# Neg card Doc Round 4 Texas

## Regs CP (Presumption)

### 1NR--- Regulatory Capture (2AC Jablon)

\*\*This was read in the 2AC, and the card that we explicitly conceded in the 1NR

#### Regulatory Capture---agencies are structurally less capable of enforcing antitrust.

Robert A. Jablon et al.13, L.B.B. Harvard Law School, Partner at Spiegel & McDiarmid LLP, Anjali G. Patel, J.D. from University of Michigan Law School, Associate at Spiegel & McDiarmid, and Latif M. Nurani, J.D. from Columbia Law School, Associate at Spiegel & McDiarmid, Article: Trinko and Credit Suisse Revisited: The Need for Effective Administrative Agency Review and Shared Antitrust Responsibility, 34 Energy Law Journal 627

C. The Political Nature of Agencies Compromise Their Role As Impartial Adjudicators

Further reasons for not unduly favoring agency over court enforcement of antitrust law are institutional. Courts and agencies are very different decision-making bodies with different roles, strengths and weaknesses.

One of the pillars of the rule of law is expressed by Justice John Marshall's statement that we live under "a government of laws, and not of men." 123 Legislatures are primarily responsible for generally applicable laws that result from a balancing of interests within the political process. Ideally, courts apply law in individual cases neutrally through a reasoning process that is at least theoretically divorced from political influences.

The institutional structure and processes of courts, including lifetime appointments, strict ex parte communications rules, and requirements that decisions be justified by factual records and elaborations of neutral legal norms, are all designed to encourage reasoned and impartial judicial decision-making. 124 Agencies are structured very differently, perhaps due to the fact that they often perform both policy-making and adjudicatory functions.

[\*647] At the top tier of many regulatory agencies is a bipartisan commission of political appointees, who serve for set, limited terms. Agency heads and commissioners sometimes come from industries that they regulate or aligned industries. They often seek employment in those industries after their terms and the many legal, financial, and lobbying firms that represent them. 125 Some agencies are headed by a single political appointee; all appointees must obtain Senate confirmation and lack lifetime tenure to separate them from further political influence. Agency budgets and expenditures of money go through the executive review process and must be congressionally approved. Agencies are subject to congressional oversight and the possibility of new statutory enactments. In short, their actions are deeply affected by the political process.

The political structure of regulatory commissions makes them more susceptible than courts to the influence of their regulated industries as well as other interested parties. Thus, even at the genesis of many regulatory commissions, prominent commentators were predicting that "the older such a commission gets to be, the more inclined it will be found to take the business and railroad view of things." 126 In 1960, James Landis, the late dean of Harvard Law School and a prominent advocate of administrative authority, 127 reported to President-Elect Kennedy on the tendency of agency tribunals to reflect industry positions because of the "daily machine-gun-like impact" of industry lobbyists and lawyers in formal and informal agency processes. 128 Others have attributed regulatory "capture" to the tendency of agencies to consider themselves responsible for the health of the industries that they regulate, leading them to sometimes favor industry demands over consumer concerns and interests. 129

Stark examples of the influence of politics over regulatory agency decision-making could be seen in the widespread political debate over Federal Reserve [\*648] policy. 130 Discussions of the need to ensure the Federal Reserve's newly granted enhanced consumer protection function remains independent from its other functions and criticisms that the Federal Reserve's closeness to the banks deterred it from exercising prior authority that it had to illustrate the point. 131 Similar criticisms have been made against the CFTC and manifold other agencies whose inactions led to the banking crisis and recession. 132

None of this is to say that agencies and commissions do not often resist against such influence. Certainly, many agency decisions may be deemed responsive to public interests. However, officials who do not bend to industry desires may find themselves subject to retribution. For example, Leland Olds, first Chairman of the Federal Power Commission after the enactment of part 2 of the Federal Power Act, covering wholesale power sales and transmission regulation, was famously subject to fierce industry condemnation and ultimate defeat of his renomination confirmation. 133 Currently, EPA officials are subject to congressional attack. Legislation has been introduced to curtail the EPA's promulgation of clean air and other regulations. 134 The emphasis here is not the fact that agency officials are subject to political influence and pressure or the merits of particular criticisms, although some are clearly deleterious to administrators and commissioners' ability to regulate independently, but a recognition that agencies are inherently less judicial than courts. They may, therefore, be incapable of performing the antitrust enforcement roles that the Court appears to assume.

Moreover, members of Congress have been known to insert provisions in bills bearing on agencies' jurisdiction or funding to discourage them from pursuing unwelcome policy initiatives. 135 Such political interference has been legion. 136 The very potential of political retaliation for unpopular action may [\*649] itself caution agency officials from getting too far out on the limb. Although political questioning may not be inappropriate when an agency is engaged in policymaking, its influence is certainly not the hallmark of ensuring independent adjudication of antitrust claims.

The ability of agencies to impartially adjudicate cases is further hampered by the conflicting interests that many agencies must consider. Even where agencies have pro-competitive agendas, antitrust or other issues will not be decided in a vacuum that ignores the implication of decisions on other agency functions. Agencies need some industry support for policies that they advance, lest they find themselves under severe congressional and executive push back.

The power of privately-owned utilities and their capture of regulatory agencies is not new. 137 There have been periods of unfriendly courts and regulators to antitrust enforcement before. What is new is the development and complexity of "deregulated markets" with monopolistic attributes. 138 This complexity itself can lead regulators, courts, and the public to a laissez-faire non-interference with market results, lest their intervention with less than full knowledge make things worse.

Of course, it is true that judges are politically appointed and, whatever the ideal may be, they cannot be said to be completely cloistered from political and social influences. As Finley Peter Dunne's Mr. Dooley declared, "No matter whether the constitution follows the flag or not, the Supreme Court follows the election returns." 139 And certainly, agencies have reached enforcement decisions and other determinations quite contrary to company hopes, including levying substantial penalties for statutory violations. Day-in and day-out Commissioners and Administrators respond to public interests and well-being, as they understand them. Nonetheless, agencies have built in constraints that often limit their abilities to apply antitrust principles in an equivalent manner to courts. Although there are certainly advantages in some situations to agencies being able to act more informally, and even politically, in carrying out their missions, these advantages can also limit agencies' ability to substitute for courts in appropriately performing the antitrust role.

### 1NR---Regulatory Capture (Link to Plan)

#### Links to the AFF---*expanding the scope of antitrust causes regulatory capture.*

Thibault Schrepel 20, Assistant Professor at Utrecht University School of Law, Associate Researcher at University of Paris 1 Pantheon-Sorbonne and Invited Professor at Sciences Po Paris. ARTICLE: Antitrust Without Romance, 13 NYU J.L. & Liberty 326

Private and Pseudo-State Interests. Antitrust authorities can be captured by various outside groups that lead antitrust employees to please them so as to maximize their own future interest. 59 Public choice theorists have pointed out that special interest groups may capture regulatory authorities. 60 This issue cannot be overlooked and [\*344] a precise risk map should be drawn in this area as antitrust authorities' employees may please these groups for personal benefit, to the detriment of consumers. 61 The importance of this issue is growing as the scope of antitrust authorities is expanding, which increases the risk of regulatory capture by interest groups. 62

See, e.g., Bundeskartellamt prohibits Facebook from combining user data from different sources (Bundeskartellamt, Feb. 7, 2019), archived at https://perma.cc/B9S2-9659. For more on this extension of antitrust authorities' power, see Directive (EU) 2019/1/EU of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market, 2019 O.J. L11 3 (Jan. 14, 2019). For risks this creates in terms of regulatory capture, see Michael E. DeBow, Social Costs of Populist Antitrust: A Public Choice Perspective, 14 Harv. J. L. & Pub. Pol. 205, 220 (1991) (explaining that as the government expands the scope and aims of antitrust enforcement, private parties invest more significant sums in manipulating this greater government intervention in the economy).

## Rulemaking Advantage

### 1NC---Rulemaking Turn

#### Rulemaking requires immense time and resources .

Christopher A. Cole et al. 21. Partner @ Crowell Moring, with Jacob Canter, Raija Horstman, and Helen Osun, 4/27/21. “The Supreme Court Limits FTC’s §13(b) Powers.” https://www.crowell.com/NewsEvents/AlertsNewsletters/all/The-Supreme-Court-Limits-FTCs-13b-Powers

In the meantime, one immediate change we may see is an uptick in FTC rulemaking in an effort to allow it to speed the administrative litigation process and expand the scope of monetary relief in both consumer protection and competition cases. However, that will not be a quick or easy process. While the FTC has well-articulated UDAP rulemaking authority, it is a time-consuming process, with meaningful procedural hurdles, and any final rules can be challenged in federal court. The FTC’s authority to promulgate competition rules is more controversial. The agency has used that authority only once in its history and has not tested that authority again for decades. We will also be watching to see how courts apply this decision to existing consent judgments, contested judgments, and ongoing proceedings. It seems unlikely that there would be any challenge to a prior settlement with the FTC, as those settlements usually involve reciprocal waivers of claims and defenses. However, prior judgments may be open to reconsideration.

#### Rulemaking still costs the FTC.

William C. MacLeod 20. Chairs Kelly, Drye’s antitrust and competition practice, served as a director of the FTC’s Bureau of Consumer Protection and as the Chair of the ABA Antitrust Law Section, 7/13/20. Podcast interview, “Deep Dive Episode 120 – FTC Rulemaking: Underutilized Tool or National Nanny Renewed?” https://regproject.org/podcast/deep-dive-ep-120/

I see some of the same potential in the rule that Commissioner Phillips talked about, the Made in America Rule that the Commission is now proposing. However, in each one of these, we need to remember that there is a cost. As a matter of fact, the Commission recently reported to Congress that if Congress wants the Commission to be adopting a bunch of rules, the Commission had better receive the resources to write those rules, let alone to enforce them.

#### Rulemaking gets challenged in court.

Julie O’Neill 21. Partner @ Morrison Foerster, 5/13/21. “FTC & Privacy: Will the FTC’s Rulemaking Push Result in New Privacy Rules?” <https://www.mofo.com/resources/insights/210512-ftc-privacy-rulemaking.html>

The FTC’s foray into rulemaking could lead to a period of uncertainty and legal challenges in those areas touched by a new agency rule. There is likely to be significant debate over the scope of the FTC’s authority, the particulars of the rulemaking process, the substance of any proposed rules, and, when tested in court, the extent of Chevron deference to which the agency is entitled.

#### That independently drains resources.

FTC 21. Peter Kaplan, Office of Public Affairs, 4/27/21. “FTC Asks Congress to Pass Legislation Reviving the Agency’s Authority to Return Money to Consumers Harmed by Law Violations and Keep Illegal Conduct from Reoccurring.” https://www.ftc.gov/news-events/press-releases/2021/04/ftc-asks-congress-pass-legislation-reviving-agencys-authority

Testifying on behalf of the Commission, Acting FTC Chairwoman Rebecca Kelly Slaughter told the Subcommittee that legislation such as H.R. 2668, introduced last week, is urgently needed in light of an April 22 ruling by the U.S. Supreme Court that eliminated the FTC’s longstanding authority under Section 13(b) of the FTC Act to recover money for harmed consumers, as well as other recent court rulings that have jeopardized the FTC’s ability to enjoin illegal conduct in federal court.

“These recent decisions have significantly limited the Commission’s primary and most effective tool for providing refunds to harmed consumers, and, if Congress does not act promptly, the FTC will be far less effective in its ability to protect consumers and execute its law enforcement mission,” the testimony states.

Over the past four decades, the Commission has relied on Section 13(b) to secure billions of dollars in relief for consumers in a wide variety of cases, including telemarketing fraud, anticompetitive pharmaceutical practices, data security and privacy, scams that target seniors and veterans, and deceptive business practices, among many others, according to the testimony.

More recently, in the wake of the pandemic, the FTC has used Section 13(b) to take action against entities operating COVID-related scams, the testimony notes. Section 13(b) enforcement cases have resulted in the return of billions of dollars to consumers targeted by a wide variety of illegal scams and anticompetitive practices, including $11.2 billion in refunds to consumers during just the past five years.

Beginning in the 1980s, seven of the twelve courts of appeals, relying on longstanding Supreme Court precedent, interpreted the language in Section 13(b) to authorize district courts to award the full panoply of equitable remedies necessary to provide complete relief for consumers, including disgorgement and restitution of money, according to the testimony. For decades, no court held to the contrary. In 1994, Congress ratified its intent to enable the FTC to obtain monetary remedies when it expanded the venues available for FTC enforcement cases, strengthening the Commission’s ability to bring redress cases. Nevertheless, a drastic shift in judicial decisions over recent years culminated in last week’s Supreme Court ruling that section 13(b) does not authorize returning money to harmed consumers.

The testimony also notes two other recent decisions in Third Circuit that have hampered the Commission’s longstanding ability to protect consumers by enjoining defendants from resuming their unlawful activities when the conduct has stopped but there is a reasonable likelihood that the defendants will resume their unlawful activities in the future. In one case, the Third Circuit held that the FTC can bring enforcement actions under Section 13(b) only when a violation is either ongoing or “impending” at the time the suit is filed. In another ruling, the court held that the FTC cannot sue under Section 13(b) unless conduct is imminent or ongoing.

The testimony notes that Facebook, Inc. has cited these decisions in its motion to dismiss the FTC’s current antitrust complaint against the company, arguing that Section 13(b) bars the federal court suit.

These decisions also limit the FTC’s ability to settle cases efficiently, the testimony states. Targets of FTC investigations now routinely argue that they are immune from suit in federal court because they are no longer violating the law, despite a likelihood of re-occurrence, and they make these arguments even when they stopped violating the law only after learning that the FTC was investigating them.

### 1NR---Rulemaking Turn/Fails

#### Their ev is explicitly about Section 5 of the FTC Act---Courts say no and Congress backlashes.

Alison Jones and William E. Kovacic 20. Alison Jones, King’s College London, London, United Kingdom. William E. Kovacic, King’s College London, George Washington University, and United Kingdom Competition and Markets Authority, "Antitrust’s Implementation Blind Side: Challenges to Major Expansion of U.S. Competition Policy". SAGE Journals. 3-20-2020. https://journals.sagepub.com/doi/10.1177/0003603X20912884 https://journals.sagepub.com/doi/10.1177/0003603X20912884

One possible solution to rigidities that have developed in Sherman Act jurisprudence is for the FTC to rely more heavily on the prosecution, through its own administrative process, of cases based on Section 5 of the FTC Act and its prohibition of “unfair methods of competition.”93 This section allows the FTC94 to tackle not only anticompetitive practices prohibited by the other antitrust statutes but also conduct constituting incipient violations of those statutes or behavior that exceeds their reach. The latter is possible where the conduct does not infringe the letter of the antitrust laws but contradicts their basic spirit or public policy.95

There is no doubt therefore that Section 5 was designed as an expansion joint in the U.S. antitrust system. It seems unlikely to us, nonetheless, that a majority of FTC’s current members will be minded to use it in this way. Further, even if they were to be, the reality is that such an application may encounter difficulties. Since its creation in 1914, the FTC has never prevailed before the Supreme Court in any case challenging dominant firm misconduct, whether premised on Section 2 of the Sherman Act or purely on Section 5 of the FTC Act.96 The last FTC success in federal court in a case predicated solely on Section 5 occurred in the late 1960s.97

The FTC’s record of limited success with Section 5 has not been for want of trying. In the 1970s, the FTC undertook an ambitious program to make the enforcement of claims predicated on the distinctive reach of Section 5, a foundation to develop “competition policy in its broadest sense.”98 The agency’s Section 5 agenda yielded some successes,99 but also a large number of litigation failures involving cases to address subtle forms of coordination in oligopolies, to impose new obligations on dominant firms, and to dissolve shared monopolies.100 The agency’s program elicited powerful legislative backlash from a Congress that once supported FTC’s trailblazing initiatives but turned against it as the Commission’s efforts to obtain dramatic structural remedies unfolded.101

#### Courts block it---proves the link to the net benefit.

Bryan Koenig 6/29. Senior competition reporter at Law 360. "Is The Consumer Welfare Standard On FTC's Chopping Block?." Law 360. Accessed via Nexis Uni. 6-29-2021. https://www.law360.com/articles/1398386

If Khan does rescind the Section 5 statement in the name of moving beyond the consumer welfare standard however, observers note that it would not be the standard's immediate death knell. Courts have come to rely on the standard, which is not based on statute, for assessing enforcement actions, and the FTC would need to persuade judges to try something new.  
  
"Since existing U.S. case law recognizes the consumer welfare standard, new FTC suits that ignore consumer welfare and competition on the merits would likely fail, leading to a waste of public and private resources," said Alden Abbott, a former FTC general counsel who is now a senior research fellow with George Mason University's Mercatus Center and is also critical of the move.

#### And it causes agency stripping---that decks the FTC.

Alison Jones and William E. Kovacic 20. Alison Jones, King’s College London, London, United Kingdom. William E. Kovacic, King’s College London, George Washington University, and United Kingdom Competition and Markets Authority, "Antitrust’s Implementation Blind Side: Challenges to Major Expansion of U.S. Competition Policy". SAGE Journals. 3-20-2020. https://journals.sagepub.com/doi/10.1177/0003603X20912884 https://journals.sagepub.com/doi/10.1177/0003603X20912884

D. Political Backlash

As we have already indicated, the government’s prosecution of high stakes antitrust cases often inspires defendants to lobby elected officials to rein in the enforcement agency. Targets of cases that seek to impose powerful remedies have several possible paths to encourage politicians to blunt enforcement measures. One path is to seek intervention from the President. The Assistant Attorney General of the Antitrust Division serves at the will of the President, making DOJ policy dependent on the President’s continuing support. The White House ordinarily does not guide the Antitrust Division’s selection of cases, but there have been instances in which the President pressured the Division to alter course on behalf of a defendant, and did so successfully.125

The second path is to lobby the Congress. The FTC is called an “independent” regulatory agency, but Congress interprets independence in an idiosyncratic way.126 Legislators believe independence means insulation from the executive branch, not from the legislature. The FTC is dependent on a good relationship with Congress, which controls its budget and can react with hostility, and forcefully, when it disapproves of FTC litigation—particularly where it adversely affects the interests of members’ constituents. Controversial and contested cases may consequently be derailed or muted if political support for them wanes and politicians become more sympathetic to commercial interests. The FTC’s sometimes tempestuous relationship with Congress demonstrates that political coalitions favoring bold enforcement can be volatile, unpredictable, and evanescent.127 If the FTC does not manage its relationship with Congress carefully, its litigation opponents may mobilize legislative intervention that causes ambitious enforcement measures to the founder.

Imagine, for a moment, that the DOJ and the FTC launch monopolization cases against each of the GAFA giants. Among other grounds, these cases might be premised on the theory that the firms used mergers to accumulate and protect positions of dominance. The GAFA firms have received unfavorable scrutiny from legislators from both political parties over the past few years, but the current wave of political opprobrium is unlikely to discourage the firms from bringing their formidable lobbying resources to bear upon the Congress. It would be hazardous for the enforcement agencies to assume that a sustained, well-financed lobbying campaign will be ineffective. At a minimum, the agencies would need to consider how many battles they can fight at one time, and how to foster a countervailing coalition of business interests to oppose the defendants.

### 1NR---Rulemaking Fails/AT: Credibility

#### The plan enumerates specific examples of conduct that competes unfairly---that weakens FTC claims for deference in other areas.

Marianela López-Galdos 21, the Global Competition Counsel at the Computer & Communications Industry Association, “Tech Regulatory Overhaul Series: The Glass-Steagall Act for the Internet,” Project Disco, 6/15/21, https://www.project-disco.org/competition/061521-tech-regulatory-overhaul-series-the-glass-steagall-act-for-the-internet/

Back in 2015, the FTC issued a statement in an effort to clarify what constitutes an ‘unfair method of competition’. In such a statement, the FTC recognized that Congress “[…] left the development of Section 5 to the Federal Trade Commission as an expert administrative body, which would apply the statute on a flexible case-by-case basis, subject to judicial review […].”

The statement also clarified that “the Commission is less likely to challenge an act or practice as an unfair method of competition on a standalone basis if enforcement of the Sherman or Clayton Act is sufficient to address the competitive harm arising from the act or practice.” So this bill introduces an exemption to the current way of enforcing section 5 of the FTC Act, and it remains to be seen whether, if approved, it will have a further negative impact on the agency’s ability to litigate section 5 cases. It is foreseeable that the explicit definition of an ‘unfair method of competition’ as determined in Rep. Jayapal’s bill will weaken the agency’s ability to obtain deference from courts when litigating other section 5 cases that have not been explicitly defined. Not to mention, it renders the FTC’s statement outdated, since Congress is now defining what section 5 of the FTC Act means.

In conclusion, this bill is a discriminatory effort to avoid competition enforcement and break up designated companies regardless of whether as a result consumers and the economy would be better off or not. As a spillover effect, this bill is likely to weaken the FTC’s authority to identify and pursue section 5 cases beyond what is defined by Rep. Jayapal’s bill, decreasing the agency’s competence to win cases against businesses’ conduct that may have a real negative impact on consumers. In essence, this bill will punish consumers and antitrust institutional design, which are the opposite effects of what members of the House are seeking to achieve by introducing the legislation being analyzed in this series of blog posts.

#### It signals to Courts that the authority for the plan didn’t exist before---that undermines Section 5 deference claims.

--added ‘Congress’ instead of ‘we’ to clarify who Congresswoman Schakowsky is referring to

Jan Schakowsky & William Kovacic 21, Schakowsky is chair of the Energy and Commerce Committee; Kovacic is Global Competition Professor of Law and Policy, The George Washington University Law School, “Safeguarding American Consumers: Fighting Fraud and Scams During the Pandemic,” 2/4/21, https://energycommerce.house.gov/committee-activity/hearings/hearing-on-safeguarding-american-consumers-fighting-fraud-and-scams

Jan Schakowsky (1:07:07): Thank you. I wanted to ask this, Rich - Mr. Kovar - I'm sorry - Kovacic. Here's a really important question. Is there any point in waiting to see how the Supreme Court rules on the question of 13(b), or should the authority under that - should we [Congress] deal with it before the Supreme Court? Mr. Kovacic?

William Kovacic (1:07:52): My intuition would be to wait until the decision comes up. There is the possibility, comes out, there's a possibility that the court will say, contrary to my prediction, the FTC is doing a great job, that's just what Congress wanted, full speed ahead. I'd be faintly concerned that if there were a measure introduced and adopted before that the argument could be made, the impression would be given, that, oh my God, Congress didn't think that the Commission has the authority, so it's got to put in a supporting mechanism right now. I guess my inclination would be that you are - you understand the legislative process better than I do, how long it takes and how it goes. My inclination would be to drop that bill as fast as possible, or even now to be ready, if there's an adverse decision, but I hope I'm wrong. Maybe the Supreme Court says, God bless the FTC, full speed ahead.

#### Ambiguity is a prerequisite for Chevron---specifically enumerating prohibited practices weakens FTC’s case.

Valerie C. Brannon & Jared P. Cole 17, Legislative Attorneys at CRS, “Chevron Deference: A Primer,” Congressional Research Service, 9/19/17, https://www.everycrsreport.com/reports/R44954.html#\_Toc493667552

These concerns aside, the doctrine as a whole nevertheless is firmly established at the Supreme Court.244 Most importantly, the majority of Supreme Court Justices appear comfortable applying the doctrine.245 Nonetheless, appellate judges and commentators have noted that the Supreme Court has recently limited the doctrine's reach and applied Chevron's second step fairly stringently.246 Given the doubts about the constitutionality of Chevron deference of at least two Justices,247 the competing tests for determining when Chevron applies to judicial review of agency action,248 and the uncertainty about whether an agency interpretation concerns a "major question" that does not merit agency deference,249 future disagreements about the scope of the doctrine are quite possible.250 Achieving consensus on the doctrine's applicability may prove difficult in certain cases, at least with respect to those areas where the appropriateness of Chevron has not been conclusively decided by the Supreme Court.251 Further, just as the Court has limited the reach of the doctrine in the past, such as by requiring certain procedures to apply the Chevron framework or declining to apply Chevron to certain issues, the scope of these "doctrinal safety valves" may be expanded in future cases.252

Could Congress Eliminate Chevron?

Chevron is a judicially created doctrine that rests, in part, upon an assumption made by courts about congressional intent: that where a statute is silent or ambiguous, Congress would have wanted an agency, rather than a court, to fill in the gap.253 Accordingly, Congress can determine whether a court will apply Chevron review to an agency interpretation. When it drafts a statute delegating authority to an agency, it may "speak in plain terms when it wishes to circumscribe, and in capacious terms when it wishes to enlarge, agency discretion."254 Thus, Congress can legislate with Chevron as a background presumption, using ambiguity to delegate interpretive authority to agencies or writing clearly to withhold that authority.

#### Spills over

Daniel Crane 10, Professor of Law, University of Michigan, “Reflections on Section 5 of the FTC Act and the FTC’s Case Against Intel,” Articles, 01/01/2010, https://repository.law.umich.edu/articles/1370

For the reasons set forth above, the Intel action raises serious risks of setting back the FTC’s antitrust enforcement powers. Certainly, the Commission risks losing the matter in a probusiness appellate court46 or the Supreme Court during a time of economic trouble when antitrust cases are historically difficult for the Government to win.47 But the risk goes far beyond losing this individual matter. There is a very real risk that an appellate court will write an opinion rebuking the Commission for asserting independence from the Sherman Act, thus setting a precedent that could constrain the Commission’s enforcement mission for years to come.

#### GAP-FILLING---Section 5 is intended to fill statutory gaps---this is the CP’s whole argument for independence from Sherman and Clayton---by expanding provisions to explicitly cover the plan, the perm removes that argument, preventing deference.

Daniel Crane 10, Professor of Law, University of Michigan, “Reflections on Section 5 of the FTC Act and the FTC’s Case Against Intel,” Articles, 01/01/2010, https://repository.law.umich.edu/articles/1370

This section outlines six principles for development of a strong and viable independent Section 5. Adherence to all six principles is not necessarily essential for a successful (meaning both conceptually-sound and review-proof) enforcement action, nor is adherence to all six principles a guarantee of success. However, the greater the adherence to the principles, the greater the likelihood of success. The Intel enforcement action violates all six principles. In such a case, there is a very strong likelihood of reversal in the courts.

A. Do Not invoke Section 5 in Paradigmatic Sherman Act Cases

Courts are most likely to defer to administrative agency judgments in cases involving commercial practices about which the courts have not developed a deeply rooted body of precedent. In such cases, the courts may allow some administrative experimentation and testing, even though they might not have reached the same result as the agency if they had analogized to conduct already covered by established liability norms. Conversely, courts are least likely to defer when they have already spoken to the exact practice on many occasions and developed a timetested body of liability rules to govern it. Refusal by the agency to honor the judicially created precedents may look—to judges at least—like intransigence.22 It is human nature (and judges are human after all) to be more open to an idea on which one has not yet expressed an opinion than to approve of an idea that contradicts one’s prior assertion.

An example of such judicial hostility to an agency decision recently appeared in ScheringPlough, where the Eleventh Circuit testily rebuked the Commission for failing to follow its Valley Drug decision on patent settlements.23 The court took umbrage at the Commission’s failure to adhere to Valley Drug’s legal framework in a private Sherman Act case when deciding a very similar issue in an adjudicative proceeding. The Commission should avoid similar judicial confrontation by declining to assert Section 5 independence in cases where the courts have recently decided precisely the same questions under the Sherman Act and decided, as a policy matter, to confine the liability rule in a particular way.

The bulk of the Intel enforcement action is a challenge to commercial practices about which there is paradigmatic Sherman Act precedent. Much of the case challenges Intel’s pricing/rebating behavior. The Complaint acknowledges that that these practices are akin to predatory pricing, but then proposes tests that are at odds with well-established Sherman Act precedents. For example, the Complaint includes sunk costs in the appropriate measure of cost and says that the Commission need not prove the possibility of recoupment24—both assertions are directly at odds with the Supreme Court’s insistence that predatory pricing plaintiffs show pricing below an appropriate measure of incremental cost and the dangerous probability of recoupment.25

The Complaint also makes assertions about Intel’s alleged exclusive dealing or exclusive dealing-like contracts.26 Like predatory pricing, exclusive dealing is subject to well-established judicial liability norms.27 The last major Justice Department monopolization case was an exclusive dealing matter.28 Whether or not the Commission can satisfy those norms as to Intel, exclusive dealing claims are very familiar to the courts.

The Complaint also asserts that Intel had a “duty to deal” with its competitors.29 Such an allegation waves a red flag in the face of the courts, which have been sharply cutting back on the duty to deal since Aspen Skiing30 narrowly opened the door to the duty. In Trinko, 31 the Supreme Court declared Aspen “at or near the outer boundary of § 2 liability” and, in its most recent Section 2 decision—linkLine32—continued to cast aspersions on any duty to deal. It would be very surprising to see the courts passively defer to an independent Section 5 evaluation of refusal to deal claims when they have spent so much time and energy analyzing such claims in recent years.

For virtually every practice alleged in the Complaint, there is a well-developed body of Sherman Act precedent that will naturally become the focus of legal argumentation on appeal. Convincing a reviewing court to defer to the Commission’s prophylactic interpretation of Section 5 where courts already have honed legal tests for the relevant conduct will be a very tough sale.

B. Do invoke Section 5 in Cases involving a Statutory Gap

One area where many commentators have urged the Commission to assert Section 5 independence is where there is a gap between Sections 1 and 2 of the Sherman Act.33 Although Sections 1 and 2 plausibly could be seamlessly read to cover all commercial conduct of an anticompetitive nature, judicial construction of the statutory texts has created some coverage gaps. Section 1 requires a “contract, combination, or conspiracy”—and hence agreement between at least two unrelated actors—which precludes coverage of purely unilateral acts, such as the unilateral adoption of practices that facilitate tacit price coordination, or unsuccessful attempts to induce others to join a cartel. Section 2 requires monopoly power, thus precluding application to anticompetitive acts involving a lesser degree of market power. Further, there is a serious juridical question about the viability under Section 2 of “joint monopolization” offenses where the defendants did not agree on a concerted pattern of conduct but adopted parallel measures, such as exclusive dealing contracts, that effectively lock up the market to new entrants.

During the 1970s, the FTC brought cases that sought to fill these statutory gaps with the seamless and open-ended text of Section 5.34 Though it was rebuffed by the courts, the Commission is surely on strong ground when asserting Section 5 as a catch-all, intended by Congress to avoid end-runs around the Sherman Act. The FTC Act’s legislative history evidences such Congressional intent.35 Further, it is not hard to explain to courts why the Act should be broadly read to capture conduct that, for statutory construction as opposed to public policy reasons, falls outside the purview of the Sherman Act.

The Intel case involves no such statutory gaps, as evidenced by the Commission’s decision (strongly objected to by Commissioner Rosch) to bring a supplemental Sherman Act Section 2 challenge concerning the same conduct as the Commission challenges in its Section 5 allegations. As set forth in the previous section, the conduct challenged here is paradigmatic Sherman Act conduct. It will be difficult for the Commission to explain the need for Sherman Act independence in a case involving conduct that the Commission admits is directly covered (and unfavorably to the Commission’s position) by the Sherman Act.

### 2NR---AT: 1AC Pierce

#### Says “it would not be easy” for congress---Flows Neg—emory in Blue.

1AC Pierce 15 GWU Law Prof The Rocky Relationship Between the Federal Trade Commission and Administrative Law November, 2015 Reporter 83 Geo. Wash. L. Rev. 2026 \* Length: 11874 words Author: Richard J. Pierce, Jr.\* \* Lyle T. Alverson Professor of Law, The George Washington University Law School.

B. Give FTC the Power to Issue Legislative Rules

The FTC is extremely rare among administrative agencies. The vast majority of agencies have the power to use the notice and comment procedure described in APA Section 553 to issue legislative rules pursuant to each of the statutes implemented by the agency. 107 In the antitrust context, the FTC lacks that power. 108 It has no power to issue rules to implement the Sherman or Clayton Acts, 109 and its power to issue rules to implement Section 5 of the FTC Act is so laden with burdensome, inefficient mandatory procedures that it is useless. 110 The FTC could use rulemaking to issue legislative rules that perform important functions, like creating and describing the presumptions [\*2041] it will apply and the decisional frameworks and criteria it will use in various types of cases. 111 Courts would be more likely to acquiesce in more aggressive interpretations and implementations of the Sherman and Clayton Acts when they are supported by the kind of detailed analysis courts require from an agency when it issues a legislative rule. Legislative rules that describe frameworks and criteria for application of the Sherman and Clayton Acts also would help to reassure business executives, legislators, and judges who fear that the FTC might abuse its power. Unlike policy statements, legislative rules bind agencies and cannot be rescinded or amended without going through the APA Section 553 notice and comment procedure. 112

It would not be easy to persuade Congress to confer rulemaking power on the FTC in the antitrust context, but such an effort would have a chance of success if it is part of a package of statutory amendments that includes other changes like the repeal of Section 5 of the FTC Act. A congressional decision to repeal Section 5 and to confer on FTC power to issue legislative rules to implement the Sherman and Clayton Acts would simultaneously increase the FTC's ability to persuade courts to uphold more aggressive interpretations of those statutes and reassure business executives, legislators, and judges that they need not fear that the FTC would engage in unduly intrusive regulation. That reassurance would come in part from the repeal of Section 5 and in part from the high likelihood that the FTC would impose reasonable limits on its discretion to interpret and apply the Sherman and Clayton Acts by issuing legislative rules.

## K

### Framework---Interp/Subject Formation

#### Evaluate political imaginaries. Debates over cosmopolitanism shape subjectivity---their model re-instantiates meta-norms that teach debaters to recreate the nation-state’s violence through social practices.

Gerard Delanty 14. Professor of Sociology and Social Political Thought (School of Law, Politics and Sociology) @ University of Sussex, UK “The prospects of cosmopolitanism and the possibility of global justice.” Journal of Sociology 2014, Vol. 50(2) 213–228 https://www.sciencespo.fr/ceri/plurispace/wp-content/uploads/2020/01/DELANTY\_Prospects-Cosmopolitanism.pdf

It is in the first instance a condition of openness to the world in the sense of the broadening of the moral and political horizon of societies. It entails a view of societies as connected rather than separated. Cosmopolitanism is made possible by the fact that individuals, groups, publics, societies have a capacity for learning in dealing with problems and, in particular, learning from each other. In this sense, then, cosmopolitanism is not a matter of diversity or mobility, but a process of learning. Dialogue is a key feature of cosmopolitanism since dialogue opens up the possibility of incorporating the perspective of others into one’s own view of the world. It can thus be associated with a communicative view of modernity. Rather than being an affirmative condition, it is transformative and is produced by social struggles rather than being primarily elite driven or entirely institutional. In this sense, cosmopolitanism can be related to popular and vernacular traditions rather than exclusively to the projects of elites (see Holton, 2009). From an epistemological perspective, cosmopolitanism involves the production of essentially critical knowledge, such as the identification of transformative potentials within the present.

Finally, cosmopolitanism is related to subject formation: it is constitutive of the self as much as it is of social and political processes. This is reflected in the von Humboldtian – in this case Wilhelm von Humboldt’s – understanding of cosmopolitanism as a particular kind of consciousness that is best exemplified in education. In the acquisition of knowledge, the self undergoes a transformation, for Bildung is a form of self-formation and occurs through the encounter of the individual with the world. Bildung is a means of encountering the universal, as reflected in the category of the world, and is the aim of education.

These features of cosmopolitanism challenge the received view of normative ideas, such as global justice as transcending political community or as simply utopian. The conception of cosmopolitanism I am putting forward is that it is constitutive of modernity and part of the make-up of political community. This is why cosmopolitanism is not a zero sum condition – either present or absent – as its critics often argue and its defenders mistakenly argue in its support. It is present to varying degrees in contemporary societies.

In order to assess the prospects of cosmopolitanism it is therefore necessary to determine the extent to which cosmopolitan phenomena are present in the cultural model of societies and in their modes of social organization and institutions. By the cultural model, I mean the social imaginary of societies, that is the dominant forms of collective identity or self-understanding. The cultural model of all modern societies involves the amplification and metamorphosis of transcultural ideas such as liberty, justice, freedom, autonomy, rights, which of course are variously interpreted and are not always fully institutionalized. But the existence of such ideas (essentially meta-norms), means that societies have the cognitive means of reaching beyond themselves. For this reason, there is generally a tension in modern societies between the cultural model and institutions. Related to these levels of analysis is the dimension of subject formation, the cosmopolitan self. It is possible that any one time in the history of a society there is a tension between subject formation, the cultural model of society, and social institutions. It is for this reason that cosmopolitanism can be seen as a critical theory of society (see Delanty, 2009): it shares with the critical heritage the concern with possibilities within the present or the immanent transcendence of society.

I am emphasizing, then, the formative dimensions of cosmopolitanism, which in other words is a structure forming itself out of both the self and society. It entails a subject (the cosmopolitan subject), a discourse in which ideas, knowledge, modes of cognition are produced, and social practices. Viewed in such terms, cosmopolitanism is a process as opposed to a fixed condition. It is marked by conflict, contradictions, negotiation. The implications of this view are that evidence of cosmopolitanism must be found not in an end state – a cosmopolitan society or state as opposed to a non-cosmopolitan one – but in the process by which it emerges. It is the task of sociology to determine whether and how this process is occurring.

### Framework---Misrepresentation

#### Misrepresentation---predetermining the “who” and “how” of policymaking blocks democratic arenas. Our public sphere of argument over the Westphalian frames is an act of justice through assertion of rights.

Nancy Fraser 05. Henry A. and Louise Loeb Professor of Political and Social Science and professor of philosophy at The New School. “Reframing Justice in a Globalizing World, NLR 36, November–December 2005.” New Left Review. https://newleftreview-org.proxy.library.emory.edu/issues/ii36/articles/nancy-fraser-reframing-justice-in-a-globalizing-world

But the claims of transformative politics go further still. Above and beyond their other demands, these movements are also claiming a say in a post-Westphalian process of frame-setting. Rejecting the standard view, which deems frame-setting the prerogative of states and transnational elites, they are effectively aiming to democratize the process by which the frameworks of justice are drawn and revised. Asserting their right to participate in constituting the ‘who’ of justice, they are simultaneously transforming the ‘how’—by which I mean the accepted procedures for determining the ‘who’. At their most reflective and ambitious, accordingly, transformative movements are demanding the creation of new democratic arenas for entertaining arguments about the frame. In some cases, moreover, they are creating such arenas themselves. In the World Social Forum, for example, some practitioners of transformative politics have fashioned a transnational public sphere where they can participate on a par with others in airing and resolving disputes about the frame. In this way, they are prefiguring the possibility of new institutions of post-Westphalian democratic justice.footnote16

The democratizing dimension of transformative politics points to a third level of political injustice, above and beyond the two already discussed. Previously, I distinguished first-order injustices of ordinary-political misrepresentation from second-order injustices of misframing. Now, however, we can discern a third-order species of political injustice, which corresponds to the question of the ‘how’. Exemplified by undemocratic processes of frame-setting, this injustice consists in the failure to institutionalize parity of participation at the meta-political level, in deliberations and decisions concerning the ‘who’. Because what is at stake here is the process by which first-order political space is constituted, I shall call this injustice meta-political misrepresentation. Meta-political misrepresentation arises when states and transnational elites monopolize the activity of frame-setting, denying voice to those who may be harmed in the process, and blocking creation of democratic arenas where the latter’s claims can be vetted and redressed. The effect is to exclude the overwhelming majority of people from participation in the meta-discourses that determine the authoritative division of political space. Lacking any institutional arenas for such participation, and submitted to an undemocratic approach to the ‘how’, the majority is denied the chance to engage on terms of parity in decision-making about the ‘who’.

### Impact---Denigration//Double Exclusion

#### Inability to conceptualize violence determines impact calculous.

Tamara Trownsell et al. 19. Tamara Trownsell, Associate Professor of IR @ Universidad San Francisco de Quito, Ecuador. AND Amaya Querejazu, Associate Professor of IR and Latin American Studies at Universidad de Antioquia, Colombia. AND Giorgio Shani, Chair of the Department of Politics and IR @ International Christian University. AND Navnita Chadha Behera, Visiting Fulbright Fellow at George Washington University and Professor of IR @ the University of Delhi. AND Jarrad Reddekop, Associate Fellow at the Centre for Studies in Religion and Society @ the University of Victoria. AND Arlene Tickner, professor of IR @ the Universidad del Rosario, Colombia. “Recrafting International Relations through Relationality.” <https://www.e-ir.info/2019/01/08/recrafting-international-relations-through-relationality/>

How we relate to others should be a central concern of the field of International Relations. However, independent political communities—states—and their interrelations have historically been the focus of the discipline of International Relations (IR), thus limiting the forms of interaction that potentially constitute the field.[1] Postpositivist accounts have repeatedly indicated the disjuncture between the conceptual constructs that IR scholars use to make sense of the world historically and the way people practice their lives, which in the end is the substance of global politics. Many critical projects including Global IR have challenged the research produced through atomistic understandings of the world, and attempts have been made to integrate other ways of knowing into the discipline (Acharya 2014, Jackson and Nexon 1999, Tickner and Wæver 2009). While the ‘critical turn’ has made IR a more plural discipline by opening space for examining different types of relations, they have still been founded on modern, western ‘ontological’ assumptions about existence that have undercut their ability to reap the full benefits of other more robustly relational ways of existing (Blaney and Tickner 2017, Shani 2008, Trownsell 2013). Because the kind of plurality practised has not effectively dealt with distinctly relational ways of living and forms of knowing in their own terms, the call that we are making here is not just about adding other perspectives to the IR cauldron. We are aspiring for a deep plurality, in which IR scholars learn to effectively engage with difference at the ontological, methodological and practical levels.

Since the issue at hand is about ontological-cosmological commitments, we proffer our particular understandings of these terms. By ontology, we mean those basic assumptions about the nature of existence that are operative within any given tradition of living and thinking. In this sense ontology is closely linked to the cosmological in that they both reflect how we conceptualize our relationship with the cosmos and our place in it (Shani 2017). They are distinct in that cosmology refers more to origin stories and to cultural, spiritual and religious practices while ontology expresses the assumptions about the primordial condition of existence that provides the underlying logic of cosmological accounts and as such of all the other cultural fruits that emerge from them. Here we focus on ontology, because it helps draw attention to and provincialize many of the fundamental assumptions made in the dominant IR tradition, many of which have become invisible or merely commonsensical by being consonant with prevalent shared meaning systems and through longstanding and conventional use.

The general inability both in the field and discipline of international relations to recognize when and how one and others are engaging existence from very distinct ontological points of departure has had a serious impact in terms of both politics and knowledge production. Promoted through globally replicated institutions including academia, media, churches, etc., conceptualizing and practicing existence based on separation has become so naturalized that other more relational forms of being have been silenced and excluded. Conflict over what counts as real arises since those applying the predominant assumptions cannot even fathom that these other ways of being can be possible, legitimate or valid. As such living in one’s own or a group’s terms becomes a struggle when they are not aligned with the more predominant logic.

Several consequences of being blind to these relational ways of living and being manifest themselves politically. First these life expressions are often “othered” and “minimized” by treating them as myths (Law 2015), legends, superstitions, or stories about how people communicate with other beings. Denigration also becomes evident when examining public policies that do not even articulate, let alone protect, these relational ways of life. Among humans, groups abound that have not been deemed worthy of civil rights protections in the process of statebuilding for not engaging the world in sufficiently “civilized” manners (Sawyer 2004). Others have been the targets of state-led violence through national forced sterilization or “population control” initiatives (Carpio 2004, Pegoraro 2015). Beyond the human, these excluded groups have clamored to protect other beings that do not translate easily into traditional legal frameworks. For example, while indigenous groups were able to get the rights of nature officially acknowledged in Ecuador’s 2008 constitution, an effective implementation of these rights has yet to be seen. Efforts to maintain a healthy relationship with the beings of land, water, air, plants and animals often come into direct conflict with “national interests,” international treaties, foreign direct investment and forms of international cooperation, as can be clearly seen in last year’s indigenous struggles at Standing Rock in the United States. In the end, the ontological nature of these clashes has been clearly echoed in the zapatistas’ claims to a world of many worlds when stating, “We are another resistance, we are another reality.”[2]

In addition to the important political implications in the field of international relations, the discipline itself has yet to consider seriously relational ways of knowing and being. Because the problematics typical of IR and the tools generated to deal with them have been identified and named through the same predominant set of existential assumptions, the conceptual capacity of the discipline to grasp and respond to these ways of knowing is limited. In fact the predominant understanding of ontology within the discipline of IR has been referred to as “scientific ontology” (Patomäki and Wight 2000, Jackson 2011). Here scholars fight over what exists in the world without a prior discussion as to how it is ontologically that we arrive at a place where we insist on the existential autonomy of categories in the first place. This means that we keep studying these cosmologies through ontologically incommensurate filters (not based on similar existential assumptions) thinking that in this way we will still be able to understand them and then use the knowledge generated through reduced filters to find effective strategies for engagement. Yet our ontological parochialism still translates into epistemic violence by not being able to hear, understand, engage their world in their own ontological terms. Simultaneously we continue to generate a skewed picture of the kinds of knowing and being practiced in distinct parts of the world and subsequently of world politics. Consequently the resulting “intelligibility gap” still reinforces certain ways of being and knowing in the world as more legitimate or acceptable than others, thus reinforcing the source of cosmological insecurity for those falling outside these parameters.

### Nation-state/they are wrong

#### Our uniqueness claim is a methodological takeout: globalization means the nation-state cannot hold. Their evidence presumes antiquated socio-ontological givens, statistical categories and research procedures.

Ulrich Beck and Natan Sznaider 10. Ulrich Beck. Department of Sociology, Ludwig-Maximilians-Universitat Munich. Natan Sznaider, School of Behavioral Sciences, Academic College of Tel-Aviv Yaffo, Israel. "Unpacking cosmopolitanism for the social sciences: a research agenda". Wiley Online Library. 1-15-2010. https://onlinelibrary.wiley.com/doi/full/10.1111/j.1468-4446.2009.01250.x

Indeed, the basic idea behind this special issue of the British Journal of Sociology is that ‘the light of the great cultural problems has moved on’ from a nation-state definition of society and politics to a cosmopolitan outlook. At this point the humanities and social sciences need to get ready for a transformation of their own positions and conceptual equipment – that is, to take cosmopolitanism as a research agenda seriously and raise some of the key conceptual, methodological, empirical and normative issues that the cosmopolitanization of reality poses for the social sciences. The intellectual undertaking of redefining cosmopolitanism is a trans-disciplinary one, which includes geography, anthropology, ethnology, international relations, international law, political philosophy and political theory, and now sociology and social theory (see Beck and Sznaider 2006). Cosmopolitanism is, of course, a contested term; there is no uniform interpretation of it in the growing literature. The boundaries separating it from competitive terms like globalization, transnationalism, universalism, glocalization etc. are not distinct and internally it is traversed by all kind of fault lines. Yet we will argue that the neo-cosmopolitanism in the social sciences –‘realistic cosmopolitanism’ or ‘cosmopolitan realism’– is an identifiable intellectual movement united by at least three interconnected commitments:

First, the shared critique of methodological nationalism which blinds conventional sociology to the multi-dimensional process of change that has irreversibly transformed the very nature of the social world and the place of states within that world. Methodological nationalism does not mean (as the term ‘methodological individualism’ suggests) that one or many sociologists have consciously created an explicit methodology (theory) based on an explicit nationalism. The argument rather goes that social scientists in doing research or theorizing take it for granted that society is equated with national society, as Durkheim does when he reflects on the integration of society. He, of course, has in mind the integration of the national society (France) without even mentioning, naming or thinking about it. In fact, not using the adjective ‘national’ as a universal language does not falsify but might sometimes even prove methodological nationalism. That is the case when the practice of the argument or the research presupposes that the unit of analysis is the national society or the national state or the combination of both. The concept of methodological nationalism is not a concept of methodology but of the sociology of sociology or the sociology of social theory.

Second, the shared diagnosis that the twenty-first century is becoming an age of cosmopolitanism. This could and should be compared with other historical moments of cosmopolitanism, such as those in ancient Greece, the Alexandrian empire and the Enlightenment. In the 1960s Hannah Arendt analysed the Human Condition, in the 1970s Francois Lyotard the Postmodern Condition. Now at the beginning of the twenty-first century we have to discover, map and understand the Cosmopolitan Condition.

Third, there is a shared assumption that for this purpose we need some kind of ‘methodological cosmopolitanism’. Of course, there is a lot of controversy about what this means. The main point for us lies in the fact that the dualities of the global and the local, the national and the international, us and them, have dissolved and merged together in new forms that require conceptual and empirical analysis. The outcome of this is that the concept and phenomena of cosmopolitanism are not spatially fixed; the term itself is not tied to the ‘cosmos’ or the ‘globe’, and it certainly does not encompass ‘everything’. The principle of cosmopolitanism can be found in specific forms at every level and can be practiced in every field of social and political action: in international organizations, in bi-national families, in neighbourhoods, in global cities, in transnationalized military organizations, in the management of multi-national co-operations, in production networks, human rights organizations, among ecology activists and the paradoxical global opposition to globalization.

Critique of methodological nationalism

Methodological nationalism takes the following premises for granted: it equates societies with nation-state societies and sees states and their governments as the primary focus of social-scientific analysis. It assumes that humanity is naturally divided into a limited number of nations, which organize themselves internally as nation-states and externally set boundaries to distinguish themselves from other nation-states. And it goes further: this outer delimitation as well as the competition between nation-states, represent the most fundamental category of political organization.

The premises of the social sciences assume the collapse of social boundaries with state boundaries, believing that social action occurs primarily within and only secondarily across, these divisions:

[Like] stamp collecting . . . social scientists collected distinctive national social forms. Japanese industrial relations, German national character, the American constitution, the British class system – not to mention the more exotic institutions of tribal societies – were the currency of social research. The core disciplines of the social sciences, whose intellectual traditions are reference points for each other and for other fields, were therefore domesticated– in the sense of being preoccupied not with Western and world civilization as wholes but with the ‘domestic’ forms of particular national societies (Shaw 2000: 68).

The critique of methodological nationalism should not be confused with the thesis that the end of the nation-state has arrived. One does not criticize methodological individualism by proclaiming the end of the individual. Nation-states (as all the research shows – see also the different contributions in this volume) will continue to thrive or will be transformed into transnational states. What, then, is the main point of the critique of methodological nationalism? It adopts categories of practice as categories of analysis. The decisive point is that national organization as a structuring principle of societal and political action can no longer serve as the orienting reference point for the social scientific observer. One cannot even understand the re-nationalization or re-ethnification trend in Western or Eastern Europe without a cosmopolitan perspective. In this sense, the social sciences can only respond adequately to the challenge of globalization if they manage to overcome methodological nationalism and to raise empirically and theoretically fundamental questions within specialized fields of research, and thereby elaborate the foundations of a newly formulated cosmopolitan social science.

As many authors – including the ones in this volume – criticize, in the growing discourse on cosmopolitanism there is a danger of fusing the ideal with the real. What cosmopolitanism is cannot ultimately be separated from what cosmopolitanism should be. But the same is true of nationalism. The small, but important, difference is that in the case of nationalism the value judgment of the social scientists goes unnoticed because methodological nationalism includes a naturalized conception of nations as real communities. In the case of the cosmopolitan ‘Wertbeziehung’ (Max Weber, value relation), by contrast, this silent commitment to a nation-state centred outlook of sociology appears problematic.

In order to unpack the argument in the two cases it is necessary to distinguish between the actor perspective and the observer perspective. From this it follows that a sharp distinction should be made between methodological and normative nationalism. The former is linked to the social-scientific observer perspective, whereas the latter refers to the negotiation perspectives of political actors. In a normative sense, nationalism means that every nation has the right to self-determination within the context of its cultural, political and even geographical boundaries and distinctiveness. Methodological nationalism assumes this normative claim as a socio-ontological given and simultaneously links it to the most important conflict and organization orientations of society and politics. These basic tenets have become the main perceptual grid of the social sciences. Indeed, this social-scientific stance is part of the nation-state's own self-understanding. A national view on society and politics, law, justice, memory and history governs the sociological imagination. To some extent, much of the social sciences has become a prisoner of the nation-state. That this was not always the case is shown in Bryan Turner's paper in this issue (Turner 2006: 133–51). This does not mean, of course, that a cosmopolitan social science can and should ignore different national traditions of law, history, politics and memory. These traditions exist and become part of our cosmopolitan methodology. The comparative analyses of societies, international relations, political theory, and a significant part of history and law all essentially function on the basis of methodological nationalism. This is valid to the extent that the majority of positions in the contemporary debates in social and political science over globalization can be systematically interpreted as transdisciplinary reflexes linked to methodological nationalism.

These premises also structure empirical research, for example, in the choice of statistical indicators, which are almost always exclusively national. A refutation of methodological nationalism from a strictly empirical viewpoint is therefore difficult, indeed, almost impossible, because so many statistical categories and research procedures are based on it. It is therefore of historical importance for the future development of the social sciences that this methodological nationalism, as well as the related categories of perception and disciplinary organization, be theoretically, empirically, and organizationally re-assessed and reformed.

What is at stake here? Whereas in the case of the nation-state centred perspective there is an historical correspondence between normative and methodological nationalism (and for this reason this correspondence has mainly remained latent), this does not hold for the relationship between normative and methodological cosmopolitanism. In fact, the opposite is true: even the re-nationalization or re-ethnification of minds, cultures and institutions has to be analysed within a cosmopolitan frame of reference.

Cosmopolitan social science entails the systematic breaking up of the process through which the national perspective of politics and society, as well as the methodological nationalism of political science, sociology, history, and law, confirm and strengthen each other in their definitions of reality. Thus it also tackles (what had previously been analytically excluded as a sort of conspiracy of silence of conflicting basic convictions) the various developmental versions of de-bounded politics and society, corresponding research questions and programmes, the strategic expansions of the national and international political fields, as well as basic transformations in the domains of state, politics, and society.

This paradigmatic de-construction and re-construction of the social sciences from a national to a cosmopolitan outlook can be understood and methodologically justified as a ‘positive problem shift’ (Lakatos 1970), a broadening of horizons for social science research making visible new realities encouraging new research programmes (Beck and Lau 2005; Beck, Bonss and Lau 2003: 1–35). Against the background of cosmopolitan social science, it suddenly becomes obvious that it is neither possible to distinguish clearly between the national and the international, nor, correspondingly, to make a convincing contrast between homogeneous units. National spaces have become denationalized, so that the national is no longer national, just as the international is no longer international. New realities are arising: a new mapping of space and time, new co-ordinates for the social and the political are emerging which have to be theoretically and empirically researched and elaborated.

This entails a re-examination of the fundamental concepts of ‘modern society’. Household, family, class, social inequality, democracy, power, state, commerce, public, community, justice, law, history, memory and politics must be released from the fetters of methodological nationalism, re-conceptualized, and empirically established within the framework of a new cosmopolitan social and political science. It would be hard to understate the scope of this task. But nevertheless it has to be taken up if the social sciences want to avoid becoming a museum of antiquated ideas.

### Globalization---COVID

#### COVID provides overarching uniqueness---it makes a post-Westphalian ruptures possible and necessary but not inevitable.

Jay Blumler and Stephen Coleman 21. Jay Blumler is Emeritus Professor of Public Communication at the University of Leeds and Emeritus Professor of Journalism at the University of Maryland. Stephen Coleman (corresponding author) is Professor of Political Communication at the University of Leeds. “After the Crisis, A “New Normal” for Democratic Citizenship?” Javnost - The Public, 28:1, 3-19, DOI: 10.1080/13183222.2021.1883884

The lesson we draw from these studies is that crises do not generate changes in norms and practices deterministically through some sort of metaphysical shock wave. Normative and practical changes are consequences of altered perceptions of meaning. Crises throw social meaning into disarray, fracturing seemingly settled accounts of who “we” are; whose social contributions are most important; how to speak about causes and effects; feasible scales of social coordination; what can and cannot be tolerated; and how to demonstrate accountability. In crises, contestations of meaning become more explicit. Claims that certain perspectives are beyond the pale have less clout. Ideas that had an incipient, but marginal presence in pre-crisis thinking might begin to be taken seriously. A mixture of nervous conjecture and confident extemporisation inflect the public conversation, undermining abiding certainties.

Faced with a historically exceptional combination of global pandemic and economic depression, some citizens and politicians reach for a new language of civic reflection. This is because any hope of tackling the unprecedented debt pressures, market failures, infrastructural collapse, population immobility, intensifying inequalities and collective trauma generated by the crisis will not only call for imaginative, coordinated and massively resourced policy responses, but a new way of talking about policy that is not weighed down by obsolete categories. In short, much depends upon whether people can find a common frame of reflection that will enable them to think, speak and act upon what binds them together as well as what divides them.

Politics arises when people disagree, and now that there are more and bigger problems than ever to disagree about it is vitally important to find ways of arguing that do not exacerbate uncertainty or intolerance. In any political disagreement there are two matters at stake: firstly, the nature of the dispute; secondly, the competing options for action. The second cannot be realised unless there is some clarity surrounding the first. The political theorist, William Connolly (1993, 2) suggests that the distinction between these tasks can be compared to the conventionally agreed meanings set out for juries before they deliberate on a legal case:

The jury examines the evidence and reaches a verdict but prior to its deliberations, the judge, acting as the official interpreter of the law, charges the jury with a set of responsibilities, establishes what can be considered as evidence, and specifies what constitutes a punishable offense … In charging the jury and in regulating the presentation of evidence to it, the judge, we might say, specifies the terms within which the jury considers evidence and reaches a verdict.

Of course, democratic public debate does not take place in a courtroom in which the rules of discourse can be laid down by an authoritative judge. The contestability of the terms of political discourse by the people themselves is a fundamental precondition of democracy. People must not only be able to have their say, but to determine what they are talking about; what matters and what things mean. This entails a capacity to argue about the very norms that underpin policy decisions and to communicate across differences, acknowledging normative disagreements as necessary features of political communication. It is to these matters of normative contestation that we refer when we suggest that “the new normal” depends upon finding a refreshed language of democratic citizenship. What form might this discursive reconfiguration take? How might it be incorporated into an emerging vernacular of civic discourse?

Re-Thinking the Space, Mediation and Contestation of Citizenship

Citizenship involves the performance of norms and practices through which people are bound to strangers within communities of co-existence. The traditional liberal conception of citizenship sees it as a relationship between individuals and the state entailing the exercise of duties and rights. Citizenship in this sense is a status bestowed on those who are full members of a polity. Anyone who possesses this status is equal, having all the rights and duties that come with legally sanctioned legitimacy. No universal principle determines what those rights and duties shall be, but over time societies tend to create images of the ideal citizen and direct individuals to aspire to them (Marshall 1964).

In contrast to this legalistic notion of citizenship, there is a broader, less state-bound characterisation which sees it as comprising a repertoire of practices that people inherit and devise in order to co-exist interdependently with others. In this broader sense, to act as a citizen is to engage in public situations of various kinds with people one might not know and who might not share one’s interests, tastes, values, or even language. Sometimes civic interactions will involve relations with governments, authorities, or employers. At other times they will relate to quotidian ways of living amongst neighbours and strangers. Performances of citizenship are both framed institutionally, conforming to conventional notions of political and civic participation (voting, joining parties and campaigns, following the news) and improvised from below, often transcending or resisting established civic scripts. Through such extemporised forms of social practice, citizens create what Arendt (1958, 198) refers to as “spaces of appearance”: “the space where I appear to others as others appear to me, where men (sic) exist not merely like other living or inanimate things, but make their appearance explicitly.”

The crisis induced by the pandemic raises fundamental questions about how citizens are to “make their appearance explicitly.” Most of the decisions and regulations responding to the crisis have been framed by political elites and legitimised by appeals to expert wisdom. Public involvement in shaping or making such decisions has been extremely limited, raising questions about the role of democratic publics in responding to critical issues that affect them. Moves to democratise crisis response are bound to consider fundamental questions about who constitutes “the public” (given the need to respond to social challenges that transcend political borders); how civic discourse is mediated (given the need to generate global narratives, conversations and concerted actions in the face of common threats) and how political differences can be both recognised and negotiated (given the urgent need for pluralistic publics to work through complex problems). It is to these questions that we now turn.

Constituting the Public Domain

The global pandemic has brought into sharp focus the spatial framing of political problems within national boundaries. Since the middle of the seventeenth century, politics has been conceived as “taking place” within national units characterised by territorial borders, sovereign authority, civically attached populations and bounded economic interests. The emergence of nation-states as a natural scale of political action and analysis is the defining feature of the Westphalian order in which to govern is to protect and enhance national state interests; to be a citizen is to belong to a nation state, thereby bound by specific geo-political responsibilities and rights; and to speak of democracy in an empirically meaningful sense is to refer to a mode of legitimacy operating at the nation-state level. The Westphalian view of political place established a firm distinction between domestic and foreign domains; inside and outside; the scope of national control and extraneous precariousness.

The robustness of these conceptual categories of inter-national social order have been called into question by the speed and density of global economic and cultural interconnections that have become increasingly manifest since the late twentieth century. The conception of the globally dominant capitalist market as a “world system” was elaborated in the mid-1970s by Immanuel Wallerstein (1974, 390) who urged social scientists to abandon the reification of the nation-state as the primary unit of politico-economic analysis. He argued that capitalism could only operate as a world economy “with a single division of labour and multiple cultural systems.” In short, states might be distinguished by cultural characteristics and domestic political projects, but they cannot escape their enmeshment in a global system of interdependent economic relations. Some theorists have celebrated globalisation as a modernising force, while others have warned against its homogenising flattening of cultures. Rejecting the simplistic notion of globalisation as “a single society and culture occupying the planet” (Waters 1995), more nuanced theorists have observed that the contemporary world is characterised by a marked tension between the specificity of place and the overriding dynamics of a global system. The latter frequently overrides the particularities of national statehood, economy and culture, while state actors do what they can to assert their independence. It makes sense to think of there being “multiple, overlapping, and sometimes contradictory globalisms” (Tsing 2000, 342), with states reshaping their territorial claims “on to both sub- and supra-national geographical scales” (Brenner 1999, 65). Such framing and reframing of political space depend as much upon symbolic mediation as upon the rules, treaties and logics of transnational institutions. In short, globalisation entails an ongoing struggle to tell people where and to what they belong.

The Covid-19 health crisis is a primary example of this battle to frame a global event. Most people acknowledge that the pandemic is truly global, albeit disparately pernicious in different parts of the world, and at different times. In relation to the urgent need for global coordination to find a vaccine, the insular ambitions of nations or regions seem manifestly petty and irrelevant. However, that has not stopped nationalist leaders from playing blame games in which they ascribe the origin of the virus to nefarious foreign states, or from making boastful claims that their public health strategy is “world-beating” rather than simply functional. Rarely has the disconnect between bombastic national rhetoric and empirical global reality seemed more conspicuous.

Given that the most pressing and intractable contemporary challenges can only be addressed through global coordination, the challenge of finding effective ways of communicating and acting beyond national silos seems more urgent than ever. From the spread of viruses to regulation of the environment, and from the direction of migration flows to the looming catastrophe of climate change, nation-states appear to be Canute-like before the irresistible waves of globalism. Left to themselves, nations squabble about who should take responsibility, constantly deferring meaningful action until others have made a move.

The inescapably global nature of the pandemic has shown the futility and risk of such an approach, casting doubt upon the pursuit of national solutions and pointing towards the urgency of appeals to transnational public agency. Faced with globally diffuse problems of viral contagion, climate change and market instability, the civic case for stretching the use and meaning of the term “we, the public” becomes compelling.

This important shift in collective self-consciousness entails the adoption of what Nancy Fraser (2007, 21) refers to as “the all-affected principle”:

Today, … the idea that citizenship can serve as a proxy for affectedness is no longer plausible. Under current conditions, one’s conditions of living do not depend wholly on the internal constitution of the political community of which one is a citizen. Although the latter remains undeniably relevant, its effects are mediated by other structures, both extra and non-territorial, whose impact is at least as significant … In general, globalization is driving a widening wedge between affectedness and political membership. As those two notions increasingly diverge, the effect is to reveal the former as an inadequate surrogate for the latter.

It follows from Fraser’s analysis that “what turns a collection of people into fellow members of a public is not shared citizenship, but their co-imbrication in a common set of structures and/or institutions that affect their lives” (ibid, 22). The logic of the all-affected principle rejects the notion that only national publics can confer democratic legitimacy, as the latter depends upon registering the voices of all those who are potentially affected by a problem, notwithstanding their national labels. This amounts to a post-Westphalian conception of citizenship in which, rather than being fragmented by artificial political divisions, the public is characterised by its common vulnerabilities, experiences and capacities. Members of post-Westphalian publics will continue to disagree with one another, of course, but the public sphere within which such political disagreement takes place will correspond to the dimensions of the issues at stake.

To be clear, it is only through the emergence of a cosmopolitan public domain in which solidarities are rooted in common affectedness rather than national-legal identities that global challenges such as the pandemic and economic depression, as well as climate change and other environmental threats, can be tackled democratically. This does not amount to a utopian call for citizens to adopt an abstractly cosmopolitan stance. Already competing with discourses of nationalism and populism in contemporary societies are many millions of voices across the world who view social problems from the perspective of a universal humanity sharing a common home. Such people are more inclined “to take risks by virtue of encountering the ‘other’” and to possess “some ability to reflect upon and judge aesthetically between different natures, places and societies” (Szerszynskiand and Urry 2002, 470). By understanding that “[g]lobalisation has brought large swathes of the world’s population closer together” in overlapping communities of fate (Held 2003, 478), many contemporary campaigners for social justice frame their arguments in terms of a language of cosmopolitan sensibility. These include movements opposing the structural inequalities of transnational economic power (such as Occupy Wall Street), ecological depredation (the School Strike for Climate Change), institutional sexism (MeToo) and racism (Black Lives Matter). The effectiveness of these campaigns in bringing injustices to global attention does not entail abandoning national institutions and populations as if they no longer matter, but framing messages to affected citizens within a cosmopolitan context that celebrates openness to global heterogeneity, pluralism and nuance.

As the pandemic highlights the limitations of the Westphalian conception of “normal” by forcing people from across the world to face up to their interdependence, both in terms of the transnational porosity of contagion and the resources needed to contain it, it calls attention to the aptness of a “new normal” in which shared social problems are addressed on a new scale. This adjustment of scale calls into being new conceptions of the public, defined increasingly in terms of shared affectedness.

Given that the most urgent crisis facing the world in the aftermath of the pandemic will be the threat of global catastrophe caused by climate change, the world is increasingly dependent upon the practical effectiveness of calls to action that are couched in a language of citizenship that transcends state borders and prioritises shared affectedness. The challenge of co-ordinating moral and political responses with a view to enhancing the public’s global agency is now a prerequisite for even modest success of efforts to save the planet from systemically wrought depredation. Could the public that has begun to develop a consciousness of its collective global vulnerability during the pandemic act upon such awareness beyond the current crisis?

### Link---Competition

#### The 1AC’s competitive-state model reinforces taken-for-granted nationalism---it makes answering transnational questions impossible.

Pauli Kettunen 21. Professor of Political History in the Social Science Faculty of University of Helsinki. "Welfare state, competition state, security state: Nationalism in nation-state responses to crossborder mobilities." In Remapping Security on Europe’s Northern Borders, pp. 201-220. Routledge, 2021.

Democratic welfare nationalism, competitiveness-seeking nationalism, and security-seeking nationalism appear as rational nation-state policies and are generally not associated with nationalism. It is reasonable to argue that the persistent limits of the conventional use of “nationalism” outside specialist studies of nations and nationalism indicate the power of nationalism as a taken-for-granted mode of thought and action. Taken-for-granted nationalism seems to be reinforced by the intertwining of democratic welfare nationalism with competitiveness-seeking and security-seeking nationalism. There is thus a self-reinforcing circle. The extent to which globalisation is defined as a national challenge reinforces the role of competitiveness and security in political agenda setting, and the extent to which competitiveness and security frame the political agenda assists them to maintain national perspectives to globalisation.

From the welfare-state, competition-state, and security-state perspectives “nationalism” is not a tool for self-description, but for condemning xenophobic and racist far-right nationalism. However, the taken-for-granted nationalism justifying the nation-state limits of these perspectives provides a readymade framework for xenophobic nationalism. The distinctions between us and others and between the internal and external are a shared point of departure, but instead of policies recognising their interdependencies, xenophobic nationalism turns the us-other distinction into an exclusionary us-against-them divide, and the internal-external distinction into a motive for stricter borders.

The emphasis on the national “us” in mainstream modes of combining welfare-state, competition-state, and security-state arguments may facilitate populist protests that accuse the elite of betraying the people. There are similarities with how the nation as an imagined community provided subordinated social groups with the criteria for a collective critique of existing society and created preconditions for the labour movement. However, while the working class was able to motivate its demands by referring to its central role in the production of life’s necessities, the social divides associated with current projects for a national competitive community give little scope for such arguments.

We may find that an insoluble tension appears between what is recognised as the institutional preconditions of competitiveness, and how its content is conceived. At the same time as egalitarian institutions and participatory practices can be defended as preconditions for knowledge-based competitiveness, true membership in a competitive community is a matter of individual competitiveness. This in turn consists of communicative and innovative skills, talent, and a reflexive capacity to monitor oneself from the perspective of competitiveness. Besides winners and losers, some people cannot even participate in this competition.

Individual deficiencies or the unavoidable imperatives of the global economy tend to be offered as explanations for grievances. Welfare-state policies aim to improve individual capacities and compensate for job losses, yet it is far from self-evident that people willingly accept individualised or naturalised explanations. Political implications may be found in constructions demarcating collective threat images and in the support for right-wing populist parties that have managed, not least in the Nordic countries, to merge nostalgic welfare nationalism and xenophobic nationalism.

While the emphasis on “us” in the making of national competitive communities is an integral part of global capitalism, the same transformations may also either erode the solidarity based on common spatial ties or open new crossnational and crossterritorial perspectives for defining “us”. A multicircle non-divisive understanding of “us” would arguably require a transnational democratic dimension in defining problems and solutions. Inspiration may be found in the ideas of policy coordination beyond nation states and European regional integration that Gunnar Myrdal proposed in his 1950s critique of the nationalism of democratic Western welfare states. In any case, even good answers to questions of national competitiveness and security fail to answer questions of democracy, citizenship, social equality, and the ecological preconditions of life. There is a risk that the reinforced emphasis on the competition-state and security-state aspects of the nation state will make it even more difficult to formulate such questions to effectively recognise that they are simultaneously local, national, European, and global.

#### Competitive national security identifies threats to perpetuate nationalism.

Pauli Kettunen 21. Professor of Political History in the Social Science Faculty of University of Helsinki. "Welfare state, competition state, security state: Nationalism in nation-state responses to crossborder mobilities." In Remapping Security on Europe’s Northern Borders, pp. 201-220. Routledge, 2021.

In the world of increased crossborder mobilities of capital, information, people, and viruses the practical implications of the nationalism of Western welfare states are more evident than they were at the time of Myrdal’s critical account. However, we have seen no expansion of the national welfare state into a Myrdalian welfare world. European welfare states have changed, partly through regional integration, but especially through national responses to global challenges, most notably to crossborder mobilities. Such responses aim to offer an attractive competitive operational environment for globally mobile companies, investors, and people representing “international talent”. Yet nation states have also developed policies to prevent the entry of unwanted people and meet immigration-related challenges by defining them as security threats. The welfare state is assessed by the criteria of national competitiveness and security, and reshaped accordingly.

The changes occurring through the national responses can be described by the concepts of the welfare, competition, and security states. It is useful to employ these terms for different institutional and functional aspects of the nation state instead of for its different phases. Changes in the roles and relationships of these aspects appear to be important. Arguably, a change historical institutionalists call “institutional convergence” (Mahoney and Thelen, 2010) has occurred, in which the old welfare-state institutions have been modified to serve new competition-state and security-state functions.

“We”, referring to a national community, is one of the most frequent words in economic rhetoric. National policies driven by internal common interest and will are intended to respond to what are defined as external challenges. This implies “a reifying of the global as external and the national as internal”, not only in public debate but in studies Saskia Sassen criticises as “the state adaptability scholarship” (Sassen, 2006, 169, 228). To develop my argument, the modes of reproducing the distinctions between the internal and external and between us and others in the shaping of the political agenda and agency are important. These distinctions are reproduced in combinations of democratic welfare nationalism, competitiveness-seeking nationalism, and security-seeking nationalism. Different combinations appear in connection with different “models” of national society, including the “Nordic model”, a popular expression referring to similarities of national institutions in Denmark, Finland, Iceland, Norway, and Sweden. Utilising existing research literature, including my own previous studies, I will discuss nationalism in nation-state responses to crossborder mobilities by focusing on the Nordic model and, especially, Finland as a specific Nordic case.

### AT: Perm

#### 1. Inclusion of the Westphalian grammar in frame-setting is an act of injustice that prevents transformative politics and makes global death inevitable.

Nancy Fraser 05. Henry A. and Louise Loeb Professor of Political and Social Science and professor of philosophy at The New School. “Reframing Justice in a Globalizing World, NLR 36, November–December 2005.” New Left Review. https://newleftreview-org.proxy.library.emory.edu/issues/ii36/articles/nancy-fraser-reframing-justice-in-a-globalizing-world

The politics of framing can take two distinct forms, both of which are now being practised in our globalizing world.footnote12 The first approach, which I shall call the affirmative politics of framing, contests the boundaries of existing frames while accepting the Westphalian grammar of frame-setting. In this politics, those who claim to suffer injustices of misframing seek to redraw the boundaries of existing territorial states or in some cases to create new ones. But they still assume that the territorial state is the appropriate unit within which to pose and resolve disputes about justice. For them, injustices of misframing are not a function of the general principle according to which the Westphalian order partitions political space. They arise, rather, as a result of the faulty way in which that principle has been applied. Thus, those who practise the affirmative politics of framing accept that the principle of state-territoriality is the proper basis for constituting the ‘who’ of justice. They agree, in other words, that what makes a given collection of individuals into fellow subjects of justice is their shared residence on the territory of a modern state and/or their shared membership in the political community that corresponds to such a state. Thus, far from challenging the underlying grammar of the Westphalian order, those who practise the affirmative politics of framing accept its state-territorial principle.

Precisely that principle is contested, however, in a second version of the politics of framing, which I shall call the transformative approach. For its proponents, the state-territorial principle no longer affords an adequate basis for determining the ‘who’ of justice in every case. They concede, of course, that that principle remains relevant for many purposes; thus, supporters of transformation do not propose to eliminate state-territoriality entirely. But they contend that its grammar is out of synch with the structural causes of many injustices in a globalizing world, which are not territorial in character. Examples include the financial markets, ‘offshore factories’, investment regimes and governance structures of the global economy, which determine who works for a wage and who does not; the information networks of global media and cybertechnology, which determine who is included in the circuits of communicative power and who is not; and the bio-politics of climate, disease, drugs, weapons and biotechnology, which determine who will live long and who will die young. In these matters, so fundamental to human well-being, the forces that perpetrate injustice belong not to ‘the space of places’, but to ‘the space of flows’.footnote13 Not locatable within the jurisdiction of any actual or conceivable territorial state, they cannot be made answerable to claims of justice that are framed in terms of the state-territorial principle. In their case, so the argument goes, to invoke the state-territorial principle to determine the frame is itself to commit an injustice. By partitioning political space along territorial lines, this principle insulates extra- and non-territorial powers from the reach of justice. In a globalizing world, therefore, it is less likely to serve as a remedy for misframing than as a means of inflicting or perpetuating it.

#### 2. Anti-competitive” framing pushes aside equality and collective interest---transforming value to “competitive” is an ideological power to revitalize the competition state and hollow out egalitarianism.

Pauli Kettunen 11. Professor of Political History in the Social Science Faculty of University of Helsinki. “Welfare Nationalism and Competitive Community.” In Welfare citizenship and welfare nationalism.

In their discussion on the competition state, Palan and Abbot strongly stress the diversity of the particular modes in which the competition state can be embedded in different nation-states and realised through different “state strategies”.44 Indeed, the change may take place within a remarkable institutional continuity, through an “institutional conversion”45. Old institutions of the welfare state and industrial relations can be and have been modified to serve new functions of the competitive community. Concerning working life, collective interest representation and even high social norms are considered not only as “rigidities”, but rather widely, as competitive advantages, as factors promoting the commitment of workers and the innovativeness of firms and their managements. Much of the ideological power of knowledge, training and innovation in the Nordic countries stems from the promise that competitiveness and its preconditions in the global economy can – or even must – be seen from a wider perspective than that of neo-liberalist deregulation. The concept of “social capital” has gained popularity while it has opened up new possibilities to revitalise ideas of the virtuous circle between social cohesion and economic success in the context of the competition state.

It makes a difference whether or not an individual’s opportunities to make her or himself competitive are shaped by more or less egalitarian systems of education and training, and it also makes a difference whether or not the encouragement of knowledge-based competition in working life is connected with collective institutions of social regulation. Nevertheless, a tension appears in Nordic discussions between what are presented as institutional preconditions of competitiveness and how the contents of competitiveness are conceived. At the same time as egalitarian institutions and participatory practices can be defended as preconditions for knowledge-based competitiveness, true membership in a competitive community is a matter of individual competitiveness. This consists of communicative and innovative skills and talents and reflexive capabilities of monitoring oneself from the point of view of competitiveness. From this sphere, the principles of social equality and collective interests have been pushed aside.

#### 3. Nationalizing Framework---Competition fixes the gaze---it necessitates otherization and comparative reflexivity.

Pauli Kettunen 21. Professor of Political History in the Social Science Faculty of University of Helsinki. "Welfare state, competition state, security state: Nationalism in nation-state responses to crossborder mobilities." In Remapping Security on Europe’s Northern Borders, pp. 201-220. Routledge, 2021.

Reforming the welfare state in the direction of the competition state clearly differs from Myrdal’s vision of expanding it into a welfare world. Critical visions of global policies could be opened from the universalistic principles of the national welfare state, as Myrdal, and later Pekka Kuusi (1985), did. Transforming the welfare state in the direction of the competition state fixes the gaze on national agency in a way that closes the window to such visions. “Welfare” does not itself imply a distinction between us and others; “competitiveness” does.

The importance of comparisons in national politics is no novelty, yet promoting the competitiveness of a nation in global competition implies new requirements of comparative reflexivity. “We” within a given territorial – local, regional, European, yet in the first place national – framework are supposed to make us attractive and competitive in the face of those who compare different environments from a transnational perspective in their decision making regarding flows of money, investment, and the location of production and jobs. This means being able to constantly assess one’s own actions and capacities from the varying and changing positions of those actors who compare us with others. In addition to divisions between us and others, the distinction between the internal and external is reproduced. Globalisation, notably the crossborder mobility of capital, is naturalised as necessities of external environment; national society is commodified as a competitive community.

### Unsustainable/Wrong/Offshoring---Globalization

#### Epochal transformation makes crisis transnational---methodological nationalism fails.

Ulrich Beck 14. Institute of Sociology, Munich, Germany. “We Do Not Live in an Age of Cosmopolitanism but in an Age of Cosmopolitization: The ‘Global Other’ is in Our Midst.” https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7124081/

The collapse of a world order is often a moment for reflection on the dominant social theory and research of the time, but surprisingly this is not the case today.1 Mainstream social theory still floats loftily above the lowlands of epochal transformations (climate change, financial crisis, nation-states) in a condition of universalistic superiority and instinctive certainty. This universalistic social theory, whether structuralist, interactionist, Marxist, critical or systems-theory, is now both out of date and provincial. Out of date because it excludes a priori what can be observed empirically: a fundamental transformation of society and politics within modernity (from first to second modernity)2; provincial because it mistakenly absolutizes the trajectory, the historical experience and future expectation of Western, i.e. predominantly European or North American, modernization and thereby also fails to see its own particularity.

This is why we need a cosmopolitan turn in social and political theory and research (Beck/Grande 2010a). How can social and political theory be opened up, theoretically, empirically as well as methodologically and normatively, to historically new, entangled modernities which threaten their own foundations? How can it account for the fundamental fragility and mutability of societal dynamics of domination and power shaped, as they are, by the globalization of capital and risks at the beginning of the twenty-first century? What theoretical and methodological problems arise and how can they be addressed in empirical research? Here I want to discuss these questions in five steps.

First, I will call into question one of the most powerful convictions about society and politics, one which binds both social actors and social scientists: methodological nationalism. Methodological nationalism equates modern society with society organized in territorially limited nation-states. Second, I propose to draw an essential distinction between cosmopolitanism in a normative philosophical sense and cosmopolitization as a social scientific research programme. Third, I am going to illustrate this paradigm shift by re-mapping social inequalities; and, fourth, by discussing world risk society and its political dynamics. Fifth and finally, I will pick up the question: what does a ‘cosmopolitan vision’ imply for the social sciences and humanities at the beginning of the twenty-first century?

### Turns Case

#### 3. Means only the alt can solve the case.

Nancy Fraser 12. Henry A. and Louise Loeb Professor of Political and Social Science and professor of philosophy at The New School. Can society be commodities all the way down? Polanyian reflections on capitalist crisis. 2012. ffhalshs-00725060f

Today, moreover, as many on the Left have long warned, and as Greeks have discovered to their dismay, the construction of Europe as an economic and monetary union, without corresponding political and fiscal integration, simply disables the protective capacities of member states without creating broader, European-level protective capacities to take up the slack. But that is not all. Absent global financial regulation, even very wealthy, free-standing countries find their efforts at national social protection stymied by global market forces, including transnational corporations, international currency speculators, financiers, and large institutional investors. The globalization of finance requires a new, post-westphalian way of imagining the arenas and agents of social protection. It requires arenas in which the circle of those entitled to protection matches the circle of those subject to risk; and it requires agents whose protective capacities and regulatory powers are sufficiently robust and broad to effectively rein in transnational private powers and to pacify global finance.

### Alternative

#### Taken-for-granted nationalism is up for contestation and determines the scope of justice ---the “who” of politics predetermines the “what” of policy. Only shifting the grammar of argument can address the global nature of crisis.

Nancy Fraser 05. Henry A. and Louise Loeb Professor of Political and Social Science and professor of philosophy at The New School. “Reframing Justice in a Globalizing World, NLR 36, November–December 2005.” New Left Review. https://newleftreview-org.proxy.library.emory.edu/issues/ii36/articles/nancy-fraser-reframing-justice-in-a-globalizing-world

Globalization is changing the way we argue about justice.footnote1 Not so long ago, in the heyday of social democracy, disputes about justice presumed what I shall call a ‘Keynesian-Westphalian frame’. Typically played out within modern territorial states, arguments about justice were assumed to concern relations among fellow citizens, to be subject to debate within national publics, and to contemplate redress by national states. This was true for each of two major families of justice claims—claims for socioeconomic redistribution and claims for legal or cultural recognition. At a time when the Bretton Woods system facilitated Keynesian economic steering at the national level, claims for redistribution usually focused on economic inequities within territorial states. Appealing to national public opinion for a fair share of the national pie, claimants sought intervention by national states in national economies. Likewise, in an era still gripped by a Westphalian political imaginary, which sharply distinguished ‘domestic’ from ‘international’ space, claims for recognition generally concerned internal status hierarchies. Appealing to the national conscience for an end to nationally institutionalized disrespect, claimants pressed national governments to outlaw discrimination and accommodate differences among citizens. In both cases, the Keynesian-Westphalian frame was taken for granted. Whether the matter concerned redistribution or recognition, class differentials or status hierarchies, it went without saying that the unit within which justice applied was the modern territorial state.footnote2

To be sure, there were always exceptions. Occasionally, famines and genocides galvanized public opinion across borders. And some cosmopolitans and anti-imperialists sought to promulgate globalist views.footnote3 But these were exceptions that proved the rule. Relegated to the sphere of ‘the international’, they were subsumed within a problematic that was focused primarily on matters of security, as opposed to justice. The effect was to reinforce, rather than to challenge, the Keynesian-Westphalian frame. That framing of disputes about justice generally prevailed by default from the end of the Second World War to the 1970s.

Although it went unnoticed at the time, this framework lent a distinctive shape to arguments about social justice. Taking for granted the modern territorial state as the appropriate unit, and its citizens as the pertinent subjects, such arguments turned on what precisely those citizens owed one another. In the eyes of some, it sufficed that citizens be formally equal before the law; for others, equality of opportunity was also required; for still others, justice demanded that all citizens gain access to the resources and respect they needed in order to be able to participate on a par with others, as full members of the political community. The argument focused, in other words, on exactly what should count as a just ordering of social relations within a society. Engrossed in disputing the ‘what’ of justice, the contestants apparently felt no necessity to dispute the ‘who’. With the Keynesian-Westphalian frame securely in place, it went without saying that the ‘who’ was the national citizenry.

Today, however, this framework is losing its aura of self-evidence. Thanks to heightened awareness of globalization, and to post-Cold War geopolitical instabilities, many observe that the social processes shaping their lives routinely overflow territorial borders. They note, for example, that decisions taken in one territorial state often have an impact on the lives of those outside it, as do the actions of transnational corporations, international currency speculators, and large institutional investors. Many also note the growing salience of supranational and international organizations, both governmental and non-governmental, and of transnational public opinion, which flows with supreme disregard for borders through global mass media and cybertechnology. The result is a new sense of vulnerability to transnational forces. Faced with global warming, the spread of aids, international terrorism and superpower unilateralism, many believe that their chances for living good lives depend at least as much on processes that trespass the borders of territorial states as on those contained within them.

Under these conditions, the Keynesian-Westphalian frame no longer goes without saying. For many, it has ceased to be axiomatic that the modern territorial state is the appropriate unit for thinking about issues of justice, and that the citizens of such states are the pertinent subjects of reference. The effect is to destabilize the previous structure of political claims-making—and therefore to change the way we argue about social justice.

This is true for both major families of justice claims. In today’s world, claims for redistribution increasingly eschew the assumption of national economies. Faced with transnationalized production, the outsourcing of jobs, and the associated pressures of the ‘race to the bottom’, once nationally focused labour unions look increasingly for allies abroad. Inspired by the Zapatistas, meanwhile, impoverished peasants and indigenous peoples link their struggles against despotic local and national authorities to critiques of transnational corporate predation and global neoliberalism. Finally, wto protestors directly target the new governance structures of the global economy, which have vastly strengthened the ability of large corporations and investors to escape the regulatory and taxation powers of territorial states.

In the same way, movements struggling for recognition increasingly look beyond the territorial state. Under the umbrella slogan ‘women’s rights are human rights’, for example, feminists throughout the world are linking struggles against local patriarchal practices to campaigns to reform international law. Meanwhile, religious and ethnic minorities, who face discrimination within territorial states, are reconstituting themselves as diasporas and building transnational publics from which to mobilize international opinion. Finally, transnational coalitions of human-rights activists are seeking to build new cosmopolitan institutions, such as the International Criminal Court, which can punish state violations of human dignity.

In such cases, disputes about justice are exploding the Keynesian-Westphalian frame. No longer addressed exclusively to national states or debated exclusively by national publics, claimants no longer focus solely on relations among fellow citizens. Thus, the grammar of argument has altered. Whether the issue is distribution or recognition, disputes that used to focus exclusively on the question of what is owed as a matter of justice to community members now turn quickly into disputes about who should count as a member and which is the relevant community. Not just the ‘what’ but also the ‘who’ is up for grabs.

Today, in other words, arguments about justice assume a double guise. On the one hand, they concern first-order questions of substance, just as before. How much economic inequality does justice permit, how much redistribution is required, and according to which principle of distributive justice? What constitutes equal respect, which kinds of differences merit public recognition, and by which means? But above and beyond such first-order questions, arguments about justice today also concern second-order, meta-level questions. What is the proper frame within which to consider first-order questions of justice? Who are the relevant subjects entitled to a just distribution or reciprocal recognition in the given case? Thus, it is not only the substance of justice, but also the frame, which is in dispute. The result is a major challenge to our theories of social justice. Preoccupied largely with first-order issues of distribution and/or recognition, these theories have so far failed to develop conceptual resources for reflecting on the meta-issue of the frame. As things stand, therefore, it is by no means clear that they are capable of addressing the double character of problems of justice in a globalizing age.footnote4

In this essay, I shall propose a strategy for thinking about the problem of the frame. I shall argue, first, that theories of justice must become three-dimensional, incorporating the political dimension of representation alongside the economic dimension of distribution and the cultural dimension of recognition. I shall also argue that the political dimension of representation should itself be understood as encompassing three levels. The combined effect of these two arguments will be to make visible a third question, beyond those of the ‘what’ and the ‘who’, which I shall call the question of the ‘how’. That question, in turn, inaugurates a paradigm shift: what the Keynesian-Westphalian frame cast as the theory of social justice must now become a theory of post-Westphalian democratic justice.

Specificity of the political

Let me begin by explaining what I mean by justice in general and by its political dimension in particular. In my view, the most general meaning of justice is parity of participation. According to this radical-democratic interpretation of the principle of equal moral worth, justice requires social arrangements that permit all to participate as peers in social life. Overcoming injustice means dismantling institutionalized obstacles that prevent some people from participating on a par with others, as full partners in social interaction. Previously, I have analysed two distinct kinds of obstacles to participatory parity, which correspond to two distinct species of injustice. On the one hand, people can be impeded from full participation by economic structures that deny them the resources they need in order to interact with others as peers; in that case they suffer from distributive injustice or maldistribution. On the other hand, people can also be prevented from interacting on terms of parity by institutionalized hierarchies of cultural value that deny them the requisite standing; in that case they suffer from status inequality or misrecognition.footnote5 In the first case, the problem is the class structure of society, which corresponds to the economic dimension of justice. In the second case, the problem is the status order, which corresponds to its cultural dimension. In modern capitalist societies, the class structure and the status order do not neatly mirror each other, although they interact causally. Rather, each has some autonomy vis-à-vis the other. As a result, misrecognition cannot be reduced to a secondary effect of maldistribution, as some economistic theories of distributive justice appear to suppose. Nor, conversely, can maldistribution be reduced to an epiphenomenal expression of misrecognition, as some culturalist theories of recognition tend to assume. Thus, neither recognition theory nor distribution theory alone can provide an adequate understanding of justice for capitalist society. Only a two-dimensional theory, encompassing both distribution and recognition, can supply the necessary levels of social-theoretical complexity and moral-philosophical insight.footnote6

That, at least, is the view of justice I have defended in the past. And this two-dimensional understanding of justice still seems right to me as far as it goes. But I now believe that it does not go far enough. Distribution and recognition could appear to constitute the sole dimensions of justice only so long as the Keynesian-Westphalian frame was taken for granted. Once the question of the frame becomes subject to contestation, the effect is to make visible a third dimension of justice, which was neglected in my previous work—as well as in the work of many other philosophers.footnote7

The third dimension of justice is the political. Of course, distribution and recognition are themselves political in the sense of being contested and power-laden; and they have usually been seen as requiring adjudication by the state. But I mean political in a more specific, constitutive sense, which concerns the nature of the state’s jurisdiction and the decision rules by which it structures contestation. The political in this sense furnishes the stage on which struggles over distribution and recognition are played out. Establishing criteria of social belonging, and thus determining who counts as a member, the political dimension of justice specifies the reach of those other dimensions: it tells us who is included in, and who excluded from, the circle of those entitled to a just distribution and reciprocal recognition. Establishing decision rules, the political dimension likewise sets the procedures for staging and resolving contests in both the economic and the cultural dimensions: it tells us not only who can make claims for redistribution and recognition, but also how such claims are to be mooted and adjudicated.

Centred on issues of membership and procedure, the political dimension of justice is concerned chiefly with representation. At one level, which pertains to the boundary-setting aspect of the political, representation is a matter of social belonging. What is at issue here is inclusion in, or exclusion from, the community of those entitled to make justice claims on one another. At another level, which pertains to the decision-rule aspect, representation concerns the procedures that structure public processes of contestation. Here, what is at issue are the terms on which those included in the political community air their claims and adjudicate their disputes.footnote8 At both levels, the question can arise as to whether the relations of representation are just. One can ask: do the boundaries of the political community wrongly exclude some who are actually entitled to representation? Do the community’s decision rules accord equal voice in public deliberations and fair representation in public decision-making to all members? Such issues of representation are specifically political. Conceptually distinct from both economic and cultural questions, they cannot be reduced to the latter, although, as we shall see, they are inextricably interwoven with them.

To say that the political is a conceptually distinct dimension of justice, not reducible to the economic or the cultural, is also to say that it can give rise to a conceptually distinct species of injustice. Given the view of justice as participatory parity, this means that there can be distinctively political obstacles to parity, not reducible to maldistribution or misrecognition, although (again) interwoven with them. Such obstacles arise from the political constitution of society, as opposed to the class structure or status order. Grounded in a specifically political mode of social ordering, they can only be adequately grasped through a theory that conceptualizes representation, along with distribution and recognition, as one of three fundamental dimensions of justice.

Three levels of misrepresentation

If representation is the defining issue of the political, then the characteristic political injustice is misrepresentation. Misrepresentation occurs when political boundaries and/or decision rules function to deny some people, wrongly, the possibility of participating on a par with others in social interaction—including, but not only, in political arenas. Far from being reducible to maldistribution or misrecognition, misrepresentation can occur even in the absence of the latter injustices, although it is usually intertwined with them. At least two different levels of misrepresentation can be distinguished. Insofar as political decision rules wrongly deny some of the included the chance to participate fully, as peers, the injustice is what I call ordinary-political misrepresentation. Here, where the issue is intra-frame representation, we enter the familiar terrain of political science debates over the relative merits of alternative electoral systems. Do single-member-district, winner-take-all, first-past-the-post systems unjustly deny parity to numerical minorities? And if so, is proportional representation or cumulative voting the appropriate remedy? Likewise, do gender-blind rules, in conjunction with gender-based maldistribution and misrecognition, function to deny parity of political participation to women? And if so, are gender quotas an appropriate remedy? Such questions belong to the sphere of ordinary-political justice, which has usually been played out within the Keynesian-Westphalian frame.

Less obvious, perhaps, is a second level of misrepresentation, which concerns the boundary-setting aspect of the political. Here the injustice arises when the community’s boundaries are drawn in such a way as to wrongly exclude some people from the chance to participate at all in its authorized contests over justice. In such cases, misrepresentation takes a deeper form, which I shall call misframing. The deeper character of misframing is a function of the crucial importance of framing to every question of social justice. Far from being of marginal significance, frame-setting is among the most consequential of political decisions. Constituting both members and non-members in a single stroke, this decision effectively excludes the latter from the universe of those entitled to consideration within the community in matters of distribution, recognition, and ordinary-political representation. The result can be a serious injustice. When questions of justice are framed in a way that wrongly excludes some from consideration, the consequence is a special kind of meta-injustice, in which one is denied the chance to press first-order justice claims in a given political community. The injustice remains, moreover, even when those excluded from one political community are included as subjects of justice in another—as long as the effect of the political division is to put some relevant aspects of justice beyond their reach. Still more serious, of course, is the case in which one is excluded from membership in any political community. Akin to the loss of what Hannah Arendt called ‘the right to have rights’, that sort of misframing is a kind of ‘political death’.footnote9 Those who suffer it may become objects of charity or benevolence. But deprived of the possibility of authoring first-order claims, they become non-persons with respect to justice.

It is the misframing form of misrepresentation that globalization has recently begun to make visible. Earlier, in the heyday of the postwar welfare state, with the Keynesian-Westphalian frame securely in place, the principal concern in thinking about justice was distribution. Later, with the rise of the new social movements and multiculturalism, the centre of gravity shifted to recognition. In both cases, the modern territorial state was assumed by default. As a result, the political dimension of justice was relegated to the margins. Where it did emerge, it took the ordinary-political form of contests over the decision rules internal to the polity, whose boundaries were taken for granted. Thus, claims for gender quotas and multicultural rights sought to remove political obstacles to participatory parity for those who were already included in principle in the political community. Taking for granted the Keynesian-Westphalian frame, they did not call into question the assumption that the appropriate unit of justice was the territorial state.

Today, in contrast, globalization has put the question of the frame squarely on the political agenda. Increasingly subject to contestation, the Keynesian-Westphalian frame is now considered by many to be a major vehicle of injustice, as it partitions political space in ways that block many who are poor and despised from challenging the forces that oppress them. Channelling their claims into the domestic political spaces of relatively powerless, if not wholly failed, states, this frame insulates offshore powers from critique and control.footnote10 Among those shielded from the reach of justice are more powerful predator states and transnational private powers, including foreign investors and creditors, international currency speculators, and transnational corporations. Also protected are the governance structures of the global economy, which set exploitative terms of interaction and then exempt them from democratic control. Finally, the Keynesian-Westphalian frame is self-insulating; the architecture of the interstate system protects the very partitioning of political space that it institutionalizes, effectively excluding transnational democratic decision-making on issues of justice.

From this perspective, the Keynesian-Westphalian frame is a powerful instrument of injustice, which gerrymanders political space at the expense of the poor and despised. For those persons who are denied the chance to press transnational first-order claims, struggles against maldistribution and misrecognition cannot proceed, let alone succeed, unless they are joined with struggles against misframing. It is not surprising, therefore, that some consider misframing the defining injustice of a globalizing age. Under these conditions, the political dimension of justice is hard to ignore. Insofar as globalization is politicizing the question of the frame, it is also making visible an aspect of the grammar of justice that was often neglected in the previous period. It is now apparent that no claim for justice can avoid presupposing some notion of representation, implicit or explicit, insofar as none can avoid assuming a frame. Thus, representation is always already inherent in all claims for redistribution and recognition. The political dimension is implicit in, indeed required by, the grammar of the concept of justice. Thus, no redistribution or recognition without representation.footnote11

In general, then, an adequate theory of justice for our time must be three-dimensional. Encompassing not only redistribution and recognition, but also representation, it must allow us to grasp the question of the frame as a question of justice. Incorporating the economic, cultural and political dimensions, it must enable us to identify injustices of misframing and to evaluate possible remedies. Above all, it must permit us to pose, and to answer, the key political question of our age: how can we integrate struggles against maldistribution, misrecognition and misrepresentation within a post-Westphalian frame?

### Alt---Movements prove

#### Our contestation of the “who” of politics is open cosmopolitanism. Think the WSF’s transnational, crisscrossed networks of anti-nationalist, open public spheres that reimagine just, desirable future---bottom up, agile movements can address global crisis by resisting hegemonic lifeworlds of competition.

Giuseppe Caruso 17. “Open Cosmopolitanism and the World Social Forum: Global Resistance, Emancipation, and the Activists’ Vision of a Better World.” Globalizations, 14:4, 504-518, DOI: 10.1080/14747731.2016.1254413

The resurgence over the past three decades of a cosmopolitan discourse is related to, on the one hand, the expansion of market-led globalisation and, on the other, the intensification of social and political mobilisation for social justice. The fall of the Berlin Wall introduced a vision of global unity predicated on the global spread of neo-liberal doctrines. Liberalisation, privatisation, and devolution fostered by global governance institutions—the World Bank, IMF, and WTO—affected the global dynamics of production, trade, and governance. Concurrently, a global culture began to develop carried by waves of consumer goods and by the flooding of the global airwaves (and fibre optics) with entertainment products which established or reinforced global cultural stereotypes and entrenched values of competition, individualism, and consumerism. Narratives about the survival of the fittest increasingly express human relationships and social arrangements

As neo-liberalism was hailed by conservative elites as the panacea to social problems and the engine of global development, its dark side was increasingly resisted in protests around the world targeting labour market deregulation, environmental degradation, poverty, inequality, and exploitation. Localised forms of resistance grew in scale with the intensification of electronic communication between activists. In 1999, weaving networks that criss-crossed the planet, an unprecedented activist convergence burst into the public scene in the Seattle mobilisation against the WTO. The critical mass achieved in Seattle moved in waves to successive demonstrations such as those against the World Bank and the IMF in Prague in 2000 or the G8 in Genoa in 2001 (Della Porta, Andretta, Mosca, & Reiter, 2006; Pleyers, 2010; Smith, Byrd, Reese, & Smythe, 2011). In January 2001, the first World Social Forum (WSF) took place in Porto Alegre, Brazil (Conway, 2013; Juris, 2008a; Teivainen, in press). Grown out of the alterglobalisation movement and shaped by Brazilian activists, WSF’s more recent roots lay in the anti-imperialist, anti-colonialist, peace, and pro-democracy movements since the 1960s and in the alternative NGO forums to the UN conferences of the 1990s (Correa Leite, 2003; Fisher & Ponniah, 2003; Glasius, 2005; Seoane & Taddei, 2002; Wallerstein, 2004; Waterman, 2004).

The WSF is the world’s largest and most diverse transnational activist initiative to date. Its global events in Brazil, India, Kenya, Mali, Pakistan, Venezuela, Senegal, Tunisia, and Canada, and the dozens of regional, national, and local avatars have gathered millions of participants and tens of thousands of civil society organisations and social movements (Massiah, 2011).1 The WSF was developed as a counter-event to the World Economic Forum (WEF), a gathering of the world’s wealthiest CEOs and most influential finance ministers, heads of government, and academics. Its meetings focus on market expansion and economic development. WSF’s activists, instead, stress social and environmental justice when imagining desirable futures. They privilege equity over individual wealth, harmony with over exploitation of the environment, and shared responsibility over profit. The WSF has been described as a global public sphere (Conway & Singh, 2009; Doerr, 2008; Glasius, 2005; Hardt, 2002), a global network of social movements (Byrd & Jasny, 2010; Juris, 2008a; Waterman, 2004), a utopian space (Tormey, 2005), a space of intentionality (Juris, 2008b), an embryonic party (ChaseDunn & Reese, 2007; Marcuse, 2005; Patomaki & Teivainen, 2004), or a contact zone (Conway, 2011) in which alliances develop transversally (Housseini, 2013) across multiple political cleavages (Santos, 2004).

WSF’s most inspiring political and organisational innovation has been the ‘open space’. The open space, a bottom-up and participatory methodology for social change, provides a context for the creation of knowledge and experience beyond a directive pursuit of change (Whitaker, 2005). This formula rallied unprecedented numbers of activists from very diverse backgrounds. The open space is the organisational representation of the political environment in which WSF’s open cosmopolitanism takes shape. WSF’s unique cosmopolitan vision is developed both as resistance against neo-liberal cosmopolitanism and as a methodology of individual and collective emancipation. The nature of WSF’s cosmopolitan aspiration has been discussed by Janet Conway and Boaventura de Souza Santos. Scholars familiar with the WSF, they framed WSF’s cosmopolitanism as decolonial (Conway 2011, 2013) 2 and subaltern (Santos, 2004, 2005a). Dialogue (Conway, 2012) and translation (Santos, 2005b) are among the strategies deployed to develop WSF’s field and to extend its reach across world society. The two authors differ in the understandings of the tensions and conflicts in the WSF. Santos sees the cleavages traversing the WSF as a guarantee of openness against the domination of one ideological and organisational form. Conway warns about power dynamics among WSF participants and points at the contradictions of a space in which structures of domination not only are not challenged, but through denial are also in fact strengthened.

WSF’s open cosmopolitanism, I argue, invokes a struggle for global justice built on dissent and resistance, driven by emancipatory aspirations, and fuelled by a global alliance against neo-liberal globalisation: dissent against any totalitarianism that denies social complexities, that attempts to subsume them forcefully, or that attempts to annihilate them; resistance against hegemonic lifeworlds; emancipatory because it is predicated on individuals’ and groups’ self-determination. In previous examinations, I have described the WSF in terms of ‘emancipatory cosmopolitanism’ (2012b) and ‘open cosmopolitanism’ (2012a). Here, I consider the latter as a recursive process of power and resistance, conflict and emancipation taking place both across and within the boundaries of WSF’s open space. Open cosmopolitanism understands that denied conflict between allies reinforces dynamics of domination and that courageous engagements of those conflicts, however painful and apparently destabilising of activists’ contingent goals, promote trust and, potentially, effectiveness (Caruso, 2004).

Open cosmopolitanism is not based on a blueprint, it develops in fits and starts, it is traversed by powerful ambivalences, it often suffers setbacks, and its outcomes are not foreseeable and are always open to reframing and reinterpretation as the activists’ work develops into new and previously unimaginable forms. Power dynamics, ideological cleavages, and pragmatic concerns about organisation, alliance building, and strategic efficacy traverse the open space and, according to some, challenge WSF’s ability to pursue its goals (Worth & Buckley, 2009; Zibechi, 2012). Criticism centred on the extent to which the excitement that the WSF generated among activists may be justified; on the gap between values and practices in the open space; on the disappointment generated by the unrealistic investments in the possibility for global social change afforded by the WSF; and, more recently, on the ability of the WSF to adapt to a changed political environment. Tensions, internal struggles, and critical analysis, I argue, contribute to make WSF’s cosmopolitan project, though apparently harder to achieve, more realistic (but by no means easier) than statements of universal solidarity among global activists or, even more, among all human beings united in a common destiny on a shared planet. When acknowledged and worked through, conflicts and power dynamics contribute to the recursive nature of the struggle for individual and collective emancipation. As conflicts are engaged and negotiated and as the ambivalent nature of human existence is made central to groups’ organisation, resistance to domination becomes the ground on which the alternative is constructed and emancipation can realistically be achieved. WSF’s open cosmopolitanism is here understood as the struggle between Empire and Cosmopolis as discussed by Gills (2005). This struggle is not only represented by the opposition of WSF’s Cosmopolis to the WEF’s Empire, but also, more broadly, as the struggle between two contending visions of human existence and global community. With Gills, I understand these contending visions as the expression of a ‘perennial historical tension, [which is] deeply embedded in history and human psyche’ (2005, p. 5). I have been involved in the WSF since 2002. The present article is based on material collected during participant observation in four continents complemented by extensive virtual ethnography and unstructured interviews.3 The remainder of this article is organised as follows. The next section discusses WSF’s founding cosmopolitan principles. The following introduces WSF’s cosmopolitan practices. Section 4 discusses conflict in the open space. Section 5 spells out WSF’s open cosmopolitanism. Section 6 concludes.