
MEMORANDUM

TO: JOURNAL OF LAW & CONTEMPORARY PROBLEMS EDITORIAL BOARD
FROM: MARION G. CRAIN, CATHERINE FISK, & KIMBERLY D. KRAWIEC
SUBJECT: 2008 LIVE SYMPOSIUM PROPOSAL
DATE: 12/11/2009

Thank you for soliciting symposium proposals for *L&CP*. We propose a live symposium entitled *Show Me the Money: Race, Gender, & the Value of Labor*. Symposium participants would address the following questions: “Do law or the structure of existing institutions shape the labor market such that the value of some forms of labor is enhanced while the value of other labor is diminished? If so, are the effects disproportionately felt by particular demographic groups, such that some groups systematically are denied the full value of their productive labor?” The valuation of labor may stem, for example, from legal regulation of certain markets (e.g., college athletics, baby markets, sex markets, and organ markets); employer efforts to wrest super-profits from workers (e.g., through sexualized or racialized branding practices that disproportionately impact women and people of color); structural features of institutions (e.g., the way waged labor is structured inconsistently with family work; or immigration laws that prevent workers from entering certain labor markets).

Scholars from a variety of disciplines have considered the interplay of legal rules and market forces in contexts which, though superficially dissimilar, on closer inspection are linked by the consistent devaluation of particular types of labor performed disproportionately by women and persons of color. These issues are both timely and important, as evidenced by the recent boom in scholarship on, and news coverage of, baby markets, occupational segregation by gender, race and national origin, the transformation of the nature and value of human capital through globalization, outsourcing, and “just-in-time” personnel practices, and guest-worker proposals. In part, their timeliness is a function of the growth in the size and importance of these markets, as well as the advent of ever-sharper global competition. As the demand for, and price of, certain goods and services rises to new highs, previously existing tensions are exacerbated beyond the point of societal comfort and regulatory cohesion. For example, the increasing popularity and profitability of many college sports highlights the disparity of profit division between NCAA schools and athletes, a disparity that disproportionately affects young African-American men. Similarly, the current shortage of transplantable organs and the resulting black market

exacerbates tensions between developed nations, whose citizens purchase such organs, and developing nations, whose citizens sell such organs. Similar forces are at work in the global baby trade, in which developing nations are disproportionately likely to be suppliers of babies to adoptive parents in developed countries. The modern corporate trend toward “branding” in ways that exploit and control workers’ sexuality--such as make-up and grooming rules-- is facilitated by the employment at-will doctrine and driven by the advent of global competition in product and service markets. Occupational segregation by race, sex, and national origin creates barriers to competitive operation of labor markets. Restrictive immigration laws, along with guestworker programs, place downward pressure on some labor prices (by creating incentives for workers to refrain from insisting on enforcement of protective labor law or making it impossible for workers to switch jobs in pursuit of higher wages).

The topics on which each of the symposium participants are experts can be divided into two general categories: (1) legally restricted markets; and (2) the social process by which human capital is defined and valued. Each of the proposed speakers has examined whether these two factors – legal restrictions on free market exchange and the social construction of the value of human capital – disproportionately impact particular demographic groups, such as women, racial minorities, the poor, or immigrants.

For example, legal restrictions prevent providers in certain markets from fully appropriating the market price of their labor. This is the case in markets in which permissible compensation is legally restricted, including baby markets, sex markets, organ markets, and certain athletic markets. Immigration rules and restrictions may cause similar effects, particularly in markets dominated by immigrant labor, such as some agricultural markets and domestic labor markets. Providers in these markets are disproportionately female (in the case of sex, baby, and domestic labor markets), poor (in the case of all of the aforementioned markets), and minority (in the case of athletic markets, some sectors of the baby market, and markets dominated by immigrant labor). Moreover, the social and institutional processes by which labor is valued results in high values assigned to some types of labor and low value assigned to others. Rather than being solely merit-based, these processes may systematically disadvantage certain demographic groups – again, typically women, racial minorities, the poor, or immigrants.

At the broadest level, what links all these phenomena is the process by which the assets or abilities of certain market participants are given value by the legal and/or political system, by the institutions we currently understand as constituting markets (including advertising and job search processes), and by extra-market institutions, including culture, family relationships and educational institutions. The question of how value is assigned to forms of labor, and the social consequences of the high valuation of some labor and the low valuation of others, is both extremely pressing as a matter of social policy and foundational to an understanding of the relationship of law, culture, and economics.

A rough outline of potential speakers and the topic(s) on which they have previously written (or are currently researching) follows. We have erred on the side of over-inclusiveness at this point, knowing that the number of speakers will have to be reduced to a manageable size before proceeding with symposium invites, and that some potential speakers will decline the invitation and others may need to be substituted to get full and thoughtful coverage of the issues. If *Show Me the Money* is chosen for L&CP's live symposium, therefore, we would refine this list to a smaller number, concentrating on the topics of legally restricted markets and the social formation of human capital, after getting a sense of our budget and which speakers might agree to participate.

[Contact information for participants below deleted for their privacy]

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