NEW HORIZONS IN COMPETITION LAW AND ECONOMICS

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This series has been created to provide research based analysis and discussion of the appropriate role for economic thinking in the formulation of competition law and policy. The books in the series will move beyond studies of the traditional role of economics – that of helping to define markets and assess market power – to explore the extent to which economic thinking can play a role in the formulation of legal norms, such as abuse of a dominant position, restriction of competition and substantial impediments to or lessening of competition. This in many ways is the *new horizon* of competition law policy.

US antitrust policy, influenced in its formative years by the Chicago School, has already experienced an expansion of the role of economic thinking in its competition rules. Now the EU is committed to a greater role for economic thinking in its Block Exemption Regulations and Modernisation package as well as possibly in its reform of Article 102. Yet these developments still raise the issue of the *extent* to which economics should be adopted in defining the public interest in competition policy and what role economists should play in legal argument. The series will provide a forum for research perspectives that are critical of an unduly-expanded role for economics as well as those that support its greater use.

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1. A neo-structural legal perspective to economic power analysis

1. INTRODUCTION: THE INSUFFICIENCY OF THE ANTITRUST CONCEPTS AND INSTRUMENTS

For decades, antitrust theory has been moribund and read like an obituary. New ideas have been few and far between, and what little has come on the scene takes pride in having mere practical application, all foundational theories and justifications for antitrust having long since had their day.

In fact, the strong tendency toward simplification and doctrinal negativism has a double origin. In the first instance, it is based upon a superficial analysis of the economic landscape that leads to the belief that the effects of private economic power in society are limited to the manufacturer–consumer relationship.

Economic history, both in developing and developed countries, shows that the effects of monopoly power are much more pervasive than just the consumer–producer relationship, affecting development patterns and even distribution patterns in society.

In the second instance, there is a powerful and again simplistic faith in the ability of economic theory to predict results and, consequently, in our ability to identify the most efficient result in the consumer–manufacturer relationship.

This efficient result is, in its turn, the product of a rationality-based analysis of the market functioning. Therefore law and antitrust law in particular have been oriented to correct imperfections in the market functioning. Market power structures, in this (neoclassical)[1] view, are nothing more than the product of an imperfect functioning of the market.

Adding these two simplifications together leads to a belief in the possibility of identifying one unique theoretical objective in antitrust law, which consists of obtaining a certain economic result based on principles of rational functioning of the market. This analysis is, as will be demonstrated, too simplistic for various reasons.

[1] The word neoclassical has many different meanings in economic history and economic science. When used in the book, it is equivalent to the Chicago School microeconomic theory as applied to Antitrust Law.

First of all, because economic power cannot be considered a mere market phenomenon. As will be demonstrated, not all structures with economic power are created in the market, even if they have effects on it. Many of them are created by the law or by social relations. Their analysis in terms of market rationality is therefore impossible.

But this is not all. The exclusive (or predominant) market rationality paradigm can be criticized not only based on the source of economic power but also on its effects. The effects of economic power structures are not limited to the market. They are much broader, involving, as will be seen in the next sections, negative wealth distribution effects and negative social effects. Consequently, all structures, even those created in the market, are neither well perceived nor analyzed by market rationality paradigms.

If all this is true and economic power has not only market but also legal and sometimes social roots and on the other hand produces effects far beyond the market, economic rationality cannot be predominantly a market rationality but instead a rationality of power and power exercise. Evidently such a broad reality cannot be well perceived by traditional antitrust law.

2. ECONOMIC POWER AND ITS MULTIPLE EFFECTS ON THE SOCIAL AND ECONOMIC SPHERES: MONOPOLIES AND UNDERDEVELOPMENT

If this is true, then an analysis of the relationships and effects generated by economic power should originate not in mathematical assumptions about economic results but in the study of the economic history of countries in which this power is more structured and deeply rooted in social and economic structures. The reason is simple. It is first of all in these regions that these broader effects of economic power are easier to identify. As in all theoretical analyses, using examples with more pronounced characteristics helps to identify tendencies and demonstrate propositions. This does not mean that such results are invalid for countries in which economic power is less disseminated and less profound. It only means that the results obtained will likely be less intense.

The countries in which economic power is historically most concentrated and consolidated are former European colonies in South America and Asia. In those countries, economic power is a phenomenon that is historically part of society and, therefore, much easier to identify. This statement is not new, but its consequences for the economics and internal legal systems in place in developing countries were disregarded in the past and are still belittled.

There is no doubt that in the former colonies, as contrasted with today's

developed countries, economic power was made up of economic relationships that were relevant factors even for the formation of the national states. The histories of most, if not all, of these countries are tightly intertwined with European colonization. This is an important element to be noted. The status of 'colony', far beyond external dependence, created internal power structures that marked and still influences many aspects of development (or underdevelopment) in these societies.

This is why it appears possible to revisit their development processes, starting from the structures of economic power and the structure of income distribution that follow them. The bonds of colonial dependence that motivated underdevelopment, even if the root cause, are not its ultimate cause. The explanation is simple, but must be well understood. The internal economic structures are what permit or inhibit, in the necessary moments, the breakthrough from dependency. As we all know, this rarely took place in the history of developing countries. Apart from rare and exceptional situations, in these countries the bonds of dependency are rarely counter-attacked and even less frequently broken. This is owing to internal power structures and income distribution that benefits, even if indirectly, from these bonds.

It is therefore on these structures that the analysis should be focused. In addition, the relationship between economic power and income distribution must be addressed in the light of historic evidence. This relationship is intense.

Traditional analysis tends to identify only certain superficial relationships between a monopolistic company and the consumer, to wit, essentially identifying it as the value of the monopolist's extraordinary profit, which is extracted from consumers through the imposition of monopolistic prices. As has been shown in empirical studies, this value may not be dismissed and accounts for a relevant portion of income concentration.

The fact is that this relationship between economic concentration and income distribution is much deeper and more extensive. This is especially true of structurally concentrated economies such as the former colonies. On the one hand, the relationship is much more extensive in the product market, affecting industrial organization itself. As well as the imbalance in relations between consumers and manufacturers, with the consequent inefficiencies in allocation and distribution, it leads to an absolute disproportion amongst economic sectors. The dynamic sector of the economy since colonial times is generally concentrated in primary products or low technology manufactured goods for export and in the durable consumer goods to be consumed internally by the high income segment of the population. These two sectors, monopolized or oligopolized, concentrate inversions and productivity gains. They therefore drain resources from the economic system either directly, through monopolistic profits obtained from suppliers, or indirectly, via the siphoning of investments that would otherwise be invested in other sectors (hereafter called peripheral economic sectors).

The effects are also deeper. As well as the consumer market and peripheral economic sectors, there is also strong interference in the labor market. Thus, in many, if not most, of these countries, income concentration ends up becoming a fundamental condition for economic growth. This is precisely because, based on the production of primary products and simple raw materials, be it for the domestic or foreign market, productivity gains in these economies cannot be obtained only through technological improvements (which are at times insufficient in such low technology sectors). Gains in productivity that are fundamental for economic growth should be based on an increase in workforce productivity, which can be achieved through reducing real salaries or through an effective reduction in the workforce (source of the first so-called economies of scale achieved with economic concentration). This movement is only made possible, however, via a high level of monopolization in the economy, which also creates great monopolistic conglomerates in the labor market. As previously mentioned, this state of affairs is explained not only by the fact that competitors in the relevant sector are scarce and hardly relevant, but also because, in such economies, the colonial monopolistic standard ensures that there is a lack of competition among economic sectors. Sectors with real economic dynamism, capable of accumulating capital and absorbing the labor force, are few and concentrated.

Only through such an absolutely concentrated growth standard is it possible to have capital accumulation and therefore productive investment that leads to growth. That said, such a growth standard requires, for its own existence, inverse income redistribution, with impoverishment (relative for employed workers and absolute for those who lose their jobs) of lower income groups and relative impoverishment of peripheral economic sectors.

Placing the spotlight on structures also implies that predominant sociological-individualistic explanations for underdevelopment are not accepted. These justifications are frequently incorporated into neo-institutional reasoning to explain underdevelopment and suggested solutions. Hence, according to these theories, with the individual motivation of colonizers of Latin America and Asia, colonial exploitation, different from that of immigrants to North America and Oceania, was reflected in the entire institutional structure of society. This kind of statement errs in being an under and overstatement at the same time. On the one hand, it exaggerates the differences in the individual spirit of colonizers. Interesting studies demonstrate that the colonial experience is richer than this distinction appears to suggest. Within the same colonies, there coexisted regions of mere exploitation with regions where colonizers considered settling and remaining. Both situations happened in colonized countries in Latin America, Asia and even Africa (South Africa, for example). In these countries, be they Argentina, Australia or India, the capitalist colonial spirit was similar.[2]

On the other hand, what these sociologic-individualistic theories fail to consider is precisely the study of economic structures created by exploitive colonization. These structures, and not individual motivation, are the main factors that lead to differences between economies based on exploitive monopoly and societies in which these structures do not prevail. They end up determining economic cycles and influencing the whole of a society's socio-economic system, prevailing over the similarities or differences that regions that experienced the definitive settling of populations, as opposed to those where populations were merely exploited, could have from the point of view of the motivations of explorers. Thus, regions of similar colonial spirit like Buenos Aires in Argentina and Sydney in Australia result in countries and regions of social and economic development levels that are absolutely different.

Structural concentration of economic power therefore produces effects on the entire system, concentrating income between industrial sectors and between social strata. This concentration of power and income also causes economic growth patterns to change substantially. The increase is strongly based, among other factors, in productivity gains resulting from the inverse redistribution of income from workers (both employed and surplus) to the great conglomerates (and their small number of shareholders).[3]

It is important to observe as of now that this hypothesis, once explained, can help solve two apparent paradoxes of contemporary economic history, which are, in fact, directly correlated.

The first consists of reproducing underdevelopment (with absolute or at least relative deterioration of the main social and income distribution indicators) even in countries that have had important economic growth rates. The hypothesis presented here can help explain this apparent paradox. If the hypothesis for concentration of economic power as a generator of inverse income distribution in the consumer, work and inter-industrial markets in the developing countries is admitted, it is possible to understand the reason for economic growth with deterioration of social indicators. This happens precisely because of inverse income distribution, in other words, owing to the fact that gains in productivity result from a loss in real salaries or more

2 See D. Denoon, *Settler Capitalism: The Dynamics of Dependent Development in the Southern Hemisphere*, 1983, p. 18, *et seq.*

3 For an econometric analysis of the relationship between market concentration (monopolies) and poverty in Brazil during colonial times see C. Salomão Filho, B. Ferrão and I. C. Ribeiro, *Concentração, estruturas e desigualdade – as origens coloniais da pobreza e da má distribuição de renda*, 2009.

recently from an increase in the exclusionary process created by unemployment.[4] The final result is the existence of constantly underdeveloped economies, in which the more economic power structures grow, the more poverty and social inequalities are produced.

The second apparent paradox is in the convergence of relative prices between developed and developing countries identified in empirical studies.[5] According to this research, it is possible to show a positive correlation between international convergence in prices of commodities and convergence of relative prices of production factors (principally wages and land prices, the wage–rental ratio). This convergence is followed, and thus the apparent paradox, by an increase in differences in living standards in the developed and developing worlds. Obviously it is not sufficient, as is done in these studies (see note 4), to identify technology gains to explain these results. The approximation of prices of commodities followed by an approximation in wage–rental ratios should also lead to smaller and not greater differences in living standards, even with various technologies. After all, commodity and

4 Whereas in colonial and early industrial time productivity gains were obtained from real salary reduction, in modern times productivity or 'efficiency' gains are obtained from cost reduction in concentration processes, specially through lay-offs. The problem is that the 'economic exclusion' created by this lay-off process is much more serious than just unemployment. Unemployment, when coupled with an environment where other people are included in the economic process, completely marginalizes the individual. Since he is incapable of paying any kind of prices or any kinds of goods (from food to real estate) that the non-marginalized pay, he is constrained normally into a parallel economic environment, of the excluded. Poverty, violence, gang formation and drug addiction create a vicious circle parallel to the economic process out of which it is difficult to take the individual. Although many developing countries like Brazil, experimented in latter times relevant growth rates coupled with improvement in many social indicators, this is due mainly to governmental anti poverty and inclusionary programs (as Bolsa Família in Brazil). Even in those countries, however, the above stated influence of economic structures in exclusion is an important reason why probably urban poverty has proved so much more difficult to eradicate than rural poverty through anti-poverty programs (*Bolsa Família* in Brazil, for example). For instance, see 'Brazil's Bolsa Família' in *the Economist*, 31 July 2010, p. 19. For recent data and analysis, see 'Gastos com a Política Social: alavanca para o crescimento com distribuição de renda', Comunicado no. 75, Comunicados do IPEA, February 2011, available in Portuguese at *www.ipea.gov.br*. The Institute for Applied Economic Research (IPEA) is a federal public foundation linked to the Strategic Affairs Secretariat of the Presidency of the Republic. It provides technical and institutional support to government for the formulation and reformulation of public policies and development programs in Brazil.

5 See J. Williamson, 'Land, Labor and Globalization in the Third World, 1870–1940', in *The Journal of Economic History*, 62(1), March 2002, p. 55 (68); see also previous work by the same author, 'Globalization, Convergence and History', in *The Journal of Economic History*, 56(2), June 1996, p. 277, *et seq*.

land prices account for much of what is required to improve social and economic indicators of a region. Even with other important factors influencing these indicators, the full discrepancy can show only that there is a particular segment of the population taking advantage of the best wage–rental ratios.

In relation to different and successive economic phases typical of developing countries in which the primary products and raw materials industries are substituted for a rural economy, these results are in reality indicators of economic concentration and inverse redistribution of income and not improvements in quality of living. In these economies, in this particular historic moment of industrialization, the reduction of land prices is more than proportional to the reduction in real wages that, however, still exists. This is because the demand for land drops more in periods of industrialization than the demand for workers and also because, during this period, union organization begins in most developing countries, avoiding an even greater deterioration of real wages levels. What is actually happening is a concentration of wealth in the top segments of society, which can accumulate even more capital through the purchase of land. In addition to the association of better wage–rental ratios and worse social indicators, this also explains another peculiar characteristic of developing economies. It is a fact that 50 years after the start of the industrialization process in the majority of the developing countries, we are witnessing a re-concentration of agricultural property in the hands of large landowners and the marginalization of farm workers in such countries. The accumulation of capital, having happened in an unbalanced manner, is such that only the top layers of society can take advantage of reductions in land prices. For the working classes, employed or even unemployed, there is no access to agrarian property. This explains the prevalence and endemic character of the agrarian conflicts in these economies, in spite of the relative abundance of land.

What we are saying, in fact, is that the opposing positions of the classic theory of comparative advantages and the structural theory (in the initial version by Prebish) should be revised. Even with an approximation between the values of the production factors (in a certain period of time),[6] this approximation is not relevant for the economic development of these regions. This is because the central problem of colonialism is not in the structures of international commerce, but in the domestic structures of economic power (related or not to foreign economic and trade issues) whose establishment and implementation were very much favored by colonialism.

6 Approximation not completely shown. There is relevant data in the opposite sense – see on this issue J. Love, 'Economic Ideas and Ideologies in Latin America since 1930', in *Cambridge History of Latin America*, vol. VI, 1, 1994, p. 393 (p. 423, especially note 91).

Furthermore, as mentioned above, the history of colonialism and the monopolistic structures deriving from it impacts the societies of the Southern Hemisphere profoundly, to the point of constituting social and economic structures that will affect the entire future economic development of such societies. It is for this reason that this book begins with a recapitulation of the economic history of developing countries.

Mention of social and economic structures is intentional. It is not correct to start from a unilateral predefinition of human behavior, to wit, that people are moved exclusively by economic rationality as defined by G. Becker,[7] or by predominantly social motives, as was so passionately and effectively defended by K. Polanyi.[8] The definition between these two tendencies when studying development (underdevelopment) is therefore unnecessary.

In fact, colonization deeply affects not only economic structures but also social structures. Attachment to the cultures and living standards of developed countries and a certain contempt nurtured by the upper and even middle classes for their own civilization is a common characteristic in most developing countries. More importantly, the monopoly of economic knowledge introduced by the colonial monopolies roots itself in social structures, creating tension amongst the classes and worsening cooperation. These beliefs and structures create great impediments to development.

In the economic field, the effect of such structures is even greater. It affects, as seen above, the accumulation of capital and the distribution of its gains. Analysis of the means of addressing such serious economic structural problems should be more detailed. It demands analysis of the structures and economic behavior present in the economic order of developing countries resulting from monopolistic structures, as well as a legal proposition capable of offering a way out of the vicious circle of underdevelopment caused by them.

A last and very important point must be made. The central importance to underdevelopment of the monopolistic structure created in the colonies does not imply that it is always the opposite of what we are looking for, that is, the generalized existence of decentralized economic structures in the economy. It is a common and perhaps intentional mistake among neoclassic theoreticians: opposing the great monopolies with an economic structure of (inefficient, according to them) small and medium-sized enterprises.

Not even from the logical point of view are there only two alternatives. In fact, the real alternative to concentrated economic power is a balanced economic structure (in terms of information and bargaining capacity) between

7 See G. Becker, *The Economic Approach to Human Behavior*, 1976.
8 K. Polanyi, *The Great Transformation*, 1957, esp. p. 46.

supply and demand. To address the correct organization of supply and demand and not only the best configuration of the industrial structure is the real objective of an economic system and the laws that aim to protect it.

This also does not imply that fighting monopolies is enough, on its own, for economic development. In particular, it should be emphasized that economic structures affect structural characteristics in society and not quantitative data. Therefore, singling out monopolies is not a very effective way to explain why, amongst the developing countries, there are differing degrees of relative growth. For this, there are other decisive factors such as population growth, the importance and relative value that each country's main product has in the international market,[9] and also varied institutional configurations.

3. THE ECONOMIC HISTORY OF MONOPOLISTIC COLONIAL SYSTEMS AND ITS EFFECT ON THE DEVELOPMENT PROCESS

The relationship between monopolies and underdevelopment is, however, not best seen through theoretical arguments. Its best demonstration lies in history.[10]

To achieve the objective of stressing the effect of monopolistic colonialism on underdevelopment, some examples of the operation of monopolistic structures in Latin America, Africa and Asia must be analyzed during three different historical periods: (a) the colonial period; (b) the industrialization period; and (c) the most recent economic internationalization period.

Colonial Monopolistic Systems

The colonial period is a long and particularly effervescent one in the history of capitalism. From the economic standpoint, it lasts four centuries, from the beginning of the sixteenth to the end of the nineteenth century. Throughout these many centuries, a constant economic pattern was maintained as a result of the connection with the metropolises: the monoculture, or the agriculture of

9 On this subject, see the interesting description of the many levels of growth obtained by Latin American countries in the nineteenth century owing to *commodity lottery* – V. B. Thomas, *The Economic History of Latin America since Independence*, 1994, esp. p. 43, *et seq.*
10 Since it is not the primary objective of this study the historical description is in fact shortened. For a deeper description and analysis of the historical relationship between monopolies and underdevelopment see C. Salomão Filho, *Histoire critique des monopoles – une perpective juridique et economique*, 2010.

a single product over a very large area, usually covering whole countries, and the exploitation of a single natural resource, in both cases focused on exports. In conjunction with the monopolistic system, this economic structure provided the extraction of the highest possible economic value of the colony, because the focus on one single product reduced costs of export goods, while preventing the colonies from creating a domestic market, which would also guarantee high profits on imports from the metropolis.

This leads not only to say that such economic structures impacted the contemporary social organization of underdeveloped countries. It leads also to understand how the monopolistic colonial system managed to have such a diffuse and long-lasting influence over the economic and social systems of the colonies. This is best seen through the description and comparison of the two different modes of colonization implemented in what are now called underdeveloped countries: the public and the private monopolistic colonial systems.

The public monopoly regime may be described generally as the mode of colonization used by Portugal and Spain during the colonization of Latin America. It may be described as an absolute monopoly controlled by the metropolis of imported and exported products by the colony. The literature often disregards the effect of such tight control of the metropolises over the economic activities of the colonies when studying the contemporary levels of economic development of the countries that were subject to such colonial mechanisms. Some colonies were actually formally prohibited from having industrial activities.

For the purposes of their metropolises, they had to produce only agricultural goods, and import all industrialized products from Europe, always through the channels provided by the metropolis. Such structures actually produced a triple draining effect over the economy that prevented any kind of endogenous development. The purchase of basic consumer goods was subject to monopoly by the metropolis, therefore a monopolistic surplus was charged there; the labor market was subject to the same monopoly structure and dependent entirely on the product of the cycle of the moment, that is, workforce and labor was completely drained by the existing structures.

Finally, and that is the third draining, there were no dynamic sectors in the economy other than the monopolized sectors. Therefore sectors were economically drained into the monopolized ones (that varied according to the varying interests of the metropolis in exporting products such as sugar, gold, coffee, etc.) and the economy gained no autonomy or self determination.

The private monopoly regime implemented in Asia was somewhat different from the public monopoly in Latin America. It was a colonization system driven mainly by commercial interests, not really interested in controlling the whole economy of the regions (whose population was, by the way, significantly larger and much better organized from the economic point of view). As

a result, colonization was limited to the products that their colonizers were interested in buying and selling.

After the seventeenth century, the newly-established system of royal privileges provided that only companies holding privileges granted by the metropolis, such as the East India Company, were allowed to trade certain specific goods. However, this was only a relative monopoly, because other companies could still trade products not controlled by the East India Company. There was also tolerance regarding local agricultural production. The interregional commerce of products that were not considered as priorities by the British were tolerated, and even stimulated, as means of generating income to local communities.

Considering such differences, it is easy to understand why there was less hurry in the decolonization of Asia than of Latin America. The industrial powers controlling Asian economies used to stimulate a local consumer market, based on endogenous economic growth. In contrast, in Latin America the colonial system was structured to protect products and markets for the metropolises, mostly Portugal and Spain, which, since the mid seventeenth century were not part of the dynamic center of the capitalist system. Hence the pressure coming from the great industrial powers of the nineteenth and early twentieth centuries for decolonization of Latin American countries, in order to allow the creation of new consumer markets, open to the big industrial powers and independent from the metropolises.

The comparison between Latin America and Asia in the colonial period reveals very different approaches to the export economy. In Latin America, the export economy is strictly monopolized. The absolute export monopoly is actually the main element of the colonization process. Under its shadows, nothing blossoms; neither the consumer market, nor any complementary economic sector, which remain continuously centered on subsistence activities and dependent on the great exporting entrepreneurship. Also the workforce (slaves) is not paid a salary and therefore there is no creation of rent inside the colonies. The slave or semi-slave work used in Latin America during colonial times guaranteed that no endogenous demand power could be created internally in the colonies.

In Asia, the landscape was significantly different. Colonization was driven by large commercial enterprises, in which concern with the exploitation of local resources was followed by interest in developing a local consumer market. As a result, small agricultural enterprise was stimulated and interregional commerce was tolerated. Autonomous economic dynamism was tolerated from the beginning.

Such economic characteristics, inherited from the colonial period, help to partially explain why certain Asian economies performed better in terms of economic growth based on exports than Latin American countries toward the end of the twentieth and beginning of the twenty-first centuries.

In contrast, this loose colonization system that prevailed in Asia also led to much higher rates of rural poverty if compared to Latin America. The devastating famines of the twentieth century in Asia, so well described and analyzed by Sen as a consequence of the absence of entitlements,[11] are actually a byproduct of this pattern of colonization that focused only on valuable export products and 'forgot' completely a part of the population that was not devoted to their production.

In Latin America, on the other hand, poverty closely followed the main economic activities. While the production was mainly agricultural, poverty remained mainly a rural phenomenon. When the dynamics shifted to the industrial sector in the second half of the twentieth century, poverty changed rapidly to be an urban phenomenon.[12] This close link between social and economic structure is certainly deeply influenced by the economic structures created during colonial times that, as observed earlier, created a great dependence of the whole economy and of the workforce on its activities.

The Industrialization Period

The industrialization of most of the former colonies is related to the process of decolonization. In Latin America this process happened more clearly, with most countries becoming independent toward the end of the nineteenth century, and industrialization following some decades thereafter. In Asia, the process of industrialization happened in different periods, as countries maintained varying degrees of political dependence from the major economic powers throughout the nineteenth and twentieth centuries. However, the bulk of the decolonization process followed the end of World War II.

Despite such significant differences, it is possible to identify certain common elements. For most countries, the decolonization process was carefully tailored in order to avoid any rupture in the balance of economic forces that supported the old colonial order. For most countries it was an independence process in the political sphere, but not a process of economic transformation. Despite some conflicts among the economic elite, the most powerful economic group would be one related to the most relevant export products, as it was in the colonial period.

11 See A. Sen, *Poverty and Famines: An Essay on Entitlement and Deprivation*, 1982.

12 See C. Salomão Filho, B. Ferrão and I. C. Ribeiro, *Concentração, estruturas e desigualdade – as origens coloniais da pobreza e da má distribuição de renda*, cit., where the relationship between economic structures and poverty in Brazil during the colonial times is econometrically analyzed.

If, beforehand, this economic elite maintained its power because of its close connection with the metropolis, after independence it is the connection with the government that maintains the concentration of economic power. This symbiotic relationship between private monopolies and political power is a natural consequence of the relationships that created such nation states from former colonies. In the independent states, the bureaucratic apparatus is developed to serve an already established monopolistic structure, which ranges from local private agents (major colonial companies or landlords holding concessions to exploit natural resources) to the trade monopoly by the metropolis (or, in the Asian case, the colonial companies with trade privileges granted by the metropolis). Political leaders of the colonies had to ask for support from its internally powerful economic groups, and, in exchange for their support, they were assured the maintenance of their privileges.

As a result, the process of independence is also the process by which the economically powerful groups also gained independence, and learned to shape the economic and political structure to their benefit, no longer connected to the metropolis and no longer dependent on it for decision making. This is why it is possible to speak about a linkage between decolonization and industrialization. Although not simultaneous and not directly connected, it is only after independence that internal dominating economic structures can decide exclusively based on their best interest and choose, when necessary, to invest their capital and energies in the industrialization process.

In Latin America, the export monopolies simply changed from agricultural to industrialized products, maintaining other economic sectors and even the government under their total control. As such, export sectors were dependent on commodities prices; there were no virtuous circles of income and investment generation. Even when it happened, its isolated effects on the export sectors did not create relevant income in other sectors owing to the intersectoral draining effect of the existing monopolies explained in the previous section. As a consequence, there was very little stimulus to the formation of a consumer market as a result of industrialization.

In Asia, the decolonization process generally took longer to occur. Yet the greater economic freedom of economic sectors not directly connected to the export monopolies and the comparatively lesser importance of monopolies to the internal economic process created a better structure for economic development. Also, the great agricultural companies that were established in the region during the nineteenth century were not regarded as connected to the national interests that motivated the independence process. As a result, after independence, Asian governments were freer than Latin American ones from control by the economic elite and had more leeway to influence industrial organization and land distribution. Governments took time to exercise such freedom, as it is expected, considering the weight of colonial heritage, particularly because of mechanisms implemented by the colonial powers to gain control over these countries, such as reinforcing social stratifications and stimulating internal rivalries. Poverty rates were, however, always higher in Asia owing to the great portion of neglected rural population, a byproduct of the private monopoly system of Asian colonization. This is still a substantial barrier to the full development of countries such as India and China.

Internationalization of Monopolistic Structures

It is not possible to fully comprehend the movement of economic internationalization (or globalization) without the understanding of the progression of monopolistic structures. The recent history of capitalism demonstrates that, from the point of view of companies engaged in the production of goods and services, geographic expansion is a natural progression. Profits tend to decrease with time in regions with higher industrial and technological development, as a result of the great competition among companies. As a result, they need to look for new markets where competition is not as fierce and monopolistic profits may still be extracted. This global expansion based on the creation of new monopolies in developing countries has four dreadful effects: (i) increasing levels of unemployment and higher economic inequality; (ii) disruption of the safety net of public services; (iii) exhaustion of natural resources; and (iv) increasing technological dominance and the power of monopolistic structures that control such technologies. What is new is that those effects are produced throughout the world, both in developing and developed countries, there is, therefore, not only economic globalization, but also a globalization of social problems.

The expansion of companies to new markets is partially justified by the lower labor cost in developing countries. This creates unemployment in developed countries. This process is accompanied by a broad mergers and acquisitions movement that creates unemployment, even in the developing countries to which production was transferred, and increases the market power of monopolies. Therefore, it is easier to drain resources from the labor market, not anymore by lowering salaries (as happened during the early industrial era) but by means of unemployment created by the great mergers or delocalization of enterprises.

The expansion of monopolistic structures from developed countries to developing ones also led to the substitution of many public services for private ones. The concept of natural monopolies is then broadened, justifying the process of privatization of public services traditionally managed by governments. As a result, the inter-industrial concentration, one of the other elements of the triple draining effect, is expanded and sophisticated in this new international phase, if compared to the prior colonial and industrial periods. The

monopolistic structures expand to the so-called new dynamic sectors. The inter-industrial draining is no longer a result of the draining of resources from other economic sectors, but also and mainly from the expansion of monopolistic power to new sectors, such as public services previously provided by the government. The social safety net of public services such as health care, sanitation, energy and water distribution, disappears and the effects of economic imbalances in underdeveloped economies are multiplied.

The same reasons that led to the internationalization of monopolies led also to the predatory use of the environment. The search for cost savings that already drove companies to developing countries in search for cheap labor also led such companies to use the lower protection to the environment in poor countries as a source of savings. This predatory exploitation of natural resources was initially understood by developing nations as means to allow fast economic growth and gain access to global markets. The costs of such predatory use of natural resources, however, do not have such immediate effects. Such predatory practices take longer to show their full strength, and they will certainly take much longer to disappear. It took only a few years for many developing nations to notice that the costs are much higher than the benefits and that the environmental costs will remain while many companies will move again.

Finally, the internationalization of monopolies deepens their overall domination of technology and information, particularly considering the global network effect that became possible with the new information technologies, creating material conditions for global monopolies that previously could not even be imagined. Such a process has in its turn two important effects. First, it becomes more difficult to discipline or regulate the behavior of such structures. Their international character and the changing character of technologies (that can completely shift in a few years) make their existence more liquid[13] and difficult to control. Second, their technological domination allows consumption patterns to be further determined. Technological domination allows companies dominating them to create tastes and uses for their new products and technologies. As a result, the last element of the triple draining effect, the extraction of abnormal profits from consumption, is expanded.

It is important to observe that, as a result of the process of internationalization, the negative effects of monopolistic structures (the triple draining effects) also reach the so-called developed world. Unemployment, domination of public services by private monopolies, and consumerism are common features

13 The term liquid as applied to modern societies and their components had its most influential use by Z. Bauman, *Liquid Modernity*, 2000. The author mentions among the characteristics of such modernity exactly the 'liquid' character of modern companies and technologies.

throughout the world. Predatory use of the environment is a common problem. Structural solutions are therefore no longer required only in respect to underdeveloped countries, but also to the capitalist system as a whole.

4. ECONOMIC RESULTS VS LEGAL VALUES

Economic Results as Legal Guidelines

Criticism of the current simplified rationale for antitrust law is not and cannot be solely internal and empirical (historical). Not only the understatement of the importance of economic structures for society as a whole should be criticized (demonstrated through various examples in the previous section), but also the search for economic results itself must be regarded with reservations.

The problem is not in the search for these results, but in the belief that these results may be correctly anticipated. At this juncture, it is helpful to revisit the classic discussion on the possibility (or not) of theorizing economic knowledge. The initial step for this discussion is given by Hayekian studies on economics and information. For him, many of the neoclassic constructions on equilibrium are, in effect, tautologies, that is, mere results of the presuppositions from which one started.[14]

Market equilibrium (and not only individual balance) would exist only where individuals' expectations corresponded to real data. This correspondence, however, would exist only where information is transmitted between market agents. Note that this statement implies a denial of something Hayek himself would come to say years later. Price cannot be the factor in the transmission of this information because it is a product of the information and not its creator.[15] In other words, stating that price is the instrument for solving the information problem means a return to the tautology. In fact, price is only considered an information transmitter in a market in equilibrium or tending to equilibrium (in which price, therefore, cannot be necessary to reach it).

The same can be said in different words. In order for price to be a perfect information transmitter, everyone's evaluations (evaluations that make up the

[14] The best stated theoretical construction of the criticism is in the original article by F. Hayek on 'Economics and Knowledge', in *Economica – New Series*, 4(13), February 1937, p. 33, *et seq.*

[15] This statement will be made by Hayek in a later article, better known, however theoretically less consistent, as 'The Use of Knowledge in Society', in *American Economic Review*, xxxv(4), September 1945, p. 519, *et seq.* In this last article Hayek is already influenced by the ideological premises that will influence the rest of his academic life and are responsible for its decay in quality.

price) on use, relative value and usefulness of the products would have to converge and adhere to reality. The fact is that, in this situation, equilibrium would already have been achieved. The correct transmission of information through price is, therefore, a consequence and not the cause of equilibrium.

More recently, these statements have come to be confirmed by research undertaken by theoreticians in economics and information. These models show that information is intrinsically poorly distributed in the majority of markets, which, in many of them, purely and simply renders its functioning impossible.[16]

Being so, the great difficulty is found in the means for transmitting information. The search for answers, here brought to light by the conclusions of information economics, should be more realistic: the issue is not believing or searching for a perfect manner of information distribution, but, rather, it is about doing exactly the opposite, specifically, to ascertain that information is imperfectly distributed and that information, however unequally, is distributed and diffused among individuals.

There is not and cannot be, therefore, perfect correspondence between subjective expectations and objective data. There is not and cannot be, therefore, equilibrium. What can and does exist is a constant state of friction and contrast between expectations and reality that leads to an also constant change in expectations.

Evidently, what is set out for discovery here is what can be found that is constant and not relative. What is meant is that there must be something on which individuals base their decisions. This something, which helps them make forecasts of possible behavior patterns, is the existing economic structures, which are the only elements indicating how the market works from which it is possible to reach conclusions.

There is a rather simple reason for this. There is today a theoretical consensus around the fact that it is possible to predict behavior patterns in certain economic structures. Monopolistic or oligopolistic rationality is well known and does not arise necessarily from predefinitions of equilibrium situations. It simply comes from the fact that there is no economic power that is not exercised – as this would imply denying the situation of power itself.

With equilibrium being unobtainable and information rare and badly distributed, it is not to be supposed that any regulation or legal discipline focused on results is to be trusted. In this sense, its use as a parameter for applying antitrust law, or any other branch of economic law, cannot have a

[16] The most influential article and point of departure of the modern information economics is G. Akerloff, 'The Market for Lemons: Quality Uncertainty and the Market Mechanism', in *Quarterly Journal of Economics*, 89, 1970, p. 488.

technical justification, as it is an economic policy decision among many possible others.

The Legal Approach: Economic Law as an Economic Procedure Model

The considerations above lead to an interesting conclusion. On the one hand, economic structures, that is, the centers of economic power, are relevant data for understanding and correcting the functioning of the economy, since they account for important characteristics in the underdevelopment process. On the other hand, these structures allow agents and regulators to make some presumptions about the probable behavior of economic agents.

There is a rather simple reason for this. There is today a theoretical consensus around the fact that it is possible to predict behavior patterns in certain economic structures. Monopolistic or oligopolistic rationality is well known and does not arise necessarily from predefinitions of equilibrium situations. It simply comes from the fact that there is no economic power that is not exercised – since this would, as mentioned just above, imply denying the situation of power itself.

What has yet to be defined is the kind of legal instruments that can be used to correct the orientation and behavior of these structures. As we have seen, the economic instruments are worth little as they do not supply concrete economic results that are susceptible to empirical verification. Standing in the way of the use of legal instruments, however, is the apparent difficulty in applying social policy directives to the economic sphere. For many years, the decisions that have affected the economic order have been left primarily to economic theories to which the discussion of values is unfamiliar. It is time, therefore, for a legal theory of economic behavior.

Legal scholars view knowledge in a different way from social scientists. While knowledge in the social sciences is something that is eminently empirical, whether theoretical as perceived by dogmatic Marxists and neoclassical scholars, or practical as viewed by Hayek, knowledge for law scholars is something that is eminently constructed around values.[17]

The moment for addressing values, if well understood and used, is precisely what gives the law its distinctive character and capacity for social change. According to the concept as defined here, political-institutional change is only possible through a profound political discussion of norm-protected values. The

[17] See on this issue E. J. Mestmäcker, 'Markt, Recht, Wirtschaftsverfassung', in *Zeitschrift für das gesamte Handelsrecht und Wirtschaftsrecht*, 137, 1973, p. 101.

transformative and propelling force of the law is found in the fact that, more than a form of defining values, it can itself be an instrument of knowledge for society. To postulate that knowledge is value-related is nothing more than stating that the values of a certain society may influence – and they do – in a determinative manner the knowledge we have of it.

This relationship of values/knowledge in a society is relatively clear in the economic field. Protecting competition and allowing choice, for instance, leads to the discovery of the real utility of products and better choices for the consumer. The value of competition, therefore, influences reality, allowing every individual to know it.

Once generalized, this statement on the cognitive force of the law implies a transformation in economic law itself. It is a necessary transformation, as the law has an important cognitive role. A legal system, before disciplining the functioning of society, must allow this society to know itself.

In a legal system so conceived, legal rules in the economic field necessarily change their nature. It is no longer possible to admit that there are only, on the one hand, rules protective of individual economic rights and, on the other, only aims-oriented norms, defining aims and objectives of the economic process. An example of the first, property law (as it is typically known in a capitalistic state), is insufficient to meet the needs of society as a whole as it currently exists. The latter, strongly being dependent upon a mediation of interests that are at times ideologically opposed (as is the case, for example, with the principles of free initiative and social justice), frequently lack practical application.

There is an urge, therefore, to acknowledge norms that incorporate values allowing individuals and society to acquire knowledge about society and the objectives and fundamental values of economic norms, as seen above. This can only be done through norms that guarantee equilibrium in economic interactions, since, as seen, it is in these interactions (and not before them) that individuals can supply each other with information about their specific needs and uses.

It shall, therefore, not be a surprise that this kind of norm is also instrumental for the proper functioning of the economic and social system. When the equilibrium of economic interaction is guaranteed, individuals or social groups will 'discover' their economic preferences. Therefore, these rules have to assume a clear procedural character, of real *due process* in the economic sphere.[18]

[18] Here an analogy may be made to the reasoning of the more progressive lines of thinking in judicial realism, which, when faced with the problem of the foundation of the judicial norm, suggest a procedural rule that would lead to a fair judicial solution and not a material rule that would not escape political and ideological discussions.

Rules defined by these parameters contain values that are democratically established and debated. On the other hand, they do not predefine the most convenient solution. At the same time that they give the system stability and the citizens assurances, they allow for social and institutional experimentalism. The law thus established leads 'to' and does not derive 'from' the fairest solution. It is a safer system and a more flexible one, as it allows for its own improvement.

It is important to observe that such a rule has a very specific character. It is not enough to ensure the correction of procedures. It is fundamental to ensure balance between the interacting parties not only in legal processes, but also in economic ones.

Thus understood, the rule of due process in economics is the basis of explicit redistributive principles in the regulatory sense, such as, for example, the universalization of services for the public interest. For the principle to be truly effective, it is necessary to include a multitude of citizens who have been jettisoned from the economic process. As is well defined by the theory of the legal process itself, the rule for the right legal process implies ample participation in the process. This idea may and should be extended to economic relations and procedures.

Note that, in the realistic line, the procedural thinking is so accentuated that it is taken for granted, where the discussion is about the best institutions in which to apply it. This is what happens with the two main lines – the Yale School and the Harvard School. The former sees in the activity of the judiciary system a political evaluation of opposing interests, and takes up again, therefore, former ideas of the interests of case law (see H. Sasswell and M. Mc Dougal, 'Legal Education and Public Policy: Professional Training in the Public Interest', in *Yale Law Journal*, 52, 1943; see also B. Ackerman, *Reconstructing American Law*, 1984). The Harvard School, which is more original, centers the discussion of law on the issue of which institution is more apt to apply it (see H. Hart and A. Sacks, *The Legal Process*, 1958). More recently, the progressive realism school questions, in a way that joins the Yale and Harvard concepts set forth above, how judicial decisions may influence the public and private spheres that hold power, improving them (see O. Fiss, 'The Social and Political Foundations of Adjudication', in *Law and Human Behaviour*, 6, 1982, p. 121, *et seq.*). This procedural method approaches also the reasoning developed by J. Habermas in the political field, which places a minimum procedure ('prozeduralistisches Minimum') at the centre of democracy, without which it could not exist. In this minimum procedure, evidently influenced by the individualist liberalism that features the most recent phase of his scientific work, is included the principle of the egalitarian and ample participation of all citizens (*Faktizität und Geltung- Beiträge zur Diskurstheorie des Rechts und des demokratischen Rechtsstaats*, 1998, p. 368). Note that proceduralism in the economic field is very different from that of the political field, since while equal participation could be just a formal element in the latter, any procedural idea in the former depends, to maintain a minimum level of effectiveness, on a real re-equilibrium of forces, i.e., of effective redistributive measures.

Effective choice and access to information by all are, therefore, the center of the economic law. In its application, the state should act energetically so as to ensure the existence of choice.[19]

Confronted with such a definition of law, with all its direct implications to fields like antitrust and regulatory law, it is not surprising that this theory opposes the neoclassical approach. The neoclassical model assumes that it is possible to know the utility for each consumer of every product before that product is used, that is, that a product is purchased because it has use rather than a product has use because it is purchased.

According to the theory here defined, this last statement – and not the first – is correct. It seems rather obvious, and that is exactly what the economic process means as a discovery process, that the more product alternatives the consumer can examine and discard, the more his choice will be full of information relative to his preferences.

Thus, if there is no alternative to the choice of a product, it is not possible to know how much utility the non-chosen alternative would bring to the consumer. And even if the alternative exists, it is only possible to know the level of utility for the consumer when this alternative is chosen.[20]

This theoretical premise is accepted by the new institutional economics itself (which does not represent a total rupture with the neoclassic tradition). The limited rationality and opportunistic conduct only make the utility become more uncertain and dependent upon empirical verification.[21]

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19 This interventionist competition position, as it is institutional and procedural, may even be considered super-ideological. The historic experience corroborates this point of view. Much of the consensus around the immediate post-war German model of social capitalism is attributed to the political-ideological consensus formed around the ordoliberal ideas on competition and state interventionism achieved through antitrust law. It is in the fight against monopolies that the German democratic socialists identified the social element in antitrust law (see J. Gotthold, 'Neuere Entwicklungen der Wettbewerbstheorie – kritische Bemerkungen zur neo-liberalen Theorie der Wettbewerbspolitik', in *ZHR*, 145, 1981, p. 286.

20 See F. Denozza, who, confronted with this issue, uncovers a flaw in the neoclassical thesis and concludes: 'In un impostazione che pone al centro i desideri del singolo individuo e l'utilità (o i dollari) che il singolo guadagnerà in conseguenza di certe decisioni, il valore delle cose non può essere stabilito *a priori* (è ben noto che esistono impostazioni diverse, le teorie c.d. oggetive del valore, come la marxiana teoria del valore lavoro, ma è altretanto noto che essi conducono verso lidi assai lontani da quelli prediletti della scuola di pensiero in esame)' – 'Chicago, l'efficienza e il diritto antitruste', in *Giurisprudenza Commerciale* I, 1988, p. 23.

21 The more progressive representatives of the new economic institutionalism school already accept the difficulty and even impossibility of establishing values from economic rules, admitting that cultural and moral values have great enough influence over economic behavior and institutions to stop this kind of presumption. This tendency is particularly emphasized in the Nordic School of the new institutional

Being so, the only instrument capable of fulfilling the consumer's need for information is the existence of alternatives. Only an economic system based upon alternatives is sensitive to variations in consumer tastes and can transform itself in response to these changes. Only the existence of access to choice and alternatives is capable of fulfilling the great information vacuum caused by the market.

The possibility of choice has a social value that cannot be denied and must necessarily be acknowledged by the law. The market, on the other hand, does not necessarily lead to this result. That is where the state should interfere, ensuring the former and not the latter.

5. AN ALTERNATIVE: LEGAL STRUCTURALISM AND SOCIAL ORGANIZATION

This procedural concept of the functioning of the economic sphere demands a redefinition not only of antitrust law, regulatory law and economic law, but of the notion of law itself. It is this notion from now on that will be referred to as the 'neo-structural concept of law'.

Antitrust, regulatory patent law and even property law itself, in its neo-structural concept, do not impose a result or economic result, but ensure that the relationship between parties is fair and that alternatives exist effectively, not being substituted for the ruling of the powerful (economic structures) that is typical of free markets. In this way, they aim to ensure that economic agents discover the best options, and discipline economic relations in the fairest and most balanced way possible.

The final effect of such a theory is that economic power must be substituted as the most relevant element for the organization of economic relations. Law aimed at providing choice and access to information shall substitute power as this organizing element.

This is not an easy task. Economic power is not only deeply rooted in existing economic structures but also in existing economic relations. Relations are defined and organized based on power exercise.

The law must rise to the challenge of regaining control of social relations. To do so, legal analysis should free itself from legal positivism and be able to propose a structural approach to economic relations.

economics (see T. Eggertsson, 'The Economics of Control and the Costs of Property Rights', in *Rights to Nature – Ecological, Economic, Cultural and Political Principles of Institutions for the Environment*, p. 157 (167); A. Sen, 'Rational Fools: A Critique of the Behavioral Foundations of Economic Theory', in *Choice, Welfare and Measurement*, cit., pp. 84–106).

It is no longer possible to rely only on compensatory measures to groups damaged by the economic activities of monopolistic groups. Legal institutions with a compensatory characteristic, such as labor law or consumer law, are useful tools, but clearly insufficient to discipline the effects of monopolies and prevent what is described here as the 'triple draining' of the consumer, labor and inter-industrial markets. In monopolized societies, compensatory mechanisms became almost useless because of two reasons: (i) it is not possible to implement public policies through legal mechanisms, since compensatory measures are enforced by means of individual judicial decisions, which lack coordination and coherence; and (ii) it is difficult to achieve economic transformation because ad hoc compensation will always be insufficient to overcome inequalities continuously created by concentrated economic structures.

Solutions grounded on legal structuralism focusing on a profound revision of the operations of the economic system also require that certain basic legal concepts, such as property rights, intellectual property, and regulation, be revisited in a creative way. Developments in the theory of common goods, creative thinking about patents of socially essential goods and their mandatory licensing in the public interest, and new regulation of capital markets leading to the existence of fewer markets (only those where the flow and understanding of information are possible) are just some examples of how structural solutions could look.

What meaning of law is being suggested? What structures and which discipline of economic relations allow access to individual and social choice? It is time to sum up what has been said until now legal structuralism.

Evidently the answer can be correctly arrived at only when the subject of law and its interpretation are properly analyzed. For the time being, two characteristics and two consequences of these characteristics can be mentioned.

On the one hand, it must be clear that legal structuralism, contrary to economic structuralism, does not trust the production of certain predefined economic results. Consequently, it is not feasible to set forth, as intended by the Harvard structuralist line of thinking in the 1960s, a structure-conduct-performance model. The study of structures does not aim to ensure results, but rather the access of all to information and choice. Consequently, the structural study of economic power will focus on ensuring choices and inclusion of people (that is, access to economic knowledge) and not on predetermined models of business dimension or economic dilution.

From here derives another characteristic, very important to the law concept itself. Legal solutions tend to be seen mainly as compensatory ones. Being the concept of justice so relative and difficult to define in a transcendental way,[22]

[22] This is the most powerful critique made by Sen to Rawls. See. A. Sen, *The Idea of Justice*, 2009.

law has always had a tendency to opt for compensatory measures. It does not interfere in the economic or social processes as such; it just compensates groups of individuals that are particularly harmed by them. Such is the case with consumer law and labor law, not to speak about ordinary private law questions, where compensation is thought of on a case by case basis.

The neo-structural approach proposes something completely different. Law is not made to compensate individuals or groups of individuals. Its aim is actually to organize the functioning of society. This can mean, in the economic arena, being able to intervene in structures of power in order to create choice and inclusion to individuals. This intervention also has its limits. It is not the scope of law to determine the results of the economic process. But it can protect values (choice and inclusion) that are instrumental to the construction of a due economic process.

Such an approach has profound consequences for the treatment of economic power. If choice and access to information are values to be pursued in a variety of fields, and not only in the markets, the theoretical instruments of antitrust law are not sufficient anymore.

On one hand, it is necessary to understand the different consequences of economic power on social and economic arenas. These different effects must be identified and dealt with separately according to the different sources of economic power. Economic power positions can be created from different sources and not just by market dynamics. They can be a product of (i) market relations, but they can also be a product of (ii) law, for example, exclusivity rights granted by law (patent law), or even of (iii) social relations, through a domination of natural resources or common goods. The expression 'social relations' here must be well understood. It is used as opposed to market relations, since the goods in question are so relevant for society in general that their attribution to a sole individual or enterprise cannot be discussed on an economic or legal traditional basis, but rather with a methodology of interest inclusion compatible with their social relevance.

Therefore, from the perspective of the source of the power, economic power originated from social relations can be better understood. In opposition to the first two sources, it refers to a market power structure based not on a position gained in the market or through a legal concession, but instead based on the possession of a good with immense social relevance to groups or communities and even (in some) to the whole species survival.

These different phenomena all have problems and instruments of regulation that cannot be found in general discussions about market rationale.

In all of these areas, economic power must be dealt with, bearing in mind that it is much more complex than just a consumer–producer relationship. It affects a series of other relations and interests (workers, community affected by the enterprise activity, the environment, etc.).

These different sources of economic power and its different effects require the application of different conceptual schemes for understanding and different methods for their regulation. These are the subjects of the next two chapters. But we must always bear in mind (and this is perhaps one of the main conclusions of this first chapter) that these different sources of power create power structures that have important things in common that, as seen above, must guide their legal treatment and justify the very elaboration of a legal theory of economic power. They all produce triple draining effects on economy and society that reach well beyond the consumer-produced relationship. And they require an intervention that is not compensatory, but rather directed at eliminating or affecting seriously the very sources of power that create these economic and social distortions.