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# Value Making in International Economic Law and Regulation

Alternative Possibilities



Donatella Alessandrini

ROUTLEDGE



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This book examines the contemporary production of economic value in today's financial economies. Much of the regulatory response to the global financial crisis has been based on the assumption that curbing the speculative 'excesses' of the financial sphere is a necessary and sufficient condition for restoring a healthy economic system, endowed with real values, as distinct from those produced by financial markets. How, though, can the 'intrinsic' value of goods and services produced in the sphere of the so-called real economy be disentangled from the 'artificial' value engineered within the financial sphere?

Examining current projects of international legal regulation, this book questions the regulation of the financial sphere insofar as its excesses are juxtaposed to some notion of economic normality. Given the problem of neatly distinguishing these domains – and so, more generally, between economy and society, and production and social reproduction – it considers the limits of our current conceptualization of value production and measurement, with specific reference to arrangements in the areas of finance, trade and labour. Drawing on a range of innovative work in the social sciences, and attentive to the spatial and temporal connections that make the global economy as well as the racial, gender and class articulations of the social reproductive field within it, it further asks: what alternative arrangements might be able to affect, and indeed alter, the value-making processes that underlie our current international regulatory framework?

**Donatella Alessandrini** is Reader in Law at the Kent Law School. Her research interests are in the areas of critical development studies, trade theory and practice, and feminist political economy.

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For Maria

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## List of abbreviations

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ALBA	Bolivarian Alternative for our Peoples of the Americas
BIS	Bank for International Settlements
ELR	Employer of Last Resort
EMH	Efficient Market Hypothesis
FCC	Federal Communication Commission
GATS	General Agreement on Trade in Services of the World Trade Organisation
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
IPRs	intellectual property rights
LANDS	Law and New Developmental State
LIBOR	London Interbank Offered Rate
NPED	New Political Economy of Development
OTC	over-the-counter
RMA	Regional Monetary Agreement
SSF	social studies of finance
STS	science and technology studies
SUCRE	Unified System for Regional Compensation
UN	United Nations
WTO	World Trade Organization



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# Introduction

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This book is about value. Its idea emerges from a series of reflections concerning shifting public and regulatory debates about the US subprime mortgage, turned financial, turned (world) economic crisis, and the place of value making within these debates. At stake is the missed opportunity for change that the international community was presented with in the period 2007–2010: that of radically affecting the economy–society nexus. Whereas previous financial crises were thought to be limited to certain regions in terms of both their effects and causes,<sup>1</sup> *this* crisis was seen as striking at the heart of a system, the Anglo-American one, which had been praised for its ‘efficiency’, ‘depth’ and capacity for ‘financial innovation’ around the world. Between 2008 and 2009, alongside the emphasis on reforming the international financial system, questions about the relationship between the process of financialisation and the economy were increasingly raised which challenged the sustainability as well as desirability of financialised models of growth.<sup>2</sup> A year later, however, the crisis had become, in the UK as well as in many other European countries, a fiscal one and the breadth of this debate was reduced to the question of the extent to which public spending needed to be cut in order to regain the confidence of financial investors. Fiscal imperatives came to replace earlier reformist agendas and questions about the role of finance were removed from public debate. Austerity had become the dominant discourse and policy prescription.

The factors that have contributed to this sudden change in 2010 are complex and would require much more careful and detailed exploration than I am able to undertake in this book. There is, however, one particular aspect of the debate that I think constrained, since the very beginning, the possibility of imagining alternative and more creative responses to the crisis and this has to do with the way in which value making is conceptualised in international economic regulation. Much of the regulatory response to the crisis was predicated on a belief that what had happened represented an excess, an anomaly within the realm of finance which had thrown the

economic system off balance. The assumption was that curbing the speculative ‘excesses’ of the financial sphere through appropriate regulation of risky innovations was a necessary and sufficient condition for restoring a healthy productive system endowed with ‘real’ values separate from the ones produced by financial markets. From this perspective, I would argue, the transition to austerity was not as radical a departure: its acceptance was possible, at least in part, because the belief in financial excess as the antithesis of economic normality has been to a large extent internalised. Rather than viewing it as the manifestation of a particular normality, that is of a specific system of norms and values that regulate, discipline and arrange the economy–society nexus, the crisis has been understood as an anomalous situation brought about by irresponsible consumers, borrowers and lenders, and by regulatory oversight. The implication of this line of argument is the belief that once the irresponsible borrower *par excellence*, that is the state, is disciplined, normality, purged from the excess that has given rise to the anomaly, can be restored.

Why, then, talk about value making in this context? Because normality thus understood, that is as a situation where the economic system ought to be purged from the excess of financial speculation, relies on a pervasive and problematic understanding of economic value that is common to both advocates and critics of financial markets. For the advocates, value is that which is produced in the sphere of the so-called real economy, that is the sphere within which goods and services are produced, but which financial markets are able to measure accurately. For the critics, financial markets distort economic value, by creating a financial value which for the most part bears no sound relationship with the economic value of the asset measured. For both, therefore, the idea is that there exists a real economic value which is either reflected in or distorted by financial markets. This position was evident in the debate concerning the regulation of financial derivatives that took place between 2008 and 2010. Much of the discussion then was premised on the assumption that a distinction could and should be made between a ‘real’, productive sphere of the economy that needed to be re-appropriated and stimulated and a purely speculative, unproductive one that needed to be tamed, with financial innovations belonging to the latter. This kind of framing characterised not only financial commentaries (Jenkins, 2008; Ishikawa, 2009) and reform proposals (US and EU in particular) but also a certain position in the social sciences which, even as it recognised that speculation is inherent in capitalism, saw derivatives as violent financial innovations whose threat had and could be eradicated through more stringent regulation (Lipuma and Lee, 2004; Dodd, 2005).

The problem with this position, however, is that significant work has called into question exactly such assumptions. To start with, we have learnt that the financial sphere is coterminous with the sphere of the real

economy: indeed most profits made by manufacturing and services companies derive from their financial sectors (Krippner, 2005; Bayliss, 2014). What this implies is that finance not only provides the means for economic activities meant to realise profits, it has also become a direct source of profits. At the same time, we have come to appreciate how difficult it is, conceptually and empirically, to disentangle real from financial values. For instance, studies on financial derivatives have demonstrated how their trading can affect the value of the assets they are supposed to be based on and shown how, save their banning, regulation can limit but not eliminate the effects of such value making processes (Pérez Caldentey and Vernengo, 2010).<sup>3</sup> The most practical and immediate consequence is that faith in regulation as the means for curbing the excesses of the financial sphere is misplaced. This is not to say that regulation is irrelevant. As I argue in Chapter 1, there are limitations to what it can achieve. Specifically, regulation juxtaposes financial excess to economic normality while leaving intact the arrangements through which the production–finance nexus is currently organised. More fundamentally at stake, however, there are questions about the way we conceptualise the relationship between the real and the financial spheres of the economy and of value production and its measurement at their intersection. What if the normality we have to work with contemplates the difficulty, even the impossibility, of neatly distinguishing between the real and the financial spheres of the economy? What does it mean to acknowledge that value is produced at their intersection? How can we act then?

This book is an attempt to think about these questions in three realms of international economic regulation. I have drawn on previously published work which, relying on case studies conducted between 2010 and 2014, shares a commitment to thinking in a particular way about the contingency of value making processes as well as our ability to contest them;<sup>4</sup> and chosen to focus on finance, trade and labour as examples of the many spheres that constitute the nexus between economy and society, a nexus which is the very stuff of political economy.<sup>5</sup> Focusing on how value is produced and circulates within different spheres enables us to see how the various attempts made to conceive of and act upon them as neatly separate domains are deeply problematic. This is because such separations do not attend to the complex ways in which these spheres co-produce, and not merely exist alongside, one another; this is not just the case with the financial regulatory debate, which remains premised on a neat distinction between a real and a financial sphere. The current austerity debate is also predicated on, while actually effecting, a very problematic separation between the productive and reproductive spheres of life that does specific political economic work, that of generating more (economic) value from the very terrain on which life is reproduced.<sup>6</sup> Taking into account such work, I ask whether

alternative institutional arrangements can provide a better appreciation of the co-production of these different spheres, and by doing so, whether they can enable other values to inform action, thereby arranging the economy–society nexus otherwise. The book therefore addresses two main questions: first, taking into account the difficulty of neatly distinguishing between the real and the financial spheres of the economy, and between real and financial values, how do we conceptualise value production and measurement? And second, what institutional arrangements can we think of that are able to affect current value making processes?

I return in the last section to the theme of institutional arrangements and the particular way I envisage them. In the meantime, if the ability to contest the arrangements that intervene in current value making processes is one recurrent theme of this book, the other, with which contestability is inextricably connected, is our ability to think value's contingency. Thus, while the book aims to show the limitations that regulatory frameworks place on our ability to think differently about international economic action, it does so by exploring the complementarities and important differences between three currents of thought which I have grouped together as constructivist approaches to economic value. These are the performativity of economics approach, and within it the social studies of finance (SSF) school (Callon, 1998; MacKenzie, Muniesa and Siu, 2008); and two particular traditions of Italian thought, the post-workerists turned immaterial labour scholars (Hardt and Negri, 2001; Vercellone, 2006, 2009; Virno, 2004) and those feminist scholars who are associated with the 'Wages for/against Housework' campaign in the Anglo-American world (Dalla Costa and James, 1972; Fortunati, 1981; Federici, 2004). The reason I consider them together despite their important differences is that they all share an understanding of the nexus between economy and society that is much more nuanced than regulatory accounts assume. At the same time their different understanding of value's contingency, a concept which has attracted quite a lot of attention in the social sciences, provides crucial resources for thinking about how to contest and therefore intervene in processes of value making.

### **Value's contingency and contestability**

What makes a product valuable today? The question of where economic value comes from has a long history in economic thought. Although notions of use value and exchange value go back to Aristotle and Aquinas – limiting one's analysis to Western philosophy – the shift in thinking about the source of economic value is often presented as one from objective, intrinsic to subjective, extrinsic accounts. The former identifies value as pertaining to the sphere of production, with the Physiocrats seeing land as the source

of value and agriculture as the productive activity *par excellence*; and classical political economists identifying labour and industry as its source and productive activity respectively. The subjective approach to value places it instead in the sphere of exchange, with neoclassical economists introducing the idea of 'marginal utility' according to which economic value is determined exclusively by the wants and desires of consumers. For the marginalists, there is no intrinsic value as such; no property or substance that bestows value upon goods but only consumers' preferences. Economic sociologists have acknowledged the limits of this approach in that it does not explain how preferences are formed and how they change over time. While agreeing that value is an effect of the desire of potential purchasers, Beckert and Aspers (2011:11) for instance argue that 'the valuation of goods and changes of these valuations need to focus on the *meanings* that goods obtain for actors and on the social and institutional structure of markets'.

The position I take in this book is somewhat different: I agree that a focus on the activities constituting value requires us to pay attention to processes, including meaning making activities, rather than on a predetermined substance – whether an objective source such as land or labour or a subjective one such as consumers' preferences. However, as I argue in Chapter 2 through a re-reading of Smith's and Marx's work on value, and Federici's engagement with the latter in particular, I think that the 'substance' thesis has been exaggerated. Foucault (1966) for instance argued that underlying both subjective and objective accounts is a preoccupation with source and origin which he saw as characteristic of all modern human sciences, including political economy, since the eighteenth century. From this perspective labour and preferences, however seemingly different, can both be seen to occupy the position of quasi-transcendentals, that is, of unquestionable sources of value. This reading, however, is possible only if these accounts are purified of all controversies which, as I hope my engagement with Smith and Marx will demonstrate, were already present in their works. What I therefore intend to show is that thinking about value's contingency has a history which is longer and more fraught than is often assumed, a history which has struggled with the question of how to think contingency, its qualifications, and its relationship together with the ability to contest powerful value making processes.

How to think this history has been the underlying question that has accompanied, albeit not always explicitly, my thinking around contingency. I approach this question by bringing the theoretical insights of feminist and critical political economy to bear on both the scholarship of the performativity of economics and on that of cognitive and immaterial labour. What I find interesting is the fact that, already in the 1970s, 'Wages for/against Housework' scholars had argued that value was neither subjective nor the effect of an irrefutable logic but the result of the complex

dynamics of an economic system which is always bound up with other (non-economic) values. More recently, SSF have traced the complex ways in which economic models and financial innovations actively shape, rather than merely reflect, the economy (Callon, 1998; MacKenzie, Muniesa and Siu, 2008; Bryan and Rafferty, 2006). And post-workerists and cognitive labour scholars have reflected on the transformations that have occurred at both the level of the economy and that of subjectivity, thereby affecting the links between labour and value in post-Fordist economies (Hardt and Negri, 2001; Mezzadra and Neilson, 2013a; Lazzarato, 2014). On the one hand, my interest in considering these approaches together lies in exploring the extent to which they complement one another in theorising value production and measurement and, by doing so, are capable of opening up the debate on how to act in the face of financial and economic uncertainty. This is a question that concerns the possibility of arranging the economy–society nexus otherwise.

On the other hand, there is a more specific intervention that I aim to make by relying on the insights of critical and feminist political economists. I think their work brings two important qualifications to the contribution that both performativity scholars and post-workerists have made to the contingency debate, and these qualifications matter for analytical and political reasons. First, they have shown how seeing value as contingent and its measurement as a construct means acknowledging that there is not one natural or correct way for us to measure what we produce and exchange. This, however, is not the same as saying that value is today beyond measure. The latter is a claim post-workerist scholars often make when describing the shifting relationship between labour and value from Fordist to post-Fordist value production. I do not mean to deny that there are important differences in the ways in which both labour and value, as well as their relationship, are conceptualised, produced and organised in post-Fordist economies, as Mezzadra and Neilson's recent work has insightfully shown (2013a). However, as I argue in Chapter 1, the manner in which the rupture from Fordism to post-Fordism is posited, specifically by scholars of cognitive capitalism and immaterial labour, risks conferring a fixity – almost naturalness – to both these categories and their relationship that, as this feminist work has shown, particularly that of 'Wages for/against Housework' scholars, was never there. Thus, to claim that value is today beyond measure is to disregard the fact that it is not that *socially necessary labour time* (particularly understood as clock time) once provided the accurate measure of value and today is no longer capable of doing so, but that the way in which value measurement is constantly instituted has important political consequences (De Angelis, 2005). The point is not to ignore the profound transformations that are taking place but to say that such transformations and the ways they affect, while being affected by,

social relations have to be carefully traced rather than assumed so as to be able to see the many different ways in which measuring takes place (Harvie, 2005; Bryan, Rafferty and Jefferis, 2015). Acknowledging that measuring constantly takes place, and that measures are heterogeneous in character, also helps us unpack the assumption according to which considering value as contingent means that anything is possible. While contingency points to the fact that there is not one natural or 'correct way for a society to measure a commodity' (Mirowski, 1991:568), its measurement is instituted nonetheless. The consequences – the crystallisations this process of instituting enables – have to be taken into account when thinking about alternative value making processes, and this is why in Chapter 1 I emphasise the role derivatives have come to play in measuring bits of capital across the world, that of giving continuity to global production and accumulation (Bryan, Rafferty and Jefferies, 2006, 2013, 2015; Allon, 2015). If I keep a focus on the seemingly defunct 'law of value' as a powerful organising logic for economic and social relations (of which derivatives are a manifestation), this is not because I believe it to be ubiquitous or all-encompassing force but because, as Mezzadra and Neilson have pointed out, 'it is necessary to keep both the systematic and differentiating abilities of capitalism in view' in order to understand how (capitalist) value continues to be produced and measured despite the heterogeneity characterising forms of labour, production and regulation around the world (2013a:81, 86).

There is, however, a second qualification that this work, in particular that of 'Wages for/against Housework' scholars, brings to the contingency debate. This is the fact that, by engaging with classical political economists, not only have they shown that economic categories and the reality they described were more fluid and contested than is often assumed to be the case; they have also brought to the fore the crucial role that social reproduction plays in processes of value making, a role that both Smith and Marx disregarded as they thought *generally* about the totality of processes through which a socio-economic system reproduces itself; and the specificity of this role continues to be overlooked even by scholars who have moved past both objective and subjective accounts of value. As Rai, Hoskyns and Thomas (2010:3) have argued, social reproduction encompasses biological reproduction, including sexual, affective and emotional services; unpaid production of goods and services in the home and within the community; and the reproduction of culture and ideology, which can both stabilise and challenge dominant social relations. The link to processes of value making is evident since each of these activities contributes to processes of production, consumption and exchange.<sup>7</sup>

While this conceptualisation brings crucial (gender, sexual and racial) qualifications to the more general definition of social reproduction, there is something else to be gained by going back to the work of Dalla Costa,



Fortunati and Federici. For them, social reproduction has certainly to do with the way we collectively organise our living, the way we produce and reproduce life's conditions, and therefore also with the way economic value is constantly produced and measured. At the same time, by focusing their attention on the historic separation between production and reproduction, they have been able to trace the processes through which the latter, in as much as the former, is deeply entangled with processes of capital accumulation. Although it was by no means a universal case both within and outside Fordist economies, they saw unpaid housework in particular as providing the means through which the labouring population was reproduced and value was extracted. Today the sexual division of labour, as well as the prominence of wage labour, can no longer be assumed (Adkins, 2009). However, this does not mean that their contribution is no longer relevant. Indeed, despite their initial focus on domestic labour, their work soon highlighted both the enormous pool of unwaged labour that sustains the life process and the ways in which this pool generates value for capital, with the consequent problematisation of both the analytical and political privileging of wage labour. Similarly, despite the initial attention to the situation of women in Fordist economies, their analyses became gradually attentive to the spatial and temporal connections that make the global economy and the racial, gender, sexual and class articulations of the social reproductive field within it, and this I think remains a specific quality of their present work (Federici, 2011). This attention is what tends to be missing in accounts that privilege the immaterial or cognitive aspects of global production, thereby severing those crucial connections of which they are an integral part.

This work therefore offers the possibility of remaining attentive to both the articulations that make the social re/productive field on a global scale, and the relevance of other values, actually existent or not, that coexist with, even as they are obfuscated by, those informing current action (Gibson-Graham, 1996; Bedford, 2009; Spillman, 2012). Indeed social reproduction, seen as the production of the very conditions of life, is not just the realm on which capital relies to extract value but also the terrain on which to struggle for engendering alternative valorisation processes. At stake is the question of how otherwise to forge the nexus between economy and society. Latour and Lepinay (2009) have argued that the problem with current understandings of political economy, that is the nexus between economy and society, is the belief in an economic order regulated by natural laws that exist out there, which society has to discover and implement. This is the belief that this body of work has challenged since at least the 1970s, pointing to how categories, concepts and theories (including socially necessary labour time and the law of value) were not given but constructs whose validity and solidity were achieved and fabricated rather than natural. Understanding this process, which is both an epistemological