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# AN INTRODUCTION TO THE SYMPOSIUM ON FOREIGN LIFE VALUATION

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Welcome to the University of Illinois Law Review Slip Opinions symposium on “Foreign Life Valuation.” This symposium brings together perspectives from philosophy, psychology, and various legal subdisciplines to address this question: How many—if any—scarce domestic resources should be allocated to the prevention of foreign harms?

The symposium developed out of the article *Valuing Foreign Lives*,<sup>1</sup> which identified some policy puzzles posed by foreign life valuation. The article initiated its inquiry by outlining a working definition of what constitutes a “foreign life,” namely: the lives of persons outside the borders of a nation state. It then identified reasons that might lead policymakers to distinguish between foreign and domestic lives, and surveyed how the U.S. government actually does value foreign life in varied contexts, including within armed conflict and for purposes of domestic regulation.

In writing *Valuing Foreign Lives*, we were continuously struck by the challenges posed by foreign life valuation, and were often frustrated to find ourselves limited by our own backgrounds and expertise. So we were delighted and excited to be presented with the opportunity to invite scholars from philosophy, psychology, and other areas of law to bring their own expertise to bear on questions of foreign life valuation. We think the result has developed into an enriching scholarly conversation on this important—and fundamentally interdisciplinary—issue.

The symposium opens with philosopher Colleen Murphy’s piece entitled “Differentiating Moral Duties.” Murphy makes three main contributions. First, she notes the moral difference between doing and allowing, and articulates how that difference might influence valuation across contexts. Second, she identifies the moral significance of special relationships to identify the varied duties and obligations of individuals and states. Third, she suggests while most philosophers accept a recognition

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1. Arden Rowell & Lesley Wexler, *Valuing Foreign Lives*, 48 GA. L. REV. 498 (2014).

of the need to distribute resources to those in need, whether domestic or foreign, she canvasses philosophers working in distributive justice to explore whether the state's duty to provide distributive justice is bound by political borders or extends to foreign lives. She concludes with a question as to whether the proposed willingness to pay principle "track[s] morally salient distinctions among the various duties we have toward individuals."

While Murphy focuses on the state's potential duties and obligations to foreigners, law professor Jonathan Masur emphasizes foreigners' lack of accountability to states other than their own. Because many life-saving actions may require the cooperation of multiple states to achieve the greatest life valuation, Masur notes that "the welfare-maximizing valuation will be whichever valuation is most likely to encourage foreign action, and that figure may differ dramatically from case to case." He similarly argues for case-by-case foreign life valuation in the military context distinguishing between combatants and civilians and even among civilians in order to capture the "moral valence of the activities in which [they] are engaged." Masur also cautions against widespread transparency as it may hamper negotiations, yet also notes that efforts to optimize secrecy may backfire causing some countries to feel particularly undervalued. He concludes that the foreign context may need to remain ad-hoc in a way that the domestic system does not.

In "Valuing Immigrant Lives," law professor Jaya Ramji-Nogales interrogates the implications of foreign life valuation in the specific context of immigration policy. She notes that immigrants challenge the definition of foreign lives, as they present contexts where individuals who are physically present in a jurisdiction are not politically represented in that same jurisdiction. She then thinks through the particular distributive justice concerns raised by the valuation of immigrants both inside and on the way to our physical borders. She argues that treating such individuals as "domestic" would require a massive and likely politically unpalatable reform of current policies ranging from detention to entry to the weight given to family reunification. Yet treating them as foreign raises complicated questions of causality and reciprocity.

Psychologist Paul Slovic explores the implications of a particular psychological bias—the prominence effect—on decisions about foreign life valuation. Focusing on humanitarian interventions as a setting in which foreign life valuation is implicated, he puzzles over why elite decision makers who profess to strong foreign life valuation nonetheless rarely engage in humanitarian interventions. The numbers of foreign lives implicated is often large and well documented but he wonders: "Why can't sheer numbers, once great enough, tip the scales toward at least some forms of meaningful intervention if not outright troops on the ground?" Slovic points to a "prominence effect" under which "lofty humanitarian values are systematically devalued in the decision-making

process” because more psychologically prominent concerns, such as national security, crowd out other conflicting values. He cites laboratory experiments to both test the strength of the prominence effect on foreign life valuation, as well as to identify potential countering techniques such as decision analysis and value-focused thinking.

In “Valuing Foreign Lives in Genocides and Mass Atrocities: law, humanitarian intervention, and the prominence effect,” law professor Lesley Wexler explores how international and domestic legal institutions may interact differently with the same foreign valuation practices and the same psychological biases. Further developing the example of genocide and the prominence effect presented by Slovic, Wexler explores the impact of the prominence effect on valuation by addressing the effect’s possible role—and remedy—within a particular legal institution: the United States’ Atrocity Review Board (“ARB”). Wexler discusses the legal context in which the ARB operates, evaluating both international law related to states’ obligations regarding genocide and mass atrocities, and the domestic legal structures that empower and constrain the ARB’s operations. She then explores possible prescriptions for responding to the prominence effect, emphasizing the importance of contextualizing those prescriptions to the institutional realities in which they operate.

Law professor David Dana concludes our symposium by widening the scope of foreign valuation beyond simple life valuation. In the face of impending climate change, Dana questions whether states should expend additional resources to preserve or recreate foreign communities and cultures as opposed to simply protecting the individuals that hearken from them. He notes domestic practices to expend significant resources on preserving disaster stricken communities after Hurricane Katrina and Hurricane Sandy and observes that like with foreign lives, no systematic approach has been taken with regards to valuing foreign cultures and communities. He queries whether the otherness and out group biases that pervade foreign life valuation will be exacerbated for the valuation of cultures and communities unknown or radically different than our own and opens a conversation about factors, such as distinctiveness and domestic preferences, that might weigh in favor of significant resource expenditures. Rather than endorse domestic preferences as the only relevant or most decisive factor, Dana views willingness to pay studies eliciting domestic preferences as a necessary first step to “highlight and perhaps to correct—via promoting thoughtful debate and engagement— . . . over and under allocations of resources.”

We feel honored to have been part of this conversation, and hope that this symposium is only the start of a continued discussion on foreign valuation. Certainly, the diverse contributors to this symposium all seem to agree with us that foreign life valuation ought to be more rigorous and that it need not be uniform across settings. They also each pose and de-

velop challenges of their own that reveal the continued—and even deepening—complexities of foreign life valuation.

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