BACK TO BASICS: A CRITICAL ASSESSMENT OF CSR AS WORK LAW IN NETWORK FIRMS

Isabelle Martin and Philippe Barré

Professors
School of Industrial Relations
Université de Montréal, Québec, Canada

Back to Basics: A Critical Assessment of CSR as Work Law in Network Firms

Isabelle Martin *
Associate Professor,
School of Industrial Relations,
Université de Montréal, Québec, Canada

The rise of the network firm undermines the application of labour law to a growing proportion of workers. The protections put in place by labour law, specifically devised to apply within the hierarchical and bilateral structure of the employer/employee relationship, are ill-fitted to tackle the multilateral structure of network production where market and hierarchical relationships are entangled. It is in this context that the hybrid regulatory model supported by corporate social responsibility (CSR) appears to some as a possible answer to the challenges brought to labour law by the network form. Still, CSR is a controversial tool, denounced by some as increasing the commoditization of labour rather than impeding it, perceived as contributing to the marketisation of morals rather than the moralisation of markets (Shamir). The aim of this paper is to assess the promises and limits of CSR as a regulatory tool that could partake in a new work law that would protect workers in network firms. Taking into account the specificity of the legal, economic and organizational structure of work in the network firm, we will evaluate the capacity of CSR to further the basic principle underlying labour law, the assertion that labour is not a commodity. This principle attests to the uniqueness of labour which cannot be simply bought and sold at a market price because of the intrinsic importance, the dignity, of the providers of labour: human beings. Building on the philosophical and legal interpretations of human dignity, we will show how the three basic functions of labour law -the protection of working conditions, the responsibilization of employers for working hazards, and the right to act collectively- promote the principle of the human dignity of workers. We will then asses the capacity of CSR to further those three functions, taking into account the existing empirical evidence regarding the application of CSR to workers as well as the organizational and market structures of networks. Our contribution brings together the insights brought by the new institutional economics model of the network firm as hybrid and a holistic understanding of human dignity in order to better assess the potential of CSR in closing the regulatory gap between labour law and workers in network firms. Our analysis will show the key importance of workers' collective action if CSR is to act as work regulation and the necessity of combining state regulation with CSR in order to provide a real protection for workers in network firms.

This paper examines the potentiality of corporate social responsibility to compensate for the inability of labour law to reach workers in firms organised through networks of production. The protections put in place by labour law were specifically devised to apply within the hierarchical and bilateral structure of the employer/employee relationship.

They are now ill-fitted to tackle the multilateral structure of network production where market and hierarchical relationships are entangled[1].

Corporate social responsibility, especially through codes of conduct, has emerged as an impending substitute for labour law in network organisations[2]. But corporate social responsibility is still a controversial tool and it is not clear to what extent it can be up to the task. The aim of this paper is to critically assess the promises and limits of CSR as a regulatory instrument that could partake in a new work law that would protect workers in network firms. Our paper seeks thus to assess corporate social responsibility from a point of view that is both functional[3] and normative[4].

In particular, we will examine to what extent CSR can achieve a basic normative function of labour law: the protection of the human dignity of workers[5]. An emphasis on the normative aspect of labour law and its foundation upon the principle of human dignity is interesting in more than one aspect. First of all, human dignity, as conceptualized by human rights law and philosophy, provides us with a rich understanding of what is meant by the phrase «labour is not a commodity»[6]. It presents a rationale uniting labour rights[7] which permits to bridge over legal categorizations[8] and national disparities and

---

* Working paper. A portion of this paper was published in: Philippe Barré and Isabelle Martin, «Networks as a CSR Breeding Ground: Prospects and Challenges for Labour Relations», in Yvan Tchotourian, ed, *Company Law and CSR: New Legal and Economic Challenges (analysed from a Comparative Perspective),* Bruxelles, Bruylant, 2013 (forthcoming). Comment are welcomed and can be addressed to Isabelle.martin.9@umontreal.ca

[1] Gilles CRAGUE and al., « La responsabilité à l'épreuve des nouvelles organisations économiques », (2012) 54 *Sociologie du travail* 1, at p 5; Judy Fudge, «Fragmenting Work and Fragmenting Organizations : The Contract of Employment and the Scope of Labour Regulation », (2006) 44 *Osgoode Hall L.J*. 609-648; On the network structure see: Gunther Teubner, «Hybrid Laws : Constitutionalizing Private Governance Networks», in Robert Kagan, Martin Krygier and Kenneth Winston, eds*, Legality and Community : On the Intellectual Legacy of Philip Selznick*, Rowman & Littlefield Publishers, Lanham (Maryland), 2002, 311.

[2] André Sobczak, «Codes of Conduct in Subcontracting Networks: A Labour Law Perspective», 2003 (44) Journal of Business Ethics 225.

[3] On the functional approach to labour law see Guy Davidov, «Re-Matching Labour Laws with their Purpose», in Guy Davidov and Brian Langille, ed, *The Idea of Labour Law*, Oxford, Oxford University Press, 2011, 179, at p 181.

[4] On the normative approach see Virginia Mantouvalou, «Are Labour Rights Human Rights» (2012) 2 European Labour Law Journal.

[5] On the different approaches to human rights in labour law see *Id*.

[6] On such a necessity see Brian Langille, «Labour Law's Theory of Justice» in Guy Davidov and Brian Langille, ed, *The Idea of Labour Law*, Oxford, Oxford University Press, 2011, 101, at 114, who however develops such an account by drawing upon Amartya Sen's capability approach.

[7] On the need to find a rational in order to alleviate the normative anxiety that the changes in the organization of work has provoked see Langille, *id*, at p 109-110.

[8] On the necessity to ground labour law in a normative basis that encompass all personal work relations see Mark Freedland and Nicola Kountouris, *The Legal Construction of Personal Work Relations*, Oxford, Oxford Monographs on Labour Law, 2011, p. 370; see also Mantouvalou, at p.25.

construct labour law transnationally[9]. Moreover, since the principle of human dignity is at the heart of human rights[10], a firmer grounding of labour law in the principle of human dignity could be useful to tackle the legal potential of human rights which are increasingly used to anchor labour rights[11] and corporate social responsibility[12]. An emphasis on the normative principle of human dignity is also in line with the shift in ILO's approach, as evidenced by the *Decent work agenda*[13], which departs from the traditional approach used by ILO of integrating work standards through national legislation by formulating its goal in normative terms in order to address economic actors directly[14]. It can furthermore contribute to a much needed moral foundation of labour standards which has been eroded by the neoliberal ideology[15]. Overall, human dignity provides us with a strong vantage point from which we can judge CSR's accomplishments in the network firm.

---

[9] Harry Arthurs, « Labour Law after Labour », in Davidov and Langille, 13, at 23.

[10] Both at the international level (*Universal Declaration of Human Rights*, art 1; *United Nations Covenant on Economic, Social and Cultural Rights*, adopted by GA Res 2200A (XXI) of 16 December 1966; *United Nations Covenant on Civil and Political Rights*, adopted by GA Res 2200A of 16 December 1966, Preamble), and at a domestic level (eg: *The Basic Law of Germany*, May 23rd 1949, art 1; *Israeli basic law: Human Dignity and Liberty*, 25.3.1992, art 4; *The Constitution of South Africa*, 1993, art 1; *Charter of Human Rights and Freedoms*, Lois refondues du Québec, c C-12, preamble, art 4.

[11] See generally: Philip Alston, ed, *Labour Rights as Human Rights,* Oxford, Oxford University Press, 2005; Tonia Novitz and Colin Fenwick, «The Application of Human Rights Discourse to Labour Relations: Translation of Theory into Practice», in Colin Fenwick and Tonia Novitz, *Human Rights at Work: Perspectives on Law and Regulation*, Oñati International Series in Law and Society, Oxford and Portland, Hart Publishing, 2010, 1.

[12] «Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework», in *Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and other business Enterprises, John Ruggie*, United Nations, Human Rights Council, 17th session, March 21rst 2011, online: http://www.ohchr.org/documents/issues/business/A.HRC.17.31.pdf [*Ruggie Report*].

[13] International Labour Organization, *The Millennium Declaration, The mdgs and the ILO's Decent Work Agenda*,online: http://www.ilo.org/pardev/development-cooperation/millennium-development-goals/lang--en/index.htm

[14] For a critical account of the decent work agenda and the novelty of its approach see: Adelle Blackett, «Situated Reflections on International Labour Law, Capabilities, and Decent Work: The Case of Centre Maraîcher Eugène Guinois» (2007) (Hors-série) RQDI 223, 242-243. For an account on how rights' discourse could help further the decent work rationale at the heart of ILO see Jill Murray, «Taking Social Rights Seriously: Is there a Case for Institutional Reform of the ILO?», in Colin Fenwick and Tonia Novitz, *Human Rights at Work: Perspectives on Law and Regulation*, Oñati International Series in Law and Society, Oxford and Portland, Hart Publishing, 2010, 359, at p. 381,

[15] On the need for such a moral foundation see Michael J Piore, «Flexible Bureaucracies in Labor Market Regulation», in Davidov and Langille, *Idea* , 385, at p. 402.

Labour law employs different means in order to protect the human dignity of workers, from the prohibition of discriminatory practices in the workplace[16] to the imposition of limitations on dismissals[17]. But our analysis will show that there are three functions of labour law that are fundamental in order to address the main challenge that the employment relationship poses to human dignity: the protection of minimal working conditions, the responsibilization of employers for risks associated to work and collective action. We will draw on the legal and philosophical studies of the principle of human dignity in order to provide a deeper understanding of how these functions participate in protecting the dignity of workers and to what extent the various CSR initiatives can meet the challenges facing workers in network firms.

The limits of labour law in the network firm

The organization of firms through networks is characterized by a functional fragmention of production based in multiple locations[18]. Production is coordinated through an assemblage of hierarchical and market relationships[19], often devised by a hub-firm in order to maximise flexibility and minimise costs. Moreover, it is not always theoritically possible to recompose a vertical chain of commands through the network[20] given that some firms of the production network do sub-contract to more than one hub-firm[21]. For workers operating within a network firm, this means that they are subject to both the

[16] On such a link see Sandra Fredman, « Equality: A New Generation? » (2001) 30 Industrial Law Journal 145, 155-156; David C Yamada, «Human Dignity and American Employment Law» (2008) 43 U Rich L Rev 523, 565.

[17] See Hugh Collins, *Justice in Dismissals*, Oxford, Clarendon Press 1992, p. 16-18; David C Yamada, «Human Dignity and American Employment Law» (2008) 43 U Rich L Rev 523, at 558-561.

[18] Manuel Castells, *The Rise of the Network Society*, Malden (Mass), Blackwell Publishers, 1996, at p 96; MARIOTTI, Fabien, « Entreprise et gouvernement : à l'épreuve des réseaux », Revue française de sociologie, 2004, 45-4, p. 712; Gilles CRAGUE and al., « La responsabilité à l'épreuve des nouvelles organisations économiques », (2012) 54 *Sociologie du travail* 1.

[19] CRAGUE, at p 5; Gunther Teubner, «Hybrid Laws : Constitutionalizing Private Governance Networks», in Robert Kagan, Martin Krygier and Kenneth Winston, eds*, Legality and Community : On the Intellectual Legacy of Philip Selznick*, Rowman & Littlefield Publishers, Lanham (Maryland), 2002, 311.

[20] Aurélie Catel Duet, «Être ou ne pas être : le groupe comme firme unifiée ou comme ensemble de sociétés ? Une approche sociologique » (2007) 67:3 Droit et société 615, at 625-627.

[21] See for example: *Lian v Crew Group Inc*, 2001 Canlii 28063 (ON SC) where the sub-contractor employing the worker to sew clothes was supplying four clothing retailers. Such a practice is also evidenced by Richard Locke, Matthew Amengual and Akshay Mangla, «Virtue out of Necessity? Compliance, Commitment, and the Improvement of Labor Conditions in Global Supply Chains» (2009) 37 Politics Society 319, 329 and 337.

power of their *de jure* employer and the power of their *de facto* employer, the network firm.[22]

Under the organizational model of network, workers lose the protections that labour law developed for the integrated firm model.[23] Throughout the 19 and 20th centuries, three major instruments have been instituted by labour law for worker protection : the imposition of minimum labour standards[24], the responsibilization of the employer for work-related risks[25], and the facilitation of collective action among employees[26]. These form the basic functions of labour law. The organization of firms through networks weakens the effectiveness of all three.

Firstly, the emergence of the network firm gives an employer the opportunity to benefit from the results of other people's work without being their employer within the meaning of employment law since the labour supplied is not necessarily performed under employment relationships.[27] In a firm organized through networks, the coordination of production may rely on contracts such as franchising contracts,[28] contracts of enterprise or for services.[29] It may also be done through several other legal

[22] Virgille Chassagnon, « Fragmentation des frontières de la firme et dilution des responsabilités juridiques : l'éclatement de la relation d'emploi dans la firme réseau multinationale », (2012)26 *Revue internationale de droit économique*, 5, at 9-13.

[23]Judy Fudge, «Fragmenting Work and Fragmenting Organizations : The Contract of Employment and the Scope of Labour Regulation » (2006) 44 Osgoode Hall L J 609-648; Marie-Laure Morin «Les frontières de l'entreprise et la responsabilité de l'emploi», [2001] Droit social 478 [Morin, «Frontières»]; François Gaudu, « Entre concentration économique et externalisation : les nouvelles frontières de l'entreprise », [2001] Droit social 471; Pierre Verge with the collaboration of Sophie Dufour, *Configuration diversifiée de l'entreprise et droit du travail*, Québec, Presses de l'Université Laval, 2003, at 20-24.

[24]Guylaine VALLÉE « Les rapports entre la protection des travailleurs et la liberté d'entreprendre : des principes aux manifestations actuelles »,(2007) 86 :2*Revue du Barreau canadien* 247, at 248-249 [Vallée, «Rapport»]. On the protective fonction of labour law see : Marie-France Bich, « De quelques idées imparfaites et tortueuses sur l'intermédiation du travail », in Service de la formation permanente du Barreau, *Développements récents en droit du travail*, Cowansville (Qc), Éditions Yvon Blais, 2001, 257 at 292; Pierre Verge and Guylaine Vallée, *Un droit du travail? Essai sur la spécificité du droit du travail*, Cowansville (Qc), Éditions Yvon Blais, 1997, at 32; Horacio Spector, «Philosophical Foundations of Labor Law» (2005) 33 Fla St U L Rev 1119, at p 1120.

[25] Marie-Laure Morin, « Le droit du travail face aux nouvelles formes d'organisation des entreprises », (2005) 144 :1*Revue internationale du travail* 5, at 13-14 [Morin, «Droit»].

[26] On collective action as a purpose of labour law see: Guy Davidov, «Collective Bargaining Laws: Purpose and Scope» (2004) 20:1 International Journal of Comparative Labour Law 81; Alain Supiot, «Revisiter les droits d'action collective» [2001] Droit social 687.

[27] VALLÉE, Guylaine, « Les rapports entre la protection des travailleurs et la liberté d'entreprendre : des principes aux manifestations actuelles », (2007) 86 :2*Revue du Barreau canadien* 247, at 265.

[28]About the use of franchising contracts as work relationships see : Guylaine VALLÉE « Les rapports entre la protection des travailleurs et la liberté d'entreprendre : des principes aux manifestations actuelles » (2007) 86 :2*Revue du Barreau canadien* 247, at p 265 and 271-273.

[29] Which serve as a legal basis for *in situ* sub-contracting: Marie-France Bich, « De quelques idées imparfaites et tortueuses sur l'intermédiation du travail », in Service de la formation permanente du

institutions than contracts, such as intellectual property law[30] and corporate law.[31] The resort to these regulatory frameworks results in the loss of employment law's protection for workers.[32]

Labour law is therefore made to compete with other regulatory frameworks which do not share its protective function toward workers. Labour law's protections are thus evaluated as costs and compared to the benefits the employment relationship may bring to the profitability of firms that have to stay competitive in order to remain within the production network. Even for workers who are protected by a traditional employment contract, the pressure of alternative regulatory framework and the ever-present possibility of externalisation implies that the employment contract per se is an employment benefit that one may have to bargain for. Labour law itself gets to play a part in the segmentation of labour markets because of its inability to regulate the reality of work in the new organizational forms of production in firms.[33]

Overall, organization through networks undermines the universality of minimum working standards. Firms may now choose the regulatory framework of work performance. In the case of transnational firms, this choice adds up to the possibility already documented that they have of choosing the level of working standards through off-shoring.[34]

Barreau, *Développements récents en droit du travail*, Cowansville (Qc), Éditions Yvon Blais, 2001, 257 at 281-282.

[30] About using trademarks as organisational link in order to completely externalize production see: Naomi Klein, *No Logo : Taking Aim at The Brand Bullies*, Toronto, Vintage Canada, 2000, at chap 9.

[31] Guylaine VALLÉE « Les rapports entre la protection des travailleurs et la liberté d'entreprendre : des principes aux manifestations actuelles » (2007) 86 :2*Revue du Barreau canadien* 247 at 265.

[32] Vallée, *id*; Luc Boltanski and Eve Chiapello, *Le nouvel esprit du capitalisme*, Paris, Gallimard, 1999, at 476. On the various approaches elaborated by national laws to overcome this difficulty see: in Canadian law: Judy Fudge and Kate Zavitz, « Vertical Disintegration and Related Employers : Attributing Employment-Related Obligations in Ontario » Canadian Labour & Employment L.J., 2006-2007, vol. 13, p. 107-146; in Quebec law : VALLÉE, *id*.; in French law : Gilles CRAGUE and al., « La responsabilité à l'épreuve des nouvelles organisations économiques », (2012) 54 *Sociologie du travail* 1, at 35-41 and, in English law the seminal article by Hugh Collins, « Ascription of Legal Responsibility to Groups in Complex Patterns of Economic Integration » (1990) 53:6 The Modern Law Review 731. However, the inexistence of a presomption of employment relations greatly limits the effectiveness of piecemeal legal modifications: Guylaine VALLÉE, « Responsabilité sociale de l'entreprise et droit du travail » in B.-TURCOTTE, Marie-France et Anne SALMON, *Responsabilité sociale et environnementale de l'entreprise*, coll. Pratiques et politiques sociales et économiques, Ste-Foy (Can), Presses de l'Université du Québec, 2005, 171.

[33] Guylaine VALLÉE « Les rapports entre la protection des travailleurs et la liberté d'entreprendre : des principes aux manifestations actuelles »,(2007) 86 :2*Revue du Barreau canadien* 247, at p 292.

[34] Marie-Laure Morin, « Le droit du travail face aux nouvelles formes d'organisation des entreprises », (2005) 144 :1*Revue internationale du travail* 5 at 14; Muhammad Azizul Islam and Ken Mcphail « Regulating for Corporate Human Rights Abuses : The Emergence of Corporate Reporting on the ILO's Human Rights Standards within the Global Garment Manufacturing and Retail Industry », 2011 (22)

Secondly, the employer's responsibility for work's related-risks is anchored in a conceptualization of employment as a bilateral relationship organization of production that simply cannot follow the trail of responsibility over working conditions in networks.[35] Network production makes it possible to hide, under a contractual veil, relationships that are truly firm-like hierarchies[36] in order to dodge public policies of accountability for work-related risks. In production networks, the dominant firm may combine various governance tools, commercial contracts, employment contracts or trade-marks property, in order to optimally distribute responsibility for working conditions. Besides, the organization of production through networks offers hub-firm the possibility to define their legal responsibility through the choice of the size and structure of their corporation,[37] without relinquishing any power over the performance of work. This implies that the employer identified by law is not necessarily the entity with the real power to determine work conditions throughout the production chain.[38]

Network production then results in a disconnection of power from responsibilities.[39] Hub firms have the possibility of transferring to sub-contracting firms directly involved in the employment relationships the responsibilities related to work[40] while keeping a decisive power over fundamental conditions of production such as quality, quantity and

---

Critical Perspectives on Accounting 790, at 791, 792; François Gaudu, « Entre concentration économique et externalisation : les nouvelles frontières de l'entreprise », (2001:May) *Droit social* 471, at 472. On the attenuated application of domestic labour laws inside export processing zones see: Adelle Blackett, «Global Governance, Legal Pluralism and the Decentered State: A Labor Law Critique of Codes of Corporate Conduct» (2000) 8 Ind J Global Legal Stud 401, at n 2.

[35] Marie-France Bich, « De quelques idées imparfaites et tortueuses sur l'intermédiation du travail », in Service de la formation permanente du Barreau, *Développements récents en droit du travail*, Cowansville (Qc), Éditions Yvon Blais, 2001, 257; Judy Fudge, «Fragmenting Work and Fragmenting Organizations : The Contract of Employment and the Scope of Labour Regulation », (2006) 44 *Osgoode Hall L.J*. 609-648, at 611.

[36] Luc Boltanski and Eve Chiapello, *Le nouvel esprit du capitalisme*, Paris, Gallimard, 1999, at 475. See also Guylaine Vallée « Reconnaître la relation de travail dans des modèles organisationnels complexes : une question de méthode? » (2008) 42 Revue juridique Thémis 518.

[37] Hugh Collins, « Ascription of Legal Responsibility to Groups in Complex Patterns of Economic Integration » (1990) 53:6 The Modern Law Review 731 at 737; Judy Fudge, «Fragmenting Work and Fragmenting Organizations : The Contract of Employment and the Scope of Labour Regulation », (2006) 44 *Osgoode Hall L.J*. 609, at 617-618.

[38] For example, according to a workers' advocacy organization, « Wal-Mart has designed its system of production to contain as many degrees of separation between the corporate head and factory workers as possible, leaving the middleman as the scapegoat. »: International Labor Rights Forum, *Ethical Standards and Working Conditions in Wal-Mart's Supply Chain*, October 24th 2007, p. 1-35, online: http://www.laborrights.org/, at p 15.

[39] Alain Supiot, « Fragments d'une politique législative du travail », [2001] Droit social 1151.

[40] PESKINE, Elsa, *Réseaux d'entreprise et droit du travail*, Paris, L.G.D.J. 2008, pp. 6-7; BARRAUD DE LAGERIE, Pauline, « Le salaire de la sueur : un éclairage socio-historique sur la lutte anti-sweatshop », *Sociologie du travail*, 2012 vol. 54, p. 45-69, à la p. 57. For a telling example see *Lian v Crew Group Inc*, 2001 Canlii 28063 (ON SC).

timing. Legal accountability techniques cannot fully reach those with the power to remedy work-related risks[41] and reconnect power with responsibilities.[42] There are only a small number of networks which possess a unity sufficient for them to be reconstituted as a group.[43] In the vast majority of cases, the responsibility of those with the power to determine work-related risks needs to be rethought and refounded.

Finally, the organization of production through network weakens workers' capacity to act collectively and reach those with decision-making power over their working conditions. Because of the dispersion of workers through legal and national frameworks,[44] it is not possible anymore to create through collective bargaining a counter power equivalent to the economic power of the networks.[45]

The Wagnerian model of collective action and collective bargaining is especially ill-adapted to the fragmentation of firms and collectivities. In a transnational firm, even when unified within a unique group, collective bargaining is made impossible because of the local character of labour laws and the limited scope of accreditation units that do not even reflect the entirety of a firm.[46] Workers employed by distinct firms which are linked by the network cannot resort to strike simultaneously in order to improve their

[41] For a analysis of the new legal techniques needed in order to regulate the new forms of employment see Guylaine VALLÉE « Les rapports entre la protection des travailleurs et la liberté d'entreprendre : des principes aux manifestations actuelles »,(2007) 86 :2*Revue du Barreau canadien* 247; Marie-France Bich, « De quelques idées imparfaites et tortueuses sur l'intermédiation du travail », in Service de la formation permanente du Barreau, *Développements récents en droit du travail*, Cowansville (Qc), Éditions Yvon Blais, 2001, 257; Gilles CRAGUE and al., « La responsabilité à l'épreuve des nouvelles organisations économiques », (2012) 54 *Sociologie du travail* 1, at 35-41; Hugh Collins, « Ascription of Legal Responsibility to Groups in Complex Patterns of Economic Integration » (1990) 53:6 The Modern Law Review 731. For a critical analysis of the efficacy of those techniques see Judy Fudge, «Fragmenting Work and Fragmenting Organizations : The Contract of Employment and the Scope of Labour Regulation » (2006) 44 Osgoode Hall L J 609-648, at 611.

[42] Marie-Laure Morin «Les frontières de l'entreprise et la responsabilité de l'emploi», [2001] Droit social 478 at 479.

[43] About the distinction between networks and corporate groups where a hierarchy can still be discerned, see PESKINE, Elsa, *Réseaux d'entreprise et droit du travail*, Paris, L.G.D.J. 2008, at 147-149. See also Aurélie Catel Duet, « Être ou ne pas être : le groupe comme firme unifiée ou comme ensemble de sociétés? Une approche sociologique », (2007) 67 :3 *Droit et société* 615-629.

[44] Alain Supiot, *L'esprit de Philadelphie : la justice sociale face au marché total*, Paris, Seuil, 2010, at 140; Pierre Verge, « Mondialisation et fonctions du droit du travail national », (1999) 40*Cahiers de droit*, 437-457, at 450-451.

[45] On this idea of the resulting economic power of organization, but applied solely to transnational organizations, see Verge, *id*, at 449.

[46] VERGE, *id*, at 448.

bargaining position with their employer.[47] At most they will be allowed to picket at secondary sites.[48]

Even in the case of purely regional networks, the multiplicity of legal frameworks used to structure the performance of work and the fragmentation of work in various locations are all legal obstacles to collective organisation. In fact, the organization of networks of production through cooperation agreements without any unifying purpose under a single entity directly undermines labour law's architecture.

> *Within such complex networks, marginalized producers and workers find themselves in what is referred to as structural disempowerment, as they are unable to control opportunities and resources or compel external decision-makers to share the responsibility for maintaining their wellbeing».* [49]

It is in this context that corporate social responsibility (CSR) in general, and codes of conduct in particular, appear to some as a possible answer to the challenges brought to labour law by the network form. Codes of conduct include both codes promulgated unilaterally by a great number of transnational firms and codes resulting from multilateral initiatives,[50] ranging from international framework agreements signed between multinational enterprises and global union federations[51] to certification processes pertaining to various non-governmental organizations.[52]

With regard to workers' protection, codes of conduct share three elements according to Morin.[53] First, codes of conduct assert the fundamental rights of workers as individuals rather than as employees: they stem from the general assertion of fundamental rights

---

[47] ATLESON James, « The Voyage of the Neptune Jade : Transnational Labour Solidarity and the Obstacles of Domestic Law » in CONAGHAN Joanne, FISCHL, Richard Michael et KLARE, Karl, *Labour Law in An Era of Globalization*, Oxford, Oxford University Press, 2002, 379-399.

[48] Pierre Verge with Sophie Dufour, *Configuration diversifiée de l'entreprise et droit du travail*, Québec, Presses de l'Université Laval, 2003, at 20-24 and 72-73; Guylaine Vallée, « Les codes de conduites des entreprises multinationales et l'action syndicale internationale : réflexions sur la contribution du droit étatique » 2003 (58 :3) *Relations industrielles* 363-394.

[49] Yossi Dahan, Hanna Lerner and Faina Milman-Sivan, « Global Justice, Labor Standards and Responsibility » (2011) 12 Theoritical Inq L 439, at 455.

[50] Renée-Claude Drouin, « Responsabiliser l'entreprise transnationale : Portrait d'une normativité du travail en évolution », in Pierre Verge (ed.*), Droit international du travail : Perspectives canadiennes*, Cowansville (Can), Éditions Yvon Blais, 2010, 283, at 291, 309.

[51] Konstandinos Papadakis, ed, *Shaping Global Industrial Relations: the Impact of International Framework Agreements*, Basingstoke (UK), Palgrave Macmillan, 2011.

[52] Such as SA 8000 and ISO 26000.

[53] Marie-Laure MORIN, « Le droit du travail face aux nouvelles formes d'organisation des entreprises », (2005) 144 :1*Revue internationale du travail*, 5-30, at 20.

and freedoms rather than from the struggles of the labour movement.[54] Second, these codes aim to promote corporate responsibility in the area of economic power rather than in the area of labour relations. Third and last, codes of conduct are mobilized to a greater extent through trade law and consumer law rather than labour law. All things considered, CSR in the area of work could be described as follows: by getting around labour law, the implemented codes of conduct help to exceed the limits of this law with regard to the network firm.

However, one may wonder about the true potential of codes of conduct in performing the basic functions of labour law in network firms. Some researches have been conducted about the use of codes of conducts in network firms, some empirical[55], most theoretical.[56] But these researches come from a multiplicity of disciplinary horizons, ranging from management to corporate governance law and their perspective is not necessarily informed by the basic functions that labour law performs in order to protect workers. Collective action and collective bargaining are especially left out of the picture. To leave the assessment of the protection of workers by codes of conduct out of the realm of labour law scholarship risks increasing the marginalization of labour law. For these reasons, a critical framework based on labour law is necessary. Such a framework could be found, as we will argue in the next section, in the principle of human dignity that constitutes the main objective of labour law. We will expose how the principle of human dignity is translated in the basic functions of labour law and we will use this framework to assess the potential of CSR to ensure the protection of workers' dignity by using existing studies on codes of conduct.

---

[54] *Id.* See also Pierre VERGE « Les instruments d'une recomposition du droit du travail : de l'entreprise-réseau au pluralisme juridique », (2011) 52 : 2 *Les Cahiers de droit*, 135-166, at 152.

[55] See for instance : Richard Locke et al, « Beyond Corporate Codes of Conduct : Work Organization and Labour Standards at Nike's Suppliers » (2007) 146:1-2 International Labour Review 21; S Prakash Sethi et al, « Mattel, Inc. : Global Manufacturing Principles (GMO)- A Life-Cycle Analysis of a Company-Based Code of Conduct in the Toy Industry » (2011) 99 Journal of Business Ethics 483; Marie-Ange Moreau, « Négociation collective transnationale : réflexions à partir des accords-cadres internationaux du groupe ArcelorMittal »,[2009] Droit social 93-102.

[56] See for instance: André Sobczak, «Are Codes of Conduct in Global Supply Chains Really Voluntary? From Soft law Regulation of Labour Relations to Consumer Law», 2006 (16:2) Business Ethics Quarterly, 167-184; André Sobczak, «Codes of Conduct in Subcontracting Networks: A Labour Law Perspective», (2003) (44) Journal of Business Ethics 225-234; Adelle Blackett, «Global Governance, Legal Pluralism and the Decentered State: A Labor Law Critique of Codes of Corporate Conduct» (2000) 8 Ind J Global Legal Stud 401; Cynthia Estlund, «Rebuilding the Law of the Workplace in an Era of Self-Regulation», in Brian Bercusson and Cynthia Estlund, ed, *Regulating Labour in the Wake of Globalisation: New Challenges, New Institutions*, Portland (Oregon), Hart Publishing, 2008, 89.

Human dignity as the main objective of work law

The fundamental link between labour law and human dignity has long been recognized by labour law[57]. Hugo Sinzheimer has most explicitly acknowledged this intimate connection by asserting that labour law's main purpose is the protection of human dignity and the construction of the basis of a true humanity[58]. The ILO Declaration of Philadelphia affirmed in 1944 that the right of human beings to pursue their «material well-being in conditions of freedom and dignity» «must constitute the central aim of national and international policy»[59]. More recently, legal instruments such as the *Charter of Fundamental Rights of the European Union*[60] have revived the connection between the respect for dignity and working conditions. Finally, the ILO's decent work agenda has also highlighted such a connection[61], especially when we consider that etymologically, decency and dignity share the same latin root *decet*, which means «what is proper»[62].

Yet, the relationship between human dignity and labour law has generally been left at an intuitive level[63]. In this section we will draw on these legal analyses and on philosophical and legal analyses of the principle of human dignity in order to show how this principle may offer a firm ground to articulate the fundamental normative

[57] Hugo Sinzheimer has been the first labour scholar to expressly state the link between labour law and dignity (Manfred Weiss, «Re-Inventing Labour Law» in Davidov and Langille, 43 at 44). See also; Christian Brunelle, «Le droit à la dignité : un vecteur de la citoyenneté au travail» in Michel Coutu and Gregor Murray, ed, *Travail et Citoyenneté : quel avenir?* Coll Travail et emploi à l'ère de la mondialisation, Presses de l'Université Laval, Québec, 2010, 273; Guy Davidov, «Re-Matching Labour Laws with their Purpose», in Guy Davidov and Brian Langille, ed, *The Idea of Labour Law*, Oxford, Oxford University Press, 2011, 179, at 179.

[58] Spiros Smitis, « Le droit du travail a-t-il encore un avenir? » (1997) *Droit social*, 655-667, at p 667; Manfred Weiss, «Re-Inventing Labour Law» in Davidov and Langille, 43, at 44. See also Dominique Roux, *Le principe du droit au travail : juridicité, signification et normativité*, Montréal, Wilson & Lafleur, 2005, at 97.

[59] ILO, *Declaration concerning the Aims and Purposes of the International Labour Organization*, adopted by the Conference at its 26th session, Philadelphia, May 10 1944.

[60] Art. 31(1).

[61] Adelle Blackett, «Situated Reflections on International Labour Law, Capabilities, and Decent Work: The Case of Centre Maraîcher Eugène Guinois» (2007) (Hors-série) RQDI 223, at p 242.

[62] Muriel Fabre-Magnan, «La dignité en droit : un axiome» (2007) 58 RIEJ 1, at pp 28-29; Philippe Pedrot, « La dignité de la personne : principe consensuel ou valeur incantatoire? » in Philippe Pedrot, ed*, Éthique, droit et dignité de la personne- Mélanges Christian Bolze*, Paris, Economica, 1999, XI, at p XI.

[63] We should note however the following contributions: Guy Davidov, « A Purposive Interpretation of the National Minimum Wage Act» (2009) 72 MLR 581; David C Yamada, «Human Dignity and American Employment Law» (2008) 43 U Rich L Rev 523; Christian Brunelle, « Le droit à la dignité : un vecteur de la citoyenneté au travail» in Michel Coutu and Gregor Murray, ed, *Travail et Citoyenneté : quel avenir?* Coll Travail et emploi à l'ère de la mondialisation, Presses de l'Université Laval, Québec, 2010, 273; Dominique Asquinazi-Bailleux, «Droit à l'emploi et dignité», in Philippe Pedrot, ed*, Éthique, droit et dignité de la personne- Mélanges Christian Bolze*, Paris, Economica, 1999, 123.

objectives of labour law and to analyze the extent to which CSR may accomplish them in the network firm. Moreover, we think that such a study of this relationship could be fruitful for labour law in order to harnest the potential of the numerous legal instruments of protection of rights and freedom that protect human dignity.

Kant has defined dignity as a value that doesn't have an equivalence, cannot be priced[64]. Human dignity attest to the intrinsic importance of human beings[65], independantly of their abilities, their personal conditions and their usefulness for others. Human dignity, by refering to «what is proper»[66] for human beings, is inherently a normative principle that prescribes how human beings should be treated[67]. Kant has famously phrased the principle of human dignity in the archetypal maxim that what possesses dignity must not be treated purely as a mean but also as an end in itself[68].

The employment relation threatens in a fundamental way human dignity by instituting an exchange of money for something that can't be severed from human beings, their labour[69], and by instituting a relationship of subordination where workers are used as means of production at the service of the entrepreneur. There is a specific dignitary harm inflicted on someone when her labour is treated as a commodity[70]: doing so constitutes her as an object and negates her intrinsic importance, her dignity of human being[71]. Accordingly, the classic assertion at the heart of labour law that «labour is not a commodity»[72] underlines the human dignity of workers and the necessity of treating

---

[64] Immanuel Kant, *The Metaphysics of Morals, II, Doctrine of the Elements of Ethics*, ed by Mary Gregor, Cambridge, Cambridge University Press, 1996, at s 24.

[65] I*d,* at s 38.

[66] See *supra* note 62 and accompanying text.

[67] Muriel Fabre-Magnan, «La dignité en droit : un axiome» (2007) 58 RIEJ 1 at p 24. On dignity as a normative concept see Oscar Schachter, «Human Dignity as a Normative Concept» (1983) 77:4 The American Journal of International Law 848-854. On the role of principles in law see Dominique Roux, *Le principe du droit au travail : juridicité, signification et normativité*, Montréal, Wilson & Lafleur, 2005, at chapter 1.

[68] Kant, *The Metaphysics of Morals, II, Doctrine of the Elements of Ethic,* at s 25.

[69] Guylaine Vallée « Les rapports entre la protection des travailleurs et la liberté d'entreprendre : des principes aux manifestations actuelles »,(2007) 86 :2*Revue du Barreau canadien* 247 at p 248.

[70] Ruth Dukes, «Hugo Sinzheimer and the Constitutional Function of Labour Law», in Davidov and Langille, 57, at p 64.

[71] On the relational dimension of dignity see David C Yamada, «Human Dignity and American Employment Law» (2008) 43 U Rich L Rev 523, at p 549 ff. On dignity as a basis for grounding intentional infliction of harm see Denise Réaume, «Indignities: Making a Place for Dignity in Modern Legal Thought», (2002) 28 Queen's L J 61.

[72] ILO, *Declaration concerning the Aims and Purposes of the International Labour Organization*, adopted by the Conference at its 26th session, Philadelphia, May 10 1944, art. 1. On the genealogy of this principle see Paul O'Higgins, 'Labour is Not a Commodity – An Irish Contribution to International Labour Law' (1997) 26 Indus LJ 225.

them differently from machinery[73]. From this, we may directly infer the purpose of a distinct legal regulation for the provision of labour that serves to ensure that the worker's treatment is not determined exclusively by the needs of the employer. Labour law, by its sole existence, affirms that workers are bearer of fundamental rights and prevents their legal treatment as objects[74].

Although human dignity does not need to be grounded in further justification[75], it may be instructive to consider the various dimensions of human dignity in order to better understand the exigencies that dignity entails. A first dimension of the principle of human dignity is its universality[76] that translates itself in the requirement of equal recognition[77]. Other philosophers have pointed to a more corporal dimension of human dignity, the profound threat to self-esteem that physical or psychological abuse or even economic deprivation do inflict[78]. The inherent vulnerability of human beings translates then in a requirement of care and responsibility when someone is in a position of inequality toward another[79]. Finally, dignity possesses also a dimension of autonomy. According to Kant, the dignity of human beings comes from their innate capacity to reason, to act according to a moral law that they decide for themselves[80]. Such an understanding of human dignity points toward an exigency of respect for the autonomy

[73] On labour law as infusing dignity in the employment relationship see Adelle Blackett, «Global Governance, Legal Pluralism and the Decentered State: A Labor Law Critique of Codes of Corporate Conduct» (2000) 8 Ind J Global Legal Stud 401, at p 418.

[74] Manfred Weiss, «Re-Inventing Labour Law» in Davidov and Langille, 43, at p 50.

[75] Daniel Proulx «Le concept de dignité et son usage en contexte de discrimination : deux Chartes, deux modèles» (2003) Numéro spécial R du B 487, at p 492; Muriel Fabre-Magnan, «La dignité en droit : un axiome» (2007) 58 RIEJ 1, at p 20.

[76] Christian Brunelle, « Le droit à la dignité : un vecteur de la citoyenneté au travail» in Michel Coutu and Gregor Murray, ed, *Travail et Citoyenneté : quel avenir?* Coll Travail et emploi à l'ère de la mondialisation, Presses de l'Université Laval, Québec, 2010, 273, at 290-291.

[77] Charles Taylor, « The Politics of Recognition » in Amy Gutmann, *Multiculturalism- Examining the Politics of Recognition*, Princeton, NJ, Princeton University Press, 1994, 25, at p 39; Thierry Pech, «La dignité humaine. Du droit à l'éthique de la relation» (2001) 3 Éthique publique 93, at p 95, 116.

[78] Daniel Statman, «Humiliation, Dignity and Self-Respect», in David Kretzmer and Eckart Klein, ed, *The Concept of Human Dignity in Human Rights Discourse*, La Haye, Kluwer Law International, 2002, 209; Thomas De Koninck, *De la dignité humaine*, Paris, Presses universitaires françaises, 1995, pp 7, 10-11; See also Denise G. Réaume, «Indignities : Making a Place for Dignity in Modern Legal Thought» (2002) 28 Queen's L.J. 61, pp. 84-85. For a synthesis of these approaches see Isabelle Martin, «Reconnaissance, respect et sollicitude : vers une analyse intégrée des exigences de la dignité humaine», (2010) 15 :2 *Lex electronica*.

[79] Amartya Sen, *The Idea of Justice*, Cambridge, Belknap Press, 2009, at p 205; Immanuel Kant, *The Metaphysics of Morals, II, Doctrine of the Elements of Ethics*, ed by Mary Gregor, Cambridge, Cambridge University Press, 1996, at s 29.

[80] Immanuel Kant, *Groundwork of the Metaphysics of Morals*, ed by Mary Gregor, Cambridge, Cambridge University Press, 1998, section II, at 432.

of human beings[81]. Taken together, these dimensions of human dignity lead to three unseparable demands of human dignity: recognition, care and respect [82].

The philosophical understanding of human dignity, its various dimensions and its exigencies will help us to better understand how the three basic functions of labour law -the protection of working conditions, the responsibilization of employers for working hazards, and the right to act collectively- protect the human dignity of workers.

1. The recognition of workers' dignity through the imposition of minimum labour standards

The imposition of minimum standards of work such as fixation of a minimum wage, restriction of the work schedule and health and safety requirements protects workers' human dignity[83] by recognizing to all workers the same needs and ensuring them the same rights. The prohibition of any treatment violating minimum legal standards, regardless of the different worth of workers for their employers, recognizes the universal human dignity of workers. It acknowledges that every worker possesses the same basic needs, and that the fulfillment of those needs is not to be determined by their value on the market. Furthermore, by ensuring that an equitable wage is paid for the labour performed, minimum wage laws recognize the equal dignity of workers and contribute to the abolition of relationships based on exploitation and domination that so directly negate equality[84]. The imposition of a minimum wage above the strict personal subsistence level recognizes the «value of [their] time»[85] and the physical and emotional energy devoted to work[86]. Finally, the limitation on working hours and the

[81] Immanuel Kant, *The Metaphysics of Morals, II, Doctrine of the Elements of Ethics*, ed by Mary Gregor, Cambridge, Cambridge University Press, 1996, at ss 37; Christian Brunelle, « Le droit à la dignité : un vecteur de la citoyenneté au travail» in Michel Coutu and Gregor Murray, ed, *Travail et Citoyenneté : quel avenir?* Coll Travail et emploi à l'ère de la mondialisation, Presses de l'Université Laval, Québec, 2010, 273, at 291.

[82] On the necessity to maintain all exigencies in order to fulfill the principle of human dignity see Isabelle Martin, «Reconnaissance, respect et sollicitude : vers une analyse intégrée des exigences de la dignité humaine», (2010) 15 :2 *Lex electronica* at p 21 ff.

[83] Guy Davidov, « A Purposive Interpretation of the National Minimum Wage Act» (2009) 72 MLR 581 at p 592; Pierre Verge and Guylaine Vallée, *Un droit du travail? Essai sur la spécificité du droit du travail*, Cowansville (Qc), Éditions Yvon Blais, 1997, at pp 33-34.

[84] Judy Fudge, «Labour as a 'Fictive Commodity': Radically Reconceptualizing Labour Law» in Davidov and Langille, 120, at p 133. For a substantive interpretation of equality see generally: Elizabeth Anderson, «What is the Point of Equality?» (1999) 109 Ethics 287; Nancy Fraser, *Justice Interruptus: Critical Reflections on the Postsocialist Condition,* NY, Routledge, 1997, chap 1.

[85] Guy Davidov, « A Purposive Interpretation of the National Minimum Wage Act» (2009) 72 MLR 581, at p 593.

[86] Davidov, *id*.

imposition of minimum wages recognizes the dignity of workers by treating them, not as pure means of production that only need to be sustained, but also as ends in themselves, with a life of their own. Most are part of a family and all, as members of society, need to obtain living standards in line with the requirement of decency in the society where they belong[87].

We have seen how fragmentation of production within the network firm prevents minimum labour standards from being applied throughout the production chain because these standards are based on a traditional bipartite employment relationship that no longer corresponds to the reality of work within these networks. What is the potential of codes of conduct to remedy this shortcoming?

Since codes of conduct are rooted in the assertion of fundamental human rights and freedoms,[88] they do have the potential to increase the number of workers covered by labour standards.[89] Codes of conduct are generally applicable to all workers in a network, including those who work for subcontractors and franchisees.[90] Moreover, the concern for workers throughout the production chain as expressed by the codes of conduct puts the worker as a person back at the centre of the product, and could be seen as participating in the decommodification of labour. Lastly, although, at first, the rights recognized in the codes of conduct were often seen to be disparate in nature,[91] the standards stated in these codes have increasingly converged around the four fundamental principles and rights at work stated in the ILO Declaration of 1998[92]:

---

[87] Davidov *id;* Alain Supiot, *Critique du droit du travail,* 2nd ed, Paris, Presses universitaires de France, 2007, at p 76.

[88] Pierre Verge « Les instruments d'une recomposition du droit du travail : de l'entreprise-réseau au pluralisme juridique », (2011) 52 : 2 *Les Cahiers de droit*, 135, at p 155.

[89] André Sobczak, «Are Codes of Conduct in Global Supply Chains Really Voluntary? From Soft law Regulation of Labour Relations to Consumer Law», (2006) 16:2 Business Ethics Quarterly 167 at 170-171.

[90] André Sobczak, «Codes of Conduct in Subcontracting Networks: A Labour Law Perspective», 2003 (44) Journal of Business Ethics 225 at 225. However, international agreements do not necessarily cover workers who are not part of a direct employment relation with the MNE: Renée-Claude Drouin, «Promoting Fundamental Labor Rights through International Framework Agreements: Practical Outcomes and Present Challenges» (2010) 31 Comp Lab L & Pol'y J 591, at 621. See for instance the case of ArcelorMittal analyzed in Marie-Ange Moreau, « Négociation collective transnationale : réflexions à partir des accords-cadres internationaux du groupe ArcelorMittal » [2009] Droit social 93-102.

[91] OECD 2001, *Corporate Responsibility, Private Initiatives and Public Goals*, Paris, OCDE, 2001, at p 34.

[92] Dara O'Rourke, «Outsourcing Regulation: Analyzing Nongovernmental Systems of Labor Standards and Monitoring» (2003) 31:1 Policy Studies Journal 1-28, at 7; Marie-Ange Moreau, « Négociation collective transnationale : réflexions à partir des accords-cadres internationaux du groupe ArcelorMittal »,[2009] Droit social 93-102, at 97.

elimination of all forms of forced or compulsory labour, abolition of child labour, elimination of discrimination and freedom of association.[93]

However, important variations in the field of worker protection still exist which shows the limit of CSR as universal recognition of the human dignity of workers. First, these variations can be observed in the types of protected rights. Thus, despite the apparent convergence of the content of codes of conduct, freedom of association receives much less support in codes of conduct and monitoring processes[94] than the issue of child labour.[95] Codes of conduct also have a more positive impact on occupational health and safety rights than on freedom of association and protection against discrimination.[96] Second, considerable variations can be seen in the type of firms likely to adopt and implement CSR practices related to worker protection. Given that codes of conduct are implemented mainly because of a threat to undermine a particular firm's commercial interests, the standards set out in codes of conduct will be respected only by firms which consider themselves to be vulnerable to such a threat.[97] Thus, codes of conduct will be implemented mainly in firms which have a direct link with consumers in Western countries[98] and whose business strategy hinges on their brand name,[99] firms which constitute the dominant image of a market,[100] or firms which have previously been targeted by a campaign condemning the working conditions they have offered.[101]

---

[93] *ILO Declaration on Fundamental Principles and Rights at Work and its follow-up*, adopted by the International Conference at its Eighty-six session, Geneva, June 18 1998.

[94] Muhammad Azizul Islam and Ken Mcphail, « Regulating for Corporate Human Rights Abuses : The Emergence of Corporate Reporting on the ILO's Human Rights Standards within the Global Garment Manufacturing and Retail Industry » 2011 (22) *Critical Perspectives on Accounting* 790, at 799.

[95] André Sobczak, «Are Codes of Conduct in Global Supply Chains Really Voluntary? From Soft law Regulation of Labour Relations to Consumer Law», (2006) 16:2 Business Ethics Quarterly 167, at 180.

[96] Stephanie Barrientos, « Contract Labour : The 'Achilles Heel' of Corporate Codes in Commercial Value Chains » (2008) 39:6 *Development and Change* 977at 980.

[97] VALLÉE, Guylaine, MURRAY, Gregor, COUTU, Michel, ROCHER, Guy and GILES, Anthony, *Les codes de conduites des entreprises multinationales canadiennes : aux confins de la régulation privée et des politiques publiques du travail : Rapport de recherche*, 31 janvier 2003, at p. 61. About the variation according to sectors of the efficacy of *shaming* see: OSHIONEDO, Evaristus, « The U.N. Global Compact and Accountability of Transnational Corporations : separatingmythfromrealities », *Florida Journal of International Law*, 2007 (19), p. 1-38, at p. 18-19.

[98] Dara O'Rourke, «Outsourcing Regulation: Analyzing Nongovernmental Systems of Labor Standards and Monitoring» (2003) 31:1 Policy Studies Journal 1-28, at p. 22.

[99] André Sobczak, «Are Codes of Conduct in Global Supply Chains Really Voluntary? From Soft law Regulation of Labour Relations to Consumer Law», (2006) 16:2 Business Ethics Quarterly 167, at 179.

[100] Stephanie Barrientos, « Contract Labour : The 'Achilles Heel' of Corporate Codes in Commercial Value Chains » (2008) 39:6 *Development and Change* 977 at 981.

[101] Richard Locke et al, « Beyond Corporate Codes of Conduct : Work Organization and Labour Standards at Nike's Suppliers » (2007) 146:1-2 International Labour Review 21; S Prakash Sethi et al, « Mattel, Inc. : Global Manufacturing Principles (GMO)- A Life-Cycle Analysis of a Company-Based Code of Conduct in the Toy Industry » (2011) 99 Journal of Business Ethics 483 at 486.

Finally, the power of hub-firms to convince their suppliers to respect workers' rights varies along their dependencies on a sub-contractor[102].

The selectivity in the type of protected rights and participating firms comes partly from the fact that the codes of conduct aim primarily at managing the network firm's relations with its consumers.[103] The protected rights reflect the concerns of consumers.[104] A firm's decision to adopt a code of conduct and the seriousness with which it will implement this code will depend on its position in a market and its business strategy.[105] The regulation brought by codes of conduct is thus similar to product- or brand-based regulation[106] rather than regulation aimed directly at improving workplaces or protecting workers.[107] Ultimately, it is the consumer (or even the hub-firm![108]) who is protected by a firm's failure to respect its code of conduct, through protection against false advertising.[109] From this perspective, worker protection is only one consideration among others, the importance of which varies according to consumer concerns.[110] Each consumer is left to decide between the importance to be attributed to the environment, labour or just simply the low price of a product. The competition between firms

[102] Renée-Claude Drouin, «Promoting Fundamental Labor Rights through International Framework Agreements: Practical Outcomes and Present Challenges» (2010) 31 Comp Lab L & Pol'y J 591, at 623.
[103] Stephanie Barrientos, « Contract Labour : The 'Achilles Heel' of Corporate Codes in Commercial Value Chains » (2008) 39:6 *Development and Change* 977at 981; Gay Seidman, « Transnational Labour Campaigns: Can the Logic of the Market Be Turned Against Itself? » (2008) 39:6 *Development and Change* 991 at 1000.
[104] André Sobczak, «Are Codes of Conduct in Global Supply Chains Really Voluntary? From Soft law Regulation of Labour Relations to Consumer Law», (2006) 16:2 Business Ethics Quarterly 167, at 179; Adelle Blackett, «Global Governance, Legal Pluralism and the Decentered State: A Labor Law Critique of Codes of Corporate Conduct» (2000) 8 Ind J Global Legal Stud 401, at p 412 and 430.
[105] C.f. Gay Seidman, « Transnational Labour Campaigns: Can the Logic of the Market Be Turned Against Itself? » (2008) 39:6 *Development and Change* 991 at 1000. See also David Vogel, *The Market for Virtue : The Potential and Limits of Corporate Social Responsibility*, Washington, Brookings Institut Press, 2005 at 3.
[106] Dara O'Rourke, «Outsourcing Regulation: Analyzing Nongovernmental Systems of Labor Standards and Monitoring» (2003) 31:1 Policy Studies Journal 1-28, at 6.
[107] Adelle Blackett, «Global Governance, Legal Pluralism and the Decentered State: A Labor Law Critique of Codes of Corporate Conduct» (2000) 8 Ind J Global Legal Stud 401 at 412, 418.
[108] The inclusion of a code of conduct in a contract between Wal-Mart and its suppliers has been interpreted as a promise to Wal-Mart that work will be performed according to the standards set in the code of conduct. Violations of these standards give Wal-Mart the right to cancel the suppliers' contract while giving absolutely no rights to the workers employed by the suppliers: *Doe v Wal-Mart Stores, Inc* 572 F 3d 677 (9th Cir 2009).
[109] Renée-Claude Drouin, «Promoting Fundamental Labor Rights through International Framework Agreements: Practical Outcomes and Present Challenges» (2010) 31 Comp Lab L & Pol'y J 591, at 308. For an illustration see *Nike v. Kasky*, 02 C.D.O.S. 3790, May2 2002.
[110] Muhammad Azizul Islam and Ken Mcphail, « Regulating for Corporate Human Rights Abuses : The Emergence of Corporate Reporting on the ILO's Human Rights Standards within the Global Garment Manufacturing and Retail Industry » 2011 (22) *Critical Perspectives on Accounting* 790, at 809.

adhering to a constraining code of conduct and those which do not share this constraint leads firms to favour standards that are less costly and have little impact on the product cost and management. Moreover, the volatility of consumers' concerns can lead firms to abandon the rigorous application of a code of conduct which does not produce the expected benefits in terms of developing customer loyalty.[111]

Overall, the implementation of codes of conduct can ensure the protection of workers throughout some networks of production but it cannot provide a universal recognition of the human dignity of workers because their effectiveness varies according to product markets.

2. The protection of workers' dignity through the responsibilization of the employer

The attribution of responsibilities to employers for working hazards is another function of labour law[112]. Through a number of labour laws, employers are made responsible for physical, financial and social risks linked to work[113]. The attribution of responsibility to employers through health and safety regulation is the most obvious of such provisions but it is not the only one. For instance, laws protecting workers from unjust dismissals or requiring advance notice of lay-offs make employers responsible for the financial risks related to the employment status. Moreover, employers are increasingly held responsible of providing and maintaining a workplace free from harassment[114].

The ascription of responsibility for work-related risks is often presented as a way to limit externalities[115] produced by the employment relationship by imposing on employers the cost of working hazards and of their prevention. But responsibility for working hazards could also be envisioned as a protection of workers' human dignity. The employer's accountability for working hazards is tantamount to the imposition of a responsibility to

---

[111] S Prakash Sethi et al, « Mattel, Inc. : Global Manufacturing Principles (GMO)- A Life-Cycle Analysis of a Company-Based Code of Conduct in the Toy Industry » (2011) 99 Journal of Business Ethics 483 at 493, 515.

[112] Marie-Laure Morin, « Le droit du travail face aux nouvelles formes d'organisation des entreprises », (2005) 144 :1*Revue internationale du travail* 5 at 13.

[113] *Id* at 13-14.

[114] The prohibition of harassment was first implemented through human rights legislation prohibiting discrimination in the workplace: see for instance in Canada: *Robichaud v. Canada* [1987] 2 SCR 84. It is now extended in many jurisdictions to the prevention and prohibition of harassment regardless of its link with a recognized ground of discrimination. See for instance, in Quebec: 81.19 Loi sur les normes du travail, L R Q c. N-1.1; in France: L1152-4 *Code du travail* as modified by LOI n°2012-954 du 6 août 2012 - art. 7.

[115] Alan Hyde, « What is Labour Law?» *in* Guy Davidov and Brian Langille, *Boundaries and Frontiers of Labour Law*, Portland, Hart, 2006, 37, at 54-57.

care[116] for workers who put their physical, emotional and financial security at risk by entering a relationship based on subordination. Responsibility for economic downturns through advance notice of lay-offs and just cause provisions are acceptance that, for workers, employment represents more than an exchange of labour for wages but is also an important part of their identity[117]. A similar case could be made about the responsibility of employer for workplace harassment, which may cause great psychological distress and dignitary harm[118] to workers.

In this sense, the higher responsibilities ascribed to employers are to be seen as a corollary of their power to directly impact workers' security and the corresponding vulnerability of workers[119]. Employers cannot foster indifference for human suffering that they are in a position to alleviate without negating human dignity. Human dignity is harmed when someone who could act to protect another human being chooses to ignore the other's plight[120]. In what constitutes a fundamentally unequal relationship between workers and their employer, the imposition on the most powerful one of a responsibility to care for the more vulnerable one compensates the structural inequality between the two.

In production networks, as was noted previously, the power held by the hub-firms no longer coincides with the extent of their legal responsibilities toward the workers who contribute to their economic performance.[121] The emergence of corporate social responsibility in this context is seen as a response to the inability of state law to hold firms accountable to the workers that contribute to their wealth. CSR makes it possible to reconnect the hub firm with its workers throughout the value chain.

---

[116] We are here referring here to the general exigency of care that derives from the principle of human dignity, not to the specific duty to care devised by corporate law and linked to the fiduciary relationship.

[117] David C Yamada, «Human Dignity and American Employment Law» (2008) 43 U Rich L Rev 523, at pp 558-559.

[118] *Id*, at p 562.

[119] The principle of proportionality has been recognized in the *Ruggie Report* (Principle 14). On the link between power and responsibility in working relations see : Yossi Dahan, Hanna Lerner and Faina Milman-Sivan, « Global Justice, Labor Standards and Responsibility » (2011) 12 Theoritical Inq L 439 at 457-458; Guy Davidov, «The Principle of Proportionality in Labor Law and its Impact on Precarious Workers », (2012) 34 Comp Lab L & Pol'y J 63. See also generally; Amartya Sen, *The Idea of Justice*, Cambridge, Belknap Press, 2009, at 205; Immanuel Kant, *The Metaphysics of Morals, II, Doctrine of the Elements of Ethics*, ed by Mary Gregor, Cambridge, Cambridge University Press, 1996 at ss 29.

[120] Sandra Liedenberg, « The Value of Human Dignity in Interpreting Socio-Economic Rights » (2005) 21 SAJHR 1 at 12.

[121] Alain Supiot, « Fragments d'une politique législative du travail », [2001] Droit social 1151.

The rise in CSR has made it socially unacceptable for corporate leaders to know as little as possible about the number and identity of their suppliers[122] – a strategy they commonly adopted in the 1990s. CSR conveys the idea that firms heading production networks must socially respond to the social and environmental conditions involved throughout the value chain of their products. Since CSR does not stem from state regulation, although it is based on some legal instruments,[123] its field is not limited to legal responsibility only. It is on this basis that CSR can justify the legitimacy of accountability demands that extend beyond the firm's legal boundaries. Yet, can CSR compensate for the impossibility of legally linking those who perform the work with those who have the real power to determine their working conditions?

Firms are made responsible through the promulgation of codes of conduct and code compliance inspections conducted in the different plants of the hub-firm's network. The idea underlying codes of conduct is to use the regulatory potential of transnational firms, which have already established the processes to control and coordinate the activities of their subcontractors, to provide workers with acceptable working conditions throughout the value chain.[124] Thus, codes of conduct help to link the hub-firm with other firms in its network. However, since they are modelled on private regulation, the possibility for these codes to contribute to making the hub-firm truly responsible for the working conditions prevailing in the network is limited.

Codes of conduct translate social expectations into contractual requirements imposed by hub-firms on the subcontracting firms in the network.[125] Codes of conduct are frequently integrated into the supply policies of transnational firms and are thus incorporated into the contracts they conclude with their subcontractors as obligations that the latter must undertake to comply with on pain of being excluded from the value chain.[126] By putting on the suppliers of hub-firms the obligation to respect the codes of conduct and the sanctions for failure to respect them (going as far as exclusion from the network), codes of conduct too often make the direct employers of workers bear the

[122]Orly Lobel, « Sustainable Capitalism or Ethical Transnationalism: Offshore Production and Economic Development », (2006) 17 Journal of Asian Economics 56,at 58.

[123]Guylaine Vallée, « Responsabilité sociale de l'entreprise et droit du travail » in Marie-France B.-Turcotte and Anne Salmon, ed, *Responsabilité sociale et environnementale de l'entreprise*, coll Pratiques et politiques sociales et économiques, Ste-Foy (Can), Presses de l'Université du Québec, 2005, 171, at 198-199.

[124] Cynthia Estlund, «Rebuilding the Law of the Workplace in an Era of Self-Regulation», in Brian Bercusson and Cynthia Estlund, ed, *Regulating Labour in the Wake of Globalisation: New Challenges, New Institutions*, Portland (Oregon), Hart Publishing, 2008, 89, at 99-100.

[125]Muhammad Azizul Islam and Ken Mcphail, « Regulating for Corporate Human Rights Abuses : The Emergence of Corporate Reporting on the ILO's Human Rights Standards within the Global Garment Manufacturing and Retail Industry » 2011 (22) *Critical Perspectives on Accounting* 790 at 802.

[126] See for instance *id* at 807-808.

sole responsibility for the latter's working conditions.[127] Sometimes this responsibility is even directly attributed to the workers of these employers since some firms provide for the discontinuation of the employment relationship when a clause in the code of conduct is violated.[128]

Moreover, the obligations set out in the codes of conduct only add to other obligations that the subcontracting firm must respect under threat of being excluded from the network, such as respecting delivery time, product quality and other specifications. Since hub-firms are not responsible for preventing or dealing with the violations of codes of conduct, nothing obliges them to take account of the difficulty for the subcontractors to provide workers with decent working conditions in the extremely competitive environment to which they are confined by the culture of just-in-time and cost minimization.[129]

Faced with the denouncing of degrading working conditions, hub-firms too often respond by cutting all links with the firm that does not respect the terms of their code of conduct, and even by relocating their production to another country. However, apart from the fact that nothing but the absence of a documented scandal indicates that better working conditions will prevail at the new subcontractor,[130] this practice has the effect of hitting with full force the very people who are subject to protection: the workers.[131] This cut-and-run practice has been severely criticized and is no longer systematically applied. However, the implementation of practices that are more respectful of workers and the local communities in which the subcontractors that have violated the codes of conduct are established requires the active involvement of public authorities,[132] inter-state agencies[133] and local communities.[134] Here again, private

---

[127] *Id,* at 808. As an illustration, in the context of the inability of Canadian minimal wages law to reach over the immediate employer and hold responsible contractors for unpaid wages, see *Lian v Crew Group Inc*, 2001 Canlii 28063 (ON SC).

[128] See examples given in Emmanuelle Mazuyer, « La responsabilité sociale de l'entreprise et ses relations avec le système juridique » (2011) 26 :1 Canadian Journal of Law and Society 177 at 186.

[129] For instance see S Prakash Sethi et al, « Mattel, Inc. : Global Manufacturing Principles (GMO)- A Life-Cycle Analysis of a Company-Based Code of Conduct in the Toy Industry » (2011) 99 Journal of Business Ethics 483 at 514). For further development on the problem of risk sharing see Renée-Claude Drouin, « Responsabiliser l'entreprise transnationale : Portrait d'une normativité du travail en évolution », in Pierre Verge (ed*.), Droit international du travail : Perspectives canadiennes*, Cowansville (Can), Éditions Yvon Blais, 2010, 283 at 306. See for instance *Doe v Wal-Mart Stores, Inc* 572 F 3d 677 (9th Cir 2009).

[130] Peter Lund-Thomsen, « The Global Sourcing and Codes of Conduct Debate : Five Myths and Five Recommendations » (2008) 39:6 Development and Change 1005 at 1015.

[131] Isabelle Daugareilh, «La responsabilité sociale des entreprises, un projet européen en panne» (2009) 51 Sociologie du travail 499 at 513.

[132] Peter Lund-Thomsen, « The Global Sourcing and Codes of Conduct Debate : Five Myths and Five Recommendations » (2008) 39:6 Development and Change 1005 at 1016.

regulation alone cannot make the client-firms operating as a network responsible for their actions.[135]

Thus, it is found that CSR puts in place only a limited process of accountability for firms operating within the network. Although this process of making firms responsible for working conditions extends beyond their legal boundaries, it cannot alone commit firms to participate in preventing and repairing the damages suffered by workers, which nevertheless constitutes the definition of a real accountability of client-firms.[136]

3. Collective action and human dignity

The formalisation and protection of collective action of workers generally and collective bargaining specifically constitute another fundamental function of labour law. The importance of collective action in labour law cannot be overestimated. Without collective action, labour laws' protections and employers' responsibilization would never have been enacted[137]. Collective action provides workers with a mechanism to counterbalance employers' power to dictate working conditions[138]. Collective action is protected by fundamental rights and freedom such as freedom of association[139] and freedom of speech[140]. Freedom of association and the right to bargain collectively also constitute one of the four Fundamental Principles and Rights at Work affirmed by the ILO in 1998[141].

But collective action and collective bargaining are not important solely because of their instrumental function but also for the respect for workers' autonomy that they foster[142]. We have seen how the dimension of autonomy is central to human dignity and how it is

---

[133] Adelle Blackett, «Global Governance, Legal Pluralism and the Decentered State: A Labor Law Critique of Codes of Corporate Conduct» (2000) 8 Ind J Global Legal Stud 401 at n 103. On the result brought by concerted campaign see Orly Lobel, « Sustainable Capitalism or Ethical Transnationalism: Offshore Production and Economic Development », (2006) 17 Journal of Asian Economics 56, at 58-59.

[134]Peter Lund-Thomsen, « The Global Sourcing and Codes of Conduct Debate : Five Myths and Five Recommendations » (2008) 39:6 Development and Change 1005 at 1010-1011.

[135] Virginie Forest and Christian Le Bas, « Responsabilité sociale des enterprises et régulation économique » in Bernard Baudryand Benjamin Dubrion, ed, *Analyse de la firme aujourd'hui : enjeux et perspectives*, Paris, Éditions La Découverte, 2009, 299 at 315.

[136]Marie-Laure Morin, « Le droit du travail face aux nouvelles formes d'organisation des entreprises », (2005) 144 :1*Revue internationale du travail* 5 at 14.

[137] Alain Supiot, «Revisiter les droits d'action collective», [2001] Droit social 687 at 687.

[138] Pierre Verge and Guylaine Vallée, *Un droit du travail? Essai sur la spécificité du droit du travail*, Cowansville (Qc), Éditions Yvon Blais, 1997, at 37-38

[139] *International Covenant on Civil and Political Rights*, 999 UNTS 171, art 22 par 1.

[140] *Id*, art 19.

[141] *Declaration on Fundamental Principles and Rights at Work*, 18 June 1998, 37 I L M 1233, art 2.

[142] On the intrinsic importance of collective bargaining see Guy Davidov, «Collective Bargaining Laws: Purpose and Scope» (2004) 20:1 International Journal of Comparative Labour Law 81, at 87.

directly threatened by the legal and economic subordination intrinsic to the employment relation. Collective action introduces a ground where workers are allowed to articulate collectively the autonomy that they can't express individually[143]. It provides them the individual autonomy to act collectively[144] and, by doing so, empowers them with the positive freedom to shape their own life[145]. Collective bargaining introduces the process of deliberation where workers have the possibility to voice in their own terms what is important for them[146] and entails the recognition of workers as agents with the moral autonomy to reason and to participate in debates.

The organization of production through networks has severely weakened the capaciy of workers to act collectively. While some production site retain through unionization the ability to bargain collectively, their localized actions are no longer sufficient for grasping and counterbalancing the power of the network which results from a combination of the power of hierarchical organization with the economic power provided by unequal market competition. It is within that context that CSR provides new avenues for collective action.

The development of CSR has enlarged the circle of individuals authorized to act collectively[147] and has allowed workers to step beyond the framework delimited by labour law where the collective expression of demands is limited to the parties to a collective agreement, when an agreement is negotiated.[148] The flexibility of CSR, of its definition and mobilization methods make an enlarged alliance possible between consumers, investors, workers and community organizations around campaigns

---

[143] Pierre Verge and Guylaine Vallée, *Un droit du travail? Essai sur la spécificité du droit du travail*, Cowansville (Qc), Éditions Yvon Blais, 1997, at 110.

[144] Alain Supiot, *Critique du droit du travail,* 2nd ed, Paris, Presses universitaires de France, 2007, at 140-141.

[145] Simon Deakin, «Social Rights in a Globalized Economy» in Philipe Alston, ed, *Labour Rights as Human Rights*, Oxford, Oxford University Press, 2005, 60; Hugh Collins, «Theories of Rights as Justifications for Labour Law» in Davidov and Langille, *Idea*, 137 at 151; Judy Fudge, «Labour as a 'Fictive Commodity': Radically Reconceptualizing Labour Law» in Davidov and Langille, *Idea*, 120 at 133; Brian A Langille, « Core Labour Rights- The True Story (Reply to Alston) » (2005) 16 EJIL 409 at 428-429.

[146] Judy Fudge, «Labour as a 'Fictive Commodity': Radically Reconceptualizing Labour Law» in Davidov and Langille, *Idea*, 120, at 133; Guy Davidov, «Collective Bargaining Laws: Purpose and Scope» (2004) 20:1 International Journal of Comparative Labour Law 81 at p 86. On the link between deliberation and agency see generally Amy Gutman, « Introduction » in Michael Ignatieff, *Human Rights as Politics and Idolatry*, Princeton, (NJ), Princeton University Press, 2003, vii, at xxvi-xxvii.

[147]André Sobczak, «Are Codes of Conduct in Global Supply Chains Really Voluntary? From Soft law Regulation of Labour Relations to Consumer Law», (2006) 16:2 Business Ethics Quarterly 167 at 172-174.

[148]Guylaine Vallée, « Les codes de conduites des entreprises multinationales et l'action syndicale internationale : réflexions sur la contribution du droit étatique » (2003) 58 :3Relations industrielles 363 at 379-380.

demanding greater corporate social responsibility.[149] Moreover, CSR offers actors new resources for collective action (labelling, blacklisting, boycotting) which are modelled on network organizations.[150] Boycotting and secondary picketing are means of action which are directly aimed at the source of vulnerability of the network firm unified by its image, brand or products.[151] However, to what extent are collective action practices instituted by CSR respectful of workers' autonomy and are they a factor of empowerment that nurtures workers' agency?

The impact of new forms of collective action on the human dignity of workers cannot be assessed independently of how CSR is implemented throughout the production chain. In this respect, a fundamental distinction must be made between multilateral codes of conduct and unilateral ones. While the vast majority of codes of conduct are implemented unilaterally by transnational firms, an increasing minority, referred to as international framework agreements[152], is the product of multilateral negociation between a transnational firm and its various global union federations. The bargaining process that is at the heart of international framework agreements gives workers the «opportunity to express their needs and play a part in the creation of labor regulation»[153] instead of being mere «beneficiaries of rights»[154].

By comparison, unilateral codes of conduct entail a more «paternalistic approach»[155] to the protection of workers' rights. In addition to their unilateralllly devised content, the process of compliance is also devoid of possibilities for workers to act collectively. Code compliance is guaranteed by inspections conducted either by employees of the hub-firm or independent auditors. Unions and local human rights advocacy groups are rarely involved in this process.[156] The most common monitoring practice is thus modelled to a greater extent on a managerial rather than a participatory model.[157]

---

[149]Orly Lobel, « Sustainable Capitalism or Ethical Transnationalism: Offshore Production and Economic Development » (2006) 17 Journal of Asian Economics 56 at 62.

[150] Alain Supiot, «Revisiter les droits d'action collective» [2001] Droit social 687 at 687- 688.

[151]Guylaine Vallée, « Les codes de conduites des entreprises multinationales et l'action syndicale internationale : réflexions sur la contribution du droit étatique » (2003) 58 :3Relations industrielles 363, at 381.

[152] Konstandinos Papadakis, ed, *Shaping Global Industrial Relations: the Impact of International Framework Agreements*, Basingstoke (UK), Palgrave Macmillan, 2011; Renée-Claude Drouin, «Promoting Fundamental Labor Rights through International Framework Agreements: Practical Outcomes and Present Challenges» (2010) 31 Comp Lab L & Pol'y J 591. In 2010 there was more than 80 IFAs: Papadakis, *id*.

[153] Renée-Claude Drouin, «Promoting Fundamental Labor Rights through International Framework Agreements: Practical Outcomes and Present Challenges» (2010) 31 Comp Lab L & Pol'y J 591at 611.

[154] *Id* at 611.

[155] *Id* at 593.

[156]Peter Lund-Thomsen, « The Global Sourcing and Codes of Conduct Debate : Five Myths and Five Recommendations » (2008) 39:6 Development and Change 1005 at 1013; Muhammad Azizul Islam and

This way of proceeding is detrimental to workers for several reasons. First, the issues monitored will not necessarily be those with which the workers are most concerned.[158] Moreover, the attention and power granted to monitoring agencies can have the effect of "crowding out" the efforts of local worker associations.[159] Lastly, the practice of managerial monitoring has the effect of focusing inspections on areas that can be easily verified and standardized, such as health and safety standards,[160] to the detriment of more qualitative issues such as freedom of association and quality of labour relations.[161]

The dynamic of control and compliance central to monitoring does not redress the inequality in power between workers and client-firms – for some, monitoring actually constitutes an extension of managerial power[162] - and, in addition, it imperils the very quality of the monitoring conducted. In fact, without assessing the quality of working conditions and labour relations, the practice of coaching workers whereby the manufacturers dictate to the workers the appropriate answers to be given to the inspectors, and double bookkeeping systems cannot be detected.[163]

Thus, it is observed that, at the risk of stating the obvious, with regard to making firms responsible for working conditions prevailing throughout the value chain, the

---

Ken Mcphail, « Regulating for Corporate Human Rights Abuses : The Emergence of Corporate Reporting on the ILO's Human Rights Standards within the Global Garment Manufacturing and Retail Industry » 2011 (22) *Critical Perspectives on Accounting* 790, at 800.

[157] For a detailed account of the empowerment brought by a participatory type of monitoring see Mark Barenberg, «Toward a Democratic Model of Transnational Labour Monitoring?» in Brian Bercusson and Cynthia Estlund, ed, *Regulating Labour in the Wake of Globalisation: New Challenges, New Institutions*, Portland (Oregon), Hart Publishing, 2008, 89, at 37-65.

[158] Peter Lund-Thomsen, « The Global Sourcing and Codes of Conduct Debate : Five Myths and Five Recommendations » (2008) 39:6 Development and Change 1005 at 1013.

[159] Dara O'Rourke, «Outsourcing Regulation: Analyzing Nongovernmental Systems of Labor Standards and Monitoring» (2003) 31:1 Policy Studies Journal 1-28, at 22. See also André Sobczak, «Are Codes of Conduct in Global Supply Chains Really Voluntary? From Soft law Regulation of Labour Relations to Consumer Law», (2006) 16:2 Business Ethics Quarterly 167, at 177-178.

[160] O'Rourke, *id*, at 23.

[161] As Blackett expresses it: « Labor standards are quantified, but labor relations are overlooked. » (Adelle Blackett, «Global Governance, Legal Pluralism and the Decentered State: A Labor Law Critique of Codes of Corporate Conduct» (2000) 8 Ind J Global Legal Stud 401, at p 423)

[162] *Id*, at 422. Renée-Claude Drouin, « Responsabiliser l'entreprise transnationale : Portrait d'une normativité du travail en évolution », in Pierre Verge (ed.*), Droit international du travail : Perspectives canadiennes*, Cowansville (Can), Éditions Yvon Blais, 2010, 283 at 303. On the power given by monitoring see generally Larry Catà Backer, «Global Panopticism : States, Corporations, and the Governance Effects of Monitoring Regimes»(2008) 15 Ind J Global Legal Stud 101.

[163] Regarding the existence of these practices see: Peter Lund-Thomsen, « The Global Sourcing and Codes of Conduct Debate : Five Myths and Five Recommendations » (2008) 39:6 Development and Change 1005 at 1013; S Prakash Sethi et al, « Mattel, Inc. : Global Manufacturing Principles (GMO)- A Life-Cycle Analysis of a Company-Based Code of Conduct in the Toy Industry » (2011) 99 Journal of Business Ethics 483 at 512.

participation of workers is crucial. The importance of dialogue between client-firms and workers cannot be underestimated.[164] In fact, this criterion alone could help to differentiate between the numerous initiatives aimed at making firms responsible for the working conditions which prevail in a production network.

Conclusion

The aim of this paper has been to evaluate the potential of CSR in general and codes of conduct in particular to fulfill the basic functions of labour law. Corporate social responsibility is a new regulatory instrument that does offer some potential to compensate for labour law's inability to reach workers throughout production networks. As a new tool, CSR has not reached its definitive form nor shown its full potential. Considering this malleability of CSR, it is all the more essential to express clearly the essential tasks for which it is needed with regard to workers's protection.

This paper has argued that the principle of human dignity could provide the normative and functional link required for the fine tuning of corporate social responsibility as a tool to enhance workers' protection. We have argued in favour of a multi-dimensional comprehension of human dignity which integrates exigencies of recognition, care and respect. Our analysis has confirmed the importance of collective action in securing human dignity at work, a dimension of workers' protection that is sometimes overlooked by corporate social responsibility.

Our preliminary study of the potentiality of codes of conduct to fulfill labour law's basic functions shows that CSR cannot by itself provide a panacea to the many challenges brought by the organisations of firms through networks of production. Such a finding is in line with the increasing recognition, both by labour law scholars[165] and by CSR scholars[166], that corporate social responsibility and state law are complementary, not alternative, regulatory tools. What still needs to be defined is their optimal mix.

---

[164] Dickerson and Sobczak arrive both at this same conclusion : Claire Moore Dickerson, «Transnational Codes of Conduct through Dialogue : Leveling the Playing Field for Developing-Country Workers», (2001) 53 :4Florida Law Review 611at 667; André Sobczak, *Réseaux de sociétés et codes de conduite : un nouveau modèle de régulation des relations de travail pour les entreprises européennes*, Paris, LGDJ, 2002, at 318.

[165] Kevin Kolben, « Transnational Labor Regulation and the Limits of Governance» (2011) 12:2 Theoritical Inquiries in Law 403; Judy Fudge, «The Carthography of Transnational Labour Law: Projection, Scale and Symbolism» in Blackett and Lévesque, ed, *Social Regionalism in the Global Economy*, Routledge Studies in Employment and Work Relations in Context, Routledge, N Y, 2011, 299, at 306.

[166] Michael Kerr, Richard Janda &Chip Pitts, *Corporate Social Responsibility: A Legal Analysis* (Markham Ont: LexisNexis, 2009) at 103-104.