### OFF---Privacy [:50]

#### 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.”

### \*OFF---Regs [0:14]

#### The United States federal government should

#### ban private sector business practices that are exempt from penalties via state action immunity through non-antitrust regulations

#### 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.

### \*OFF---States [0:29]

#### The fifty states and all relevant territories should substantially increase prohibitions on anticompetitive business practices by the private sector shielded by application of state action immunity.

#### States can pursue autonomous anti-trust enforcement even when conflicting with federal law.

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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.

### OFF---Cap---Commons [1:32]

#### 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---N&C [1:10]

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 anticompetitive business practices by the private sector shielded by application of state action immunity.

#### 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---CWS [0:52]

#### 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:

* the practices firms can use to engage in collusion and its welfare consequences;
* the practices firms can use to abuse a dominant position and its welfare consequences;
* which practices can be considered proof of such activities;
* how to regulate access to a market;
* how to properly assess the effects of a particular practice or merger;
* the practices, by which the state and public authorities distort competition such as subisidies and tax measures
* 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:

* Can and should competition law be used to protect the privacy of consumers on the internet?
* 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?
* Should competition policy also include considerations of economic inequality or environmental effects?
* 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.

### 1NC---Innovation Adv

#### 1---Big Tech drives AI innovation and R&D---antitrust fractures it

Nicole Hemsoth 20. Co-Founder and Co-Editor at the Next Platform. What Could Stifle American AI Innovation?. Next Platform. 5-21-2020. https://www.nextplatform.com/2020/05/21/what-could-stifle-american-ai-innovation/

There are many things the U.S. government can do, but innovating at a rapid pace in the ever-evolving world of artificial intelligence is not necessarily one of them.

Much of the work in deep learning hardware and software comes from the private sector, which various government agencies depend upon for their various directives. However, we are in an age of complicated antitrust conversations and unfortunately, many of the companies under the gun for such action are those who supply the feds with much-needed computational and algorithmic know-how and tools.

The Center for Security and Emerging Technology (CSET) issued a detailed brief this month reviewing the role of antitrust action and what it could mean for the Pentagon’s access to AI. Indeed, there are a number of other government entities that could feel the burn if some of the most prolific tech monopolies are divvied up, but the report is narrowly focused on the Pentagon specifically.

We talked with one of the authors of the report, Dakota Foster, a visiting researcher at CSET about the multi-layered question of antitrust, AI, and what governments stand to lose (and what smaller private companies and startups might gain).

One of the most interesting questions in the wake of potential antitrust action against some of the largest tech companies (Google Microsoft, etc.) is around innovation. How might it might stifled and what will the effect be on the agencies that rely on the swift pace of progress on strategically critical technology areas like AI?

“We estimate that antitrust action will likely reduce the net amount and diversity of data held by firms that are broken up and could also reduce firms’ R&D budgets,” Foster says. “However, the effect these losses will have on innovation remains unclear. Similarly, we expect firms’ computing resources to diminish with yet undetermined consequences; shared compute resources could perhaps more than compensate for any loss.”

The R&D problem of any potential antitrust action down the pike would be most keenly felt in R&D, which spurs the innovation of many of the platforms that have tricked into use in hyperscale, HPC, and enterprise settings as open source or simply inspiration. While plenty of work comes out of national lab and developer communities, few things can beat a near-limitless well of R&D funds to innovative and iterate.

Foster and colleagues argue that If “R&D spending drives innovation, firms that can spend more on R&D— presumably large ones—will generally hold an edge in innovation.” They add that a “postbreakup AI sector could be less innovative as a result. Large tech companies do in fact spend more on R&D both in absolute and relative terms. According to PricewaterhouseCoopers, in absolute terms, Amazon and Alphabet were the world’s top two corporate R&D spenders in 2018, with Samsung, Intel, Microsoft and Apple in the top ten.

“The debate over breaking up Big Tech has profound national security implications. The Pentagon maintains that the innovation and acquisition of AI technologies is critical to America’s national security. Defense Secretary Mark Esper recently called AI the most significant emerging technology for warfare, predicting that “whoever masters it first will dominate on the battlefield for many, many, many years.” Although others within and beyond the Pentagon stress the limits of AI, its potential is widely acknowledged. In order to develop and deploy new, strategically decisive AI tools, the Pentagon must rely on an AI innovation ecosystem in which large private-sector companies play a critical role. At the same time, the Department of Justice, the Federal Trade Commission, Congress, and state attorneys general have targeted many of the private sector’s largest and most innovative AI companies in ongoing antitrust probes.” – Dakota Foster, Visiting Researcher, CSET

#### 2---Pharma monopolies don’t stifle innovation

Joanna Shepherd, 18 (Professor of Law, Emory University School of Law. " Consolidation and Innovation in the Pharmaceutical Industry: The Role of Mergers and Acquisitions in the Current Innovation Ecosystem," *Journal of Health Care Law and Policy*, 8-28-18, <https://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=1356&amp;context=jhclp>

Note: M&A = Mergers & Acquisitions

Despite concerns among some researchers and competition agencies that consolidation in the pharmaceutical industry reduces innovation, aggregate innovation has held strong notwithstanding dramatic increases in M&A activity. The years 2014 and 2015 generated both record numbers of new drug approvals and record pharmaceutical M&A.152 In fact, although M&A deals and new drug approvals vary slightly year-to-year, the general pattern has been increasing aggregate innovation alongside increasing consolidation.153 Although trend data is not enough to prove a causal relationship between innovation and consolidation, when considered alongside the evolving innovation ecosystem, it suggests that M&A does not stifle drug innovation. Today, most drug innovation originates outside of traditional pharmaceutical companies, in biotech companies and smaller firms, where a culture of nimble decision-making and risk-taking facilitates discovery and innovation. In the later stages of the drug development process, the biotech companies routinely partner with large pharmaceutical companies to advance through late-stage clinical trials and produce, market, and distribute the drugs. 154 In this current ecosystem, biotech and pharmaceutical firms are able to specialize in what they do best, bringing expertise and efficiencies to the innovation process. The specialization has led to an environment in which approximately three-fourths of new drugs are externally-sourced. 155 Internal R&D is no longer the primary source, or even an important source, of drug innovation.

#### 3---No internal link---the 1AC evidence that says disruptive healthcare innovation solves disease outbreaks is from 2015---Covid disproves

#### 4---Alt causes to innovation--- 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.”

#### 5---Disease impact card sucks---not peer-reviewed and just spewing hypotheticals

#### 6---Diseases don’t cause extinction

Sebastian Farquhar 17. \*\*Project Manager at FHI responsible for external relations, M.A in Physics and Philosophy, Oxford. \*\*John Halstead, Global Priorities Project. \*\*Owen Cotton-Barratt, Research Associate in the FHI at Oxford, Lecturer in Mathematics at St. Hugh’s College. \*\*Stefan Schubert, PhD in philosophy, Researcher at the Centre for Effective Altruism. \*\*Haydn Belfield, Academic Project Manager, Centre for the Study of Existential Risk, Cambridge. \*\*Andrew Snyder-Beattie, Director of Research at FHI. “Existential Risk: Diplomacy and Governance.” *Future of Humanity Institute*. Oxford, Global Priorities Project. <https://www.fhi.ox.ac.uk/wp-content/uploads/Existential-Risks-2017-01-23.pdf>.

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

### 1NC---Federalism Adv

#### 1---*Parker*’s exemptions from federal antitrust law derive from the principle of federalism.

Jason Kornmehl 15. Law Clerk, Maryland Court of Appeals. State Action on Appeal: Parker Immunity and the Collateral Order Doctrine in Antitrust Litigation. Seattle University Law Review. 2015. 39(1): 8-9

The Parker decision left open the issue of whether the conduct of private actors and subordinate government entities could be exempt from federal antitrust laws based on the state action doctrine.46 However, in a series of cases in the 1980s, the Supreme Court found that private actors and certain subordinate government entities could rely on the state action doctrine to shield their conduct from federal antitrust scrutiny. In California Retail Liquor Dealers Ass’n v. Midcal Aluminum, the Court established a two-part test for determining whether private actors could take advantage of Parker immunity.47 The unanimous Court stated that (1) the challenged restraint must be “one clearly articulated and affirmatively expressed as state policy[,]” and (2) “the policy must be ‘actively supervised’ by the State itself.”48 Because actions of a state legislature and a state’s highest court acting in a legislative capacity are treated as the action of a state itself, the state action doctrine applies to these entities without a need to establish the clear articulation and active supervision requirements of Midcal. 49 Midcal’s two-part test has long supplied the framework within which courts have determined the availability of the state action defense to private parties.50 However, actions taken by subordinate government entities such as counties and municipalities may also be entitled to Parker immunity. Subordinate government entities are not entitled to the same protection from the federal antitrust laws as a state itself, and thus also fall under the Midcal framework.51 However, municipalities and local government entities need only satisfy Midcal’s first prong for their conduct to be exempt from federal antitrust laws under the state action doctrine.52 The state action doctrine is a strong weapon, or perhaps more appropriately, a shield, in the arsenal of antitrust defendants.53 Because the state action doctrine “derive[s] from principles of federalism and other constitutional considerations,”54 and is a long-term priority of the Federal Trade Commission,55 it is an important exemption that governmental and private entities will continue to invoke in antitrust litigation.

#### 2---No AI impact

Michael Shermer 17. Publisher of Skeptic magazine, a monthly columnist for Scientific American, and a Presidential Fellow at Chapman University. “Why Artificial Intelligence Is Not an Existential Threat” April 2017. Skeptic. Vol. 22, no. 2, pp. 29-35.

Why AI is not an Existential Threat First, most AI doomsday prophecies are grounded in the false analogy between human nature and computer nature, or natural intelligence and artificial intelligence. We are thinking machines, but natural selection also designed into us emotions to shortcut the thinking process because natural intelligences are limited in speed and capacity by the number of neurons that can be crammed into a skull that has to pass through a pelvic opening at birth, whereas artificial intelligence need not be so restricted. We don't need to compute the caloric value of foods, for example, we just feel hungry. We don't need to calculate the waist-to-hip ratio of women or the shoulder-to-waist ratio of men in our quest for genetically healthy potential mates; we just feel attracted to someone and mate with them. We don't need to work out the genetic cost of raising someone else's offspring if our mate is unfaithful; we just feel jealous. We don't need to figure the damage of an unfair or non-reciprocal exchange with someone else; we just feel injustice and desire revenge. Emotions are proxies for getting us to act in ways that lead to an increase in reproductive success, particularly in response to threats faced by our Paleolithic ancestors. Anger leads us to strike out, fight back, and defend ourselves against danger. Fear causes us to pull back, retreat, and escape from risks. Disgust directs us to push out, eject, and expel that which is bad for us. Computing the odds of danger in any given situation takes too long. We need to react instantly. Emotions shortcut the information processing power needed by brains that would otherwise become bogged down with all the computations necessary for survival. Their purpose, in an ultimate causal sense, is to drive behaviors toward goals selected by evolution to enhance survival and reproduction. AIs -- even AGIs and ASIs -- will have no need of such emotions and so there would be no reason to program them in unless, say, terrorists chose to do so for their own evil purposes. But that's a human nature problem, not a computer nature issue. To believe that an ASI would be "evil" in any emotional sense is to assume a computer cognition that includes such psychological traits as acquisitiveness, competitiveness, vengeance, and bellicosity, which seem to be projections coming from the mostly male writers who concoct such dystopias, not features any programmer would bother including, assuming that it could even be done. What would it mean to program an emotion into a computer? When IBM's Deep Blue defeated chess master Garry Kasparov in 1997, did it feel triumphant, vengeful, or bellicose? Of course not. It wasn't even "aware" -- in the human sense of self-conscious knowledge -- that it was playing chess, much less feeling nervous about possibly losing to the reigning world champion (which it did in the first tournament played in 1996). In fact, toward the end of the first game of the second tournament, on the 44th move, Deep Blue made a legal but incomprehensible move of pushing its rook all the way to the last row of the opposition side. It accomplished nothing offensively or defensively, leading Kasparov to puzzle over it out of concern that he was missing something in the computer's strategy. It turned out to be an error in Deep Blue's programming that led to this fail-safe default move. It was a bug that Kasparov mistook as a feature, and as a result some chess experts contend it led him to be less confident in his strategizing and to second-guess his responses in the subsequent games. It even led him to suspect foul play and human intervention behind Deep Blue, and this paranoia ultimately cost him the tournamentt.[ 13] Computers don't get paranoid, the HAL 9000 computer in 2001 notwithstanding. Or consider Watson, the IBM computer built by David Ferrucci and his team of IBM research scientists tasked with designing an AI that could rival human champions at the game of Jeopardy! This was a far more formidable challenge than Deep Blue faced because of the prerequisite to understand language and the often multiple meanings of words, not to mention needing an encyclopedic knowledge of trivia (Watson had access to Wikipedia for this). After beating the all-time greatest Jeopardy! champions Ken Jennings and Brad Rutter in 2011, did Watson feel flushed with pride after its victory? Did Watson even know that it won Jeopardy!? I put the question to none other than Ferrucci himself at a dinner party in New York in conjunction with the 2011 Singularity Summit. His answer surprised me: "Yes, Watson knows it won Jeopardy!" I was skeptical. How could that be, since such self-awareness is not yet possible in computers? "Because I told it that it won," he replied with a wry smile. Sure, and you could even program Watson or Deep Blue to vocalize a Howard Dean-like victory scream when it wins, but that is still a far cry from a computer feeling triumphant. This brings to mind the "hard problem" of consciousness -- if we don't understand how this happens in humans, how could we program it into computers? As Steven Pinker elucidated in his answer to the 2015 Edge Question on what to think about machines that think, "AI dystopias project a parochial alpha-male psychology onto the concept of intelligence. They assume that superhumanly intelligent robots would develop goals like deposing their masters or taking over the world." It is equally possible, Pinker suggests, that "artificial intelligence will naturally develop along female lines: fully capable of solving problems, but with no desire to annihilate innocents or dominate the civilization."[ 14] So the fear that computers will become emotionally evil are unfounded, because without the suite of these evolved emotions it will never occur to AIs to take such actions against us. What about an ASI inadvertently causing our extinction by turning us into paperclips, or tiling the entire Earth's surface with solar panels? Such scenarios imply yet another emotion -- the feeling of valuing or wanting something. As the science writer Michael Chorost adroitly notes, when humans resist an AI from undertaking any form of global tiling, it "will have to be able to imagine counteractions and want to carry them out." Yet, "until an AI has feelings, it's going to be unable to want to do anything at all, let alone act counter to humanity's interests and fight off human resistance." Further, Chorost notes, "the minute an A.I. wants anything, it will live in a universe with rewards and punishments -- including punishments from us for behaving badly. In order to survive in a world dominated by humans, a nascent A.I. will have to develop a humanlike moral sense that certain things are right and others are wrong. By the time it's in a position to imagine tiling the Earth with solar panels, it'll know that it would be morally wrong to do so."[ 15] From here Chorost builds on an argument made by Peter Singer in The Expanding Circle (and Steven Pinker in The Better Angels of Our Nature[ 16] that I also developed in The Moral Arc[ 17] and Robert Wright explored in Nonzero[ 18]), and that is the propensity for natural intelligence to evolve moral emotions that include reciprocity, cooperativeness, and even altruism. Natural intelligences such as ours also includes the capacity to reason, and once you are on Singer's metaphor of the "escalator of reason" it can carry you upward to genuine morality and concerns about harming others. "Reasoning is inherently expansionist. It seeks universal application," Singer notes.[ 19] Chorost draws the implication: "AIs will have to step on the escalator of reason just like humans have, because they will need to bargain for goods in a human-dominated economy and they will face human resistance to bad behavior."[ 20] Finally, for an AI to get around this problem it would need to evolve emotions on its own, but the only way for this to happen in a world dominated by the natural intelligence called humans would be for us to allow it to happen, which we wouldn't because there's time enough to see it coming. Bostrom's "treacherous turn" will come with road signs ahead warning us that there's a sharp bend in the highway with enough time for us to grab the wheel. Incremental progress is what we see in most technologies, including and especially AI, which will continue to serve us in the manner we desire and need. Instead of Great Leap Forward or Giant Fall Backward, think Small Steps Upward. As I proposed in The Moral Arc, instead of Utopia or dystopia, think protopia, a term coined by the futurist Kevin Kelly, who described it in an Edge conversation this way: "I call myself a protopian, not a Utopian. I believe in progress in an incremental way where every year it's better than the year before but not by very much -- just a micro amount."[ 21] Almost all progress in science and technology, including computers and AI, is of a protopian nature. Rarely, if ever, do technologies lead to either Utopian or dystopian societies. Pinker agrees that there is plenty of time to plan for all conceivable contingencies and build safeguards into our AI systems. "They would not need any ponderous 'rules of robotics' or some newfangled moral philosophy to do this, just the same common sense that went into the design of food processors, table saws, space heaters, and automobiles." Sure, an ASI would be many orders of magnitude smarter than these machines, but Pinker reminds us of the AI hyperbole we've been fed for decades: "The worry that an AI system would be so clever at attaining one of the goals programmed into it (like commandeering energy) that it would run roughshod over the others (like human safety) assumes that AI will descend upon us faster than we can design fail-safe precautions. The reality is that progress in AI is hype-defyingly slow, and there will be plenty of time for feedback from incremental implementations, with humans wielding the screwdriver at every stage."[ 22] Former Google CEO Eric Schmidt agrees, responding to the fears expressed by Hawking and Musk this way: "Don't you think the humans would notice this, and start turning off the computers?" He also noted the irony in the fact that Musk has invested $1 billion into a company called OpenAI that is "promoting precisely AI of the kind we are describing."[ 23] Google's own DeepMind has developed the concept of an AI off-switch, playfully described as a "big red button" to be pushed in the event of an attempted AI takeover. "We have proposed a framework to allow a human operator to repeatedly safely interrupt a reinforcement learning agent while making sure the agent will not learn to prevent or induce these interruptions," write the authors Laurent Orseau from DeepMind and Stuart Armstrong from the Future of Humanity Institute, in a paper titled "Safely Interruptible Agents." They even suggest a precautionary scheduled shutdown every night at 2 AM for an hour so that both humans and AI are accustomed to the idea. "Safe interruptibility can be useful to take control of a robot that is misbehaving and may lead to irreversible consequences, or to take it out of a delicate situation, or even to temporarily use it to achieve a task it did not learn to perform or would not normally receive rewards for this."[ 24] As well, it is good to keep in mind that artificial intelligence is not the same as artificial consciousness. Thinking machines may not be sentient machines. Finally, Andrew Ng of Baidu responded to Elon Musk's ASI concerns by noting (in a jab at the entrepreneur's ambitions for colonizing the red planet) it would be "like worrying about overpopulation on Mars when we have not even set foot on the planet yet."[ 25] Both Utopian and dystopian visions of AI are based on a projection of the future quite unlike anything history has given us. Yet, even Ray Kurzweil's "law of accelerating returns," as remarkable as it has been has nevertheless advanced at a pace that has allowed for considerable ethical deliberation with appropriate checks and balances applied to various technologies along the way. With time, even if an unforeseen motive somehow began to emerge in an AI we would have the time to reprogram it before it got out of control. That is also the judgment of Alan Winfield, an engineering professor and co-author of the Principles of Robotics, a list of rules for regulating robots in the real world that goes far beyond Isaac Asimov's famous three laws of robotics (which were, in any case, designed to fail as plot devices for science fictional narratives).26 Winfield points out that all of these doomsday scenarios depend on a long sequence of big ifs to unroll sequentially: "If we succeed in building human equivalent AI and if that AI acquires a full understanding of how it works, and if it then succeeds in improving itself to produce super-intelligent AI, and if that super-AI, accidentally or maliciously, starts to consume resources, and if we fail to pull the plug, then, yes, we may well have a problem. The risk, while not impossible, is improbable."[ 27]

#### 3---No catastrophic cyberattacks---25 years of empirics prove they stay low-level and non-escalatory.

Lewis 20---senior vice president and director of the Technology Policy Program at the Center for Strategic and International Studies). Lewis, James. 2020. “Dismissing Cyber Catastrophe.” Center for Strategic & International Studies. August 17, 2020. https://www.csis.org/analysis/dismissing-cyber-catastrophe.

A catastrophic cyberattack was first predicted in the mid-1990s. Since then, predictions of a catastrophe have appeared regularly and have entered the popular consciousness. As a trope, a cyber catastrophe captures our imagination, but as analysis, it remains entirely imaginary and is of dubious value as a basis for policymaking. There has never been a catastrophic cyberattack. To qualify as a catastrophe, an event must produce damaging mass effect, including casualties and destruction. The fires that swept across California last summer were a catastrophe. Covid-19 has been a catastrophe, especially in countries with inadequate responses. With man-made actions, however, a catastrophe is harder to produce than it may seem, and for cyberattacks a catastrophe requires organizational and technical skills most actors still do not possess. It requires planning, reconnaissance to find vulnerabilities, and then acquiring or building attack tools—things that require resources and experience. To achieve mass effect, either a few central targets (like an electrical grid) need to be hit or multiple targets would have to be hit simultaneously (as is the case with urban water systems), something that is itself an operational challenge. It is easier to imagine a catastrophe than to produce it. The 2003 East Coast blackout is the archetype for an attack on the U.S. electrical grid. No one died in this blackout, and services were restored in a few days. As electric production is digitized, vulnerability increases, but many electrical companies have made cybersecurity a priority. Similarly, at water treatment plants, the chemicals used to purify water are controlled in ways that make mass releases difficult. In any case, it would take a massive amount of chemicals to poison large rivers or lakes, more than most companies keep on hand, and any release would quickly be diluted. More importantly, there are powerful strategic constraints on those who have the ability to launch catastrophe attacks. We have more than two decades of experience with the use of cyber techniques and operations for coercive and criminal purposes and have a clear understanding of motives, capabilities, and intentions. We can be guided by the methods of the Strategic Bombing Survey, which used interviews and observation (rather than hypotheses) to determine effect. These methods apply equally to cyberattacks. The conclusions we can draw from this are: Nonstate actors and most states lack the capability to launch attacks that cause physical damage at any level, much less a catastrophe. There have been regular predictions every year for over a decade that nonstate actors will acquire these high-end cyber capabilities in two or three years in what has become a cycle of repetition. The monetary return is negligible, which dissuades the skilled cybercriminals (mostly Russian speaking) who might have the necessary skills. One mystery is why these groups have not been used as mercenaries, and this may reflect either a degree of control by the Russian state (if it has forbidden mercenary acts) or a degree of caution by criminals. There is enough uncertainty among potential attackers about the United States’ ability to attribute that they are unwilling to risk massive retaliation in response to a catastrophic attack. (They are perfectly willing to take the risk of attribution for espionage and coercive cyber actions.) No one has ever died from a cyberattack, and only a handful of these attacks have produced physical damage. A cyberattack is not a nuclear weapon, and it is intellectually lazy to equate them to nuclear weapons. Using a tactical nuclear weapon against an urban center would produce several hundred thousand casualties, while a strategic nuclear exchange would cause tens of millions of casualties and immense physical destruction. These are catastrophes that some hack cannot duplicate. The shadow of nuclear war distorts discussion of cyber warfare. State use of cyber operations is consistent with their broad national strategies and interests. Their primary emphasis is on espionage and political coercion. The United States has opponents and is in conflict with them, but they have no interest in launching a catastrophic cyberattack since it would certainly produce an equally catastrophic retaliation. Their goal is to stay below the “use-of-force” threshold and undertake damaging cyber actions against the United States, not start a war. This has implications for the discussion of inadvertent escalation, something that has also never occurred. The concern over escalation deserves a longer discussion, as there are both technological and strategic constraints that shape and limit risk in cyber operations, and the absence of inadvertent escalation suggests a high degree of control for cyber capabilities by advanced states. Attackers, particularly among the United States’ major opponents for whom cyber is just one of the tools for confrontation, seek to avoid actions that could trigger escalation. The United States has two opponents (China and Russia) who are capable of damaging cyberattacks. Russia has demonstrated its attack skills on the Ukrainian power grid, but neither Russia nor China would be well served by a similar attack on the United States. Iran is improving and may reach the point where it could use cyberattacks to cause major damage, but it would only do so when it has decided to engage in a major armed conflict with the United States. Iran might attack targets outside the United States and its allies with less risk and continues to experiment with cyberattacks against Israeli critical infrastructure. North Korea has not yet developed this kind of capability. One major failing of catastrophe scenarios is that they discount the robustness and resilience of modern economies. These economies present multiple targets and configurations; they are harder to damage through cyberattack than they look, given the growing (albeit incomplete) attention to cybersecurity; and experience shows that people compensate for damage and quickly repair or rebuild. This was one of the counterintuitive lessons of the Strategic Bombing Survey. Pre-war planning assumed that civilian morale and production would crumple under aerial bombardment. In fact, the opposite occurred. Resistance hardened and production was restored.1 This is a short overview of why catastrophe is unlikely. Several longer CSIS reports go into the reasons in some detail. Past performance may not necessarily predict the future, but after 25 years without a single catastrophic cyberattack, we should invoke the concept cautiously, if at all. Why then, it is raised so often? Some of the explanation for the emphasis on cyber catastrophe is hortatory. When the author of one of the first reports (in the 1990s) to sound the alarm over cyber catastrophe was asked later why he had warned of a cyber Pearl Harbor when it was clear this was not going to happen, his reply was that he hoped to scare people into action. "Catastrophe is nigh; we must act" was possibly a reasonable strategy 22 years ago, but no longer. The resilience of historical events to remain culturally significant must be taken into account for an objective assessment of cyber warfare, and this will require the United States to discard some hypothetical scenarios. The long experience of living under the shadow of nuclear annihilation still shapes American thinking and conditions the United States to expect extreme outcomes. American thinking is also shaped by the experience of 9/11, a wrenching attack that caught the United States by surprise. Fears of another 9/11 reinforce the memory of nuclear war in driving the catastrophe trope, but when applied to cyberattack, these scenarios do not track with operational requirements or the nature of opponent strategy and planning. The contours of cyber warfare are emerging, but they are not always what we discuss. Better policy will require greater objectivity.

#### 4--- Alt-causes---Illicit economies find more sources of revenue.

Vanda Felbab-Brown 13, senior fellow with the Center for 21st Century Security and Intelligence in the Foreign Policy program at the Brookings Institution, 2013, “Counterinsurgency, Counternarcotics, and Illicit Economies in Afghanistan: Lessons for State-Building,” <http://www.brookings.edu/~/media/research/files/papers/2013/04/counterinsurgency%20counternarcotics%20illicit%20economies%20afghanistan%20state%20building%20felbabbrown/counterinsurgency%20counternarcotics%20illicit%20economies%20afghanistan%20state%20building%20felbabbrown.pdf>

Regarding nonmilitary operations, such as economic reconstruction, it is vital that the international community scale down its expectations of how rapidly legal economies can replace illicit ones. Even when the basic economic infrastructure is present and intact, the growth of the legal economies may well coincide with the continuing flourishing of the illegal enterprises. But certainly in areas where the basic structural requirements for a legal economy are absent, as is true in the majority of the world’s large-scale drug cultivation areas, efforts to boost alternative livelihoods are likely to take decades

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Moreover, a seeming success in suppressing an illicit economy in a particular region can easily lead to its transformation into a differently-organized illicit economy, which could be no less dangerous to the state and possibly the larger international community than the original economy. Nonetheless, efforts to boost licit livelihoods represent the only available source-country option to reduce illicit economies without resorting to substantial, lasting, and costly repression.

Counternarcotics efforts are indeed a key component of stabilization and reconstruction in Afghanistan and in any country where licit livelihoods have been decimated and an illicit narcotics economy thrives and intermingles with violent conflict. However, premature and inappropriate efforts against such an illicit economy, be it drugs or other commodities, greatly complicate counterterrorism, counterinsurgency, and stabilization objectives. Hence, they ultimately also jeopardize economic reconstruction and political consolidation.

### Cap

#### 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.

#### A – 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

#### B – 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.

#### C – Tipping points 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.

#### D - CCS Fails - Profit motive means it won’t be adopted – and drives coal use

McDonnell 20 [Tim, reporter covering global climate change and energy issues, 8-13-2020, “The business model for carbon capture is broken,” <https://qz.com/1891765/the-uss-only-clean-coal-system-got-shuttered-by-covid-19/>]

In the months since the pandemic cratered the price of oil, the financial fallout has spread from drilling companies to refineries and oilfield maintenance companies. Now the crash has claimed another, more unlikely victim: The only system built to capture carbon emissions from a coal plant in the US, one of only two worldwide.

The $1 billion system, known as Petra Nova, was built in 2017 to catch CO2 from one unit of a coal plant near Houston. That plant is one of the dirtiest in Texas, both in terms of climate and air quality impacts, according to a Rice University study. Petra Nova was meant to cut the unit’s carbon footprint by about a third—roughly the equivalent of taking 300,000 cars off the road each year.

But on July 28, E&E News broke the story that the facility has been shuttered since May. And while the plant’s owners have said they plan to get it running again once the economy improves, Petra Nova’s shutdown exposes the weird market dynamics that could threaten the sustainability of carbon capture facilities in progress around the world.

The case for carbon capture

Capturing the carbon emissions from power plants and other industrial facilities is widely considered a key part of any successful climate strategy. The trouble is, there’s not a whole lot you can do with the CO2 after you capture it. That makes the economic case for installing a big, expensive piece of equipment a bit shaky. Some companies are helping create a market for CO2 by using it to make mattresses, cement, and other manufactured products. But the use with the greatest market potential today is, ironically for a climate project, oil drilling. That’s what Petra Nova went after.

So-called “enhanced oil recovery” (EOR) projects inject CO2 into oil wells to shake loose the dregs stuck in subterranean rocky pores. The technology is decades old, but has traditionally relied on CO2 pulled from natural sources underground. If the CO2 comes from a power plant’s emissions, though, it can reduce the climate impact of drilling. A barrel of oil produced with EOR using captured CO2 is, on net, about 37% less carbon-intensive than a normal barrel, according to the International Energy Agency. “EOR is a stepping stone,” said John Thompson, technology and markets director at the Clean Air Task Force, a research group. “If you have to choose between oil produced the conventional way or one that’s reduced, you’d like all your oil to come from that.”

The coal plant conundrum

Large-scale carbon capture and storage (CCS) systems, many of which rely on EOR, have been rolled out at nearly two dozen facilities worldwide, from chemical and fertilizer factories to natural gas processing plants. But they’ve remained elusive for power plants. In large part, that’s because the CO2 in power plant emissions is relatively diffuse. And that means it’s more expensive to capture.

One groundbreaking coal plant CCS project in Mississippi turned into an infamous $8 billion boondoggle before it was scrapped in 2018. The world’s only other power plant CCS project, in Canada, has fared better: It claims to have captured 3 million tons of CO2 since 2014, and has managed to stay open despite the low oil price because the country’s strict limits on coal pollution make the economics more favorable. The $1 billion Petra Nova project was supposed to top them all. But according to a report the plant’s owners filed to the Department of Energy in March, the results have been mixed. The technology itself appears to be working: It managed to capture 92.4% of the CO2 that passed through it since 2017. It experienced outages on 367 days, but a majority were either planned for routine maintenance or the result of something outside the system—for example, the entire coal plant being switched off for weeks following Hurricane Harvey.

But in part because of those outages, the system fell 17% short of its capture goal. Ultimately, it only captured about 7% of the plant’s total carbon emissions, according to the Energy and Policy Institute. Then the pandemic tossed the project’s whole business model on its head. In order to operate, the system requires oil prices of at least $75 per barrel. Otherwise, it’s not worth the oil company’s money to bother purchasing CO2 for EOR. Even before the pandemic, the oil price was around $60; after briefly dipping below zero in April, it’s now around $40. Few experts expect the price to return to pre-pandemic levels anytime soon, if ever.

“Petra Nova was a success in terms of technology,” said Daniel Cohan, a civil engineering professor at Rice who co-authored the power plant study. “But the premise behind it no longer makes sense environmentally or financially.” Petra Nova’s portent Arij van Berkel, director of research for the consulting firm Lux Research, agrees: The chances of an economical EOR model of carbon capture get smaller every year, he said. It’s not just coal plants feeling the pinch: A solar power farm in Oman that produced concentrated steam for oil drilling was liquidated in May because of the low oil price. Some of the oil price issues could be smoothed out with a new carbon capture tax credit, known as 45Q, that Petra Nova was just filing paperwork to tap before the pandemic struck. That credit is even higher if a company chooses to inject the CO2 directly into underground reservoirs, rather than sell it for EOR.

But oil prices aren’t the only vulnerability for other coal CCS projects coming down the pike, including one in New Mexico and another in North Dakota. The pandemic also crushed demand for electricity—and coal plants, which are expensive to run, are often the first to get switched off. Decreased demand means fewer emissions, and therefore fewer tax credits to keep an operation afloat.

It’s a Catch-22: A promising technology for reducing emissions from coal requires both high oil prices (aka, more oil being produced) and a lot of coal consumption. “Proponents of these projects are selling an unproven dream that in all likelihood will become a nightmare for unsuspecting investors,” Dennis Wamsted, an analyst at the Institute for Energy Economics and Financial Analysis, said in a recent report on Petra Nova. “Investors would do well to conduct their due diligence before investing in any coal-fired carbon capture project anywhere.”

#### 3. Federalism’s concept of “the local” is anti-democratic---it is a fortress from universal protection that insulates states from transnational movements.

Judith Resnik 01. Arthur Liman Professor of Law, Yale Law School 1-1-2001 Categorical Federalism: Jurisdiction, Gender, and the Globe http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1772&context=fss\_papers

B. Fears of "the Foreign" Within

These developments abroad illuminate another aspect of the appeal of categorical federalism in the United States. Insistence on the "truly local" as a jurisdictional limit underscores territorial boundaries in an effort to defend against waves of transnational laws and increasingly homogenized cultures. Categorical federalism therefore promises (or threatens, depending on one's view) not only to limit (or undo) the New Deal, but also to reinscribe isolationist foreign affairs policies aimed at returning the globe to a description of the planet rather than a powerful presence within the physical boundaries of the United States. Categorical federalism deploys "the local" as if it is inevitably a site of participatory democracy that protects some categories of human enterprise from distant power by safely ensconcing them in decisional processes controlled by one's friends, one's neighbors, and oneself.

Categorical federalism is thus specially responsive to the history of this nation's birth in rebellion from a distant and centralized power. The central gesture of the American Revolution-separation from King George-is reenacted by claiming that "[t]he Constitution requires a distinction between what is truly national and what is truly local,"210 thereby limiting Washington's power. Moreover, a tenet of constitutional faith, that the Constitution defines and confines all power, is invoked to justify the Court's exercise of its own power. In addition, categorical federalism has psychological appeal; "people often believe that there is an underlying essence or reason for categories to be the way that they are."2 1 Categorical federalism thus helps to cushion anxiety occasioned by dissolving boundaries.

Working in conjunction with other precepts of current federalism jurisprudence about the relationship between "the local" and "the international," the boxes constructed through categorical federalism become fortresses designed to ward off incursions not only from the national government but also from abroad.2 12 This posture also has a history. The claim that states' rights ought to preclude the application of international human rights law was raised in the early 1950s, when, after the creation of the United Nations and the promulgation of the Universal Declaration of Human Rights, Senator John Bricker proposed a constitutional amendment that would have limited federal treaty power if deployed to undercut states' rights.2 "3 According to one commentator, "Bricker wanted to insure that international agreements would not lead to United Nations interference or more liberal social and economic policies and legislation in the United States." 2 14

Although the Bricker Amendment did not become law, some believe it has become fact-through practices of the Senate that consistently limit the application of international laws by reference to federalism. 15 For example, when the Clinton Administration proposed that the Senate ratify CEDAW, the executive also submitted "reservations, understandings, and declarations" (RUDs)--caveats used in international treaty-making to enable selective adherence to treaty provisions.216 The CEDAW RUDs specified that the Convention's provisions would not be enforceable domestically; that ratification would not result in "changing U.S. law in any respect." " Further, in what is termed a "federalism understanding," the RUDs specify that the allocation of power between state and national governments would be unaffected.218 Parallel reservations accompanied the United States's joining of the International Convention on the Elimination of All Forms of Racial Discrimination, 219 and of the International Covenant on Civil and Political Rights.220 Federalism concerns have also been proffered as the rationale for the United States's refusal to ratify the Convention on the Rights of the Child.22'

States' rights are one set of prerogatives to be protected; gender roles are another. Since the 1940s, the fear of international law undoing gendered relationships in the United States has been express. The theme emerged in hearings on the Bricker Amendment,222 and has now been put forth vividly through a 2001 Heritage Foundation publication entitled How U.N. Conventions on Women's and Children's Rights Undermine Family, Religion, and Sovereignty.223 That monograph argues that the implementation of CEDAW undervalues the nuclear family and marriage by encouraging mothers to "leav[e] their children in the care of strangers and enter[] the workforce."' 24 Complaining that the "United Nations has become the tool of a powerful feminist-socialist alliance that has worked deliberately to promote a radical restructuring of society," the monograph calls on Congress to devote time and resources to protect against the dangers the UN poses to sovereignty.22

#### 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.

#### Bee concludes 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.

#### Communing is best form of federalism---antitrust cedes politics to neoliberal terms – only we enable a legal revolution without rationalities of competition – Creative Commons proves success.

Lomfeld 16 [Bertram. Professor of Law, Free University Berlin, Germany. “Epilogue: the power of law to reshape markets.” *Reshaping Markets Economic Governance, the Global Financial Crisis and Liberal Utopia*. Cambridge University Press. 2016.]

Marx had read this development within ‘the bourgeois mode of production’ as an evolutionary necessity that would eventually lead to the breakdown of capitalism and the possibility of a communist utopia (Marx 1859: Preface). Marxist analysis might have underrated the flexibility, resilience and creativity of a free market economy, which in turn spurred a mirage of follow-up and counter-proposals. Whenever an economic crisis ends, it seems, a new ‘spirit of capitalism’ (Boltanski & Chiapello 2007) is born or newly conceptualized. The intriguing correlation between economic and political crisis was, as well, the starting point of our book with the reflection on how Marx’s economics relates to the nature of market regulation (cf. Chapter 1: Campbell). Socialist reality, however, organized its planned economy by a hierarchical system of administrative laws together with a host of bylaws, ordinances and decrees.

The political liberal utopia of ‘embedded’ capitalism which arose after the Second World War can be seen as an attempt to systematically reconcile markets and politics. According to one of its founding fathers, mankind has no natural propensity to barter, but only a ‘propensity to consume’ (Keynes 1936: Book III), which the state should support in times of crisis by public spending. One famous example was the German ‘social market economy’ with its explicit promise of shared ‘prosperity for all’ (Erhard 1957). In that welfare state model, the constitutive functions of social legal embedding were seen to reside in antitrust and competition law, in labour law, social welfare law, administrative and constitutional law. Social market economies are unthinkable without extensive legal framing. On the global level, ‘embedded liberalism’ (Ruggie 1982) directly refers to the legal framework of international institutions.

While there has been a wide-ranging debate over the quality, nature and scope of market governing legal ‘institutions’ (North 1990; Zumbansen & Calliess 2011), the fact remains through all different economic systems that significant economic transactions without law are unthinkable. Most obviously, property rights create, define and limit market commodities. Markets need institutions; law provides and forms them (Commons 1924; Copp 2008). These lines could be seen throughout the whole book. Contracts enable market exchange and even create new markets as the securitization market illustrates (cf. Chapter 2: Varellas). Firms are legal entities founded by a contractual company agreement on the basis of institutional forms provided by corporate law, therefore open to contract governance (cf. Chapter 3: Zumbansen). Tort liability shapes economic decisions of corporate managements (cf. Chapter 7: Engert). Legal regulations do not simply embed a previously independent market, but bring its basic institutions into existence. Every market transaction is based on an artificial ‘legal ordering’ (Grewal 2014: 652): ‘The bargains at the heart of capitalism are products of law’. Law constitutes markets.

All three aforementioned economic models have a very different normative grammar or ‘ideology’. Libertarian free market economies focus on the ideas of individual self-interested ‘freedom’ and allocative ‘efficiency’. A socialist planned economy at least theoretically aims towards social ‘equality’. And socially embedded welfare state markets demand political and economic ‘solidarity’ and ‘fairness’. Yet all three models underrate its legal prerequisites. Law was and continues to be a blind spot of most economic theories (Kennedy 1985). But law is not only functionally indispensible for the real economy as legal rules are framing economic action and enable economic exchange under real world conditions. Law is also normatively constitutive of the economic systems.

This ideological influence is of course most obvious in planned economies, where the planning process requires a complex system of political administrative regulation as in the former Soviet Union. Yet Western social market democracies too, in their once-existing ideal type, limit markets with obvious political regulations such as minimum wages, maximum rents or covered prices for existential goods. Not only constitutional law but also labour and social welfare law and even antitrust, competition and consumer law carry evident political signatures.

Even libertarian ‘laissez-faire’ markets require meaningful institutional underpinnings. Economic exchange demands ‘mutual agreement on defined rights’ (Buchanan 1974: 18). At a minimum, markets need contracts and property rights. The core of a libertarian ‘night-watchman’ or ‘minimal state’ (Nozick 1974: 26) is to ensure the enforcement of rights as basic economic mechanisms. But the concrete ‘mechanism design’ and implementation of these legal institutions is never free from political contestation. Markets cannot be reduced to a neutral price mechanism. The underlying justification for strong property rights, optimized freedom of contract and unhindered capital flows is a political decision in favour of utility-maximizing individualism and the wealthier members of society. The very existence of a ‘spontaneous’ market order (Hayek 1973: 35) depends on politically charged legal institutions. Yet, one intriguing clear characteristic of the otherwise ambiguous label of ‘neoliberalism’ (Harvey 2005) echoed from nineteenth-century laissez-faire liberalism is the denial of any political quality of a free market, which of course is an ideology in itself.

The task of legal analysis is to deconstruct the underlying political implications of market economies. Critical legal analysis must ‘identify the ways that neoliberal efforts necessarily rely upon (and thus must engage) law’ and additionally show that ‘the very idea of a market is empty without specific legal content’ (Grewal & Purdy 2014: 13, 7). Contract law offers a good example here. Not only does contract enable the basic market exchange of goods and services, but contracts also determine the function and operation of tradable services, including capital circulation. Contract law in itself never is neutral, but always implies political structures due to its intervention into and its constitution and shaping of concrete socio-economic positions (Kennedy 2001). Echoing the findings of the Legal Realists of the early twentieth century, present-day studies of contract governance focusing on the European legislation on anti-discrimination (cf. Chapter 12: Haberl), which restricts the contractual freedom to reject parties especially in labour and tenancy contracts, illustrate the pertinence of such an analysis. This is certainly true also in areas where the discrepancy in bargaining power is not all that obvious, as is apparent in debates between European and US scholars regarding the cultural differences in contract regulation (cf. Chapter 13: Caruso). A ‘deconstruction of contract doctrine’ (Dalton 1985) reveals different cultural and political backgrounds, which result in different market structures. The standards for unconscionability, duress and even consideration change with a libertarian or egalitarian reading of the doctrine.

Deconstruction of legal background assumptions not only brings to light many cultural and political faces of law, it also reveals the ideological coining of our economic systems. A libertarian reading of legal institutions like freedom of contract and exclusive private property rights inscribes economic self-interest into everyday life. Together with the mythical narrative of a homo oeconomicus, the institutional legal frame assumes the role of a self-fulfilling ideological reference system and ‘legitimates greed’ as socially beneficial (Streeck 2011b: 143). Again, it is law which constructs social and economic reality here. The modern individual could thus be seen as a ‘homo juridicus’ (Supiot 2007). Her identity and lifeworld are shaped by its legal status as a ‘person’, her property rights and her contractual relations. The subtle power of economic ‘biopolitcs’ (Foucault 2008) is infused by legal institutions. In that respective, the law of obligations could also be read as ‘biopolitics of debt-economy’ (cf. Chapter 5: Somma) shaping specific hedonistic and ascetic mentalities for the recent market order. The arrangement of debt relations in contract and consumer law and of its limits within bankruptcy law decide upon the ‘easiness’ of money available to average consumers.

At the centre of exposing the legal constructedness of economic markets through a critical reading of legal institutions lies the relativization of the neoliberal claim that ‘there is no alternative’. The ‘truth of the market’, the untiring assertion of its natural status and inevitability (cf. Chapter 14: Ferrarese) becomes just one possible narrative with ‘competition’ and ‘efficiency’ as specific storylines. A critical analysis of the Greek sovereign debt disaster (cf. Chapter 4: Michos) not only reveals the belief in the power of market fundamentalism by the European Commission and the International Monetary Fund, but also provides for a dramatic illustration of the limitation of such a neoliberal approach.

III

The mere possibility of a critical deconstruction shows that we are not locked in a naturally given social and economic reality. There always is an alternative. Regardless of its underlying model, the market economy implicates and is founded on a legal structure. Economic markets are a legal construction, and we could change them. This, in turn, renders present-day debates over the goals and instruments of ‘economic governance’ both obvious and elusive. While ‘governance’ denotes the evolution of a reflective legal and regulatory structure, ‘economic governance’ addresses the organization of the market and its relation to politics. Law influences, shapes or constitutes economic governance. Law has the power to reconstruct markets.

A first approach of economic governance aims for legal framing and taming of markets. An early paradigm was ‘ordo-liberalism’ that demanded strong economic law to ensure fair competition (Eucken 1940). After the global financial crisis, even hard-boiled libertarians concede that ‘markets work, but only within limits’ (Buchanan 2011: 1). ‘Economic governance’ than means a legal reaction on market forces to limit its extreme effects: for instance, by regulating shadow banks (cf. Chapter 8: Troger). Yet, it is doubtful, whether corrections of market failures will change any significant outcomes.

As empirical data of the global economic system shows, inequality is not a market failure, but quite the opposite: ‘the more perfect the capital market (in the economist’s sense), the more likely’ is inequality (Piketty 2014: 27). Consequently, the second approach regards law as an instrument of economic redistribution. A recent proposal for a form of economic governance like that would be a ‘global tax on capital’ (Piketty 2014: 515).

The third approach - prevailing in this book - focuses on the power of mainly private law in reshaping basic market institutions. Seen from this perspective, economic governance has everything to do with the fundamental relation between democracy and capitalism. Most Western states claim to be both. But does the logic of capitalism with its focus on self-interested maximization of surplus still (or, even?) allow for a free and equal political space? Notwithstanding that growing inequality and shrinking political options might indicate a more sceptical answer (Rawls 2001: 135), the contributors to this book still harbour a degree of hope for the possibility to sustain the ‘paradox of democratic capitalism’ (Prindle 2006; Streeck 2014). At the same time, even the valuable insights provided by the ‘varieties of capitalism’ scholars in the last one and a half decades (Hall & Soskice 2001) have not fully dissipated the concerns about shrinking public political agency with regard to the shaping of different forms of capitalist market economies.

‘If democracy is someday to regain control of capitalism, it must start by recognizing that the concrete institutions in which democracy and capitalism are embodied need to be reinvented again and again’ (Piketty 2014: 570). The idea of reshaping markets tries to reveal, awake or infuse some critical democratic potential within mostly private law institutions. The possibilities to reshape basic institutions like contract, property or corporate entities range from advocating new norms or doctrines to reinterpreting or using them creatively. Modern American contract doctrine which is one institutional core of the global market was created by a ‘revolution in private law’ in the nineteenth century (Kreitner 2007: 1). To change the relation between democracy and capitalism today, we need a new legal revolution.

Specific economic imperatives colonize our lifeworld (Habermas 1981: 355), but not the law itself. Law has not only become an indispensible component of modern societies and identities, but law even enables us to reshape the social systems we live in. The democratic task is not to achieve a freedom from law, but a ‘freedom through law’ (Hale 1952). The special ‘force of law’ is its ‘power of naming’ (Bourdieu 1987: 837) social and economic realities, which conveys a ‘mystical foundation of authority’ (Derrida 1990). We could use this symbolic power of law to recode the (bio-)politics of market economy. Arguing for ‘efficient performance’ (Brooks 2006) rather than ‘efficient breach’, for instance, is not a merely technical calculation of possible gain and loss, but influences the way we think about economic relations. Instead of a pure strategic instrument of competitive bargain, contract could also be construed as a form of ‘market solidarity’ (Markovits 2012) or even as an intersubjective social contract with a mutual promise of political ‘deliberation’ with public reasons (Lomfeld 2013).

The preceding chapters individually contain tentative proposals towards such a rethinking of law’s role in economic governance. One could condemn the ‘International Swaps and Derivatives Association’ because they support highly speculative financial markets, or one could try to sharpen its internal democratic potential (cf. Chapter 6: Renner & Leidinger). To change the behaviour of transnational corporations, a solution could be to rethink the theory and practice of corporate law and contract governance (cf. Chapter 3: Zumbansen). Another way is to challenge intellectual economic orthodoxies within the management of corporations (cf. chapter 9: Conley & Williams). To infuse doubts about the homo-oeconomicus-model within the management might in the long run not only irritate, but have a lasting effect on corporate culture.

An innovative or experimental use of existing legal institutions could also have a transformative democratic effect. A well known example is the ‘Free Software’ and the ‘Creative Commons’ movements, which have drafted and published contractual standard terms to circumvent proprietary software and copyright regimes and their economic exploitation. In that respect, standard contract terms ‘regulate markets instead of being regulated by them’ (Wielsch 2012: 1075). A similar vision motivates the idea of standard ‘global sustainability terms’ for investment contracts (cf. Chapter 11: Lomfeld). A similar shift of investments to sustainable development could also be achieved by an active role of ‘sovereign wealth funds’ within global financial markets (cf. Chapter 10: Cata Backer).

‘Reshaping markets’ could be understood as a method of economic governance, that aims to transform basic market structures by re-forming, reinterpreting or re-using mainly private law institutions. This structural transformation differs from mere political claims regarding a ‘re-embedding’ of the economy in society. Given its inevitable legal construction, economy always is socially embedded. The utopian dimension of reshaping markets is to inscribe some new democratic spirit within the institutional basis of economic cooperation.

### Notice and Comment CP

#### 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.

#### 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.

#### Solves faster---plan means lower courts can’t change opinions until there’s a SCOUTS case---Chevron creates immediate changes.

Royce Zeisler 14. J.D. Candidate 2014, Columbia Law School; B.S., B.A. 2012, University of British Columbia. “Chevron Deference and the FTC: How and Why the FTC Should Use Chevron to Improve Antitrust Enforcement”. 2014 COLUM. Bus. L. REV. 266 (2014).

Second, the cost of undertaking regime-changing litigation may be prohibitive. Antitrust cases are notoriously expensive. This expense becomes an even greater concern when the FTC contemplates the multiple attempts that may be needed to overcome the institutional momentum of precedent.122 Stare decisis, as Justice Brandeis famously explained, reflects the understanding that "in most matters it is more important that the applicable rule of law be settled than that it be settled right."'123 However, when contemplating an optimal antitrust regime, this may be far from true. The Court has explicitly acknowledged that stare decisis warrants less consideration in deciding antitrust cases. 124 However, while the Supreme Court is free to overrule itself, lower courts are bound by incorrect economic presumptions codified in past cases. 125 Even if courts fully understand and agree with the FTC's argument, they are limited in their ability to adopt this new understanding. Comparably, the FTC, by expressing its desired policy change through interpretations that will receive Chevron deference, empowers a court to defer to it and alter the law accordingly.

#### Antitrust agency guidelines are used by the court.

William E. Kovacic 21. Global Competition Professor of Law and Policy, George Washington University Law School; Visiting Professor, Dickson Poon School of Law, King’s College London; Non-Executive Director, United Kingdom Competition and Markets Authority. “The future adaptation of the per se rule of illegality in U.S. Antitrust law”. Columbia Business Law Review.

E. Policy Guidance

As noted above, antitrust agencies influence the development of doctrine in the courts by means other than litigation. The issuance of enforcement guidelines and related policy commentary is part of the conversation that agencies conduct with judges. Guidelines that offer a compelling intellectual vision based on a synthesis of theory and practice have supplied an influential way of translating enforcement experience into concepts that courts can use to interpret the antitrust laws.205 Twenty years after the issuance of the DOJ and FTC Competitor Collaboration Guidelines,206 this is an opportune time for the Agencies to reformulate their visions of the rule of reason and of the role of per se rules in its implementation.

#### 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.

#### 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.

#### 4---Topic Education---mechanism is the most important question---sidelining it ruins antitrust policy.

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

In this article, we do not debate the condition of competition in the U.S. economy, nor do we assess the substantive merits of the respective measures proposed to correct the market and policy deficiencies identified. Instead, we focus on a less noticed issue—the policy implementation challenges that stand between the soaring reform aspirations and their effective realization in practice. We thus take the reform recommendations—presented in scholarly papers, blue-ribbon studies, and in popular essays—at face value, and ask what legislators and policy makers must do to land them. For example, assuming that more aggressive antitrust enforcement is required, how can an effective program actually be delivered—through winning antitrust cases and securing positive change—and how can it be delivered well?

In our view, these “implementation” issues have tended to be overlooked in the modern critique and to have been too quickly side-lined as technical details to be (easily) addressed once the high-level concepts of a bold antitrust program have been settled.21 Implementation is not, however, a simple matter that will necessarily sort itself out once the intellectual architecture is in place. Rather, inattention to implementation challenges invites serious disappointment by creating a chasm between elevated policy commitments and the capacity of responsible public institutions (competition agencies, new regulators, and the courts) to produce expected outcomes. This is the implementation blindside. Unless the blindside is acknowledged and addressed, there is a significant risk that a major reform program will engage considerable resources, public and private, in initiatives that fall well short of their goals. Instead of restoring confidence in the ability of government agencies to enforce antitrust laws effectively, a failed effort might merely reinforce doubts, and cynicism, about the quality of public administration.

This article analyzes important impediments that are likely, if not carefully addressed, to hamper the delivery of the current proposals to expand competition policy significantly and propose ways to overcome them. It commences in Part II by introducing the principal flaws that modern commentary attributes to U.S. antitrust policy (the “crisis in antirust”), before describing some of the proposals offered to bolster competition, strengthen antitrust policy, and restore its centrality as a tool of economic control. It also sketches how the federal and state agencies are responding to demands for more extensive intervention. As already explained, the purpose of this section is not to address the (respective) merits of these policy proposals but to identify the magnitude of the implementation challenges that the proposals for a major expansion of the U.S. antitrust program create.

#### 6---Ground---desirability of antitrust rulemaking is debated.

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

Given that the FTC has largely neglected this tool, some may question the Commission’s authority to issue competition rules and the legal status these rules would have.54 Indeed, a common misconception is that this authority is extremely limited because FTC rulemaking is subject to the extensive hurdles posed by the Magnuson-Moss Warranty–Federal Trade Commission Improvements Act55 (“Magnuson-Moss”). In reality, Magnuson-Moss governs only rulemakings interpreting “unfair or deceptive acts or practices.”56 For rules interpreting “unfair methods of competition,” the FTC has authority to engage in participatory rulemaking pursuant to the APA. Several antitrust scholars have affirmed this authority, and the Appendix lays out further background on and discussion of it.57

Others acknowledge the authority exists but assert that antitrust law is ill suited for rulemaking because antitrust is a common law enterprise. It is true that, as a descriptive matter, antitrust enforcement has proceeded almost exclusively through adjudication.58 But the idea that this approach is normatively desirable is neither clear nor persuasive. Indeed, relying solely on adjudication has certainly not delivered a system with sufficient clarity, efficiency, or transparency.59

#### 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---Overwhelmingly support the plan---public, thinkers, scholars, and activists will vote yes.

David Dayen 20. Prospect’s executive editor. "It’s Not a Big Tech Crackdown, It’s an Anti-Monopoly Revolution". American Prospect. 12-18-2020. https://prospect.org/power/its-not-a-big-tech-crackdown-its-an-anti-monopoly-revolution/

Just look at what’s happening across the spectrum. The Federal Trade Commission is seeking information about data collection from nine social media companies. California Attorney General Xavier Becerra, who’s about to join the Biden Cabinet, is suing to compel Amazon’s compliance with an investigation into the company’s workplace protocols and level of coronavirus cases. Amazon warehouse workers in Alabama are voting on unionization with the Trump Labor Board’s blessing. App seller Cydia is suing Apple for creating a monopoly with its App Store. Researcher Zack Maril single-handedly implanted the notion of Google’s web-crawler monopoly in the public consciousness with one report. Northeastern University professor John Kwoka and Imperial College London’s Tommaso Valenti revised the history on firm breakups, showing them to be far superior to behavioral or conduct remedies. And across the pond, the European Union’s new rules on digital services and markets reflect a stronger and more confident challenge to tech firms, which feels like a direct consequence of the flurry of lawsuits.

This rethinking of antitrust policy and the actions it has spawned couldn’t come at a more critical time. As the pandemic consolidates markets, new mergers—from regional banks to big pharmaceutical firms to the world’s largest cannabis company—are being announced every day. The level of mergers and acquisitions is “extraordinary,” says Goldman Sachs’s top M&A banker Stephan Feldgoise, and he expects those mergers to come with job loss, as is typical with concentration.

The lawsuits against Google and Facebook will last for years. Big Tech’s defenders and lobbyists will defame them and bargain for a settlement of the anti-monopoly strife. The cases might even fail. It doesn’t matter. The policy center of America has now been convinced that the situation in corporate America has grown out of control. Public opinion supports that perspective. The network of anti-monopoly thinkers and scholars and activists has grown. The arguments for enabling monopoly power have been revealed as weak. Nothing is going to stop this evolution away from the laissez-faire of the Chicago school and toward the preservation of liberty and democracy.

#### 2---Notice and comment is consensus building---their ev doesn’t assume the process.

William E. Kovacic 21. Global Competition Professor of Law and Policy, George Washington University Law School; Visiting Professor, Dickson Poon School of Law, King’s College London; Non-Executive Director, United Kingdom Competition and Markets Authority. “The future adaptation of the per se rule of illegality in U.S. Antitrust law”. Columbia Business Law Review.

The public antitrust agencies—the DOJ, the FTC, and the state attorneys general—from time to time have convened public gatherings to examine developments in antitrust law.175 The agencies could apply their capability as convenors to conduct periodic assessments of the operation of per se rules of illegality and to build a consensus about what types of behavior are appropriate subjects for categorical prohibition.176 They could host proceedings in which academics, business officials, judges, policymakers, and practitioners analyze the existing set of per se prohibitions and discuss possibilities for expanding or reducing the set. One could imagine that such proceedings might take place on a regular basis—perhaps every five years. As a recent example, the FTC in 2020 held a public workshop on noncompete covenants as part of a larger set of deliberations on modern competition law and policy.177

An important aim of the periodic reassessment would be to take stock of ongoing advances in economic theory and in learning about business practices. This stock-taking would help illuminate the impact of existing per se rules and help interpret the experience that courts use as a basis for adjusting the class of conduct subject to per se condemnation. The agencies could prepare reports that distill the results of the reassessment proceedings and thus provide accessible means for courts to consider future adaptions to the per se rule.

#### 2---Changes will only be major if there is unanimous opposition.

Marissa Martino Golden 98, University of Pennsylvania. “Interest Groups in the Rule-Making Process: Who Participates? Whose Voices Get Heard?”. Journal of Public Administration Research and Theory: J-PART , Apr., 1998. Vol. 8, No. 2 (Apr., 1998), pp. 245-270. https://www.jstor.org/stable/1181558

As exhibit 6 depicts, eight of the ten final rules were changed, at least minimally, from the proposed rules in response to interest group comments.8 However, in only one case did the agency change a rule "a great deal." In that case (NHTSA's electric vehicle rule), in response to objections from all seven commenters, NHTSA abandoned altogether its proposal to require electric powered vehicles to contain a gauge and symbol to warn drivers when their batteries are in need of recharging. In the other cases-although commenters had requested more substantial changes-changes were limited to definitional changes, changes in deadlines, and changes to procedural issues such as record-keeping requirements. In short, in the majority of cases the agency made some of the changes that were requested by commenters, but it rarely altered the heart of the proposal. In only two of the ten cases did the agency refuse to make any modifications to its NOPR; moreover, in one of those two rule makings, only one comment was submitted regarding the rule.

#### 2---Public engagement is key to prevent monopoly power---participation is the only way to promote competition and decenter dominant firms.

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

Lastly, the current approach deprives both the public and market participants of any real opportunity to participate in the creation of substantive antitrust rules.23 The exclusive reliance on case-by-case adjudication leaves broad swaths of market participants watching from the sidelines, lacking an opportunity to contribute their perspective, their analysis, or their expertise, except through one-off amicus briefs.24 Nascent firms and startups are especially likely to be left out—despite the vital role they play in the competition ecosystem—given that they do not comprise a significant portion of the parties represented in litigated matters, and they usually lack the resources to engage in amicus activity. Furthermore future entrants, whose interests should be carefully considered in all aspects of competition law and policy, have no voice.

Firms, entrepreneurs, workers, and consumers across our economy vary wildly in their experiences and perspectives on market conduct. Enforcement and regulation of business conduct can more successfully promote competition when it incorporates more voices and evidence from across the marketplace.

The ambiguity of the laws, the administrative and resource burdens of enforcing them, and the exclusivity of the current process tend to advantage incumbents and suppress market entry. For example, when courts disagree with one another on the legality of particular conduct, new entrants are likely to eschew the practice, since the threat of litigation could prove fatal at an early stage. Incumbents, by contrast, will be more likely to conduct a cost-benefit analysis of engaging in a potentially unlawful practice, since they are likely to have higher tolerance for protracted litigation and deeper pockets to fund it. Continued ambiguity and complexity also create business opportunities for lawyers, economists, and lobbyists, who effectively profit from the lack of clarity.

#### 1---Input---the aff creates a democratic deficit.

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

The institutional aspects of today’s antitrust enterprise, however, are increasingly out of balance, threatening the democratic, economic, and political goals of the antitrust laws.5 The shift that Hofstadter first described has led to an antitrust system captured by lawyers and economists advancing their own self-referential goals, free of political control and economic accountability. Some of this professional control is inevitable, of course, because antitrust is a system of legal ordering of economic relationships. But antitrust is also public law designed to serve public ends. Today’s unbalanced system puts too much control in the hands of technical experts, moving antitrust enforcement too far away from its democratic roots.

We characterize the result of this shift toward technocracy as antitrust’s democracy deficit.6 We draw upon the concept of a democracy deficit from the literature analyzing and critiquing the European Union (EU) and the World Trade Organization (WTO).7 The term has generally been used to refer to policymaking by unaccountable and nontransparent technocratic institutions far removed from democratic (or national) control.8 The concern over a democracy deficit has led Europeans to develop the principle of subsidiarity, which seeks to direct lawmaking and enforcement, where possible, to the level of government closest to the people affected by the decisions.9 Similar concerns have led the WTO to open its dispute resolution proceedings to participation by nongovernmental organizations and other affected parties.10

The concern for democratic decision making has also been reflected in a new interest in global administrative law and the importance of basic principles of transparency and due process as a way to control the administrative state.11 This interest in administrative law principles has likewise led to a closer examination of how well antitrust conforms to due process and institutional norms.12

Our concern over antitrust’s move away from more democratically controlled institutions toward greater reliance on technical experts is not just animated by a theoretical preference for democracy. As lawyers know, institutional arrangements affect outcomes. A preference for democratic institutions implicitly assumes that more democratically arranged institutions will, in general, produce preferable antitrust policies and outcomes. We think this is particularly true today, when the imbalance between democratic control and technocratic control has put antitrust on a thin diet of efficiency, one that has weakened antitrust’s ability to control corporate power. Nevertheless, our concern about a democracy deficit does not lead us to a full-throated embrace of William Jennings Bryan–style populism.13 Political values change over time with changes in the social sciences and the world more generally. Rather, we think that by redressing the democracy deficit we can move the needle back toward policies that reflect more general political understandings and views of antitrust policy, even if not all the way back to the nineteenth century.

#### 2---Engagement---direct engagement force competition into culture.

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 role of an engaged civil society is critical for a competition policy that is democratic. Awareness of competition policy through the press, academia, along with a transparent agency and court system helps make competition policy (and government more generally) more accountable and directly engaged with the public at large. It allows occasional competition issues to enter the realm of politics, but more likely it helps create a culture of competition by making competition policy more a reality for the everyday lives of consumers.

#### 3---Only the CP makes antitrust democratic---plan removes transparency and gets circumvented.

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).

Democratic decision making also involves an open and transparent system where the parties and the public can determine what is occurring and participate as appropriate. In the United States, a complaint to either of the federal competition agencies has no legal significance. The agencies have complete discretion on how to proceed with the information and when, or if, to take any further action. 120 No agency response is required, and the complaining parties have no legal standing to participate in any resulting investigation or any right to challenge a decision not to proceed.

Similarly, the U.S. agencies have discretion on how to proceed if they choose to conduct an investigation. They must initially decide whether to open a preliminary investigation and whether to treat the matter as a potential civil or criminal offense. 121 They eventually may choose to bring a case in court or to close the investigation without taking any action.122 There is no requirement that the agency explain its decision to close a matter, although the agencies do so from time to time in varying degrees of detail. 1 23 Outside parties cannot challenge a decision not to proceed regardless of whether they were the complaining party, provided information to the agency, or were otherwise affected by the decision.