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#### FTC enforcing algorithmic bias now---wins with strong authority and resources

K.C. Halm 21. Partner at Davis Wright Tremaine LLP, with Nancy Libin, 4/26/21. “FTC Warns of Greater Scrutiny Over Biased AI, Offers Best Practices to Mitigate Potential Harm.” https://www.dwt.com/blogs/artificial-intelligence-law-advisor/2021/04/ftc-ai-bias-best-practices-guidance

Building on prior guidance issued in 2020, the Federal Trade Commission (FTC) recently warned in a new blog post that it will use its authority under existing laws to take enforcement action against companies that sell or use algorithms or artificial intelligence (AI) technology that results in discrimination by race or other legally protected classes. The agency urged companies developing or using AI to ensure their AI tools or applications do not result in biased outcomes because a failure to do so may result in "deception, discrimination—and an FTC [] enforcement action." The agency's latest pronouncement leaves no doubt that the FTC will be actively reviewing the market for potential bias or discrimination when AI-enabled applications and services are used to provide access to housing, credit, finance, insurance, or other important services. As our readers know, AI is emerging as a transformative technology that is enabling new systems, tools, applications, and use cases. At the same time, perceived risks arising from potential bias, discrimination, or other negative outcomes is leading regulators to look more closely at both the benefits and potential risks of the technology. To that end, the FTC is moving quickly to assert itself as a leading regulator with authority to oversee a broad range of AI providers, systems, and applications on the market. Basis of Potential AI-related FTC Enforcement Actions Three statutes provide the FTC significant authority to act in this area. Specifically, Section 5 of the FTC Act prohibits unfair or deceptive practices. The FTC's latest statement suggests that the agency believes it can use Section 5 authority, for example, to penalize entities selling or using "racially biased algorithms." Further, the agency also has authority to act under the Fair Credit Reporting Act (FCRA), which could be applied when an algorithm is used in a process that results in the denial of employment, housing, credit, insurance, or other benefits. Similarly, the Equal Credit Opportunity Act (ECOA)—which prohibits a company from using a biased algorithm that results in credit discrimination on the basis of race, color, religion, national origin, sex, marital status, age, or because a person receives public assistance—could be another basis for the agency to act. Thus, for example, if your algorithm results in credit discrimination against a protected class, you could find yourself facing a complaint alleging violations of the FTC Act and ECOA. Notably, the FTC's blog post is framed as both guidance and a reaffirmation that the FTC has been policing issues around AI and big data for many years and sends a clear signal that it intends to do so going forward. This reinforces Acting Chair Rebecca Kelly Slaughter's recent speech on algorithmic discrimination in which she cited a study demonstrating that an algorithm used with good intentions—to target medical interventions to the sickest patients—ended up funneling resources to a healthier, white population, to the detriment of sicker, patients of color. She asked the FTC staff "to actively investigate biased and discriminatory algorithms" and expressed an interest "in further exploring the best ways to address AI-generated consumer harms." Indeed, as we explained in recent blog posts, recent FTC enforcement actions reflect increased scrutiny of companies using algorithms, automated processes, and/or AI-enabled applications. The FTC's recent settlement with Everalbum is instructive in that it illustrates the agency's latest remedial tool: the so-called "disgorgement" of ill-gotten data. In the recent enforcement case, the FTC alleged that Everalbum, an app developer that used photos uploaded by users to train its facial recognition technology, failed to properly obtain users' consent. The agency also alleged that Everalbum made false statements about the users' ability to delete their photos upon deactivating their accounts. On these facts, the FTC secured a settlement and consent decree that required Everalbum to delete algorithms that used the data obtained without consent—a remedy that is akin to the "fruit of the poisonous tree" concept—and obtain consent before using facial recognition technology on user content. The FTC's latest reaffirmation of its authority to act in this area demonstrates that the agency will hold businesses accountable for using AI that may result in biased outcomes or for making promises that the technology cannot deliver. Its message is clear: "Hold yourself accountable – or be ready for the FTC to do it for you."

#### Antitrust undermines privacy enforcement.

David Hyman 19 – Professor at Georgetown University Law Center, with William E. Kovacic, “Implementing Privacy Policy: Who Should Do What?” 29 Fordham Intell. Prop. Media & Ent. L.J. 1117 (2019). https://ir.lawnet.fordham.edu/iplj/vol29/iss4/3

The case for making an enhanced FTC the national privacy regulator is straightforward. Of all U.S. privacy implementation institutions, the FTC has unequaled capacity in the form of expert case handling and policy teams and physical resources (including the development, over the past decade, of an internet laboratory to do high-quality forensic work, and the hiring of technology experts to assist in that effort). The agency’s capacity also is the product of extensive experience in applying its UDAP authority and enforcing statutes such as the FCRA and COPPA. The FTC has a broad portfolio of policy instruments (litigation, rulemaking, consumer and business education, data collection, the preparation of reports, the convening of conferences), and it has demonstrated its ability to use all of them to good effect in the privacy domain. The FTC’s stature as an independent agency gives it additional credibility in the eyes of foreign officials, who generally distrust the vesting of privacy powers in an executive department.

Within an enhanced FTC, privacy policy implementation also would be informed by the Commission’s larger experience with consumer protection. The FTC’s privacy unit is one part of its Bureau of Consumer Protection, rather than being a self-contained bureau. This reflected the institution’s reasonable view that the effort to safeguard consumer interests in “privacy” was one dimension of “consumer protection,” rather than a wholly distinct policy realm. Our impression is that many matters that involve privacy issues also raise problems that fit within other areas of the FTC’s consumer protection program. The analysis of the “privacy” issue often benefits from perspectives developed in the course of applying the agency’s deception and unfairness authority in other cases. The intertwining of privacy issues with other consumer protection concerns in many scenarios has important implications for how the mandate of a privacy agency should be defined. In whatever setting one ultimately might place a “privacy” mandate, we would expect that the host agency would have a mandate that incorporates powers that traditionally have been associated with the FTC’s broader consumer protection program.83

The FTC’s expertise in antitrust should also help it develop and enforce privacy policy. Enforcing antitrust law has given the FTC ongoing involvement in multiple high-tech markets—as well as an understanding of how competition can motivate companies to offer better privacy protections. The FTC’s work in both consumer protection and antitrust draws upon a Bureau of Economics with over 80 PhDs in economics.84 The Bureau of Economics has developed considerable skill in sub-disciplines (including behavioral economics) with special application to privacy issues.

Of course, inputs are not the same thing as outputs. The FTC has not always achieved the full integration of perspectives that the combination of these institutional capacities would permit. And, although there are policy complementarities across the domains of antitrust, consumer protection, and privacy, this combination of functions is not an unmixed blessing. An agency with all three functions might seek to use its position as a gatekeeper with respect to one policy domain to leverage concessions from firms over which it exercises oversight in another domain.85 Such temptations have been present when the FTC has applied its antitrust powers to review mergers involving companies in the information services sector.86

Finally, there is the possibility that any one of these functions might be diminished if all three are contained in the same agency. An agency focused solely on privacy will make privacy policy its single concern. An agency responsible for antitrust, consumer protection, and privacy is likely to find itself making tradeoffs as it sets priorities for how to use its resources.

#### Unchecked algorithmic bias risks massive inequality and extinction.

Mike Thomas 20. Quoting AI experts including MIT Physics Professors, Senior Features Writer for BuiltIn. THE FUTURE OF ARTIFICIAL INTELLIGENCE: 7 ways AI can change the world for better ... or worse, Updated: April 20, 2020, <https://builtin.com/artificial-intelligence/artificial-intelligence-future>

Klabjan also puts little stock in extreme scenarios — the type involving, say, murderous cyborgs that turn the earth into a smoldering hellscape. He’s much more concerned with machines — war robots, for instance — being fed faulty “incentives” by nefarious humans. As MIT physics professors and leading AI researcher Max Tegmark put it in a 2018 TED Talk, “The real threat from AI isn’t malice, like in silly Hollywood movies, but competence — AI accomplishing goals that just aren’t aligned with ours.” That’s Laird’s take, too. “I definitely don’t see the scenario where something wakes up and decides it wants to take over the world,” he says. “I think that’s science fiction and not the way it’s going to play out.” What Laird worries most about isn’t evil AI, per se, but “evil humans using AI as a sort of false force multiplier” for things like bank robbery and credit card fraud, among many other crimes. And so, while he’s often frustrated with the pace of progress, AI’s slow burn may actually be a blessing. “Time to understand what we’re creating and how we’re going to incorporate it into society,” Laird says, “might be exactly what we need.” But no one knows for sure. “There are several major breakthroughs that have to occur, and those could come very quickly,” Russell said during his Westminster talk. Referencing the rapid transformational effect of nuclear fission (atom splitting) by British physicist Ernest Rutherford in 1917, he added, “It’s very, very hard to predict when these conceptual breakthroughs are going to happen.” But whenever they do, if they do, he emphasized the importance of preparation. That means starting or continuing discussions about the ethical use of A.G.I. and whether it should be regulated. That means working to eliminate data bias, which has a corrupting effect on algorithms and is currently a fat fly in the AI ointment. That means working to invent and augment security measures capable of keeping the technology in check. And it means having the humility to realize that just because we can doesn’t mean we should. “Our situation with technology is complicated, but the big picture is rather simple,” Tegmark said during his TED Talk. “Most AGI researchers expect AGI within decades, and if we just bumble into this unprepared, it will probably be the biggest mistake in human history. It could enable brutal global dictatorship with unprecedented inequality, surveillance, suffering and maybe even human extinction. But if we steer carefully, we could end up in a fantastic future where everybody’s better off—the poor are richer, the rich are richer, everybody’s healthy and free to live out their dreams.”

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#### The United States federal government should substantially increase prohibitions on patent thickets through non-antitrust regulations by

#### - Shifting fees in patent cases to the loser, requiring plaintiffs to post a bond at the beginning of the case

#### Expanding the review procedure from AIA Section 18 to cover all business method and software patents

#### Eliminating Civil Form 18

#### Making plaintiffs responsible for the costs of discovery beyond core documents

#### - revise the Hatch-Waxman act to limit the scope of patent monopoly and streamline PTO procedures

#### Solves their sham litigation internal link

Patent Progress No Date. “Common Sense Solutions to the Patent Troll Problem.” https://www.patentprogress.org/patent-troll-reform/common-sense-solutions-to-the-patent-troll-problem/

Members of both parties agree that the patent troll problem has gotten out of hand. For example, Rep. Chaffetz said: “Patent trolls contribute nothing to the economy. No industry is immune to these attacks. Instead of creating jobs and growing the economy, businesses are wasting resources to fight off frivolous lawsuits.” And Sen. Leahy acknowledged: “There is more Congress can do to improve the patent system and address the problem of patent trolling, by increasing transparency and accountability.”

1. Trolls shouldn’t be allowed to use the crushing cost of litigation as a weapon.

Proposal: Shift fees in patent cases to the loser, requiring plaintiffs to post a bond at the beginning of the case.

Trolls thrive on a business model that makes settlement the lower-cost option for defendants, even when they would ultimately succeed if the case were to go to trial. The cost of litigation, coupled with the inability to recover fees, leads defendants to settle otherwise meritless cases. Therefore, by creating some form of fee-shifting requirement, like that proposed by Reps. DeFazio and Chaffetz in the SHIELD Act, defendants would feel less pressure to settle in order to save money and fight the cases that need and deserve to be fought. Requiring trolls to post a bond would ensure that patent holding corporations with no assets don’t bring the suits, leaving the defendant with a bankrupt plaintiff to seek fees from.

Small competitor companies should be allowed to request that the bond be waived, and this request should be granted at the judge’s discretion. The bond is to prevent shell companies with no assets from bringing suit.

2. Let all industries benefit from the success of enhanced review for the financial services industry.

Proposal: Expand the existing review procedure from AIA Sec. 18 to cover all business method and software patents.

Business method and software patents are typically vague, broad, and abstract. That makes them the frequent weapon of choice for patent trolls. Section 18 of the America Invents Act created a strong review procedure for “covered business method patents,” which were limited to financial products or services. As proposed by Sen. Schumer in the Patent Quality Improvement Act, this review should extend to at least all business method patents. It should be extended further to all software patents as well.

3. Hold patent trolls to the same pleading standards as everyone else; defendants have a right to know what they are accused of doing wrong.

Proposal: Eliminate Civil Form 18.

Although the standard for pleading a complaint has been raised by the Supreme Court in recent years, trolls evade this and file vague complaints, relying on a recent Federal Circuit decision, K-Tech Telecoms. v. Time Warner, which created a sui generis, patent-specific pleading standard. Under this patent-specific rule, a plaintiff need only complete Civil Form 18 of the Federal Rules of Civil Procedure. Compare K-Tech Telecoms. v. Time Warner, Nos. 2012-1425, 1446 (Fed. Cir. April 18, 2013) with Bell Atl. Corp. v. Twombly, 550 U.S. 544 (2007) and Ashcroft v. Iqbal, 556 US 662 (2009). As a result, an accused infringer often has no idea what it is accused of having infringed, or how. Eliminating Form 18 would require patent trolls to meet the same pleading requirements as other plaintiffs.

4. Prevent costly fishing expeditions made to drive up the cost of litigation.

Proposal: Plaintiffs should be responsible for the costs of discovery beyond core documents. If the plaintiff ultimately prevails, they can always be reimbursed.

Patent trolls can drive discovery costs into the millions in order to force settlement. Courts should prohibit such fishing expeditions. Defendants should only be required to produce certain “core” documents regarding limited topics such as the patent, the relevant features of the accused product, the prior art, and summary financial information. The cost of any other document production should be borne by the requesting party, to be reimbursed if they prevail.

#### The counterplan PICs out of anti-trust legislation and the FTC and DOJ as enforcers---other agencies’ regulations solve.

Lawrence Fullerton et al. 08. Joel M Mitnick, William V Reiss, George C Karamanos and Owen H Smith. Sidley Austin LLP. Vertical Agreements The regulation of distribution practices in 34 jurisdictions worldwide. “United States.” https://www.sidley.com/-/media/files/publications/2008/03/getting-the-deal-through--vertical-agreements-2008/files/view-united-states-chapter/fileattachment/united-states-21.pdf

5 What entity or agency is responsible for enforcing prohibitions on anticompetitive vertical restraints? Do governments or ministers have a role?

The Federal Trade Commission (FTC) and the Antitrust Division of the Department of Justice (DoJ) are the two federal agencies responsible for the enforcement of federal antitrust laws. The FTC and the DoJ have jurisdiction to investigate many of the same types of conduct, and therefore have adopted a clearance procedure pursuant to which matters are handled by whichever agency has the most expertise in a particular area.

Additionally, other agencies, such as the Securities and Exchange Commission and Federal Communications Commission, maintain oversight authority over regulated industries pursuant to various federal statutes, and therefore may review vertical restraints for anti-competitive effects.

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#### The fifty states and all relevant territories should substantially increase prohibitions on patent thickets

#### Autonomous state action solves

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At the federal level, the U.S. antitrust laws—including the Sherman Act and the Clayton Act, which governs mergers and acquisitions—are enforced by the FTC and DOJ. States also have antitrust laws, which are enforced by state AGs and are often patterned after their federal analogs, but can contain important differences. States frequently collaborate with the federal antitrust agencies and/or other states on merger investigations. However, the Supreme Court has recognized that states are not required to do so, and have the right to make enforcement decisions that differ from other federal and state authorities.[[3]](https://www.jdsupra.com/legalnews/trends-in-state-antitrust-enforcement-42950/#_ftn3) States have sometimes exercised this authority in order to “fill the gap” of perceived under-enforcement at the federal level. For example, in June 2017, the California AG sued to block Valero Energy Partners LP’s acquisition of two petroleum terminals in Northern California, despite the FTC’s decision not to challenge the deal. Several months later, the parties abandoned the transaction. More broadly, in recent years, there has been a growing trend of robust and autonomous state antitrust enforcement, as illustrated by major investigations and enforcement actions by state coalitions in the healthcare, pharmaceutical, telecom, and technology sectors, among others. Consistent with this trend, Colorado AG Phil Weiser—who previously served as Deputy Assistant Attorney General in the DOJ Antitrust Division under the Obama administration—has affirmed his commitment to “protecting all Coloradans from anticompetitive consolidation and practices…whether or not the federal government acts to protect Coloradans.” In keeping with this mandate, the Amendment will bring Colorado increasingly in line with states such as California and New York that have demonstrated an appetite for aggressive, independent antitrust enforcement, even where it may depart (or conflict) with federal action.

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#### Anti-trust is a capitalist psy op to pacify the working class, buy time to mystify unsustainable accumulation, and map competition onto subjectivity – homo economicus devalues life.

Lebow 19 [David Lebow – Lecturer on Social Studies at Harvard University and lawyer, “Trumpism and the Dialectic of Neoliberal Reason,” Perspectives on Politics 18(2):380-398, doi:10.1017/S1537592719000434]

I. Neoliberal Reason

As Michel Foucault and others have argued, neoliberalism entails far more than an economic doctrine favoring deregulated markets.4 It is a novel form of governmentality—a rationality linked to technologies of power that govern conduct, not just through direct state action but through liberty itself.5 Not isolated to the traditionally demarcated sphere of economics, neoliberal society entails a whole economic-juridical order.

The central program of neoliberal **governmentality** is the absolute generalization of competition as a universal behavioral norm. Whereas in liberal thought, the root principle of capitalism was exchange of equivalents, for neoliberal reason it is competition entailing inequality. The key result of market processes goes from specialization to selection. The competitive market is the exclusive site of rationality. It processes information, indicated by price, and is the only mechanism of producing knowledge, defined as what is profitably utilizable. Because consumers are free to refuse inferior goods or services, the price mechanism of the market system ensures optimal solutions and maximal satisfaction of preferences.

Liberal capitalism, as Karl Polanyi argued, required the construction of “fictitious” commodities like land and labor.6 These abstract, exchangeable factors of production had to be disembedded from concrete non-market social relations, norms, and values. Instead of merely disembedding commodities, neoliberalism intervenes to make competitive mechanisms regulate every moment and point in society. It strives to build an empire of market choice that invades every domain of life, and deposes all other social, political and solidaristic institutions and values.

Neoliberalism does not allege that markets are natural; competition must be constructed. Rather than endorsing laissez-faire overseen by a night watchman, it stipulates a strong state engaged in permanent vigilance, activity, and intervention to maintain artificial competition. It must not plan outcomes, which would upset the market’s innate rationality, and must be insulated from political disturbances. Economic interventionism leads down the road to serfdom; fascism and unlimited state power are its necessary results. A “minimum of economic interventionism” on the “mechanisms of the market” must be accompanied by “maximum legal interventionism” on the “conditions of the market.”7 Fixed, formal rules make up an economic constitution that inhibits planning, repulses political disruptions, and impartially safeguards competition. The state is the executor of the market and growth is the basis of public legitimacy. Governance depoliticizes public power, promotes ostensibly post-ideological technical problem-solving by experts, and relies on “best-practices” that dissolve the distinction between public and private organization.8

Unlimited generalization of competition yields an enterprise society in which calculations of supply/demand and cost/benefit become the model of all social relations. Neoliberal reason renders homo economicus, based on this model of the enterprise, the exhaustive figuration of human subjectivity. The center of economic thought shifts from labor and processes of production, exchange, and consumption to human capital and rational decision-making under conditions of scarcity. Capital is everything that can generate future income; wages are reconceived as income from capital. Labor is no longer comprehended as a commodity exchanged for a wage, but as a combination of human capital (the worker’s education and abilities) and the income stream it generates. This neoliberal subject is an aggregate of human capital who invests in his own income-generating abilities.

Neoliberalism replaces the invariant identity of the moral person as a rights-bearing citizen with a formally empty receptacle filled up through enterprising choices. It brushes aside models of freedom as self-rule achieved through moral autonomy or popular sovereignty.9 In the neoliberal “democracy of consumers,” individual consumers together constitute the sovereign that monopolizes the issuance of legitimate commands.10 Sovereign will is expressed not through political channels, but by choices in the “plebiscite of prices.”11 Whereas producers have particular interests like protectionism, consumers have a consensual and common interest; all favor the impartial functioning of market processes. In the neoliberal free society, consumers exercise their right to choose in complete independence.

II. From Keynesian State Capitalism to Neoliberal Deregulation

Situating the 2008 crisis in a historical account of American political and economic development clarifies its broader significance. The early twentieth-century Progressives were disdainful of what they took to be the chaos and waste of fin de siècle laissez-faire society. They strove to build a new American state that would replace the structural and rights-based formalisms of the nineteenth century with direct democracy and expert administration. It took the Great Depression and New Deal to bring into full bloom the Progressive commitment to pragmatic rationality. Thereafter, the “policy state” was authorized to pursue designated social goals and develop the means to accomplish them.12 The slew of New Deal innovations included state oversight of labor negotiations, invigorated antitrust, Keynesian countercyclical deficits to stimulate demand and increase purchasing power, an expansive public sector sheltered from the business cycle, aggressive banking regulation, and social insurance. Regulation and redistribution ensured the conditions necessary for an economic system based on capital accumulation, private property, and corporate profit to endure.

To many, the differences between the New Deal and Nazi political economies appeared less significant than their common response to monopoly capitalism. Both erased boundaries between state and society by politicizing the private sphere and authorizing public bureaucracies to rationalize crisis-prone economies. Frankfurt School member Friedrich Pollock suggested that this common “state capitalism” had solved the contradiction between the forces and relations of production, and thus overcome the economy’s crisis tendencies. It seemed to him that management had become merely technical and “nothing essential” had been “left to the laws of the market.”13 Worries abounded that the private law sphere of property and contract was necessary for individual freedom. Despite salient differences between Nazi and New Deal state capitalism, many feared that intervention into society was a waystation to domination. Unease about the specter of American despotism motivated development of mechanisms to ensure that interventionism did not devolve into arbitrary rule.14 Expertise was one justification and limitation of the policy state. Authority could be safely delegated to a new corps of public-spirited administrators because their scientific knowledge would not only make them effective, but also counsel restraint. Enduring misgivings led later to new laws of administrative process. The procedural state was legitimated by its defenders as being a substantively value-neutral and instrumentally rational machine serving goals set by society. Regulatory decision-making was shunted into the abstruse procedures of courtrooms and bureaucracies. Defenders of the state emphasized that its processes of allocating authority were neutral, impartial, and open to all. The balanced accommodation of all interest groups seeking to exercise influence would yield an equilibrium corresponding to the public interest.15

The intermeshing of state and society through interest groups, agencies, and professionalized parties marginalized the public. The sovereign public opinion that Progressives had hoped would rationalize government gave way to the rationality supposedly inherent in processes of public law, public-private negotiation, and regulated markets. The state was endowed with a diffuse legitimacy in exchange for a growing economy, broad distribution, and ongoing household capacity to consume.16 The Keynesian welfare settlement pacified the working class, protecting the market economy from more radical political pressures. Newly available, mass-produced commodities encouraged leveled-down notions of citizenship as welfare clientelism and privatistic consumption. As the state expanded and routinized, the initial politicization of private property relations through public intervention developed into depoliticized economic management by lawyers and social scientists organized by administrative and judicial processes.

The terms of the social contract preserving the coexistence of capitalism and democracy had been set. In exchange for a pacified citizenry and depoliticized regulatory authority, the policy state promised to deploy instrumental reason to sustain both capital accumulation and widely distributed capacity to consume (supported, always, by the exclusion of African Americans). During the decades of postwar growth, these twin responsibilities seemed attainable and compatible. Capitalism functioned smoothly enough and potentially delegitimating inequality was clipped by inflation, tax-based welfare, and collectively negotiated wages. But in the late 1960s and early 1970s, weakening growth, stagflation, trade deficits, and the collapse of Bretton Woods revealed that state capitalism had not solved the problems of economics. As the Great Depression had enabled construction of the instrumentally rational policy state, economic disturbances in the 1970s opened the breach into which neoliberal reason entered to reconfigure the political economy. Rather than shielding rational policy-making from political pressure and assuring broadly distributed welfare, neoliberalism promised growth driven by depoliticized markets freed from regulation and downwards redistribution. Believing in the optimal rationality of competitive markets, neoliberals sought to reinvigorate capital accumulation through deregulation, lowered taxes, financialization, privatization, and market expansion.

Liberating accumulation from the restrictions and obligations incurred under state capitalism might have imperiled capitalism’s peace treaty with democracy. For deregulation to proceed without impairing the system’s legitimacy, the quid pro quo—depoliticization for consumption—had to continue. Over the ensuing decades, as Wolfgang Streeck explains, the state “bought time” by finding new ways to generate illusions of widely distributed prosperity that prolonged the capacity of the lower and middle classes to consume.17 Each successive attempt exhausted itself, leading to new and escalating disturbances. In the 1970s, inflation safeguarded social peace by compensating workers for inadequate growth until stagflation ended this mode of buying time. A subsequent reliance on public debt enabled the government to pacify conflict with borrowed money. Rising debt and balking creditors delimited this phase, which was brought to a definitive close with the Clinton administration’s social spending cuts and balanced budgets. In a final stage that dawned in the 1980s but grew increasingly paramount over time, debt-based support of purchasing power was privatized. Household spending was financed through mortgages, student loans, and credit cards. This “privatized Keynesianism” buoyed consumption up through 2008, despite cuts to social spending, falling wages, and tightening employment markets.18

Each device for upholding spending maintained the legitimacy of the depoliticized political economy, even as liberalization continued to strip the wage-dependent population of regulatory and redistributive safeguards. The end of the inflation era brought structural unemployment and weakened trade unions. The passing of the public debt regime meant cuts to social rights, privatization of social services, and a trimmed public sector. Growing private debt enabled people to hold on despite lost savings, and rising under- and unemployment. At every step, the neoliberal project was “dressed up” as a consumption project.19 Continuing consumption ensured legitimacy long enough to enact total transformation of the political economy.

The state could not buy time indefinitely. The 1970s had already witnessed the beginning of the transition from a manufacturing, production-oriented economy that exported surpluses to an import-based, finance and services economy focused on consumption. As the United States went from creditor to debtor, a system of “balanced disequilibrium” took hold.20 With impunity granted as the world’s reserve currency, the United States ran mounting budget and trade deficits. To finance them, it absorbed surplus capital from abroad, much of which wended its way to Wall Street. Banks used these profits to extend credit to the working- and middle- classes. Household debt funded consumption of imported goods, returning the surplus capital abroad, and completing the circuit of global trade. This system depended on the unsustainable condition of ever-increasing debt-based consumption. Consumption was notoriously reinforced by secondary markets in what was essentially private money (securitized derivatives and collateralized debt obligation) that was much riskier than assumed. Because increasingly irresponsible lending was integral to continuing the consumption that stabilized the macroeconomic system, it became a sort of vicious collective good that progressively magnified the scale of the inevitable crash.21 When in 2008 the debt finally proved unserviceable and the housing bubble burst, the private money disappeared and the disequilibrated global economic system fell into crisis.

Consumption based on private debt had provided an unstable bridge over the yawning inequality brought about by deregulation, financialization, globalization, and the diminished welfare state. When the 2008 crisis dried up credit, it revealed a divided “dual economy.”22 On one side is the primary sector of elite, highly-educated professionals who are collected in coastal urban centers and tied in to corporate management, technological innovation and oversight of global capital flows. On the other is the secondary sector of low-skilled workers primarily fixed in the heartland, for whom deregulated competition has brought under- or unemployment, job instability, depressed wages, exploding debt, and diminished prospects.

Unable to buy more time, the state’s breach of the postwar social contract has been exposed. The neoliberal system of capital accumulation was entrenched at the expense of broad and sustainable consumption. The results have been the politicization of defrauded citizens and a political economy plunged into legitimation crisis. Time has belied the premature conclusion that contradiction and crisis potential had been overcome by state capitalism. Contradiction was relocated into cross-cutting imperatives for the state to enable capital accumulation and distribute consumption. In hindsight, we find only a window of stabilization of an enduring crisis potential built into capitalist political economy. As Nancy Fraser puts it “on the one hand, legitimate, efficacious public power is a condition of possibility for sustained capital accumulation; on the other hand, capitalism’s drive to endless accumulations tends to destabilize the very public power on which it relies.”23 The political fallout from the 2008 crisis marks the end of the postwar social contract that had established conditions ensuring the continued coexistence of capitalism and democracy.

#### Capitalism drives extinction and structural violence

Allinson et al 21 [Jamie Allinson is Senior Lecturer in Politics and International Relations at Edinburgh University and author of The Age of Counter-revolution. China Miéville is the author of a number of highly acclaimed and prize-winning novels including October: The History of the Russian Revolution. Richard Seymour is the author of numerous works of non-fiction, His writing appears in the New York Times, London Review of Books, Guardian, Prospect, Jacobin. Rosie Warren is an Editor at Verso and the Editor-in-Chief of Salvage. All are writing for the Salvage Collective. “The Tragedy of the Worker: Toward the Proletarocene.” Introduction. July 2021. Verso EBook. ISBN: 9781839762963 //shree]

This is the question that vexed us as we set out to write The Tragedy of the Worker. From the vantage point of the present, the history of capitalist development is, as Marx expected, the history of the development of a global working class, the proletarianisation of the majority of the world’s population. But the very same process of that development has brought us to the precipice of climate disaster. Our position, to recall Trotsky’s rationalisation of War Communism in 1920, is in the highest degree tragic.

It is now clear that we will pass what scientists have long warned will be a tipping point of global warming, accelerating the already catastrophic consequences of capitalist emissions. How do we imagine emancipation on an at best partially habitable planet? Where once communists imagined seizing the means of production, taking the unprecedented capacities of capitalist infrastructures and using them to build a world of plenty, what must we imagine after the apocalypse has befallen us? What does it mean that as capitalism has become truly global, the gravediggers it has created dig not only capitalism’s grave, but also that of much organic life on earth?

Our answers to these questions remain rooted in the politics of revolutionary communism. Our stance is not based on the fantasy of a homeostatic nature that must be defended but on the critique of the capitalist metabolism – the Stoffwechsel- that must be overthrown. Earth scientists are accustomed to speak in terms of ‘cycles’ by which substances circulate in different forms: the water cycle, the rock cycle, the nitrogen cycle, the glacial-interglacial cycle, the carbon cycle, and others. One way of registering the catastrophe of climate change is to see these cycles – most of all, but not solely, the carbon cycle – as disordered, under- or over-accumulating. But this is to ignore the more fundamental circuit of which these now form epicycles, like Ptolemy’s sub-orbits of the heavenly bodies: the circuit of capital accumulation, M-C-M′.

This circuit accumulates profit and produces death. Neither is accidental. It is for this reason that the debates that capitalist ruling classes permit among themselves on ‘adaptation’ versus ‘mitigation’ take place on false premises. What is to be mitigated is the impact of climate change on accumulation, rendered through the ideology of ‘growth’ as something that benefits everyone. What we are to adapt to are the parameters of accumulation, sacrificing just enough islands, eco-systems, indigenous – and non-indigenous – cultures to maintain its imperatives for a period of time until new thresholds must be crossed, and new life sacrificed to the pagan idol of capital. Already, capitalist petro-modernity builds a certain quantum of acceptable death into its predicates: at the very least, the 8.7 million killed by fossil fuels each year according to Harvard University are considered a price worth paying for the stupendous advantages of fossil capital. And the sky can only keep going up, as deforestation, polar melt, ocean acidification, soil de-fertilisation and more intense wildfires and storms tear the web of life into patches. If the necropolitical calculus of the Covid-19 pandemic appears crass, just wait until its premises are applied to climate catastrophe.

#### Vote neg for anti-capitalist commons – collectives should refuse commitments to competitive principle and the straitjacket of what’s “realistic”

Rose 21 [Nick. PhD in Political Ecology from RMIT University. Executive Director of Sustain: The Australian Food Network. From the Cancer Stage of Capitalism to the Political Principle of the Common: The Social Immune Response of “Food as Commons.” Int J Health Policy Manag 2021. 3-31-21. DOI: 10.34172/ijhpm.2021.20 //shree]

Silvia Federici provides a longer historical perspective, noting that ‘commoning is the principle by which human beings have organised their existence for thousands of years;’ and that to ‘speak of the principle of the common’ is to speak ‘not only of small-scale experiments [but] of large-scale social formations that in the past were continent-wide.’87 Hence a commons-based society is neither a utopia or reducible to fringe projects, and the commons have persisted despite the many and continuing enclosures, ‘feeding the radical imagination as well as the bodies of many commoners.’87 Federici acknowledges that commons and practices of commoning are diverse, that many are susceptible to cooptation and many are consistent with the persistence of capitalism; indeed some, such as charities providing social services (including foodbanks) during the years of austerity budgets in the United Kingdom (2010-2015), reinforce and stabilise capitalism.87 What matters to Federici is the character and intentionality of the commons as anti-capitalist, as ‘a means to the creation of an egalitarian and cooperative society…no longer built on a competitive principle, but on the principle of collective solidarity [and commitments] to the creation of collective subjects [and] fostering common interests in every aspect of our lives.’87

Federici’s analysis resonates with the political thought and proposals developed by Dardot and Laval in their 2018 work, ‘On Common: Revolution in the 21st century.’11 For Dardot and Laval, the common is likewise understood as a principle of political struggle, a demand for ‘real democracy’ and a major driving force behind the emerging articulation of a political vision and programme that transcends and overcomes the straitjacket logic of neoliberal ideological hegemony and its ‘policy grammar’ which appears to foreclose all alternatives and lock us forever into a capitalist realism in which ‘it is easier to imagine the end of the world than it is to imagine the end of capitalism.’89 Eschewing Bollier’s ‘triarchy’ of a market/state/ commons coexistence, Dardot and Laval argue for a politics of the common based on an engaged citizenry that directly participates and deliberates in all decisions which impact it, and in the process not merely transforms the institutions responsible for the management of services and allocation of resources, but creates new institutions and new ways of being in the world.11

Dardot and Laval describe this form of politics as ‘instituent praxis’: the common, they argue, is ‘not produced but instituted.’11 This acknowledges the conventional understanding of Ostrom, Bollier and others of ‘the commons’ as residing in the rules – the laws – that a community establishes for the collective management and use of shared resources, but extends it much further and in a more radical direction. The essence of the commons, they argue, is not in the goods per se such as land or a forest or a seed bank ‘held in common,’ but rather in the process of their establishment as well as the ongoing negotiation that will surround their use and governance. Hence, Dardot and Laval distinguish the commons from the ‘rights’ tradition of property, arguing that ‘the commons are above all else matters of institution and government…the use of the commons is inseparable from the right of deciding and governing. The practice that institutes the commons is the practice that maintains them and keeps them alive and takes full responsibility for their conflictuality through the coproduction of rules.’90 To ‘institute’ in this context should not be misunderstood as ‘to institutionalise [or] render official;’ rather it is ‘to recreate with, or on the basis of, what already exists.’ 90 This messy, conflictual and evolving process is what Dardot and Laval insist will ultimately bring about a revolution, not in the form of a violent uprising or insurrection, but rather through the ‘reinstitution of society’ via the transformation of politics and economy from its current state of ‘representative oligarchy’ to full participatory and deliberative democracy.11 Such a vision is premised on a mass politicisation of society; in effect a return of mass popular political contestation and a turn away from the postpolitical era of the neoliberal consumer.91-92

### OFF

Next off is the rule making counterplan---

#### Text: The United States federal government should delegate antitrust rulemaking authority to a new expert agency. The agency should begin notice-and-comment rulemaking to substantially increase prohibitions on patent thickets

#### Solves the case, engages notice and comment.

Rebecca Haw 11. Climenko Fellow and Lecturer on Law, Harvard Law School. J.D., Harvard Law School, 2008; M. Phil, Cambridge University, 2005; B.A., Yale University, 2001."Amicus Briefs and the Sherman Act: Why Antitrust Needs a New Deal." Texas Law Review, vol. 89, no. 6, May 2011, p. 1247-1292. HeinOnline.

Without the informational benefits of expertise and notice-and-comment rulemaking, the Court may be a poor choice to define the broad proscriptions of the Sherman Act. Framed this way, the problem has an obvious solution: give the power to interpret the Act to an expert agency.240 This idea has academic support already, 241 and the case for it is strengthened by this Article's observation that the Court has tried to approximate administrative decision making by relying on amicus briefs. The obvious candidates for reallocation are the two existing antitrust agencies: the Department of Justice's Antitrust Division and the FTC.

A. The Agency Solution

Using agencies to give specific meaning to American antitrust's most important statute means avoiding the problems with the Court's current quasi-administrative process for rulemaking. As adjudicators, agency experts would know what kind of economic evidence is necessary for an efficient solution and would be better able to understand it when it is presented by the parties. Repeat exposure to antitrust cases would only reinforce this advantage, while also giving the administrative judges a broader perspective on what kinds of conflicts commonly arise in competition law, a perspective necessary for efficient policy making in the first instance. A Supreme Court Justice hears about one antitrust case a year, hardly the cross section of controversies necessary to make efficient economic policy writ large.

Agencies could take policy making a step further using notice-and-comment rulemaking. Unlike in adjudication, regulation by rulemaking can be initiated without the formal requirements of a case or controversy and a proper appeal to the Supreme Court. Informal letters of complaint could spark an investigation. A rule-making agency could announce its intention to regulate publicly and provide a convenient venue for, or even solicit, expert opinions on the economic impact of the proposed rule. Not only would it have the benefit of these numerous perspectives, but it would also have the obligation to respond to them in a reasoned manner. Its rule would be subject to judicial review, affording an opportunity to catch mistakes 242 or invalidate rules that do nothing but deliver rents to special interests.

Another advantage of rulemaking, an option for agencies but not for the Court, since it only operates through adjudication, is that rulemaking regulates behavior ex ante, while resolution of economic policy through cases is necessarily ex post. Antitrust courts worry obsessively about "chill"--deterring procompetitive behavior with overly broad rules for liability.2 43 In fact, the overruling of Dr. Miles in Leegin implies that the entire twentieth century was a period of inefficient business practices and stunted innovation in distribution because of an early misunderstanding of RPM. Only after a long and expensive period of litigation was Leegin redeemed for breaking the law by effecting a change in the law, and only after Leegin was issued were similar firms, perhaps walking the Colgate line better than Leegin, redeemed for wanting some control over their product's ultimate retail price.24 4 The problem of ex post rulemaking is made worse by the treble damages afforded successful plaintiffs suing under the Sherman Act.2 4 5 To create a new form of liability, the Court has to punish a firm threefold for complying with standing antitrust norms. Thus Supreme Court lawmaking in antitrust is a kind of one-way ratchet.246

The result of the current ex post scheme is that "antitrust law leaves considerable gaps between what is permissible and what is optimal." 2 47 With judges making the rules one case at a time, this gap is justifiable. As discussed above, when judges are not economically sophisticated enough to know where "optimal" lies, 24 8 laissez-faire is a very inexpensive regulatory regime for courts to follow, and raising the level of regulation would effect a kind of taking of property from firms operating under the status quo. So if the Court is making antitrust policy, laissez-faire may be the only sensible approach. But that is not to say that it is the most sensible approach. An agency could provide firms with the necessary clarity-ex ante-that they need when conducting business in a world where competitive behavior so closely resembles anticompetitive conduct. The current state of affairs is that much more is illegal on the books than antitrust lawyers think is actually likely to be struck down in a court.24 9 Lawyers thrive in such a legally uncertain world, but firm efficiency suffers.

#### Key to democracy and court acquiescence---notice and comment engages participants and creates deference.

Harry First and Spencer Weber Waller 13. Harry First, New York University School of Law. Spencer Weber Waller, Loyola University Chicago School of Law. “Antitrust’s Democracy Deficit”. Fordham Law Review, Volume 81 Issue 5 Article 13. https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=4890&context=flr

Redressing antitrust’s democracy deficit on the procedural side can be done with the tools of administrative law. Administrative law is the body of law that controls the procedures of governmental decision making.151 It allows interested persons to participate in decisions that affect their interests. Normally, it requires appropriate notice, the right to be heard, fair procedures, protection of fundamental rights, and judicial review of the resulting decision. These basic features are present in the administrative laws of most foreign legal systems and are part of a growing international consensus.152 The tradeoff is that the decisions of administrative agencies that properly follow these strictures normally are granted a degree of deference as to the interpretation of the laws they enforce.153 Frequently, but not inevitably, private parties also have the right to proceed with actions for damages against private parties who violate their regulatory obligations and even against the government itself when it acts unlawfully, either substantively or procedurally. These tools of administrative law are available to make antitrust enforcement decisions more transparent and more responsive to the interests that the antitrust laws were meant to serve, thereby promoting both better decision making and greater democratic legitimacy.

CONCLUSION

Free markets and free people cannot be assured by the efforts of technocrats. Ultimately, both come about through the workings of democratic institutions, respectful of the legislature’s goals and constrained from engaging in arbitrary action. Antitrust has moved too far from democratic institutions and toward technocratic control, in service to a laissez-faire approach to antitrust enforcement. We need to move the needle back. Doing so will strengthen the institutions of antitrust, the market economy, and the democratic branches of government themselves.

#### US democratic retreat causes terrorism, great power war, famine, and poverty.

Garry Kasparov 17. Chairman of the Human Rights Foundation, founded the Renew Democracy Initiative. “Democracy and Human Rights: The Case for U.S. Leadership”. Feb 16 2017. U.S. Senate. http://www.foreign.senate.gov/imo/media/doc/021617\_Kasparov\_%20Testimony.pdf

The Soviet Union was an existential threat, and this focused the attention of the world, and the American people. There existential threat today is not found on a map, but it is very real. The forces of the past are making steady progress against the modern world order. Terrorist movements in the Middle East, extremist parties across Europe, a paranoid tyrant in North Korea threatening nuclear blackmail, and, at the center of the web, an aggressive KGB dictator in Russia. They all want to turn the world back to a dark past because their survival is threatened by the values of the free world, epitomized by the United States. And they are thriving as the U.S. has retreated. The global freedom index has declined for ten consecutive years. No one like to talk about the United States as a global policeman, but this is what happens when there is no cop on the beat. American leadership begins at home, right here. America cannot lead the world on democracy and human rights if there is no unity on the meaning and importance of these things. Leadership is required to make that case clearly and powerfully. Right now, Americans are engaged in politics at a level not seen in decades. It is an opportunity for them to rediscover that making America great begins with believing America can be great. The Cold War was won on American values that were shared by both parties and nearly every American. Institutions that were created by a Democrat, Truman, were triumphant forty years later thanks to the courage of a Republican, Reagan. This bipartisan consistency created the decades of strategic stability that is the great strength of democracies. Strong institutions that outlast politicians allow for long-range planning. In contrast, dictators can operate only tactically, not strategically, because they are not constrained by the balance of powers, but cannot afford to think beyond their own survival. This is why a dictator like Putin has an advantage in chaos, the ability to move quickly. This can only be met by strategy, by long-term goals that are based on shared values, not on polls and cable news. The fear of making things worse has paralyzed the United States from trying to make things better. There will always be setbacks, but the United States cannot quit. The spread of democracy is the only proven remedy for nearly every crisis that plagues the world today. War, famine, poverty, terrorism–all are generated and exacerbated by authoritarian regimes. A policy of America First inevitably puts American security last. American leadership is required because there is no one else, and because it is good for America. There is no weapon or wall that is more powerful for security than America being envied, imitated, and admired around the world. Admired not for being perfect, but for having the exceptional courage to always try to be better. Thank you

### OFF

#### The scope of competition law defines it goals---attempts to meet current goals by banning practice are implementation questions.

ESE No Date. Erasmus School of Economics (as per their website, “The Erasmus Center for Economic and Financial Governance is an international multidisciplinary network of leading researchers and societal stakeholders initiated by researchers from Erasmus School of Economics and Erasmus School of Law. ECEFG conducts interdisciplinary research (law, economics and political science) and contributes to current debates in public and in academia on issues relating to European and global economic and financial governance.”). "Competition Policy". <https://www.eur.nl/en/ese/affiliated/ecefg/research/competition-policy>

Competition Policy

Research in this field consists of two broad areas. The first area – Theory and Implementation of Competition Law and Policy – refers to fundamental and applied research into topics that are traditionally seen as the core of competition policy. The second area – Scope of Competition Law and Policy – refers to all research on the effect and desirability of including new considerations in competition law and policy in order to address the challenges of our time, such as the increasing power of big tech firms, or global warming.

Theory and Implementation of Competition Policy

This covers for instance collusion, abuse of dominance, mergers, market regulation and state aid. Some examples of research topics are:

1. the practices firms can use to engage in collusion and its welfare consequences;
2. the practices firms can use to abuse a dominant position and its welfare consequences;
3. which practices can be considered proof of such activities;
4. how to regulate access to a market;
5. how to properly assess the effects of a particular practice or merger;
6. the practices, by which the state and public authorities distort competition such as subisidies and tax measures
7. the interpretation and application of EU and national competition law by Competition Authorities and Courts and the extent to which they achieve the goals of competition policy

Scope of Competition Policy

The effectiveness of European competition law and policy in combination with rapid technological changes have raised questions about its proper scope. Which policy objectives can and should be pursued by means of competition law and policy, and which should be delegated to other legal fields and policies? Some examples of specific research questions include:

1. Can and should competition law be used to protect the privacy of consumers on the internet?
2. Information gathered by firms can be used to increase their own profits. How does this affect consumers, and what does this depend on? Can and should competition law deal with market power derived from information gathering? For instance, should the big five tech giants be forced to divest activities?
3. Should competition policy also include considerations of economic inequality or environmental effects?
4. Can competition law remain effective if it is used for more than safeguarding fair competition?

#### That means the aff must replace the consumer welfare standard.

Trevor Wagener 21. "The Curse of Tradeoffs: Neo-Brandeisians vs. Consumers". Disruptive Competition Project. 5-21-2021. https://www.project-disco.org/competition/052121-the-curse-of-tradeoffs-neo-brandeisian-antitrust-versus-consumers/

Neo-Brandeisians seek to replace the longstanding objective and principles-based framework of the consumer welfare standard in antitrust enforcement with an amorphous, process-based framework guided by an ethos one Neo-Brandeisian described as: “Big is bad. Just don’t let big firms merge. The end.” A movement dedicated to replacing a consumer welfare-maximizing approach with an assortment of competing goals has proven unable to offer a quantified, systematic cost-benefit analysis justifying such a radical change, instead relying upon anecdotal evidence and moving prose. The many goals of the Neo-Brandeisian approach are often rhetorically appealing, but the rhetoric hides a simple truth: When you target every variable, you effectively target none. Addressing a wide range of goals through antitrust policy requires de-emphasizing consumer welfare, creating fundamental tradeoffs expected to harm consumers relative to the status quo.

The willingness to sacrifice consumer welfare in order to achieve other ends is a defining characteristic of Neo-Brandeisian antitrust. This is illustrated by concrete Neo-Brandeisian critiques, which typically emphasize perceived harms to businesses rather than harms to consumers. For example, the Neo-Brandeisian activist group American Economic Liberties Project (AELP) published a pair of policy briefs on May 3 that criticize online service operators for a litany of purported inconveniences to businesses over a combined 22 pages, but struggle to quantify any harms to ordinary consumers and users. Those few purported harms to consumers that AELP raised are distinctly qualitative rather than quantitative, consistent with the broader reluctance of prominent Neo-Brandeisian thinkers to conduct a rigorous quantitative cost-benefit analysis of their antitrust policy prescriptions relative to the consumer welfare standard.

#### Vote negative for limits and ground---only “change goals” creates key economy and legal disads over what antitrust should consider---the affs topic races to tiny exemptions and technical changes with no core ground.

## Advantage

### Alt Causes---1NC

#### Alt causes to innovation---inequality, work times, shareholder suits

Bee 20 [Vanessa A. Bee. Senior Litigation Counsel at the Consumer Financial Protection Bureau with a JD from Harvard Law. Would We Have Already Had a COVID-19 Vaccine Under Socialism?. No Publication. 4-20-2020. https://inthesetimes.com/features/covid-19-coronavirus-vaccine-capitalism-socialism-innovation.html]

STIFLING WORKERS, STIFLING CREATIVITY

Many of the most sophisticated innovations of our time, from groundbreaking drugs to smart car technology, have depended on a deep pool of creative labor. But the idea that capitalism allows the bestsuited workers to join that pool is wishful thinking. As journalist Chris Hayes writes in Twilight of the Elites: America After Meritocracy, meritocracy “can only truly come to flower in a society that starts out with a relatively high degree of equality.” From 1979 to 2015, the annual average household income of the top 1% grew five times faster than that of the bottom 90th percentile. The reality is that deep inequalities in how this country’s wealth is distributed make meritocracy all but a myth. Some people can afford to attend college and access spaces where discovery is encouraged, moving into a “creative pipeline,” while their poorer peers go right into the workforce or juggle demanding classes with work schedules. While some with great innate talent for innovation end up in these coveted creative jobs, many more—poor and workingclass—are pushed by financial necessity into positions mismatched to their potential.

In theory, one doesn’t need a creative-focused job to innovate. But creativity requires a certain freedom— an ability to “waste” time, to work nonlinearly, to experiment and repeatedly fail. Capitalism’s constant dictate to maximize productivity leaves people with little time to spare, at work or at home—especially in poor and working-class households: The bottom fifth of earners have seen their work hours increase by 24.3% since 1979, compared to 3.6% for the top fifth.

Being in a more precarious financial position, or in a job with little security, also discourages workers from taking risks, even when the risks might lead to innovation. The precarity makes it difficult to approach one’s supervisors and ask for sick days, let alone personal time to go down rabbit holes. It makes it frightening to change fields or spend money on any project that might result in even more precarity.

Notably, the corporate structure itself has been known to stifle creation. Many corporate firms are under the effective control of shareholders, to whom managers owe a fiduciary duty to maximize profits. Shareholders who believe this duty has been breached typically have the right to sue the corporation. While this power can be used for the greater good—note how Tesla was sued by shareholders in response to its poor safety record—it also opens the door to shortsighted shareholders. One DuPont shareholder, for example, demanded the chemical company “not invest a single dollar in research that will not generate a positive return within f ive years.” What’s more, according to a 2017 working paper by the Institute for New Economic Thinking, “Many of America’s largest corporations, Pfizer and Merck among them, routinely distribute more than 100% of profits to shareholders, generating the extra cash by reducing reserves, selling off assets, taking on debt or laying off employees.”

Even the most creative of workers who make it into innovative roles in the private sector may find themselves starved of resources. As professors Chen Lin and Sibo Liu of the University of Hong Kong, and Gustavo Manso of the University of California, Berkeley, explain in a 2018 study, the threat of shareholder litigation generally discourages managers from “experimenting [with] new ideas,” which acts as an “uncontrolled tax on innovation.”

### Backlash/Stripping---1NC

#### Expanded antitrust enforcement of anticompetitive practices causes backlash---turns the case.

Alison Jones 20. Professor of Law at King's College London, with William E. Kovacic, March, “Antitrust’s Implementation Blind Side: Challenges to Major Expansion of U.S. Competition Policy.” The Antitrust Bulletin. https://journals.sagepub.com/doi/full/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

### Sham Litigation---1NC

#### Plan doesn’t solve sham litigation, antitrust just opens Pandora’s box.

Ioannis Lianos & Pierre Regibeau, 17. Lianos is a Professor of Global Competition Law and Public Policy and the Director of the Centre for Law, Economics and Society (CLES) at UCL Faculty of Laws, London, UK. Regibeau is a UCL Faculty of Laws, London, UK. "“Sham” Litigation: When Can It Arise and How Can It Be Reduced?" *The Antitrust Bulletin* 62, no. 4 (2017): 643-689.

IX. Conclusion

The concept of “sham” or “vexatious” litigation has stayed relatively opaque in competition law scholarship, although cases invoking the doctrine have multiplied, if not as much in Europe, at least in the U.S. and other parts of the world.144 This raises interesting questions as to the design of the “sham” or “vexatious” litigation antitrust category, in view of the close links this has, both with regard to its origins and with regard to the overall theoretical framework of the interaction of competition law with the use of governmental processes by undertakings for various purposes. The aim of this article was, first, to discuss the emergence of the antitrust category of “sham” or “vexatious litigation” and to explore its boundaries with regard to other categories of abuse, in particular in the IP context. The overall impression of this analysis was that even if one may argue for more conceptual coherence in the design of antitrust categories, which has the potential to open Pandora’s box as to the way these various categories have been designed at the first place and the need for categorical thinking as opposed to case-by-case balancing, it is clear that some order is needed, at least in the conceptualization of the economic underpinnings of the various antitrust categories, and specifically that of “sham” or “vexatious” litigation. We start from a precise definition of sham litigation as induced by sham benefit, “sham” litigation being simply defined as litigation that the plaintiff would not have started in the absence of any sham benefits. As we allow for settlement, this enables us to develop a narrow and a broader definition of “sham”/“vexatious” litigation, the latter also requiring that, absent sham costs or benefits, the defendant would prefer not to litigate. We then distinguish between different types of “sham” litigation on the basis of two criteria: the first criterion refers to which parties receive sham benefits and which parties might incur sham “costs”; the second is whether or not the defendant also receives sufficient sham benefits to actually be made better off by litigation. This effort of classification enables us to distinguish between the following subtypes of “sham” litigation: (i) Parasitic sham litigation, which does not impose sham costs on the defendant but still decreases her total profits. (ii) Potentially predatory sham litigation if, additionally the litigation process imposes sham costs on the defendant, this potentially being a sham benefit enjoyed by the plaintiffs. This is particularly likely when the defendant is a potential or actual rival of the plaintiff, as is often true in competition law or IP law disputes. (iii) Collusive sham litigation when we have situations where the defendant also enjoys benefits from the very fact of litigating. In this case if the defendant’s sham benefits are large enough to offset her assumed reluctance to litigate, then both parties benefit from engaging in the litigation process. Determining if a case forms part of one of our three subcategories with some confidence requires relatively little information. We examine a number of illustrative examples for each type of “sham” before exploring the implications of a narrower definition of “sham,” should we factor in the possibility of settlements. Having defined a typology, we the turn to the analysis of welfare effects. This leads us to remain completely agnostic as to whether “sham” litigation is worth deterring or at least limiting, our emphasis being on how sham litigation might be efficiently controlled if it seems desirable to do so. We identify two approaches.

#### Status quo solves – federal action preventing frivolous litigation now. We postdate their 1ac ev by 7 months.

Michael Gallagher et al, 10-12. Michael Gallagher is a partner based in White & Case LLP’s New York office, where he focuses his complex commercial litigation practice on antitrust. Also, Eric Grannon, Heather McDevitt, Kristen O’Shaughnessy, Adam Acosta, Kevin C Adam and Ada Yue Wang. “United States: Pharmaceutical Antitrust.” White & Case LLP. 12 October 2021. https://globalcompetitionreview.com/review/the-antitrust-review-of-the-americas/2022/article/united-states-pharmaceutical-antitrust

Federal legislation

While federal legislation regarding drug pricing took a back seat in 2020 during the covid-19 pandemic, lawmakers refocused on pricing in early 2021. With the Biden Administration came a number of bills targeting key issues in the ongoing drug-pricing debate. For example, the COVID-19 Stimulus Package passed in March 2021 eliminated the statutory cap on rebates that drug manufacturers pay to Medicaid, which means a manufacturer may be required to pay Medicaid when its drug is used.[92] Further, two bills signed into law in April 2021 seek to reduce prescription drug prices by supporting generic and biosimilar alternatives to branded drugs. The Ensuring Innovation Act clarified the technical qualifications for earning exclusivity as a ‘new chemical entity’ (NCE) and codified the FDA’s practice of awarding NCE exclusivity based on a drug’s ‘active moiety’ rather than its ‘active ingredient’, arguably making it more difficult for pharmaceutical companies to obtain NCE exclusivity.[93] The Advancing Education on Biosimilar Act called for the government to provide educational materials to physicians and the public to increase awareness of biosimilar drugs.[94] In addition to the two bills signed by President Biden, an April 2021 House Judiciary Antitrust Subcommittee hearing kick-started a discussion on changes to existing antitrust and patent laws to address prescription drug pricing. Federal lawmakers used the hearing to introduce a legislative package of four previously introduced bills that would revise aspects of antitrust and patent enforcement in the pharmaceutical industry: the Preserve Access to Affordable Generics and Biosimilars Act, the Affordable Prescriptions for Patients through Promoting Competition Act, the Stop STALLING Act, and the Affordable Prescriptions for Patients through Improvements to Patent Litigation Act.[95] On the antitrust front, these bills would create presumptions of anticompetitive conduct for certain ‘reverse payment’ patent settlements, instances of ‘product hopping’, and sham petitioning.[96] On the patent front, the bill would cap the number of patents in an infringement action resulting from the ‘patent dance’ information exchange created by the Biosimilar Products Competition Innovation Act (BPCIA).[97] Congressional Democrats may also have found support from President Biden on a number of other developments. Among those developments is a bill revived earlier this year to empower Medicare to negotiate drug prices and to make those prices available to commercial plans,[98] a proposal to establish international reference pricing for newly launched specialty drugs, and other proposals intended to rein in drug prices.[99] President Biden’s 9 July 2021 Executive Order continued to press for action on drug pricing. The Executive Order expressly supports ‘aggressive legislative reforms that would lower prescription drug prices, including by allowing Medicare to negotiate drug prices, by imposing inflation caps, and through other related reforms’.[100] The Executive Order also directs the FDA to work with states to import less-expensive pharmaceuticals from outside the US.[101] President Biden re-emphasised his Administration’s focus on drug pricing with a 12 August 2021 statement calling on Congress to take certain steps, such as allowing Medicare to negotiate lower drug prices.[102]

### AT: Aff---Patent Thicket

#### Patent thicket doesn’t assume standardization correction---the theory is purely theoretical

Damien Geradin & Miguel Rato 6. \*\*Professor of Competition Law and Economics and member of the Tilburg Law and Economics Center (TILEC) at Tilburg University \*\*Associate at Howrey LLP. "Can Standard-Setting Lead to Exploitative Abuse? A Dissonant View on Patent Hold-Up, Royalty Stacking and the Meaning of FRAND." European Competition Journal. April 2006. https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=946792

B. Patent Thickets

In 2001, Shapiro picked up one of the threads from the anti-commons debate, and pronounced the existence of a “patent thicket” in “several key industries”.[[1]](#footnote-1) The key extension here is the application of the anti-commons theory to high technology industries involved in standard setting. Shapiro argues that “[t]he need to navigate the patent thicket and hold-up is especially pronounced in industries such as telecommunications and computing in which formal standard-setting is a core part of bringing new technologies to market.”[[2]](#footnote-2) To bolster this claim, Shapiro cites the dramatic increase in patenting and the potential implications in terms of IP licensing costs in these two sectors. According to Shapiro, “the danger of paying royalties to multiple patent owners is hardly a theoretical curiosity in industries such as semiconductors, in which many thousands of patents are issued each year and manufacturers can potentially infringe on hundreds of patents with a single product.”[[3]](#footnote-3) Nonetheless, Shapiro does not present any evidence on licensing difficulties or “hold-up” within the semiconductor or telecommunications industries, instead referring to unsupported hypothetical results.

One of the key distinctions for patent thicket theory as applied to standard setting lies in the timing of licensing negotiations. For those technologies that are easy to invent around, Shapiro argues, “the patented technology contributes little if anything to the final product, and any ‘reasonable’ royalty would be modest at best.”[[4]](#footnote-4) But after the technology is included in a standard or after potential licensees have started manufacturing, the patent holder “can credibly seek far greater royalties, very likely backed up with the threat of shutting down the manufacturer…” Shapiro sees little relief for this ex post“hold-up” aspect of patent thickets short of reforming patent law.

One clear limitation of Shapiro’s argument, however, is that standardization only grants additional market power and thus enhances the essential patent holder’s ability to charge royalties when the patented technology can be easily designed around. In the presence of a technology for which there is no alternative as is often the case in complex industries, the ability of the holder of essential patents to seek significant royalty rates exists prior to the adoption of the standard.[[5]](#footnote-5) Standardization will certainly benefit essential patent holders as it stimulates the implementation of selected technologies and thus expands royalty revenues, but in the case of technologies for which there is no reasonable alternatives the ability of licensors to extract rents originates in the uniqueness of their patented inventions.

### No Disease Impact---1NC/2AC

#### Burnout and geographic dispersion check disease.

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For most of human history, natural pandemics have posed the greatest risk of mass global fatalities.37 However, there are some reasons to believe that natural pandemics are very unlikely to cause human extinction. Analysis of the International Union for Conservation of Nature (IUCN) red list database has shown that of the 833 recorded plant and animal species extinctions known to have occurred since 1500, less than 4% (31 species) were ascribed to infectious disease.38 None of the mammals and amphibians on this list were globally dispersed, and other factors aside from infectious disease also contributed to their extinction. It therefore seems that our own species, which is very numerous, globally dispersed, and capable of a rational response to problems, is very unlikely to be killed off by a natural pandemic.

One underlying explanation for this is that highly lethal pathogens can kill their hosts before they have a chance to spread, so there is a selective pressure for pathogens not to be highly lethal. Therefore, pathogens are likely to co-evolve with their hosts rather than kill all possible hosts.39

### No ABR Impact---1NC/2AC

#### ABR won’t get close to extinction, intervening actors solve it, their internal link can’t

Ed Cara 17, science writer for The Atlantic, Newsweek, and Vocativ, 1/27/17, “The Attack Of The Superbugs,” http://www.vocativ.com/394419/attack-of-the-superbugs/

Antibiotic-resistant infections kill at least 700,000 people worldwide a year right now, according to an exhaustive report commissioned by the UK in 2014, and without any substantial medical breakthroughs or policy changes that slow down resistance, they may claim some 10 million deaths annually by 2050 — eclipsing cancer in general as a leading cause. These deaths largely won’t come from pan-resistant infections, just tougher ones. A preventable death there, a preventable death here. Leaving that aside, antibiotics, along with proper sanitation and nutrition, gird our entire way of living. Most every invasive surgery, pregnancy, organ transplant and chemotherapy session we go through will become riskier. Other diseases like HIV, malaria or influenza will become deadlier, since bacteria often exploit the opening in our immune system they leave behind. And already precarious populations like those living with cystic fibrosis, prisoners, and the poor will lose years off their lives. For all the warranted gloom, though, Farewell does think there are reasons to be hopeful. “I don’t think we are doing enough, but the scientific community along with many governmental and private foundations are very actively involved in finding not only new antibiotics, but new solutions to this problem,” she said. There’s been a noticeable change in attitude and increased urgency surrounding antibiotic resistance, she said, one that she hadn’t seen even five years ago, let alone twenty. Until recently, that attitude change could be seen from places as high up as the U.S. federal government. In 2014, former President Obama issued an executive order aimed at addressing antibiotic resistance, the first real acknowledgement of the problem from an administration, devoting funding and outlining a national action for combatting resistance. Through its federal agencies, the administration pushed to reduce antibiotic use on farms and encouraged doctors to stop using them in excess. “There has been a lot of work done the last couple of years, much of it spurned by [Obama’s] National Action Plan,” said Dr. David Hyun, a senior officer for Pew Charitable Trusts’ Antibiotic Resistance Project. The CDC, in particular, has used its funding to open up regional labs that allow them to better detect and respond to antibiotic-resistant outbreaks like the Nevada case, he said. They ultimately hope to create an expansive surveillance system that can easily keep track of resistance rates on a national, state and regional level. A parallel system also exists for monitoring resistance in the food chain, shepherded by the CDC and the U.S. Department of Agriculture. In fact, it was this sort of cooperation between national and local health agencies that enabled Nevada doctors to stop the worst from happening, said Dr. Lei Chen. The swift identification of a possible CRE strain by the hospital, coupled with the woman’s medical history, led to a precautionary quarantine, while also prompting Chen’s public health department and eventually the CDC into action. And it may help prevent future cases from spilling into the public. According to Chen, the CDC has allocated funding this year to all of Nevada’s state public health departments so they can better detect CRE and other dangerous resistant strains. Under the Trump administration, there’s no telling how these small victories will hold up or whether they will advance. All references to antibiotics once found on the Whitehouse.gov site have been removed, including a link to the Obama administration’s national action plan, and the fact that they’re already tried to bar USDA scientists from discussing their work with the public while stripping funding from other public health agencies isn’t encouraging. Even with the best public policy, however, there’s no clear light at the end of the tunnel. Antibiotic resistance has gradually been worsening, even within the last 15 to 20 years, when superbugs like methicillin-resistant Staphylococcus aureus (MRSA) first became widely known, said Hyun. The effort needed to develop new drugs has been in short supply, hamstrung by pharmaceutical companies’ inability to recoup the costs of bringing new antibiotics to market. That’s because, unlike the latest heart medication, any new antibiotics will have to be treated like the last drops of water during a drought, used as little as possible — the exact opposite way to make money off a new product. Yet, much like climate change, the financial toll of not doing anything will total in the trillions years down the road. And it already numbers in the billions now, according to the CDC. Of course, we need bacteria to survive. And most need or pay no mind to us in return. Even pan-resistant bacteria don’t really mean harm. Some have been found in perfectly healthy people, a fact that’ll either comfort you or keep you awake at night, only causing problems when our immune system wavers. There’s no army of sentient E. coli that will rise up and someday overthrow the human race. But barring the calvary showing up, a new fear of ours will learn to settle in, almost unnoticed. It’ll creep in when we pick our heads up from a nasty fall that scrapes our skin open or breaks our bones; when we wave goodbye to our loved ones before they enter an operating room, or when we cradle our newborns into a world teeming with the living infinitesimal, wishing there was still a way to shield them from it as our parents once could for us. A fear of naked vulnerability. The antibiotic apocalypse will be gentle, if it fully

### Innovation---1NC

#### Competition fails---first mover advantages, economies of scale, and an enforcement nightmare

Ramsi A. Woodcock 19. [Assistant Professor, University of Kentucky College of Law, Secondary Appointment, Department of Management, University of Kentucky Gatton College of Business & Economics.] “Using Price Regulation Instead of Competition to Reduce Prices after Patents Expire” (October 8, 2019). SSRN: <https://ssrn.com/abstract=3466473> or [http://dx.doi.org/10.2139/ssrn.3466473](https://dx.doi.org/10.2139/ssrn.3466473)

V. THE LIMITS OF COMPETITION AS A REGULATOR OF PRICE

Antitrust enforcers and the courts understandably feel little compulsion to use the antitrust laws to achieve policies established by the distinct statutory regime that is the patent system. But even if they did, it is not clear that the promotion of competition is the best way to get prices down to costs after patent expiry. Competition drives prices down to costs only when numerous firms sell an undifferentiated product.149 To create those conditions in a post-expiry market, the antitrust laws would need to engage in a level of radicalism in enforcement that they have never embraced, even during the postwar height of antitrust’s fascination with promoting competition.150 To combat the patent-magnified first-mover advantages that exist after patent expiry, the antitrust laws would need to eliminate all differentiation between the patented product and the products sold by competitors employing the offpatent invention.151 This could be accomplished only by forcing the patent holder to share all trademarks, trade secrets, copyrights, and other intellectual property that might be used to prevent firms entering the market from selling exact copies of the patented product.152 Attempting to use advertising on behalf of new entrants into off-patent markets to counteract the brand awareness and loyalty enjoyed by incumbent patent holders would be insufficient, because advertising is a weak substitute for those advantages.153

Compulsory licensing at zero cost would only be the beginning, however. Production in the vast majority of industries has a substantial fixed cost component, meaning that entry into a market will be cost effective, particularly under circumstances of heavy price competition, only if the firm can sell a substantial volume of output.154 If the market is small enough, only a small number of firms, or even one alone (the case of natural monopoly), will be able profitably to sell in the market.155 But as the number of firms in a market declines, their ability to collude tacitly to their joint advantage increases, for the same reason that residents of small towns tend to be friendlier to each other than residents of large cities.156 To prevent this from taking place, antitrust enforcers would need to condemn such tacit collusion. The courts have never, however, recognized tacit collusion as an antitrust violation, in part because in cases in which the market supports only small number of competitors, there is no obvious remedy. 157 Breaking the companies into pieces will just cause them to fail.158 And ordering them not to collude to set high prices, where collusion is merely tacit, can amount only to ordering them outright to charge lower prices.159

Even in the absence of collusion, or fixed costs so high that only a small number of firms may compete in the market, economies of scale usually give an advantage to the firm that sells the largest volume.160 Because as volume increases, unit cost falls, allowing the large seller to charge a lower price than all other firms in the market.161 That in turn means that ultimately one firm will be able to drive all other firms from the market.162 And then raise prices.163 This fact—that one firm can always obtain a cost advantage—is itself enough to deter firms from entering the market, even after the large firm raises prices, because new entrants cannot hope to instantly achieve greater market shares than the incumbent, and so the incumbent will be able to punish entry by dropping prices down to its lower unit costs whenever a new firm enters the market.164 This is not predatory pricing, because the incumbent does not charge a price below its costs, but it is just as devastating to a policy of using competition to reduce prices.165 To stop this behavior, the antitrust laws would need to prohibit attempts by firms to realize economies of scale through the selling of large volumes, something that the courts dabbled with mid-century but later repudiated.166 But even if antitrust were to do that, there would be the unfortunate consequence that the antitrust laws would actually be driving costs and prices above the minimum achievable levels, contrary to Congress’s desire to drive off-patent prices as low as possible. If no firm is permitted fully to realize economies of scale, then the unit cost of production in the market will be higher than necessary, so even if competition drives price to cost, it drives price to an inflated cost.

# 2NC

## Cap

#### 3 – Invert your standard for solvency – “feasibility” concerns are propaganda

McCarraher 19 [Eugene; 11/12/19; Associate Professor of Humanities at Villanova University, PhD in US Cultural and Intellectual History from Rutgers University; The Enchantments of Mammon: How Capitalism Became the Religion of Modernity, p. 15-18]

Words such as “paradise” or “love” or “communion” are certainly absent from our political vernacular, excluded on account of their “utopian” connotations or their lack of steely-eyed “realism.” Although this is a book about the past, I have always kept before me its larger contemporary religious, philosophical, and political implications. The book should make these clear enough; I will only say here that one of my broader intentions is to challenge the canons of “realism,” especially as defined in the “science” of economics. As the master science of desire in advanced capitalist nations, economics and its acolytes define the parameters of our moral and political imaginations, patrolling the boundaries of possibility and censoring any more generous conception of human affairs. Under the regime of neoliberalism, it has been the chief weapon in the arsenal of what David Graeber has characterized as “a war on the imagination,” a relentless assault on our capacity to envision an end to the despotism of money.24 Insistent, in Margaret Thatcher’s ominous ukase, that “there is no alternative” to capitalism, our corporate plutocracy has been busy imposing its own beatific vision on the world: the empire of capital, with an imperial aristocracy enriched by the labor of a fearful, overburdened, and cheerfully servile population of human resources. Every avenue of escape from accumulation and wage servitude must be closed, or better yet, rendered inconceivable; any map of the world that includes utopia must be burned before it can be glanced at. Better to follow Miller’s wisdom: we already inhabit paradise, and we can never make ourselves fit to live in it if we obey the avaricious and punitive sophistry professed in the dismal pseudoscience.

The grotesque ontology of scarcity and money, the tawdry humanism of acquisitiveness and conflict, the reduction of rationality to the mercenary principles of pecuniary reason—this ensemble of falsehoods that comprise the foundation of economics must be resisted and supplanted. Economics must be challenged, not only as a sanction for injustice but also as a specious portrayal of human beings and a fictional account of their history. As a legion of anthropologists and historians have repeatedly demonstrated, economics, in Graeber’s forthright dismissal, has “little to do with anything we observe when we examine how economic life is actually conducted.” From its historically illiterate “myth of barter” to its shabby and degrading claims about human nature, economics is not just a dismal but a fundamentally fraudulent science as well, akin, as Ruskin wrote in Unto This Last, to “alchemy, astrology, witchcraft, and other such popular creeds.”25

Ruskin’s courageous and bracing indictment of economics arose from his Romantic imagination, and this book partakes unashamedly of his sacramental Romanticism. “Imagination” was, to the Romantics, primarily a form of vision, a mode of realism, an insight into the nature of reality that was irreducible to, but not contradictory of, the knowledge provided by scientific investigation. Romantic social criticism did not claim the imprimatur of science as did Marxism and other modern social theories, yet the Romantic lineage of opposition to “disenchantment” and capitalism has proved to be more resilient and humane than Marxism, “progressivism,” or social democracy. Indeed, it is more urgently relevant to a world hurtling ever faster to barbarism and ecological calamity. I wrote this book in part out of a belief that many on the “left” continue to share far too much with their antagonists: an ideology of “progress” defined as unlimited economic growth and technological development, as well as an acceptance of the myth of disenchantment that underwrites the pursuit of such expansion. The Romantic antipathy to capitalism, mechanization, and disenchantment stemmed not from a facile and nostalgic desire to return to the past, but from a view that much of what passed for “progress” was in fact inimical to human flourishing: a specious productivity that required the acceptance of venality, injustice, and despoliation; a technological and organizational efficiency that entailed the industrialization of human beings; and the primacy of the production of goods over the cultivation and nurturance of men and women. This train of iniquities followed inevitably from the chauvinism of what William Blake called “single vision,” a blindness to the enormity of reality that led to a “Babylon builded in the waste.”26

Romantics redefined rather than rejected “realism” and “progress,” drawing on the premodern customs and traditions of peasants, artisans, and artists: craftsmanship, mutual aid, and a conception of property that harkened back to the medieval practices of “the commons.” Whether they believed in some traditional form of religion or translated it into secular idioms of enchantment, such as “art” or “beauty” or “organism,” Romantic anticapitalists tended to favor direct workers’ control of production; the restoration of a human scale in technics and social relations; a sensitivity to the natural world that precluded its reduction to mere instrumental value; and an apotheosis of pleasure in making sometimes referred to as poesis, a union of reason, imagination, and creativity, an ideal of labor as a poetry of everyday life, and a form of human divinity. In work free of alienation and toil, we receive “the reward of creation,” as William Morris described it through a character in News from Nowhere (1890), “the wages that God gets, as people might have said time agone.”27

Rendered gaudy and impoverished by the tyranny of economics and the enchantment of neoliberal capitalism, our sensibilities need replenishment from the sacramental imagination. As Americans begin to experience the initial stages of imperial sclerosis and decline, and as the advanced capitalist world in general discovers the reality of ecological limits, we may find in what Marx called the “prehistory” of our species a perennial and redemptive wisdom. We will not be saved by our money, our weapons, or our technological virtuosity; we might be rescued by the joyful and unprofitable pursuits of love, beauty, and contemplation. No doubt this will all seem foolish to the shamans and magicians of pecuniary enchantment. But there are more things in heaven and earth than are dreamt of on Wall Street or in Silicon Valley.

#### 2. Market Rationality---Market competition inevitably creates economic busts and proves capitalism’s contradiction – overproduction undermines profitability and spills-over to cause other crises---that’s Lebow AND

Alan Maass 21. Communications staff for Rutgers AAUP-AFT. Marxism Shows Us How Our Problems Are Connected. Jacobin. 1-5-2021. https://jacobinmag.com/2021/01/marxism-capital-socialism-capitalism-book-review

When Things Fall Apart

Marxist economics explains not only how capitalism works but why it regularly doesn’t — during the periodic economic busts that inevitably follow the booms. As Marx and Engels wrote:

Society suddenly finds itself put back into a state of momentary barbarism; it appears as if a famine, a universal war of devastation had cut off the supply of every means of subsistence; industry and commerce seem to be destroyed. And why? Because there is too much civilization, too much means of subsistence, too much industry, too much commerce.

Of course, in a world where billions go without enough food, there’s no such thing as “too much means of subsistence.” There’s only too much from the point of view of the capitalists — too much to sell their products at an acceptable profit.

Thier introduces the chapters on capitalist crisis by unpacking a long quotation from Engels that ends: “The contradiction between socialized production and capitalistic appropriation is reproduced as the antagonism between the organization of production in the single factory and the anarchy of production in society as a whole.”

Under capitalism, production within workplaces is generally highly regimented, but the economy as a whole is a free-for-all. Businesses make their investment decisions behind closed doors, each hoping to get a leg up on the competition — by introducing the most popular model, the new product, the next trend. Success means a greater share of the market and therefore more profits.

All the important questions for society as a whole — how much food should be produced, how many homes to build, what kind of drugs to research and manufacture, how to generate electricity — are decided by the free market.

In economic good times, success seems contagious. Companies make ambitious investments, produce more and more, and watch the money roll in. But when enough companies jump in, the market gets saturated, sales slump, debts grow, and the record profits start to sink. The effects spread from part of the economy to the next, as Thier explains, using the example of oil:

If refineries sit idle because there is an overproduction of oil, the workers are laid off, and the creditors, who financed the investment, are dragged down as well. But as future oil extraction and refining projects are pulled back, so too is demand for the raw materials (steel, concrete, plastics, electricity, etc.) and engineering necessary for the production of oil rigs, pipelines, and so on. The construction business and service and retail companies, which had benefited from the springing up of oil boomtowns, suffer as well.

Because of the complexity of the international capitalist economy, the boom-slump roller-coaster ride can look and feel different each time around. Thier devotes a chapter to analyzing the crash last time: the Great Recession of 2008–9. She explains why and how the parasitical realm of banking and finance was the detonator of this slump but looks beyond popular left explanations about “financialization” to reveal the underlying crisis of global overproduction.

Among Marxist economics writers, there are some disagreements about the details here, specifically about “which aspects of Marx’s writing — falling profitability, overproduction (or in some cases, underproduction), disproportionality among branches, the role of credit — are emphasized and how these pieces fit together,” Thier writes.

In her account, Thier tends to stress overproduction, to the disappointment of those who emphasize falling profit rates. This focus on overproduction crucially emphasizes how an organic mechanism of capitalism — inevitable in a system driven by exchange, exploitation, and competition — repeatedly causes crisis.

Regardless of their ideology or morality (or lack thereof), capitalists are inevitably driven to reduce costs, they inevitably see an advantage in producing more for less, and this inevitably leads to frantic overproduction that undermines profitability and ultimately slams the economy into reverse.

In other words, capitalism stops working not because of a mistake or failed policy, but because it’s been working the way it’s supposed to. As Thier writes:

Competition is the mainstay of capitalism. It can’t be made friendlier or softer because it requires an accumulation of capital at any cost, in order to get ahead or get left behind.… These same processes of accumulation necessarily lead to contradictions that threaten the very profits that capitalists seek. Every contradiction for capitalism is both a great hazard to our lives — since we are made to pay the price — and also an important crack in the system. Every periodic crisis is a potential point around which to organize.

#### And the links turn case--- Antitrust law creates vertical coordination that expands the corporate world.

Jedediah Britton-Purdy et. al. 20. William S. Beinecke Professor of Law at Columbia Law School. David Singh Grewal, Professor of Law at Berkeley Law School. Amy Kapczynski, Professor of Law at Yale Law School. K. Sabeel Rahman, Associate Professor of Law at Brooldyn Law School and President, Demos. Building a Law-and-Political-Economy Framework: Beyond the Twentieth-Century Synthesis. The Yale Law Journal. April 2020. 129(6): 1801-1802

The many criticisms of this way of reasoning did not halt the influence of modern law and economics in legal thought. Law and economics spanned substantive areas of law, delivering a simplicity and method that any first-year student could learn and that a wave of dedicated scholarship on alternative field- specific idioms did little to displace. The result was far from a comprehensive defense of market ordering, much less one that overcame the many telling criti- cisms of the normative case for law and economics that issued in the 198os.59 Nonetheless, adherents of law and economics reorganized an array of legal fields. They did so using a variety of argument types, sometimes shifting among them. Arguments that idealize a version of market ordering as neutral and "good for us all," which would characterize the elevation of consumer welfare in antitrust law or efficiency reasoning in intellectual property, are market fundamentalist. Arguments to the effect that the state simply cannot be trusted to make substantive judgments about value and distribution on account of the dynamics revealed by public-choice theory take the form of market tragedy. Here, market-modeled in- sight reveals that the market is the best we can do, perhaps regrettably but ineluctably nonetheless. This style of argument persistently accompanied the more optimistic market-fundamentalist moves, enabling scholars and advocates to in- sist without fear of contradiction that economic policy deviating from market models would invite rent seeking. The combination of the first two supported a third, subtler style of argument: market hegemony simply assumed that "serious" law and policy thinking would adhere to market models, as in environmental law's focus on cost engineering to the exclusion of infrastructure investment and political engagement. The latter kinds of proposals simply have no place at the table, and raising them suggests the discrediting failure to understand that market reasoning provides the authoritative and exclusive way of engaging urgent questions.

Antitrust law, our first example, was remade to address a drastically narrowed conception of the problem of monopoly.60 Market power was to be disciplined only when it interfered with consumer welfare, and sometimes, still more narrowly, only when it increased prices. 61 Historically, antitrust law and scholar- ship took a broader view: it emerged from a concern about the power of large corporate entities to influence politics and not just prices, and imposed structural limits and bright-line rules to guard against an array of possible political-eco- nomic implications of firm dominance.6 2 Replacing this political-economic version of antitrust, the field came to target a much narrower conception of market collusion. The result is a regime that privileges firms as favored instances of (vertical) coordination but repudiates certain forms of (horizontal) coordination among market participants and certain workers (such as independent contractors).63 In the name of supposed efficiency, antitrust now blesses mergers and big firms but restrains cooperation among Uber drivers and church organists.64 This remade antitrust law has in turn helped to remake the corporate world, facilitating the substantial new forms of market concentration and priority for capital over labor that we previewed above.

#### 1 – Carbon bubble, peak oil

Rifkin ‘19 [Jeremy, Honorary Doctorate in Economics at Hasselt University. Recipient of the 13th annual German Sustainability Award in December 2020. BS in Economics at UPenn – Wharton School. Founder of People’s Bicentennial Commission. The Green New Deal: Why the Fossil Fuel Civilization Will Collapse By 2028, and the Bold Economic Plan to Save Life on Earth. St Martin’s Press. P7-8. Google Book. //shree]

The Carbon Tracker Initiative, a London-based think tank serving the energy industry, reports that the steep decline in the price of generating solar and wind energy “will inevitably lead to trillions of dollars of stranded assets across the corporate sector and hit petro-states that fail to reinvent themselves,” while “putting trillions at risk for unsavvy investors oblivious to the speed of the unfolding energy transition.”19 “Stranded assets” are all the fossil fuels that will remain in the ground because of falling demand as well as the abandonment of pipelines, ocean platforms, storage facilities, energy generation plants, backup power plants, petrochemical processing facilities, and industries tightly coupled to the fossil fuel culture.

Behind the scenes, a seismic struggle is taking place as four of the principal sectors responsible for global warming—the Information and Communications Technology (ICT)/telecommunications sector, the power and electric utility sector, the mobility and logistics sector, and the buildings sector—are beginning to decouple from the fossil fuel industry in favor of adopting the cheaper new green energies. The result is that within the fossil fuel industry, “around $100 trillion of assets could be ‘carbon stranded.’”20

The carbon bubble is the largest economic bubble in history. And studies and reports over the past twenty-four months—from within the global financial community, the insurance sector, global trade organizations, national governments, and many of the leading consulting agencies in the energy industry, the transportation sector, and the real estate sector—suggest that the imminent collapse of the fossil fuel industrial civilization could occur sometime between 2023 and 2030, as key sectors decouple from fossil fuels and rely on ever-cheaper solar, wind, and other renewable energies and accompanying zero-carbon technologies.21 The United States, currently the leading oil-producing nation, will be caught in the crosshairs between the plummeting price of solar and wind and the fallout from peak oil demand and accumulating stranded assets in the oil industry.22

#### 2 – Mineral cycles – that’s Allinson – copper, lithium, manganese hit bottlenecks

Ahmed 20 [Nafeez. M.A. in contemporary war & peace studies and a DPhil (April 2009) in international relations from the School of Global Studies at Sussex University. Capitalism Will Ruin the Earth By 2050, Scientists Say. Vice. 10-21-2020. https://www.vice.com/en/article/v7m48d/capitalism-will-ruin-the-earth-by-2050-scientists-say]

Endless growth will generate minerals scarcity within decades

The EV transition is, in short, a massive industrial project. Electrification of roads and rail will require upgraded smart grids, complex routes connected to high power lines, and regular battery-swap stations. The paper explores several scenarios to explore how such a transition would take place.

In a continuing GDP growth scenario, the authors note that the economy begins to stagnate “due to peak oil limits at around 2025-2040,” but GDP is able to continue growing thanks to the EV transition. This shows that the reduction in liquid fuels in transportation can play a powerful role in avoiding “energy shortages in the economy as a whole.”

But then the economy hits the limits of mineral and material production to sustain this electric transition—in just three decades. And this is even with high levels of minerals recycling.

By 2050, in this scenario, the EV transition will “require higher amounts of copper, lithium and manganese than current reserves. For the cases of copper and manganese the depletion is mainly due to the demand from the rest of the economy,” but most lithium demand “is for EV batteries,” and this alone “depletes its estimated global reserves.”

Mineral depletion takes place even with “a very high increase in recycling rates” in a continuing GDP growth scenario.

In one such scenario, the authors apply what they consider to be realistic upper level recycling rates of 57 percent, 30 percent and 74 percent to copper, lithium and manganese respectively. These are based on extremely optimistic projections of recycling capabilities relative to their costs.

But still they find that even these high recycling rates wouldn’t prevent depletion of all current estimated reserves by 2050. The conclusion corroborates findings of other studies, estimating an expected bottleneck for lithium by 2042-2045 and for manganese by 2038-2050.

Actual bottlenecks could come even earlier because existing studies—including the MEDEAS model—don’t account for material requirements needed for internal wiring, the EV motor, EV chargers, building and maintaining the grid to connect and charge EV batteries, the catenaries to electrify the railways, as well as inherent difficulties in recycling metals.

#### 3 – COVID – “recovery” is sugar rush that drives crisis

Roberts & Smith ‘21 [Michael Roberts worked as an economist for over 40 years, Activist in British Labor Movement in Britain. Interviewed by Ashley Smith, Author at Specter Journal. “Out of Lockdown and Back into the Long Depression.” 7-6-21. <https://spectrejournal.com/out-of-lockdown-and-back-into-the-long-depression/> //shree]

The Covid slump of 2020-21 was basically a supply-side shock due to the global spread of the Covid-19 virus and the failure of governments in the major economies (with a few exceptions) to prevent its spread. There were delayed and bungled measures along with weakened health systems, so economies had to close down as lockdowns and isolation measures were the only answer to avoiding catastrophe. Economically, that meant supply stopped, and then that led to a collapse in demand as people were laid off and businesses crashed.

But recovery is now under way (more or less) in most major economies. Demand was propped up in the major advanced economies through massive government fiscal spending and central bank injections of credit for businesses (particularly large ones). And now through a combination of lockdowns and the incredibly fast development and rollout of effective vaccinations (thanks to publicly funded science), the major economies are now able to recover.

But in the G7 economies this initial recovery has the aspect of a “sugar rush.” The “sugar” of fiscal stimulus and historic levels of easy credit is infusing capitalist businesses and household spending with an energy boost.

Indeed, during the pandemic slump sections of capitalism did not suffer at all; on the contrary, they gained hugely, e.g., the social media and tech sector, the mega-distribution companies, and Big Pharma.

Better-off households also suffered less (at least materially) as they continued to be paid, could work at home, and saved income significantly. This led to a house purchase boom as these sectors of labour looked to change their lifestyles post-Covid.

At the same time, zero interest rates and cheap credit allowed financial institutions to make hay in financial markets and billionaire wealth rocketed as stock and bond markets hit historic highs.

But, for most manual workers in the cities and in low-paid service industries, the pandemic slump was a disaster and with little prospect of returning to “normal” for them in the recovery.

And it’s the advanced capitalist economies and the East Asian states that are recovering best in 2021-22. The so-called global South suffered hugely in the pandemic, with record levels of excess deaths and a massive rise in unemployment and poverty levels. Fiscal support from governments was limited and the rollout of vaccines to get economies going again is way short. Estimates are that the target vaccination levels in these countries will not be achieved until 2023-4!

So, what we are going to see is the major capitalist economies of the West and China returning to pre-pandemic levels of national output by the end of this year or in early 2022, but Latin America, Africa, South Asia failing to do so.

What are the weaknesses and contradictions of the recovery in those economies?

Before the pandemic, the world economy was slowing down. Real GDP growth rates in the G7 were dropping to just 1 percent or lower; the so-called emerging economies had growth rates down to 3 percent (hardly enough to cover increases in population). World trade was declining. Even the giant economies of China and India had slowed.

The main reason was that growth in investment in productive assets that can boost the productivity of labor and expand technology and employment had also slowed. In my view, investment and productivity growth are key to developing the productive forces of modern capitalist economies, and they were failing because under capitalism, profitability is the driving force behind investment.

And according to the best estimates, US and global profitability levels are at historic lows. This is the long-term result of the basic contradiction of capitalism: between raising the productivity of labour and sustaining profitability. Over the long term, this cannot be done, and this is the economic Achilles heel of capital.

At first sight, this result seems strange when we read of the huge profits being made by the likes of the so-called FAANGS (the tech and social media monopolies) and Amazon. But these are the exceptions that prove the rule. On average, the profitability of firms in the productive sectors of capitalist economies are low.

That’s partly why profits have been reinvested into financial and other unproductive sectors like property where profitability is higher.

Indeed, it is estimated that before the pandemic, about 15-20 percent of companies in the major economies were what are called “zombies,” i.e., not making enough profit to invest or expand, but just enough to pay wages and service their debts. They are the “living dead” in capitalist terms. At the same time, however, corporate debt is at record highs in most countries, raising the risk of bankruptcies if interest rates were to rise.

All this makes it unlikely that we shall see any significant change post-pandemic from what we saw in the post-great recession decade, i.e., slow growth in investment, low wage growth, poor productivity growth, rising inequality, and unchanged or worsened global poverty.

In the US, a lot has been made about Biden’s turn away from the neoliberal consensus toward Keynesianism. What has he done, why has he done it, and what has been its impact so far?

The pandemic fiscal packages introduced by various G7 governments and, of course, by the Biden administration were emergency measures by states to avoid complete meltdown and catastrophe from the pandemic. In my view, they do not signify a change of ideology or policy by pro-capitalist governments. The usual talk is “let’s get out of this slump and preserve capitalist businesses using state funds and credit and then worry about paying it all down later.” The “later” is still to come.

Biden’s fiscal packages have been heralded as a sea change in government policy and a return to Keynesian macro-management and stimulation of capitalist economies. But first, let’s leave aside the fact that Keynesian stimulus and macro-management was mainly a myth anyway and really the product of a war economy after 1945 which was ditched in the mid-1970s.

Instead let us consider the actual impact of the Biden packages. The latest estimates by Goldman Sachs, hardly a voice of the left, is that after all the machinations of Congress by the end of this year, the Biden package will be equivalent to about 1 percent of US GDP each year for the rest of Biden term. But Biden is going to pay for these partly by increasing taxation by 0.75 percent of GDP a year.

Given that the best estimates of so-called multiplier effects on GDP from fiscal stimulus are about one, that means the net effect of the Biden packages, if fully implemented, might boost US real GDP growth by 0.25 percent a year. The current forecast for long-term us real GDP growth is just 1.8 percent a year. So, the “great” return to Keynes by Biden will be minimal.

If Biden manages to get his larger proposals for increased spending on infrastructure and social welfare spending through Congress, what impact will that have on the US and world economies?

If the Biden package will have a limited effect on the US economy, any spillover effect into other economies will be even less substantial. The EU is also planning an economic recovery package that will boost government funds in EU countries with already large debt burdens like Italy and Spain. But again, the impact on the capitalist sectors of these economies will be minimal. Japan is about to announce a fiscal package that aims to “balance the books” over the next decade – hardly stimulus then! Indeed, the latest growth forecast for japan is a further slowing from its pre-pandemic pace of less than 1 percent a year.

And apart from China, Vietnam, and the small East Asian states, the rest of the global South has little prospect of any fiscal stimulus or economic recovery. Most estimates from international agencies are that these economies will not recover to pre-pandemic GDP levels before 2023 and will never recover to pre-pandemic trajectories of economic growth. There is a permanent “scarring” of these weak peripheral capitalist economies.

There has been a whole range of bourgeois commentators like Lawrence Summers warning about the threat of inflation. What’s your assessment about the arguments about inflation? What are the dangers of a return to what in the 1970s was called stagflation, a combination of slow growth and increased inflation?

In the short term, inflation has returned to many economies. This is because of the sugar rush of consumer demand as economies open up again and people start spending down savings built up during the pandemic slump, while companies search for raw materials and components to restart businesses. Coupled with a significant disruption of global value chains, supply cannot meet demand and bottlenecks have created an inflation of prices in raw materials and consumer goods and services.

But is this as transitory as the federal reserve and other central banks claim (though to be fair, there are divergent views within these banks)? Some, like Summers, argue that credit and fiscal stimulation boost demand without engendering enough supply because there is a secular stagnation in investment and productivity in modern economies.

Others argue that credit injections and monetary easing after the great recession did not lead to inflation. On the contrary, easing only boosted financial and property prices. The Keynesian view is that inflation only happens when wage costs rise, i.e., inflation is caused by labor rather than capital. And that is not happening so far.

My view is that price inflation in goods and services in capitalist economies comes about through a combination of demand generated by new value (as expressed in wages and profits) and the pace of money supply growth. But it is the change in value production that matters most.

Capitalist economies have experienced a slowdown in new value growth for decades, so inflation rates have slowed to a trickle. Central banks have tried very hard with monetary easing to get some inflation (2 percent targets, etc.) and failed. Tinkering with interest rates and money quantities cannot deliver even moderate inflation in these conditions.

So, after this initial burst, inflation will rise above pre-pandemic rates (i.e., 2 percent or so) only if the world capitalist economies generate faster growth in new value (unlikely) and/or there are sustained levels of double-digit growth money supply (possible). The latter is what central banks control, and they are divided on how long to maintain that.

This raises larger theoretical questions on the left. Many believe that Keynesianism or Modern Monetary Theory can stimulate growth and bring about a more egalitarian capitalist order. You have challenged these ideas in your blog, The Next Recession. Why do Marxists argue that Keynesianism can’t overcome capitalist crisis in general and in this slump?

The key to answering this is to recognize that capitalists decide whether economies grow or go into slump. By that I mean capitalists will only invest in means of production and employment if there is a profit to be made. Profit calls the tune under capitalism. And as mentioned above, average profitability in the major capitalist economies is low; corporate debt is high, and many firms are just surviving through cheap credit and not investing productively.

But Keynesian theory does not consider capitalist economies from the perspective of profitability. It’s effective demand that decides. If government spending can increase demand, then it can get capitalist economies going. If Marxist theory is a better explanation of capitalist accumulation, then if profitability of capital stays low and does not recover to new higher levels post-pandemic, then government spending will be ineffective.

#### Tipping points---This is a brink argument for us---We haven’t passed every tipping point and it can only get worse---the alternative solves and market based environmental mechanisms doom us to catastrophe.

Rebecca Green 6-1-21. Rebecca Green is a writer for the Socialist Alternative. Who Can Solve the Climate Crisis?," Socialist Alternative, https://www.socialistalternative.org/2021/06/01/who-can-solve-the-climate-crisis/

In an article titled [“Understanding the Challenges of Avoiding a Ghastly Future,”](https://www.frontiersin.org/articles/10.3389/fcosc.2020.615419/full) 17 climate scientists from around the globe state that, “The scale of the threats to the biosphere and all its lifeforms—including humanity—is in fact so great that it is difficult to grasp for even well-informed experts.” Yes we’ve heard about increasing global temperatures, but these scientists lay out the much longer list of symptoms that will come as a result of unmitigated climate disaster: mass species extinction, unprecedented migration, more pandemics, extreme weather, and food, water, and land shortages. These compounded crises are on the horizon if we do not fight for a top-to-bottom overhaul of society and an end to the for-profit economic system of capitalism. Under a subhead “Political Impotence” these scientists detail the contradictory reality of a rapidly worsening climate situation and the increasing clash of national interests that, if left intact, dooms the type of international collaboration necessary to avert full-scale climate disaster. The situation is so bad that it has forced a section of the global ruling class to act. The World Economic Forum’s 2020 conference was [dubbed](https://time.com/5771889/davos-climate-change/) by *Time* a “Climate Conference,” Biden released his climate-driven infrastructure proposals, and corporations have pledged to cut emissions. All of this can be glimmers of hope to some. But the pace of change that’s possible on the basis of a competitive, free-market economy, even one that has resolved to fight climate change, is far too slow. We need a socialist transformation of society on a green basis, which will only be achieved by a genuine revolt of the global working class. **State of the Climate** Having already surpassed an increase of 1.0° C above pre-industrial global temperatures, we are on track to reach 1.5° C between 2030 and 2052. Even if the emissions reduction goals of the much hailed Paris Climate Agreement were met (which they are not almost anywhere) we would reach 2.6-3.1° C of warming by 2100. According to the international scientific community, anything above 1.5° C would be catastrophic. CO2, methane, and nitrogen levels (three long-lived greenhouse gases that cause warming) all [started to dramatically increase in 1750](https://www.acs.org/content/acs/en/climatescience/greenhousegases/industrialrevolution.html) with the rise of the coal-fueled industrial revolution and the rise of British capitalism. Imperialism spread these fossil-fuel-burning, resource-extracting, and industry-building methods around the globe. Today, electricity and heat production are the biggest source of emissions leading to a warming planet ([25% globally](https://www.epa.gov/ghgemissions/global-greenhouse-gas-emissions-data)), followed by agriculture, forestry, and other land use (24%), and then industry at 21%. Since 1992, CO2 emissions from energy and industry have [increased by 60%](https://www.iea.org/reports/net-zero-by-2050). From 1990 to 2005 emissions from agriculture [increased by 17%](https://www.ipcc.ch/site/assets/uploads/2018/02/ar4-wg3-chapter8-1.pdf). The bulk of these greenhouse gas emissions from the rise of capitalism to today have [come directly from corporations](https://www.theguardian.com/sustainable-business/2017/jul/10/100-fossil-fuel-companies-investors-responsible-71-global-emissions-cdp-study-climate-change). Scientists have warned that we have [either reached or surpassed](https://www.cbsnews.com/news/climate-change-tipping-points-amazon-rainforest-antarctic-ice-gulf-stream/) a number of climate tipping points, which are a “point of no return” in the climate system that mean unavoidable and dramatic consequences. The conversion of the Amazon rainforest into a savannah, the melting of the West Antarctic ice sheet, and the complete collapse of the Gulf Stream are all decisively underway, meaning a collapse of biodiversity, huge dumps of carbon and methane into the atmosphere, extreme sea level rise, and uncontrollable weather. Climate-related extreme weather disasters [jumped by 83%](https://e360.yale.edu/digest/extreme-weather-events-have-increased-significantly-in-the-last-20-years#:~:text=There%20has%20been%20a%20%E2%80%9Cstaggering,report%20from%20the%20United%20Nations.&text=Much%20of%20this%20increase%2C%20the,be%20attributed%20to%20climate%20change.) globally in the last 20 years, killing 1.23 million people. Major floods have doubled and severe storms have increased by 40%. Last year saw the worst wildfire season in the West on record and the Southeast broke the record of number of tropical storms and hurricanes. This will only get exponentially worse. Right now, the West Coast is experiencing its [worst drought in 1,200 years](https://www.usatoday.com/story/news/nation/2020/04/16/drought-worst-western-megadrought-here-study-says/5145929002/). Lack of rainfall and snowpack (frozen reservoirs that release water during spring and summer) are spelling what could be the worst fire season yet, with two fires each in California, Arizona, and New Mexico already this season. With a warming climate and worsening droughts, extreme water shortages will be [“nearly ubiquitous”](https://www.nytimes.com/interactive/2020/09/15/magazine/climate-crisis-migration-america.html) west of Missouri by 2040 according to projections from the federal government. The Ogallala Aquifer, which supplies nearly a third of the country’s irrigation groundwater and supports [one sixth of the world’s grain production](http://duwaterlawreview.com/crisis-on-the-high-plains-the-loss-of-americas-largest-aquifer-the-ogallala/), could be gone by the end of the century. In response to droughts, New Mexican officials have directed farmers who rely on water from the Rio Grande and other rivers to [avoid planting crops](https://www.krqe.com/news/new-mexico/extreme-drought-pushes-local-farmers-to-get-creative-to-water-crops/) unless absolutely necessary. Floods, drought, storms, fire, and global warming pose a dramatic threat to our homes, our communities, and our water and food supply. A half-billion people around the world already live in places that are turning into desert because of destructive agricultural practices and a warming climate that will eliminate the potential for anything to grow. [One billion people](https://sciencepolicyreview.org/2020/08/coral-reefs-are-critical-for-our-food-supply-tourism-and-ocean-health-we-can-protect-them-from-climate-change/) globally rely on coral reefs for food, which now face extinction from warming oceans. Sea level rise, caused by melting ice at the poles will cause extreme flooding, eliminating coastal land for food production and displacing entire communities. By 2060, an estimated [13 million](https://www.nytimes.com/interactive/2020/09/15/magazine/climate-crisis-migration-america.html) people in the U.S. will be forced to move away from submerged coastlines, which would represent the largest internal migration in American history. In 2019, weather-related hazards forced 24.9 million people across 140 countries to move. Estimates suggest there will be anywhere from [200 million](https://reliefweb.int/report/world/cost-doing-nothing-humanitarian-price-climate-change-and-how-it-can-be-avoided) to [1 billion](https://www.frontiersin.org/articles/10.3389/fcosc.2020.615419/full) environmental migrants by 2050 when you factor in permanent food and water shortages. This means, in the worst case scenario, one in seven people globally will be forced to move because of climate change in the next 30 years. Already in the U.S. a historic surge at the southern border has largely been driven by devastating hurricanes and prolonged droughts in El Salvador and Honduras. Massive migration will further strain dwindling resources. As one example, by 2100 it is possible that Atlanta, GA [could receive a quarter million new residents](https://www.nytimes.com/interactive/2020/09/15/magazine/climate-crisis-migration-america.html) from sea-level rise displacement alone. But Atlanta may very well lose its water supply by then to drought and face worsening heat-driven wildfires. And if all this wasn’t bad enough, increasingly dense cities in many countries and strained public services from forced climate migration threaten worse outcomes for future disease outbreaks. Scientists are already [warning of more deadly pandemics to come](https://internationalsocialist.net/en/2021/03/coronvirus), largely linked to deforestation and a loss of biodiversity. One of the most terrifying and underreported realities is that it is “scientifically undeniable” that we are already on the path of a [sixth major extinction](https://www.frontiersin.org/articles/10.3389/fcosc.2020.615419/full). One million (out of 7-10 million) species are at threat of immediate extinction, 40% of plants are endangered, and insects (including pollinators who help us grow food) are disappearing rapidly. An extinction event on this scale will have profoundly destabilizing and complex consequences on global ecosystems. It will contribute to more warming, worse food shortages, poorer water and air quality, more frequent and intense flooding and fires, and compromised human health. **The Cost of the Climate Crisis** All of these horrifying consequences of the unrestricted use of fossil fuels have been known to scientists, politicians, and CEOs for decades. But as scientists really started to ring the alarm bells in the early 80s, deregulation of industry and global expansion under the neoliberal era took carbon emissions to record highs. Capitalism’s virtually unrestricted pillage of the natural world in the interest of profits has gone so far that it now threatens its own economic and political security. Capitalism has never factored environmental impact into its profit-making formula. This despite the fact that all of its wealth comes from the raw resources of the earth, and the work done to them by workers. According to a recent UN report, if any company did have to pay the cost of their environmental damage, not one of them would actually be profitable. We’ve been operating under a severe climate deficit for centuries, but our economic and political system has blatantly ignored this fact because living sustainably is fundamentally contradictory to capitalism’s constant need to expand, cut costs, and maximize profits. In the last 20 years, an estimated [$2.97 trillion](https://e360.yale.edu/digest/extreme-weather-events-have-increased-significantly-in-the-last-20-years#:~:text=There%20has%20been%20a%20%E2%80%9Cstaggering,report%20from%20the%20United%20Nations.&text=Much%20of%20this%20increase%2C%20the,be%20attributed%20to%20climate%20change.) in global economic losses have come as the result of climate-related extreme weather events. In the most extreme climate warming scenarios, the U.S. alone could lose [$520 billion](https://news.climate.columbia.edu/2019/06/20/climate-change-economy-impacts/) a year from climate change damages. Food and water shortages, destroyed infrastructure, worse and more widespread human illness and instability, the collapse of tourism economies, and more will be extraordinarily expensive. The International Energy Agency (IEA), which informs climate policy globally and has historically encouraged the use of fossil fuels, issued a [shocking report](https://www.iea.org/reports/net-zero-by-2050) this month that sets the goal of reaching net zero carbon emissions by 2050. They say that this means halting sales of new internal combustion engine passenger cars by 2035, phasing out all coal and oil plants by 2040, and halting any new investment in oil or natural gas this year. This means a massive scaling up of renewable energy technologies, and the creation of new ones. To illustrate the gargantuan shift this would require, they explain that for solar power, it would be the equivalent of “installing the world’s current largest solar park roughly every day.” This will also mean tripling investments in clean energy worldwide by 2030 to about $4 trillion. Unfortunately, the IEA has been complicit in perpetuating a global economy whose foundations are fossil fuels, so how do we turn this freight train around? **International Response** Joe Biden hosted a climate summit in April that brought together world leaders, almost all of whom belong to countries who have failed their completely inadequate Paris Climate Agreement promises, but who engaged in showboating discussions about the climate crisis nonetheless. Chinese President Xi Jinping attended the summit, where he doubled down on his previous commitment to reach peak emissions before 2030 and [carbon neutrality by 2060](https://www.bbc.com/news/science-environment-54256826). But shortly after, Chinese minister Wang Yi [issued a statement saying](https://www.nytimes.com/2021/04/23/climate/biden-climate-summit.html) “If the United States no longer interferes in China’s internal affairs, then we can have even smoother cooperation that can bring more benefits to both countries and the rest of the world.” Essentially, China’s cooperation with Biden on the climate is contingent on broader relations between the two countries, which are deteriorating due to [inter-imperialist rivalry](https://www.socialistalternative.org/2021/05/08/biden-and-xi-escalate-us-china-conflict/). In order to meet Xi Jinping’s carbon neutrality pledge, China will need to invest $21 trillion to remove carbon from its energy system by 2060. In order to meet this goal, there has been a rapid expansion of Chinese “green finance.” Over the past five years, China’s “green finance” sector has become the [second largest in the world](https://www.scmp.com/news/china/politics/article/3128167/what-green-finance-and-why-it-important-chinas-carbon-neutral) after the U.S. Climate could well become a key battleground in the two countries’ battle for global dominance. Biden has proposed a $2.25 trillion infrastructure package in the U.S., which promises money to update and weatherize infrastructure, transition away from gas-powered cars, and ramp up research and development of renewable energy technologies among other things. In his speech unveiling the plan, Biden [mentioned China six times](https://www.wsj.com/articles/china-looms-large-in-biden-infrastructure-plan-11617631234), and explicitly framed it as an attempt to build up U.S. manufacturing and the economy to undermine growing Chinese economic influence. The Chinese economic model includes a very high level of state intervention into the economy. This has given the Chinese ruling class a certain advantage in scaling up key sectors. Seeing this, Biden is suggesting a level of state intervention into the economy not seen in decades in the U.S. This is accepted by a section of big business itself who recognize that it’s the only [option](https://time.com/5771889/davos-climate-change/) given the scale of the crisis. So what about other countries at the summit? For poorer countries who have been devastated by COVID-triggered economic crises and continue to face outbreaks because of wealthy countries’ vaccine hoarding (see page 11), trillion dollar climate spending packages are simply not an option. Biden’s infrastructure package will barely scratch the surface of what is necessary to address the climate crisis in the U.S., which historically is the number one emitter of greenhouse gases. And Biden’s pledge of [$2.5 billion for overseas climate finance](https://www.theguardian.com/environment/2021/apr/22/poorer-nations-raise-concerns-over-climate-aid-ahead-of-white-house-summit) is as insulting as his pledge to send [20 million vaccine doses](https://www.nytimes.com/2021/05/17/us/politics/biden-coronavirus-vaccine.html) abroad. Poor countries, many of whom have economies that are [completely dependent on dirty energy](https://qz.com/1970294/economies-reliant-on-oil-will-lose-trillions-to-climate-action/#:~:text=Small%20nations%20such%20as%20South,18%25)%20are%20also%20vulnerable.) (like Nigeria, Venezuela and Iraq), were promised [$100 billion a year](https://www.theguardian.com/environment/2021/apr/22/poorer-nations-raise-concerns-over-climate-aid-ahead-of-white-house-summit) in climate finance starting in 2020, but this is yet another Paris agreement promise left unmet. Leaving poor countries that are saddled with debt due to the legacy of imperialism and colonization to fend for themselves on the climate (or the pandemic) is the murderous logic of capitalism’s reliance on the nation state. An “America first” approach to the climate is doomed to fail and will only fuel mass migration and leave millions of poor and working people from the Global South seeking refuge at the doorstep of advanced capitalist countries. **The Ruling Class’ Divided Response** Even Biden’s very limited infrastructure package faces huge challenges ahead. Democrats will have to be fully united (meaning winning over centrist Democrat Joe Manchin, who represents the second-largest coal producing state of West Virginia) and use a special process called budget reconciliation to pass the package in its full form. Republicans, especially those representing fossil-fuel-dependent states like Texas, have already signalled strong opposition. The growing price tag of the climate crisis is driving divisions in the ruling class about what to do, as evidenced by the emerging debate around Biden’s infrastructure package. Many banks who have invested heavily in major polluters for decades will act as fetters on a transition to sustainability because abandoning these investments would represent a big loss on their balance sheet. However, even among the titans of finance capital, there is a growing recognition that climate change carries tremendous fiscal risks. BlackRock, the world’s biggest asset manager, has suggested that climate change will lead to a “fundamental reshaping of finance.” In a similar vein, corporations like Amazon, Coca-Cola, and Microsoft have begun to pledge carbon neutrality in the coming decades. For these companies, disastrous climate scenarios pose the biggest threat to their medium and longer-term profits, meaning they’re willing to invest up front now. For Biden, the threat of losing the cold war with China and seeing the further weakening of U.S. imperialism globally has forced him to act as well. In June 2020, Goldman Sachs announced that spending on renewable power would soon overtake oil and gas drilling, and that clean energy provided a [$16 trillion investment opportunity through 2030](https://www.wsj.com/articles/china-looms-large-in-biden-infrastructure-plan-11617631234). They pointed to the growing cost of fossil fuel development (which will increase if fossil fuel subsidies are removed as proposed in Biden’s infrastructure plan), which could lead to higher oil and gas prices and spur more investment in renewables. It is possible that we do see politicians and big business interests make a shift towards renewable energy to avoid full climate collapse, and to get in on a growing market. We should of course hold our applause for the companies and politicians who have waited until it was clear they would lose money to do anything at all, and we shouldn’t hold our breath that any of it will be enough anyways. **What Next?** What is concretely needed to address this crisis is a global plan to completely rebuild energy grids that rely 100% on renewables in the next decade; ending new production of gas-run cars, scaling up electric vehicle production and massively expanding public transit; developing renewable fuel alternatives for planes, trains, and cargo ships and completely phasing out fossil fuel dependence; retrofitting, weatherizing, and building new green housing and infrastructure to withstand extreme weather and accommodate climate refugees; reforesting the planet and overhauling our food system top-to-bottom, full scale replacing of mass monocrop agriculture with local, organic alternatives; and investing to historic proportions in yet-undiscovered technologies that can help deal with the crisis of water contamination and shortages, infectious disease, coral reef and pollinator population collapse, and so much more. Despite a shift in the ruling class’ approach, it will inevitably be too slow because of the logic of capitalism. Inter-imperialist rivalries mean countries will work separately to develop and then hoard climate technology, instead of collaborating to most rapidly produce and share out the best innovations. Poor countries will be left behind. Corporations will continue to invest their profits in the financial markets as opposed to expanding their productive capacity in the direction needed by humanity. Fossil fuel interests, the agricultural industry, other major polluters, and their loyal politicians will work to block a transition to a sustainable future with ferocity. While we’re seeing increased state intervention globally, the levels required to mitigate all of these bottlenecks and speed the process up enough to put us on track is extraordinarily unlikely. That is why we need to take things into our own hands. Mass climate protests have clearly put this issue onto the agenda, and we need a dramatic ramping up of this movement. School strikes should be coordinated and planned as soon as schools open again in the fall, and should be ongoing with a plan to involve more students, teachers, and staff. The youth-led movement also urgently needs to link up with the broader working class. In the short term this could look like striking students appealing to local unions to join them for demonstrations and days of action. This will crucially need to include workers in polluting industries. [Ten million people globally](https://thehill.com/opinion/energy-environment/494427-fossil-fuels-save-the-workers-kill-the-industry) work directly for the fossil fuel industry, and many more rely indirectly on these and other highly polluting jobs. To build a powerful movement with political and economic power, demands for the environment need to be linked with demands to retrain these workers in new, sustainable fields with no loss of pay or benefits and a guarantee of high wages and union recognition. This type of organizing could win crucial victories for expanding renewable energy, reforestation, and general resource protection. This would help buy time. Fundamentally though, these battles will need to be waged again and again on a mass scale to address the many complex dynamics of the climate crisis caused by a system that is based on the exploitation of workers and the earth. What is actually necessary for a long-term solution to climate disaster is a complete restructuring of a society on a socialist basis. This can only be won by the global working class asserting itself in a mighty struggle against the capitalist system. Mitigating the climate crisis on the time frame necessary requires an end to a for-profit system and its replacement with a democratically planned economy run by the working class itself. This means bringing the energy industry, the transport sector, key sections of manufacturing and finance fully into public ownership. On this basis, millions could be put to work helping rebuild a green economy, the accumulated wealth of polluting industries could be reallocated to green and socially productive projects, scientific innovation would be unleashed as global collaboration would replace nationalist competition, and instead of profits for a few, all economic activity would be geared towards meeting global human need, including averting the climate crisis. In this society, economic decisions would necessarily include environmental and social impact. On the basis of a truly democratically-run economy, we could make rapid decisions about the resources of society and put the full weight of the global working class behind stopping the climate crisis in its tracks. Winning this society will require the biggest ever united struggle of the global working class against capitalism. While the size of this task is mammoth, the future of humanity depends on it.

## Advantage

#### B] Propriety rights, no incentive for R&D

Bee 18 [Vanessa A. Bee. Senior Litigation Counsel at the Consumer Financial Protection Bureau with a JD from Harvard Law. Innovation Under Socialism. 10-24-2018. <https://www.currentaffairs.org/2018/10/innovation-under-socialism> ]

But prioritizing profit is a double-edged sword that can hamper innovation. Owning the proprietary rights allows private firms to block workers—through anti-competitive tools like non-compete agreements, patents, and licenses—who put labor into the innovation process from applying the extensive technical expertise and intimate understanding of the product to improve the innovation substantially. This becomes especially relevant once the workers leave the firm division in which they worked, or leave the firm altogether. Understandably, this lack of control and ownership will cause some workers, however passionate they may be about a project, to be less willing to maximize their contribution to the innovation.

Of course, the so-called nimbleness that allows firms to make drastic changes like mass layoffs is extremely harmful to the workers. This is no fluke. The capitalist economy thrives on a reserve army of labor. Inching closer to full employment makes workers scarcer, which empowers the labor force as a whole to bargain for higher wages and better work conditions. These threaten the firm’s bottom line. So, the capitalist economy is structured to maintain the balance of power towards the owners of capital. Positions that pay well (and less than well) come with the precariousness of at-will employment and disappearing union power. A constant pool of unemployed labor is maintained through layoffs and other tactics like higher interest rates, which the government will compel to help slow growth and thereby hiring. This system harms the potential for innovation, too.

The fear of losing work can dissuade workers from taking risks, experimenting, or speaking up as they identify items that could improve a taken approach—all actions that foster innovation. Meanwhile, thousands of individuals who could be contributing to the innovative process are instead involuntarily un-employed. This model also encourages monopolization, as concentrating market power gives private firms the most control over how much profit they can extract. But squashing competition that could contribute fresh ideas hurts every phase of the innovation process, while giving workers in fewer workplaces space to innovate.

Deferring to profit causes many areas of R&D to go unexplored. Private firms have less reason to invest in innovations likely to be made universally available for free if managers or investors do not see much upside for the firm’s bottom line. In theory, the slack in private research can be picked up by the public sector. In reality, however, decades of austerity measures  threaten the public’s ability to underwrite risky and inefficient research. Both the Democratic and Republican parties increasingly adhere to a neoliberal ideology that vilifies “big government,” promotes running government like a business, pretends that government budgets should mirror household budgets or the private firm’s balance sheet, and rams privatization under the guises of so-called public-private partnerships and private subcontractors.

In the United States, public investment in R&D has been trending downward. As documented in a 2014 report from the Information Technology & Innovation Foundation, “[f]rom 2010 to 2013, federal R&D spending fell from $158.8 to $133.2 billion … Between 2003 and 2008, state funding for university research, as a share of GDP, dropped on average by 2 percent. States such as Arizona and Utah saw decreases of 49 percent and 24 percent respectively.” Even if public investment in the least profitable aspect of research suddenly surged, in our current model, the private sector continues to be the primary driver of development, production, and distribution. Where there remains little potential for profit, private firms will be reluctant to advance to the next phases of the innovation process. Public-private projects raise similar concerns. Coordinated efforts can increase private investment by spreading some costs and risk to the public. But to attract private partners in the first place, the public sector has a greater incentive to prioritize R&D projects with more financial upsides.

This is how the quest for profits and tight grip over proprietary rights, both important features of the capitalist model, discourage risk. Innovations are bound for plateauing after a few years, as firms increasingly favor minor aesthetic tweaks and updates over bold ideas while preventing other avenues of innovation from blossoming. At the same time, massive amounts of capital continue to float into the hands of a few. The price of innovating under capitalism is then both decreased innovation and decreased equality. The idea that this approach to innovation must be our best and only option is a delusion.

#### Red innovation solves---mutual funds, dividends, public projects, larger and more creative workforce

Bee 18 [Vanessa A. Bee. Senior Litigation Counsel at the Consumer Financial Protection Bureau with a JD from Harvard Law. Innovation Under Socialism. 10-24-2018. <https://www.currentaffairs.org/2018/10/innovation-under-socialism> ]

In this market socialist society, most shares are pooled into highly regulated mutual funds, which then pursue different investment strategies when trading them on a highly regulated stock exchange. This exchange helps monitor the performance of the firm managers and assess which innovations are performing strongly. To avoid the concentration of market power and capital, the government sets the bar for how much stock any stakeholder can hold in any firm and industry. It also sets the minimum and maximum amount of dividends that each person can receive annually. As the economy grows, dividends can be adjusted to increase by a percentage, or commensurate with inflation. Surplus resulting from distributing only part of the profits allows the more profitable firms to subsidize innovative, but less profitable, activities. In addition, this regime does not tolerate anti-competitive contracts like restrictive employment agreements, strict license agreements, and long patents (although inventions may be attributable to their inventors and may be rewarded through other means like prizes, bonus compensation, or simply very short patents periods).

The model could incorporate elements of democratically-planned, participatory socialism, which emphasizes democracy and individual autonomy in the workplace. Economist David Kotz believes that particular features of this model could foster innovation performance:

First, the main features of the overall economic plan would be determined by a democratic process … Second, the planning and coordination of the economy would take place … by industry boards and local and regional negotiated coordination bodies that have representation of all affected constituencies, including workers, consumers, suppliers, the local community, and even “cause” groups such as environmentalists, job safety activists, feminists, etc.

Among other topics, these representative boards could vote on compensation minimums and maximums, to prevent innovation from supporting socioeconomic inequality and unfair social divisions of labor. This injection of democracy would give ordinary people a larger say in the direction of the markets, and what areas they think would benefit from more investment in innovation.

The second ingredient of innovation, capital, is guaranteed in the market socialist economy. Freed of its neoliberal handcuffs, the government can designate funding towards various innovative projects at a greater rate than it does now. Banks jointly owned by the government and other non-private stakeholders would provide entrepreneurs with access to capital for projects through loans with terms more generous than private lenders offer now. The firms owned by government, worker co-operatives, ordinary people, and other publicly-owned firms can also raise capital from each other as wealth is distributed more equally. In such a world, more individuals can pool their resources to invest in particular innovative projects rather than a recurring cast of millionaires.

Market socialism would easily deliver the third ingredient of innovation: human capital. Such an economy has no need for a reserve army of labor. While profit is encouraged, its primary function is increasing the pool of resources and cash distributable to workers and non-workers. It does not come at the price of providing generous wages, as dividends to shareholders are capped no matter how well the firm performs. In fact, this society could make a democratic decision to compensate people in positions on the lower band of wages with more in unearned income, out of the same pool of profits.

When applied earnestly, the principles of socialism are also incompatible with mass incarceration, discrimination, uncompensated caregiving, highly restrictive immigration policies, and other social practices that exclude large numbers of workers from participating in our capitalist economy. Add a fairer distribution of public resources among individuals and communities, along with more free or heavily subsidized goods like education, and a market socialist economy could really see an increase in the availability and skills in the pool of workers. Freeing more people to join the innovative process would naturally foster more innovation.

Lastly, innovation can only thrive if the innovation process affords individuals chances to be creative and the right conditions to motivate them. Studies on what fosters creativity show that workers who rate highly on creativity indexes perform best when they are given challenging work, a good measure of autonomy, and supportive and caring supervisors who can provide substantive and constructive feedback. The same study, however, shows that workers who are by nature less creative tend to be happier in less complex positions. Neither worker is, or should be, superior to the other. On the contrary, the innovation process has plenty of room for all types of workers with varying degrees of innate creativity. The core principles of socialism, however, do suggest that this economic system is better suited for supporting creative workers than capitalism.

#### Cap turns disease

#### A – Health care market incents pandemics, monocultures erode health

Rose 21 [Nick. PhD in Political Ecology from RMIT University. Executive Director of Sustain: The Australian Food Network. From the Cancer Stage of Capitalism to the Political Principle of the Common: The Social Immune Response of “Food as Commons.” Int J Health Policy Manag 2021. 3-31-21. DOI: 10.34172/ijhpm.2021.20 //shree]

Such suffering at the individual and population level is, however, a significant commercial opportunity for the corporate players in the global healthcare market, valued at $US8.45 trillion in 2018, and, with an anticipated compounding annual growth rate of nearly 9%, expected to reach nearly $US12 trillion by 2022.23 In a revealing statement, a recent Businesswire commentary on this booming sector noted that:

“Going forward, faster economic growth, technological developments and the increasing prevalence of diseases due to rising busy and sedentary lifestyles will drive the growth [of the global healthcare market]. Factors that could hinder the growth of this market in the future are rising interest rates, increasing awareness of alternative therapies and natural remedies, government provisions in healthcare services, and stringent government regulations”23 (emphasis added).

The implication here is that greater public spending on healthcare and better public health generally are, from the perspective of the private healthcare market, unwelcome, insofar as they inhibit increasing profit. From the standpoint of ethics and a commitment to basic human rights, including the right to the highest attainable standard of health, such reasoning can only be described as perverse. And yet it is widely accepted as the ‘common sense’ of industry and financial markets, as well as being reinforced in a directly material sense by highly effective lobbying efforts aimed at inhibiting public health measures such as a sugar tax.24

In terms of the ecological impacts, large-scale industrialised monocultures and the deforestation and land-use change that they entail are major drivers of anthropogenic climate change, with the food system accounting for as much as 37% of all greenhouse gas emissions, according to the Intergovernmental Panel on Climate Change.25 Such practices are also major drivers of the ‘unprecedented’ rapid decline in ecosystems and accelerating rate of species extinction, leading to humanity ‘eroding the very foundations of our economies, livelihoods, food security, health and quality of life worldwide;’ this being the conclusion of the most comprehensive assessment of the state of planetary ecosystems ever undertaken by the world’s leading scientists in their respective fields.26

Summarising these and other major datasets, 16 leading biophysical scientists, in a paper published in January 2021, stated that ‘the scale of the threats to the biosphere and all its lifeforms – including humanity – is so great that is difficult to grasp for even well-informed experts.’27 They added that the current political and policy responses were woefully inadequate to the extent and severity of the crisis, concluding that:

“The gravity of the situation requires fundamental changes to global capitalism, education, and equality, which include inter alia the abolition of perpetual economic growth, properly pricing externalities, a rapid exit from fossil-fuel use, strict regulation of markets and property acquisition, reigning in corporate lobbying, and the empowerment of women.”27

Absent such thorough-going structural changes, they warned, the future in the coming decades would be ‘ghastly.’ They thus concluded with an exhortation to ‘experts in any discipline that deals with the future of the biosphere and human well-being to eschew reticence, avoid sugar-coating the overwhelming challenges and “tell it like it is.” Anything else is misleading at best, or negligent and potentially lethal for the human enterprise at worst.’27 This paper is written in the spirit of that academic and scientific call to arms.

#### B – Profit motive net increases new disease – empirics

Broughton 20. [Alan, Active Member of the Organic Agriculture Association and is a co-author of Sustainable Agriculture vs Corporate Greed. Capitalist greed and biodiversity loss is spawning new deadly diseases. Green Left. 05-16-2020. https://www.greenleft.org.au/content/capitalist-greed-and-biodiversity-loss-spawning-new-deadly-diseases]

Diseases such as COVID-19 have been predicted by various disease ecologists.

In Spillover: Animal Infections and the Next Human Pandemic, David Quammen wrote in 2012 about the likelihood of virulent infectious diseases because of urban sprawl, pesticides and international trade, which has altered ecosystems and damaged biodiversity, letting loose the viruses that were once confined to wildlife.

Dr Peter Daszak, a contributor to the World Health Organization Register of Priority Diseases, called it Disease X in 2018, well before COVID-19 broke out.

The number of new infectious diseases has tripled each decade since the 1980s: there have been at least 300 in the past 50 years, 72% of which originated in wildlife.

Ebola arrived via a chimpanzee that was caught and consumed in Gabon; it killed 90% of infected people. It is suspected to have been passed on to chimpanzees from bats, forced to inhabit the same ecosystems and compete for the same food sources by deforestation.

Middle East Respiratory Syndrome (MERS) passed from bats to camels and then to the camel handlers. Hendra virus came from fruit bats, urbanised because of loss of habitat, and was passed on to horses and people.

Kyasanur Forest Disease in India spread from monkeys to humans via ticks as monkeys invaded human territory when theirs was lost through deforestation.

Nipah virus in Malaysia spread from fruit bats driven from the forest by clearing on to mango trees, into pigs via bat droppings and saliva, and then on to the farmers. HIV-AIDS, Zika, Severe acute respiratory syndrome (SARS), bird flu and West Nile viruses all came from wild animals.

COVID-19 is likely to have passed by bats to another animal, possibly a pangolin, then on to humans trading in wild animals.

Disrupted ecosytems

David Quammen said: “We cut the trees, we kill the animals or cage them and send them to markets. We disrupt ecosystems, and we shake loose viruses from their natural hosts. When that happens, they need a new host. Often, we are it.”

As Joachim Spangenberg from the Sustainable Europe Research Institute wrote: “We are creating this situation, not the animals”.

Ending the trade in wildlife sounds like a simple solution but suppression could drive it underground where hygiene is likely to be worse. Many people are dependent on the trade for their income and sustenance.

The issues of poverty, unemployment and food insecurity need to be addressed at the same time. Simply blaming bush meat, which has been consumed since the start of human history, does not address the key issue — biodiversity loss.

The extent tropical forests has been halved in the past century. When animals at the top of the food chain disappear, those at the bottom, such as rats and mice that normally carry more pathogens, take up the space.

Habitat loss forces animals and their diseases to go elsewhere. Species in degraded ecosystems carry more disease.

Natural animal habitats are being destroyed for monocultural agricultural production by corporations — soy, corn and palm oil — and for logging, mining, roads and urbanisation. The consequences of this practice are not factored into the extracted profits.

Climate change

Climate change is another factor. As climatic zones are altered wildlife migrates to new areas and interacts with species it never did before, passing on its diseases.

COVID-19 has a low mortality rate — about 1% — but is highly infectious.

The Ebola mortality rate is 90%, but infection does not spread easily. A new disease with the mortality rate of Ebola and the infection rate of COVID-19, or the flu, would be far more devastating than either alone.

If the world continues to allow the unrestricted greed of profit to destroy the world’s natural and agricultural ecosystems, such an outcome becomes more likely. We live in a world where profits are privatised, but the ecological consequences are paid for by everybody.

Indian agroecologist Vandana Shiva says that the profit motive separates humans from the ecosystems that life, including us, depends on: “As forests are destroyed, as our farms become industrial monocultures to produce toxic, nutritionally empty commodities, and our diets become degraded through industrial processing with synthetic chemicals and genetic engineering in labs, we become connected through disease.”

COVID-19 was predicted, and inevitable, because of how nature is treated. As well as treating the epidemic, and preparing for the next one, we have to address the root cause, restoring the broken link between humans and the environment.

## N&C

#### 2] Participation must be prior and considered---its key to legitimacy of rules and participation.

Rohit Chopra and Lina Khan 20. Rohit Chopra, Commissioner, Federal Trade Commission. And Lina M. Khan, Academic Fellow, Columbia Law School; Counsel, Subcommittee on Antitrust, Commercial, and Administrative Law, US House Committee on the Judiciary; former Legal Fellow, Federal Trade Commission. “The Case for "Unfair Methods of Competition" Rulemaking”. The University of Chicago Law Review , Vol. 87, No. 2 (March 2020), pp. 357-380. https://www.jstor.org/stable/10.2307/26892415

And third, rulemaking would enable the Commission to establish rules through a transparent and participatory process, ensuring that everyone who may be affected by a new rule has the opportunity to weigh in on it, granting the rule greater legitimacy.49 APA procedures require that an agency provide the public with meaningful opportunity to comment on the rule’s content through the submission of written “data, views, or arguments.”50 The agency must then consider and address all submitted comments before issuing the final rule. If an agency adopts a rule without observing these procedures, a court may strike down the rule.51

This process is far more participatory than adjudication. Unlike judges, who are confined to the trial record when developing precedent-setting rules and standards, the Commission can put forth rules after considering a comprehensive set of information and analysis.52 Notably, this would also allow the FTC to draw on its own informational advantage—namely, its ability to collect and aggregate information and to study market trends and industry practices over the long term and outside the context of litigation.53 Drawing on this expertise to develop rules will help antitrust enforcement and policymaking better reflect empirical realities and better keep pace with evolving business practices.

#### 3] Admin law is precedent setting---genuine consultation now becomes inalienable---the plan and perm signal nullification is legitimate.

Giulio Napolitano 14. Professor of Administrative Law, Law Department, University of Roma Tre. "Conflicts and strategies in administrative law". OUP Academic. 8-1-2014. https://academic.oup.com/icon/article/12/2/357/710357

Conflicts in administrative law are not a single-battle war. Every move of an actor responds to the moves made by others. That’s why administrative law is a repeated interactions game. Each move is incremental and path-dependent. Devices and mechanisms set up in the previous round cannot be easily and fully dismantled.

Let’s take the example of independent authorities. Once they are established in order to insulate the implementation of specific policies from the influence of the government or from the pressure from local interests, it becomes difficult to abolish them: even when the rule-making power comes back into the hands of national legislators or executives. As a consequence, reactions must be fine-tuned and sophisticated. The preferred solutions will be, for instance, the transfer of a specific power from the regulatory agency to the executive, or the submission of some sensible prerogatives of the independent body to ex ante directives or ex post approval by a political actor.36

Further, procedural rights are difficult to withdraw: even more than organizational devices. Once they have been recognized, even if sometimes for purely instrumental reasons of fire-alarm signaling, they become sanctified as inalienable rights.37 That’s why adjustments and reactions must be interstitial: the right to be heard and other prerogatives of private actors cannot be nullified. Changing time limit for comments, enlarging or restricting addressees of participatory rights, shifting the burden of proof from the acting agency to private parties, and vice-versa, are among the most preferred solutions.

#### Perms sever the mandate of the plan---counterplan doesn’t fiat antitrust law but recommends a rule---process could result in no change---makes the affirmative conditional and a moving target.

Justia 21. "Notice and Comment Process for Agency Rulemaking". Updated: May 2021. Accessed: 8/26/2021. https://www.justia.com/administrative-law/rulemaking-writing-agency-regulations/notice-and-comment/

Agencies must consider all “relevant matter presented” during the comment period, and they must respond in some form to all comments received. They are not, however, required to take any specific action with regard to the rule itself. The publication of the final rule must include analyses of any relevant data or other materials submitted by the public and a justification of the form of the final rule in light of the comments the agency received.

If opposition to the proposed rule is exceptionally large or strident, the agency may decide to make substantial modifications and start the process over by publishing a new notice and opening a new comment period. Otherwise, the agency will publish its final findings along with the rule, which is codified in the Code of Federal Regulations.

#### Severs certainty and immediacy

#### 1---“Resolved”---means certain.

Webster’s Revised Dictionary 1996 ((1.) RESOLVED MEANS “HAVING A FIXED PURPOSE; DETERMINED; RESOLUTE”)

#### 2---Should is mandatory

Court of Appeals of Arizona, Division 1, Department D. 02. IN RE: the Marriage of Vanessa A. McNUTT, Petitioner-Appellee, v. Shane M. McNUTT, Respondent-Appellant. No. 1 CA-CV 01-0255. Decided: June 27, 2002 https://caselaw.findlaw.com/az-court-of-appeals/1315322.html

¶ 26 The word “should” is most commonly used to express obligation or duty.   See The American Heritage Dictionary 1670 (3d ed.1992).   We conclude that, based on the intent of the Guidelines and the interest of parents in the allocation of the federal tax exemption, the word “should” as used in § 25 of the Guidelines is mandatory rather than discretionary.   See Lincoln v. Lincoln, 155 Ariz. 272, 276, 746 P.2d 13, 17 (App.1987) (holding that the trial court abused its discretion by refusing to allocate the dependency exemption).   Thus, the trial court abused its discretion by failing to allocate the federal tax exemption, and we direct the trial court to allocate the exemption on remand.

#### 3---“Substantial”---means full not merely possible.

Words & Phrases 64 (40 W&P 759)

The words “outward, open, actual, visible, substantial, and exclusive,” in connection with a change of possession, mean substantially the same thing. They mean not concealed; not hidden; exposed to view; free from concealment, dissimulation, reserve, or disguise; in full existence; denoting that which not merely can be, but is opposed to potential, apparent, constructive, and imaginary; veritable; genuine; certain; absolute; real at present time, as a matter of fact, not merely nominal; opposed to form; actually existing; true; not including admitting, or pertaining to any others; undivided; sole; opposed to inclusive.

#### 4---“Prohibitions”---eliminates all possibility that the activity is legal---the counterplan is a restriction.

PEDIAA 15. “Difference Between Prohibited and Restricted”. https://pediaa.com/difference-between-prohibited-and-restricted/

Main Difference – Prohibited vs. Restricted

Prohibited and Restricted are used in reference to limitations and prevention. However, they cannot be used interchangeably as there is a distinct difference between them. Prohibited is used when we are talking about an impossibility. Restricted is used when we are talking about something that has specific conditions. The main difference between prohibited and restricted is that prohibited means something is formally forbidden by law or authority whereas restricted means something is put under control or limits.

What Does Prohibited Mean

Prohibited is a variant of the verb prohibit. Prohibited can be taken as the past tense and past participle of prohibiting as well as an adjective. Prohibited means that something is formally forbidden by law or authority. When we say ‘smoking is prohibited’, it means that smoking is not allowed at all, there are no exceptions. Prohibit indicates an impossibility. This gives out the idea that it is not at all possible under any condition or circumstance. The term Prohibited goods is used to refer to items that are not allowed to enter or exit certain countries. For example, the government of South America lists Narcotic and habit-forming drugs in any form, Poison and other toxic substances, Fully automatic, military and unnumbered weapons, explosives and fireworks as prohibited goods. The following sentences will further explain the use of prohibited.

Inter-racial marriages were not prohibited by the government.

He was proved guilty of using prohibited substances.

No one was allowed to enter the grounds; entry was prohibited.

Prohibited imports are the items that are not allowed to enter a country.Difference Between Prohibited and Restricted

What Does Restricted Mean

Restrict means to put under limits or control. Restricted can be either used as the past tense of restrict or as an adjective meaning limited. When we say something is restricted, it means that limits or conditions have been added to it. It does not mean that it is completely impossible. For example, Restricted goods are allowed to enter or exit a country under certain circumstances. A written permission can help you to import or export that item. Likewise, a restricted area does not mean that people are not allowed to enter; it means that a special permission is required to enter the place. Restricted information refers to information that are not disclosed to the general public for security purposes.

The new regulations restricted the free movement of people.

The club was restricted to its members and their family members.

Only the highest military personnel had access to the restricted area.

American scientists had only restricted access to the area.Main difference - Prohibited vs Restricted

Difference Between Prohibited and Restricted

Meaning

Prohibited means banned or forbidden.

Restricted means limited in extent, number, scope, or action

Possibility

Prohibited means that there is no possibility of doing something.

Restricted means that something can be done under certain conditions.

Adjective

Prohibited functions as an adjective derived from prohibit.

Restricted functions as an adjective derived from restrict.

Past tense

Prohibited is the past tense and past participle of prohibit.

Restricted is the past tense and past participle of restrict.

#### 5---“Anticompetitive”---competition policy doesn’t go through notice and comment.

Spencer Weber Waller 19. John Paul Stevens Chair in Competition Law and Director, Institute for Consumer Antitrust Studies, Loyola University Chicago School of Law. “Antitrust and Democracy”, 46 FLA. St. U. L. REV. 807 (2019).

The question of judicial deference to a FTC decision is a more complicated matter. The FTC is an independent regulatory agency established by Congress with powers over both consumer protection and competition matters. 2 00 The FTC Act prohibits both unfair methods of competition, and unfair and deceptive acts and practices. 2 0 1 The FTC also enforces a wide variety of other statutes that relate to consumer protection and privacy.202 The FTC engages in notice and comment rulemaking in consumer protection, but not in competition matters. 2 03

#### 6---“Expansion” to “antitrust law” must be binding and immediate.

Anu Bradford and Adam Chilton 19. Anu Bradford, Henry L. Moses Professor of Law and International Organization, Columbia Law School. Adam S. Chilton, Assistant Professor of Law and Walter Mander Research Scholar. “Competition Law Gone Global: Introducing the Comparative Competition Law and Enforcement Datasets.” Codebook for Version 1. “Comparative Competition Law Dataset”. “CCL\_Law\_Data\_Ver1.dta”. Journal of Empirical Legal Studies 16(2): 411-443.

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| --- | --- |
| Threshold for a “law” that triggers coding | Code all laws, regulations, and constitutional provisions on competition that appear to be legally binding. Ask yourself whether the competition agency could rely on this particular document as a legal basis for bringing an enforcement action or reaching a certain decision. If the document is a mere notice of enforcement priorities, a white paper on planned (future) changes in remedies, or a guideline elaborating on how the agency approaches the questions of market definition, etc., exclude the document from the set of laws that you code. As the name of the document (Regulation v. Guideline) is not always conclusive in revealing its legal status, this may require you to read through the text of a document, or do some additional background investigation to determine whether it should be coded. If you are uncertain, reach out to Lead Coders for guidance – this can be very tricky to determine, particularly as you get used to the survey instrument and coding procedure. |

#### 7---“Expand the scope”---doesn’t occur until a case is won.

Gibson Dunn 21. Lawfirm. Gibson Dunn partner Howard S. Hogan served as an expert witness for 1-800 Contacts. "Second Circuit Issues Important Ruling on Trademark Settlements and Antitrust/IP Interface". Gibson Dunn. 6-14-2021. https://www.gibsondunn.com/second-circuit-issues-important-ruling-on-trademark-settlements-and-antitrust-ip-interface/

Finally, the decision in 1-800 Contacts also serves as a reminder that, in an era in which commentators are encouraging more aggressive and novel antitrust enforcement, the federal judiciary remains the ultimate arbiter of federal antitrust policy. Enforcers seeking to expand the scope of U.S. antitrust law must do more than bring novel cases—they must also prove their cases with hard facts in a court of law.

#### 1---Optimal policymaking---comparison of policymaking settings is key.

C. Scott Hemphill 09. Associate Professor and Milton Handler Fellow, Columbia Law School. “An Aggregate Approach to Antitrust: Using New Data and Rulemaking to Preserve Drug Competition”. Columbia Law Review. https://poseidon01.ssrn.com/delivery.php?ID=588125096113080096106002107108097121035031077054017013065114020077027104102087029081118107106002104019004112030074020109103121006086087059083005011081071001076076040034056104112070118104110067012020072022093015084126127025065066072121017026087065093&EXT=pdf&INDEX=TRUE

B. Antitrust Rulemaking

The previous section advocates a focused increase in the FTC’s “competition policy research and development.”174 If the FTC accepted the suggestion, it would eventually reach a firm, empirically grounded conclusion about the optimal policy for side deals, and thus either confirm or reject the conclusion reached in Part II. That conclusion could be deployed in a variety of policymaking settings, including litigation brought by the Agency, amicus practice, and advocacy for congressional legislation. This section considers a further possibility, that a comprehensive aggregate study of settlement practice could form the basis for substantive policymaking by the Agency in the form of rulemaking.

There is of course an enormous literature on the choice of courts versus agencies, adjudication versus rulemaking, and rules versus standards, and this Article does not engage the full complexity of those debates. My goal here is simply to suggest how the virtues of an aggregate perspective on settlement practice shift the balance in a way that favors agency rulemaking. In other words, the settlement issue highlights certain advantages of moving away from a court-centered model of antitrust law.

#### 2---Literature---rulemaking is an enormous debate---deleting it is unpredictable and anti-educational.

Rohit Chopra and Lina Khan 20. Rohit Chopra, Commissioner, Federal Trade Commission. And Lina M. Khan, Academic Fellow, Columbia Law School; Counsel, Subcommittee on Antitrust, Commercial, and Administrative Law, US House Committee on the Judiciary; former Legal Fellow, Federal Trade Commission. “The Case for "Unfair Methods of Competition" Rulemaking”. The University of Chicago Law Review , Vol. 87, No. 2 (March 2020), pp. 357-380. https://www.jstor.org/stable/10.2307/26892415

We agree that relying solely on adjudication to define the substance of § 5 has generated persistent ambiguity. However, relying on courtroom battles to create precedents that set expectations for the marketplace is not the only vehicle through which the Commission can establish what conduct constitutes an “unfair method of competition.” The Commission has in its arsenal a far more effective tool that would provide greater notice to the marketplace and that is developed through a more transparent and participatory process: rulemaking. Through engaging in rulemaking, the Commission could define “unfair methods of competition” through processes established by the Administrative Procedure Act38 (APA).39

There is an enormous body of literature on the choice between adjudication and rulemaking, and this Essay does not seek to fully address the various trade-offs.40 Instead, our goal is to reflect on the current state of antitrust enforcement and consider ways to address the ambiguity, burdens, and democratic deficiency that we discuss above.

#### Reject the argument not the team.

#### Less than 60 days.

Prepared by the Office of the Federal Register. “A Guide to the Rulemaking Process”. https://www.federalregister.gov/uploads/2011/01/the\_rulemaking\_process.pdf

What is the time period for the public to submit comments?

In general, agencies will specify a comment period ranging from 30 to 60 days in the “Dates” Section of the Federal Register document, but the time period can vary. For complex rulemakings, agencies may provide for longer time periods, such as 180 days or more. Agencies may also use shorter comment periods when that can be justified.

1. See Carl Shapiro, “Navigating the Patent Thicket: Cross Licenses, Patent Pools, and Standard-Setting,” in *Innovation Policy and the Economy*, Volume I, Adam Jaffe, Joshua Lerner & Scott Stern, Eds, MIT Press, 2001. [↑](#footnote-ref-1)
2. See Shapiro, supra note 72, abstract. [↑](#footnote-ref-2)
3. Id., p. 7. [↑](#footnote-ref-3)
4. Id. [↑](#footnote-ref-4)
5. But the incorporation of a patented technology into a standard does not always create market power. A patented technology may be so fundamental to the subject matter of a standard as to have no viable alternatives. A technology also may be so superior to its alternatives that a standards body may have no practical choice but to incorporate it into a standard. In either case, any market power that may be enjoyed by the patent owner would arise from the market's demand for the invention and not from its incorporation into the standard. Moreover, the incorporation of the patented technology into a standard may not confer market power at all if alternative standards exist or if the standard otherwise fails to secure market acceptance.” See Joseph Kattan, “Disclosures and Commitments to Standard-Setting” (2002) *Antitrust* 22. 77 See, for example, the discussion of Wang’s refusal to license its Single In-Line Memory Modules (SIMMs), after lobbying JEDEC to adopt the technology as a standard, in Janice M. Mueller, “Patent System Reform: Patent Misuse Through the Capture of Industry Standards,” (2002) *Berkeley Technology Law Journal*, 659. [↑](#footnote-ref-5)