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**Labouring under inauthentic conceptions: Some caveats to the predominant visions of artistic and contractual freedom**

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Contracts and artists have a similar recent history: their emergence as dominant visions of human existence and human ways of life have accompanied the ‘long enlightenment’ in the West, from the late medieval period to our own confusing late-modern times. While recognisably contractual and artistic forms have existed in all recorded human history, they have by no means possessed the conceptual coherence and prominence which they now have. The eclipsing of prescribed visions of the Good, and the coming to the fore of the individual and her choices as the bearer of value, have meant that the contract and the figure of the artist have become both the means through which we express certain ideas, but also, by extension, the apotheosis of a certain vision of humanity. The contract, an agreement between autonomous individuals which expresses their ascent to a set of mutual commitments, replaced the will of God or natural law as the basis for all discussions of what a just society might look like. This spawned the social pacts of competing content of Hobbes (Hobbes 2017), Locke (Locke 1821), Rousseau (Rousseau 2017) and Rawls (Rawls 2009). It also spawned the powerful idea of constitutionalism and the legitimacy of the modern State. It equally spawned radical opposing visions of justice, based on the inviolable nature of agreements between individuals, like that of libertarian Nozick (Nozick 1974), and the modern hegemonical concept of the market, and of orthodox economics, and almost all heterodox economics, in which the greater good is achieved through the free exchange of commitments in line with people’s perception of the good (Posner 1987). Our vision of the virtuous human, trustworthy, honest and capable of planning is deeply informed by the centrality of contracts, with their close link to the concept of promise (Fried 2015), and our ability deal with those who we don’t know or understand is delegated to a system which replaces promises between friends with dealings between strangers (Kimel 2003) – Durkheim famously described these systems of private law as the organic solidarity of complex modernity which replaces the mechanical solidarity of small, uniform communities in which punishment is the basis of the governing system of rules (Durkheim 1997). Equally, Herbert Hart, legal philosopher, distinguishes pre-legal and legal societies through the genesis of systems of rules in which people are able to create and change their own obligations, which Hart called secondary rules (Hart 2012). Ultimately, the contract emerged as the central basis to describe ourselves and the structures of interaction which govern our lives. The most significant aspects of our lives, from marriage to work are now discussed almost exclusively in the lexicon of contract, whether metaphorically or legally. The modern human being is nothing without contract.

The figure of the artist is a similar product of the same genesis of modernity. While art and aesthetics have been part of shared visions of human flourishing and the good life since Ancient Greece, and although art has remained a constant in all known societies, the ‘artist’ as we know her today is inseparable from late modernity and its hegemonic fetishisation of contracts. As the individual has emerged as the ultimate, and even sole, source of value, accompanying visions of ‘authenticity’ have become alternative metrics to judge the worth of an individual’s endeavours. This is an almost impossible standard for individuals, taking the Kantian requirement (Kant 2008) that one act out of a commitment to universal law rather than self-interest and transforming into a requirement that one rejects the dominant, inherited and ultimately baseless tenets of accepted wisdom and forges one’s path. This trend unites the apparent nihilism of Nietzsche (Nietzsche 2012), the socially engaged existentialism of Sartre (Sartre 1977) and the nuanced communitarianism of Charles Taylor (Taylor 1992). This search for authenticity has come to dominate our discussion of the arts and popular culture. Much art is judged by a second meta-level consideration, unconnected to its intrinsic artistic quality: hip-hop artists boast perennially about ‘keeping it real’ and other musical artists are dismissed because they are ‘manufactured’ or ‘plastic’. Art in this way is seen as achieving its potential when it is somehow produced as an act of defiance against its inherited condition, emerging by some miracle of authenticity from the essence of the artist. The ‘artist’, on this view, is the apotheosis of the hyper-individual of hyper-modernity: the artist of the modern imagination is venerated due to their deep authenticity, unpolluted by the demands of that which arbitrarily lies outside, the result of coincidence, history and chance.

What is the encounter, then, between these two parallel symbols of modernity: contracts as obligations agreed by sovereign individuals combined with artists as the true essence of such sovereign individuality? Within the apparent logic of the story told here, the meeting is an inevitable commodification of the artist’s work in which the value of her authenticity is rewarded by the sovereign purchaser of that work by the individual who places most value on it, thus simultaneously empowering the choice of the consumer with the value of the producer in a manner which allows for the commodity to be placed in the hands of the person who values it the most while maximising the material reward for the artist (Posner 1986). This is the vision of the artist as part of the ‘art market’, a hideous term which conjures up an economic ecology with an in-built ethics akin to that of the used car market. However, this vision is a remarkably powerful one precisely because it feeds into the self-image of the artist who embraces the authentic self and the economic ideology of the self-made man which suits the bohemian imagery of the outsider creative force which artists sometimes see themselves as embodying. It allows for an economic model in which the artist is unencumbered by the usual power structures and exploitation of employed labour, making her free to develop art, and indeed to live, in a deeply authentic way. The ordinary worker is part of the rat race. The artist is free. This vision also allows for artists is see themselves as capable of something else: becoming not only free but rich. If they are paid for a commodified artefact rather than their time, as normal employees are in their inauthentic existence, that artefact can be valued at a level which enables the artist to enjoy the heightened material freedom which stems from wealth and the subsequent time to engage in further acts of authenticity, a virtuous cycle of reward and endeavour which older forms of artistic labour, from artisan crafts-based models, to apprenticeships to feudal patronage, cannot hope to compete with.

There are of course some significant problems with this story. Firstly, like all neat stories, it hides a multitude of nuances and realities which are obscured by this same neatness. Secondly, like all good stories, it begs more questions than it answers. The question it forces us to ask is what we mean by the key concept in this whole story: the sovereign individual as the source of value, of authenticity, through their choices and their agreements. Ultimately, it forces us to ask questions about the ultimate slogan of modernity, the end and basis for so many other core ideas: freedom. If contracts are the justification for our obligations, it is because this reflects a deep rhetorical belief that our obligations should be justified by our voluntary commitment to them. If artists are revered due to their authenticity, this is because we value this deep form of existential freedom. As a labour lawyer and political philosopher of law, this is where I can insert myself legitimately into this narrative: ideas of freedom and the moral, cultural and legal frameworks of value which purport to reflect these are fraught with difficulty and complexity. If we value freedom and the ability to self-legislate and the benefits that this brings, we must consider two things: firstly, what are the conditions which promote this set of circumstances and, secondly, what are the cultural forms and rules which would best lead to such conditions? It would be very surprising if the fetishised forms of transactional contracting and deeply deracinating ‘authentic’ individuals were the best way to create the conditions in which people were free and in which artists were able to benefit from an economic ecology which supported a flourishing artistic practice.

This is where a consideration of CAVEAT! can begin therefore. The project is an impossibly ambitious one, as all ideas must be if they are to hope to achieve any of their goals. It brings together artists to think about their place within an economic ecology within which they work. It sits somewhere between an abstracted artistic project in its own right and a form of auto-ethnography, where artists map their own self-understanding within the processes and interactions of the factors of production of art. Unsurprisingly the themes which emerged from these auto-ethnographic dialogues were the three key elements in any sectoral system of labour law: the work that people do, the ownership structures which exist, and the normative and governance structures which set out the rules of engagement for all parties. In short: labour, capital, law. CAVEAT!’s work has revealed a deep ambivalence within the practices and attitudes of artists. While the project itself seeks to disrupt the exploitative practices of the transactional model of the art market, devoid of connection and distributive concern to the broader economic and cultural ecology of art and the social realities which produce it, the artists themselves perceive an authentic form of freedom within a precarious existence outside the protective relationships which might mitigate against the unpredictability of the transactional model. Artists, in short, embrace the freedom which comes from their work not being governed or controlled by other actors, be these private or public institutions. The transactional contractual model, in which the artist emotionally and conceptually separates herself from the artefact which her work produces, seems here to be a reversal of the Marxist tradition which has seemingly lied at the basis of the justification of labour law and the focus on the worker, rather than the product, as the basis of labour law for the past century and a half. In Marxist thought, the worker is alienated from her labour precisely because she is part of a depersonalised production process in which capital expropriates the result of that labour, taking a section of the value, effectively the worth of the worker’s contribution. For the artist, as understood in CAVEAT!’s exploration, the response to this is to double-down on the expropriation: the artist’s work is not the thing which is valued or paid for. Instead, the end result, separate to the artist, is sold to the end-user, institution or organisation. In this manner, the artist’s self-perception as artist is not sullied by an interference with the existential process of ‘being an artist’.

There is clearly a huge hole in this version of affairs, and it is of course this hole which CAVEAT! is seeking to fill. By deliberately excluding the process and conditions within which works of art are produced, artists fall into the trap of assuming that the dominant forms of authenticity and contract are the only ones. In reality, being systems of rules and values they are doubly indeterminate. Rules are structures which must be applied to social realities to have meaning. This involves a complex process of interpretation in which an ideological and political set of understandings of a whole variety of matters acts as a filter to turn a simple set of baseline concepts into devices which give meaning to social interaction (Holmes 1897; Kennedy 2007). Secondly, as social systems, rules can only be given the meaning which is ascribed to them by the people who are subject to them (Ehrlich 1936). If everyone involved in a football match suddenly started playing according to different rules, these would be the rules of the game. The combination of these two factors means something radical for artists and their productive ecology: they are entirely responsible for it, at least in conjunction with the other people who are equally involved. However, because the latter depend on the former’s involvement to guarantee the working of the system, artists are co-owners of the economic structures which they are subject to.

This is an exhilarating and a terrifying set of realisations. However, it means one thing from the outset: the fact that authenticity and contractarianism are the basis for our deep self-understanding is merely a starting point for discussion. Neither of these two concepts have a fixed meaning, and, crucially, neither is attached to any particular vision of autonomy, freedom or self-determination. Indeed, if we care about self-determination and freedom as the baseline conditions for good artistic practice, we have to ask ourselves what these things really mean. They surely do not mean that artists be left to their own devices, like solo-sailors in the choppy waters of the ocean while enormous cruise-liners sail by and occasionally invite them onboard on a whim while all the other artist-sailors struggle in they tiny boats to produce great art in their authentically wet and wobbly vessels. This is the self-chosen precariousness of the authentic artist who embraces an impoverished form of authenticity and an unimaginative contractual reality. Freedom to produce great art is a set of material and spiritual conditions, and the freedom to determine one’s own obligations through contracts is as broad as the imagination of the contracting parties. These two things should be understood not as two separate pre-conceived ideas, but rather as two indeterminate and interdependent things which artists must take as a single consideration: what are the conditions in which the artist can possess maximum autonomy and authenticity within her work, and what voluntary obligations stem from this vision?

Freedom, and by extension, authenticity, cannot simply be a vacuum, devoid of outside interference. Anatole France could have been talking specifically about artists when he said that the rich and the poor alike were free to sleep under bridges under the law (France 1896). Freedom consists in the conditions which allow one to determine the contours of one’s own actions and their meaning. This is a permanently negotiated, social question. The only way to ensure the absence of the domination of others is to negotiate with those others the conditions through which people can mutually support their respective development. This is a social conception of freedom. It reflects two core realities: the meaning which gives significance and shape to the individual choices and forms of communication and action of all people, but particularly artists, whose labour can ultimately be boiled down to these elements, is ultimately shared social meaning. ‘No man is an island’. ‘There is no such thing as a private language’ (Wittgenstein 2010). The artist cannot take her quest for authenticity seriously if it is a socially dislocated one: the authenticity depends on possessing the tools and the shared language to allow for a playful visitation of our shared forms and meanings. Artists can do nothing, cannot be artists, if they are not given the tools to perform this function. The notion of the deracinated authentic artist is incoherent. And yet. Yet it holds weight because of the fear of domination, of colonisation, of commercialisation, of banalisation. The artist sees herself as requiring a freedom to produce work which might be put at risk by the mutual obligations stemming from a re-ordering of labour, capital and law. She is right to fear this, as there is, as we have seen, a dominant ideology which has given predominant meanings to these core elements. However, it is artists who have bought into this ideology more than anyone else, it would seem. They impose upon themselves a deracinated vision which denies themselves the very tools upon which their function depends. This is not a noble act of self-denial. It is the embodiment of a political ideology which denies the artist’s crucial role in the mediating function of social interaction.

This is where contracts come in. That the contractual form has become the predominant way to describe all obligations demonstrates its openness. While it is the dominant form of certain economic models and ideologies, they do not have a monopoly on it. This can be demonstrated from its metaphorical use in political theory, where ‘social contracts’ are never actually agreed to, but simply used to demonstrate how a rational person would agree to certain obligations in a spirit of mutual respect with fellow citizens. It can also be seen from its equally metaphorical use in contexts such as the ‘marriage contract’ which are not concerned with single economic transactions of a commodified type. Neo-liberalism does not have a monopoly on the contractual form. Contracts are, in the simplest sense, a simple mechanism which allows for the exchange of mutual obligations. In many ways, the transactional model, in which a thing is exchanged for another thing of perceived commensurate value, is quite far from this paradigm, as, in its purest form, the ‘contract’ in question never materialises, disappearing as soon as the exchange takes place, its remnants persisting solely in terms of expectations of quality and performance of the things in question. This type of contract is inappropriate to promote the authentic, self-determining artist which we have discussed here. If this authenticity-driven artist takes her own self-perception seriously she needs to take seriously the notion that the ecology within which she works and which supports and creates the conditions for that autonomy must be structured by mutual obligations. The contractual form offers the best and most flexible device to achieve this, because it is negotiated by the actors involved, flexible and, crucially, relational. This is what CAVEAT! would seem to have discovered for artists, that contracts are devices which build trust and distribute risk in longitudinal projects and relationships. Where artists work in the context of an institutional framework, they require the tools to demand that their independence and autonomy be cultivated by a sharing of risk during that relationship. The relational contract is not one therefore which seeks to inculcate domination but rather makes clear that the authenticity which artists rightly prize depends on material conditions and expectations which are a pre-requisite for autonomous artistic practice. Relational contract theory (Macneil 2001) is, in reality, in its infancy, but relational contracts themselves are everywhere: in business, at work, between Nation States. Wherever an ongoing relationship exists, there is a form of relational contract, spelling out the obligations which make that relationship successful. Within commercial contracts, this will, above all, be an implied or overarching term of good faith and mutual support. Although contractual negotiations often aim at achieving the best goal for the lowest price from the contractual counterpart, once one is within a contractual relationship, this is turned on its head. The contracting parties are mutually dependent.

CAVEAT! has created a crucial conversation about these questions. It is a jolt of reality for artists regarding their simultaneous apparent rejection of certain forms of labour while embracing the very ideologies which perpetuate the conditions which deny them the autonomy and authenticity which they demand. Yet CAVEAT! seems to me to fall into this same trap. What is CAVEAT! after all? Is it simply a conversation? Is it a set of tools for artists to use? Is it a self-reflective artistic project, doomed to fall into the same trap which it studies, a form of elaborate mise en abyme? Does it produce a wonderful set of reflections but in the absence of the very relational structures which it advocates? Is the tragedy of this multiplied by a parallel failure to shift artists’ own perceptions? The ‘trap’ here would appear to be the impression of radical recasting of artistic practice whereas it in fact simply constitutes a standalone series of acts and interactions by artists who are working in a self-reflective and indeed authentic way on a project which reflects their deeply held, and perhaps deeply meaningful and beautiful vision of the world, but which can only hope to change the world by some miracle of altering perceptions while embodying the separateness and transactional nature of the practices which it seeks to disrupt. The problem with CAVEAT! on this view is not its inherent viewpoint on contractual practice, which would seem to be more than warranted. On the contrary it is that it is simply a project about contractual practice within art, asking artists to delve further into their own personal self-reflective practices, risking self-absorption and self-indulgence. There is nothing wrong with this. Art is about conversations which reflect upon one’s own practice and the worth of art is in its worth for its own sake. However, this means that a conversation about transforming artistic practice can very quickly slide into a form of artistic practice rather than a transformation. As this is about artists changing the way in which they work, they must think about how to make changes outside this self-reflective form of practice. What might this look like?

A labour lawyer’s reaction here is probably predictable but no less important: given the shared conditions of all artists but the radically separate nature of their practice, how can a project like this work but for the transcendence of difference through a trade union for artists which create the relational dialogue on behalf of all artistic practitioners? How can artists inhabit their self-perceived autonomous space while worrying about these issues? Is the ultimate exploitation of artists achieved by telling them that they are artists? CAVEAT!’s success, it would seem to be depends on its ability to create the institutional forms which truly relational structures depend on. A relational contract for artists needs to be permanently capable of being enforced and interrogated, to force the dialogue and negotiation which a relational contract depends upon. Could CAVEAT! not morph into a self-organising group of stakeholders who hear informal disputes and disagreements between artists, institutions and patrons, mediating and arbitrating between them, finding solutions which promote further mutual dependence and the sharing of risk? This would create a set of practices which could be progressively built into the exchanges between artists and institutions, who would thereby rely on them less and less. A relational contract is ultimately a conversation which provides solutions due to a shared commitment to the conditions which generate mutually beneficial outcomes. CAVEAT! thus far is a conversation about that conversation; it is for artists to embody it, by shaping the world within which they seek authenticity.

Bibliography:

Durkheim, E 1997, The Division of Labor in Society, Simon and Schuster.

Ehrlich, E 1936, Fundamental principles of the sociology of law, Transaction.

France, A 1896, Le lys rouge, Calmann-Lévy.

Fried, C 2015, Contract as Promise: A Theory of Contractual Obligation, Oxford University Press.

Hart, H 2012, The Concept of Law 3rd edn, Oxford University Press.

Hobbes, T 2017, Leviathan, Penguin Classics.

Holmes, OW 1897, ‘The Path of the Law’, Harvard Law Review, vol. 10, p. 457.

Kant, I 2008, Groundwork for the Metaphysics of Morals, Yale University Press.

Kennedy, D 2007, Legal Education and the Reproduction of Hierarchy: A Polemic Against the System, NYU Press.

Kimel, D 2003, From Promise to Contract: Towards a Liberal Theory of Contract, Hart Publishing.

Locke, J 1821, Two treatises of government, for Whitmore and Fenn, and C. Brown.

Macneil, IR 2001, The Relational Theory of Contract: Selected Works of Ian MacNeil, Sweet & Maxwell.

Nietzsche, F 2012, The Genealogy of Morals, Courier Corporation.

Nozick, R 1974, Anarchy, State, and Utopia, Basic Books.

Posner, RA 1986, Economic analysis of law, Little, Brown.

Posner, RA 1987, ‘The Law and Economics Movement’, The American Economic Review, vol. 77, no. 2, pp. 1–13.

Rawls, J 2009, A Theory of Justice, Harvard University Press.

Rousseau, J-J 2017, Du Contrat Social ou Principes du droit politique, CreateSpace Independent Publishing Platform.

Sartre, J-P 1977, Existentialism and humanism, Haskell House.

Taylor, C 1992, Sources of the Self: The Making of the Modern Identity, Cambridge University Press.

Wittgenstein, L 2010, Philosophical Investigations, John Wiley & Sons.

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