

NEOFEUDALISM, PARAETHNOGRAPHY

and the custodial regulation of financial institutions

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Regulators have turned to 'culture' in frustration.² Through the global financial crisis (GFC) and now again with the LIBOR scandal, we observe market participants who simply do not abide by the spirit of the rules.³ They are, in a word, bad sports. So how do regulators, charged with refereeing the markets, get financiers to be good sports? Or how do we regulate culture?⁴

In policy discourse, culture is commonly conceived in two ways. Lawyers tend to think of law as a fence that bounds otherwise free behavior. Economists tend to speak of incentives and reputational costs, thereby imagining culture as a cipher, like goodwill or transactional costs, which balances accounts. In neither case is culture understood to constitute market actors. And neither black letter rules nor incentives prevented the failures of the GFC, in which once proud institutions imploded or survived only with massive taxpayer support. Clearly, if culture is to be a part of the solution, then a more serious understanding of financial culture is required.

So how might one begin to think about financial culture? Consider travel. One sets out armed with a piece of plastic and sometimes a little book (for Americans, the book is blue). One exhibits these things to people, and is given airplane rides, hotel rooms, refreshments, etc. The traveller retains the plastic and the book, indeed, need not give anybody anything. Instead of actual exchange, various accounts on various computers are changed, i.e. by 'payment' one usually means a communication and a promise to account. Thus travel, and for that matter economic activity generally, take place in 'economies of money'.⁵ Virtually all of what is exchanged does not exist except as essentially legal communication about the terms of financial instruments, promises to alter numbers. All that is solid melts into air, as it were.⁶

One cannot think of communication (one cannot speak) outside of a culture. Financial culture is the water in which all swim; regulators and regulated and just plain folks. Finance itself is an expression and constitutive of culture; payment (contract, property, and so forth) is always already cultural. Thus the recent discovery of culture — as an

afterthought, what to do when the rules fail to keep up with developments in the market — is subtly wrongheaded. Culture was always the question. But for a long time, before the GFC, the culture of financial elites was both workable and tacit, went without saying, and so 'culture' was not something that required worrying. Those days are gone.

What might be said about the structure of financial culture? To shift examples slightly, assume that you 'order' dinner, or better still, 'command' it in French, and your credit card is accepted, that is, the waiter (or 'server') and the kitchen obey your wishes. The restaurant and its staff accept that you are the sort of person to whom dinner should be brought. Unless you leave a tip in cash on the table, you do not actually pay for the meal. You send (or sign) a message authorising your institutions to credit their institutions. Various back offices handle looking out for the restaurant, which looks after its suppliers, its staff and so forth. From this perspective the credit card establishes the diner's social standing. Credit transactions are rather feudal, in the fairly literal sense of a web of obligations and obedience built upon trust.

This does not sit well with the modern mind. Conventionally, transactions are imagined as exchanges among contracting parties who are legally presumed to be equals. Progress, as Henry Sumner Maine famously wrote, consisted in the historical movement from societies in which order was defined by status or birth, to societies in which order was defined by contract.⁷

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Coase was disturbed by the fact that so much economic activity was governed by hierarchies of command rather than by a price mechanism.⁸ He argued that a system of contractual subservience saved transaction costs. Perhaps, but this led Coase to the uneasy recognition that any system — including slavery — might be justified on the basis of efficiency demonstrated by its existence.⁹

Much more may be said about the use of 'transaction costs' to rescue the economic imaginary of autonomous and presumptively equal contracting parties, but more old fashioned and honest words are 'privilege', 'status', and even 'class', understood as a relation to authoritative institutions and especially the social capital they command. It should go without saying that corporations, including banks, are — as the church and the military have always been — such authoritative institutions.

From this perspective, handing over a credit card is like showing a letter from the king, or wearing a uniform that displays my rank. The credit card establishes my position vis-a-vis a host of financial institutions and, by extension, the governments that attempt to back them up, but not always successfully. None of this is very democratic, and in that sense not very modern, and therefore difficult to contemplate. Unsurprisingly, we prefer to talk about payment in terms of an Arcadian quid pro quo, but we actually have a financial culture that consists largely of communications about relative social standing defined by a dubious system of accounting.

The meaning of financial culture

The understanding of financial culture suggested here is darker than the comfortable imaginary of lawyers and economists with which we began.

First, insofar as economic activity consists of communications that affect relative standing ('positions') among authoritative institutions, the public/private distinction is largely effaced. From the bottom up: webs of speech form the public sphere. The fact that speech is transactional does not somehow make it private. (The agora is a public space.) From the top down, all of the actors are

licensed, regulated, and generally insured by the government. To quip, all finance is more or less public, a lesson from the recent wave of bailouts, and once again being demonstrated in Europe.¹⁰

Second, almost all actors at issue in finance are officials, whose authorities and obligations are defined by law. Banks are institutions authorised to conduct certain kinds of intermediation. Bankers act not in their own capacity, but as officers of the bank. The legal capacity to dispose of assets depends on institutional status and authority, almost never on personal ownership — even in the case of so-called proprietary trading. Shareholders simply have no legal power to dispose of corporate assets. Thus the imagination that suffuses financial policy discourse, of the sheriff attempting to constrain yeoman traders, is silly. Financial policy asks, or should ask, after the proper relationships among different sorts of bureaucrats, whose powers are legally defined, whose collective actions allocate assets.

Third, and by extension from the first two points, the regulator and the object of regulation need to be understood in terms of one another, reciprocally rather than antagonistically. The metaphor of sports is instructive. The referee does not exist without the game. Conversely, games cannot be won without a set of conventions to determine the bounds of the field, what counts as a point, and the like. To understand rules — and regulators, and ultimately law — as essentially external to marketplace activity is a common error, but an error nonetheless. It is legal instruments that are being traded, all the way down.

Fourth, regulators and policy makers and even academics are conceptually 'within' the culture they seek to regulate. To some extent, this is a matter of biography — one must know a lot of finance even to follow the conversation. Cultural bias is also a matter of interest. The Wheatley Report is quite candid about the government's wish to preserve the preeminence of London as a financial center.¹¹ More generally, financial market participants have difficulty thinking about finance in ways other than 'like what we've done, only somewhat better'.

While it is difficult to think about the context of one's own thought, it is not quite impossible. Much contemporary anthropology is marked by the acknowledgment that the discipline is fundamentally 'reflexive': the account of a culture is always also the account of the writer of the culture.¹² Hence the transformation of anthropology in the 80s has been called 'writing culture'.¹³ The difficulty in the anthropological enterprise is acknowledging the self-referential character of the inquiry, and proceeding nonetheless.¹⁴

LIBOR is reflexive, constructed by answers to the question: at what rate would your important bank be able to borrow a reasonable sum in a given currency for a specific tenor at 11:00 am?¹⁵ The British Bankers' Association (BBA), through Thomson Reuters, thus asks bankers for their view of their place in the world, asks them to enact Keynes's beauty pageant on themselves.¹⁶

Participating in a LIBOR survey is a striking example of what anthropologists Doug Holmes and George Marcus have termed the 'paraethnographic'.¹⁷ In doing their jobs, participants in complex contemporary settings like banking must articulate their own culture, and their standing within it, to themselves as a condition of their functioning in the culture. On the one hand, global finance is impossibly complex. On the other hand, financial actors in fact imagine it, tell themselves a story about it, as a condition of working. In consequence, actors in present situations stand in much the same relationship to their own cultures as traditional anthropologists stood in relation to native cultures. Contemporary anthropology often seeks to use these lay accounts, that is, depending on ethnography done by non-anthropologists — hence 'paraethnographic'.

Not only do actors describe their contexts to themselves, in so doing, they help constitute the context. LIBOR both reflects and creates markets for money. Nor is LIBOR the only place financial conversation operates to create the conditions under which finance is done. Consider inflation targeting: central banks announce not only their objectives, but the means by which they hope those objectives will be achieved, in a self-conscious effort to have those objectives priced in and traded upon, in a communicative circle.

For an anthropologist of the contemporary, a paraethnographic perspective can provide a conceptual grasp on complicated bureaucracies like banking or the military.¹⁸ For a regulator, a paraethnographic understanding of financial institutions could reconfigure the regulatory relationship, especially prudential regulation.

Reconfiguring the regulatory relationship

How so? The Bank of England's Andrew Haldane recently gave a fine speech at the Federal Reserve's annual meeting in Jackson Hole.¹⁹ In it, Haldane argued that financial regulation, and specifically the Basel process, resulted in rules that were so complex that, in the aggregate, they were counterproductive. Quite apart from questions of efficiency, Basel hadn't made banks safe enough to prevent the GFC. So Haldane argued that regulation should rely less on elaborate articulation of rules, and more on the judgment of experienced officials. Haldane was not too explicit about what bank regulation would look

like under such circumstances, but it seems fair to imagine that there would be many discussions in which regulators asked actors to convince them why their practices were safe, and their portfolios sound.

The cultural (contexts in which such conversations would be held) would be substantially different from the (orthodox) understanding of political economy, and hence financial regulation, as the bounded interaction of essentially private actors (the understanding with which we began our discussion of culture). As the GFC has demonstrated, the institutions of contemporary societies depend on well-functioning financial markets much as they depend on electricity, hence 'social capitalism'.²⁰ The social, and hence broadly political, character of contemporary financial capitalism is particularly obvious in the United States, where education, retirement, and healthcare are often directly dependent on portfolio management, rather than the taxing power of the state. If financial capitalism is understood to be social, then financial regulation is a custodial enterprise in which bankers and their regulators come to mutually agreed understanding on how to manage assets. Thus the relationship between regulator and regulated could be transformed, from one of opposition to mutually reinforcing, and interdependent, participation in the custody of social assets.²¹

A custodial approach to regulation should engender, within regulatory relationships, the sensitivity and tough mindedness traditionally associated with trust obligations.²² From this perspective, regulators might think of what happened at Barclays and many of the shenanigans of the past years not just as actions of a few 'bad apples', or even as more general expressions of a corrupt institutional culture, but as a kind of personal and professional betrayal, for which the appropriate response is anger. If management deceived key equity investors in a company, would we not expect to see such managers replaced? It would have been completely understandable had the radical interventions of 2008, and since then, resulted in the dissolution of the corporations involved: the discharge of management, the forfeit of equity and the abolition of the brands. While some banks, especially smaller banks and particularly those in the US, were resolved, banking, which is necessary, was repeatedly confused with specific banks, which are replaceable.²³ From a paraethnographic perspective, if management is no longer trustworthy then paraethnographic regulation, founded on trust, is not possible and the institution cannot be licensed or backed by the state. Even if a society does not have the stomach to replace its banks, it should at least have the will to replace its bankers. Suffice it to say that such will is not to be seen in advanced economies at present.

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What does a custodial understanding of regulation mean for the efforts to 'fix' LIBOR in particular? Most proposals for reform, including by Wheatley, treat LIBOR as if it were a device like a thermometer that measured an aspect of the natural world. Barclays and others tampered with the instrument, so that it gave an inaccurate reading. But LIBOR doesn't measure anything outside the social context of its formation. As every teacher knows, performance on a test is always about the test and maybe the class, but only tangentially about the truth. Similarly, LIBOR is a ritual for expressing sentiment about the cost of capital and therefore the relative standing of financial institutions in the present environment. But nothing is measured. LIBOR estimates are provided even in the absence of trades, that is, on a speculative basis.²⁴

Thus LIBOR wasn't untrue in the way that a faulty thermometer is inaccurate. The ritual was performed, and the BBA did generate a very important number on a daily basis. LIBOR was untrue in the sense of being dishonest. When asked 'what do you believe?', players lied. That is, the virtue at issue is not the mechanical one of accuracy, but the moral virtue of honesty. Lies about interest rates, however, are dwarfed by the ideological claim that the officials of financial institutions, enabled, licensed, and ultimately backed by the state, are merely private actors who are to act within bounds arguably set by lawyers, and in rational accord with the disincentives of reputational cost, as the economists unconvincingly have it.

How could financial regulation be more honest?

Through a paraethnographic encounter with their regulators, leaders of financial institutions could assist in the design of their own constraints, and could shape their own service. LIBOR reform, and what has been learned from the financial crisis more generally, could yet be seen in happy terms. Bankers and their regulators could come to recognise that they are profoundly privileged and, as such, have great obligations. The current culture of disingenuous reporting, pro forma compliance with byzantine and contested rules, and perennially insufficient oversight could be replaced by a more reciprocal relationship in which those who act and those who authorise and ultimately insure speak earnestly and candidly about their worlds. Together these elites could exercise their

power wisely, and navigate a prudent course forward. Honest conversations about worlds dimly imaginable could lead to good policy in spite of unavoidable uncertainty. The people would be grateful for the custody of their institutions. The ship of trade would make good, but not rash, progress.

Even in such a well-governed financial order, sometimes an institution would fail, and the taxing power of the state would have to be used to sustain the viability of the order. At issue, then, would also be the nature of the failure. Was management unworthy? Sometimes an institution or an entire industry may lose sight of its own virtues, a story of decadence and decline easily told in London and New York. In such cases, when the privileged had abused their trust, they would be removed from office, and their responsibility transferred to more worthy mandarins.

But privileged individuals would not often abuse their trust. People rarely willingly leave their class for a lower one. Thus a paraethnographic, conversational and reciprocal understanding of the regulatory relationship could go a long way toward making banking a more virtuous enterprise. Presently empty promises to reform could be made serious by establishing contexts in which elites were answerable to other elites, at pain of losing their offices and so their status. ■

Notes

1. Author of *Out of Crisis: Rethinking Our Financial Markets*, Paradigm Press, 2009. The thoughts expressed here were first aired as a keynote for a conference given by the law firm of Allens and the University of New South Wales Centre for Law, Markets and Regulation, Regulating Culture: Compliance, Risk Management and Accountability in the Aftermath of LIBOR, Sydney, 26 October 2012. I thank the participants for many thoughtful comments. I also thank Justin O'Brien for the invitation to speak, and Jack Schlegel and Douglas Holmes for good reads on short notice. Sean O'Brien provided excellent and speedy research help, for which I am grateful. Any failings are my responsibility.
2. See agenda, Regulating Culture: Compliance, Risk Management and Accountability in the Aftermath of LIBOR, UNSW Centre for Law, Markets and Regulation, 26 October, 2012.
3. See Rosa M Abrantes-Metz, Michael Kraten, Albert D Metz, and Gim S Seow 2011, 'LIBOR Manipulation?', *Journal of Banking and Finance*, vol. 36, no. 1, pp. 136–50; François Laurens 2012, 'UK banking regulatory and market framework: Post-crisis reform', Swiss Management Centre (SMC) University, July.
4. See note 1.
5. David A Westbrook 2012, 'Problematique in rethinking financial markets', *The World Economics Association Newsletter*, <http://rfconference2012.worldeconomicsassociation.org/problematique/>
6. Karl Marx and Friedrich Engels 1848, *The Communist Manifesto*, Joseph Katz ed., Samuel Moore trans, p. 32.
7. Henry Sumner Maine 2003, *Ancient Law*, Transaction Publishers, p. 170.
8. See RH Coase 1937, 'The nature of the firm', *Economica*, vol. 4, New Series 16, November, pp. 386–405.
9. See *ibid.* pp. 403–04.
10. Incidentally, it is not entirely clear what is meant, in the LIBOR context, by 'unsecured' lending. Who needs collateral if obligations are backed by the taxing power of the state?
11. See Martin Wheatley 2012, *The Wheatley Review of LIBOR*, The Financial Services Authority.
12. As an aside, none of the cultural anthropologists with whom I speak make any attempt to define 'culture' objectively and externally. Instead, culture is a placeholder for a web of understandings in which both anthropologists and their interlocutors are implicated.
13. See generally George Marcus and James Clifford 1986, *Writing Culture: The Poetics and Politics of Ethnography*, University of California Press.
14. As another aside, economics and so finance has not yet really taken the turn to interpretation that marks the rest of the social sciences and also the humanities.
15. See Wheatley, note 11, p. 22.
16. See John Maynard Keynes 1936, *The General Theory of Employment, Interest and Money*, p. 156.
17. See Douglas R Holmes and George E Marcus 2012, 'Collaborative imperatives: A manifesto, of sorts, for the re-imagination of the classic scene of fieldwork encounter', in *Collaborators Collaborating: Counterparts in Anthropological Knowledge and International Research Relations*, Monica Konrad ed., pp. 126–43; Douglas R Holmes and George E Marcus 2005, 'Cultures of expertise and the management of globalization: Toward the re-functioning of ethnography', in *Global Assemblages: Technology, Politics, and Ethics as Anthropological Problems*, Aihwa Ong and Stephen J Collier eds, pp. 235–52; Douglas R Holmes and George E Marcus 2006, 'Fast capitalism: Para-ethnography and the rise of the symbolic analyst', in *Frontiers of Capital, Ethnographic Reflections on the New Economy*, Melissa S. Fisher and Greg Downey eds, pp. 33–57; Douglas R Holmes and George E Marcus 2008, 'Collaboration today and the re-imagination of the classic scene of fieldwork encounter', *Collaborative Anthropologies*, vol. 1, pp. 136–70.
18. See, for example, David A Westbrook 2008, *Navigators of the Contemporary, Why Ethnography Matters*, The University of Chicago Press.
19. See Andrew G Haldane, Executive Director, Financial Stability and member of the Financial Policy Committee, Bank of England, address at the Federal Reserve Bank of Kansas City's 36th economic policy symposium, The Changing Policy Landscape, August 12, 2012
20. See Problematique, note 5.
21. The elegant exchange of letters between Barclays Chairman Marcus Agius and the FSA's Adair Turner is exactly what I'm NOT talking about. See The Exchange of Letters between Lord Turner, Chairman of the FSA, and Marcus Agius, Chairman of Barclays, available at <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmtreasy/481/48111.htm>
22. See, for example, Meinhard v. Salmon, 249 N.Y. 458 (1928) (A trustee is held to something stricter than the morals of the market place).
23. Banks, as Bagehot taught a long time ago, should conduct themselves with the understanding that they are replaceable. Walter Bagehot 1877, *Lombard Street: A Description of the Money Market*.
24. See Wheatley, note 11, pp. 6–7.