Contract and Capitalism for the Philosophical Sophisticate

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Abstract

This review essay of Alan Brudner’s The Unity of the Common Law attempts to flesh out the role of markets in Brudner’s conception of contract law. The Unity of the Common Law aims to synthesize competing principles through a concept of dialogic community in which a public legal order realizes the individual’s claim to final end status. The review claims that the aspects of exchange that Brudner highlights as indispensable for the emergence of dialogic community only exist under advanced capitalism. It concludes by raising questions of how to evaluate the possible concurrence between capitalism and dialogic community.

I. Introduction

For decades, philosophically oriented private law theory has ignored markets.¹ At first glance, Alan Brudner’s The Unity of the Common Law seems unexceptional in this regard. Markets appear, but they generally seem to be mentioned in passing and in abstraction, with little attention to concrete features. One might be tempted to say that markets were marginal, but the temptation should be resisted, not least because of the resonance with the concept of marginal utility. Instead, it might be best to think of markets in Brudner’s account as parenthetical. My main interpretive claim in this essay will be that from their position within parentheses, markets perform a crucial function in Brudner’s theory of contract and his theory of transactional law more generally. And the markets in question are not just any markets, but rather the type of markets associated with an idealized form of advanced capitalism. I imagine that claim will strike some of Brudner’s readers as trivially obvious, while others will find it oddly perverse. Therefore, I will spend most of the essay explaining that claim. Once the explanation is in place, I will move on to a brief speculation about how to evaluate the justificatory structure of contract, once markets have been liberated from their parenthetical prison.

Before plunging into the explanation of my claim, however, a word on the almost unstated background for my discussion. When theorizing about contracts was young (in the 1930s), morality, markets, and contracts were often discussed in a single breath.² But

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¹ That may be changing, just now. See, e.g., Nathan Oman, Markets as a Moral Foundation for Contracts, 98 Iowa L. Rev. 183 (2012); Daniel Markovits, Market Solidarity (Inaugural Lecture, Guido Calabresi Professorship, 2012) (http://isites.harvard.edu/fs/docs/icb.topic1134127.files/Markovits.pdf).

increasing specialization and the accidents of scholarship changed all that, creating distinct fields for discussing either contracts and markets (Law and Society; Law and Economics) or contracts and morality (Philosophy of Law; Corrective Justice Theory). Recently, there are a few indications that contract theory may be turning toward rejoining these issues.3 My reading of Brudner aligns him with such a rejoining. While his account is much closer to the corrective justice wing of scholarship that traditionally has had little to say about markets, I will claim that a particular view of markets is central to the vision of transactional law that Brudner advances.

I will have a fair amount to say about the importance of markets for Brudner’s account of transactional law. But even the claim that morality plays a role is not an obvious one, and as I will not pursue it directly here, I ought to explain why it requires mention at all. Brudner’s book deals with morality at a philosophical remove. Indeed, there is a level of intimacy with philosophy that challenges any straightforward reading of the argument as a claim of moral justification. Brudner’s book does not brush with philosophy, or borrow philosophical insights; it is a deep engagement with philosophy at high pitch and with extreme sophistication. There are no shortcuts for the philosophically impatient. At the same time, there are no shortcuts for philosophers either: no jargon, no reliance on popular interpretations, no adoption of positions that have become stock representations of what a philosopher stands for in legal discourse. But within all that philosophical sophistication, there is an overarching claim about how transactional law must be structured by the moral necessity applicable to a liberal polity.4 Brudner’s conception of morality joins moral philosophy with political philosophy, and provides active context for his development of a theory of transactional law. Everything that follows, then, is an attempt to work through the combined attention to morality and markets, even though neither of the terms asserts a dominant place on the face of Brudner’s text.

II. Brudner’s Markets

Brudner’s discussion of contract eschews direct analysis of actually existing markets, with the references to markets often coming in parentheses. Positioning markets as central to the analysis generates interpretive difficulties, and thus requires setting out Brudner’s argument in simplified (and thus impoverished, but I hope not distorted) form. Brudner begins his chapter on contracts by claiming that the critical (also labeled heretical or heterodox) view of contract has become dominant, even orthodox. According to that critical view, “doctrinal patterns embodying conflicting human values” are the very material of contract adjudication, making it “a site of conflict between the same political moralities that contend in the legislature.” The problem is not merely a conflict between paradigms, but rather that “the fundamental idea of each contains that of the other as a necessary

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3 I discuss this development in contract theory in a separate essay, On Markets, Morals, and Contracts (unpublished manuscript 2014).

Neither a libertarian (sometimes labeled laissez-faire) paradigm nor an egalitarian (also, freedom from economic oppression) paradigm can hope to account for contract on its own, because neither can generate a stable pattern of coherent law. Exposure to critical analysis was, for the contract theorist, akin to a fall from innocence. She could no longer believe that a theory driven by a single idea could account for enough of contract law without mangling doctrine beyond recognition. The challenge for the theorist was to build a theory that would not ignore the lessons of critical legal studies, but at the same time would not be driven to nihilism about the power of organizing principles: “Accordingly, any reunification of contract law must now invoke a *synthetic* idea that, in having absorbed the heretic’s insight into law’s antinomies, has inoculated itself against his rule-of-law scepticism.”

At this point, in one sharp paragraph (and one long footnote), Brudner distances himself from his Toronto corrective justice colleagues, claiming that new legal formalism falls prey to the same vices that the critics exposed in old legal formalism. Rather than avoiding the conflict of political moralities, the task he sets himself is to “vindicate law’s unity in the conflict itself. That is, we must show how the unifying idea is already implicit in the heretic’s demolition of the previous contenders; and its immanence, instead of being asserted by us, must be observed in the spontaneous unfolding of principles that self-consciously inform the law.”

Brudner then goes on to outline a strategy for synthetic reunification. In order to reach unification, Brudner must elaborate anew each of the paradigms, picking out the crucial aspects for his analysis, and then he must describe the kind of framework that can join them in a principled unity or totality that will eliminate the mutual antagonism between them. Brudner formulates the first paradigm (formal right) as a commitment to the atomistic abstract individual, “an abstraction from which all individual differences are excluded. The person, in other words, is a sheer ‘not’—an expulsion of everything given and determinate and so nothing but a void.” That commitment generates a legal paradigm that does not recognize needs: “[T]he free will has no needs of its own.” Individuals are considered without reference to particular material ends they desire when engaging in ex-
change, but only with reference to the capacity for choice: “Bracketing their material ends, formal right sees human beings only as capacities for free choice, and it is solely the end-status involved in this capacity that the law seeks to vindicate.”9 Formal right cares nothing for concrete intentions, for motives for acquiring things, or for human welfare; it consists solely in respect for freedom of choice. But formal right is obviously incomplete, and thus must be supplemented by a positive conception of freedom as self-determination encompassing real autonomy. This conception draws in part on public law, and provides “an ethical reason for political association.” It must, therefore, acknowledge a right to welfare without which people could not actually pursue concrete purposes. “In general, we can say that, in contrast to formal right, the real autonomy paradigm recognizes a right to the legal and material conditions of welfare conceived publicly as a realized human potential for autonomous action.”10 The two paradigms are brought together in a conception of the dialogic community.

For my idiosyncratic purposes in this review, the mechanics of joining the two paradigms are not a central focus. However, anyone wishing to gain an inclusive understanding of Brudner’s overall claims, and especially of the book’s jurisprudential and philosophical depth, will have to delve into these mechanics in detail. While the joining of paradigms does not figure directly into my concern with how Brudner’s account of contract relies on markets, it is important for understanding the structure of the claims and especially the claim that formal independence and substantive autonomy paradigms eventually mesh. The account is fully developed in the chapter on property, where the status of the principles of equity is explained. Brudner’s initial explanation of the structure of property law shows that attempts at defining formal property are open to the double critique that: 1. formal law leads to intolerable possibilities of domination; 2. the law in fact does not allow these possibilities to materialize in their extreme forms, but rather establishes counter-rules. It is in trying to make the counter-rules into a set of unified principled rules that the mode of equity becomes more than a simple stop-gap.11

The tension is formulated directly in terms of combatting alienation (in the Marxist sense, or what Brudner calls self-estrangement), which is inherent in the paradigm of formal right: “We can say, therefore, that equity revokes the person’s self-estrangement in formal right—its subjection to an external power—for the sake of the autonomy of the moral subject.”12 There are two crucial things to notice about the law-equity tension as Brudner presents it. First, law and equity posit different ends: law (formal right) is geared toward independence but has no regard for real autonomy; equity, for its part, is geared toward autonomy. Second, there are two different instances of mutual recognition in-

9 Id.
10 Id. at 173.
11 Id. at 139.
12 Id. at 142.
volved in the synthesis. The formal idea of property requires mutual recognition of property holders in market exchange, but absolute property threatens to become an external power. Equity then injects an additional relation of mutual recognition, “this time between law and subject.” Property’s validity, then, is internally conditioned: “[I]ts own validity as a right requires that it be limited by a mutual recognition between law and subject such that the subject owes a duty of submission to law only insofar as the law reciprocally submits to a test of self-imposability by an end.”

These formulations are remarkable on many fronts, not least of which is the positioning of recognition, now, between a human subject and the law itself. This recognition follows from the idea that the principles of equity do not grant direct rights to their beneficiaries, but rather impose institutional duties on courts: “In that it governs the relation between law (court) and person rather than that between person and person, the idea behind equity’s counter-principles is a public-law idea. Property law (and transactional law generally) thus comprises both private-law and public-law elements.”

Brudner develops the idea that equity does not undermine individual liberty, but completes it with a more robust understanding of its very basis, individual freedom. This idea runs through two different versions, the first of which would have everything decided in accordance with common will (standing somewhere between economic analysis and a more capacious version of balancing of values, where in either case the totalitarian community may completely undermine the individual) and thus fails; and the second of which entails what is propounded as a coherent synthesis of individual right and autonomy, with mutual recognition running between individual and community. That synthesis is eventually spelled out and demonstrated in a final note on industrial property, to which I return in conclusion.

Returning to contract, we see that the key to understanding the workings of the dialogic community rests in its being the framework that allows for a relation of mutual recognition between equals. Brudner, following Hegel, develops an elaborate scheme for what mutual recognition requires. In addition to the general character of recognition outlined above, it entails another important feature, which is that any being can only qualify for end-status if it can detach itself from concrete ends or necessities, and it can only achieve end status through recognition by another being qualified for end-status. In other words, it takes two free ends to tango. This elusive abstract formulation takes on concrete form in Brudner’s application to contract law, two features of which I highlight here.

First, Brudner’s framework denies that contract is a species of promissory liability, because promissory theories rely on a version of the good (different promissory theories relying on different versions, or goods) and are thus strictly self-regarding rather than relational. Theories of promissory liability, according to Brudner, are all about the moral obligation of the promisor. As such, they suffer from two deficiencies: on the interpretive plane, they cannot account for enough of existing contract doctrine; and on the normative

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13 Id.
14 Id. at 142-43.
plane, they cannot explain why contract “is ethically justified as a necessary part of the total public life sufficient for fulfilling the human individual’s claim to dignity.”\(^{15}\)

Second, the content of the contractual right is a perfected version of the property right, and crucially, this perfection can only be attained by conceptualizing the contractual entitlement through its exchange value, rather than in reference to any concrete thing or action. Drawing on his earlier discussion of property, Brudner argues that we should understand property in the context of the person’s project of self-validation. People cannot get validation simply from possession of things, because validation requires recognition that can only be granted by a being with end-status. Therefore, validation requires exchange (through which a party relinquishes his tie to some concrete thing), which in principle contains mutual recognition. But so long as the true goal of exchange remains a concrete thing, the person acquiring it is still tied to needs and desires and as such ceases to be an end-status, and is thus incapable of granting recognition. To function successfully in the perfection of property and thus in the establishment of validation, the object of exchange must be abstract. It can be viewed as a promise, yet the concrete legal meaning of the promise must not reside in its performance, but rather in its exchange value. The (possibly counterintuitive) idea begins with the property right, and with Brudner’s claim that property is not in the thing that a person possesses but rather in its exchange value: “Absolute ownership is ownership only of exchange value, which mediates between the material object and the person, allowing the person to own something specific without once again becoming dependent on things.”\(^{16}\)

The reason that exchange value is not subject to appetites or needs is that it is expressed in something with no concrete character, and crucially, no use value: “In sale, a thing’s exchange value is expressed more fittingly in terms of something—money—abstracted from the specific character and subject-relative utility of things.”\(^{17}\) And thus, when promises are translated into obligations for abstract exchange values, neither party is dependent on things, both are sufficiently detached from the world of needs, and both achieve mutual recognition. Conveniently for common law doctrine, exchange value in the form of money is precisely the way law will normally remedy a breach, signaling for Brudner that theory and practice converge.\(^{18}\)

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\(^{15}\) Id. at 180.

\(^{16}\) Id. at 191-92.

\(^{17}\) Id. at 192.

\(^{18}\) Id. at 192-93. Later, an additional formulation on exchange value, echoing Marx, appears:

Let us return to the difference between the value of things \textit{inter se} and their value for the parties. That distinction corresponds to the difference between a thing’s exchange value and its use value. Whereas use value (or utility) is a straightforward, down-to-earth relation between a thing’s qualities and an individual person’s material ends, exchange value is a more curious relation between things detached from their relation to persons. It is as if, like animated cartoon figures, things got up and cavorted with each other on their own. What is more curious, exchange value is a relationship between things detached
Brudner goes on to explain this conceptualization along a spectrum of contract doctrines, and eventually turns to equity-inspired doctrines that temper formal right. The coherent combination (rather than ad hoc balancing) of formal right and equitable doctrines is made possible by the fact that they both serve one combined idea of dialogic community where the individual is the primary consideration, but one that cannot be realized without the collective:

[D]ialogic community . . . refers to the mutual recognition as ends of the collectivity and the individual agent. Because the common good is validated as such only through the individual agent’s free endorsement thereof as its good, the common good’s representative must defer to the individual’s free agency and moral self-determination; and because the common good must recognize the individual’s free will and moral independence for its own sake, the individual can in turn recognize the common good’s authority for the sake of its own confirmation as an end.19

I will not engage with the heart of Brudner’s metaphysics here, because my goal is much more limited. The point, after all, was just to show that Brudner’s analysis implicates a tight relationship between contract, morality, and markets. The upshot of that connection goes something like this: persons seek validation as end-statuses; that validation can only result from intersubjective recognition among independent end-statuses; the mechanism for recognition is exchange through executory contracts, where the objects of exchange are the (monetary) values generated in ideal markets.20 There is a further element in Brudner’s argument, according to which the formal aspect of being an end-status is incomplete without wider recognition that must come through the community, but its structure is the same. Contracts are not enough on their own, unless they exist within a framework that guarantees welfare rights that ensure that everyone will have the opportunity to use contract as the system of validation. Thus, in addition to a community element in the mutual recognition among contractors (they must submit to the authority of the community’s law), there is also a submission to the community as supplier of welfare. But these aspects are secondary for my purposes. The key thing to note is that markets that from the qualities that make them valuable to some but not to others . . . . Exchange value is intersubjective value—the same for both parties to the exchange. An object’s intersubjective value, however, must be a metaphysical relation, for it can be expressed only by ignoring the material appetites and sensible qualities that give objects different value to different individuals. So exchange value is an equivalence on a metaphysical plane between numbers of different things.

Id. at 211. Compare 1 Karl Marx, Capital: A Critique of Political Economy 163 (Ben Fowkes trans., 1976) (1867) (on the fetishism of commodities) with strikingly similar language. Perhaps intriguingly, the analysis closest to Brudner’s in terms of the meaning of property and contract can be found in Evgeny B. Pashukanis, The General Theory of Law and Marxism (Barbara Einhorn trans., 2007) (1924) (though of course, with very different evaluations of the system). On Pashukanis and Brudner, see Igor Shoikhedbrod, Uncovering the Latent Disunity of Property Law? (in this issue).

19 Brudner, supra note 4, at 234.

20 In even starker terms: How do we become full moral agents? By exchanging executory promises for widgets, and acknowledging courts as arbiters in case of breach.
price goods in a way that generates abstract value are an absolutely crucial part of the system. Put bluntly, this amounts to an argument that people cannot achieve real autonomy except in late capitalism, where the form of the circulation of goods is the developed commodity form, and where the goal of circulation is the increase in exchange value.

To see why this is so, it helps to recall Marx’s analysis of circulation. According to Marx, the products of labor circulate in any economy with a division of labor (anything we could call society); however, they circulate in a special way in capitalism, which is by exchange in the form of commodities. The exchange of commodities, like commodities themselves and the labor that produces them, is doubled. In one aspect, its goal is the transfer of a product of labor from one individual to another, or what Marx, following Aristotle, will label C-M-C (commodity-money-commodity). The commodity then falls out of circulation, to be consumed as a use value. Money here is a middle term, a means to the end of consumption, use. On the other hand, circulation also has an additional aspect, or a different perspective from which it may be viewed. Rather than beginning with a commodity exchanged for money and then exchanged again for another commodity, circulation also begins with money that buys a commodity to be sold for more money, or M-C-M'. In this aspect, it is the commodity that mediates between two quantities of money, and the goal has nothing to do with a qualitative change (from one commodity to a different one with different uses), but implies only a quantitative change; in addition, money is never withdrawn from circulation, but is constantly (endlessly) recirculated. C-M-C is the natural, or simple, form of circulation, geared toward realizing use values. M-C-M' is the value form of circulation, geared only toward increasing the amount of money in the hands of the exchanger, in turn the entrepreneur or capitalist. Its form transfigures the role of money: rather than being a medium of exchange and a means to an end (realizing a use value), it becomes the end itself. “The simple circulation of commodities—selling in order to buy—is a means to a final goal which lies outside circulation, namely the appropriation of use values, the satisfaction of needs. As against this, the circulation of money as capital is an end in itself, for the valorization of value takes place only within this constantly renewed movement. The movement of capital is therefore limitless.”

To return to Brudner: If people are oriented toward consumption (C-M-C), they are tied to concrete use values and do not participate in self-validation. Only when their goal can be conceptualized as increasing a quantity with no qualities (M-C-M') do they participate properly in the system of property, contract, and transactional law more generally. And only when they participate in developed transactional law can they be part of law’s dialogic community that creates the proper relationship between the independence of formal right and substantive autonomy. The conclusion, again, is that without advanced capitalism that orients circulation toward the accumulation of abstract value, there can be no dialogic community, no self-validation of persons as ends, no real autonomy.

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21 Marx, supra note 19, at 253.
If this conclusion seems surprising, we should recall that it is a rather old surprise, even in legal scholarship. Fuller’s *The Morality of Law* articulated it half a century ago, in noting that the kind of society in which the conditions for the “optimum realization of the notion of duty” exist, surprisingly, “in a society of economic traders.” Fuller goes on to claim that without markets to supply the measure of value, equality in trading becomes metaphorical, and then alludes to those champions of markets who predict that the rule of law itself can only survive alongside the market principle. And most clearly, he writes: “This analysis suggests the somewhat startling conclusion that it is only under capitalism that the notion of the moral and legal duty can reach its full development.”

Brudner, I believe, would not be “startled” by the conclusion. But he does not spell out what his attitude toward the claim might be. I will flag two possible attitudes, before going on to even more speculative issues in evaluating the framework. First, Brudner might simply accept that up until the development of markets that approximate capitalist circulation, full moral development was impossible. That would be an idea of history as leading up to a culmination that gets nearer as history progresses, and possibly ends. Alternatively, freedom, autonomy, or moral development themselves may change historically; in that case, full moral development is available in all historical ages, but the avenues to achieving it change with time. If so, reaching full moral development in ancient Greece or in the deserts of Arabia at the time of the biblical patriarchs was possible, and probably had little or nothing to do with the kind of transactional law (or transactional life generally) detailed in Brudner’s book. This seems, at least to this reader, a more plausible attitude for Brudner to hold. The interesting thing about this latter attitude is that it makes morality itself historical, and that in turn has implications for our evaluation of dialogic community today. It is to that evaluation that I turn in conclusion.

**III. Conclusion: Value and Evaluation in Dialogic Community**

If my reading of Brudner’s account of contract (and transactional law more generally) is correct, then Brudner offers us a vision of dialogic community that exists only where something approximating ideal market exchange has developed and become the dominant mode of economic interaction. Ideal market exchange of this sort requires advanced capitalism, in the sense that exchange is not oriented toward the satisfaction of needs, but rather toward the generation of abstract value, better known as profit. That leaves open the question of how we are to read his attitude toward actual markets. One option is to read Brudner as an apologist for actually existing capitalist markets, and as calling for their extension into fields where they might have little purchase today. On this reading, market exchange is seen as a mode of expanding the potential for independence and autonomy;

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22 I must admit that when I thought of this, I had forgotten Fuller and was quite pleased with my own insight. Returning to Fuller pricked the bubble of perceived originality, but also increased my confidence in the correctness of the claim (though of course, Fuller had not the advantage of reading Brudner).

limitations on markets foster dependency or one-sided responsibilities that do not allow for full human development. But an opposed reading is also available, where Brudner’s account of transactional law becomes a pivot for critique. I will close with a few words on a number of ways to develop this opposed reading.

First, Brudner’s appeal to markets as a setting for the instantiation of dialogic community rests in part on their approximating ideal markets. In other words, only markets where the exchanging entities can achieve a measure of aloofness from material wants qualify. That approximation seems fine for the relatively well-off; it seems obviously wanting for much or most of the contracted labor in the developing world. Second, the ideal markets of dialogic community bring together agents seeking self-validation; but on the face of things it would seem that business firms do not seek self-validation, so that contracts between firms or between firms and individuals would not be privy to quite the same structure of justification. Together, these two objections might turn Brudner’s account into a critical vision, according to which only a narrow subset of existing contractual practices could be justified by the idea of dialogic community. This would then amount to a call to shift current practices toward those that could be justified, and as such this would be a wide-ranging critique indeed.

For the most part, Brudner seems distant from these questions of apology or critique regarding actual economies. But there is a crucial exception in an intriguing two-page conclusion to the chapter on property, dealing with industrial property. Here, in brief but pregnant passages, Brudner outlines a vision of the democratization of industrial property that includes not only background regulation but also significant limitations on managerial control and expansions of self-determination for labor. The recognition that property as we know it feeds into “acute human dependence” can be read as a prod to critical development of the law. But the style of these passages, and their placement as a “concluding thought” that is never quite integrated into the rest of the work, hint that these considerations do not upset the framework of justification at its core.

24 And those contracts, in turn, become a condition of the consumer markets in the advanced economies. Thus, the question of whether contracts for consumer goods ever leave the realm of exploitative arrangements is important for the conception of dialogic community (at least for the question of who is included in it).

25 Brudner, supra note 4, at 159-60.

26 The section claims that democratizing industrial property does no violence to property, requires no taking, and need not upset the position of managers as fiduciaries of owners (rather than of labor). All interests find their proper place, without undoing the basic known structures:

The interests of capital could continue as the primary (default) object of the corporation; yet these interests would yield at the point of conflict to the self-determination of those who depend on access to capital for their livelihood and self-expression. . . . The democratic management of property within the industrial workplace is the clearest embodiment of dialogic community yet produced, for it signifies the common welfare’s actualization not against but in the sphere of private accumulation.

Id. at 160.
I would suggest that there is more at stake in the nod to industrial property than Brudner allows, and that it points to a deep tension rather than the embodiment of a harmonizing synthesis. Brudner aptly emphasizes demands for worker “self-determination” and “self-expression” and, again aptly, locates these as issues of democratizing property. Note, however, how far determination, expression, and democracy are from abstract value or profit. Indeed, the people who would contract for conditions that maintain their rights to self-determination (or expression, or democracy) are interested in voice over the very questions of value that Brudner’s assumed ideal market could avoid discussing. Workers trying to maintain self-determination and self-expression are in effect demanding that value remain an issue of politics, including politics conducted in the workplace. And that politics can never completely disengage from material needs and dependencies in the form that Brudner posits for the self-validating property alienator.

The same tension could be visible from the other direction, starting from the place where markets work most closely to the model on which Brudner generally relies. That ideal market assumes decentralized price takers who never have to agree on the reasons for value, which emerges as a signal in the price system. In essence, the ideal market makes valuation a mystery, and that is its very appeal. It does away, at least in terms of appearances, with the political conflict over what is valuable and why. But the appearance is deceptive, because at bottom valuation can never escape the fact that it arises as the product of the organized social relations, including the entire system of property distribution.27 The better the market is working, the better it hides the politics that underlie valuation. Demands for democratizing industrial property (potentially) upset this veiling effect of markets on the question of value, and to the extent they succeed they undermine the distinction between politics and exchange. That distinction is crucial for the formal aspect of property to retain its transactional structure and its justificatory power.

How then, should we understand the relationship between capitalism and dialogic community? On the one hand, it seems that the structural claims regarding contract (and property) can only reach fulfillment under conditions of advanced capitalism. The crucial condition is that contractors transact for abstract value rather than for satisfaction of wants; one implication of that condition is that value emerges from the price system. On the other hand, the image presented as the “clearest embodiment of dialogic community” seems to threaten that type of exchange. Demands for democratization, as the word implies, remind us of the political core of valuation. And perhaps this political core is precisely the right resonance to take from the word dialogic, which implies a give and take in discourse. If the dialogic community is one where the question of value is constantly open for political discussion, perhaps it contains the seeds for the most radical critique of capitalism yet.

27 That system includes, crucially, an ownership structure that allows capital to capture most of the surplus value of production—and this is precisely why democratizing industrial property touches on such a basic issue.