Commentary on Part III

Anarchic Governance: A Commentary on 'Data Ecologies and Jurisdictions'

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The three chapters in this Part offer us detailed arguments about how to connect data ecologies and jurisdictions, although none of the chapters uses that precise terminology. In her chapter, Jennifer Cobbe focuses on how relationships of control and interdependence in the data-driven supply chains of platforms distribute regulatory power. She describes the resulting regulatory power and forms of asymmetrical governance in and of data supply chains. Fisher, Kingsbury and Streinz, in turn, take us into the Argo floats and entice us to 'think infrastructurally' about them. They prompt us to see the floats as generating a data infrastructure and to take note of the regulatory infrastructures that emerges through it. Finally, in her argument about 'algorithmic environmentality', Roxana Vatanparast shows us how data infrastructures have become integral to the governmental rationalities in the environmental field and she critically assesses the implications of this shift in governance form.

The three chapters focus on data infrastructures, algorithmic regulation technologies and the supply chains of platforms. As such, they speak to theme of data ecologies and jurisdictions flagged in the title of this section. The contributions make excellent, clear statements about how precisely they conceptualise this connection. Their original and clear reasoning is worth reading in full. In this short commentary, I will follow the editors' instructions to focus on common puzzles, things the chapters help us see better, concerns or worries that arise from them and the research ahead as indicated by the chapters. (Rereading this, I note how fundamentally gendered my inclination to politely follow instructions is.) To do so, I pick up threads running through the three chapters that resonate with core questions about the regulatory politics implicating

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digital infrastructures. Specifically, I follow their common focus on the (not so puzzling to most of us but still) *anarchic normativities* associated with data infrastructures and the diverging ways in which their contributions help us conceptualise (and so better see) the *hierarchical implications*. I will then discuss the *fuzzy forms* of possible intervention proposed in the chapters and conclude by pointing out how these three chapters invite us to extend and deepen our *complicit engagements* with data infrastructures and regulation through further conceptual work.

Anarchic Normativities

Catherine Malabou notes that 'the real anarchist is being itself'.[1] As it continues to morph and mute, it refuses to subject itself to any singular overarching hierarchy. It is literally anarchic in the sense of lacking placement in a hierarchical order. It carries 'the tattoo of its indifference to power'.[2] This characterisation would seem appropriate for characterising also the normativities that emerge in the three chapters of this section. Although they differ fundamentally in many respects, the normativities that emerge in them carry the anarchic 'tattoo of indifference' to single and settled jurisdictional powers.

For Jennifer Cobbe, normativities emerge distributed across each of the data supply chains she describes. The 'Terms of Service' (ToS) connect and exclude, assembling the regulatory norms governing the chain and also the chain itself. Through the ToS, providers suit themselves. They 'impose terms for exchange of control which seek to minimise legal costs, risks, responsibilities, and accountabilities by passing them to others'. They 'decouple' the regulation of the chains from the 'legal risks, responsibilities, and obligations' that might otherwise weigh on them as Jennifer Cobbe puts it. The ToS are also decoupled from each other. The ToS are specific to each chain, varying with the pertinent context, data infrastructure, services associated it and regulatory instruments. The ToS are doubly anarchic in disrespecting settled and unitary powers in ways that often serve these powers as Cobbe argues with reference to vendors as diverse as Google, Amazon or Uber.

The normativities emerging through the Argo floats are no less anarchic, albeit differently so. Fisher, Kingsbury and Streinz depict them as emerging in processes that are 'organic and mycelial-like'. As

[1] C Malabou, *Stop Thief! Anarchism and Philosophy* (John Wiley & Sons 2023) 212.
[2] Ibid 213.

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Kropotkin they go beyond 'the inorganic fact' and integrate 'the tangled traces of life' into their reasoning.[3] The sensor data collected by the floats 'not only forms part of the ontology of what it is describing but also help make what they are meant to represent'. Things ranging from 'the individual flair and initiatives, lock-in to past practices for data continuity, and the quirks and vagaries of funding and participation, as well as external overlaps of interest' fashion this collection. The normativities emerging in this moving, underdetermined and somewhat random process are anarchic but in an ecological rather than corporate manner. Where Cobbes focuses on the world of platforms, client-vendor relations, the ToS and labour laws regulating them and thus captures an anarchic commercial relationality, Fisher, Kingsbury and Streinz invoke the living world of the oceans and the sensors observing, and so the anarchic relationality of the eco-systems of the oceans.

Finally, the 'algorithmic environmentality' that Roxana Vatanparast describes, infuses environmental governance with the persuasion that 'algorithmic data-driven infrastructures, can help better manage climate change mitigation and adaptation'. As a consequence, normativities imported and imposed through these sprawling infrastructures take precedence over environmental normativities that are not or cannot be grounded in or governable through data. The penchant for algorithmic, data-driven, environmental governance assumed to be superior makes the norms attractive and difficult to resist. The possibilities for innovating in and changing the form of such governance are infinite. Again, the normativities are anarchic. However, in Vatanparast account, the anarchy is algorithmically ideological rather than ecological or commercial.

The three chapters in this section offer detailed descriptions of normativities that are anarchic in the strict sense of the term as in without overarching hierarchy. This image is challenging. As political anarchists, these corporate, ecological and algorithmically ideological oppose and resist the state and hierarchies. They disturb the firm foundations of legal orders. Not only do the authors pose the question of how to think about legal developments materially and infrastructurally, as the three contributions underline we must when 'data ecologies are involved'. They also pose the question of how to come to terms with the sprawling and unruly character of the more than human normativities that wear the 'tattoo of

[3] Ibid 1.

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its indifference to power', including the power of legal lineages, linkages and jurisdictional lines beyond those of the sovereign.

Hierarchical Implications

The three chapters eloquently describe normativities tattooed with an anarchic indifference to power, challenging established hierarchies. At the same time, this emphasis on challenging hierarchies is matched with clear depiction of the consolidation of hierarchies that is associated with anarchical normativity. An achievement of these contributions is that they all, again in different ways, focus attention squarely on the dark and dirty sides of the anarchic orderings they explore. At no point do they simply let 'networks hollow clouds of uncertainty in order to foreground clean connections across empty space' to speak with Wendy Chun.[4] Instead, they break with prevailing techno-optimisms and so open venues for countering or addressing the more troublesome and problematic sides of the processes they focus on.

Roxana Vatanparast's chapter on algorithmic environmentality dedicates a section – the most substantial of her chapter – to the 'critiques' of the phenomenon. In it, she elegantly highlights the self-defeating and paradoxical effects that arise when the reliance on data infrastructures subverts the environmental governance it is supposed to advance. She shows (among other things) how 'the universalizing temporality of algorithmic environmentality . . . is at odds with the multiple geological, multispecies, and political time-scales and temporalities of climate change'. Jennifer Cobbe, in turn, names the 'regulatory power' that she sees as located with the platforms that benefit from the 'asymmetrical' relations of operation and control. Those in a position to do and control can decide how to do so. Cobbe is also not afraid to insist on the imbrication of the asymmetrical ability to work with legal rights and obligations. In her view, these asymmetries tend to spiral as they 'produce, shape, and intensify power dynamics within and across chains'. Law and regulatory control is integral to this process.

Finally, Fisher, Kingsbury and Streinz associate the Argo data infrastructure with questions about hierarchies and their distributional effects: following Harold Laswell's basic and classical definition of politics, they ask 'who gets what, when and how', adding to this also where and

[4] WHK Chun, 'The Space Between Us: Network Gaps, Racism, and the Possibilities of Living in/Difference' (2021) 7(2) *Catalyst: Feminism, Theory, Technoscience* 235.

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when. They extend the range of questions that long defined the remit of political inquiries focussed on distributional hierarchies. Their chapter demonstrates that the data infrastructure they study answers these fundamental questions about hierarchy for data and its governance. To underscore this, they underline that data infrastructures operate as a 'stack' and therefore are immensely complex and inscrutable, but also emphasise that 'stacks are conventionally understood as inherently vertical'. At no point do they let the hierarchical implications of the constitutive normativities associated with the Argo data slide out of sight.

Whether they locate the hierarchical implications of anarchic normativities in self-defeating and paradoxical processes, in asymmetrical operation and control relations or in constitutive effects, each of the contributions to this section locates hierarchies at the core of their reasoning. They foreground these processes, insisting that we look at and acknowledge them. The chapters thus make it less comfortable for platforms, environmental regulators, the ocean data gathering Argos and others to use the clouds of uncertainty associated with anarchic normativities to forget or smooth over the bumpy discomforts of dense hierarchies. Collectively, they undo the delusion that data infrastructures operate connections across 'clean empty space' and recalls the ways in which they shape, consolidate and generate hierarchies and the normativities associated with them.

Fuzzy Forms

A worry emerging from these three chapters is their fuzziness surrounding the form of engagement that might make it possible to fashion, intervene with and perhaps even transform the hierarchical anarchic normativities emerging in data infrastructures. As Annelise Riles has argued, form is at the core of law to an extent where 'the effectiveness of form in international law is an effect generated by the form itself'.[5] This makes it particularly preoccupying that the image of what kinds of interventions that might effectively be used to refashion the normativities of data infrastructures remains unclear and with it the 'form' generating effectiveness fuzzy.

The fuzziness surrounding form is not generated by contradictory or overlapping representations in the chapters at hand. The chapters all

[5] A Riles, 'Global Designs: The Aesthetics of International Legal Practice' (1999) 93 *Proceedings of the ASIL Annual Meeting (American Society of International Law)* 28, 34.

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leave the question of the form of countering intervention relatively open. They pose but do not answer them and so leave space of imagination and innovation. Fisher, Kingsbury and Streinz conclude by suggesting that we approach the 'sprouting' 'organic' regulatory developments they document, by focusing on the those 'interfaces where promise lies for planetary governance' that is on the spaces where 'unexpected connections' or 'fusions' are generated with 'other initiatives interested in ocean governance'. However, what form this 'focus of attention' might be given to turn it into an effective intervention remains untold. Analogously, after judiciously describing the need to move away from a 'techno-solutionism' that fails to engage the skewed normativities associated with algorithmic environmentality, Roxana Vatanparast stresses that 'the problem of climate change will require alternative models' and that we therefore 'need to reimagine collective forms of social life and responsibility in global governance'. What forms of engagement might encourage such alternatives and the re-imaginations underpinning them, is left open for the reader to ponder. Jennifer Cobbe provides arguably the clearest sense of form. For her, the aim of focusing on interdependencies is also 'to open up avenues for legal and regulatory governance mechanisms aimed at supply chains'. The form around which Cobbe invites readers to mobilise, in other words, is the existing legal and regulatory form. However, considering her clear demonstration of how precisely the asymmetries of this interdependence short-circuit these forms, how that form could be of engagement could be practiced is something that is left less than clear.

The fuzziness of forms is not a problem of these chapters only. Rather, it echoes the challenge of regulatory practices that involve the anarchic normativities associated with data ecologies and jurisdictions. That the chapters leave us with it is therefore something to be valued. It is an invitation to probe, work through and tinker. One way of doing this might be draw on what we learn about the difficulty of fixing forms in these chapters to rethink the notion of form. If fixing forms of intervention that guarantee effectiveness in intervening with moving and malleable data infrastructures is a difficult or even impossible task, as the chapters show, allowing for plasticity of form, attuning form to dispositions, potentials and tendencies that operate through design, might be an option? It is certainly one scholars direct attention to[6] and regulators are

[6] By way of example, in two collective projects focussed on digital infrastructures, we discussed such options. In one, we worked with 'ripples' as a form. In the other, we mobilised Keller Easterling's notion of 'active form' for our own purposes. See respectively JL Austin and A Leander, 'The Active Form of Security: Technology and the

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working with. The European Union Agency for Cybersecurity (ENISA, originally called the European Network and Information Security Agency) introduced the General Data Protection Regulation (GDPR) as operating 'by design', taking into account the constantly evolving character of data infrastructures.[7] As so often, a worry or concern may serve as a motivation to engage new research paths and practices of political experimentation.

Complicit Engagements

As inspiring work often does, the three chapters in this Part point to more than one direction of future research. To conclude this commentary, I would like to indicate one path ahead to which the arguments in all three chapters point: namely, the path of continued theoretical work. The three contributions make conceptual contributions to our thinking about data infrastructures and the regulatory normativities associated with them or in thinking about 'data ecologies' and 'jurisdictions' as the Part title prefers it. They provide us with concepts that help us navigate and problematise this relationship. Each does this in distinctive ways. The contributors gift us with 'asymmetric interdependence', 'algorithmic environmentality', an 'organic governance model' and more as commented on above and as developed in the chapters.

This conceptual work is not simply an intervention in the world of theory, where it relates to other equally theoretical interventions. Rather, their work is developing tools also for interventions beyond the scholarly realm. In making sense of data infrastructures and their normativities, the conceptual tools sharpened in these contributions *also*, at the same time, opened up for specific interventions. They suggest how to identify potential sites for intervention and provide (fuzzy) notions of the forms such interventions might take. In so doing, they create 'response-abilities' as in abilities to respond to and act on the world, to speak with Donna Haraway.[8] For the same reason, they make scholars and their concepts

Material-Aesthetic Script' (2024) 49(4) *Science, Technology, & Human Values* 872, 887–89 and Anna Leander et al., 'Ripples and Their Returns: Tracing the Regulatory Security State from the EU to Brazil, Back and Beyond' (2023) 30(7) *Journal of European Public Policy* 1379.

[7] For a detailed discussion: Leander et al., *supra* note 6.

[8] D Haraway, 'Awash in Urine: DES and Premarin® in Multispecies Response-ability' (2012) 40(1/2) *Women's Studies Quarterly* 301.

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complicit with the engagements that do – and do not! – take place within data infrastructures and associated normativities.

These complicit engagements are not a one-off thing. They are ongoing, continuous processes. Just as with physical tools, conceptual tools also require revision, repair and perhaps replacement. This need not be a preserving conservative endeavour only. On the contrary, the conceptual tools provided in these contributions may be fundamentally transformed and do things no one could imagine in ways that were not expected. They may be just as 'fluid' as the Zimbabwe bush pump de Laet and Mol describe, admire and love precisely because it can be endlessly repurposed and transformed in ways far beyond the imaginations its maker Mr Murgatroyd.[9]

Moreover, these tools might be portable. They might be adapted for engagements with other kinds of data infrastructures and normativities located elsewhere. Fluidity might help such adaptability. On both accounts, accepting responsibility for their own complicit engagement requires following them through, accepting these kinds of mutabilities or, more strongly, encouraging them. In Haraway's words 'responsibility in and for worldings . . . requires the cultivation of viral response-abilities, carrying meanings and materials across kinds in order to infect processes and practices'.[10] The virality and fluidity of these conceptual tools will make them take on lives of their own, beyond the control and manipulation of their creators. Their loss of privileged control is also an invitation for others to join, contribute to and continue the work they started. The task of working with the response-ability generated by these tools is not the preserve of the authors of the three contributions to this section. Rather, the question of complicit engagement extends to those of us who share their interests in data infrastructures and their regulation. The contributions stake out these paths for us. They invite us to explore and develop the conceptual tools they propose and make us complicit in their engagements. To conclude this commentary, directing Esteven's prayer to the three contributions therefore seems appropriate: 'thanks for darkness and creation unfinished'.[11]

[9] M De Laet and AM Mol, 'The Zimbabwe Bush Pump: Mechanics of a Fluid Technology' (2000) 30(2) *Social Studies of Science* 225.

[10] Haraway, *supra* note 8, 311.

[11] Esteven is a main character in U Le Guin, *The Left Hand of Darkness* (Ace Books 1969).

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