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Failure to comply

bioart, security and the market

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"How many crimes must be allowed? And how many criminals must be left unpunished? This is the problem of penalties."
(Foucault 2005b: 211, my translation)

What is the nature of the 'accident' – and the chain of events which it sets in motion - that befell Steve Kurtz on the 11th of May 2004? A terrible accident, surely to start with – kick-starting a surreal series of events. The sudden, premature death of Hope Kurtz – Steve's wife and co-member of the collective Critical Art Ensemble; a paranoid emergency crew, so sensitized by the war on terrorism to signs of virtual threats as to report to the FBI the presence of harmless bacterial cultures glimpsed in his house; the encounter with the security apparatus; the long, ongoing journey through the courts; the 'prosecutorial circus' resulting in a change in the charge laid on him and Robert Ferrell, the academic who helped him – from bioterrorism to trade law infringement – once the biological material found in his flat was proven to be harmless[1].

As Anna Munster puts it in her critical account of the case, one should be careful not to miss the problematic nature of such an event, which is not simply another case of an artist on trial because of the nature of his artwork. In the first place, it is significant that Kurtz's prosecution was not the outcome of a deliberate process of targeting an artist for the morally subversive content of his work. Munster argues that it is a serious interpretative mistake to judge this case as simply a return of McCarthyist censorship tactics in a post-9/11 context. The genealogy of the case, the series of which it is a part, is not that of ideological warfare which, in her opinion, defines the long history of censorship against artists, and of which McCarthyism was an instance. There was no campaign or conspiracy mounted to 'get' to the CAE so as to punish them for the years of radical activism in the field of new technologies and art (although there was definitely no sympathy for the 'lefties' in the courts that judged them). Neither was it an explicit attempt at censoring a piece of artwork which could potentially cause great damage to multinational corporations trading in Genetically Modified Organisms, for example. The project the CAE was working on, just to remember, included a 'home DNA extraction machine' as part of an exhibit "Free Range Grain". This portable machine could be used to test food brought in by the audience for the presence of genetic modification. (Babin 2005) And yet, he was not sued by one of the wealthy bio-tech corporations that his work attacked. His past and current activity as radical artist had an impact on this case only *after* the accidental event that triggered off the policing and legal procedures. He was not targeted ahead by the FBI because of his history of political practice, but he "*contingently* became part of a diffuse and modulated logic of control ... a biopolitical logic." (Munster 2005).

As Munster recounts, it is the *contingency* of the event that befell Steve Kurtz that marks it as belonging to a different series other than that of ideological censorship against art, that is to the series of the recent 'chance' harvesting of mainly Middle Eastern, Indian and Pakistani immigrants from various Western nations in the post-9/11 conjuncture. Kurtz's case shares with these arrests the randomness of the event that led him to be charged and prosecuted; and the easiness by which once the original charges were formulated, they were switched to something else[2]. For Munster, the logic of control that links these different cases is biopolitical. It is biopolitical not only at the level of the exhibits that triggered the arrest (the potential threat of bioart) but also in the way the security apparatus has come to draw on predictive models adapted from biology.

Kurtz's chance arrest would have probably triggered his appearance in the new database software adopted by the FBI after 9/11 that explicitly utilizes algorithms developed by network theory and adapted by biology. The data collected by different agencies and sources is now modeled and visualized as a scale free network – whose evolution over time leads to the inevitable formation of powerful hubs, which can now become the target of network warfare (unlike a distributed network a decentralized network can be seriously damaged by taking down its hubs). In these models, information captures the unfolding of recursive events of linking and interconnecting through "the morphogenic forms of growth, development and decay" of a virtual, that is unstable, network of relations (Munster 2005). Kurtz's name might have surfaced first on the bio-terrorism network as a lonely node – no other virtual connections with potential bioterror networks. But then, his name probably would have appeared again in another network where Steve Kurtz is definitely a dense node – that mapping aberrations

of conduct, such as anti-market activities, signaled by his political activity and connections with the Critical Art Ensemble. The virtual network of relations changes: from threat to security to threat to the market.

In two courses held at the College de France in the years 1977/1978 and 1979/1980, Michel Foucault saw exactly in these two mechanisms (security and the market) the heart of a new dispositif of power which rising numbers of neo-liberal theorists and apologists have explicitly discussed, described and actively lobbied for since the aftermath of World War II. He looked at the two different schools, German and American, that can be properly called 'neo-liberal', in order to reconstruct in their writings the framework of political rationality which made possible and also explained the emergence of what he had previously called 'bio-politics' (that is the emergence of a technology of power that takes life as its object). In doing so he described how the moment whereby life becomes the new object of power is also the moment of affirmation of powerful new technologies of power such as those described by liberal and neo-liberal political economists.

These powerful discourses are not 'ideologies' which cover what is basically a process of intensification of the economic logic of capitalism, based on exploitation, which remains substantially the same that Marx had already mapped. On the contrary, they are discourses that emerge very close to the exercise of the actual power of government – so as to make them real pragmatic knowledges, existing at the edge of that 'mute and blind' Nietzschean play of forces that he understood to be power. Neo-liberalism is then not 'nothing' (that is nothing new) as many would have it. If nothing else, it is definitely the expression of a radical mutation of liberalism, in as much as, unlike the latter, it sets itself up specifically to limit and contain as much as possible

the action of the State in such a way to create "a state under surveillance by the market". In doing so, it does not so much destroy the State as invent a new art of government which induces a radical upheaval both in the rules of formation and operation of the law and in the production of the very fabric of society.

Neither liberalism nor neo-liberalism, for example, can be said to have invented 'security' as such, but they have definitely made much of this 'third modulation of the law' which Foucault sees as supplementing both the old form of the law based on the paradigm of sovereignty and the modern disciplinary modulation. Unlike the law which operates in the Imaginary (it 'imagines' the crime and the punishment) and discipline which operates in a space which is complementary to reality (the perfect prison is a utopia where by a simple system of visibility, a docile conduct is induced in individuals who are flawed by nature), security, Foucault tells us, operates *within the play of reality*. The object of security is the life of a population – a life that is inextricably productive of and exposed to a variety of events. Security does not aim at eradicating evil (such as crime), because it accepts the *naturalness* of the phenomena it aims to govern (the naturalness of crime as a phenomenon that *will* take place, it does not matter how much one legislates or punishes). Such naturalness is not given by the eternal and essential immutability of vital phenomena, but by their very resistance to power – and in particular, their stubborn and mute indifference to the sovereign command and the irreducible element of disorder that they always bring to the disciplinary assemblage. What security is dealing with, then, is not life as an object, but life as chains of diverging and converging series of probable effects without causes, chains of effects which have happened, are happening but which also might happen (Massumi 2005). It is out of this series of 'connected, discontinuous, contingent and

purposeful events over time' that scale-free networks emerge by means of maps and diagrams as a new mode of representation. (Munster 2005)

In a way, security can be said to be that operation by which the problem of order, already posed by the XVIII century state of police, is subjected to a strictly economic calculus. Taken the same phenomenon, such as a theft (or bioart) the mechanism of security is that which places it within a series of more or less probable effects described according to the overall logic of cost. It does not think that it can eradicate the activities in question completely, but it can set up such measures as to make them expensive and hence keep them within limits. The network intervenes in this calculation as a productive machine *and* as a predictive/preemptive mode of simulation. As a mode of simulation, it allows one to model and rehearse possible strategies of preemption. As a productive, concrete assemblage, it acts as an uncontrollable multiplier and as a medium of diffusion of series of effects. How much does not only a theft, but a series of thefts (such as those which the recording industry considers to be the 'theft' of its products by the file-sharing mobs) cost? What is the cost of bioart – should it set upon to actively undermine the monopoly of the biotech industry? What are thresholds that define the acceptability of such series of thefts or bio-artistic projects? What are the measures that should be taken, the *punishments* that should be introduced and the *rewards* awarded to 'virtuous' behavior (purchasing of copyrighted material; funding for 'virtuous', that is a-critical bioart projects)? What is the mechanism or protocol that would naturally draw limits around the catastrophic potential inherent to such series of events (Digital Rights Management software, high profile prosecutions)?

As Munster reminds us, security is still a *biopolitical* mechanism of power and in as much as its object is the life of a population, it ends up also taking upon itself the intrinsically murderous *racist* element of biopolitics – whereby a population is segmented and hierarchized on the basis of racialized differences. Because the life of a population is not simply biological, racialization does not simply have biological connotations, but increasingly also *cultural* connotations. Modern racialization becomes *ethnicization* while retaining the homicidal function that racism performs within the biopolitical dispositif (see Venn 2007). (It is this function which makes Steve Kurtz's arrest an anomaly when compared to the ethnic arrests of Pakistani and South Asian immigrants, Middle Eastern citizens etc). In such a security regime, the power of killing (and letting die) is ethnicized. There is always 'one' population, whose life is worth more, which must be defended against those modulated foreign bodies who would infect, alter or destroy its ways of life. On the other hand, it is impossible to think about security without the other 'regulating principle' of neo-liberal governmentality – that is the market. Security's calculus is biopolitical and economic – indeed it is as if the two elements cannot really be disjointed.

On the one hand, it is liberal political economy that insists that economic phenomena are akin to vital phenomena in as much as both cannot be commanded or disciplined. When Adam Smith talked of the 'invisible hand of the market', Foucault insists, he was stressing the 'invisibility' of the hand. Not so much the purposive nature of the mechanism which allowed the market to self-regulate, but the radical obscurity of the causes of economic processes, whose dynamics exceed the vision and power of the lawmaker and the institutional man. And yet, for Adam Smith and

the liberals, Foucault argues, the market was still a natural place. This is something that neo-liberals will strongly object to.

Liberal political economists will be criticized by neo-liberals for not having understood that one cannot really deduce the dynamics of the market from the laws of nature, because the market is something that is other than the laws of nature. It is an *eidos,* a Husserlian idea, a perfect, but fragile mechanism that will not spontaneously emerge unless the proper conditions for its emergence will be laid out. The market is a formal game or mechanism that the neo-liberals claim to have discovered, whose key dispositif is not so much exchange as *competition.* Competition for the neo-liberals,

> is not a phenomenon of nature, it is not the result of a natural play of the appetites, instincts, behaviors etc. Competition owes its effects, in reality, only to its own essence ... Competition is an essence, an *eidos.* Competition is a principle of formalization. It possesses its own internal logic, it has its own structure ... One is dealing, in a certain sense, with a formal game between inequalities, not a natural game between individuals and behaviors. And exactly like for Husserl a formal structure is not given to intuition without a certain number of conditions, so competition, as essential economic logic, can appear and produce its positive effects only if a certain number of conditions are present, which will be accurately and artificially pre-disposed.
> (Foucault 2005b: 111, my translation)

The introduction of principles of competition into the mechanisms of exchange guarantees the automatic operation of a libidinal economy of gains and losses, rewards and punishments that like an

immanent *telos*, drives the whole process towards infinite growth. Competition is ultimately meta-stable because it solves all its tensions by growth – it pushes them towards the next limit – and does not allow a system to become too structured, that is not sensitive enough to the intrinsic instability of the series of events to which it is exposed. Neo-liberal competition is thus not the Hobbesian war of all against all because it does not operate in a Malthusian economy of limited resources, but in the open duration of unlimited growth. Competition is what wards off stasis and unleashes productivity and makes possible that solution offered by neo-liberal policies to all social discontent: endless economic growth, stabilized by policies such as low inflation, minimum unemployment, marketization of the public sector, and securitization. This is not the liberal *laissez faire* market economy, but it entails an active politics of 'vigilance, activity and permanent intervention.' (Foucault 2005b: 115) The meta-stability and growth of the market is guaranteed by competition and security.

Foucault sees this new rationality (and the mechanisms which it indexes) as constituting a new hollow, a new species of human: *homo oeconomicus,* on whose individual conduct and rational behavior the operations of security and competition depend on.

The installment of mechanisms of competition as the ruling principle of economic growth implies a decomposition and recomposition of the social fabric – to which now corresponds a new unit: *homo oeconomicus* who is the subject of the enterprise or business. In order for the market to function as the regulating principle of society, the whole social fabric must be decomposed in an infinite number of businesses – so that, as Foucault put it, business might become the soul of the society. This decomposition of the fabric of society into a multiplicity of unit-enterprises of variable extension and size allows for the parallel production of

cooperation among businesses within an overall economy of competition. In this way, neo-liberal economists answer Marx's critique of the contradiction introduced within the economic process by the exploitation of living labor. The neo-liberal market knows no exploited worker – only minor businessmen and businesswomen who might sometime get a rough deal. All capital/labor relations are resolved into cooperative relations within the overall formalism of competition. "... businesses are constantly introducing an inexorable rivalry presented as healthy competition, a wonderful motivation that sets individuals against one another and sets itself up in each of them, dividing each within himself." (Deleuze 1995: 179). What used to be called 'workers' do not so much sell their labor as extract an income from the capital they have invested in themselves and form cooperative temporary associative networks with other businesspeople which would allow such capital to grow. Business-like, he will accept that having crossed the border to work in the West means that he will have lost all the cultural capital accumulated through its degrees at home in exchange for some other gain (freedom) and he will exchange his old profession as a doctor for a new career as a taxi driver. Businesslike, she will naturally accept that investing in a child is worth losing a job in terms of the affective and emotional rewards that it does and will eventually bring. As a businessman again, he will accept that being over 50 and out of a job, means that his personal capital has dramatically decreased and will not expect to make as much now as he did during his prime years. As good businesspeople, they will do what businesspeople do: buy insurance; gauge themselves against their rivals and think about where better to invest that endlessly increasing/decreasing capital that is one's self.

Interestingly, Foucault quotes human capital theorists such as Gary S. Becker to show how such a *homo oeconomicus* is by definition rational whereby to be rational means to behave realistically, that is in ways which are not aleatory but systematic. Economic analysis then depends on a postulate of the 'realistic conduct' (or good conduct) of the individual.

> ... economic analysis, ultimately, can perfectly find its points of anchorage and its efficacy too only if the conduct of an individual fulfills the clause by which the reaction of such conduct will not be aleatory with relation to reality. This implies that every conduct which answers systematically to modifications in the variables of the environment will have to be able to relay to an economic analysis, meaning, then, to say it with Becker, all conduct which "accepts reality". *homo oeconomicus* is he who accepts reality. Rational conduct is then all conduct which is sensitive to modifications in the variable of the environment and which answers it in a non-aleatory way, and hence systematic, whilst the economy will be able to define itself as the science of the systematicity of the answer to environmental variables. (Foucault 2005b: 219)

In a sense, then, the radicality of CAE's foray into bioart derives as much from the situation created in the actual piece of art whereby a layperson can learn that she too can 'do' science, as from their refusal to practice 'good' bio-art. Well behaved bio-art fosters social cohesion (that antidote to the cold, disintegrating social effects of competition) or creates marketable value, it does not try to interfere or even worse to subvert the market. CAE bioart failed to comply to the rules of good conduct and thus attracted a surplus of punishment from the judiciary apparatus. To act with one's interest

in mind and one's own capital at heart within the limits set by security is what makes one virtuous in neo-liberal times where rational/realistic conduct is conduct which accords with the rules of the market. All failure to comply will make you a virtual threat.

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[1] At the moment of writing, the legal case is ongoing and expected to go to trial in the summer of 2008, if not sooner. The Critical Art Ensemble Defense Fund website (http://www.caedefensefund.org/) offers useful, updated information about the case while also raising funds for the legal fees.

[2] On the relationship between Kurtz's case and other legal cases against alleged terrorist activities resulting in a number of unlawful arrests of Muslim citizens and other kinds of political and cultural dissidents under the Patriot Act see also Claire Pentecost "Reflections on the Case by the U.S. Justice Department against Steven Kurtz and Robert Ferrell" April 6, 2005, (http://www.caedefensefund.org/reflections.html)