PERSPECTIVES

The future of work, employment and social protection (The Annecy Symposium, January 2001)*

Though the labour markets have outlived the recent vogue of apocalyptic predictions about the end of work – or, at least, of wage employment – the fact remains that both work and employment relationships have changed over the past two decades in the industrialized countries. These changes have brought on a heightened sense of insecurity and genuine uncertainty. The explanation may lie in the breakdown of the Fordist model, which combined mass production and consumption with social protection and negotiated sharing of the rewards of productivity gains. For a time, this model appeared to offer boundless prospects for stability and sustainability. Today, however, the organization of work is undergoing rapid changes, as are the content of the employment relationship, the concept of the Welfare State and the scope of social protection. Has the time come to confront a new “social question”? To come up with an answer was one of the aims of a round of symposiums scheduled within the framework of an agreement between the Government of France and the ILO. The first such symposium was held at Annecy (France) on 18 and 19 January 2001.1

The purpose of the Annecy Symposium on the Future of Work, Employment and Social Protection was to contribute ideas to the current debate on the new social issues confronting the industrialized countries. This “Perspective” reviews the presentations made at the Symposium as well as the ensuing discussions. The first part presents the general aims of the meeting, together with the underlying issues. This is followed by brief summaries of the presentations made and

* This “Perspective” was prepared by Patrick Bollé, French-language editor of the International Labour Review.

1 In a forthcoming issue, the International Labour Review will also feature coverage of the second symposium, to be held at Lyons on 17-18 January 2002.

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exchanges held at each of the four panel discussions devoted to the major items on the agenda. A concluding section attempts to bring out some of the alternative options, avenues for reflection and proposals that emerged from the proceedings as a whole.

Social institutions for the new global economy:
The central concern

One of the aims of the agreement between France and the ILO is to contribute to the ongoing process of reflection on the new social problems facing the industrialized countries, particularly in regard to issues emerging in the fields of employment and work and the role of work as a factor of economic security and social cohesion. Its other aims are to identify new practices introduced in response to the major changes occurring in this area – examining their scope and whether or not they are innovative, beneficial or risky – and to help develop international strategies which integrate the economic and social dimensions of development.

On this basis, a list of issues was drawn up: 2

- A first issue centres on the viability – perhaps even the long-term benefit – of strengthening the current strategy underlying the process of globalization, i.e. product differentiation, individualized presentations, and the closest possible matching of “client” needs or, rather, wants. What are the relative micro and macroeconomic costs and benefits of a society structured around the notion of serving the “almighty customer”? Does this not mean sacrificing the producer to the consumer? Taken to an extreme, would it not exacerbate inequalities?

- In the light of these concerns, how would work really need to change in order to ensure that flexibly organized production does not preclude decent work? Could work offering individual and collective social protection be organized in ways that would increase flexibility while reducing worker insecurity? Or do flexibility and security necessarily clash?

- How could social policies come to be seen more in terms of their benefits, instead of being invariably considered in terms of costs? Health, education and training, income stability and a sense of security should not be viewed solely as costs, but also as important factors contributing to efficiency and performance. Can this dimension be incorporated into conventional economic development policies?

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Which specific arrangements need to be made to spare labour the full brunt of what seems to be the inescapable flexibilization of production? Can workers' needs for flexibility over the course of their career be reconciled with the flexibility required for the production of goods and services? What would be the institutional underpinnings of such "flexicurity"?

Has the time come to set up a system of "special drawing rights" that individuals could make use of at different stages in their career? Since life appears to involve increasingly frequent transitions - between one job and another, between a job and a training course, between jobs and family responsibilities, etc. - can new institutions be designed to manage those transitions?

How to set up new forms of collective regulation that would accommodate both the social and the economic (through law, collective bargaining or social pacts, and at what level and on which issues)?

Could there be ways of encouraging employers - in cooperation with existing institutions - to make allowance for the other roles that workers must perform (as citizens, parents, etc.) in order to help them strike a better balance between a career and a family, social and personal life?

The first of the France/ILO symposiums proposed to tackle these questions under four broad headings, each of which was the topic of a panel discussion, namely, the transformation of work and new insecurities; the impact of changes on work and society; the political response to the new challenges; and methods, actors and levels of political action.

Transformations of work and new insecurities

The first panel discussion opened with a presentation by Eileen Appelbaum which identified four factors of insecurity.

The internationalization of production processes. The growth of international trade causes job loss and wage erosion in industries exposed to international competition, thereby contributing to worker insecurity. This process has been documented and its impact measured. Yet the international integration of production within multinational corporations is just as significant. "These companies exhibit remarkably little concern for the interests of their many stakeholders - the

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3 For a full record of proceedings, see Peter Auer and Christine Daniel (eds.): The future of work, employment and social protection: The search for new securities in a world of growing uncertainties. Geneva, ILO, 2002. All of the quotations in this "Perspective" are taken from this source (hereinafter referenced "Auer and Daniel, op. cit.").

4 Director of Research, Economic Policy Institute, Washington, DC (see "Transformation of work and employment and new insecurities", in Auer and Daniel, op. cit., pp. 17-44).
workers, communities, and government of the nations where they are headquartered or their facilities are situated” (see Auer and Daniel, op. cit., p. 18). Such enterprises concentrate on design and marketing while outsourcing and relocating their manufacturing operations as reflected in the spectacular growth of intra-enterprise international trade. The result is a “threat effect” hanging over workers in industrialized countries, compounded by a weakening of their bargaining power and social protection. Also weakened is the regulatory power of States: “Thus, workers confront new insecurities while, at the same time, governments are less able to provide protections” (see Auer and Daniel, op. cit., p. 20). In the face of these developments, Appelbaum proposes that a global social agreement be negotiated with three major objectives: development assistance (infrastructure, social investment, debt relief and technical assistance), compliance with the ILO’s basic labour standards, and the introduction of an international tax on global financial transactions, the proceeds of which would serve to finance social investment in the developing countries.

The decline of the standard employment relationship is the second factor of insecurity. In the face of stock market volatility, risk and responsibility are passed on to workers. It is then up to them to maintain their “employability”. Precarious employment relationships lessen the employer’s social responsibility in respect of both employment security and social benefits. The standard employment relationship is also under threat from the practice of outsourcing. Professionals and managers are no longer sheltered from job loss. This obviously contributes to making employment insecurity more visible. A balance between the needs of business and workers could be struck by providing for wage and benefit parity as between standard and non-standard employment, proper classification of employees (to prevent their misclassification as temporary workers or independent contractors, for example), a broadening of the scope of labour law to include all types of employment, and an increase in the number of “good” part-time jobs.

The marginalization of care work. Comparing the experiences of the United States and of Sweden, Appelbaum shows how an increase in women’s labour force participation rates can produce contradictory outcomes. Some countries, like Sweden, use taxpayer money to finance social services that not only offer women jobs but which also enable them to reconcile work and family, because such services are typically based on the caring labour – e.g. childcare – that was traditionally assigned to the “homemaker” in the male breadwinner model. In other countries, like the United States, by contrast, the issue is conceptualized as a matter of personal choice, one that does not call for any social-policy action: “Men and women can work if they conform to the old ideal of the male employee with no domestic work responsibilities;
... Even women who pursue homemaking on a full-time basis are dismissed as 'just a housewife', the important care work they do devalued" (see Auer and Daniel, op. cit., pp. 29-30). Appelbaum advocates a public policy that would promote the sharing of market-based work and recognized care work on the basis of a reduction of working time, equality of opportunity and non-discrimination, a sharing of the cost of care, direct access to benefits bypassing employers, and an update of income security protections.

The ubiquity of digital technology. Information technology has far-reaching consequences for workers. Many of the highly skilled may well enjoy prosperity, but they are nonetheless exposed to the forms of insecurity associated with non-standard employment, i.e., no social protection and ongoing training at their own expense. However, many others, who are less qualified, face considerable insecurity on account of their lack of income security and social protection. New technology has boosted productivity and could lead to improvements in people’s lives and a reduction of working time. It has improved job quality in high-performance work systems. But there is also a downside: computer technology is contributing to the emergence of trends that undermine workers’ security.

Appelbaum concludes that both security and insecurity, whether real or perceived, are strongly determined by labour market institutions, hence the differences observed between industrialized countries in this respect. She also stresses that both segments of the labour market currently face insecurity. This may contribute to broadening awareness of the issues and to reviving trade union activity around issues of common interest.

In the course of the ensuing discussion, Robert Castel\(^5\) pointed out that the process underway is more in the nature of an erosion, than of a collapse, of the regulatory system. In his view, a process of creative destruction is unfolding which could well lead to a new balance between the interests of labour and those of capital. In particular, current demographic trends and a return to full employment can be expected to change the balance of power and thereby lead to the emergence of new regulatory mechanisms.

Jean Gadrey\(^6\) stressed the importance of distinguishing “good flexibility” from bad, and of ensuring that the latter does not crowd out the former. The public authorities can take action to that end, as some


\(^6\) Faculté des Sciences économiques et sociales, Université de Lille I, France (see “The rights and wrongs of labour flexibility”, in Auer and Daniel, op. cit., pp. 41-43).
French municipalities have done with the launch of “town hours” programmes to reconcile the flexibility of private- and public-sphere activities with certain principles of community life. The authorities can also encourage negotiated management of flexibility over the long term. Gadrey also calls for the international public debate to be enriched with “indicators of labour market quality, job quality and work-related insecurities in order to monitor how they develop over time and to make reliable comparisons between different countries” (see Auer and Daniel, op. cit., pp. 42-43).

Jill Rubery drew attention to what she sees as a tendency to shift or evade responsibilities: as a result of government’s weakened job-creation capability and of the shifting of the responsibilities of principal employers to subcontractors, workers are increasingly having to provide for their own “employability” and social protection (care work and income security). The point of her argument is to broaden the scope of social protection to include all care work (without reproducing the old male/female division of labour), to improve social protection for contingent work and to extend social dialogue and intervention by labour market institutions beyond the narrow framework of permanent employment in large organizations.

Summing up the proceedings of this first panel discussion, Bruno Trentin expressed concern over some of the consequences of flexibility for people’s private lives and for relations between women and men. Moreover, flexibility can also translate into unilateral enterprise management – by creating an atmosphere of general insecurity – and labour market segmentation. In response to these unfavourable developments he proposes that workers be given more say in the organization of work, together with equal social protection regardless of the form of their contract of employment, neighbourhood services (to be developed through the re-employment of older workers), security of contract with penalties for unjustified dismissals and, lastly, a programme of public and private investments in a system of lifelong learning. For workers, such training would have to be seen as a form of remuneration in kind and, primarily, as an insurance for the future because it offers the best possible protection against insecurity.

The impact of changes on work and society

While pondering the causes and consequences of changes in work, it seems only reasonable to attempt to measure their extent. Such was

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7 Manchester School of Management, UMIST, Manchester (see “Shifting of risks and responsibilities in labour markets”, in Auer and Daniel, op. cit., pp. 45-46).

8 Member of the European Parliament, Rome (see “Rebalancing the employment relationship”, in Auer and Daniel, op. cit., pp. 47-49).
the aim of the presentation given by Raymond-Pierre Bodin. This was based on research that the European Foundation for the Improvement of Living and Working Conditions had been conducting for ten years. As regards numerical flexibility, the period 1990-95 witnessed considerable growth in precarious employment, followed by stabilization at about 20 per cent of total employment today. Significantly, such employment has become widely diversified with a reduction of the proportion of short-term contracts, agency work and internships and a sharp increase in the proportion of "other contracts", which are increasingly difficult to categorize. There are also wide variations across countries (see table 1) and economic sectors not only in respect of the extent of precarious employment but also in terms of its underlying trends and distribution by type. While agriculture and hotels/restaurants remain the sectors with the lowest proportions of permanent jobs (69 and 72 per cent respectively), precarious employment is on the increase in the construction sector and some services. Some variation also occurs according to the personal characteristics of workers, i.e. skill, age and sex.

National and sectoral variations also show up in temporal flexibility. While hours of work display a pattern of increasing diversification, weekly working time has been decreasing slightly. There has been a slight increase in part-time employment: people working less than 30 hours per week accounted for 16 per cent of total employment in 2000, up from 15 per cent in 1995 (see table 2). But this increase is occurring "bottom-up", and it is imposed. In other words, the increase was brought about by growth in the lowest working-time band (less than ten hours per week) and comprises a significant proportion of involuntary part-time work, with 22 per cent of part-timers wanting to work more. In some sectors, part-time work is used as a method of regulation, either in conjunction with numerical flexibility (hotels/restaurants, "other services") or on its own (wholesale and retail trade). Precarious jobs and part-time jobs accounted for 30.5 per cent of wage employment in 2000, while the proportion of full-time permanent contracts appeared to have declined by two percentage points since 1999.

Regarding the organization of work, Bodin observed a slight reduction in the use of flexible hours (evening, night or weekend work),

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9 Director, European Foundation for the Improvement of Living and Working Conditions, Dublin (see "Wide-ranging forms of work and employment in Europe: Review and challenges for the players", in Auer and Daniel, op. cit., pp. 61-78).

10 The findings presented by Bodin were primarily those of the third European survey of working conditions carried out in the spring of 2000 on the basis of a representative sample of the working population consisting of 1,500 people per country (500 for Luxembourg) for each of the Member States of the European Union (face-to-face questionnaires).
Table 1. Precarious employment in Europe: Development levels and recent trends by country in the year 2000 (precarious employment: fixed-term contracts, temporary agency work, work experience, other)

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<tbody>
<tr>
<td><strong>Countries with the highest levels of precarious employment:</strong></td>
<td><strong>Countries where employment has become less stable:</strong></td>
</tr>
<tr>
<td>Spain (35%)</td>
<td>United Kingdom (−6%)</td>
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<tr>
<td>Portugal (24%)</td>
<td>Portugal (−6%)</td>
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<tr>
<td>Finland (21%)</td>
<td>Finland (−4%)</td>
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<tr>
<td></td>
<td>Austria (−4%)</td>
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<tr>
<td></td>
<td>Ireland (−3%)</td>
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<tr>
<td><strong>Countries with the lowest levels of precarious employment:</strong></td>
<td><strong>Countries where employment has become more stable:</strong></td>
</tr>
<tr>
<td>Luxembourg (10%)</td>
<td>France (+7%)</td>
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<tr>
<td>Germany (12%)</td>
<td>Spain (+6%)</td>
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<tr>
<td>Austria (14%)</td>
<td>Belgium (+3%)</td>
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<tr>
<td>Sweden (14%)</td>
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<tr>
<td><strong>Countries close to the European average:</strong></td>
<td><strong>Countries where the structure of employment has remained unchanged:</strong></td>
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<tr>
<td>Ireland (18%)</td>
<td>Denmark</td>
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<td>Denmark (18%)</td>
<td>Italy</td>
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<tr>
<td>Netherlands (18%)</td>
<td>Netherlands</td>
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<tr>
<td>United Kingdom (16%)</td>
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<td>France (16%)</td>
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with significant variations between countries, sectors and occupations. Besides, flexible hours and precarious employment often go together. Lastly, whichever form flexibility may take, it adversely affects women: female part-time employment is growing in the lowest working-time bands; the proportion of women in stable jobs is falling; and the number of women working on Sundays is increasing.

Bodin’s study leads to the following conclusions:

- Precarious employment is affecting career paths: “rather than being ‘passive’ in nature, it is being ‘actively’ used during labour market entry, often as a recruitment filter. It seems that we can speak of ‘precarious career paths’... This trend is borne out if we look at the breakdown by age. Massive numbers of young people ‘<25’ are experiencing precarious employment, although all the age groups, in particular the ‘25-34’ age group where the use of fixed-
Table 2. Part-time work in Europe: Development levels and recent trends by country, in the year 2000 (part-time: "less than 30 working hours per week")

<table>
<thead>
<tr>
<th>Countries with the highest levels of part-time work:</th>
<th>Countries with the highest increase in part-time work:</th>
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</thead>
<tbody>
<tr>
<td>Netherlands (30%)</td>
<td>Netherlands (+7%)</td>
</tr>
<tr>
<td>United Kingdom (21%)</td>
<td>Ireland (+7%)</td>
</tr>
<tr>
<td>Belgium (18%)</td>
<td>Austria (+4%)</td>
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<tr>
<td>Germany (17%)</td>
<td>Belgium (+4%)</td>
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<tr>
<td></td>
<td>France (+3%)</td>
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<td></td>
<td>Italy (+3%)</td>
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<table>
<thead>
<tr>
<th>Countries with the lowest levels of part-time work:</th>
<th>Countries where part-time work is declining:</th>
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</thead>
<tbody>
<tr>
<td>Portugal (9%)</td>
<td>United Kingdom (-2%)</td>
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<tr>
<td>Finland (9%)</td>
<td>Sweden (-2%)</td>
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<tr>
<td>Sweden (11%)</td>
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<tr>
<td>Spain (11%)</td>
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<tr>
<th>Countries close to the European average:</th>
<th>Countries where there has been little change in part-time work:</th>
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<tbody>
<tr>
<td>Ireland (15%)</td>
<td>Denmark</td>
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<tr>
<td>France (14%)</td>
<td>Portugal</td>
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<tr>
<td>Italy (14%)</td>
<td>Finland</td>
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<tr>
<td>Austria (14%)</td>
<td>Greece</td>
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- Term contracts is most marked, are being affected” (see Auer and Daniel, op. cit., p. 56).
- Flexibility falls into three categories: “individual flexibility (United Kingdom and Ireland) based on individual relations between employers and workers, State-driven flexibility (France, Spain and Finland) where the legislator plays a more important role in constructing regulations, in other words working hours and, to a certain extent, the social entitlements associated with different types of employment, are regulated more by legislation than by collective bargaining and negotiated flexibility (Denmark, Netherlands, Germany) where actual working time is set in particular by bargaining and enterprises’ quantitative adjustment strategies make only limited use of precarious jobs” (see Auer and Daniel, op. cit., p. 68).
• Though there does not appear to be much growth in the absolute numbers of workers in precarious employment, labour market segmentation seems to have set in: precarious employment now accounts for one-fifth of total wage employment, it is concentrated in specific sectors and affects some categories of workers – particularly women and young workers – more than others.

• Variations across countries highlight the important part played by labour market institutions in containing flexibilization, reducing uncertainty and preventing insecurity. One particular concern is the risk that the new forms of flexibility might be excluded from the scope of collective bargaining. Another is the possible erosion of conditions of employment.

With satisfactory levels of both male and female employment, a significant reduction of unemployment, a low proportion of precarious employment, and a well-preserved Welfare State, Sweden’s performance leads Sandro Scocco\footnote{Economist, Swedish Confederation of Trade Unions (LO), Stockholm (see “The Swedish paradox”, in Auer and Daniel, op. cit., pp. 71-73).} to raise the following questions: “Are the changes we have seen in the labour market the consequence of changes in production? Or were many changes really due to a different power relationship between employers and employees? The boring truth is that it is both” (see Auer and Daniel, op. cit., p. 71). In venturing this answer, Scocco concurs with Robert Castel’s conclusion (see above) as to the consequences for that power relationship of population trends and the return to full employment.

Philippe Lemoine\footnote{Co-chairperson of the board of the “Galeries Lafayette” group, Paris (“The links between technical progress, employment and work”, in Auer and Daniel, op. cit., pp. 75-78).} draws attention to the far-reaching implications of technological changes and the computerization of exchanges – both commercial and non-commercial – which followed that of production and, more recently, management. Also significant in this respect is the transition from mass production and consumerism to the belief that service companies need to organize themselves around their clients: “There are many positive sides to thinking that the client is king, but I am not convinced that the client has to be king for all levels of the company, provided that the image of the client is the same. It is certainly essential that various types of players have their own ideas about what the client is (see Auer and Daniel, op. cit., p. 78).

Sabine Erbès-Seguin\footnote{Director of Research, Centre national de la recherche scientifique, Paris (see “Impact of transformations on work and society”, in Auer and Daniel, op. cit., pp. 79-80).} stresses the key parts played, first, by the institutional framework in maintaining high standards of security and social protection and, second, by the proliferation of different types of flexibility as a determinant of workers’ heightened sense of insecurity,
which is not necessarily related in any direct way to actual insecurity of employment.

*The political response to the new challenges*  

According to Fritz Scharpf, globalization leads to a decrease in employment in internationally exposed sectors of the economy. As a result, the Welfare State can survive only if it manages to increase employment in sheltered sectors of the economy. In Europe, Scharpf identifies two successful models for coping with this problem. The first is that of the United Kingdom, which is characterized by low taxes and a market approach to social services. In the United Kingdom, low public spending on social services goes hand in hand with a transfer of previously “non-market activities” to the market economy (family work, childcare, public education, public infrastructure). In particular, this is reflected in the high rate of female labour market participation. The second successful model is that of the Scandinavian countries, which is based on high taxes and high social spending, generating equally high employment rates. Continental Europe is in the worst possible position, with an approach that lies somewhere in between the above two models. In Scharpf’s view, continental European States need to choose either one of these approaches. Since the Scandinavian model would imply higher taxes, it does not command sufficient political support. The only path these countries can follow in order to increase their employment rates would therefore consist in adopting the United Kingdom’s approach of reducing taxes and public spending.

From the ensuing discussion, however, the situation in practice appeared to be less clear-cut than Scharpf suggests. While a comprehensive and all-pervasive Welfare State is not an adequate response to the challenges currently confronting continental Europe, the United Kingdom’s model of low taxes and low public spending also has some serious drawbacks, not only for social cohesion but also for the competitiveness of exposed economic sectors. The transfer of public-sector activities to the private sector does not automatically solve the problems of the Welfare State. Besides, overly radical cuts in public spending can have adverse economic effects on the competitiveness of the private sector, which needs an efficient administrative and logistic infrastructure as well as a highly productive workforce.

As regards the effects of the European Union, Scharpf draws attention to the risk of inconsistencies between the common monetary policy

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14 The summary of the proceedings of this third panel discussion is largely based on the overview presented by Renate Hornung-Draus, Director for European and International Affairs, Confederation of Employers' Associations of Germany (BDA), Berlin (see “The political response to the new challenges: Raising the issues”, in Auer and Daniel, op. cit., pp. 109-112).

15 Director, Max Planck Institute for the Study of Societies, Cologne (see “New challenges and political responses”, in Auer and Daniel, op. cit., pp. 83-98).
and the diversity of national economic situations, with the possibility that the policies of individual Member States may lead to job loss. Maurizio Ferrera\textsuperscript{16} also criticizes the fact that the European Union’s law on competition hinders regional policy via state aid or differentiated social security contributions. A way has to be found to strike a better balance between the European Union’s competition policy and the need to promote economic development in poor regions of the Union.

Bernard Gazier\textsuperscript{17} points out that the different levels and modes of labour market regulation are undergoing a process of readjustment and redefinition. This refers to the question of legislation versus collective bargaining, enterprise versus sectoral/regional levels, etc. New modes of regulation are also emerging in some countries, e.g. national pacts for employment and competitiveness, which supplement legislation and help to build up the necessary consensus for reforming social protection systems. Globalization has increased the importance of regional and global regulation, as has become clear from the debates around the liberalization of world trade and the role of the ILO in that context.

Concerning the emergence of new actors for employment regulation, several contributors to the discussion raised the issue of non-governmental organizations as partners in collective bargaining. However, this poses the problem of the binding nature of collective agreements: under an agreement that regulates working conditions, the actors must be able to deliver what they have agreed upon, and this is only possible for the parties to contracts of employment, i.e. workers and employers. Lastly, with the increasing diversity, discontinuity and dispersal of the professional careers of individuals, labour market regulation needs to facilitate smooth transitions between different activities in the labour market, e.g. from education to employment, from one job to another, from wage employment to self-employment and vice versa, or from unemployment back into employment.

Christian Baudelot’s\textsuperscript{18} focus is on the educational system. In his view, the educational system – particularly in France – is too concerned with general education and fails to prepare young people adequately for working life by providing them with vocational skills. In meeting the challenges of globalization, the State therefore needs to improve the link between the educational system and the labour market. However, the information society is characterized by the fact that vocational skills become obsolete more and more rapidly and have to be updated through a process of lifelong learning. From this perspective, general

\textsuperscript{16} Professor, Polite, Luigi Bocconi University, Milan (see “The south of the South”, in Auer and Daniel, op. cit., pp. 99-100).

\textsuperscript{17} Professor, Maison des sciences économiques, University of Paris I (see “New approaches to negotiation”, in Auer and Daniel, op. cit., pp. 101-103).

\textsuperscript{18} Department of Social Sciences, École normale supérieure, Paris (see “Using education to tackle unemployment, and its limits”, in Auer and Daniel, op. cit., pp. 105-107).
education is an important foundation because it should teach young people how to learn and acquire new skills throughout their working lives.

Hornung-Draus concludes her overview of the discussion with the following comment: "we are probably experiencing a change in paradigms. ... [T]he political responses in the 1990s were dominated by deregulation, privatization, tax cuts linked with the reduction of public spending and more specifically of social spending. There is increasing awareness today of the importance of good public infrastructure (education, transport, communication, administration) – which requires public spending – for the international competitiveness of companies. Furthermore, there is an increasing awareness of the importance of social cohesion and hence social spending for the sustainability of the international competitiveness of Europe" (see Auer and Daniel, op. cit., p. 112).

Methods, actors and levels of new political regulations

Alain Supiot\(^{19}\) launched the discussion on "which new forms of regulation might be introduced in response to the current changes in employment and work" (see Auer and Daniel, op. cit., p. 115). The first question, however, is to define what is meant by "regulation".

The meaning of regulation

From the legal point of view, regulation appears to be an attempt to combine two types of rule: legal rules – which draw their strength from a shared belief in the values they are meant to express – and technical rules, which draw their strength from scientific knowledge of the facts they are meant to represent. Yet it would be both dangerous and unrealistic to believe that the knowledge of experts will ever be able to rule out political disputes and conflicts of interest and would, as it were, rise above the old opposition of State and market. "The sphere of belief is the sphere of what is qualitative and unprovable; it was largely dealt with by laws, public consultation and the State. The sphere of calculation, of what is quantitative, was dealt with by contracts, negotiation and the market. ... It is only when the State takes charge of the incalculable aspects of human life that the market may be viewed as a self-regulation mechanism ... State and market, law and contract thus become inseparably linked" (see Auer and Daniel, op. cit., p. 117). On this basis, regulation can be understood in a more reassuring sense: bargaining and contract, on the one hand, and the regulatory authorities, on the other, are both called upon to address issues that extend beyond

\(^{19}\) Professor, University of Nantes, Maison des Sciences de l'Homme Ange-Guépin, Nantes (see "Towards an international social order? Preliminary observations on the 'new regulations' in work, employment and social protection", in Auer and Daniel, op. cit., pp. 115-138).

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the limits of the State’s cognitive abilities. The regulatory authority thus acts as a new sort of magistrate or judge, taking decisions by referring both to knowledge of the facts and to value judgements. In other words, regulation certainly does not mean the disappearance of the “third party” which characterizes what is known as “the law” in the West.

“Since States are no longer able to define or impose the imperative of ‘decent work’, it must be expressed through other institutional channels, particularly at international level. Redefined in this way, the concept of regulation provides a suitable framework for tackling the problems currently facing labour law. This law incorporates ‘regulatory’ mechanisms for transforming relationships based on strength into legal relationships. By allowing workers representation and collective action it acknowledges that they are genuinely entitled to challenge the law; on the other hand, it channels these collective forces to promote the ongoing development of the law. These mechanisms are what we now call ‘social dialogue’, which actually refers to a wide range of instruments for confronting employers’ and workers’ interests: rights to information, to consultation, to strike, to be represented, to negotiate ...” (see Auer and Daniel, op. cit., p. 118).

No regulation without a regulator

The State is growing weaker. This is especially true of the Welfare State that serves people’s well-being through public services and protections attaching to wage employment. And it applies both to the international level, where the law of competition (neo-liberalism) rules, and to the national level, where solidarity and security needs are addressed through negotiation with the representatives of different interest groups (neo-corporatism). “However, it is unlikely that the space vacated by the retreat of the State will stay empty for long. The myth expounded in the west that society is being ground down to a dust made up of rational individuals maximizing their interests ignores the basics of anthropology” (see Auer and Daniel, op. cit., p. 121) – as reflected in the surge of demands articulated around religious, ethnic or regional identities. “This is why we need to ask what the new foundations for regulation might be in an economy and a world which are open to trade” (ibid., p. 122).

The social and the economic. With the opening up of frontiers, national solidarities operating within States are becoming subordinate to the principles of free competition upon which the international markets are founded. The old distinction between public and private is thus overtaken by the distinction between economic rights (“rights of ...”) and social rights (“rights to ...”). But this distinction is purely ideological: any legal relationship necessarily embodies both an economic dimension and a social dimension. One must therefore be careful to distinguish between the scientific value of the distinction – which is zero –
and its value as a dogma, which is considerable. "This distinction underlies the legal structures which have come about as a result of globalized markets. ... EU law shows that the consideration of social rights can counterbalance the rules of free competition, not only nationally but at a supranational level too. This is an extremely interesting way of building an international social order which will act as a counterweight to the economic order" (see Auer and Daniel, op. cit., p. 124).

**Principles and procedure.** Another distinction – that between law and contract – is also becoming blurred. Here, principles need to be distinguished from procedure. There are two levels of legislation corresponding to two main types of rule: on the one hand, the law, which is deliberate and unilateral, reflecting the public interest, and on the other, the contract, which is negotiated, bilateral and reflects individual interests. The globalization of the market economy is believed to lead inescapably to enlargement of the province of contract to the detriment of imperative law. But the situation is not that straightforward. Indeed, what is happening is more in the nature of a change affecting both contract and law. While the law is admittedly relinquishing the job of ruling on substance, it is concentrating instead on upholding principles and laying down procedures. And these procedures pass on to contracts the burden of the qualitative issues being offloaded by the law. Thus the State is both withdrawing, disengaging from the management of social matters, and reaffirming, restoring its role as the guardian of common assets. Within the European Union, an example of this type of regulation is Council Directive 94/45/EC of 22 September 1994 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees. "At international level the ILO did something similar, adopting in 1998 a Declaration on Fundamental Principles and Rights at Work which requires all member States to respect, to promote and to realize these principles in good faith" (see Auer and Daniel, op. cit., p. 126).

**Power and authority.** Whereas the State used to combine power and authority in the face of market forces, these two attributes now need to be dissociated. The opening up of markets has been accompanied by a proliferation of national, regional and international regulatory authorities. These lie beyond the reach of state control. Their powers are as diverse as the areas they cover, but they have two features in common: they draw their legitimacy from the scientific or technical expertise of their members and they are held to be independent of both government and private operators. Being responsible for markets, however, these authorities do not see it as their job to address the social dimension of the problems they deal with. This means that there is no one to authorize States to invoke social considerations as a way of limiting the effects of competition law. It thus leads to decisions which
can, at a single stroke, destroy the livelihood of entire societies, most notably the poorest. There are two ways of escaping such follies. The first would be to "de-specialize" regulatory authorities and enable them to take equal account of the economic and social aspects of such issues as they are required to rule upon. The other would be to set up authorities with special responsibility for regulating the social dimension of markets. "These authorities could rule on disputes where a State or a trade union believed that the application of competition law infringed fundamental social principles or, conversely, cases in which a State or a company thought that specific social legislation constituted an unfair barrier to free trade. There might also be a role for them in regulating the forces operating within the labour market and ensuring that a proper balance was maintained between those forces" (see Auer and Daniel, op. cit., p. 129).

No regulation without a balance of forces

As a result of new corporate structures, changes in the organization of work, opening up to international competition, and the new rules of corporate governance, Supiot argues that: "The balance of forces between the economic action of companies and the collective action of workers, which is necessary for 'social regulation', is thus disrupted, and it is social regulation which loses out. One of the great tasks facing labour lawyers in years to come will be to invent ways of restoring that balance, many possibilities for which are already available in practice" (see Auer and Daniel, op. cit., p. 133).

The whole complex of law governing collective labour relations needs to be reconsidered with a view to adapting it to the new forms of corporate organization and their new dimensions (international centres, company networks, groups, trades, etc.) and to the diversification of types of employment (contract work and other types of atypical work). The same goes for systems of trade union representation: "we would have to extend the scope for action and collective representation to areas currently out-of-bounds to them ... Two types of method can be employed here. The first involves using the new freedoms inherent in globalization: the freedom of choice enjoyed by consumers and investors and freedom of information offer ways to influence the social policy of business-owners. The second involves the reverse: restraining global competition law by emphasizing the distinction between the economic and social fields and by strengthening the authority of institutions concerned with social issues" (see Auer and Daniel, op. cit., p. 134). Here, Supiot suggests a number of leads that could be followed: workers' representatives should be given access to the information technology networks of enterprises; relations should be established between the workers of subcontractors and those of the contracting company; trade union organizations should be given the right to pro-
vide social and environmental information to the public; the right to boycott should be recognized and incorporated into international legislation. Some corporations have issued "codes of conduct and social labels, the effectiveness and sincerity of which are open to question in the absence of reliable certification procedures covering their content and application" (see Auer and Daniel, op. cit., p. 136). In order to avoid the wide range of possible manipulations, two conditions must be met: the first is the establishment at international level of proper social regulation authorities which would guarantee the validity of the information disseminated; the second is to give trade unions and consumers' associations the financial resources to provide social information for the public. Lastly, the ability of States to take measures restricting freedom of competition on social grounds presupposes "the involvement of social regulation authorities able to ensure that such measures are likely to promote the equalization of working conditions throughout the world and do not serve to protect the richest countries which would prefer to close their borders to both workers and products from the poorest countries. ... Such an authority could be called on to intervene, either directly or by way of a complaint to the market economic authorities (for example the WTO's Dispute Settlement Body)" (see Auer and Daniel, op. cit., p. 136).

In the course of the ensuing debate, Hans Borstlap 20 considered that the problems confronting Europe stem not from flexibility and globalization, but from the inability to adapt European social policies to these new challenges. Strong public regulations at the international level are definitely needed, but the commitment to social policy must also be renewed through an investment programme and public regulation. In addition to the equalization of rights as between full-time and part-time workers, another of Borstlap's recommendations – proceeding from the assumption that workers' security depends on training and skills – is to make lifelong learning a legal obligation along the lines of what was done with education about a century ago.

Danielle Kaisergrubber 21 took the view that the demand for flexibility is not being pressed by employers alone, for each and every individual is all at once a worker, a user, a consumer, an Internet user. The type of regulation that is needed therefore has to display the following five characteristics: regulations and social negotiations should be at grass-roots level; they should be made consistent with changes in the size and structure of enterprises through decentralization and the adjustment of trade union organization; they should be grounded in

20 Director General for Strategy and the Labour Market, Ministry of Education, Culture and Science, the Netherlands (see "The threats to job security", in Auer and Daniel, op. cit., pp. 139-141).

negotiation rather than in the law; they should involve new players (such as subcontractors and local-level government); and they should spell out the procedures to be followed by workers in transit between one status and another in order to secure their working life trajectories rather than their particular situation at a given point in time.

Taking the example of Silicon Valley, Amy B. Dean\textsuperscript{22} spelled out the features that make the new economy different from the old, namely:

\begin{itemize}
  \item internationalization and regional concentrations;
  \item corporate restructuring through networking and externalization of non-core activities;
  \item changing notions of justice in society;
  \item changes in the pace of work and of the renewal of skills;
  \item primacy of intellectual capital;
  \item an "hour glass" profile of job distribution, with many high-skilled and low-skilled jobs, but few intermediate jobs.
\end{itemize}

This requires trade union organizations to refocus their role as labour market institutions in order to take an active part in coordination between small and medium-sized enterprises, between the various players involved in training, during workers’ transitions between jobs, and between labour supply and demand. At the political and social levels, Dean argues, the challenge to labour in the United States is to press for an overhaul of labour law to remove legal impediments to labour’s capacity to organize. She also argues the case for regional-level regulations suited to the needs of the new economy, adding: “I am not of the belief that there will be some international regulatory order, nor some international regulatory body of law any time soon. However, the idea of the hybrid approach [of marrying contractual obligations so that you create a parity of power between interests and make this a condition of our trade agreements …] is not only politically viable but also consistent” (see Auer and Daniel, op. cit., p. 148).

Summing up the proceedings of the fourth panel discussion, Allan Larsson\textsuperscript{23} concludes that everything has changed in the world of work and that both institutions and working life need to follow suit. The debate as to whether trade unions should adjust to change, resist it or seize the initiative is under way; yet a number of points need to be stressed. In particular, this applies to the necessity of solidarity between the more successful workers and those at risk of becoming marginalized. New rights need to be recognized in order to reconcile flexi-

\textsuperscript{22} President, South Bay AFL-CIO, San José, CA (see “The view from Silicon Valley”, in Auer and Daniel, op. cit., pp. 145-148).

\textsuperscript{23} President, Swedish Television Corporation, Södertälje (see “Social institutions for change and security”, in Auer and Daniel, op. cit., pp. 149-152).
bility and security, such as the right to lifelong learning. The ILO, for its part, should, at the substantive level, focus on the quality of work and, from the point of view of method, develop guidelines and benchmarks in addition to setting minimum standards.

Additional perspectives

Aside from the exchanges held during the panel discussions, two keynote speakers were invited to share their visions of the future of work.

Working to live or living to work?

These are the two visions of society contrasted by Richard B. Freeman.\(^{24}\) The live-to-work vision has four distinctive characteristics: everyone works; there is limited social protection; there is great inequality; and trade unions are weak. At best, this is the world of shared capitalism. At its worst, it is “an insecure rat race”. Conversely, the characteristics of the work-to-live vision are: limited hours of work; extensive social protection; long periods of joblessness; and powerful trade unions. “At its best, this is a world where security generates risk-taking and where leisure generates stronger families, limited hours produce deep insights and labour-saving innovation. At its worst, this is a world where the employed guard their positions against newcomers, which makes entrepreneurship costly, and where the young remain in their parents’ homes for years while they wait for the good job” (see Auer and Daniel, op. cit., p. 156).

The two visions reflect the positions of the United States and of continental Europe, respectively. The paradox, according to Freeman, is that the live-to-work model offers the best prospects for attaining full employment, whereas the work-to-live model is the one that works best in conditions of full employment and at times of economic difficulty. Moreover, the two models generate equivalent hourly productivity. And the fact that the United States and Scandinavia are in the forefront of the Internet economy suggests that either model can lead the modern technological revolution.

The role of consumers and producers in the promotion of fair labour standards

Eddy Laurijssen\(^{25}\) challenges the logic of the distinction typically drawn between consumers and producers, because better wages lead to higher consumption and, consequently, increased need for production.


\(^{25}\) International Confederation of Free Trade Unions (ICFTU), Brussels (see “Consumers and producers – Their role in the promotion of fair labour standards”, in Auer and Daniel, op. cit., pp. 159-162).
In a global economy, however, this virtuous circle cannot be achieved when governments gear all their efforts towards export maximization by depressing wages and curbing workers’ rights. Laurijssen is confident nonetheless: “It is said that markets know the price of everything, but the value of nothing. The same cannot be said of the modern consumer. … The growing awareness by consumers of the effect of their purchases on conditions of workers as well as the dangers of products and their consequences for the environment does not just exercise itself in the market. Consumers are also workers and the public. They are helping to restrain the excesses of free market dogma” (see Auer and Daniel, op. cit., p. 160). Discarding the assumption of short-term maximization of profits as a primary objective of companies and their share-holders, one can increasingly observe that there exists a common cause, a convergence of the interests of consumers with those of producers. Unfortunately, what is actually happening is a trend towards shifting risk onto individual workers, away from enterprises and society as a whole. At worst, Laurijssen deplores, flexible employment “may mean that people are thrown on the social scrap heap” when they are no longer needed (see Auer and Daniel, op. cit., p. 161). It is therefore important to remember that labour law recognizes the unequal power of the parties to an employment relationship: social protection in the context of atypical work requires more, not less, solidarity, in the same way as the global economy and demographic pressures mean more, not less, international solidarity. In particular, the global economy requires global social dialogue: “The challenge for the ILO itself as well as for the social partners is: How can social dialogue rooted in respect for freedom of association and collective bargaining be expanded in ILO member countries?” (see Auer and Daniel, op. cit., p. 162).

Concluding remarks

In spite of the variety of topics addressed, views expressed and approaches taken by participants, there are a number of major issues and proposals that cut across the discussions. These are presented in this concluding section, together with excerpts from the closing remarks of Juan Somavia, the Director-General of the ILO.26

Perceived insecurity versus real insecurity. “Whatever conclusion you draw from the discussion we had, whether jobs are truly becoming more or less precarious, the fact is that uncertainty is growing. On that we are broadly in agreement. There is for some reason a sense of unease – I may have a sure job today but will I have it tomorrow? We have to deepen the understanding of that. I think that people are not

26 See “closing remarks”, in Auer and Daniel, op. cit., pp. 163-171, the source of all the quotations given in this concluding section.
afraid of change, they are afraid of uncertainty” (see Auer and Daniel, op. cit., p. 165).

_Labour market segmentation._ Conditions of employment do not appear to be deteriorating in a general sense. Nor is the share of wage employment shrinking. Yet the status of such employment and the protection it affords are substandard for a significant, albeit stable, proportion of workers. “We were told yesterday that there has not been much change in the proportion of precarious jobs, but 20-30 per cent of precarious jobs in a developed society is not something to be proud about” (see Auer and Daniel, op. cit., p. 167). Accordingly, almost all of the participants call for equal rights and social protection to be extended to all types of employment. It must indeed be remembered that the current segmentation affects some categories of workers more than others, such as young workers, women and the least skilled. Moreover, atypical employment is associated – and this may be the explanation – with a transfer of certain costs or certain risks to the worker. Some contingent workers, for example, have to pay for their own unemployment, sickness or old-age insurance.

_Transferring responsibilities and risks to the worker._ As has just been pointed out, there is a tendency now to shift certain risks and certain responsibilities away from the enterprise or society to the worker. One example relates to the concept of employability: “[T]here is a tendency to say, look, if you do not have a decent job it is your fault, you are adequate, you are not adapted, you are unfit, you are incompetent, it is your problem. … We came back to the notion of personal responsibility which somehow had been lost. We came back to the idea that in the end we do have a responsibility for our own reality and for our own life and it is up to us to be able to cope with many of the issues that we face. I think that up to a point this has been a positive evolution. But it can go too far, and some people end up arguing that institutions and policies are not that important, only individual responsibility counts. We have to re-establish the balance between the spaces of personal responsibilities and the spaces of institutional needs. I think we discussed this issue here very well” (see Auer and Daniel, op. cit., p. 168). One of the issues this raises is whether this transfer is the hallmark of a more individualistic society or the result of a shift in the balance of power that governs bargaining over conditions of employment.

_Changes driven by production or by power relations._ As pointed out above, changes in conditions of employment are probably both dictated by the needs of globalized production and driven by a change in power relations. It would be interesting – particularly for the purposes of social policy – to distinguish the respective effects of these two factors. Population trends together with a return to full employment – where applicable – will no doubt make a difference. A further determinant will be the ability of trade unions to adjust their systems
of representation to new corporate structures and to the wide variety of workers’ employment situations. Even so, as Supiot points out, some of the “rules of the game” will need to be adapted, whether at the national, European or global level. This is a matter of political will: “We tend to say that economic changes are irreversible and the only possibility that we have is to adapt to them. I would say to that, yes and no. Yes, open economies are better than closed economies, yes, open societies are better than closed societies, yes, the information and communication technology revolution is irreversible. But policies can be changed, whether they are macroeconomic policies, trade policies, development policies, financial policies. Policies are not biological phenomena. They are made by people and institutions and they can be changed. You need a double adaptation. An adaptation of people and institutions to the reality of the changes but also an adaptation of the process of change to the needs of people” (see Auer and Daniel, op. cit., p. 166). Regarding the issues of political will, the transfer of responsibility (employability), and of reconciling flexibility and security, particular consideration deserves to be given to Hans Borstalp’s proposal to make lifelong learning a legal obligation modelled on the legislation of compulsory education last century.

The ILO: The global authority on social issues. Here again, with only one exception, all participants concurred on the idea that the world needs a body – an authority – that regulates social matters. As the economy goes global, existing social-policy instruments – as embodied in international labour standards – appear to lack supporting authority, if not legitimacy. As Somavia points out: “I think that we fit into the legitimacy sphere rather than the power sphere” (see Auer and Daniel, op. cit., p. 169). Yet every single participant recognized that the ILO should be that international social authority, also suggesting that its standard-setting and supervisory work should be supplemented by such mechanisms as may be needed to redress the balance of power, to gain knowledge of the conditions prevailing in the world of work, and to evaluate “decent work”. The two proposals made along these lines warrant special attention, namely, the development of qualitative indicators of work and the establishment of a certification system covering conditions of work and employment in enterprises upholding a code of conduct. On this point, it is worth mentioning that a number of agreements have already been signed under the auspices of the ILO between multinational corporations and international trade secretariats on the protection of fundamental rights at work.