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*The peace of work agreement :
The emergence and enforcement of a swiss
labour market institution*

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THE PEACE OF WORK AGREEMENT:
THE EMERGENCE AND ENFORCEMENT OF A SWISS LABOUR MARKET INSTITUTION

Abstract :

This paper deals with a specific institution of the Swiss labour market called the work peace agreement. It notably appeared in 1937 in the machine and metal work industry. First, the paper portrays the characteristics of the agreement and work peace clauses in Switzerland. Second, the paper describes the emergence of the 1937 agreement, which was a big step in Swiss industrial relations. The agents' strategies and external economic pressure which provoked the move to cooperation are the main factors stressed. Third, the problem of the agreement persistence is addressed. As benefits from the convention generate a context of public goods allocation, finally the paper scrutinises the free rider problem which is expanding when the agreement is continuously signed.

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LA CONVENTION DE PAIX DU TRAVAIL EN SUISSE,
NAISSANCE ET MISE ŒUVRE D'UNE INSTITUTION DU MARCHÉ DU TRAVAIL

Résumé :

La communication concerne une institution particulière du marché du travail suisse nommée la paix du travail. Elle est apparue en 1937 notamment dans l'industrie des machines et métaux. En premier lieu la communication détaille les caractéristiques de la paix du travail en Suisse. En second lieu elle décrit la naissance de la Convention en 1937. La stratégie des agents aussi bien que l'impact de facteurs extérieurs sont analysés. Les forces et stratégies qui ont contribué à permettre la reconduction de la convention sont étudiées dans la troisième section. Enfin, la communication examine le problème que la stratégie opportuniste pose aux cocontractants. Les solutions mises en œuvre pour le surmonter sont détaillées.

THE PEACE OF WORK AGREEMENT:
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Two basic issues in the literature of economic institutions are related to the creation and persistence of institutional rules. A naturalist option like Hayek's (1967) would presume that they appear spontaneously and are then selected on an efficiency basis. However, the concept of a spontaneous efficient order is far from obvious (Vandberg 1986), even if spontaneous conventions may arise (Sugden 1989). Rules may instead emerge from an intentional arrangement between several agents, most likely collective ones, as stressed by Granovetter (1994). But even if the need of an institution, or a particular design, is recognised by the participants, reaching an agreement is quite a difficult process. Some external impulsion, a change in the environment, or some kind of device is often required.

Once an institution is built, theoretical concerns shift to ask how it persists and operates. Darwinism offers remarkable answers (Hodgson 2002) with the selection process, but seems quite insufficient. The key should rather be sought in enforcement issues, because its *modus operandi* contributes for a considerable part to the endurance of an institution.

Three main categories of enforcement may be identified, depending on what kind of institution is considered.

First, if institutions are values and habits, socialisation is the basic operating process. Second, if institutions are official rules, credibility relies on laws and courts. Third, when institutions derive from private arrangements or agreements, enforcement cannot essentially depend on either socialisation or state laws. Such agreements, which require cooperation, are exposed to be repeatedly denounced. Single behaviours, as for instance free riders', may impair such institutions. Indeed, institutional and evolutionary literature gives some clues to overcome this problem. The birth and persistence of institutions is alleviated by definite circumstances and also by their efficiency (capacity to reduce transactions costs). Furthermore, efficiency is increased by a selection process that, in turn, strengthens the institution. It is unquestionably true but partially inadequate, especially in the third case. *Ex ante*, efficiency is merely alleged; it may not be experienced before the functioning of an institution. Unless forced to, individuals could not willingly enter a precarious selection process where they could undergo some trouble. In other words, uncertainty and risk aversion could halt the process of institution building before it begins. Moreover, achieving collective efficiency may not be crucial for personal behaviours. Hence, there are missing elements. My hypothesis is that a combination of compulsion and benevolence may be the missing factor. Besides, the concept of institution is undoubtedly tightly related to the notion of constraint (North 1997).

The paper intends to explain and exemplify the respective roles of deliberate human action, constraint and benevolence, in the birth and persistence of some cooperative institutions (third variety). The labour market gives many examples of this type of institutions (Shanahan 1999, Bazzoli, Kirat, Villeval 1994) and as underlined by Ménard (2001, 2003), case studies are of much value for institutional and evolutionary analyses. The paper will therefore present a case study related to a Swiss labour market institution, which may be considered as private, called the *peace of work agreement*.

At the beginning of the twentieth century, Switzerland encountered numerous severe labour conflicts, even a general strike occurred in 1918. Eventually, industrial relations

became so peaceful that, within the OECD, Switzerland turned out to be the country with the lowest labour conflict rate (see also Schoenenberger & Zarin-Nejadan 2001 p. 35). This transformation is merely to be connected with the emergence and diffusion of collective labour agreements and specifically including work peace clauses. This type of agreement appeared in 1937 in the machine and metal work industry and has lasted until now, spreading to almost all industrial sectors. The peace of work is now even taken into consideration in the Swiss Constitution. Collective agreements including peace clauses represent an institution of the Swiss labour market which has no true counterpart in other OECD countries. Indeed, a lot of countries do have collective labour agreements, sometimes including peace clauses, but in none do they have the particular features which are to be met in Switzerland (Aubert 1981). Moreover, in many ways the peace of work clauses have been regarded as a key element of the steady economic performance of Switzerland, in the sense of North's (1991) preoccupations.

The paper is structured as follows. First, it describes the Swiss agreement characteristics that depart from standard work peace clauses. Second, it analyses the emergence of the 1937 agreement and what brought about the move to cooperation. Third, the permanence problem is addressed. The discussion shows that cooperation may not stem only from expected or observed mutual advantages. Fourth, the paper analyses how the workers' potential opportunistic behaviour has been held up.

1 THE WORK PEACE AGREEMENT, A SPECIFIC INSTITUTION OF THE SWISS LABOUR MARKET

1.1 PEACE OF WORK ARRANGEMENT AND PEACE CLAUSE

Unions endorsed the first labour contract including peace clauses in 1937, first in the watchmaker industry, next in the metalwork industry. This latter convention became famous and well known as the work peace agreement.

From an analytic point of view, it is helpful to distinguish the 1937 agreement from the standard principle of peace clauses or compulsory arbitration that may be found in other countries (Shanahan 1999).

The agreement signed in the metalwork industry actually set up a dispute resolution procedure that included a peace clause. Its purpose was to prevent both parties from either using lockout or strike. The settlement procedure encompassed three levels. At the last one a conciliation court was to intervene, its resolutions were mandatory for the two parties. This procedure was not a true labour contract, which should determine wages and working rules. In fact, negotiations about these topics took place at the local firm level. However commonly since 1937, negotiations about wages and labour rules have occurred simultaneously with the renewal of the agreement. The nature of the agreement has however evolved in the 1970's and is now a true labour contract.

The peace clause is both common and long-standing in Swiss labour contracts. Aubert (1981) finds its first origin in court resolutions in 1919. This clause halts every struggle action during the period of the agreement. In 1956, legislators conferred this conventional clause a legal form, which they modified in 1970.

The Swiss code of obligation pronounces:

“(1) The parties shall make sure they conform to the convention; to this respect the association shall intervene toward their members using if necessary all the power given to them by their statutes and the law.

(2) Each party shall preserve the peace of work; in particular, it shall avoid any means of struggle pertaining to matters that have been settled in the agreement. The preservation of peace requirement is unrestricted only if parties have deliberately specified it.”

The requirement of peace may be narrow or unrestricted (absolute). In the first case, fighting measures are only forbidden against matters that have been mentioned in the contract. Disputes are allowed on other subjects. The unrestricted clause eliminates all motives of fight during the extent of the contract. Since there was still some uncertainty about whether clauses were restricted or not, a 1971 act clarifies the issue by pronouncing a general restricted clause presumption.

The peace clause has been increasingly employed in the labour contracts since the beginning. The 1937's agreement constitutes a large step toward this extension. Its main contributors will indeed later on have an essential role at the federal level, whether on the union side as member of the Federal Council (C. Ilg), or as chairman of the Swiss Federal Union (A. Steiner). On the entrepreneurial side, Ernst Dubi will also play a key role. In 1939, 504 contracts were signed, only 25 % included a work peace clause; the proportion rose to 71 % in 1977; 67 % including an unrestricted peace clause, 4 % a formally restricted one; the rest was unspecified, which means also restricted (Aubert 1981 p. 214). In 1992, 1,146 contracts were known covering roughly 40 % of the actually working population (OCDE 1993). Until now, these figures have not significantly changed (Freyermuth 1994 ; Schoenenberger Zarin-Nejadan 2001).

1.2 AGREEMENT AND CONTRACT

In the Swiss institutional pattern, the collective agreement has a binding power close to a real contract, and gives a mandatory power over the two parties. Unlike the French or Italian cases, the agreement is not a temporary and unstable result of a balance of power. It is a true commitment for a definite period. The agreement may be extended by the federal state to the whole industry. Since 1956 a legal reform has expanded this eventuality by lifting the necessity of particular historical circumstances, which was previously required. The extension of the peace clause goes hand in hand with the growing involvement of the federal state in labour matters. Interference or mediation of the state always concludes with a peace clause. Thus, local unions or entrepreneurs cannot argue against the federal settlement in any ways.

The peace obligation has a double juridical effect both “negative” and “positive”.

The negative effect forces the parties to avoid hostile behaviours. The positive effect commits them to preserve the peace by all measures that are in their range of capacities, especially towards their members. Since unions and not members sign agreements, local organisations could feel uncommitted. However, individuals are to implement agreement signed by the organisation they belong to. Even non-members have to abide by agreements, when they have been extended by the federal state. The legal responsibility of the organisations parties to the contract is involved by their local officials. When some of the members do not comply with the commitments of their union, the union could be prosecuted sentenced. Yet, if the moral obligation is real, the legal one has somehow limited effects. In 1977, a Bern court ordered a union to prevent some of its members from going into a labour conflict, under risk of a fine, which could reach 20 000 FS. The union passed on the court demand to its local branch, which nevertheless went on strike. The federal union endured no penalty because the court found that it had fulfilled its obligation as regarded the contract. Finally, all depends on what has been signed.

Since the convention with peace clause has reached a widespread and even compelling framing function (mentioned in the Swiss Constitution), since it has lasted such a long period, it has acquired the status of a Swiss labour market institution.

2 THE EMERGENCE OF THE PEACE OF WORK AGREEMENT IN THE METALWORK INDUSTRY: FROM A NON COOPERATIVE BEHAVIOUR TOWARD A COOPERATIVE ONE.

The signature of the peace agreement symbolises the move from a situation of conflicts to a cooperative one. As the famous metalwork industry agreement takes a great place in the history of the Swiss labour market, I shall use it as an archetype to describe the global mutation of the behaviours.

The birth of the metalwork agreement

Peace clauses already existed in the case law, but it would not have been self-sufficient to spread them. They were not well considered because they were imposed by courts. In 1919 a federal bill even suggested a mandatory peace clause following each federal economic intervention. This proposal was rejected by a popular vote. We can see that the spreading of peace clauses did not occur spontaneously.

The birth of the peace clause as an institution is thus a specific phenomenon. It was born because of the combination of several distinctive factors which were both internal and external to the participants. On one side, the will and strategies of labour union and industry representatives got closer. On the other side, the environment played an important role. The social and economic situation of the 1930s triggered it off. The impetus came from the threat of interference from the federal state. Indeed, the agreement is truly the result of a free choice from the participants, but made under the pressure of a specific context. I shall describe these different aspects in the following sub sections.

2.1 THE AGENTS' STRATEGIES

Unions: to be recognised as genuine delegates

On the union side, leaders wanted to secure the official representation of the workers, while some other unions were rising.

In July 1907 took place a first meeting between representatives from ASM¹ (entrepreneurs' association) and FOMH² leading workers' union. The subject of this "strictly private" gathering was to initiate a conciliation scheme confronted to conflicts. Hopes were modest since during the general assembly of the ASM next year (1908), one leader declared "we expect from the negotiation nothing much that ceases fire, but not the peace. Negotiation cannot settle crucial dispute, only fight may definitely decide". During this period as Lambelet (1993 p. 174) observes, contrary to unions many of the entrepreneurs did not wish to reach

¹ Swiss Alliance of Machine and Metalwork Companies, founded in 1905. Since 1999 it is represented through the group Swissmem (Swiss companies of machine, electric equipment and metalwork).

² The Federation of Metalworkers was founded in 1888; it became the Federation of Metalworkers and Watchmakers in 1915; and afterward the Federation of Metalwork and Watch Workers Industry in 1972. It merged in October 2004 with several other service industry unions to become UNIA, a multi industry federation. To make things easier, I will preserve the old name all along the paper: FOMH.

agreements. Unexpectedly, the aforementioned meeting had nonetheless some outcomes. Taking the opportunity of a strike for the 50 and half hours of work in a week, the central comity of the FOMH asked its local groups to comply with the 1907 agreement: “we take the occasion to request every colleague to strictly conform to the agreement we orally convened with the ASM and not to go on strike or use forbidding measures before discussions have been held between the two organisations. During the current negotiations (...) we should avoid every decision which could be considered as an infringement of the given parole” (Humbel 1987 p. 19).

The 1928 FOMH congress approved the principle of a collective agreement including a peace clause, with this justification: “Our relationship with the ASM is too loose. To be crude, we are still fighting for recognition. (...) If we truly want a collective agreement we have on our side to concede them to give up strike”. Entrepreneurs rejected the proposal with the following reason: “A high number of our workers is unorganised. Our interest is not to bind ourselves with a union which would therefore be untitled to endorse the protection of all workers”.

Indeed even if the Swiss law had recognised unions and collective bargaining, these recent changes were still discussed. For instance, a PhD thesis in law published in 1936, in Geneva, was severely criticising the unions’ position and collective agreements: “the union is progressively becoming a state inside the state. Its members are to pay a fee: this is the union as a fiscal organisation. It is untitled to settle its own court and arbitral procedure: this is the union as a judge. It pronounces against its members penalties that may range from a fine to being dismissed, the latter often equivalent to an economic sentence: this is the union as a public lawyer and executive power (Guisan 1936 p. 170) (...). We now may, with no doubt, declare that the 322 art. and 323 art. [pertaining to collective bargaining] should be expelled from our Obligation Code, because they are improper to our positive law scheme and also because of their destructive effects on the sound existence of the state and the moral development of man” (ibid. p. 175).

Nevertheless, another meeting attempt reached success in 1937. The FOMH committed itself to influence other unions to support the project of an agreement. The main FOMH responsible explained: “If we reach an agreement in these relatively easy times, it should also be workable when times become hard [war is threatening Europe]. (...) To my opinion, this agreement is feasible only if strike is absolutely prohibited. It should be based on good faith”. The reference to good faith should be noticed.

Keeping a prominent position

Another concern of the FOMH came from the birth and development of other unions, especially the FCOMH (Christian federation), the USSA (Independent federation)³ and a red union in the 1920’s. Its aim was then to keep its position of major workers representative. Taking the initiative of an agreement would authorise it to insure its prominence. A lot of statements or facts corroborate the competition between unions and the strategy of the FOMH. In 1919, the FCOMH annoyed by a gathering between the ASM and the FOMH engaged itself in an overbidding strategy. In 1920 the FOMH discussed secretly to consent a collective agreement to avert this possibility to the FCOMH (Humbel 1987 p. 26). In 1928, FOMH made clear its will to become the exclusive interlocutor of the firms. A representative asserted: “negotiation in presence of opposite organisations should be rejected” (ibid. p 32). In 1929, an FOMH official declared: “We don’t have any relation with FCOM. Our conscience makes us an obligation to reject any request from this organisation. Any contact with it should be

³ The Federation of Christian Metalworkers founded in 1905; the Swiss Alliance of Independent Unions founded in 1919.

considered as disgraceful” (ibid. p. 34). However, despite these severe stances, the FOMH was truly willing to serve as a mediator between firms and whole unions.

Employers: « a man’s home is his castle »

As it was previously mentioned, at first employers did not favour agreements with unions.

In fact, each owner wanted to remain sole responsible for their choices and fear of the union was strong. The 1918 general strike and the period of conflicts which followed then the second large wave of strikes in 1924, appeared to confirm these views. However, gradually with the growing strength of unions, the necessity to organise a solid frame for negotiations and to find reliable counterparts became inescapable. In 1907 ASM officials were surprised that in some occasions FOMH had to support class action launched by the rank and file against its will (Humbel 1987 p. 13). Competition between unions was also producing disadvantages. At the 1925 ASM congress, one of the delegates said: “the situation for firms and for us would be better if all workers were members of FOMH” (ibid. p. 30). Finally, after 1920 the goal of supporting moderate behaviours also contributed to a shift in the employer’s determination.

At last, employers granted to sign the work peace convention and concede the recognition of unions inside the firm. In counterpart, the union ensured reliability of social environment. Wage negotiations were still settled at the firm level, but the renegotiation of an agreement could yield work position improvements. ASM was to issue recommendations to its members. It was only after 1969 that each agreement included true mandatory clauses about workplace conditions thus becoming a proper collective contract.

2.2 A VERY URGING CONTEXT

The economic crisis and the rise of threats

FOMH officials facing a tough political and international context seemed convinced of their weakness, even with the growth of their members.

For instance, between 1929 and 1936, workers affiliation to the Swiss Union of Workers rose from 36 000 to 222 000 members (Andrey 1986 p. 745). Unemployment nevertheless increased with the economic crisis. Between 1924 and 1930 it was under 10 000, i.e 0.5% of the workforce. In 1932 it reached 40 000 and 124 000 in 1936, i.e. roughly 5% of the workforce. This very year, the metalwork industry fired one third of its employees as compared to 1929. In 1928, one FOMH official declared: “we are not able to impose upon employers a contract including obligations only for firms” (Aubert 1981 p. 171). The Unions’ representatives had also witnessed the loss of their correspondent in Italy and Germany. The feeling of weakness was also redoubled by a fear for the future of democracy. During the debate that led to the signature of the convention Ilg, one of the main FOMH responsible, asserted: «we must persuade workers that we will be threatened by fascism for still a long time» (Humbel 1987 p. 50). Union officials were also concerned with the possibility that the Federal State could impose corporatism. They were seeking a way to obtain official recognition from employers without falling under state control.

Preventing state intervention which would deny organizations any autonomy

The Swiss economic system, especially pertaining to the labour market is often portrayed as a flexible system (Blaas 1992 p. 366). One may point the paucity of federal regulation in industrial relations matters. However Lambelet (1988, 1993) suggests that the threat of federal intervention is the main factor which led to the agreement: “without the appropriate interference from an external agent (...) employers and employees wouldn’t probably have done the critical leap over opposition to cooperation (...)” (1993 p. 177).

To avoid federal interference is an aim shared by both workers’ unions and employers’ organizations.

On the one hand, the FOMH dreads to lose its autonomy. The eventuality that the federal state would impose guilds union inspired by the fascist type is some kind of a scarecrow. In 1936 a local act, though canceled by the Federal Court, established in Geneva mandatory collective contracts in a corporatist state of mind (Andrey 1986 p. 734).

On the other hand, the employers wanted to keep control over their own business. The Federal State had already interrupted several times negotiations and imposed arbitration. Berenstein (1951) observes as early as 1900 the state propensity to force conciliation. As mentioned before, in 1919 a federal law proposition concerning labour market regulations included such a clause. Parallel with a plummeting economy the economic crisis, the Franc devaluation led in 1936 to a federal act empowering the state to settle wages and salaries. A decree gave the federal council authority to interfere in wage disputes and price determination. Employers feared that a rebuff off agreement could allow public administration to use regulation. Similarly, on the opposite side, the threat of a strike ban was becoming serious.

3 THE RENEWAL OF THE CONVENTION

As Axelrod (1992 p. 167) notices: « the evolutionist approach is based on a simple principle: what succeeded once is more likely to turn up in the future”. However, this statistical and mechanical principle is not sufficient to explain the renewal of a collective agreement when its specific birth context has vanished. To be sure, labour market institutions will likely be exposed to changing economic contexts (Harcourt & Wood 2003), especially because they have to be renegotiated periodically. As a matter of fact, repeatedly when the convention had to be renewed, disputes and arguments appeared, noticeably on the unions’ side. This section will first describe briefly the motives of these oppositions, and then suggest explanations for the renewal of the convention.

3.1 RECURRING PROTESTS

The main motive of the repeating protests is the feeling that the sacrifice, which has been accepted on abandoning strike, is too high a cost for what is obtained in counterpart. The agreement also induces a strategic shift in the militant activity. Instead of encouraging protests and preparing actions, he has to promote mediation, to enforce the agreement clauses and control union members’ or workers’ behaviour.

The first opposition appeared during the very first convention debate. One representative of the FOMH is booed in an assembly nearly two thousands workers strong, when he declared the union not ready to subsidise a strike. Nevertheless, afterwards, the union

succeeded, by a majority of 13 votes out of 1996, in forcing a mediation that in turn gave satisfaction to nearly 70% of the workers' wages claims (Humbel 1987).

At the time, the socialist press offered a rather chilly welcome to the convention. The FOMH congress however approved the convention by 218 votes against 3. In 1941 a FOMH representative declared that if a ballot was to be held involving the rank and file, the convention would be rejected. After the war, confronted with a come back of wildcat strikes, a union representative "vehemently requested the local meetings of FOMH's delegates to control convention respect" (Humbel 1987 p. 68). During the steady growth years, opposition became light. In French-speaking Switzerland however, after 1977, a dispute against the convention renewal rose with the petition launched by 27 local union's officials against absolute work peace (Koller 2004 p.49). The number of negative votes thus increased during congresses. In 1983, they were even more numerous against continuation. Questions were raised again after the 1998 agreement when a union representative declared in 2002 that: "everybody recognizes that the present convention implemented in July 1998 is not satisfactory". Work time flexibility and especially a specific stand by clause in case of economic crisis were heavily criticized. Nevertheless, a few months later, in 2003, the convention was prolonged as it was until the end of 2005, under the motive of poor economic growth. On the employers' side several voices spoke from time to time against the convention. Despite these discussions, on the whole, oppositions remained confined to a minority.

3.2 SELF INTEREST, CREDIBILITY AND ENFORCEMENT

As Lambelet underlines (1993 p. 181), the simple fact that the first agreement has been signed and implemented for several years breaks the initial misunderstanding due to a lack of confidence. The very first agreement thus installs an irreversibility that modifies the range of future paths and may be considered as a mutation. However, it is not sufficient a view to ensure the prolongation of the agreement. The following subsection will address the issue of its persistence. The question will be akin to the one of North's 1993 paper (p.11) "how to bind the players to agreement across space and time?" Three main explanations will be consecutively analysed.

3.2.1 Cooperation brings mutual advantages

Obviously the convention would not have lasted long if it had not brought returns for both sides. FOMH presently displays, in a six-page long document, the great advantages drawn from all the 13 previous agreements. Swissem explains in several statements that peace of work, linked with fair industrial relations partnership, has been a long-standing comparative advantage for the Swiss industry. "Owing to peace of work, the Swiss industry has for a long period been able to maintain a reliable climate pertaining to quality and delivery (...) that has a huge significance for the market" (Swissem 2003).

Cooperation appears thereby mutually beneficial. The Swiss negotiation case may be hence regarded as an exemplification of a model of productivity gains allocation between firm and workers, combined with efficiency wages.

Negotiations are focused on sharing productivity gains. Indeed, it was as early as 1949 that FOMH publicly regarded that better working and earning conditions mainly relied on productivity growth (Humbel 1987 p. 78). Moreover OECD (1982 p. 13) alleges that Swiss agreements pertains to the distribution of productivity increase.

Efficiency wages situation occurs in a context of hidden information and specific skill asset. Workers' professional knowledge and skills are personal assets, specific to the firm, that

are not to be found readily on the labour market. Replacement induces high transaction costs because substituting workers is costly. Moreover, as presumed in the efficiency wages theory, global productivity is linked with efforts, but firms are not able to measure genuine individual results. Workers modulate their efforts following their contentment, which may be roughly represented by the level of wages or fringe benefits. In these circumstances, the firms' interest is to accept higher wages and long term contracts that ascertain their workers' loyalty and commitment.

3.2.2 Credibility: confidence needed

The above depicted pattern is often considered as self enforcing but it is not truly credible: the choice of each participant to cooperate or not (i.e. defect) remains open. In fact, a broad trust problem remains, especially if each party was to follow a standard expected utility decision rule. Several considerations may actually blur the overall projected long term mutual advantage and impair enforceability.

Each time circumstances could let one participant expect to benefit alone from almost all the productivity gains, he could refuse to share, and thus defect. Furthermore participants could not comply, in one way or another, with what was established.

This is a classical opportunism problem that chiefly stems from imperfect information. One aspect is asymmetry of information: either party holds private information pertaining to their planned behaviour. It opens a moral hazard ambiguity, known as the "shirking" problem (Fehr & Gächter 2000). Indeed, any participant could take advantage of the agreement, but not comply with its requirements. Imperfect information includes also basic uncertainty: what the future truly holds is unknown for both of them.

Finally the long term mutual advantage is not enough a plan to confer credibility to the commitments undertaken.

To be sure, trust, which merely derives from a reliability reputation, is a way to enforce credibility. However, it is far from being granted easily and takes a long time to be ascertained. Each participant has to build up a trustworthiness reputation. Part of it stems from the repetition of the negotiation dialogue which operates as a discipline to secure the reputation (Tullock 1985).

Nevertheless, this mechanism may not be effective in the first years. Some features of the first convention were accurately designed to overcome this problem, thus illustrating the actuality of moral hazard worries (see box):

The duration of the first agreement was shorter than the next ones. Two articles exemplify the parties' willingness to commit themselves and provide credibility to their intentions. The first one constitutes a bail deposit; the other one provides penalties in case of deviation from obligations. Trust is then obtained through accepted penalties. It is similar to an after sale pattern, where a seller binds himself to signal his good will.

Box

1937 peace convention excerpts:

- settlement of divergences and conflicts following good faith rules ;
- during the validity period of the agreement it is mandatory to fulfil peace of work obligation [at the beginning 2 years, since 1939 usually 5 years] ;
- (...)
- signatory organisations should ensure that the agreement is followed by their members ;
- each party will deposit a bail of 250 000 Swiss Francs to the National Bank to guarantee abidance to the convention;

- contractual penalties are due in case of infringement of the convention.
(Humbel 1987 p. 54)

The convention gives legal assurances but it is still not enough, trust may be not solid; besides it does not explain why conventions were renewed. Moreover, as Arrow (1976) notices it, a constrained trust is not an authentic one⁴. The pledge to act with good faith is therefore a further way to narrow the problem.

3.2.3 Good faith and reciprocity

Since 1937, agents promise each other to act in good faith (see box). This statement is not merely a congress, or an insignificant aged reference. For instance, it is still to be found in the actual convention: article 8.1 reads as follows: « the contracting parties commit themselves to conforming to the goals of the Convention and collaborate with respect to the principle of Good Faith”

The notion of Good Faith is linked with law contract principles. For instance, in Article 2 of the Swiss Civil Code one can read: “Everyone is due to exercise their rights and fulfil their obligations in accordance with the rule of good faith”. Many Swiss collective agreements include such a reference to good faith. As a matter of fact, the legal content of good faith is somewhat fuzzy (Beranger-Lefors-Naujoks 2003). The principle has nevertheless a long-standing juridical history, with roots in Roman law. Anyhow, when the main FOMH official declared in 1937: “To my opinion, (...) [convention] should be based on good faith”, he not only expressed a true willingness to establish a contract, with full legal binding outcomes. He especially bore in mind another essential meaning. He referred to ethical obligations, far exceeding economic or judicial rationales. These latter considerations confirm that trust, without which not any contract could exist, cannot be only grounded on the contract itself.

Bridging the gap: the reciprocity bet

Sole self-interest, or even collective interest, may neither exclusively explain the first cooperation step, nor all the next ones. The parties had to take the risk of a signature at first and then have to believe in further collaboration. Good faith and social partnership pledges accompanying each signature prolongation, as it is still done in 2003, illustrate this view.

The whole process represents recurring true choices and not expected utility ones. The difference between the two types comes from the fact that, with expected utility, the choice is already written in the expected gains: it is a null risk choice. Conversely, an authentic choice is resolved facing an uncertain future and contributes to shape it.

The beginning of the game implied a bet decided by some officials who had to convert their individual decision into a collective one. They had to persuade their fellow members they were right and overcome their resistance; a dose of pressure was required. Without this first bet the cooperation may not have begun.

Where does this bet come from? Axelrod (1992) notices that being benevolent is an important propriety of behaviours, which induces collective efficiency. Fehr and Gächter (2003) name similar orientation reciprocity; it designates a conduct where agents are more

⁴ Note that for pure opportunistic behaviour, trust is never entire and trying to acquire a reputation of reliability is nonsense. In fact, each time unrestricted trust would be granted the other gamer would be in position to abruptly defect. The literature pertaining to the independence of Central Banks and inflation illustrate this point. Consequently, in this perspective, as a reliability reputation is never to be reached, losing it should have no cost. Only threat or constraint would secure reliability.

friendly or cooperative than standard self-interest theory expects. Neither of them explains how agents become benevolent. This characteristic is quite usually related to social norms, which indeed is true. In the Swiss case it may be embedded in the “social partnership” and “good faith” principles. But it also may derive from a decision of pure logic: the decision to be ready to lose something in order to possibly win something.

The propriety of reciprocity is actually needed each time new negotiations are met, for two main reasons:

First, parties accept to share even if it were possible not to. This behaviour obviously requests reciprocity. The second one is they keep on signing, even if there is nothing to share, or perhaps more curiously even if one party has to abandon some advantages. Some observers think it has been the case for FOMH since the 1993 convention, particularly with the economic crisis clause, which renders possible for an employer to suspend some benefits if its firm is in a tough situation (Mach & Widmer 2004 p.122-23). Yet, some kind of retaliation could have been conceivable.

3.2.4 True and false retaliation

The renegotiation of the convention is an important issue and also a potential threat. If no agreement was to be settled, the social and economic environment could become unstable.

On the one hand, the negotiation game consists for each party in showing its retaliation capacities, its strength, in order to try obtaining more in the contract. It is also a threat to defect process, which works as deterrence. The threat operates as a discipline tool.

On the other hand the partnership is not being broken for two reasons. The fear of a draw back, or a jump in the unknown, is a powerful mean to keep the parties to the negotiation table (Cf. the statement quoted in Mach & Widmer 2004 p.121). In addition, as long as the reciprocity pledge is valid, the threat to defect mainly appears as a ritual. The point is to show retaliation capacities without doing much damage, because creating some irreversibility could engage on a new non cooperative path, a new mutation.

One may borrow to Axelrod (1992) an exemplification concerning this phenomenon: “the ritual took the form of a superficial use of minor weapons and deliberately harmless firing from the artillery. (...) Both enemies made sure to show each other they could reply if necessary (1992 p. 90 & p. 85)”.

Demands, demonstrations and petitions may be considered this way. Union activity is growing up during the period preceding a new negotiation. For instance, while preparing the 2005 negotiation the FOMH has already gathered 16 000 signatures to back its demands. The other purpose of the ritual is to keep and show its control upon its members. This issue is fundamental and will be addressed further on.

Besides, in a context of competition between unions, if the FOMH does not sign, it takes the risk to lose its leadership and let another union become the main interlocutor of the companies.

When every party has shown its strength and perhaps its discontent, the convention is nevertheless signed. In 2002 the FOMH had made it clear it intended to ban the economic crisis clause, but the convention was nevertheless prolonged, as it was, in 2003.

Since 1998, a shift in employer’s views could deteriorate the agreement climate. In a statement published in 2003, the employer’s organisation Swissmem expresses its will to change the goal of the convention. “Considering ever growing competitive challenges, the convention should not be regarded, like during these last decades, as a means to allocate growth returns, but rather to create the conditions for a new growth. When the firms have

reinforced their competitiveness through restructuring observed these last years, this new strength must be used to secure jobs”. Whether this orientation could impair or not the reciprocity corner stone opens interesting questions:

As long as no organisation intends to repudiate agreements, the other one may try to obtain the more possible. But, depending on the balance of power, when one party is ready to go to a real conflict the other one could be led to accept losses. This could have been the case since 1988 for FOMH.

However, with good faith and reciprocity pledges in mind, consenting losses is an appeal to future counterparts, as in a logrolling process. It is also a means to transfer the burden of a potential rupture onto the other party. Indeed, in this very context, the reason for which a party breaches the agreement continuity is of much consideration. It is essential for each party not to seem unfair or greedy. Only in these circumstances will serious retaliations be justified. Balance of power is therefore mediated by ethical concerns, which commonly act as a cooperative discipline.

This subsection has suggested some explanations to the persistence of the convention and exemplified the role of good faith. The next one will address the opportunism problem within organisations. The analysis will be focused on the union side.

4. THE COOPERATIVE STRATEGY AND THE UNION COHESION FACING OPPORTUNISM

It has been stated that the union guarantees stability to the companies in exchange of working benefits. To confer effectiveness to this strategy, the union’s commitment has to be credible, while workers opportunism could be expected. To preserve credibility the union must have enough influence on its members and local branches to prevent possible rank and file excesses. They both have to follow its directives and stay within the agreed mandatory framework.

To be sure, working benefits obtained through conventions could be the rationale. But it is not enough an elucidation. Benefits are jointed advantages (they are simultaneous to several agents) and non-excludable (someone may benefit even if he has not borne the linked costs). Therefore advantages driven from conventions possess the characteristics of pure public goods. They profit to either members or non-members of unions. It is thus tempting for an opportunistic agent to follow a free rider behaviour, which could empty the union and hamper its credibility. Besides, not every worker may feel bound to the unions’ pledges.

The union has to secure its members’ loyalty. One way is to offer exclusive services. It is the case with unemployment pensions. For instance, in 1936 while metal industry fires approximately one third of its employees in comparison to 1929, union enrolment increases steadily “due to the nice development of their unemployment funds” (Humbel 1987 p. 42). It has to be noticed that the phenomenon is self-enforcing. A powerful union is in position to offer many exclusive services, which, in turn ensures a regular increase of members. In this state of mind it is noteworthy that FOMH has opposed some federal initiatives pertaining to social security, even against a proposal from the Swiss Federation of Workers and the Socialist Party. In 1948, when a Federal retirement system was finally settled (Old age Insurance and Survivors Insurance), FOMH had to cancel a specific metalwork industry system that was under negotiation. It was compared by the representative of the union, to a collective suicide.

Mach & Widmer (2004, p. 119 and 125), give more examples, one of them is a quite amazing one: in 1958, FOMH subsidised by 70 000 Swiss francs opponents to a proposition of a federal law which aimed at reducing working time. In 1959, the president of the FOMH declared: “taking the collective contracts only as a first step toward federal laws, is on the long run detrimental to the labour movement: because it is chiefly the contract that ensures prestige and members to unions” (Humbel 1987 p. 84).

The abovementioned strategy is not sufficient, “spillovers” may nevertheless occur. They may come from two directions. Local branch or members may defy directives; non members may reject the union’s paternalism.

Considering the first problem, the convention and the obligation code set up penalties if resolutions are not executed, internal pressure is crucial (see above).

The second problem has not yet been addressed. In this case no penalty may be envisaged. Non-union members may be true one, or disaffiliated ones. As a matter of fact there is since world war two a trend of decrease in affiliation. In the two circumstances the problem is serious; workers may take advantages from the convention and refuse constraint and costs linked. On a theoretical point of view there is a breach that could hinder cooperation. If the union loses too many members, the appeal of the convention for firms becomes questionable.

It is worth mentioning that Swiss law does not favour opportunistic behaviours. In fact, the direct effect of an agreement is restricted to the associations that have signed and to their members (Freyermuth 1994). But for obvious reasons this rule is not enacted by employers, every worker member or not of a union benefits from the convention. Thus all things being equal, while keeping plain the opportunity cost of the membership, firms deter union’s cohesion that is nevertheless useful⁵.

The aforementioned opportunistic behaviour problem is not only a blackboard problem. It has provoked during the 1970th discussions from local union delegates. They argued that non-union members could go on strike, when they were playing the role of yellow workers (Humbel 1987 p. 94). Koller (2004) gives several examples and underlines (p. 47) that the union was, in several cases, torn apart between its commitment towards work peace and the spontaneous strikes that were rising, sometimes led by other unions.

During the 1960th FOMH complained about “fare-dodgers” that benefit from convention and were not undertaking any union activity. FOMH thus demanded either that “fare dodgers” should pay a solidarity contribution, either they should not profit from convention (Humbel 1987 p. 90). In 1968 it suggested to levy a contribution on every worker, which for three-quarters should finance a holiday backing to union member, the rest of it being dedicated to vocational training. This idea was adopted in 1974 (Humbel 1987 p. 94). By now the contribution amounts to 5 francs a month (Article 4.2 of the 2003 convention). OECD (1985-86 p. 52) observes that, if union monopoly is forbidden in Switzerland, non-affiliated workers are often to sign a declaration stating they will abide by the convention endorsed by unions and pay a “solidarity contribution” to unions, in order to compensate administrative expenses.

In the end, the solidarity contribution relates formally all workers, unionised or not, to the agreement process in a mandatory way, the same way taxes oblige participant to contribute to public goods.

⁵ As a matter of fact, union cohesion is desirable from employer’s point of view, only if union’s goals are moderate. It is then tempting for employers to promote division among unions, and one may notice that, for a long period, Independent Unions have received income support for their unemployment system founded in 1921 (Humbel 1987).

Opportunistic behaviours may also be prevented through the renegotiation process. The eventuality of a lack of agreement reinforces internal and external cohesion. The threat strengthens the loyalty of potential opportunists because they want to benefit from agreement, even if they do not want to face its cost. Therefore, the union's interest is to overstate the issue of renegotiations and possible defection.

Finally, several constraining devices are used to reduce opportunistic behaviour that imposes a risk for union credibility and a danger to renewal of agreements.

5 CONCLUSION.

The case of Work Peace Convention has illustrated that the standard economic approach cannot truly explain the shift toward cooperation in the Swiss industrial relations, and its persistence. Neither birth nor continuation may solely be related to expected mutual advantages. Even if economic calculus could have taken an important place in the process, it would not have been decisive.

An evolutionist approach appears more relevant. However, no spontaneous or natural selection processes were primarily at stake. A specific environment jointed with individual and collective volitions were rather required.

The peace clause is not a sudden mutation or an *ex nihilo* creation. It was unquestionably known before 1937 and was thus available in the environment. However, its selection does not result from a competition between numerous alternatives, several being experimented without success. Its selection comes from the conjunction of a specific historical context, which is part of the overall environment, and a strong will. Its extension may be regarded as the dissemination of an efficient mutation. But once more, the role of intentional engagement must not be put aside.

Volitions, leaned on hierarchy, gave true authority to what were primarily individual bets. This conversion of personal bets, into a collective's one, required several means of persuasion. However a cooperation that would have merely relied on crude behaviour would probably not have resisted to opportunistic behaviours and imperfect information.

Two ways were employed to overcome these latter problems: control and reciprocity. Control played and still plays an important role to enforce the agreement, whether based on a legal framework, or on the action of organisations upon their members, or else, on their action upon their close environment. Reciprocity, integrated in the good faith pledge, was also part of the formula. It eased the first step, the prolongation of agreements, and also hindered individual or collective temptations of free ride. The pledge to good faith may be thus considered as a social control on behaviour, which prevents totally free, though unstable conducts. It imposes each participant a moral constraint on the negotiation behaviour.

On the whole, the case study corroborates two broad ideas. First, as expected, a complete understanding of institutions may not be reached without taking into account beyond standard preoccupations, evolutionist perspective and institutional approach. Secondly it specifically suggests that some kind of control, both legal and social, is essential to institutions permanence. After all, what differentiates an institution from an organisation if not the place of constraint?

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