### OFF---Trade [0:47]

#### Protectionism is low now, but the plan sends a protectionist shockwave that shreds global free trade.

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INTRODUCTION

Trump. Le Pen. Brexit. Protectionist rhetoric has consumed the international political stage. Western countries and their leaders were once the drivers of economic globalization, relying on free-market speeches and the prospect of removing trade barriers to appeal to their constituents. 1They pointed fingers at other countries engaging in or encouraging protectionist behavior and challenged them in the court of public opinion and elsewhere to stop their antics. The "our country first, world trade after" mentality was widely politicized and vilified. Now, it seems that Western national leaders are championing the very protectionism that they once criticized. 2

Although a system of truly free world trade has never been perfected, past world leaders have eliminated most of the protectionist trade mechanisms that once ran rampant in the international economy. They did so by implementing multilateral and bilateral trade agreements. These webs of agreements have bolstered decades of support for free trade, or at least some version of it. By and large, tariff policies and other forms of protectionism were either eliminated or dramatically reduced. Now, as we have seen in the media, when a government imposes a tariff, it becomes a rather extreme political statement which sends a shockwave of significant global consequences.

Protectionism did not end when the age of overbearing tariff policies did, despite then-leaders’ best efforts to vilify it. Rather, the end of the tariff era forced nations to achieve protectionist goals through more subtle trade vehicles, like antitrust law.3 So, the recent resurgence of protectionist rhetoric should mean that these subtle trade vehicles, including antitrust law, will be relied on more heavily. It is a fear of many that antitrust law may become overused and inequitably applied to achieve and combat protectionist aims.

Notwithstanding the recent uptick in tariff threats, it is unlikely that all Western leaders will revamp or terminate the trade agreements set forth by their predecessors and bring back the kinds of tariff policies that once existed in their place. Although in the United States (“U.S.”), President Trump recently imposed tariffs on steel imports, it appears that his intent is to limit this behavior to a specific industry rather than institute a widespread policy favoring the use of tariffs generally.4 To remedy bad behavior in a specialized set of industries is not to instigate a global paradigm shift. This purpose is underscored by his use of the national security exemption, which is largely interpreted as being used for individual situations rather than general policy schemes.5 Many still hope that his course of action will be retracted and is merely a strong negotiation tactic. However, there is no doubt that Trump is far more comfortable than past leaders with subverting the status quo on trade relations.

Trump is not the only high-profile leader flirting with staunch protectionism. Western *leaders* in the E.U. appear to be growing more comfortable than their predecessors with considering similar policies. However, Western *lawmakers* themselves do not seem as persuaded by the statements of their leadership. The general sentiment among international policymakers is that there has been too much political wherewithal spent on loosening international trade barriers to take actions that could counteract that progress.6 Presidential actions taken because of dissatisfaction with current global trade relations aside, a complete overhaul of trade agreements may be too daunting and difficult a task, especially absent ample political support in legislative bodies.

Given the anticipated continuation of cooperative trade agreements and the proliferation of protectionist rhetoric as the new norm of public opinion, leaders will be forced to rely on existing avenues to meet protectionist aims. Again, we find ourselves relying squarely on antitrust law, the more subtle and widely accepted mechanism of restricting trade, to address perceived inequities. In the words of the World Trade Organization (“WTO”), “once formal trade barriers come down, other issues become more important.”7 Among the important issues lies antitrust law. Antitrust and competition laws can form a subtle trade barrier resulting in the imposition of tariff-like measures.

Antitrust law can be enforced to reach protectionist aims and to combat them. It is a tool that allows nations to achieve individual protectionist aims without undermining the future of trade between countries and the cooperative framework underpinning the relatively delicate global free trade enjoyed today. However, the perception of enforcement of antitrust laws as an abusive and solely protectionist mechanism may cause the death of even the smallest semblance of international free trade that remains in the international marketplace today.

#### Nuclear war.

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Four structural forces will shape the future of International Relations: globalization (but without liberal rules, institutions, and leadership)1; multipolarity (the end of American hegemony and wider distribution of power among states and non-states2); the strengthening of distinctive, national and subnational identities, as persistent cultural differences are accentuated by the disruptive effects of Western style globalization (what Samuel Huntington called the “non-westernization of IR”3); and secular economic stagnation, a product of longer term global decline in birth rates combined with aging populations.4 These structural forces do not determine everything. Environmental events, global health challenges, internal political developments, policy mistakes, technology breakthroughs or failures, will intersect with structure to define our future. But these four structural forces will impact the way states behave, in the capacity of great powers to manage their differences, and to act collectively to settle, rather than exploit, the inevitable shocks of the next decade.

Some of these structural forces could be managed to promote prosperity and avoid war. Multipolarity (inherently more prone to conflict than other configurations of power, given coordination problems)5 plus globalization can work in a world of prosperity, convergent values, and effective conflict management. The Congress of Vienna system achieved relative peace in Europe over a hundred-year period through informal cooperation among multiple states sharing a fear of populist revolution. It ended decisively in 1914. Contemporary neoliberal institutionalists, such as John Ikenberry, accept multipolarity as our likely future, but are confident that globalization with liberal characteristics can be sustained without American hegemony, arguing that liberal values and practices have been fully accepted by states, global institutions, and private actors as imperative for growth and political legitimacy.6 Divergent values plus multipolarity can work, though at significantly lower levels of economic growth-in an autarchic world of isolated units, a world envisioned by the advocates of decoupling, including the current American president. 7 Divergent values plus globalization can be managed by hegemonic power, exemplified by the decade of the 1990s, when the Washington Consensus, imposed by American leverage exerted through the IMF and other U.S. dominated institutions, overrode national differences, but with real costs to those states undergoing “structural adjustment programs,”8 and ultimately at the cost of global growth, as states—especially in Asia—increased their savings to self insure against future financial crises.9

But all four forces operating simultaneously will produce a future of increasing internal polarization and cross border conflict, diminished economic growth and poverty alleviation, weakened global institutions and norms of behavior, and reduced collective capacity to confront emerging challenges of global warming, accelerating technology change, nuclear weapons innovation and proliferation. As in any effective scenario, this future is clearly visible to any keen observer. We have only to abolish wishful thinking and believe our own eyes.10

Secular Stagnation

This unbrave new world has been emerging for some time, as US power has declined relative to other states, especially China, global liberalism has failed to deliver on its promises, and totalitarian capitalism has proven effective in leveraging globalization for economic growth and political legitimacy while exploiting technology and the state’s coercive powers to maintain internal political control. But this new era was jumpstarted by the world financial crisis of 2007, which revealed the bankruptcy of unregulated market capitalism, weakened faith in US leadership, exacerbated economic deprivation and inequality around the world, ignited growing populism, and undermined international liberal institutions. The skewed distribution of wealth experienced in most developed countries, politically tolerated in periods of growth, became intolerable as growth rates declined. A combination of aging populations, accelerating technology, and global populism/nationalism promises to make this growth decline very difficult to reverse. What Larry Summers and other international political economists have come to call “secular stagnation” increases the likelihood that illiberal globalization, multipolarity, and rising nationalism will define our future. Summers11 has argued that the world is entering a long period of diminishing economic growth. He suggests that secular stagnation “may be the defining macroeconomic challenge of our times.” Julius Probst, in his recent assessment of Summers’ ideas, explains:

…rich countries are ageing as birth rates decline and people live longer. This has pushed down real interest rates because investors think these trends will mean they will make lower returns from investing in future, making them more willing to accept a lower return on government debt as a result.

Other factors that make investors similarly pessimistic include rising global inequality and the slowdown in productivity growth…

This decline in real interest rates matters because economists believe that to overcome an economic downturn, a central bank must drive down the real interest rate to a certain level to encourage more spending and investment… Because real interest rates are so low, Summers and his supporters believe that the rate required to reach full employment is so far into negative territory that it is effectively impossible.

…in the long run, more immigration might be a vital part of curing secular stagnation. Summers also heavily prescribes increased government spending, arguing that it might actually be more prudent than cutting back – especially if the money is spent on infrastructure, education and research and development.

Of course, governments in Europe and the US are instead trying to shut their doors to migrants. And austerity policies have taken their toll on infrastructure and public research. This looks set to ensure that the next recession will be particularly nasty when it comes… Unless governments change course radically, we could be in for a sobering period ahead.12

The rise of nationalism/populism is both cause and effect of this economic outlook. Lower growth will make every aspect of the liberal order more difficult to resuscitate post-Trump. Domestic politics will become more polarized and dysfunctional, as competition for diminishing resources intensifies. International collaboration, ad hoc or through institutions, will become politically toxic. Protectionism, in its multiple forms, will make economic recovery from “secular stagnation” a heavy lift, and the liberal hegemonic leadership and strong institutions that limited the damage of previous downturns, will be unavailable. A clear demonstration of this negative feedback loop is the economic damage being inflicted on the world by Trump’s trade war with China, which— despite the so-called phase one agreement—has predictably escalated from negotiating tactic to imbedded reality, with no end in sight. In a world already suffering from inadequate investment, the uncertainties generated by this confrontation will further curb the investments essential for future growth. Another demonstration of the intersection of structural forces is how populist-motivated controls on immigration (always a weakness in the hyper-globalization narrative) deprives developed countries of Summers’ recommended policy response to secular stagnation, which in a more open world would be a win-win for rich and poor countries alike, increasing wage rates and remittance revenues for the developing countries, replenishing the labor supply for rich countries experiencing low birth rates.

Illiberal Globalization

Economic weakness and rising nationalism (along with multipolarity) will not end globalization, but will profoundly alter its character and greatly reduce its economic and political benefits. Liberal global institutions, under American hegemony, have served multiple purposes, enabling states to improve the quality of international relations and more fully satisfy the needs of their citizens, and provide companies with the legal and institutional stability necessary to manage the inherent risks of global investment. But under present and future conditions these institutions will become the battlegrounds—and the victims—of geopolitical competition. The Trump Administration’s frontal attack on multilateralism is but the final nail in the coffin of the Bretton Woods system in trade and finance, which has been in slow but accelerating decline since the end of the Cold War. Future American leadership may embrace renewed collaboration in global trade and finance, macroeconomic management, environmental sustainability and the like, but repairing the damage requires the heroic assumption that America’s own identity has not been fundamentally altered by the Trump era (four years or eight matters here), and by the internal and global forces that enabled his rise. The fact will remain that a sizeable portion of the American electorate, and a monolithically pro- Trump Republican Party, is committed to an illiberal future. And even if the effects are transitory, the causes of weakening global collaboration are structural, not subject to the efforts of some hypothetical future US liberal leadership. It is clear that the US has lost respect among its rivals, and trust among its allies. While its economic and military capacity is still greatly superior to all others, its political dysfunction has diminished its ability to convert this wealth into effective power.13 It will furthermore operate in a future system of diffusing material power, diverging economic and political governance approaches, and rising nationalism. Trump has promoted these forces, but did not invent them, and future US Administrations will struggle to cope with them.

What will illiberal globalization look like? Consider recent events. The instruments of globalization have been weaponized by strong states in pursuit of their geopolitical objectives. This has turned the liberal argument on behalf of globalization on its head. Instead of interdependence as an unstoppable force pushing states toward collaboration and convergence around market-friendly domestic policies, states are exploiting interdependence to inflict harm on their adversaries, and even on their allies. The increasing interaction across national boundaries that globalization entails, now produces not harmonization and cooperation, but friction and escalating trade and investment disputes.14 The Trump Administration is in the lead here, but it is not alone. Trade and investment friction with China is the most obvious and damaging example, precipitated by China’s long failure to conform to the World Trade Organization (WTO) principles, now escalated by President Trump into a trade and currency war disturbingly reminiscent of the 1930s that Bretton Woods was designed to prevent. Financial sanctions against Iran, in violation of US obligations in the Joint Comprehensive Plan Of Action (JCPOA), is another example of the rule of law succumbing to geopolitical competition. Though more mercantilist in intent than geopolitical, US tariffs on steel and aluminum, and their threatened use in automotives, aimed at the EU, Canada, and Japan,15 are equally destructive of the liberal system and of future economic growth, imposed as they are by the author of that system, and will spread to others. And indeed, Japan has used export controls in its escalating conflict with South Korea16 (as did China in imposing controls on rare earth,17 and as the US has done as part of its trade war with China). Inward foreign direct investment restrictions are spreading. The vitality of the WTO is being sapped by its inability to complete the Doha Round, by the proliferation of bilateral and regional agreements, and now by the Trump Administration’s hold on appointments to WTO judicial panels. It should not surprise anyone if, during a second term, Trump formally withdrew the US from the WTO. At a minimum it will become a “dead letter regime.”18

As such measures gain traction, it will become clear to states—and to companies—that a global trading system more responsive to raw power than to law entails escalating risk and diminishing benefits. This will be the end of economic globalization, and its many benefits, as we know it. It represents nothing less than the subordination of economic globalization, a system which many thought obeyed its own logic, to an international politics of zero-sum power competition among multiple actors with divergent interests and values. The costs will be significant: Bloomberg Economics estimates that the cost in lost US GDP in 2019- dollar terms from the trade war with China has reached $134 billion to date and will rise to a total of $316 billion by the end of 2020.19 Economically, the just-in-time, maximally efficient world of global supply chains, driving down costs, incentivizing innovation, spreading investment, integrating new countries and populations into the global system, is being Balkanized. Bilateral and regional deals are proliferating, while global, nondiscriminatory trade agreements are at an end.

Economies of scale will shrink, incentivizing less investment, increasing costs and prices, compromising growth, marginalizing countries whose growth and poverty reduction depended on participation in global supply chains. A world already suffering from excess savings (in the corporate sector, among mostly Asian countries) will respond to heightened risk and uncertainty with further retrenchment. The problem is perfectly captured by Tim Boyle, CEO of Columbia Sportswear, whose supply chain runs through China, reacting to yet another ratcheting up of US tariffs on Chinese imports, most recently on consumer goods:

We move stuff around to take advantage of inexpensive labor. That’s why we’re in Bangladesh. That’s why we’re looking at Africa. We’re putting investment capital to work, to get a return for our shareholders. So, when we make a wager on investment, this is not Vegas. We have to have a reasonable expectation we can get a return. That’s predicated on the rule of law: where can we expect the laws to be enforced, and for the foreseeable future, the rules will be in place? That’s what America used to be.20

The international political effects will be equally damaging. The four structural forces act on each other to produce the more dangerous, less prosperous world projected here. Illiberal globalization represents geopolitical conflict by (at first) physically non-kinetic means. It arises from intensifying competition among powerful states with divergent interests and identities, but in its effects drives down growth and fuels increased nationalism/populism, which further contributes to conflict. Twenty-first-century protectionism represents bottom-up forces arising from economic disruption. But it is also a top-down phenomenon, representing a strategic effort by political leadership to reduce the constraints of interdependence on freedom of geopolitical action, in effect a precursor and enabler of war. This is the disturbing hypothesis of Daniel Drezner, argued in an important May 2019 piece in Reason, titled “Will Today’s Global Trade Wars Lead to World War Three,”21 which examines the pre- World War I period of heightened trade conflict, its contribution to the disaster that followed, and its parallels to the present:

Before the First World War started, powers great and small took a variety of steps to thwart the globalization of the 19th century. Each of these steps made it easier for the key combatants to conceive of a general war. We are beginning to see a similar approach to the globalization of the 21st century. One by one, the economic constraints on military aggression are eroding. And too many have forgotten—or never knew—how this played out a century ago.

…In many ways, 19th century globalization was a victim of its own success. Reduced tariffs and transport costs flooded Europe with inexpensive grains from Russia and the United States. The incomes of landowners in these countries suffered a serious hit, and the Long Depression that ran from 1873 until 1896 generated pressure on European governments to protect against cheap imports.

…The primary lesson to draw from the years before 1914 is not that economic interdependence was a weak constraint on military conflict. It is that, even in a globalized economy, governments can take protectionist actions to reduce their interdependence in anticipation of future wars. In retrospect, the 30 years of tariff hikes, trade wars, and currency conflicts that preceded 1914 were harbingers of the devastation to come. European governments did not necessarily want to ignite a war among the great powers. By reducing their interdependence, however, they made that option conceivable.

…the backlash to globalization that preceded the Great War seems to be reprised in the current moment. Indeed, there are ways in which the current moment is scarier than the pre-1914 era. Back then, the world’s hegemon, the United Kingdom, acted as a brake on economic closure. In 2019, the United States is the protectionist with its foot on the accelerator. The constraints of Sino-American interdependence—what economist Larry Summers once called “the financial balance of terror”—no longer look so binding. And there are far too many hot spots—the Korean peninsula, the South China Sea, Taiwan—where the kindling seems awfully dry.

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

#### The United States federal government should create a non-antitrust Digital Authority responsible for regulating digital platform policy through the mechanisms outlined in the Stigler evidence.

For reference, these include:

---imposing market standards

---mandating portability and accessibility of data

---monitor and correct negative market developments

---review mergers

---work with applicable agencies in other countries.

#### Solves the aff

Stigler Committee on Digital Platforms 19. The Steigler Committee is an independent committee of over 30 area experts and scholars tasked with creating a report on the regulation of digital platforms. What follows are the credentials of the report’s main organizers, but a full list of scholars and qualifications can be found at the link listed later in this cite. Luigi Zingales is the Robert C. McCormack Distinguished Service Professor of Entrepreneurship and Finance at the University of Chicago Booth School of Business. Guy Rolnik is a Clinical Associate Professor of Strategic Management at the University of Chicago Booth School of Business. Filippo Maria Lancieri is a fellow at the George J. Stigler Center for the Study of the Economy and the State. "Stigler Committee on Digital Platforms: Final Report." The University of Chicago Booth School of Business. 9-16-2019. https://www.chicagobooth.edu/research/stigler/news-and-media/committee-on-digital-platforms-final-report

Longer-term—the creation of a Digital Authority: The strongest indication emerging from the four reports is the importance of having a single powerful regulator capable of overseeing all aspects of DPs. DPs generate several concerns across different fields, all linked to the power of data. To address these concerns in a holistic way, there needs to be a single regulator able to impose open standards, to mandate portability of and accessibility to data, to monitor the use of dark patterns and the risks of addiction, and to complement the FTC and the DoJ in merger reviews. Countries like the UK are considering the set-up of a Digital Markets Unit. The United States and other nations should follow their example.[[1]](#footnote-1)

#### 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 increase prohibitions on anticompetitive business practices by at least expanding the scope of in its core antitrust laws to include a standard of digital platform interoperability

#### Autonomous state action solves

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

### 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 increase prohibitions on anticompetitive business practices by at least expanding the scope of in its core antitrust laws to include a standard of digital platform interoperability

#### 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.

#### Notice-and-comment is key to democracy---deference and court acquiesence

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 leadership solves extinction

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:

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

Scope of Competition Policy

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

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

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

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

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

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

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

### T-Core

#### Its core antitrust laws are Sherman and Clayton

Teo Spengler 19. J.D. Reviewed by: Michelle Seidel, B.Sc., LL.B., MBA. “Consumer Laws: California Consumer Rights & Responsibilities”. Legal Beagle. https://legalbeagle.com/13720462-consumer-laws-california-consumer-rights-responsibilities.html

Federal and State Antitrust Laws

Antitrust laws are intended to protect consumers by not letting any business corner the market in a way that precludes competition. These laws protect free trade from unfair restraints, monopolies and price fixing. Antitrust vigilance helps consumers by ensuring fair prices for goods and services, a range of products to choose from and innovative, quality goods and services.

The core antitrust laws are federal – the Sherman Act and the Clayton Act. California's complementary laws are found in the Cartwright Act, Business and Professions Code Section 16720 and following sections. These laws bar agreements among competitors that would fix prices or allocate customers or markets. California law offers a more detailed list of forbidden actions than that included in the federal law's general prohibitions against restraints of trade. The California Attorney General enforces antitrust laws by reviewing business mergers, investigating violations of the law and litigation.

#### Fiating some new delegating authority is obviously not topical --- at best its effects T

#### 1. Limits---they delete the term “core” from the resolution and make anything related to antitrust and competition topical.

#### 2. Ground---they give the Aff access to FTC process advantages and eliminate “other legislation” CPs, which are core functional limits---that’s why we voted for “core antitrust laws.”

#### 3. Predictability---we have legal ev with intent to define and exclude.

### Interoperability

#### 1. Turn:

#### 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.

#### 2. Extending antitrust’s reach over digital platforms undermines innovation

Alden F. Abbott 21, General Counsel, Federal Trade Commission, Washington, DC, February 2021, “COMPETITION POLICY CHALLENGES FOR A NEW U.S. ADMINISTRATION: IS THE PAST PROLOGUE?,” https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en

11. First, a word about innovation and “high-tech” digital platforms, which have been much in the public eye of late. Unquestionably, big tech companies, particularly those that currently possess monopoly power in particular markets, merit antitrust challenge if they act inefficiently (not on the business merits) to exclude new forms of competition or harm the competitive process. The Trump administration Justice Department and FTC’s bringing of monopolization cases against Google and Facebook, noted above, manifested a willingness to apply current monopolization law to challenge specific practices by digital platform giants. 12. But recent suggestions put forth in an October 2020 House Judiciary Subcommittee on Antitrust majority report (HJSMR) [12] and in a November 2020 report by the Washington Center for Equitable Growth (WCEGR) [13] (coauthored by various prominent critics of Trump administration antitrust enforcement who served in the Obama administration) would go far beyond application of existing antitrust law to big digital platforms. In particular, the HJSMR proposes taking a highly regulatory approach to digital platforms, including imposing “[s]tructural separations and prohibitions of certain dominant platforms from operating in adjacent lines of business.” [14] The WCEGR also endorses the use of rulemaking (and, in particular, FTC rulemaking) to tackle significant problems of competition. [15] Rushing into rulemakings on platforms (especially without a clear showing of market failure) poses major risks, however, including, in particular, the creation of disincentives to invest in platform-specific innovation; and the interference with potential efficiency-seeking transactions by platform operators and suppliers of complements (in light of inevitable government second-guessing of platform-related business decision-making). The JBA antitrust team may wish to keep such potential costs in mind in setting competition policy vis-à-vis digital platforms.

#### 3. 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.”

#### 4. Smart cities are fake---no model for ecological sustainability

**Gonella 19** (F. Gonella, Dept of Molecular Sciences and Nanosystems, Ca’ Foscari University of Venice; C.M.V.B. Almeida, Paulista University. Post-graduation Program on Production Engineering; G. Fiorentino, Department of Science and Technology, Parthenope University of Naples; K. Handayani, Department of Governance and Technology for Sustainability, University of Twente; F. Spanò, Department of Physics, Royal Holloway University of London; R. Testoni, Dipartimento Energia, Politecnico di Torino; A. Zucaro; Department of Science and Technology, Parthenope University of Naples; “Is technology optimism justified? A discussion towards a comprehensive narrative”, Journal of Cleaner Production, 2019, doi: 10.1016/j.jclepro.2019.03.126) \*edited for language

Several sustainability-related issues based on the development of new technologies have become popular in the public and scientific debate. Among these, a quite actual issue is that of the Smart Cities, cities that use Information and Communication Technology (ICT) to enhance their livability, workability and sustainability (Smart Cities Council, 2013). Internet of Things and Big Data should allow to increase smart operational efficiency (see for example CCCM, 2018), making it possible for citizens to have access to a “culturally vibrant and happy life”. Generally speaking, the effects of innovative technologies – in particular ICT-based ones – in making a city more sustainable seem to be **largely overestimated**, in as much the very meaning of “**sustainable city” is not addressed whatsoever**. For the European Union, sustainability of a smart city is based actually on the presence of more competitive industry and Small-Medium Enterprises (SMEs), as well as on smart energy, smart transportation, and ICT (European Commission, 2012 and 2013). Based on the literature on smart cities, it seems that the main problems of an urban community are traffic congestion and slow internet connectivity, supposedly a major obstacle to the business. As recommended by Industrial Internet of Things (IIoT) global digital publication, “Smart city management models must integrate a new ecosystem of value creators and innovators”, with “innovative spaces” where they are supported in “monetizing new business models” (IIoT, 2018). It is interesting to note how the word “ecosystem” is often rhetorically used to describe a smart city to emphasize its highly interconnected nature, at the same time neglecting most of the components that make a system an “ecosystem”, the living creatures (Odum, 1996). In the smart cities narrative, vegetation is relegated to the role of parks and green areas, without considering the importance of plants for the well-being of all animal species in the city, nor the ecosystemic services in terms of evapotranspiration and temperature regulation (Almeida et al., 2018). Animals presence is never addressed, in spite of their important role in the city overall sustainability: insects guarantee the health of green areas as well as that of birds and migratory species, bats eat mosquitoes, while the communities of dogs and cats provide an enormous service in term of the (human) citizens well-being, in particular that of aged people and children, and so they should be regarded as part of the citizenry for biophysical, systemic and ethical reasons. To neglect this important part of the city system in a policy-planning activity means to be ~~blind~~ [ignorant] of the interconnection network of all social, environmental and economic aspects and problems which the smart city narrative advocates. Interestingly, as a matter of fact, children, animals, and plants do not drive, do not use the internet, do not produce business, and do not participate in the electoral choice game, neither by voting nor by being voted. The narrative on smart cities is very often characterized by a surprisingly high cognitive dissonance. From a systemic point of view, the problem is that the current city smartness is the change, innovation and optimization of processes inside, but without taking into account the necessary change in local stocks and the inflows from the supporting area (Brown and Ulgiati, 2011). In this respect, a quantitative estimation of the resources required from supporting areas to make a city smart is **hardly addressed**, **nor a rigorous systemic approach is proposed** (Ascione et al., 2011). In this conceptual framework, technology is assigned of a power that it has not, that to address and solve the problems of the city community. Under this discourse, the city would survive and operate independently of its surroundings. Besides traffic management, data access and ease of doing business, much more serious problems occur **outside the technological realm**: **poverty**, **unemployment**, **forced immigration**, **pollution**, **marginalization** and **violence** are all aspects of a city life that seem to be **ignored** or **absent from the description** given by the enthusiastic smart city narrative focused on the problem of the traffic congestion, talking about communities that **simply do not exist**. The role of technology in the smart cities issues is therefore highly biased, and the FWFW questions assume a crucial relevance. The Smart City model talked about at the EU level, for example, is clearly a Western World Smart City. In the 256 pages of the report “The making of a smart city: best practices across Europe” by the EU Smart Cities Information System (EU, 2017), the word “mobility” appears 114 times, and the word “business” 67. None of the words “child/children”, “welfare”, “poverty”, “violence”, “disability”, “inequality”, “gender”, “happiness”, “vegetation”, “animal(s)”, are present. Interestingly, the word “green” appears 31 times, but only five of them are related to green spaces or areas. Along with green economy and green growth, these best practices contemplate green energy, green jobs, green power, green buildings, green roofs, green cooling and green heating, green electricity, green research, green contributions (?) and – of course – green mobility and green parking. As a matter of fact, the model is just **not exportable to most world cities**, where most part of [hu]mankind lives. The number of slum dwellers worldwide is **constantly increasing**, forming about one billion people excluded from any participatory political and economic issue of the city they live in. Indeed, it is hard to address “smart interconnectedness” where there is no electricity, or fast-ICT access to sanitary data where there are **no sanitary infrastructures**, or talking of a “culturally vibrant and happy” smart living where the problem is just that of living, or surviving. But this cognitive dissonance when talking about technology and smart cities **might go even farther**: **the plausible failure of the policies addressed by the Paris Accord to keep temperature increase below 2 °C** will make much of the smartness we are discussing about **senseless** even for Western European cities, for example, London, as far as electric public transportation infrastructures are unlikely to be operated in a partially flooded town (Strauss, 2015).

### Rulemaking

#### 1. The FTC lacks any ability to issue sanctions for non-compliance, and courts gut the plan.

Alden Abbott & Andrew Mercado 21. \*\*Senior research fellow at the Mercatus Center at George Mason University. \*\*Research assistant at the Mercatus Center at George Mason University. September 28 2021. https://www.mercatus.org/publications/antitrust-and-competition/ftc-rulemaking-noncompete-agreements

Two years after National Petroleum Refiners Ass’n was decided, Congress granted the FTC specific consumer-protection rulemaking authority through section 202 of the M-M Warranty Act. This act added section 18 to the Federal Trade Commission Act, imposing strict, adjudicatory hearings and other formal procedures on the FTC. Though the section 18 process is stricter than the informal process under section 6(g), the FTC may seek civil penalties for violation of M-M rules. This remedy is notably absent from section 6(g) rulemaking authority.

There are, however, concerns over the statutory basis for section 6(g) rulemaking. According to the Antitrust Law Section of the American Bar Association,

[T]he Commission’s [section 6(g)] rulemaking authority is buried within an enumerated list of investigative powers, such as the power to require reports from corporations and partnerships, for example. Furthermore, the [Federal Trade Commission] Act fails to provide any sanctions for violating any rule adopted pursuant to Section 6(g). These two features strongly suggest that Congress did not intend to give the agency substantive rulemaking powers when it passed the Federal Trade Commission Act.

In other words, the structure of the Federal Trade Commission Act indicates that section 6(g) rulemaking is best understood as a tool to aid the FTC’s investigative and procedural authority, not standalone substantive rulemaking authority in and of itself. Though it is true that National Petroleum Refiners Ass'n defended the substantive rulemaking interpretation, the decision came at a time of substantial deference to agency activism from the courts, and such an interpretation may no longer hold.

Evidence pointing in this direction comes from a recent Supreme Court decision in AMG Capital Management, where the court unanimously held that the FTC’s authority to seek a permanent injunction under section 13(b) of the Federal Trade Commission Act does not authorize the FTC to seek monetary damages. The FTC argued that the historical understanding of a permanent injunction includes monetary relief, but the Supreme Court rejected such a reading on the basis of the statutory language of section 13(b). The court noted that the permanent injunction language was “buried” within a provision that discusses injunctive, not monetary, relief. Section 6(g) rulemaking authority is similarly buried in a section discussing other topics.

Moreover, as previously noted, just two years after National Petroleum Refiners Ass’n, Congress added section 18 to the Federal Trade Commission Act, enumerating detailed, substantive rulemaking provisions, and leaving section 6(g) unchanged. This preservation of section 6(g), in the face of significant additions to the FTC’s substantive rulemaking authority under section 18, leaves informal rulemaking on shaky ground. Informal rulemaking under section 6(g) is anything but settled law, and the FTC may face significant legal challenges by choosing to use this authority.

Furthermore, even if there are no challenges to the FTC’s authority to undertake wholesale rulemaking under section 6(g), there still may be challenges to any specific rule that the FTC proposes. First, “unfair methods of competition” rulemaking may prove particularly difficult to survive legal scrutiny because of the nondelegation

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doctrine. Under that doctrine, if a court determines that the Federal Trade Commission Act’s general—and arguably vague—reference to “unfair methods of competition” does not include an “intelligible principle” guiding the FTC’s discretion in making competition rules, then that court may not uphold competition rulemaking.

Second, a court may strike down an individual proposed rule as “arbitrary and capricious,” should the court find that the FTC did not sufficiently consider procompetitive justifications for the condemned practice.

#### 2. AGI is benign.

Shermer 17 Dr. Michael Shermer, Ph.D. from Claremont Graduate University in the history of science. [Why Artificial Intelligence is Not an Existential Threat, Altadena, 22(2), 29–35 (“i/s” is short for “if statements”)]

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 senne 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 i/s 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. Burnout and geographic dispersion check disease.

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

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

#### 4. No impact to the liberal order.

Graham Allison 18. Professor of Government at Harvard. “The Myth of the Liberal Order.” *Foreign Affairs* 97.4: 124-133

Among the debates that have swept the U.S. foreign policy community since the beginning of the Trump administration, alarm about the fate of the liberal international rules-based order has emerged as one of the few fixed points. From the international relations scholar G. John Ikenberry's claim that "for seven decades the world has been dominated by a western liberal order" to U.S. Vice President Joe Biden's call in the final days of the Obama administration to "act urgently to defend the liberal international order," this banner waves atop most discussions of the United States' role in the world. About this order, the reigning consensus makes three core claims. First, that the liberal order has been the principal cause of the so-called long peace among great powers for the past seven decades. Second, that constructing this order has been the main driver of U.S. engagement in the world over that period. And third, that U.S. President Donald Trump is the primary threat to the liberal order-and thus to world peace. The political scientist Joseph Nye, for example, has written, "The demonstrable success of the order in helping secure and stabilize the world over the past seven decades has led to a strong consensus that defending, deepening, and extending this system has been and continues to be the central task of U.S. foreign policy." Nye has gone so far as to assert: "I am not worried by the rise of China. I am more worried by the rise of Trump." Although all these propositions contain some truth, each is more wrong than right. The "long peace" was the not the result of a liberal order but the byproduct of the dangerous balance of power between the Soviet Union and the United States during the four and a half decades of the Cold War and then of a brief period of U.S. dominance. U.S. engagement in the world has been driven not by the desire to advance liberalism abroad or to build an international order but by the need to do what was necessary to preserve liberal democracy at home. And although Trump is undermining key elements of the current order, he is far from the biggest threat to global stability. These misconceptions about the liberal order's causes and consequences lead its advocates to call for the United States to strengthen the order by clinging to pillars from the past and rolling back authoritarianism around the globe. Yet rather than seek to return to an imagined past in which the United States molded the world in its image, Washington should limit its efforts to ensuring sufficient order abroad to allow it to concentrate on reconstructing a viable liberal democracy at home. CONCEPTUAL JELL-O The ambiguity of each of the terms in the phrase "liberal international rules-based order" creates a slipperiness that allows the concept to be applied to almost any situation. When, in 2017, members of the World Economic Forum in Davos crowned Chinese Presisdent Xi Jinping the leader of the liberal economic order-even though he heads the most protectionist, mercantilist, and predatory major economy in the world-they revealed that, at least in this context, the word "liberal" has come unhinged.

### Cap

#### Nitrogen cycling is essential for life.

S. A. Iqbal & Y. Mido 10. Department of Chemistry @ Safia P.G. College of Science & Education; Department of Chemistry @ Kobe University. 2010. Chemistry Of Air & Air Pollution. Discovery Publishing House.

NITROGEN Nitrogen, and its exchange between the biosphere and the atmosphere, is more essential to ecosystem survival than any other element. Nitrogen, N2, is an inert gas comprising 78 per cent of the atmosphere. N2 is crucial to nitrogen use by eco-systems, but several other nitrogen compounds are also important. Nitrogen and its compounds are essential building blocks for ecosystem and human survival. The global estimates of total nitrogen stored in atmospheric and surface locations are given in Table 3.3. The lithosphere holds far more nitrogen in storage than all the other locations combined. Stored in primary and igneous rocks this nitrogen is not accessible to any use by ecosystems. Only a very small fraction is released by weathering and other natural processes. Only small amounts of nitrogen are made available for ecosystem use, and inclusion in the active nitrogen cycle from other regions.

#### Soil erosion causes extinction.

George Monbiot 15. Author and investigative reporter. “We’re treating soil like dirt. It’s a fatal mistake, as our lives depend on it.” 3-25-2015. https://www.theguardian.com/commentisfree/2015/mar/25/treating-soil-like-dirt-fatal-mistake-human-life

Imagine a wonderful world, a planet on which there was no threat of climate breakdown, no loss of freshwater, no antibiotic resistance, no obesity crisis, no terrorism, no war. Surely, then, we would be out of major danger? Sorry. Even if everything else were miraculously fixed, we’re finished if we don’t address an issue considered so marginal and irrelevant that you can go for months without seeing it in a newspaper. It’s literally and – it seems – metaphorically, beneath us. To judge by its absence from the media, most journalists consider it unworthy of consideration. But all human life depends on it. We knew this long ago, but somehow it has been forgotten. As a Sanskrit text written in about 1500BC noted: “Upon this handful of soil our survival depends. Husband it and it will grow our food, our fuel and our shelter and surround us with beauty. Abuse it and the soil will collapse and die, taking humanity with it.” The issue hasn’t changed, but we have. Landowners around the world are now engaged in an orgy of soil destruction so intense that, according to the UN’s Food and Agriculture Organisation, the world on average has just 60 more years of growing crops. Even in Britain, which is spared the tropical downpours that so quickly strip exposed soil from the land, Farmers Weekly reports, we have “only 100 harvests left”. To keep up with global food demand, the UN estimates, 6m hectares (14.8m acres) of new farmland will be needed every year. Instead, 12m hectares a year are lost through soil degradation. We wreck it, then move on, trashing rainforests and other precious habitats as we go. Soil is an almost magical substance, a living system that transforms the materials it encounters, making them available to plants. That handful the Vedic master showed his disciples contains more micro-organisms than all the people who have ever lived on Earth. Yet we treat it like, well, dirt. The techniques that were supposed to feed the world threaten us with starvation. A paper just published in the journal Anthropocene analyses the undisturbed sediments in an 11th-century French lake. It reveals that the intensification of farming over the past century has increased the rate of soil erosion sixtyfold. Another paper, by researchers in the UK, shows that soil in allotments – the small patches in towns and cities that people cultivate by hand – contains a third more organic carbon than agricultural soil and 25% more nitrogen. This is one of the reasons why allotment holders produce between four and 11 times more food per hectare than do farmers. Whenever I mention this issue, people ask: “But surely farmers have an interest in looking after their soil?” They do, and there are many excellent cultivators who seek to keep their soil on the land. There are also some terrible farmers, often absentees, who allow contractors to rip their fields to shreds for the sake of a quick profit. Even the good ones are hampered by an economic and political system that could scarcely be better designed to frustrate them. This is the International Year of Soils, but you wouldn’t know it. In January, the Westminster government published a new set of soil standards, marginally better than those they replaced, but wholly unmatched to the scale of the problem. There are no penalities for compromising our survival except a partial withholding of public subsidies. Yet even this pathetic guidance is considered intolerable by the National Farmers’ Union, which greeted them with bitter complaints. Sometimes the NFU seems to me to exist to champion bad practice and block any possibility of positive change. Few sights are as gruesome as the glee with which the NFU celebrated the death last year of the European soil framework directive, the only measure with the potential to arrest our soil-erosion crisis. The NFU, supported by successive British governments, fought for eight years to destroy it, then crowed like a shedful of cockerels when it won. Looking back on this episode, we will see it as a parable of our times. Soon after that, the business minister, Matthew Hancock, announced that he was putting “business in charge of driving reform”: trade associations would be able “to review enforcement of regulation in their sectors.” The NFU was one the first two bodies granted this privilege. Hancock explained that this “is all part of our unambiguously pro-business agenda to increase the financial security of the British people.” But it doesn’t increase our security, financial or otherwise. It undermines it. The government’s deregulation bill, which has now almost completed its passage through parliament, will force regulators – including those charged with protecting the fabric of the land – to “have regard to the desirability of promoting economic growth”. But short-term growth at the expense of public protection compromises long-term survival. This “unambiguously pro-business agenda” is deregulating us to death. There’s no longer even an appetite for studying the problem. Just one university – Aberdeen – now offers a degree in soil science. All the rest have been closed down. This is what topples civilisations. War and pestilence might kill large numbers of people, but in most cases the population recovers. But lose the soil and everything goes with it. Now, globalisation ensures that this disaster is reproduced everywhere. In its early stages, globalisation enhances resilience: people are no longer dependent on the vagaries of local production. But as it proceeds, spreading the same destructive processes to all corners of the Earth, it undermines resilience, as it threatens to bring down systems everywhere. Almost all other issues are superficial by comparison. What appear to be great crises are slight and evanescent when held up against the steady trickling away of our subsistence.

#### 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.

#### Questions of what we should do carries presuppositions about political subjectivity---if those are wrong, our policies will be too---they can’t access the case until they’ve defended their ideology.

Mathieu HILGERS, Laboratory for Contemporary Anthropology, Université Libre de Bruxelles, and Centre for Urban and Community Research, Goldsmiths, University of London, 13 [“Embodying neoliberalism: thoughts and responses to critics,” *Social Anthropology*, Vol. 21, No. 1, February 2013, p. 75-89, Accessed Online through Emory Libraries]

The implementation of neoliberalism goes far beyond the mere appearance of its policies. It cannot be reduced to the application of a programme or to institutional changes. This implementation is deployed within a triangle constituted by policies, institutions and dispositions. This last component has remained at the margins of our debate. If we wish to grasp the depth of the changes that neoliberalism causes, we cannot neglect its effects on systems of dispositions. To analyse this impact, it is necessary to describe the symbolic operations that give rise to government-enabling representations as well as to categories that support neoliberalism and are propagated by it. This task requires accounting for the historicity of the spaces in which policies are put into action, the intentional constructions but also involuntary historical formations in which they become entangled, and the transactions, negotiations, associations, working misunderstandings and chains of translation that give them their flexibility and support their deployment.

Neoliberalism is embodied in the agents and representations through which it is put into action. Through a historical process, the dispositions that it generates become, as Bourdieu would say, durable and transposable, as well as increasingly autonomous from their initial conditions of production. As such, when these conditions disappear or transform, or when policies are modified or abandoned, some of them spread into other social spaces and contexts and take on new meanings. Therein lies the importance of broadening the notion of ‘implementation’, so that we may appreciate the role of culture in the dynamics of neoliberal expansion. It is precisely (but not only) because of the embodiment of neoliberalism emphasized in this paper that at the moment we are nowhere near the end of the neoliberal era. Thus I arrive, by a different path, at the same observation that Kalb (2012) formulated in this debate: today it is capitalism that is in crisis, not neoliberalism.

In some parts of the world, information that helps people to stabilize their perceptions, practices and activities is mainly produced within a neoliberal context, forms and procedures. The figures, statistics, norms, audits and discourses that I evoke in this paper are fashioned by a constellation of institutions; they condition, train and shape a mental and practical space. They impact the way in which one conceives and carries out research. Indeed, academia is not outside of this neoliberal world; on the contrary, it is a centre of development and support for neoliberalism. While many academics are critical of neoliberalism, this does not mean that they have a permanent deconstructionist relation to the world and to themselves. In many parts of academia, a neoliberal way of functioning has become common sense. If neoliberalism is so present in our mind and in the way in which academia is designed and works today, it appears more than necessary for researchers to consider how this shapes their relation to production of knowledge.

If we wish to avoid the eviction of critical perspectives in this time of crisis, if we hope to have some chance to think within but beyond the neoliberal age, if we want to develop alternatives and different horizons, one of the first things to do is to decolonize our mind by objectifying our own neoliberal dispositions. The reflexive return to the tools of analysis is thus ‘not an epistemological scruple but an indispensable pre-condition of scientific knowledge of the object’ (Bourdieu 1984: 94), if we are to prevent the object and its definition from being dictated to the researcher by non-scientific logics, such as the necessity of being visible and marketable in the academy. To achieve a break with neoliberal common sense, anthropologists could follow Bourdieu (2003) in his will to engage in a ‘participant objectivation’.14 It is clearly this kind of objectivation even if not phrased in such terms that has led some researchers to call for a radical change in the academy, supported by new arguments and put into practice through the initiation of a ‘slow science’ movement.15 In some places, academia is still a space of critiques and alternatives.

#### Guise of Efficiency---Technology uses the guise of efficiency to expand the working class – exploitation gets re-circulated into new forms.

Estevan Hernandez et. al. 19. Estevan Hernandez, John Prysner, and Derek Ford 19. Members of the Liberation School. A Marxist approach to technology. Liberation School. 12-9-2019. https://liberationschool.org/a-marxist-approach-to-technology/

Under capitalism, each technological development is bound to be outdone. This means that once capitalists develop new technologies, they have an incentive to use them as quickly as possible. Thus, rather than shortening the working day, machinery prolonged it. Machinery also increased the pace of work through speed-ups.

Another way that machinery impacted workers was through deskilling. No longer was the worker’s knowledge required for production. Now it was contained in the machine. This also increased the available supply of labor-power for capitalists.

Marx further identified machinery as “the most powerful weapon for repressing strikes” (p. 410). In fact, he suggested that “it would be possible to write quite a history of the inventions, made since 1830, for the sole purpose of supplying capital with weapons against the revolts of the working-class” (p. 411).

When a capitalist introduces new machinery in the workplace, it tends to displace labor power in that workplace in ways that are easily observable. There are two countervailing tendencies, however, which are not so easily observed. First, if the machinery increases the rate of profit enough, other capitalists will move into that industry and therefore the need for labor as a whole in that industry might increase. Second, it can increase employment in other industries that feed into it. The invention of machinery, for example, increased the demand for coal and metal workers. That was the case, at least, until labor-saving technologies were later introduced in coal and metal mines. But the point here is that the major technological changes in the means of production led to a rapid overall increase in the size of the working class; these were coupled with labor-replacing technology that pushed agricultural workers and peasants off the land and into the urban factories.

#### Antitrust law creates vertical coordination that expands the corporate world.

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

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

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

#### 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

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

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

In an article titled [“Understanding the Challenges of Avoiding a Ghastly Future,”](https://www.frontiersin.org/articles/10.3389/fcosc.2020.615419/full) 17 climate scientists from around the globe state that, “The scale of the threats to the biosphere and all its lifeforms—including humanity—is in fact so great that it is difficult to grasp for even well-informed experts.” Yes we’ve heard about increasing global temperatures, but these scientists lay out the much longer list of symptoms that will come as a result of unmitigated climate disaster: mass species extinction, unprecedented migration, more pandemics, extreme weather, and food, water, and land shortages. These compounded crises are on the horizon if we do not fight for a top-to-bottom overhaul of society and an end to the for-profit economic system of capitalism. Under a subhead “Political Impotence” these scientists detail the contradictory reality of a rapidly worsening climate situation and the increasing clash of national interests that, if left intact, dooms the type of international collaboration necessary to avert full-scale climate disaster. The situation is so bad that it has forced a section of the global ruling class to act. The World Economic Forum’s 2020 conference was [dubbed](https://time.com/5771889/davos-climate-change/) by *Time* a “Climate Conference,” Biden released his climate-driven infrastructure proposals, and corporations have pledged to cut emissions. All of this can be glimmers of hope to some. But the pace of change that’s possible on the basis of a competitive, free-market economy, even one that has resolved to fight climate change, is far too slow. We need a socialist transformation of society on a green basis, which will only be achieved by a genuine revolt of the global working class. **State of the Climate** Having already surpassed an increase of 1.0° C above pre-industrial global temperatures, we are on track to reach 1.5° C between 2030 and 2052. Even if the emissions reduction goals of the much hailed Paris Climate Agreement were met (which they are not almost anywhere) we would reach 2.6-3.1° C of warming by 2100. According to the international scientific community, anything above 1.5° C would be catastrophic. CO2, methane, and nitrogen levels (three long-lived greenhouse gases that cause warming) all [started to dramatically increase in 1750](https://www.acs.org/content/acs/en/climatescience/greenhousegases/industrialrevolution.html) with the rise of the coal-fueled industrial revolution and the rise of British capitalism. Imperialism spread these fossil-fuel-burning, resource-extracting, and industry-building methods around the globe. Today, electricity and heat production are the biggest source of emissions leading to a warming planet ([25% globally](https://www.epa.gov/ghgemissions/global-greenhouse-gas-emissions-data)), followed by agriculture, forestry, and other land use (24%), and then industry at 21%. Since 1992, CO2 emissions from energy and industry have [increased by 60%](https://www.iea.org/reports/net-zero-by-2050). From 1990 to 2005 emissions from agriculture [increased by 17%](https://www.ipcc.ch/site/assets/uploads/2018/02/ar4-wg3-chapter8-1.pdf). The bulk of these greenhouse gas emissions from the rise of capitalism to today have [come directly from corporations](https://www.theguardian.com/sustainable-business/2017/jul/10/100-fossil-fuel-companies-investors-responsible-71-global-emissions-cdp-study-climate-change). Scientists have warned that we have [either reached or surpassed](https://www.cbsnews.com/news/climate-change-tipping-points-amazon-rainforest-antarctic-ice-gulf-stream/) a number of climate tipping points, which are a “point of no return” in the climate system that mean unavoidable and dramatic consequences. The conversion of the Amazon rainforest into a savannah, the melting of the West Antarctic ice sheet, and the complete collapse of the Gulf Stream are all decisively underway, meaning a collapse of biodiversity, huge dumps of carbon and methane into the atmosphere, extreme sea level rise, and uncontrollable weather. Climate-related extreme weather disasters [jumped by 83%](https://e360.yale.edu/digest/extreme-weather-events-have-increased-significantly-in-the-last-20-years#:~:text=There%20has%20been%20a%20%E2%80%9Cstaggering,report%20from%20the%20United%20Nations.&text=Much%20of%20this%20increase%2C%20the,be%20attributed%20to%20climate%20change.) globally in the last 20 years, killing 1.23 million people. Major floods have doubled and severe storms have increased by 40%. Last year saw the worst wildfire season in the West on record and the Southeast broke the record of number of tropical storms and hurricanes. This will only get exponentially worse. Right now, the West Coast is experiencing its [worst drought in 1,200 years](https://www.usatoday.com/story/news/nation/2020/04/16/drought-worst-western-megadrought-here-study-says/5145929002/). Lack of rainfall and snowpack (frozen reservoirs that release water during spring and summer) are spelling what could be the worst fire season yet, with two fires each in California, Arizona, and New Mexico already this season. With a warming climate and worsening droughts, extreme water shortages will be [“nearly ubiquitous”](https://www.nytimes.com/interactive/2020/09/15/magazine/climate-crisis-migration-america.html) west of Missouri by 2040 according to projections from the federal government. The Ogallala Aquifer, which supplies nearly a third of the country’s irrigation groundwater and supports [one sixth of the world’s grain production](http://duwaterlawreview.com/crisis-on-the-high-plains-the-loss-of-americas-largest-aquifer-the-ogallala/), could be gone by the end of the century. In response to droughts, New Mexican officials have directed farmers who rely on water from the Rio Grande and other rivers to [avoid planting crops](https://www.krqe.com/news/new-mexico/extreme-drought-pushes-local-farmers-to-get-creative-to-water-crops/) unless absolutely necessary. Floods, drought, storms, fire, and global warming pose a dramatic threat to our homes, our communities, and our water and food supply. A half-billion people around the world already live in places that are turning into desert because of destructive agricultural practices and a warming climate that will eliminate the potential for anything to grow. [One billion people](https://sciencepolicyreview.org/2020/08/coral-reefs-are-critical-for-our-food-supply-tourism-and-ocean-health-we-can-protect-them-from-climate-change/) globally rely on coral reefs for food, which now face extinction from warming oceans. Sea level rise, caused by melting ice at the poles will cause extreme flooding, eliminating coastal land for food production and displacing entire communities. By 2060, an estimated [13 million](https://www.nytimes.com/interactive/2020/09/15/magazine/climate-crisis-migration-america.html) people in the U.S. will be forced to move away from submerged coastlines, which would represent the largest internal migration in American history. In 2019, weather-related hazards forced 24.9 million people across 140 countries to move. Estimates suggest there will be anywhere from [200 million](https://reliefweb.int/report/world/cost-doing-nothing-humanitarian-price-climate-change-and-how-it-can-be-avoided) to [1 billion](https://www.frontiersin.org/articles/10.3389/fcosc.2020.615419/full) environmental migrants by 2050 when you factor in permanent food and water shortages. This means, in the worst case scenario, one in seven people globally will be forced to move because of climate change in the next 30 years. Already in the U.S. a historic surge at the southern border has largely been driven by devastating hurricanes and prolonged droughts in El Salvador and Honduras. Massive migration will further strain dwindling resources. As one example, by 2100 it is possible that Atlanta, GA [could receive a quarter million new residents](https://www.nytimes.com/interactive/2020/09/15/magazine/climate-crisis-migration-america.html) from sea-level rise displacement alone. But Atlanta may very well lose its water supply by then to drought and face worsening heat-driven wildfires. And if all this wasn’t bad enough, increasingly dense cities in many countries and strained public services from forced climate migration threaten worse outcomes for future disease outbreaks. Scientists are already [warning of more deadly pandemics to come](https://internationalsocialist.net/en/2021/03/coronvirus), largely linked to deforestation and a loss of biodiversity. One of the most terrifying and underreported realities is that it is “scientifically undeniable” that we are already on the path of a [sixth major extinction](https://www.frontiersin.org/articles/10.3389/fcosc.2020.615419/full). One million (out of 7-10 million) species are at threat of immediate extinction, 40% of plants are endangered, and insects (including pollinators who help us grow food) are disappearing rapidly. An extinction event on this scale will have profoundly destabilizing and complex consequences on global ecosystems. It will contribute to more warming, worse food shortages, poorer water and air quality, more frequent and intense flooding and fires, and compromised human health. **The Cost of the Climate Crisis** All of these horrifying consequences of the unrestricted use of fossil fuels have been known to scientists, politicians, and CEOs for decades. But as scientists really started to ring the alarm bells in the early 80s, deregulation of industry and global expansion under the neoliberal era took carbon emissions to record highs. Capitalism’s virtually unrestricted pillage of the natural world in the interest of profits has gone so far that it now threatens its own economic and political security. Capitalism has never factored environmental impact into its profit-making formula. This despite the fact that all of its wealth comes from the raw resources of the earth, and the work done to them by workers. According to a recent UN report, if any company did have to pay the cost of their environmental damage, not one of them would actually be profitable. We’ve been operating under a severe climate deficit for centuries, but our economic and political system has blatantly ignored this fact because living sustainably is fundamentally contradictory to capitalism’s constant need to expand, cut costs, and maximize profits.

In the last 20 years, an estimated [$2.97 trillion](https://e360.yale.edu/digest/extreme-weather-events-have-increased-significantly-in-the-last-20-years#:~:text=There%20has%20been%20a%20%E2%80%9Cstaggering,report%20from%20the%20United%20Nations.&text=Much%20of%20this%20increase%2C%20the,be%20attributed%20to%20climate%20change.) in global economic losses have come as the result of climate-related extreme weather events. In the most extreme climate warming scenarios, the U.S. alone could lose [$520 billion](https://news.climate.columbia.edu/2019/06/20/climate-change-economy-impacts/) a year from climate change damages. Food and water shortages, destroyed infrastructure, worse and more widespread human illness and instability, the collapse of tourism economies, and more will be extraordinarily expensive. The International Energy Agency (IEA), which informs climate policy globally and has historically encouraged the use of fossil fuels, issued a [shocking report](https://www.iea.org/reports/net-zero-by-2050) this month that sets the goal of reaching net zero carbon emissions by 2050. They say that this means halting sales of new internal combustion engine passenger cars by 2035, phasing out all coal and oil plants by 2040, and halting any new investment in oil or natural gas this year. This means a massive scaling up of renewable energy technologies, and the creation of new ones. To illustrate the gargantuan shift this would require, they explain that for solar power, it would be the equivalent of “installing the world’s current largest solar park roughly every day.” This will also mean tripling investments in clean energy worldwide by 2030 to about $4 trillion. Unfortunately, the IEA has been complicit in perpetuating a global economy whose foundations are fossil fuels, so how do we turn this freight train around? **International Response** Joe Biden hosted a climate summit in April that brought together world leaders, almost all of whom belong to countries who have failed their completely inadequate Paris Climate Agreement promises, but who engaged in showboating discussions about the climate crisis nonetheless. Chinese President Xi Jinping attended the summit, where he doubled down on his previous commitment to reach peak emissions before 2030 and [carbon neutrality by 2060](https://www.bbc.com/news/science-environment-54256826). But shortly after, Chinese minister Wang Yi [issued a statement saying](https://www.nytimes.com/2021/04/23/climate/biden-climate-summit.html) “If the United States no longer interferes in China’s internal affairs, then we can have even smoother cooperation that can bring more benefits to both countries and the rest of the world.” Essentially, China’s cooperation with Biden on the climate is contingent on broader relations between the two countries, which are deteriorating due to [inter-imperialist rivalry](https://www.socialistalternative.org/2021/05/08/biden-and-xi-escalate-us-china-conflict/). In order to meet Xi Jinping’s carbon neutrality pledge, China will need to invest $21 trillion to remove carbon from its energy system by 2060. In order to meet this goal, there has been a rapid expansion of Chinese “green finance.” Over the past five years, China’s “green finance” sector has become the [second largest in the world](https://www.scmp.com/news/china/politics/article/3128167/what-green-finance-and-why-it-important-chinas-carbon-neutral) after the U.S. Climate could well become a key battleground in the two countries’ battle for global dominance. Biden has proposed a $2.25 trillion infrastructure package in the U.S., which promises money to update and weatherize infrastructure, transition away from gas-powered cars, and ramp up research and development of renewable energy technologies among other things. In his speech unveiling the plan, Biden [mentioned China six times](https://www.wsj.com/articles/china-looms-large-in-biden-infrastructure-plan-11617631234), and explicitly framed it as an attempt to build up U.S. manufacturing and the economy to undermine growing Chinese economic influence. The Chinese economic model includes a very high level of state intervention into the economy. This has given the Chinese ruling class a certain advantage in scaling up key sectors. Seeing this, Biden is suggesting a level of state intervention into the economy not seen in decades in the U.S. This is accepted by a section of big business itself who recognize that it’s the only [option](https://time.com/5771889/davos-climate-change/) given the scale of the crisis. So what about other countries at the summit? For poorer countries who have been devastated by COVID-triggered economic crises and continue to face outbreaks because of wealthy countries’ vaccine hoarding (see page 11), trillion dollar climate spending packages are simply not an option. Biden’s infrastructure package will barely scratch the surface of what is necessary to address the climate crisis in the U.S., which historically is the number one emitter of greenhouse gases. And Biden’s pledge of [$2.5 billion for overseas climate finance](https://www.theguardian.com/environment/2021/apr/22/poorer-nations-raise-concerns-over-climate-aid-ahead-of-white-house-summit) is as insulting as his pledge to send [20 million vaccine doses](https://www.nytimes.com/2021/05/17/us/politics/biden-coronavirus-vaccine.html) abroad. Poor countries, many of whom have economies that are [completely dependent on dirty energy](https://qz.com/1970294/economies-reliant-on-oil-will-lose-trillions-to-climate-action/#:~:text=Small%20nations%20such%20as%20South,18%25)%20are%20also%20vulnerable.) (like Nigeria, Venezuela and Iraq), were promised [$100 billion a year](https://www.theguardian.com/environment/2021/apr/22/poorer-nations-raise-concerns-over-climate-aid-ahead-of-white-house-summit) in climate finance starting in 2020, but this is yet another Paris agreement promise left unmet. Leaving poor countries that are saddled with debt due to the legacy of imperialism and colonization to fend for themselves on the climate (or the pandemic) is the murderous logic of capitalism’s reliance on the nation state. An “America first” approach to the climate is doomed to fail and will only fuel mass migration and leave millions of poor and working people from the Global South seeking refuge at the doorstep of advanced capitalist countries. **The Ruling Class’ Divided Response** Even Biden’s very limited infrastructure package faces huge challenges ahead. Democrats will have to be fully united (meaning winning over centrist Democrat Joe Manchin, who represents the second-largest coal producing state of West Virginia) and use a special process called budget reconciliation to pass the package in its full form. Republicans, especially those representing fossil-fuel-dependent states like Texas, have already signalled strong opposition. The growing price tag of the climate crisis is driving divisions in the ruling class about what to do, as evidenced by the emerging debate around Biden’s infrastructure package. Many banks who have invested heavily in major polluters for decades will act as fetters on a transition to sustainability because abandoning these investments would represent a big loss on their balance sheet. However, even among the titans of finance capital, there is a growing recognition that climate change carries tremendous fiscal risks. BlackRock, the world’s biggest asset manager, has suggested that climate change will lead to a “fundamental reshaping of finance.” In a similar vein, corporations like Amazon, Coca-Cola, and Microsoft have begun to pledge carbon neutrality in the coming decades. For these companies, disastrous climate scenarios pose the biggest threat to their medium and longer-term profits, meaning they’re willing to invest up front now. For Biden, the threat of losing the cold war with China and seeing the further weakening of U.S. imperialism globally has forced him to act as well. In June 2020, Goldman Sachs announced that spending on renewable power would soon overtake oil and gas drilling, and that clean energy provided a [$16 trillion investment opportunity through 2030](https://www.wsj.com/articles/china-looms-large-in-biden-infrastructure-plan-11617631234). They pointed to the growing cost of fossil fuel development (which will increase if fossil fuel subsidies are removed as proposed in Biden’s infrastructure plan), which could lead to higher oil and gas prices and spur more investment in renewables. It is possible that we do see politicians and big business interests make a shift towards renewable energy to avoid full climate collapse, and to get in on a growing market. We should of course hold our applause for the companies and politicians who have waited until it was clear they would lose money to do anything at all, and we shouldn’t hold our breath that any of it will be enough anyways. **What Next?** What is concretely needed to address this crisis is a global plan to completely rebuild energy grids that rely 100% on renewables in the next decade; ending new production of gas-run cars, scaling up electric vehicle production and massively expanding public transit; developing renewable fuel alternatives for planes, trains, and cargo ships and completely phasing out fossil fuel dependence; retrofitting, weatherizing, and building new green housing and infrastructure to withstand extreme weather and accommodate climate refugees; reforesting the planet and overhauling our food system top-to-bottom, full scale replacing of mass monocrop agriculture with local, organic alternatives; and investing to historic proportions in yet-undiscovered technologies that can help deal with the crisis of water contamination and shortages, infectious disease, coral reef and pollinator population collapse, and so much more. Despite a shift in the ruling class’ approach, it will inevitably be too slow because of the logic of capitalism. Inter-imperialist rivalries mean countries will work separately to develop and then hoard climate technology, instead of collaborating to most rapidly produce and share out the best innovations. Poor countries will be left behind. Corporations will continue to invest their profits in the financial markets as opposed to expanding their productive capacity in the direction needed by humanity. Fossil fuel interests, the agricultural industry, other major polluters, and their loyal politicians will work to block a transition to a sustainable future with ferocity. While we’re seeing increased state intervention globally, the levels required to mitigate all of these bottlenecks and speed the process up enough to put us on track is extraordinarily unlikely. That is why we need to take things into our own hands. Mass climate protests have clearly put this issue onto the agenda, and we need a dramatic ramping up of this movement. School strikes should be coordinated and planned as soon as schools open again in the fall, and should be ongoing with a plan to involve more students, teachers, and staff. The youth-led movement also urgently needs to link up with the broader working class. In the short term this could look like striking students appealing to local unions to join them for demonstrations and days of action. This will crucially need to include workers in polluting industries. [Ten million people globally](https://thehill.com/opinion/energy-environment/494427-fossil-fuels-save-the-workers-kill-the-industry) work directly for the fossil fuel industry, and many more rely indirectly on these and other highly polluting jobs. To build a powerful movement with political and economic power, demands for the environment need to be linked with demands to retrain these workers in new, sustainable fields with no loss of pay or benefits and a guarantee of high wages and union recognition. This type of organizing could win crucial victories for expanding renewable energy, reforestation, and general resource protection. This would help buy time. Fundamentally though, these battles will need to be waged again and again on a mass scale to address the many complex dynamics of the climate crisis caused by a system that is based on the exploitation of workers and the earth. What is actually necessary for a long-term solution to climate disaster is a complete restructuring of a society on a socialist basis. This can only be won by the global working class asserting itself in a mighty struggle against the capitalist system. Mitigating the climate crisis on the time frame necessary requires an end to a for-profit system and its replacement with a democratically planned economy run by the working class itself. This means bringing the energy industry, the transport sector, key sections of manufacturing and finance fully into public ownership. On this basis, millions could be put to work helping rebuild a green economy, the accumulated wealth of polluting industries could be reallocated to green and socially productive projects, scientific innovation would be unleashed as global collaboration would replace nationalist competition, and instead of profits for a few, all economic activity would be geared towards meeting global human need, including averting the climate crisis. In this society, economic decisions would necessarily include environmental and social impact. On the basis of a truly democratically-run economy, we could make rapid decisions about the resources of society and put the full weight of the global working class behind stopping the climate crisis in its tracks. Winning this society will require the biggest ever united struggle of the global working class against capitalism. While the size of this task is mammoth, the future of humanity depends on it.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Cap turns bioD – profit motive consumes ecologies as “externalities”

Pigott 18 [Anna, Postdoctoral Research Fellow in Environmental Humanities, Swansea University. Capitalism is killing the world's wildlife populations, not 'humanity'. Conversation. 11-1-2018. https://theconversation.com/capitalism-is-killing-the-worlds-wildlife-populations-not-humanity-106125

The latest Living Planet report from the WWF makes for grim reading: a 60% decline in wild animal populations since 1970, collapsing ecosystems, and a distinct possibility that the human species will not be far behind. The report repeatedly stresses that humanity’s consumption is to blame for this mass extinction, and journalists have been quick to amplify the message. The Guardian headline reads “Humanity has wiped out 60% of animal populations”, while the BBC runs with “Mass wildlife loss caused by human consumption”. No wonder: in the 148-page report, the word “humanity” appears 14 times, and “consumption” an impressive 54 times.

There is one word, however, that fails to make a single appearance: capitalism. It might seem, when 83% of the world’s freshwater ecosystems are collapsing (another horrifying statistic from the report), that this is no time to quibble over semantics. And yet, as the ecologist Robin Wall Kimmerer has written, “finding the words is another step in learning to see”.

Although the WWF report comes close to finding the words by identifying culture, economics, and unsustainable production models as the key problems, it fails to name capitalism as the crucial (and often causal) link between these things. It therefore prevents us from seeing the true nature of the problem. If we don’t name it, we can’t tackle it: it’s like aiming at an invisible target.

Why capitalism?

The WWF report is right to highlight “exploding human consumption”, not population growth, as the main cause of mass extinction, and it goes to great lengths to illustrate the link between levels of consumption and biodiversity loss. But it stops short of pointing out that capitalism is what compels such reckless consumption. Capitalism – particularly in its neoliberal form – is an ideology founded on a principle of endless economic growth driven by consumption, a proposition that is simply impossible.

Industrial agriculture, an activity that the report identifies as the biggest single contributor to species loss, is profoundly shaped by capitalism, not least because only a handful of “commodity” species are deemed to have any value, and because, in the sole pursuit of profit and growth, “externalities” such as pollution and biodiversity loss are ignored. And yet instead of calling the irrationality of capitalism out for the ways in which it renders most of life worthless, the WWF report actually extends a capitalist logic by using terms such as “natural assets” and “ecosystem services” to refer to the living world.

By obscuring capitalism with a term that is merely one of its symptoms – “consumption” – there is also a risk that blame and responsibility for species loss is disproportionately shifted onto individual lifestyle choices, while the larger and more powerful systems and institutions that are compelling individuals to consume are, worryingly, let off the hook.

#### Market-driven versions catalyzes inequality, causing competition-based war – only nationalized AI under a planning economy solves.

Xiang 18 [Feng. Professor of law at Tsinghua University and one of China’s most prominent legal scholars. Opinion: AI will spell the end of capitalism. Washington Post. 5-3-2018. <https://www.washingtonpost.com/news/theworldpost/wp/2018/05/03/end-of-capitalism/> ]

BEIJING — The most momentous challenge facing socio-economic systems today is the arrival of artificial intelligence. If AI remains under the control of market forces, it will inexorably result in a super-rich oligopoly of data billionaires who reap the wealth created by robots that displace human labor, leaving massive unemployment in their wake.

But China’s socialist market economy could provide a solution to this. If AI rationally allocates resources through big data analysis, and if robust feedback loops can supplant the imperfections of “the invisible hand” while fairly sharing the vast wealth it creates, a planned economy that actually works could at last be achievable.

The more AI advances into a general-purpose technology that permeates every corner of life, the less sense it makes to allow it to remain in private hands that serve the interests of the few instead of the many. More than anything else, the inevitability of mass unemployment and the demand for universal welfare will drive the idea of socializing or nationalizing AI.

Marx’s dictum, “From each according to their abilities, to each according to their needs,” needs an update for the 21st century: “From the inability of an AI economy to provide jobs and a living wage for all, to each according to their needs.”

Even at this early stage, the idea that digital capitalism will somehow make social welfare a priority has already proven to be a fairytale. The billionaires of Google and Apple, who have been depositing company profits in offshore havens to avoid taxation, are hardly paragons of social responsibility. The ongoing scandal around Facebook’s business model, which puts profitability above responsible citizenship, is yet another example of how in digital capitalism, private companies only look after their own interests at the expense of the rest of society.

One can readily see where this is all headed once technological unemployment accelerates. “Our responsibility is to our shareholders,” the robot owners will say. “We are not an employment agency or a charity.”

These companies have been able to get away with their social irresponsibility because the legal system and its loopholes in the West are geared to protect private property above all else. Of course, in China, we have big privately owned Internet companies like Alibaba and Tencent. But unlike in the West, they are monitored by the state and do not regard themselves as above or beyond social control.

It is the very pervasiveness of AI that will spell the end of market dominance. The market may reasonably if unequally function if industry creates employment opportunities for most people. But when industry only produces joblessness, as robots take over more and more, there is no good alternative but for the state to step in. As AI invades economic and social life, all private law-related issues will soon become public ones. More and more, regulation of private companies will become a necessity to maintain some semblance of stability in societies roiled by constant innovation.

I consider this historical process a step closer to a planned market economy. Laissez-faire capitalism as we have known it can lead nowhere but to a dictatorship of AI oligarchs who gather rents because the intellectual property they own rules over the means of production. On a global scale, it is easy to envision this unleashed digital capitalism leading to a battle between robots for market share that will surely end as disastrously as the imperialist wars did in an earlier era.

For the sake of social well-being and security, individuals and private companies should not be allowed to possess any exclusive cutting-edge technology or core AI platforms. Like nuclear and biochemical weapons, as long as they exist, nothing other than a strong and stable state can ensure society’s safety. If we don’t nationalize AI, we could sink into a dystopia reminiscent of the early misery of industrialization, with its satanic mills and street urchins scrounging for a crust of bread.

The dream of communism is the elimination of wage labor. If AI is bound to serve society instead of private capitalists, it promises to do so by freeing an overwhelming majority from such drudgery while creating wealth to sustain all.

If the state controls the market, instead of digital capitalism controlling the state, true communist aspirations will be achievable. And because AI increasingly enables the management of complex systems by processing massive amounts of information through intensive feedback loops, it presents, for the first time, a real alternative to the market signals that have long justified laissez-faire ideology — and all the ills that go with it.

### N&C

#### 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.

#### 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.

#### 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

#### Notice and comment is sufficient

Justin Hurwitz 14. Assistant Professor of Law, University of Nebraska College of Law. “Chevron and the Limits of Administrative Antitrust.” 76 U. PITT. L. REV. 209.

What is more, Mead makes clear that the "rulemaking" power necessary to receive deference-that is, "to make rules carrying the force of law"-may be satisfied "by an agency's power to engage in adjudication or notice-and-comment rulemaking. ' 185

#### CP solves unique big-tech issues.

Bhaskar Chakravorti 21 – the dean of global business at Tufts University’s Fletcher School of Law and Diplomacy. He is the founding executive director of Fletcher’s Institute for Business in the Global Context, where he established and chairs the Digital Planet research program. “Lina Khan Has Her Own Antitrust Paradox.” https://foreignpolicy.com/2021/07/07/ftc-lina-khan-regulate-tech-congress/

The digital industry demands a dedicated regulatory agency to sort through these issues. As I have argued before in Foreign Policy, Congress needs to create a new agency—perhaps called the Federal Digital Commission—along the lines of the Securities and Exchange Commission to take on the unique complexities of the financial services industry separate from the FTC. This agency can be given the power to set antitrust rules more broadly than what the FTC can pursue. Congress is eager to find ways to define antitrust more expansively, and it needs an agency that can carry out such a broader mandate.

#### Emboldened NoKo causes extinction.

Adam Mount 15, Stanton Nuclear Security Fellow at the Council on Foreign Relation, “The Strategic Logic of Nuclear Restraint, Survival: Global Politics and Strategy”, Volume 57, Issue 4, 2015, p. 53-76

As things stand today, the most plausible scenario for US nuclear use is in a contingency on the Korean Peninsula. Though North Korea's nuclear programme is still primitive, steady effort over the last decades has yielded an appreciable nuclear capability. Public estimates suggest that the programme has accelerated since 2009: the regime now possesses the full nuclear fuel cycle, a nuclear arsenal comprising as many as 20 warheads, a rudimentary capability to produce warheads small enough to fit atop the country's sizeable ballistic-missile force, and even an effort to develop submarine-launched missiles.27 In the last few years, the military situation on the Korean Peninsula has looked relatively stable. However, both sides of the demilitarised zone (DMZ) remain on high alert. North Korea has retained its predilection for destabilising provocations, and although these have not been as severe as in previous years, they could still produce a spiral of mis-calculation that could quickly escalate to conflict.28 Imagine: the winter of 2018 has not gone well for North Korean leader Kim Jong-un. A weak harvest has caused declining readiness and increased desertion among the Korean People's Army (KPA) forces deployed in the country's north. Facing an internal challenge, the young dictator fears that his regime will not survive until summer. He calculates that a show of strength could shore up his regime, and develops a plan that he hopes will halt the annual joint US–South Korea exercises that begin in February. By escalating the military situation on the peninsula, he hopes to moderate the exercise, or at least to demonstrate defiance. As part of the effort, North Korea conducts a nuclear test in early February. KPA forces are alerted, and artillery units are shifted closer to the DMZ. Unfortunately, the South Korean president is struggling with a corruption scandal and has an incentive to show strength. Tensions escalate more quickly than expected, and soon units are exchanging artillery fire across the Northern Limit Line and sections of the DMZ. KPA units periodically cross the northern border of the DMZ near Seoul. The United States, anxious to demonstrate alliance cohesion, deploys a Stryker Brigade Combat Team (SBCT) to the demilitarised zone to supplement the rotational armoured brigade combat team then deployed with the Eighth Army in South Korea. A carrier strike group is stationed in the Sea of Japan, operating in conjunction with an amphibious group carrying elements of the third Marine Expeditionary Brigade deployed from Japan. The Air Force is conducting deterrent patrols with nuclear-capable B-52Hs up the eastern coast of the peninsula. More forces continue to flow into the theatre. At this stage, North Korea might decide to escalate to the nuclear level in an attempt to prevent full-scale contact between forces. For instance, a Scud or Nodong missile could detonate a 2-kiloton warhead 25 kilometres off the eastern end of the DMZ, between the Carrier Strike Group and the Korean coastline. Under this scenario, the blast would cause only limited casualties to aviation forces and the naval groups would soon recover operational status. Alternatively, the regime might only issue a nuclear threat while the United States continued to deploy forces into the region. Under this scenario, a US B-52H on deterrent patrol faces electronic interference and is fired upon by North Korean air-defence units. US forces ramp up their intelligence-collection efforts against the air-defence networks, but also North Korea's road-mobile nuclear forces, using stealthy unmanned aerial vehicles, signals intelligence and special-operations forces. North Korean officials alert their leadership that US cyber forces have penetrated their command, control and communications networks, though they have not yet damaged the system. Concerned that their nuclear forces are vulnerable to a first strike and anxious to forestall the deployment of additional ground units, North Korean leaders decide to launch a nuclear-armed Nodong ballistic missile at Kadena Air Base on Okinawa. The strike kills nearly 20,000 American citizens and many more Japanese civilians who live near the base. If the regime instead opted to withhold nuclear use until later, the military situation could deteriorate further still. Let us imagine that in retaliation for US airstrikes against certain aggressive anti-ship missile units on the eastern coast – strikes which the DPRK claim caused civilian casualties – North Korean artillery north of the DMZ have shelled Seoul. Having achieved a favourable correlation of forces, the US–South Korean combined command orders a limited expeditionary force to attempt to clear the northern border of the DMZ of artillery units. US and South Korean ground-attack fighters suppress enemy air defences along the length of the DMZ and the southern half of the eastern coastline, and a mechanised brigade begins to advance across the DMZ. Concerned they are facing an invasion, the North Korean leadership conducts a nuclear strike against allied forces crossing the DMZ. The immediate casualties from the nuclear blast are military, but a cloud of fallout drifts toward Seoul. Though these scenarios for nuclear strikes vary significantly, US interests in each case would be similar. The United States would act to prevent further nuclear attacks; to deny North Korea any advantages from nuclear use; to resolve the crisis in a manner favourable to US allies; and to ensure that the global community expressed strict disapproval of the first strike, both to punish North Korea for its actions and to attempt to recover the nuclear taboo. In the aftermath of a nuclear attack, the first three interests might well lead US and ROK officials to determine that the North Korean regime cannot be allowed to remain in power. If so, the combined command would have to mount an invasion of the North. Allied aircraft would suppress enemy air defences, ground forces would advance along the peninsula from south to north, while amphibious forces attacked from the Sea of Japan, and special-operations forces attempted to secure North Korean weapons of mass destruction and critical leadership targets. The invasion would be difficult and risky, but would be likely eventually to succeed.29 Prior to launching an invasion, however, US policymakers would have to make a decision on whether to employ nuclear weapons in response to North Korea's first use. There are three likely options:30 a nonlethal demonstration shot; a counterforce nuclear strike against the North's nuclear forces; and a nuclear strike against the North's conventional forces.31 A demonstration would be the likeliest nuclear response to the first scenario, a North Korean demonstration. Because a lethal retaliation for a demonstration response would violate the standing employment guidance, which promises to ‘apply the principles of distinction and proportionality and seek to minimize collateral damage to civilian populations and civilian objects’, US officials might judge this to be the best retaliatory option.32 The reasoning behind issuing a reciprocal demonstration would be for the United States to match the DPRK's demonstration of resolve and willingness to escalate to the nuclear level. The hope in this case would be that, seeing that US policymakers were willing to employ nuclear weapons, North Korea would eschew further nuclear use. However, the US demonstration strike would not achieve tactical military objectives and it would be devastating to the systemic interests listed above. After an exchange of demonstration strikes, the global community would certainly condemn the DPRK shot – but the United States would have difficulty avoiding similar disapprobation. A reciprocal demonstration shot would also do little to resolve the crisis in a favourable way. It would provide no tactical advantage, dilute international pressure on the North (especially from China) and leave intact the incentives that caused the DPRK to escalate in the first place. Having affirmed that the nuclear threshold could be breached, North Korea would be able to credibly threaten more damaging strikes later. Meanwhile, the exchange would have done little to drive back KPA forces, and invasion would be more difficult than before the exchange took place, owing to the difficulty of operating in a contaminated environment. The United States could instead use nuclear weapons as part of a counterforce strike to destroy the North Korean nuclear arsenal before it could be launched. This would be most proportional in response to the second scenario, a strike on Okinawa. With an arsenal as small, inaccurate and constrained as North Korea's, the United States would have a reasonable chance of limiting damage from a future attack. The primary problem with a nuclear counterforce strike, however, is that it would entail the use of multiple nuclear warheads in response to a single shot, signalling a major escalation of the nuclear war. Because North Korea's 20 warheads would have to be struck simultaneously, and their location would not be certain, the counterforce operation would likely require the United States to employ several SLBMs. Moreover, these ballistic trajectories would likely alert Russian and possibly also Chinese forces. With tensions high in the region and US expeditionary forces operating in close proximity to the borders of each country, the potential for misunderstanding would be significant. A nuclear counterforce strike would cause massive destruction in North Korea. A cloud of fallout would cover the peninsula and, depending on wind patterns, large parts of Russia, China and Japan. In addition to hundreds of thousands of North Korean casualties, the strikes would cause widespread radiation poisoning in South Korea and neighbouring countries. An invasion of North Korea would be all but impossible.

1. See [https://www.gov.uk/government/speeches/pm-speech-opening-london-tech-week-10-june-2019.](https://www.gov.uk/government/speeches/pm-speech-opening-london-tech-week-10-june-2019) [↑](#footnote-ref-1)