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Trust in Freedom or in Equality? A Comment on Bernard E. Harcourt's *The Illusion of Free Markets*

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Abstract

“At the end of the day, the notion of a ‘free market’ is a fiction. There is simply no such thing as a non-regulated market—a market that operates without legal, social and professional regulation. Those forms of regulation, including the criminal sanction, are precisely what distributes wealth and resources, what makes it possible for the Chicago Board of Trade to exclude non-members from the trading floor, for the Big Four accounting firms to effectively control accounting standards and for large commercial banks to essentially coordinate lending practices” (p. 242).

This erudite and forcefully written book's chief endeavour is to propose a genealogy of the reason why, in the United States and, by extension, in most western neoliberal societies, proclaimed state abstention in the economic sphere combined with actual state intervention in the criminal sphere have come to be perceived as perfectly “natural” and fail to trigger much social contestation, despite the devastating social consequences that this seemingly paradoxical juxtaposition of practices has had over time.

KEYWORDS: neoliberalism, faith, free markets, Physiocrats, punishment, law

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Bernard E. Harcourt, *The Illusion of Free Markets: Punishment and the Myth of Natural Order*, Harvard University Press, 2011.

Review by Marion Brivot

1. Preliminary remarks

The author's study of the link between state regulations and prisons is carried out in the Foucauldian tradition of "Discipline and Punish" (Foucault 1977). This tradition is characterized notably by the presence of a critical project – the author does not just explain but also denounces what he explains – and the use of a historical method of demonstration, namely *genealogy*. This method aims at documenting – geographically and historically – the birth and early developments of a dominant regime of truth that is falsely perceived by everyone as ahistorical and universal.

In *The Illusion of Free Markets*, the taken for granted truth that the author attempts to situate in time and space (XVIII century France) is that state intervention is undesirable in economic affairs because it can only destroy the naturally optimal equilibrium of free markets whereas state intervention is socially desirable in the penal domain.

The author draws explicitly on economics and law in this book, but I argue that a link with accounting can also be drawn, thus addressing this journal's three domains of interest.

A large body of critical accounting literature exists, in the same Foucauldian vein, where the study of regulations and prisons is transposed into organizational contexts: companies are conceived of as nested physical enclosures where panoptical controls over employees take place. In these prison-like organizations, strict controls on work, punishments for deviant behaviour and sanctions on counter-performances are achievable via use of accounting techniques which, much like regulations, are also believed to help increase self-control and discipline in employees (see Brivot and Gendron 2011 for a review and critique of this literature). This book contributes indirectly to the academic debate surrounding the role of accounting in organizations and society. If we agree that the accounting culture has contributed to the financialization of the world (Vollmer et al. 2009) and the spreading of the notion of "efficiency" in almost all aspects of social life (Lyotard 1979; Power, 1997), and that accounting is the language of business and capitalism (Macintosh 2002), then we cannot help but wonder to what extent accounting and accountants have facilitated the propagation of the neoliberal discourse and vision of the world, which the author deconstructs in this book.

2. Summary

The Illusion of Free Markets advances several claims, including four which I found particularly provocative and sometimes questioning traditional perceptions.

One, the belief – espoused by many contemporary economists – that government is incompetent in economic affairs, but competent as far as policing the “disorderly” is concerned, is a falsely modern belief. It dates back to eighteenth century France *Physiocrats*’ writings (“Physio”- Nature, and “crats”- rule in Greek, i.e., “the rule of natural order”). This intellectual circle included Francois Quesnay, Pierre Samuel Du Pont de Neumours, the Marquis de Mirabeau, and Pierre-Paul Le Mercier de la Rivière. They inspired Adam Smith, quite possibly to the point of plagiarism according to the author, and enthused many others up until the twenty-first century.

(Referring to the Physiocratic idea of “natural orderliness”) “This bias, this prejudice, this distortion came to us from the Physiocrats and has weaved through liberal writings from Jeremy Bentham to Frederick Hayek, Milton Friedman, Richard Epstein, and Richard Posner.”
(p. 241)

The author maintains that the Physiocratic theory of a natural order in the economic domain has been transmuted into today’s neoliberal dogma which transcends all political parties in the US nowadays, as confirmed by the following excerpt of Barack Obama’s answer to New York Times reporter David Leonhardt on Aug. 20, 2008, in the midst of the financial crisis

“The market is the best mechanism ever invented for efficiently allocating resources to maximize production. And I also think that there is a connection between the freedom of the marketplace and freedom more generally.”

Two, this belief is highly noxious and has had devastating social consequences in the US, including the “naturalisation” of unequal distributions of wealth and, indirectly, mass incarceration, to the point where 1% of the total adult population in the USA is currently in prison, a score yet unmatched by any other developed country in the world, whether in percentage or in absolute value.

Three, the very idea of “free markets” is totally specious: all social and economic spaces are regulated through and through, as suggested by the quote that appears in the abstract. In fact, today’s markets are even more severely regulated than eighteenth century France’s grain market, cited frequently as a

paradigmatic exemplar of government run economy. Even the *Police des Grains*, famous for being depicted by Foucault (2004) as epitomizing a “disciplinary” form of control, was not as severe in its enforcement of market rules as today’s Chicago Board of Trade is.

Four, opposing the economic and penal areas as far as state intervention is concerned is very misleading. It is a false dichotomy. On the one hand economy is not spared from fraud and crime and on the other punishment, in itself, is a market and reportedly a very lucrative one. Prisons are a form of partially privatized economic activities in which the state plays a key role, and strangely nobody denounces that this very active state intervention in the prison market contradicts the *Laisser Faire* rhetoric.

3. Discussion

The author’s analysis of the contemporary ramifications of XVIII century theses might be challenged by historians of economic and social theories (Cheinisse 1914 and Steiner 2003), inviting more situated comparisons and more careful conclusions, but more importantly, the author could have documented the plethora of contemporary writings that challenge the economic *laisser-faire* dogma, including philosophers like Slavoj Zizek (Zizek 2009) or journalists like Justin Fox (Fox 2009) who wrote on the front flap of his book:

“The efficient market hypothesis – long part of academic folklore but codified in the 1960’s at the University of Chicago – has evolved into a powerful myth (...). That myth is crumbling.”

Similar claims have also been made by many managers and left-wing politicians like the former president of the International Monetary Fund, who declared:

“The time when it was thought that the market was enough to regulate financial activity is over (...). The ideology of self-regulation has been demolished by the facts.” (quoted by Kolhatkar, 2011, p. 64).

Even the famous financier George Soros (2008, p. vii) recognized the need for a new paradigm:

“The currently prevailing paradigm, namely that financial markets tend towards equilibrium, is both false and

misleading; our current trouble can be largely attributed to the fact that the international financial system has been developed on the basis of that paradigm.”

A number of scholars have also denounced the cynicism of financial market-makers who have self-interestedly exploited the “efficient financial market rhetoric” to “advertise their new financial ‘products’ to clients and citizens” (Biondi 2009, p. 1). In sum, social contestation is not as nil as the author fears, including in America, as suggested by the ongoing “Occupy Wall Street” protests (New York Times, October 6, 2011).

The main contribution of the book is not so much the demonstration that the ideology of free markets generates shocking “collateral damages” or that free markets are not free but intensely regulated and controlled by public and private policies, norms and rules. These claims have been made already. Of course, there is no harm in repeating them until such time as mainstream economists and policy makers abdicate their “faith”. History shows that heretic discourses, like that of the author and others, take time before they make their way into the mainstream. But there is hope since, at the time of the Physiocrats, economic liberalism was revolutionary and it has now become the prevailing belief. The pendulum might swing again in the future. We may, in fact, be observing a new paradigm shift in the making: many of those who govern us have traded economic *laissez faire* for strong government intervention since the last financial crisis, particularly in Europe (Giesbert 2011¹)

Rather, what I found novel in this book is the (questionable) causal argument that there might be some vicious circle going on that originates reportedly with the Neoliberal dogma and somehow results in aggravating the problem of mass incarceration in the United States. The author remains quite fuzzy as to how this vicious circle might operate, but the implicit causality seems to be that increased trust in free markets’ efficiency leads to increased inequality (that we know already), which, following its own dynamic, may lead to more crimes. This, in turn, leads to increased feelings of insecurity, which calls for more aggressive forms of policing and punishing. The final result is mass incarceration. All of this happens without much resistance other than more crimes being perpetrated by the victims of inequalities and without much political contestation, to the great stupefaction of the author.

When the author speaks of legal despotism in the penal sphere, do we have to understand it in the limited context of “street crimes”? The current US administration has not intervened much in policing and punishing the crimes

¹ About French President Nicolas Sarkozy “That’s how he made his big ideological shift, in less time than is needed to write it. The world has changed and so has he. Henceforward, he’ll be an advocate of Statism.” (Giesbert 2011, p. 143. Our translation).

perpetrated by white collar delinquents during the Subprime crisis (Biondi 2011, Fergusson 2010, Schechter 2010). This lack of coercive action – which one could be tempted to attribute to entrenched social and financial connections between public and private sectors' elites – seems to violate the neoliberal principle that the state has a legitimate role to play when it comes to protecting property and punishing crime. This failure to intervene, however, may not be fully intentional. There might be a deficit of information and a lack of appropriate legal tools that public prosecutors may mobilize in neoliberal, deregulated contexts. Additionally, competence might be deficient: “Fraud is often a difficult crime to prosecute, and for which to obtain punitive sentences (...). If someone is mugged and robbed in the street, both the damage and the way in which it was caused are obvious for all to see. In cases where a chief executive fiddles the accounts to cover losses, how it was done and the way that that it hurts mutual fund investors are harder to grasp.” (Gapper 2009).

Another paradox that comes to mind when reading *The Illusion of Free Markets* is that the US is a champion of freedom; it promotes an image of humanitarian power committed virtually everywhere on the planet to fight tyranny and despotic violence, while its own incarcerations rate (particularly - and embarrassingly - where Hispanics and African Americans are concerned) is reportedly the highest in the developed world.

As convincing as the author's story may be, with regard to the paradox of *laissez faire* and strict policing/punishing, I think that a different tale could be told. The author begins with an economic thesis (that of the Physiocrats which transmutes itself into various adulterations of the Neoclassic economic thesis over time) and assesses its political consequences. Another approach would be to inverse the argument and start with a political thesis – that of liberalism – followed by an assessment of its economic consequences. Viewed from this perspective, the market liberalism vs. legal despotism paradox that the author unveils appears much less paradoxical and very logical indeed. The fundamental dogma of liberalism is that all men are born and remain free and equal in rights. When attempting to explore all the consequences of this precept of individual freedom, one has to resolve the problem of inter-individual domination and violence, which constitutes a major threat to freedom. To avoid having one individual's freedom threatened by another individual's violence, one option is to grant the State the “monopoly of legitimate violence” (to borrow the terms of Max Weber), hence the logical and practical link between liberalism and policing. Of course, this link is not without risks; counter powers have to be in place to avoid the State overstepping its authorized use of violence against citizens. The mass incarceration trend that the author virulently reproves may be a sign of such abuse.

The book leaves the reader wondering how this abuse should be stopped and how social discontent can be better captured and mobilized.

The author suggests that we, first, recognize that all social spaces are regulated, including the economic and penal spaces, and that we then discuss which various regulation packages might be desirable and compare their wealth (re)distributional consequences. However, if one wants to play devil's advocate, it is also possible to conclude from *The Illusion of Free Markets* that economic neoliberalism has had the undesirable effects described by the author not because these effects were inevitable², but because neoliberal principles have never really been applied in the first place. The author himself, and many others including Slavoj Žižek (about the US economy) or Peter Sloterdijk (about the European Economy) said that there is no such thing as a free market.

“Wait a minute, who is leaving everything to the market? If we look at today's American economy, how much support there is for American farmers, how much intervention, military contracts, where is there any free market? I mean, sorry, but I don't see much free market here.” (Žižek, interviewed by Chance).

“The question that many European observers are asking during the current economic crisis – “Does capitalism have a future?” – is the wrong one. In fact, we do not live in a capitalist system but under a form of semi-socialism that Europeans tactfully refer to as a “social market economy.” (Sloterdijk 2010)

Certainly, we need greater clarity of thinking as to what, if anything, labels like “freedom”, “market”, “capitalism” and “neoliberalism” really mean. But the point is that one could refute the author's claim and argue that markets should be made *really* free first; only then can we assess critically the social effects of economic liberalism. One could even take a libertarian stance and conclude that mass incarceration is the very sign that all forms of governmental intervention – including where security is concerned – is illegitimate. Interestingly, if we follow this line of thought in total contradiction with the author's standpoint, we still arrive at the same conclusion: free markets are an illusion, but for the former this illusion constitutes a utopia; for the latter, a dystopia.

² Although many neoliberals and the physiocrats before them (in particular Mercier de La Riviere) did attempt to justify inequality as natural.

As we see, the debate is far from being over and it will take many more scholars, who are willing to bend the Neoliberal “faith”, to invent alternative forms of capitalism.

At the end of the day, one way to see the issue of neoliberalism’s social effects is to consider that it all boils down to determining which of equality or freedom is the prime philosophical value upon which society should be built. An interesting follow-up question would be to ask whether national mottos such as “Liberté, Egalité, Fraternité” might be constituted of mutually compatible values. If we believe that the era of plain dualisms (nature versus culture, free versus regulated, equality versus inequality, positivist versus constructivist research etc.) is over, times are perhaps favourable for us to conceive hybrid forms of economic policies to reunite principles previously considered detached from one another.

References

- Biondi, Y. (July 29, 2009). The Governance and Disclosure of the Firm as an Enterprise Entity. CLPE Research Paper No. 21/2009. Available at SSRN: <http://ssrn.com/abstract=1440871>
- Biondi, Y. (2011). Disagreement-based trading and speculation: implications for financial regulation and economic theory. *Accounting Economics and Law*, Vol. 1, Issue 1, Article 11, pp. 1-6.
- Brivot, M. and Gendron Y. (2011) "Beyond Panopticism: On the ramifications of surveillance in a contemporary professional setting". *Accounting Organizations and Society*, Vol. 36, No. 3, pp. 135-155.
- Chance, K. (no date). On culture and other crimes: an interview with Slavoj Žižek. Exchange, online review available at: <http://ucexchange.uchicago.edu/interviews/zizek.html>
- Cheinisse, L. (1914). *Les idées politiques des physiocrates*. Paris: Gallica.
- Ferguson, C. H. (2010). “Inside Job”. A documentary film about the late-2000s financial crisis directed by Charles Ferguson and co-written with Chad Beck.
- Foucault, M. (1977). *Discipline and punish: The birth of the prison*. New York: Vintage Books.
- Foucault, M. (2004). *Sécurité, territoire, population*. Cours au Collège de France (1977-78), Paris : Gallimard/Seuil.
- Fox, J. (2009). *The myth of the rational market. A history of risk, reward and delusion on Wall Street*. New York: HarperCollins.
- Gapper, J. (2009). Sentence is necessary and rare. *Financial Times (FT.com)* July 1, 2009.

- Giesbert, F.O. (2011). *Monsieur le Président - Scènes de la vie politique (2005-2011)*. Paris: Flammarion.
- Kolhatkar, S. (2011). The Two Sides of DSK. *Bloomberg Businessweek*, No. August 15-28; pp. 58-65.
- Lyotard, J.-F. (1979). *La condition postmoderne*. Paris, France : Éditions de Minuit.
- Macintosh, N.B. (2002). *Accounting, Accountants and Accountability: Poststructuralist Positions*. London, England: Routledge.
- Miller, P., & Napier, C. (1993). Genealogies of Calculation. *Accounting, Organizations and Society*, 18 (7/8), 631-647.
- Orrell, D. (2009). *Economyths*. Mississauga: John Wiley and Sons Canada.
- Power, M. (1997). *The audit society: Rituals of verification*.
- Schechter, D. (2010). *The crime of our time*. New York: The Disinformation Publishing company Ltd.
- Sloterdijk, P. (2010). The Grasping Hand. *City Journal*. Winter 2010, Vol 20, No. 1.
- Soros, G. (2008). *The New Paradigm for Financial Markets: The Credit Crisis of 2008 and What It Means*. New York: PublicAffairs.
- Steiner, Phillippe (2003). *Physiocracy and French Pre-Classical Political Economy* in eds. Biddle, Jeff E, Davis, Jon B, & Samuels, Warren J. *A Companion to the History of Economic Thought*. Blackwell Publishing.
- Vollmer, H., A., Mennicken and A., Preda (2009). Tracking the numbers: Across accounting and finance, organizations and markets. *Accounting, Organizations and Society*, Volume 34, Issue 5, July 2009, pp. 619-637.
- Wall Street Journal (October 6, 2011). Unions lend muscle, resources to Wall St. protests.
- Zizek, S. (2009). *First as tragedy, then as farce*. London (UK): Verso.