

The new institutional approach to institutions: concepts, methods, results

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Abstract

New Institutional Economics has developed considerably over the last twenty years, qualifying as a «progressive research program». This program is based on a hard core of concepts that apply to well identified objectives: The alternative modes for organizing transactions, the institutional environment in which they are embedded, and the interaction between these dimensions. Transaction costs play a major role in this approach. This paper examines why it is so, it deals with several controversial issues, and it provides examples of recent breakthroughs in economics, but also in history and in the political sciences.

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1. Introduction

As its name describes, the new institutional approach is built on and revolves around the subject of institutions. The main proposal developed in the following pages can be summarized as follows: the new institutional program is a «progressive research program» as defined in Lakatos (1976), containing a hard core of concepts relating to specific, well-identified objects and whose field of application goes deeper as compared to the initial questions, while rapidly expanding to new questions (Canguilhem, 1968, Introduction).

The corollary proposal, one which I will of course try to justify, consists of supporting that under the apparently somewhat overgrown view of the research program, a powerful unifying element transpires: namely, the approach in terms of transaction costs.

Why should the accent be immediately put on the transactional approach? For one simple but fundamental reason, noted very early on by Ronald Coase (1937), who has since continued to evoke this essential point (Coase, 2001): transactions are at the core of the economic activity. In fact, without efficient mechanisms to ensure transactions, we cannot take advantage of the benefits of the division of labor and the resulting organization of the production would lose its entire meaning. By transaction, I mean, following Williamson (1985, p. 1), *the transfer of «rights to use» goods or services between separable technological units*. The idea of «rights to use» that I introduce here, thus modifying the definition of Williamson, seems to me to be most important. For example, the case of the transfer of property rights is in fact only one aspect, essential of course, of understanding market mechanisms. But the integrated company also organizes transactions internally; transactions that Demsetz (1991) prefers to call the transfer of «administrative rights». Furthermore, at a more general level, social methods exist for the transfer of rights other than property rights; for example, when a community systematically organizes a collective transfer of rights. Therefore, the definition that I have just proposed deserves general recognition, as it became more specific in accordance with the subjects studied. It combines the abstraction and precision expected of a key concept of a theory.

Further, the very idea of mechanisms that are essential for the organization of these transfers of rights also has a major consequence. If alternative mechanisms exist, then these mechanisms will have

relative costs that can be compared. Choosing the «right» mechanism thus becomes an essential part of the strategy of microeconomic units as well as a determinant factor of innovation and growth. Therefore, in this paper, I will put the accent on costs adopting almost exclusively an economist's approach to transactions and the related institutions. I insist on this point because of the importance of the distribution and influence of new institutional theories in numerous other social sciences, most particularly political sciences, history of economics and management theory¹. While I sometimes make reference to some of these developments, the quick overview that I propose here is essentially related to researches in economics.

The article is organized into three major sections. Section two reexamines the main concepts used in the definition of the research topics of the neo-institutional program and the resulting consequences. Section three discusses the problems related to the methods that led a certain number of «orthodox» as well as «heterodox» economists to attack the neo-institutional program. Finally, the fourth section summarizes certain results that I consider particularly important, and raises questions that I think may nurture the development of the new institutional approach in the coming years. I will conclude drawing a certain number of lessons learned from that ongoing research program.

2. Key concepts of new institutional economics

It can be, of course, quite overwhelming to begin the discussion of the contributions of a theory with definitions. But this is almost inevitable since there must be a positioning of the new institutional approach with regard to alternative paradigms, which are partly complementary and partly competitive. Part of what differentiates the various institutional approaches is related to the subject the approach is devoted to.

2.1. The starting point

Initially, we may adopt a simple and classical distinction between «institutional environment» and «institutional arrangements», one proposed by Lance Davis and Douglas North (1971, pp. 6-7) and developed more precisely by North in 1990. Environment refers

back to the rules of the game, the political, social and legal rules that define and support the transactional activities of the actors, while arrangement refers back to the actor's method for using these rules, or more exactly, to the methods of organization of transactions within the scope of these rules. I believe that Coase, at his Nobel Prize conference, revealed a much more precise and satisfactory content of these arrangements, as he spoke of the «institutional structure of production» (Coase, 1991).

Therefore, we must note that the distinction proposed here progressively revealed two branches to the new institutional research program. A first branch, rather general, explores the nature and the role of institutions by highlighting their historical dimension (North, 1981; Greif, 1998; Aoki, 2001). Regarding this aspect, the concepts of *enforceability* (*ex-ante*) and *enforcement* (*ex-post*) play a key role: under an economic angle, an institutional environment is not characterized only by the production of rules and/or standards (hence the problem of the types of rules), but also and above all by the production of mechanisms destined to implement these rules and by their effective implementation. The analysis of these mechanisms is a key point of the new institutional program. Measuring their relative costs is also a major challenge.

A second branch is of a rather micro-economic nature. It is probably the most familiar one to economists, and relates to the study of the methods of organization of transactions, arbitration between these methods, and their compared efficiency, with a strong analytical dimension². The concept of *incomplete contracts* plays an essential part here, for at least two distinct reasons.

Firstly, the idea that contracts play a structuring role in the organization of transactions allows for a precise translation of the relational dimension essential to the very concept of transaction. Secondly, the idea that practically all contracts are incomplete, naturally leads to the requirement of an in-depth analysis of the coordination mechanisms complementary to the contractual agreements (even implicit) as for example the form assumed by «command» (i.e., the role of hierarchy in firms), in the creation and allocation of resources.

2.2. Returning to the concept of institution

Let us return to the concept of institution that implies directing the analysis in the areas we have just indicated. I am aware that

there is no universally accepted definition of concept of institution. In a very restrictive and minimalist sense, an institution can be viewed as an agreement between two agents. For many, the institution is a balance between the strategies of the agents participating in a «game» (as defined within game theory, of course). Aoki recently pushed the analysis much further in this regard (Aoki, 2001). Others have even put the accent on the fact that an institution is concerned with the very rules that govern the game, in short, a sort of meta-agreement. In following the path indicated by North (1990), I would like to propose a more precise definition, whose main interest is to define the field of analysis and, through this, to better clarify the new institutional research program. By institution, I therefore mean *a set of rules that are durable, stable, abstract and impersonal, appearing in the laws, traditions and customs and embedded in the mechanisms that implant and implement, by consent and/or constraint, the methods of organization of transactions.*

This definition involves a certain number of points that I would like to emphasize.

The first point is that stability and durability are essential to the identification and characterization of the rules of the game that mark an institution. New Institutional Economics offer the hypothesis that there is a very weak variability in institutions over time, in particular as compared to the modes of governance (or organizational modes). An important consequence is therefore deduced, there is a strong differentiation of the time horizons of the branches of the new institutional program described above. Williamson proposed to think of institutions in secular terms while organizational arrangements are essentially intra-secular (Williamson, 2001).

Second point, these rules of the game are abstract and impersonal in the sense that they transcend not only the individuals but also the organizations. They transcend in that they are perceived as being non arbitrary, imposed in a non discretionary manner on well defined classes of agents or entities (Hurwicz, 1987). A rule that varies in line with the individuals to whom it applies cannot take its support from stable mechanisms and is quickly faced with problems of implementation. «Customized» rules and constraints are not interpreted as institutions by the agents to whom they apply, but according to the case, as privileges arbitrarily attributed to certain agents or as coercive or unjust measures. One of the key elements of the dynamic of institutions undoubtedly results from this tension.

Finally, institutions possess a normative character. They exist on-

ly through the mechanisms that define «the limited set of accepted alternatives in a society at a given moment» (North, 1986). From this viewpoint, institutions possess a double standard, of which results an obvious paradox. On the one hand, they definitely and significantly restrict the field of action of the individual agents and, due to this, require *enforcement* mechanisms. On the other hand, they permit development of the transactional activity. Analysis of the mechanisms destined to make effective the rules required by this transactional activity constitutes an essential component of the new institutional analysis and explains the role that authors such as Coase may have held in the development of the programs of «Law and Economics».

I furthermore proposed a characterization of these specific «micro-institutional» mechanisms (Menard and Shirley, 2002, chap. 1).

The analysis of these micro-institutions, for example the cases of «regulation» with regard to the general laws that govern them and to the constraints they imposed on the players of the game, seems to me to be a significant field of research. But, on the other hand, institutions may enlarge the fields of action of the agents by safeguarding their transactions. Many of North's studies (summarized in his book of 1981), but also in Alston and Libecap (1996) regarding property rights, illustrate this point. The events leading to the transition towards a centrally planned economic market constitute an *in vivo*, and distressing, experience of this key role of institutions.

Naturally, a very interesting question is formulated from the definition of my proposition above, and this question tends to take a non negligible place in recent literature: does it make sense to speak of private institutions? The new institutional response is «yes» and examples have been given and analyzed (see the series of articles of North et al. on the «Law Merchant», for example, Milgrom, North and Weingast 1989).

2.3. Some consequences of the new institutional design of institutions

An examination of the design of institutions to which I just referred, and that touches on just a part of the problems put forth, led me to clarify certain aspects that I consider crucial for future research.

Firstly, what role does the concept of transaction play in the proposed definition? This is rather central, since, as economists opera-

ting in the context of this design, we are mainly interested in institutions and the accompanying mechanisms («micro-institutions») that will facilitate transactions and reduce their costs. Hence, the key point of these mechanisms is *enforceability*, or the ability to enforce rules and procedures ex-ante for feasible implementation, and *enforcement*, or the necessary mechanisms to make these rules operational ex-post, in such a manner so as to secure the transactions of the agents. For example, the adoption of legal rules for the protection of trademarks must provide for the possibility of court action, but would not have any relevancy without the establishment of adequate administrative and legal mechanisms guaranteeing their effectiveness (for illustrations, see Menard, 1996; Menard and Valceschini, 1999).

Further, may we speak of efficient institutions? I know that I will create many disagreements on this point but I will defend a «YES» answer, in the sense that there is *comparative efficiency*. Certain institutions are more favorable than others for the development of a significant volume of transactions, hence the possibility of taking better advantage of the division of labor; and for the reduction of transaction costs, hence the possibility of higher accumulation. We may think of, for example, the rules and mechanisms governing the transfer of property rights in real estate, and the difference between countries regarding these rules and the associated costs. The hypothesis that I make, and that can be supported by comparative studies, therefore is that institutions exist that carry easy transactional abilities and, through this, permit taking better advantage of the division of labor. Alston proposes characterizing these institutions as «growth enhancing», which could be a more adequate characterization than the term «efficient». In any case, the central idea, that North (1971, 1981) put forth early on and that Greif (1993,1998) recently developed with very precise examples, remains the same: institutional mechanisms exist that, in the long run, have greater stimulating effects than others.

Finally, as a last remark, this does not mean that the efficiency criterion of institutions is the only one to be taken into account. On the one hand, we find here the old cleavage between «efficiency» and «equity». The reduction of transaction costs and the increase of volume, and eventually even quality of the transactions they permit, may very well be accompanied by a devastating amplification of the inequalities, or effects having catastrophic results for the environment. A certain number of political scientists and historians have

started to use the transactions concept to analyze all the exchange that takes place between efficiency and equity on a political level or to explain major historical bifurcations³.

On the other hand, the efficiency criterion says nothing about the stability of institutions: institutions that are perfectly inefficient in that they restrict the development of transactions or lead to a serious increase of their costs, may in fact remain in place, for a very long time (Greif, 1998).

2.4. What about institutional arrangements?

Careful readers may have noted that in all of the preceding, I did not speak much on the other part of the new institutional program, the more micro-analytical part, that concerns what Davis and North (1971) called «institutional arrangements» and that gave rise to all the recent literature on the modes of governance (Williamson, 1996). I will refrain from developing this aspect, so as to focus the attention, in the assigned space, on the crucial question asked, relating to institutions in a general sense. We must however keep in mind that, in the approach developed here, the modes of organization definitely have institutional roots⁴. I will briefly come back to certain aspects of this question in the last section («Results»), if for no other reason than the necessity of clarifying the interaction between the institutional environment and these organizational modes, a point where the new institutional approach has also significantly progressed.

3. Method

One of the major difficulties that the economic analysis comes up against when it tackles institutions, relates to problems of methods. The question is in fact to know if the economist's classic tool box is adequate for this subject. The answer is complex because the technical tools and the underlying hypothesis fit together inextricably.

It is out of the question for me to elaborate extensively here on the problems of methods brought about by the new institutional program (and to which they come up against)⁵. But I believe it is important to say a few words because a large part of the critics of

«heterodox» as well as «orthodox» economists⁶ with regard to this research program are developed from this angle.

3.1. A «standard» method...

In a sense, New Institutional Economics present no methodological originality concerning the research method. They submit to a classical logic revealed by the history of sciences, including social sciences. In fact, they are based on (1) a theory, that is to say a set of well defined questions and concepts built to analyze these questions; (2) models developed from these concepts, mobilizing the analytical instruments that allow to generate testable propositions on classes of well defined phenomena; and (3) tests, effectively destined to confront these propositions with data, either by the use of measure (including econometric tests) or by a recourse to simulation, either abstract (game theory) or applied (experimentation).

However, let me emphasize the first difference that is also a source of major difficulty, as much in the relationships with the standard approach as within the research program itself. The modelization intent mentioned above is accompanied in fact by a «plausibility» requirement concerning the underlying hypotheses. This leads the new institutional authors to systematically retain two key hypotheses: the hypothesis of bounded rationality and the hypothesis of opportunistic behavior. The first one comes up against the «neo-classical» sensitivity as it leads to a questioning of the postulate of maximization, which would render the use of the related tools less productive, if not impossible. The second greatly hinders the «heterodox» authors who view this as a continuation of the idea that the agents are essentially calculative, which would make them «a-sociable» and therefore abstractions that are not very pertinent for the analysis of the real social phenomenon. I do not pretend to have a satisfactory answer to these two «hindrances». But I would like to simply notice that these difficulties have not stopped the research program from progressing rapidly, as I will try to show in the next section. And I believe that we can be inspired by the history of sciences to nourish a certain confidence: as a general rule, when a pertinent question is put forth, it ends up by creating adequate analytical tools.

3.2. ...that also mobilizes original elements

We can find traces for this requirement for new methods for ex-

ploring with the use of non conventional techniques that complex issues rose by institutions and how they change over time and shape trade-offs among modes of organization, in at least two directions. Hence, in my opinion, taking this into account is essential if we hope to understand the progress made in the analyses of institutions and if we want to go further in regard to these topics.

The first direction is that of comparative analysis. We cannot proceed with the analysis of institutions in a purely axiomatic manner. The very identification of the rules of the game and the study of their application, of their impact on the performances of the organizational modes, and more generally, on the dynamic of organizations, implies marking the research terrain with points for comparison. Comparison does not mean description. The comparative studies undertaken by the new institutionalists are guided by a theory, the transactional approach. In the present state of the research, many works⁷ use a mix of qualitative analyses and theoretical models that are basically «local», destined to account for the introduction and the application of certain rules.

A typical case seems to be that of a model developed by Milgrom-North-Weingast (1989) that accounts for the nature and the role of the «Law Merchant» in the trade fairs of the Middle Ages.

Also, Avner Greif is developing a whole series of models destined to account for the «enforcement» mechanisms and for their place in the development of Mediterranean commerce of the 11th, 12th, and 13th centuries. In another perspective, let me quote the works of McCubbins, Weingast, etc. regarding the impact of the political rules of a federated system as compared to a centralized system in the implementation of a transactional order.

A second direction concerns the use of case studies, a very controversial subject for numerous economists of the «mainstream». Case studies play an important role in updating and analysing the general rules of the game, but also in the study of institutional arrangements and modes of organization (an emblematic example is that of the buyout of Fisher Body by General Motors. See the controversial contributions to the *Journal of Law and Economics*, April 2001). Most of the authors working in the new institutional field do not seem to be suffering from the allergy that for obscure reasons, is quite widespread among economists, in regard to «case» studies serving as a basis for theoretical developments. The reason could be due to a misunderstanding. If we refer to a case study as descriptive research, then the new institutionalists share the scepticism of con-

ventional economists. But can we characterize as a purely descriptive monograph the study of the pins factory that has provided Adam Smith with a basis for the establishment of the concept of division of labor? Or the study of a baseball team, that led to the creation of the tournament theory? Or the analysis of the franchising of cable television in Oakland, that led to a profoundly new interpretation of arbitration between modes of organization? Would that be the case, we should reject a very substantial part of the theoretical developments in economics over the last two centuries.

4. Results

After having brought forth the conceptual background and the methodological problems, what additional knowledge, can the new institutional program claim to have contributed to the analysis and the comprehension of the nature and the role of institutions? Here also, it is not appropriate to go ahead with an exhaustive inventory, considering the abundance of accumulated results. If we look back on the last twenty years of this research program, the summary would seem quite impressive.

Standard economics make no mistake about this, preempting more and more questions and results. I will be content with recalling three areas of the program that seem to me to be most fruitful so far.

4.1. Analysis of organizational modes (or arrangements) and arbitration between these arrangements

A first set of contributions, undoubtedly the one that has progressed the most rapidly and most particularly since the 1980's, concerns «institutional arrangements», or, according to the terminology that I have rather favored until now, organizational modes. It is the program, well known and renowned, impelled by Williamson (1975). This domain of new institutional researches contains precise and testable predictions, therefore refutable. I would like to emphasize three points in particular.

The first is to recall the impressive number of studies and tests on integration and quasi-integration, studies based on the concept of *specific assets*, and, although to a much lesser extent, on the *uncer-*

tainty variable, surrounding transactions. As numerous authors have said (see, for example, Joskow, 1991; 2002), the analysis of integration is a «success story» of the new institutional program. The employed concepts allow us to better understand how firms' boundaries are determined, and how the arbitration is carried out between alternative institutional arrangements. Some comparative tests have also shown that the new institutional explanation is «performing» particularly well as compared to alternative explanations (Poppo and Zender, 1998; Rindfleisch and Heide, 1997; Whinston, 2001).

A second contribution that I would like to emphasize concerns the very distinct development, over the past ten years, of studies on an alternative class of arrangements, the *hybrid organizational forms* (sometimes characterized as «non standard» institutional arrangements). By this we refer to modes of governance based on agreements between legally autonomous entities, but sharing a subset of economic decisions, arrangements designed to preserve the incentive advantages of the market while implementing mechanisms to reduce opportunistic behavior. Examples, now considered classic, are networks among firms, franchises, producer's groups. While there are many earlier related works, the article that truly launched these studies was that of Williamson (1991). This author developed the idea, until then basically intuitive, of stable arrangements presented between the polar cases of the markets and the «hierarchies», therefore making considerably more complex the picture he had drawn in his book in 1975. A summary of the characteristics of these arrangements was proposed in Ménard (1997), and since then the studies have multiplied trying to learn more and better understand the contracts underlying the agreements, and more generally, coordination and incentive mechanisms that ensure sustainability (see, for example, Brousseau and Glachant (ed), 2002; Lafontaine and Reynaud, 2001; Ménard 2003).

On the other hand, there is a certain paradox on the micro-analytical side of the new institutional program: This lies in is the relative underdevelopment of the studies regarding the internal characteristics of integrated organizations. In fact, taking into account the importance attributed in 1937 to the «nature of the firm» by the founder of the new institutional movement, Ronald Coase, and taking into account that the first research works of Williamson⁸, related precisely, to the internal properties of integrated firms and the manner in which they determine their advantages as well as their limits with regard to the market, we could have expected a more rapid de-

velopment of researches on these issues. Hence, the progress in this area is still poor, as emphasized by numerous authors (see for example, the numerous contributions to the *Journal of Economic Perspective*, April 1998).

Therefore, we possess very few studies today relating to the internal mechanisms of firms that allow them to organize transactions internally in an efficient manner (Gibbons, 2001), or in the manner in which human asset specificity plays out on the organization of work and, therefore, the relative efficiency of a firm with regard to other institutional arrangements. Part of the explanation lies in the difficulty in obtaining data. But it is crystal clear that the analytical framework must also be developed. This is where the new institutional concerns join with those of economists closer to the central core of the mainstream (for example, Holmstrom, 1999).

4.2. Analysis of a certain number of institutional mechanisms and their effects on the organization of transactions

A second area of fruitful research concerns the analysis of institutions themselves. The works of Douglass North have evidently played an important role in directing this dimension of the new institutional program. Here again, too many contributions should be taken into account. Let me focus on some of them.

Firstly, progress has been made concerning the comparative analysis of institutional mechanisms, which underlines their role in the differentiation of the paths of development because of their impact on the volume and the methods of organization of transactions. The political-legal dimension holds a particularly important place here, and the concept of «enforceability» plays a key role in these analyses that partly inspired the annual report of the World Bank (2001). To be more precise, I will give here three examples that are particularly significant: (1) the work of Avner Greif, comparing the political mechanisms established in Genoa and in Venice in the 12th and 13th centuries and leading to organizational choices and development paths that were strongly differentiated; (2) the research of Sokoloff, Engerman and Haber (2001) on the compared growth of the USA and Latin America; or (3) the works of Lee Alston et al. (1996) regarding the role of land property rights in the dynamics (and some of its failures) of the American economy.

We should also take note of the researches that have allowed for the identification and the analysis of the «efficient» (or inefficient) institutional rules, in the sense that they permit an increase in the volume of transactions and a reduction of their cost. I must particularly mention here the remarkable development of studies on the intersecting area of «Law and Economics» (in particular, contract rights and property rights), mainly initiated and piloted by Coase, within his editorial functions for the *Journal of Law and Economics*⁹.

Less known, particularly in Europe where these developments have not greatly advanced until now, but very dynamic is the new institutional movement developing at the intersection of economics and political sciences, for example regarding the nature and the role of a «federal» system, the relative advantages of the degree of centralization and the impact on the «enforceability» of the rules of the game. If an important part of these studies has been in regard to the American system (Weingast, Ferejohn, McCubbins), they are also being extended to other areas, for example, Brazil (Mueller) or Argentina (Spiller and Tommasini).

I would finally like to make note of a certain number of more formalized works, regarding mainly the question of institutional stability, for example, in the analysis of the factors that determine institutional equilibrium and the factors that lead from one equilibrium to another. The pioneering work of Hurwicz (1987), on «institutional design», that remained at a very general and abstract perception of institutions as a system for transmitting messages, gave way to much more precise researches on the conditions of stability of well defined rules of the game, whether they are related to norms (Aoki, in Ménard 2000; Aoki 2001), to political rules (McCubbins, 1999), or to social mechanisms relevant to the micro-economic organization of transactions (Ensminger, 1992).

4.3. Analysis of interactions between institutional environment and modes of organization

The preceding naturally lead to highlighting other results, even more recent and, therefore, currently undergoing elaboration and deeper exploration, relating to the manner in which the institutional environment interacts with the organizational arrangements that are displayed within this context. The numerous new institutional studies of the last decade regarding the phenomenon of regulation/de-

regulation have allowed for advancement in this regard, in particular in three areas.

First of all, we now have better knowledge of the impact of the choice of rules of the game on the manner in which the modes of organization of transactions are determined and therefore the exchange between these modes as well as on the resulting performances. We may refer, for example, to the works of Joskow and Schmalensee (1997) for the manner in which State-owned enterprises in Russia have been delineated in the privatization movement, to the works of Joskow regarding the deregulation of the electrical sector (Joskow 1991b, 1998), to the studies of Levy and Spiller (1994) for the institutional transformation of the telecommunications sector or the studies coordinated by Shirley (2002) in the water sector. An interesting development concerns the use of experimental economics to test the behaviors related to the rules of the game (see for example, Staropoli, 2001).

A second series of interesting results on this subject relates to the analysis of the impact of the legal frameworks on the choice of the modes of governance and their performances. First of all, there is a series of studies relating to the manner in which property rights are defined as well as to the consequences resulting from the way the transactions are organized in such contexts. Good examples are provided in the works of Alston, Libecap and Mueller (1997) regarding American or Brazilian agriculture, or the works of Libecap and Wiggins (1985) regarding operations in the oil fields. Then, there are researches regarding the laws governing the operations of firms, for example, the laws concerning «corporations» and their consequences on the mode of governance (illustrated, for example, by Marc Roe, 2002). Finally, there are the analyses concerning the role of the legal system in the definition, elaboration and execution of contracts (I can refer here to the works of Alan Schwartz (1992), among others). All these researches converge, despite their diversity, in what they all emphasize, the articulation between legal rules and organizational choices based on these rules.

I would like to end this far from exhaustive review, by mentioning a series of works in the process of publication that put more and more emphasis on the central role of «micro-institutions», interspersed, on the one hand, between the global rules of the game marking the institutional environment, and on the other hand, the agents, the organizations or the contractual agreements that bind them. Converging studies (Levy and Spiller, 1994; Shirley (ed.),

2002; Menard and Shirley, 2002) show, in fact, the key role of these mechanisms in the organizational choices and in the performances observed once the choices are made. The objective of these researches is also to progressively identify the key *micro-institutions*, to show how they are closely linked to certain sectors of activity. A theory for intermediary institutions then takes shape, setting out the general rules of the game for the effective modes of organization of transactions in specific activities. It is these intermediary *institutions* that, in all probability, make all the difference regarding the efficiency of institutions comprising the global institutional environment and largely determine the differences in performance, explaining why the same mode of governance (sometimes the same firm) succeeds in one environment and fails in another.

5. Conclusion

I have presented here but a minute part¹⁰ of the recent contributions of new institutional analysis to the knowledge of what institutions are and how they function and interact with the arrangements for which they serve as a framework and support. As I have shown, there is quite an abundance of contributions. Readers will conclude, I hope, that the new institutional program is effectively «progressive», that it continues to open up new fields and therefore deserves more discussion.

If I must retain a few unquestionably central points of these contributions, I would definitely put forth the concepts of transaction and transaction costs with all the analytical mechanisms that surround them. But I would also emphasize the analysis that is developed around the problems of «enforceability» and «enforcement», on the nature and the characteristics of incomplete contracts, and the now central idea in the new institutional program that there exists a significant variety of alternative organizational modes, among which a never ending arbitration takes place, an arbitration where both the rules of institutional environment are at play as well as the internal characteristics specific to these modes of organization. Finally, I would like to note the study of the conditions characterizing the efficiency and the stability of the institutional mechanisms.

Major problems obviously remain, of which I should have made a point. I will mention three of these points that I particularly feel

strongly about. (1) We have, as of yet, made little progress on the question of innovation, in particular regarding the nature and the articulation of organizational and institutional innovations. (2) We do not, or barely, understand the mechanisms for the implementation of incentives in their organizational environment and in their institutional dimension. (3) We have not advanced very far in the area of analyses of the agents' behaviors allowing us to go above the *ad hoc* hypotheses related to bounded rationality and opportunistic behaviors. In particular, we are still debating the famous hypothesis of rationality. Here, I believe we share a difficulty common to all economic theories, attributing a central position to the analysis of institutions. A major problem results: For lack of a more generalized theory, we have a tendency to produce localized theories, beyond the transaction concept that cannot include everything. Fortunately, we may draw an optimistic conclusion: there is still a lot of time left for more research into institutions.

Notes

1. For a survey of the diverse contributions of the new institutional approach to these fields and some others, see Ménard, C. and M. Shirley (2003; forthcoming).
2. For overviews on the subject, see Williamson, 1985; Joskow, 1988; Crocker and Masten, 1996; Klein and Shelanski, 1995, Rindfleisch and Heide, 1997, Ménard 2003.
3. Let me mention, for example, the researches of Ferejohn, McCubbins, Weingast in political sciences, of Engerman, Nye, Sokoloff in history.
4. For developments on this point, see Ménard (1995).
5. For a more detailed approach, see Ménard, 2001. One can also find very interesting remarks, although from a totally different viewpoint, in Lafont 1999.
6. And other social scientists in that respect.
7. References are provided in the next section.
8. See, for example, his remarkable article of 1967 on «Hierarchical Control and Optimum Firm Size».
9. A concise presentation of these contributions can be found in the preface of Yves-Marie Morissette, a law scholar from Montreal (Introduction to Coase, 2000).
10. For a more complete view, see Ménard (2003) and Ménard and Shirley (2003).

References

- Alston, L.J., Libecap, G.D., Mueller, B. (1997), «Violence and the Development of Property Rights to Land in the Brazilian Amazon». In Drobak, John and John Nye, *The Frontiers of the New Institutional Economics*, Academic Press, Chap. 7.
- Alston, L.J., Libecap, G.D., Schneider, R. (1996), 'The Determinants and Impact of Property Rights; Land Titles on the Brazilian Frontier', *Journal of Law, Economics and Organization*, 12 (1), 25-61.
- Aoki, M. (2000), «Institutional Evolution as Punctuated Equilibrium», in Ménard (ed), 2000., pp. 11-35.
- Aoki, M. (2001), *Towards a Comparative Institutional Analysis*, Cambridge (USA), MIT Press.
- Brousseau E., Glachant, J.M. (2002) *The Economics of Contracts*. Cambridge (UK): Cambridge University Press.
- Canguilhem, G. (1968), *Etudes d'histoire et de philosophie des sciences*, Paris, Librairie Vrin.
- Coase, R.H. (1991), «The Institutional Structure of Production». Alfred Nobel Memorial Prize Lecture in Economic Sciences. Nobel Foundation: 12 pages. Reproduit dans *American Economic Review*, 1992, 82(4): 713-19.
- Coase, R.H. (1999), «The Task of the Society». Opening Address to the Annual Conference of ISNIE, *ISNIE-Newsletter*, 2(2):Fall.
- Coase, R. (2000), *Le coût du droit*, Paris: Presses Universitaires de France. Introduction by Yves-Marie Morrisette
- Crocker, Keith J. et Scott E. Masten (1996) «Regulation and Administered Contracts Revisited: Lessons from Transaction-Cost Economics for Public Utility Regulation». *Journal of Regulatory Economics*, vol. 9.
- Davis, L.E., North, D.C. (1971) *Institutional Change and American Economic Growth*. Cambridge (UK): Cambridge University Press.
- Demsetz, H. (1991), «The Theory of the Firm Revisited», dans Williamson, Oliver et Sydney Winter (eds), *The Nature of the Firm*, New York :Oxford University Press, chap. 10, pp. 159-78.
- Engerman, S., Haber, S., Sokoloff, K. (2001), «Inequality, Institutions and Differential Paths of Growth among New World Economies», in Ménard C. (ed), *Institutions, Contracts and Organizations*, Edward Elgar Pub., pp. 108-35.
- Ensminger, J. (1992), *Making a Market*, Cambridge (UK), Cambridge University Press.
- Gibbons, R. (2001), «Why Organizations are Such a Mess (and What an Economist Might Do About It)», Working paper, MIT.
- Greif, A. (1993), «Contract Enforceability and Economic Institutions In Early Trade: The Maghribi Traders» *American Economic Review*, 83 (June): 525-48.

- Greif, A. (1998), «Historical and Comparative Institutional Analysis» *American Economic Review*, 88 (May), no. 2: 80-4.
- Holmstrom, B. (1999), «The Firm as a Subeconomy». *Journal of Law, Economics and Organization*, 15:74-102.
- Hurwicz, L. (1987), «Inventing New Institutions: the Design Perspective». *American Journal of Agricultural Economics*. 69 (2): 395-402.
- Joskow, P. (1991a) «The Role of Transaction Cost Economics in Antitrust and Public Utility Regulatory Policies». *Journal of Law, Economics and Organization*. 7 (Sp): 253-83.
- Joskow, P. (1991b), «Asset Specificity and the Structure of Vertical Relationships: Empirical Evidence», in Williamson, O., Winter, S. (eds.), *The Nature of the Firm*, Oxford, Oxford University Press, Chap. 8, pp. 117-37.
- Joskow, P. (1997), «Restructuring, Competition and Regulatory Reform in the US Electricity Sector». *Journal of Economic Perspectives*, 11(3): 119-38.
- Joskow, P. (2002), *Journal of Law, Economics and Organization*, 18.
- Joskow, P., Schmalensee, R. (1997), «Privatization in Russia: What Should be a Firm?», in Ménard C. (ed.), *Transaction Cost Economics: Recent Developments*, Edward Elgar Pub., chap. 4, pp. 86-126.
- Klein, P., Shelanski, H. (1995), «Empirical Research in Transaction Cost Economics: A Survey and Assessment», *Journal of Law, Economics and Organization*, 11(2):335-61.
- Lakatos, I. (1976), *Proofs and Refutations*. Cambridge (UK), Cambridge University Press.
- Laffont, J.-J. (1999), «Political Economy, Information and Incentives», *European Economic Review*, 43: 649-69.
- Lafontaine, F., Raynaud, E. (2000), «Creance residuelle et flux de rentes comme mecanismes incitatifs dans les contrats de franchise: complements ou substituts ?», *Revue d'economie industrielle*, no 92: 255-76.
- Levy, B., Spiller, P. (1994), «The Institutional Foundations of Regulatory Commitment», *Journal of Law, Economics and Organization* 10 (Fall): 201-46.
- Libecap, G., Wiggins, S. (1985), «The Influence of Private Contractual Failure on Regulation: The Case of Oil Field Unitization», *Journal of Political Economy*, 93: 690-714.
- McCubbins, M. (1999), Menard, Cl. (1995), «Markets as Institutions vs Organizations as Markets: Disentangling Some Fundamental Concepts», *Journal of Economic Behavior and Organizations*, 28 (3).
- Ménard, Cl. (1996), «On Clusters, Hybrids and other Strange Forms. The Case of the French Poultry Industry», *Journal of Institutional and Theoretical Economics*, 152 (1).
- Ménard, Cl. (2001), «Methodological Issues in New Institutional Economics», *Journal of Economic Methodology*, 8(1):85-92.

- Ménard, Cl. (2003a) «The Economics of Hybrid Organizations». *Journal of Institutional and Theoretical Economics* (forthcoming)
- Ménard, Cl. ed. (2003b), *The International Library of the New Institutional Economics*, 7 Volumes, Edward Elgar Pub. (Forthcoming).
- Ménard, Cl., Shirley, M. (2002), «Reforming Public Utilities, lessons from Urban Water Supply in Six Developing Countries», The World Bank.
- Ménard, Cl., Shirley, M. (2003), *Handbook of New Institutional Economics*, Boston, Kluwer Academic Press (forthcoming).
- Ménard, Cl., Valceschini, E. (1999), «The Creation and Enforcement of Collective Trademarks», *Voprosi Ekonomiki*, Moscow, March: 74-87.
- Milgrom, P., North, D.C., Weingast, B. (1989), «The Role of Institutions in the Revival of Trade: The Law Merchant, Private Judges, and the Champagne Fairs», *Economics and Politics*, 2:1-23.
- North, D.C. (1981), *Structure and Change in Economic History*, New York, Norton and Co.
- North, D.C. (1986), «The New Institutional Economics», *Journal of Institutional and Theoretical Economics*, 142(1):230-37.
- North, D.C. (1990), *Institutions, Institutional Change, and Economic Performance*, Cambridge, Cambridge University Press.
- North, D.C. (1991), «Institutions». *Journal of Economic Perspectives*, 5 (Winter): 97-112.
- Poppo, L., Zender, T. (1998), «Testing Alternative Theories of the Firm: Transaction Cost, Knowledge Based and Measurement Explanations for Make-or-buy Decisions in Information Services», *Strategic Management Journal*, 19: 853-77.
- Rindfleisch, A., Heinde, J. (1997), «Transaction Cost Analysis: Past, Present, and Future Applications», *Journal of Marketing*, 61 (October): 30-54.
- Roe, M. (2002), *Political Determinants of Corporate Governance: Political Conflict, Corporate Impact*. New York, Oxford: Oxford University Press.
- Schwartz, A. (1992), «Relational Contracts in the Courts: An Analysis of Incomplete Agreements and Judicial Strategies», *Journal of Legal Studies*, 21: 271-318.
- Shirley, M. (ed) (2002), *Thirsting for Efficiency*, Amsterdam, Elsevier Pub.
- Staropoli, C. (2001), *Conception de marches efficaces pour les secteurs dereglementes: le cas des marches de gros d'electricite*, *These de Doctorat*, Universite de Paris (Pantheon- Sorbonne).
- Whinston, M. (2001), «On the Transaction Determinants of Vertical Integration»
- Williamson, O. (1967), «Hierarchical Control and Optimum Firm Size», *Journal of Political Economy*. 75: 123-38.

- Williamson, O. (1975), *Markets and Hierarchies: Analysis and Antitrust Implications*, New York, The Free Press.
- Williamson, O.(1985), *The Economic Institutions of Capitalism*. New York, The Free Press.
- Williamson, O. (1996), *The Mechanisms of Governance*. New York, Oxford University Press.
- Williamson, O. (2001), «The New Institutional Economics: Taking Stock/looking ahead», *Journal of Economic Literature*, 37(3):595-613.

