

GOVERNANCE

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To speak of governance is to employ a metaphor. In the *Republic*, Plato has Socrates describe elaborately the metaphor of the captain on the ship so as to illustrate for Adeimantus why the philosopher should be king rather than submitting to the vicissitudes of an unruly *demos*. The true master of governance of what even today we call the ship of state might be dismissed as a stargazer by those simply seeking to take control. But, says Socrates, in their ambition they would fail to understand that paying attention to all the signs of things around them—the seasons, the sky, the winds, and stars—is actually what is needed to guide the common endeavour successfully. And so it was that the idea of an art of steering—the French word *gouvernail* preserves something of the Greek κυβερνάω (*kubernáo*)—became so closely associated with the task of politics.

The brilliant rhetorical effect of Socrates' metaphor resides in the sense that the ship can run aground or be lost to the storm if there is not a firm, wise hand on the tiller. The notion that the ship is built as a single container for the souls within it and is going toward one common destination predisposes us to imagine that governance involves the effort by or for a collectivity to set its direction and to steer toward it.

It is striking, therefore, that the same metaphor has surfaced in contemporary thought, albeit pointing toward a very different predisposition. The notions of cybernetics, drawn from exactly the same term used by Plato to describe the art of steering well, and cyberspace—a space within which we are governed by computer networks—both suggest that there is a context in which we are steered rather than an entity that we steer. The term governance is now often deployed much more with that sense, suggesting that we must come to acknowledge and in some degree accept the way in which the organized whole, the system, functions to govern us.

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I want to propose a way of thinking about governance that is neither the effort to set a single direction for a collectivity nor the effort to discern the system that steers us. I am inspired in this by a short text of Michel Serres, *Petite Poucette*, which imagines the relationship and even posture undertaken toward our information technology devices—our tablets and mobile phones—as involving steering. All of us have tools now purporting to allow us to govern our own lives, albeit within the social networks where we decide what or whom to like. What would the world be if we were all steering but not aiming to control a single tiller so as to find a unique destination for the polity? And what if, unlike in Plato’s imagination, we all had access to all the signs and signals of the things around us—including all of the directions taken by others as they sail? Can there be such a thing as the collective intelligence of steering that is not the *autopoiesis*—self-creation—of the system that governs us but rather the result of all of our conscious efforts to steer?

There has been a kind of rediscovery of Mandeville’s *Fable of the Bees* in some of the contemporary thinking around swarm intelligence. Complex swarms take on emergent properties when, for example, all of the efforts of individual termites to burrow after sources of sustenance produce mounds or “cathedrals” that can even provide thermoregulation for the colony. Some biologists, such as Kevin Kelly, go so far as to think of the swarm as itself constituting an organism or “superorganism” that is “a collection of agents [which can] act in concert to produce phenomena governed by the collective.” Swarms or hives or schools or flocks or herds seem to be governed through forms of pooled intelligence in which the limited and sometimes specialized capacity of any individual to embark on differing behavioural pathways nevertheless converges on patterns of collective response that allow for social reproduction and successful management of predation or environmental threat.

There are significant and difficult questions involved in trying either to analogize human social forms to those of other animals or indeed to distinguish human forms axiomatically from those of other animals. At the great risk of error, I will suggest that unlike the accounts of other animal superorganisms, the collective governance we are attempting in our cyberspace involves the need for us to design the signals to which we respond. The metaphor of the ship of state suggests that we orient according to given signals of wind and rock and stars. But as we apply the metaphor to the polity, especially as we come into the *agora*, we have to figure out what signals we communicate to each other.

It appears to be the genetic heritage of other social animals to have given signals to which they respond, although epigenetics is now teaching us that gene expression can be altered transiently and even with heritability without the underlying sequence being transformed. This opens up the possibility of learning, something we know that animals can do. We

also know that other animals communicate. Human beings, however, respond to signals we have designed (marked out): totem, taboo, fetish, fashion, distinction, property, price, currency. Perhaps features of these signals can be discerned already in animal rituals. Yet the capacity of signals of human design to orient how we are governed and govern ourselves is especially powerful precisely as we encounter the violence of its constructed character—whether this be seen as divine intervention or produced social form.

Let me pursue an illustration of how signals of human design take on material significance. It is one thing to say that human beings bundle up against the cold. That seems to be a response to the elements and thus to the kinds of signs about which Socrates' master of the ship knew. It is another thing to say that human beings orient themselves according to supply and demand. Traders and financial analysts seek to master these signs. Indeed, we now tend to believe that of the two sets of signs—physical and human—the latter is far more relevant to governance. The former relates to physical necessity. Indeed, to the degree we can learn about the elements, we will deploy signalling models and technologies of our own design and those will be used for governance, for example in weather forecasting and risk management. At least ever since Descartes' unhappy introduction of the mind-body dichotomy, we tend to imagine other animals as impelled only by physical necessity whereas we at least in part are impelled by the conscious formation of will. Yet that disembodied will becomes suddenly quite embodied when it cannot respond to signals of human design. Does the absence of money or the incapacity to pay a price truly involve something other than physical necessity when it impedes someone from bundling up against the cold? Economists tend to say that we make choices in response to the price signal that are derived from our given preference functions. This seems to bring us around in a circle to the notion that when we govern ourselves, we are being governed.

The effort to govern the world rather than to be governed by it is one way to characterize the project of the Enlightenment. We are indeed now brought full circle as we come to see that in order to preserve the regulatory conditions of the world within which we live, we must learn to govern the consequences of our effort to govern the world. How apposite that this is most clearly conveyed to us by the effect on our climate—against which we bundle up—of the market activities for which we pay a price.

Can we design a new set of signals in our cyberspace that allows us to govern those consequences? Can we create for ourselves forms of steering that are charted according to the accumulated effects of our governance? As Michel Serres insists, we all now have in our hands our common, collective intelligence. Perhaps he did not have Siri or Watson in mind, but Serres is surely right that in no other time in history have we been able to carry with us and connect to all that has been thought, discovered, meas-

ured, and evaluated. Of course, this is imperfectly true and is indeed distorted in considerable degree by property and price. But just as the imperfect market surprisingly resembles the perfect one, so too the imperfect availability of collective intelligence surprisingly resembles, more and more, what that would be like. I remain dazzled by the ubiquity of Google having lived most of my life without any such possibility lying within contemplation. This is not merely another instance of Schumpeter's continuous gale of creative destruction. It is more like what Marshall McLuhan anticipated, in his cybernetic text, *The Gutenberg Galaxy*, as the world becoming a computer. However, it is not so much that the world becomes a computer as that our capacity for expressing our intelligence is now achieved through the medium of computer networks.

We must come to understand much more of the significance of this dramatic technological revolution, something I believe that we have not and cannot yet have done fully, if we are to produce sets of signals that allow us to govern the consequences of our effort to govern the world. On the one hand, we need signals indicating how the world is responding to our presence. About this we gather ever-increasing data. One can say that through this data the world speaks to us and we can respond in turn. In principle that data can be connected to every choice we make. On the other hand, we need signals as to how to orient ourselves in relation to all the choices being made by others. The price signal is the astonishing construction that we have produced for this purpose up until now. However, for reasons that Garrett Hardin famously dubbed the tragedy of the commons, the price signal does not coordinate our collective impacts and orient us in relation to how those impacts accumulate.

To some degree we can recalibrate the price signal by attempting to shift demand for outcomes that produce accumulating collective impacts. But a point comes at which willingness to pay cannot be a measure for capacity to will: what price are you willing to be paid in order to give up the capacity to will? A hard-nosed economist might say that this is a calculation we perform all the time when we assess levels of risk of injury or death we are prepared to run. But there is in that move the avoidance of a harder-edged question that I think we would say takes us over the line of pathology if it amounts to the market value of a suicide pact. I am aware here that the spectre of such a market emerging is not without a significant dose of reality, especially if market "participants" can exchange the present value of pleasure gained somehow against the future loss of will foregone. Yet such a market should remain anathema and governed—that word again—by criminal law. There is no price that can be set for ending the conditions of life. The market cannot signal to us a possible exchange. We need to respond to other signals, however elegant and omnipresent the invisible hand has become.

It seems to me, therefore, that the contemporary project of governance involves producing the collective intelligence to allow us to respond to signals of how our world is responding to us. We would seek thereby to coordinate our choices with those of all others as we encounter the consequences of having sought to govern the world. This involves notably, and problematically, the phenomenon of reflexivity analyzed so carefully by Jean-Guy Belley. Within networks, actors are themselves almost indistinguishable from the assemblage of all outcomes of activity—human and non-human, living and non-living. They are thus paradoxically emptied of agency. Yet as they engage with networks for others, actors take on vast and open-ended agency that is best called fiduciary and is a form of trusteeship for all of agency itself. It is what Justice Benjamin Cardozo wonderfully characterized as that “punctilio of an honor the most sensitive.” We are thus brought into a reflexive relationship between capacity for others and incapacity for ourselves.

Heretofore the project of liberal democratic governance has been about achieving greater capacity for ourselves. It has fashioned institutions of the state within which and through which we achieve considerable ability to steer. But it has also issued in the ability to pursue self-interest all the way toward the tragedy of the commons. Exactly at the point at which liberal democracy gives way to anarchy—the absence of any ruler and the substitution of the self-ruled market—is the point at which panarchy—the ability of all to engage in governance for others, present and future—might be enabled. The cybernetics of the social networks we have already produced suggests this possibility.

References

- Belley, Jean-Guy, “Une justice de la seconde modernité : proposition de principes généraux pour le prochain Code de procédure civile” (2001) 46:2 McGill LJ 317.
- Hardin, Garrett, “The Tragedy of the Commons” (1968) 162:3859 Science 1243.
- Kelly, Kevin, *Out of Control: The New Biology of Machines, Social Systems, and the Economic World*, (New York: Basic Books, 1994).
- Latour, Bruno, *Reassembling the Social: An Introduction to Actor-Network-Theory* (Oxford, UK: Oxford University Press, 2005).
- Mandeville, Bernard, *The Fable of the Bees: or, Private Vices, Publick Benefits*, 3rd ed (London, UK: J Tonson, 1724).
- McLuhan, Marshall, *The Gutenberg Galaxy: The Making of Typographic Man* (Toronto: Toronto University Press, 2011).
- Meinhard v Salmon*, 249 NY 458 (App Ct 1928), Cardozo CJ.
- Plato, *Republic*, translated by Allan Bloom (New York: Basic Books, 2016).
- Serres, Michel, *Petite Poucette* (Paris: Le Pommier, 2012).