

How Much Information should Philanthropic Consumers Receive about Consumocratic Results? The Case of RugMark/GoodWeave

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On the basis of an in-depth case study of a transnational governance scheme driven by philanthropic consumers and designed to fight child labour in Southern Asia – RugMark (now GoodWeave), co-founded by Peace Nobel Prize recipient Kailash Satyarthi – we identify and describe a number of characteristics peculiar to the consumocratic system of regulation, before examining the impact of information transparency within it. A number of theoretical scenarios emerge from the identification of four critical factors in the regulation of the societal information shared with consumocrats: (1) the degree of subjective veracity and comprehensiveness of available information; (2) the more or less comforting nature of this information; (3) the culminating outcomes to which it refers; and (4) its degree of objective veracity. All societal information is not theoretically bound to convey comforting messages to consumers inclined to consider the well-being of others. This message, while accurately reflecting the results achieved by local consumocratic organisations, may as well reflect the more or less controversial choices made in the pursuit of desirable goals, such as improving the fate of working children. It could also shed light on the flaws (e.g., ethical, technical, managerial) of this system of regulation by exposing its own limits to a better informed public. By opting for the transmission of messages subject to public controversy or worth a mea-culpa, the local regulators of this information would inevitably confront some risks (e.g., judicial, economic, socio-organisational). Under which conditions could these risks be reasonably taken? Quid of their likely impact on philanthropic dispositions? A non-paternalist analysis of transparency as a regulatory tool, it is shown, leads to recognising the utility of replacing transnational consumocratic activity on original, constitutional foundations, before envisaging the development of increasingly transparent and efficient tools in this regard

The Philanthropic Basis of Consumocratic Regulation

When they act as consumers, adults, like children, are often regarded as the subjects of protective state regulation – potential, manifest, or latent victims of corporate negligence, misrepresentations, price-fixing, and abusive marketing. The status of consumers may change significantly, though, depending on whether or not the societal value of consumer

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goods is elicited through markets. Central in this process is the control over the diffusion of societal information on world consumer markets. Its understanding requires an examination of the regulatory regime through which citizens are invited to broaden their notion of a desirable good and exercise new forms of authority over corporations. This regime is said to be *consumocratic*,² in contrast with the more self-centered spirit of consumerism.

Consumocracy may be defined as a *system soliciting other-regarding dispositions in consumers, allowing them to exert more authority on market enterprises through broadened qualifications of desirable goods*. We have explained elsewhere³ that the consumocratic system may mark the development of modern societies in four notable ways. First, by effectively soliciting rational and *other-regarding* behavior, while ensuring that instrumental reason does not obligatorily take precedence over finalities on the market place. Second, by inviting the individual – i.e. the consumocrat⁴ – to inject ‘meaning’ into the socket of the liberal order itself, and offering an ordering of values in which the sense of indifference is posited below that of social responsibility, *prior to choice*. Third, by giving politically disenchanted consumers the opportunity to exert new authority outside the traditional spheres of consumer influence, generally shaped by a deficient ideology – one under which it is (wrongly) assumed that market mechanisms are *inherently* guided by the solicitation of consumers' individualistic concerns. Fourth, by concretely challenging the common perception that the failure by the state to correct economic externalities in markets leads to undesirable results that are inevitable. It is shown that a nascent consumocracy may be opening promising spheres of influence in the field of socio-environmental regulation, without direct state intervention – a state of affairs which may prove critical in the face of coming social and environmental crises.

This is done, transnationally, through the operation of codes of conduct the enforcement of which is signaled to consumers via a more or less transparent form of societal

² From *consummare* (Lat.), to consume, and *kratos* (Gr.), authority.

³ P. Martin Dumas, The Malaise of Modernity under Consumocratic Order, 5 *ECONOMICS & SOCIOLOGY*, 75 (2013).

⁴ A *consumocrat* is a consumer who pays attention to the societal attributes of goods or services, via societal marketing – to the well-being of others, ultimately.

marketing. Societal labels are typically placed on the outside of products in order to signal the effects such products or production conditions may have on consumers, other people, or the environment. The regulatory capacity of labelling initiatives is thus actuated by the communication to consumers of information pertaining to certain conditions or repercussions observed at the stage of production, distribution, or usage of goods – such as the use of child labour, the depletion of the ozone layer, or the effect a product may have on human health. Societal information may thus relate to the socio-environmental conditions under which goods are produced, and to activities undertaken to improve these conditions. The meaning of logos not accompanied by a text description must be conveyed through other media such as the internet, wireless communication, and television. A variety of impacts ensue with a degree of directness the state could hardly approach.⁵

An increasing number of independent codes of conduct constitute, in this view, a body of rules, enforced through demand-side market-based mechanisms, and used as instruments of corporate governance (hereinafter referred to as *consumocratic law*⁶). As such, they do not fit well within the ‘soft law’ regime of corporate voluntary initiatives, nor do they qualify properly as ‘reflexive law’ rules, since one finds them conditioned by important segments of consumers. In contrast with citizens called to express, *ex ante*, their preferences for particular socio-economic plans through voting, consumers (or, more precisely, *consumocrats*) are rather called here to play a role *ex post*, and pronounce themselves on the desirability of certain goods, in comparison to others, following a number of non-traditional criteria already embodied in labelled codes. Such criteria are

⁵ In the works of regulatory cost-benefit analysis proponents, consumer choices in fact do not lay themselves wide open to bureaucratic inefficiencies, agency capture, and paternalism – at least not as openly as political action through voting does. See Daphna Zamir, Consumer Preferences, Citizen Preferences, and the Provision of Public Goods, 108 YALE LAW JOURNAL 377 (1998).

⁶ For more details regarding the nature and operation of consumocratic law, see P. Martin Dumas, Three Misunderstandings about Consumocratic Law, 35 COMPARATIVE LABOR LAW AND POLICY JOURNAL 67 (2013). One may be indecisive about whether to refer to consumocratic ‘law’ or ‘regulation’. But as rightly pointed out, “there is no settled definition of ‘law’ within legal pluralism, just as there is none of regulation. Legal pluralists are agreed that ‘law’ does not solely emanate from the state; just what it is and how it is distinguished from other forms of norm-based social ordering is still contested”. See Julia Black, Critical Reflections on Regulation (Centre for Analysis of Risk and Regulation, LSE) 1-27 (2002).

not confined to the limited and controversial domain of ‘societal information’ under transnational (WTO) law, to the extent that they may as well pertain to the protection of eco-systems (air, water, and soil) and animals, the downsizing of the military industry, the reduction of flagrant inequities, and the amelioration of the labour conditions in which vulnerable categories of employees find themselves – children in particular.

Consumers are accordingly called upon to acknowledge some part of responsibility in the persistence of a number of irritants which the sole intervention of the state, in the operation of markets, cannot seem to combat satisfactorily. Popular societal labels such as *FSC* (forestry preservation), *Flipper Seal* (dolphin friendliness), *Green Seal* (ozone protection), *Fairtrade* (wage security), and *Equal-Salary* (gender pay equity) exemplify the movement towards the provision of richer information, ‘societal information’, to consumers. One of the most sophisticated regimes of consumocratic labour law (on child protection and schooling) was developed by *Rugmark/GoodWeave* in Uttar Pradesh, India.

The RugMark/GoodWeave Initiatives

The Rugmark code was developed in 1994, by Indian carpet manufacturers and exporters along with many leading non-governmental organisations, under the guidance of carpet importers, the influence of consumers, and as a result of the failure by the Indian state to tackle its child labour problems alone. Intensive campaigns in Europe (and Germany more particularly) against the use of child labour had indeed led to a proposal to boycott the import of carpets from India.⁷ In its attempt to progressively eliminate child labour in the Indian ‘carpet belt’, Rugmark now certifies to consumers that carpets bearing the Rugmark label are child-labour free, rehabilitates former child weavers found by its inspectors, and manages free schools in Uttar Pradesh.⁸ It is worth noting that exporters

⁷ cf. <http://www.rugmarkindia.org> (hereinafter the ‘Rugmark website (I)’), accessed on: 15/02/2015.

⁸ The Rugmark organisation has gradually split into two disconnected networks: Rugmark India and the new GoodWeave, which encompasses the entire spectrum of the former network of organisations, with the exception of the local Rugmark team based in India. Since most of the facts on which this paper is based have been collected during or immediately before these changes, they will be considered as attached to the

and weavers, typically, do not voluntarily join the Rugmark network. Carpet importers (mostly from Europe and North America) have literally imposed their conditions on carpet exporters.⁹

The content of the Rugmark code derives directly from two sources: the substantive obligations agreed to by export or import firms under Rugmark licensing agreements as well as a series of commitments and contentions of Rugmark, described and published on websites and made accessible to consumers.

Obligations provided under Rugmark licensing agreements include observance of the RugMark International (RMI) Standard, in force since 1994, which engage all licensed exporters in RMI member countries: (1) to submit a list of all their loom manufacturing units and have them registered with Rugmark; (2) to allow unannounced random inspections by Rugmark inspectors; (3) not to illegally employ any person under the age of fourteen; (4) to pay minimum official wages to weavers and endeavour to pay 'fair wages' to adult workers; (5) to remove children found working on looms or disengage the loom in case the loom owner does not comply with inspectors' orders; (6) to pay Rugmark a 0,25 % royalty on the net export value of the carpets in order to cover the costs entailed in the inspection and labelling system. Non-compliance with the RMI Standard leads to a revocation of the licence to use the Rugmark label and potential market losses.

The Rugmark code also incorporates a series of official contentions described and published on websites and made accessible to consumers. One such commitment involves abiding to Indian state law. In particular, Rugmark reassuringly expresses disapproval of *illegal* child labour. However, while the central message conveyed to consumers is that

operations of Rugmark, even though our principal conclusions also hold for the new GoodWeave. Even though the original Rugmark and the GoodWeave networks extend beyond the frontiers of Uttar Pradesh (to reach Nepal, Pakistan and other parts of India), only facts collected in UP are discussed in this chapter.

⁹ One should perhaps distinguish here between 'voluntary' codes of conduct and those effectively linked to societal labelling programs. Societal labelling was indeed perceived by key actors in the carpet industry as involuntary and dictated by the preferences of the buyers (cf. Fieldwork notes (45C) January 22, 2007, p. 126-127; (46) January 23, 2007, p. 142-144; ALAKH SHARMA, CHILD LABOUR IN CARPET INDUSTRY 78-82 (1st ed. 2004).

Rugmark “offers the best assurance that no child labor was used in the manufacture of a carpet or rug”, a more ambiguous message is to the effect that “[i]n the case of traditional family enterprises, children under 14 years of age helping their parents must attend school regularly” – a condition typical of the family or local community business context.¹⁰ In principle, the Rugmark code thus authorises the work of children who accompany their parents (or their uncles) – ‘family business’ being excluded from the work interdictions posed under the code. In well-established weaving communities, several family members are typically involved in carpet weaving. Numerous children can invoke their family relationship with a distant uncle (*chacha*) to justify their work behind a loom.¹¹ This possibility is made stronger by the lasting influence of the professional caste system (i.e., the Hindu *jati* and Muslim *birādarī*) over the weavers and their profession. The *jati* that gathers the Hindu weavers of Uttar Pradesh has been formed, in general terms, by families of traders and farmers who joined this profession around the 1950s. By often turning a blind eye to state law, Rugmark inspectors are said to favour a ‘realistic approach’ and concentrate their efforts on combatting the worst forms of child labour and avoiding misguided consumer boycotts.¹²

Thanks to Rugmark and its consumocratic regime, the illegality of child labour in the carpet belt has been progressively recognised and thousands of deprived (working and non-working) children have had free access to a primary education of relatively good quality, many of them having subsequently engaged in higher studies. The Rugmark initiative also spurred the development of similar organisations such as Step and Care & Fair in Northern India, Nepal, Pakistan, and Tibet. Rugmark’s mission is a continuous venture as the organisation keeps investing in the education of larger cohorts of children every year. On this account, the strengthening of soft law through consumocratic law has proved beneficial to the targeted children. What is more problematical, with a view to

¹⁰ Rugmark website (I), accessed on: 15/02/2015. Among the four types of child labourers (i.e., family & local children – in principle targeted by Rugmark schools – and migrant & bonded children – in principle targeted by the Rugmark rehabilitation centre), only family workers and local workers are allowed to both work and attend school (cf. fieldwork notes (17) November 7, 2006, p. 33; (46) January 23, 2007, p. 142-145).

¹¹ Fieldwork notes (51) February 10, 2007, p. 170.

¹² Fieldwork notes, (51) February 10, 2007, p. 169.

improving the Rugmark regime, is the degree of transparency required in the diffusion of societal information when pursuing the double objective of preventing negative consumer sanctions and eliminating the worst forms of child labour. Several gaps were noted between Rugmark's discourse and its concrete interventions. We adopt a pragmatic approach when analysing them, on the basis of our fieldwork accomplished between September 2006 and March 2007, with some update work in the winters of 2012-2013 and 2013-2014.¹³

Some synthetic observations must be made concerning the overall reaction of the Rugmark direction to these concrete gaps. Deviations relating to the inspection of carpet looms, the rehabilitation of child workers, and discriminatory practices understandably embarrass the Direction. There is no doubt in its eyes that consumers should be made aware of the good news coming from the Rugmark scheme, above all. The organization would not be efficient should it openly blame and shame weavers, exporters, and their intermediaries whenever the Rugmark code is not enforced. The direction maintains that its collaboration and persuasion efforts are in the interests of the children, and more efficient than adversarial measures. In private, the Direction does not hesitate to recognize the flaws in its achievements¹⁴ as well as in its discourse.¹⁵ It insists, though, on the importance of diffusing essentially *positive* field results, at the expense of transparency. It is aware of the intransigent attitude of Oriental and Occidental people

¹³ See for more details P. Martin Dumas « Thickening Soft Law through Consumocratic Law: A Pragmatic Approach » in Research Handbook on Transnational Labour Law, Edward Elgar Research Handbook Series (Anne Trebilcock and Adelle Blackett, eds.) (forthcoming). Fieldwork was undertaken and completed with the financial support of generous fellowship plans – from the Commonwealth Foundation and the Fonds de recherche Société et Culture (Québec) in particular.

¹⁴ For instance, the Direction deplores that in matters of rehabilitation, it cannot do anything without parental consent.

¹⁵ Officially, Rugmark is said to abide by Indian law in matters of labour inspection. In practice, the organization ignores an October 2006 amendment of section 3 of the *Child Labour (Prohibition and Regulation) Act* under which any domestic child labour is forbidden. By turning a blind eye to child labour performed within a family unit, Rugmark inspectors supposedly favour a non-State, 'realistic' approach. A proviso to section 3 of the Act provided that the child labour interdiction "shall not apply to any workshop wherein any process is carried on by the occupier with the aid of his *family* (...)", meaning, in relation to an occupier, "the wife or the husband, as the case may be, of such individual, and the children, brothers and/or sisters of such individual".

vis-à-vis the child labour issue.¹⁶ It fears that this attitude may trigger boycotts (or threats of boycotts)¹⁷ should the organization decide to expose its flaws or reveal all types of obstacles to its action. The ‘grey zones’ in the Rugmark scheme are thus said to be better left to knowledgeable local employees called upon to exercise their judgment. Characteristic examples of these grey zones include the decision of inspectors to rescue working children and to put pressure on employers to let them leave the workplace.

It is worth recalling at this stage that a critical mass of consumers may suffice to force national or transnational corporate entities to amend some of their practices. Few competitive organisations indeed can afford the luxury of abandoning a small though ‘critical’ portion of their clientele, under significant pressures exercised on corporate profitability equations.¹⁸

*“Why don’t you carry rugs sold with the RUGMARK label?” I asked.
He said he had never heard of the name, so I told him all about it
and suggested that if all his customers only knew the human costs
of all these rugs that had been made by children, many of them working
as slave labor, “who would want to buy one?”*

Reporter Vanessa Larson
World View Magazine, 2001

The Transparency Problem

In a transparent regime, the diffusion of societal information should not provide a distorted view of the actual operations of private regulators. Access to societal

¹⁶ A Varanasi human rights lawyer insisted in that regard that the only thing an inspector should tolerate in workplaces involving the presence of a learning child, is a child watching adults at work (cf. Fieldwork notes (50A) February 9, 2007, p. 162).

¹⁷ Such reactions allegedly forced the implementation of Rugmark in the first place: “Intensive campaigns against the use of child labour led to a proposal to boycott the import of carpets from India. To avoid the negative consequences of such a step on workers (...) Rugmark, the initiative against the use of illegal child labour in the carpet industry, was initiated in 1994 by Indian carpet manufacturers and exporters along with many leading non-governmental organisations.” (cf. Rugmark website; accessed on 01/03/2015).

¹⁸ See P. Martin Dumas, Three Misunderstandings about Consumocratic Law, 35 COMPARATIVE LABOR LAW AND POLICY JOURNAL 67 (2013).

information by consumers, however, is often lacking in transparency. In theory, societal information may lie somewhere between a poor reflection and a rather complete and exact reflection of certain production practices. It may as well be denied, blocking any communication of relevant information pertaining to such practices. The question raised by this opposition is that of *regulatory transparency*.¹⁹

Consumer access to societal information raises a number of central economic, political, and legal issues. Indeed, the broadening – individual and institutional – of what constitutes a desirable good entails some necessary adjustments in supply and demand markets, a redefinition of the powers surrounding production conditions, as well as a more complex regulation of consumer choice. Given the significant potential for growth in the (national and transnational) market share of labeled products and the regulatory autonomy of this sector, the demand for transparency in the regulation of private-sponsored schemes somehow reflects the first requirement imposed by the WTO on government-sponsored schemes – i.e., that labels must be informative and credible (Emslie 2005: 539). Also, and perhaps more importantly, the impact of information transparency within the consumocratic system is likely to influence the (perceived or real) philanthropic dispositions of consumers.

Concerns conveyed by societal marketing are manifold. They extend from animal rights issues to the protection of vulnerable workers, and to a better control of food processing, climate change, or water, forest and air quality. Although the question of regulatory transparency poses itself in all cases, the issue of child labour will guide the conclusions of this study. The focus will remain on the elucidation of a regulation problem which, in

¹⁹ At this level of generality, without regard for the intrinsic or instrumental value of transparency, the problem may also be put in these terms: Is transparency the key to better governance? (Hood and Heald 2006). Following Heald's terminology, the term 'transparency' will mean here *transparency inwards* (i.e. "when those outside can observe what is going on inside the organization"), *transparency in retrospect* (i.e. "rendering an *ex post* account of [societal information]"), and *effective transparency* (as opposed to "nominal transparency...as measured by some index") (Heald 2006: 25-43).

spite of its centrality under the rise of private governance of standards, has been largely neglected.²⁰

Various reasons are generally invoked by specialists in order to enhance or limit the scope and exactitude of information relating to the production processes of consumer goods. The problem of regulatory transparency arising thereunder is further complicated by the contradictory character of expert debates in matters of protective regulation.

In addition to the fight against protectionism and the problem of unintended consequences of action, the disputed exercise of power over the determination of production conditions constitutes another important obstacle to transparency. The diffusion of societal information to consumers does reduce the power of producers to determine the nature of the conditions under which goods are produced. What is at stake in the transparency debate, beyond anti-protectionism concerns and the unintended consequences of action, may be more than the cost to be incurred in actually becoming a ‘good corporate citizen’²¹; it is also a struggle over the locus of power and control, over the capacity to define policies that shape the development of transnational markets (Aman 2004; Beck 2000:13).²²

²⁰ Kysar, in particular, examines the “underappreciated trend” discovered in “the struggle for control over consumer access to information regarding the processes by which products come into being” (2004:10).

²¹ The cost of altering production processes in the South-Asian carpet industry, for instance, is principally held by consumers willing to pay a premium (about one percent of the market price of carpets) to encourage adult-made textiles and sponsor elementary schools for the children of weavers.

²² The *Nike* case provides a now famous illustration of this. When faced with charges of labor exploitation, the transnational company attempted to depict itself as a “socially responsible employer” but nevertheless sought the protection of the First Amendment to isolate this very claim from the false advertising regulation applicable to commercial speech. It contended that commercial speech should not be considered as encompassing attributes other than “the qualities of a product as such (like its price, availability, and suitability)”. (See *Nike, Inc. v. Kasky*, 45 P.3d 243 (Cal. 2002); 123 S. Ct 2554 (2003). Influential associations in support of the petitioner added that “only speech that does no more than propose a commercial transaction – that is, speech that does no more than promote *tangible* qualities of a product or service in a *traditional* advertising format – may be treated as commercial speech and subjected to strict liability rules”. (See Brief Amici Curiae of Forty Leading Newspapers, Magazines, Broadcasters, Wire-Services, and Media-Related Professional and Trade Associations in Support of Petitioners, 2003 WL 835613 cf *28 (emphasis added).

Although an obstacle to transparency, this power struggle also feeds the search for *more* transparency, outside the corporation. A tenor of corporate social responsibility sums up this point of view shared by the advocates of the ‘stakeholder theory’: “[W]herever power is exercised, there should be transparency” (Henriques 2007: 5). The abusive use of management power is a central reference in this regard. Corruption and covered mismanagement being examples of this abuse, transparency is generally perceived as a solution to the problem.²³ More fundamentally, it may also be regarded as a human right.²⁴ It has been argued that transparency enhances legitimacy, accountability, human integrity, and that it is a necessary ingredient for participative democracy. It would then be “both intrinsically and instrumentally good” (Birkinshaw 2006: 54).²⁵ It follows that the control over the determination of the conditions under which goods are produced finds itself on a doubly contested terrain. One should underscore that while this control is the target of pro-transparency and pro-opacity claims alike, no expert challenges the proposition that transparency in public affairs does not always pass the public interest test and that several legitimate exemptions to the right to be informed exist, for reasons of security, privacy, and commercial secrecy, among others. In other words, the public interest test may favour disclosure as well as concealment (Henriques 2007: 56). As regards the private sector, such a test has not been fully developed.²⁶ Furthermore, while proponents of regulatory opacity are generally content with a simple blockage of societal information, advocates of increased transparency do not agree on the level of convergence to reach in the determination of standards to be shared with the population. In the field of fair trade regulation, the debate has been launched between proponents of *convergence* and *heterogeneity*. Transparency nonetheless remains an essential ingredient of the approaches suggested.

²³ One may refer here to the mission of *Transparency International* in the general fight against corruption (TI 2002, 2006).

²⁴ Article 19 of the Universal Declaration of Human Rights (1948) recognizes “the right to seek, receive and impart information and ideas through any media and regardless of any frontier”.

²⁵ Although Birkinshaw centres his analysis on the right to freedom of information, which typically involves the intervention of a public authority, “private bodies that perform public functions... or... interfere with human rights of individuals” must also be considered (Birkinshaw 2006: 50).

²⁶ A contrario, information relating to emissions to the environment, particularly in Europe, must not be withheld by corporations for such reasons. See, for instance, the U.K. *Environmental Information Regulations* (2004), and the U.S. *Toxic Release Inventory* (2001).

This portrait is thus peppered with contradictory expert debates, a phenomenon often neglected in matters of regulatory transparency. That experts may be better placed than dilettantes to make an informed decision, in the face of a complex situation, is a well-defended opinion shared by policy makers and academics (Sunstein 2002: 104-05).²⁷ A critical issue with respect to the development of regulations on consumer access to societal information is the fact that (more or less authoritative) experts do not inevitably come into agreement with each other. The situation is all the more troubling since incompatible positions on important problems are being advocated.²⁸

A consideration for specialized and contradictory opinions raises important issues in matters of regulatory transparency. It gives rise to more nuanced interrogations in the pro-transparency / pro-opacity debate. It requires a more complex treatment than the prescriptions generally made in response to these problems, that is, *blocking the access to societal information* (e.g., in view of some unintended consequences of action, discrimination and corporate power issues) and *widening the access to societal information* (e.g., as against abusive managerial and corporate power). Beyond this opposition, one may deduce other scenarios likely to weaken the legitimacy of the above prescriptions.

Surely, societal information may be (1) more or less exact and complete; (2) more or less comforting to the public; and (3) more or less in agreement with beneficial results for the targeted populations, such as school-aged children in a position to work. A somewhat troubling scenario logically follows from this. Societal information regulators may voluntarily dissimulate or alter such information so as to comfort consumers, while

²⁷ Avoiding the undesirable instrumental impact of consumer action is a noble objective and, in that regard, it has been suggested that the specialized International Standards Organization may judiciously provide a “significant forum for devising consensus product standards” (Kysar 2005: 29).

²⁸ Social science experts are the principal actors of such conflicts. As underlined by Albert Einstein in his *Thoughts on the World Economic Crisis*: “If there is anything that can give a layman in the sphere of economics the courage to express an opinion on the nature of the alarming economic difficulties of the present day, it is the hopeless confusion of opinions among the experts.” (2003 [1934]: 81). Natural science experts are not immune against such incongruities, though.

knowing that concrete results derived from their activities are truly beneficial to a number of children. For more concision, this combination is referred to as the *Machiavellian scenario*.²⁹ It is the non-transparent regulation of societal information combined with the achievement of positive results for the targeted children.

In this broader context, discordant expert recommendations (i.e., the simple abandonment of societal information diffusion and the requirement of such diffusion) appear doubly problematic: academically disoriented and instrumentally hazardous. More serious, in a transparent search for positive results, is the examination of *the conditions under which societal information regulators would be more inclined to reveal a priori discomforting information*. The non consensual character of what is deemed appropriate and inappropriate in the concrete enforcement of child labour regulation also leads us, intuitively, to consider scenarios largely ignored in the literature. The analytical approach retained in this regard is the subject of the following section.

Scenarios of Societal Information Communication

The question of regulatory transparency would be simplified if only the abuse of power by regulators, on the one hand, and the unintended consequences of their action, on the other, were to be considered. The central questions raised in this article call upon a critical examination of this polarization. In the light of a certain ‘theoretical sensitivity’ (Glaser 1978), one is led to acknowledge that contradictions and lacuna inherent in the expert literature do not give rise to a single type of analytic appraisal. Experience, analytical skills, and efforts to bridge gaps between balkanized disciplinary characterizations may generate the conditions for the development of challenging and otherwise ignored questions. Prior to and during the fieldwork period, this is what helped construct, with the instruments of elementary logic, the analytical framework used in our study.

²⁹ Cicero suggested that, in the political arena, “honesty is the best policy”, an advice which had shaped the official Christian discourse of Renaissance times (Berlin 1981). Machiavelli, by contrast, insisted on the incompatibility of Christian-valued *unwavering truthfulness* and what he conceived of as another moral objective, that is, the stability of an enviable City (1515/1944).

[Insert Graph I here]

If regulators of societal information could (1) disseminate exact and comforting information to the benefits of the targeted population, (the ideal scenario); (2) disseminate exact and comforting information to the detriment of the targeted population (the dilettantish scenario, plausibly marked by the unintended consequences of action);³⁰ (3) alter or dissimulate uncomfortable information to the detriment of that population (the villain scenario, plausibly marked by the risk of power abuse), there is no reason to ignore that regulators may as well (4) alter or dissimulate uncomfortable information to the benefits of that population (the Machiavellian scenario). Furthermore, if outside experts as well as dilettantes do not seem to agree on the ins and outs of the child labour problem, how could one ignore the potential role of bona fide dissimulation and camouflaging when regulators and consumers are not exposed to the same realities and, consequently, are likely to disagree on several issues?

Such questions found fertile grounds in the Indian carpet manufacturing industry and in the regulation of child labour-related societal information in particular. It was further enriched and validated under the approach developed by the advocates of ‘grounded theory’ (Glaser and Strauss 1967). The approach did not consist in testing the hypothetical existence of the Machiavellian scenario, but rather in situating this

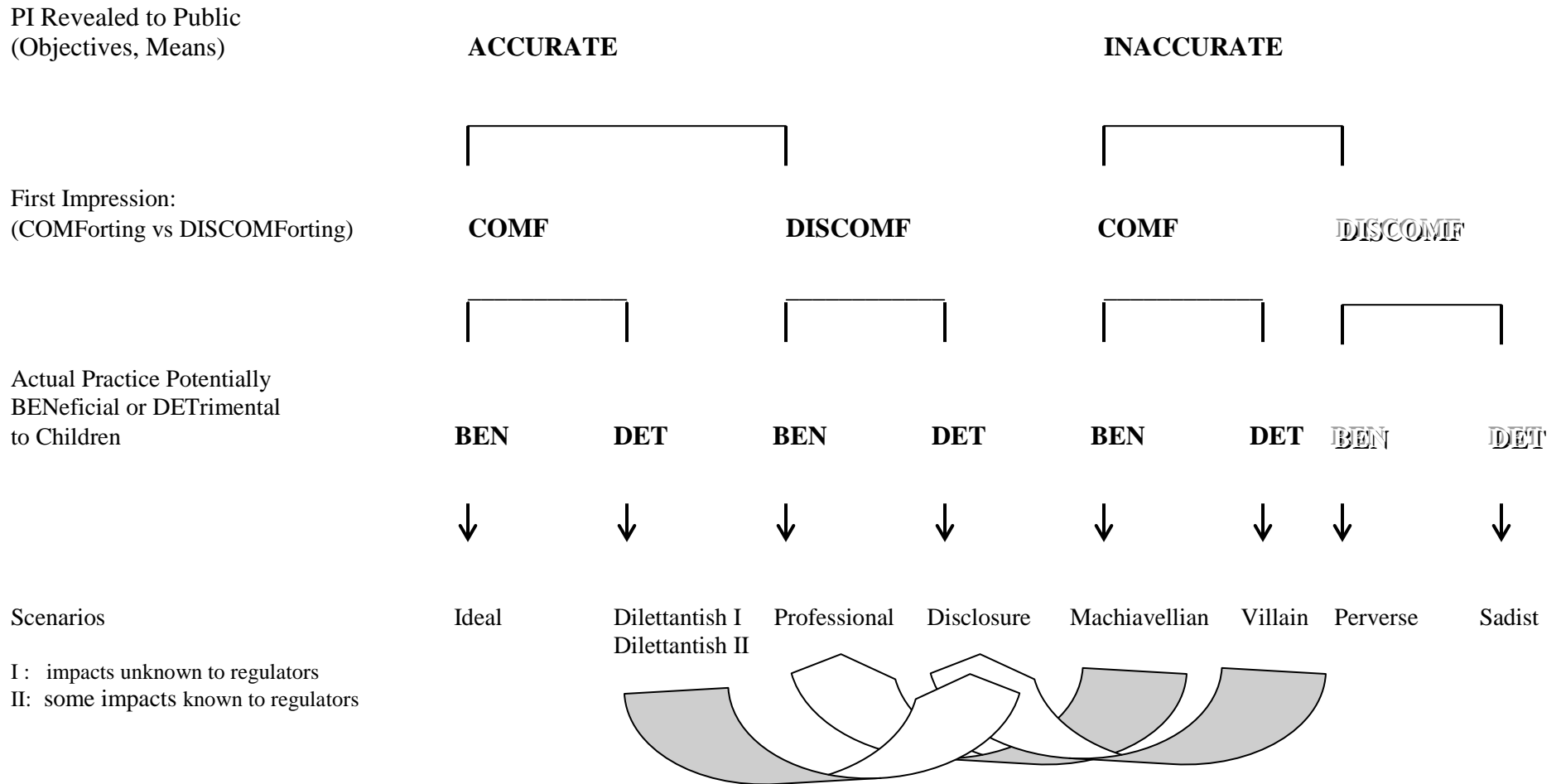
³⁰ It should be remarked that regulators may or may not be (or become) aware of the unintended consequences of their action. A careless form of dilettantism (*Dilettante I*, in Graph I) therefore must be distinguished from its less blind version, tantamount to the Villain scenario (*Dilettante II*). The distinction between what is known and what is unknown to regulators is arguably more critical in the case of the dilettantish scenario because it is under its first variation (I) that actual, local practices – displayed in comforting truthfulness – are least likely to be questioned, albeit detrimental to the children. Unintended consequences of action which prove *beneficial* to children, under some variations in the ideal and Machiavellian scenarios, have not been considered in the present study.

uncovered scenario among others and examining its regulatory implications within an analytical framework refined on the field (Strauss and Corbin 1990: 49). Is transparency necessary “wherever power is exercised”? Although inspired by deductive thoughts in the first place, the decisive question of this project was in the end guided by more inductive ones: Under which conditions would societal information regulators be more likely to diffuse discomforting information to consumers?³¹

³¹ It may be worth noting that case studies lend themselves particularly well to the falsification of such blanket statements as “Wherever power is exercised, there should be transparency”. In effectively exploring the *conditions under which* regulators may transmit societal information to consumers without harming the vulnerable population they are trying to help, one is certainly falsifying this general statement. See Flyvbjerg (2006) for an interesting review of five misunderstandings about case-study research, including the largely held view that “one cannot generalize on the basis of a single case” (2006: 224-8).

GRAPH 1

SCENARIOS OF SOCIETAL INFORMATION COMMUNICATION



The scenarios shown in Graph I schematize the logic of this reasoning. They rest on the recognition of three decisive factors in the regulation of societal information: (1) the degree of veracity and comprehensiveness³² of available societal information; (2) the more or less comforting nature of this information; and (3) the culminating outcomes to which this information refers – generally known by regulators. Letting aside the ideal and dilettantish scenarios (of *comforting transparency*) and the Machiavellian and villain scenarios (of *comforting opacity*), one must note that other avenues are open to societal information regulators. All societal information is not theoretically bound to convey comforting messages to the outside world. This message, while accurately reflecting the results achieved by regulators, may just as well reflect the more or less controversial choices made in the pursuit of some desirable goal, such as improving the fate of working children. It could also shed light on the flaws (e.g., ethical, technical, organizational) of this system of regulation by exposing its own limits to a better informed public. By opting for the transmission of a message subject to public controversy or worth a mea-culpa, the regulators of this information would inevitably confront some risks. Under which conditions could these risks be reasonably taken?

This logically follows from the problem of regulatory transparency exposed before: It is, no doubt, by seriously tackling the risk of diffusing discomfoting societal information that a raise in the level of transparency could occur. In a mea-culpa type scenario, this diffusion could help combat the risks of corruption, for instance. In a professional type scenario, one would rather ‘educate’ consumers by attempting to demonstrate that means deemed dubious by them may, in reality, be instrumental in achieving the desired goal. The question, then, is to examine the conditions under which regulators could abandon the comfort of opacity and meet the challenge of (a priori) *discomfoting transparency*.³³

³² “Transparency means conveying the truth”, writes Henriques. This does not imply that exactness is the only criterion to be retained in assessing transparency levels; some significant, normally hidden actions should also be revealed for transparency to be meaningful (2007: 30). Transparency evaluations thus require using the criteria of exactness as well as comprehensiveness, to the extent pertinent.

³³ The perverse and sadist scenarios (of *discomfoting opacity*) are not expected to occur in a context particularized by the appeal for ethical practices, *at least in all appearances*, through the mediation of corporate messages that are true or comforting, or both. These scenarios are, no doubt, more commonly found in wartime international relations, and in more or less healthy interpersonal relations.

The terrain of such investigations was offered by the Rugmark initiative described earlier. It will be argued, in the end, that enhancing the level of transparency would not be advisable in the absence of a proper regulatory platform for its non-State activities.³⁴

Preliminary Analysis of the Transparency Problem

The disparities observed between Rugmark's main contentions and the concrete activities realized under its name in Uttar Pradesh are analyzed within the proposed framework. The so-called Machiavellian scenario will be given special attention, although other scenarios of societal information regulation also revealed themselves through the empirical examination. Conclusions will then be drawn in relation with the possibility of raising the level of transparency in the diffusion of societal information by Rugmark.

Prevailing Scenarios of Societal Information Regulation

A first observation consists in acknowledging that Rugmark's principal assertions are designed to reassure consumers and restore confidence to the Indian carpet business. The Rugmark direction has not yet envisaged the diffusion of discomfiting information on the consistency between the objectives pursued by the organization, the means retained towards their accomplishment, and the results obtained on the field. Two scenarios of societal information regulation are thus set aside: (1) the communication to a better informed public of the flaws – ethical, technical, organizational – affecting its regulation system (i.e., the *mea-culpa* scenario, plausibly directed against forms of power abuse); and (2) the demonstration to consumers that means deemed dubious by them may, in reality, be instrumental in achieving a desired goal (i.e., the *professional* scenario, plausibly directed against a renunciation to 'educate' the public). Rugmark has so far limited itself to a regulation mode based on comforting transparency, comforting opacity, and their respective scenarios.

³⁴ The International Social and Environmental Accreditation and Labelling (ISEAL) Alliance, which is gathering an increasing number of labelling schemes under the hat of a single organisation, is likely to present itself as a serious world interlocutor as it remains open to the idea of further developing such a regulatory platform.

Under this mode, Rugmark regulators take a wide range of decisions which do not necessarily benefit the children of Indian weavers. Since the start of their mission in 1995, zealous Rugmark inspectors have paradoxically and involuntarily contributed to the clandestineness of child labour in Uttar Pradesh, for instance. Before the creation of Rugmark, the child labour phenomenon was manifest and prevalent in the carpet manufacturing industry. Because the employment of child weavers was then broadly accepted by the local population, it was relatively easy to discover its worst forms. The progressive recognition of the illegality of child labour in the region was paralleled with efforts to hide it, to inspectors' discontent. One major unintentional consequence of Rugmark's action, then, consisted in the further development of interlope practices. Contrary to inspectors who are *now* aware of this issue, 'child labour free' carpet buyers are not in a position to discover this phenomenon in light of the information provided by Rugmark.

This dilettantish scenario does not develop in isolation; it is embedded in a broader, more positive scheme. In all transparency, it is also known that former child weavers, rescued and rehabilitated by Rugmark, later started their own enterprises with success, employing in some cases their young Balashrya colleagues. Thousands of deprived children have had free access to a primary education of relatively good quality, and many of them subsequently engaged in higher studies. The Rugmark initiative also spurred the development of similar organisations such as Step and Care & Fair in Northern India, Nepal, Pakistan, and Tibet. Rugmark's mission is a continuous venture as the organization keeps investing in the education of larger cohorts of children every year. These results, among others, are an object of pride and they benefit from a generous publicity in Europe and North America. Comforting transparency, here, finds itself within a more ideal interface between Rugmark and carpet buyers sensitive to its societal marketing.

Comforting opacity is no less well-established, as exemplified by the multiple contraventions to the organization's official contentions. On the one hand, irregular

practices are still taking place within the organization, unbeknown to the public. Rugmark does not control very adequately the risks of extortion, contractual torts, segregation, favouritism, prodigality, and abuse of confidence.

On the other hand, the recourse by Rugmark to comforting opacity also results in the dissimulation of potentially troubling elements that ultimately prove beneficial to deprived families and their children. The latter have often taken advantage of secretly accommodating and paradoxical applications of the Rugmark code – not to mention Indian law. This may occur, for instance, when ‘illegal’ child labour is tolerated by Rugmark inspectors under certain circumstances. Such circumstances abound. One common denominator is inevitably found in the exceptionally high value attached to a child worker’s remuneration in destitute or hapless families. In contravention with its own code, Rugmark covertly allows the children of these families to work under other conditions determined *ad hoc*. This permissiveness is put into effect through various processes: (1) the maintenance of a certain degree of complaisance in the regulation of carpet labelling; (2) the friendly age evaluation of some children caught working behind carpet looms; (3) the consideration of non legal arguments in the decision not to rescue a child worker; (4) a generous interpretation of the ‘family business’ notion; (5) the preference given to obtaining the consent of parents and employers, over the organization of ‘raids’ (to better prevent the dangers of clandestineness). Comforting opacity may therefore serve the interests of deprived families through several channels.

This form of comforting opacity is at the source of interrogations neglected by the agents and analysts of societal marketing, fair trade, and their regulation. Behind the veil of ideal statements hailed by Rugmark, one is led to acknowledge that increased transparency in the regulation of its societal information would be problematic. *Ceteris paribus*, more transparency could prove as harmful as beneficial to carpet belt children. One may distinguish here between two types of comforting opacity, i.e. between the villain type (with potentially harmful consequences) and the Machiavellian one (with potentially beneficial consequences). These do not lend themselves to similar rationales with respect to the problem of regulatory transparency.

The revelation of villain practices to the public (i.e., those tainted with corruption, for example), could be followed by a commitment not to repeat them, under good auspices. The target audience of societal marketing would not ask for less, in return for its confidence. Weavers would be better off, to the extent that practices marked with corruption serve the personal interests of some Rugmark employees, and generally not those of weavers. Increased transparency, in this context, would be more likely to trigger a desirable adjustment within the organization, in agreement with consumers' expectations.

By contrast, the revelation of Machiavellian practices (i.e, misleadingly comforting, although secretly beneficial to weavers), could not be followed by such a commitment of non-repetition without risk for the weavers. Increased transparency would consist in communicating some troubling information likely to trigger boycotts (or threats of boycotts) in a context where a commitment not to repeat these practices could very well prove more detrimental than helpful to weavers. Hence the most manifest illustration of the regulatory transparency problem. First, consumers do not have access to the contextual elements required for a full understanding of the likely benefits (to the weavers) of practices they may strongly oppose. Second, if they were given access to such contextual elements, polemics would undoubtedly be brought to life, in the absence of any conciliatory mechanism. The expert scene is no exception. Controversies characterize the discourse of specialists on the question of child labour, and the expert literature seems incapable to play such a mediating role. The question then becomes: under which regulatory conditions could increased transparency not harm weavers and their families?

Primary Obstacles to Increased Transparency

The most important obstacles to increased transparency in the transmission of societal information by Rugmark are combined in the form of substantive and procedural factors: (1) the complexity of the context within which the organization operates; (2) the

controversial character of the means retained by the organization to fulfill its mission; and (3) the absence of mechanisms designed to translate this complexity to consumers and offer a framework for eventual exchanges with producers.

First, the regulatory problem under study would not be so critical if any work performed by a child under the age of 14 (outside the purview of a family business) was more detrimental than beneficial to the child, directly or indirectly. The original Rugmark code would not suffer from any major deficiency. The mission of the organization would simply consist in enforcing that code to its best and fight any form of power abuse. Any contravention to the code would represent both a derogation to the principles promoted by its societal marketing and a menace to the well-being of weavers. Such is not the case, though. The evidence shows that the benefits which could be received, by a poor family, from the labour of a child – an *opportunity forgone* (i.e., the ‘opportunity cost’, in economic language) – may be very high. It may draw the line between a healthy and an insufficient family diet, the administration of a vital medical treatment and its inaccessibility, the possibility and impossibility for some brothers and sisters to gain access to a college education, and so on. Such conditions are necessarily aggravated by the absence or insufficiency of basic services (such as education, health, and financial services) and by the slowness of the political and economic reforms on which often depend the adequate provision of these services. The complexity of the context in which Rugmark operates does not transpire from the recognition of these intervening variables as much as in the evaluation of their relative importance. To what extent should a problem relating to the safety, health, diet, or finances of a family legitimize the work of a school-aged child? From a distance, without a detailed knowledge of the peculiarities of the daily life of some destitute families, this appreciation is hardly possible. Not to mention the fact that child labour does not necessarily encroach on the school schedule; it has been stressed that part-time work, before and after class, was a common occurrence within the carpet belt – an arrangement absent from the Rugmark code.

Admittedly, the unofficial means retained by Rugmark in the pursuit of its mission do lend themselves to polemics or criticism. The facility with which weavers can register

one loom with Rugmark, and another one with a competing organization that does not perform inspections, is a typical illustration of this. The reputation of the organization, no doubt, would be tarnished if it were revealed that the Rugmark inspection system can so easily be circumvented by displacing children to a neighbouring loom, all other things equal. The same can be said of the unexpected simplicity of Rugmark's carpet labelling procedures. Whereas the royalties paid to the organization for each labeled carpet sold on the market do contribute to improving the welfare of poor families, the Rugmark label does not provide 'the best assurance' that a carpet was weaved by adults and that one can trace back the loom on which it was produced. Also, the appreciation by inspectors of the age of a child and his attachment to a family of weavers is conducted with a great deal of elasticity. So much so that while Rugmark is said to condemn 'illegal' child labour, one no longer refers to prohibitions found under Indian law, but to Rugmark's own standards, unknown to the public. Under the pressure of carpet importers and their clienteles, these non-State standards are enforced with relative flexibility and secrecy. One may understand the choice not to publicly uncover these 'grey zones' under present conditions. Is the legitimacy of such a regulation system, however, irremediably condemned to a lack of transparency?

For a large number of families, this lack of transparency is justified concretely by the instrumental gain they derive from it. Others may suffer from it, though, to various degrees. Examples of this conflict include: (1) the preference granted to Hindu children over Muslims and *Dalits*, in the selection of students; (2) the preference granted to Hindu men in the selection of teachers; (3) the strict obedience to (abusive and non abusive) parents prior to the final registration of children to the rehabilitation center; (4) the remuneration of (relatively good) teachers below the minimum wage and that of (relatively bad) government teachers; (5) the relatively adequate coverage of the core carpet belt region by inspectors, and the neglect of its periphery. The lack of regulatory transparency, although justified to some extent and under certain conditions, is also masking its own vulnerability. The organization is not immune against the risk of such polemical information leaking and reaching the public, without proper contextualization. This has been confirmed during an examination conducted by a Rugmark manager on the

scope and eventual diffusion of the results of this research. The possibility that the various flaws or ‘grey zones’ of the Rugmark regulation system be exposed to the public, indeed, attracted special attention.

In the absence of mechanisms designed to translate this complexity to consumers and offer a framework for eventual exchanges with producers, Rugmark regulators are exposing their organization to the risks posed by the leaking of sensitive information towards a large audience. The absence of any communication mode between consumers and producers led to the boycott of Indian carpets in the early 1990s. Social labelling standing for one fairly elementary mode of interaction between producers and consumers, it is here confronted to a problem similar to that which gave birth to the Rugmark organization itself. The gap perceived between consumers’ broader expectations and the harsh reality shaping the action of Rugmark is at the heart of this problem. Consumers may have been comforted, more or less genuinely, with respect to the use of Indian child labour since the birth of Rugmark. This comforting position, however, is fragile: the mere exposition of sensitive or controversial information to the targeted public would suffice, in the present context, to undermine the credibility of the organization – not to mention the dire consequences likely to affect weavers as a result. Ultimately, one may conclude, the vulnerability of the Rugmark system rests on the absence of a deliberation space between consumers and producers, under the risk of increased regulatory transparency, either forced or unexpected. Hence the reserves expressed on the blanket prescriptions generally made in response to the Rugmark initiative.

The Pre-Constitutional Pitfalls of Rule Changing

It is pertinent at this stage to envisage Rugmark’s action from a more strictly institutional perspective. One must first note that in the carpet niche of fair trade, the functions relating to the formulation, enforcement, and interpretation of social standards lie in the inner workings of a non-governmental organization. Consumers may have initiated and sustained the activities of Rugmark since the mid-1990s, but it is its directors and inspectors who still accomplish the legislative, executive, and interpretative functions

within this young institution. In this domain, Rugmark has established itself as a sovereign entity.

One second major conclusion of this study resides in the recognition that it is impossible, from an instrumentalist point of view, to sensibly reform Rugmark's institutional apparatus without endowing it with a (new) constitutional platform. One is led to acknowledge that the necessary contextualisation of societal information, within a more transparent framework, is bound to reveal the constitutional flaws of the organization, and, by ricochet, to call for its constitutional reform. Such a platform would serve as a basis for the redistribution of powers and functions which, until now, have been kept in the hands of a handful of people. An overview of the procedural and substantive elements of such a reform is offered below.

On the procedural level, one notes that Rugmark's inspection system is based on an *inquisitorial* mode. It is in effect Rugmark that takes the initiative of the monitoring, auditing, and certification process in the hand-made carpet industry by directly undertaking the information gathering required by its mission. Since its inception, this inquisitorial scheme has been deemed sufficient in responding to the informational demand of societal marketing. Yet the success of the Rugmark mission necessitates the adoption of a supplementary, *accusatorial* mode of information collection – a more independent, complaint-based system, in other words. The main reasons supporting this conclusion are as follows.

First, the vast and hostile territory covered by the four inspectors poses a serious obstacle to access to the production sites. Inspecting all carpet looms within a reasonable period is impossible under these conditions. Other hurdles include the difficulties attached to the identification of looms within villages as well as their inspection before and after regular office hours. A flagrant violation of the Rugmark code may thus persist without any inspector having even the chance of intervening. In these circumstances, surprise inspections based on sampling procedures appear to answer a need for equality before the Rugmark code more than a need for efficiency.

Second, institutional flaws of the current regime drive potential sources of infractions away from the scope of the Rugmark inspectorship. One flaw concerns the child labour *displacement effect* following a *selective registration* of carpet looms with Rugmark. It has been shown that a community of weavers could very well register one (or several) loom(s) with Rugmark while maintaining one (or several) unregistered loom(s) outside the purview of the Rugmark code. The ensuing displacement of young workers towards such unregistered looms has created privileged and non-representative zones of direct Rugmark influence outside of which the child labour problem may be unintentionally moved. Another flaw of importance relates to the reputational risks incurred as a result of the non-correspondence between the series number displayed on a Rugmark label and the registration number of the loom on which the carpet was produced, contrary to Rugmark's official claims. In this context, a mention to the effect that the label signals the intervention of Rugmark within a broader sphere of regulatory influence – as opposed to a collection of hardly traceable carpet orders – would be more susceptible of reassuring informed consumers. And the use of external 'antennas', more autonomous and decentralized, would prove necessary in this respect. Flagrant violations of the Rugmark code could then be uncovered outside the more privileged zones created by the organization. In both cases, the exclusively inquisitorial scheme retained by Rugmark appears as a major determinant of the problem.

Third, the inquisitorial mode does not lend itself well to the disclosure of internal, professional faults committed by Rugmark inspectors and directors within or beyond the boundaries of their legitimate powers. Under the current regime, no victim of inspectors' negligence or zealousness, for instance, could effectively voice his complaints in seeking remedial action. Corruption and abuse of power may threaten the organization and if the latter finds its legitimacy in intervening in the operations of private enterprises, it does not necessarily welcome outside scrutiny upon its own activities. Symptomatically, it is as a result of our independent investigation that abuses of contractors' confidence by

directors as well as bribes accepted by inspectors and teachers have been denounced and criticized.

Fourth, the inquisitorial regime does not adequately support a consideration for new facts in the course of its operations. It tends on the contrary to consolidate its regulatory agenda, yet to the exclusion of relevant facts and opinions more likely to enrich and safeguard the mission of the organization. By contrast, a supplementary, complaint-based accusatorial system would open the door to a self-correcting dynamic fed by the influx of these novel elements. A consideration for the discrimination exercised against the Muslim and the *Dalit* communities in the administration of Rugmark schools illustrates this point. Socio-religious discrimination issues are indeed absent from the Rugmark code and without the intervention of an outside party, it is doubtful that they be integrated into it. The desirability of this addition, in turn, calls upon an examination of the substantive aspects of the envisaged reform.

In sum, institutional failures, abuses of power, spatio-temporal limitations, and the centralism of the regulatory apparatus all point to the failures of Rugmark's paternalistic and inquisitorial system. The precise form that a suppletive, accusatorial system could take will not be discussed here. One may envision an arbitration tribunal or a private ombudsman scheme, among known models. What matters the most at the preliminary stages of a constitutional reform is arguably the recognition of a need for 'decentralizing' the information gathering process at Rugmark's – e.g., encouraging the development of initiatives designed to collect and treat a broader range of potentially controversial facts and opinions. On the procedural level, the setting-up of such a system would require tackling issues relating to the nomination and destitution of arbitrators or ombudsmen and to the determination of their powers, to rules of amendment and evidence, and to the posting of claims and decisions on websites accessible to consumers – all new challenges on the margins of overloaded State courts and tribunals.

On the substantive level, it is clear that Rugmark's regulatory system suffers principally from a lack of fundamental principles, that is, background rules intended to guide rules of

a more particular nature. This deficiency manifests itself in the main zones of tension observed during fieldwork, whether within hand-made carpet production units (ex. between the interest of a parent and that of a child), more strictly domestic affairs (ex. between the right to leisure, education, and the right to life, bodily health), or communities assembled in a village and its surroundings (ex. the interests of the Hindu community and those of the Muslim community).

Lastly, it is worth stressing the obvious point that a viable reform of Rugmark supposes that its body of rules be organized in a (minimally) hierarchical fashion. By establishing a constitutional platform for Rugmark's code and operations, the current regime could indeed free itself from its fixed arbitrariness. A reform would require the arrangement of occasional constitutional reviews – legislative and judicial – by a constitutional board or a similar authority. In the absence of such reviews, the success of the rule changing process contemplated above would be compromised, in the same way that State laws would remain unbalanced without the effective supremacy of a constitutional charter or its equivalent.³⁵

Conclusion

We have examined certain conditions under which more transparency would be desirable in the transmission, to consumers, of information regarding the processes through which goods are produced, broadly speaking. In the case under study, 'societal information' pertained to child labour in the production of Indian carpets as well as the activities undertaken by (consumer-sponsored) *Rugmark International* to gradually eliminate it.

Several arguments have been advanced by experts in support of greater regulatory transparency in this regard, and in opposition to it. By paying special attention to the foreseeable effects of greater transparency on the well-being of children, an underappreciated scenario of societal information regulation was uncovered, which calls for a more nuanced approach to the problem of regulatory transparency. In this scenario,

³⁵ The first part of a model Constitutional Charter appears on Annex I.

societal information regulators may voluntarily dissimulate or alter potentially ‘troubling’ information so as to comfort consumers, while knowing that concrete results derived from their activities are truly beneficial to a number of deprived children. It was also revealed that Rugmark has established itself as a sovereign entity in this important segment of fair trade, by concentrating the powers to formulate, execute, and interpret the operating rules within the organization.

A higher level of transparency, *ceteris paribus*, would not necessarily be in the interest of children; it could in fact harm them. This is all the more so in a context where regulators and consumocrats are not exposed to the same realities, and where the best as well as the worst may cohabit in the exercise of unified legislative, executive, and interpretative powers. Hence the importance of examining the conditions under which societal information regulators would be more inclined to reveal *a priori* discomforting information to consumers without hurting the targeted children.

Greater regulatory transparency could hardly emerge, in the present context, without efforts to contextualize (a priori doubtful or potentially controversial) decisions taken by Rugmark in the course of its activities. Such contextualization, however, would inevitably expose the flaws of the organization in the formulation, execution, and interpretation of its own rules. It is the obligation of contextualizing societal information, within a more transparent framework, which would then command a constitutional reform of the organization on both the substantive and procedural planes. In the absence of such reform, higher levels of transparency would inevitably trouble regulators and consumocrats alike, putting the philanthropic mission of Rugmark at risk. From an instrumentalist point of view, maintaining a certain degree of opacity, while fighting power abuses insofar as possible, would be advisable before a reform takes place. At a later stage, a successful and transparent regime would be a first step towards the creation of a veritable deliberation space between producers and consumocrats and, plausibly, towards a more democratic, other-regarding alignment of the policies which model transnational markets.

CONSTITUTIONAL CHILD LABOUR CONSUMOCRATIC LAW (draft model)

Part I

DEFINITIONS

- (1) “*charter*”: part II of the present Constitution, the consumocratic charter of children’s rights.
- (2) “*child*”: any person below the age of fourteen.
- (3) “*child labour consumocratic law*”, “*consumocratic law*”: rules designed to improve the well-being of a population of children and enforced through market-based mechanisms.
- (4) “*consumocratic activity*”: activity conducted under consumocratic law.
- (5) “*consumocratic constitutional board*”: group of officials with the authority to amend the constitutional framework of consumocratic law and oversee the activities of the tribunal under the present provisions.
- (6) “*consumocratic organisation*” : organisation officially dedicated to improving the well-being of a population of children under consumocratic law.
- (7) “*consumocratic tribunal*”, “*tribunal*” : group of officials with the authority to interpret and amend consumocratic law, and settle certain types of dispute arising thereunder.
- (8) “*consumocrat*” : consumer who selects certain products subject to societal marketing.
- (9) “*local*”: of, or from the region targeted by a consumocratic organization.
- (10) “*societal marketing*”: marketing of goods or services whereby societal information is signaled to consumers through various means.

Part II

THE CONSUMOCRATIC CHARTER OF CHILDREN'S RIGHTS

Preamble

(...)

CHILDREN'S RIGHTS

1. (1) This charter guarantees the rights set out in it subject only to such reasonable limits prescribed by consumocratic law as can be demonstrably justified under a careful appreciation of local beliefs, motivations, and opportunity sets.

(2) In the conduct of such appreciation, whenever the interest of a child conflicts with the interest of a parent, the interest of the child shall prevail.
2. Every child has the right to life, security, leisure, and guided freedom.
3. Every child has the right to education, rehabilitation, and the right not to engage in bonded labour and other forms of forced labour.
4. Every child has the right to bodily integrity and the right not to be subject to any cruel or unusual treatment or punishment.
5. (1) Every child is equal under consumocratic law and has the right to equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, ethnic origin, colour, religion, caste, sex, or mental or physical disability.

(2) Subsection (1) does not preclude any consumocratic law or activity that has as its object the amelioration of conditions of disadvantaged children.

ENFORCEMENT OF RIGHTS

6. (1) Anyone who has serious reasons to believe that a right guaranteed by this charter has been infringed or denied may apply to the tribunal to impose such authorized corrective as the tribunal considers appropriate and just in the circumstances.

- (2) The mismanagement of a consumocratic organisation is, for the purposes of subsection (1), an infringement of the rights guaranteed by this charter.

7. Any decision rendered by the tribunal shall be made public
 - (1) permanently and in its entirety;
 - (2) in English and, if deemed necessary, other languages;
 - (3) within a reasonable timeframe;
 - (4) primarily through the medium of its internet website.

8. (1) A duplicate of any such decision shall be made public, in the conditions listed in section 7, by the consumocratic organisation(s) concerned.

- (2) Wherever a corrective imposed by the tribunal involves the amendment of consumocratic law provisions, the amended law shall also be made public, in the conditions listed in section 7, by the organisation(s) concerned.

9. Any failure by a consumocratic organisation to abide by a decision of the tribunal shall be recorded together with the organisation's reasons for not abiding to it and both shall be made public by the tribunal in the conditions listed in section 7.

10. The release of information contemplated in section 7 shall be suspended, exceptionally and for a determinate period not exceeding 5 years, if it is established by the tribunal that conflicting expectations held by consumocrats and local producers would, following such release, most likely hamper the protection of children's rights.

APPLICATION OF THE CHARTER

11. (1) This charter applies to child labour consumocratic law and the activities undertaken thereunder.

(2) Any law and activity referred to in subsection (1) shall be executed or conducted by a consumocratic organisation signatory to the present Constitution.

AMENDMENT OF THE CHARTER

12. An amendment to this charter may be made by resolution of the consumocratic constitutional board supported by at least three-quarters of its members.

SUPREMACY OF THE CHARTER

13. Any child labour consumocratic law that is inconsistent with the provisions of this charter is, to the extent of the inconsistency, invalid and of no force.

Part III

THE TRIBUNAL

**COMPOSITION
RULES OF OPERATION
POWERS AND DUTIES**

Part IV

THE CONSTITUTIONAL BOARD

**COMPOSITION
RULES OF OPERATION
POWERS AND DUTIES**

Part V

GENERAL