

**INDIVIDUALS SURFING ON INTERNET WAVES
FACED TO
BANK SECRECY AGAIN.**

**COMMENT ON SELDON 'S
« THE MARKET INSIDE AND OUTSIDE THE LAW :
NATURALLY IMPERFECT VERSUS
POLITICALLY DISTORTED MARKETS. »**

DAVID W. VERSAILLES

CENTRE D'ANALYSE ECONOMIQUE
Faculté d'Economie Appliquée
Université Aix Marseille III
3 avenue Robert Schuman
F - 13628 AIX EN PROVENCE Cedex 1
FRANCE
home : (+33) 91 98 50 96
office : (+33) 42 17 29 94
office fax : (+33) 42 59 38 87

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Responsibility for errors remains entirely mine.

In his article Arthur Seldon proposed some paths to spare us the inconveniences of the ominous welfare state. Over-government is a typical manifestation of our social-democracies : advocating in favor of better services provided by the state is always linked to the stronger and larger necessity of taxing. Austrian economists and philosophers concentrated their efforts on the socialist calculation debate during the 20th century, in order to explain its logical impossibility. Now their demonstration is wide accepted and recognized. Yet the Leviathan is still alive : the American New Deal imported the combination of the Napoleonian positive conception of law and of the Bismarkian interventionism. This is the model for our modern social-democracies but there is still a great job to let the points developed against totalitarianisms transferred into an analysis of the modern democracies. Fighting those is the main task of the work presented by Arthur Seldon. It is hardly possible not to agree with the general orientation of the paper he presented.

The scientifically strong refutation of constructed orders leads to interpret as an emanation of the spontaneous forces of the market the manifestation and institutionalization of black market economy in these countries. The point is easy in a way. It is a consequence of HAYEK 's theory, advocating in favor of the legitimacy of the "underground" forces of the market because of their "spontaneous" origin. On the contrary legislation is a second-order order, whose illegitimacy is based upon its constructed positive character. This point constitutes altogether an incentive and a justification for individuals to find out the tiniest possibility of turning the legislative apparatus. It manifests the liberty of acting free, in the positive instrumentalist acception of the word. The point Arthur Seldon is insisting on does not have anything to deal with but a legislation, that is a second-order order. Whether the market is inside or outside the law is an irrelevant question in the perspective of the law as defined by HAYEK as a first-order order, because the law proceeds from the same spontaneous tradition as the market. There is a kind of co-evolution between the law and the market. The tradition of the rule of law defines the legal institutions and the rules as consequences of the behavior and codifies the law when it is well accepted by anyone. This is the meaning of Arthur Seldon 's sentence (section IV, p 8) : "*The legal law may have to recognize economic law*". The efficiency of the law is justified because of its spontaneous emergence. It is not the task of this paper to discuss the scientific character or such explanation, founding the future relevancy of an institution upon the question of its origins (see PETRONI 1992). On the contrary it is important to stress that the whole argument is based upon an already solved question : the legislation is illegitimate as all positive interventionist manifestations of the state are. The previous argument is a consequence of philosophical position, and it is an understatement for the whole paper.

This aspect of the analysis has to be separated from the microeconomic part of the discussion. Arthur Seldon insists strongly on it. The reasoning explains that, first, the services of the welfare have become (or always have been) disservices and, second, that today more and more, the consumers are getting aware about it. Anyone is able to recognize this fact, even if one's experience remains in one only particular field. Here the main methodological problem is the lack in information : when the service is provided by the state in a monopolistic way, it becomes priceless (BUCHANAN, 1965) but never free of charge. Therefore it is hardly difficult to deal with a cost-benefit analysis, and to start again reasoning in the way of the market. Individuals will obviously look for more efficient services. If they do not find these ones inside the law, they will look for them outside the law. Their cost-benefits analysis will include the risks linked to the passage outside the law, and individuals will always find a point where the disservice is enough boring to accept the risks of getting outlaw, or so to say out-legislation.

I tried to summarize Arthur Seldon 's starting points. The always rising up proportion of the informal economy in our society is seen by Arthur Seldon as a decisive aspect of the analysis. This

point is due to the same arguments than those hold in the context of the socialist calculation debate. The question of the "unrecorded", "informal", "shadow", "unobserved", "black", "underground" economy, as Arthur Seldon is listing its names, remains of great importance for macroeconomics. He exemplified one of these points linked to the calculation debate : The proportion of "black" economy at the macrolevel is lowering the relevancy of any macroeconomic analysis and consequently of the voluntarist intervention. It is rather difficult to manage analytically the "shadow" economy, and the adjectives listed here explains why.

Though the great lack in scientific analyses, anyone can have a concrete idea of its importance. In this comment I prefer to concentrate about Arthur Seldon 's propositions. As I read his paper for the first time, I have been a bit surprised by the proportion mentioned for "unrecorded" economy, even when it is concerning only the period 1978-1980 for most of the listed countries. Fifteen years after, the proportion seems even more timorous. I do not know what to think about the behaviors in highly disciplined countries like Austria, Great Britain or Germany. As French, it is hardly difficult to me not to feel especially Latin in this case. In realizing with relief the presence of Italy and Spain at the top of the list, it was hardly difficult to believe that France did not join the top team at that time. The rates evaluated according to both methods were unbelievable to me. In reading only 30 % for Italy (following the currency demand method), my Italian friends felt first deeply ashamed, then started to laugh. We could not find any relevant rates which could describe the current situation, but we did a sort of informal sounding of opinion about the point. According to all my Italian friends, all recently graduated or assistant at the university, the amount of the "black" economy is -at least- as much important as the GNP itself. Obviously this poll is not scientific, but it represents the way normal people think about this point in our Latin countries today. One who works and earns (or saves) money outside the law is respected and imitated. He is himself proud about it. Analytically the difficulty may even be the contrary of the one mentioned by Arthur and Marjorie Seldon : in asking the citizens who pay and choose to cross the bridge outside the law, the answers may be overstressed just in order to look smarter ! In so doing, private institutions are built up in escaping broadly the current legislations.

Arthur Seldon pays lot of attention to the new technological opportunities cellular phones, modems and notebooks computers provides. The new technologies will allow people to keep on living in their home country and positioning easily their earnings with lower taxes elsewhere, thanks to the cyberspace. Positioning incomes in fiscal paradises is an easy solution companies have been using for years. Arthur Seldon rightly explains that the possibility of reaching fiscal paradises in other positions can be given to all individuals as a consequence of the disclosure at low-prices of micro-informatics in all families. Thanks to this new possibility, individuals will have the possibility to snooker the state *inside the law*. Internet is the network that organizes a generalized link between users, consumers and producers enabling every connected individual to dodge taxes. Only one limit would appear : the one who wants to work in that way necessarily needs some knowledge in informatics, even though it can be learned fast and easily.

I am afraid, I am not as optimistic anymore as Arthur Seldon when he analyzes the case of individuals who want to escape from the coercion of the state and seek to be *outside the law* or to find out new paths *inside the law*.

Obviously the possibility is open to citizens to escape from the state inside the market. Internet has been conceived in order to transmit all kind of numeric information through a safe and protected network. The American Pentagon decided to set up the earliest stages of Internet during the paranoia of the Cold War, in order to protect safely the communications of the US Army. Recently during the Gulf War, they have been unable to decrypt Irakian military communications because the latter were using the American Internet technology. Internet is based on an UNIX platform. Whereas «normal» computers files are usually transmitted as one only set via phone lines, the Internet files are not. They are cut in pieces, with ranking and ordering properties, all these pieces travelling independently from each other

between two connected correspondents. It is not necessary to know the exact location of each to communicate, it is only important to know his informatic designation and his dispatching service. The sender connects his computer with his own dispatcher, which uses algorithms to transfer the file to the addressee's service ; the addressee will connect himself to his service from anywhere to empty his mail box. The file is travelling in short pieces between both dispatching services. It is impossible to forecast and know where each part of the file is travelling through : in the same eMail sentence sent from Paris to Berlin, some words can travel through Sidney and Los Angeles, and others through Milano and Vienna. At the end the file will be ranked in the right way again. There is only one rule characterizing this organization : data busses have to move without any stop on the lines where the traffic is not crowded. The world record for a world tour is 0,64 second. This method does not only allow the transmission of the electronic mail : any kind of file can be sent.

At the beginning of its development, Internet was rather dedicated to the electronic mail and the consultation of huge data bases, electronic libraries. Now it is in complete transformation after the wide spread of personal computers all over the world. It is becoming a large mass market catering organization providing any kind of service. The volume of transactions is always increasing, the number of the users is growing geometrically. Generalizing the payment of transactions with credit cards allows to imagine a great depersonalization of the transaction : the consumer will choose on computer and pay through his own computer by credit card. France made an original experience with the Minitel, whose newest version is able to read directly the introduced credit cards and convey their information to achieve the transaction. Microsoft has already been working in the same direction. It is setting currently the Microsoft Network (MSN) closely linked to its operating systems Windows©. In the operating system itself a software designed for authenticating an electronic signature and a credit card imprint will be introduced. This software is developed together by Microsoft, the VISA pool and the American company RSA Data Security. Potential customers are the 11 million of shopkeepers and traders and the 150 million of credit card holders in the world. Information and service providers will be free to present and sell their own trademark and contents on the MSN, Microsoft only being in charge of the back office and of the dispatching of services and payments. In paying back the provider, Microsoft will keep a commission. This will not come in competition with already established services such as CompuServe. The service is new because it does integrate the complete management of the so called information highways. Technically the main problem is to let different operating systems and various standards work together in a multimedia context : here the main problem comes back to the "hard" job of managing the operating systems, which is the main and first job of Microsoft.

Up to this point the technical details here shortly evocated are reinforcing Arthur Seldon's explanation. They open large doors for the individuals to snooker the state or any coercive institution.

There is a trap for those who remain outside the law. Our task is to explain how individuals can avoid the taxation ability of the state in locating their incomes in some places where the taxes are less important. Obviously it will become rather easy to locate incomes and orders in any interesting part of the world thanks to the new technologies. Yet here we just have forgotten that the way individuals make payments does not change. No problem at all when the concerned amounts are from clear and open origins. What about the money saved outside any official market or moved to a fiscal paradise ? When joining a service on line, the computer's screen will show you very soon some questions about your bank and credit card reference to charge you the corresponding amounts. Without answer, no access to the service. Even free services ask you a credit card number in order to charge you for the eventual overspending of the period gifted to discover the service. The credit card is the generalized necessary open sesame. In such situation, nothing changes for the coerced individual. If one dares to imagine having any access to the

computer managing the credit card system, it will be easy to seek the elements corresponding to a particular citizen or a specific company and to reconstruct both expenses and earnings. It can become even worse for the one who is used to pay cash without bill and avoids in that way the VAT, because all transactions now are recorded by the credit card network. The on line service always issues a bill. Transactions outside the law have become impossible, except if you pay with a stolen credit card.

Banks are always managing banking accounts and the operations made on the checking. Remaining inside the bank, the relations does not change between the customer and the producer, i.e. the bank or the credit card pool (VISA, Mastercard, AMEX, etc.) Obviously the number of transactions is still increasing and requiring always more accurate managing procedures. Data computing is only intended to solve faster transactions in a greater quantity, the computers use is not only of general use but a strong and strict managerial necessity : fast and safe are the only important words for the banker. Yet data computing allows a greater accessibility to the databases in the same time. If some kid is able to come inside the computers in the Pentagon, why should be the state unable to come inside the computers of the credit cards pools ? The bank secrecy is easily transgressed. At least, we have to recognize that there is a limit for the new technologies of data computing and numeric networks, that is exactly the limit of the bank secrecy of the pools managing the credit cards. This limit is exactly the limit we know today, that is the link and the necessary relations between the state and its administrations on one side and the bank or pool on the other one.

At a national level, the bank secrecy is not only broken because of criminal prosecutions, which anyone could understand : the narco-dollars, the money of the Mafia are sought by the criminal or antiterrorist police through the same ways the tax inspectors use for "normal" citizens. Inside their respective tasks it can conceivably happen that some officials depending from the Ministry of Finance could have huge possibilities of actions, for instance the American SEC or the French COB. These possibilities turn against any individual right when used in an extensive way. In the framework of a "normal" criminal prosecution breaking the bank secrecy is a difficult and long administrative procedure. On the contrary the French COB and the customs have an unlimited right for searching houses and offices at any time of the day and for confiscating what they want. Today in France, more than 180 000 officials depends on the Ministry of Finance. Whenever their prosecuting ways can be justified in some particular framework, they mostly remain at the frame of the edge of the legality, when they are not clearly against any individual right. At the international level, conventions are made to fight more efficiently against the laundering of the money terrorists and drugs cartels afford and manage. Where can be the limit ? Conventions exist inside the European Community centered around Interpol, to which participate not only our EC fiscal paradises as the Jersey Island or Luxembourg, but even the Swiss banks. The end of an era.

Conceiving of the technological advances Arthur Seldon was dreaming about, it is possible to draw an opposite conclusion. Here we are dealing with high technologies. Their management and control are more and more specialized, computers manage operations nearly in real time. Faced to technologies dedicated to escape from the state coercion into the market sometimes inside the law and mostly outside the law, the administration could draw radical consequences and transform progressively its prosecution interventions in an absolute discretionary power. This tendency is already perceptible to the multiplication of the so called *Autorités Administratives Indépendantes* in France, independent administrative authorities, whose control is more or less in the hands of some few *haut fonctionnaires* either totally independent, except from the highest level of the judiciary, or closely linked to the political power. In one word, no control does exist anymore in the citizen 's hand.

Summarizing the problem of the transactions inside the market in the technological framework of the cyberspace, we are faced to a double question. The first one deals with the classical problem of the bank secrecy, as general problem. The second question refers to the question of the

management of information at a world level, the levels of the VISA, Mastercard, AMEX or Dinner's pools for instance. At this level data are linked and exchanged all over the world. Here breaking the secrecy is possible through particular or legal coercive derogations. How to manage it ? The point is difficult because this is the exact counterpart of the possibility we have to pick up money from any box at the corner of the 5th Av. and 48th St. at 4:00 am before having some beers with the friends we have just met during a passionate seminar. How can we protect ourselves from the interference of the state in computers ?

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