

# Flexibility and security: what forms of political regulation?

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## Summary

This article examines the strengths and weaknesses of the concept of 'flexicurity', calling into question the tendency of the contemporary cultural imagination to regard flexibility as a framework for the expression of individual freedom. It then describes a range of possible policy options, in relation to the market, in the perspective of combining flexibility of labour and security of persons. Three major options emerge: the 'procedural', the 'neo-substantive' and the 'partnership' options. As a conclusion, this article comes out in favour of a different policy which would alter the framework for public intervention. It especially underlines the need for a 'flexible' and 'decentred' Welfare State, capable of supporting and encompassing forms of regulation emanating from civil society, in particular – but not exclusively – from the social partners.



## Sommaire

Cet article examine les points forts et les points faibles du concept de «flexicurité», en mettant en question l'imaginaire culturel contemporain qui ferait de la flexibilité le nouveau terrain d'expression de la liberté individuelle. Il s'attache à mettre ensuite en lumière toute une série d'options politiques possibles, face au marché, dans la perspective d'une articulation forte entre flexibilité du travail et sécurité des personnes. Trois options principales se dessinent: l'option «procédurale», l'option «néo-substantielle» et l'option «partenariales». En guise de conclusion, cet article prend position pour une politique différente qui changerait le cadre de l'intervention publique. Il souligne particulièrement le besoin d'un Etat-providence «flexible» et «décentré», capable de soutenir et d'englober des formes de régulation émanant de la société civile, en particulier – mais pas exclusivement – des partenaires sociaux.



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## Zusammenfassung

In diesem Beitrag untersucht der Autor die Stärken und Schwächen des Konzepts der "Flexicurity", wobei er die in der gegenwärtigen kulturellen Vorstellung vorherrschende Tendenz, Flexibilität als Rahmen individueller Freiheit zu verstehen, in Frage stellt. Anschließend beschreibt er eine Reihe marktbezogener politischer Optionen, die sich für die Verknüpfung von Arbeitsflexibilität und individueller Sicherheit anbieten könnten. Dabei stellen sich drei große Optionen heraus: die "prozedurale", die "neo-substantive" und die "Partnerschafts"-Option. Abschließend plädiert der Beitrag für eine andere Politik, die den Rahmen für öffentliche Maßnahmen ändern würde. Er unterstreicht die Notwendigkeit eines "flexiblen", "dezentrierten" Wohlfahrtsstaats, der in der Lage ist, Formen der Regulierung, die von der zivilen Gesellschaft – insbesondere von den Sozialpartnern, aber auch von anderen Akteuren – ausgehen, mit zu integrieren und zu unterstützen.



## Introduction

This article does not set out to review the concept of 'flexicurity' which has been amply defined in the preceding contributions. These have served to emphasise how broad is this notion, and how rich it is in both content and meaning. Nevertheless, if not reinserted into a wider problematic, it remains, as a concept, rather fragile; such is the argument to be developed here. The wider problematic is the whole question of the legitimacy of political action *vis-à-vis* the market in a twin context of increasing social vulnerability and individualisation of social relations, both within and beyond the workplace. Approaching the matter from this standpoint, our article is organised as follows: we begin by drawing attention to the more obscure aspects of the concept of 'flexicurity' (section 1), before calling into question the tendency of the contemporary cultural imagination to regard flexibility as a framework for the expression of individual freedom (section 2). In a third and final section, we seek to explain the need for new forms of regulation, while also describing the range of possible policy options in relation to the market, in the perspective of combining flexibility of labour and security of persons (section 3). In conclusion, we come out in favour of a different policy which would alter the framework for public policy intervention. Recommendations in this respect include a transition from a 'sovereign' Welfare State which, while guaranteeing some national cohesion, is incapable of effectively coping with the emerging social risks, to a 'flexible' and 'decentred' State, capable of supporting and encompassing forms of regulation emanating from civil society, in particular – but not exclusively – from the social partners.

## Contributions and limits of the concept of 'flexicurity'

It may seem incongruous to begin an article on the basis of a criticism of the concept of 'flexicurity'. After all, this concept certainly seems to mark an important stage in the renewal of the social pact which, in most European countries during the earlier

industrial period, sought to combine economic development and social cohesion. In fact, this pact has become increasingly vulnerable – where it has not been radically called into question – in the last two decades, which have witnessed both a new fascination with business activity in the contemporary cultural imagination and a re-empowerment of the market in the management of public affairs. These developments have led to an individualisation of social relations and a gradual weakening of earlier collectively acquired benefits. In these circumstances, it is time to seek new collective balances to offset what are the most damaging – or at least the most obvious – results of unbridled economic liberalism. The situation may indeed be considered urgent: ‘capitalism is flourishing but society is deteriorating’ (Boltanski and Chiappello 1999). After a phase of relative stabilisation, inequalities have once more become wider, not only between the North and South but also within countries, including those of the North (Fitoussi and Rosanvallon 1996; Martin *et al.* 2003). These inequalities combine traditional forms of inequality – principally of income – with the appearance of new risk factors, frequently more individualised (job insecurity, stress and intensification of work, poor quality jobs, etc.).

### Rethinking the relationship between mobility and protection

Of course, the concept of ‘flexicurity’ does not claim to take on responsibility for the whole weight of the ‘social issue’. Even so, its scope is far from negligible. Though still rather unstable, this concept is nonetheless indicative of a desire to redress the increasingly selective play of the economy, which brings to bear on employees – particularly the most vulnerable among them – the brunt of adaptation to the conditions of globalised competition. Moreover, ‘flexicurity’ is indeed a helpful tool for conceptualising ways of maintaining social protection in the face of fluctuation, instability and, in many cases, fragmentation that appear as ever increasing features of working lives. As stressed by Pascale Vielle and Pierre Walthéry (2003), labour flexibility takes place within a ‘post-Fordist’ context which reduces the scope of traditional social protection systems and places large numbers of ‘atypical’ workers outside the generically defined areas of protection.

Finally, and given the absence of ready-made solutions, a number of analysts see the concept of flexicurity as a new formulation of the classic antagonism between capital and labour. Such a concept would be better adapted to the new conditions of a competitive economy, in which the dividing line between individuals and social groups is no longer that of access to *ownership* of the means of production, but that of possession of a range of *resources* enabling acceptance – without serious risk to one’s health or one’s material and social situation – of the demand for virtually permanent mobility. As such, ‘flexicurity’ is regarded as something like the conceptual basis for allowing the redefinition of a more reliable – and, one might go so far as to say, more ‘comfortable’ – safety net. It can encourage – so the argument runs – the emergence of new rights, grounded in law or in collective agreement, allowing a collective assent to the increased demand for mobility, without leading to inequality or entailing major disruption of social cohesion. For its most rigorous proponents (Wilthagen, in this issue), ‘flexicurity’ is defined as a two-way movement towards increased flexibility of labour and enhanced security of

persons. This security relates, in theory, to the ‘external variables’ of the wage-earning relationship: security of protection, but also security of *income* or security of *employment* – or even all three at once<sup>1</sup>.

The criticism according to which the concept of ‘flexicurity’ is nothing more than a Trojan horse erected by the proponents of all-out deregulation appears to us to be inaccurate, not to say inappropriate, for the law has frequently been a particularly powerful tool in counteracting the harm done by the market, as shown by the history of the Welfare State. The problem is both more complex and more radical. In its desire to grasp both ends of the chain (flexibility and security) simultaneously, the concept of ‘flexicurity’ runs the risk of committing a twofold error: upstream, it holds a distorted view of the real state of the *wage-earning relationship*; downstream, it clings to a blinkered vision of *political action*.

### Overestimated needs?

Let us pause for a moment to consider the state of the wage-earning relationship through an examination of three main arguments. According to the first argument, the concept of ‘flexicurity’ is intended to define a programme whereby people are offered security with a view to enabling an increasing – not to say permanent – flexibility of labour. Yet this view considerably *overestimates* the actual needs of the corporate sector in this respect. The idea that firms require their workforces to be mobile on a general scale, both quantitatively and qualitatively, appears at odds with reality. In their pioneering work, M. Piore and C. Sabel (1984) pointed out that ‘flexible specialisation’ was far from being incompatible with mass production. R. Boyer and J.-P. Durrant (1998) show, for their part, that flexibility has never moved far from more or less elaborate forms of mass production, giving rise to what they call ‘flexible mass production’ – a proposition that has been particularly well verified on the global scale. What this situation actually entails, behind the spectre of generalised mobility, is strategies to induce a portion of the labour force – that portion working in core business areas – to become loyal and stable. It is true that the techniques for forging such loyalty have changed, no longer necessarily entailing ‘life-long employment status’ but combining a range of incentives (relative employment stability, pay development, non contractual benefits, etc.). Even so, the existence of a ‘hard core’ of employees has not disappeared with the new forms of work and employment. What are the characteristics of this hard core? How is it organised, remunerated, managed? ‘Flexicurity’, while conveying – sometimes in spite of itself – the notion of an unconditional need for flexibility, fails to answer these questions.

- 1 We will not elaborate upon the usual definitions of flexibility, for these are given in other contributions. Very broadly speaking, flexibility of labour means, for us, the whole set of tactics used by firms in the effort to alter the previously existing wage-earning relationship, with a view to increased adaptation to the constraints – foreseen or projected – of the environment. These tactics generally relate to aspects of numerical flexibility (fixed-term contracts, temporary agency workers, traineeships, etc.), working time flexibility (part-time, overtime, non-standard hours, etc.), productive flexibility (subcontracting, outsourcing, etc.) and functional flexibility (multi-skilling, teamwork, project groups, etc.).

## Flexibility and rationality of choices

Now this overestimation has one major impact – and this is the second argument concerning the wage-earning relationship. It entails the risk of abstracting from the field of analysis, and hence from that of regulation, the *practical reasons* underlying recourse to flexibility in its different guises. If one accepts the idea that the term in fact conveys no more than a very rough representation of the actual needs of firms, it then becomes necessary to be able to account for the way in which firms use this term, define its content, and employ it as a strategy tool. And here a split seems to have taken place: the formerly prevalent distinction between a 'defensive' flexibility (encompassing strategies of external and/or quantitative flexibility, geared to a reduction in labour costs and the search for short-term productivity gains) and an 'offensive' flexibility (encompassing strategies of internal and/or qualitative flexibility, aimed at increasing companies' capacity to react in the long run and at development of innovation or quality) seems increasingly less pertinent (Boyer 1986). T. Coutrot (1998) writes in this respect: 'on a globalised market competition strategies based on prices and those based on other factors complement one another: firms are subject both to strong pressure on costs (short-term) and to quality and innovation demands (long-term)'.

It is revealing to note, in this respect, that, on the European scale, numerous agreements on labour flexibility contain both 'defensive' and 'offensive' measures (Barré *et al.* 2000)<sup>2</sup>. R. Boyer himself, to whom we are indebted for this original distinction, has since made regular efforts to fine-tune it<sup>3</sup>. In a recent collective article (Beffa *et al.* 1999), he shows that labour flexibility takes on extremely diverse meanings depending on the sector. This approach is in line with the conclusions reached by earlier (du Tertre 1989) or subsequent (Lallement 1998; de Nanteuil-Miribel *et al.* 2004) investigations, which stress the importance of the sector, in particular on the European scale, for a detailed understanding of strategies to develop labour force flexibility. Banal as it may seem, this point has consequences that are decisive.

First of all, it appears difficult to get away from the idea that flexibility refers, in reality, to sophisticated strategic combinations – even *deliberate ploys* – that transcend mere adaptation to the unforeseen environment. In fact, changes in the wage-earning relationship often combine external and internal, quantitative and qualitative, variables, in proportions that depend on firms' human resources policies as well as on existing socio-institutional constraints. And these combinations are themselves based on *different sets of motives*: it is possible to observe a mixture of production constraints – linked to the fluctuating and unpredictable state of the business – and ambitions of a cultural or

2 In their latest work on the subject, J.-M. Barbier and H. Nadel suggest moving beyond this dichotomy by proposing an original combination of 'flexibility of work' and 'flexibility of employment' (Barbier and Nadel 2002).

3 The original idea was that there exists an 'upwards route out' of flexibility and that, for this very reason, it is not restricted to a short-term arbitration between rigidity and reactivity. This remains true, even if the ways of describing and organising flexibility in the long term have changed.

political nature, intended, for example, to put an end to collective occupational identities or to alter existing power relations. And lastly, this diversity has repercussions on the wage-earners' *lived situations*: a fixed-term contract may in one instance be a solution to a particular problem and serve as a bridge to a permanent job while in other cases it serves as a reservoir of insecure labour deprived of social protection and collective guarantees in force in the sector; multi-skilling, meanwhile, may be a way of overcoming the rigidities of Taylorist organisation and may create learning situations of benefit to employees, but it can also act as a stopgap in a situation of clear understaffing, thereby undermining existing competences. In short, one and the same flexible labour situation may be turned to good or ill account, depending on the prevailing organisational configuration and the existing balance of power. This is shown in exemplary fashion in C. Faure-Guichard's studies on agency work (1999).

In confining itself to the 'external' variables of the wage-earning relationship (jobs, income, protection), 'flexibility' offers a reassuring framework to persons coping with the challenges of all-out mobility. But it conceals the fact that flexibility can have undesirable effects – especially on the psycho-emotional or psycho-social level – whatever the degree of security on offer: is a worker who is pushed around from one insecure job to another, without ever being in a position to take in hand his/her own career, to be regarded – in spite of the preservation of wage level or the continuing payment of social security contributions – as the solution for the years to come? Meanwhile, the desire to confine security to 'external' variables might give rise to the belief that this type of flexibility covers a standard set of practices. But here too there are differences and a considerable amount of leeway, for example in the nature of the tools selected or in the particular forms of flexibility chosen (fixed-term contract is different from temporary agency work, etc.).

The failure to investigate this area renders impossible any fruitful exchange of views on the *pertinence*, but also the *limits*, of recourse to flexibility. The social actors (managers, trade unionists, employees, but also local actors, family associations, etc.) are thereby denied the opportunity to question the precise content of management choices, to devise lines of behaviour which would make sense in relation to whatever particular issue may be at stake, to discuss and protest at the terms of implementation. In other words, there is a risk of remaining confined within a rationale of 'social repair' which, though it was indeed dominant in the conception of the Welfare State inherited from the past industrial period of growth, is today precisely what remains highly problematic, given its inability to apprehend social risk in a fine-tuned, adaptive, evolutionary manner.

It is important to realise that this question is not simply socio-economic in nature, but that it also entails an ethical dimension. It is hardly an exaggeration to say that, in this respect, there would appear to be a distinct tendency to cling to a vision according to which there exists, from the outset, a 'good' and a 'bad' form of flexibility, irrespective of the way in which the actors are in a position to influence the course of things. More broadly, the risk would be that of conferring permanent legitimacy on a process which, taken as a whole, remains subject to divergent interpretations, including within top

management circles (Beaujolin 1999; El Akremi and Igalens 2002). Here, it may be worth noting, we are not far from the meaning attributed by Marx to exploitation, namely, a situation of structural imbalance between contribution and reward, which the system of formal rights would be bound to perpetuate, insofar as it failed to attack the problem at its root.

## Flexibility and liberty: a new symbiosis?

And this is why our third and final argument concerning the wage-earning relationship is in a more philosophical vein. Though there are many who take it for granted that flexibility amounts to a kind of reincarnation of individual freedom in a hyper-complex world emancipated from the burdens of the industrial age, this is something of a caricature. It is based first of all on a partial re-reading of the Taylorist-Fordist contract. Our aim is not to compose an apology of Taylorism but simply to recall that, alongside a system of depersonalising constraints, certain forms of collective rationale (occupation, groups, even classes) did exist to give meaning to occupational activities and place the objective situation of subordination within a broader societal perspective (Linhart 1991; Laville 1999). What is more, the contemporary value accorded to an individual subject deprived of any fixed grounding or history is only one stage in the development of the modern individualist problematic, of which it exhausts neither the boundaries nor the content. At best, it marks a return to a contractual, pre-State, form of the modern individual, the underpinnings and political expressions of which still have to be reinvented, against a backdrop of globalised competition. At worst, it is a caricature of liberty.

For liberty is indeed the issue at stake. Modernity has been built up around the idea that it was up to the human subject to access autonomy, to invent his or her history in a rational manner, to encompass existential finitude in the absence of metaphysical certainty. But this process did not develop in linear fashion (Touraine 1992). It came to find expression in numerous different spheres, and autonomy acquired specific representations, exhibiting distinct registers: that of private interest, that of labour and material conditions of existence, that of the meaning with which each person endowed his or her own life. Such a diversity enabled the preservation and cohabitation of 'two kinds of liberty', to recall Isaiah Berlin's (1969) famous distinction: a 'negative' conception, centred on the absence of constraints, with autonomy regarded as a given; a 'positive' conception, focused on the achievement of projects, whereby autonomy remains an aspiration, a horizon. And the power and force of conviction attaching to the idea that flexibility is no longer controversial as regards its principles, and is negotiable only as regards its effects, cannot be understood in the absence of a reference to a certain idea of liberty: the idea we entertain – in the post-Cold War world, in which no credible alternative to the market is on offer – concerning the leading of our lives. For many, flexibility means the advent of an endlessly reversible stream of behaviours, commitments, choices. By placing employers and employees on an equal footing, it is regarded as no more and no less than the legitimate expression of an aspiration to exercise freedom of choice, in the conduct of one's professional or private life, in the making of one's personal history.

Viewing autonomy as synonymous with the defence of one's private interests, it signifies the return of a purely 'negative' conception of liberty, namely, one in which nothing would any longer have to be constructed but where everything could still be selected, in which value is accorded to the sphere of choices rather than that of projects. The philosophical aberrations entailed by this narrow-minded approach have been described at length, on the scale of persons as well as of the community (Taylor 1997, 1998). Quite apart from its reductionist stamp, this approach serves to occlude the founding project of modernity, which has always been an attempt to find ways of reconciling the two spheres in question.

But sociological analysis shows us, more than anything, the extent to which this representation of flexibility takes a severe battering in reality. Granted, flexibility does frequently broaden the spectrum of options – for example in the area of working time. But the resulting situation also gives rise to constraints and irreversibility. Thus, workers may in theory choose to work outside normal working hours in an effort to reconcile their working and their private lives. In actual fact, these working hours are frequently imposed upon them: presented as 'normal' schedules, they gradually acquire the stamp of employer authority and become fenced about with new rules and regulations. In many cases these working hours cease being associated with the payment of premiums, and the 'standard' organisation of time becomes the exception. Conversely, stability has not disappeared from the flexible workplace. However, it no longer necessarily results from a trade union strategy pursued through established bargaining relationships, but derives more often from the strategic needs of the employers, who are faced with a constantly changing environment that is both unpredictable and demanding. As well summed up by Jean-Louis Beffa et al. (1999: 1045): 'it is now on the initiative of firms and their redefinition of occupational profiles that stability is granted to the best performing employees ... and no longer in response to trade union demands aimed at generalising the status'.

Not that collective rules are necessarily absent from the new situations. But they have forfeited their former stability, becoming more labile, more subject to change than in the past, a state of affairs that is reflected in the new flood of 'local corporate regulations' (Dupray et al. 2003). The focal element of power relations has accordingly shifted. The focus is now the meaning of regulatory activity: it refers to the control of the development and reversibility of the employment rules, which themselves become the component of a 'meta-game', to use Ulrich Beck's terminology (2003: 27 ff.). In other words, it appears quite clearly that one of the characteristics of labour flexibility is the definition of new patterns of irreversibility, an alteration in the nature of the relationship between control and degrees of freedom. In other words, at the same time as the spectrum of possibilities on offer is seen to become broader, greater selectivity can be observed in terms of access to new situations. This selectivity increasingly eludes the expression of a joint will, founded on the existence of a bargaining relationship between different social forces (Reynaud 1996). This is a point emphasised in a recent European research project (de Nanteuil-Miribel et al. 2004), even if 'traditional' collective bargaining practices (wages, working time and working conditions) are still to be found in several sectors.

Quite obviously, any exploration of liberty has to incorporate issues of security – whether of jobs, income or protection – without which flexibility will connote more closely with subjection than with emancipation. But a decisive aspect of the contemporary wage-earning condition also comes to light, one which the whole issue of ‘flexicurity’, if considered in too isolated a fashion, might easily fail to address: namely the *disappropriation of regulations* or, to put it more positively, the need for all the parties to the play of the economy to *accede to a new type of regulation*. The issue at stake cannot be reduced to a narrow conception of security of persons, designed to offset the increasing and ineluctable flexibility of labour. It is above all a question of enabling those parts of the labour force that are shunted back and forth by ill-assorted and unpredictable forms of flexibility to reclaim their own destinies, to be given a say in the production of the collective rules that would set limits on a process too frequently perceived as inevitable, and that would endow this process with a still largely non-existent ethical dimension. While defining the essential safeguards required for the preservation of social cohesion and moral integrity, political action also needs to establish new links with a ‘positive’ conception of liberty, one which gives an essential place to the achievement of projects by individuals and/or groups, at this specific juncture in history characterised by strongly asymmetrical economic relationships.

Indeed, what we have in mind here is an enlarged notion of security, an idea capable of vindicating an ambitious role for autonomy in our globalised modernity. And this requires at the same time that we move beyond the initial problematic: the question is less about the *type of relationship* that can be established between flexibility and security than about the *means of producing* the collective rules, about how a sense of general interest can be re-introduced into a global game governed by inter-individual adjustments. It is here that we approach the wellspring of the relationship between political action and the market.

## Political action and the market: a range of options

A highly delicate issue at the heart of the current political and ideological controversies is the question of *laissez-faire* or prohibition. Yet perhaps it may be time to look for ways of moving beyond this dichotomy that has for decades inhered in the history of relations between the State and the market. Indeed, it is hard to see what *laissez-faire* could further usefully contribute, over and above the exacerbation of what is already a highly asymmetrical and inegalitarian economic nexus. Should we be calling for stronger government intervention? But to what end? It is hard to imagine a simple return to an interventionist Welfare State that would make sure that flexibility would be ‘of the right kind’ and would nurture nostalgia for an ideal world, from which complexity and contradiction had been effectively banished. According to Charles Taylor, one of the essential challenges of modernity is, precisely, to avoid the distortions of the utilitarian tradition and the romantic counter-illusions which invariably follow in their wake (1998: 71). The crisis of the Welfare State testifies, moreover, to the exhaustion of forms of unilateral political intervention in the socio-economic field (Rosanvallon 1984, 1995). And finally,

it must not be forgotten how extremely diverse are the mechanisms of public action on the continent of Europe today (Esping-Andersen 1999).

It remains that if, as is probably the case, the general idea which has governed the action of the Welfare State for decades – that of a by and large redistributive operation to ‘repair’ the damage inflicted by the market, coupled with a division of labour between the market that produces wealth and the State which defends the general interest – if this idea has indeed had its day, this in no way abolishes the importance for the State of remaining – to use C. Arnspenger’s phrase (2003) – ‘socially active’. Robert Castel, meanwhile, points out that what is at stake is not ‘less or more State (...) We need recourse to a *strategist State* that would redeploy its interventions to accompany this process of individualisation, defuse its tension spots, prevent damage and rescue those who have already run adrift. (...) A State that would need to fine-tune its interventions to take account of the nerve paths of the process of individualisation’ (Castel 1995: 474, our emphasis).

It remains to ask, however, according to what types of mechanism and approach the State might be in a position to pursue this type of strategy. The question is above all whether the legitimacy of the political *vis-à-vis* the market inevitably requires the summing up of an ultimate tutelary figure, to be conceived of as the redistributive and centralised social State, operating as a lone rampart against the damage wrought by market competition. On the European scale, an answer is being formulated. ‘Flexicurity’ is, precisely, a tentative form of reply, facilitating *other ways* of articulating economic development and social cohesion via the widespread recognition of a set of fundamental rights without direct impact on the content of competition relations. But the first part of this article has stressed the shortcomings, if not the extreme vulnerability, of any form of regulation limited to this type of approach. In reality, this approach is just one option on a much broader spectrum of possible policies, the general nature of which we shall try to describe here. It is not a question of expounding political programmes, even less of proposing definitive solutions to recurring problems. What is at stake here is something both more modest and more profound, namely, the formulation of possible stances in an effort to home in on the components of a *method*.

## The ‘procedural’ option: pluralism and inequalities

This is obviously not the place to go into depth about what is meant by the term ‘procedural ethic’ or ‘procedural action’. Any such enquiry would be all the more protracted in that we are speaking here of a family of ideas with a large number of branches that become frequently intertwined. It can be indicated only that this ‘option’ – a term to be understood in its broadest sense – links up with the currently most fashionable directions of thought in political philosophy and ethics, but also in sociology and philosophy of law. What are the issues at stake here? In the first place, this approach considers the *plurality of ways of life and social situations* as an irreducible fact (Rawls 1987). It is argued that our complex democratic societies, founded on the principle of the freedom of the rational subject, are characterised, above all else, by a pluralism of values which



makes any search for common substantive purposes unfruitful – and indeed dangerous. In philosophical terms, this means that the priority should henceforth be given to the ‘just’ over the ‘good’, to the fixing of a *procedure* of justice divested of any reference to an idea of the good, to any higher criterion for determining the ‘good life’ (Nachi 1998). The point is that the procedure comes to ‘replace a substantive criterion that would define an exemplary way of life’ (Rochlitz 1991: 171). As remarked by Paul Ricoeur, ‘the purpose and function of a procedure (is) to ensure the primacy of the just over the good by substituting the actual procedure of deliberation for any commitment to a self-styled common good’ (1995: 72). In other words, it appears quite clearly that a purely procedural conception of public action will make no reference to any substantive content, since it claims to have become emancipated from any tutelary notion of the good.

But what exactly then is meant by ‘procedure’? A procedure is a *criterion* for validating a standard, an argument or an action. The initial postulate is formulated by Jürgen Habermas as follows: ‘insofar as, in the modern age, philosophy can no longer make an *a priori* judgement concerning the multiplicity of individual life projects and forms of collective living, insofar as the socialised individuals themselves alone bear responsibility for their way of life, which has henceforth to be assessed from the standpoint of its participants, the only thing that can still prove convincing to everyone is the procedure according to which the rational formation of the will takes place’ (quoted in Rochlitz 1991: 169–170). Now this procedural conception has political consequences of the first importance. According to this mode of understanding, the political sphere should no longer have the task of fostering any kind of vision of the good life, or of injecting into norms any specific kind of content. The ‘proceduralists’ stress the fact that the arguments and justifications for a public action cannot resort to a substantive ethic. Politics must be ‘neutral’ in relation to concepts of the good: ‘neutrality appears as a ‘specific constraint imposed on the reasons that can be invoked to justify a public policy.’ It concerns the *justification* of the rules governing public life and not the end purpose of the political practices and institutions’ (Berten *et al.* 1997: 12). The concept of the political is thus itself also purely procedural. In this context, the neutrality of the State becomes the foundation of political action: ‘the validity of political judgement lies solely in the respect paid in the process of justification to a purely formal demand for neutrality in relation to the controversial concepts of the good life’ (*ibid.*: 13).

We will not discuss here what underlies this desire for ‘neutrality’. Where the political regulation of flexibility is concerned, it may simply be noted that it would amount to giving the State the role of *general coordinator* in such a way as to ensure that the formal rules of deliberation are observed during the controversies that would inevitably surround the implementation of any new flexible practice. In parallel, this role would deliberately preclude any more substantive form of intervention that might lead to the formulation of binding rules for firms and economic agents. Again, this option would amount to setting collective bargaining also on a foundation which, too, would be essentially procedural in nature, ensuring that the outcome of industrial disputes should be secured at the level of respect of the formal undertakings taken in relation to work and employment, in the absence of any particular normative thrust. It would be a question

of producing something like *agreements on method*, enabling practical mechanisms for implementation to be devised but also grievance procedures against certain forms of abuse in regard to flexibility, albeit without calling into question its principle. This option entails a number of advantages: it accommodates the particularly controversial nature of flexibility; it can also help to push back the grey areas of non-law referred to above, by providing the groundwork for a legal stability disconnected from fluctuations in the employment relationship. This is precisely the kind of rationale that underlies the concept of ‘flexicurity’ which, in actual fact, is part and parcel of a procedural approach to public action, a fact which, undoubtedly, is at the root of its semantic success.

But this option also entails a number of shortcomings. It runs, in fact, the risk of neglecting a central sociological fact, namely that the extreme fragmentation of situations encountered within the realm of flexibility generates a new type of inequality. This inequality derives from the ‘normative vacuum’ introduced by such a fragmentation and the impossibility of halting the practices experienced by workers as materially and psychologically destructive. More prosaically, the procedural option in favour of plurality is liable – when it is applied, for example, to the increasing diversification of employment statuses – to take on a rather negative colouring. For it actually leads to occlusion of the mechanisms of recourse to these forms of employment and to the preservation of new lines of cleavage within the employee class. In spite of its advantages, it could therefore serve to reinforce the status quo and, in practice, encourage inertia on the part of the State in the face of a tangle of contradictory reasons and challenges. It is true that this approach could lead to the emergence of new rights, designed to make the path through working lives and careers more secure. But over and above the effects of legitimisation mentioned above, it could also translate into stronger forms of social domination over individuals lacking the resources to devise independent projects, or to regain control over disrupted career paths, over and above minimal legal protection. The question of a ‘substantivisation’ – whether partial or total – of regulation therefore emerges.

### The ‘neo-substantive’ option: between individualism and statism

The ‘neo-substantive’ option quite logically seeks a solution to these *impasses* by reaffirming the essential role of the State in steering ‘the ship of the wage-earning society subject to threat on all sides’ (Castel 1995: 474). The State is seen as requiring readjustment of its aims in order to deal with the powerful new trend towards a ‘recommodification’ of social relations. Though the claim is not made in so many words, this option calls for a ‘strong social State’ to act as guarantor of enduring forms of social protection. Not that it is a question here of a simple ‘return’ to the previous Welfare State. Regarded from this standpoint, the task of public action would no longer be limited to its previous role in the major phase of industrial development, namely, to legitimise the market as the exclusive locus for the production of wealth, while accepting responsibility for rescuing market losers and misfits through a generalised and anonymous policy of redistribution. At the heart of the renewal of the Welfare State is the question of individualism. Robert Castel is undoubtedly one of the thinkers who today gives most eloquent expression to this problematic: ‘official public bodies still have to find their *modus operandi* in a world bearing the twofold seal of individualisation and the obligation to be mobile’ (Castel 2004: 93).

And yet this inclusion of the question of individualism does not lead to a purely procedural conception of regulation. The standpoint is, if one may say, rather the reverse. In the face of this individualisation of social networks, the specific task of the political sphere is precisely, so it is argued, to deepen – or to renew – a certain ambition of the whole, an ideal of social totality, to be set in tandem with the strong underlying individualist trend. M. Gauchet puts this more clearly than others: 'the triumph of democracy over its enemies testifies to a split: there is no alternative source of legitimacy that would justify sacrificing the freedom of persons, be it in the name of religion, tradition or history. (...) We are no longer at the mercy of an aggressive resurgence of the collective at the expense of the individual. (...) If there is a peril on the horizon, it is that of the collapse of the collective in the face of the affirmation of individuals' (2002: X-XI, 378). Now, the 'horizon' in question is a reference, implicit or explicit, to a certain ideal of the good life, the aim being, more precisely, to preserve the space of a substantive ethic as a grounding point of public action.

No bones are made here about the debt to Durkheim. The challenge is indeed to seek the conditions of a new *modem ethic* in the face of the increasing damage inflicted on the social fabric by global competition. Of course, the ethical and cultural pluralism around which the 'proceduralists' built up the earlier scenario remains broadly valid, insofar as it corresponds closely to the main thrust of contemporary individualism. But that does not mean that all reference to a substantive ethic, to a certain idea of the good, has been abandoned. In reality, the issue at stake is less the search to formulate a unique ideal of the good life than to renew the foundations of a collective ethic, that would aim at counteracting the trends which undermine social cohesion. To be sufficiently efficient and realistic, such a perspective could not avoid any explicit reference to substantive values, even though a certain degree of pluralism is strongly recognised. In other words, this approach is guided by the willingness to make this pluralism effective, in the face of the hegemonic effects of the market. The way forward, therefore, is to reaffirm the role of a public authority capable of supplying a *hierarchy of values*, combining market practices with purposes that are irreducible to the market. In the case of flexibility, the State is called upon to tackle, as a matter of priority, the roots of job insecurity, by acknowledging and fully facing up to the increasingly heterogeneous nature of wage-earning relationships. And this could include binding measure against economic agents, such as the fixing of thresholds or tax penalties for abusive practices. Given the emergence of problems of varying kinds, in particular the proliferation of threats to health or the appearance of new social risks, this approach could, at a first glance, appear quite operationally promising. But it may come to grief on the magnitude of recent trends in the relationship entertained by citizen-individuals towards the political sphere.

This approach indeed entails the major risk of conferring the whole responsibility for normative production on the State, whereas the elements described here show the need for decentralised standards able to accompany the diversity of lived situations (de Munck and Verhoeven 1997). Moreover, it is an approach that could serve to disqualify the parties involved in the play of the economy in relation to a task of establishing standards which is of direct concern to them and cannot, by definition, be conducted in their

absence. Finally, and above all, there is the risk that it may take flexibility for an established – indeed a homogeneous – fact, by arbitrarily defining what might be desirable and what not, and by legitimising a certain level of practice. Now the dilemmas described above show that such thresholds vary a great deal depending on sector, and that an inherent feature of flexibility is ongoing efforts to redefine the limits of the possible. Above all, these dilemmas remind us that one of the major political challenges of the moment is to find ways of enabling the different social actors – especially social partners – to participate in future forms of regulation. This participation should not be seen as a simple 'tolerance' by the State, but as a central tool in the elaboration of norms that concern society as a whole. Therefore, such a perspective could not be restricted to a too narrow procedural approach: it would need some references to substantive conceptions of the good life, in the course of contradictory collective debates. By the way, this may be the new side of the current individualistic trend: the latter should not only be seen as the privatisation of choices and the disintegration of the body politic; it also means that civil society is able to bear and discuss a spectrum of substantive values, or that substantive values are no longer the exclusive prerogative of the State. In short, the challenge is to bear in mind that the individualist question confers on the arrangements emanating from civil society a completely new moral and political status.

### The 'partnership' option: democracy, critical activity and contradictory deliberation

In a report commissioned by the European Commission, a group of researchers coordinated by Alain Supiot (1999) put forward the principle of a 'professional status' according to which the social rights generally attaching to occupational activity (unemployment, sickness, old age, etc.) would be disconnected from the latter and would attach instead – irrespective of the activity of the moment – to the worker's person. The aim of such an approach is to restore continuity of rights in a situation where new forms of work and employment have the precise effect of curtailing or suspending them. An idea put forward in parallel is to offer workers a set of 'social drawing rights' designed to ensure their survival through employment 'grey areas' (periods of casual labour, lay-offs, part-time work, etc.) and to preserve their skills, in particular by means of greater participation in training activities. The innovative thrust of these proposals signals a break in the liberal-social thinking, which has prevailed so far on this subject. They may be said to constitute, to some extent, a half-way house between the two options considered above: they propose a substantive detachment of social rights from the employment contract, thereby entailing decisive changes in the distribution of risks between employers and employees; yet they are conceived of principally as being located on a legal ground, i.e. within a rather procedural conception of social life. To state the same thing differently, they partially 'substantialise' the prospects opened up by the concept of 'flexibility', while remaining peripheral to the power relations that are at the root of flexible practices. And for this reason precisely, they offer no clear indication of the ways and means whereby future forms of regulation would be brought into being. Once again, they contain very little reference to the social actors.

This is where a third option emerges, one which takes into account the positive features of the earlier approaches, while suggesting an alternative construction of the problems. What is important in this instance is the constitution of the deliberative scene itself. In other words, the role of a constructive interplay of interests among social actors comes to be regarded as central and as of value in its own right; in this context, the boundaries of old-style collective bargaining are modified and its field of application extended to include, among other things, the criteria of firms' efficiency, occupational health or job insecurity issues, but also the question of reconciling work and private life. At the same time, this perspective would require enlarging current forums for meeting and debate, by bringing together actors that are still excluded from the 'traditional' collective bargaining process: local policy actors, consumers' associations, families' delegates, etc. This option takes its inspiration, to a certain degree, from the critique of the procedural conception of political action drawn up by the 'communitarian' thinkers. From a communitarian perspective, 'it is not possible to define in any abstract or 'essential' manner the ethical value of practices or ways of life. In any specification of what constitutes ethical excellence we are invariably returned to a given tradition, a specific historical community and the place occupied in it by the individual' (Berten *et al.* 1997: 10). Similarly, this option accords an essential role to the decentralisation of standards, to individuals experiencing themselves as belonging to living communities that can never be reduced to any form of centralised institution. As such, it contests the principle of 'neutrality of political action', and yet without considering that such action is the exclusive prerogative of the State.

This approach does, however, take a significant distance from the communitarian perspective insofar as it continues to assign to the State a major role in the organisation of regulations. But this role, important as it is, is of a new and very different kind. The key aspect is the way in which the sources and contents of the overall political regulation no longer spring from an enlightened political elite but emanate, instead, from civil society. This is a process in which the State, far from disappearing, would have the task of *recognising, supporting and legitimising* the regulations at work in a society faced with changing modes of competition and challenges of flexibility in its multiple forms. In opposition to the procedural 'retreat into the wings', it attempts in reality a synthesis between the 'communitarian' and the 'neo-substantive' traditions. This third option accordingly displays a twofold characteristic:

- In the first place, it *grants social actors a moral and political competence of the first order*, in their capacity as participants in ordinary social life. As stated by Boltanski and Thévenot (1991), the social actors are always in a position to adopt a stance in what may appear to be the most trivial choices by reference to sufficiently broad registers of justification grounded in ethics and political philosophy. This local dynamic depends on the participation and commitment of the actors but, at the same time, it sets at the centre of the social order critical activity and the capacity of all its members to stand back from the situation and think. It testifies to a partial – but nonetheless decisive – contribution to the normative production of a human community;

- In the second place, and in parallel to the first, this approach points out the *growing impossibility for the State to settle into complacency*, to claim as its basis for action a stock of solid knowledge of which it is the sole possessor and supplier. Here we may take our cue from Axel Honneth, who states that, over and above the forms of recognition allowed by a relationship of love or a legal status, a sentimental background and/or a sound basis in legislation, there is a need to reflect on the conditions of a social ethic geared to the challenging conditions of advanced capitalism. Yet it is not possible, even so, to 'fill the *place thus left empty*, which represents the locus of the particular in the building of a modern form of social ethics. (...) For to decide whether the values (linked to political action) point in one direction or another, whether they are, or are not, compatible with the conditions of existence of a capitalist society, cannot be a matter of political theory but will be settled by the *social struggles* still to come' (2000: 214 our emphasis).

In the extreme variety of its forms and expressions, the flexibility of labour is a dimension of firms' efficiency in a post-Fordist context. It can also, in the absence of appropriate regulation, constitute a threat for the cohesion of society. But it is above all a tremendous opportunity for revealing and displaying the moral and political competence of ordinary actors in the face of a series of changes in the midst of which they find themselves aware of tensions, discontinuities, and latent innovations. For it is the ordinary actors – and they alone – who are in a position to take the pulse of the transformations underway: the subjection entailed by employer power in the transition from hierarchical control to continually changing employment rules; the painful compromise between access to employment and quality of work; the tensions between working and private life; but also the resources freed up by more flexible organisation, a reduced and negotiated working schedule, more individualised working hours; or the impact of working time changes on the organisation of childminding services or the sharing of tasks within the family or household. It is these ordinary actors who experience from the inside the contradictions inherent in the multiform and unpredictable flexibility whose defining registers are located on increasingly different levels. Regarded from this standpoint, one may say of flexibility of labour what Manuel Castells says of networks – of which the Internet is a powerful prototype on a world scale: irrespective of their technical components, 'the networks destroy something else, namely, state control over society and the economy. One thing that has now been left behind us is the sovereign nation state' (*Libération*, 12 June 1998).

If the provision of security for persons in their working lives and choices clearly appears as a central new need of society in the face of the market, if it doubtless prefigures one of the components of a new 'social pact' in the countries of Europe, it requires above all a rethinking of our modes of regulation, of our ways of articulating the collective and the individual, of devising norms for living together. The challenge is without doubt to promote what Robert Castel calls a 'flexible State', one able to propose appropriate forms of protection in the face of emerging social risks and the accompanying trend towards individualisation, thereby driving out the spectre of anonymous and depersonalising social policies. It is also to promote what we will call here a 'decentred State', one



able to recognise the diversity of sources and contents of regulation, to take its cue from a wide range of social activities, which no longer loom above the market but cut through it. In short, it is to institute social actors emanating from civil society as fully legitimate partners of policy action thus expelling a spectre as deep as that of anonymity, namely the long-established division of labour: between the market and the State, the individual and the collective, the particular and the universal. The locus of the challenge concealed within the strange neologism 'flexicurity' is doubtless here rather than elsewhere, in this capacity to redesign the political forms of our 'being together'.

Jean-Louis Laville is undoubtedly the thinker who has moved furthest in this area, through the search for the normative underpinnings of a 'plural and solidaristic economy'. It is therefore to him that we turn for our concluding paragraph (2002: 116): 'the question being asked is what kind of institutions can ensure that the economy is endowed with the plural dimension required for it to be set within a democratic framework, for this situation is compromised by the logic of material gain when it becomes exclusive and limitless. The answer to this question can be sought only by means of institutional inventions securely grounded in social practices; it is these which can point the way to a re-confinement of the economy within democratic standards. The restoration of earlier forms of social contract is condemned to failure and consideration of how to reconcile equality and freedom, which remains the core issue at the heart of democracy in a complex society, can progress only by heeding reactions that spring from within society. (...) It is a question of focusing upon practices, in order to supply information about their existence and to analyse them, in other words, to set out from the economic movement 'beneath' and not from a social reform project handed down from 'above'. What is finding expression here is a way of conceiving change.'

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