

Why should we care about the Consumer Financial Protection Bureau?



In the early hours of November 27th, employees at the Consumer Financial Protection Bureau (CFPB) woke up to a world of contested allegiances. Advocated by Senator Elizabeth Warren and set up by the *Dodd-Frank Wall Street Reform and Consumer Protection Act*, CFPB was created in 2011 as an independent Federal agency tasked with protecting consumers in the financial sector. Since it was this sector's predatory exploitation of low-income racialized communities that triggered the subprime mortgage crisis, this agency was intended to regulate finance across consumer services like mortgages, student loans, and credit cards. As such, the founding of the agency received large support from consumer groups and their Democratic allies in the Federal administration. Republicans, for their part, dutifully (and unsurprisingly) rendered the agency as another burden on the "free" market.^[i] Such conflicts are hardly news and government employees are in this sense always in the precarious position that their jobs might be discarded with every new administration. Rarely, however, do these conflicts take the absurd character we could witness the following few days.

A holdout against the de-regulatory agenda of President Donald

Trump, the CFPB was until as late as November 24 still directed by Obama-appointed Richard Cordray. Deciding to resign, however, the former director, who is now expected to run for Ohio governor, appointed his chief of staff Leandra English to Deputy Director. This would in accordance with Dodd-Frank regulation make her acting director of the agency until a permanent replacement had been found. While this seemed to be in order, just a little later that same day Trump intervened. Citing the *Federal Vacancies Reform Act* of 1998, the President claimed the right to override the conventional succession order and appointed White House budget director Mick Mulvaney to the post.[ii] Mulvaney, who had made himself famous as a critic of CFPB when he in a 2014 interview called the agency a “sick, sad” joke, [iii] now found himself competing for an unlikely job. In addition, his contender English had late on Sunday night filed for a restraining order to try to keep him out of office. No wonder Mulvaney brought doughnuts with him when he showed up for his first day of work. [iv]

Arriving in the office early, however, Leandra English had already introduced herself to the agency’s 1600 employees with an email signed “Acting Director.” The confusion was complete. Throughout most of Monday, the situation on the ground was still unclear; although tweets of empty doughnut boxes indicated that at least some employees had chosen sides.[v] Mulvaney would in a competing email claim the title of “Acting Director” for himself while English sought support from Senators Warren and Chuck Schumer. Finally, on Tuesday 28, Trump-appointed Judge Timothy Kelly gave his verdict on the restraining order, predictably denying the request and installing Mulvaney as Cordray’s legitimate successor despite loud protests from demonstrators who had gathered outside the agency’s headquarters. Temporary order was restored and Mulvaney, who the *Washington Post* now calls “one of the most powerful bureaucrats in the country,”[vi] proceeded by putting a freeze on new regulations and hires.

The seeming absurdity of D.C. politics was hard to escape. In the pages of the *Los Angeles Times*, Doyle McManus called the conflict a “bizarre standoff”^[vii] while financial market commentator Megan McArdler called the struggle “pointless” as, “in the final analysis, [Mulvaney and English are] battling for brief control over a minor agency with limited impact on the economy.”^[viii] The doughnuts, the competing emails and the restraining order only further reinforced the farce-like qualities of the episode. In all its absurdity, however, this debacle within the D.C. establishment is simply the surface expression of a much deeper set of contradictions. Beyond legal battles and administrative intrigue, Mulvaney’s coupe-d’état at the CFPB is a particularly striking example of what Greek Marxist Nicos Poulantzas (1936-1979) argued to be the internalization of class contradictions within the capitalist state.

Poulantzas, the State, and the CFPB

First becoming known to an English-speaking audience as the “structuralist” antagonist to Ralph Miliband in the late-1960s “State Debate,” Poulantzas would go on to develop a sophisticated analysis of the relationship between state power and class power over the course of the 1970s. Cumulating in *State, Power, Socialism*,^[ix] the last book before his untimely death in 1979, Poulantzas’ work drew inspiration from Marx insistence on treating capital as a social relation. This orientation pitted him against both orthodox Marxist theorists who saw the state simply as an instrument in the hands of capitalists and those mainstream political theorists who thought of it as a subject with absolute autonomy and a rationality of its own. Instead, Poulantzas argued that the state was best understood as a class relation, writing that “[t]he (capitalist) state should not be regarded as an intrinsic entity: like ‘capital’, it is rather a relationship of forces, or more precisely the material condensation of such a relationship between class and class fractions, such as this

is expressed within the State in a necessarily specific form” (pp. 128-29).

Rather than seeing the state as external to society, Poulantzas positioned the state and its myriad contradictions within the class relations of capitalism writ large. While recognizing the gravitational pull of capitalist imperatives, Poulantzas did not see capitalist control over the state as foreordained or automatic. Instead, he saw the state as a terrain of struggle, with class contradictions deeply inscribed in its institutional make up. These contradictions, he argued, were condensed in *intra muros* bureaucratic quarrels over competing policies and administrative fiefdoms. This view is consequential for social strategy. Rather than regarding the state as a monolithic entity to be encircled and crushed, Poulantzas suggest that by struggling against the state as well as inside the state, socialists can favorably shift the conflictual balance of forces already inscribed in its institutions. This formulation allows for a notion of state power that, instead of simply decrying the state as an almost metaphysical evil, highlights how it is traversed by contradictions that range from its executive heights to the street-level bureaucracy of service provision. When these contradictions surface, they often take the character of the CFPB-affair.

The role of CFPB is to regulate the financial sector in favor of the “little guy” and, for a liberal regulatory body, it has aggressively pursued this agenda, helping nearly 29 million consumers to reclaim funds of around \$12 billion from banks, debt collectors and mortgage lenders.[x] As late as November 17 of this year, it mandated a new rule that would require payday lenders to take steps to ensure their customers could actually repay their loans before extending credit. The appointment of Mulvaney, who in the 2015-2016 federal campaign cycle received \$31,700 from payday lenders alone, has, however, made the industry more confident and its

representatives are now planning on suing the agency, hoping that with a new director it would be less combative in court.[xi] Indeed, Mulvaney himself has stated that his new job is to make sure the CFPB does not “interfere with capitalism.”[xii]

Creditor-Debtor Relations and the Financialized Economy

If the capitalist state is, per Poulantzas, a contradictory class relation, the CFPB-affair has uncovered a very particular set of contradictions: those emanating from the creditor-debtor relation. Since the subprime mortgage crisis, an increasing number of activists[xiii] and academics[xiv] have argued that this relation constitutes a central– if not *the* central – contradiction of financialized capitalism. Maybe most explicitly, Italian sociologist Maurizio Lazzarato[xv] has criticized received notions of finance as chiefly being characterized by excessive speculation or greed, instead conceptualizing it as at heart a power relation between creditors and debtors. Lazzarato accordingly prefers to speak about the “debt economy” rather than the “financialized economy,” as a way of putting this power relation at the center of attention. Taking the increased indebtedness of American university students as the paradigmatic example, Lazzarato argues that this social contradiction has become modern capitalism’s most important power relation. Rather than simply replacing old contradictions in a blanket fashion, however, the debt relation now permeates all other social relations, remaking conflicts between workers and capitalists, the welfare state and its service users, businesses and consumers through the medium of debt. In this sense, Lazzarato argues, “[d]ebt creation, that is the creation and development of the power relation between creditors and debtors, has been conceived and programmed as the strategic heart of neoliberal politics” (p. 25).

Although we should resist some of the strongest claims that financialization constitutes a completely new world of

completely new contradictions, centering of the creditor-debtor relation at contemporary capitalism's "strategic heart" can be instructive when thinking through contradictions of Trump's Federal state. While the *New York Times* characterize the conflict over the leadership of the CFPB as "encapsulating dueling visions of how the American financial system should be regulated"[xvi] putting Lazzarato in conversation with Poulantzas shows us that it runs even deeper than that. Together they allow us to see such "dueling visions" as the internalization of the creditor-debtor contradiction within the institutions of the state itself, highlighting the possible cracks in what often appears a monolithic bureaucracy.

Rather than constituting a neutral terrain for struggle, however, the cards are usually not stacked in our favor. Poulantzas insistence on the state as not simply a social relation, but a "*material condensation*" of social relations indicated that the state (while riddled with contradictions) still has an inbuilt bias favoring some social forces over others. In this sense, McManus might be correct when characterizing the entire CFPB affair as a "guerilla theater" in which "[a]lmost everyone involved know how the story will turn out in the end." [xvii] The judicial response, favoring the view that the President has the right to determine Federal appointments, seems to confirm this. But, after all, whoever thought it would be easy? In the face of such challenges, there is no reason for the left to dismiss the affair as merely bureaucratic squabble. Instead we need to recognize it as the expression of the real class contradictions of financialized capitalism, those between the creditors of Wall Street and all those of us who through our interest payments enable their wealth.

This conflict isn't just reflective of the contradictions within the Federal state apparatus, however, but also within the parties that have monopolized its administration. In

particular, the Democratic Party's "progressive neoliberalism"[xviii] temporarily allowed it to set up the CFPB as Senator Warren's pet project during finance's immediate weakness after the subprime mortgage crisis. In this way, a party outlier could be satisfied while its establishment continued to court the banks and the hedge funds. For democrats who are still coping with the fallout from Bernie Sanders challenge, defending the CFPB now seems to open the possibility of regaining credibility in the "resistance." Radical challenges to Trump's plutocratic onslaught will therefore have to be careful not to become foot soldiers in a desperate attempt to cling onto the remains of the Obama administration. Neither should we simply defend an agency that has brought some protection to working class communities, important as that is. Conservatives might downplay the episode as a "Washington comedy,"[xix] but, as Poulantzas argued, "the establishment of the State's policy much be seen as the result of the class contradictions inscribed in the very structure of the State" (p. 132). Popular movements need to grab onto those contradictions and try to split open the cracks.

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Photo of Nicos Poulantzas thanks to Verso press.

[i]

<https://www.nytimes.com/2017/11/27/us/politics/cfpb-leandra-english-mulvaney.html>

[ii]

<https://www.cbsnews.com/news/whats-going-on-at-the-consumer-financial-protection-bureau/>

[iii]

<https://www.vox.com/policy-and-politics/2017/11/16/16667266/mi>

ck-mulvaney-cfpb-cordray-omb-joke

[iv] <https://twitter.com/katierogers/status/935125394767917056>

[v] <https://twitter.com/CZ/status/935177171697586181>

[vi]

https://www.washingtonpost.com/news/business/wp/2017/11/30/mick-mulvaney-is-now-one-of-the-most-powerful-bureaucrats-in-the-country/?utm_term=.a0be2a34708d

[vii]

<http://www.latimes.com/opinion/op-ed/la-oe-mcmanus-cfpb-elizabeth-warren-trump-20171129-story.html>

[viii]

<http://www.sltrib.com/opinion/commentary/2017/11/28/megan-mcardle-the-fight-over-the-consumer-financial-protection-bureau-is-pointless/>

[ix] https://books.google.ca/books?id=ejTYwLoZtY4C&pg=PR7&source=gbp_toc_r&cad=4 - v=onepage&q&f=false

[x]

<https://www.nytimes.com/2017/08/31/business/consumer-financial-protection-bureau.html>

[xi]

<https://www.usatoday.com/story/money/2017/11/30/payday-lending-group-plans-sue-consumer-financial-protection-bureau/905316001/>

[xii]

<https://www.salon.com/2017/12/01/mick-mulvaney-my-job-is-to-prevent-cfpb-from-interfering-with-capitalism/>

[xiii] <http://strikedebt.org/>

[xiv] https://books.google.ca/books?id=G0LzAgAAQBAJ&pg=PT10&source=gbp_toc_r&cad=4 - v=onepage&q&f=false

[xv]

<https://www.amazon.com/Making-Indebted-Man-Neoliberal-Intervention/dp/1584351152>

[xvi]

<https://www.nytimes.com/2017/11/26/business/trump-cfpb-consumer-agency.html>

[xvii]

<http://www.latimes.com/opinion/op-ed/la-oe-mcmanus-cfpb-elizabeth-warren-trump-20171129-story.html>

[xviii]

https://www.dissentmagazine.org/online_articles/progressive-neoliberalism-reactionary-populism-nancy-fraser

[xix]

<http://www.weeklystandard.com/abolish-the-cfpb/article/2010664>