce in Ideas and Intellectual Property”. For A testimony direct on THE system American of x1x' century, cf HC CAREY, *The International Copyright Question Considered with Special References to tea interests of American Authors, American Printers and Pub/ishers, and American Readers*, Henry Carey Baird Industrial Publisher, Philadelphia, 1872.

16. We mentioned this phenomenon of • dissipation of rents • in other chapters, notably that on agriculture. We find A mechanism identical In THE domain of the patents.

He East TRUE that there putting in place of rights of property GOOD tech only delimited, of the the stages THE more early of development of innovation industrial, should to allow a best allocation of the resources. Theoretically, there technical of the patents allow has the company of to plan THE development And THE launch of his we calves lines of products without to have has to fear of se TO DO take of speed by of the • passengers clandestine • has the lookout advances tech nological susceptible to be exploited without to have has in support THE costs of development initials. Without this protection, businesses would be attempted of proceed has a marketing too much hasty, And therefore uneconomic; (see Edmund KITCH, • Tea Nature and Function of the Patent System, *Journal of Law and Economics*, October 1977.) However, Thus that do it to remark Donald McFETRIDGE And From where glas SMITH (• Patents, Prospects and Surplus Economy: A How to, *Journal of the Aw and Savings*, October 1977), waste does not disappear not. There competition For there annuity se moves in upstream At level of the competition For the attribution of the rights of property of patent. THE earnings which are expected of there marketing of a new idea and his protection by a diet national of property industrial have all odds to be wasted in advance In a rivalry increased of the between taken For there capture of the rights of property on THE veins tech nological discovered. Or has discover.

This analysis would explain there race contemporary with the R. and D. He is likely that the continued rise of research spending in modern nations is less an overall factor in accelerating growth than a manifestation of the way in which competition leads to the dissipation of rents that companies believe they have accumulated grace has there protection of the patents.

17. Let us mention here the French case. During of the decade of the 1970s, France experienced a strong fall of the requests for deposits patents. THE low point has summer reached in 1982. The numbers are going up, but we are still far from having found 1960s levels (except for the left original foreign). Is this the index of a real fall power d innovation of French industry? Do we really have to be alarmed? There is a certain number of international studies including the interest is to go beyond a simple comparison of the numbers absolute. He in res comes out clearly: 1. that there fall of the years 1968-1982 was not not a phenomenon specifically French, but widely sharing by other nations of the Western world (except the Japan, and to a lesser extent Germany); 2. that Nothing born allow of confirm the existence of a tendency • chronic • of industry And of there research French has born not enough protect their inventions.

International comparison problems must always be treated with great caution. We often deal with statistics Who born are Never totally homogeneous. When we THE corrected, he almost always happens that we come to conclusions opposite to what suggested THE numbers initials.

Why do the German figures seem so high to us? How do they succeed has export as much of licenses has the foreigner? The explanations are undoubtedly the next one. In which industry Germany is

She traditionally the country leader? Answer : there chemistry. Gold, it is precisely the sector of activity that contemporary researchers described as being one where industrialists remain the most attached to the formula for patent protection. The strong relative specialization of the FRG in chemistry and pharmacy could be sufficient to explain the specificity of German behavior in matters of industrial property.

Conversely, French weakness compared to Germany could be explained by the fact that, of all industrialized countries, France remains the one where the coefficient of industrial specialization traditionally remains THE more down.

18. See *above* note 17.



## Appendi ces



## The mistake scientist of Léontieff

1986 was the fiftieth anniversary year of the General Theory of Keynes, but also that of the first important text of Léon Tieff on THE paintings entries exits.

From during, Léontieff has accomplished a artwork that some don't hesitate not has to qualify of titanic. Her influence on French engineer-economists from INSEE or the Management of the Forecast, is very important. It is to him that we owe Development of there technical of the « scenarios » today abundantly used in the frame of the work of the Plan.

There are none left not less that his works translate the presence of an error scientist characteristic of there thought econometric. Léontieff explain that THE role of planner is not not to prescribe very precisely what directions one government should to print consciously to the economy<sup>1</sup>. Her planning se wanna First of all « informative » And « rationalizing ». It's about to enlighten choices of the power public without the planner neither the Economist substitute to human responsibilities policy. There is no question, he says in substance, of replace THE game natural of the strengths policies and groups of pressure by A body technocratic. THE issue East only of manage that choices policies are taken based on information more « rational » on the tenants and outcomes of alternatives that are available, and also in such a way that the action of the State now appears less, less contradictory. In this context, THE role of planning should be of to present of the *scenarios* exploring the consequences of the different policies possible, depending on procedures such that those employees by THE Police station French At Plan, !INSEE Or there Direction of there Forecast, has leave of use of the models econometrics.

*There disintegration statistical We brings her closer of real?*

THE great criticism made by Léontieff to techniques current macroeconomic regulations is to rely on the use of aggregated data that their very level of aggregation deprives of all value economic concrete<sup>2</sup>.

This reproach East we born can more based. Let's take by example the concept of *capital*. Take I all the production goods which constitute the capital of a company, and add up their monetary value to calculate the value of the capital that this company owns, East a perfectly legitimate procedure if we limit ourselves to the case where these different goods are an integral part of a single plane of production, and Or we East based to think that their uses are complementary and all contribute to achieving the same purpose. But it is no longer the same when we aggregate production goods belonging to different companies whose plans of production are no longer complementary but rivals. From that moment on, proceeding with the aggregation of production goods held by one or the other, by means of a single monetary index, no longer makes much sense because it amounts, for example, to add the value of the bridge and that of the bomb that we prepare for the destroy. Does this have a sense? There Is society really richer? Use market prices as a common denominator for a numerical estimate and aggregated resources capital of a company would not have sense that in a so-called equilibrium situation where all individual production plans are would find r.perfectly coordinated the one in relation to others And Or 11 no would have more of competition.

This is the fundamental criticism that Hayek's economists address to modern methods of econometric analysis: any aggregation distances us from the concrete reality which, in individual minds, governs decision-making, And leads SO a loss of information<sup>3</sup>.

Apparently, the critical of Léontieff is not not very distant. He criticizes economists for acting at too high levels of aggregation and for not paying enough attention to what he calls « realities empirical underlying » of the industry.

To macroscopic forms of aggregation of the Keynesian type, he recommends replace the use of projection models based on the creation of the most detailed input-output tables possible<sup>4</sup>.

This technical East of nature more microscopic, SO more

close of the realities concrete industrial choices. THE input-output tables have the advantage of making people more aware of extremely complex networks of interdependence Who characterize any production structure. For Léontieff this represents A progress considerable.

However, all these advantages are in reality purely illu evenings. There method input-output East herself a aggregation technique whose defects are not less than those that Léontieff reproach to fashions more classic intervention and of simulation. THE same reasons Who THE make skeptical as for efficiency of use of the methods more classics modeling macroeconomic, should also THE leave deep skeptical as to to progress real as it own technique could provide as a planning tool. When we y look at up close, we see that what Léon tieff recommends is quite simply the use of more aggregates disa gregés, it is All. But how does such disintegration allows it to obtain a best image of the reality, more close to the universe real of the decision-makers? In What THE level more reduced aggregation gives A content « mformative » more big than the use of aggregates of level higher? For what born no more far And require that there decomposition go up to the particle elementary what is the individual Or All At less there firm?

The problem is that Léontieff, while being very critical of the extreme modes of aggregation in force, understood nothing about the question. that put them procedures aggregation on THE plan of the philosopher of there awareness economic.

*There distance born do Nothing has the case...*

The reason why aggregated measures *ipso facto result in* a loss of information has nothing to see with THE do that we are no longer located or less close, or more or less far from the level where the real transactions take place. Distance doesn't matter. What matters for economic analysis, if we want to reconstruct and understand what is happening in an economy where THE decisions are taken by of the millions of spirits individual, this are all these details of constants, of do, of place, etc., which explain why a particular decision is taken, but which precisely are lost from then on that an aggregate level of analysis is involved. Understanding how an economy works assumes that it has what are we interested in? are the circumstances, the meaning and consequences of all THE individual human actions Who give to the economic order there configuration

Who is here his. If THE aggregates lose all meaning, this is because quantities such as "the capital" are only numbers which express nothing for the decision-maker who must choose how many meters of a given steel wire he must buy to carry out his plans, but Who, at no time in its procedure decision, will not be required to consult this or that statistic on national production steel, or even of such category fine steels, concepts which do not have none operational significance for him. It follows that the fact of using an aggregate smaller, such that "fine steels", or "steel wires", brings nothing more to the understanding of the mechanisms Who govern the economy.

Like most economists, Léontieff transfers the world of human relations concepts which perhaps have a sense in physics, but none in economy. When a physicist observes atomic particles, and tries to understand how they work, he can only have external knowledge. He cannot understand how the molecule or the atom work of the interior. All that he observed is that, under certain conditions, *on average*, particles behave in this or that way. In this context, there is no disadvantage to using aggregate measures since, anyway, we don't can have none knowledge, even indicative, of the origins causal of the individual behaviors. In THE case of the behaviours economic, THE things are different. The economist still has specific knowledge of what this human atom is, since he is one himself. He knows that we cannot in any way compare the mechanical behavior of elementary physical particles with the behavior of a large number of men, all carriers a certain freedom of action. And therefore that we never find in THE facts social of the regularities statistics Also constants only in the study of physical phenomena, for example gaseous. A simple extrapolation from statistical regularities is enough to give an explanation to a physical phenomenon, but in most cases, it is totally insufficient to give a satisfactory explanation of a human fact. When it comes to social relationships, it is impossible to construct mechanical and deterministic models as we do in physics. At most we can explain certain categories general understandings of human behavior using what we know about the way people act rational human beings, because we are. We can do no better than use what we intuitively know about logic of the choice Who characterizes the human mind by in relation to others species animals. A point It is All 5 •

Prices communicate intelligible and usable information only because of our individual knowledge of the attributes of the goods or services to which they apply. Separated from their context, they no longer mean anything. They are then just numbers without meaning. When THE decisions are taken, they are taken not only according to the purely numerical relations which exist among all these numbers, but depending on the contextual relationships that exist between these numbers and the circumstances of place, of time, but also the features particular things on which the choices relate <sup>6</sup>. All things which disappear as soon as we move to any level of aggregation and which therefore deprive these prices of any concrete meaning for understanding how things actually worked. What fundamentally matters for economic analysis are concrete individual transactions. And No THE aggregates.

#### *A interest only retrospective*

Léontieff would undoubtedly say that using production statistics for "electrical machines" is more useful than using the "national capital" aggregate, because we are then at a level of analysis closer to real individual transactions. But this concept of "close" or "not close," brings nothing. No entrepreneur has ever taken of decision in referring only to production figures for "electrical machines". THE decisions are taken in function of This that we knows about production, prices where the costs of manufacture of this or that electrical machine, intended for such use, in such and such a country, at such and such era, in connection with this or that other type of technology, etc. Calculate the monetary value of machine production electrical involves a procedure of aggregation whose nature is no different from the operation which amounts to adding all the production of capital goods over a given period to give an estimate of the national stock of capital. The loss of information is neither lower nor greater. And the fact that we use disaggregated models showing seventeen, forty: -9four, one hundred and seventy, ten thousand or even a million categories Different statistics do not change the problem. These are not always days that of the categories abstract, constructed by of the analysts, who have no meaning only in relation to this that they have in their heads, And absolutely none report with all of the facts

concrete Who are intervened In the development of the real economic decisions, those Who have generates the order economical than we try of to understand, and on which we would like to act. If THE planners are In incapacity of reproduce in full of these transactions individual (Who only explain the form of the economic order that we observe), and if, for this reason, they rely on the use of aggregate measures, Also disaggregated be they, he in results that these planners se find Exactly In there position of captain of a equipped with players chess Who would like "guide" decisions of each one of its players GOOD whether devoid of a awareness precise of the decisions has take. The recommendations that THE planner will give has leave of its input-output models will not have no more sense than those of the player failure Who gives for order has his comrades of to move their round " in average ., of three boxes has LEFT, their queen " on average ., six squares to the right, etc. Playing chess in this way would be completely absurd. However, it is the logic of system of Léontieff, even when he does not claim to want All to plan of way imperative. THE recommendations of its central planner will not have more of sense that those of the captain of the chess team. If the planner does not know THE details, this wants say that he does not knows not This that he should know in order to impose one's own choices, in preference to choice Who would have summer those of the people that he directed.

The data that Léontieff would like to see collected in a more active way, are data which are only of retrospective interest for historians. They are of no use to us in bringing to light these " empirical realities " including Léontieff tells us, rightly, that this is what we need to know to TO DO of Planning. We never, In the real world, seen someone take a decision has leave of the alone indications that could be given by reading aggregated production statistics, whatever their level. This qm interests the entrepreneur, it is everything he can know, whether quantifiable or not. quantifiable to subject of such or such product that he plans to manufacture, And It is only to This level of relat10ns causal that we can find the real explanatory factors of the behaviors which give birth has the order economic that we are trying to understand, and that we cannot validly undertake to change if we don't do not know first this who made it possible. Variations in aggregates, whether aggregates of rank as high as " national production ", or aggregates apparently as detailed as those of a sub-sector economic, born are that THE reflection After cut of decide-

human relations regarding specific products, and cannot tell us anything about what the planner would need of know for validly claim to indicate to the actors economic This that they should TO DO.

*THE role of « know tacit »*

Suppose that we have a central organization endowed computers so powerful that it is possible to fit all THE information of which we has on THE transactions individual. One might believe that this destroys reasoning Who precedes.

In reality, even in this ideal case, nothing is changed about the problem. The planner will not have more information he must For realize his goals.

For what? For reasons linked to the role played in determining human behavior by this particular form of knowledge that Hayek and Polanyi call "tacit knowledge. That is to say because of this that a very large part of what allows us to act is the product of knowledge And dune knowledge that lie at most deep ourselves, and that we use without be capable to give an expression Who either communicable in A language explicit<sup>7</sup>.

Any data collected by a central planning or information agency, whether input output type data or statistical aggregates more traditional, specific indications on individual transactions or aggregated data, must necessarily be presented in a form that is humanly communicable ( "articulated "). But only a small fraction of all the knowledge that guides those who have decisions to make is in such a form. The business manager who decides to buy a certain machine does so on the basis of a mental process which involves infinitely more things in his head than he is capable of expressing. This machine is not an abstract object endowed with characteristics that the company manager, or the engineer who advises him, have clearly in mind and which they can clearly express. This machine has no value. in their eyes only depending on the particular production plan that they have in mind, and who, in turn, himself has no sense that compared to all of the expectations they have regarding economic conditions general conditions which will prevail when the machine comes into operation. Outside of this context subjective", the machine has for them no value.

Thus, even the central planning agency could record all the particular transactions, there is one type of information to which it will never be able to have access: this is information "contextual" • which surrounds the decisions taken by the individuals in the context of their own individual plans. However, without this knowledge, all the encrypted information available to us poses on THE transactions individual stay a information " cold ", simple reflection *has posteriori* of a choice of which we East Inca table of trace THE sequences And THE data causal.

### *Of false analogies*

Nowhere does Léontieff take the trouble to explain how a central planning organization could acquire the knowledge necessary to intervene intelligently and guide the economy towards a goal determined in advance, with plausible chances of success. Léontieff satisfied to resort to superficial analogies comparing for example the conduct of a economy to that of a automobile or of a boat has sails. Each of these analogies reflects a false conception of how a modern economy works, and therefore cannot justify THE kind of planning that he recommended.

Léontieff, by example, compare the economy has a automobile that is driven using the accelerator and brakes. " The problem, however," he explains, "is that for the moment the public authorities rarely know which route they want to follow, and do not even have a map of the region into which they are venturing. Much worse, when there is one who is responsible for supporting on the accelerator, simultaneously we in has A another who presses the brake, one who turns the steering wheel to the right, the other to the left, and everything to match. Have we ever seen a car arrive has Good port In of such terms <sup>8</sup> ? »

Answer : he is obvious that if the economy were reduced to the plan of a single person, we would be entitled to require this person to show a minimum of coherence in its various actions. But the economy is not plan belongs to nobody. It is the product of millions of individual plans whose overall coherence cannot be achieved or conceived *a priori*, and which complexity is only made possible by the state of knowledge, knowledge and information produced by the fight that takes place of the millions of plans in competition between them for access the use of rare resources. Public intervention policies are indeed good often inconsistent. But this does not are not THE powers public Who have forget of design this

card that makes them default. We owe it to the fact that, by definition, it is impossible to no human being draw such a map, and that has THE walk is already himself A self-guiding mechanism that all intervention born can that upset.

Léontieff compared the economy has A gigantic computer capable of solving its problems automatically, but which, like All computer, born can be left without care, and requires repair from time to time <sup>9</sup>. But precisely, the economy is not a computer. While the computer was built by A spirit human, the economy At opposite has never summer And would not have Never could be designed by A human mind. Know the general principles from which a thing Also complex that one economy can function, East all that we will never be able to to know, even with the best possible developments of the awareness scientist. The economy is not not a "machine", but A "order spontaneous", product of the action of men and not of their designs. Consequently, he East wrong of say that we "re are » the economy as we repair a computer, in pushing 1 analogy until comparing the multiples cogs of an economy thousands of wirings which constitute the heart of the computer. This analogy would have no sense that if the economy had been designed by a mind human.

A commentary by Léontieff on technological unemployment gives us the key to the fundamental errors made by this great scientist. He speaks of computers as "intelligent machines" whose problem would be that by replacing our group mental work, they don't We would leave more Nothing to do<sup>1</sup>. But say of the computers that they will do our mental work is to understand nothing about the very problems of this work. We reduce all knowledge of the mind human to a simple mechanical treatment of explicit numerical data. What the computer actually is, but certainly not our brain. This would mean that it functions from explicit knowledge that someone has introduced into it, whereas it itself is only the product of a spontaneous process. And self-construction. If the human mind could really be reduced to such a mechanism, then, yes, Léontieff would be right, and nothing would oppose its design for planning that consciously controls all the major choices of humanity.

Another favorite image of Léontieff: public authorities should be given the choice between a certain number of alternative scenarios of the future, for the same reasons as when we enter into A restaurant, we begin First of all by demand the menu <sup>11</sup>!

Here again, it is a misunderstanding of what constitutes the very essence of our civilization: no government no longer has the possibility of choose THE directions future of her economy, that a single termite or even a particular group of termites cannot decide what the final height of the termite mound will be, or that a scientist has the capacity to decide alone what will be THE development future of there awareness scientist.

Finally, last analogy : the one who sees profit as a strength motor similar has there strength gravitational Who guide the waves of a river, but which nevertheless has need to be channeled by d ues or regularized by the presence of dams and locks <sup>1</sup> .

*State: A guide "blind"...*

Like the comparison of the market economy to a sailing boat which cannot navigate correctly that if someone holds the helm, this analogy reveals incomprehension that Léon Tieff talks about how an economy works <sup>13</sup> . Profit is not only some thing that we can compare it with the flow or the wind which pushes the boat. Profit is a much more complex mechanism which, while giving movement, does not give any movement, in any direction, but on the contrary, plays simultaneously an orientation role quite similar to that of dams And of the locks that Léontieff would like to see introduced. Profit plays a role much closer to that of an autopilot - with, here again, a fundamental difference which is that no one can say *a priori* in which direction this automatic pilot should direct us because we cannot have this awareness.

When public authorities intervene to "guide" the economy, this that they do not to print a precise direction to what without them would only be a drifting economy. What they make, It is constrain the economy has adopt others directions than those indicated by the autopilot guided by the principles of profitability and profitability. They don't bring not save the help of a bar which would be lacking, but on the contrary distort the directional mechanism which, without this rod artificial that we want him add, has at least for characteristic of guiding this economy towards a relatively satisfactory degree of spontaneous coordination. In fact, what state intervention introduces is only a blind steering mechanism that push aside of This degree of coordination towards which

say the economy spontaneously when left entirely to its own self-guiding principles. Public powers are of the guides blind because, by definition, they do not and cannot have access to the very type of knowledge that could teach them the best way to arrive at this state coordination without which it could there be civilization human sustainable.

### Notes

1. See in particular Wassily LÉONTIEFF, *Essays in Savings: Theories, Facts and Policies.*, vol. 2, ME Sharpe Inc., White Plains, NY, 1977. • Tea Box for National Economy Planning”, In *Tea Journal of Business Strategy*, Spring 1981. See also: • What Hope for the Economy”, *Tea new York Review of Books*, 12 August 1982. This cry tick of Léontieff East inspired of a chapter of book published in 1985 by the young • Austrian • professor, Donald LAVOIE, from George Mason University, below THE title *National Schedule: What Is left?*, Ballinger.
2. • Academic Savings•, letter published In *Science Magazine*, 1982, flight. 217, p. 104.
3. For a remarkable presentation of Austrian epistemological theses of Donald LAVOIE, *Rivalry and Central Planning, the Socialist Calculation Debate Reconsidered*, Cambridge University Press, 1984.
4. See her classic *Input-Output Economics*, Oxford University Press, 1966.
5. HAYEK, *Studies in Philosophy, Politics and Savings*, University of Chicago Press, 1967, p. 3 and 4; *New Studies in Philosophy, Politics, Economics and tea History of Ideas*, Chicago, 1978, pp. 35-49.
6. James BUCHANAN, *Cost and Choice: an inquiry in Economic Theory*, University of Chicago Press, 1969.
7. Michael PoLANYI, *The Logic of Liberty*, University of Chicago, 1951. See Also, *The Study of Man*, 1958; *Knowing and Being*, 1969.
8. LEONTIEFF, *Essays in Savings...*, 1977, p. 157.
9. *Essays in Savings...*, p. 33.
10. Quoted by Leonard SILK In • Structural Joblessness •, *New York Times*, April 6, 1983.
11. *Essays in Savings...*, p. 153.
12. *Essays in Savings...*, p. 156.
13. In • Sails and Rudders, Ship of State”, article published by THE *New York Times*, 16 March 1973, reproduced In Leonard SILK, *Capitalism: tea Moving Target*, 1974.

## **Policies industrial : THE bad arguments**

Industrial policy is only one of the ideological screens used For allow for some to secure “rents” at the expense of taxpayers and consumers without them having the slightest idea of resisting. This note strives to demonstrate the fallacious nature of the arguments invoked to justify maintaining of a level minimum help has the industry.

### *There false excuse of the others*

To justify the maintenance of certain public aid, we often hear it said, even by people Who se believe very liberals: “ the others do the same.” Thus, for some time now, much has been made of the discovery that countries like the FRG or Italy ultimately spend at least as much money, otherwise more (but more discreetly), profit from their industry. **But** that the other major industrial countries grant \_approximately the same percentage of budgetary aid does not \_prove Nothing as to has their desirability economic.

When the foreigner subsidizes certain of its activities, we would not have else choice that of TO DO of even to allow our production to remain competitive. Nothing is less obvious. The one Who subsidized his industries immobilizes resources in unproductive sectors that could be more efficiently used elsewhere. There is waste. This increases the costs generals of its industry. He se condemn, if we do not let's not THE same nonsense, has see there competitiveness of its economy losing ground. Why should we follow his example? It would be smarter to take advantage of the opportunity to buy his products has A price lower has their value eco-

real economy, and put the financial resources thus saved on the back of “his”, taxpayers and “its”, consumers to the arrangement of those who, with us, are best able and most motivated to find and exploit new technological and commercial niches. As Bastiat would no doubt have said: “It is not because our competitors throw away rocks in their ports that we must TO DO as much.”

Our officials are fascinated by the successes of German industry. It is true that if the German government intervenes rather less, the German regions intervene much more than ours. But this does not prove that there is a direct link between cause and effect between these subsidies and the export performance of their industry. It seems to us more makes sense to reason the other way: This who must What is surprising is that German industry is still achieving such performances “despite” the growing intervention of its public authorities.

It is the same with the Japan. We agree that it is far from responding to an authentic model of liberal economy. But this is not a reason to make MITI the *second ex machine* of Japanese success. He East more exact of ring as if this one had summer acquired “despite”, the presence of MITI. THE Japan's secret is more likely to be the exceptional quality of its budgetary and fiscal management since the war.

If financial aid to industry is more important than it born have it Never summer, even In a country as THE United States, however renowned for his “liberalism”, it is because that they play In THE world contemporary A role similar has the one which customs protection policies fulfilled before the war. Action through tariffs and customs duties is now impossible due to the international GAIT agreements (too high visibility), governments have found another way to respond to specific requests for protection emanating from the most industrial and trade union circles. active in defending the “rents” acquired to the detriment of other workers, taxpayers and consumers, against the effects of there competition from employees foreigners. There Or formerly they act through quotas or customs duties, they respond today with industrial subsidies, reconversion or land development bonuses, loans at subsidized rates, etc. But, fundamentally, it's the same logic. This interpretation of the development of industrial policies corresponds any further has there reality that THE postulate

that no State can't not encourage Or protect, even indirectly, THE development industrial.

We don't we don't believe more to the alibi of national imperatives. Today, power does not come from the fact that we are actually capable of having independent production, but from the mastery of micromarkets based on the intelligent exploitation of « niches » technologies that make others not can't more se pass of We that We born can we do without them. Talking about national imperatives reflects a conception « macho » of the economy totally exceeded.

Let us note At passage that there definition of industries Who would be essential to national independence generally corresponds to the list of sectors where the influence of unions and groups depression East most strong, And where the benefits of which employees have, in terms of salaries but Also of working conditions, or even privileges granted to union apparatchiks, are often THE more important.

### *The useless imperative of there reconversion*

If the outdated aspects of industrial policy (support for lost funds for sectors in regression) are often denounced, the idea remains however firmly anchored that this condemn nation born would know apply to helpers say of « reconversion ».

To those who do not stop using this image « modernist », of industrial policy, it must answer that such is precisely the role and function of the market to ensure and facilitate the permanent redeployment of industrial assets, as well as their reclassification In of news chains of complementarity. There « reconversion », THE « redeployment », THE walk are there For that.

By market, we obviously do not mean only the theoretical mechanism of prices and relative profits to which the market economy model is generally reduced, but the concrete market - that is to say the set of firms whose business is precisely to earn their living by activating the redeployment and permanent valorization of industrial assets. He se can that This market don't do THE things enough quickly, so that the industry has difficulty remaining competitive. But before concluding that it would be appropriate for the State to intervene For « dope» the patient, we still have to wonder about the exact reasons for these rigidities. Do they not have an institutional origin? (regulations, taxation...)?

The idea even to help THE companies has se « reconvert » in their

giving financial aid is contradictory. It is not necessary to never lose sight of the fungible and unitary character of the cash flow of a company. Aid given for this means money freed up for something else. To encourage sick companies to seek new production, new outlets, new technologies, and to surround yourself with professional advice the most competent, nothing can replace the constraint of financial difficulty. Intervening financially piecemeal amounts to attenuating the functioning of all the signals and motivations on which the dynamic is based. of redeployment industrial.

It results from everything that it is simply not true that industrial aid granted on the basis of criteria of "reconversion, is necessarily better and more adapted than simple aid with lost funds. Even if the public authorities impose criteria of severe management has those who receive aid (edits in management, presentation of strategic plans...), remains the problem of determining what are the best criteria, the best possible choices, etc. But he is precisely something where no one, even with access to all the powers of investigation that men of the State possess, can beat the market. To deny it is to adopt there design angelic of the state "despot enlightened."

### *the alibi of ugly to industries nascent*

The same thoughts apply to the myth of aid to industries nascent (ugly At startup).

If it is indeed possible to form a certain number of ideas on the sectors or techniques which, *roughly speaking*, will make up the industry of tomorrow, it is however not possible to deduce the precise points of application likely to ensure the future of such or such business. That, only the market can determine (with there contribution of all his relay competitors of companies specializing in market research, recruiting good managers, industrial risk financing, insurance, the assessment technological, etc.).

Ensuring the discovery of the sectors of activity of the future, their financing, these are again precisely the role and function of the institutions of walk.

Talking about aid to emerging industries is a psychologically mobilizing way of justifying a series of economic transfers At profit of the interests of some clientele policies .

This aid to emerging industries is one of the forms most harmful aid. The reason is simple. A nascent industry is by definition one industry where innovation plays a role, and is called has Play, A big role. It is by definition a industry where we can never know if the latest known technology is really the one which, in the future, will prove to be the most efficient, the most competitive. This is therefore an area where openness to competition is everything absolutely essential. Gold, has What does the aid we give to companies under the pretext of allowing them to develop their technology achieve? To close the market to other entrepreneurs who might have brought new techniques even more efficient than those that we subsidize, but who does not THE will not do due to "unfair" competition • what do the companies' products do to them? subsidized.

Result : aid to emerging industries, like all others, has an essentially protective aspect. It is a question of closing the market for the benefit of the first to have entered it, of creating for them a " annuity » sustainable. The setbacks recorded over the past ten years by the new energy industry are a good illustration of this .

There will always be projects that the market will not want to finance. Say that it is then up to the State to take charge of their financing come back has admit that he in knows safer what their long-term profitability will be than the market itself. Now this is an assertion which we have seen is spelled out softly. absolutely impossible. We fall back on the myth of the omniscient State.

Even the argument according to which he East of the projects of which there dimension exceeds ca financial acities of private markets is not serious. When a project is too important for one only firm, he exist of multiple methods of cooperation allowing the resources of several companies to be combined. Unfortunately these techniques are often seen with a bad eye by the administrations At name of their concerns "antitrust". It is the State which, through its competition policy, or through the restrictive effects of its regulations financial, makes it more difficult for THE private sector taking in charge of such projects - And in pull in further argument to justify the character necessary for his mind in charge.

*there false excuse of /'export*

The same reasoning is found with export aid. Or GOOD it's about help Who are going has people who

already export, in which case we fall again on THE issue of the fungibility of treasuries. This makes resources available for other financing within the company. Export assistance becomes a help to anything. Or he These are companies that have never exported, in which case we are entitled to ask if he is good wise of THE encourage to TO DO some \_chos pol;lr q1;loi they born se felt until here hardly gifted m prepared.

As for investment, the problem is not to export at all costs, but to export what we have a real comparative advantage for. Export assistance hardly has any odds from there contribute.

### *the argument cultural- nationalist*

Last argument: that of the French political culture which, we they say, would be particularly attached to the notions of national independence, technological autonomy, of mastery strategic resources. The idea of defense of industrial heritage would be natural to our politicians, right and left. Double heirs of the "modernists" of the post-war period and the Gaullist message on the role of France in the world, they spontaneously integrated the industrial tool into the panoply of the resources of there power.

Let this cultural trait be dominant, okay. But that's why you have to try of THE to change. If Onne THE don't, we inevitably condemns At decline, the reason being that there has no chance for an industrial policy to achieve its objectives, except by chance. THE nationalism can that drive to A waste expensive, mortgaging the future.

The argument of the achievements economic French past is not not one. These results were achieved despite the sumptuary waste of the period Gaullist. These no have played none go.

We recall that there policy industrial gaul list born its interested than to A number restricted of sectors. Those Who boast successes of the first plans should remember of a comparison. There France And there **FRG** have received little almost the same amount of aid Marshall. In France, the distribution of Manna American East passed through THE Planning Commission, which assigned it primarily for adults so-called basic sectors : transport, steel industry, coal mining, shipyard. The Germans respected market mechanisms and aid a lot more benefited to the needs of the sectors manufacturers. THE result, we THE knows : less of ten years more late, THE

major sectors in which the French had invested everything showed the first signs of irrevocable decline. The Germans had become the export champions industrial.

The rise economic of the France during the Thirty Glories owes nothing to his plans nor to the masses of money invested in his big projects. Certainly, THE big project can TO DO illusion for some time. But this illusion cannot be maintained for long - except in the minds of a population receptive to this kind of propaganda, which is precisely the problem since that risk of delay choices and THE inevitable revisions, as well as accentuating the discrepancy with the real image of country has the foreigner.

Nationalism is never, in the long term, a good economic investment, neither even policy.

## **THE control of the concentrations In there EEC\***

The Europe of Twelve is looking for a new system to control economic concentrations. On several occasions the Council of Ministers has summer received a proposed regulation European who was to him presented by the Commissioner to the competition, but for which he has not yet managed to find A agreement.

This text, still under discussion, provides that from now on companies exercising their activity in the Community should compulsorily notify the Commission services of their proposed mergers and acquisitions, as long as they involve transactions “of dimension community” (i.e. which concern at least two EEC member States), carried out by firms of which the number business cumulative exceeds one billion ECU - or around seven billion francs. Once notification has been made, the Brussels Commission would have two months to say whether it approves or rejects the project. In case non-response in THE deadline, the operation would be considered approved. If a dispute procedure is opened, the European authorities would then have nine months to provide their final response. However, this notification does not would not mandatory if the turnover of the company whose acquisition is planned is less than fifty million ECU, nor when the firms undertaking the operation achieve more than three quarters ts of their turnover within a single State of the Community.

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The Commission already has various means at its disposal to act on concentrations of companies between days of Walk common. The case law of the Luxembourg Court of Justice has recognized its ability to apply Articles 85 and 86 of the Treaty of Rome to them. The novelty would lie in the *a priori character* of the control, whereas until then it can only be exercised *a posteriori*.

This text would be added to and imposed on the identical provisions which appear in the national laws (e.g. French law on there competition of 1<sup>er</sup> December 1986).

*evolution of the attitude of there Community has respect concentrations industrial*

Although largely inspired by American antitrust legislation, the European Community's competition protection system departs from it, at least initially, on one important point. : that of the role played by concentration. Unlike their counterparts in the Sherman Act (1890), the editors of treaty of Rome they were not animated by no fear with regard to large companies when they negotiated the texts of articles 85 to 90. In fact, one of their main concerns was to encourage the creation of companies of sufficient size to be competitive inside the new, European market. Until then, companies in each Member State mostly aimed at all or part of the national market. If the European market were to see the light of day, these small firms would have to expand in order to allow their products or services to reach markets located beyond the national borders. In the same vein, the signatories of the treaty wished allow European companies to compete with foreign multinationals whose influence was particularly sensitive on the European market during the 1950s and 1960. It is therefore not surprising that no specific provision of the Treaty comes to limit the concentrations of companies. Actually, THE text East silent on This subject.

However, a specific regime exists for two industrial sectors : coal and I steel. These two extremely concentrated industries played a particular role during the Second World War, particularly in Germany. Also the editors of the ECSC Treaty of 1951 were keen to adopt a relatively restrictive competition regulation regime. The article 66 required that THE companies Who

merge receive the prior agreement of the Commission. Through this means the European Communities exercise direct control over each operation of concentration in the manufacturing industries, coal and of steel of each State member.

Given the philosophy of its drafters with regard to concentration, the Treaty of Rome does not consider the phenomenon of market dominance to be a fault in itself. Article 86 only concerns "abuse of a dominant position". While US competition law specifically prohibits oligopolistic conduct, European Community regulations only prohibit oligopolistic conduct, situations of monopoly.

THE silence of the Treaty of Rome with regard to the control of Merger transactions have for some time led to uncertainty over whether concentration trends could be limited in any way. The European Commission responded in a memorandum on competition published in 1966. According to this document, Article 85 (on the prohibition of monopolies and cartels) would apply not to mergers *stricto sensu*, except in isolated cases, but to joint ventures. According to the Commission, only Article 86 (on anti-competitive behavior) covers the case of mergers. This interpretation was confirmed by the Court of Justice of the European Communities, in the "Continental Can" judgment of 1972. This decision definitively dismissed the argument invoked in defense according to which the silence of the treaty with regard to the modifications of corporate structure ensures immunity to mergers has respect of there legislation on there competition.

Given the flexible attitude of the drafters of the Treaty of Rome with regard to concentrations, when the first effects of the economic crisis of the 1970s began to felt, one could have imagined that the Commission would adopt a policy of specific support for companies or industries in difficulty. On the contrary, after stopping "Continental Can", faced with a movement of increasing concentration in all THE sectors of economy, the Commission is choosing to ment the powers of competition control that it conferred the texts, and began to interpret in a restrictive manner dispositions of treaty governing there matter. Thus in 1973, she presented to the Council a first Proposal for a regulation relating to the "regulation concentration control", which was to establish a prior notification regime And exam of there validity of each concentration at glance of right, that's to say A diet identical has the one

provided for by the ECSC Treaty. It is this project that comes back periodically on there table of discussion.

Having been unable to obtain as quickly as it wished the broadening of its merger control powers within the framework of Article 86, the Commission then turned to a exploitation more systematic analysis of the possibilities offered within the framework of Article 85. Thus, in a series of important decisions, it ruled out, in case of violation of dispositions of this article, any means of defense based on an improvement in efficiency or on the difficulties affecting certain industries. In a recent judgment dated November 1987 (Phillip Morris case), the Court of Justice of the European Communities confirmed the powers of control of there Merger Commission through Article 85 (concentrations having the effect of creating a situation of “ abuse of position dominant,.).

### *THE reasons to be of project on THE concentrations*

Why go beyond This which already exists? The Commission gives three series of justifications : the need to complete the competition control system; the constraints resulting from the completion of the internal market; finally, the ex gency to put in place a real large-scale industrial policy community.

The European Community, she maintains, needs a instrument for controlling concentrations in order to contribute to the emergence, within the new single market, of an industry with truly competitive *structures* vis-à-vis its American or Asian competitors. We must increase business productivity at all costs. Merger control will contribute to this by ensuring that merger operations and mergers are encouraged which enable economies of scale to be achieved in production, distribution, but also more particularly research and development. Conversely, the objective will be to discourage operations which, by having the effect of reducing competition, would have the consequence of hindering the exploitation of progress in there technology.

These explanations from the Commission repeat the traditional argument according to which a high concentration rate in an industry leads, from the point of view of competition, to economic effects similar to those which would result from a direct agreement between several companies. A concentration rate

high concentration in fact allows the dominant companies in the sector to make "monopoly" profits, which come in particular from this 9. that these are industries where, due to the level of concentration, it is easier to get along on THE price. These monopoly profits reduce the efficiency of market functioning and reduce the overall well-being of society. Company. The efficiency gains achieved by dominant companies are not fully passed on to consumers. This results in higher supply costs for other industries located downstream and customers of the concentrated sectors. All this affects the growth capacity of the economy. What is directly opposite to the aim of the Community, as expressed in the treaty, and which is of " ... encourage throughout the Community harmonious development of the activities economic".

It is important, explains the father of the project, Donald Sutherland, to eliminate all national barriers to competition which come from the non-harmonization of industrial and commercial legislation from one country to another, or even direct aid that governments grant to some of their industries, without any search for European cooperation. However, there is no point in prohibiting Member States from subsidizing their companies if, at the same time, they abuse of their position for exploit the European consumers. The establishment, at Community level as a whole, of a system for monitoring concentrations is therefore an essential complement to the efforts currently being made at political level to eliminate everything which continues to hinder the free movement of goods, services, capital and of the people.

Apart from specific cases falling within the application of Articles 85 and 86, the monitoring of concentrations is a responsibility of national bodies (in France, the Competition Council created by the law of 1<sup>st</sup> December 1986 to replace the old "Commission"). These bodies are responsible for assessing whether the mergers and acquisitions of companies subject to their approval improve the competitive nature of the companies, industrial structures, or have an opposite effect. But their standards of decisions remain essentially national. For example, it is of course the influence of the concentration examined on the national market which is taken into account as a priority. This results in increased difficulties for companies with a European dimension which, in each country, must meet different standards and criteria. This situation is a brake on the interpenetration of the markets.

Furthermore, when certain mergers are necessary in order to strengthen the competitive capacity of the industry faced with the offensive of foreign companies, the danger is that these organizations will prioritize national groupings, even though there may be European solutions. Again more effective.

Today, the size of industrial markets is fundamentally European. Therefore THE live daily businesses. It is SO to this level that first and foremost the problems of structural competitiveness must be considered. If we want to interpret the markets, it is essential to favor intra-European operations, in preference to strictly national solutions. By promoting the reconstitution of locally dominant industrial centers, these can only recreate a form insidious of partitioning. From where, pleads Donald Suther land . the urgency of having an institutional mechanism that makes it possible to go back up these questions at a level of study and decision truly European. We born can not, he concludes, wanting the completion of the single market and at the same time being against the establishment of community control of the concentrations. Mon implied the other. »

The very fact that the number of merger and acquisition operations between European firms from different countries growing rapidly advocates such an institution. Can we still leave the companies merging across borders subject to the whims of twelve different laws? How will we resolve the conflicts where a country admits the legitimacy of an industrial grouping whose compatible character with there competition East disputed by A other?

Last argument : no developed society can do without a " industrial policy » active. The vigor of international competition implies great flexibility in redeploying productive devices. New industries are prospering. Others decline. Growth requires a permanent reallocation of resources. But these movements, affirm the supporters of the project, must be done in a progressive manner and as coordinated as possible to limit the social costs. This implies in particular a close link between the actions carried out in the field of research and innovation on the one hand, and the decisions whose objective is to act on the structures of other market go. Of the during that THE single market becomes a reality, he East logical that the center of seriousness of these initiatives go back to the Commission of Brussels. This one has Besides, In THE pass, do there

repeatedly demonstrated his ability to administer a such task; for example during the difficulties encountered by the steel industry, or during the problems which arose placed in European petrochemicals. The presence of legislation giving it full power of control over concentrations of a European dimension is essential for it to be able to carry out its duties. its mission in of the even more effective conditions big.

*The Commission's competition doctrine is based on A know Today handed over in cause*

The European Commission undoubtedly has good logical reasons for asking Member States to grant it the powers it requests in the area of merger control. However, they arise from a conception of competition and competition policies which, She, East eminently questionable.

Is there really a need for a system for monitoring and controlling corporate mergers and acquisitions? Faithful to traditional university education, Commission agents consider that competition is measured by the number of companies present on the same market. Their position is that once there are only a small number of companies offering the same products or services - what we call an "oligopoly", there is every chance that, unless proven otherwise, they will behave in a way which would deprive consumers of a certain number of economic gains that they would appropriate to their advantage. Hence the need, we they say, of a entrusted supervision Has authorities specialized.

This is a much less obvious idea than is generally believed; of an *a priori* whose scientific basis is less olid than state economists usually assert. They forget that this theory only really gained currency relatively recently, in the 1950s or 1960s, after a series of statistical and econometric studies seemed to support the validity of the hypotheses. empirical Who in flowed.

However, these studies were for around ten years subjected to a series of critical analyzes which demonstrated that their results were ultimately only the product of a defective methodology. Reconstructed with more complete data and methods more rigorous, THE same studies give

very different results today. Hence, among economists, the emergence of a new attitude - *the New Industrial Savings* - which resolutely turns its back on the classic approach to competition by the static study of structures market, and replaces it with a vision of competition mainly seen as a dynamic process of rivalry, contestation, but also cooperation between independent firms .

Again difficult to admit, especially from side of the European economists, this approach revolutionizes the way we approach competition problems. For example, it leads to contesting that there is a certain and verified correlation between concentration and collective practices, and therefore that there concentration is in itself an obstacle to competition and industrial mobility. Likewise, it leads to the conclusion that most of the concepts traditionally used to justify State control over the competitive behavior of companies have the consequence of banning industrial or commercial acts and strategies which, in reality, are the manifestation even the game of industrial competition in action. One of the implications of this new way of seeing is in particular to suggest that a "monopoly" is not really harmful, and that he does not have of reason in the worry only if it is the product of acts of private violence (acts reprehensible under ordinary law and for which there is no need to appeal to a law isolation « extraordinary ), or support of a constraint state of nature regulatory.

Applied to projects from Brussels, this approach leads to reproaching the people of the Commission for not realizing that, despite their speech in favor of Community free trade, they are unable to abstract themselves from the mode of reasoning which is specific to all planners. Their argument continues to be based on the false idea that a body of independent experts could *objectively* distinguish between THE "good" mergers (Who favor there productivity) And THE "mauvaises" (which only reinforce the market power of a few dominant oligopolies). But this is precisely the nothing of "objective knowledge" which, strictly speaking, is accessible has the mind human.

*THE control of concentrations is just another manifestation of the mind pianist*

There competition is not not A model abstract (Who there would see "pure And perfect"), but A process of rivalry And of cooped-

ration. Cooperation - in whatever form it manifests itself : mergers, signing of contractual agreements, joint ventures, creation of financial consortia, cartels and private agreements - appears when entrepreneurs believe that there is something what comes from economies of scale or management synergies which cannot be appropriate than in common. Legislation on mergers, concentrations, but also cartels, operates as if experts were *a priori* able to determine with certainty the future savings that such operations should make possible. But this is precisely what that no one can know, even In THE companies concerned.

When considering joining forces, companies suspect that there must be economies of scale (or scope) to exploit somewhere, but they are never sure. They can only be sure of this when the implementation of their projects has resulted in industrial and commercial success (or failure). The knowledge that business managers have of economies of scale that can be exploited is always "subjective" knowledge. » (which depends on personal experience accumulated in the exercise of their profession and in-depth knowledge of their business), uncertain and risky. There best proof of this is that in the United States 40 % of mergers carried out each year result, three years later, in a reverse divestment operation total Or partial.

We criticize the legislator - whether French or European - not to see that this is precisely the function of industrial cooperation operations to help companies to identify the areas where he is possible to benefit from such synergies. To discover them, there is simply no other way than to let entrepreneurs test the cooperation and rapprochement operations that they consider In their interest to experiment.

He East TRUE that THE public administrations are in measure of gather a mass of statistics Who exceeds of far away This that will be able to Never gather an organization private. But when we come At issue concrete to identify if a project will bring Or no advantages appreciable of productivity Or competitiveness, these data, basically macroeconomics, born serve strictly more has Nothing. There scientific quality of experts will not erase never does it that their judgement will stay All Also "subjective", uncertain And risk ue the one of anything what manager private; And that without so that we can Never find a reason any Who demonstrates

why it should be *a priori* more valid, more "objective" than the one of the companies directly concerned.

From this perspective, the economic philosophy implemented by antitrust legislation is just one more example of the famous theses of teacher Hayek on the pretension to the "omniscience" men of the State. Everything that passes as if the agents responsible for monitoring the state of competition in industry or commerce were by definition endowed "super men", thanks to their "scientific knowledge", of a kind of knowledge "superior".

The result is that when they signify their agreement (or opposition) to the projects which they are submitted by manufacturers, the public authorities responsible for competition do not in reality do anything other than what the "planner" himself when he selects, for example, the industrial activities for which he considers that the distribution of money taken from the taxpayer. In the two cases, it is in fact the same form of thought, the same errors, the same mental schemes who are at work. There is nothing in the nature of what he does which allows us to say that the one who is responsible for "monitoring" the competition is doing something fundamentally different from her colleague who has for "plan" function industrial development. The very way in which the Commission defends its project is, moreover, regard, particularly revealing.

*He no has Never of regulation "innocent"*

Competition legislation must therefore be taken for what it is (a discreet or disguised form of industrial planning) and not for what it is not (a policy of defense of consumers).

Knowledge of "good" and "bad" mergers (from the point of view of consumer utility) is knowledge that can only be given to us by observing the results of free markets functioning without discriminatory intervention of the state - Or of all other authority "superior".

There is no need for controls on mergers and concentrations to establish a true competitive economy in Europe. Of such controls do not can only weigh on THE progress in productivity and hinder the process which allows the European economy to be more competitive. The real obstacles to competition come from the subsidies that States distribute to companies private Or public, of the

professional or industrial regulations that their administrations decree, as well as their efforts to implement in place of "industrial policies". These multiple interventions in fact distort the competitive game to the benefit of companies already on site which benefit from the best established political and administrative complicity, to the detriment of all the unfortunately unknown and unknowable potential competitors whose market entry costs are increased by the effects of this "unfair" competition. It is only by the establishment of institutional constraints making such collusions between the public unnecessary and the private sector, that we can never entertain the hope of capturing all the gains that a economy of walk competitive should clear.

Antitrust policies, whether of national or community origin, are therefore targeting the wrong target. The problem is not only to remove regulations and public interventions which create obstacles to the free movement of goods and services within the Community. More fundamentally, it is to help European opinion to take awareness of what he does not have Never of regulation "innocent".

The reasoning is simple. For the business owner, competition is never a pleasant thing. Better to have less than more. It's human. How can he reach this objective?

There The first solution that comes to mind is to agree with the others. This is the classic method of collusion, with agreements and cartels. But like the partners always remain competitors, this is actually a very precarious strategy. Everyone knows that in this kind of agreement everyone has nothing of more press that of cheat with This that he come of sign.

He exist a second technical, more long has put implemented, more expensive without doubt In the immediate, but infinitely more paid In along term : to turn to the walk policy, And monetize her money and his influence electoral against there putting in place of legislations And of regulations responding in principle has of the goals of interest general, but actually having the consequence of increasing the entry costs of new competitors. S1 we make a cost/benefit assessment of these two solutions, it is clear that companies have much more interest in investing massively in the political market to obtain regulations that benefit them, rather than seeking to protect themselves through collusive practices of a traditional kind. Formerly, businesses were looking for in priority there protection of the rights of customs. It's not more possible Today, in

reason of the agreements of **GATT**. Result : the activity of the private lobbyists has not stopped, but its point of application has shifted. What they are looking for NOW is here regulation which, under the pretext of protecting the consumer, of improving the situation of the worker in the factory, or of facilitating the harmonization of the standards used in a profession, will make it even more difficult for someone to enter which is not already found in the profession, and will reduce the risks of new innovations destabilizing.

So explains itself there proliferation Since there war of the sys regulatory economics themes, or even the fashion of industrial policies (specific subsidies, specific aid for research, export, development regional, etc.). Managed by national powers, captured in reality by the influence of private powers, they are ultimately no other thing that the expression of a shape contemporary of " neo-protectionism ".

But here again, with the completion of the Common Market, everything is no longer possible. In principle, national policies of direct aid to industry leading to discriminatory effects on intra-community trade are prohibited. And since the signing of the Single Act, the Brussels Commission has been increasingly cautious on this point. What is left for businesses? Answer : antitrust policy itself! There has in effect no reason For that this shape particular of " dirigisme » appear better immune against the effects of " capture ", than more traditional forms of regulatory intervention. This is also what the study of a few examples confirms. n known, such as the Robinson-Patman Act of the 1930s in the United States, or there law Royer in France.

### *Conclusion*

If the aim of policies competition is really to protect the consumer against the abuse of power of certain private powers, this objective, We it seems, will be more certainly achieved by concentrating attention less on the reports of power industrial And the structures of walk Who are the expression of this, but more on the reality of this complex world of connivance and collusion which exists between the private sector and the public sector, and which is all the more developed as the intervention of the State in the the economy does itself more direct And more active.

He East TRUE that these ideas will have of wrong has be recognized. THE

Antitrust policies are favored by many people: the politicians to whom they enable easy demagoguery; the bureaucrats and economists for whom they create jobs with guaranteed security; the lawyers who earn fat income from it; and even companies (which publicly declare themselves in favor of free competition, but who have nothing more eager than to run to the corridors of ministries, to obtain the privilege of favors and protection of the State). Antitrust action is one of the few economic areas where it is possible to achieve consensus at the lowest political cost. He not in stay no less than fundamentally the fight for competition is indistinguishable from the fight against bureaucracy and statism, even at the level of community administrations.

## There theory economic of there franchise \*

The Brussels Commission is opposed to the recognition of contractual clauses resulting in absolute territorial protection. OUR thesis East that these clauses of non-competition are an integral part of the economy of the system because it is essential, for a selective distribution network to operate effectively and sustainably, that the franchisor retains as much that se can there mastery of income of his franchisees.

Since the judgment of the European Court of Justice concerning Pronuptia (1986) *franchise contracts are no longer contrary to the requirements of Article 85-1 of the Treaty, provided that we do not find there non-competition clauses resulting in to train a protection territorial absolute.*

It is important that the Community Court explicitly recognizes the property rights of the franchisor over its know-how, and thus formalizes the legitimacy of the contractual clauses whose object to protect these rights against their undue appropriation by competitors. However, the drafters of the text did not see that this problem of *protection of property rights* arises not only in the ard competitors who could, without the franchisor's knowledge, take advantage of its previous investments in the creation of particular know-how, but also against members of the network who would be tempted not to respect their obligations and of behaving like "stowaways" benefiting from the advantages of there brand without taking responsibility all disciplines.

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The fact that they failed to identify any explanation other than an anti-competitive desire, to understand the reason for of such clauses of non-competition, East in self a proof of the failure of the authorities to grasp the nature of the economic problems (and in particular control problems) to which franchise contracts are precisely an attempt to respond And of solution. •

To understand the problem, we must return to the origins of the franchise. The explanation traditionally put forward, and which is found almost everywhere, is essentially financial. Franchising would be a device which would allow a manufacturer to ensure the availability of an *exclusive distribution network* without needing to bear the cost of the enormous investments represented by the construction of an integrated sales network. This would mainly be an easy way and cheap of lift of the capital.

Let's accept A moment this thesis. Stay Again has explain why so many companies are looking today preferably to sell their products through *exclusive* high-value networks added (at the level of services). This phenomenon would be linked to the evolution of the nature of the products, to the fact that the goods produced today contain more in addition of characteristics no directly observable, what laid has the buyer A problem of conformity between the delivered product and the sample from which the order was placed. What guarantees me that the product thus delivered will be very consistent with what the producer told me promised For THE price that I accept of pay? Moon characteristics of the evolution of modern products is to place THE consumer In a situation of *growing uncertainty*. Uncertainty is a cost. The market had to find an antidote. The sting of there competition in has stimulated there green discovery. There companies' response consisted of moving more and more more towards of the products of *brand* incorporating a dose important aunt of services of Quality And of investments intangible. For what there brand? There answer East simple. A brand is an asset who is asking a lot of time and a lot of money to build oneself. But it's Also A active extremely fragile. Of the products A little too much often No compliant, materials which fall too frequently in breakdown, and the brand do not resist not a long time. GOOD of the businesses, even among THE more powerful, in have do there unhappy experience. And a brand Who collapses, This are of the billion investments made over years which go up in smoke. But, then, if it is a investment Also "risk", Why THE do companies continue from there devote so much silver? Answer: because

that, in acting Thus, in signaling of manner conspicuous (by one expensive policy of promotion advertising, by of the spectacular actions of sponsorship...) gu'elle would take A risk financial out of all proportion if he taking there expensive sorting fantasy with its promises, the company sends in some sort a message to the market him TO DO know that she *truly* intends to respect her speech, what East *Really* more worthy that others to deserve trust and attachment consumers. In this optical, the importance cumulative of the are invested In there construction of a picture of brand represents a sort of *bail* that the company files in pledge of his good faith; a • surety » which serves to ensure that market transactions se unfold in a more great climate trust. The image of brand is there answer that the market discovered for remedy has uncertainty And *produce more of trust*. However, this innovation do immediately appear a series of new problems. The interview of This • trust capital » depends First of all of This that No only THE maker, but Also all those who, from one manner Or of a other, contribute has there diffusion And has there sale of his products, respect some number of requirements municipalities quality and service; which, to its turn, supposes the implementation systems location of control relaxing on of the mechanisms effective sanction and motivation. If one of the elements of the distribution chain does not respect not the standards quality or service ford Assumed the interview of there brand, he can in to pull profit personal (In there measure Or its costs are more low, then Who keep on going of take advantage of benefits related commercial to the use of the brand), but it harms all others, and first place At producer Who supported all the incorporation expenses And of launch of there brand. A policy brand born can sustainably fill THE service that we in waits

- improve the trust in the relationship between the producer and his clients - that if an effective system makes it possible to fight against those who thus behave in « stowaways » on the efforts of the others. By elsewhere, se laid THE problem of there competition from v01sins products and brands. If a merchant sells two products simultaneously substitutable, but of which one benefits from the advertising support of large national budgets, then That it's not THE case of the other, there there is every chance that we will witness a phenomenon of "piracy" which consists, for the trader, to attract there customer base in playing on there reputation of the product best known to the public, but then to do all that that he reut so that it is the other which is sold in priority (This that Ion call her derivative of the sales"). There again, he East

clear that the principle of brand investment can only provide the services expected of an advanced industrial economy if it is possible to eliminate this other form of "not wise clandestine".

It is precisely to respond to these problems of "illegal passengers", created by the development of brand investments, that we have developed the concepts of distribution exclusive and or of distribution selective.

Let's take a product for which a selective distribution policy seems to be required. It does not necessarily follow that the only conceivable form of commercial organization involves the creation of a network of independent, but approved, distributors. Another possible formula is that of integration where traders do not are that of the managers employees of stores, branches Or subsidiaries.

There building a network of stores integrated, we they say, is expensive, very expensive. This requires the immobilization of significant capital, which often exceeds the means of the firm. Hence the preference for placing establishing networks of franchised traders who equip themselves with their own capital, and under their own financial responsibility, while agreeing to place themselves below a discipline common. It is This "pooling" of individual capital, for the benefit of a more efficient distribution management system Or less centralized, Who would represent the main attraction of franchising as a golden formula for commercialization when exclusivity and or there selectivity are required.

It is true that this explanation is all the more plausible as we are located in a country Or, For of the reasons institutional, the capital market is particularly narrow and rigid (as was the case in France). But, we do not believe in its universality for reasons linked to the modern theory of capital. This teaches us in fact that, rather than concentrating all the assets on the ownership of a single point of sale, the individual investors would earn more (optimization of Risk games) to place their money at their supplier (in bonds for example), even if it means then taking on the management of one of its stores with employee status, benefiting (why not?) from a profit-sharing mechanism generated by her activity.

There true explanation of there franchise us East data by *the theory of the agency relationship*, foundation of modern theory of there firm.

To have available its own network of sale has of the benefits. But there are *control problems*. He ... not not enough to give orders, of distribute of the instructions, Again Is it necessary that those

who are addressed follow the instructions. The execution of instructions depends on three series of factors: 1. clarity and precision of orders, as well as of the ability to translate them into measurable objectives; 2. of the sanctions provided for in case of non-achievement of contractually accepted objectives; 3. personal motivation. Who anime those of which we research there cooperation. However, the effectiveness of the result itself depends on the particular characteristics of the product and its market. The nature, structure and extent of *control costs* will not be not THE same according to that we has affair has a product of which distribution is geographically concentrated in a few points centralized sales, or On the contrary, a mass product distributed over a vast territory through of an army small, widely dispersed resellers far from the centers of decision. As a result, the sales and distribution technique that *minimizes costs* will not necessarily be the same either.

There theory economic of the agency suggests that THE companies have even more interest in using the frankness that we finds itself in a situation where, in addition to the requirement for a selective distribution (for reasons that we have seen), we have business with physically dispersed points of sale, Or he East SO difficult and costly to resort to direct procedures of control of seller activity. This leads to consider that what *constitutes the essence of the franchise* lies in the nature of the control and animation mechanism which characterizes the system : namely, *the replacement of direct hierarchical monitoring methods, specific to integration, by a self-discipline mechanism based on the financial interest of a franchised agent, legally autonomous, and therefore financially responsible, but which, moreover, from the point of view of professional responsibilities has a status which is, after all, hardly different from that of a normal salaried manager.* Hence the classic structure of franchise contracts, including all the technical, commercial and financial clauses mentioned in the Pronuptia judgment, and !JUi indeed suggest that, professionally, if not legally, the franchise agent is much closer to I employee than the independent contractor. *More than a contract of a restrictive nature, limiting the freedom of management of an authentic business manager (which is the approach of the authorities), the ranchise should be analyzed as dismantling partial 'A integrated system of selective distribution in which, for reasons of efficiency and control linked to the nature and structure of the services sought, it appears desirable to locally introduce more responsibility financial located.*

Let's take A product relatively sophisticated of which there sale must be accompanied by a certain number of fairly complex services. Distribution income will depend, on the one hand, on the personal talents of the seller, but also on the particular know-how taught to him by the manufacturer's specialists. This know-how is the result of a investment whose future returns are in somehow *incorporated* into the person of seller. If THE seller goes away, this investment will be lost for the firm, and will be appropriated by another employer. Result : For that this know-how is produced, and therefore for the sale to be accompanied by the desired services, it is essential that the sales force involved presents guarantees of *stability professional* sufficient.

Let's take an employed salesperson. The investment the company makes For increase her personal know-how increases the value of its human capital, and therefore its value on the labor market. Other firms will offer him a higher salary. The only way of THE retain East of align with these proposals. He Sellers are likely to have relatively high mobility, especially if there are many competing products on the market. In this scenario, the competition has so for paradoxical and negative effect of reduce the level of product service in relation to This Who is desired by the producer (and the consumers).

How to defend yourself? One solution is to entrust the monopoly of there sale, neither has of the managers employees, but has salespeople who are asked, to be admitted to this position, to make a personal placement in a *specific investment* including there value is linked to the brand that it is to distribute. It's the franchise system. To be assigned a sales position, each "salesman" must agree to finance the purchase of a business, as well as the installation of *specialized equipment which he knows in advance will only have a very high resale value. low if never he "divorce" of the brand* with which if associates.

The advantages of such a system are easy to highlight. There will be significantly *less mobility*. Any departure resulting for the "employee, by a significant loss of capital, once we enter a network, there is every chance that we will stay there on average much more long as This is not the case for normal employees (employees) who, for their part, have everything to gain from leaving and monetizing elsewhere the increase in value of their human capital, without losing anything in return. The company can without danger investing in training and elevation of know specific of its "sellers". She knows that,

thanks to this type of arrangement, it will be sure to recover, on average, the value of the money invested in training and maintaining the professional qualities of its sales system .

Another advantage is to encourage the “employee” to invest in himself well more in the brand And her promotion, what would do it A “employee” If he do some efforts personal, THE “employee » has every interest in this investment being made for the benefit of “versatile” qualities, likely to be advantageously monetized with other employers, rather than in *specific areas* Who would be more useful to the brand and its commercial promotion. Due to the fact that the value of its heritage, And not only his income, East linked At spell of there brand of which it distributed THE products, THE “franchisee » has, him, the opposite motivation.

This analysis allow of better to understand Why, contrary to appearances, the “franchise » is a system of business organization more efficient than hierarchical integration when we are dealing with products whose sale requires specific know-how. However, it remains to be asked whether the non-competition clauses between franchisees, denounced by the authorities of Brussels, are truly indispensable For the production of advantages which, from the point of view economic, justified adoption of system, Then her use croissant.

This who precedes me seems to argue for an affirmative answer: *non-competition clauses are an integral part of the general economy of the system*; they are essential so that THE mechanism can sustainably function. There reason seems related to me to the fact that he *is essential, for the Good operation of the system, which the franchisor retains as much control as possible of income of his franchisees.*

If there is talk of prohibiting non-competition clauses between franchisees, it is because, within the framework of a system of territorial exclusivity, that confers At distributor one “mono pole” perfect on the territory of the concession which is recognized to it. **However**, within the framework of traditional competition theory, monopoly is the expression of “evil ” the most complete. Protected from any rival, the franchisee could freely set its prices and make “excess profits ” sustainably higher than the rate of return that would be justified by the normal remuneration of its services and the investments made with its money (these surplus profits being totally absorbed by the franchised himself, Or shared with THE franchisor).

That such a situation produces profits above a level normal, none doubt. But he born must do not forget A ele-

already mentioned: because he concentrates all his assets in the ownership of a single asset, the franchised merchant takes, personally, a greater *risk* big than the one supported by the entrepreneur who, having an integrated sales network, finances the operation of a large number of points of sale, and therefore diversifies its investments. All things being equal, this risk justifies higher remuneration if we want companies seeking to place their brand. In of the stores of trust find a number enough candidates. This is the function of the monopoly rent offered by the franchisor; annuity that plays also, like we saw it about of the automobile, the role of carrot. For encourage THE dealers to make the effort of specialized equipment necessary to achieve the level of service desired by manufacturers.

Is this "rent" likely to be excessive? *A f'iori*, the monopoly only knows a limit determined by I cross elasticity of products substitutable. But reason. Thus amounts to forgetting that, in this specific case, a factor is present which does not appear in the other monopoly situations studied by the theory: *I want to talk about the competition that exists among candidates for the award or takeover of a franchise*.

Every franchise has commercial value. This value is equal to the discounted sum of the additional income that each candidate hopes to receive compared to This that would be his salary in a other activity. Initially, the franchisor, whose brand is barely known, has an interest in guaranteeing its first franchisees a high income in order to attract a sufficient number of candidates among whom he can make her selection. To this end, he se will be happy with ask for a entry fee into its network (the purchase of the symbol of the brand) relatively modest. But, as the brand develops, as it becomes known, as the network matures, the competition to enter strengthens. The candidates are more numerous, less demanding. The producer can raise his prices. Actual remuneration of the franchisees decline. Their « annuity » is no longer what it was. Little by little their income aligns with the normal rate of remuneration justified by the services they provide and the financial risk they agree to take instead of their franchisor.

This phenomenon of competition is completely hidden by the reasoning of the Commission and the Court of Justice. They do not see that alongside the competition between franchisees already established (which they regret the removal of the fact

non-competition clauses contained in franchise contracts), there is also no less real competition between them. Firstly, THE people who seek to enter In franchised distribution networks, on the other hand, between producers to attract the most valuable candidates to them. Economic analysis suggests that, in such a market which is far from being small (due to development fast of walk of there franchise, but also because it is about jobs accessible to a large population), this dual competition must be sufficient to gradually bring the income of franchise store owners back to a normal rate of remuneration ; and this, even with the presence of non-competition clauses « bou clant » completely their system of territorial protection. We find a contract clause which appears at first glance to be contrary has there competition, but whose real role East to help competition to introduce economic agents to what they do not know, and which they have no means of knowing *has priori* : THE price of their function.

Let's look NOW This Who se pass if we follows THE prohibition instructions .

Each franchisee is assigned by the manufacturer a privileged sales area where the latter is prohibited from opening a competing store himself, as well as from transfer an identical franchise to another trader. However, the ban of the non-competition clauses mean that we cannot prevent the franchisee of an area neighbor to open A second, even A third store, on its territory. This, we are told, should allow a certain amount of price competition to persist between stores in a even chain (THE system of the imposed prices being itself prohibited). Selective distribution, it is added, must not be a excuse For eliminate all variability of the price.

Let's imagine then that one of the members of a chain of distribution profits of these possibilities, And commits In a ambitious price-cutting campaign, which he exports to the territory of some of his colleagues. The generalization of such a situation leads to a drop in income received by distributors of the network. THE franchisor has lost control of the remuneration of his agents.

Never mind, we will be told. Retailers may earn less, but to the benefit of consumers' wallets. Gold It is that seu Who account.

It's true. But, here, there situation is not comparable to This that is happening in a normal market where of the strictly independent traders confront each other. He must hold account of the consequences that a such a confrontation by prices can have on the behavior

is lying specific of each of the partners of there chain of distribution .

If franchisees' revenues collapse, or if it proves impossible For them to reach the thresholds of income that we their dangled during the signing of contracts, this leads to the reduction price of there franchise. For to have available enough candidates with whom to place its stores, the producer is forced to reduce the entry contributions, or to reduce its requirements in terms of selection. The lowering of criteria Selection implied that he takes From now on A risk more big to see its agents not respecting quality standards. Moreover, the reduction in the entry price also reduces the effectiveness of the commitment to which each franchisee subscribes when, implicitly, he deposit this *pawned* money of his maid faith and his desire to respect the terms of the signed contract. This results in operating costs for the company owning the network. more students, but Also THE risk of see THE custodians of its brand cheating” more and more widely with the standards and obligations which are precisely at the origin of the brand image of the product and its competitive effectiveness. When we arrive at such situation, it is all the effectiveness of image policy brand of the company, and therefore all the investments that have been devoted to it, which is called into question. Why would the industrialist continue to invest so much money in expenses whose commercial return is increasingly compromised by *the degradation of professional skills in the network and the erosion of loyalty? of his agents?* This is how that, of thread in needle, we ruin a network and a product, without count the company itself and the whole of the jobs what provides.

So much that one alone business East concerned by This gender of problem, it's only half bad. But the ban concerns all firms practicing selective distribution. If the same scenario is reproduced in all networks, one conclusion is obvious: *it is the death sentence of the very principle of selective distribution.* Consumed by increasingly opportunistic behavior, even unfair of the tradespeople franchisees, free riders, this one does not will not be able to survive, in so much that system of organization, in competition with other methods of distribution. And the community will find itself deprived of the gains (mainly, as we have seen, in terms of fighting against situations of " stowaways ") which had motivated its appearance, then her development.

Result : *we cannot recognize the economic merits of there distribution selective, and in even time impose*

*to contracts which in are the support a legal constraint which condemns it.* This is not not logic.

I initially assumed that all stores continued to respect THE same rules of game And of scrupulously complete the obligations imposed by their notebook of the loads. This only then, gradually measure that it appears that the promises of income « purchased » by franchisees born will be more held, than the situation degraded. However, if we want to be realistic, it is of the THE beginning that we risk, in case prohibition non-competition clauses, to see manifest of the individual strategies of nature « opportunistic » incompatible with the operation sustainable of a system of distribution selective. In All system contractual, Also GOOD designed be it, it exists in effect always a certain margin of game Who is holding to incapacity of franchisor of All control In THE detail, and that, In some boundaries, allow At retailer of « cheat" with his obligations without se TO DO detect And sanction.

The Court of Justice, in its Pronuptia judgment, does not see that since a franchisee can freely bring competition to the territory of other members of the network, each will naturally be encouraged to use *more* of this strategy which allows, on the one hand, to lower its own costs, on the other hand, to sell less expensively in the territories of others while continuing to benefit from the advantages of the brand image produced by the fact that others, they continue to fulfill their obligations (this Who remember there position of the « discounters”).

We find a classic problem of « stowaway » but this time within the network itself, and with the same destructive effects. By preventing franchisors to maintain internal non-competition rules, a greater number of stores are encouraged to behave in « stowaways » working on the backs of their colleagues, and we force the company has devote any further of resources has there monitoring And upon detection of these « free riders » (SO even though the system had summer designed For minimize this sort of costs); these effects have For result of to strenghten THE process of decline relative of there distribution selective, And se return ultimately against the interests of all THE partners.

Conclusion : there consequence of This gender attitude will be to encourage large companies producing mass consumer goods with high commercial added value reorient ourselves more towards *integration* formulas, even though market experience has revealed to us that there are other possible less costly and economically viable formulas for cooperation more efficient. The whole community loses; what

is the contrary even to what are the judges for? se precisely believed founded has to intervene.

### *A know impossible*

These reviews are extremely important. They We allow of better to understand Why, by definition, any inclination to entrust to a external authority control, *a priori* or *has posteriori*, of the contracts, East a absurdity intellectual. There legislation East designed as if those Who judge the contracts, And their compliance with there competition, were some beings "omniscient", in able to access to knowledge of all the relevant facts necessary to assess, in each case of species, THE benefits relative of such Or such commercial solution. This Who precedes We watch has what point such \_ attitude East THE attic of all pretension.

First of all, I hope to have demonstrated that economic theories Who constitute the fund of trade in authorities geese of there monitoring of there competition are affected by such blinders that they do not allow us to understand the reason to be part of a large number of contractual practices that are nevertheless very widespread. Our analyzes suggest that it is not because the highest administrative or judicial authorities wear glasses that prevent them from seeing the services that these practices provide to partners that they are necessarily necessary. has condemn.

Then, it clearly appears that the factors which intervene to determine the advantages and disadvantages relating to various organizational solutions commercial, are so many, and depend so much on circumstances or specific conditions linked to elements themselves often one could not be more contingent, that it is very difficult to imagine that an instance human, even particularly "enlightened", can ever accumulate the sum of knowledge and knowledge that it would need to claim to dictate to economic agents the content, or even quite simply the limits of their contracts. Believing that there is "scientific knowledge" available, susceptible to provide the intellectual means for such action, is the product of a characteristic scientific error. This observation tion is based in particular on the fact that many of these factors which intervene in a crucial way in the determination of the relative costs and advantages of the different solutions, relate themselves of elements of which we can show that there is has probably none chance that we can A day THE see express-

put into a formalizable and measurable language, easily transmitted because that perfectly articulated (I think by example to everything relating to concepts of control costs, costs of detection, "specific" investment", THE phenomena of cheating and stowaways", which, even if they enter into the implicit reasoning of those who make the decisions, will not appear without doubt never explicitly in their explanations if we their request of justify their choice).

It is true that the provisions of the legislation leave a door opened. A business can always try to legitimize a practice by using the "economic assessment" procedure provided for by the article 85-3. So, in This Who concerns the clauses non-competition, he East always possible For a firm of request benefit of a clause exemption in demonstrating that the benefits to the community outweigh the drawbacks. But it is still necessary that the managers of the company have a clear awareness of the precise circumstances which lead them to adopt this or that contractual practice, and that they be able to clearly express all the reasons and all the consequences. But I claim that this is precisely an exercise which, in most cases, is impossible, the true reason for many practices based on *tacit knowledge* inexpressible, Who vehicle without that we THE let's know, in the form of *collective know-how*, experiences, expertise, professional standards And of rules often unconscious, infinitely more information And of knowledge useful has all, than we are able to express in words, and therefore know technical Or scientist Speak clearly.

The conclusion to all this is simple. It seems beyond doubt to me that these laws ultimately have only one effect: we prevent discover this that we don't don't know And that the free market would help us find and do even more effectively what we are already doing better than yesterday, but not less effectively that We could Again THE TO DO.

## **There false liberalization of right French from there competition \***

There concession exclusive, there distribution selective, there fran chise... are of the contracts of organization commercial which involve, by definition, the obligation for the industrialist refuse of provide of the distributors Who don't have not there quality of dealers approved Or franchisees.

However, in France, these fashions of distributions se collided to provisions of article 37 of the orders of 1945 which established the principle of the ban *a priori* of refusal of sale, and of which the effect was not to recognize there legitimacy that In A number restricted of cases basically defined by there nature of product concerned.

December 30, 1985 a reform took place which broadened the possibility of recourse to refusal of sale in the case of relationships commercial governed by a contract of which he is recognized by the authorities that it is not likely to have any significant influence on the state of there competition.

This new legislation, taken up by reform of December 1986, represents undeniable progress. It's even a real table revolution In there measure Or, For there first times In a text of law, se finally finds officially recognized freedom of the producer to opt for commercial strategies involving the implementation of a certain number of clauses of a restrictive nature generally considered to entail consequences " anti-competitive » (limit on the number of points of sale, contractual restrictions to the commercial freedom of the distributor...).

*More liberal* that that Who resulted of there circular Fontanet,

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\* Unpublished note written for a working seminar (September 1986).

She East However *Also more restrictive* In there measure where the appreciation of the justifying elements or not the refusal of sale is now subordinate has a economic thinking global overall of the situation competitive in the sector concerned. Result : A diet has two speeds. From a side, we recognize that there is no reason to systematically prohibit all shape of practical commercial has character restrictive or discriminatory. But of the other, we laid as principle only when these practices are implementations work P.ar of the companies with A weight economic " dominant ", 11 y has presumption automatic anti-competitive effects whose company cannot release only by molding the content of his contracts on the one of txpe contracts having received ministerial approval, or presenting a cost/benefit balance sheet economic which serves as justification .

**THE** new system resulting has This that the appreciation given on the contracts of distribution born will not there even according to THE distributed product occupies a significant or negligible share of the market. In the first case, there will be an automatically negative presumption, unless the company can demonstrate that its distribution system provides a certain number of clearly identifiable economic advantages; in the second, it will be the freedom which will prevail (except if THE contracts contain clauses of which THE character anti-competitive East obvious).

That said, to facilitate the evaluation by companies of what is allowed to them or prohibited, the law provides that the Administration will draw up *exemption regulations* specifying for each profession or by type of activity the contractual clauses which are considered to do not hinder the recognition of the legality of contracts. Developed from a census and a critique of current practices in each profession, these regulations will result from ministerial orders taken for a period determined, this which will allow their periodic re-evaluation according to the evolution of the state and structures of competition In each sector.

« Setting implementation of this new regulation refusal to sell, commented one of the authors of this legislation, is certainly not equivalent to total decriminalization. But she opens a wide field of freedom to companies, by offering them the appropriate legal framework to face competition through of the interventions on THE terms of marketing of their products. THE policies commercial of the businesses will thus be able to define themselves freely within clearly defined boundaries, while that the risk of see braked in their growth, distributors who develop forms of marketing innovative should se find dismissed. »

It is true that this new legislation represents great progress, a clear improvement compared to the previous legal regime. Exclusive or selective distribution practices finally find recognition official by the considerable enlargement of the exceptions Who can be From now on legitimately invoked. It was absurd to continue living with a law which, as it was written, resulted in the negation of everything that is taught today around the world in terms of management and marketing. It had become urgent to adjust the content of French legislation to changing morals commercial. It no longer had of sense of limit the legitimate cases of refusal of sale to only categories of luxury or high-tech products, while franchising becomes a mode of marketing moreover in addition common including THE success even proves that it provides benefits valued by consumers .

He is indisputable that the law from 30 December 1985 reflects a clear movement of *liberalization*. Liberalization for small businesses And average, Or exercising their activity on of the very competitive markets, which now gain almost complete freedom of commercial strategy (provided, however, that they do not resort to overly obvious price restriction clauses). But liberalization also for other companies which, while being subject to restrictive clauses in certain respects more serious that the previous ones (support count of the nature of the firm's competitive environment, and not just incrimination of his behavior), also gain more great freedom of commercial choice in relation to this that they could legally TO DO previously.

That said, if liberalization there's has, he it is a liberalization which continues to be situated in an extraordinarily "dirigiste" conceptual context, (!.It has very little in common with a philosophy of competition that is authentically liberal.

If we now recognize that there is no reason to systematically prohibit any form of commercial practice of a restrictive or discriminatory nature (which is considerable progress on the philosophy which dominated until then), on the other hand the new law results in establishing as a principle that when these practices are implemented by companies which have an economic weight dominant "• or whose products play " A role pilot"• he y has *presumption* automatic protection of anti-competitive effects from which the company can only free itself by checking that his contracts born contain that of the clauses " approved, .. by THE authorities ministerial, Or in presenting A

balance sheet costs/benefits economic Who him serve of justification. But a such approach of right resulting has a very curious design of there "justice" : From now on businesses will be able to be sanctioned For the choice of some business practices, No not because that these practice are judged *in itself* unfair, neither because they will have adopted a behavior expressing a intention unfair has respect of their competitors rents, but All simply because that he is of firms bigger that THE others, of companies leaders of which THE products have THE misfortune to be of fat success, Or Again of companies operating their activities on of the markets of which of the "experts" appointed by the state estimate THE *structures competitive* insufficient For to guarantee, has their eyes, that THE practices incriminated will not have no noticeable effects on there competition... Otherwise said, we has a situation Or From now on THE legal nature of a practical Or of a choice commercial - that's to say In fact there recognition of her character " just " Or "unfair " - depends No not the *personal intention* expressed there, but of factors exogenous totally independent of All • control » human; a situation Or THE character " just » Or " unfair » of contractual behavior depends not of the individual *will* which is asserted there, but "objective" facts such as the size of the company, the nature of its production, the structure of her walk, THE strategies of his competitors...

What is such a philosophy if not the expression of a conception essentially « positivist » and « dirigiste » of law where men have no rights other than those that the legislator specifically recognizes for them? To admit that identical behaviors can be considered differently depending on whether they are THE do of a business small Or big, « weak » Or « powerful », « dominated » or « dominant »... one must in fact necessarily situate oneself in a legal universe where we does not admit not that of the men can to possess other property rights than those which the public power gives them expressly delegates usage. We are the antipodes of Libera lism And of his design « subjective » of the freedoms; to antipodes also of the philosophical origins of what still remains in principle our right so much civil ci.ue criminal (importance of there responsibility). That the s0It system some little « more liberal » does not change anything essential: as in the law of work, we remain fundamentally in the presence of a system of thought «dirigiste» Or THE rights of property (And SO THE freedoms) cease to be the *natural extension* of the person's dignity human For not to be one privilege of state of which the use is only conceded has of the people private. Of the during that one

administration, even under the control of the judge, can at any time, by his prohibited, se reappropriate each of the rights by individuals constituting This what we call *freedom of commerce and industry*, it is absurd to speak of liberalism. We remain within the framework of a legal regime where, by definition, we cannot found economic freedom (and therefore freedom tout court) that on of the basics fragile And random.

A possible objection consists of noting that it is no longer a question of "qualifying" individual behaviors (as in the old approach to the law of individual practices), but of "protect the competition » against the *situations* of which *we know objectively* that they have every chance of leading to consequences negative uences on the " collective well-being. Averaging, l important born would be more of say THE " just „ or I ' unfair ;" but to *objectively* distinguish between the " good" and " bad „ - which would strengthen the legal security of economic agents in reducing THE role of the criteria " subjective".

We find there the typical expression of a trust GOOD naive in the powers of economic theory and analysis; attitude which can only weaken the right and not reinforce it as THE believe THE authors of there new legislation.

The problem is simple. Supposing that we admit the validity of the *calculation utilitarian* as a foundation of law, the question that arises is to know what confidence we can place in

THE theories on which relies there Commission of competition, And SO there conviction of legislator that it is starting from this jurisprudence that judges must decide disputes Who their are submitted. All THE world se behaves like if he born could y to have none doubt on THE do that *the approach structuralist* which characterizes contemporary theories of competition, notably there theory oligopolies, we given the key " objective " Who We allow to *measure* the degree of competition present on the markets, and therefore the character " healthy „ Or " unhealthy » of the structures industrial Who dominate there. Gold, he is of a affirmation scientist Who is today more and more frequently questioned, not only on THE plan of the strict approach epistemological, but also At level of the validity of empirical studies on which the approach by THE structures a, in the past, sitting fame intellectual. This one Assumed by definition that men loaded to monitor THE markets And from there apply the legislation on there competition have access has *a knowledge* of which we can demonstrate by logical analysis that they should be *supermen*, SO of the beings non-human, for benefit from it. In this regard, he East All of even paradoxical, And some little

worrying, to see this attitude of an *enlightened despot* register at the very heart of the system designed by our positive law at the very moment Or She se find of more in addition disputed scientifically, and even disowned by a growing number of economists of renowned (but in the United States, it is right!). Isn't this a gear which, of a in a certain way, recalls previous infortunate of Lysenkoism?

The consequence is that we end up with competition "rules" which are more designed to protect the interests of *certain* competitors, or of certain forms of competition, what interest • n general" of consumers. Despite all the beautiful rationalizations legal frameworks surrounding it, our competition legislation remains what she has always been since 1958 : first and foremost an instrument of *mercantile policy* which serves as a cover for men of the State to distribute, of there manner there less visible possible, has certain parts of the population, economic benefits ("rents") including they then hope to leverage in the form of votes. This situation is today aggravated by the increase n the influence of there Commission and of her doctrine on the entire device monitoring of there competition. Contrary to what has been written almost everywhere, it is not necessarily progress to see the law of individual practices to align with procedures relating to collective practices; and this even if this revolution brings us closer to what is happening in others country Europeans, notably in FRG.

The spirit of the reform is to move jurisprudence from an exclusively legal approach (regime of the offense *itself*), towards a more economic concept where commercial practices of a restrictive nature would no longer be prohibited. that when he y has truly *situation of addiction*.

Very good, but we come back to the inevitable problem of evaluation criteria making it possible to define the circumstances giving rise to a situation of " addiction ", And on there question corollary of know who judges there Oh good or not " situation of derendance".

If I we agree that THE conclusions deduced of the traditional theory of imperfect competition and oligopolies have an incontestable scientific status, and that makes it an • objective truth » Who born would reasonably know be From now on questioned, then the system is logical. But if we have the slightest doubt about the epistemological wisdom of such an attitude, everything East different. We have then a situation which does not other thing than to erect *the subjective arbitrariness* of a few "experts" into rules of right.

Can we in consequence really speak of "progress"?. We doubt it. We rather have the feeling that this new development of *economic law* to the detriment of more traditional conceptions "law" subjective", is not just one step moreover in the regression of the rule of law, unfortunately started since then not wrong of time Already.

Nothing is not more indefinite, And indefinable, that there notion of

"economic dependence" We cannot be satisfied with criteria such as relative market shares, to condemn the existence of "dominant positions". In the technological universe which is today ours, due of there specificity growing investments (And of the possibilities grabbing of

"quasi-rents » illegitimate Who in arise), he appears that THE "dependency" situations . are much more complex and ambivalent, even reciprocal, than what the usual tools of the theory classic of there competition allow us to understand. It is not impossible to think that many small businesses actually benefit from "market power " real much higher than that of many companies of much larger size, and this because of their particular position In THE chains technological. Why do not not control them too? And if we accept the principle (this that current legislation authorizes : it is enough to determine the segment of walk appropriate), where will we stop? Can we really make such a subjective and imprecise technical notion the key element regulation of a freedom as fundamental as *commercial freedom*? A country that so-called democratic can he get away with impunity make it depend the future of his freedoms alone judgment of "experts,., basing their assessment on contested theories And questionable?

**There competition of the States makes  
inevitable hindsight of the economy  
mixed \***

The archaism of French socialists is manifested in particular by their incomprehension of the global constraints, and not only European, which impose on contemporary governments to initiate a real receding tax who does not se does not boil down to a simple reduction symbolic of some taxes.

By opposing it - under the fallacious pretext that there are still so many collective needs to satisfy - the French socialists are going to counter-current of This who is not that one a simple claim of utopian intellectuals, but the expression of an international constraint which imposes itself more and more severely .

« People do not yet realize to what extent the development of computers and computer systems calls into question THE power policy And economic of the governments. Contemporary technology, because it has changed the nature of capitalism, has the effect of returning power to people. Freed from the arbitrary constraints of national regulations, capital financial internationalizes and reaches a degree of mobi

bedded that THE financiers could never have dreamed of before. Consequently, he is not not stupid of think that THE power States of tax And to exploit their taxpayers and their consumers as they see fit, approach to its twilight. » This paragraph East drawn of a article published by THE Professor Richard McKenzie in *Reason Magazine*. He expresses a point of view maybe A little too much optimistic. But the idea East interests-

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• Adapted from the article by Richard McKENZIE • Capital Flight : Tea Hidden Power of Technology to Schiak Government •, published in *Reason Magazine*, March 1989.

health: for the first time, technology plays finally in favor of interests of citizen taxable And drudgery has THANKS.

The political impact of technology is very different from there a hundred Or two cents years. There industrial Revolution its built on the farm economies of scale and increasing returns. The symbol of this revolution was the assembly line which spread over vast areas and tied up enormous capital in of the fixed installations that we don't could move than to of the costs prohibitive.

The immovable factory of the past not only fixed men, but it also had the effect of tying their hands in the face of the power of the State. They constituted a deposit which, ultimately, could be exploited intensively through taxes and regulations. Nothing hampered the exercise of this can be seen, if not the rules of political democracy. As long as invested capital could only be moved at great expense, companies had no alternative but to grimace and to pay, or to enter the political game themselves in order to obtain results more in line with their wishes, but to costs others citizens.

DI} capital immobilized, he y in has still many. The power of states on the capital and.on people East apparently more stronger than ever. The share of the State in national life has further progressed. However, something is clearly changing. This power n appears more without boundaries. Of more in more than people doubt that he can bring THE solutions to problems that THE concern.

This some thing Who exchange East related has there technology And has her "miniaturization". Computers once filled an entire room. Today, we put them on their knees. THE Archives which lined up on kilometers of dusty shelves, are contained in a few discs which are stored in a drawer. The factories which mobilized hectares of land and occupied thousands of people, produce even thing with less than a hundred people. Almost everything that has been created as new jobs in the United States Since ten years the summer In of the companies employing less than hundred employees. 39 % of firms surveyed by a gold American employers revealed that they had reduced the size of their production equipment over the previous two years. There half announced to have the intention of THE TO DO.

Technological and industrial development is towards a reduction of savings of scale. Towards This that Francois Dalle called THE " custom made industrial ».

Se doing more little, less visible, losing her character of

GOOD tangible, THE capital East became infinitely more fluid. When the dollar East fall at most down against THE yen, we has seen overnight the Japanese Ricoh move the production of its photocopiers to UNITED STATES, Sony supply its European customers from No more establishments located in the Peaceful, but of news factories built in A record time in Alabama and in Florida, and even Honda plans to re-import into Japan automobiles made in Ohio. With the integrated circuit substituting for the machine, the • human capital » take a growing importance in as long as source to be able economic.

But this investment East infinitely more fluid And mobile that investment industrial of yesteryear.

He in go of even with the information. In reducing the costs Communication, THE new brackets computerized modify the internal organizational logic of companies. They favor the emergence of a new, extremely mobile firm, which immobilizes very few assets. capital, And subcontracts most of its production.

Whether he is in his office, on his boat, or in an isolated chalet, the man business has in a few seconds, and for one very low price, access to hundreds of pages of information describing the functioning of her business. On a simple gesture, it can instantly send orders throughout the world and put producers in competition, regardless of the country they belong to. It is increasingly in a position where it escapes the supervision of States. The emergence of modern technology gives him more of the ability to say "damn " and to refuse to enter into the game that the authorities traditionally seek has him impose.

All these changes force the legislator to reassess the boundaries of her political role And economic. THE frame legislation of a territory determines the desire of people there to work, save and to invest in it. More THE capital se dematerializes, more it becomes mobile, the greater the probability that an increasing number of citizens react by moving their capacity elsewhere of earn of money.

THE together who lives under a certain political jurisdictions have an idea of the income they intend to earn there and the capital they want to make grow there. Their expectations depend of a large number of factors, including the " implied price " which consists of having to pay taxes or even having to obey has of the regulations.

When taxes and regulations change, their expectations change. modify. But these changes depend on their round of ease with which they can Or No escape to

constraints. More he East easy For THE people of to change of residence or of move their investments, more they will react to variations in their legislative and regulatory environment. The rise of new technologies, but also institutional developments such as the creation of the single European market, have the effect of increasing the elasticity of people's demand to live, work or invest in the country. or the region of their choice.

Not so long ago, as long as transfer costs remained high, the legislator could reasonably hope that raising taxes would bring in more budget revenue. All he had to worry about was estimating his needs and gauging the political resistance of those who would be responsible. of parry there note.

Today, 1 escalation of technical progress has increased the reactivity of populations. From now on, those who governments must be concerned that rising taxes will lead to an exodus of taxpayers and capital, and thus result in losses of income tax.

Among THE people particularly mobile include those of which the personality incorporates a high "human capital" quotient ". But knowledge, intelligence, competence form a capital that is hard to confiscate in passing of a border. With modern communication techniques and computers, these people and their factories have freed themselves from the constraints of geography. They can easily transport their capital beyond borders of the jurisdictions policies Or THE levy tax has become heavier. For this, he often enough to take with them a few floppy disks computer.

Result : governments now live in a world or they born can more TO DO anything; Or they born are no longer as free as before to adjust taxes to This that they considered necessary to cover their needs. The government's approach can no longer start from need and go back to taxes. The other aJ.>near Who consists has increase THE recipes by facilitating business and creating a climate more favorable to business and its competitiveness, is regaining greater importance. Logically, politicians should be less enthusiastic about the development of a state Who requires there lifting taxes always more heavy.

It is indeed, it seems, this Who happens Already. Political evolution In most of big country correspond to This what to expect in a world marked by greater mobility of factors. Witness the major topics of discussion policy And economic Of time : 1. the economy of

supply, reduction of marginal tax rates and restoration of individual motivations; 2. the modernization of the State and all the reflections on the means of making public offices more effective; 3. there deregulation And THE process of the obstacles which prevent the supply of capital from satisfy market demands; 4. privatizations of public companies, but also the subcontracting of the municipal services;

5. decentralization and the discovery of a " competition " which plays on there quality And THE " price " of the services local.

HAS originally, he y has undoubtedly the back of the ideas liberal and research on " perverse effects » of the bureaucratic approach. But that does not explain not All. That THE theme of there

" competitiveness" found in the speeches of all political tendencies can be interpreted as a sign that politicians and their advisors are waking up to the idea that competition applies also has their clean services. THE do even that we granted as much of importance has there" globalization of markets ", or the progress of " global economic integration » testifies of a socket of awareness of there manner d9nt the development calls into question the traditional monopolies of the State and its bureaucracies. For succeed, THE men policies must henceforth, they will no longer restrain their authoritarian inclinations. They are more in addition many to take some awareness. Even there fathers troika Soviet do part of phenomenon.

Since last century states benefited from a happy situation: on the one hand a population which demanded increased production of " collective goods "; on the other hand a technology Who stared At ground THE men and the capital. Found: the resources to finance the increase in state expenditure posed hardly of issue. These time are gone.

From now on And Already he is possible to ide)ltify a ul)iver tendency saddles the decline in the growth of the State. If we take the United States, it is clear that despite the decline in intention during the Reagan period, state spending continued to increase in relation to the national product. But the rhythm of this growth has noticeably decreases. For there period 1970-1987, it is located has approximately there half of what he was during there decade I 960-1970 (+ 0.8 % per year against 1.5 %). If we changes periods of reference, and which we take by example 1960-1975 and 1975-1987, the trend is hardly different. In absolute terms, the state has not regressed. But these figures offer a first proof that competition between States is starting to TO DO feel its pressure and may, in the future, lead to a withdrawal of the State, even in numbers absolute.

There even evolution se find In THE others industrial country

read. In Japan, the percentage of government expenditure relative to gross domestic product peaked in 1984 at 34 %; clepuis during he has regressed slightly. At Canada, THE expenses have more or less stabilized at their 1982 level. In Great Britain, the trend is towards a slight decline compared to the statistics of beginning of the years 1980: 47.7% in 1985 against 48.7 % in 1981; a gain of one point. West Germany lies on a plateau between 48 and 50 % since the middle of 1970s. Australia and most small European states present a profile identical. Of all THE big countries the only ones has TO DO exception are there ,France And Italy.

The most proof direct from reality of this new form of competition East given by there manner including an large number of states have reacted to the American initiative to cut taxes in 1981. The following table gives some examples. On average, the different countries reduced their tax rates of the slices of income more high about 11 %. The highest scale of income tax has increased from an average of 63 % has 52%.

This tax competition has spread to the Third World. From country Or recently intervned of the discounts Sensitive tax scales include Singapore, South Korea, the Philippines, Indonesia, Turkey, Jamaica, Colombia, Bolivia, Mexico, Grenada, Botswana, Ciskei, Maurice, India, Israel, And even there China.

Tax on THE income <i>Scale THE more down And scale THE more pupil</i>		
	1985	1986-90
Australia	30/60 %	24/29 % (1987)
Denmark	50/73 %	50/68 % (1987)
France	5/65 %	5/50 % (1988)
FRG	22/56 %	19/53 % (1990)
Ireland	35/65 %	35/58 % (1986)
Italy	18/65 %	11/56 % (1988)
Japan	10/70 %	10/50 % (1988)
New Zealand	20/66 %	15/48 % (1987)
Great Britain	30/60%	27/60 % (1987)
United States	1/50 %	15/28 % (1988)
<i>Average</i>	23/60 %	21/52 %

This analysis will seem very optimistic, too optimistic. The slowdown in state growth may only be temporary. Nevertheless, so much there theory that THE facts seem agree to show that a certain number of economic forces fundamental are has the work Who, of a manner may still be marginal but no less real, let us hope rer A reflux progressive of there ability of the States modern to tax and ransom their citizens. Under these conditions, the policy should little has little lose of his importance. Even if it is still only very marginally, it should count less than before In there life of the people.

In consequently, less of resources will be wasted by individuals and groups depression private For to act on the processes of decision policy. More of resources will remain available for investment in businesses and research of profits legitimately acquired. THE ambitions And appetite to be able to men of the State will clash to obstacles that will come less of there resistance ideological of the intellectuals that of there threat of see their, source of funding se dry up. You must not be naive. No State will see this evolution of a good eye, even if he find constrained break down. THE politicians will try to escape it, or All At less than reduce the effects. They will invent new ways of camouflage the cost real of their promises electoral. More that Never they will search there « cooperation international » - a technique for to protect yourself by forming state cartels including there function East of multiply THE efforts spouses For TO DO failure has there mobility growing of capital.

In acting Thus, THE States will row has counter-current of evolution technological. They will be able to in mitigate THE consequences. But he East little probable that they succeed never to totally compensate for there loss of power Who in will result. It is from this perspective that we must judge the insistence of French socialists to reevaluate the economy mixed, and to be built a Europe social which se would do by alignment on the States the biggest spenders. It is also in this context that must be resituated freezing of privatizations, THE refusal to consider a real reform tax, as well that there recurrence of the temptations protectionists who occur In some circles even employers. He it's about attitudes authentically « reactionaries » of which archaism aims has TO DO failure At movement of release of the people that favors the emergence of the technologies news.

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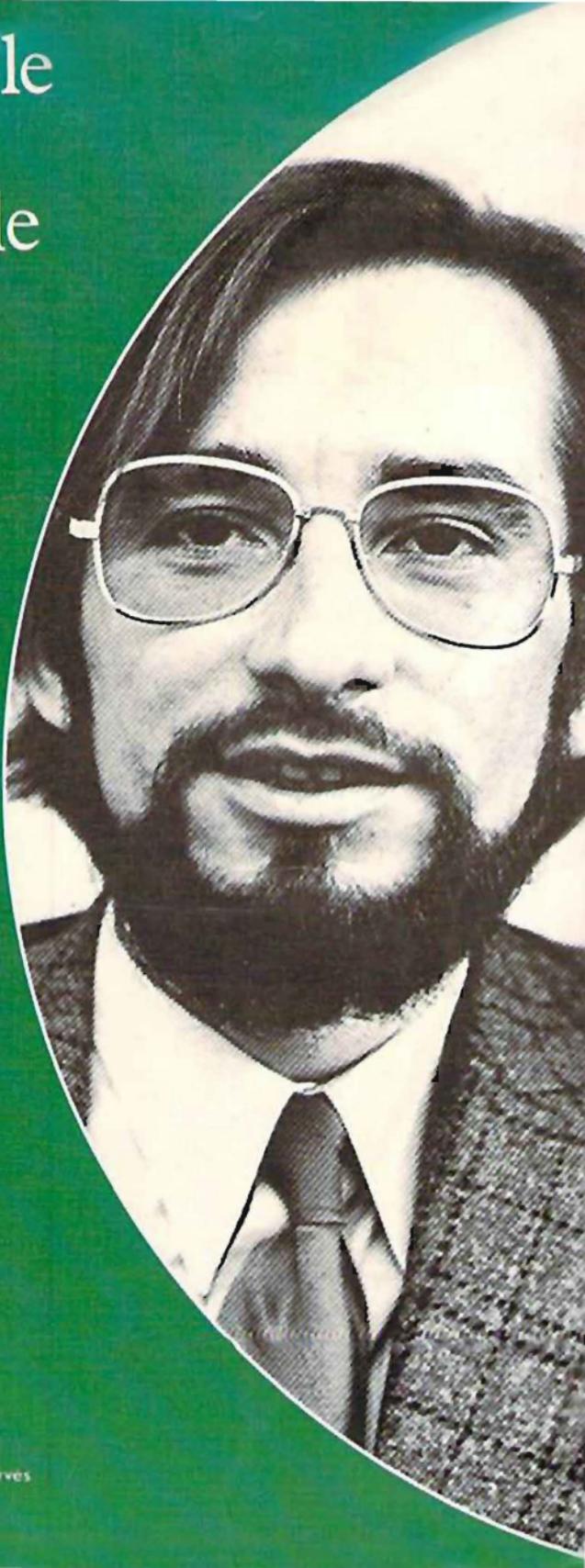
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# La nouvelle économie industrielle

Ce livre reprend tous les cas difficiles du libéralisme, tous les problèmes limites où même ceux qui croient aux valeurs de la libre entreprise et de l'économie de marché acceptent de reconnaître le besoin d'une intervention de l'État. L'auteur analyse les limites et les défauts scientifiques des arguments généralement utilisés pour justifier l'intervention des pouvoirs publics.

Comme dans ses ouvrages précédents (*Demain le capitalisme...*), Henri Lepage se fonde sur l'exploitation de travaux anglo-saxons encore peu connus en France. Allant au bout de sa démarche, il rapporte comment des avancées récentes de la science économique mettent à mal les concepts fondateurs de l'économie publique contemporaine.



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