

DISMANTLING / NEOLIBERALISM

There are two aspects of Lisa Wedeen and Michael Dawson's interventions that I would like to address. The first involves the definitional and comparative issues surrounding neoliberalism's influence. The second, the central question: what is to be done?

COMPARING NEOLIBERALISMS

Regarding the first, Lisa Wedeen is undoubtedly right that neoliberalism has had varied impact across different nations and that it is therefore crucial to pay close attention to the different varieties of neoliberalism. For those of us focused more specifically on the penal sphere and political economy, there is heated ongoing debate over the interaction of different neoliberal ideologies and punishment practices—or more exactly, over the effects of different varieties of neoliberalism. Nicola Lacey (2008) tends to emphasize the distinctions between the United States and countries such as Canada, the Scandinavian states, and other major Western European countries. Drawing on new research on “varieties of capitalism,” Lacey proposes a set of distinctions within neoliberal economic organization (such as, for instance, differences between liberal market economies and coordinated market economies), as well as within political institutional organization (such as, for instance, differences between proportional representation and first-past-the-post electoral systems) in an effort to explain different penal outcomes. Other

theorists, such as Alessandro De Giorgi (2006), deploy a more Marxist framework, arguing that carceral distinctions can best be understood on the basis of differing labor-market needs. Mick Cavadino and John Dignan (2005) develop a four-fold typology of political economies (neo-liberal, conservative corporatist, social democratic and oriental corporatist) to help explain differences in penal systems.

In these debates, properly defining neoliberalism becomes of vital importance—especially when we need to distinguish it from, say, neoconservative politics or coordinated market economies. It becomes essential to get at the core of neoliberalism—to focus on a precise theoretical notion of neoliberalism, rather than merely on the specific policies (privatization, welfare retrenchment, etc.). This effort gets close to neoliberalism *qua* ideology in Michael Dawson’s sense. Let me propose, then, one theoretical angle.

At its core, I would argue, neoliberalism is the attempt to displace political conflict, contestation, and struggle—i.e. to neutralize the political clash over irreconcilable normative visions of family, society, and nation—by extending an idea of orderliness from the economic realm to other spheres of human existence and practice. The notion of orderliness corresponds to the idea of the ordered market as *the* model of social interaction—a model of (purportedly) “voluntary and compensated exchange” that “benefits all parties.” Early liberal economists in the eighteenth century set the stage for neoliberalism by introducing the notion of natural order into the sphere of trade, commerce, and agriculture—inserting it into the economic realm. Building on this original intervention, twentieth century neoliberals, beginning in the late 1930s and in reaction

to the rise of fascism and communism, performed *two key moves* that ultimately gave birth to the kind of state interventions (such as deregulation, privatization, and workfare) that have come to be known as post-1970 neoliberalism in the more strict and narrow sense that, for instance, David Harvey uses (2005).

The first critical move was to update and render more technical the notion of natural orderliness. This was achieved, first, through Hayek's notion of spontaneous order, but then, and more importantly, by means of more technical economic interventions that gave rise to concepts such as Pareto optimal outcomes and Kaldor-Hicks efficiency. This first move transformed notions of "natural order" into far more powerful, more persuasive concepts of "market efficiency," especially "Pareto efficiency" (which no one in their right mind could possibly oppose). The second critical move was to extend the earlier liberal notion of orderliness from economics to other domains—the social, the familial, the political. In other words, to extend the model of natural order beyond economic exchange to crime, divorce, punishment, illicit drugs, adoption, and so on. And this is precisely what was achieved by the early Chicago School in the 1950s and 60s.

These two moves were extremely productive and, in this sense, clearly demarcate the essence of neoliberalism from its earlier liberal kin in the eighteenth century. By extending orderliness and predictability—remember that prediction is based on orderliness—to multiple spheres of human interaction, neoliberalism today manages to mask, cover, or marginalize politics and the contestation over political values. This is what Jean and John Comaroff have in mind when they identify

neoliberalism as the “impulse to displace political sovereignty with the sovereignty of ‘*the* market,’ as if the latter had a mind and a morality of its own” (2001:43).

This impulse is perhaps best captured by the growth, since President Jimmy Carter, of the economic evaluation of government regulation. The effort to measure, quantify, and render commensurate all political initiatives by means of “economic impact statements”—in other words, to quantify the costs-and-benefits of every political intervention—is precisely aimed at providing a neutral and apolitical way out of politics. The “costing out” of politics essentially puts on the same footing OSHA labor standards and COPS police programs: Instead of contestation over the underlying political visions for society, today we quantify how many statistical lives can be saved and at what cost by, say, an OSHA regulation relating to working conditions versus a COPS program that puts more police officers on the street. No need to talk about *visions* of society—we can resolve that merely by two economic impact studies relying on values of statistical lives and econometric computations.

One need only look at President Bill Clinton’s executive order on the “Economic Analysis of Federal Regulations,” which essentially codified the practices under Carter and Reagan and has paved the way for today’s bureaucratized government, to see how market economics has displaced politics (OMB 1996). The primary and only stated reason to justify government regulation—i.e. politics—is “market failure”: “In order to establish the need for the proposed action [i.e. federal regulation], the analysis should discuss whether the problem constitutes a significant market failure,” the document begins. There are no other defined reasons, though there are a few

other possible suggested reasons. Market failures are defined as either externalities, natural monopolies, market power, or inadequate or asymmetric information. Plus, there is inscribed in the executive order an assumption of market efficiency. “Government action may have unintentional harmful effects on the efficiency of market outcomes,” the document states up front (OMB 1996). But it goes further:

“For this reason there should be a presumption against the need for regulatory actions that, on conceptual grounds, are not expected to generate net benefits, except in special circumstances. In light of actual experience, a particularly demanding burden of proof is required to demonstrate the need for any of the following types of regulations:

- price controls in competitive markets;
- production or sales quotas in competitive markets;
- mandatory uniform quality standards for goods or services...” (OMB 1996)

In other words, the entire political enterprise has been turned into a market evaluation—and the central assumption is market efficiency. So as not to put too fine a point on it, the document goes on: “Even where a market failure exists, there may be no need for Federal regulatory intervention if other means of dealing with the market failure would resolve the problem adequately or better than the proposed Federal regulation would” (OMB 1996).

As you can see, neoliberalism achieves the displacement of politics by means of particular ways of knowing that privilege

measurement and the presumption of efficiency. This has important effects on relations of power and distributions of resources within society. By privileging measurement, commensurability, prediction, and forecasting, neoliberalism essentially converts the economic analyst into the speaker of truth—neutral, objective, unbiased, depoliticized. Neoliberalism thus gives way to a particular crystallization in our relations of power, and this is associated with distinct distributional outcomes, in this case increasing social inequality (*see generally* Massey 2007). This is precisely what Loic Wacquant has in mind, in *Punishing the Poor* (2009), with regard to the increased inequality that leads to the need for more punitive state action. I think this is also exactly what Michael Dawson is discussing in his intervention as well.

It may be possible, with this definition in hand, to compare the degree or extent to which neoliberal ideology has infiltrated different countries, and then to assess the relationship between the level of infiltration and social outcomes, including carceral outcomes. In this regard, as I argue in *The Illusion of Free Markets* (2011: 225-231), although the United States may be an outlier in the *magnitude* of these effects in the post-1970s (especially as they relate to the carceral sphere), there are surprising similarities with Western European countries as to the overall *trends*: the larger Western European countries have, to a great extent, mirrored the trends in the United States, with some lag and a lot of attenuation. This suggests—though further study is certainly necessary—that the extent of neoliberalism may be a dominant factor. Degrees of neoliberalism may explain the crystallization in relations of power and distribu-

tional outcomes. This, then, takes me to the second issue raised by Michael Dawson.

WHAT IS TO BE DONE?

The task of critique—*our* task, I take it—is to resist these crystallizations in relations of power in order to retrieve the politics and unmask contestation. The central task of critique is to lift the veil from the purported orderliness or market efficiency; to unmask the ostensible neutrality of the economic analysis; to expose the distributions that are at the heart of all political interventions.

There is a striking passage in Michel Foucault's essay, *Nietzsche, Genealogy, and History*, where Foucault discusses formations of truth (*véridiction*) as the very precondition of injustice. Foucault writes, in 1971: "The historical analysis of our great *desire to know* [ce grand vouloir-savoir] reveals that there is no knowledge [*connaissance*] that does not rest on injustice and that the instinct for knowledge is wicked (that there is something in it that is murderous, and that wants nothing to do with the happiness of mankind)." ¹ Foucault's words were prescient: the precondition of injustice, most often, is the certainty that attaches to knowledge. It is only when we *know* that we act politically in the debilitating ways that we do. It is only when we *know* that we are prepared to execute someone or wage war. The history of our punishment practices in twentieth and twenty-first century America, I fear, is a demonstration of this—ranging from a period of massive institutionalization in mental hospitals in the 1930s and 40s to an era of mass incarceration at century's end (Harcourt 2006).

It is in this sense that I view the proper response to neoliberalism as being resistance to those formations of truth—to the idea of natural order or market efficiency and to the expansion of market rationality to all aspects of human existence. In contrast to Michael Dawson, though, I view my primary task, as critic, to constantly dismantle these crystallizations of power, rather than to put new ones in place. I should emphasize I have no objection to utopias or utopian thinking; and I, myself, have strong desires for specific human conditions, of equality especially. But I see my task, in my role as critic, as centrally preoccupied with the end zone, trying to avoid utter catastrophe, rather than on the other side of history.² I also fear that our positive programs often reify new crystallizations of power that become obstacles to critique at later points in history. This reflects the deep nominalism of my approach.

As I have explored elsewhere, it often happens that useful categories—categories that serve to reveal illusions at one point in time—get in the way of addressing new problems that emerge at later times. The notion of *discipline*, for instance, may have been extremely useful at a certain historical moment to question the progress narrative of punishment and destabilize our self-righteous complacency; but once that task has been accomplished, the idea itself may become a hindrance to further critical interventions in the larger effort to destabilize punishment *per se*.³ In a similar vein, the category of *repression*—or, for that matter, of *the repressive hypothesis*—may serve a useful purpose in one historical context, but later may begin to mask troubling forms of governance. The notion of “beheading the King” may be a useful political intervention in

the study of power at one time, but may stymie critical thought at a later date.

In his lectures in 1978 at the Collège de France on *Sécurité, Territoire, Population*, for instance, Foucault used the Parisian policing of grain markets as his chief illustration of the concept of *discipline* in order to help identify another form of governance—what he called *sécurité* or, elsewhere, *gouvernementalité*—and to destabilize the notion of liberty at the heart of liberalism. Foucault went so far, in fact, as to create the neologism of the “*police disciplinaire des grains*”—inscribing discipline into the very policing practices of the period (Foucault 2004:46). But that very category, that *useful* category of *discipline*, can turn into a hindrance when it becomes entrenched. It can end up solidifying the differences between “free” markets and “overly-regulated” markets—for instance, in the current American neoliberal context. The result is that the useful category may, at a later time, begin to mask the illusion that there could ever be such a thing as an unregulated space. It also hides the fact that much of the policing of grain markets in 18th century Paris was trivial, to say the least (Harcourt 2011:153-171). In effect, it reifies the discipline of the “over-regulated” space.

In this sense, it is equally important to constantly deploy, but later resist useful categories. A genuinely nominalist approach demands the recurrent abandonment of the very categories that identify illusions and emancipate us in earlier periods. Knowledge, I would suggest with Foucault, is murderous. It is only when we know who the accused is, that we sentence him to death or institutionalize him in the asylum. In the carceral field, the moments of punitive excess seem inextricably

Dismantling / Neoliberalism

linked to the certitude of truth. The critical task ahead, then, is not simply to reveal illusions in order to construct a path forward, but to constantly challenge the crystallization and solidification of our own truth-telling.

The task, as I see it, is to unmask and enlighten, but then to shed the tools we have used, before those very beliefs become oppressive themselves. As a historical matter, I suspect, our twentieth century experience with certain forms of communism confirms this instinct.⁴ Knowledge makes us master of our universe, but mastery is the most dangerous thing of all. To constantly dismantle: I think that is probably a good place to stop and invite further discussion.

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NOTES

- 1 « L'analyse historique de ce grand vouloir-savoir qui parcourt l'humanité fait donc apparaître à la fois qu'il n'y a pas de connaissance qui ne repose sur l'injustice (qu'il n'y a donc pas, dans la connaissance même, un droit à la vérité ou un fondement du vrai) et que l'instinct de connaissance est mauvais (qu'il y a en lui quelque chose de meurtrier, et qu'il ne peut, qu'il ne veut rien pour le bonheur des hommes) » (Foucault 1971 :1023).
- 2 Perhaps this explains why I have spent so many years representing those who are facing their final appeals before execution. There may be a relation, here to, to the end zone.
- 3 See Harcourt, « *Supposons que la discipline et la sécurité n'existent pas* – Rereading Foucault's Collège de France Lectures (with Paul Veyne) » in *CARCERAL NOTEBOOKS - VOLUME 4, 2008* (Bernard E. Harcourt, ed.) (2008) (where I argue that the categories of *discipline* and *sécurité* may shield us from having to ask harder questions about the need for punishment); Harcourt, *Illusion of Free Markets*, p. 47-48 (where I suggest that the category of *discipline* may reify, rather than undermine, the notion of free markets).
- 4 This is the central problem with calling the emancipatory impulse that has animated political revolutions since the French Revolution the “communist hypothesis,” as Alain Badiou does in *L'hypothèse communiste* (Éditions Lignes 2009).