Neoliberalism and the Crisis of Public Institutions

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Editor: Anna Yeatman

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- AND TO LIBERATE THE TALENTS AND UPLIFT THE HORIZONS OF THE AUSTRALIAN PEOPLE.

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About the Whitlam Institute’s *Human Rights & Public Life Program*

To use the words of Gough Whitlam, this program is designed to apply the intellect to human affairs—to ensure that ideas and public conversation conjure possibility and create opportunity for political community and public policy.

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Specifically, the program is oriented to intellectual enquiry of a kind that can stimulate public conversation about the urgent political questions of our time, and contribute to the development of a strategic framework for political action.

The questions that guide this program are:

» What is the idea of citizenship that best responds to the challenge of our times, and how is it to work with the idea of human rights?

» How to renew the idea of the state as the public authority? What is the basis of public authority, and in what ways should private agents be held accountable to it?

» How is government (and the different arms of government), civil society, and family/personal life to make their distinctive contributions to the vitality and integrity of public authority?

» Political community and sovereignty are national in character, even in context of the different institutional orders of global governance. The question is: How should national political communities (states) work with global governance institutions in ways that enhance the effective public capacity of both?

» How is the language of economics used as a language of political argument, and how can it be held to account as such?

This program is anchored in the practical politics of contemporary Australia as this relates to global patterns of political thought and action. It is committed to bringing political thought into connection with the challenges of a practical politics. It assumes that new problems may need new solutions but also that there are tried and tested ways of engaging in political action and of building political institutions from which we can learn. Finally, it is committed to the sovereignty of the Australian political community or state, and to enquiry as to how this sovereignty is to be practised at this time if it is to be effective.
Neoliberalism and the Crisis of Public Institutions – four essays

Editor: Anna Yeatman

Human Rights and Public Life Program, Whitlam Institute
Preface

The neoliberal way of thinking about human society in terms of market principles has become ubiquitous in contemporary modernity. It informs the common sense of elite decision making in both national and international institutions. Yet an approach to institutional design that makes market principles the primary reference for ordering relationships and conduct privileges private power and private interest at the expense of public power and the public interest. Competitive modes of human conduct are privileged at the expense of cooperative modes. What this means not just for the ethical orientation of social life but for life itself is something perhaps we begin to discover. When conduct is oriented in terms of market principles it becomes instrumental: everything, the earth, things, other creatures and human beings themselves are valued only so far as they can be turned into means of producing profit. We are sleepwalking toward catastrophe unless we are able to rethink this way of thinking and the way of being it informs.

This set of essays deals with this important topic. Each in its own way traces the destructive impact of neoliberal thinking on things public. Samuel Tschorne’s essay suggests that the neoliberal take-over of the state and of government (the system of administration of the state) has been at the expense of the rich institutional tradition of democratic constitutionalism. Anna Yeatman’s essay suggests that neoliberal thought substitutes a narrow and privatised conception of freedom for the rich conception of freedom that drove the early modern discovery of the idea of the state as the public authority. Paul du Gay’s essay proposes that the mobilisation of bias against ‘bureaucracy’, along with the focus on ‘results’, have dangerously imperilled the tradition of impartial, professional, and institutionally independent public service. Du Gay argues that the ethic of office, and ‘the duty of obedience’ that this ethic informs, are the core of public service and of the public benefits that flow from public service. Edward Nik-Khah, an expert on neoliberal economic thought, offers an elegant if chilling account of the neoliberal approach to the university. Where once it was thought that the university as an institution should be designed and governed so as to promote knowledge in the public interest, George Stigler (a key neoliberal economist of ‘the Chicago School’) argued that the university should be funded and governed by ‘top-quality leaders in the marketplace’, private corporations in other words. Knowledge should be subject to and led by market principles, a proposition that fits within a broader epistemic conception of the market as a knowledge and information processor.
Neoliberal thought is recognisable as a form of ideological thinking (in Hannah Arendt’s sense of the term) because it is organised in terms of a binary logic: either the market or the state. Yet the modern western tradition of thinking about things public has always embraced a mode of thinking that operates in terms of both/and. Defenders of things public argue that the freedoms of private belief and conduct can be secured only if there is a sovereign public authority (the state) that ensures that right prevails over might. The question is one of balance: how should the public authority balance powerful private interests and actors; and, how can a freedom of private belief and conduct ensure that a flourishing civil society holds in check any tendency for the power of the state to exceed its constitutional limits.

Papers by Du Gay, Nik-Khah and Tschorne were originally contributions to an international research workshop (Neoliberalism in Translation: a diagnosis) organised under the aegis of the Human Rights and Public Life program at the Whitlam Institute in Western Sydney University in November 2014. The paper by Yeatman is a revised version of an address she gave in Wellington NZ on 9 July 2014.

Anna Yeatman
December 2015
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Contributor biographies

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Edward Nik-Khah is an Associate Professor of Economics at Roanoke College (USA). He has completed research on interactions between the Chicago School of Economics, the pharmaceutical industry, and pharmaceutical science; the neoliberal origins of economics imperialism; the distinctive role of George Stigler as architect of the Chicago School; and the tensions emerging from economists’ assumption of a professional identity as designers of markets. His forthcoming book on the history of knowledge and information in economics (with Philip Mirowski) is entitled The Knowledge We Have Lost in Information.

Samuel Tschorne is a Professor of Public Law at Universidad Adolfo Ibáñez (Chile). His areas of research and publication extend from constitutional theory and public law to legal history, jurisprudence and political philosophy. He has worked as a legal researcher and advisor to the Chilean Presidency (División jurídica, Ministerio Secretaría General de la Presidencia) between 2004 and 2006 (Presidency of Ricardo Lagos) and as an external legal-legislative advisor to the Ministry of Education in 2009 (Michelle Bachelet’s first administration). He is currently undertaking doctoral research at the London School of Economics on British public law theory.

Anna Yeatman is a professorial fellow in the Whitlam Institute at Western Sydney University where she leads the Human Rights and Public Life program. Recent publications include (as co-editor) The Aporia of Rights: Explorations in Citizenship in the Era of Human Rights, Bloomsbury 2014.
Neoliberalism and the crisis of public law

Samuel Tschorne

London School of Economics
Neoliberalism and the crisis of public law  

1.

Crisis once more is at the centre of much theorisation in the social sciences and the humanities. The growing theoretical discussion on the subject has shown that it is a multi-faceted phenomenon, one that goes beyond its financial and economics dimensions. In order to adequately grasp the nature of the phenomenon, crisis literature has increasingly engaged with bigger questions using longer timeframes. Questions that not long ago seemed to have lost their force and urgency have come to the fore revitalised. Once again we find ourselves wondering whether capitalism structurally generates unsustainable levels of wealth concentration and extreme inequality or whether capitalism is compatible with democracy.

Wolfgang Streeck, for example, articulated a macrosociological analysis of the crisis setting it in a developmental sequence which started with the crisis of democratic capitalism in the 1970s and whose resolution has been delayed for four decades using different strategies (i.e. inflation, public borrowing, private Keynesianism, the acquisition of public debt and bank liabilities by central banks). The use and exhaustion of these different mechanisms for buying time, which successfully defused potentially destabilising social conflict, has left us today with weakened democratic states. Indeed, in this neoliberal era, democratic states seem to have no other resources to face the imperatives of the markets (and, thus, to retain their confidence or trust) than to disarticulate the welfare systems that protect their citizens from the vagaries of capitalism, sacrificing the well-being of their national population (Staatsvolk) to an international wealthy class (Marktvolk) that profits from the maximisation of shareholder and bondholder value.

But if Streeck revisited the crisis theories of the 1960s and 1970s, Nancy Fraser proposes to revise the theorisations of the crisis of the 1930s. Offering a re-reading of Polanyi’s classic The Great Transformation, she intends to provide a larger theoretical frame to bring more clearly into view also the ecological and social dimensions of the crisis. The expansion of self-regulating markets theorised and inspired by neoliberalism, she argues, has eroded the social constraints that tamed capitalism rendering it environmentally and socially unsustainable. The challenge today is to promote an emancipatory resolution of the crisis and not simply a reactionary reclaiming of previous social structures that could also be oppressive. Thus, the need to bring together not only the opposing forces of marketisation and social protection but also the struggles of

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1 This paper has greatly benefited from a discussion at the Whitlam Institute (Western Sydney University, Australia) in the context of a workshop entitled “Neoliberalism in translation—a diagnosis” (November 2014). In particular, I am deeply grateful to Kristen Rundle, Anna Yeatman, Janet McLean, Eric Sidoti, Paul Du Gay, Edward Nik-Khah and Michael Di Francesco, for their perceptive comments and questions.

2 Wolfgang Streeck, Buying Time: The Delayed Crisis of Democratic Capitalism (Verso 2014).
those emancipatory movements that flourished from the 1960s (feminism, anti-racism, anti-imperialism and so on), moving from Polanyi’s “double movement” to a “triple movement”\(^3\).

In this paper, I explore the public law dimensions of the crisis brought by the neoliberal turn and the progressive deconstruction of the social democratic state from the 1970s onwards. More generally, here I discuss how political crises have manifested in public law terms and how they have impacted the way we conceptualise public law.

2.

The late 1970s and early 1980s, the times of the crisis of the welfare state and the subsequent dawn of the neoliberal turn, were also a time of intellectual ferment in public law. It was at that time that many public lawyers in Britain (and elsewhere\(^4\)) rebelled against the constraints of a traditional legal scholarship exclusively devoted to undergraduate teaching and to the production of textbooks and commentaries about statutes and case law. In times when fundamental questions about society, economics and politics were in debate, public lawyers could not remain the only ones in the social sciences and the humanities to make no contribution\(^5\).

The problems that most concerned them were those that were characteristic of the later stages of the welfare state. The continuous expansion of state intervention into a growing number

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of aspects of social and economic life made increasingly visible the limitations that afflicted the state's planning and regulatory capacities, becoming evermore inflexible, routinised and insensitive to the social realities it affected. The 20th century expansion of the administrative state, which parliament seemed increasingly unable to adequately scrutinise, prompted a consequent growth of judicial review especially since the 1960s. This meant a considerable expansion of the judiciary's own discretion, creating the need to have a closer look into its exercise and justification. The exclusively legalistic analysis of judicial decisions became inappropriate, as this ignored relevant political and social contextual considerations that were key to make sense of the nature of the problems that judges had to decide and of the reasons really underpinning their rulings. Finally, state tools of economic management that did not translate into limitations to private rights but into benefits such as the award of grants, state aids, contracts, and so on, gave governmental institutions an increasing power and means of influence that were almost totally under the radar of traditional mechanisms of legal control.

All this seemed to fall outside the scope of the then dominant public law doctrinal approach. This generated an increasing criticism against orthodox approaches in the field, a target variously identified as legal positivism, formalism, the black-letter law or textbook tradition. The crisis of traditional public law was followed by a diversification of theoretical approaches created by methodological experimentation and by integrating intellectual developments in neighbouring disciplines, such as socio-legal studies, law and development, critical legal studies, political theory, and social theory. This new public law scholarship attempted to provide an understanding of the state and its law more attuned to the conditions of contemporary societies and, thus, which provided a descriptively and normatively more convincing frame. Most agreed that the state and its law were in crisis and in need of reform, but the point was to improve the post-war social democratic state not to disarticulate it.

To use Nonet and Selznick's at the time highly influential conceptualisation, the aspiration was to make public law more responsive, focusing on the attainment of ends rather than on fulfilling procedures, in actual competence rather than mere formal authorisation, in material rather than formal justice. This was a response to the crisis of authority and law of the 1960s and 1970s, and the demand of responsiveness was born from the extended perception "that law-making, judging, policing, and regulation were all too easily divorced from the realities of social experience and from the idea of justice itself". The revisionist social democratic project was a critique of the technocratic ideology of a top-down hierarchical bureaucracy providing for and acting over passive clients of welfare services, in order to make the state more respectful and sensitive to the pluralised forms of life and the autonomy of its citizens. The social conditions of late capitalism required a transition from the politics of redistribution to the politics of recognition and the answer was sought in the ideals of radical democracy and active citizenship, that is, in the normative conception of an open and participatory government that is responsive.

to a revitalised and inclusive civil society articulated through social movements and public opinion.

From the late 1970s an aggressive programme of reform did, indeed, take shape but it was inspired by a different diagnosis and promoted a quite different resolution. If social democrats saw the crisis as a result of the lack of participation and inclusiveness and proposed to further democratisé state and society, enhancing the competences of the state to attend to the demands of a more diverse social life, neoconservatives contended that the crisis was a consequence of an excess of democracy and an overstretched state. The “democratic upsurge” of the 1960s and the emergence of new “pressure groups” prompted a “revolution of rising expectations” which ended up creating a demand overload which the government was simply unable to satisfy. The crisis of authority of the state, they claimed, was self-inflicted. It was the post-war social democracies themselves that created the spectre of ungovernability by taking on tasks that were simply beyond the state’s governing capacity (say, promoting full employment). Moreover, a weakened overloaded state did not have the strength to impose on its population the sacrifices that were deemed necessary to recover the path to economic growth and prosperity.

This understanding of the crisis aligned perfectly with the neoliberal conception of politics. On this view the overextension of democratic politics generated inevitably inflationary and fiscal crises. Office-seeking politicians had strong incentives to offer ever increasing social protection and benefits to secure a majority in the next elections. State regulatory intervention in the economy tended to benefit the special interest of the best organised pressure groups transferring wealth to them at the cost of the general public. Put briefly, when political decision making was inappropriately extended to intervene in the economy and the operation of markets, the inevitable result was the emergence of a series of distortions and government failures (such as vote trading, logrolling, regulatory capture and so forth).

This pointed towards not only the depoliticisation of the economy, but also to the idea that markets and private firms operating under competitive conditions were necessarily more efficient than the state and public corporations at producing wealth and delivering products and services. The solution was then to make structural adjustments to the overstretched state and extend to the highest possible degree markets and markets mechanisms to promote growth, efficiency and to reduce the public deficit through privatisation, regulatory reform and contracting out. When state intervention could not be avoided, marketisation techniques should be used to secure value for money and reduce public spending.

The predominance in the subsequent decades of neoliberal policies meant the progressive dismantling of the postwar welfare state. The responses from public lawyers in Britain to these institutional transformations were varied. For some, like Paul Craig, neoliberal politics and its

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9 For a public lawyer’s point of view, see Jerry L Mashaw, Greed, Chaos, and Governance: Using Public Choice to Improve Public Law (Yale University Press 1997).
economic theory of regulation represented just another type of background political theory or ideology underpinning programmes of legal reform and interpretations of public law – from this perspective it represents a (market-based) variety of pluralism. Very early on, however, other public law scholars, notably Patrick McAuslan, saw in all this a challenge to the very intellectual and social basis of the social democratic state, due to its scepticism towards the notion of public interest itself, its cynical view of politicians and administrators, its treatment of all social movements as rent-seeking groups, its displacement of the public law values of fairness, reasonableness and participation, by efficiency and cheap government.

But the neoliberal transformation cut even deeper. As Harry Arthurs has argued, neoliberalism both in its domestic dimension (expressed in programmes of regulatory reform, privatisation and marketisation) and its international dimension (expressed in the promotion of structural adjustment and liberalisation of trade by international and transnational organisations like the OECD, WTO, IMF and the World Bank), has made visible that public law was essentially connected to democratic values and a political economy that are progressively losing force. Indeed, the most fundamental institutional condition of social democracy and its law, namely, the state itself is put into question not only by marketization and globalisation, but also by new discourses about law and politics (e.g. legal pluralism). It is at this point that the nature and extension of the crisis of public law should be considered.

3.

Carl Schmitt in *The Crisis of Parliamentary Democracy* acutely observed that the authority and vitality of political institutions depended on certain social and spiritual conditions. His disquieting suggestion was that the social and the spiritual conditions of the core institution of liberal democracies, parliaments, had disappeared as a consequence of mass democracy and party politics. The flourishing of parliamentary institutions, he argued, was premised on the belief that political questions were matters to be decided by deliberation and that parliamentary debates connected with an informed bourgeois public sphere of public minded citizens. The expansion of the franchise that brought the “masses” into the political arena and engendered modern party politics obliterated such conditions. The antagonistic class conflict articulated by labour movements and trade unions, replaced deliberation by strategic negotiation and truth by compromise between parties with irreconcilable interests.

Such changes in the nature of politics, he claimed, rendered inadequate the large deliberative assemblies and the legislative procedures of liberal democracy. Party discipline and compromises

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obtained outside parliamentary sessions and not debates decided how members of parliament voted. Moreover, parliaments flourished in times of the *laissez faire* state because they are designed to deliberate on matters of principle and to decide enacting general, abstract and permanent norms. In the times of the interventionist state, however, what is needed are concrete measures that are sector specific and changeable, that is, administrative regulations rather than legislative laws. The growth of the delegation of powers to the executive was for Schmitt a sign that the transition to the executive-led plebiscitary democracy that he envisioned was already on its way.

The political and economic crises of the 1930s seemed to deprive liberalism of what vitality it had left. Schmitt's sombre picture of European liberal democracy seemed to be confirmed by the rise of communism and fascism. What he did not envisage was the establishment of stable social democracies with mixed economies based upon the new social and political importance of organised labour. Economically, the working classes were the basis of mass production and Keynesian demand management while at the same their increasing income provided the Fordist economy with the mass consumers it needed. Politically, working classes provided the social constituency for social democratic parties providing them with the strength to both keep a capitalist economy and protect its population from the vagaries of the market. The crisis of bourgeois liberal democracy was defused by the enactment by parliament of extensive social legislation and the creation of an extensive administrative state to implement it\(^\text{14}\). The achievements of the liberal democratic *Rechtsstaat* were preserved through transforming it into a *Sozialstaat*.

The golden age of democratic capitalism was also the golden age of public law and its imaginary. The constitutional imagination is the product of three centuries of political conflict to domesticate and democratise the Leviathan, that is, the powerful modern state that emerged with the consolidation of European absolute monarchies during the early Modern period. Constitutionalism animated the political struggles to transform the absolutist state in three dimensions converting it into a Social Democratic *Rechtsstaat*, dimensions that were subjectively articulated in the three elements of citizenship analysed by TH Marshall (i.e. civil, political and social)\(^\text{15}\).

Constitutionalism was born out of the crisis of the *Ancien Régime* and it rebelled against the forms of arbitrary power and unjustified privilege that characterised it, transforming old monarchical states and colonies into constitutional monarchies and republics, that is to states that respected their citizens’ liberties as protected by civil rights and independent courts. This was followed by the democratisation of the state through the development of parliaments, local democracy and the expansion of political rights. The expansion of the franchise, in turn, brought the crisis of bourgeois liberal democracy, replacing it with a social democracy that endowed its citizens with social rights guaranteed by a welfare system. Constitutionalism can be seen,


therefore, as a tridimensional political achievement. To the individual it meant the recognition of an evermore substantive or contentful citizenship that protected not only fundamental liberties and political rights, but also social rights which guaranteed to all citizens the economic and material conditions necessary to enjoy such rights and liberties. Such citizenship not only protected individual autonomy, it also supposed a practice of collective self-determination through democratic representative institutions and political parties.\(^\text{16}\)

This developmental path changed with the crisis of post-war consensus in the 1970s and the preeminence of neoliberal ideas. Since then the social democratic Rechtsstaat and its distinctive form of citizenship have suffered a process of continuous deterioration. Structural reforms proposed by domestic government and international economic institutions have supposed not only the continuous rolling back of the state but have effectively deprived it of the capacity to manage the economy and secure the welfare of its citizens. First, Keynesian demand management was discarded and now states are increasingly exposed to the global economy and, thereby, subjected to continuous pressures from the markets. To attract foreign investment and retain the confidence of financial markets, states have had to reduce inflation, taxation, public spending and public debts, to diminish regulations and make flexible the labour market, to privatise public assets and marketise public services.\(^\text{17}\)

In times of a permanent politics of austerity and increasing depoliticisation of economic questions, the increased power of non-majoritarian domestic and transnational institutions (such as central banks, constitutional courts, independent regulatory agencies) contrasts with the progressive loss of prestige, resources and legitimacy of the key institutions of social democracy (parliaments, local authorities, political parties, public services). Moreover, the diminishing size of the state and the demoralisation of the civil service have effectively deprived the state of the institutions, personnel and expertise necessary to even aspire to regain steering capacities in respect to markets and the national economy. Inevitably the content of citizenship becomes ever thinner as the institutional conditions of political and social rights are eroded and political participation and party membership decline to worrying levels. This scenario explains why the crucial elements in the conceptual apparatus we use to make sense of our constitutional arrangements and the administrative state are losing their descriptive and explanatory force. Concepts like state sovereignty, political representation, public service and many others, are being increasingly deprived of vitality, because the institutional framework that incarnates these concepts has lost a great part of its previous energy. As Colin Crouch would put it, in this post-democratic times all the distinctive institutions of democracy remain but the energy to drive social, economic and political change has moved elsewhere, to transnational corporations, financial markets, and a series of other transnational and international institutions, many of them private or non-governmental.\(^\text{18}\)

\(^{16}\) On this, Jürgen Habermas, Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy (Polity Press 2008) 66–193.

\(^{17}\) Streeck (n 2).

\(^{18}\) Crouch, Post-Democracy (n 14).
These changes are reflected in public law thought as constitutional theory loses its attractiveness and force. These are the times for governance and regulatory theory, which displace the state from the centre and see it as only one of many interdependent and yet autonomous actors in a policentric regulatory space\textsuperscript{19}. Now that to speak about the constitution beyond the state is so fashionable, one needs to consider whether what we are doing without is not only a variety of democracy, but democracy as such. All that seems to remain of the good and old modern public law is the constitution-lite of universal human rights protected by national and transnational courts, and a global administrative law that is more attuned to the necessities of a globalised economy than to the promises of the social democratic state\textsuperscript{20}.

In past centuries, modern public law has evolved thanks to crises. The present crisis, however, seems to have put an end to the journey of constitutionalism in favour of a neoliberal order that makes the states and its law the handmaiden of markets and firms. The more optimistic, like Habermas, believe that we are moving led by the EU towards the political constitution of the world order or to some other form of postnational democracy\textsuperscript{21}. For the less optimistic, neoliberalism is still remaking the world to its image, in spite of all its costs for the environment, social equality and democracy.

\textsuperscript{19} So much so, indeed, that the pace of conceptual and theoretical innovation makes a dizzying ride for anyone trying to keep up with the speed of transitions from de-regulation, re-regulation, self-regulation, co-regulation, meta-regulation, smart regulation, risk-regulation, responsive regulation, post-regulation and the multiple theoretical lenses used from economic theory, to network theory, neo-corporatism, steering theory and system theory. For an overview, see Robert Baldwin, Martin Cave and Martin Lodge, ‘Introduction: Regulation – The Field and the Developing Agenda’ in Robert Baldwin, Martin Cave and Martin Lodge (eds), The Oxford handbook of regulation (Oxford University Press 2012). A discussion of how the enlarged scope and methodological diversity in regulatory theory has strained the coherence of its conceptual framework can be found in Julia Black, ‘Critical Reflections on Regulation’ (2002) 27 Australian Journal of Legal Philosophy 1; Julia Black, ‘Decentring Regulation: Understanding the Role of Regulation and Self-Regulation in a “Post-Regulatory” World’ (2001) 54 Current Legal Problems 103.


\textsuperscript{21} Jürgen Habermas, The Crisis of the European Union: A Response (Ciaran Cronin tr, Polity 2012). A critique of Habermas’ optimism can be found in Streeck (n 2) 177–89. Habermas critical reaction to Streek’s stance regarding the European project and its problems can be found in ‘Democracy or Capitalism? On the Abject Spectacle of a Capitalistic World Society Fragmented along National Lines’, The Lure of Technocracy (Polity Press, forthcoming 2015). See also Streek’s response Wolfgang Streek, ‘Small-State Nostalgia? The Currency Union, Germany, and Europe: A Reply to Jürgen Habermas’ 21 Constellations 213.
Freedom and the question of institutional design

Anna Yeatman

Whitlam Institute within Western Sydney University
Introduction

Modern society is shaped by what the philosopher Hegel calls the principle of subjective freedom. This principle means that individuals are able to claim their lives as their own and to engage in what Donald Winnicott (1971) calls creative living. Their lives and identities are no longer dictated by the needs of the group; rather the collective nature of social existence has to be rethought and redesigned so as to be responsive to a freedom for individuality.

The principle of subjective freedom represents a fundamental challenge for traditional forms of authority. It is no longer possible to take authority on trust: instead both the rationale for authority and its form have to be discovered by individuals using their ability to think for themselves. This has two implications. Firstly, authority cannot be embedded in inherited tradition – instead, it has to be constructed in accordance with explicit and rationally justified argument concerning the rationale for authority. Authority thus becomes an explicit project for intentional human artifice. Secondly, the rationale for and form of authority have to be conceived in terms of how they serve the principle of subjective freedom.

The question of institutional design concerns precisely how authority is to be made an explicit project for intentional human artifice. It requires us to think about what principles should shape and order a modern society. These questions are at the heart of politics in its modern sense.

In early modern Western political and juristic thought the question of how can authority serve freedom centred on the idea of the state. It is the role of the state to provide a public and lawful ordering of social life, as well as to provide a jurisdictional container for society organised as a self-determining political community. This idea of the state has been the foundation of the tradition of modern democratic constitutionalism.

The state has subjective freedom as its ground in three respects. Firstly, it is important that individuals themselves come to understand why and how the state serves their freedom because then they willingly accept its authority over their conduct and relationships. Secondly, the basis of the authority of the state is that it secures the standing of the individuals as free beings. Thirdly, the exercise of the authority of the state by public agencies and public officials has to be politically accountable to the individuals whose freedom they serve.

Over the last half century or so, this conception of institutional design has come under sustained attack by neoliberal thinkers. They propose an alternative approach to the question of what form of authority serves freedom. They refuse the idea that freedom requires an artificially constructed political, lawful and public mode of being together because they posit freedom as an already and naturally existent mode of being. Freedom is expressed in the spontaneous order (as Hayek puts it) of market society. Such thinkers are equivocal regarding the need for the state. On the one hand, they reject any idea of the state ‘interfering’ with the spontaneous order. On the other hand, they need the authority of the state in order to impose the institutional design of
market society. In making it seem that the state simply recognises a market society that already exists, neoliberal thinkers deny what it is that they actually do which is to have the state *construct* (in law and policy) the specific market ordering of relationships that they champion. There is no such thing as the market economy in general: it exists only as historically specific forms of the market economy that are not necessarily compatible with each other. These forms are politically contestable. For instance, the form of the market economy that enables small business to thrive is different from that which enables the multinational corporation to thrive. In denying the political artifice of market design, neoliberal thinkers deliberately sustain the fiction that ‘the market economy’ is a natural and spontaneous order that must be placed beyond politics. It is this rhetorical move that justifies the subjection of the inherently political nature of the state to supposedly impersonal economic forces.

In the pursuit of this approach, neoliberalism centralises the power of the state in the executive branch of government and correlates weakens the other branches of government: it privatises government services, thus handing them over to privately interested agents where the contract between the government purchasing agency and the private contractor falls outside the political process because of its commercial in-confidence character; it strips the public service of its traditional role of providing dispassionate, professional and non-partisan policy advice; and it enables powerful private interests to get access to executive branch decision makers in ways that lie beyond the usual channels of political accountability. The idea of public office falls into desuetude in a mode of thought where private interest is said to motivate action. While the formal trappings of democratic institutions are maintained, the citizen public finds itself increasingly locked out of an informal, secret and insider-driven decision-making process. A new ‘constitutionalism’, that of free trade agreements and competition policy, comes to set the rules for how the authority of the state is used to marketise both society and subjectivity. These rules distribute power to powerful, concentrated units of private capital (the modern corporation), and away from the state thought of as both the public authority and the political community.

The idea of the state

The development of a modern idea of authority that is justified in terms of how it serves subjective freedom first came about in early modern political and juristic thought. Offering a modern conception of natural law, these thinkers begin from the idea that, in principle, human beings are both free and equal, or at least, they should be. If they are to enjoy such freedom and equality then authority has to be so shaped and instituted that it makes this possible.

Power has to be something other than domination (including as this does oppression and exploitation) because when power is domination there are some who assert their freedom of action at the expense of the freedom of others. Also power cannot be reduced to private power because then might makes right. The other way of putting this is to propose that authority has
to be something other than domination and the assertion of private power. The question of how authority can be something other than domination and private power shaped the ideas and action of those who built the tradition of constitutional democracy in western societies from the 16th to the 20th centuries.

As an innovation in institutional design, the idea of the state has two origins. The first origin is discussed by Blandine Kriegel when she presents the political thought of the French jurists of the sixteenth century who offered a critique of feudal authority: ‘Brought to power either by conquest or by plunder, feudalism is regarded with contempt, because it reduces law to force, and justice to victory in war (Kriegel 1995, 23).’ In addition, these thinkers ‘reject the feudal relation of dependency and criticize servitude generally (Kriegel 1995, 24).’ They ask three fundamentally political questions: 1. Must subjects be treated as slaves? 2. Must human beings be treated as things? 3. Do political relationships derive from property relationships? (Kriegel 1995, 25-26) The rejection of feudalism turns on the objection against what the 16th century jurist Loyseau calls ‘power by means of property’ (Loyseau cit Kriegel 1995, 26). Kriegel comments: the fundamental objection against feudalism is that ‘it confuses public relationships among individuals with the private relationship between a human being and a thing, treating persons as goods (Kriegel 1995, 26).’ The jurists seek to undo the confusion between power and property ‘and to secure the autonomy of both the governance of human beings and the possession of things (Kriegel 1995, 26).’

If authority is to be something other than domination and private power, these jurists propose that it has to take the form of the state or sovereign power. Blandine Kriegel explains that sovereignty must be independent in relation to foreign powers because otherwise it might become the vehicle of external domination, it has to establish an internal coherence for its jurisdiction thought of as ‘a single body politic’ (Kriegel 1995, 29-30), and above all it has be subject to law, for ‘in the absence of limitation, sovereignty would be no different from feudal domination’ (Kriegel 1995, 31).

The second origin of the idea of the state is shaped by the experience of civil conflict arising out of religious differences. Thinkers such as Bodin and Hobbes develop the idea that the state should be conceived as a political and sovereign authority that imposes a civil peace whereby people can enjoy personal security including freedom to profess and do as they wish as long as they do not disturb the peace. The modern state cannot be associated with any one particular profession of faith because this would be to (mis) use the authority of the state to establish a religious form of tyranny, and to violate the principle of subjective freedom: “The modern state repudiated the project of saving society and of bringing about “emancipation”; it left to the individual and to the church the task of salvation and concerned itself with justice alone (Kriegel 1995, 55).”

The state has to instantiate a public form of power, that is a form of power that is oriented to the integrity and good of all considered both as a collectivity (the commonwealth or political
society) and as the distinct individuals this comprises. Private power and private interest can oper-ate so long as they are contained within a public ordering of relationships that upholds the status of all individuals as free beings. This means that private power and private interest cannot be permitted to corrupt the public authority.

Sovereign power or the state is not the same thing as government. Martin Loughlin (2003, 2010) distin-guishes between the state and ‘the activity of government’. Thus government concerns how sovereignty is ‘discharged and exercised in administering the affairs of state (Lee 2013, 410).’ The administration of these affairs is expressed as a system of public office that is lawfully constituted, where those who serve public office are obliged to serve the public in a legally accountable way.

Public office is both the expression and the medium of authority. For this to be so, those who are in public office have to comport themselves so that they serve the public rather than any private interest or personal cause. Specifically, office should not be an object of private property (see Lee 2013). Blandine Kriegel (1995, 26) cites the sixteenth century French jurist Loyseau on this point: ‘Power is common to feudal lordships and to public offices, but property distinguishes lordships from public offices; the power of the latter derives from the functioning of the office or the exercise of authority, whereas that of the former derives from a property right.’

Until the nineteenth century, the idea of the state as the public authority and public container for social life was understood in such a way that presupposed that the units of social organisation were patriarchal households. The household combined familial relationships of marriage and parenting with those of economic production and education. The head of the household was a domestic governor who was responsible for the material and spiritual welfare of those who came under his jurisdiction. He represented the household in the world of public affairs, and thus, under the moral economy of the patrimonial household, the right to vote was limited to men of property. With industrialization the economy shifted beyond the household into the semi-public space of a social sphere. Employees came to be located in this space rather than within the patriarchal jurisdiction of a household. As household functions progressively contracted over time, domestic life increasingly centred on familial relationships that were now interpreted as relationships that served the nurture and development of individual personality. The rise of the social also involved the professionalization of education, health, and welfare, their emergence as distinct functional spheres that required dedicated and trained professionals to serve them. With this, a new complementary relationship between these professionals and families developed.

The rise of the social meant that the state had to assume oversight of all that was located now within ‘society’ as distinct from the patriarchal household. To be sure the logic of early modern political thought was to place the patriarchal household within not outside the jurisdiction of the state. Early modern political thinkers generally agreed that the patriarchal head of the household was not entitled to that aspect of the Roman legal doctrine of patria potestas that gave him power of life and death over his dependants. With the rise of the social the employment relationship
now came directly under the jurisdiction of the state: progressively, the state assumed responsibility for ensuring that employer prerogative was exercised in a way that did not harm, exploit, or oppress employees. Increasingly from the end of the nineteenth century onwards, the state also called into question patriarchal power in relation to women and children.

The rise of the social also exposed an entire set of social problems. These problems had to be publicly managed and contained if they were not to get out of hand. They were problems associated with a new capitalist and industrial market economy: periods of high unemployment especially but not only associated with structural change in economic production; chronic poverty and an under-class; urban slums and associated public health issues; and lack of adequate access to education, health, legal advice, and housing for those who lacked the resources to pay for these services in a private market.

The late nineteenth and early twentieth century political philosophies of social liberalism and social democracy represented a rethinking of the role and responsibility of the state in the context of the rise of the social (see Yeatman 2015). These ideologies offered an idea of personhood that fitted the post-patriarchal era of the rise of the social, and their champions embraced the democratization of the franchise (universal male suffrage followed by the vote for women), the right of workers to collectively organise in trade unions, children’s rights, feminism, and the political representation of labour. These political philosophies also championed the idea of basic needs provision: basic needs were those that had to be met before the individual could practically enact the status of a free subject or person. It was such needs provision that made it possible for individuals to be both personally secure and to enjoy an equality of opportunity to develop as individuals free to discover their talents and gifts. Such needs were thought to include access to an essential minimum of schooling, municipal sanitation and related public health measures, primary health and hospital services, policing and public order, public housing for those who could not afford private housing, legal aid for those who could not afford to hire their own lawyers, and public utilities (water, power, and telecommunications). Basic needs provision by the state clearly had to be funded, and this was the justification for a progressive taxation system.

The rise of the social and the expansion of the state that it provoked represented a fundamental rejection of the patrimonial form of private property, and of the interpretation of freedom that it invited—the freedom of the private property owner to do as he will within the limits of the law even though the private jurisdiction of his will includes other people as his employees and dependants. Instead, owners of private property and capital were now expected to assume a socially aware and publicly responsible comportment—to accept their obligations as employers, as owners of taxable wealth and income, as users of natural resources and land, and as beneficiaries of state investment in the education and skilling of their employees.

The idea of the state and its evolution into the welfare state of the twentieth century attracted bitter and organised opposition. The attack came in the name of freedom, but this time it is
not the freedom of all persons, each entitled to the status of personhood, to personal security, and to equality of opportunity, but the freedom of private property. The argument is that social liberalism and social democracy offer a conception of the role of the state that interferes with property right and with the freedom that capitalist entrepreneurs need if they are to engage in productive investment of kinds that ultimately benefit everyone. In this argument we find a combination of an interpretation of freedom as a natural right of property ownership and the proposition that a market economy generates more wealth if it is not interfered with by non-economic and political considerations. An alternative role for the state is proposed to that offered by the socially liberal and social democratic tradition of democratic constitutionalism: the state’s role is to offer security for private property, and, to provide the order of rules that are necessary for a market economy to function optimally.

‘Market thinking’: the neoliberal approach to the state

Neoliberalism is a doctrine that was developed by the Austrian economists, Ludwig von Mises and his colleague F.A. Hayek in the 1920s and 1930s, and that later became identified with the Chicago School of Economics from the 1950s onwards. The term ‘neoliberalism’ became current in the 1930s (Plehwe 2009, 12). In 1938 at a conference in Paris celebrating Walter Lippmann’s advocacy of ‘the superiority of the market economy over state intervention (Plehwe 2009, 13),’ the term neoliberalism was preferred over other alternatives in designating the following:

» the priority of the price mechanism,

» the free enterprise,

» the system of competition, and

» a strong and impartial state (Plehwe 2009, 14).

If neoliberalism began in an historical epoch when the welfare state was ascendant, by the time of the 1970s the tide was turning in its favour. By the mid-to-late 1980s neoliberal doctrine began to set the agenda for how the role of the state and the work of government were to be thought about.

After the Second World War, neoliberalism became a transnational and transdisciplinary force with the creation of the Mont Pèlerin Society (MPS) in 1947. It formed an organised and networked ‘epistemic community’ that aimed to change both knowledge and opinion within influential elites. All that the members of this community needed to share was ‘the desire to learn how to effectively oppose what they summarily described as collectivism and socialism and to develop an agenda diverging from classical liberalism (Plehwe 2009, 6).’ Their rejection of classical liberalism or laissez-faire concerned the role of the state. Instead of the laissez-faire
doctrine of the state leaving the market alone, neoliberals embrace a strong state that uses its authority and institutional resources to impose a market design on society.

Neoliberal thought is actually a political philosophy that, paradoxically, takes the form of economic thought because its intention is to make market thinking the basis of public decisions. In order to make this strange proposition seem sensible, neoliberal thinkers suggest that market society is the natural state of humankind, and that this is demonstrated in how the laws of evolution work (Mirowski 2013, 55).

Philip Mirowski emphasises that, while neoliberal thinkers make it seem that the institutional design of market society is a simple translation of the natural state of things into an institutional formation, in fact they are entirely aware that the conditions for the existence of market society have to be constructed, and ‘will not come about “naturally” in the absence of concerted political effort and organization (Mirowski 2013, 53)’. He sees this as the core ‘double-truth’ of neoliberal doctrine (Mirowski 2013, 70–83), where the representation of market society as a spontaneous order is pitched to the punters while, within the tent of the doctrine's initiates, it is fully understood that the state has to be both a strong state, and to be re-engineered in order to impose neoliberal institutional design. Thus, when asked to justify their project, neoliberals can say that all they are doing is to free up market action from what is represented as forms of public regulation that are said to inhibit it. The shorthand way of selling this story line for popular consumption is to justify policy in what ‘the economy’ needs.

Neoliberal political doctrine presents in the guise of economic language that justifies an ‘economics imperialism’ (see Nik-Khah and Van Horn 2012). The notion that society should be ordered and organised so that it functions like a market justifies the construction of economics as the master science, and its invasion of the territory of the social sciences, political philosophy, and natural sciences such as evolutionary and neuroscience, while knowledge disciplines that cannot be colonised in this way are marginalised.

The master value that is used to justify neoliberal institutional design is ‘freedom’. Philip Mirowski (2009, 448) quotes James Buchanan's presidential address to the MPS in 1984: ‘Professionally, economics has dominated the membership of the Society from its founding, but the whole thrust of the Society, as initially expressed in its founding documents, has been toward elaborating philosophical ideas without which a free society cannot exist. That is to say, political philosophy is what this Society has been, and ought to be all about.’

However, this is a peculiar idea of freedom. Against the rich, inclusive, and coherent idea of freedom that centres on the freedom to be personally secure so that each can become a centre of self-activity, free to claim one’s life and body as one’s own, as well as free to assume one’s own voice in relationships and social organisation, the neoliberal idea is one of freedom to engage in private enterprise and investment, to own private property, to engage in contractual exchange, and to respond to economic incentives and disincentives. With this last freedom—freedom of
the actor to respond to incentives and disincentives—neoliberalism offers a theory of action that encompasses everyone (well almost everyone, babies and children do not readily fit into this conception of personhood), and that is reconcilable with the situation in which economists design the institutions that embody the right kinds of incentives and disincentives in order to elicit the right kind of action from individuals.

Against both the early modern idea of political right and against the late nineteenth and twentieth century ideologies of social liberalism and social democracy, neoliberalism cuts the idea of freedom away from its historical and conceptual association with equality and fraternity. It explicitly justifies inequality, and rejects all forms of state intervention in the name of equality. It also rejects the idea of citizenship as implying both collective responsibility for the self-determination of a political community/society, and an equality of entitlement to education and support for being an individual citizen who is capable of self-responsible action, who understands and accepts civic obligation, and who seeks to contribute to the quality of life that is available in this political society.

Neoliberal ideologues intentionally conflate social liberalism and social democracy with totalitarian communism, the better to obscure the distinct political tradition of the former, and to tar it with the brush of the latter.1 This indicates that the real target of neoliberalism is the form of political democracy associated with the social liberal and social democratic era of the welfare state and its late nineteenth century foundations. As Philip Mirowski (2009, 426) points out, neoliberalism developed after WWII as ‘the major rival of welfare state capitalism and socialist planning.’ The deliberate nature of this project is in large part called out by the equally deliberate project of institutional design that neoliberalism set out to destroy: a public collectivism that involves the use of the state for the provision of public welfare and for ‘public interest’ intervention and regulation with regard to the market economy. Neoliberalism belongs to the late modern era in which a strong interventionist state is required for the management of the social. In this case, state management of the social is de-politicized and given over to market design. In its character as a ‘negative socialism’, as Mike Gane and others point out, ‘[i]n theory, and in practice, neo-liberalism inserts the market principles of competition and enterprise at every conceivable site, extending not contracting the sphere of intervention of the state (Gane 2009, 21).’

While neoliberal thought is protean, historically dynamic, adaptive to opportunity, and informed by different intellectual strands (Mirowski 2013, 52), it is also a distinctive worldview that has a number of components. The first component is the importance of re-engineering the state to

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1 I am reminded of a recent interview with David Gonski by Geraldine Doogue on ABC Radio National (‘Saturday Extra’) where, in answer to a question about the contemporary relevance of a socialist politics in the context of his un-nuanced defence of capitalism, he rejected this out of hand suggesting we most certainly don’t want to be like North Korea! http://www.abc.net.au/radionational/programs/saturdayextra/david-gonski/6498706
establish the institutional framework of a market society, of what Hayek calls a competitive order.\textsuperscript{2} Neoliberal institutional design centres on market design, and on a particular conception of the rule of law as the legal order that secures market-oriented expectations of private agents. Here the core modern value of freedom is reinterpreted to fit the reduction of human action to market action as expressed in the first of the ten aims in the draft statement of the MPS April 7 1947: ‘Individual freedom can be preserved only in a society in which an effective competitive market is the main agency for the direction of economic activity.’ In the fifth aim of this draft statement we get a clear statement of the implications of this tenet for institutional design: ‘The preservation of an effective competitive order depends upon a proper legal and institutional framework. The existing framework must be considerably modified to make the operation of competition more efficient and beneficial (from Plehwe's 2009, 22-23 reproduction of the 'Draft Statement of Aims, April 7, 1947').’

The second component is the rejection of what neoliberals call a ‘metaphysical’ conception of the state. Even though they use the authority of the state to impose their market design on society, neoliberals distance themselves from the tradition of thinking about the state that begins in early modern political thought and centres on political right. Hayek expressly argues that ‘it does not make for clarity to drag in the term “state” where “government” is quite sufficient (Hayek 2013, 46).’ Hayek argues that the role of government is to provide a lawful order for rules of conduct that are already immanent within a spontaneous market order. Specifically that: ‘This particular function of government is something like the maintenance squad of a factory, its object being not to produce any particular services or products to be consumed by the citizens, but rather to see that the mechanism which regulates the production of those goods and services is kept in working order (Hayek 2013, 46).’

The third component is the repression of the question of how power might be something other than domination. As Rob Van Horn and Philip Mirowski (2009, 162) put it (specifically with regard to the Chicago School of Economics) ‘[t]he reverse side of flattening the state/market distinction was a repression of overt considerations of power, both within economics and in neoliberal theory.’ For the German Ordoliberal economic theorists, a competitive market order could work only if the state used its power to design this order to check the formation of monopolies and

\textsuperscript{2} Hayek was the key figure in the establishment of the Mont Pelèrin Society, and in laying the ‘essential institutional foundations for the development of the postwar Chicago School’ of neoliberal economics (Nik-Khah and Van Horn 2012, 263). Nik-Khah and Van Horn explain how Hayek understood his project and its difference from nineteenth century laissez-faire: ‘Hayek, who positioned himself as a passionate opponent of laissez-faire liberalism in The Road to Serfdom, championed the creation of an institutional framework, or what Hayek later called a 'competitive order,' so that effective competition would flourish. Hayek claimed that no-one had ever conducted an in-depth study of the competitive order and attributed the failure of nineteenth century liberalism to the fact that liberals failed to go beyond the principle of laissez-faire liberalism and plan the legal foundations of competition. Hayek suggested that the task for the future would be to succeed where nineteenth century liberals failed: twentieth century liberals would need to thoroughly investigate and understand the competitive order (Nik-Khan and Van Horn 2012, 263-4).'}
However these phenomena are not a problem for neoliberal economic thinkers. Neoliberal thinkers justify the power of the large corporation because it is viewed as efficient. Van Horn and Mirowski (2009, 163) again: ‘the only market actor accused of misusing power was the trade union, which was uniformly treated as illegitimate, whereas any other instance of market power, as in the case of monopoly or oligopoly, was either treated as harmless and temporary or attributed to some nefarious state policy.’ By the same token, neoliberal thinkers have no difficulty accepting a strong state where constitutional constraints on the power of the executive are either weak or non-existent as long as this power is used for neoliberal ends. Mirowski (2009, 443-6; and 2013) emphasizes that neoliberals do not believe in democracy. He cites Hayek’s argument that ‘[l]iberalism and democracy, although compatible, are not the same,’ and that ‘an authoritarian government may act on liberal principles (Hayek cit Mirowski 2009, 443).’ For Hayek and for Milton Friedman, in Hayek’s words, ‘[in] demanding unlimited power of the majority, [democracies] become essentially anti-liberal (Hayek cit Mirowski 2009, 443).’

The fourth component tenet is the elaboration of economic action to become the prototype for all human action. This justifies a monistic rather than a pluralistic conception of social life in contrast to social liberalism and social democracy. These historically entwined political philosophies championed the idea of human flourishing as this was best served by distinct spheres of human activity, where one sphere was not permitted to colonise another, and where the role of the state was to provide a public framework that safeguarded the (relative) autonomy of each sphere. Thus home and family life were to be safeguarded against the intrusion of market-economic values (instrumentalism, competition, maximising private advantage), and the rich diversity of the voluntary associations of civil society was to be safeguarded against both the tendency of the government of the day and powerful market interests to use them for their own purposes. Against such liberal pluralism, neoliberal ‘market thinking’ offers its own version of a totalitarian creed that centres on the subjection of all human action to an impersonal market mechanism. In practical terms, the reduction of human action to economic action justifies the adoption of ‘competition policy’ where all erstwhile publicly funded services such as education, health and welfare services are redesigned as market-based services. Not only do the service providers and professionals have to shift to a business model where the paramount goal is efficiency but service users (formerly students, patients, and clients) are redefined as business customers whose ‘choice’ to use a service in question (e.g. a general practitioner who provides primary health care) is guided by ‘a price signal’ (the price the service sets for its service in a

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3 Ordoliberal thinkers argued that society needs both a ‘political’ and an ‘economic’ constitution. As to the latter, ‘the economic constitution should construct an economy with “complete” competition where no firm would possess the power to coerce another firm. Like … classical liberals, ordoliberals feared governmental and nongovernmental concentrations of power. They were convinced that Nazi Germany emerged as a result of the misuse and abuse of political and economic power, which crushed liberalism. Hence, under ordoliberalism, the legislature “made” the law; the executive had virtually no political and economic power; and the judiciary ensured that policy implemented by the legislature was consistent with the economic constitution (Van Horn 2009, 210).’
competitive service market). The assumption is that if the customer does not wish to pay the price of the service, it is because they do not value it sufficiently.

The fifth component is the proposition that, instead of a mixed economy where public needs provision balances market-based provision for wants, there are no needs, only wants. Neoliberal doctrine refuses the social liberal and social democratic idea of the mixed economy. The idea of needs provision integrates a conception of basic needs that all people share with a conception of how an equality of access to needs provision must be on offer if people are to enjoy equal standing as persons or free subjects. Both of these conceptions converge in the argument that there should be state provision of education, health, and social security where access to these systems of need provision is not contingent on the ability to pay for these services. Access to basic services has to be guaranteed by the state even as the state accepts that where people have sufficient money to make private arrangements (private schools for example) they should be free to do so as long as such freedom does not destabilise the public system of needs provision. People need also public institutional protection against how powerful and wealthy private interests use formal freedom of contract to force unfair and inequitable conditions of exchange onto individual consumers and employees. Thus social liberal and social democratic ideologies proposed that market-based class inequality has to be checked and balanced by publicly resourced equality of standing as a person. By refusing the idea of human needs that must be met if individuals are to enjoy the status of the person, neoliberal doctrine essentially dismisses the conception of personhood as a public standing or status that has to be secured by the state. Thus, in championing a ‘wants only’ conception of the human agent as a free being, neoliberal doctrine justifies the abandonment of this idea of balance between public and private. Furthermore this justifies also the abandonment of the discourse of citizenship: actors become investors, consumers, customers, and entrepreneurs, not citizens. Mirowski (2013, 58) suggests that here democracy is turned into an economic phenomenon: in the economic theory of democracy, [i]n its most advanced manifestation, there is no separate content of the notion of citizenship other than as customer of state services.’

The sixth component is a conception of human agency as essentially commercial: human beings are said to be motivated in terms of financial incentives and disincentives, and thus it makes sense to design an institutional environment that calls out patterns of human conduct on these terms. Mirowski (2013, 59) makes this point starkly: neoliberalism revises what it means to be a human person. It no longer has anything to do with human rights, or with being a producer. Rather the person or individual is dissolved into ‘an arbitrary bundle of “investments,” skill sets, temporary alliances…and fungible body parts.’ There is no self to be preserved as in the language of early modern political thought; there is no sense of self that is to be cultivated as a subject capable of thinking for herself through education;⁴ and there is no self that is the centre of a rich subjective life that can become both reflexive and integrated as in twentieth century post-Freudian

⁴ Mirowski (2013, 61): ‘It follows from the human capital concept that education is a consumer good, not a life-transforming experience.’
Freedom and the Question of Institutional Design

Psychoanalysis and the therapeutic services it informed. Andrew Dean suggests that ‘market thinking’ has become so ubiquitous ‘as to be invisible’: ‘Incentives, a term which includes both rewards and penalties to perform or not perform some action, are everywhere in today’s political and business cultures (Dean 2015, 27).’ Incentive-based patterns of conduct invite a privately interested performance calculus where the ultimate inducement is to make sure that you are on the right side of the divide between those who make it in the market economy, and those who do not. Neoliberals refuse the relevance of class analysis: ‘everyone is middle class now’ is the mantra of a doctrine that is invested in denying class division between the increasingly wealthy few, and the vast majority whose real wages and salaries are stagnant or declining if indeed they have employment at all. Everyone is middle class because each individual is free to respond to price signals, to work hard, to take entrepreneurial risks, and to invest in accumulating different kinds of capital. Poverty is redescribed in terms of personal failure to respond appropriately to the opportunities for market success that everyone enjoys at least in principle, and it becomes legitimate to redesign welfare (public income support) in terms of incentives to enter employment (even if it is poorly paid, temporary, and a dead-end), and disincentives to stay on welfare. As Mirowski (2013, 130) puts it the poor are the detritus of the market. Contrary to the welfare state where the idea of people being beggars or homeless was anathema, in the neoliberal state those who have seemingly refused market-based opportunities, or who have been foolish enough to engage in crime thought of as ‘inefficient attempts to circumvent the market’ (Mirowski 2013, 66), essentially get what they deserve even if this is utter destitution or incarceration (which is also designed on the incentives/disincentives model of human conduct). Without a public economy of needs provision, it takes little to tip the balance for someone from relative success within the everyday world of neoliberal wants provision to dereliction, and fear of such a fate motivates the increasing willingness of people in employment to accept longer hours, worse conditions, poorer pay, and unpaid internships).

The seventh component is the rejection of public planning which requires a sense of history, an ability to live between past and future (as Hannah Arendt put it 1977, 9-14). Here time is not the abstraction of mathematical time, but rather historical time, where the public collective ‘we’ has to ask the question of how do we build on past achievements and meet future challenges. Early modern political thinkers emphasise the political arts of thinking that are expressed in prudence and rhetoric, while modern democratic thinkers emphasise a public discursive process within which opinion can be voiced, made to take account of contrary or different opinion, and some kind of considered collective judgment arrived at. Neoliberal thinking rejects the political arts, and instead embraces technologies of quantification. Such thinking dispenses with a sense of history or place. It is given to a mathematical matrix of living in the now. There can be no prudential consideration of the consequences and implications of conduct for the future wellbeing of individuals, their families and communities.

The eighth component is the reduction of the heteronomy of values for public policy to one value: efficiency. It is this that justifies the privatisation of state owned and managed service sectors (hospitals, schools, universities, technical training and professional education, utilities, public
housing). Where the art of public policy used to be understood as a complex adjudication of different values guided by the ultimate value of serving the public interest, it has lost this ethical identity.

The ninth component is the reduction of politics to competition between private interests. The older patriotic conception of a partisan politics that is tempered by consideration of the public interest as this is informed by advice from a disinterested and independent professional public service is jettisoned.

The tenth component is a conception of knowledge as driven by private commercial or political interest. Neoliberal epistemology makes the ends of action a matter of subjective valuing—something that is nothing other than a personal or private opinion. Thus the knowledge disciplines and the spiritual traditions that teach us how to philosophically reflect on and politically account for the ends of action become irrelevant. At the same time neoliberal epistemology values technical expertise so far as it can be instrumentally turned to the service of particular private ends, but such expertise cannot be permitted to question the ends of those who have paid for it. Effectively this tenet destroys the idea of enlightenment as this is cultivated by developing and refining human capacities to dialogue, think, and understand. Clearly this tenet is directed against the embrace of enlightenment thinking by the social liberal and social democratic tradition that built the great public universities of the late nineteenth and twentieth centuries.

To reprise: the doctrine of neoliberalism is a drastic reduction of the modern idea of freedom to a monism of market-oriented action. An impoverished conception of freedom as a manipulable response to incentives and disincentives is used against a philosophically and practically adequate conception of freedom that shaped the trajectory of modern political philosophy and institution building until our current era when neoliberal doctrine assumed ascendancy. Neoliberals offer the artifice of market design where the competitive order of market relationships becomes the framework for social life in general. To establish this institutional design, neoliberal doctrine uses the authority and sovereignty of the state against the very nature of the state as a political-legal container for social life.

This approach to how our lives and conduct are framed has assumed the status of common sense at least for the governing elites: ‘Writing against such powerful and often invisible beliefs is no easy task: there are certain positions that are now fundamental to public debate, most of which rest on the assumption that markets, allowed to operate freely and independently, will in every situation allocate resources more efficiently, and make everyone better off (Dean 2015, 16).’

The progressive penetration of neoliberal thought into the mode of thinking of our governing elites has been driven not just by its highly organised promulgation but also by the same eagerness not to defy what are represented as new impersonal historical forces: economic globalization, automation of jobs, market forces. The impersonality of the market mechanism
itself creates the ultimate resource for deniability—no one has to assume personal responsibility in a context where decisions are driven by market forces. The latest expression of such deniability is the idea of disruption (from Clayton Christensen’s idea of ‘disruptive innovation’, a re-run of Schumpeter’s conception of creative destruction) where new technologies displace old ways of organising work and employment. Referring to MPS member Ruth Richardson’s complacent adoption of this idea in the New Zealand context, Andrew Dean (2015, 96) comments: ‘Business theories like Schumpeter’s and Christensen’s are programmatically incapable of addressing the nature of our duties and responsibilities to others. Instead, the nation’s economic and social policy is given over to an almost millenarianist view of history and progress.’ Dean discusses the increasing political disengagement of young people in New Zealand in a context where there has been a deliberate project of taking key policy decisions out of the formal political process. Another NZ MPS member, Roger Douglas, the key figure of the 4th Labour Government in neo-liberalising the policy agenda in the 1980s, ‘was committed to taking democratic participation out of the formation of economic policy as the Reserve Bank in particular took on a much more expanded role (this is the neoliberal conception of the independence of central banks). The end of the awards system for setting wages was also consistent with this: wages are now set directly by “the market”, over which employees have no control, rather than through negotiation between union officials, employers and the government (Dean 2015, 83).’ For an ideology that trumpets freedom of choice, neoliberal doctrine is profoundly committed to representing our collective situation as one where we have no choice to influence the key decisions that affect our lives.

No doubt many members of the governing elites are influenced by neoliberal doctrine in ways that they can hardly account for, and perhaps they would think again if they were invited to consider the assumptions and content of neoliberal doctrine. The difficulty is that

5 Ruth Richardson, a member of the Mont Pèlerin Society, was the New Zealand National Government’s Minister of Finance (1990–1993) who introduced a radically neoliberal budget in 1991 that, abandoned block grants for universities, ‘uncapped student fees, restricted eligibility for student allowances, and designed an interest-bearing student loan scheme.’ It also made deep cuts to welfare so as to incentivise work over welfare. The same government was committed to the de-regulation of the labor market, a process that has involved the use of legislation to de-authorise collective bargaining and to individualise the employment contract. Welfare cuts have combined with disinvestment in public housing, the provision of greater support for private schools and the increasing concentration of students from poor families in public schools, and the development of low paid precarious work to deepen poverty in New Zealand at a time when income for those at the top has increased (Dean 2015).

6 The generation from which those who introduced the neoliberal agenda for institutional design came was one that benefitted from the public collectivism of the 20th century welfare state. Their policy activism, however, has left current younger generations in a state of political dereliction: ‘Economic issues that especially affect young people—interest rates, wages, prices, and the housing market, for example—are now, by design, out of the reach of the ballot box. Whatever effects this may have had on economic stability, the effect on the now much reduced sphere of politics is to restrict citizen’s ability to participate in economic decision making, leaving many feeling—perhaps rightly—that politics will not allow them to gain real control over the conditions in which they work and live (Dean 2015, 83).’
when a doctrine has successfully shaped common sense it is difficult to see how it has been formed, promulgated, disseminated, and networked. The development of the neoliberal thought collective as an organised take-over of common sense has been documented by Philip Mirowski, Edward Nik-Khah, Van Horne, and others. They have gone into the archives and have disinterred the discourse of key intellectual leaders of the neoliberal thought collective as it developed from the point of formation of the Mont Pèlerin Society in 1946, through the course of the development of the Chicago School of Economics from the 1950s to the 1980s, and to the present. The neoliberal thought collective adopted an ideas-led and long-term strategic focus on getting the intellectual, institutional and organisational resources in place, and then seizing the political and economic opportunities as they offered (Bair 2009, 356-357). Then when such opportunities presented, neoliberals were ready to take advantage of them. In some cases, key political leaders were signed up members of the MPS (as in the NZ cases of Roger Douglas and Ruth Richardson). In other cases, the ground had been prepared for capturing the political leader as in the cases of Ronald Reagan and Tony Abbott. When Reagan assumed government in the USA, the Heritage Foundation had prepared a 20 volume Mandate for Leadership in the incoming Reagan team (Bair 2010, 375). In the case of the Australian Prime Minister Tony Abbott, when he came to power in 2013, the Institute of Public Affairs prepared advice in the form of an article titled ‘Be like Gough: 75 radical ideas to transform Australia.’

Conclusion

Freedom is the core defining value of modernity but as I have argued it is of considerable importance how we understand this value. If we centre this value on freedom to own and exchange private property we are at risk of re-feudalising authority. It was precisely a feudal power centred on private property that the early modern conception of public authority rejected in the name of an equality of entitlement to be and to count as a free being. My ambition here has been to sketch out the nature of the difference between two very different approaches to institutional design: one that offers a public ordering of social life that is expressed in the authority of the state and the rule of law; and one that offers a private ordering of social life that is expressed in the authority of a legality centred on private property and exchange. Each approach invokes freedom as its ground. There is much at stake in us deciding which of these two accounts of freedom is the more adequate in articulating the challenge of living and growing as an individual who is complexly interdependent with other individuals.


Is Office a Vocation in ‘Post-Bureaucratic’ Public Management?

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It used to be reasonably easy to outline the contours of the administrative state, to distinguish public administration from other forms of organized activity, and to identify the professional role of state bureaucrats, public administrators, or career civil servants in the conduct of government. No longer. Over the last three decades, public administration, particularly but not exclusively its Anglo-Saxon variant, has been subject to extraordinary degrees of turbulence. As the American scholar of public management, Gerald Caiden (2006:515) has argued, there have been periods in the past when the public administration as an institution of government ‘has undergone considerable upheavals…but rarely…at so fast and furious a pace, rarely so radical and revolutionary’ For another American scholar, Michael Lind (2005:37), this continuous reform of the public administration is best seen as a vast political and managerial experiment ‘as audacious in its own way, as that of Soviet Collectivism’. Among its most significant consequences has been what the French legal theorist Alan Supiot (2006: 2) terms the ‘délitement’ or ‘unbedding’ of public institutions. He points in particular to the role of political elites themselves in this process of de-institutionalisation, not least in their enthusiastic desire to be unencumbered by existing norms and machineries of government that might in some way abrogate their freedom to experiment (See also Quinlan, 2004; Fukuyama, 2011). He argues that one significant casualty of this process of délitement has been a prized achievement of Western political and juridical practice – the distinction between a public office and the person who occupies it. ‘Initially intended to characterise the office of sovereign, this distinction signifies that the office does not die, that it has a dignity transcending the human being who provisionally occupies it and who must respect it. When that respect is erased, public office from the highest to the most modest, is perceived as the private property of the present holder who can use it as he sees fit’ (Supiot, 2006:3; See also Fukuyama, 2011).

This paper explores some of the reforms of the public administration as a bureaucratic institution of government that have contributed to this process of délitement, and examines their consequences for the relationship between ‘person’ and ‘office’ in the practice of governmental administration. I begin by highlighting certain key criticisms of the bureaucratic form that have circulated within the social and human sciences over the last three decades, and indicate briefly how each trades upon a particular representation of the work of the premier theorist of bureaucracy, Max Weber. I then proceed to indicate how these criticisms feed into, and indeed help to frame, the changing ethical template that programmes of so-called ‘post-bureaucratic’ and ‘responsive’ managerial reform have required of civil servants. In so doing, I have cause to highlight certain political and administrative dangers that a subtle and insidious emphasis upon particular forms of loyalty and commitment to the current governing party (‘the all on one team’ approach), or of policy enthusiasm (‘owning’ the policy and championing its ‘delivery’) pose to the maintenance of what we might term the ‘conservation standards’ for responsible and effective government.

The main argument of the paper is that many of the political and administrative virtues associated with the development and reproduction of an ethic of bureaucratic office in public administration – in particular the capacity to act with what Weber (1994a) famously termed a
‘spirit of formalistic impersonality’ hence ‘without affection or enthusiasm, and without anger or prejudice’ – are either unappreciated or simply ignored in contemporary programmes designed to inculcate the requisite ‘responsiveness’. This carries with it certain dangers that earlier analysts of bureaucracy were more than aware of. In particular, the work of Max Weber, and especially his theorisation of bureaucracy as officium and politics as a vocation, provides a continual source of inspiration for those who seek to hold onto an ‘ethics of bureaucratic office’ in an increasingly alien environment.

Max Weber and the Bureaucratic Form: Critic, Celebrant, or Historical Anthropologist?

Much of what passes for criticism of the bureaucratic form within the social sciences does so with reference to the work of Max Weber1. Weber is seen as the premier theorist of bureaucracy. However, interpretations of Weber’s views of, and intellectual approach to, bureaucracy differ significantly. In certain forms of sociology, for example, Weber is represented as one of the chief critics of bureaucracy, and his work is referenced with respect to what is considered to be his perceptive, even prophetic, analysis of this organizational form’s inherent ‘dark side’. Here is a critic of modernity, Bauman (1989) for instance, argues, who highlights the instrumentalising, rationalising logic of bureaucratic action, and points to its role in undermining substantive forms of morality (See also Ritzer, 2004). Within certain sections of management and organization studies, on the other hand, a rather different picture of Weber emerges. Here, we find Weber positioned as a celebrant of bureaucracy as the most efficient form of organization known to humanity. This Weber is something akin to a paradigmatic adherent of the – seemingly discredited – ‘closed system-rational actor’ school of organizational analysis. As two of his more dramatic critics make clear, Weber got it all wrong because ‘he pooh-poohed charismatic leadership and doted on bureaucracy; its rule driven, impersonal form, he said, was the only way to ensure long term survival’ (Peters & Waterman, 1982: 5). In this reading, Weber is represented as a well intentioned but ultimately misguided celebrant of bureaucracy; misguided because he pays too much attention to formal rationality and not enough to its inherent dysfunctions. The latter are seen ultimately to matter more than the former precisely because they eventually paralyse the organization, making it unable to fulfil its instituted purposes except at tremendous cost – socially and emotionally, for instance – particularly to those working within it.

What both images of Weber assume is the centrality of ‘rationalization’ to his work. The former locates Weber as a key critic of Western rationalism and its ‘instrumental’ logics, who views with horror the ethical and emotional disfigurements that the primary institutional carrier of this forms of rationalization – bureaucracy – is producing. The latter locates Weber as a leading advocate of rational management, and, hence, as a unconscious promoter of bureaucracy’s

inherent tendency to displace ‘morality’, ‘emotion’ and all forms of substantive human value from organizational existence. What both approaches share, though, is first, the assumption that rationalization is Weber’s key theme, and second, that, when we come to analyze the consequences of bureaucratic action, most especially the advances in efficiency and economy it registers, we can see that increasing instrumental rationalization comes at too high a price for those immediately subject to its dictates, and also for the societies it helps to bring into being. In this way, both the image of Weber as critic, and that of Weber as celebrant, of bureaucracy point towards a similar conclusion: the importance of constructing a post-bureaucratic future where the human and social ends of organizing and managing are once again invested with more value than are their means, and the negative human consequences of hierarchy, instrumental rationality and impersonality can be addressed and remedied (Hecksher and Donnellon, 1994).

As two of the most impressive scholars of his work, Mommsen (1987) and Hennis (1988), for instance, have argued, though, it does not take much familiarity with Weber’s oeuvre to see that Max Weber is innocent of the so-called Weberianism that adopts a uniform, monolithic conception of the historical phenomena of rationalisation. As Weber argued, on a number of occasions, rationalism can mean many different things. In The Protestant Ethic and the Spirit of Capitalism, for instance, he warns that that

The history of rationalism shows a development which by no means follows parallel lines in the various departments of life…In fact, one may – this simple proposition should be placed at the beginning of every study which essays to deal with rationalism – rationalise life from fundamentally different basic points of view and in very different directions. Rationalism is a historical concept which covers a whole world of different things (Weber 1930: 77-78)

Many economic sociologists and scholars of organization studies who comment on his work often appear to imagine that the distinctions suggested by Weber are, so far as Weber’s own studies are concerned, flattened out by the modern advance of that dead hand of instrumental rationality – bureaucracy (Bauman, 1989, Ritzer, 2004). However, it is relatively easy to point to the vital importance that Weber attaches to the lasting and intrinsic differences between, for instance, the style of rationality appropriate to the bureaucrat, and those of the entrepreneur and the politician, for example (Gordon, 1987; du Gay 2000).

This still leaves open the question as to whether, and in what ways, the question of rationalisation determines the overall themes and purposes of Weber’s oeuvre. One response to this question was provided by Wolfgang Schluchter (1981), who saw the varieties of rationalisation that Weber’s studies deal with as ultimately staging posts on the road to a complete theory of rationalisation. However, perhaps one of the most problematic aspects of this proposal is Weber’s own stated doubts concerning the extent to which the different historical ‘problem-spaces within which questions about rationalisation come to be posed can usefully be merged together under the auspices of a single overarching theory’ (Gordon 1987:294).
If, as Weber argued, we need 'to remind ourselves that rationalism may mean very different things', then to represent Weber as involved in a project of tracing 'a universal-historical process of rationalization' is somewhat misleading, if not misplaced. The problematic of rationalization is more diverse and context specific than such a grand narrative allows for or appreciates. Rather, Weber's work points to the ways in which different 'orders of life' (Lebensordnungen) exhibit their own distinctive and non-reducible forms of 'organized rationality'. These have to be described and understood in their terms, rather than being 'co-ordinated' into a meta-theory of rationalisation (Mommsen 1987: 42-43). As Wilhelm Hennis (1988:94) puts it, the process of rationalization for Weber has 'to be related to each life order if we are to perceive the significance it has in his work. Not only this, the tensions between these forms of organized rationality need to be outlined and appreciated. They do not necessarily follow the same path, towards the same end. Rather, they often have non-uniform trajectories, not entirely unrelated to their rather differing purposes and the ethos framing them. Here, then, there are in principle a plurality of competing rationalizations, each of which 'is dependent upon a different value position, and these value positions are, in their turn, in constant conflict with one another' (Mommsen 1987:44). As Weber (1994b: 357) famously asked, 'is it in fact true that any ethic in the world could establish substantively identical commandments applicable to all relationships, whether erotic, business, family or official, to one's relations with one's wife, greengrocer, son, competitor, with a friend or an accused man?'

In contrast to commentators seeking to find in Weber's work, or more likely, imprint upon that work a uniform, unilinear and monolithic process of rationalisation, other interpretations of the Weberian œuvre have stressed the importance of a more contextually specific focus on the organized forms of rationality that must be confronted by all those who become involved in particular 'life orders'. Here the central focus is upon Lebensführungen: the conducts of life, and the various forms of their rationalization in specific life orders (Hennis, 1988; 2000; Minson, 1993; 1998; Saunders, 1997; Turner, 1992).

The claim, most notably advanced by Wilhelm Hennis, that a focus on Lebensführung constitutes a, if not the, key object of Weber's work, involves three interlinked propositions. First, Hennis argues that most of Weber's work is centrally concerned with the conduct of life as its first and most pressing topic. Among the texts that Hennis refers to in order to back up this claim is, unsurprisingly, Weber's most famous essay The Protestant Ethic and the Spirit of Capitalism, with its focus upon the methodical conduct of life instilled by the Calvinist sects (see also du Gay, 2013). Second, Hennis argues that the concern with Lebensführung inspires and illuminates the methodology of Weber's major works, pointing in particular to Economy & Society, where the 'arena of normative and de facto powers' is imagined and assessed in terms of the influence of collective forces upon individual life-conduct (1988:84).

"The point of departure is that of external given conditions. The life-orders, however, do possess an inner regularity, …each of these orders makes a demand, forms, characterises, a variety of ‘impositions’ or perhaps opens up possibilities for future conduct, involves a
formative tendency for the ‘personality’…What fate do these orders dictate, open up to or withhold from the persons placed in their power by conditions of time and place? Is this Weber’s theme?’ (Hennis 1988:65).

That this is indeed Weber’s main theme is, as far as Hennis is concerned, evidenced by his third claim: For Weber, no ultimate moral or philosophical justification for a given form of life is possible in modern societies, ‘because the different value systems of the world stand in conflict with one another’ (1989: 22). Between these different life orders there is frequently a battle of different gods of different religions: ‘Destiny not science prevails over these gods and their struggles. One can only understand what the divine is for one system or another, or in one system or another’ (Weber 1989:22). In *Science as a Vocation*, Weber encourages his audience to be ‘polytheistic’, and to take on the persona specific to the life order within which they are engaged. In the absence of a universal moral norm, or a conclusive victory for one form of organized rationality over all others, Weber asks, how are individuals to develop ‘character’ or ‘personality’ (*Persönlichkeit*)? In considering the future of modern societies, and the individuals existing within them, Weber’s deepest concern, Hennis argues, is the cultivation of individuals with ‘personality’: those willing and able to live up to the ethical demands placed upon them by their location within particular life-orders, whose life-conduct within those distinctive orders and powers – the public bureau, the firm, the parliament – can combine practical rationality with ethical seriousness.

In *Science as a Vocation*, Weber’s answer to this problem is clear and direct: ‘Ladies and gentlemen: Personality is possessed in science by the man *(sic)* who serves only the needs of his subject, and this is true not only in science’ (1989:11). The individual with ‘personality’ is one who is capable of personal dedication to a cause (*Sache*), or the instituted purposes of a given life-order, in a manner that ‘transcends individuality’ (Hennis, 1988:88). It is in this sense that it is possible, for example, for bureaucrats to be ‘personally’ committed to the ethos and purposes of their distinctive office even though that ethos lies outside of their own personal (i.e. individual) moral predilections or principles. The possibility of different categories and practices of personhood requiring and expressing distinctive ethical comportments, irreducible to common underlying principles, appears quite foreign to those for whom a common or universal form of moral judgment is held to reside in the figure and capacities of the self-reflective person or individual agent (Habermas, for example). This context-specific, and thus ‘limited’, conception of ‘personality’ cautions against the siren-calls of those political romantics – neo-conservatives, socialists, anarchists, the littérateurs – seeking to hold onto, or re-establish, the idea of the ‘complete’ human being: an ultimate, supra-regional persona that could function as the normative benchmark for all others.

Hennis argues passionately, and with a wealth of documentary evidence, that at the heart of Weber’s work there is a moral anthropology at profound variance with both the positivistic tendencies and Kantian philosophical assumptions of the human sciences in the present and previous century. He argues that for both a positivistic and high theoretical social science, which
in Weber’s own words, sought to ‘shift its location and change its conceptual apparatus so that it might regard the stream of events from the heights of reflective thought’ (Weber 1949, quoted in Hennis 1988:104), questions of Lebensführung, of ‘personality’ and life-orders, would have little interest. However, if we managed to descend from such heights, they might once again become very important indeed. For Hennis (1988:104), Max Weber’s work finds a place in the pre-history of this sort of social science only once his central problems, questions, and concerns are neglected. In Hennis’s view, Weber’s work belongs, rather, to the late history of a rather different practical science of mankind (Menschentum) and, we might add, to a distinctive ethical tradition: the ethics of office. Seen in this way, Max Weber’s work provides a classic account of the ways in which a distinctive and important role for an ethics of office can be maintained in an increasingly alien environment, through, for example, his theorisation of bureaucracy as officium and politics as a vocation (Hennis 1988:104; 2000: 156; Condren, 2006: 347).

Office as a Vocation: Weber and the Moral Economy of Bureaucracy

If, as I have suggested, Weber is approached first and foremost as a historical anthropologist of Lebensführung, then it becomes clear that his work on bureaucracy is neither celebratory nor overtly critical. Indeed, Weber was not simply or exclusively interested in offering a formal organizational theory of ‘bureaucracy’ at all, for good or ill, but rather, as Wilhelm Hennis (1988; 2000) has suggested, with describing the ethical-cultural attributes of bureaucratic conduct. In order to approach Weber’s work in this way – as a historical anthropologist of Lebensführung or ‘conduct of life’ – it is first necessary to dispense with the detritus of the Parsonian inheritance in Weberian scholarship, and to focus instead upon Weber as a somewhat eccentric and isolated moral theorist in a tradition of the ethics of office (Condren, 2006: 24). To put it in its most general propositional form: a presupposition of office was the expectation that people are educated (in the widest sense of that term) to live up to the demands and requirements of their respective offices. An office (Lebensordnung) was an

‘identifiable and discriminate constellation of responsibilities and subordinate rights and liberties asserted to be necessary for their fulfilment’ and manifested not in an individual, represented as a distinctive, reflective and autonomous ‘self’ but rather in a persona. In other words, individual identity was specific to office, referring only to bodies considered as personae, as instituted statuses or conditions (Condren, 2006: 29).

For Weber, bureaucracy was a historically contingent and variable ‘life order’ (Lebensführung) constituting a distinctive ethical milieu in its own right, one whose practices of formalistic impersonality gave rise to certain substantive ethical goals. Thus, in his classic account of the ‘persona’ of the bureaucrat, for instance, Weber (1978, II: 978ff) treats the impersonal, expert, procedural and hierarchical character of bureaucratic conduct as elements of a distinctive ethos. Here office itself constitutes a ‘vocation’, a focus of ethical commitment and duty, autonomous of and superior to the bureaucrat’s extra-official ties to kith, kin, class or conscience. The ethical attributes of the ‘good’ bureaucrat – strict adherence to procedure, commitment to the purposes
of the office, abnegation of personal moral enthusiasms and so on – represent a remarkable achievement (Hunter, 1994: 157). In particular, Weber (1978, II: 983ff) stresses the ways in which the ethos of bureaucratic office-holding constitutes an important political resource because it serves to divorce the administration of public life from private moral absolutisms. Without the historical emergence of the ethos and persona of bureaucratic office-holding, Weber argues, the construction of a buffer between civic comportment and personal principles – a crucial feature of liberal government – would never have been possible. Indeed, without the ‘art of separation’ (Walzer, 1984) that the state bureau effected and continues to effect, many of the qualitative features of government that are regularly taken for granted – for instance, formal equality, reliability and procedural fairness in the treatment of cases – would not exist.

As Weber makes clear, the crucial point of honour for bureaucrats is not to allow extra official commitments to determine the manner in which they perform the duties associated with their office. ‘On the contrary’, the bureaucrat ‘takes pride in preserving his impartiality, overcoming his own inclinations and opinions, so as to execute in a conscientious and meaningful way what is required of him by the general definition of his duties or by some particular instruction, even – and particularly – when they do not coincide with his own political views’ (Weber, 1994a:160). ‘The official has to sacrifice his own convictions to his duty of obedience’ (1994a:204). This does not mean that officials only do the boring, routine work of public or state administration.

Independent decision-making and imaginative organizational capabilities are usually also demanded of the bureaucrat, and very often expected even in large matters. The idea that the bureaucrat is absorbed in subaltern routine and that only the “director” performs the interesting, intellectually demanding tasks is a preconceived notion of the literati and only possible in a country that has no insight into the manner in which its affairs are conducted (Weber, 1994a: 160).

The key to understanding the ethos of bureaucratic office, Weber argues, resides in ‘the kind of responsibility’ associated with it. It is this, and not simple divisions between task complexity and simplicity, or between policy making and routine administration, that distinguishes the ‘demands addressed’ to this ‘position’. As Weber (1994b: 330) puts it,

‘An official who receives a directive which he considers wrong can and is supposed to object to it. If his superior insists on its execution, it is his duty, even his honour to carry it out as if it corresponded to his innermost conviction, and to demonstrate in this fashion that his sense of duty stands above his personal preference…This is the ethos of office.’

Without this ‘supremely ethical discipline and self-denial’, Weber (1994b: 331) continued, the whole apparatus of the state would disintegrate, and thus all the political benefits deriving from it, would too.
Similarly, Weber (1978 I: 225-226) argued that it was odd for the literati to criticise bureaucratic conduct as antithetical to the realisation of substantive ends; that is, as simply the organizational vehicle by which instrumental values supersede and/or eliminate all substantive values. Rather, as he made clear on a number of occasions, the ‘formalism’ of bureaucratic conduct – its instituted blindness to inherited differences of standing and prestige – produces the very substantive effects – enhancing democracy and equality, for example – that the literati claimed bureaucratic conduct would destroy (Weber, 1978 I & II; 1994b).

The dominance of a spirit of formalistic impersonality: “Sine ira et studio”, without hatred or passion, and hence without affection or enthusiasm. The dominant norms are concepts of straightforward duty without regard to personal considerations. Everyone is subject to formal equality of treatment; that is, everyone in the same empirical situation. This is the spirit in which the ideal official conducts his office. The development of bureaucracy greatly favors the levelling of status, and this can be shown historically to be the normal tendency. Conversely, every social levelling creates a favourable situation for the development of bureaucracy by eliminating the office-holder who rules by virtue of status privileges and the appropriation of the means and powers of administration; in the interests of “equality”, it also eliminates those who can hold office on an honorary basis or as an avocation by virtue of their wealth. Everywhere, bureaucracy foreshadows mass democracy… (Weber, 1978 I: 225-226).

In other words, the exclusion of extra official considerations from the conduct of official business, and the strictly formalistic impersonality with which that business was conducted, was a prerequisite not only of impartial and efficient administration, but also crucial to the production of mass democracy and increased social equality. This idea that the ‘formal’ rationality of bureaucratic conduct itself gives rise to substantive ethical goals and effects, and is rooted in its own Lebensordnung or ethical life-order: that of the bureau, has been largely ignored by critics keen to ‘rehumanize’ official life through ‘post-bureaucratic’ means. Like the literati chided by Weber in his own day, contemporary anti-bureaucrats in the arena of public or governmental administration focus much of their attention upon the presumed negative consequences of the bureaucrat’s formalistically impersonal obligations of office, and demand a shift in the relationship between these obligations and what they conceive of as the official’s principal duties – to deliver the policies that their political governors demand of them with maximum enthusiasm and conviction. It is to the work of these critics that I now turn.
Enthusiasm, Responsiveness and ‘Post-Bureaucracy’

It would be difficult to underestimate the importance allocated to qualities of enthusiasm and enterprise in recent discourses of organizational reform in both private and public sector management. From the hyperbolic commandments of Tom Peters (1989) to ‘develop a public and passionate hatred of bureaucracy’ through Gary Hamel’s (2000) demands for ‘revolutionary management’, up to and including Josh Linkner’s (2014) paen to anti-bureaucratic ‘disruption’, the emphasis has been on breaking with bureaucratic norms and forms of conduct in the name of innovation, risk-taking and organizational and personal liberation (Armbrüster, 2005; du Gay, 2005). While, in the aftermath of the early millennial corporate scandals at Enron, and Worldcom, and more recently those disclosed at Lehman’s, HBOS et al, the shine has been somewhat taken off of the tropes of revolutionary rule-breaking, nonetheless the equation of entrepreneurial enthusiasm with getting things done or delivering results, as the current wisdom has it, has far from disappeared from programmes of organizational reform.

In discussions of public sector performance, for instance, governments of many different political hues have come to the conclusion that Weberian bureaucracy is not a solution but rather a barrier to ‘delivery’. In their search for responsive forms of public management, party-political governments rail against the obstruction and inertia of conservative bureaucrats, and seek instead to surround themselves with enthusiastic, committed champions of their policies. The testimony of the former head of (former) Prime Minister Blair’s Public Service Delivery Unit, offers a taster of precisely such an attitude. ‘Most of all there is the danger of underestimating the extraordinary deadweight of institutional inertia. Senior civil servants generally recognised the need for change, but found it hard to bring about – the deadweight of the culture held them back…Bold sustained leadership is a pre-requisite for transformation, professions left to themselves rarely advocate more than incremental change…’ (Barber, 2007: 72, 124-125 and 144). Here, the demand is for a break with bureaucracy in the name of transformation, performance, passion and much else besides. There is, from this perspective, no recognition, and thus no respect, for the possible benefits of attention to precedent, for institutionalised caution, and for consultation and cross-checking.

As the former Senior Civil Servant Sir Michael Quinlan (2004: 128) has noted, such a focus on ‘delivery’ and ‘performance’ as part and parcel of a sustained focus on the achievement of practical results can

Slide into a sense that outcome is the only true reality and that process is flummery. But the two are not antithetical, still less inimical to one another. Process is care and thoroughness; it is consultation, involvement and co-ownership; it is (as we were reminded by the failure of international process in the run-up to the Iraq war) legitimacy and acceptance; it is also record, auditability and clear accountability. It is accordingly a significant component of outcome itself; and the more awkward and demanding the issue – especially amid the special gravity of peace and war – the more it may come to matter.
For Quinlan (2004), such bureaucratic practices are less the epitome of inefficiency and anachronism than crucial material means through which responsible democratic governance is practically achieved. As John Uhr (1993:xvii; see also Fukuyama, 2011) put it, the bureaucratic vocation helps furnish states and governments with many of the ‘conservation standards’ appropriate to their political management, including the ordered management of ‘change’ between governments of differing political hues.

The issue of ‘transformational leadership’ has been a hot topic within the field of public management for a number of years now (Newman, 2005; Western, 2013). In Britain, the New Labour Government’s White paper, ‘Modernising Government’ (CM4310, 1999) and its related policy documents (Cabinet Office, 1999a &b) placed considerable emphasis upon the capacity of executive leadership to help change the culture of ‘risk aversion’ that it considered endemic to the British Civil Service. Thus, the White Paper stated that officials must ‘move away from the risk-averse culture inherent in government’ and that this was to be achieved through removing ‘unnecessary bureaucracy which prevents public servants from experimenting, innovating and delivering a better product. As with a previous attempt to inculcate ‘real qualities of leadership’ amongst senior civil servants, the Next Steps Report (Cabinet Office, 1988: para 35), quite what this meant in the British constitutional context, where ministerial accountability was still assumed to be a crucial constitutional convention, was not at all clear. At one level, encouraging all senior civil servants to become leaders and to take individual personal responsibility for their decision-making would make the accountability trail more, not less, complicated. With so many leaders among politicians and civil servants, where would the buck stop, exactly? Indeed, would not the distinction between these categories of person become somewhat blurred – and their respective ‘responsibilities of office’ compromised – if everyone is equally assumed to be a leader?

Throughout the Anglo-American world, governments have been busy preaching the virtues of enthusiasm as part of a search for more ‘responsive’ forms of public management. In Britain, demands for ‘delivery’, combined with an often unsubtle distaste for the traditions of the civil service as the ‘other governing profession’, have led to demands for changes in the ‘ethos’ governing the conduct of public administrators. As one former British Home Secretary, Charles Clarke, put it, ‘what I think we’d benefit from is a more effective managerial quality at the top, and I’d say put the “just do it” ethic in, is the change that’s needed’ (BBC Radio 4: 25/07/02). Once again, the civil servant as part of an institutional ‘gyroscope of state’ and bulwark against, what Walt Whitman once described as, ‘the never ending audacity of elected persons’, was to be reconfigured as a something akin to an enthusiastic, energetic “yes-person”.

The consequences of the shift in style and emphasis for the civil service as a constitutional bureaucracy have become increasingly clear. The last three decades have witnessed a concerted attempt by governing parties in many different political contexts, to strengthen their control over state bureaux. One aspect of this particular trend has been the erosion of the powers of centralised staffing agencies which safeguarded public service recruitment and promotions.
from political or official interference; strengthening ministerial control of top departmental appointments by removing the need to consult an independent staffing agency; substituting short term contracts for security of tenure in top official posts, generating the general attitude that party-political governments should not have to tolerate obstruction or inertia from conservative bureaucrats, and should instead insist they were supported by enthusiastic advocates of their policies who would ensure that the latter were ‘delivered’ (Chapman, 2004). In attempting to achieve these ends, however, politicians and their advisers have arguably weakened the legitimate role of officials in government by undermining the Weberian ethos of bureaucratic office (Parker, 1993; du Gay, 2000; Chapman, 2004).

The tactic of increasing the use of external appointments to senior civil service positions, in particular, and especially the appointment of those with known prior policy enthusiasms, has given rise to two particular problems. The first is that of ensuring that standards in state service are maintained – that the obligations of office are lived up to; the second is that distinctions between office and self are not so blurred that the civil service becomes a politically partisan institution. In the United Kingdom, for instance, the political neutrality, or party political impartiality, of the British Civil Service, has flowed in no small part from its career basis (Bogdanor, 2001; Chapman, 2004). Career civil servants are expected to serve successive governments of differing party political hues. The key to being able to do this, as Weber indicated long ago, is to cultivate a degree of indifference to the enthusiasms of all political parties. Traditionally, at least, civil servants have been trained to conduct themselves in such a manner. Indeed, in Britain, as elsewhere, people with strong party political or single issue interests have – until relatively recently – been unlikely to be appointed to senior civil service positions, or to present themselves for consideration as candidates in the first place (Chapman, 1988). As a result, civil servants have been likely to greet the panaceas of all political parties with caution. Inevitably, this leads them to embrace party political programmes with less fervour than party political enthusiasts would like. But this is part of their job, one assigned to them by the constitution. And in fulfilling this role they may be seen as servants of the state.

It is precisely the statist /constitutional role that is being affected by political and managerial demands for displays of ‘enthusiasm’ among civil servants, and which is evident in the growing number of external appointments to the senior echelons of the service. New recruits coming from outside – whether from commercial organizations or social enterprises – will generally lack the traditional patterns of experience, such as those gained by being a private secretary to a minister, which help inculcate in civil servants those very comportments of impartiality described by Weber. Moreover, someone recruited from outside the service by virtue of relevant knowledge and approved commitments is likely to arrive with all sorts of partisan baggage derived from their previous situation. That is almost inevitable, if ‘new’ enthusiastic civil servants are expected to be cheerleaders for government, and act as committed champions for specific policies. It is not easy, however, for those same people to both fulfil such a role and at the same time to conform to traditional practices of subordination and lack of constitutional personality, their views being those of their minister, and not their own (Bogdanor, 2001).
As Bogdanor (2001:296) has suggested, it is not clear, therefore, how far outside recruitment to senior policy positions in the Civil Service can avoid the dangers of politicisation or at least a degree of prior policy commitment, incompatible with traditional notions of ‘political impartiality’. Politicisation is a loaded term, one deployed rather too flexibly perhaps. However, if suitably disaggregated, it is not without its uses. Certainly, it should not be seen simply to refer to a process by which civil servants are recruited, selected or promoted on the basis of their political views. Even a politician as partisan as Margaret Thatcher denied taking political outlook into consideration when discussing civil service personnel issues. Instead, she was clear that she wanted a certain proactive, ‘can do’ disposition to be at a premium amongst public servants - ‘drive and enthusiasm were what mattered’ (Oliver, 2003: 46). However, the promotion of these latter qualities should alert us to another, less overtly party political, facet of the term ‘politicisation’. The term can also be used to refer to the willingness of officials to implement politicians’ ideas enthusiastically (Stahlberg, 1987). Put simply, politicisation can refer to a civil service that reacts over-favourably to political signals without the officials personally or necessarily having a commitment to a specific political party or programme.

One of the problems with policy enthusiasms among civil servants is that office and self can become blurred, with committed champions coming to see the office as an extension of themselves, thereby effecting a confusion of public and private interests and identities. The American scholar Patrick Dobel (1999: 131) calls this ‘zealous sleaze’, a process whereby individuals come to view public office as an extension of their own will and ideological commitments – their enthusiasms. The introduction into state bureaux of too many people with prior policy commitments and established enthusiasms could therefore easily undermine the traditional obligations of office framing the conduct of the Civil Service as an institution of government. Similar objections can be made concerning the increased use of special advisers, especially when, as in some well known cases in the UK, this category of actor was allotted extraordinary powers to issue orders to civil servants, or was, through its gatekeeper role with ministers, effectively able to negate the influence of civil servants in the area of advising on policy issues (Daintith, 2002; Jones, 2002; Oliver, 2003; O’Toole, 2006).

Well before the latest manifestations of the ethics of enthusiasm and enterprise in government and public administration, the problems attendant upon the promotion of such capacities among officials was considered and foreseen by the Secretary to the Fulton Committee – perhaps the best known of the post-second world war official investigations into the role and function of the British Civil Service. As a result of his career in the British Civil Service, and his reflections upon its constitutional role and purposes, R.W. Wilding had some interesting things to say about the place of enthusiasm in the professional ethic of the career public administrator. Writing in 1979, he argued that it was necessary for bureaucrats to ‘distinguish energy from commitment; It is absolutely necessary to pursue today’s policy with energy; it is almost equally necessary, in order to survive, to withhold from it the last ounce of commitment’ (Quoted in Chapman, 2006:6). For Wilding, as for Weber, enthusiasm for particular policies is dangerous for public administrators precisely because it means that bureaucrats become increasingly indistinguishable from
politicians in that they too are encouraged to engage in ‘partisanship, fighting, passion – *ira et studium*’ (Weber, 1994b:330)[2]. If they act outside of the limits of their office, or if the office itself becomes indistinguishable from another department of existence, bureaucrats will have ceased being bureaucrats and have become something else.

How then, can they continue to live up to the obligations of their office? The abiding problem of ‘enthusiasm’ in administrative life is precisely the way in which it can effectively undermine what Weber and Wilding see as the virtues of the non-sectarian comportment of the bureaucratic person. In so doing, the ethics of enthusiasm run the risk of returning the administration of public life to the pursuit of private moral absolutisms, rather than, as Weber noted in his discussion of the moral economy of bureaucratic ethics, divorcing it from them.

The development of the bureaucratic ethos therefore furnishes the state with an important tool. The political benefits flowing from this bureaucratic ethos derive in large part from its own imperviousness to particular sorts of enthusiasm. This does not preclude bureaucrats from pursuing their instituted purposes with energy, demonstrating rigorous dispassionateness, integrity and propriety, including appropriate attention to criteria of efficiency, effectiveness and economy (as understood in a governmental sense) in the conduct of official business, for example. This commitment, though – one for behaving constitutionally, within the confines of their office, as servants of the state – precisely excludes enthusiasm for particular policies themselves.

As events surrounding the decision to go to war in Iraq dramatically illustrated, enthusiasm for a particular course of action, combined with impatience with due process considerations and the minutiae of bureaucratic record-keeping, can lead to all sorts of problems. While discussions of civil service reform might at first sight appear largely unrelated to the processes through which, and the manner in which, the decision to go to war with Iraq was made, there is much to be learned from seeing them in tandem, as a number of former senior civil servants have argued (Quinlan, 2004; Wilson, 2004). As Sir Michael Quinlan (2004:125) has indicated, for example, the important inquiries by Lords Hutton and Butler in the UK into aspects of the Iraq saga, painted a picture of the workings of government, including its politico-administrative ‘condition’, that was in many important respects remarkably disquieting. Norms and techniques of conduct designed to assist in the seemingly innocuous objectives of enhancing ‘delivery’ and aiding ‘responsiveness’, for instance, have had some profound effects upon the capacity of the civil service to live up to its constitutional obligations. These changes, often it appeared, marked by an impatience with existing norms and techniques of conduct, appeared to rest upon an insufficient (one might even say absence of) understanding that existing patterns had not been developed without practical reason, and that departing from them might have some serious costs that necessitated careful consideration beforehand. In particular, seemingly banal, ‘old fashioned’ forms of bureaucratic administration, turned out to play an important role in constituting the political landscape in ways that made attempts to by-pass or transcend them very costly (Wilson, 2004; For a fuller explication of this point, see Byrkjeflot & du Gay, 2012)
The antipathy towards enthusiasm inherent in the bureaucratic ethos has its own *raison d'être*. While it is easy to see how such an ethos can be viewed by politicians as a licence to obstruct, it was, until comparatively recently, generally considered indispensable to the achievement of responsible (as opposed to merely ‘responsive’) government, because, it was seen to balance and even complement political will, making governance more effective in the long run.

As John Rohr has suggested, the bureaucratic ethos is in important respects necessarily unresponsive. The role accorded to governmental bureaux in many polities has been deliberately devised to isolate officials from the electoral process, or from the demands of ‘special interests’, for example, thus institutionalising the very ‘unresponsiveness’ which so many enthusiasts decry. And, it has been so organized to serve a positive political purpose – to help preserve a modicum of stability, consistency, and continuity, in the face of the vagaries and experimental enthusiasms of partisan politicians, for instance. In this specific and limited sense, the bureaucratic ethos is a conservative one or better, perhaps, a conservational one. The bureaucratic comportment of the person embodies an acceptance, which no moral zealot really can abide, of the irreconcilable diversity of human goods, and an awareness of the possible costs, moral and otherwise, of pursuing one end to the detriment of another. In this way, the bureaucrat tends to see in every controversial change to existing social arrangements the possibility of important losses as well as the opportunity for certain gains (Larmore, 1987:xiv). Like the ethos of the Lawyer/Statesman described so eloquently by Anthony Kronman (1995:161), the good bureaucrat ‘is unlikely to be moved by that passion for purity which motivates the adherents of every great political simplification’ and to approach programmes of radical change with a degree of caution unlikely to appeal to the party political enthusiast. In this way, though, rather than being soulless, uncaring ‘pen pushers’, unelected policy wreckers, or un-entrepreneurial ‘automata of the paragraphs’, as the *literati* (old and new) would have it, the bureaucrat’s antipathy to enthusiasm can be seen to be provide an important service to the state, and to make a crucial contribution to the long-range effectiveness of government.

Concluding Comments

The main argument of this paper has been that, when applied to the office based commitments of professional civil servants, contemporary political and managerial demands for increased ‘responsiveness’ and ‘enthusiasm’ associated with a ‘post-bureaucratic’ departure from the features of the bureaucratic ethos outlined by Weber, should be treated with considerable scepticism. As we have seen, the demand for greater levels of ‘personal’ involvement on the part of career civil servants in championing and delivering policies, and related demands upon their increased levels of personal attachment to those policies, have been hallmarks of a number of recent political and managerial initiatives in government. In the United Kingdom, for instance, as I indicated earlier, one area where this has become much more evident is in the practice of appointing to civil service positions people with known policy commitments who governing politicians regard as ‘one of us’ in a way that they do not so regard career civil servants. This
does not imply that these enthusiasts are necessarily members of the same political party as their recruiting sergeants, but simply that they are advocates of particular policy programmes or solutions favoured by the governing party, and are committed to seeing them delivered. At the same time, and not unrelated, there has also been a substantial increase in the number of so-called ‘special advisers’ operating in government, some charged with executive responsibilities, and once again exhibiting a more partisan approach to policy making and delivery than career civil servants would be expected to manifest (O’Toole, 2006).

The consequences for the institutional and ethical integrity of governmental machinery of this embedding of enthusiasm or ‘partisanship’ within the organs of the state need careful consideration. Both historical evidence concerning the part played by zealous moral or spiritual enthusiasms in stirring up civil sedition and disobedience in the name of obedience to divine revelation, and contemporary problems attendant upon the creation of a new breed of civil servants ‘more entrepreneurial…more adventurous like their private sector counterparts’, individuals keen to take risks in their passionate desire to ‘deliver’ (Prime Minister, 2004), suggest that the contemporary passion for the ‘ethics of enthusiasm’ may be dangerously misplaced. In their search for greater control over the state bureaucracy and for a more committed approach from it to delivering what they want, politicians may well have weakened or undermined the important role played by the bureaucratic ethos – with its spirit of formalistic impersonality – in the responsible operation of a state and in the effective running of a constitution. When advocates of the ethics of enthusiasm characterise governmental administration as an unreconstructed Weberian world of ‘formal rationality’ they tend to forget that for Weber such an ethic of Zweckrationalität was not merely ‘instrumental’ or dependent upon arbitrarily given ends. Rather an ethos of formalistic impersonality – ‘without affection or enthusiasm’ - was premised upon the cultivation of indifference to certain ultimate moral ends. This indifference was a remarkable, if ultimately fragile, achievement, requiring those subject to its demands to learn to take cognisance of the incompatibility between a plurality of enthusiastically held convictions about rival ends, and hence the consequences of pursuing one of them at the expense of the others. Seen in this light, formal rationality is not predicated upon an amoral instrumentalism, a wilful obstructionism or incapacity to ‘deliver’, but on what we might term a positive, statist, ‘ethics of responsibility’.
Bibliography


What is “Freedom” in the Marketplace of Ideas?

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The concept of the “marketplace of ideas” often structures discussions about the institutions promoting and the laws governing political and intellectual life. In the US, discussions pertaining to the First Amendment have frequently appealed to the marketplace of ideas. Critical communications policy scholars have taken note of its increasingly economic construction, opening the door for economists to assume increased responsibility for the development and circulation of this concept, and leading competition, consumer welfare promotion, and efficient exchange to displace democratic consensus building as goals of communications regulatory policy. Science studies scholars have noted the increasing influence of economists in the management of science, a development closely related to the reconceptualization of intellectual life as a kind of market.

From a certain viewpoint, it might seem surprising if this were not the case: who has been more strident in claiming to possess a singular expertise in operation of markets—any markets—than economists? Yet the history was not that straightforward. John Stuart Mill famously linked intellectual life to markets in *On Liberty*, but the link was tenuous, certainly not suggestive of any specific analytical method of studying the creation and dissemination of knowledge. Such links between economic doctrine and intellectual life would have to wait nearly a century longer for the emergence of a (relatively) new breed of economists—the neoliberal economists. For members of the Mont Pèlerin Society (MPS), the historical epicenter of the transnational and transdisciplinary politico-intellectual movement that served to incubate neoliberal ideas and to put them into practice, the existence of such a market would serve as something approaching a foundational principle. They would often engage in “supply and demand” talk, at times making reference to the satisfaction of consumer preferences, but for these economists the metaphor was much more capacious than that: it was a rich resource that served as now a critique of state reason, now a justification for the restructuring of science, now a reconceptualization of human freedom.

This paper examines the development of the “marketplace of ideas” at the hands of these neoliberal economists. The positions on the operation of this market advanced by the MPS members that I will be discussing—Benjamin Rogge, Fritz Machlup, Milton Friedman, and George Stigler—were distinct and to some extent incompatible. At one of the most influential academic centers of neoliberal thought, the University of Chicago, Stigler’s views came to prevail. For this reason, I will focus on the development of his views. He argued that the

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1. John Durham Peters has called the concept “a metaphoric kudzu vine whose resources have shaped English-language reflection on public space for the past five decades for good and ill” (2004, p. 72).
2. On the appeal to economics in setting communications policy, see (Napoli 1999). On the role of economists in the management of science, see Mirowski (2011) and Berman (2012).
4. I will not explain the circumstances leading Stigler’s views to assume significance there. Instead, I examine the development of his views for the purpose of characterizing one highly influential view of the marketplace of ideas. I have given one possible explanation of the triumph of his ideas in (Nik-Khah 2011). I will return to this topic in the concluding section of this paper.
marketplace of ideas does not merely promote “economic efficiency,” but freedom of inquiry. We will see that the exact notion of freedom for the inquirer would be a peculiar one.

Sovereignty in the Intellectual Marketplace

Scholars routinely give the “marketplace of ideas” an impressive lineage, by tracing it to John Stuart Mill’s On Liberty and John Milton’s Aeropagitica. However, John Durham Peters (2004) suggests a much more recent origin: in popular interpretations of the US Supreme Court jurist Oliver Wendell Holmes’s famous dissenting opinion in Abrams v. United States. In the decades that followed, appeals to the marketplace of ideas were used in protecting unpopular speech and fostering robust democratic discussion.

For most of this history, economists steered clear of such market-talk: the significance of knowledge was held to be beyond their purview. However, immediately following the close of World War II, two momentous events changed this. First was the rise of “information” as a primary ontological principle across the sciences (Gleick 2011). Economists followed suit; they would increasingly study not the allocational, but the informational properties of markets. Second, some liberals became alarmed that the intellectual tide had moved against them, prompting them to reexamine the features of intellectual life, leading them to espouse conclusions quite at odds with their liberal predecessors.

Both events contributed to the development of the Mont Pèlerin Society (MPS). The MPS was an association of pro-market intellectuals founded in 1947 to countervail “collectivism”: socialism, institutional reformism, and Keynesianism. Famously, Friedrich Hayek intervened into the socialist calculation controversy by reconceptualizing the economy from a system of allocation to a system of communications, and arguing for the superiority of the price mechanism on the grounds of its unsurpassed ability to make use of knowledge.

It is not surprising then that the question of the role knowledge plays in a modern society now came within the purview of these neoliberal economists, and some questioned the kind of

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5 (250 U.S. 616) (1919). The case concerned the imprisonment of Jacob Abrams, along with four co-defendants, who were tried, found guilty, and sentenced under the Sedition Act of 1918 for criticizing the US government’s deployment of troops to Russia and for advocating for a labor strike in munitions factories aiding in this effort. They appealed their convictions to the US Supreme Court under the free speech clause of the First Amendment of the US Constitution; the Supreme Court upheld the convictions by a 7-2 margin. In dissent, Holmes (joined by Louis Brandeis) argued, “the best test of truth is the power of the thought to get itself accepted in the competition of the market”—a phrase that continues to attract scholarly scrutiny to this day.

6 Hayek’s argument resists quick summary; his views on where economic information was supposedly located and how it would be accessed changed considerably over the course of his career.
knowledge that was being produced. They began to scrutinize the metaphor of the marketplace of ideas and to explore different ways of operationalizing it.

One finds exactly this sort of exploration in a 1957 MPS session entitled “Egalitarianism and ‘Democratisation’ in Education.” Within it, the economist Benjamin Rogge (at that time dean of Wabash College, a US liberal arts college) delivered a paper on the financing of higher education. Rogge argued that the appropriate way to respect a pro-market creed in the organization of colleges and universities would be to finance all their operations out of student tuition fees. Rogge decried the subsidization of the funding of student education—what he called “below-cost pricing”—on the grounds that it served as an unnecessary and unwarranted intervention into the education market. He found especially objectionable that people routinely denied the principle of consumers’ sovereignty in this market on the grounds that those seeking education were uneducated.

To subsidize students’ education, colleges and universities placed themselves in the position of needing funds from the government, alumni, the wealthy, and corporations. But relying on these groups for funding had given them undue sway over the curriculum, stifling intellectual diversity. Rogge noted, “he who pays the piper will call the tune (Rogge, [1957]1979, p. 255).” He did not begrudge funders for seeking to “call the tune,” but he sought to diffuse such power among many more, and dispersed rather than organized, tune-callers (the students themselves). A full cost pricing method would achieve this because the consumers of education—the students—were, in his view, many and diverse. Consequently, full cost pricing would also promote intellectual diversity. Specifically, by eliminating the state’s funding of professors’ activities, full cost pricing would help to combat “collectivism.”

The person assigned to discuss Rogge’s paper was the economist and founding MPS member George Stigler. Stigler would come to occupy an unusual position within the intellectual and political crosscurrents of the Cold War economics profession—we might even characterize his position as unique. He was able to combine an interest in formal models of information, orthodox economics, pro-market politics, and the role of the intellectual in capitalism into something approaching a coherent set of views and practices that he and his students then deployed both inside and outside economics—indeed, inside and outside the academy—all the while claiming to uphold the best traditions of science, and gaining a reputation among even intellectual antagonists for doing just this.

Stigler rejected Rogge’s argument. First, he denied that full cost pricing would necessarily attract a variety of funders, promoting intellectual diversity: although research funding already utilized full cost pricing, the US federal government and the Ford Foundation exerted tremendous authority in setting research priorities. Second, Stigler objected to Rogge’s

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7 The paper, “Financing Higher Education in the United States,” would later be published as a chapter in Rogge’s (1979) book *CanCapitalismSurvive?*
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Proposal to promote student sovereignty over higher education. He argued students lacked the qualification to judge either the quality of courses or the quality of research. Stigler noted dryly “At Minnesota, 2 Mt. Pelerin Members [were] at [the] bottom in 1946.”

At that time, the University of Minnesota Economic Department employed Rogge, Stigler, and Milton Friedman. I leave it to you to guess which two he was talking about.

Stigler then attacked the metaphor of democratic diffusion of power that underpinned Rogge’s consumer sovereignty argument:

In general in intell[ectual] affairs democracy is not a proper system of organizing. The best econ[omics] in the US is not the one the public would elect; a science must impose the standards of an elite upon a profession.

Affairs of science, and intellectual life generally, are not to be conducted on democratic procedures. One cannot establish a mathem[atical] theorem by a vote, even a vote of mathematicians. An elite must emerge and instill higher standards than the public or the profession instinctively desire.

The preferences of the patrons of science might indeed triumph, but their sovereignty over the knowledge produced was nothing necessarily to celebrate. Unless, that is, they were the right kind of patrons.

Stigler elaborated on his views in his 1963 publication The Intellectual and the Market Place. Here, Stigler wanted to persuade intellectuals to reexamine their attitudes towards markets:

If one asks where, in the Western university world, the freedom of inquiry of professors has been most staunchly defended and energetically promoted, my answer is this: not in the politically controlled universities…and not in the self-perpetuating faculties…. No, inquiry has been most free in the college whose trustees are a group of top-quality leaders of the marketplace, men who, experience shows, are remarkably tolerant of almost anything except a mediocre and complacent faculty (Stigler, 1963, p. 87).

Those who cherish freedom of inquiry should show greater appreciation for those who make their livings in the marketplace, not only because their actions have provided for the material progress necessary to support a class of intellectuals, but also because by their oversight of elite private universities they have personally safeguarded freedom of inquiry.

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8 “Comments on Rogge’s ‘Financing Higher Education in the United States’,” GSRL Box 26, File: Mont Pelerin Society 10th Anniversary Meeting.

9 “Comments on Rogge’s ‘Financing Higher Education in the United States’,” GSRL Box 26, File: Mont Pelerin Society 10th Anniversary Meeting.
If bringing the good deeds of businesspersons to the attention of intellectuals was insufficient to convince them to reexamine their attitudes, then perhaps closer scrutiny of the deep similarities between the marketplace and the intellectual world would do the trick:

The organizing principles of [the marketplace and intellectual world] are the same… Just as real markets have some fraud and monopoly, which impair the claims for the market place, so the intellectual world has its instances of coercion and deception, with the coercion exercised by cliques and fashion. But again these deviants are outside the logic of the system (Stigler, 1963, pp. 87-88).

The rationality of science and the effectiveness of the market for goods were due to the same organizational principles. Hence, intellectuals should regard the marketplace favorably.

But if the organizing principles were the same, and if markets generally worked, then how could one reasonably hold—as Stigler did—that intellectual life persisted in producing the wrong kind of knowledge? Stigler’s answer is worthy of close scrutiny. Markets did give people what they wanted. But this was nothing to celebrate, because most people are instinctually predisposed to hold the wrong views about them. Markets produce the wrong kind of knowledge because they give people what they want. After all, there was something to be said for coercion: an elite could potentially counteract such views. But larger political forces hampered its ability to do so. Stigler complained that the demand expressed by government for science as channeled through the system of publicly funded universities and grant programs had become intertwined with a set of egalitarian concerns. This encouraged “diffusion” of talent, leading ultimately to a decrease in the quality of research, entrenching professional consensus. Estate taxes eliminated the possibility of a future Rockefeller, and therefore the establishment of another University of Chicago was out of the question; states had diverted resources to the system of public universities that otherwise would have gone to a Harvard or, better yet, a Chicago.

Overall, Stigler was skeptical of the prospects for US higher education. But he held out limited hope that a small set of institutions might yet help to impose the higher standards that Stigler so desired.

Intellectual Failure and Market Failure

We have mentioned neoliberals’ concern for “freedom of inquiry.” What was its relationship to standard methods for protecting such freedom, such as tenure? The topic of tenure had provoked mixed reactions among MPS neoliberals. Could tenure be squared with developing notions of the operation of the intellectual marketplace?

10 In 1940 the American Association of University Professors approved guidelines for protecting academic freedom (including specifying conditions for obtaining tenure).
In 1964, Fritz Machlup (a founding MPS member) delivered a defense of academic freedom, and in particular its tenure protection. At that time, he was serving as president of the American Association of University Professors. In his talk, Machlup focused specifically on how tenure helped “to secure the great benefit of academic freedom and of the fruit it bears.”

Machlup viewed the professor as playing a crucial role in the advancement of knowledge. (Machlup cited the example of pressure exerted by a pharmaceutical company on a junior researcher studying the toxicity of one of its drugs.) In order for them to play this important role, professors would need protection. But to obtain this protection, they would have to personally sacrifice:

[T]he free competitive market for higher learning would not guarantee all the academic freedom which society ought to provide in the interest of progress; without the interference through the universal tenure system the degree of academic freedom would be only that which professors would be willing to pay for, and this would be much less than what is socially desirable (Machlup, 1964, pp. 119-120).

Machlup portrayed the intellectual marketplace as beset by “externalities.” For Machlup, professors produced the fruits of academic freedom. The problem was that they did not reap the full benefits of such freedom, while at the same time they solely bore the costs of it. In forging a binding commitment amongst professors, trustees, and administrators, tenure operated as a corrective for this “market failure.”

There were a variety of reasons Machlup’s position would have been intolerable to Chicago neoliberals. This was the time of the advent of the “Coase Theorem” (a term “christened” by Stigler), which effectively denied that externalities posed any significant problem for economies.¹¹ For Stigler, the inability to appropriate the fruits of academic freedom would suggest at most rejiggering the property rights associated with intellectual activities—for example by expansion of intellectual property.

But Stigler had an additional reason for rejecting Machlup’s argument:

The censorship of professors is more severe than that of either trustees or the market. Could you conceive of Princeton appointing an economist who actively professed racist views? …

¹¹ The argument was, in a nutshell, that if commodities were conceived as bundles of rights, then it would immediately become apparent that it was possible to unbundle them and allow the market to efficiently assign each one. The initial assignment of these legal rights would have no effect on the utilization of economic resources—subject to conditions that Coase called “zero transactions costs.” Hence, economic problems caused by externalities would simply dissolve.
Professors are highly conformist and make very poor custodians of intellectual freedom when it conflicts with the academy’s beliefs.\textsuperscript{12}

The faculty had gained control of the university—even the elite private university—and intellectual freedom had suffered. What had happened?

The intervening years between \textit{The Intellectual and the Market Place} and Stigler’s correspondence with Machlup had been a turbulent time in US higher education. Chicago was not spared. In 1967 the Chicago campus was roiled by a series of disruptive student protests. Students demanded greater say in administering the university. This disturbed Stigler. But the decisions of some faculty to support them in their demands had shaken him. And by now his experience tempered his admiration of the trustees, to say the least: “[T]he trustees have been as craven and irresponsible as the faculties.”\textsuperscript{13} The numbers to be found in the university whom Stigler trusted to carry forth its proper mission were now vanishingly small. Stigler concluded that matters had become dire. In a 1969 letter, Stigler admitted, “I am becoming increasingly more critical of present-day higher education.”\textsuperscript{14}

Hence, by the time of his 1969 correspondence, Stigler would have rejected Machlup’s argument that an agreement between trustees, regents, administrators, scholars, and teachers would foster intellectual freedom. He would have been skeptical that any one of those groups could be trusted to do so. Instead, Stigler began to contemplate a radical reorganization of knowledge. Recall, he believed in a science advanced by imposing the standards of an elite on a profession and, ultimately, a society. The elite class was very small; it was outnumbered, and its freedom of inquiry needed to be protected from coercion by students, the state, and the faculty. Moreover, inquiry would have to be structured such that the elite would prevail. He posed the question: “Is the university a sensible base of operations for the research scholars?”\textsuperscript{15}

The Division of Academic Labor is Limited by the Extent of the Market

On October 20 and 21, 1972, a conference was held at the University of Virginia in honor of Milton Friedman’s sixtieth birthday. It coincided with the tenth anniversary of the publication of \textit{Capitalism and Freedom}. The conference was framed as an exploration of the issues raised by that book—of its “Problems and Prospects.” George Stigler took the occasion to express his concern about one troubling feature of the work of his old friend and close colleague:

\begin{itemize}
\item \textsuperscript{12} Letter of Stigler to Fritz Machlup, dated April 14, 1969. GSRL Box 10, File: Machlup.
\item \textsuperscript{13} GSRL Box 22, File: “Do Trustees Have a Place in Education?”
\item \textsuperscript{14} Letter of Stigler to Robert Leach, dated May 23, 1969, GSRL Box 22, File: 1969 Student Aid.
\item \textsuperscript{15} GSRL Box 22, File: “Are There Any Professors Left?”
\end{itemize}
As I mentally review Milton’s work, I recall no important occasion on which he has told businessmen how to behave… Yet Milton has shown no comparable reticence in advising Congress and public on monetary policy, tariffs, schooling, minimum wages, the tax benefits of establishing a ménage without benefit of clergy, and several other subjects… Why should businessmen—and customers and lenders and other economic agents—know and foster their own interests, but voters and political coalitions be so much in need of his and our lucid and enlightened instruction? (Stigler, 1975, p. 312)

Stigler took exception with what he believed to be the confused image of the marketplace of ideas that was implicit in Capitalism and Freedom. If Friedman’s popularization of Chicago neoclassical economics in his advice to the public was effective, this would imply that the public “underinvests” in knowledge, a market failure. But if agents maximize in collecting information (since his 1961 paper “The Economics of Information,” Stigler argued that they did) they will already have gathered all the information that is appropriate for them to have. Friedman’s efforts at popularization would be of no use to them.

Stigler posed a provocative question: If markets generally work, then why should this not be the case for the marketplace of ideas? And if the marketplace of ideas works, then why should the public need a Milton Friedman? Or, for that matter, a George Stigler? It was a threatening question for an economist, and Stigler knew it: he had entitled one journal article “Do Economists Matter?”

Within that article, Stigler answered his question affirmatively by adopting something akin to the commonsense view of science as rational and reflecting nature (or, in this case, society), and expressing it in the language of commodity exchange. Science was a very special kind of commodity, differing from other information-commodities in its effects. Science is rational, and so is society (albeit in a different way), and therefore a rational society must make use of science. Society did need Friedman’s work—not his popularizations, but the economic science itself, that is his work aimed at fellow economists. It needed his Monetary History of the United States, but not his Free to Choose. It needed his scientific work, but it did not need to agree with it, much less to comprehend it.

But “society” doesn’t purchase knowledge: people do, for specific purposes. Students decide from which college or university to purchase knowledge. Patrons of research do much the same, Stigler observed: “…[the] huge area of antitrust & I[ndustrial] O[rganization] in [the] US [were] generated by both public policy and business defenses against it.” Stigler was in an excellent position to make such an observation: he had consulted for and testified on behalf of firms

16 GSRL Box 20, File: “To What Tune Does Science Dance?” The economic field of industrial organization had traditionally concerned itself with assessing the competitiveness of market structures; work in this field was often used in adjudicating antitrust cases in the US, and economists often served as expert witnesses.
facing antitrust action. Economists develop ideas in response to consumer demand for them; in Stigler's words, the economist was a "customer's man."\(^{17}\)

The argument led Stigler to state what he himself called a “paradoxical” conclusion: economists were truly influential only when they work on technical matters for an audience of technical economists and not when they speak directly to society. Only in the former case would economists achieve the fundamental effect of changing the platform upon which policy debates take place, a change due to the special reception given by the public and polity to science.

Stigler believed the university was beset by serious problems. He set out to construct an institution exempt from them. He would concentrate scholars in a setting freed from teaching obligations (and the influence of students), removed from the inconvenient protection of tenure, and placed under the watchful supervision of an “authoritarian” master. In this way, Stigler hoped to impose the standards of an elite upon his profession.

To do so it would be necessary to find a set of patrons that were uncontaminated by the egalitarian views of the government and the public at large. Stigler found them in corporations and pro-market foundations. Such patrons had funded the rise of University of Chicago Law and Economics and the development of a University of Chicago neoliberal version of Industrial Organization.

Stigler heeded his own advice. The topics Stigler settled on, studies of the economy and the state, had the virtue of appealing to a paying clientele. Stigler believed that economists and political scientists held unrealistically optimistic views about the ability of democracy to address social problems, and that these views tainted their studies of democracy and regulation. Stigler held that studies of the “capacities of democracy” could counteract prevailing beliefs about the way the political system functions.

Stigler was keen to persuade his patrons that science’s effects truly were special. He insisted, “The relevance of this work to public policy will be both indirect and decisive… The work will often shatter the fond hopes of the scholarly professions.”\(^{18}\) Stigler argued that using science was

\(^{17}\) At times Stigler did portray the scientific community as, if not exactly autonomous, then as bringing a handful of distinct values to the table—for example, in its disengagement from issues of immediate concern and valorizing generalizability (Stigler, [1972]1982). This view was clearly at tension with portrayal of the scientist as a "customer's man." Stigler later attempted to reconcile these two distinct accounts of the forces driving science by appealing to the passage of time—scientists’ judgments would dominate in the short run, but in the long run, market judgments would prevail (Stigler, 1988, pp. 85-86)—or by assigning to the scientist the role of discovering the latent desires of patrons (Hazlett, 1984, p. 48). What is noteworthy is that he reserves the role of making the final judgment on scientific knowledge not for the community of scientists but for the market.

\(^{18}\) GSRL Box 21, File: A Research Institute in Economics.
the best—indeed the only—way to achieve the influence that patrons might desire. He proposed using two methods to deliver this “decisive influence”:

1. Studies of the effects of past economic policies—to reduce unemployment, to stabilize prices, to control public utilities, to protect consumers and investors, etc.

2. Studies to develop and test hypotheses on the nature of the political process as it works in the economic scene.19

Stigler could deliver fundamental change by counteracting the attitudes economists and political scientists held toward markets. These studies would do so by instilling skepticism toward democracy and by producing audits designed to guide regulators’ behavior. They would impose the standards of an economic elite on the social sciences. It was a manifesto for the private funding of economics imperialism and neoliberal governmentality.

Conclusion

We have seen that other MPS members disagreed with Stigler, and he with them. Does that not mean that we should treat Stigler’s views as aberrant, or at least unrepresentative of neoliberalism? I think not.

Over time, rival views of the marketplace of ideas gave way to Stigler’s. Machlup’s portrayal of a marketplace of ideas beset by externalities was rejected. Much the same can be said of Friedman’s: by the 1980s, those at Chicago had acknowledged that Stigler’s views had prevailed over Friedman’s (Reder, 1982). This triumph was not necessarily due to a uniquely clear perception of the intellectual world. It surely had something to do with an imperative internal to the MPS to maintain consistency among its various explorations of the market: the market simply can’t fail. It was also due to the world coming ever more closely to resemble Stigler’s views; in some cases, this resemblance was due to his direct intervention. Stigler’s proposal for a private research institute led directly to the establishment of the Center for the Study of the Economy and the State (CSES), a key institution that took Chicago ideas outside the discipline of economics: it is impossible to write the history of “economics imperialism” without placing George Stigler at the very center of it (Nik-Khah and Van Horn, 2012).

He and his students developed relationships with scientists, resulting in a variety of interlinked and coordinated research institutes spanning economics, politics, and even the biomedical sciences (Nik-Khah, 2014). These efforts were significant enough to draw the attention of Michel Foucault who, in his Birth of Biopolitics, not only mentions Stigler’s research by name, but also singles out the work of the American Enterprise Institute’s Center for Health

19 GSRL Box 21, File: A Research Institute in Economics.
Policy Research as an exemplary instance of the “permanent criticism of governmental policy” so characteristic of neoliberalism (Foucault, 2008, pp. 246-7). This center was also an outgrowth of Stigler’s efforts.

For Stigler, the marketplace of ideas was everywhere; it was inescapable. But a market-governed science was not, and it was this that Stigler hoped to bring about. Stigler argued that the academy was incapable of self-regulation, and proposed that the marketplace would be a more reliable guardian of intellectual freedom. Science was special, but scientists were not special, or at least academic scientists were not special. In fact, science must be protected from them. The marketplace was a far more reliable guardian of intellectual freedom. The “top-quality leaders of the market place” would ensure that.

A market-governed science would dispense with elements of academic freedom to preserve intellectual freedom. It would utilize contract research and be conducted outside the structure of academic departments, under close supervision of one empowered to deliver on promises made to patrons. The purpose was not merely to produce “more” science, and certainly not to ensure the freedom of the individual scientist to pursue independent inquiry. Instead, it would satisfy the demands of patrons by producing the “right” kind of knowledge. It would free an elite group of individuals from the need to satisfy their students and their fellow faculty. In the case of economics, it would support a specific kind of political project. This was intellectual freedom.

If the faculties did not want this form of freedom, this would only prove how very necessary it was.

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