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“What about the box?” Some thoughts on the possibility of ‘corruption prevention’, and of ‘the disciplined and ethical subject’



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ABSTRACT

Accepting the call to treat the ‘toolbox’ and not the ‘tools’ as central to doing Foucauldian analysis (Paltrinieri, 2012), this paper draws on Foucault’s characterisation of his project as ‘a critical history of thought’ (Florence, 1994) where ‘thought is understood as the very form of action’ (Foucault, 1987a). Therewith the paper seeks to develop an analysis of corruption and corruption prevention among elites (Neu et al, 2015) in two ways. First it adopts Foucault’s analysis of ‘illegalism’ in *Discipline and Punish* (1977: 82ff), wherein corruption ceases to be a negative—the ‘unlawful’ counterposed to ‘law’ as positive—as law itself becomes destabilised, framed by different forms of illegalism: ‘illegalisms of property’ for the poor leading to imprisonment, ‘illegalisms of rights’ for the powerful which go unchallenged. It suggests that elite corruption now supplements its use of the latter illegalisms through recourse to expert discourses of ‘hyper-legalism’, increasingly entailing a ‘skilful accounting’ (Neu et al, 2015). Second, Neu et al propose that corruption’s prevention may be effected by a modern Foucauldian ‘ethical and disciplined subject’. However Foucault’s analysis of modern self-formation in *The Birth of Biopolitics* (2008: 219ff) suggests this may prove problematic. The Human Capitalist subject is there an ‘abilities machine’ and ‘entrepreneur of one’s self’. As ‘abilities machine’ it is ‘disciplined’, forming itself within the ‘truth games’ of today’s ‘double disciplinarity’, sc. involving self-engagement with both disciplinary conduct and disciplinary expertise. As ‘self-entrepreneur’ it may also, formally, be ‘ethical’ (cf. Dilts, 2011), based on Foucault’s own classification of the aspects of that relation (Foucault, 1987b). But substantively its ‘ethicality’ may entail ploys of hyper-legalism and skilful accounting, leading to corruption’s continuance as well.

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‘Delinquency, illegalism mastered, is an agent for the illegalism of the dominant groups. ... It is also an instrument for the illegalism which the very exercise of power summons around itself.’ (Foucault, *Discipline and Punish*, 1977: 279–280)

‘Singular forms of experience can well carry within themselves universal structures; they can well not be independent of the concrete determinations of social existence; nevertheless, neither those determinations nor those structures can give rise to experiences (that is to say to knowledges [*connaissances*] of a certain type, to rules of a certain form and to certain modes of consciousness of oneself and others) except through thought. There is no experience which is not a

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way of thinking and which cannot be analysed from the point of view of a history of thought.' (Foucault, *Preface to The History of Sexuality*, 1987a: 335)¹

1. Introduction: on linking 'corruption prevention' and 'subject construction'

As I first read, and then re-read, the provocative (in the best sense of thought-provoking) piece by Neu, Everett, and Rahaman (2015), and then reflected on—'Preventing corruption in government procurement: constructing the disciplined and ethical subject'—I found myself referring back to the two passages from Foucault above.

First I found the piece so very Foucauldian in its conjoining of such potentially discomfiting binaries: 'preventing' alongside 'constructing', but also 'preventing corruption', at the level of 'government', alongside 'constructing' the subject, at the level of ethicality. Second, I found it, through its choice of binaries, bringing into proximity two significant Foucauldian themes which are often kept apart: on the one side self-construction, as a form of 'care of the self', frequently seen as taking place at the 'level' of the individual: and on the other world-construction as a practice of governmentality, frequently seen as taking place at the 'level' of the social, the economic, the political, or some combination of these.

As a result, I found it putting into play two intriguing analytical possibilities which are key aspects of Foucault's agitating of our thought. The first is the possibility of taking up the kind of destabilising of the conventional 'levels' of explanation which Foucault's analyses constantly engaged in, as in the second passage above where the level of the 'individual' is dissolved as a basis for analysis of sexuality.

Here he begins analysis from the very different category of 'experience' which is not reducible to either an 'individual' or a 'supra-individual' level of explanation. He has introduced the category right at the start of the 'Preface', as he explains that across his series of researches into sexuality in different eras, his plan was to analyse sexuality as 'a historically specific form of experience' (1987a: 333); he has then explained (in a variation of what he says in the passage cited above), that this has required treating 'experience' as the correlation of a domain of knowledge [*savoir*], a type of normativity, and a mode of relation to the self (1987a: 333). But this destabilises the 'individual', which in its etymology is an 'un-dividable', as it is firstly rendered porous both to forms of knowledge and to sets of rules or norms from the outside, while it is secondly divided on the inside, as subject engaged in a mode of 'relation to self'. As a construct, and therefore as a 'level' of analysis, it becomes (literally) incoherent. But so equally do any forms of analysis which pass over the problematic status of the individual as an 'undividable': as is the case for forms of supra-individual analysis which leave that problematic status unaddressed insofar as such individuals are simply collectivised, whether etymologically into a 'band of allies' (*socii*), or into those forming a 'household' (*oikos*), or into those constituting a 'city' (*polis*).

But the piece also potentially puts into play a way of engaging with corruption which does not begin, as if from a positive conceptual ground for analysis, from the side of 'the law', and then seeks to discriminate what (just, or justly) falls outside the law from what (just or justly) falls within it. This form of agitation of our thought is what potentially follows if we begin analysis from the side of the concept that Foucault puts so intriguingly into play in *Discipline and Punish*: 'illegalism'. 'Illegalism', as noted in Footnote 1, is not the term familiar to readers of *Discipline and Punish*, where the term used is 'illegality'; nevertheless '*illégalisme*' is the term Foucault uses throughout the French original, *Surveiller et Punir*.

It is, I suggest, more of a conceptual term, where the term used in English, 'illegality', keeps a focus on illegal 'acts'. As such, it sets up a relation to a reciprocal which is not law but '*légalisme*'. 'Illegalism' plays off, works round, but also *defines* 'legalism'. It operates very precisely to construct that threshold and barrier of what falls just (and justly in legalism's terms, which are after all the only terms the law in practice can articulate) inside and outside the law. It also plays off and works round the convenient fact of law in practice, that there are multiple forms of the law, e.g. canon, civil, common, commercial, constitutional, criminal, and never forgetting that form familiar to those who have read Dickens' *Bleak House*, Chancery. Illegalism thrives on the opportunities for what one might call 'legal trumping', using one 'c-form' to block or envelop another. It thrives, in the context of corruption today, in the multiple uses today of commercial, tax, or international trade law to trump civil or even constitutional law 'rights'—something which, at the time of writing, critics have identified as being a consequence of the current Transatlantic Trade and Investment Partnership (TTIP) proposals.

Illegalism therefore has a claim to becoming a 'lodestar term' around which to gravitate in seeking to make sense of corruption's fashionable and emergent ruses: perhaps because starting from there may help us not to make law into a barrier with illegalities just on its far side. For once illegalism is seen as framing legalism one may see how its *principle* is to operate simultaneously on either side of the barrier. On one side it engenders what are named 'illegalities', but on the other it engenders what we might counter-name forms of '*hyper-legalism*'.

The tactics of such hyper-legalism embrace not only the use of the law to evade the law, albeit in slightly differing ways, but also the cloak of 'transparency'. Neu et al. (2015: 2) rightly note the presence in developed states of those 'luminous arrangements' which enact 'effective anti-corruption procurement practices', particularly through the use of 'written inscriptions to construct moments and spaces of visibility, the examination of these inscriptions by auditors, and the subsequent generation and circulation of inspection traces'. In the presence of such practices and such visibility, one almost

¹ The translation of both these passages is emended, following a practice of emendation of the published translations of Foucault which Stuart Elden has already begun, voicing what I see as a very real concern about how the published English translations do not always follow the surface of Foucault's French statements. In the first of the passages above, I have substituted for the English term 'illegality', the term long familiar from the text of *Discipline and Punish*, the term 'illegalism', since the term which Foucault uses in *Surveiller et Punir* is '*illégalisme*' (Foucault, 1975: 284–285). In the second, I have substituted the term 'knowledges' for the published version's 'understandings' since Foucault's French term is *connaissances*.

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