

## SOCIOLOGY AS A SCIENCE: NEW CHALLENGES OF THE 21<sup>ST</sup> CENTURY

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### THE IRON BARS GET CLOSER: ANORMATIVE SOCIAL REGULATION

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ПРУТЬЯ ЖЕЛЕЗНОЙ КЛЕТКИ ВСЕ БЛИЖЕ: АНОРМАТИВНОЕ СОЦИАЛЬНОЕ РЕГУЛИРОВАНИЕ

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**Abstract.** The ‘problem of normativity’ concerns the role that society’s value system, norms and conventions play in legislative regulation. Rapid social change was always problematic, for example the swift displacement of French Revolutionary law by the Napoleonic

**Аннотация.** Проблема нормативности связана с ролью, которую играет общественная система ценностей, норм и обычаев в законодательном регулировании. Стремительные социальные изменения, примером которых может быть быстрая замена Французского

Code. What validated one or the other, since both broke with previous social norms? Traditionally, both legal and social theories appealed to shared normativity to account for the 'bindingness', the sense of obligation held to inhere in the law. However, the intensification of morphogenesis had growing negative repercussions on all the normative components of the legal order: law itself, norms and rules, conventions, custom and etiquette. It is argued that as these elements weaken, 'Anormative Regulation' (or 'Bureaucratic Regulation') takes over in contemporary society, entailing no 'ought', exerting a causal force not a moral one, and operating through penalizations and prohibitions, which are punitive without entailing either a criminal record or invoking social sanction.

революционного законодательства Кодексом Наполеона, достаточно сложны. Как доказать правильность одного или другого, если оба резко отступали от прежних социальных норм? Традиционно и правовые и социальные теории обращались к коллективно разделяемой нормативности, лежащей в основе «обязательности» — обязывающего характера правовой системы. Однако интенсификация морфогенеза была сопряжена с увеличением негативных последствий для всех нормативных составляющих правового режима: самого закона, норм и правил, конвенций, обычаев и этикета. Утверждается, что, по мере того как в современном обществе эти элементы ослабляются, на смену им приходит «анормативное регулирование» («бюрократическое регулирование»), не подразумевающее долженствования, налагающее казуальное принуждение вместо морального и функционирующее через систему наказаний и запретов, не влекущих за собой ни уголовной ответственности, ни социальных санкций.

**Keywords:** norms, values, 'bindingness', anormativity, 'moral disconnect'

**Ключевые слова:** нормы, ценности, «обязательность», анормативность, «моральный разрыв»

## Introduction<sup>1</sup>

At its most general, legal normativity concerns the role that society's moral or value system, norms and conventions play in social regulation. Traditionally, both legal and social theorists had used such normativity to account for the 'bindingness' or crucial sense of obligation held to inhere in the law<sup>2</sup>. Fundamentally, it was shared normativity that put the 'ought' into social action and accounted for legal conformity.

<sup>1</sup> This paper is abridged from my 'Anormative Social Regulation: The attempt to cope with Social Morphogenesis' (2016), in *Morphogenesis and the Crisis of Normativity*, M. S. Archer (Ed), Dordrecht, Springer.

<sup>2</sup> Since Pufendorf [Pufendorf, 1964], the obligation attaching to or the binding character of the law was the key element to be understood.

But the central question was which way round it worked? Was it shared normativity that orchestrated social change, or did social transformation engender changes in norms and values?

Radical social change accompanied by changes in the law had always been problematic in legal philosophy since it challenged the grounding of lasting legal *validity* in lasting *social normativity*. For example, French Revolutionary law, was swiftly displaced by the Napoleonic Code, and proved exercising for other independent States (when or whether to recognize either). It was yet more challenging to the philosophy of law (what validated one or the other, since both broke with previous social norms but were at variance with each other?) Conversely, if legality was granted to either, then legal validity did not seem reliant upon its grounding in the normativity particular to every nation state.

The morphogenetic approach does not treat this central problem in either/or terms, siding neither with Durkheim's conviction that changes in the 'collective conscience' follow the transformation in the division of labour<sup>3</sup>, nor with Hans Kelsen (in the bulk of his work), where legal regulation *derived* from its rooting in a foundational 'groundnorm' that underwrote its normative validity [Kelsen, 1945]. The reason for not taking sides is principled: the explanation of any social phenomenon whatsoever always comes in a SAC because it must incorporate the interplay between Structure, Culture and Agency, rather than causal primacy automatically being accorded to one of them, as was assumed by Durkheim and Kelsen in opposite ways. Given the complexities of this inter-disciplinary debate, I shall immediately spell out the three main propositions to be advanced in this paper.

To most legal philosophers the connection between Law and normativity is fundamentally *morphostatic*, working in terms of negative feedback between them. To philosophers of social science the relationship today is *morphogenetic*, with positive feedback amplifying both legal and normative changes, without assuring their compatibility.

For Sociologists, the demise of a shared normative system results in reductions in social integration, an increasing deficit in social solidarity, a growing 'macro-moral disconnect'<sup>4</sup> between religious/ethical systems and members of society, all of which have negative repercussions upon the traditional normative components of the legal order: the law, norms/rules, conventions, customs and etiquette.

In consequence all five elements above are held to be giving way to the 'Anormative Regulation' of the contemporary social order or, if preferred, its 'Bureaucratic Regulation' — replete with Weber's 'iron bars' growing closer. In other words, normativity plays a much reduced role in furnishing guidelines for social action because the law and social custom diminish proportionately in relation to non-normative forms of regulative social control. Is this *necessarily* the case for any society that is undergoing intensive morphogenesis?

<sup>3</sup> Durkheim's position was nuanced by his concern that the Third Republic in France required substantial increases in civic morals and moral education as essential normative reinforcements in order to produce a stable and just society. See the last chapter of *The Division of Labour* dealing with remedies for its pathologies.

<sup>4</sup> Douglas V. Porpora coined this term in [Porpora et al., 2013].

As social change has intensified over the last three decades as a consequence of the synergy between digital science and economic financialization [Archer, 2014, 2015], novel opportunities for crime have created a novel problem for legislative regulation, namely ‘how to keep up?’ This inverts the traditional relationship between the legal order and the social order. Increasingly, the law lags behind innovative malfeasance and, since morphogenetic variety generates more variety in ways that are unpredictable, it outdistances the possibility of jurisprudence ever catching up. There are two legal alternatives. Either the law can try to ‘run faster’, but this inflates the quantity of legislation and still remains a retrospective tidying up operation<sup>5</sup>.

The alternative to futile legislative frenzy consists in an increasing cascade of regulations, passing downwards through a plethora of Agencies, culminating in increased bureaucratic rather than legal regulation. The next section is devoted to the growth and role of administrative regulation in late modernity (approximately after 1980), focusing upon its morphogenetic importance in relation to earlier hegemonic forms of socio-legal regulation.

## Why Morphogenesis and Normativity part company

### ***Bureaucratic regulation as anormative social regulation***

This is a broad trajectory where ‘culture’ is gradually displaced from the driving seat and from steering the social order when (Durkheimian) ‘mechanical solidarity’ prevailed, diminishing further with ‘the diversity of morals’ [Ginsberg, 1962]<sup>6</sup> and yet further as it confronted *fin de siècle* ‘multiculturalism’.

Although allowance must be given to the growth in international law, human rights law, and the definition of new universal legal prohibitions (for example, ‘Crimes against Humanity’), all the same these developments do not nullify the fragmenting bindingness of normativity in most parts of the life-world (locally, regionally, generationally, sexually, ethnically, linguistically etc.). This is what Doug Porpora has persuasively diagnosed as the ‘macro-moral disconnect’, where the guidelines for behaviour show a growing detachment from systems of social normativity (religious and secular alike), which are increasingly confined to the private domain [Porpora, 2001, 2013].

Within in our lifetimes, the phrase ‘rules and regulations’ was common in ordinary speech; but now the two terms have come apart. Today, ‘regulations’ — which are one form of rules — are not accompanied by normative justification and a sense of obligation has been displaced among those conforming to them, along with feelings ‘shame’ for or ‘guilt’ about their infringement. Instead, these moral responses have been replaced by considerations of escaping detection, cost-benefit analysis of the price of a fine versus one’s personal convenience (for those who can afford it) and frequent disgruntlement about these bureaucratic intrusions. This is what is meant

<sup>5</sup> This has been attempted and abandoned. For example, between 1983 and 2009 the British Parliament approved over one hundred criminal justice bills and over 4,000 new criminal offences were created. In response to that trend, the Ministry of Justice established a procedure to limit the designation of new crimes (Cabinet Office 2013). In fact, the volume of Government primary legislation diminished between 1979—2009, whilst the quantity of Statutory Instruments increased [House of Lords, 2011].

<sup>6</sup> An evolutionary exploration that is matched by many in legal philosophy texts on moral development [Joyce, 2007].

by social regulation having become increasingly anormative. However, is it *justified to attribute this social tendency to morphogenesis*.

On the one hand, the reason given for this proliferation of regulatory bodies in very different countries is sometimes the simple speed of change, as accentuated by ‘acceleration theory’ [Hartmut Rosa, 2003], which is straightforwardly empiricist. This is illustrated in a U. K. Cabinet Office paper<sup>7</sup>, significantly entitled ‘When Laws become too complex’, showing that from 1979 laws have decreased in number, though increasing in volume, whilst Statutory Instruments have more than doubled from the late 1980s to 2006. On the other hand, some stress the increased expertise required, especially in complex or highly technical sectors, where ‘their *legitimation* resides in the need for expertness and advanced technical competence’ [Casini, 2007: 21]. Here, the connection with the novel practices and techniques introduced through morphogenesis in the last three decades is more prominent.

However, it is salutary to note that within legal studies, where the growth of regulatory bodies has captured considerable attention, discussion has been restricted to an ‘in house’ debate about whether or not their increase subtracts from the powers of the state through ‘decentering’ control and results in its ‘polycentricity’, often referred to as the ‘hollowing out of the state’. This is a debate largely without a social context because, at most, references are made to the changing political philosophies of those in Office. Moreover, the concern of ‘regulatory studies’ is with the workings of regulation in terms of ‘good governance’ or the opposite, rather than with the explanation of its growth, social form or relation to normativity. Consequently, there is little meeting point between this corpus of work and my present concerns, which accounts for why the main positions sequentially adopted in ‘regulation studies’ are of little service to the sociological issues under discussion.

1. Regulation by ‘command and control’ (CAC) is the preserve of the state, using legal rules backed by criminal sanctions. ‘It is «centred» in that it assumes the state to have the capacity to command and control, to be the only commander and controller, and to be potentially effective in commanding and controlling. It is assumed to be unilateral in its approach (governments telling, others doing), based on simple cause-effect relations, and envisaging a linear progression from policy formation through to implementation.’ [Black, 2001: 106]. These substantive assumptions are rejected here and also by those advocating position (b).
2. Conversely, in the ‘decentred understanding of regulation, regulation happens in the absence of formal legal sanction — it is the product of interactions not the exercise of the formal, constitutionally recognized authority of government.’ [Rhodes, 1997]. Partly based on the manifest failures of CAC, partly on the simple recognition that regulation has many locales (polycentrism), taking place ‘in many rooms’ [Nader, Nader, 1985], and partly on Teubner’s anti-centrist systems theory [Teubner, 1993: 19—34], this popular approach also eschews any explanatory generative mechanism producing decentred regulation and settles for a list of contributory factors such as ‘complexity’, ‘fragmentation of

<sup>7</sup> GOV-UK. 2013. When laws become too complex. Cabinet Office and Office of the Parliamentary Counsel, <https://www.gov.uk/government/organisations/publications/when-laws-become-too-complex> (downloaded 21.11.2014).

government', 'loss of steering power', 'new knowledge', 'novel networks' and so forth, whose permutations result in diverse sources of prescriptions.

3. Finally, there is the millennial hybrid that combines the above positions, by accentuating the combination of institutional centralization with decentred regulation. Hence, in the quest for enhanced steering capacity, Moran argues that the state spearheads a 'drive towards synoptic legibility: installing systems of comprehensive reporting and surveillance over numerous social spheres; the consequential pressure to standardize and to codify, which is to make explicit what had hitherto been tacit; and the creation of new institutions (notably specialized regulatory agency) to help enforce all of this' [Moran, 2004]. As his title indicates, *The British Regulatory State: High Modernism and Hyper Innovation*, Moran's preoccupations come closest to my own, but not his conclusions.

The unhelpfulness of these positions can ultimately be attributed to their empiricism. Such 'tendencies' are merely extrapolations from current data; there is no mention of generative mechanisms. All the same, it was hoped that this corpus of literature would have furnished a brief lexicon of fairly consensual and useable definitions. Yet, to Black, 'definitional chaos is almost seen as an occupational hazard by those who write about regulation' [Black, 2001: 129—144]<sup>8</sup>. Instead, I have resorted to self-help in the following Ideal Type, with the aim being of accentuating the most salient features of 'anormative regulation', without pretending to exhaustiveness.

- Regulations do not attempt to meet any form of 'normativity requirement', legal, conventional or personal (such as Korsgaard's 'reflective endorsement' [Korsgaard, 1996, 2009], but are the means of *avoiding* such appeals.
- Regulations exert a *causal force* not a *moral one*. They are unrelated to the approbation, approval or assent of those to whom they apply (in some of their actions), but whose agreement to any given regulation is rarely directly sought. Nevertheless, it is not one associated with a high rate of non-compliance.
- Regulations do contain 'normative operators', words such as 'ought' or 'must', is 'required'/'prohibited' or 'permitted'. However, they work — insofar as they do — through the instrumental rationality of the subjects in question, who feel no obligation but, rather, are calculative or prudential in their responses according to their means.
- Regulations have a heteronomous character, depending upon fines, penalizations and prohibitions, which are punitive without incurring either a criminal record or involving social sanction.

<sup>8</sup> Compare the following three definitions:

1. To the OECD regulation is 'the full range of legal instruments by which governing institutions, at all levels of government, impose obligations or constraints on private sector behaviour. Constitutions, parliamentary laws, subordinate legislation, decrees, orders, norms, licenses, plans, codes and even some forms of administrative guidance can all be considered as 'regulation' (OECD, 1995).

2. To the UK government's Better Regulation Taskforce, regulation is 'any government measure or intervention that seeks to change the behaviour of individuals or groups, so including taxes, subsidies and other financial measures'. (Better Regulation Taskforce, undated, Principles of Better Regulation, 1. (undated)).

3. Hall, Scott and Hood [Hall, Scott, Hood, 1999] provide the broadest and vaguest definition when they simply talk of people beinging

3. Hall, Scott and Hood [Hall, Scott, Hood, 1999] provide the broadest and vaguest definition when they simply talk of people being regulated by culture.

- Regulations have to be actual (it would sound odd to talk of the ‘dead letter of the regulation’), but they can be displaced and replaced overnight without appealing to the ‘democratic defence of validity’.
- Regulations do not necessarily stem from authorities within the legal order. Many do (as in planning regulations), but many others originate from retailers (concerning conditions for return, reimbursement or recompense for products), train and bus services, private utilities, landlords (no pets), hotels, companies, banks, financial services, libraries and taxi drivers. The law may or may not uphold any of the above.
- Regulations do not depend upon existing social conventions. Often their avowed aim is the opposite, as in combatting discriminatory practices or policing acceptable vocabulary and behaviour. (It is not illegal to swear, conventionally many do, but we are sternly warned not to affront railway personnel or cabin crew in this way). *In fact, convention is now more frequently re-made by regulation than vice versa.*
- Regulations are basically concerned with the social co-ordination of action and practices rather than with issues of social co-operation or re-distribution. As such, they are at most binding (without entailing a sense of obligation) but never socially bonding. Hence the connection with a decline in social integration.
- Regulations differ from laws or other forms of rules in terms of what makes them social. In the latter cases, this depends upon their internal relations within complexes of roles and rules. Conversely, what makes bureaucratic regulations social is simply that people (largely) behave in conformity to them, thus producing a manifest social regularity.
- Regulations are ultimately intrusive of previously unregulated (or more loosely regulated) domains<sup>9</sup>.

### **Anormative Social Regulation Takes Over**

In linking anormative bureaucratic regulation to the intensification of morphogenesis, one socio-political characteristic of regulations is crucial. Since they do not rely upon consensus among or consultation with the public affected, neither are they dependent upon the relatively slow development, typical of social conventions and of norms. *This feature recommends their suitability for ready response to the novel changes introduced through morphogenesis and its generic tendency for new variety to generate more variety.* Nevertheless, more than ready regulative capability is required to explain why they became the weapon of preference for governance over the last three decades because various negative aspects were associated above with regulatory governance.

The post-war ‘golden age’, prior to multinationalism and financialization of the economy, was the product of mutual regulation between industrial employers and their workforce, the state of one mattering to that of the other with the two sides enjoying the sponsorship of political parties alternating in government and opposition. Thus,

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<sup>9</sup> Such as such as EU regulation No. 730/1999 on the retail of carrots, banning the public sale of forked specimens or those with secondary roots.

Western democracies could fairly be characterized as ‘lib/lab’ [Donati, 2000, 2014]<sup>10</sup>. The regular alternation of such parties in government (or the equivalent alternation of centre-right and centre-left coalitions) gave half a loaf of bread in turn to those they represented. Hence, such mutual regulation between these distinctive political parties was a formula for protracting *morphostasis*.

It did not last because voter turn-out in general elections plummeted throughout Europe as electorates recognised the diminishing powers of national governments, given international finance capitalism, multi-national corporations and supra-national institutions such as the EU. A decade later, with the onset of the economic crisis, any residue of ‘lib/lab’ oscillation had disappeared to be replaced by a politics of ‘centrism’. Very few (an exception is [Bobbio, 1996] still maintained that ‘right’ and ‘left’ retained any meaning — unless prefixed by the term ‘ultra’. Slogans of the ‘We are the 99%’ variety indicated that the economic crisis and the response to it of ‘austerity’ had eroded the residual class basis of political support in Europe and with it the ‘lib’ versus ‘lab’ distinctions between parties. At that point, its successor, ‘centrist’ politics had no alternative to attempting to cope with the consequences of *morphogenesis* that were no respecters of national boundaries. It was this above all (though not alone) that enhanced the appeal of administrative social regulation.

#### *Politics without Conviction: From Strategic to Tactical Government*

Politics without conviction means a drastic shrinkage (*crispation*) of normativity in political life. Political parties are preoccupied with tactics; with a St Simonian ‘administration of things’ — the day to day management of austerity and the reduction of public spending with minimum backlash — not the ‘government of people’ based on a normative conception of the good society. Tactical governance, with its ‘about turns’, absorption in today’s latest ‘scandal’, and the announcement of a ‘quick fix’, behaves like the fire service attending only to emergency calls. It ejects commitment from the political domain, whether in the form of expansive political philosophies or explicitly normative organizations with a broad conspectus on the good life. Thus, religion in general is banished from the public domain [Trigg, 2008], henceforth supposed to be a depoliticized matter of private belief and practice. *If functionalists had once held that values articulated every system of social action, they have become the antithesis of today’s political aversion towards social normativity.*

Tactical governance works through bureaucratic regulation whose highest aims are manifest (meaning measurable) efficiency and effective control. Institutionally, the public domain is carved into decreasingly small pieces, each with its own Regulator, meaning that the problems occurring in any fragment can be addressed technocratically. Consequently, the pieces are never put back together and assessed for their coherence, let alone for their contribution to or obstruction of any normative definition of the good society.

Ultimately, politics without conviction generates a huge shrinkage of normativity itself within public life. What matters is that epistemically we, the people, live togeth-

<sup>10</sup> Donati also uses the term to refer more broadly to the *lib-lab* configuration of society, one that is a compromise between the liberal (lib) side of capitalist markets (free economy) and the socialist (lab) side of the welfare entitlements and ‘equal’ opportunities funded by the state (political system).

er in overt 'political correctness'; real ontological differences are not acknowledged, addressed, assisted, or ameliorated in this semantic displacement manoeuvre. If those lower down the social hierarchy are not addressed as 'plebs', 'slags' or 'pakis', then a veneer of civility conceals the endurance of real inequalities of class, sex or ethnicity. By implication, any form of society could claim to be 'good' provided it had somehow eliminated improper speech. Thus, the role of political correctness is to mute the expression of normative differences and places a stranglehold on their potential to justify demands for greater justice. Anormative regulation inserts a solid wedge between social policy and normativity.

### *Social Institutions and Governance by Performance Indicators*

From their emergence in Europe, the distinctive feature of the professions was the adherence of each to a specific and demanding code of ethics, departures from which were usually disciplined by a governing body of peers (usually for doctors and lawyers). This ethical regulation, symbolized by the Hippocratic Oath, approximated to a secular vow of service. It both bonded members of a profession together and provided assurance to those they served that the skills in question were being used in their interests and thus that their relationship differed from a market transaction.

Over the last quarter of a century, all of the above groups have become subject to governance by performance indicators. Schools, hospitals, universities and so forth became managed by 'objective' performance indicators with results published in League Tables, which undermined the solidarity amongst 'free professionals' and the relationality between them and those they served. *The use of performance indicators represents an extension of the logic of competition from the business world to one previously held to consist importantly in the quality of human relations.* The indicators deployed could capture measurable quantitative differences in crude empiricist terms (hospital through-put, waiting times for operations and so on) but were incapable of assessing the quality of care, of teaching or of research.

But, internally within each organization (schools, medical centres, hospitals and universities) and externally between the potential public of users, the *logic of competition* constituted an assault upon solidarity. Externally, the effects of governance by performance indicators may not be fatal but do damage the social solidarity among users. In seeking school placement for their children in establishments highly ranked on the League Tables for their measurable results, English experience shows parents moving house in order to be eligible for entry and cases of legal prosecution for some who lied about their addresses so as to place themselves in the desired catchment area. Parent is thus placed in competition with parent and their children under an obligation of gratitude for these manoeuvres. It is unnecessary to mention the transformation of our students into 'consumers', reluctant to do more than minimal reading unless this 'counts' towards their results. Corporate employers raise the non-academic stakes by the expansion of seductive internships, the appointment of 'student Ambassadors' and other forms of colonizing the campuses.

Internal and external effects coalesce. The use of Journal 'impact factors' by Heads of Department to control where colleagues publish, the appearance of Google 'hit' rates in academic references (common in Switzerland), the expectation that research grant

holders must demonstrate its 'impact' before the research is even completed, embroil all in the *situational logic of competition*. Collegiality gives way to mutual suspicion, collaboration to strategic considerations, and peer review segues into a procedure for enforcing academic correctitude. *Qui bono* from this competitive turn? The answer is hardly anyone, except those — usually not the most creative — who have re-invented themselves as academic administrators, but not the state of research and not academia as a solidary body. By working under this form of governance professionals become inoculated against the robust normativity that was once their patrimony.

### *Governance by Bureaucratic Regulation*

It is worth noting that Canada, the U.S. and the E.U. have commissions or committees whose aim is to reduce it. In other words, bureaucratic regulation is a strange animal in the sense that some of the agencies most responsible for its proliferation, such as the E.U., at least wish to be seen to be unenthusiastic about it. What accounts for this paradox?

Certainly, bureaucratic regulation is about control and no democratic institution wants to be seen as a 'controller'. Yet, there has to be more to it because so many organizations that increasingly operate through this form of regulation make no claims about their governance being democratic: public utilities, banks, supermarkets, manufacturers, public transport, leisure facilities and hotels amongst dozens of others. I maintain that one reason for this profusion and proliferation lies in low social solidarity amongst the relevant populations (of users, consumers, clients etc.) and one consequence of its growth is to drive solidarity even lower.

It is when normative consensus is lowest in a target population that bureaucratic regulation can be applied most easily. Were there higher solidarity, entailing shared concerns amongst group members, the basis exists for potential (organized) opposition to bureaucratic fiat. Although solidarity does not necessarily imply a state of affairs even approaching normative consensus, the holding of shared concerns cannot be devoid of normativity. Some of the same things matter to those with concerns held in common and the most important of them is that these *ought* to be fostered rather than damaged. Conversely, low solidarity signals heterogeneous concerns meaning that regulation will have a mixed reception, but one too fragmented for resistance. In that case, control is simply control.

*A bureaucratic regulation is usually satisfied if each and every member of the target population behaves as specified* (e. g. not parking except in designated bays). What makes a regulation social is simply when a social outcome is its objective, such as avoiding a definition of overcrowding ('No more than 8 standing passengers permitted'). Nevertheless, regulations influence real social relations — specifically social solidarity — in excess of the behavioural conformity sought.

Let us quickly glance at an improbable instance, that of the (still current) E.U. regulation governing the sale of carrots. Commission Regulation (EC) No 730/1999 of 7 April 1999 states they must be «not forked, free from secondary roots». One consequence has been that horticulturalists have to dump or find some industrial outlet for their offending carrots, being paid by supermarkets for only perfectly straight specimens. Another is that the price of the latter rises. Farmers are disgruntled and so are custom-

ers. Yet, considering the price, customers may conclude that farmers growing carrots are doing very well. Meanwhile, the grower, returning home with a half a truck load of rejected forked carrots that have now lost freshness and value, curses customer perfectionism. Ironically, neither party may be fully aware of EC Regulation No 730/1999 and both, if consulted, might well be normatively opposed to it. The attitudes they do share are discounted bureaucratically and the practices imposed by regulation serve to diminish solidarity between them.

Can one generalize from this ludicrous issue? Perhaps, to the extent that when social solidarity is low, the weaker are the networks along which information flows and the less the bonds that mitigate or offset a person or group behaving in a way that is the product of regulatory control. Conversely, bureaucratic regulation enables competitive individualism to infiltrate more readily with every new decline in solidarity, thus serving to promote it. Additionally, collectivities invent informal regulations of their own. For instance, that passengers seated in rows towards the front of the plane have a right to disembark first, whether ready or not. Recognizing this practice, some airlines introduced a Priority Boarding fee!

## Conclusion

This paper has tracked how sources of normativity within the legal order — laws, rules, norms, conventions and etiquette [Abrutyn, Carter, 2014] — responded to the intensification of morphogenesis over the last three decades. I have maintained that the task of normative control has passed to processes of *anormative* bureaucratic regulation. These can respond faster to novel social changes but have largely severed their links to traditional legal concerns about *legitimacy*, yet are not imbued with social concerns about *legitimation* [Turner, 2010]. Consequently, the legal and social orders are linked *instrumentally* meaning that instead of supplying normative guidelines for action, that are both constraining and enabling, social regulation is increasingly sought through regulative prohibitions and sanctions that are *anormative*.

In terms of the three main tasks that legal instruments can perform for the social order — assisting co-ordination, co-operation and redistribution — bureaucratic regulation focusses exclusively upon *co-ordination*, working causally to promote conformity rather than supplying guidelines fostering how we live together in fairness. Moral concerns cannot be obliterated but their social diffusion is discouraged as voluntary initiatives prompted by them are colonized, economic philosophy is curtailed into ‘There is no alternative’, political philosophy truncated into ‘getting by’ without vision, and human philosophy reduced to political correctness unrelated to humanistic ideals of flourishing. In consequence, all the resources most capable of fostering eudemonia, are repressed by the top-down imposition of anormative social regulation. They are fragmented into the specific remits of each regulative organization, which at most stimulates single-issue pressure groups as the form of opposition. These are hampered from coalescing because they compete for governmental recognition at election time in relation to their numerical strength.

In sum, the major top down effect is to augment the overall decline in social solidarity, since bureaucratic regulation operates through instrumental rationality and is therefore fundamentally individualistic. Thus, there is no encouragement for the

majority to become reflexive relational subjects [Donati, Archer, 2015; Archer 2007, 2012] but, rather, anormative social regulation constitutes both structural and cultural barriers against effective relationality and creative reflexivity. It follows that we should not be surprised that 'those born here' can be recruited as jihadists, that migrant groups form residential enclaves, and that the affluent retired are retreating into gated communities. These, at least have some form of social integration surpassing the absence of solidarity encountered in the developed world and a source of values sustaining normativity, albeit not ones promoting the common good.

Such are the results when the generative mechanism fueling intensive morphogenesis becomes systematically skewed towards market competition, with its intrinsic tendency to produce winners and losers, but one that increases the disproportionality between the two ('We are the 99%'). From this perspective, the potential for the same generative mechanism to diffuse 'win-win' contexts cumulating in an integrative Commons is overshadowed by the proponents of the *situational logic of competition* having made common cause with the political promoters of anormative social regulation. With it, the prospects of a eudemonic morphogenic social order appear to be paralyzed.

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