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Late to the party: debt and data

At the 2012 Law and Society Association meetings, law professor Tom Baker argued that add-on insurance – the kind you are offered at the point of sale when you purchase a computer or rent a car – constitutes a 'situational monopoly' and should be regulated away. It was striking: rarely do you hear a legal scholar make such an unequivocal case. One government official in attendance, though supportive, was flabbergasted. I was struck, however, by Baker's comment that add-on insurance receives little scholarly attention because it is 'not obviously cool', and 'does not compute' according to standard economic theory. For some time, I've been arguing that the not obviously cool and the difficult to compute are crucial to understanding how contemporary market societies and the regulatory frameworks that lay the grounds for them do and do not work (see Star 1999). In a purposeful mistranslation, I take the word 'mode' in 'capitalist mode of production' as referring to a statistical central tendency, and follow through the metaphor by attending to the long, fat tails of non-capitalist relations on either side of that mode. These do not compute in standard economics or in social and critical theory attempts to understand finance or the economy. And so, at a time when many anthropologists and cultural critics are re-examining debt and credit, my work in the anthropology of finance wants me to encourage attention to the not-so-cool stuff (derivatives are cool, credit and abstraction are cool; regulations and legal technicalities are not cool), and to pay heed to moments when even the cool stuff does not compute in our liberal or critical assessments of it.

In foregrounding the debt side of the credit/debt nexus, contributors to this issue gently moderate certain critical exuberances. Credit has always been sexier than debt, especially outside anthropology but also lately in some quarters within it. Credit speaks to issues critical theorists treat very well: fiction, the relationship between intellectual and financial speculation, the 'spirit' of charismatic risk-takers (Appadurai 2011), futurity, potentiality. The unreality or hyperreality of it all, the houses of cards or sand castles of credit give themselves to modes of analysis warranted by a separation of the real from ideological, or productive from speculative, the impulse to expose the falsity of worlds where all that is solid melts into air . . .

But the 'debt' side of the credit/debt nexus is harder. It brings up theoretical (almost theological) languages of obligation. Anthropology for a time did very well with such languages (think Gluckman (1965)). These concerns are now seen as part of the actual past – 'they' don't have those kinds of relations anymore (although they very

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well might) – and disciplinary past – it's old-fashioned even to talk about such things anymore. Anthropology today is not so good on these languages of obligation because of a belief in the field's own modernity and its quest for 'relevance': we like to talk about the future, to imagine anthropology as part of that future, and not so much to worry about chiefdoms and their differences, say, from feudal fiefs.

So, while I am glad for the renewed attention to credit and charisma, I think there are other, important things afoot in that long tail. These other things are rarely sexy. The 'natives' also think these things are important, and also think they are 'geek' or 'dork'-worthy – both emic terms from payments industry professionals I've been working with since 2007. My plea is for more geeks to pay attention to this boring and mundane world in the quest to understand the current financial situation.

My focus is retail payments at the point of sale – the everyday process of buying things, and the current proliferation of new techniques and regulations around the transfer of value from one entity to another. Value itself is transforming, and new matters of concern emerging (Latour 2004). Specifically, questions of the *debt of data* are coming to the fore: who gifts, who owns and who owes what to whom in exchange for the massive amount of information that is transferred any time a person makes a purchase without state-issued cash, but instead over a private set of payment infrastructures.

Today, many anthropologists are approaching the financial 'crisis' by way of instruments of complex credit arrangements and risk (but see Roitman forthcoming). Risk can take us too far from credit when the two get aligned. Such alignment needs to be demonstrated, not assumed. And the focus on credit can take attention away from the debt side of credit/debt (usefully unified by Peebles, as discussed in Gregory, this issue). The crisis brought to light a little known fact, one still rarely discussed outside of payments law and consumer finance industry and policy writings: that where retail banking is concerned, interest rate arbitrage and credit are not so important to revenues anymore, and have not been for some time – at least since the 1990s, according to Bruce Summers, formerly of the Kansas City Fed (Summers 2012). Instead, the money in money, so to speak, has been fees. Consider all the service charges faced by Lydia in Fiji, as recounted by Gregory in this issue. Consider what these fees are, how they work, and what they do to our accounts of money, debt and credit. They defy the market logic that supposedly undergirds the neoliberalising world. As I write, in mid-June 2012, I have just recently returned from two conferences and two 'master classes' for professionals involved in 'emerging payments' (from mobile phone-enabled payment systems to various prepaid electronic or digital coupon schemes) where participants argued that even fees are now going the way of the dodo. If the money in money is currently fees, they maintain, in the not too distant future it will be in data.

I've jumped scales here, from wholesale to retail credit, from the 'big boys' – say, JP Morgan or Citibank – to entities most people have never heard of, like Fiserv, First Data, Blackhawk, and the Automated Clearing House, the entities that provide, process, clear and settle everyday consumer transactions using a credit or debit card, a prepaid gift card, an online gift certificate, or a direct, online bill payment, salary deposit or reimbursement. Both wholesale and retail credit rely on similar clearance and settlement infrastructures to facilitate value transfer: from the large-scale interbank transfers around whose collateralisation Riles (2011) centres her discussion of the global financial markets, to the drops and rivulets of everyday non-cash payments at the point of sale. These in turn flow into gigantic torrents driving that which we have come to call 'the economy'. These rivers large and small function because private and public entities

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have built a series of channels complete with portals, locks, sieves and dams that enable that transfer of value – for a price that is not set by the market.[1]

Until around 2011, the US Federal Reserve Board of Governors did not consider consumer payments to be 'systemically important' (Summers 2012: 8); they were not perceived as having the potential to bring the whole system down, like the major institutions of the financial markets. Crucially, too, consumer payments were not seen as 'owned' or 'ownable'. As recently as 1999, legal scholars could proclaim that 'historically private property rights have not attached to the infrastructure of exchange' (Fram *et al.* 1999, para. 114). They were writing just as PayPal was founded. After 2008, during the global recession, consumer confidence was a key indicator of recovery. Financial stability depends on the safety of consumers' deposits and 'predictability that funds transfers will be completed as instructed' (Summers 2012: 8). Stability and finality of payment is thus part of the public interest (2012: 23). While post-2008 financial reform regulations (in the US, the Dodd-Frank Wall Street Reform and Consumer Protection Act) gave the Fed the authority to regulate payment settlement and clearance between systemically important institutions, it is 'silent', Summers notes, 'on the subject of oversight of consumer payment systems' (p. 24).

Dodd-Frank's so-called Durbin Amendment flagged the regulatory realisation that credit and debit card fees are monopoly not market driven and disconnected from credit risk (see Levitin 2007). I leave aside the argument that interchange, heretofore the driving force behind the private payments infrastructure business model, making payments one of the largest though underappreciated industries in the world, represents a non-capitalist operation within and subtending what we've come to call the market society (Maurer 2012a). Payment as I am using it, then, is more a matter of enaction than transaction, to use Sneath's (this issue) terms: the idiom is not of exchange but of the toll that permits the exchange to take place via the rails or pipes that connect transacting parties. I built the pipes; you pay the toll if you want to exchange with another party. Your exchange is part of the capitalist economy; my toll is . . . part of that long tail.

When I began working on mobile phone-enabled financial services around 2007, services that used the text-messaging capability of a simple phone to carry financial data, the big regulatory concern was anti-money laundering. People imagined text-based money services would provide an alternative to the banks for the poor and underbanked, but also would be the basis of a parallel financial system (Maurer 2012b). The internal debates were: Should telcos be regulated like banks? When is a load of funds into a mobile system a 'deposit' and when it is not? To what degree should mobile providers be responsible for conducting customer due diligence?[2]

As new start-ups have jumped into the market and old players like the card networks, wire services and device manufacturers tried to defend their turf, the conversation changed. Recognising that *payment*, not banking, seemed to be both the primary use case and potential business model for new value transfer systems, money laundering concerns faded somewhat, and consumer protection and anti-competitive

1 Payments professionals name these infrastructures 'pipes' and 'rails'. A new payment service thus can 'ride the rails' of existing infrastructure; a pipe that does not have a mechanism for collecting a toll on the passage of data through it is a 'dumb pipe'. The family of metaphors in payments related to portals and locks thus supplements Tsing's (2000) call to focus not on flow but channel with the recognition to attend not only to channel but sieve. See Elyachar (2010) and Kockelman (2010).

2 This refers to the process of verifying the identities of their clients in order to mitigate the potential for fraud or money laundering.

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practices came to the fore. This makes sense in that payment does not proceed from the assumption of equal partners in an exchange transaction, but is predicated on an asymmetry between on the one hand those putatively equal partners seeking to transact and on the other hand those controlling the means of value transfer, the pipes and tubes and rails that permit a transaction to occur between those parties. If the money in the first transaction operates through equivalence, the fee for the use of the pipes is more like Graeber's (this issue) 'social currency' – in that it allows the 'mutual fashioning of human beings' who realise themselves through exchange relationships. As industry players discovered payments – a process of self-discovery in many respects, as they had not originally set out to provide a new payments infrastructure – they also discovered they were regulated entities. The chief challenge became figuring out what kind of entity they were. As one interlocutor, a regulator, put it: 'I have a regulator?! Yes – meet your regulator!' pointing at herself. And as a banking professional put it, in advice to payment start-ups trying to navigate the regulatory environment: 'it is important to know what you are'.

Knowing 'what you are' has become complicated. With the ubiquity of the Internet, anyone setting up a coupon scheme or any other payment-related service is instantly operating in multiple jurisdictions, each of which may have different regulations about the prepayment and storage of a client's funds, or the movement of money from one entity to another, across or within a state or national boundary. The potentiality of information networks has long concerned regulators, especially those involved in the interdiction of criminal financial activity. Thus, in the United States, the Bank Secrecy Act (BSA) of 1970, originally devised to prevent money laundering, has required periodic updating to keep up with technological change. In 2011, new BSA rules were promulgated by the Financial Crimes Enforcement Network (FinCEN).[3] These took effect in 2012. The rule changes concerned whether a prepaid instrument is 'stored value' or 'prepaid access'. To give you a sense of how under-the-radar this was for all except those directly involved in the payments industry, consider the fact that during the period for public comment on the Durbin amendment, 11,000 comments were received. Contrast this with the scant 76 received around the FinCEN rules for prepaid access. And this is one of those not-sexy places where I think the action is.

FinCEN tried to determine who should be responsible for reporting suspicious activity and gathering customer and transaction information in new payment systems. Its chief concerns were the potential use of various prepaid, non-bank issued instruments – gift cards! – for criminal activity. But along the way in the rulemaking, a curious thing happened. Money itself got redefined. Put simply: it lost its store of value function, and became simply a means of exchange. In Guyer's (2012) terms, state-issued money became 'soft', transactional and relational, not 'hard', warranting abstract value. FinCEN set aside the question of whether something like a private coupon could be a 'store of value'. It abolished the term 'issuer of stored value' altogether, replacing it with a finely tuned pair of concepts: 'provider' and 'seller' of 'prepaid access'. The conceptual shift from value to access is consequential: it returns money to its roots, so to speak, as always a nexus of relationships, never an actual substance with inherent value or a mere representation of that value. Furthermore, even the value in the exchange now takes a back seat to the transactional data (not the *amount* of the purchase, as an informant from one large-scale quick service restaurant gift card programme put it, but

3 Established in 1990, FinCEN is now a bureau in the US Department of Treasury.

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the *fact* of the purchase). If, as Strathern writes (this issue), 'the gift entails, and hence summons, the absence of money', then the gift card after this rule change entails the shift from value to access, and the obviation of money as a store of value.

This is taking place in the context of a proliferation of currencies made possible by new technologies and business models. An industry conference in summer 2012 heralds 'the new money ecosystem'. Gaming companies and Facebook are actively involved in designing new payment systems whose legal status is uncertain. One hears again and again the use of the terms 'wild west' and 'frontier' with reference to payments. One regulator analogised the explosion of new payments companies to the dot com boom. Groupon is testing a cash register. PayPal is designing an ATM. Rumours fly that Apple will buy a bank.[4]

FinCEN goes to great lengths to differentiate the provider and seller of prepaid access from retail sellers of ordinary things. 'Prepaid access', it writes, 'is fundamentally different than non-financial products and services . . . because [it] is essentially a financial service that provides consumers with access to the financial system' (FinCEN 2011: 45406).

But is it? Listen to one start-up founder talking about 'the new value movement' – not, as a colleague and I first assumed, the new forms of movement of value, but a new 'social' movement for a new kind of 'social' value:[5]

> Traditional currencies do a fantastic job for certain things, but [. . .] the traditional systems no longer really capture and allow people to interact and value each other's interactions in a way that cash-based societies did previously. Reputation is a big one. It's locked in people's heads, not something you can see in a banking account.

Another responded:

> Trust is an excellent storage device for value. [But] it's not good for exchange because you can't buy a sandwich with it.

How to turn trust into a sandwich? First, you have to make trust visible and durable, in information networks. It has to become data, moving through those pipes and rails. Conversation in the payments space shifted in 2011–12. Where pre- and immediately post-Durbin, everything happening in payments was about fees, since 2011 it is increasingly about data.

Thus, David Birch, digital money guru, at a conference in May 2012: 'When my wallet is connected to your wallet, something in its nature must change. [. . .] In 10 years' time, my smart wallet and your smart wallet are going to be talking to each other and we won't be in the loop so much, we won't be bothered.'

4 Groupon, founded in 2008 and on rocky footing at the time of this writing, is an online service that offers promotional gift certificates each day to its participants. If the required number of participants in a local market commits to purchase using the coupon, it becomes valid for everyone. PayPal was founded in 1999–2000 and is an electronic commerce platform that permits money transfers via the Internet. Apple has been a personal computer and device manufacturer since its founding in 1976, but, with the advent in 2003 of its iTunes store for purchasing downloadable music, it has come to operate, in part, as a payments platform.

5 All quotations of industry professionals in this article are from the author's fieldnotes.

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What is this 'new money ecology'? In it, money is plural. Where a Fed interviewee once told me, 'we want the consumer to have a choice in payments', now developers are rushing to create a world where consumers will have a choice in *currencies*. However, the value of those currencies is not value as many have heretofore understood it. When FinCEN abandoned the concept of stored value, it also left the door open to, for example, airline miles or other forms of 'value' not directly supported by state-issued currency.[6] In addition, in responding to its 76 comment letters, FinCEN got a crash course in how the industry is changing. 'Technological improvements', it noted, 'allow the merchant to track the remaining balance, the goods or services purchased, demographic data and other valuable marketing information' (p. 45408).

And this is precisely where the action is. More quotations, from workshops on new payment systems:

> Over the 5–10-year term as interchange and similar fees approach zero, transactional advertising will be a major source of payment profit. If you haven't been an advertising person yet, you will be.
>
> Traditional payment revenue sources are becoming less and less important in the mobile space. Instead, the real value proposition is going to come from data collection and the use of data for targeting marketing.

According to Meglena Kuneva, the European Consumer Commissioner, 'Personal data is the new oil of the internet and the new currency of the digital world' (quoted in World Economic Forum 2012: 5). But this is not quite right. Value inheres neither in credit nor cash; not in the state-issued currency sitting in a pooled account, for example, to which a prepaid seller gives access. Value is in the data, and that data is our relations (see Hart 1999): with each other, with things, in relation to each other and things. Value is in the potential or vibrancy of the data when it meets and interacts with other data sets (see Bennett 2010): data's relations to data, and the relations between data's relations and our person–thing relations.[7] Commodity money in this scenario is no longer a matter of concern. But credit/debt is: not because people are newly endebting themselves, but insofar as credit/debt is the coming together of those relations. Again: money returns to its roots in relationships.

To take up the questions posed by this collection of essays, then: One wonders what 'habitual sympathy' (Gregory, this issue) will emerge from transactional data sets, what morality will thereby obtain? Or, alternately, what would be our data potlatch, against not the state as in Nahum-Claudel's account (this issue), but the privatised digital archives of our own on-going and everyday credit/debt relationships? Simply by the act of purchase by any non-cash medium of exchange, we now 'donate' – transactional data. 'No return is expected' (Strathern, this issue); and yet, a return can come, unheeded and

6 Remember, its chief concern was to determine who in a payments system has responsibility for oversight and collection of identifying data to prevent criminal activity. In the end, the provider of prepaid access was required to register with FinCEN and implement an anti-money laundering programme, among other duties; both the provider and the seller of prepaid access are responsible for monitoring. (In a system familiar to many readers of this journal, a gift card company is the provider, and the business when you load value onto the card is the seller of prepaid access).

7 The concept of vibrant data, extending from Bennett's work, is in circulation in a range of research activities at UC Irvine and at Intel Labs, with which the author maintains a number of cross-cutting research agendas. I thank Maria Bezaitis for conversations on the topic.

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sometimes unwanted in the form of an advertisement or promotional offer. For some, the answer is to deny the gift, commodify one's data oneself and sell it to the highest bidder! Or to remove oneself entirely: go cash-only . . . keeping oneself 'sociable' in the sense of being always endebted to the value warranted by state-issued currency (see Peebles, this issue).

This now takes us into a whole new arena, one where consumer finance protection meets digital 'bills of rights'. Nota bene: Consumer protection here has less to do with, for example, interest rates or subprime lending. Instead, it has to do with data breaches and the value and ownership of personal data. What is striking to me about this is that it represents a temporal reorientation to the past, present and realisable, proximate future (Bell and Dourish 2007), rather than the endlessly deferred futures of credit and speculation. In other words, there is a foreshortening of the millennial horizon of credit. For prepaid access, for example, FinCEN states, 'the funds or the value of funds . . . have been paid in advance' (p. 45413). They can be 'retrieved at some point in the future', but their retrieval is not really at issue here. If the customer does not retrieve them ever, they might escheat to the state.[8] But, again, this is not a matter of concern for growing numbers of payments professionals: what is, is the transactional data contained in the fact of their initial payment, their use at the point of sale in the present and future, and the future potential for leveraging not their funds but that transactional data.

As the articles in this issue demonstrate, we are late to the party if we focus only on credit, missing debt; on financial abstraction and speculation, missing the plumbing that makes it possible, the embodiment and materiality of abstracted informatics. We live in a world of capital but also of tribute, and a world where rents themselves are declining in significance. A proliferation of new value forms and new media of exchange is taking place, incited not by 'money' per se but by the 'new oil' of data – which we must understand in relational terms, not as a new commodity backing old money, but as a realisation of ramifying relationships knotted together moment by moment in specific, on-going transactions. For the regulator, this raises consumer protection choices. It also raises political and analytical choices. The political choice is about the role of the state in providing for stability and soundness of currencies, and the monopoly of the legitimate means of exchange. The analytical choice? Well, there are many. I end on one: We can worry about debt and credit as both the subtension and subversion of society. Yet money is not just debt and credit. It is also a public infrastructure for value transfer. We are entering a world where the public interest in payment must be defended.

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8 This controversial issue is, in the US, a matter of state-by-state regulation.

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