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Neoliberal wrongdoing, or same as it ever was?

A review essay

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James G. CARRIER (ed) | *Economy, crime and wrong in a neoliberal era*, New York, Berghahn, 2018, pp. 276.

Wrongdoing and crime are constantly on our lips and newspapers/newsfeeds, while true crime is one of the fastest growing genres in all media. Even if, based on statistics, crime's prevalence has dropped in most rich countries, the malfeasance of political and entertainment elites produces a fascinated audience for collusion, corruption and fraud. This book offers a diverse selection of insightful case studies of deviance, wrongdoing and crime in recent decades. Each offers rich discussion of particular kinds of malfeasance which are enabled or colored by the political economic context in which they occur.

Each chapter has many merits, but my main concern is to examine the core framing of the volume as a whole: the relationship between crime/wrong and neoliberalism. Before we can evaluate the linkages, it is necessary to clarify the terms. Wrongdoing is generally adequately conceptualized, although with neglect of important work in the field such as the distinction between illegal and illicit, influentially explored by van Schendel and Abraham (2005). More problematic is the idea of neoliberalism. In the *Introduction*, James Carrier allows that it is a "slippery

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concept”, and says that in the volume it means three things: “a historical period, an economics and a political economy” (p. 1). He fails to adequately distinguish neoliberalism from classic liberalism in any of these senses, other than being located in the “neoliberal period”, which is dated from the 1970s. Carrier concentrates on distinguishing neoliberalism from its predecessor, which I call Fordism for simplicity. His description of the neoliberal political economy is not etic, but emic, relying on member experience of the era: we know it when we see it. This limits the utility of such definitions for comparison and generalization. The claim that an increasing value was “placed on market activity, commercial success and the innovation that was taken to produce it” would be equally valid, applied to the late 18th or 19th centuries. The strengthening of the political position of businesses also increased at this time. The way in which “people were increasingly encouraged to see themselves as entrepreneurs” (p. 2) is hardly new in American society, for instance, and the moral valuation of economic success echoes Max Weber’s Protestant Ethic.

Briefly, I myself see the term *neoliberal* as only justified if it means something different than liberal. Otherwise, it is more a revival than something new. The most interesting aspects of neoliberal regimes and governments have been the ways in which they extended markets into unconventional realms of life, for example by outsourcing governmental services, carbon credit markets, or providing insurance for climate change risks. Or as Steven Sampson defines it in the *Conclusion*, “the increasing encroachment of market rationality into spheres of social life formerly governed by non-market logics” (p. 243). This is what Peck and Tickell (2002) describe as the roll-out phase of neoliberalism, as opposed to the rollback phase where leaders concentrated on dismantling the protections and corporatist arrangements of Fordism and social democracy. Carrier emphasizes the rollbacks more than the rollouts, and thus fails to adequately separate post-1973 neoliberalism from classic neoliberalism.

I turn now to the main focus of the book: the relationship between (neo)liberalism and crime/wrongdoing. The *Introduction* says the purpose of the book is to “consider whether there are forms of economic activity, expectations of the normal and the abnormal, and understandings of the proper and the improper that are distinctive to that era”. This purpose is justified because “neoliberalism includes a set of assertions about what proper economic behaviour is” so that “the rise of neoliberalism has made the question of proper and improper economic activity more visible than usual” (p. 1). This is an excellent question, but without precision about the

nature of neoliberalism, it is challenging to answer. Leaving aside adequate delineation between neoliberalism and classic liberalism, the question becomes whether the differences with the Fordist era are established. Even with this reduced scope, defensible generalizations are hard to see. Still, the effort to do so is admirable and worthy. These chapters will stimulate further work in this direction.

One of the problems with providing a clear account of the neoliberal/wrongdoing interface is what we might call the neglect of “actually existing pre-neoliberalism”. For example, Royrvik provides a fascinating critique of management through key performance indicators (KPIs) and other forms of quantified evaluation and incentives. Such systems, he suggests, are easily manipulated and tend to change forms of work, and subjectivity, in ways that ignore important substantive concerns that the KPIs are intended to represent and “do so in ways that ignore professional and ethical judgement” (p. 67). The will to quantify, he suggests, produces socialities that encourage the “proliferation of economic activities that many see as questionable” (p. 66) such as overseas bribery to obtain contracts and other advantages. In many ways I agree with this assessment, and have argued that anti-corruption strategies, such as those in Hong Kong, which rely on preventing corrupt activities by setting precise boundaries between corrupt and acceptable actions facilitate collusion by making socially illegitimate actions legal right up to the line. This is part of a broad tendency towards what has been called “gaming the system”, hitting the target while missing the point (Smart 2018). As long as KPIs are met, managers gain power over their subordinates while “giving them good reason to ignore their professional and ethical judgement” (p. 86).

This kind of argument, apparent in other chapters as well, seems to presume some management golden age when managers and other members of the economic and political elite behaved better. Let us only consider the classic Fordist era from World War II to the mid-1970s. Managers, but not workers, were largely insulated from the alienating Taylorist management of mass production. But consumers of American made automobiles (described by consumer activist Ralph Nader as often “unsafe at any speed”) had less reason to consider it a golden age. Did managers always focus on their professional and ethical obligations? Not those that were engaged with corrupt politicians and mafia bosses in urban political machines and mafia leaders to control unions. Oligopolies with fat profit margins could afford labor contracts with good benefits for the white males who dominated the primary labour sector, while abuses and dangerous working conditions faced minorities and women in the secondary labour sector. One only has to read

work on the era by sociologists of law like Block and Chambliss (1981) to question whether economic crime is increased by actually existing neoliberalism. It is certainly a possibility but not one that has been adequately demonstrated. If we look back farther to the age of mercantile capitalism, governments, and their agents such as the East India Company and Hudson's Bay Company, plundered as much of the world as they could, gaining commercial advantage through forces of arms (Frank 1998).

In his informative description of financial supervision in the post-2008 European Union, Daniel Seabra Lopes concludes that finance in the neoliberal era has stabilized around three related movements: the interplay of innovation and wrongdoing facilitated by regulatory arbitrage; an international framework that attempts to free finance from politics; and the predominance of technical knowledge over social conventions. He provides an incisive discussion of the cat-and-mouse game between regulators and profit (more precisely, rent) seekers. He says that although financial markets are global, "supervision and regulation remain largely confined to national borders" (p. 102). This seems to neglect American legal extraterritoriality, which exerts inordinate influence on the world economy. Critics decry America's financial imperialism, while policymakers are looking for ways to limit its reach. "European companies are increasingly impacted by the extraterritoriality of US sanctions", according to the head of BusinessEurope, the main employer federation in the EU (The Economist "Uncle Sam's game" Jan 19 2019 61-63). Economic Pax Americana perhaps? But surely not liberal, or neoliberal, in any general sense, since it allocates to only one state the power to impose its rules beyond its borders.

Part of the problem, and one common among anthropologists discussing neoliberalism, is a tendency to see neoliberalism as synonymous with most of the policies and practices they find abhorrent. With this kind of analysis, if a government is considered to be neoliberal, all of the negative things that they do are castigated as neoliberal, even if they have little to do with extending markets and choice, and instead are authoritarian rather than neoliberal. The clearest case of this approach here is the chapter by Kathy Powell on neoliberalism in Central America. As she writes, neoliberalism in the region renders the "poor surplus, both producing migrants and rationalizing the option of organized crime, while the security framework that protects those imperatives itself exacerbates the dangers migrants seek to escape" (p. 212). The discussion of migrants' narratives of the dangers faced, and the moral economy that encourages them to undertake such hazardous journeys, are evocative and important, but lumping everything

together as neoliberalism fails to sufficiently illuminate the situation, or the possible solutions. As an aside, I was surprised to see heavy use of the term “moral hazard” without any definition of it (usually seen as the negative outcomes of insurance encouraging greater risk-taking), and apparently treating it as immoral risks imposed on marginalized people by unfair political economies (Smart 2013).

The following chapter by Josiah Heyman deals with similar issues of the political economy of migration, from Mexico to the United States, but with more precise analysis of the relationship between neoliberalism and unauthorized migration. He notes one meaning of neoliberalism as freeing individuals to make decisions, but demonstrates how far US policies toward Mexican migration diverge from this definition. Rather, neoliberal policies in other domains, such as structural adjustment and regional free trade, are seen as causing massive dislocations in Mexico and Central America that generate cross-border unauthorized movements. Unauthorized labour migration involves, rather, “activities that evade limitations on market processes within incomplete neoliberalism” (p. 220). In other words, migrant flows were “reinforced by neoliberalism but were not a product of it” (p. 221). The broader picture of oppression, exploitation, suffering and wrongdoing existed for Mexicans in the United States, including American citizens of Mexican descent, long predated the 1970s, as did oppressions in Mexico that drove the exodus. He suggests that the bigger picture is not one that is exclusive to neoliberal regimes, but results from the “place of peasants in uneven capitalist development” (p. 228). Neoliberalism is only one phase of a “broader pattern of capitalist devaluation of the peasantry” (p. 235) and which I might add was also found in communist, colonial and imperial regimes.

Still, the chapters in this book demonstrate that economic crimes such as fraud are facilitated by changes associated with neoliberalism. While pharmaceutical fraud is hardly new (think of highly hazardous patent medicines of the past or Big Tobacco’s Big Lie), the sophistication of the schemes to defraud public health systems through promotion of off-label use based on sponsored clinical trials does seem novel (chapter by Kalman Applbaum). In his useful historical analysis of taxation, Thomas Cantens suggests that the complexity of the contemporary economy leads to the justification of tax policies shifting away from (liberal) rights and values and towards (neoliberal) calculability, with the outcome privileging the wealthy. The elaborate financial regulatory schemes of the European Union, discussed by Lopes, and the not-yet-illegal schemes used to work around them, would be unimaginable in the 19th century. How can we reconcile my criticism with

this evidence? I accept that the quality and form of economic crime is influenced by neoliberal policies and practices, just as economic crime in the 18th century and under Fordist regimes of accumulation took on particular patterns associated with those political economic regimes. This is where the strength of this collection lies, in careful diagnosis of how these historical influences structure and encourage particular kinds of fraud and economic wrongdoing in the contemporary era. This is apparent in Sabina Stan's examination of how the exchange of favors and corruption in Romanian health care took different forms under successive regimes. The pervasive acceptance of gifts by doctors in exchange for scarce medical services survived under the early post-socialist system, but during a period of austerity since 2010 has become increasingly criminalized. Her conclusion that the shifting evaluation and practice of informal exchanges in healthcare is a "function of the evolving reconfigurations of citizenship and the struggles that social actors wage around it" suggests that we need to be careful to situate our analyses of wrongdoing in subtle shifts rather than explain them in terms of broad but insufficiently precise generalizations.

Liberal attitudes of free markets and neoliberal attitudes that allegedly value growth over values can also reduce crime, by ending prohibitions such as those against marijuana, and producing new growth industries, as Michael Polson's chapter describes. The resistance to legalization, continuing at the American federal level, despite state level legalizations, suggests that in our supposedly neoliberal era, "traditional" values still have immense impacts on the economic choices of our governments, particularly ones that are just as neo-authoritarian as they are neoliberal. To see politics as organized only around economic growth and individual entrepreneurship provides too narrow and truncated an account of contemporary political economies. Hypocrisy, prejudice and xenophobia operate simultaneously, perhaps as often at a tangent to economic growth as in harness with it.

The conclusion by Steven Sampson offers what may be the clearest formulation of the neoliberal/wrongdoing nexus. He draws on the chapters to suggest that in the neoliberal era we have a "situation in which it is deviance that sets the rules rather than rules marking out what is deviant [...] the rules seem to be an artifact of deviance" (p. 249). While this is a plausible and powerful indictment, again, one wonders if it adequately distinguishes the situation from the past. In some ways, rules apply to rulers in ways that didn't seem to be the case a half century ago. The indiscretions of British monarchs and American presidents before Watergate were widely known by reporters, but unreported by convention and political pressure. Collusion by big business and politicians to ensure the dominance of pro-

business and often mafia-infiltrated unions were undertaken to marginalize more progressive unions. The fake science, and payoffs to politicians, used to undermine strong evidence that tobacco caused cancer delayed health warnings and regulations for many years, at the cost of hundreds of thousands of deaths and many more cancers. Similarly, scholars of critical legal studies have repeatedly shown that judicial interpretation of the law and its precedents is essentially indeterminant, constantly responding to tactical responses by elaborating on the meaning of the rules, which facilitates new manipulations, with no final certainty (Moore 1978; Coombe 1989). Legal and rule reform running after implementation problems, and regulatory capture, has arguably long been normal. Perhaps the issue with it under neoliberal regimes is, to quote Canadian folksinger Bruce Cockburn, that “the trouble with normal is it always gets worse”.

This review has been perhaps too critical, but only because I took seriously the important question at the core of the book’s conception, the relationship between neoliberalism and wrong. Anthropologists, sympathizing with the losers in the changing political economy, seem to be prone to loose usages of neoliberalism. Yet, as Sampson describes, these chapters offer penetrating analyses of the “strategies and tactics that people and communities use when faced with neoliberal encroachment into their lives” (p. 247). Despite definitional issues, the regulatory systems have for the most part disadvantaged the less privileged segments of the world, and are subject to sophisticated forms of manipulation by the elite, sometimes simply creative “situational adjustment” (Moore 1978), sometimes collusion, sometimes fraud and corruption. But when we turn to what is to be done, an excessively positive account of the Fordist era, far from just and inclusive to racial minorities, indigenous peoples, women, members of the LGBTQ2SA+ community, etc. risks making the wrong choices about how to regulate markets and reform economies and polities. We certainly need, for example, a revitalization of anti-trust controls against the network effect based oligopoly of the tech giants which are generating massive profits through their surveillance of our activities (Zuboff 2019); but a return to cozy economic nationalist deals between corporations and government at the expense of consumers doesn’t seem like a sensible choice either. Yes, markets are rigged, and inequality has risen within most countries. After all, the freeing of markets in China have lifted 500 million people out of extreme poverty between 1981 and 2012. How can we rescue the baby of economic freedoms from the filthy bathwater of elites rigging the system to their advantage?

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