

Neoliberal Statecraft

By Colin Crouch

The last few decades have been marked by a profound reconfiguration of the dividing line between the state and the market. As the state increasingly ensures that market competition functions without impediments, the field of intermediation and influence is experiencing an unprecedented expansion.

About: Antoine Vauchez, Pierre France, *The Neoliberal Republic. Corporate Lawyers, Statecraft, and the Making of Public-Private France*, Ithaca, Cornell University Press, 2020.

This English translation of the authors' *Sphère publique, intérêts privés: Enquête sur un grand brouillage* (Presses de Sciences Po, 2017) will bring to a deservedly wider audience their major research contribution to the study of neoliberalism in practice. They concentrate, as the English title implies, on the revolving door between private corporate law firms and the upper echelons of French politics and public administration. This then shines a larger spotlight on to the wider phenomenon of the *brouillage* between state and market that, paradoxically and deeply ironically, neoliberalism has brought to contemporary societies. The story is of course not solely a French one. The role of law firms might be particularly strong in France; elsewhere

it might be management consultants, accountants or bankers—in the United States all combined.

The irony is that an important one of neoliberals' many promises to the world was that, by replacing an interventionist economic role of the state with pure market forces they could end the *pantouflage*, cronyism and downright corruption that seemed to accompany the interventionist state. Absent the state from interference with the activities of firms, they argued, then business interests would have little or no interest in lobbying or bribing ministers and civil servants in order to secure favours. Do away with most regulation of business activity, and there would be an end to 'regulatory capture', that process whereby regulatory agencies are gradually taken over by the most powerful among those they are supposed to be regulating. End the practice of promoting *champions nationales* and there would no longer be politically privileged corporations.

If all this was true, how have we arrived at a position where French political and public administrative leaders are falling over each other to qualify as corporate lawyers, advising the firms they used to regulate on how to avoid regulation, and perhaps returning for a while to public office to make further regulatory adjustments? How did Goldman Sachs and other leading US banks come to lobby the US government to deregulate the financial system, send some staff members into the administration to oversee that deregulation, lead the lobbying plea for banks and other financial institutions to be largely exempt from the negative consequences of the global collapse in 2008 that followed that deregulation, and go on temporarily to provide prime ministers for Greece and Italy to ensure that those countries implemented the disastrous austerity policies that helped protect the banks?

The Role of Re-regulation

The answer emerges clearly from Vauchez and France's account: there is no such thing as simple deregulation, only re-regulation (as the most perceptive of neoliberal observers, such as Giandomenico Majone (1990) had envisaged). Whereas 'old' regulation imposed restraints on certain business activities in order to protect such non-economic goals as health and safety, the purpose of neoliberal re-regulation

is, in principle, to ensure that market competition functions without impediments. Given that across much of an economy many activities have strong tendencies to monopoly and oligopoly, this is no easy task. Particularly important are network externalities. Where a product depends heavily on networks for promotion, sale and service, and where (as is usually the case) size is an important characteristic of a network, advantages will accrue to firms that are linked to the largest network. This produces a constant pressure to reduce the number of producers to below the large number required for a true market to function, and ideally to one. The internet has reinforced this process massively, since by definition it comprises networks and provides a basis for platform firms that use networks and which share the logic of driving towards the largest possible one.

A separate process that has also made the achievement of anything like pure markets very difficult is the importance within a neoliberal economy of privatized public services. Many of these services were in the public sector in the first place because it is very difficult to achieve competition within them—for example, railways, gas, electricity, water, telecommunications. With the possible exception of this last, where new technologies have enabled a major expansion of radio wavelengths, competition in such cases with heavy tendencies to network monopolies can be introduced only through analogues and highly artificial technical devices.

Establishing where, when and how market competition can be achieved, if at all, under these circumstances is a difficult task, with many alternative possibilities and cases for exceptions. Where there are alternative possibilities and cases for exception in regulation there is always work for lawyers, securing interpretations and exemptions favourable to their wealthy clients. Lawyers who can run round and round the revolving door between state service and the private sector are able to pop up on alternative sides of the divide between regulator and regulated, and thereby serve their clients' interests even better. As the neoliberal turn from governments active in the economy to a regulatory state closed the door on certain kinds of close and potentially corrupt relations between state and corporations, so it opened another at least equally large one, *en route* producing what Vauchez and France call a new form of statecraft.

The mechanism of the revolving door has been liberally lubricated by another set of neoliberal reforms that is also well understood by our authors: new public management, enthusiastically endorsed by the Organisation for Economic

Cooperation and Development (OECD 2005) and nearly all other public policy institutions for the past two decades. The starting assumption for these reforms was that governments and public services were virtually certain to be less competent than private firms. Therefore, the closer that the former could be brought to the latter, the more it would be improved.

Previous ideas (inspired as much by market liberals as by social democrats) that public officials should operate at arm's length from companies over which they had some kind of tutelary relationship, were replaced by the exact opposite: staff from firms being regulated should be seconded to the ministries responsible for their sector; public officials should be seconded to firms in sectors they were regulating. Public-private partnerships were also heavily encouraged, whereby firms would fund public investment projects, take ownership of these and lease them back to the public service concerned. The terms of investment and of the leases provide enormous scope for negotiations between the staff of public and private partners, staff who might move between the two.

The Neoliberal Republic and Democracy

Majone was worried that democratic processes might interfere with neoliberal re-regulation, retaining old and imposing new forms of restrictive regulation. He therefore advocated that as much as possible of this re-regulation should be carried out at the level of the European Union, more remote from democratic interference than national parliaments. Majone need not have feared. Setting the terms of, implementing, and constantly revising, regulation is not a task in which the public or ordinary members of parliaments play much of a part. These are jobs for small, highly professional elites, mainly lawyers, operating far from public scrutiny, working very expensively to ensure that individual firms and business interests in general are the main beneficiaries of the outcomes.

This is not entirely true. Regulation for health and safety, consumer protection, and increasingly the environment has by no means been totally excluded from the agenda. Democracy and parliaments, including the European parliament, continue to impede the goal of regulation solely to protect competition. As the

authors point out, some elements of the neoliberal programme itself have brought higher standards of transparency to business and politics. Campaigning groups are increasingly active in trying to use transparency laws in order to expose the secretive contracts that are the main expressions of the neoliberal republic. In the United Kingdom a group of lawyers called the Good Law Project are crowd-funding court cases to expose the secret terms of contracts between ministers and their favoured firms. These contracts have mushroomed with the coronavirus pandemic, government using arguments of urgency and the need for speed in order to avoid normal tendering procedures and to award contracts for the provision of medical equipment to firms owned by their friends.

The battle is not over, but one must not be too sanguine. Even as I write, the UK government is trying to cripple the Good Law Project with legal costs. New progressive forms of regulation are increasingly implemented and monitored by the processes of the kind that Vauchez and France describe, meaning that corporate interests dominate. Consumers' organizations, trade unions, social movements and other groups representing major social interests are not characters in this book; they do not need to be, as they have little role to play, and usually cannot afford to buy one.

Two Forms of Neoliberalism

Behind the paradox of the neoliberal republic that encourages an intermixing of public and private actors that seemed to be anathema to neoliberal ideas lies a major division in the ideas of what neoliberalism means.¹ This begins with two interpretations of what competition entails. The first, which we can call classic or market neoliberalism, holds that competition requires the permanent existence of a large number of participants in a market. In a true market no one or small groups of producer(s) or purchaser(s) can affect a price by their own actions; everyone is a price taker. If some firms grow so large that they threaten this criterion, they have to be forced to surrender some of their activities. This is something that the European Court of Justice enforces from time to time.

¹ I have enlarged further on this division in Crouch 2011 and 2013.

True market neoliberals are idealists; they believe that the economy could be refashioned through tough competition law so that it resembles the abstract models of neoclassical economic theory. Pragmatic neoliberals are very different from this. They argue—realistically—that the ideal can never be attained in an economy where there are major advantages to scale. They also contend that the degree of legal intervention needed to enforce pure markets constitutes unacceptable state interference. They therefore redefine a competitive economy as one in which competition has taken place at some point; the pattern of large, dominant corporations that results from this rewards the successful and, they argue, benefits consumers. It is therefore unnecessary and even undesirable for competition law to try to impose pure markets; we should be quite relaxed about monopoly. The advocates of this position are corporate rather than market neoliberals. They are the ones who make the rules and control affairs in Vauchez and France’s neoliberal republic.

Corporate neoliberalism is realistic where market neoliberalism is naïve. It is also cynical, as its proponents use the rhetoric of free markets and the minimization of state intervention, when in practice they aim at the manipulation of markets through the interpenetration of the worlds of politics, public administration and large firms that constitutes the statecraft of the public-private polities of the contemporary world. The result is the political economy of politically connected, rent-seeking corporations that contributes in turn to the growing inequality and separation between a politico-economic elite and everyone else that we see all around us.

Emmanuel Macron

Every author’s dream is for an event to occur after they have finished their work that they had not predicted but which bears out their claims—and which they can include in a second edition. This happened to Vauchez and France with the election of Emmanuel Macron as president of France after they had finished writing *Sphère publique, intérêts privés*. They have been able to add an Afterword on this development to the English translation. Not only does Macron’s own career constitute an example of that pattern of graduation from l’École Nationale de l’Administration followed by oscillation between public and private office that is central to the statecraft of the neoliberal republic, but he and his *En Marche*

movement embody some of the wider implications of that statecraft, including impatience with and even contempt for the ways of orthodox politics.

Even more recently than the publication of this English edition, Macron has announced the closure of the ENA itself. This seems to be a fine example of the intelligent conservative's motto: *Se vogliamo che tutto rimanga come è, bisogna che tutto cambi*.² The neoliberal elite is not particularly interested in preserving access to itself for the children of the privileged, but in ensuring the efficiency and continuity of its statecraft. This and similar actions leave critics of the neoliberal republic in a difficult place: one does not want to defend an *ancien régime* that was shot through with its own defects, any more than one would support the *Rassemblement Nationale* against this new regime. What have we left to defend beyond some precious fragments of a post-war social democratic legacy that has lost much of its own integrity?

References

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² "If we want everything to remain as it is, it is necessary that everything change" — a pronouncement of the young aristocrat Tancredi Falconeri in Giuseppe Tomasi di Lampedusa's Sicilian novel *Il Gattopardo* (1958).