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Institutional Pluralism and Interactions Between Normative Systems: A Theoretical Overview

Michaël Bruckert and Emmanuel Pannier

INTRODUCTION

Institutions are generally approached through four questions: their definition, their transformation, their effects and their functioning. General definitions such as Douglass North's, for whom institutions are the "rules of the game in a society" (1990), contrast with more precise ones that consider their construction and spatio-temporal stability (Granovetter, 2017). Following a cultural approach, they are "prevalent habits of thought" (Veblen, 2007 [1899]: 126). While Mauss sees them as externally imposed social totalities (1971), pragmatic approaches are interested in how actors participate in their stabilisation (Boltanski, 2009). They can be construed as a system of rules and prescriptions (Ostrom, 2005; Searle, 2005) that structure, constrain and enable practices (Hodgson, 2006). This raises the question of their effects: from a functionalist perspective, their role is to reduce uncertainties and produce trust (North, 1990) or to reduce risk and transaction costs (Ménard & Shirley, 2005). Some

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interpret them as an “operator of civilisation” that holds together particular, and possibly discordant, affects (Lordon, 2013). In a more encompassing view, they participate in the social construction of meaning (Giddens, 1984).

Behind this diversity of approaches to understand the institutional fact, there is a common attribute: institutions regulate interactions and structure social relations. In other words, institutions embody the political, that “space in-between people” when they act together (Arendt, 1958). If institutions and the bundles of norms that underlie them are necessary for “living together with others” (Arendt, 1958), their forms and expressions vary from one society to another. They are heterogeneous within the same society and evolve over time (Helmke & Levitsky, 2004). In other words, they are polymorphic, dynamic and contextual. In addition to theoretical approaches on what institutions are, what they do and how they do it (Lordon, 2013), it is necessary to study institutional pluralism and normative diversity in different socio-historical contexts.

In this chapter, we propose a short literature review that addresses institutional pluralism and the different modes by which various normative regimes interact and relate. We identify the main contributions, but we also point to some limitations. In Chapter 23, the approaches described here are complemented and we attempt to remedy their shortcomings by studying two cases of normative pluralism in Vietnam and by proposing a typology of the modes of relation between normative systems.

THREE TYPES OF APPROACHES TO NORMATIVE PLURALISM

Many authors from various disciplines have addressed implicitly or explicitly the issue of normative pluralism and of the interactions between normative orders. We propose to distinguish three main approaches: one that focuses on the social and institutional regulation of the economy, one that examines the existence of non-state legal norms and one that addresses the diversity of norms in their empirical expressions.

To simplify, the first approach follows a socio-institutionalist approach to economics and focuses mainly on the relationships between the social realm and the economic realm. Economic anthropology and sociology have long questioned the place of the economy in society (Weber, 2013 [1922]), the role of symbols in the process of production (Sahlins, 1976), the moral dimension of the economy (Scott, 1977; Thompson, 1971), the articulation between social relations and relations of production (Godelier, 2010 [1984]) or the interplay between economic and cultural values (Appadurai, 1986; Graeber, 2001). More recently, the new economic sociology has been interested in the embeddedness of economic action in social relations (Granovetter, 2017) and, more broadly, in the connection between the social and the economic life (Zelizer, 2005). Among economists, “earlier” institutional economics (Hodgson, 2006; Polanyi et al., 1957; Veblen, 2007 [1899]) and new institutional economics (Coase, 1992; Ménard & Shirley, 2018;

North, 1990; Ostrom, 1986, 2005; Williamson, 1985), as well as so-called “heterodox” economics, i.e., regulation school and economics of convention (Aglietta & Orléan, 1998; Lordon, 2013; Thévenot, 1995), although following different or even opposing epistemologies, aim to take into account institutions and extra-economic social norms that regulate market relations and economic systems. Nevertheless, while “earlier” institutional economics and heterodox economics have distanced themselves from the assumptions of mainstream economics, it is not always the case for new institutionalist economics.¹ The latter ultimately tends to go back to the foundations of neoclassical economics, in particular to the *homo oeconomicus* paradigm, the “rational choice theory” and coordination through market equilibrium. Authors embracing this paradigm rarely take into account structural changes (economic crises, financial collapse, political conflicts, wars) that shape the evolution of institutional regimes (Boyer, 2019), whereas “earlier” institutional economics and heterodox economics adopt a historical perspective that take into consideration the plurality of registers of action and the transformations of social relationships. Aiming at developing “grounded theories”, this latter approach allows to analyse social systems as open and dynamic with malleable boundaries, to take contingency into account and to combine determinism and unpredictability (Labrousse et al., 2017). By contrast, new institutionalist economists tend to view these extra-economic forms of regulation, often referred to as “informal” (North, 2016: 74), as homogeneous, static and entangled in traditional values. According to Olivier de Sardan, “[o]nce they have mentioned institutions or informal norms, and highlighted their importance, they stop there and go on to something else. Informal institutions or informal norms basically remain black boxes” (Olivier de Sardan, 2013: 286). As a result, new institutionalist economists ignore the heterogeneity of these informal norms. Contrary to what economic anthropology and heterodox economics do, they rarely address the conflicts, power relations, fragmentations, disruptions and crisis that are internal to societies.² Nor do they analyse the concrete ways in which the economy is embedded in the social sphere, as the historical institutional economics and the new economic sociology. The worth of the latter is to deal with the social processes at work in market exchanges and to move away from the market/society dichotomy (what Zelizer calls the “hostile worlds” theory) by reconnecting the various normative systems within which actors interact (the “connected lives” theory) (Zelizer, 2005: 22). However, some of these interpretations tend to focus only on the non-economic social aspects characteristic of interpersonal networks

¹ Even if they initially “aimed to radically alter orthodox economics” (Ménard & Shirley, 2018: 1) and to “provide an alternative to the theory of substantive rationality developed by neoclassical theory, by taking into account uncertainty and transaction costs” (Boyer, 2019).

² With some recent exceptions; see Ménard and Shirley (2018).

and intimate relationships (Chantelat, 2002). This bias may lead to understate the social dynamics specific to the construction of markets, such as the processes of “economisation” (Çalışkan & Callon, 2009) or the ritual frameworks that enable market transactions but do not originate from a surrounding or pre-existing social sphere (Weber, 2000). In other words, it may miss ad hoc social norms, created in situ, that lie within the very heart of economic and market relations.

The second major approach to normative pluralism focuses rather on the relations between the social and the law. It belongs to a body of research on “legal pluralism”, which designates a “situation in which two or more legal systems coexist in the same social field” (Merry, 1988: 870). This approach stems from the work of the sociologist Ehrlich who, at the beginning of the twentieth century, distinguished between a state law and a non-state or “living law” (Ehrlich, 1989 [1913]). Taking this approach further, Gurvitch described the “social law” that arises from the complexity of interactions (Gurvitch, 1935). The work developed from the 1970s onwards deepened the analysis of norms and regulations that are part of the law but not prescribed by the state, thus redefining and broadening the field of law (Griffiths, 1986; Twining, 2010; Benda-Beckmann, 2002; see also *The Journal of Legal Pluralism and Unofficial Law*).

Notwithstanding, despite challenging the usual state(-ethno)centrist approach, these studies do not totally avoid “a state-centred bias” (Reyntjens, 2015: 357). The alternative regulatory systems they explore, notably “non-state normative orders” (Twining, 2010: 474), are often defined in the negative, in contrast to the state, i.e., by what *they are not* rather than what *they are*. Moreover, some analyses of legal pluralism tend to “narrow down to a single, legal dimension” norms that are constituted by complex processes going far beyond the legal (Fuller, 1994: 10). Thus, the school of legal pluralism is generally concerned only with explicit, formal and customary norms, those that are legal (in the broad sense). The vast field of implicit, tacit, non-legal norms regulating everyday interactions is often ignored.

Finally, the third approach encompasses authors who empirically address the plurality and entanglement of norms at the intersection of political, legal, economic, social and religious fields. This approach includes work developed in France from the 2000s onwards in the wake of development and public policy anthropology (De Herdt & Olivier de Sardan, 2017; Olivier de Sardan, 2013, 2021; Winter et al., 2001), as well as some work on normative pluralism (Helmke & Levitsky, 2004; Roitman, 2005; Ledeneva, 2018) and hybrid governance (Meagher, 2012, 2014). All these approaches defend an empirical and historicised study of normative pluralism that allows “the premises of cultural homogeneity to be avoided, and hierarchies, conflicts and contradictions to be reintroduced as well as the interplay of actors” (Olivier de Sardan, 2013: 291). These authors also differentiate themselves from dichotomous interpretations and challenge the usual binaries made between custom and

state, traditional and modern, informal and formal, endogenous and exogenous, public and private. By insisting on their heterogeneous, ambivalent and dynamic character, they explore a wide repertoire of norms and institutions with varied characteristics. Although the empirical bases of these authors are mainly drawn from African contexts, the scope of their analyses goes far beyond these socio-political spaces. This type of approach has been rarely used in South-East Asia; consequently, Chapter 23 is an attempt at applying it to Vietnam.

This third posture can be brought closer to the work on the “economies of worth” (Boltanski & Thévenot, 2006). Indeed, although they make little reference to the notion of “norms”, Boltanski and Thévenot address the way people “construct, display, and conclude more or less lasting agreements” (2006: 25). They distinguish different “worths” that correspond to higher principles, judgments and legitimate argumentation relating to justice and the common good—in other words, to “what matters and who or what will have to be involved in the action” (p. 129). These political principles are applied and brought into play in what the authors call “worlds” (2006: 125). These worlds refer to the different ways agreements are reached, actions are coordinated and sets of justifications are “tested” (p. 127) in practice. Boltanski and Thévenot distinguish six different worlds: the Inspired World, the Domestic World, the World of Fame, the Civic World, the Market World and the Industrial World. In the Domestic World, for example, order is mainly established through “the position one occupies in chains of personal dependence” (p. 164), necessitating gifts, duties and debts. The Market World, on the other hand, relies on competition, free circulation of goods and persons and the quest for personal satisfaction, while the Industrial World gives place to technology, efficiency, reliability and expertise.

DIFFERENT TYPES OF NORMS

Some studies try to identify different types of norms. These classifications are useful for understanding how social relations and actors’ practices are regulated. The question of classifying norms is not new (Gibbs, 1965). Many attempts have been made,³ but “there is no agreed taxonomy of types of social norms” (Twining, 2010: 481). Among the various proposals, the typology proposed by Olivier de Sardan (2021) seems to be one of the most operational for understanding the empirical manifestations and dynamics of norms. This classification distinguishes between explicit regulations, including official norms (conventions, codes, local regulations, administrative, technical and professional procedures, contracts, manuals, programmes, organisational structures, specifications) and social norms (accessible through the study of tradition, education, morality, religion or the reading of classical ethnologists)

³ See a review of the literature in Olivier de Sardan (2021: 144–158).

and implicit regulations, consisting of various forms of practical norms (adaptive, semi-tolerated, transgressive, palliative and rebellious). This exploratory concept of “practical norms” is one of the main conceptual contributions of Olivier de Sardan (2008, 2015, 2021). It accounts for “the various implicit regulation (informal, de facto, tacit or latent) that underlie the practices of actors which *diverge from explicit norms* (official or social norms)” (Olivier de Sardan, 2021: 121, emphasis is ours). It also encompasses norms that unfold in the absence of explicit regulations.

Practical norms are thus analysed either as deviations from the official norm, in particular bureaucratic norms,⁴ or as norms produced in contexts of absence of official rules, because the state is failing or even absent, or because the margin of appreciation is wide (Olivier de Sardan, 2021: 142). In both cases, it is with reference to official norms or the state that these norms are defined and analysed. This bias can be found in studies on hybrid governance, which tend to focus on “situations of weak statehood, and [have] shown a bias towards peripheries, while hybrid regulatory orders can be found in strong states and at the centre as well” (Reyntjens, 2015: 362). While these approaches aptly reveal a range of norms alternative to official, state and formal regulations, it is important that the analysis does not remain confined to socially regulated behaviours *that deviate from official norms*. It is necessary to broaden the focus to include all implicit, local, immanent and more or less tacit practical norms, whether or not they are deviations from explicit norms, whether they stem from old routines or are created in situ according to circumstances. This is why we argue for the importance of considering these many local norms *for their own sake*, before presenting them in relation to official norms as non-observant behaviours. This perspective makes it possible to show how “other informal institutions develop independently of formal institutional structures, in response to conditions that are unrelated to (and frequently pre-date) the formal institutional context” (Helmke & Levitsky, 2004: 736 note 103).

INTERACTIONS BETWEEN NORMATIVE REGISTERS

Studies on normative pluralism often address the interactions between different normative registers, but they rarely theorise them as such.⁵ Twining (2010: 490), for example, offers an exhaustive list of the different ways in which “legal orders” interact and interrelate: conflict, competition, symbiosis,

⁴ Although the analysis proposed by Olivier de Sardan goes beyond bureaucratic norms, its empirical basis is often confined to them, and, as he points out (p. 142), it deals more with deviations from official norms (state, bureaucratic or professional) than with deviations from social norms, a subject yet to be explored.

⁵ Except for some publications from the above-mentioned regulation school that address various forms of institutional configurations between compatibility, complementarity, hierarchy or co-evolution, but mainly from a macro-economic perspective (Boyer, 2019).

subsumption, imitation, convergence, adaptation, partial integration, avoidance, subordination, repression or destruction. However, he does not go further, nor does he illustrate or define each of these modes of relation.

Based on their typology of “orders of worths”, understood as modes of coordination, Boltanski and Thévenot are interested in what they call “disagreements” and “disputes” (2006: 33) between these different worths, and in the crises, composite situations, compromises and relativisations that result. Elsewhere, Thévenot states that “effective coordination mechanisms are composite and offer possibilities for compromise between these different orders” (1995: 40). The articulation between normative systems is thus mainly thought in terms of contradiction, combination and rearrangement. However, beyond empirical illustrations and an analysis of the contexts and pragmatic mechanisms that these compromises entail, these authors do not qualify them further and do not attempt to propose a systematic typology of modes of relation between normative regimes.

A few authors have tackled this task. One of the most accomplished categorisations is proposed by Helmke and Levitsky (2004), based on Hans-Joachim Lauth (2000). They do not explicitly propose a typology of the modes of interaction between normative systems, but develop a typology of informal institutions (complementary, accommodating, competing and substitutive), according to their relationship to formal institutions (convergent or divergent effects) and the latter’s degree of effectiveness. Their typology is based on empirical studies carried out in various contexts and provides an exhaustive picture of the various ways in which different systems of norms interact. However, despite their criticism of this bias, their perspective is still based on the distinction between formal and informal institutions. Moreover, formal institutions constitute the reference point from which other institutional forms are considered. Finally, their discussion only deals with political institutions.

It is yet useful to extend the typology to all types of institutions, whether social, political or market-related, and to complete it with other modes of interaction between normative systems. This is the aim of Chapter 23, in which we address the interaction between normative systems through two vignettes from Vietnam. The first vignette focuses on party-state interventions in the local customs and sociability practices of the Tày populations of Vietnam’s northern uplands. It illustrates the encounter and the balance of power between the State regulatory system and the local norms. By describing how the Tày populations deal with these external interferences, we analyse how these different normative orders interrelate. The second vignette examines the institutionalisation process of online sales of fresh food products in Hanoi. Municipal authorities try to formalise and standardise online buying and selling practices, especially by establishing a legal framework, developing corporate online platforms and promoting third-party certified “safe” food products. Nevertheless, many consumers buy uncertified food products on social media (such as Facebook) through unilateral and often interpersonal relationships,

therefore escaping the State's normative system and control, and altering the impersonal market logic. Our analysis of trust production points out the composite arrangements that take place between interpersonal and unmediated relationships (Boltanski and Thévenot's "Domestic World"), impersonal market mechanisms ("Market World") and procedural norms based on the rule of experts and public authorities ("Civic and Industrial Worlds"). Ultimately, drawing on these cases, we conceptualise five modes of interaction between normative systems: coexistence, combination, opposition, substitution and hybridisation.

This typology is partially based on the one proposed by Chauveau et al. (2001). The authors distinguish five logics of confrontation and negotiation between distinct normative systems: ignorance, diversion, reciprocal manipulation and instrumentalisation, competition and exclusion, and convergence. This typology seems to be one of the most operational, but it has its limitations.

Firstly, as the authors point out, "these types are not exclusive of each other" (2001: 154), which blurs the properties of each type identified and confuses the classification. Indeed, while typological distinctions never totally match social reality, since actual practices are often ambivalent and dynamic, ideal-typical categories must nonetheless be exclusive of each other in their definition in order to be operative. A second limitation concerns the type of interrelation called "reciprocal instrumentalisation of norms". For the authors, "this logic can also lead to informal arrangements that combine, without necessarily opposing them, different systems of norms" (2001: 156). In our view, this logic refers to a broader category, that of combination between normative registers, while instrumentalisation is only a sub-modality within it (see Chapter 23). Moreover, it tends to be confused with another of their categories, the "logic of convergence", which refers to the functional complementarity between different normative registers.⁶ The final limitation of this typology is the authors' use of the term "hybrid", which is absent from the first version of their text, but widely used in the second. Sometimes used to describe a specific mode of relation—the complementarity or combination between different systems of norms—it is also used as a cross-category for all modes of interaction that pertain to an assemblage. The category "hybrid" is also associated with the idea of "piling up" (*empilement*). However, in our view, hybridisation refers rather to a specific mode of articulation in which the boundaries between interrelating registers become blurred, distinct from

⁶ In a second unpublished version of the text ("La pluralité des normes et leurs dynamiques en Afrique. Apports de la recherche aux politiques publiques"), presented in the framework of the summer school "Journées de Tam Đảo" organised in Vietnam in 2010, the authors took up their typology by modifying precisely the categories we are discussing: the "logic of diversion" being integrated into the "logic of reciprocal instrumentalisation" and the "logic of convergence" being designated as a "logic of complementarity and composition".

complementarity and piling up (Yang, 2000). This extensive use of hybridisation is common in the literature on normative pluralism, in particular in studies that address “hybrid governance”, to describe the co-presence of different institutions and norms within the same society, without these regulatory regimes being formally entangled or mixed—contrary to what “hybridisation” (in the strict sense of the term) suggests.

CONCLUSION

Institutions are more or less stable systems of norms that shape behaviour as much as actors make use of them and transform them through concrete social interactions and practices. As a regulating force of social relations created by human collectives to reproduce the social fabric, they are a manifestation of the political. Beyond this general statement on the necessary presence of institutions in any society (“*ubi societas, ibi ius*”⁷), empirical observation indicates the existence of a multitude of institutional forms made up of a large repertoire of norms that are constantly evolving. Specifically, interaction between normative registers does not take place *ex post*, between normative entities that would be pre-existing, always-already there. Rather, normative registers are also produced in and through their ongoing relations and interactions. This chapter has traced various approaches to normative pluralism and presented some attempts to build typologies of the modes of relation between different normative systems.

While the pluralism and encounter of different normative systems is a social fact that can be found everywhere (Twining, 2010), the forms and expressions of this pluralism, as well as the modes of interaction between the normative registers at play, vary according to the socio-historical contexts. In order to understand the concrete manifestations of this phenomenon, it is necessary to build up operational typologies as well as to multiply the number of localised case studies. Empirical research makes it possible to construct these typologies, to test their relevance and to adjust them as closely as possible to the diversity of social realities. Based on the theoretical contributions described here and in the light of two cases of normative pluralism in Vietnam, Chapter 23 proposes to move in this direction by combining typological distinctions with systematic contextualisation.

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⁷ “Wherever there is society, there is law”.

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