

Conclusion to the Symposium "Constitutions of Value"

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Why now? Some indications of what makes this moment a propitious one to examine notions of value and value practices

Here in conclusion, we will not offer a unitary encapsulation of the project as a whole. The contributions are sufficiently diverse, sometimes in disagreement, and any such effort would be premature at this stage. Instead, we are interested to sketch the possibilities going forward for our inquiries into notions of value and value practices, on the basis of what we have assembled here in this symposium. To do this, let us take a step back, to ask a broad question: What makes our questions about value intelligible, and what makes them intelligible *now*?

By asking after their intelligibility, we mean something roughly Foucauldian – i.e., what is the grid of intelligibility by which these questions become legible today – but which we can also put in simple terms: What gives these questions their purchase today (critical or otherwise), or what gives them their currency (in several senses of the word, including acceptability and circulation in the present)? In this light, we are interested specifically in why investigations into value appeal today and why they are being revisited. Especially with respect to long-standing value critiques, such as the Marxian critiques evident among our contributions, we are interested to know what it is that renews their force today.

These questions include at least two interrelated sets of considerations. One set concerns what we will call decomposition, focusing on what has become unsettled about notions of value relative to previously stable assumptions. There seems to be a loss (or relative decomposition) of hegemony around notions of value. In this vein, it seems that instability has opened up space that our inquiries may take up. In this space, as we look forward to further possibilities, any settled assumptions that remain may constitute obstacles to further inquiry and intervention, or may be objects for the same.

The second set of considerations really addresses the same phenomena, but from another perspective. The hegemonic decomposition is also a recomposition, or reconfiguration of the practices and discourses that once held the notion together, and which continue to make it an intelligible and worthwhile subject of inquiry. We do not assume that such reconfiguration, however, already rises to the level of a new hegemony. Rather, we are interested in the possibilities that can be discerned in the new situation. We return to this in a moment.

Decomposition: some indications of instability in notions of value and value practices

First, we stay with the decomposition. Part of this set of concerns goes to the dynamics that drive the (appreciation of) instability in previously settled notions of value. Our contributors are asking what makes instability in the term of value and the way it is deployed (or disused) in mainstream discourses intelligible and appreciable now. From this angle, some inquiries overlap in provocative ways. Toni Marzal, in his post, describes the development of valuation practices in investor-state dispute settlement (ISDS). He argues that the valuation techniques were largely without any established precedent and highly controversial before they were called into existence in the 1990s. An accounting technique that seemed controversial as a matter of law became a dominant practice in ISDS seemingly overnight, and has gone relatively unquestioned in that capacity until now. With Julia Dehm, however, we see clearly enough at least one factor in how what has gone unquestioned becomes legible today. Julia's contribution describes the legal constitution of stranded assets, and the environmental costs of the same. Her post suggests that the urgency of accelerating ecological catastrophe drives the intelligibility of critical questions concerning valuation practices such as those described by Toni.

A similar urgency is at work in Gunther Teubner's post, transposed into a systems theory register. The demand for surplus value production across function systems drives disastrous ecological results. Consequently, a deceptively simple program of resistance becomes clear: to target surplus value production. The genuine challenge of that project, however, is hardly trivial. That is one of the going forward challenges to our project as a whole: how to ensure that the products of our inquiries will also be actionable. The challenge is driven home by Clair Quentin, who focuses on global tax policy, and demonstrates how legal and political regimes reproduce unequal distributions of value despite – or indeed, perhaps on the basis of – not articulating a conceptual framework (a value theory) that could assist the determination of what would be a fair distribution in the first place.

Clair's post also demonstrates the way that colonial patterns fill the void left by unarticulated notions of value. Donatella Allesandrini and Oliver Schlaudt, among others, offer further observations of colonial patterns at work. They point to the ways that unequal exchange (within and across states) is predicated on inequalities in value extraction from reproductive and informal labor (including work done by nature itself) – meaning labor that is not formally recognized under a legal constitution of value. Christine Schwoebel-Patel offers another confrontation with colonialism today in the institution of international criminal law. She investigates the work done by the circulation of images such as the individual black African perpetrator held before the International Criminal Court. Christine argues that by taking on exchange value in that context, the image contributes to the reproduction of a racialized value system that undergirds international criminal law – one that is increasingly tenuous as the legitimacy of the Court comes into question (decomposes) among African states.

Recomposition: Some indications of new possibilities for notions of value and value practices

Jamee Moudud's and Anna Chadwick's works both demonstrate how decomposition may lead to recomposition. Each investigates the reality of value practices, calling for (small c) constitutional study of the corporation and the forex market respectively. Jamee demonstrates how law co-determines how a firm actually operates, and argues for the possibility of new regulation to further alignment between a firm's business decisions and values such as secure work. Anna demonstrates how forex markets affect the value of currencies in underacknowledged ways, similarly opening the space for new legal imagination to reconstitute and redesign institutional possibilities.

Fabian Muniesa likewise proposes to free up the legal imagination, by exploring in anthropological detail the ways in which value is constituted in legal practices. Fabian has been engaged for a while now with sociological and anthropological investigations into (changes in) practices and productions of value, and we are pleased to see the possibility of complementary inquiries going forward.

We look to changed conditions for what we can make out of them, and specifically where law's contribution may lie. Florian Hoffmann's post is exemplary in this light. There, Florian recognizes acutely the implication of human rights in the production of a profoundly unjust system of value production and distribution. In this sense, he comes close to recognizing the destructive, totalizing consequences that Klaus Kempter attributes via *Wertkritik* to a (globalized) political economy predicated on commodified value. Florian, however, also calls attention to advocacy practices by and on behalf of the systematically disempowered, practices deploying human rights as a viable tool against conditions of immiseration. The pursuit of a concrete utopia, he argues, includes the opportunistic use of the effective (legal) devices at our disposal, especially in dystopian times.

Nofar Sheffi's post also challenges us with ambivalence. Nofar examines the legal constitution of an apparent innovation in value production and distribution, associated with the so-called sharing economy. This is not a convenient tale of good and evil, despite a common tendency to reduce such innovation to a fairy tale story. Rather, it is a tale of hybrid practices, typical of the contemporary moment, blending the economic notions and practices with the political, technological and communal. In this context of hybridity, Nofar explores questions of what worked, why and how: What is there to be learned from the success of these new techniques of value production and distribution?

Nofar's post points already to one other condition that seems to distinguish the contemporary conjuncture and the value practices it supports, namely new technologies. Outi Korhonen and Juho Rantala point to one such technology, the blockchain. Where Florian points to concrete utopias of socialist human rights, they point to the techno-utopia of transindividuation. Transindividuation is a sort of hack on a grand scale, disrupting the standard communications in political community by making visible and actionable new information, in new ways, for new purposes.

We are interested to extend the possibility of the hack, beyond the technological space and into the legal one. This symposium has been the first product of that interest. As Florian's post suggests, the hack does not need to be system wide. It can be small-bore, a targeted intervention. It requires allies, but they (we) are out there. We believe that the posts in this symposium attest to the further possibilities of hacking the legal constitutions of value and value practices. The code can be changed, and with it the values recognized and the value practices supported by the system.

Strategy

These inquiries lead us to a third set of considerations opened up by a combination of the considerations of decomposition and recomposition. This set of considerations is a strategic one. Florian's post speaks to one dimension of strategy. We can also imagine others, when we ask: What makes the instability that we are exploring compelling? What makes it a topic capable of attracting attention, interest, allies and antagonists? There seems to be some potential in the exercise. What is it?

When we ask about the intelligibility or unintelligibility of competing notions of value for governance purposes, we are also asking about the ways that the legal space is being (or may be) rearranged by and for redeployments of these notions and the changing materialities in which they are embodied. The legal-governance terrain is the site of constant contest and constant reconfiguration, from the micro level to the macro. Actors in this space work constantly to alter it to one end or another according to their material means. In this light, one theme has come up in a number of the posts for this symposium: politicizing economic governance and cognate practices. But we don't think, and we don't think the posts suggest, that this is our horizon. Politicization is a long-standing program and arguably already a successful one. The market has been politicized, at the WTO, the World Bank, etc. Moreover, the politicizing program threatens to remain an empty one if not connected up with real value practices and viable ideas for changing value practices such as we might imagine in collaboration with allies in climate activism, in the global south, among informal workers. These allies may not always have consonant agendas, and that is already evident in some of the disputes in the contributions to this symposium. This only reinforces our sense of the importance of conducting this inquiry together.

