Book Reviews

Nicholas Dorn: Democracy and Diversity in Financial Market Regulation

London, Routledge (2015), 182 pp.

In the movie *Margin call* (2011, written and directed by J.C. Chandor) we watch "the situation" in a large Wall Street investment bank 36 hours before the news about the 2007-2008 financial crash became public. Even though it is not a documentary, it credibly relays some firms' behaviour in the wake of the 2008 crises. At a certain point, top management debates the options, and the CEO John Tuld, a character supposedly inspired by the last Lehman Brothers' CEO and played by Jeremy Irons, orders for the immediate selling of worthless assets at a "fair market price" to unsuspecting clients. Explaining to his subordinates why this is necessary, he says:

"There are three ways to make a living in this business: be first, be smarter, or cheat… it's just money; it's made up. Pieces of paper with pictures on it so we don't have to kill each other just to get something to eat. It's not wrong. And it's certainly no different today than it's ever been. 1637, 1797, 1819, 37, 57, 84, 1901, 07, 29, 1937, 1974, 1987 - Jesus, didn't that fuck up me up good - 92, 97, 2000 and whatever we want to call this. It's all just the same thing over and over…"

In other words, since the beginning of finance, when the music stops playing, things are always tough. The question remains whether, despite such historical records, periodic meltdowns need to remain with us as a chronic, reoccurring trauma. Does the historical legacy of such "creative destructions" (Schumpeter) suggest that making financial markets more stable is a myth?

The problem is not a minor one. Let us remind ourselves of the scale of victimization that recurring financial disasters produce. For example, in the late 1980s, the so-called Savings and Loan scandal in the USA robbed a large number of people of their savings and put a similarly large number out of business through no fault of their own. To date, however, not much has been done about it. Commentators pointed out that the piecemeal regulatory reforms that followed the scandal did not touch the structural root causes that brought about the crises, and after the initial public outcry media attention faded away. Because of that, it was clear that enacting only small or no structural reforms would bring about another crisis. And it did -less than a quarter of a century later the prediction certainly came true. The 2008 crash turned out to be the largest since the great Depression of the 1930s. We witnessed truly massive victimizations of entire nations and social strata. Knowing that it seems legitimate to put down the obvious question: why does going back to "business as usual", effectively denying the problem, remain the only "remedy" that most sophisticated postmodern societies apply in these cases?

The (globalized) financial market – the crown jewel of the globalized capitalist economy – mirrors, intensifies and creates many internal contradictions in the capitalist economy of the first quarter of the 21st century. In that respect, it is not an easy field to govern and regulate. Even if all stakeholders in this field would agree that more stable and socially responsible finance is a goal and would act in good faith, from where we stand the regulatory challenges would be substantial. One could hardly find a field that is so overwhelmingly driven by vested interests, a field where literally so much is at stake.

Nevertheless, let us not forget one more reason why this is not a second rate problem. In the movie mentioned above, CEO Tuld explains it thusly: the whole game is also simply about cheating other people. As we saw in 2008, financial breakdowns also mean crime, and lots of it. They generate it as *Margin Call* shows us and they function as a great tide: they expose criminal offences that would otherwise remain hidden forever. The range of financial crimes includes securities fraud, breach of trust, market manipulations, tax evasion, corruption, money laundering, bankruptcy frauds, etc. In most cases, these crimes take place in an environment polluted with the widespread "revolving door" problem and various levels of conflicts of interest of all kinds among the accounting and rating firms and their clients.

Despite the immensely harmful impact of these crimes, they run disproportionally under the radar of criminologists (and victimologists for that matter). Many of them seem to believe this is just economics and should be left to economists, Ministries of Finance and Central banks. Thus, on the one hand, they seem to believe this is a value neutral "technical problem" that needs to be resolved by technocrats and has in most cases, nothing to do with the criminal justice system. On the other hand, paradoxically, they see the issue as political – in terms of belonging to the "pro and against market economy" debate - and thus not an appropriate subject for the supposedly non-political biased science.

Of course, on its own, criminal (and administrative) law repression as a kind of potential heavy-handed policy tool will not solve the financial crime problem. Nevertheless, what we see in practice is a textbook illustration of the lenient (or non-) treatment of this kind of white-collar crime by criminal justice systems throughout history. In the US, for example, seven years after the 2008 collapse, not much has been done to bring the individuals and corporations suspected to have committed criminal offences to justice. Near total impunity is the rule, and knowing that, should we observe consecutive meltdowns followed by piecemeal reforms as a kind of Nietzschean "eternal recurrence" and stop getting too upset about it? Nicholas Dorn in his latest book **Democracy and Diversity in Financial Market Regulation by Routledge** argues that our future need not be so grim.

His book begins with an historical overview of regulatory regimes of the last century in London's City, which incarnates the problems of financial market regulation. He displays the ups and downs of self-regulation dominated by old boys' networks which gradually, under outside pressure, evolved into the one with a more "public face", or, as the author puts it, with a more "public façade". On the other side of the Atlantic the bailout policy, legitimated by the idea of being "too connected to fail" (TCTF), developed in a specific national context of the USA and spread to Europe (EU) and around the world together with its underlying assumptions.[1] In the end, such a practice created an environment in which "TCTF belief, bailout expectations and systemic instability are mutually constitutive" (Dorn, 2015: 49).

After 2008, there was a great deal of media and public outrage, and most honest people (together with Allan Greenspan) agreed that the deregulation ideology that had triumphed in the last decades must be substantially corrected, to say the least. Dorn points out how the way regulation and oversight of the financial market was carried out so far represents an excellent example of the democratic deficit. At least in the case of the City, the club-like private self-regulation put on the public façade, but in fact remained exclusive, secluded and in that sense "technical". Regulatory failure was further strengthened by the strong common frame of reference formed by harmonization and globalization efforts. This created a "herding" effect, which proved fatal.

Analysing the stock of regulatory knowledge and its assumptions, Dorn does not prescribe a solution, but what he suggests is a method that will bring about superior outcomes: greater democratic participation in governing finance. His reasoning is clear: "Financial market stability, like environmental security and personal safety, is a public good that cannot be left to bargains stuck between market participants and regulatory agencies. Since everybody is a stakeholder, the debate must be open to all as far as basic principles are concerned… Democratic oversight carries the functional advantage that it can be expected to result in greater regulatory diversity … Such diversity would reduce the 'herding' that has been a feature of the crises." (Dorn, 2015: 75).

Indeed, Dorn must be congratulated for looking at the big picture, for doubting wide-shared assumptions and for his restraint in prescribing ready-made solutions. Instead of looking for more of the same and for more think tank's expertise led by the same people that brought us to 2008, he suggests encouraging a more democratic debate. A debate which must first of all, address the basic aims and purpose of finance as such. In this respect, we need to go back to basics and ask ourselves what is or ought to be the purpose of finance and *qui bono* from the point of view of the common good.

Taking bottom up democratic processes in managing, regulating and policing the world of finance seriously should result in greater regulatory diversity. It would reflect various constituencies and could enable learning from the mistakes of others. Diversified international policies, Dorn's "Balkanisation" of finance regulating regimes, would become a blessing and not the thing to avoid.

Dorn's book is a sophisticated, well-researched and insightful analysis of the genealogy and future of financial market regulation in the aftermath of the 2008 crises. His examination of the assumptions, goals and employed means in the world of international finance is subtle and highly persuasive. Whether the democratisation pill that he is prescribing will be taken and, after a necessary adjustment period, possibly bring about smarter policies for the common good, remains to be seen. From where I stand, it looks as if the roles at present are exactly reversed: big finance has captured and corrupted the democratic process to a great extent. In these circumstances, any serious democratisation of this sector (along with the proper use of the tools of the criminal justice system) will be testing.

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[1] Other names Dorn uses for those with the permanent "ticket to ride" are: "systemically important financial institution" (SIFI), "too big to fail" (TBTF), "too similar to fail" (TSTF). We could add a more criminal justice one: "too big for jail" (TBFJ).