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**t byfield on Fri, 25 Sep 2015 21:09:58 +0200 (CEST)**

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**<nettime> VW**

- *To:* nettime-l {AT} kein.org
- *Subject:* <nettime> VW
- *From:* "t byfield" <tbyfield {AT} panix.com>
- *Date:* Fri, 25 Sep 2015 15:01:33 -0400

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A few thoughts about the VW scandal

The VW scandal may not seem very nettimish, but I'll argue that it is. This'll take a while, because it is, as they say now, #epic. If you're interested, read on.

Cheers,  
T

There are a few 'immaterial' sectors we're used to thinking of as somehow uniquely privileged -- say, finance, communications, and genetics. Against that speculative backdrop, an automotive scandal probably seems more past-oriented than future-oriented. Cars and trucks, after all, are firmly grounded on dry land rather than the fluid seas or skies. let alone the gaseous clouds of networks. And for many people -- most in many areas -- that's not just airy-fairy associations. They know how directly cars rely on petrochemicals because they have to pump them full on a regular basis in stations that can never stray too far from the grime of the repair shop. But try as we might to imagine otherwise, the futurity of those 'immaterial' sectors still depends entirely on transportation to move around everything subsumed under the phrase 'bricks and mortar,' from the raw materials to the detritus -- people included. So simplistic assumptions and associations about the automotive industry won't prepare us very well to think through this VW scandal. And, anyway, why bother? It's not that surprising -- just another corporation lying, right?

I think it's much bigger than that.

In a nutshell, over a period of at least a decade, VW systematically set about designing, testing, implementing, maintaining, and upgrading an undisclosed system that enabled its diesel cars to deceive environmental regulators. The core of this system was software that enabled a car to 'know' when it was being tested for emissions and to dramatically reduce its emissions. VW claimed that it possessed some magical technology that allowed its diesels to achieve high mileage and low emissions without the need for a urea-based additive -- a liquid that, like gasoline or engine oil, requires its own special tank. Compared to diesels made by other manufacturers, VW's cars were cheaper and less of a hassle to operate and maintain, and their resale value remained much higher.

So, right there, VW diesel owners have a pretty ironclad case for what boils down to speculative financial compensation: the difference between what the cars 'would have been worth' if this flaw hadn't been exposed and what they *are* worth -- which is zero, if only because no one in their right mind would buy one (and in many cases resale may now be forbidden by law). For many purposes, this group also includes VW dealerships, which are stuck with inventory they'll never be able to sell, furious owners who will look to the dealers for satisfaction, and little incentive to trust that sticking with VW will serve them well. On the contrary, many may be thinking about how quickly they should sue VW.

The flipside of VW's software trick is hardware -- or, rather, the lack of it. VW can patch the software, but doing so won't give their diesels the hardware needed to integrate urea additives: not in the engine, not in the fuel system, and not in the body panels. Recalling all those cars to retrofit such a system is almost certainly impossible: it'd be prohibitively expensive *and* far beyond the capability of dealers' repair shops. So those vehicles -- 11 million of them and counting -- are damaged goods. They will *never* be able to meet environmental regulations. That means either (a) they'll need to be taken off the road or (b) environmental regulations will need to be rewritten to include a carve-out for VW diesel owners. Setting manufacturer-specific rules like that would be a disastrous precedent with huge political opposition, but to in effect 'reward' VW's systematic malfeasance would be a catastrophe. And who would support it? The other manufacturers? Not likely. Owners of non-VW cars? Not likely. The incentives for politicians and administrators to be seen as coming down hard on VW seem much greater than the incentives to come up with a flexible interim solution.

And then there's the minor matter of *how* to patch these cars.

If VW patches the software so that cars *\*always\** run in 'dishonest' but comparatively clean emissions test-mode, their performance and mileage will immediately be seriously degraded. Owners will have little incentive to comply with that, if only because of the cost. And in most setting car inspections are still a pretty grimy, results-oriented business, so the automated machinery isn't up to the task of confirming software patches. Alternatively, if VW patches the software so that it's 'honest' but dirty, the cars won't pass emissions inspections. Given the fact that compliance inspections are usually an annual process, there's a *\*very\** short window for resolving this issue. That window will open, if you like, as regulatory agencies at different levels begin to issue ad-hoc rules and procedures over how noncompliant VW diesels should be handled. And it'll close a year later, when the same cars come up for re-inspection. If they don't pass, they can't be registered and licensed for use.

But maybe worse than the short time frame is the question of *\*who\** will be in charge of this. In the US, for example, environmental regulations are imposed at the federal, state, and in some cases municipal level. In particular, the federal Environmental Protection Agency oversees congressional mandates like the Clean Air Act (CAA), but most 'retail' administration and enforcement for automobiles is delegated to the *\*state\** level -- and some states impose regulations that are tougher than federal requirements. In this respect, the VW scandal poses a jurisdictional nightmare within the US alone. It might make sense for the US federal government to negotiate a solution, but implementing and enforcing it -- in particular, the expense for doing so -- will fall to the states as an unfunded mandate.

So here we have another kind of claim, from state and maybe even some city governments with a legitimate grievance and fiscal demands. Their ire will be directed both at VW itself as well as at federal regulators. How viable their various legal cases may be will depend on many factors, but the process of determining how viable they are could itself consume immense amounts of time and money. And that's just in the US. Analogous conflicts, claims, and processes could be unleashed in dozens of countries. VW doesn't have -- *\*could not have\** -- a legal staff large or capable of addressing these conflicting legal demands and requirements.

And we haven't even gotten to the fines that are on the law books for this kind of behavior -- which in the US alone could amount to US\$18B or more. Presumably, any country in the world with analogous environmental and corporate laws could levy immense fines. As is often the case, when multiple parties in an

amorphous field are competing for dwindling resources -- and VW's resources will quickly dwindle to nothing -- the conditions are ripe for parties to see a 'first-mover advantage.' Now add individual political and financial ambition to the mix.

It's hard to see how VW would survive even the beginning of this process. Every aspect of its business has been frozen, with no prospect at all of thawing out again -- no 'recovery,' no 'green shoots,' no nothing. Everyone who depends on it -- *\*everyone\**, from raw materials suppliers to parts suppliers to used-car dealers -- will be moving as quickly as possible to minimize their exposure. In that respect, if VW is lucky -- which remains to be seen -- it's facing something along the lines of the 2009 General Motors bailout. But that bailout was based on the assumption that GM's problem was mainly one of liquidity. VW's perfidy was so systematic that it has no prospect whatsoever of becoming liquid in the near future. On the contrary, it's radioactive, and the resulting crisis may well look more like a cross between Fukushima and Lehman Brothers.

At the heart of this all is the same old question or, rather, the same old questions: Who knew? And when did they know it?

Let's start with some hypotheticals. The automotive business is intensely competitive, but in other respects it can also be very cooperative -- for example, when it comes to establishing and complying with safety standards or third-party vendors of things like tires or fuel. VW claimed to have some magical diesel technology that obviated the need for urea-based additives. It's possible that its competitors' response was, like, "Wow, that's cool -- good on you!" But it seems more likely that some time over the last decade they would have been pretty curious about what went on under the hood, as they say -- for example, by scrutinizing relevant patents and by disassembling and reverse engineering actual cars. And, of course, there's a certain amount of professional circulation as engineers and managers move from jobs with one manufacturer to another -- or are poached. It's conceivable that VW's competitors were all just totally stumped, didn't notice any disparities in VW's numbers, and didn't make any further efforts to figure out what was going on. I think it's much more likely that VW's shenanigans were, if not an open secret, at least strongly suspected by quite a few people in different aspects and contexts of the the business. I don't think it's hard to see how other companies would decide *\*not\** to follow VW's example *\*or\** to rock the boat, given that doing so would likely involve tighter scrutiny.

Within VW, there's no doubt that many people knew -- not suspected, *\*knew\**. The vast majority of VW employees wouldn't

have known, really. But lots of people knew some of the basic facts: (a) that VW claimed to possess a magical technology, which (b) no competitor could figure out, and (c) didn't involve any discernibly different systems of parts. This had been going on for a decade, and it touched every aspect of the design, manufacture, and service of VW's diesel cars. There are \*certainly\* software developers who knew exactly what was going, as did their managers and their counterparts dealing with hardware integration. And they talk. But there are also chemists and physicists who knew the math simply didn't add up. There are designers and prototypers and engineers who deal with the physical properties and behaviors of their materials and knew that the specs didn't mirror the claims. There are analysts and actuaries who knew the numbers were bullshit. And so on, on an 'iterative' basis driven by intensely competitive seasonal sales cycles. It wasn't just a rogue few who knew -- it was a much messier, large-scale process of many people who sort of knew, saw it as normal, sought approval and promotions in that context, and so on. You could even call it all \*banal\*.

But where or how exactly we draw the line of 'knowledge' or 'complicity' doesn't matter, because now everyone who works for VW -- 600,000 of them -- is at risk in one way or another. As then there are all the dependent businesses and towns. It's not just the diesel-oriented divisions: people who just days ago were looking to buy a VW will be looking elsewhere now, and people who just bought one will be looking for ways to return it. And that's just the retail activity. What about the owners of 11 million cars that, if they're allowed to run at all a year from now, will be patched to the point of sucking? The company's revenues will plummet toward zero as its liabilities mount, in some contexts maybe exponentially.

It wouldn't be too hard for investigators to make some basic determinations about who knew what and when, because all of the software in question is archived -- every version, every commit, going back well beyond this scandal. So, given enough forensic expertise and political will, they can walk through that process step by step from the very beginning, identify the lowest-level culprits, and start from there. There is a bright line to be drawn between people who were responsible in a managerial sense and people who were responsible in a labor sense, and I hope that investigators observe that bright line. But...

...who gets to decide who the investigators are? The US government? The EU? The German government, which (a) is a substantial equity stakeholder, and (b) is staring down the barrel of a very \*material\* TBTF fiasco? Above, I talked a bit about the jurisdictional nightmare that such a large car

manufacturer faces. Conceivably, one could compound that by overlaying 'network'-oriented jurisdictional issues -- for example, the use of telecom systems to transmit information (from software to managerial decisions) with an intent to deceive and defraud. As a result, investigators in countless jurisdictions and entities could, conceivably, have legitimate claim to see these supporting materials. Presumably, as various responses get rolling, some people in positions of power may feel that the German government is the one entity that shouldn't dominate this investigation. Given that that government will almost certainly be called upon to bail out VW, there may be people in the German government who agree -- or at least rue very deeply their conflicted position.

Given all the jurisdictional and sectoral issues involved, the situation could be complicated and contradictory that it could make sense to condense all these claims and adjudicate them in a single framework. But for one thing: there's no doubt that this involves criminal activity, not just civil infractions. And since ferreting out the 'individuals responsible' will be necessary because the stakes of letting them off would be too high, both in terms of how it's seen by different publics and the precedents it would set. We can begin to see how an international tribunal might make sense, but the precedent \*that\* would set -- criminal trials of corporate officers in international officers -- isn't likely to happen quite yet. Yet.

In 2008 it was easy to claim that the problem was abstract financial flows, and that the endless parking lots full of unsold cars, the factories that ground to a halt, and all the rest were just symptoms and side effects. But VW presents a very different situation: at root, the problem is an everyday machine that violates environmental laws by several order of magnitude -- a very different sector of national governments from financial regulators. And rather than mystifying algorithms and legal-financial entities, the problem is plain-old software. It may be really complicated, but it doesn't merit the mystifying estimation 'complex.' It's not very hard to understand what happened or how, and in any case VW fessed up -- and ousted its CEO. So there's no question that crimes were committed, and no doubt about guilt.

I'd be curious to hear from people who have a more proximate sense of how this is playing out in Germany, and how the government seems like it'll respond.

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**morlockelloi on Sat, 26 Sep 2015 00:58:17 +0200 (CEST)**

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**<nettime> \*\*\*SPAM\*\*\* Re: VW**

- *To:* nettime-l {AT} kein.org
- *Subject:* <nettime> \*\*\*SPAM\*\*\* Re: VW
- *From:* morlockelloi {AT} yahoo.com
- *Date:* Fri, 25 Sep 2015 12:48:45 -0700

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Consumers have been at the mercy of technology vendors for a long time. The novelty here is that it is the government that found itself in the subordinate role.

The lowdown is that the technology one doesn't fully understand and have full transparency into ("user") can and will screw you, and no amount of regulations can change that. Anything with software is especially insidious in this sense, as for most users it is impossible to fully grasp it.

The upside is that this enables multiple centers of power (from startups to VW), so in a way we are entering the age of pre-feudal fiefdoms. Whether the government model will prevail or not depends on how much power the illiterates have. I wouldn't hold my breath.

On 9/25/15, 12:01, t byfield wrote:

| A few thoughts about the VW scandal  
<...>

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**Florian Cramer on Sat, 26 Sep 2015 17:57:52 +0200 (CEST)**

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**Re: <nettime> VW**

- *To:* nettime-l {AT} kein.org
- *Subject:* Re: <nettime> VW
- *From:* Florian Cramer <fcramer {AT} pleintekst.nl>
- *Date:* Sat, 26 Sep 2015 16:22:00 +0200

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I'd be curious to hear from people who have a more proximate sense of how this is playing out in Germany, and how the government seems like it'll respond.

The implication for "our" field are much more immediate than one would expect, given that the Centre of Digital Cultures of Leuphana University Lüneburg has been funded from a grant by Volkswagen Stiftung (Volkswagen Endowment) a few years ago. Look at who's working there - a who's who of European media studies including many Nettimers: <http://cdc.leuphana.com/people/>

-F

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**Michael Gurstein on Sat, 26 Sep 2015 18:03:27 +0200 (CEST)**

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**Re: <nettime> VW**

- *To:* nettime-l {AT} kein.org
- *Subject:* Re: <nettime> VW
- *From:* "Michael Gurstein" <gurstein {AT} gmail.com>
- *Date:* Fri, 25 Sep 2015 17:59:07 -0700

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Thanks Ted, very useful.

I guess what I'm curious about is the motivations, individual and/or corporate thought processes/incentives etc. that underlie the initial decision to go down this path and then the multitude of decisions at various levels up and down the organization to continue on this path.

It seems to me that it is somehow the equivalent of those US politicians who insist on sending porno pictures of themselves via unencrypted emails to (supposedly) teenage girls. It is very hard to see the risk reward calculations here making any sense given that the outcome of eventual likely exposure is catastrophic and fatal (from a career/corporate perspective) i.e. why on earth they would risk it given what would be at stake?

Further to this what was their perception of the broad environment in which they were perpetrating this fraud. Did they not understand the (likely) inevitability of exposure. Were the short term rewards such as to overcome any concern with the longer term penalties? Were they sufficiently arrogant to think that they were too clever/important to be exposed and if exposed too important to be allowed, in the neo-liberal scheme of things, to be compelled to bear the full and likely consequences of their actions?

In the case of the individuals electronically exposing themselves, the matters could be perhaps explained by individual psychopathology but is this an explanation that makes sense for the second largest auto-maker in the world? In some ways this is even more egregious than the other automobile scandals as revealed by Ralph Nader for example where faulty engineering and internal corporate imperatives led to an on-going attempted cover-up. This one was a deliberate conscious willed action to commit serious fraud by presumably multiple individuals in a company which employs 600,000 people and is one of the mainstays of the largest economy in Europe.

Some insight into what went on in the decision processes might be very revealing about the nature of the global corporate climate is in these days of corporate triumphalism and the ascendance of their political enablers.

Mike

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From: "t byfield" <tbyfield@panix.com>  
To: nettime-l@kein.org  
Date: Sun, 27 Sep 2015 15:07:56 -0400  
Subject: Re: <nettime> VW

On 25 Sep 2015, at 20:59, Michael Gurstein wrote:

"Thanks Ted, very useful.

I guess what I'm curious about is the motivations, individual and/or corporate thought processes/incentives etc. that underlie the initial decision to go down this path and then the multitude of decisions at various levels up and down the organization to continue on this path.

<...>"

Michael, your line of questions seems to be a high priority for the media: today's NYT top story is "As Volkswagen Pushed to Be No. 1, Ambitions Fueled a Scandal." Personally, I don't think there's been much innovation in the motivation dept since, say, Sophocles, so the human-interest angle isn't very interesting, IMO. If anything, it's the primary mechanism in diverting attention from the real problem, namely, how to address malfeasance on this scale. Corporations are treated as 'people' when it comes to privatizing profit, but when it comes to liabilities they're become treated as amorphous, networky constructs, and punishing them becomes an exercise in trying to catch smoke with your hands. Imagine for a moment that by some improbable chain of events VW ended up facing a 'corporate death penalty,' there remain all kinds of questions about what restrictions would be imposed on the most culpable officers, how its assets would be disposed of, and what would happen to its intellectual property. (It'd be funny if the VW logo was banned, eh? I'm not suggesting anything like that could actually happen, of course.) The peculiar details of this scandal could spark a systemic crisis of a different kind, one that makes evading guilt more difficult. The 'too complex for mere mortals' line won't work in this case: VWs have come a long way since the Deutsche Arbeitsfront or R. Crumb-like illustrated manuals about How to Keep your Volkswagen Alive, but not so far that people will blindly accept that they can't understand them. Popular understanding of negative externalities in environmentalism is decades ahead of its equivalent in finance. And it doesn't hurt that Germany, which has done

so much to bend the EU to its will, looks like it'll be the lender of last resort.

On 26 Sep 2015, at 10:22, Florian Cramer wrote:

"The implication for "our" field are much more immediate than one would expect, given that the Centre of Digital Cultures of Leuphana University Lüneburg has been funded from a grant by Volkswagen Stiftung (Volkswagen Endowment) a few years ago. Look at who's working there - a who's who of European media studies including many Nettimers:

<http://cdc.leuphana.com/people/>"

It'll be very interesting indeed to hear what the stars of ~German media theory have to say about this. Maybe about as much as most US academics have to say about their role in imposing indentured servitude on subsequent generations...

On 27 Sep 2015, at 5:02, Jaromil wrote:

"to debate this thing as if it would be just about Volkswagen is so > naive! srsly. There is nothing to be learned there."

Jaromil, I think it's a bit premature to counter claims that this is 'just about Volkswagen,' because no one said anything like that. Obviously there are many ways in which this is symptomatic of broader structures. But Lehman Brothers and Fukushima were symptomatic as well, and would you really argue that 'there was nothing to be learned there' either? \*And\* hold up Android's OEMs cheating on benchmarks as a more illuminating example? I don't think so. Relying on open-source metaphor-mantras ('Would you buy a car with the hood welded shut?') to analyze peculiar dynamics of the car industry is like relying on Godwin's Law to understand neo-nazis. :^) As to whether there's anything to be learned about the car industry, a friend sent me this offlist (forwarded with permission):

"Just wanted to say that many many auto dealerships within much of the USA -- and I certainly don't know if this is the case in Europe or the northern coastal (blue state or /we/ US) -- are strange franchise ops in which a single owner has bought into multiple auto brands -- eg [where I live] the VW dealer is also the Audi, Infiniti, Maserati, Acura, Jaguar, Fiat dealer. While the bylaws of these

franchises typically require separate showrooms they do not always require separate facilities for other operations. So, for example, the service department, where one expects hypothetical but impossible repairs to "ramdoubler" VW emissions tech would occur might be shared by multiple auto brands. Some of those might be tiered brands fabricated by the same financial interests (e.g. VW and Audi) but that will not always be true. As such, we will not have the results of the capitalist competition we may expect -- that is if VW and competing brands are collocated and share infrastructure and personnel in terms of auto dealerships, the falling VW dominos will knock over the dominos of other automobile sellers and maintainers and servicers (and thus manufacturers?) as opposed to a scenario in which VW "loses" so 'other brand' "wins." "

There's much to be learned, but not about 'motivations' or 'corporations,' IMO. And you gotta love the Ramdoubler ref.

Cheers,

T

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