



### I-1.23: Regulation and politics: reflections upon the rule of law

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In order to properly conceive the role of law in the economic sphere, a problem that is usually designated as “good regulation”, it can be instructive to confront what such a concept denotes to one of the most prominent theories of the rule of law in modern societies, the theory of F. A. Hayek<sup>[1]</sup>. As we shall see, Hayek avoided using the concept of regulation, for the idea of state regulation contradicted his own conception of the rule of law as related to the spontaneous ordering of the market. However, with the help of the classical work of the historian of science George Canguilhem, whose insights are confirmed by more recent research, his theory appears deeply rooted in a general, and even cosmological theory of regulation, that can be traced back up to the origins of the concept, in the metaphysical debates of the 17<sup>th</sup> century about the conservation of momentum. Still, such a history of concepts would be of little use if it carried no practical consequences. In this paper, drawing on the insights of Canguilhem’s own philosophy, I will try to show that contrary to Hayek’s epistemological theses, there is no neutral way to consider the rule of law in social matters.

First, I will remind how Hayek conceived the concept of social rules. I will then show the relation of this conception to former theories of regulation, especially through the important debate that took place, at the end of the 19<sup>th</sup> century, between Emile Durkheim and Herbert Spencer. Then, drawing on another text of Canguilhem’s and on more recent research in the field on social science, I will discuss Hayek’s account of the relation between law and economics, and of the concept of the rule of

law.

## I. Rules and order as the result of a natural process: Hayek “Catallaxia” as a cognitive process of social ordering

In order to understand Hayek’s theory of the relations between law and economics, it appears necessary to examine the elements of his general conception of society. In fact, Hayek’s political and economical liberalism is rooted in a very ambitious theory of knowledge that justifies the limits inherent in all forms of state intervention within the order of the market. But this does not mean that the state has to disappear: on the contrary, its presence is of utmost importance, especially through its guarantee of the effectiveness of the rule of law. Hence, although *regulation*, as a modality of public authority, does not appear as the good formulation of the problem, the role of the state, through the enforcement of the rule of law, has to be properly defined.

It is therefore necessary to distinguish two levels of the concept of rule in Hayek’s work. The first level is the one of the “spontaneous order” or “auto-organized structure” of society in the process that is usually designated by the term of market economy[2]. However, in order to emphasize the spontaneous character of such a process, Hayek proposed to substitute the term of “catallaxia” for the one of “economy”, the latter still denoting a form of *a priori*, planned organization, while the former designates an order engendered by the mutual adjustment of numerous individual, planned or organized “economies” on a given market (DLL, 10, p. 532). At this level, an order emerges “bottom-up”: for given the limits of human understanding, it is absolutely impossible to conceive adequately, “top-down” the general form of individual interactions. Catallaxia can be defined as a process of *trials and errors*, through which the definition of the rules that determine the whole process finally appears as the *object* of

the actions rather than their *condition*. In this process, *prices* are the only source of *information* on the actual demand, the interactions being *competitive* by essence[3].

Thus in such an “open” context, individual freedom appears as submitted to no *particular* rule (DLL, 10, p. 545 *sq.*). For this reason, ends and values of human actions are completely undetermined and may remain the free choice of individuals. Hence catallaxia appears as the only realistic (by its adequacy to human mental abilities) and fair (by its axiological neutrality) account of social life. This explains that, in Hayek’s view, the quest for “social justice” is in fact merely inconsistent, a fantasy engendered by a regrettable misuse of human reason (DLL, chap. 8–9)[4].

At this level, there can really be no public regulation, even if the concept of *rule* can be used to describe (abstractly and from the outside) the general process of a natural, spontaneous ordering (DLL, chap. 2, p. 134). Only can we say that the catallactic order is driven by a process of *natural selection* in a Darwinian fashion.

However, this process has to rely, on the other hand and at another level, on another kind of rules: the legal ones.

### Law and institutions as objects of natural selection

As Hayek puts it, catallaxia is a particular species of the spontaneous order produced by the market through the acts of people placed in the same equal situation, and behaving according to legal rules concerning *property, injury and contracts* (DLL, chap. 10, 532). The “game of catallaxia” is thus permitted by determined rules, whose characteristics, however, are to be *general* and *abstract* rather than particularly determined. Hayek calls them “general rules of just conduct” (DLL, chap. 7–8). These rules are precisely those of liberal

society, in the political, rather than economic, sense of the term. Although intentionally defined (in contrast with those spontaneously appearing through catallaxia), they also proceed from a historical process of selection that appears as a natural one. Our “open societies” (a formula expressly borrowed from Karl Popper), in which individuals are said to be free to determine the contents of their conduct, originated in “closed”, “tribal” ones, in which determined legislative rules used to organize every aspect of individual lives for the sake of the group (DLL, chap. 11 [5]). Such a situation now happily belongs to ancient history: in modern times, rules are purely formal and therefore do not address the content of individual behavior, but only its potential consequences on others. Individuals can thus be said to be free and equal insofar as they all obey the same general rule, as they share “equal liberty under law”. In sum, what defines these general rules of just conduct, despite their intentional and therefore non-spontaneous character, is that they obey the general spirit of the rule governing a free society: which is what the Anglo-Saxon tradition has called the *rule of law* [6].

In other words, the *rule of law* is a determinate representation of law related to a certain conception of the proper way to put society in order. This way is, in essence, negative: governments should only – yet actively – favor the spontaneous ordering of the game of catallaxia by avoiding direct intervention in markets and promote fair competition, which is a “discovery process” (DLL, chap. 10, p. 549; chap. 15, p. 732–748) through which the various players can enhance their chance to win. The specific function of a government is to allow general rules to be respected (DLL chap. 2 p. 141), and thus to enforce individual responsibility towards these rules. In other words, a government enforces the general spirit of the rule of law by its negative power of *sanction*. As a service supplier – which it surely is – the state is only a particular part of the general spontaneous order, but in its coercive function,

it ensures an *essential condition* of the maintenance of the *whole* (*ibid.*).

Given the prominent features of Hayekian thought – the unknowable nature of social order, the negative and general role of government – one could easily understand the absence therein of the concept of regulation, which denotes a deliberate, informed action designed to develop the performance of determinate economic sectors. According to Hayek, the fundamental principles of government are rooted in a rigorous epistemology referring only to the nature of human cognition, as opposed to any organic vision of society as a great body needing adequate particularized regulation in order to increase its general health.

However, Hayek’s use of the concept of nature as an element of his theory of social order is not that free from such hazardous analogies.

## II. Natural regulation before Hayek: Spencer vs. Durkheim

### The cybernetic paradigm and the hidden concept of regulation

Hayek’s theory of information and catallaxia is partly derived, as he himself emphasizes, from Norbert Wiener’s “cybernetics” and its principle of “negative feedback” (DLL p. 247, 463, 504). In Hayek’s view, prices have the role of information vehicles in a context of opacity of the actual needs of individuals. This means that market is ruled by an immanent and impersonal mechanism of self-correction, which inevitably sanctions those who behave erroneously (mainly by speculating too much or by producing too much). In other words, market is a *system* ruled by the principle of “negative feedback”. In Wiener’s words, this principle is precisely called “regulation”. Its function is to control the tendency of a system to deregulate, by producing a temporary and local inversion of the normal trend to entropy[7]. Communicating information is thus the actual way

of ensuring systemic regulation. Thus the theory of regulation appears to be all about systems of communication: for this reason, Wiener could write that “communication and regulation concern the essence of the interior life of Man, even if they concern his living in a society” (CS p. 19).

Now, as Wiener emphasizes (CS, chap. 1.), cybernetics is the last chapter of the history of communication study, which can be traced back to the 17<sup>th</sup> century. As George Canguilhem showed, before being a problem of communication, the notion of regulation had been primarily related to the problem of the definition of the order of universe, through the question of the conservation of movement[8]. These origins had decisive consequences on the modern concept of regulation formed, in the 19<sup>th</sup> century, in the fields of biology and physiology, which Canguilhem amusingly recalled in a pseudo-classical formula: “*Claude Bernard qui genuit Cannon qui genuit Rosenblueth apud Wiener*”[9] – one would now be tempted to add, “*qui genuit Hayek*”.

In his genealogy of the concept, Canguilhem shows, alongside with Claude Bernard, the role of the French philosopher Auguste Comte. The latter’s conception of regulation as the product of an external, unpredictable constraint, originally cosmological but also influential at the time among the biologists, directly opposed the internal conception of organic internal regulation invented soon after him by the father of modern physiology, through his concept of “internal environment” (“*milieu intérieur*”), Claude Bernard, whose role on the development, a century later, of the theory of systems, would be so important. This singular conception had some decisive consequences in the field of social sciences, if not in the one of biology.

**Regulation in the early social science: two conflicting analogies**

In the end of the 19<sup>th</sup> century, two concepts of regulation were in conflict in the field of social science: those of Herbert Spencer and Emile Durkheim. While both used the concept metaphorically, as if society was an organic body whose constitutive rules were to be identified by newly-born sociology, the latter was originally a disciple of Comte. He vigorously attacked the former who, by contrast, considered himself as a neo-Darwinian. For Spencer, the most prominent representative of what has been called “social Darwinism”, society had to be self-regulated through the struggle for life of single individuals. Durkheim strongly reacted to this view in his masterpiece *De la division du travail social* (1893), in which, in a Comtian fashion, he emphasized the necessity of an external constraint to regulate a given organic body. For Durkheim, far from showing the necessity of liberalism and deregulated competition, the analogy between society and the human body illuminated the central role of government, which could be properly compared, in a living organism, to the central nervous system.

Interestingly, Durkheim’s main argument is that Spencer fails to distinguish between *information* and *regulation* in his theory of social organization.

“According to Mr. Spencer, what corresponds [*in society to the regulating function of the central nervous system in an organism*] is this exchange of information that takes place continuously and from one place to another between the state of supply and demand, and which, therefore, stops or stimulates the production. But there is nothing here that resembles a regulating action. Transmitting news is not ordering movements.[\[10\]](#)”

By opposing governmental action to the spontaneous order of market economy, Durkheim put forward the necessity of a somewhat *authoritarian* conception of regulation, which can be

interpreted as representative of the *dirigiste* tradition of French centralized government, which Durkheim saw as the historical condition of the democratic “liberal” revolution of 1789[11]. In this light, he affirmed that private, inter-individual relations are not the whole of society, and that, therefore, law could not be reduced to contractual relations: as he said in a formula that became famous, “everything is not contractual in the contract”[12].

Now Hayek carefully distinguished his position from a social Darwinist one. He emphasized that his conception of natural selection bore on “institutions and practices”, rather than on individuals, and on “culturally transmitted aptitudes” rather than on “innate” ones (DLL, chap. 1, p. 100). However, even in the light of such a “culturalist” anthropology, his theory of social ordering strongly resembles Spencer’s theory of regulation, with the same emphasis on competition, contracts and private law[13]. This proximity has recently been emphasized by P. Dardot and C. Laval in a seminal work[14]. For these authors, “spencerism represents a true turning point” between *classical liberalism*, centered on free trade and social equilibrium, and *neo-liberalism*, centered on competition and the dynamics of inequality. While the former rejected the role of the state, the latter put forward the idea of its active role in the promotion of competition as a necessary and natural process. Such a political program would later constitute the liberal theoretical answer to the Great Depression, in which Karl Polanyi saw the historical failure of classical liberalism and its creed in market self-regulation and state non-interventionism[15]. It would also be the conceptual key to German reconstruction after World War II, before its extension to the European countries *via* the Common market and finally to the whole world *via* the monetarist consensus posterior to the mid-1970’s crisis[16].

Thus, while, on one hand, the regulative conception of market



economy and state intervention appears more clearly now in Hayek's theory, on the other hand, this theory also appears historically rooted in social Darwinism. However, rather than criticizing his theory on a political basis, which would mainly lead to a sterile polemic, it seems more instructive to draw lessons from the use of the concept of *nature* in social sciences, a use that appeared here through the analogy between society and a living organism that has been developed since the second half of the 19<sup>th</sup> century. In other words, if Hayekian epistemology is more dubious and arbitrary than what its author claims, what kind of reasoning could help reflect on the role of law in economics?

### III. Regulation as a political matter: towards a pragmatic account of the rule of law

#### Organic regulation and social organization: theoretical distinctions

I will not try to oppose a durkheimian-based analogy of regulation to Hayek's natural spontaneous order in order to promote some "statist" model of regulation that would be the ("French") solution to neoliberal misconceptions of the rule of law. In a famous formula, Albert O. Hirschman declared that the role of the history of ideas was not to decide on the truth of a given idea, but "to raise the level of the debate"[\[17\]](#). According to this view, it can be useful to abandon the field of the conflicting natural analogies on which the "regulation-deregulation debate" has developed in the early social sciences, and try instead to consider, from an external point of view, the objective differences between natural and social regulation.

This is the object of a challenging paper of Canguilhem's, "Le problème des régulations dans l'organisme et dans la société"[\[18\]](#). The author - who was also a physician - rather

than trying to decide what kind of organic regulation constituted the adequate natural paradigm for the social one, chose to develop instead the conceptual differences between the two from the perspective of the problem of norms and of behaviors that contradict these norms.

What defines an organism as “quite an exceptional mode of being”, Canguilhem recalls, is that “between its existence and its ideal, between its existence and its rule or norm, there is no difference properly speaking” (PROS, p. 106, my translation). If a living organism is possible, its very existence involves its constitutive norm[19]. As a result, the problem is never to determine the goal of the action, which can only be the restoration of the healthy organic body[20], but to determine the nature of the pathologies. On the contrary, as far as society is concerned, there is no consensus on norms: “the finality of society is precisely one of the fundamental problems of human existence” (PROS p. 108). But on the other hand, there is a consensus on the identity of social troubles (alcoholism, bureaucratic inertia, child labor, etc.).

So while the proper remedy is debated in both cases, it is not for the same reasons. The debate upon the convenient actions to undertake is pathologically-oriented for organisms, and norms-oriented for society. As Kant said, a human being does not only obey (natural) laws, but also representations of laws (a phenomenon usually called “morality”)[21]. This entails a difference of reasoning (of the way of using reason) that prevents the analysis from referring to nature while dealing with cultural and social norms. Consequently, the analysis of social regulation has to shift from the determination of natural norms and remedies to the nature of discussion upon norms – a discussion that is usually referred to as the quest for justice. Thus, if technique can be defined as an action oriented to a determinate end and justified by an adequate scientific knowledge of the objects at stake, this also means that

regulation cannot be considered as a technical matter, but always first and foremost as a moral one.

### Norms and information in the regulatory process

Since social norms are not inherent in society itself, it is reasonable to say that the normal state of society is not order, but *disorder*, and that justice, the social principle of order, is external to the field of human interactions. For Canguilhem, this explains, in particular, the phenomenon of *heroism*, as the answer to the objective need for society to find an order in practice (PROS p. 122)[22]. Heroism, for structural reasons, would thus be a social need. However, actual heroism usually takes place at times of deep crises and therefore should not prevent from searching the way to avoid them, and thus to reflect on social regulation.

The common point between Hayek's and Canguilhem's analyses is that for both, the ends of society cannot be determined by social science. But the two do not share the same position on the possibility for social relations to spontaneously result in the best possible order. Though, leaving the natural foundations of Hayek's thesis leads to reconsider what he thought to be the key of the regulatory process: the exchange of information. Can we draw on Canguilhem's analyses to infer what is lacking, in a pragmatic (non-technical) perspective, in the regulatory process as described by Hayek?

What is striking in Hayek's view is that the communication of a given piece of information is always a neutral process, as though the action of communicating were not capable of engendering specific effects of signification[23]. There cannot be such thing as a "self-fulfilling prophecy" in Hayek's understanding of the market. A speculator who, by initiating or even simply repeating a rumor, actively contributes to the

effect that this rumor is supposed to do no more than depict (*e.g.* “Stakes X are going to collapse”), whatever the adequacy of this judgment to reality (the actual health of the corresponding corporation), cannot therefore really be held personally responsible for their action. In this light, the collapse of Corporation X was simply bound to happen; only perhaps can we say that the speculator was somehow visited by the spirit of the market, which, on the last proceeding, is always right[24]. This deliberate claim for general irresponsibility is particularly striking because Hayek (along with all neoliberals) was known to hold clear and strong positions on the question of individual responsibility. We saw earlier that Hayek could not conceive the role of law as something else than to coerce and to sanction people that disobey the rules. But what rules, actually, if, as the spontaneous result of a natural process, nobody at the end can be said to have written them[25]?

Saying that economic actors are responsible for the possible consequences of their actions does not mean that they have to know what the social order is like, generally speaking. For the order of a society is something that does not exist as a reality that has to be *known*, but that has to be *desired*: it is not a fact, but a mental representation; not an idea, but an ideal. Thus, although Hayek was right when saying that it is a great and dangerous illusion to pretend knowing scientifically how society works, his justifications were in fact deeply misleading. It is indeed inevitable and necessary that this ideal is eminently subject to discussion, in what is usually called a “political debate”, through which it is formulated in a way that commands some determinate set of actions (“programs”).

Finally, what kind of consequences does this entail on the concept of law? It should be noticed that contrary to Hayek’s view, legal rules cannot be considered only as sanctions. They can also be considered as *positive* ways of inducing conducts

and behaviors. Thus the “ideologies” of jurists have long been identified and criticized[26]. Recently some social researchers have illuminated the fact that the ECJ’s jurisprudence on competition could be considered as the expression of contestable conservative opinions and could even hold dangerous implications upon national economies and the European project itself[27]. This should warn the actors who perceive themselves as technical regulators, for the debate on the potential consequences of their actions is always susceptible to open in a way they had not foreseen. But this also means that law, as an instrument of human actions, is more diverse and concrete than the abstract and impersonal representation of the rule of law that neoliberalism constructed. That the practice of law has also moral, and even political dimensions that convey corresponding responsibilities to the practitioners, should give the latter an increased feeling of the importance of what they do.

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[1] See *e.g.* Guy Canivet, “Le juge constitutionnel et les doctrines économiques”, introductory speech to the international symposium at which the present review was launched, “The Role of Supreme Courts in Economics”, Paris, Economic, Social and Environmental Council, January 25, 2010. For Canivet, the influence of Hayek seems to have been counter-balanced in effect by more pragmatic considerations, in the shade of “Law and Economics” movement. More deeply, this view appears also drawn from more classical “ordo-liberalism”, whose influence was decisive in European construction, and which, in contrast with Hayek, put forward, as François Bilger put it, the necessity of a “strong state”, “indispensable” to “organize and regulate correctly market economy” (“Idées et intérêts dans la construction économique européenne”, *Les Petites Affiches*, 16, January 22, 2009, p. 13).

We will see that such a counterweight may be not only a practical need, but also a logical consequence given the limits of Hayek's theory of the rule of law.

[2] Hayek, *Droit, législation et liberté [Law, Legislation and Liberty]*, (hereafter "DLL"), Paris, PUF, 2007, 1 vol., preface, p. 48.

[3] In the market order, everyone is thus led, by its "visible gain", to address the "invisible needs". Thus the role of speculators is to favor the diffusion of information in the market (DLL p. 547).

[4] Hayek is close, in this perspective, to Kant's critique of the elaborations of « pure reason » as regrettable misuses of our faculty of knowledge (see Kant, *Critique de la raison pure (Kritik der reinen Vernunft)*, Paris, Aubier, 1997). One can only say that the result of the process is the increasing of wealth, of "diffuse advantage" (DLL p. 557), allowing those who benefit from it to ameliorate their ability to help the others (DLL p. 559).

[5] In its title, this chapter opposes "the discipline of abstract rules" to "the affective reactions of tribal society", which entails the idea that the process of opening of closed societies is also a spiritual process of both moralization and intellectualization. To justify his views, Hayek defines his rationalism as "critical and evolutionary" (DLL chap. 7 p. 373), in contrast with a "positivistic" and "constructivist" one: see DLL, chap. 1, "Reason and evolution". Moreover, catallaxia is also defined as a way to favor cooperation rather than conflict, the latter being a characteristic of tribal societies (see *e. g.* DLL chap. 11, p. 597, where Hayek refers to Carl Schmitt). Nevertheless, as we shall see, such a view can still reasonably be seen as spectacular example of sharp ethnocentrism.

[6] The "rule of law" is supposed to ensure the "sovereignty of law" and "liberty under law", in a way diametrically opposed to the idea of a "distributive justice", characteristic of "socialism" (DLL, chap. 9, p. 491).

[7] See *e.g.* Norbert Wiener, *The human use of human beings*

(*Cybernetics and society*), Boston, Houghton Mifflin Co, 1954 ; French ed. *Cybernétique et société* (hereafter CS), Paris, 10–18, 1962, chap. 1, p. 28–29. “Entropy” is the name for irrelevant data (or “noise”) in an informational system. Entropy and order are negatively correlated.

[8] Georges Canguilhem, “La formation du concept de régulation biologique”, in *Idéologie et rationalité dans l’histoire des sciences de la vie, Nouvelles études d’histoire et de philosophie des sciences*, Paris, Vrin, 1977, p. 79–100. Emmanuel d’Hombres recently confirmed this thesis (“L’histoire du concept de régulation dans le débat continuité vs. discontinuité entre liberalism et néolibéralisme”, communication to the Regulation symposium, Paris Ouest Nanterre, December 10, 2009).

[9] Canguilhem, *ibid.*, p. 82.

[10] Emile Durkheim, *De la division du travail social (On the division of social labor)*, Paris, PUF, 2007, I, vii, p. 196 (my translation). For further developments on this debate, see Emmanuel d’Hombres, “Régulation par qui ? Régulation de quoi ? La signification du vocable « régulation » en sociologie et en science politique : une mise en perspective historique”, *Raisons politiques*, 28, p. 127–152.

[11] See Emile Durkheim, *Leçons de sociologie*, Paris, PUF, 2003, esp. lesson 8. For Durkheim, in a realistic view, only the state can set the individuals free from feudalistic and paternalistic kinds of authority. See also, in a more “liberal” fashion, Tocqueville, *L’Ancien Régime et la Révolution; id., De la démocratie en Amérique*, Introduction: “les rois ont été les plus actifs et les plus constants des niveleurs” (“kings have been the most active and constant Levelers”).

[12] *De la division du travail social*, p. 189 (my translation). This theory of an increasing organic solidarity through the division of social labor even led him to the now surprising prediction that contractual relations were bound to diminish in the future to the point of a near disappearance.

[13] Incidentally, one can also notice Hayek’s attack against

“Auguste Comte, Emile Durkheim and Léon Duguit” (the famous lawyer, close to Durkheim, who understood law as the organization of “public service”), DLL, chap. 10, p. 538, note 1.

[14] P. Dardot and C. Laval, *La nouvelle raison du monde, essai sur la société néolibérale*, Paris, La Découverte, 2009, p. 135–141. The authors also recall (p. 139, note 1) that social Darwinism is first and foremost deprived of all scientific basis, including in the work of Darwin himself.

[15] See Karl Polanyi, *The Great Transformation*, New York, Farrar & Rinehart; French edition *La Grande Transformation*, Paris, Gallimard, 1983.

[16] On this story, see also M. Foucault, *Naissance de la biopolitique*, Paris, Gallimard–Seuil, 2004 (Foucault was a student of Canguilhem’s); and more recently, in a Bourdieusian perspective, the pamphlet by F. Denord and A. Schwartz: *L’Europe sociale n’aura pas lieu*, Paris, Raisons d’agir, 2009.

[17] A. O. Hirschman, *The passions and the interests : Political Arguments For Capitalism Before Its Triumph*, Princeton, Princeton University Press, 1971; French edition *Les passions et les intérêts*, Paris, PUF, 1997, p. 121.

[18] Georges Canguilhem, “Le problème des régulations dans l’organisme et dans la société” (hereafter PROS), in *Ecrits sur la médecine*, Paris, Seuil, 2002, p. 101–125.

[19] This definition is close to Kant’s, *Critique de la faculté de juger (Kritik der Urteilskraft)*, §65 (which Canguilhem quotes himself in « Machine et organisme », *La connaissance de la vie*, Paris, Vrin, 1965, p. 121). For Kant, the difference between a watch and a living organism is roughly that watches cannot repair themselves, while in an organism, the organizing norm is inherent in the very existence of the body. As a consequence, a living organism “is characterized by the constant presence and the permanent influence of all its parts to every one of them. The essence of an organism is to live as a whole, and to be able to live only as a whole” (PROS p. 110).

[20] Health can be roughly defined by the organism’s ability to adapt to unpredictable events without collapsing: see



Canguilhem, *Le normal et le pathologique*, Paris, PUF, 2009, p. 130–134.

[21] See Kant, *Fondements de la métaphysique des mœurs* (*Grundlegung zur Metaphysik der Sitten*), Paris, Delagrave, 1973, section 2, p. 122.

[22] Canguilhem borrows the concept to Bergson (*Les deux sources de la morale et de la religion*). As a Resistance fighter, he himself had experienced the phenomenon of heroism, and reflected on it through his tribute to his friend Jean Cavailles, true hero, martyr, and an important philosopher of science (see *Vie et mort de Jean Cavailles*, Ambialet, Pierre Laleure, 1984).

[23] Such effects he called “ illocutionary” and “perlocutionary” have been the subjects of the famous analyses by J. L. Austin in *How to do things with words*, Oxford, Clarendon Press, 1962 (French ed. *Quand dire, c’est faire*, Paris, Seuil, 1970).

[24] It may be amusing to notice the proximity between the formulas expressing the faith of some market actors in its impersonal infallibility and this by which some Marxist theorists expressed the idea that all political and moral ideas were determined at the end by economic structures. On both cases, “material”, “necessary” and “scientifically determined” actions are said to be *more* real than the representations the actors have of them. As we can see, evoking such impersonal forces leads to claim that the people concerned by a given interaction cannot be held responsible for what they do, although they actually should.

[25] I have developed this paradox in the light of recent research on pragmatic sociology in « Règles et responsabilités dans l’analyse des institutions », *Actes des après-midis de recherche du Département de Science Politique de l’Ulg*, 2011/1, Liège, Editions de l’Université de Liège, forthcoming.

[26] See e.g. Duncan Kennedy, “Legal Education and the Reproduction of Hierarchy”, *Journal of Legal Education*, 32, 1982, p. 591–615.

[27] See Höpner and Schäfer, “Polanyi in Brussels?”

Embeddedness and the Three Dimensions of European Economic Integration”, MPIfG Discussion Paper 10/8, 2010 ([www.mpifg.de/pu/mfpig\\_dp/dp10-8.pdf](http://www.mpifg.de/pu/mfpig_dp/dp10-8.pdf)); *id.*, “A New Phase of European Integration. Organized Capitalisms in Post-Ricardian Europe”, *West European Politics*, 33, 2, p. 344–368. For the case of France, see also the pamphlet by Martine Lombard (a public law specialist who now avoids using the concept of regulation), *L’Etat schizo*, Paris, JC Lattès, 2007.