



HAL
open science

Democratic corporate governance within fluctuating cooperative banks: A multidisciplinary diagnosis and proposition of orientations.

Rémi Jardat, Patrick Gianfaldoni, David Hiez

► **To cite this version:**

Rémi Jardat, Patrick Gianfaldoni, David Hiez. Democratic corporate governance within fluctuating cooperative banks: A multidisciplinary diagnosis and proposition of orientations.. *Corporate Ownership and Control* , 2010, 8 (1), pp. 210-221. <hal-00558179>

HAL Id: hal-00558179

<https://hal.science/hal-00558179v1>

Submitted on 21 Jan 2011

HAL is a multi-disciplinary open access archive for the deposit and dissemination of scientific research documents, whether they are published or not. The documents may come from teaching and research institutions in France or abroad, or from public or private research centers.

L'archive ouverte pluridisciplinaire **HAL**, est destinée au dépôt et à la diffusion de documents scientifiques de niveau recherche, publiés ou non, émanant des établissements d'enseignement et de recherche français ou étrangers, des laboratoires publics ou privés.



HAL Authorization

Democratic corporate governance within fluctuating cooperative banks: A multidisciplinary diagnosis and proposition of orientations.

Corporate Ownership and Control Journal, volume 8, Issue 1, Fall 2010, pp.210-221

Authors

-Rémi JARDAT, Directeur de la recherche, ISTEK Paris, France ; r.jardat@istec.fr

-Patrick GIANFALDONI, Maître de conférences en sciences économiques, Laboratoire Biens Normes et Contrats, Université d'Avignon et des Pays de Vaucluse ; Patrick.gianfaldoni@wanadoo.fr

-David HIEZ, Professeur, Université du Luxembourg ; David.hiez@uni.lu

Acknowledgements

Special thanks to Terry Rocves (Conservatoire National des Métiers, Paris) for having helped the authors translate the initial working paper into English.

Abstract

The democratic question became of an ardent actuality within cooperative banks since the end of the 1990's. Founding element of human-sized organizations that were the first mutual or cooperative *Caisses*, is democracy running the risk to dissolve by necessity in the mature and hybrid giants that are the big banking cooperative groups nowadays?

The present article unveils a multidisciplinary synthesis made possible by the conjunction of three researchers studying cooperative banks through three complementary angles: law, economy and management. After a first inventory of the possible symptoms of the disappearance of democracy inherent to the cooperative project, a more differentiating diagnosis is proposed, followed by an outline of some working leads for a creative evolution of cooperative democracy.

Keywords

Democracy, bank, cooperative, pluridisciplinarity, new cooperative paradigm

Introduction

For a decade the conservation of a specific identity of cooperative banks has raised questions. Since the rescue of capitalist banks by Crédit Agricole and Crédit Mutuel during the 1990s, the question of the cooperative "purity" of these banks has arisen in a blatant way, at least in a more visible way than it had been at the creation, during the previous decade, of private law subsidiaries. In a pioneer article, Daniel Coté had noticed, since the year 2000, that the maturity of the banking sector, with its oligopolistic concentrations, questioned the cooperative project within big mutuality banks and he called to the foundation of a new cooperative paradigm (Coté, 2000).

Some years later, a whole series of publications are dedicated, in France in particular, to the possibility of maintaining a cooperative identity while facing the competitive banking game and by diversifying its funding sources beyond the sole 'membership'. In the middle of the 2000 decade, a collective work has come to put a noticeable milestone in the study of this delicate situation between "performance and solidarity" (Richez-Battesti & Gianfaldoni, 2006). Since this date, studies and colloquiums on the subject have multiplied.

One of their most considerable characteristics is at the origin of the present work. It is about the variety of the disciplinary horizons from which arise the researchers who contribute to all these studies: law, economy, but also sociology and management sciences. We want to attempt a multidisciplinary clarification of this delicate problem of the transformation of cooperative banks, by choosing as point of view, one of the key questions of social economy: democracy. The idea of intersecting the respective approaches of an economist, a jurist and a researcher in management sciences brought about the democratic phenomenon in all its complexity, due to the plurality of threats on the reality of a cooperative democracy within the banks who refer to it, but also in the unexpected opportunities and in the evolutions which would have been necessary in any case, independently of the only institutional pressure to demutualization.

Because it is necessary "to examine" all the denotations of the term democracy, this crossed outlook is presented in three parts inspired by the medical clinic sector. In a first part, the symptoms that feed the fear of a collapse of the cooperative project are exposed. In a second part, we move from the symptoms to the diagnosis by trying to make connections between real threats and simple indications of reorganization of the cooperative idea, a diagnosis intended to supply support points in its intensification. Finally, in the third part, we attempt a synthesis of the recommendations that seem to ensue from our previous analyses.

1. The symptoms

It is possible to find in law, as in economy and organizational life, the signs of a collapse of the cooperative project, particularly within banks. From then on, one can fear their conjunction to a radical demutualization scenario that would end in the disappearance of a major piece of the social economy.

1.1 Legal symptoms

A first ingredient of this scenario lies in the general report that the couple formed by law and cooperative ethics is changing in nature (Hiez, 2009). Whereas in its debuts, the cooperative project was created, in a sense upstream to law, its legal recognition was gradually made, throughout the XX^e century, by the incorporation of the principles of this project in law. This registration "in the hard" concern, in French law as well as in French Canadian law, (ibidem, p. 3) the double quality principle (the co-operators are partners and beneficiaries at the same time) that of a-capitalism (limitation of capital remuneration and the compulsory constitution of reserves) and of political democracy ("one man, one vote"). Now, we can only notice, through all the studies led around cooperatives for about fifteen years, the movement of a reference to the principles to that of a much more vague 'normativity' centred on cooperative "values", which accompanies the transition of a legal rules system to a system of standards.

This supremacy granted to "values" could not be considered as innocuous. Whereas the principles, without being unchanging, "evolve in a slower, less spasmodic way, than the substantive law of such or such State" (ibidem, p. 6), the standard recovers from a *soft law* which is imperative only in contractual limits, and its disregard only activates penalty recovering from action circuits and more random reactions than the malpractice against the legal rule. On that plan we can thus advance that "of a clear, unchanging and rigorous rule, we would go through to more vague, evolutionary standards, of a variable-geometry imperativeness" (ibidem, p. 8). From which the risk of a progressive nibbling of the cooperative principles, if the exceptions in the traditional principles multiply without the formulation of new principles or new orientations (ibidem, p. 9).

1.2 Economic Symptoms

At the same time we are entitled to wonder about "the normative capacity of cooperative firms in a sector-based environment, and in a more widely macroeconomic one, acquired through the principles and through market capitalist values" (Gianfaldoni, 2007: 15). So, at the governance level of cooperative banks, the logic of profitability appropriate for the private enterprise "tends to insinuate itself or to be gradually imperative" (Gianfaldoni, 2008: 4) through the following decisions, which affected more or less most of the French cooperative banks:

- External growth operations and profitability requirement of the shareholders, which accompanies a new configuration of the consequent chain with an ascent of the value created towards holding companies or quoted companies,
- Rationalization of the production of the banking services aiming at performances estimated in terms of costs and productivity gains,
- Legitimization of these logics by the banking sector regulations: law of 1984, statutory modifications of 1992, Bâle II prudential rules,
- Financial evaluation publications by rating agencies,
- Motivation of salaried directors and administrators more and more centred on financial criteria and control levers

Within the framework of a forward-looking scenario, such measures may contribute " to demutualize from the inside " the cooperative banks, by emptying of their substance the solidarities inherent to Desroches' "quadrangle" - directors, administrators, employees and members - and the institutional balances supported by this quadrangle. The relation directors-employees is affected by a tendency of the first ones to adapt the "democratic practices" to the "business practices" rather than the opposite (Gianfaldoni, 2007, p. 7), the relation employee-member aims towards a clientelism of the service relation (*ibidem.*). Whereas between administrators and directors, an increasing difference of technical competence can only lead to a real power asymmetry which dispossesses the members of their orientation power of the bank. Finally, the gigantic size of the mutuality banking groups can only naturally increase the distance between national administrators and members, a trend possibly increased through functions personalization and multiple office-holding (*ibidem*, p. 11). Finally, we can even doubt the perpetuity of this quadripartite plan, as far as the adoption of a highly-rated vehicle, introducing the fifth actor under the shape of the shareholder, comes to transform the quadrangle into a "pentagon" (Ory, Gurtner and Jaeger in Richez-Battesti and Gianfaldoni, on 2006: 99).

Would these new distributions of the technical capacity as economic naturally lead to a situation where democracy of right, with its votes and its resolutions approved in various assemblies, cover a not-democracy, reducing the statutory authorities to a pure ritual? The question is all the more acute as the ground studies show a narrow overlap between the institutional and the organisational one.

1.3 Organizational symptoms

The study of a big French cooperative banking group (Jardat, 2008a) joins partly the observations made at the same time by Daniel Coté during his research-action led at a Caisse Desjardins: the project, the cooperative principles and the values are vain if they are not conveyed in the daily practices of the organization. Daniel Coté speaks of this subject as daily "moments of truth" (Coté, 2005: 55). The example treated in France maybe read as the illustration of a narrow interaction between the expected reasons of the cooperative project on one side, realized by a much elaborated internal law, and the constraints of the organizational gigantic size on the other.

On one side, the competitive (fight for market shares within a national oligopoly of the banking network) and normative (banking regulation) pressure comes to reinforce the tendency to technocratic centralism that naturally occurs in all large organizations. The installation of information systems, the need for consolidating overall ratios of profitability and performance, just like the increasing technicality of the banking trade, can only tend to increase asymmetries of resources between the graduate and the promoted intern, the hierarchical one and the operator, the central director and the local administrator. However, sociologists have showed that for some decades, these asymmetric resources mechanically generate, in everyday life, asymmetries of power: so we see with sociologist, Anthony Giddens of the "dialectic of control in social systems" (Giddens, 1985: 64). The person who knows more, who has a wider viewpoint, whose functions bring to meet a vaster network of co-workers and exterior partners, mechanically detains a greater power. It remains to be seen whether this power is used in the direction of the collective interest, under the control of the interested

stakeholders, or if it is on the contrary the opportunity to perceive material profits (incomes) or symbolic excess (recognition, prestige), in a more or less close degree of asymmetry appropriate for the private enterprise. Within the framework of a technicality and of a developing organization, everything points, *a priori*, that it is the second possibility that tends by necessity to come true, if no specific counterweight is developed.

However, on the other hand, the very elaborated power architecture of the studied bank leads to permanently counterbalance these asymmetries of power and, otherwise to realize a utopia of the full and whole democracy, at least to maintain a logic of research for the consensus which goes against the technocratic and centralist tendencies. A series of decisions as strategic and organizational non-decisions, engraved in memories, completely illustrate this assertion (Jardat, 2008a: 32-33). These formative events of common faith in opposition forces of the members as of decentralized Caisses to central directors, would not have been able to take place without strong institutional architecture which establishes, with the inertial force of the legal statuses, a balance of power between the premises and the exchange as well as amongst diverse stakeholders of the bank (ibidem: 36-38).

A contrario, we can only deduct that, without such a statutory architecture, the pressure in the demutualization would have been able to express itself in a much stronger way. The example of the other cooperative banking groups, less structured in a democratic sense, goes moreover in this direction, as far as these last ones took years beforehand on the first one in appeal to the stock-exchange capital and, correspondingly according to us, some more billion euro of losses during the subprime mortgage crisis.

1.4 The scenario of radical demutualization

The conjunction of these three groups of symptoms lets us catch a glimpse of a scenario of radical demutualization: whereas the size and the maturity of banks tends to strengthen the asymmetries of power in favour of the central technocrats, the need to resort to private financing increases the pressure in return and burst Desroches' quadripartite institutional balance, which leads to a relative intensification of the emerging relation directors - shareholders of the highly-rated vehicles and so facilitates the technocratic centralism in a circle of auto-intensification of the imitation of the capitalist sector. At the same time, the flexibility offered by a formulation of *soft law* cooperative ethics allows to accompany this demutualization of a legal de-knitting which maintains only the appearances of a cooperative continuity, at least until the *de facto* demutualization became irreversible.

Is this scenario, which can seem extreme, all the most likely? Is it besides, on the same level, in the whole of the cooperative banking sector? A more detailed diagnosis, attentive to the movement of institutional reorganization as in its variability according to the places of power and the organizations, has to offer us some elements of answer.

2 The diagnosis

Many analyses have revealed that the *subprime* mortgage crisis was due to some extent to the search of far too brought up returns, imperative of profitability to which are subjected, to a lesser degree, banks recovering from a more "patient" finance (Jardat and Boned, 2008). Nevertheless, without reaching amounts observed at Société Générale and at BNP-Paribas, losses suffered by establishments endowed with a highly rated vehicle (Caisses d'Epargne-Banque populaire, Crédit Agricole) turned out to be disproportionate to establishments protected from the shareholder pressure (Crédit coopératif), in spite of a size sometimes as big as that of the big capitalist banks (Credit Mutuel-CIC). This event reminds us that the cooperative banks do not form a homogeneous set but can recover, unlike a certain variety of statuses and culture which is not without consequences on their strengths and economic weaknesses. There is hardly to bet that their degree of "democracy" is also diverse. This report proves that there is on one side no cooperative purity and of the other one a capitalist radicalism which banks would be summoned to join, but an infinite possibility of gradations and possible choice in the evolution of the statuses and the practices of these banks. Where from, the interest to closely analyze their current processes of transformation, which may receive causes for concern for the perpetuity of the cooperative project but also the opportunities of renewal of its

instruments in the service of this project, while questioning, via the law, the multiplicity which recovers the notion of democracy.

2.1 Economic Diagnosis

The economic prism allows to reveal the character of institutional balances dynamics which happen through the reorganization within cooperative banks. To foresee the situation, it is advisable to not only consider the cooperative institution, that is "a pre-existent and objectivable set of resources of justification at the economic agents' disposal anymore for their problems of coordination or their conflicts of reproduction" (Gianfaldoni, 2008: 8), such as the corpus of rights and statuses offer as example, the organization charts, the internal traditions. While observing, over time, emergent conventional constructions one can hope to identify the germs of a renewal of the cooperative project. Indeed, the convention results from interactions which occur between agents during tests of justification thrown, launched, relaunched or renewed (Bessy & Favereau, 2003). The notion of convention thus gets closer to that of 'bookmark' that Commons had created in opposition to that of the rule denoting a more motionless reality (Jardat, 2008b).

The emergence of such conventions was studied through the main coordination relations within the stakeholders of Desroches' quadrangle: the coordination between administrators and salaried directors, the coordination between members and administrators, the coordination between directors and employees and finally the coordination between employees and customers members. The board below synthesizes analyses redrawn in detail in (Gianfaldoni, 2008):

Coordination....	Facts / vivid observations	Emerging Conventions
Between administrators and salaried directors: national level	Diversity of statuses Common objective: growth and development	Economic utility conventions: Size effects Resources Economy Value added extension and market shares ->Expansion on regional territories
Between administrators and salaried directors: local level	Cooptation phenomenon of local administrators, legalised through elections Compromising on social objectives or on management, treatment of the files of the members-customers	Utility convention of economic and social value: Mutual understanding on the treatment of individual cases or appropriate to a given business sector - > Meshing of social networks
Between administrators and members	Weak influence of participative democracy on strategic questions Weak local cohesion strengthens the concentration of powers of national administrators	New conventions of economic and social utility: - Movement of non trade or non monetary incentives conform to the collective interest in monetary trade incentives - New non monetary incentives standing up from projects of general interest - > Project of social and local development, sponsorship, banking

		foundations
Between directors and employees	Movement from a 'fordist' organization, stiff, based on qualifications with monetary and non monetary compensations to a weaker direct salary, through a wage system with individualized variable part, degradation of the operational routines, increase of the turnover	Conventions of skills, conventions of efforts, Contractual and organizational trust individual Preservation of tacit trust
Between employees and member-clients	Merchandizing of the services Depersonalization of the technical relation of the products	Conventions of competence at the economic and social intersection Cognitive Trust Acquaintance Experience Engagement of the members in social actions - > Legitimacy reinvested in the clientele relation

Such an analysis creates strong contrasts according to the establishment places of the agreements: most of the coordination relations, either only carry on economic utility conventions, or tend to separate the economic from the social in their emergence, with on one side a pure logic of business and the other one a social counterpart divided within social actions or within sponsorship without consequences on the way of driving business. At the local level, the relation between administrators and salaried directors appears as the place of coordination that best seems to escape this dichotomy by the individual treatment of the files of the customer-members. From the point of view of democracy, it means that the most long-lasting anchor point of this last one in the cooperative banks is situated in this precise place that are the local boards of administrators cooperating with the local director. As the renewal will take it or not on the cooptation in the constitution of these councils, we can then qualify this hard core of democracy of cooperative banks of "Inhabitant of the Gironde" ("Girondist") or "Thermidorien", even of almost "based on a tax qualification" in the case of a renewal till kingdom come of the same social group.

This double report, of a variety of statuses and of functioning on one hand, and the existence of a hard core precisely localized of this democracy on the other hand, leads to think that the democratic idea will find all the more concrete translation and will resist all the better to the demutualizing pressure than the group will be, by its statuses, decentralized in its functioning as in the distribution of the informative resources (information systems) and cognitive (training, qualification).

2.2 Organizational Diagnosis

If the cooperative banking groups have as a rule an inverse skeleton of that of the capitalist groups, they are some with regard to the others as diverse from the point of view of their organization and the group architecture as from the point of view of their rights and statuses. Statutory variety and organizational and management variety keep pace. So, the capitalist groups generally have a pyramidal structure, a parent company detaining the majority of the voting rights in subsidiaries which control their own subsidiaries, the system of the "waterfall of holding companies" being the extreme application of a company law which allows a minority shareholder (for example a family) to

check de facto a multitude of companies. The cooperative banks are in an opposite situation: the local level detains generally the central structures, which supposes deliberations between local co-owners entities for all which concerns the central decisions engaging the common good of the cooperative group. Nevertheless this inverted "pyramid" cooperative does not present the same features in all the concerned banks. Whereas at the Crédit Agricole, the local entity owner is of a regional level, it is the Caisses themselves that, within the Crédit Mutuel, constitute the "basic cell" owner of the network.

This variability must be considered as a multiple source of information and crossed on the interaction democracy-organization. We suggest making a sketch by advancing three aspects of this interaction: 1 °) for a long time, the cooperative banking groups do not recover from a "pure" model; 2 °) certain group architectures may generate "distance reducers" between the democratic idea and its daily application and a "democratic strength" will result from it for the cooperative part which leads, in a certain way, to a "mutualisation" of the capitalist part and not to a demutualization of the cooperative party; 3 °) There were concrete cases where the performance and economic growth of a group kept pace with a deepening of the democracy.

2.2.1 The former "Impurity" of cooperative banking groups

With the constitution of hybrid cooperative groups detaining private law subsidiaries, we observe the concatenation, in their respective summits, of a cooperative inverted pyramid and a capitalist non-inverted pyramid to a mixed "hourglass", as it is illustrated with the example of the Crédit Mutuel (see fig. 1 below). Through the central entities, the members are certainly in command of the group. Nevertheless, situated in the bottleneck of the hourglass, the general management and the federative presidency federative directly control the capitalist part of the group. In the case of Crédit Mutuel the federative head plays a key-role in the relation customer-supplier (computing services in particular), which is established between this one and the customer Caisses.

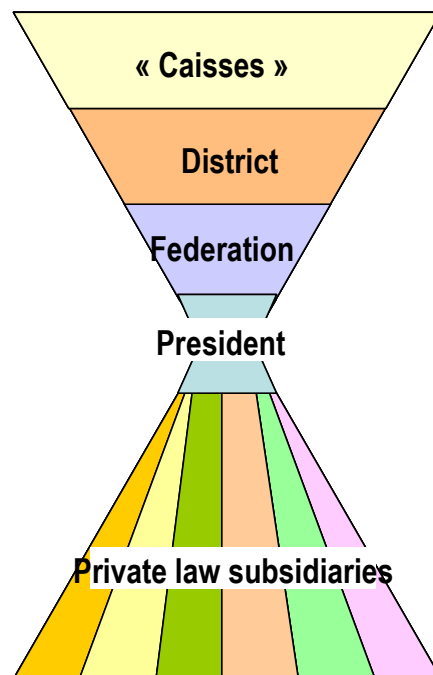


Fig. 1 - The "hourglass" of Crédit Mutuel Centre Est Europe

The functioning that result from the observation reflects the permanent interaction between statutory peculiarities (law) and the organizational contents (the nature of the subsidiaries). At Crédit Agricole, the Press stated tensions between the requirements of profitability of highly rated vehicle (CASA) on one side and the concern of perpetuity and security of the administrators (employees in particular) stemming from the network of the other one. Within the Crédit Mutuel, a case study put forward a different dynamic. The base of the hourglass is here constituted with computing subsidiaries service providers for the Caisses of the network. The head of the network, responsible in front of Caisses, maintains the superiority of these last ones by ceaselessly asserting that they are customers of the subsidiaries and, as such, decide, as a last resort, of the relevance and the quality of the services supplied by these subsidiaries.

2.2.2 Existence of "democratic distance reducers"

The interest of an institutional architecture where the basic cell (i.e. the Caisse) is of relatively reduced size lies in the nearness between the administrators on one side and the members of the other. The distance between elected decision-makers and voters is reduced, which guarantees a better representation, while making election for the council easier to cross than in big entities. Where from a certain renewal in the composition of the councils, which strengthens in return their representativeness and their legitimacy. *A contrario*, a weak ratio elected representatives/members, as well as a low rate of rotation of the elected administrators, can only tend to increase the distance between formal democracy and real democracy.

Another distance reducer, the training of elected representatives turns out to be a precious device to limit power appropriation by the salaried decision-makers to the detriment of the members. This technocratic drift was prematurely envisaged at Crédit Mutuel Centre Est Europe, by one of its historic presidents and the training of the elected representatives was explicitly asserted as a remedy: "the balance between knowledge and power can come true only if the elected representatives also have the knowledge" (Gueslin, 1982: 401-406).

Such an institutional architecture generates a specific shape of economic rationality: in an organization where the peripheral entities (federate) detain a strong power based on law, the central entities (federal) are in the obligation to work in service logic to the federate units. Logic of service all the more meaningful as, at least through law, the independent Caisses may put in competition the services returned by the federation with their own auto-performances, even with external providers. Thus, a Caisse commercialises products conceived by the marketing direction, not because it is obliged to do so, but because it considers them to be more relevant than the range of "house" products. The balance of power being so "inverted" compared to what takes place in a classic hierarchical company, any sorts of troubles of the capitalist bureaucratic company may be strongly limited: oversize projects and not adapted to the realities of ground, additional costs and inflation of staff and costs of the central services ("Parkinson law"), series of "stop and go" affecting change projects (in particular computing) insufficiently prepared in dialogue with ground operators whom they are going to affect, etc. (cf. Jardat, 2008). Indeed, in the case of a "hourglass" power architecture where the operational entities are at the top of power, the central services are in the real permanent obligation (and not only professed) to give satisfaction to the first ones, this obligation being ceaselessly reminded by the general management, hinge of the system (ibid).

This economic rationality of a company's democracy is measurable by its effects: for example, the unit costs of central services are widely lower in a federal mutualist bank than those whom we observe in a classic capitalist bank (Ibidem.). Thus, the democratic power conferred to local administrators does not uncork necessarily unto a mess of power and a decision-making inconstancy (clichés attached to democracy by aristocrats and oligarchs of all kinds since Classical antiquity), but on the contrary creates a balance of power, generative of relevant economic effects: the central entities are forced to abide by *low cost* structures supplying quality services to the local Caisses

Given that the subsidiaries of private law in charge of the functional services are in the service of the cooperative part, within which the federative functional entities are themselves in the service of the Caisses, the "contagion" of ways of functioning will tend to be made of the cooperative entity towards the capitalist entity and not the opposite. It is all the difference between the purchase and the creation of capitalist entities by a cooperative group and the partial sale of this cooperative

group within a highly rated vehicle there. We can so define two ideals of the hybridization between cooperation and capitalism. In the first case, the "hourglass" positions the democratic entity at the top of the institution and in fact the level vice-chancellor of the group. In the second case, it is the shareholders of the capitalist entity that may play this role and exercise a pressure in the demutualization (cf. figure 2)

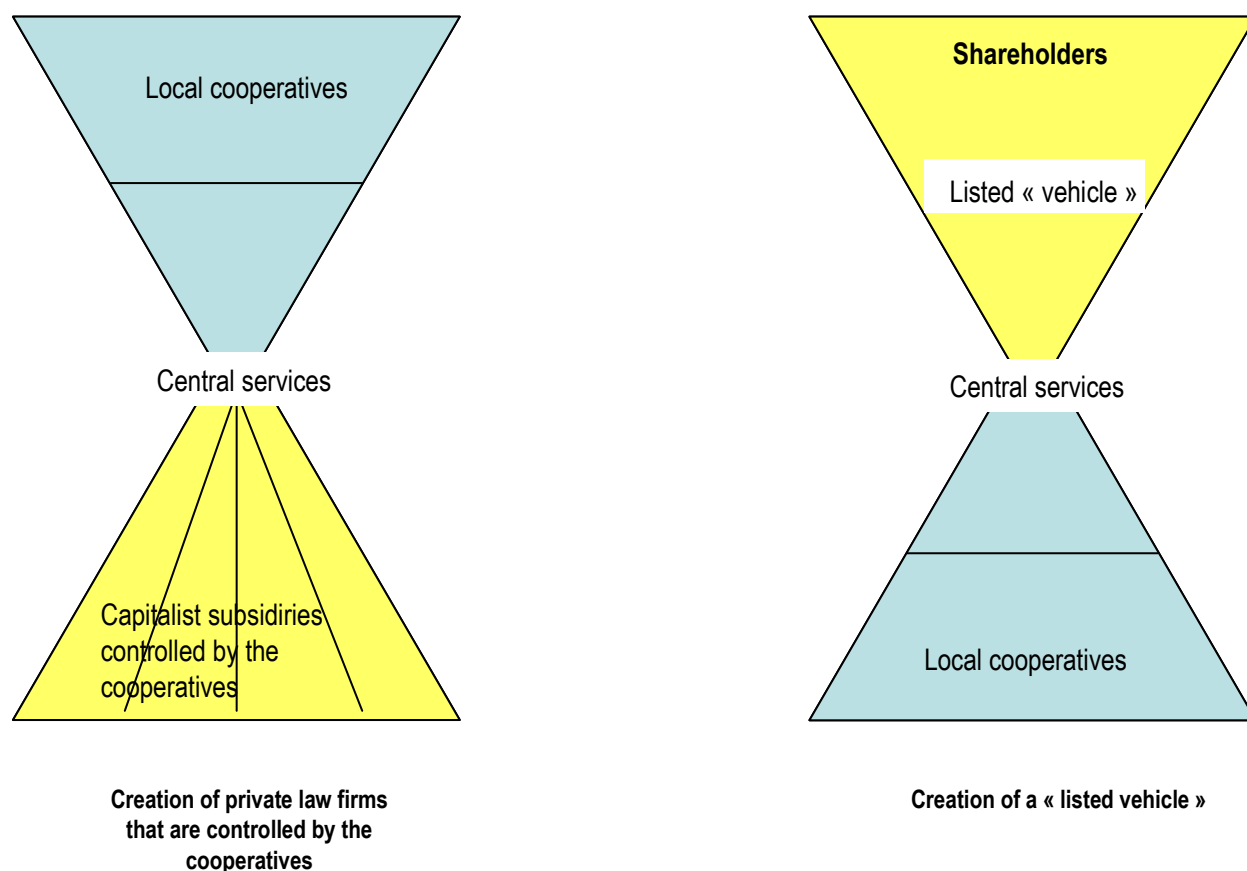


Fig. 2: The " reversal hourglass ": two ideals of the hybridization cooperation – capitalism

2.2.3 Democratic growth and evolution

Hybridization and growth are not paradoxical with cooperative democracy. This last one however cannot subsist without being transformed, as would tend to illustrate the history of the laws and statuses of Crédit Mutuel Fédération Centres Est Europe Europe (Gueslin, 1982; Jardat, 2008b; Jardat 2009). Indeed, built on the basis of a democratic cell of nearness, implanted in accordance with the " rustic Alsatian democracy " and Mosellanne, the Raiffaisien system underwent multiple evolutions during XX° century. *De-confessionalising*, political context fickleness and de-specialisation had put this model to the test, until 1960s, not without proving its robustness. The phase of strong growth of the years 1960-1970, carried in particular by the banking system of the lower and average classes, then by the invention of the bank insurance, constituted a factor of change of scale as considerable as the transformations in the course of the mutuality world. Nevertheless, we hardly assert, afterward, that the cooperative project subsided in that period.

We can only notice, at the same time, that this economic, technical and organizational evolution was accompanied, from the end of 1970s, by a major institutional evolution with the increase in power of a federal "parliament" and the drafting of a corpus of laws and statuses establishing explicitly the separation between an "executive power", a "legislative power" and a "judiciary power". The solidification of the federation thus came along with the elaboration of a kind of internal "constitution" to democratically settle the political functioning of an entity that has become

too big to rest on the only geographical and relational nearness. The presented solution is one of mixture of representative democracy (importance of the Employers' federation as "parliament") and of plebiscitary democracy at multiple levels (local general assemblies, district and federal). It comes along at the same time with an effort of training of the elected administrators to the banking techniques, wanted by the developer of this constitution. This constitution was not drafted nor approved by a large majority in one day. It was the object of debates, long in their duration, and at the same time, wide in their participation and contradictory in their contents. That is why we can consider that through this constitution, it is a kind of *constituent power of the members* that expressed itself. The transpositions to the other banks as to the social economic context, which is ours thirty years later, could be neither automatic nor without nuances. Nevertheless, two lessons of the history seem to be imperative:

1°) the impossibility to believe that a banking cooperative group can grow and develop its professions in a radical way and remain democratic, without its statuses evolving so as to offer new and adapted guarantees to this democracy to this new context,

2°) the fact that there are cases where hybridization between competitive necessities and cooperative project is not translated by the pure and simple everyday acceptance of the cooperative bank.

Legal Diagnosis

It is finally advisable to never forget the plural and evolutionary character of the notion of democracy, as demonstrated through its history, its theories and successive regimes. In particular, the cooperative world owes take into account this plurality and evolution capacities of the democratic possibilities as well as the necessity of a minimal coherence amongst the political, the social, the economic and the cultural so that this democracy does not remain a hollow formula or a rite deprived of emancipatory impact.

2.3.1 Plurality and evolution capacities of the democracy

Democracy is analyzed, at a minimal level, as a political system, in the same way as oligarchy or monarchy (Aristotle 2004). Democracy thus constitutes one of these fundamental questions of living together for which the jurist (as the political analyst) takes charge. It does not however present the rigorous terminological features terminological that usually characterize legal concepts. Its political dimension and the attraction that it has produced since modernity has multiplied its usages and diversified its meanings. These senses are themselves extremely varied in the company but it is only by return about the politico-legal wealth of the notion that we can re-question the ambiguous relations between company and democracy.

During the course of history, democracy has pointed to various concrete modalities of organization of the political systems and, at the same time, to opposite connotations. We know that in antiquity, democracy characterized the Athenian city. Although it consisted of slaves, it had a scrupulous concern of not professionalizing political functions, using for example the drawing lots as the most neutral mode of appointment. It is also a model, almost mythical, of direct democracy. Very quickly nevertheless, the golden age goes out and democracy only comes back during the Renaissance with the interest renewed for the Greek culture and consistently its institutions. And so, democracy reappears as a positively appreciated political system and it will be finally established, following the revolutionary movement of the end of the XVIII^e century, as the main model, considered even today, as impassable. The vote of the people appears in this concept as a central element, crystallising all attention, as it is shown through the struggle for the conquest of the universal suffrage. Nevertheless, behind this model, it is not certain that the agreement is so easy to realize on its precise contents, including within our western societies. And so, if it is not generally more forbidden to resort to a complete direct democracy, it remains in the imaginary as the only real democracy, the representatives in the indirect democracy always establishing a kind of treason of the represented. And this favour for direct democracy can be observed at every level of the collective life, mainly through the referendum. We saw the political stake on the occasion of the adoption of the European constitution treaty and the introduction of a referendum of local initiative by the constitutional law of

March 28th, 2003 (art. 72-1 of the Constitution) is also a considerable demonstration. In the same way, the vote stopped representing the alpha and the omega of democracy, not being able to content itself with a periodic expression but requiring a continual participation, whatever the forms.

It is also the fundamental structures of our societies, which experience confusions, democracy tending to absorb all the central political concepts. It is there so of the separation of the powers and the state under the rule of law. Nevertheless, democracies have no privilege of the respect for these principles, as the significant number of monarchies still in place can attest; and the Human Rights Declaration of 1789 makes no reference to democracy whereas article 16 integrates the separation of the powers which classically refers to the requirement of a distinction between the legislative, executive and judicial powers (Montesquieu, 1998). Not only these are independent in the fact that they perform each a specific function for which they have exclusive competence but, besides, they can have mutual modes of control. Although these characteristics are not reserved for democracy, there is no doubt today that there is no democracy without their consecration.

The understanding that had *revolutionary France* however was not always shared and we can even say that it was finally given up. In 1789, there was such a eulogy of the people, taken as an entity, that all the partial elements, the diverse communities, were marginally dismissed or excluded. And thus, all the power was concentrated in the hands of the people's representatives. This led to the refusal of all the intermediate bodies or to the appointment of a guardian of the central political power, that movement traditionally represented by the Dallarde decree of 1791. America supplied another model (Tocqueville, 1999), established on the expression of institutionalized communities, about which we know the influence that it exercised. Thus, France gradually established the existence of labour syndicates (1884) then association (1901), religious congregations (1905) and thus saw their place growing within the society. It is not only their number that must be notified here but the institutionalization of their capacity to represent distinct interests; general and particular interests, what the law calls collective interest. As such, associations' and/or labour syndicates are, under certain conditions, more and more incorporated into structures of dialogue or decision for the elaboration of public policies, at every level and in all the domains. At the same time, jurisprudence gradually abandoned its reserve in front of the risk of dissolution of the notion of general interest and recognized their capacity to judicially represent these said collective interests (Dupont, 2008).

The same ambiguities can be seen as regards to the state of law, the notion conceptualized at the beginning of the XX^o century (Herrera, 2003, p. 117). No more integrated into democracy than the separation of powers, it has nevertheless just as much part bound with it. The State of law consists mainly in the recognition and the guarantee of the fundamental rights, in other words the implementation of procedures likely to avoid the expression of arbitrary power.

This triptych gives a rather faithful image of contemporary democracy, that it is not congeal in marble and knows at present new evolutions. These are the fruit of a double theoretical reflection: on one side the procedural works of Habermas (Habermas, 1992), and on the other, the efforts to rethink the place of the citizen in an ultra – technical society (Callon Lascoume Barthe, 2001). From there, although in a deformed way, was born the development of participative democracy, through which, the political system tries to give to the citizens a more active and direct dimension in their participation in the political life. Without being able to speak about new shape of direct democracy, it is nevertheless certainly about a new phase of the democracy.

2.3.2 Consequences for the concrete translation of the democratic figure in cooperative companies

We see that the democratic figure is particularly rich and that its application to the world of the company can be carrier of numerous innovations. We could wonder about the legitimacy to integrate democracy into this particular place as far as the first one relies on political sphere whereas the second belongs to the economic domain. Two remarks however show a good part of the interest of the question, at least for this work. On one hand, democracy in the company became a classic question since the 80s, with the evolution of the conception of the company, the status has evolved from that of the business manager's property to that of an aggregate of persons and constitutive relations of homogeneous reality, then qualified as institution, within which democracy is the vector of the integration of its various members. On the other hand, the cooperative company, that holds here

more particularly our attention, claimed for a long time its democratic character - the "one man, one vote" which presides over the organization of its general assemblies is symptomatically called democratic principle-, by making a distinctive criterion with regard to the said capitalist companies. In these conditions, it is the establishment of parallelism between the conception of democracy in political society and the cooperative company which must be looked for. But, in this search, one shall never lose sight of the wealth of the political notion. The only recognition of the capacity of all the co-workers to participate in the vote cannot be considered as a sufficient indication of its democratic character.

A last remark must be made on this matter. Democracy is not a simple political shape at the risk of being only an empty shell. There is no democracy without the citizens' capacity to perform their part because to participate in the public life is not innate but results from apprenticeship. It can take extremely diverse forms but its result is indispensable: knowledge of institutions and their mechanisms, without which its functioning appears as an incompatible darkness that the citizen has to appropriate. Also, the citizen has to have a sufficient training to understand the life which surrounds it, without which he will not be capable of having an enlightened opinion on the questions with which his citizen's quality confronts him, and risks even to radically divert his interest from it. In brief, democracy is conceived only with citizens culturally ready for democracy, without which we are only in front of an enactment. It is obvious that this remark takes a particular strength as regards the cooperative companies, quite specially the banking cooperatives.

This necessity of the cultural adaptation arises today under at least a double dimension. On one side, the rights and statuses of cooperative groups owe to be in sync with the type of democratic request which emanates from the civil society to whom the members belong. The diverse collective phobias which build up around the problems of environment and health, as well as the procedures of participation of the citizens in the elaboration of big projects of general interest with strong impact on the lifestyles and the local residents (public meetings on the layouts of TGV (HST) and the other projects of infrastructure, for example) show that the civil society demands that the participative and technical constituents of the democracy develop. Cooperative companies could not henceforth make an impasse on these democratic dimensions in the evolution of their rights and statuses, at the risk of stopping being at the avant-garde of economic and social emancipation and seeing members turning away from the cooperative project to dedicate themselves to forms of collective action more in sync with the requirements of the civil society. On the other hand, cooperative groups owe to raise a large number of members with the necessary capacities so that the participation is enlightened, which supposes an effort in technical training, but also strategic and sector-based information, either general, or targeted at a minimal level towards elected administrators, to co-decide daily with the salaried directors.

2.4 Synthesis

In the crossroads of the economic, organizational and legal diagnoses of democracy in French banking groups in transformation appear three key factors of perpetuity of a certain democratic reality:

1 °) Participation and technical democracy are necessary for the establishment of balanced conventions between the various stakeholders of the cooperative project. Where from, the requirement to train the actors (above all the members and the administrators) to avoid the technocratic confinement of the policy of these banks.

2 °) Nearness (physical but also institutional) appears as reducer of essential distance between the democratic idea and its translation in human behaviour. Where from, the interest of any authorities which, within the cooperative banking groups, move a small number of representatives closer to the members and the technical decision-makers. Some of these authorities already exist and have to remain without being emptied of their substance by parallel organs: they are for example the local boards of directors, the supervisory boards, the foundations. Other authorities are emergent or could be created which would imply the members in the life of a "technical and participative democracy" of the banking groups: thematic working groups, members' panels to judge the new offers of products services, etc.

3 °) The necessary evolution of the statuses can be only made downstream to the observation of a cooperative project renewed in acts because law is not creative in itself, only the project is. Where from a double necessity:

- a) At first, a better knowledge of cooperatives by themselves (from a sociological, economic, organizational, legal point of view), so as to locate new modes of establishment of conventions reconciling imperative of performance, solidarity and democracy,
- b) Secondly, a process of establishment of new statuses which reflects the constituent power of the member, by opposition to modifications made hastily, surreptitiously even.

3 Remedies

The establishment of a new cooperative project is indispensable in cooperative banks; we join here Daniel Coté's propositions. Without claiming to have sufficient data to have detected all the emergent forms of a new paradigm, we here intend to sketch what could constitute the main strength lines of the process susceptible to bring it to the foreground. The multidisciplinary crossing of our studies indeed brings us to formulate the following orientations:

- A) It is required to show invention as statutory and as economic and organizational. The experiments made by Daniel Coté at the Caisses Desjardins agree with the observations made within the Crédit Mutuel: democracy, as constituent of the cooperative project, only exists if it is shown through within the daily practices of its stakeholders.
- B) This invention should not however limit itself to the only professional and managerial practices that imply, for the main part, only the employees and the customers members. So that the Desroches quadrangle continues to work in all its constituents, the cooperative reinvention has to rest on at least three pillars which appear on the crossroads of our analyses, with a certain order and without excluding round trips (figure 3): (i) Education, (ii) Comprehension and (iii) Constitution.

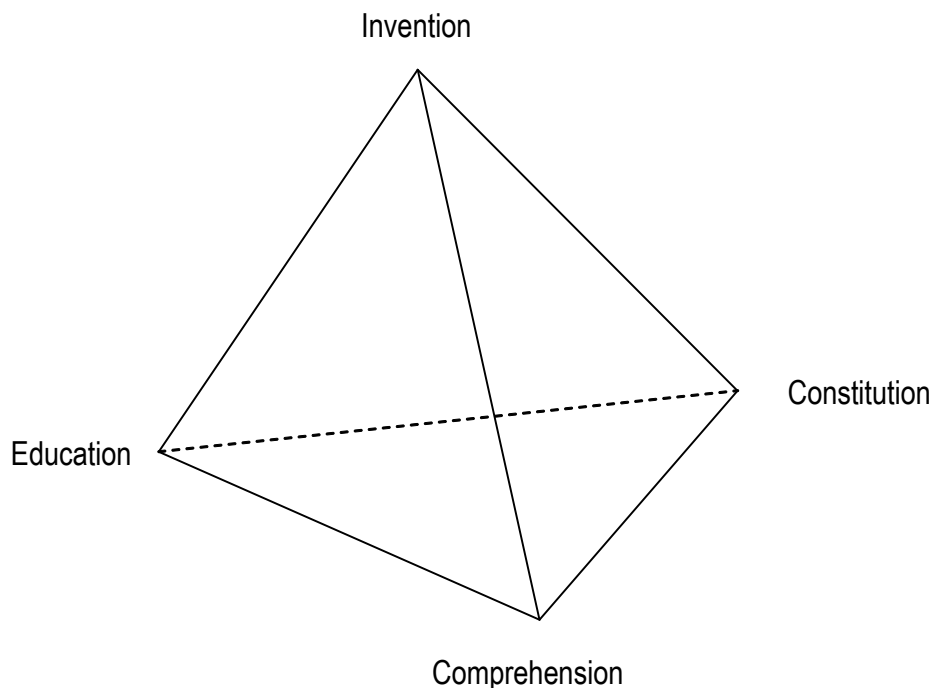


Figure 3: The tetrahedron of cooperative reinvention: the invention rests on training, understanding and constitution.

(i) Education (more precisely training) is indispensable to make the members and the administrators capable of exercising, with the necessary qualification, their constituent power. Without that necessary qualification, practices is mechanically applied a technical so narrow taxable rating as was it the financial taxable rating of the monarchy of July. Besides, it harbours two other virtuous effects: the first one is to strengthen the cohesion between members, because the sharing of technical and organizational mental plans is a form of institutional nearness. The second is to ceaselessly readjust the collective representation of the cooperative project, by a language that anchors in the bank environment as in its daily practices (commercial, technical etc.) as well as in its history.

(ii) The “comprehension” or understanding that cooperative groups have of themselves is all the more indispensable to develop. The technical evolutions as institutional of their environment indeed bathe in a liberal ideology of "vice prosperity" widely orthogonal in their values. Inadvertently, the risk is then big to introduce organizational and managerial innovations, which result in a surreptitious demutualization. The cooperative banks have to develop a critical and lucid eye on the strengths and the weaknesses inherent to their statutory and cultural specificities, so as to enlighten the necessary evolutions of their functioning. The creation of institutes, the driving of community working groups (Pflimlin report) goes in this sense.

(iii) The constitution of new corpuses of laws and statuses should, as a rule, only intervene downstream to a sufficient development of the initiatives begun according to the two other pillars. It will be all the more fertile and justifiable, indeed, as will be associated with it the qualified and enlightened stakeholders. The scale of this constitutional challenge can be confronted to the duration, which was necessary, in the political history, for the fact that societies exceed the stage where, as Montesquieu had seen, only cities and microstates could work in republic, whereas the monarchic or despotic principle remained the lot of the big States. The elimination of illiteracy, the circulation of opinions by the print media, as well as the development of disciplines offering a bigger auto-reflection of the society (political economy, sociology) allowed to exceed the threshold of Montesquieu and to form big democracies. We can guess that this change of scale, for the cooperative company, will obtain a success of the same scale only if similar educational conditions and collective reflexivity are combined.

Conclusion:

As the outcome of this somewhat programmatic panorama, we cannot miss to indicate, concerning the "understanding" part of the cooperative evolution process, the responsibility that befalls to researchers and teachers as to directors and the administrators who finance their works or to say the least who give them access to the data. The notion of pluralism has here another implication: the implementation of a new cooperative project will be collective, multidisciplinary, as it will combine members, managers, scientists and beneficiaries.

Bibliography

Aristotle [2004] , *Les politiques*, trad. inédite, introd., bibliogr., notes et index par Pierre Pellegrin, Flammarion, 2004.

Bessy C., Favereau O. (2003), « Institutions et économie des conventions », *Cahiers d'économie politique* », n°44, PP. 119-164

Callon M., Lascoumes P. et Barthe Y. (2001), *Agir dans un monde incertain Essai sur la démocratie technique*, Seuil.

Colletis G., Gianfaldoni P., Richez-Battesti N., 2005, Economie sociale et solidaire, territoires et proximités, *RECMA – Revue Internationale d'Economie Sociale*, n° 296, 8-25.

Commons J. R. (1934), *Institutional Economics. Its place in Political Economy*, the MAcMillan Company, New York.

Coté D. (2007), « Fondements d'un nouveau paradigme coopératif – Quelles incitations pour les acteurs clés ? », *RECMA* n° 305 : 72-91

Coté D. (2005), « Loyauté et identité cooperative – L'implantation d'un nouveau paradigme coopérative », *RECMA* n° 295 : 50-69

Coté D. (2000), « Les coopératives et le prochain millénaire : l'émergence d'un nouveau paradigme coopératif », *RECMA* n°275-276 : 149-166

Dupont N. (2008), *Recevabilité de l'action en justice d'une association non habilitée à agir par la loi, comm. de Cass., civ. 1^{ère}*, 18 sept. 2008, La semaine juridique, édition générale, II, 10200.

Enjolras, B (1996), « Association et isomorphisme institutionnel », *RECMA* n°262, Paris : France

Farjat G. (2004), *Pour un droit économique*, PUF.

Freund, Julien (1965), *L'essence du politique*. Sirey: Paris, France.

Gianfaldoni P. et Richez-Battesti N. (2007), « La Gouvernance des banques coopératives françaises – Démocratie et Territoire », *Actes du colloque de l'ISTEC* pp.10-40, Paris, septembre (CD-ROM, to be downloaded on by URL http://www.istec.fr/pdf/Actes_Colloque_Gouvernance_20_09_07.pdf)

Gianfaldoni P. (2007), « Les banques coopératives françaises à la recherche d'un nouvel équilibre institutionnel », Ecole thématique *Les méthodes de l'analyse institutionnelle*, La Rochelle, 17-18 septembre.

Gianfaldoni P. (2008), « Droits coopératifs, droits sociaux et conventions économiques : une application aux banques coopératives », pp. 95-108, dans P. Domin et alii (dir.), *Actualités de l'économie sociale*, L'Harmattan, Paris.

Gilly J-P. et Torre A. (éd.) (2000), *Dynamiques de proximité*, L'Harmattan, Paris

Gueslin A. (1982), *Le Crédit Mutuel, de la caisse rurale à la banque sociale*. Coprur : Strasbourg, France.

Herrera C. (2003), *Droit et gauche Pour une identification*, PU Laval, Québec, Canada

Habermas J. (1992) (trad. R. Rochlitz et Ch. Bouchindhomme), *Droit et démocratie Entre faits et normes*, Gallimard.

- Hiez D. (2009), « l'éthique coopérative et le droit », cahiers de recherche de la chaire de coopération Guy-Bernier, ESG UQAM, avril 2009, Montréal : Canada.
- Jardat R. (2009), « *Maurice Hauriou, Théoricien de l'institution et inspirateur de statuts mutualistes* », RECMA n° 312
- Jardat R. (2008b), « Les Caisses de Crédit Mutuel en Alsace-Lorraine à la charnière des XIX^e et XX^e siècle : maillages croisés et rivalités entre société civile, pouvoir politique et institutions non étatiques - leçons d'une réussite exemplaire pour les zones en développement du XXI^e siècle », *Actes du colloque du RIUESS*, Barcelone
- Jardat R. (2008a), "How democratic internal law leads to low cost efficient processes : practices as a medium of interaction between institution and organization", *Society and Business Review*, Vol. 3 No1, pp.23-40, Emerald Publishing : Bingley, United Kingdom
- Jardat R. et Boned O. (2008), « La gouvernance mutualiste face à la crise bancaire », *Expansion Management Review* n° 131 : 44-49
- Montesquieu, Charles-Louis de Secondat de [1998], *De l'esprit des lois* / Montesquieu ; chronologie, introd., bibliogr. par Victor Goldschmidt, Flamarion,.
- Moulevrier P. (2002), *Le mutualisme bancaire – le crédit mutuel de l'église au marché*, Presses Universitaires de Rennes
- Oppetit Bruno (1999), *Philosophie du droit*. Dalloz: Paris, France.
- Ory J.N. , Gurtner E., Jaeger M. (2006) « Performance et gouvernance des banques coopératives françaises », Partie 1 de l'ouvrage *Les banques coopératives en France: le défi de la performance et de la solidarité* sous la direction de RICHEZ-BATTESTI N. et GIANFALDONI P., L'Harmattan, Paris
- Ost F. et Van de Kerchove M. (1987), *Jalons pour une théorie critique du droit*, édition des Facultés universitaires saint-Louis, Bruxelles,.
- Perez R. (2003), *La gouvernance de l'entreprise*, La Découverte coll. *Repères*, Paris.
- Pesqueux Yvon (2007), *Gouvernance et privatisation*. P.U.F. : Paris, France.
- Richez-Battesti N., Ory J.-N., Gianfaldoni P. (2008), « Quelle gouvernance partenariale dans les banques coopératives françaises ? Marché, réseau et proximité », *Cahiers de recherche du CIRIEC*, n° 7.
- Richez-Battesti N. et Gianfaldoni P. (2005), « Gouvernance territoriale et réseaux : une illustration par l'accompagnement à la création d'entreprises en France », *Annals of Public and Coöperative Economics* 76 :4, pp. 621-644
- Richez-Battesti N. et Gianfaldoni P. (2006), *Les banques coopératives en France – Le défi de la performance et de la solidarité*, L'Harmattan : Paris, France.
- Sadoun B. (2005), *Les origines du Crédit Mutuel*. Coprur: Strasbourg, France
- Supiot A. (2005), *Homo juridicus Essai sur la fonction anthropologique du droit*, Seuil.
- Tocqueville Alexis de [1999], *De la démocratie en Amérique*, Laffont, , 3^e réimp.

Turpin, Dominique (1992), *Droit constitutionnel*. P.U.F. : Paris, France.