# Kentucky Round 5 Wiki

## 1NC

### T Per Se

#### 1. Interpretation – prohibit means to forbid a given practice – that’s distinct from restrictions

Kennard 93 – Judge, California Supreme Court

Joyce L. Kennard, THEODORE R. HOWARD et al., Plaintiffs and Appellants, v. GEORGE H. BABCOCK et al., Defendants and Respondents. No. S027061., Supreme Court of California, 1993, https://law.justia.com/cases/california/supreme-court/4th/6/409.html

As I pointed out earlier, the majority's conclusion is at odds with the great weight of authority. Also, in determining reasonableness based on the relationship between or among attorneys, the majority gives little regard to the relationship between the attorney and the client. Moreover, the majority fails to recognize that restrictive covenants are intended to and do restrict the practice of law. Rule 1-500 proscribes agreements that "restrict" the practice of law, not just those that prohibit "altogether" the practice of law. (Contra, Haight, Brown & Bonesteel v. Superior Court (1991) 234 Cal.App.3d 963, 969 [285 Cal.Rptr. 845] [rule 1-500 "simply provides that an attorney may not enter into an agreement to refrain altogether from the practice of law"].) To "restrict" means to restrain, to confine within bounds. (Webster's New Collegiate Dict. (9th ed. 1988) p. 1006.) To "prohibit" means to prevent, to [\*\*164] [\*\*\*94] forbid. (Id. at p. 940.) The terms are not synonymous.

#### Violation: the plan allows SSOs to still control patents as long as they meet a set of criteria, that’s a restriction not prohibition

#### 2. “Expand the scope” means broadening the range of claims that can be brought – the plan merely makes it easier to bring claims under current statutes.

Barrera 96 – J.D., Wayne State University Law School

Lise A. Barrera, “Is the Courtroom the New Front for the Resolution of Publishing Disputes?,” The Wayne Law Review, Vol. 42, Summer 1996, LexisNexis

It is important to note the distinction between the expansion of the scope of section 43(a) and the standard that courts apply in granting relief to claims under this section. The scope of section 43(a) allows plaintiffs to claim the section provides them with protection and thus should grant them relief. The expansion of the scope allows a much broader range of claims to be brought legitimately under section 43(a). Once the scope of the statute allows the claim to be brought, the courts apply a standard to the claim in order to determine whether a plaintiff should be granted relief.22 The standard applied is also the product of years of judicial interpretation. While the scope of section 43(a) is expanding, however, the standard for relief seems to be becoming higher and harder to meet.

#### That’s a voter for limits and ground – allowing exemptions lets the aff straight turn core topic DAs and get advantages based off clarifying vague statutes

### K Neolib

#### The affirmatives drive toward antitrust intervention adopts neoliberal assumptions of politics and economics where the role of the government is to get out of the markets way

Vaheesan 18 – Policy Counsel at the Open Markets Institute. Former regulations counsel at the Consumer Financial Protections Bureau

Sandeep Vaheesan, “The Twilight of the Technocrats’ Monopoly on Antitrust?,” The Yale Law Journal Forum, 6/4/18, <https://www.yalelawjournal.org/pdf/Vaheesan_ir9dchg8.pdf>.

ii. antitrust law is not and cannot be “apolitical”

Antitrust law is unavoidably political. Of course, the enforcement of antitrust law should not be political in the popular sense: the President and the heads of the Department of Justice Antitrust Division and Federal Trade Commission should not employ the antitrust laws to reward their friends and punish their enemies.22 Rather, antitrust is political in its content. In designing a body of law, Congress, federal agencies, and the courts must answer the basic questions of whom the law benefits and to what end. Answering these questions inherently requires moral and political judgments. These fundamental questions do not have a single “correct” answer and cannot be resolved through “neutral” methods or decided with an “apolitical” answer.23

Antitrust regulates state-enabled markets, which cannot be separated from politics. The history of antitrust law shows competing visions of both the law’s aims and its methods, suggesting there is no “apolitical,” universal concept of antitrust. Rather than aspire for an impossible utopia of “apolitical” antitrust, we must decide who should determine the political content of the field—democratically-elected representatives or unelected executive branch officials and judges.

A. Markets Cannot Be Divorced from Politics

A market economy is the product of extensive state action and so is inevitably political. The conception of the market as a “spontaneous order” is a useful construct for defenders of the status quo because it lends legitimacy to the current order and suggests that intervention is futile.24 This model, however, is a myth and bears no correspondence to actual markets. Most fundamentally, state action supports a market economy through the creation and protection of property rights25 and the enforcement of contracts.26 As sociologist Greta Krippner writes, “there can be no such excavation of politics from the economy, as this is the sub- stratum on which all market activity—even ‘free’ markets—rests.”27 In addition to property and contract law, examples of state action necessary for the contemporary U.S. economy to function include corporate and tort law (typically established and enforced by state governments), intellectual property, protection of interstate commerce, banking regulation, and monetary policy (generally con- ducted at the federal level).

Antitrust law, therefore, is a governmental action that shapes the power of state-chartered corporations and the scope of their state-enforced property and contractual rights. This regulation of state-enabled markets makes antitrust inherently political. Moreover, in formulating antitrust rules, lawmakers must determine whom the law seeks to protect. Antitrust law could conceivably protect consumers, small businesses, retailers, producers, citizens, or large businesses. But even identifying the protected group or groups does not fully resolve the question. For instance, if consumers are antitrust law’s sole protected group, how should the law protect consumers? Antitrust could protect consumers’ short- term interest in low prices or their long-term interests in product innovation or product variety, just to name a few possibilities.28

Given the foundational role of state action—and therefore politics—in a market economy, the choice of objective in antitrust law is not between intervention and nonintervention. Rather, antitrust law must choose between different con- figurations of state action and different sets of beneficiaries.29 More concretely, we must decide, openly or otherwise, whose interests antitrust law should protect.

B. The History of Antitrust Law Reveals the Unavoidability of Politics

The history of antitrust law further demonstrates the political nature of the field. Although Congress has not modified the antitrust statutes significantly since 1950,30 the content of antitrust has changed dramatically since then. Even the consumer welfare model has not banished political values from the field. While the range of debate within the community of antitrust specialists is narrow, the continuing disagreement over the interpretation of consumer welfare reveals the inescapability of political judgment.

Antitrust law today is qualitatively different from antitrust law fifty years ago. In the 1950s and 1960s, the courts and agencies interpreted antitrust law to advance a variety of objectives. The Supreme Court held that the antitrust laws promoted consumers’ interest in competitively-priced goods,31 freedom for small proprietors,32 and dispersal of private power.33 The Court held that business conduct injurious to competitors could give rise to antitrust violations, irrespective of the effects on consumers.34 It also interpreted congressional intent to be that a decentralized industrial structure should override possible economies of scale gained from greater consolidation of economic power.35 Recognizing this goal of decentralization, the federal judiciary adopted strict limits on business conduct with anticompetitive potential, including mergers36 and exclusionary practices.37

Since the late 1970s, however, the Supreme Court, along with the Department of Justice and Federal Trade Commission, has reduced the scope of the antitrust laws. With a rightward shift in the composition of the Supreme Court under the Nixon Administration and in the leadership at the federal antitrust agencies under the Reagan Administration,38 these institutions curtailed the reach of antitrust law, scaling back its objectives39 and rewriting legal doctrine to preserve the autonomy of powerful businesses—all in the name of protecting consumers.40

Even the adoption of the consumer welfare model has not somehow banished politics from antitrust. Instead, it has underscored the unavoidability of politics in the field. Despite being the prevailing goal of antitrust for nearly four decades now, the meaning of consumer welfare is still not settled. The two primary schools of thought on consumer welfare disagree on a fundamental question—who are the beneficiaries of antitrust law? One holds that actual consumers, as understood in the popular sense, should be the principal beneficiaries of antitrust law.41 The rival camp holds that both consumers and businesses should be the beneficiaries of antitrust law, and that whether a dollar of economic sur- plus goes to a consumer or a monopolistic business should be of no concern to the federal antitrust agencies and courts.42 C. Who Should Decide the Political Content of Antitrust?

Because the objective of antitrust law is thus bound up with political judgments and values, seeking an “apolitical” antitrust jurisprudence is futile at best and a cynical effort to conceal political choices at worst. The choice is not be- tween “apolitical” antitrust and “political” antitrust; rather, lawmakers must decide between different political objectives. Once the inevitably political valence of antitrust law has been acknowledged, we can turn to the key question of whether unelected officials at the antitrust agencies and federal judges (collectively “the technocrats”) or democratically-elected members of Congress should decide this political content.43

Over the past forty years, technocrats have dominated antitrust law.44 Leadership at the Department of Justice and Federal Trade Commission as well as Supreme Court Justices have rewritten much of antitrust law.45 They have ignored or distorted the legislative histories of the antitrust laws and have even overridden Congress’s legislative judgments.46 By restricting private antitrust enforcement, the Supreme Court has also limited the ability of ordinary Ameri- cans to influence the content of antitrust law.47

While the antitrust technocrats have been on the march, Congress has been dormant. Its antitrust activities have been confined to secondary issues.48 This combination of technocratic hyperactivism and legislative lethargy has created, in the words of Harry First and Spencer Waller, “an antitrust system captured by lawyers and economists advancing their own self-referential goals, free of political control and economic accountability.”49 Although proponents of technocratic antitrust may characterize it as “pure” or “scientific,” the reality is quite different as big business interests and their representatives dominate debate within this cloistered enterprise.50

This congressional indifference to antitrust is not inevitable. Despite pro- longed quietude, Congress could become an active player in antitrust again. Some members of Congress are showing a renewed awareness of the field and an interest in reasserting control over the content of the antitrust statutes.51 The most democratically accountable branch of the federal government may be poised to take the lead on antitrust in the coming years, reclaiming authority over a technocracy that has not answered to the public in decades.

iii. the consumer welfare model is not anchored in congressional intent and reflects a narrow conception of monopoly and oligopoly

Given that consumer welfare antitrust is a political choice, this model can be evaluated against alternatives on a level playing field. Consumer welfare is not “above politics.” It is a political construct that features at least two serious deficiencies. First, the consumer welfare model contradicts the legislative histories of the principal antitrust statutes; the courts and federal antitrust agencies have instead substituted their own political judgments for those of Congress. Second, the consumer welfare model represents an impoverished understanding of corporate power. It focuses principally on one aspect of business power—power over consumers—and ignores other critical manifestations.

Congress’s original vision for the antitrust laws, one that recognizes both the economic and the political impacts of monopoly, is a superior alternative to the consumer welfare philosophy. As the enforcers and interpreters of statutory law in a democratic polity, federal antitrust officials and judges should follow the congressional intent underlying the antitrust laws. Furthermore, commentators, legislators, and policymakers should recognize that controlling the power of large businesses over not only consumers but also competitors, workers, producers, and citizens is essential for preserving at least a modicum of economic and political equality in a democratic society.

A. In Passing the Antitrust Laws, Congress Expressed Aims Much Broader than Consumer Welfare

The consumer welfare model of antitrust is not true to the intent of Congress. An extensive body of careful research has shown that Congress had several objectives when it passed the Sherman, Clayton, and Federal Trade Commission Acts.52 The Congresses that passed these landmark statutes recognized that eco- nomics and politics are inseparable. Congress originally sought to structure markets to advance the interests of ordinary Americans in multiple capacities, not just as consumers. Consumer welfare antitrust reflects, at best, a selective reading of this legislative history and, at worst, an intentional distortion of this historical record. Contrary to Robert Bork’s historical analysis, the legislative histories show no congressional awareness, let alone support, for interpreting consumer welfare as the economic efficiency model of antitrust, one nominally indifferent toward distributional effects.53

In passing the antitrust statutes, Congress aimed to protect consumers and sellers from monopolies, oligopolies, and cartels, as well as defend businesses against the exclusionary practices of powerful rivals.54 Key members of the House and Senate condemned the prices that powerful corporations charged consumers as “robbery”55 and “extortion.”56 The debates reveal similar solicitude for farmers and other producers who received lower prices for their products thanks to powerful corporate buyers.57 In addition to consumers and producers, Congress aimed to protect another important group of market participants: competitors. In enacting the antitrust statutes, Congress sought to restrain large businesses from using their power to exclude rivals.58 Congress recognized the political power of large corporations and aimed to curtail it through strong federal restraints. Indeed, the political power of these corporations represents a running theme in the legislative histories of the anti- trust laws. A number of speakers in the course of the debates pointed to the power wielded by these big businesses over government at all levels.59 In the debate over the Clayton Act, one Congressman declared that the trusts were commandeering ostensibly democratic political institutions.60 Senator John Sherman warned his colleagues that “[i]f we will not endure a king as a political power[,] we should not endure a king over the production, transportation, and sale of any of the necessaries of life.”61

B. The Consumer Welfare Model Reflects an Impoverished Understanding of Corporate Power

Focusing solely on harms to consumers and sellers, the consumer welfare model embodies an emaciated conception of corporate power. With its foundation in neoclassical economics, the consumer welfare model privileges short- term consumer interests. The neoclassical representation of the market—commonly known through supply-and-demand diagrams—presents a static picture of a market and does not account for long-term dynamics. As the default analytical guide for consumer welfare antitrust, the neoclassical model, with its focus on quantification, prizes short-term price harms to consumers and sellers and discounts longer-term injuries.62

Furthermore, the consumer welfare model legitimizes the existing distribution of resources by focusing on change to the status quo. Current antitrust law measures consumer welfare by changes in prices paid; what a person can pay, though, depends on both her willingness-to-pay for goods and services and her existing wealth. By this definition, a rich person who pays more for a luxury good due to a cartel suffers an antitrust harm, but a poor person who has no income and is unable to afford necessities cannot suffer antitrust harm from a monopoly. A wealthy consumer commands power in the market; a poor consumer, in comparison, has little or no clout in the market.63

The consumer welfare model, moreover, affords little or no importance to corporations’ ability to dictate the development of entire markets. Antitrust practitioners and scholars are wont to remind each other and critics that the antitrust laws “protect[] competition, not competitors.”64 Although the expression is arguably empty,65 it is taken to mean that harm to actual and prospective competitors alone is of no import to the antitrust laws. This doctrinal cornerstone is a political choice,66 which gives monopolists and oligopolists the power to dictate who participates in a market and on what terms.67 Under consumer welfare antitrust, businesses can use their muscle to exclude rivals and strangle economic opportunity so long as this exclusion is not likely to injure consumers. In practical terms, consumer welfare antitrust grants big businesses broad latitude to engage in private industrial planning. 68

For the consumer welfare school, the hegemonic power of large corporations is also of no consequence. Monopolistic and oligopolistic businesses across the economy use their power to seek and win favorable political and regulatory de- cisions.69 The ongoing—and frenzied—contest between states and cities to at- tract Amazon’s second headquarters is indicative of a giant business’s weight. In recent years, the concentrated financial sector has offered a vivid example of corporate political power in action.71 Leading banks helped trigger a worldwide economic crisis through their fraud and reckless speculation, and yet they defeated subsequent political efforts to control their size and structure and man- aged to preserve their institutional power.72 An influential analysis of congressional decision making suggests that the United States today is closer to an oligarchy than a democracy—the wealthy and large businesses wield tremendous political clout, whereas most ordinary people have little or no influence.73 Large businesses also set the parameters of political debate through control of the me- dia,74 sponsorship of supportive figures and organizations,75 and marginalization of critical voices.76 Consumer welfare antitrust itself is, at least in part, a product of big business’s reaction against the relatively vigorous antitrust pro- gram of the postwar decades.77

With its narrow analytical frame, the consumer welfare model of antitrust accepts and legitimizes many forms of state-supported corporate power. Under consumer welfare antitrust, large corporations have the freedom to enhance their power through mergers and monopolistic practices that hurt competitors and citizens. Viewed as part of the overall landscape of state-enabled markets, consumer welfare antitrust is not an apolitical choice, but a charter of liberty for dominant businesses.

#### Elite capture locks in civilizational collapse, but it’s not inevitable. Try or die for putting political and economic power in the hands of the citizenry.

MacKay 18 – Professor of Sociology, Mohawk College

Kevin MacKay, also a union activist & executive director of a sustainable community development cooperative, The Ecological Crisis is a Political Crisis, 2018, https://www.resilience.org/stories/2018-09-25/the-ecological-crisis-is-a-political-crisis/

With each passing day, reports on global climate change become increasingly bleak. Recent research has affirmed that the glaciers are melting faster than anticipated1, and that acidification, with its catastrophic effect on ocean ecosystems, is also proceeding faster than feared2. As the concentration of atmospheric carbon continues to rise, so does the likelihood we’ve passed the tipping point for irreversible climate change.3

When one looks at other critical earth ecosystems, the danger is equally apparent. Soil is being destroyed.4 Fresh water shortages are wracking several continents and leaving billions of people without reliable access to clean drinking water.5 Fish stocks are plummeting.6 Oceans are clogged with plastic garbage.7 Biodiversity is disappearing at an alarming rate.8 In the face of this full-spectrum ecological assault, a growing number of scientists have been saying that the collapse of civilization is now unavoidable.9

Stopping the destructive effects of industrial, capitalist civilization has now become the defining challenge of our age. If we don’t radically change our society’s course within the next 30 years, then a deep collapse and protracted Dark Age are all but assured. In order to confront this challenge, we need to understand what is causing civilization’s crisis, and most importantly, how the crisis can be resolved. At stake is nothing less than a viable future on this planet.

The Five Horsemen of the Modern Day Apocalypse

In my book, Radical Transformation: Oligarchy, Collapse, and the Crisis of Civilization, I argue that industrial civilization is being driven toward collapse by five key forces – related to terminal dysfunction within its ecological, economic, socio-cultural, and political sub-systems:

Dissociation: globalized production and distribution systems disrupt people’s ability to put their own actions, and the actions of elites, into a coherent causal and ethical framework. Actions by individuals, institutions, and systems of governance are therefore disconnected from their effect on the natural world and on other peoples. Without this critical feedback, even well-intentioned actors can’t make rational and ethical choices regarding their behaviour.

Complexity: the world-spanning nature of industrial capitalist civilization, and the massive number of interrelationships it represents, make predicting the effect of any given change on the system as a whole devilishly difficult. Disastrous tipping points loom in several of civilization’s systems – from the collapse of ocean ecology to the threat of nuclear war. In addition, because the crisis cannot be contained in one part of the globe, the dysfunctions can’t be dealt with in isolation.

Stratification: a profoundly unequal distribution of wealth – both globally and within nations – leads to mass human poverty, displacement, and to premature death through disease and continuous warfare. Stratification also leads to political instability, eroding a society’s social cohesion and undermining decision-making structures.

Overshoot: the economic practices of industrial capitalism are exceeding ecological limits. Our civilization is critically degrading the biosphere, burning through non-renewable energy sources, and shifting the entire climatic balance.

Oligarchy: in states worldwide, political decision-making is controlled by a numerically small, wealthy elite. This form of government serves to lock in patterns of conflict, oppression, and ecological destruction.

Societies as Decision-Making Systems

Each of the horsemen presents a significant threat to civilization’s viability. However, oligarchy is particularly important as it deals with a society’s decision-making systems. In his 2005 book Collapse: How Societies Choose to Fail or to Succeed, geographer Jared Diamond argued that many past civilizations have collapsed due to their inability to make correct decisions in the face of existential threats.10 Diamond drew on the work of archaeologist Joseph Tainter, who in his 1998 book The Collapse of Complex Societies, argued that civilizations fail due to a constellation of factors.11

To Tainter, the ultimate mistake failed civilizations made was to continually solve problems by adding social complexity, and as a result, increasing the society’s energy needs. Eventually, Tainter argued that civilizations encounter a “thermodynamic crisis” in which they are unable to sustain an energy-intensive level of complexity. The result is collapse – ecological devastation, political upheaval, and mass population die-off.

The tendency for societies to collapse under excessive energy demands is an important insight. However, what Tainter and Diamond failed to appreciate is how oligarchy is an even more fundamental cause of civilization collapse.

Oligarchic control compromises a society’s ability to make correct decisions in the face of existential threats. This explains a seeming paradox in which past civilizations have collapsed despite possessing the cultural and technological know-how needed to resolve their crises. The problem wasn’t that they didn’t understand the source of the threat or the way to avert it. The problem was that societal elites benefitted from the system’s dysfunctions and prevented available solutions.

Oligarchic Control in “Democratic” States

Citizens in countries such as Canada, the United States, Australia, or the Eurozone members, would generally consider themselves to be living in democratic societies. However, when the political systems of Western democracies are scrutinized, clear and pervasive signs of oligarchy emerge.

A 2014 study by American political scientists Martin Gilens and Benjamin Page revealed that the great majority of political decisions made in the United States reflect the interests of elites. After studying nearly 1,800 policy decisions passed between 1981 and 2002, the researchers argued that “both individual economic elites and organized interest groups (including corporations, largely owned and controlled by wealthy elites) play a substantial part in affecting public policy, but the general public has little or no independent influence.”12

Today, oligarchic control over decision-making, and its catastrophic ecological effects, have never been clearer. In the U.S., Donald Trump and his billionaire-dominated cabinet are seeking to dismantle the Environmental Protection Agency13, to question climate science14, and to pursue a policy of “American energy dominance” that will dramatically expand production of fossil fuels.15

U.S. energy companies are also having a profound impact on domestic energy policy by accelerating the development of hard-to-access fuel sources through hydraulic fracturing, deep-sea oil drilling, and mountain-top removal coal mining.16 At the same time, fossil fuel oligarchs are working overtime to dismantle green energy initiatives, such as the Koch brothers’ war on the solar industry in Florida, and in other cities across the continent.17

In Canada, often thought of as more progressive than its southern neighbor, the situation hasn’t been much different. Under prime minister Stephen Harper’s two terms, the Canadian state became an unapologetic cheerleader for extracting some of the world’s dirtiest oil –Tar Sands bitumen. Harper accelerated Tar Sands production, leading to the clear-cutting of thousands of acres of boreal forest, the diversion of millions of gallons of freshwater, and the creation of miles of toxic tailings ponds, filled with water contaminated by the bitumen extraction process.18

Like the Trump administration, the Harper government silenced federal climate scientists.19 The government also targeted environmental charities and non-profits, using funding cuts and the threat of audits to undermine climate advocacy.20 When a movement of national outrage swept Harper from power in 2015, Canadians were hopeful that climate change would once more be taken seriously. However, the new government of Justin Trudeau, while embracing the international discourse on global warming, has shown a continued allegiance to the fossil-fuel oligarchy by committing over $7 billion in federal funds to purchase the failing Kinder-Morgan Trans Mountain pipeline.21

What is To Be Done?

To create a sustainable future, we must first learn the lessons of the past, and what archaeological research shows is that throughout history, civilizations that have been captive to the interests of an oligarchic elite have all collapsed.22 Today’s industrial, capitalist civilization is trapped in this same deadly cycle.

As long as a self-interested elite controls decision-making in modern states, we will be far too late to avoid the effects of steadily contracting ecological limits. In addition, we will be unable to avert the downward spiral of economic crisis, conflict, and warfare that will result as oligarchs scramble to maintain their wealth and power in the face of dwindling resources and mounting crisis.23

Breaking free from this destructive pattern will require us to take political and economic power back from the 1% and return it to the hands of citizens. This means that advocates for ecological sustainability must move far beyond individual actions, lobbying, or reform of existing political and economic institutions. If we are to have a chance, we must ensure that governments make decisions based on the public good, not on private profit.

Radically transforming industrial, capitalist civilization won’t be easy. It will require movements for environmental sustainability, social justice, and economic fairness to come together, and to realize their common interest in dismantling the system of oligarchy and building a democratic, eco-socialist society.24 This “movement of movements” must put aside sectarian squabbles, and finally realize that the goals of economic justice, human rights, and ecological sustainability are all intrinsically linked.

Such changes may seem like a tall order, but hope can be found in the deepening struggle being waged to protect our fragile ecosystems. First Nations groups are leading this charge and beginning to win some important victories. The inspiring Water Protectors of Standing Rock were able to disrupt the Dakota Access Pipeline in the face of intense government oppression.25 In Canada, Several British Columbia First Nations recently won an impressive court victory in their opposition to the Trans Mountain pipeline.26

If successful grassroots struggles can be linked with equally hopeful movements for real political change, then there is hope for the future. However, if we continue on with “business as usual” – hoping that change will come from lifestyle choices and the interchangeable representatives of elite political parties, then the future looks grim indeed.

#### Focusing on a politics of anti-domination reorients power to the people which allows collective mobilizing against existential threats

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Kate Jackson, “All the Sovereign’s Agents: The Constitutional Credentials of Administration,” *William & Mary Bill of Rights Journal*, 8 July 2021, pp. 2-7, https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3813904.

We face no less than four urgent crises: an ongoing pandemic1; racial injustice and its consequent civil unrest2; an economic depression approaching the pain inflicted in 1929; and the accumulating, existential threat of climate change.4 Citizens must rely on their state to tackle these burning perils.5 Yet critics both left 6 and right 7 would tear down its institutional capacity to do so. Some denounce the exercise of administrative power as illiberal, unconstitutional and obnoxious to the rule of law.8 Others impugn it as undemocratic, paternalistic, and corrupt.9 Yet without some kind of agent to carry out collective solutions, these perils may very well proceed unabated.

Pushing an anti-administravist agenda, libertarians continue their “long war”11 against government agencies by insisting that they are an unconstitutional fourth branch of government. For them, administration is a kind of “absolutism”12 that violates the separation of powers and defies the principle of limited government.13 They contend that agencies’ discretionary rulemaking offends the liberal commitment to the rule of law. 14 Accordingly, they would punt agencies’ responsibility for social, economic, and environmental problems to courts and legislatures. 15 Regulation would thus be placed at the mercy of an undemocratic judiciary who increasingly “weaponizes” the First Amendment in favor of big business16 – or of a Congress whose already inefficient decision-making is crippled by hyperpolarization17 and distorted by the kind of material inequalities that the welfare state is meant to ameliorate. 18

Conservatives with a more authoritarian inflection seek to recall administration from its constitutional exile by subsuming it under presidential power. 19 Such critics would lend administration some democratic credentials by bootstrapping them to the president’s electoral accountability. Yet ridding agencies of their independence by placing them under the discretion of the president grants the president personal control over agency policymaking and adjudication without the checks provided by Congress, the courts, or an independent civil service.20 It thus, arguably, solves a separation-of-powers problem by introducing a new one.21 More ominously, empowering the president with the patina of democratic legitimacy emits a strong whiff of Schmittian politics.22 The prospect of a largely unbound executive officer claiming a popular mandate to hire and fire civil servants on a whim should alarm any that followed the Trump Administration’s treatment of refugees, civil protestors, polluters, and political cronies.

Agency power likewise fares poorly in the hands of the left. 23 They blame administrative technocracy for a variety of social and political ailments: the reification of social differences and the juridification of human nature24; corruption, privatization and regulatory capture25; the depoliticization of economic issues and the subsidization of globalized financial capitalism26 and, ultimately, the constellation of conspiratorial populist politics currently threatening liberal democratic states.27 Their preferred solutions include democratizing agency decision-making28 and constraining Congress’ capacity to delegate its lawmaking function. 29 While their interventions are welcome, they may deprive government of the nimble expertise necessary to address environmental and economic crises.30 Moreover, as illustrated by the president’s extraordinary powers to shape national immigration policy despite its “notoriously complex and detailed statutory structure,” increasing the amount of formal legislation may only expand agencies’ enforcement discretion.31 Agency democratization, furthermore, risks reproducing, perhaps under the cover of ostensible public consensus, the same social, economic and political inequalities that distort Congressional lawmaking. 32

In this essay, I contend that this multi-pronged anti-administravist attack stands upon shaky conceptual foundations. Each builds atop a theory of constitutionalism that embraces a too-literal conception of popular sovereignty.33 It is a conception that posits that there is, in fact, a “people” with a sovereign “will.” It is a “will” that can be clearly identified (through elections); straightforwardly transcribed (through lawmaking); mechanically applied (by administrators) and constrained (by judges). 34 But in a country of hundreds of millions, the diverse multiplicity of citizens could never find a common will.35 It is even more impossible that it could ever be accurately expressed through the lawmaking of elected representatives.36 As a result, critics of administration often grant statutory lawmaking more democratic credentials than it deserves. 37 The non-delegation doctrine purports to prevent the delegation of something that simply may not exist.

Critics commit another mistake when they invoke a theory of constitutionalism that analytically divides functions that cannot, as either a moral or empirical matter, be disentangled. First, they incorrectly posit two separate, autonomous processes: the collective formation of ends (lawmaking) and the implementation (execution) and application (adjudication) of those ends. 38 But we cannot presume that judges and administrators can mechanically apply and enforce the law without importing into the process their own value-laden, and therefore political, judgments.39 “They who will the end will the means” is a naïve argument that occludes the power wielded by unelected actors.40 It is also a mistake to presume that the legislative branch concerns itself only with value-laden final ends, and not with the means required to execute them.41 Indeed, most of our most bitter political fights are fights conducted precisely over means: how best to grow the economy; how best to care for the sick; how best to mitigate climate change, etc. 42 As a result, the theories overemphasize and distort the purpose of separating powers.43

Critics commit yet another mistake when they divorce the constitutional functions of (1) protecting rights and limiting government power, and (2) providing the decision-making procedures necessary for democratic will-formation. 44 They isolate elections and lawmaking from the process of enforcing rights and the rule of law – as if they have nothing to do with one another. Yet quarantining rights from democracy requires reliance on an outsourced moral order external to the political system itself – a reliance inappropriate for contemporary secular polities.45 They therefore lend judges too many liberal credentials while denying any to mechanisms of popular feedback.

Rather than critiquing agencies for violating the separation of powers, for their over-reliance on unelected technocrats, or for their indifference to universalizable legal principles, I argue that administration does indeed carry constitutional liberal democratic credentials – credentials borne out by political theory’s “representative turn.”46 By understanding agencies as embedded in a system of representative democracy that aims to set the conditions by which citizens can relate to each other as political equals, we can assess the legitimacy of government agencies without any “idolatrous”47 commitments to a fictitious popular sovereign or legal formalism. I suggest that agency institutions should be measured against the notion that popular sovereignty demands not consensus and consent, but instead institutions that permit citizens to understand themselves as co-equal participants in the collective decision-making process.

This essay will proceed as follows. Part I situates administrative agencies in an understanding of liberal democratic constitutionalism that (A) eschews outmoded notions of popular sovereignty and (B) natural law. It will then (C) explain how adequately conceived notions of the separation of powers and the rule of law cannot serve as indefeasible objections to administration. Part II makes a positive case for agency authority by drawing from the insights gained from political theory’s representative turn. It will first (A) define this important intellectual development and then (B) explain how administrative agencies might fit comfortably within a representative system. The essay (C) concludes by showing how theories of representation can inform some enduring debates in administrative law and suggesting some changes that might enhance the legitimacy of agency action.

PART I: ADMINISTRATION, POPULAR SOVEREIGNTY AND RIGHTS

Democracy promises the rule of “we the people.”48 Democratic citizens, possessing inalienable rights, are to come together, deliberate,49 and jointly create the laws that bind them. The administrative agency, with its unaccountable expert technocrats, policymaking autonomy, and immunity from micromanaging judicial review, looks like an unwelcome uncle at the constitutional dinner table.

Intuitively, these knee-jerk objections cannot be quite correct. Agencies carry some obviously democratic credentials. As Adrian Vermeule points out, they are, after all, the creation of statutory lawmaking.50 At least as early as 1798, Congress has delegated coercive rule-making power to Federal bureaucracy on matters as diverse as tax inspections, territorial governance, veterans’ pensions, mail delivery, intellectual property, and the payment of public debts.51 In McCullough v. Maryland,52 the U.S. Supreme Court interpreted the “necessary and proper” clause53 to anticipate Congress’ desire to create such agencies – in this case, a national bank. Bruce Ackerman,54 in his seminal work, argues that our contemporary agencies carry Constitutional credentials. Many were birthed through multiple hyperpolitical elections and constitutional challenges within the courts. Further, from their very inception, agencies struggled internally to accommodate their actions to constitutional requirements.55 The Administrative Procedure Act56 (“APA”), for example, imposes upon agencies principles of due process and the rule of law.57

Regardless, if democratic lawmaking is to shape the community of those that make it, there must be some kind of agent or instrumentality to carry it out.58 A Congressional decision to levy a tax is meaningless without an Internal Revenue Service to collect it.59 Yet it is impossible to imagine that such agencies might operate like mindless, loyal robots. Whether performed by court or administrator, the application of laws will inevitably involve controversial policy judgments.60 Lawmaking is, by its nature, always more abstract than we would like. Such “general propositions do not,” noted Justice Holmes, Jr. in his influential Lochner v. New York61 dissent, “decide concrete cases.” The required elaboration almost always imports values that are not clearly and unambiguously identified in any statutory text.62 The task of accommodating administration to constitutional democracy cannot, therefore, aim at eliminating the agency costs implicit in the application of law. It can only seek to understand how they might comfortably fit within a constitutional order.

The next two sections will elaborate upon these intuitions. Many objections to agency power presume antiquated conceptions of sovereignty and rights. They juxtapose the will of a powerful organ-body sovereign63 against a governed mass of subjects who hold an array of pre-political liberties that require judicial protection. This all-powerful body is thought to be represented by Congress64 as the commissioned agent (or embodiment?) of the popular sovereign. To preserve citizens’ natural, pre-political liberties, this agent of the popular sovereign is constrained by a separation of powers, checks and balances, a Bill of Rights, etc. – each policed by independent courts capable of identifying and enforcing citizens’ inalienable liberties.65 If this is indeed the rubric of the liberal democratic constitutional state, it is difficult to see how agencies pass constitutional muster. They are not Congress – and so their policymaking cannot be legitimate expressions of the popular will. They often avoid substantial judicial review, and so they might violate natural liberties with impunity. Fortunately, this rubric is wrong.

A. The Mind and Body of the Democratic Sovereign

True, for much of modern Western history, sovereignty, understood as the supreme, absolute and indivisible power to make law, was thought to be held by a specific body: the one wearing the crown.66 To constitute and justify public power, Hobbes, for example, imagined a state of nature full of individuals authorizing and relinquishing their natural liberties to a “Mortall God,”67 i.e., the modern corporate state, represented (or re-presented) in the flesh-and-blood bodies of the king or legislature.68 During the democratic revolutions, radical69 theorists merged the monarch with her subjects.70 They imagined “the people” not only replacing the king as sovereign, but also governing itself as a subject, thereby creating an identity between ruler and ruled. Rousseau’s volonté générale71 serves as a model for this kind of logic.72 Montesquieu, whose thinking influenced the American founders,73 likewise held that the “people as a body have sovereign power” in a republic.74 Even A.V. Dicey, despite his fame as a rule of law scholar, believed that a representative legislature would “produce coincidence between the wishes of the sovereign and the wishes of the subjects.”75 It is a sovereign-subject hat trick: the ruled become the ruler, the democratic “people,” understood as a body, a “unitary macro-subject,”76 come to occupy what was once occupied by the body of the king. Carl Schmitt likewise endorsed a scrupulous identity between governed and governor - with homogenizing and fascist implications.77 For Schmitt, it was impossible to imagine a leader speaking with the voice of the people unless the people themselves first sang in perfect harmony.

There are flaws in this equation. The “people,” understood literally, cannot rule. They do not possess a primordial collective will existing outside and independent of their political institutions.78 Moreover, the entire population of a diverse community of hundreds of millions cannot be present within those institutions. Nor can that population ever find a unanimous general will, a non-controversial understanding of the common good, no matter how constrained and qualified their public reasoning or how universal and general its aspirations.79 Thus, no coherent popular will can obtain even after undertaking the decision-making processes of political institutions.80 Just as the contractual “meeting of the minds” is a legal fiction of private law,81 a popular “meeting of the minds” is a political fiction of public law. As a result, despite the democratic revolutions, the old gap between ruler and ruled remains.82 In other words, the merger between governed and governor attempted by the democratic revolutions did not remove the danger of heteronomy,83 even if the offices of government might be staffed by elected representatives and even as constitutional systems split powers and limited legal authority.84 Some (body) would wield public power, and the rest would be subject to its rules. Even Rousseau downgraded the popular sovereign to a silent, passive actor that left the actual business of governing to functionaries.85 Like the client of a travel agent, Rousseau’s democratic citizen was meant only to approve or disapprove the prepackaged plans presented by ministers.86

Lawmaking under constitutional liberal democracy is thus not a question of ascertaining the existence of some non-existent popular “will” to be left in the hands of loyal fiduciaries in government87 to carry out like mindless automatons. Nor is it comprised of the dictates of a caesarist leader purporting to speak with the unified voice of the sovereign people.88 Instead, it a question of developing transparent and accessible collective decision- making procedures that ensure that all citizens can understand themselves as equal participants in their collective ordering; that ordinary people are involved in public life and have a say in their collective destiny.89 They do not rule. Rather, they are equal players in the game of representative democracy.90

Thus, although contemporary notions of constitutional liberal democracy ascribe the highest legitimate source of authority to “the people,” they do not understand “the people” as a reified, homogenous whole with an identifiable will that pre-exists whatever governing apparatus might be laid atop it. Though “popular sovereignty” is a political fiction, it is a useful one – at least if it is used as a standard of justification and critique, not as a proper noun. It is an aspirational, regulative idea intended to depersonalize and distribute public power in a way that serves the entire community.91 It is a Kantian “as if” principle.92 Namely, if we try to think like a popular sovereign might think, if such a thing could ever exist, we will orient our public reasoning not towards our individual self-interest alone, but in terms of inclusivity, human equality and the public good.93 Because if the sovereign is a “we,” then governing involves more than the interests and preferences of single individuals. We will therefore demand that political institutions remain accountable and accessible to popular complaints. We will adopt a Weberian politics of responsibility, remembering that our decisions might inflict unforeseen costs upon others.94

This figurative idea of popular sovereignty also unlocks the closed doors of power and forces the inclusion of voices previously ignored.95 Whosoever happens to be governing at any given time, that person is not “the people” precisely because “the people” cannot ever be present. As a result, anyone denied an audience can appeal to popular sovereignty as they seek admission to political decision-making. Importantly, popular sovereignty demands, as French philosopher Claude Lefort96 notes, that this place of power remain an empty one – or at least one with a revolving door – where no body at all is permitted to rule permanently. For to fill that void would allow for a part to speak on behalf of the whole. “We the People” might become, as political theorist Nadia Urbinati notes, “Me the People.”97 It would thus force homogeneity upon plural societies as leaders with controversial viewpoints purport to represent everyone as they make and implement policy. Moreover, the usurpation of this space would undermine the depersonalization of power inherent in the idea of a fictional popular sovereign and, importantly, the rule of law and not of men.98 If the place of power remains empty because all citizens contribute in some way to lawmaking, then we can credibly claim that it is law, not our politicians, who rule.

As a result, it can be no objection to agency policymaking that it usurps authority from the popular sovereign. Because if we take popular sovereignty literally, so, too, do elected representatives. They likewise cannot logically or credibly speak with the voice of the sovereign people.99 Thus, insofar as theories of non-delegation and legislative primacy rely on an organ-body theory of popular sovereignty,100 they are misplaced. Attacks against the “technocratic” power wielded by administrative officers may likewise overstate the democratic credentials of the Congressional legislation against which such power is compared – and found wanting. Indeed, it is at least possible that administrative agencies can be made consistent with the requirements of constitutional popular sovereignty.101 Namely, the question is whether and to what extent they operate according to procedures that allow citizens to understand themselves as co-equal participants in shaping agency action. Finally, that independent administration is “headless” is not, as feared by contemporary New Deal critics, fascist or totalitarian.102 It may in fact be a necessary precondition for liberal democracy. A Leviathan with a single head with a single mouth, purporting to speak for all, can be monstrous indeed.

### CP Contract Law

#### Text: The United States federal government should adopt a policy –

#### – mandating the interpretation of FRAND contracts according to first principles of U.S. contract law, and

#### – recognizing that certain kinds of negotiating conduct might result in a breach of FRAND contracts.

#### Application of contract law solves holdup.

Sidak 18 – Chairman, Criterion Economics, Washington, D.C.

J. Gregory Sidak, “The FRAND Contract,” The Criterion Journal on Innovation, Vol. 3, 2018, HeinOnline

When an SEP holder's FRAND commitment is deemed to be an enforceable contract, and the implementer of an industry standard is consequently deemed to have the right, as an intended third-party beneficiary, to enforce the SEP holder's obligations to the SSO under that contract, no need exists to fashion new principles to enable the SEP holder and the implementer to resolve their disputes over FRAND terms promptly. Simply interpreting a FRAND contract according to first principles of U.S. contract law would encourage both the SEP holder and the implementer to engage in good-faith negotiations. Recognizing that certain kinds of negotiating conduct might result in a breach of contract, or the loss of a third-party beneficiary's right to enforce the FRAND contract, would encourage both the SEP holder and the implementer to avoid delaying tactics and instead to engage in conduct that facilitates the prompt execution of the license agreement. According to first principles of U.S. contract law, whether the SEP holder has discharged its obligations under its FRAND contract with the SSO with respect to a given implementer turns on whether the SEP holder has offered to license its SEPs to that implementer on legitimately FRAND terms. The recognition of comparable contractual principles in foreign jurisdictions-to the extent that such principles do not Conalready exist under the contract law of those jurisdictions-would stimulate the parties not only to avoid practices that needlessly delay negotiation and cause costly litigation, but also to work toward the prompt execution of a FRAND license agreement.

### DA Innovation

#### There’s a wave of M&A now – companies doubt rule changes will affect them now

David French and Sierra Jackson, Reuters, July 12, 2021, Analysis: Dealmakers see M&A rush, then chills, in Biden's antitrust crackdown

Dealmakers expect a new wave of transformative U.S. mergers and acquisitions (M&A), as companies rush to complete deals before President Joe Biden's antitrust push takes shape, to be followed by a slowdown when regulators start cracking down.

Biden signed a sweeping executive order on Friday to bolster competition within the U.S. economy. This included a call for regulatory agencies to increase scrutiny of corporate tie-ups which have left major sectors such as technology and healthcare dominated by few players. read more

The order came amid an unprecedented M&A frenzy, as companies borrow cheaply and spend mountains of cash they have accumulated on transformative deals to reposition themselves for the post-pandemic world. Almost $700 billion worth of U.S. deals were announced in the second quarter, the highest on record.

The dealmaking bonanza is set to continue, as companies seek to take advantage of the time window during which regulators frame precise rules to implement Biden's order, advisers to the companies said. The M&A slowdown will come only when regulators implement the rule changes, possibly in two years or more, they added.

"The order itself will be less likely to have a chilling effect on strategic M&A than the potential chilling effect of a significant increase in the number of prolonged investigations and merger challenges brought by the agencies," said Michael Schaper, partner at law firm Debevoise & Plimpton.

Spokespeople for the White House and the two main antitrust regulators, the Federal Trade Commission (FTC) and the U.S. Department of Justice (DoJ), did not immediately respond to requests for comment.

Dealmakers were bracing for a tougher antitrust environment under Biden even before last week's executive order. Last month, the DoJ sued to stop insurance broker Aon's (AON.N) $30 billion acquisition of peer Willis Towers Watson (WTY.F). And Biden tapped Lina Khan, an antitrust researcher who has focused her work on Big Tech's immense market power, to chair the FTC.

#### Expanding scope of antitrust liability brings that to a halt—undermines dynamism and global competitiveness

Thierer 21– Adam Thierer is a senior research fellow with the Mercatus Center at George Mason University. Author of several books on antitrust law; former president of the Progress & Freedom Foundation, director of Telecommunications Studies at the Cato Institute, and a senior fellow at the Heritage Foundation.

(Adam Thierer, 2-25-2021, "Open-ended antitrust is an innovation killer," TheHill, https://thehill.com/opinion/technology/540391-open-ended-antitrust-is-an-innovation-killer)

Antitrust reform is a hot bipartisan item today, with Democrats and Republicans floating proposals to significantly expand federal control over the marketplace. Much of this activity is driven by growing concern about some of the nation’s largest digital technology companies, including Facebook, Google, Amazon and Apple.

Unfortunately, the calls for more bureaucracy and regulation emanating from all corners of the political world could have an unintended consequence: discouraging the sort of vibrant innovation and consumer choice that made America’s tech companies household names across the globe.

Sen. Amy Klobuchar (D-Minn.) is leading one charge. Klobuchar, who chairs the Judiciary Subcommittee on Antitrust, Competition Policy and Consumer Rights, recently introduced the “Competition and Antitrust Law Enforcement Reform Act.” This sweeping measure seeks to expand the powers and budgets of antitrust regulators at the Federal Trade Commission and the Department of Justice. It also includes new filing requirements and potentially hefty civil fines.

The most important feature is the proposed change to the legal standard by which regulators approve business deals. It would allow the government to stop any deal that creates an “appreciable risk of materially lessening competition,” and it also defines exclusionary behavior as, “conduct that materially disadvantages one or more actual or potential competitors.”

These may sound like simple, semantic tweaks, but – much like some of the other policy ideas currently circulating – they would upend decades of settled law and create a sea change in U.S. antitrust enforcement. This change could undermine business dynamism, innovation and investment in ways that inhibit the global competitiveness of U.S. businesses.

Critics of merger and acquisition (M&A) activity by large tech firms include not only Sen. Klobuchar but also Republicans such as Sen. Josh Hawley (R-Mo.). Hawley recent offered an amendment to a budget bill that would preemptively prohibit mergers and acquisitions by dominant online firms. Klobuchar and Hawley believe that M&A skews the market in favor of today’s largest firms, entrenching their market power and discouraging innovation.

History teaches a different lesson. Consider DirecTV and Skype, both once considered innovative market leaders in their respective fields of satellite TV and internet telephony. Both firms stumbled, however, and they might not even be with us today without creative business deals. DirecTV has been partially or fully controlled by Hughes Electronics, News Corp., Liberty Media and now AT&T. Skype has swapped hands multiple times, moving from eBay, to a private investment firm and now to Microsoft.

These were complex deals, and some didn’t work, leading to divestitures. But each was a learning experience that illustrated how dynamic media and technology markets can be with firms constantly searching for value-added arrangements that serve their customers and shareholders. If we make this type of activity presumptively illegal, we’re imagining that government bureaucrats are better suited to make these calls than businesspeople and the consumers who choose whether or not to buy the product.

Worse yet, legal tests like those Klobuchar proposes – “conduct that materially disadvantages potential competitors” – are remarkably open-ended and could be easily abused. The system will be gamed by opponents of deals for business reasons. They will claim that their own failure to attract investors or customers must all be the fault of more creative rivals. That’s a recipe for cronyism and economic stagnation.

Those who worry about today’s largest tech giants becoming supposedly unassailable monopolies should consider how similar fears were expressed not so long ago about other tech titans, many of which we laugh about today. Just 14 years ago, headlines proclaimed that “MySpace Is a Natural Monopoly,” and asked, “Will MySpace Ever Lose Its Monopoly?” We all know how that “monopoly” ceased to exist.

At the same time, pundits insisted “Apple should pull the plug on the iPhone,” since “there is no likelihood that Apple can be successful in a business this competitive.” The smartphone market of that era was viewed as completely under the control of BlackBerry, Palm, Motorola and Nokia. A few years prior to that, critics lambasted the merger of AOL and TimeWarner as a new corporate “Big Brother” that would decimate digital diversity and online competition.

GOP divided over bills targeting tech giants

Today, we know these tales of the apocalypse ended up instead becoming case studies in the continuing power of “creative destruction.” New innovations and players emerged from many unexpected quarters, decimating whatever dreams of continued domination the old giants once had.

Today’s biggest players face similar pressures, and it’s better to let rivalry and innovation emerge organically, not through the wrecking ball of heavy-handed antitrust regulation.

#### Large-firm dynamism is the only way to maintain tech leadership vis-à-vis china—key to competitiveness and AI

Lee, senior lecturer at the University of Hong Kong Faculty of Business and Economics, ‘19

(David S., “Antitrust action risks holding back US tech giants in competition with China,” <https://asia.nikkei.com/Opinion/Antitrust-action-risks-holding-back-US-tech-giants-in-competition-with-China>)

But the administration should not forget the law of unintended consequences -- effective antitrust measures could stifle the ability of American tech companies to compete with their Chinese challengers. Presumably, that is the last thing the America First president wants to see.

While antitrust has been used to regulate technology companies before, perhaps most notably Microsoft two decades ago, its application against Amazon.com, Facebook, and Google seems different.

For the last half-century or so, U.S. antitrust law has been underpinned by the concept of maximizing consumer welfare, frequently measured by price to consumers. In regulating big technology companies today, however, a new paradigm has emerged, dubbed "hipster antitrust."

Hipster antitrust looks beyond traditional economic harm and includes wider effects such as wage inequality, data privacy intrusions, and sheer size as grounds to invoke the law.

But the wider the antitrust authorities reach, the more likely they are to damage the tech giants' global competitiveness. This applies especially in the key field of artificial intelligence, where the U.S. and China are world leaders.

AI is the engine powering the Fourth Industrial Revolution and the fuel for that engine is data, lots of data. Such data can only be collected at scale, which conflicts with hipster antitrust notions of size. If American antitrust measures compel large technology companies to shrink or in the extreme, to break up, then the U.S. will find itself at a disadvantage to China.

The idea of size is one of many fundamental differences separating Chinese and American technology ecosystems. Chinese government leaders have clearly grasped that scale matters for the technologies they want to dominate, such as artificial intelligence, as well as for the type of digital governance Beijing is striving to implement.

In the U.S., however, the economic value attached to scale is offset by deep-rooted concerns about privacy, bullying behavior and unfair political and social influence. Senator Elizabeth Warren of Massachusetts, a popular Democratic Party candidate for the 2020 presidential election, wrote: "Today's big tech companies have too much power -- too much power over our economy, our society and our democracy."

But in China this is not a hot-button political issue. In a recent fintech course I helped lead comprised of students from different countries, mainland Chinese students considered privacy differently than peers elsewhere. Though aspects of privacy are important to Chinese users, many readily understand there are trade-offs in operating on technology platforms.

Chinese technology platforms such as Alibaba and Meituan have developed so-called "super apps" that serve the same functions that users in the West might find by going to different applications on their devices.

Super apps are designed to be convenient to users so they can handle everything from ride hailing, shopping, food purchases, and payment, all without leaving the digital confines of a single app. This has become the dominant way Chinese citizens consume online. With the most internet users in the world, approximately 750 million, super apps also provide Chinese technology companies an incredible amount of data.

In his book, "AI Superpowers: China, Silicon Valley, and the New World Order," technology executive and investor, Kai-Fu Lee outlined four factors necessary to win the AI race: talent, computing speed, data, and government policy. Though the U.S. has an advantage in many areas, that lead is shrinking, and if China does overtake the U.S. in artificial intelligence, it will likely be a result of advantages in data and government policy.

This combination of data and government policy is perhaps best exemplified by SenseTime, widely considered the world's most valuable artificial intelligence startup. SenseTime boasts world leading facial recognition, which is enhanced because it reportedly has access to Chinese government databases, a rich source of data to further develop models.

Chinese companies like SenseTime have excelled in facial recognition, with some reports estimating that there are almost ten times as many Chinese facial recognition patents filed as American. Chinese surveillance technology is already used in the U.S., including New York City.

This widening gap will have broader implications beyond surveillance, security, and policing. Facial recognition technology will also serve as a biometric identifier for finance, retail, and health. With China moving forward aggressively both domestically and abroad in its use of such technologies, American competitors who are pursuing facial recognition, such as Amazon and Google, may not be able to close the growing competitive chasm.

So while American politicians may see antitrust investigations into large technology companies as necessary, there could be a significant impact on America's ability to compete with China.

Google's former CEO, Eric Schmidt forecast last year that China and the United States would lead the bifurcation of the internet into two spheres. Evidence of this splintering is already apparent. What remains undetermined, however, is which of those spheres will dominate.

Large Chinese technology companies, for example Alibaba Group Holding, are already setting-up far-flung outposts by partnering with and investing in local, non-Chinese technology companies around the world. This form of Chinese technological expansion allows Chinese big tech to shape user privacy norms, establish global networks, and attract more users into their ecosystems, all of which leads to increased user activity and ultimately more data.

While China aggressively expands its technological reach and hones its ability through mining evermore data, it is important that U.S. regulators understand that aggressive antitrust sanctions would risk inhibiting American companies from maintaining the scale necessary to compete with their Chinese rivals.

AI supremacy will be a defining feature of superpower status. And if future researchers one day examine how the U.S. lost the war for artificial intelligence, the hindsight of history may show that the current antitrust debate was the fatal turning point.

#### Failure to beat China in tech incentivizes escalatory nuclear postures that make extinction inevitable

Kroenig and Gopalaswamy 18 – Associate Professor of Government and Foreign Service at Georgetown University and Deputy Director for Strategy in the Scowcroft Center for Strategy and Security at the Atlantic Council; Director of the South Asia Center at the Atlantic Council

Matthew Kroenig and Bharath Gopalaswamy, "Will disruptive technology cause nuclear war?," Bulletin of the Atomic Scientists, 11-12-2018, <https://thebulletin.org/2018/11/will-disruptive-technology-cause-nuclear-war/>

Rather, we should think **more broadly** about how new technology might affect global politics, and, for this, it is helpful to turn to scholarly international relations theory. The dominant theory of the causes of war in the academy is the “bargaining model of war.” This theory identifies rapid shifts in the balance of power as a primary cause of conflict.

International politics often presents states with conflicts that they can settle through peaceful bargaining, but when bargaining breaks down, war results. Shifts in the balance of power are problematic because they undermine effective bargaining. After all, why agree to a deal today if your bargaining position will be stronger tomorrow? And, a clear understanding of the military balance of power can contribute to peace. (Why start a war you are likely to lose?) But shifts in the balance of power muddy understandings of which states have the advantage.

You may see where this is going. New technologies threaten to create potentially destabilizing shifts in the balance of power.

For decades, stability in Europe and Asia has been supported by US military power. In recent years, however, the balance of power in Asia has begun to shift, as China has increased its military capabilities. Already, Beijing has become more assertive in the region, claiming contested territory in the South China Sea. And the results of Russia’s military modernization have been on full displayin its ongoing intervention in Ukraine.

Moreover, China may have the lead over the United States in emerging technologies that could be decisive for the future of military acquisitions and warfare, including 3D printing, hypersonic missiles, quantum computing, 5G wireless connectivity, and artificial intelligence (AI). And Russian President Vladimir Putin is building new unmanned vehicles while ominously declaring, “Whoever leads in AI will rule the world.”

If China or Russia are able to incorporate new technologies into their militaries before the United States, then this could lead to the kind of rapid shift in the balance of power that often causes war.

If Beijing believes emerging technologies provide it with a newfound, local military advantage over the United States, for example, it may be more willing than previously to initiate conflict over Taiwan. And if Putin thinks new tech has strengthened his hand, he may be more tempted to launch a Ukraine-style invasion of a NATO member.

Either scenario could bring these nuclear powers into direct conflict with the United States, and once nuclear armed states are at war, there is an inherent risk of nuclear conflict through limited nuclear war strategies, nuclear brinkmanship, or simple accident or inadvertent escalation.

This framing of the problem leads to a different set of policy implications. The concern is not simply technologies that threaten to undermine nuclear second-strike capabilities directly, but, rather, any technologies that can result in a meaningful shift in the broader balance of power. And the solution is not to preserve second-strike capabilities, but to preserve prevailing power balances more broadly.

When it comes to new technology, this means that the United States should seek to maintain an innovation edge. Washington should also work with other states, including its nuclear-armed rivals, to develop a new set of arms control and nonproliferation agreements and export controls to deny these newer and potentially destabilizing technologies to potentially hostile states.

These are no easy tasks, but the consequences of Washington losing the race for technological superiority to its autocratic challengers just might mean nuclear Armageddon.

### CP States

#### Text: The fifty states and all relevant United States territories should mandate that standard-setting organizations (SSOs) are in violation of the state antitrust statutes if the SSO fails to adopt and enforce rules that are effective to prevent SEP owners from exploiting the ex post monopoly power created by the standard.

#### States have the right to enforce federal antitrust law and enact and enforce their own antitrust laws---those state-level laws are not inherently Congressionally preempted.

HLR 20 – Harvard Law Review

“Note: Antitrust Federalism, Preemption, and Judge-Made Law,” Harvard Law Review, Vol. 133, June 2020, LexisNexis

I. THE ANTITRUST FEDERALISM LANDSCAPE

Antitrust federalism, meaning the space carved out for the states in the more generally federal antitrust arena, can be thought of as made up of two "swords" -- the first the states' ability to bring suit under federal antitrust law and the second their ability to enact and enforce their own state antitrust laws -- and one "shield" -- immunity from federal antitrust law for state actions. The swords allow states to attack antitrust offenders, while the shield allows states to defend against federal antitrust action.

All three elements of antitrust federalism find their roots in congressional action or the courts' interpretation of congressional inaction. The power to enforce federal antitrust law as parens patriae for full treble damages -- the first sword -- was granted to the states by Congress in Hart-Scott-Rodino. On the judicial front, the Supreme Court acknowledged state immunity from federal antitrust actions -- the shield -- in Parker v. Brown, noting that the Sherman Act did not explicitly mention its application to state action. Finally, when the Court confirmed that states' ability to make their own antitrust laws -- the second sword and the one discussed in this Note -- was not preempted in California v. ARC America Corp., it considered the same Sherman Act silence.

### DA FTC Tradeoff

#### The plan forces tradeoffs in FTC enforcement efforts – they’re in a merger tsunami and barely staying afloat, but the plan drowns them

Rose ’19 - Department Head and Charles P. Kindleberger Professor of Applied Economics in the MIT Economics Department. She served as Deputy Assistant Attorney General for Economic Analysis in the Antitrust Division of the DOJ from 2014 to 2016, and was the director of the National Bureau of Economic Research Program in Industrial Organization from 1991 to 2014.

Nancy Rose, FTC Hearing #13: Merger Retrospectives, April 12, 2019, <https://www.ftc.gov/news-events/events-calendar/ftc-hearing-14-merger-retrospectives>

So I want to start with the last question that was on the set that Dan and Bruce circulated for this panel. Should the FTC devote more resources to retrospectives, even at the cost of current enforcement? And I was delighted to see Commissioner Slaughter be so passionate in her defense of the need for more resources. This goes to what I feel is the most significant, and yet still largely invisible message, in the ongoing debate over competition policy, which is that antitrust enforcement in the United States is chronically and substantially underfunded.

For years, the appropriation requests have been modest in their increases. Oversight hearings and interactions with the Hill have too often featured the mantra, “when business picks up, our talented and hardworking staff just do more with less.” I will say I think the career staff at both the FTC and the DOJ Antitrust Division are among the most dedicated, highly-skilled, and hardest-working professionals.

It was my great privilege to work with a number of them at DOJ, and I know that colleagues who have worked at the FTC feel the same way. They deserve our greatest appreciation and applause and not just from those of us who work in antitrust policy, but from the entire American public, on whose behalf they tirelessly work.

But there is a limit to the number of hours in a day and the number of days in a week and the well below market compensation for the lawyers and economists who work in the agencies, which is another significant problem, is insufficient to demand that staff give up all rights to leave their buildings, occasionally see their families, or catch up on sleep.

So I think it’s inevitable that if we’re asking agencies to reflect on the effectiveness of their decision-making through programs like retrospective programs, it is going to come out of someplace else. And I fear that given the ongoing intensity of the merger wave, that’s going to come out of enforcement.

We are amid an ongoing sustained, what’s been called by some, tsunami of mergers. Each year there are thousands of mergers noticed to the agencies and thousands more below the HSR thresholds, that work by Thomas Wollmann at the University of Chicago suggests, skate through to consummation with practically no probability of review or action, the occasional consummated merger enforcement action notwithstanding.

The dollar volume of mergers is at historic levels and that suggests that there are a lot of mega mergers competing for enforcement resources. In addition, litigation costs continue to climb, both for challenging mergers or bringing Section actions, especially as parties with especially deep pockets escalate litigation defenses, correctly calculating that even adding some tens of millions of dollars in antitrust litigation costs would be just rounding error in their merger financing.

And, finally, I would say it’s inconceivable to me that there are not at least some counsel that are advising parties that a good time to bring marginal mergers forward is when the agencies are stretched thin by major investigations or multiple litigations.

#### Despite short resources, FTC is effectively regulating hospital mergers – the plan halts that progress

Muris ’20 – Professor of Law at George Mason, former Chairman of FTC, Senior Counsel at Sidney Austin LLP, JD from UCLA,

Timothy Muris, “Response to Subcommittee on Antitrust, Commercial, and Administrative Law Committee on The Judiciary U. S. House of Representatives” April 17, 2020, <https://judiciary.house.gov/uploadedfiles/submission_from_tim_muris.pdf>

Finally, the Committee asks about agency resources and performance. The last section below briefly addresses the continual need for the antitrust agencies to address business practices as they evolve, as well as their own performance record. Such evaluation is necessary: ever a UCLA Bruin, I remain devoted to legendary coach John Wooden‘s maxim that “when you are through learning, you are through.” The section thus offers multiple examples of successful and bipartisan FTC efforts to improve enforcement to the benefit of consumers. In the key healthcare sector, American consumers continue to benefit from the FTC’s hard work. After losing seven consecutive hospital merger challenges before I arrived, upon my direction the FTC worked to devise a new enforcement plan by incorporating fresh economic thinking and issuing retrospective case studies showing that several hospital mergers had indeed harmed consumers. This plan resulted in a successful challenge to a consummated hospital merger that served as a template for future enforcement, leading to Obama administration victories in three separate courts of appeal endorsing the FTC’s approach. Such success did not require abandonment of the consumer welfare standard, nor a dramatic increase in agency resources. Indeed, as discussed below, my predecessor as FTC chairman, Bob Pitofsky, did much more for American consumers using the consumer welfare standard with just 1,000 staff than did the agency in the 1970s when it had far greater resources (1,800 staff by the turn of the decade), but was motivated by an antitrust policy that was, instead, at war with itself.

#### Long term per-person healthcare costs will collapse the economy from a bubble burst or terminal budget overstretch – no alt causes – restoring competition in hospital markets is key to reduce costs

Evan Horowitz, Fivethirtyeight, January 11, 2018, The GOP Plan To Overhaul Entitlements Misses The Real Problem, <https://fivethirtyeight.com/features/to-cut-the-debt-the-gop-should-focus-on-health-care-costs/>

There is no wide-reaching entitlement funding crisis, no deep-rooted connection between runaway debts and the broad suite of pension and social welfare programs that usually get called entitlements. The problem is linked to entitlements, but it’s much narrower: If the U.S. budget collapses after hemorrhaging too much red ink, the main culprit will be rising health care costs.

Aside from health care, entitlement spending actually looks relatively manageable. Social Security will get a little more expensive over the next 30 years; welfare and anti-poverty programs will get a little cheaper. But costs for programs like Medicare and Medicaid are expected to climb from the merely unaffordable to truly catastrophic.

Part of that has to do with our aging population, but age isn’t the biggest issue. In a hypothetical world where the population of seniors citizens didn’t increase, entitlement-related health spending would still soar to unprecedented heights — thanks to the relentlessly accelerating cost of medical treatments for people of all ages.1

What’s needed, then, is something far more focused than entitlement reform: an aggressive effort to slow the growth of per-person health care costs. Or — if that’s not possible — some way to ensure that the economy grows at least as fast as the cost of health care does.

Diagnosing the debt: It’s not about demographics

America’s long-term budget problem is very real. Already, the federal government has a pile of publicly held debts amounting to around $15 trillion, or about 75 percent of the country’s entire gross domestic product. That’s the highest level since the 1940s, yet the debt burden is expected to double by 2047 and reach 150 percent of the GDP, according to the Congressional Budget Office.2

It makes sense to list entitlement spending among the culprits for the growing national debt, given that these programs have grown from costing less than 10 percent of the GDP in 2000 to a projected 18 percent in 2047. Part of this is simple demographics: As America ages, more of us become eligible for Social Security and Medicare, thus driving up expenses.3

But there’s a crack in this demographic explanation: It only makes sense for the next 10 to 15 years. That’s the period of rapid transition when graying baby boomers will boost the population of seniors from around 50 million to more than 70 million. A change like that should indeed produce a surge in entitlement spending as those millions submit their enrollment forms.

By 2030, however, this wave will start to ebb, leaving the elderly share of the population at a roughly stable 20 to 21 percent all the way through 2060, based on the size of the population following the boomers and slower-moving forces like lengthening lifespans.

But think what this should mean for entitlement spending. As the population of seniors levels out in those later years, costs should naturally stabilize — at least, if demographics were really the driving factor.

This is exactly what you see for Social Security. The CBO expects total Social Security spending to leap up over the next decade but then settle at just over 6 percent of the GDP, at which point it will cease to be a major contributor to rising entitlement spending or growing debts. Social Security is thus a minor player in our long-term budget drama; if you cut the program to the bone, shrinking future payouts so that they won’t add a penny to the deficit, the federal debt would still reach 111 percent of the GDP in 2047.4

Likewise, cuts to welfare and poverty-related entitlements like food stamps and unemployment insurance are unlikely to improve the debt forecast. In fact, spending on these entitlements has been dropping since the high-need years around the Great Recession and is expected to shrink further in the decades ahead — partly because payouts aren’t adjusted to keep up with economic growth, and partly because the birth rate has been falling and several programs are geared to families with children.5

But the scale of the problem is totally different when you turn to health care. Spending on entitlement-related health programs — including Medicare, Medicaid and subsidies required by the Affordable Care Act — will never shrink or stabilize, according to projections. The CBO predicts these costs will grow over 65 percent between now and 2047 — and then go right on growing after that, heedless of the fact that the percentage of the population that’s over 65 should no longer be increasing.

Why is health care eating the budget? Per-person costs

Demographics aren’t responsible for the projected explosion in health care costs. More important than the growing number of elderly Americans is the growing cost per patient — the rising expense of treating each individual

The CBO found that the lion’s share — 60 percent — of the projected increase in health spending comes from costs that would continue to increase even if our population weren’t getting older.

The reasons for this are many, including the rising cost of prescription drugs and the fact that hospital mergers have reduced competition. But since 2000, per capita health costs in the U.S. have, on average, grown faster than the GDP. And while these costs rose more slowly after the Great Recession and the implementation of the Affordable Care Act, analysis from the Centers for Medicare and Medicaid Services suggests this slower growth rate won’t last.

Which is bad news for these programs, because if the problem were demographic, it’d be easier to solve. By mixing the kind of program cuts Republicans generally support with targeted tax increases favored by some Democrats, you could meet the short-term challenge posed by retiring baby boomers and raise enough money to cover the larger — but stabilizing — population of eligible seniors. But with ever-rising costs, there is no stable future to prepare for. To keep these programs funded, you’d need a wholly different approach — indeed a whole new perspective on mounting federal debt and the role of entitlements.

The future is a race between rising health care costs and economic growth, a race that the economy is losing. Each time health costs outpace the GDP, it creates what the CBO calls “excess cost growth,” which feeds the federal debt. If the government could close this gap, the long-term budget outlook would be a lot rosier.

There are two ways to solve this issue: Either contain health care costs — say through price regulation or more competitive markets — or boost economic growth enough to pay for this expensive health care. Success on either front would make health care spending look more manageable over future decades and lighten the debt load.

Entitlement reform needs health care reform to work

Few of the proposals that commonly fall under the heading of entitlement reform target the health care cost problem, which limits their ability to reduce the long-term debt.

Even when they do address health care, often the result is to shift — rather than solve — the problem. Say lawmakers decide to dramatically cut Medicare. That would indeed ease the government’s debt problem. But the underlying dynamic — the race between health costs and the GDP — wouldn’t really change. Seniors would still need health care, and per-person costs would likely still grow (maybe even faster, since Medicare is a relatively efficient program).

On top of all this, there’s also a deep-seated political barrier: It’s no good if one party picks its favored solution only to watch the other party dismantle it when they next take over. You need political consensus to make changes stick, and America is notably short on consensus right now.

In the end, though, it won’t do to just throw up our hands. Absent some workable solution, spending on health care will sink the federal budget, generating levels of debt that would hold back the economy and potentially spark a global crisis of confidence in the United States’ ability to borrow.

#### Healthcare driven budgetary overstretch causes global instability

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(Stuart S., “Global Power: Key Issues,” in *The Future of US Global Power: Delusions of Decline*, Palgrave, p. 57-58)

In the first instance, structural26 budget deficits are more likely to be symptoms of incipient overstretch then prima facie evidence of national decline. Overstretch suggests a need to realign commitments and resources, hence spending and revenues. In principle, persistently large deficits demand adjustments that need not materially impact the underlying drivers of longer-term prosperity. In contrast, if fiscal imbalances prove sufficiently chronic, they can eventually trigger growth-inhibiting alterations in microeconomic incentives. In such cases, incipient overstretch can mutate into a more primary threat to the system's underlying dynamism.

In its classical formulation, “imperial overstretch” refers to unrestrained and exorbitant foreign military campaigns. The latter can be said to redound to the detriment of great powers by crowding out more productive capital investments. Yet in contrast to widespread impression, the US fiscal challenge does not primarily reflect out-of-control defense spending and the burden of foreign entanglements. If this were the case, then the feasibility of financing an ever-expanding global power projection would be brought into question. This neither minimizes the sizable resources the US commits to military-related spending nor denies that cutbacks in such spending can help facilitate overall fiscal adjustment. Rather, the point is that an endemic failure to rein in explosive economy-wide health care costs with the latter's implications for public sector health insurance programs – the real fiscal challenge – will do more to endanger macroeconomic stability and eventually erode the material foundation of US power (see chapter 8).

By viewing (health-care driven) fiscal deficits as a necessary manifestation of overstretch is misguided for a more basic reason. The root of the US fiscal problem involves unsustainable commitments – particularly in the area of health expenditure – made by government to its citizens. It is decidedly not a question of any dearth of national resources to adequately meet the health needs of the population at large. As the richest country in the world, the US possesses more than enough resources to achieve this goal. The relevant political and social question is whether the population’s basic health requirements are best met via ever-expanding entitlements requiring increasingly higher levels of taxation.

### Harmonization

#### Antitrust law fails – judges provide undue deference to patents.

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Mark A. Lemley, “Ten Things to do About Patent Holdup of Standards (and One Not to),” Boston College Law Review, Vol. 48, 2007, https://www.bc.edu/content/dam/files/schools/law/bclawreview/pdf/48\_1/06\_lemley.pdf

C. Antitrust Law Can’t Solve the Holdup Problem

Note what is not on this list: antitrust law. I have made ten more or less radical proposals for doing something about patent holdup, and not one of them mentions antitrust, except to say antitrust law should get out of the way of SSOs. That’s not an accident. I think antitrust law serves a valuable purpose, but where the holdup problem is concerned, it is a backstop. In this particular circumstance, it’s a backstop that’s going to apply only if private efforts in SSOs and IP law have already failed us.

Even then, it is not clear that antitrust law is up to the task of policing patent holdup.88 Courts may be reluctant to second-guess what they see as the judgment of patent law to give certain rights to patent owners.89 Certainly, some courts have shown undue deference to patents even in circumstances that more clearly violate the antitrust laws.90 Further, proving an antitrust violation requires detailed evidence of both causation and intent, something that may be difficult even when, as a policy matter, a patentee should not be permitted to extend its rights.91 We have yet to see a successful contested prosecution of standard-setting abuse.92 Antitrust law can play a role here in extreme cases, such as in In re Rambus, Inc.93 But if we design the patent law and the SSO rules correctly, those cases should not arise.

#### Patent holdup is not a problem – every empiric goes neg.

Ginsburg et al. 15 – Judge on the U.S. Court of Appeals for the District of Columbia, Professor of Law at George Mason University School of Law, and Chairman of the International Advisory Committee of the Global Antitrust Institute

Douglas H. Ginsburg, Koren W. Wong-Ervin, Joshua D. Wright, “The Troubling Use of Antitrust to Regulate FRAND Licensing,” CPI Antitrust Chronicle, October 2015, https://www.law.gmu.edu/assets/files/publications/working\_papers/LS1537.pdf

It is important to distinguish the hypotheses generated in the theoretical literature on patent holdup from such empirical evidence as would substantiate those hypotheses. The existing empirical evidence is not consistent with the view that holdup is a prevalent or systemic problem and is causing harm to consumers.6 [FOOTNOTE 6 STARTS] See, e.g., J. Gregory Sidak, The Antitrust Division’s Devaluation of Standard-Essential Patents, 104 GEO. L.J. ONLINE 48, 61 (2015) (collecting studies at n.49) (“By early 2015, more than two dozen economists and lawyers had disapproved or disputed the numerous assumptions and predictions of the patent-holdup and royalty-stacking conjectures.”), available at https://www.criterioneconomics.com/docs/antitrust-divisions-devaluation-of-standardessential-patents.pdf; ANNE LAYNE-FARRAR, PATENT HOLDUP AND ROYALTY STACKING THEORY AND EVIDENCE: WHERE DO WE STAND AFTER 15 YEARS OF HISTORY? (Dec. 2014), available at http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/COMP/WD%282014%2984&docla nguage=en (surveying the economic literature and concluding that the empirical studies conducted thus far have not shown holdup is a common problem). [FOOTNOTE 6 ENDS] The evidence required to support the new antitrust rules requires that there be a probability, not a mere possibility, of higher prices, reduced output, and lower rates of innovation.

In fact, as mentioned above, evidence from the smartphone market is to the contrary: Output has grown exponentially, while market concentration has fallen, and wireless service prices have dropped relative to the overall consumer price index (“CPI”).7 More generally, prices in SEP-reliant industries in the United States have declined faster than prices in non-SEP intensive industries.8 A recent study by the Boston Consulting Group found that globally the cost per megabyte of data declined 99 percent from 2005 to 2013 (reflecting both innovation making data transmission cheaper as well as the healthy state of competition); the cost per megabyte fell 95 percent in the transition from 2G to 3G, and 67 percent in the transition from 3G to 4G; and the global average selling price for smartphones decreased 23% from 2007 through 2014, while prices for the lowest-end phones fell 63 percent over the same period.9 All of this indicates a thriving mobile market as opposed to a market in need of fixing.

Economic analysis provides the basis upon which to understand the apparent disconnect between holdup theory and the available evidence. As economic theory would predict, patent holders and those seeking to license and implement patented technologies write their contracts so as to minimize the probability of holdup.

#### Growth is unsustainable AND innovation can’t solve

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As the previous chapters have shown, economic growth is regarded as a prime policy aim by policy makers and economists because it is thought to be essential for reducing poverty and generating rising living standards and stable levels of employment (Ben-Ami 2010: 19–20). More generally, support for economic growth is usually intertwined with advocating social progress based on scientific rationality and reason and hence with an optimistic view of humans’ ingenuity to solve problems (ibid.: 17, 20, Chap. 5). Growth criticism thus tends to be portrayed as anti-progress and inherently conservative (ibid.: Chap. 8). While it is important to acknowledge and discuss this view, it needs to be emphasised that growth criticism is formulated with long-term human welfare in mind which advocates alternative types of social progress (Barry 1998). This chapter first outlines ecological and social strands of growth critiques and then introduces relevant concepts of and positions within the postgrowth debate. Ecological Critiques of G rowth Generally speaking, two types of growth criticism can be distinguished: the first focuses on limitations of GDP as a measure of economic performance; the second goes beyond this by highlighting the inappropriateness of growth as the ultimate goal of economic activity and its negative implications for environment and society. Since GDP measures the monetary value of all final goods and services in an economy, it excludes the environmental costs generated by production. For instance, as long as there is no cost associated with emitting greenhouse gases , the cost for the environmental and social damage following from this is not reflected in GDP figures. Worse even, GDP increases as a consequence of some types of environmental damage: if deforestation and timber trade increase or if natural disasters or industrial accidents require expenditures for clean-up and reconstruction, GDP figures will rise (Douthwaite 1999: 18; Leipert 1986). Several critics of GDP as a measure of progress have proposed alternative indicators of welfare such as the Genuine Progress Indicator, Green GDPs or other approaches which factor in environmental costs (see Chap. 5 for more details), but they do not necessarily object to economic growth being the primary goal of economic activity (van den Bergh 2011). In contrast, the idea of ecological limits to growth goes beyond the critique of GDP as a measure of economic performance. Instead, it maintains that economic growth should not, and probably cannot, be the main goal of economic activity because it requires increasing resource inputs, some of which are non-renewable, and generates wastes, including greenhouse gases, that disturb various ecosystems, severely threatening human and planetary functioning in the short and long term. 4 CRITIQUES OF GROWTH 41 Resources are regarded as non-renewable if they cannot be naturally replaced at the rate of consumption (Daly and Farley 2011: 75–76). Examples include fossil fuels, earth minerals and metals, and some nuclear materials like uranium (Daly and Farley 2011: 77; Meadows et al. 2004: 87–107). Based on work by Georgescu-Roegen (1971), many ecological economists also assume that non-renewable resources cannot be fully recycled because they become degraded in the process of economic activity. Historically speaking, economic growth is a fairly recent phenomenon (Fig. 2.1). Since its onset in the late seventeenth century in Europe and mid-eighteenth century in the US (Gordon 2012), it has gone hand in hand with an exponentially increasing use of non-renewable resources such as fossil fuels (Fig. 4.1). While we are not yet close to running out of non-renewable resources, over time they will become more difficult and hence more expensive to recover. This idea is captured by the concept of “energy returned on energy invested” (EROEI). In relation to oil for instance, it has been shown that the easily recoverable fields have been targeted first and that therefore greater energy (and hence financial) inputs will be required to produce more oil. Over time, the ratio of energy returned on energy invested will decrease, reducing the financial incentive to invest further in the recovery of these non-renewable resources (Dale et al. 2011; Brandt et al. 2015: 2). Relevant to this is also the debate about peak oil—a concept coined by Shell Oil geologist Marion King Hubbert in the 1950s—the point at which the rate of global conventional oil production reaches its maximum which is expected to take place roughly once half of global oil reserves have been produced. There is still controversy about whether global peak oil will occur, and if so when, as it is difficult to predict, or get reliable data on, the rate at which alternative types of energy will replace oil (if this was to happen fast enough, peak oil might not be reached, if it has not yet occurred), the size of remaining oil reserves and the future efficiency of oil extraction technologies (Chapman 2014). However, it is plausible to assume that oil prices will rise in the long term if conventional oil availability diminishes, while global demand for oil increases with continuing economic and population growth. Since economic growth in the second half of the twentieth century required increasing inputs of conventional oil, higher oil prices would have a negative impact on growth unless alternative technologies are developed that can generate equivalent liquid fuels at lower prices (Murphy and Hall 2011). Some scholars have criticised the focus on physical/energy resource limitations as initially highlighted in the “limits to growth” debate (Meadows et al. 1972) and state that instead catastrophic climate change is likely to be a more serious and immanent threat to humanity (Schwartzman 2012). The main arguments here are first that much uncertainty remains about the potential and timing of peak oil, future availability of other fossil fuels and development of alternative low energy resources, while the impacts of climate change are already immanent and may accelerate within the very near future. Second, even if peaks in fossil fuel production occurred in the near future, remaining resources could still be exploited to their maximum. However, this would be devastating from a climate change perspective as, according to the latest IPCC scenarios, greenhouse gas emissions need to turn net-zero by the second half of this century for there to be a good chance to limit global warming to 2° Celsius (and ideally, below that) (Anderson and Peters 2016). It is telling that some of the more recent debates about ecological limits to growth put much more emphasis on environmental impacts of growth, rather than on peak oil or other resource limitations (Dietz and O’Neill 2013). Differently put, limits of sinks, especially to absorb greenhouse gases, and to the regeneration of vital ecosystems are now attracting greater concern, compared to limits of resources. Growing economic production generates increasing pressures on the environment due to pollution of air, water and soil, the destruction of natural habitats and landscapes, for instance, through deforestation and the extraction of natural resources. Therefore, growth often also threatens the regeneration of renewable resources such as healthy soil, freshwater and forests, as well as the functioning of vital ecosystems and ecosystems services such as the purification of air and water, water absorption and storage and the related mitigation of droughts and floods, decomposition and detoxification and absorption of wastes, pollination and pest control (Meadows et al. 2004: 83–84). Recent research on planetary boundaries has started to identify thresholds of environmental pollution or disturbance of a range of ecosystems services beyond which the functioning of human life on earth will be put at risk.

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Rockström and colleagues have identified nine such “planetary boundaries”—“climate change; rate of biodiversity loss (terrestrial and marine); interference with the nitrogen and phosphorus cycles; stratospheric ozone depletion; ocean acidification; global freshwater use; change in land use; chemical pollution; and atmospheric aerosol loading” (Rockström et al. 2009: 472). They also present evidence according to which three of these boundaries—climate change, rate of biodiversity loss and the nitrogen cycle—have already reached their limits (Rockström et al. 2009). Of those three thresholds, climate change has received most attention. The 5th Assessment Report of the Intergovernmental Panel on Climate Change (IPCC 2014) concluded that global temperatures have risen by an average of 0.85° since the 1880s (while local temperature increases can be much higher than that) and that the concentration of greenhouse gases in the atmosphere has reached unprecedented levels over the last 800,000 years—that of CO2 has now reached 405.6 parts per million (NASA, January 2017, Fig. 4.2), far surpassing the level of 350 ppm which is considered safe by many scientists (Rockström et al. 2009). The IPCC report also maintained that humans very likely contributed to at least 50% of global warming that occurred since the 1950s (IPCC 2014: 5). A range of climate change impacts can already be observed, including a 26% increase of ocean acidification since industrialisation; shrinking of glaciers, Greenland and Antarctic ice sheets, as well as arctic sea ice; and the rise of sea levels of 19 cm since 1901. This is projected to increase by an additional 82 cm by the end of this century at current levels of greenhouse gas emissions (ibid.: 13). Climate change impacts are already felt with increased occurrences of heat waves, heavy rain fall, increased risk of flooding and impacts on food and water security in a number of regions around the world. It is projected that with a rise of 2° of global temperatures, 280 million people worldwide (with greatest numbers in China, India and Bangladesh) would be affected by sea level rise, escalating to a projected 627 million people under a 4° scenario (Strauss et al. 2015: 10). At the 21st Conference of Parties of the United Nations Framework Convention on Climate Change in Paris in 2015, representatives agreed that action should be taken to limit rise of global temperatures to 2° and Fig. 4.2 Concentration of CO2 in the atmosphere. Source NASA, available from https://climate.nasa.gov/vital-signs/carbon-dioxide/. The CO2 levels have been reconstructed from measures of trapped air in polar cap ice cores 4 CRITIQUES OF GROWTH 45 to “pursue efforts” to limit it to 1.5°. This has been adopted by 196 countries, but immense efforts and very radical reductions of greenhouse gas emissions will be required to comply with the agreement. Even if net greenhouse gas emissions were reduced to zero, surface temperatures would remain constant at their increased levels for hundreds of years to come and climate change impacts such as ocean acidification and rising sea levels would continue for hundreds or even thousands of years once global temperatures are stabilised; moreover, a range of climate change impacts are deemed irreversible (IPCC 2014: 16). One controversial question in the debate about economic growth and environmental impacts has been whether growth can be decoupled from the damage it causes. Important to this debate is the theory of the Environmental Kuznets Curve which applies Simon Kuznets’ hypothesised inverted u-shaped relationship between economic development and income inequality to the relationship between economic development and environmental degradation. According to this theory, environmental degradation is low in the early phases of economic development, then rises with increasing development up to a certain point, beyond which it falls again with advancing development because more resources can be invested to render production and consumption more efficient and less polluting. Therefore, this theory suggests that it is possible to decouple economic growth (measured in GDP) from its environmental implications. The counter-argument to this theory is that it does not take into account the difference between relative and absolute decoupling. Relative decoupling refers to the environmental impacts generated over time per unit of economic output, for instance CO2 emissions per million of US$. In contrast, absolute decoupling would examine aggregate environmental impact, compared to total economic output over time. Here it has been argued that while relative decoupling may be possible as the environmental impact per unit of economic output decreases over time due to efficiency gains, absolute decoupling is much harder to achieve while growth continues. Indeed, there is no evidence for absolute decoupling as total environmental impacts, for instance total global CO2 emissions, are still rising with rising global GDP (Jackson 2011: 67–86). This is partly due to rebound effects which we discussed in Chap. 2: rising consumption because the increase in efficiency has made it cheaper to produce/consume (Jackson 2011: 67–86; see also Czech 2013: Chap. 8 criticising “green growth”). Furthermore, if decoupling is examined at the country level, one would need to take consumptionbased resource use/emissions into account rather than productionbased impacts. Substantial environmental impacts related to everything that is consumed in rich countries occur in developing countries from which goods are imported. A focus on production-based environmental impacts would hence be misleading as it ignores the [and] environmental impacts that relate to a country’s living standards and that occur outside of that country. Social Critiques of Growth Economic growth has not only been criticised from an ecological perspective, but also from an individual and social wellbeing point of view. Here, we can again distinguish a critique of GDP as a measure of wellbeing and a wider critique which highlights potential negative consequences of economic growth for human wellbeing. Several scholars have argued that GDP is an inadequate measure of prosperity or wellbeing because it only includes market transactions and ignores activities of the informal economy in households and the volunteering sector which make an important contribution to individual and social wellbeing (Stiglitz et al. 2011; van den Bergh 2009; Jackson 2011). It also excludes the contribution of certain government services that are provided for free (Douthwaite 1999: 14; Stiglitz et al. 2011: 23), and the roles of capital stocks and of leisure in generating welfare (Costanza et al. 2015: 137). Furthermore, all market transactions make a positive contribution to GDP, regardless of whether expenditures increase or decrease welfare. Similar to the way in which environmental costs of growth are either excluded from GDP or even increase it, expenditures that arise from road accidents, divorces, crime, etc., contribute positively to GDP (ibid.: 133). The focus on market transactions also means that an increasing marketisation (or “commodification”) of an economy will be reflected in a rise of GDP, which may or may not be related to actual “welfare” outcomes (Stiglitz et al. 2011: 49). It also implies that GDP is an insufficient cross-national comparator for the quality of life, as it does not take into account the different sizes of the informal economy across countries (ibid.: 15). Furthermore, GDP does not indicate how income and consumption are distributed in society (Stiglitz et al. 2011: 44). This implies that a rise of GDP can be consistent with a rise of inequality of income and wealth. 4 CRITIQUES OF GROWTH 47 However, if greater inequality has negative impacts on social wellbeing (Wilkinson and Pickett 2009), this would be masked by rising GDP figures (Douthwaite 1999: 17). An even more fundamental criticism of GDP as a measure of wellbeing is that it focuses on the accumulation of money or wealth and thus on the material aspects of wellbeing. Such a narrow conception of the goals of economic activity and wellbeing has been criticised early on in the history of economic thought, e.g. by Aristotle’s distinction between oikonomia and chrematistics. The latter refers to the accumulation of wealth and was regarded by him as an “unnatural” activity which did not contribute to the generation of use value and wellbeing (Cruz et al. 2009: 2021). The argument that wider conceptions of wellbeing and prosperity are required has also become relevant for contemporary critiques of economic growth (Jackson 2011; Paech 2013; Schneider et al. 2010) as we will discuss this in more detail in Chap. 5. Arguments About the Psychological and S ocial Costs of G rowth The broader social critique of economic growth highlights potential “social limits” to or even negative consequences of economic growth for individual and collective wellbeing. The term “social limits to growth” was coined by Fred Hirsch (1976). He argued that the benefits of growth are initially exclusive to small elites and that these benefits disappear as soon as they spread more widely through mass consumption. For instance, only few people can own a Rembrandt painting; holiday destinations are more enjoyable when they are not overrun by hordes of other tourists; there are only few leadership positions, etc. From this perspective, there are “social limits” to the extent to which the benefits of growth can be socially expanded and equally shared. Other scholars have expressed concern about individual and collective social costs of economic growth. First, there is the argument that the need to keep up with ever-rising living standards and new consumer habits, “keeping up with the Joneses”—a lot of which is seen to be driven by advertisement and social pressure rather than real needs, for instance fashionable clothing or gadgets—can generate stress and increase the occurrence of mental disorders (James 2007; Offer 2006; Kasser 2002). 48 M. BÜCHS AND M. KOCH Second, it has been argued that economic growth can imply wider social costs. For instance, with its emphasis on individual gain, market relations and competition, and the need that it generates for spatial mobility (e.g. for successful participation in education and labour markets), it is feared to undermine moral and social capital and put a strain on family and community relations, potentially even leading to increasing divorce and crime rates (Douthwaite 1999; Daly and Cobb 1989: 50–51; Hirsch 1976). Social costs of technological development and industrialisation also include industrial workplace and traffic accidents and time lost in traffic jams and for commuting (Czech 2013: Chap. 2; Stiglitz et al. 2011: 24). Technological innovation which arises from growth can also act as a factor for job losses and increasing job insecurity (Douthwaite 1999), especially if growth rates are not sufficiently high to compensate gains in productivity. It is often assumed that growth will benefit the many because of assumed “trickle-down” effects which promise to improve the lot of the poor simply because the “cake” of available wealth is growing. While progress has been made in reducing extreme global poverty and inequality (Sala-i-Martin 2006; Rougoor and van Marrewijk 2015), the number of people living in poverty across the globe remains high.1 At the same time, income inequality in a range of countries has been rising and the situation of many of the people living in extreme poverty is not improving which means the fruits of economic growth remain to be unequally distributed (Collier 2007; Piketty and Saez 2014). The post-development debate goes even further than that in arguing that not only may growth not have reached the global poor to the extent that had been predicted by neoclassical economists, but that it can also have negative impacts on indigenous communities in developing countries, especially those who rely on local natural resources for their livelihoods which often suffer exploitation, pollution or even destruction through the inclusion of local economies into global value chains (Rahnema and Bawtree 1997). While the distinction between critiques of growth that focus on its problematic ecological and social consequences is useful for analytic purposes, the two dimensions are of course closely linked. Ecological consequences of growth have the potential to severely impact or even undermine human wellbeing. Local livelihoods are already affected by current climate change impacts such as ocean acidification and its impact on marine organisms, draughts, floods and severe weather events, the 4 CRITIQUES OF GROWTH 49 frequency of which has been rising. Accordingly, it is estimated that crop and fish yields are already diminishing in several regions (Stern 2015; IPCC 2014) and that millions of people are already being displaced and forced to migrate due to climate change and other environmental impacts (Black et al. 2011). While the overall long-term impacts of climate change and the surpassing of other planetary boundaries are difficult to predict, they clearly have the potential to substantially undermine human wellbeing. Since greenhouse gas emissions are driven by economic growth, the development of alternative economic models that do not depend on growth is urgent since continued growth “threatens to alter the ability of the Earth to support life” (Daly and Farley 2011: 12).

#### No impact to liberal order

G. John Ikenberry 18, professor of Politics and International Affairs in the Woodrow Wilson School of Public and International Affairs at Princeton University, “Why the Liberal World Order Will Survive”, Carnegie Ethics and International Affairs, <https://scholar.princeton.edu/sites/default/files/gji3/files/why_the_liberal_world_order_will_survive.pdf>

In this essay I look at the evolving encounters between rising states and the post-war Western international order. My starting point is the classic “power transition” perspective. Power transition theories see a tight link between international order—its emergence, stability, and decline—and the rise and fall of great powers. It is a perspective that sees history as a sequence of cycles in which powerful or hegemonic states rise up and build order and dominate the global system until their power declines, leading to a new cycle of crisis and order building. In contrast, I offer a more evolutionary perspective, emphasizing the lineages and continuities in modern international order. More specifically, I argue that although America’s hegemonic position may be declining, the liberal international characteristics of order—openness, rules, multilateral cooperation—are deeply rooted and likely to persist. This is true even though the orientation and actions of the Trump administration have raised serious questions about the U.S. commitment to liberal internationalism. Just as importantly, rising states (led by China) are not engaged in a frontal attack on the American-led order. While struggles do exist over orientations, agendas, and leadership, the non-Western developing countries remain tied to the architecture and principles of a liberal-oriented global order. And even as China seeks in various ways to build rival regional institutions, there are stubborn limits on what it can do. Power Transitions and International Order There is wide agreement that the world is witnessing a long-term global power transition. Wealth and power is diffusing, spreading outward and away from Europe and the United States. The rapid growth that marked the non-Western rising states in the last decade may have ended, and even China’s rapid economic ascendency has slowed. But the overall pattern of change remains: the “rest” are gaining ground on the “West.” While there is wide agreement that the world is witnessing a global power transition, there is less agreement on the consequences of power shifts for international order. The classic view is advanced by realist scholars, such as E. H. Carr, Robert Gilpin, Paul Kennedy, and William Wohlforth, who make sweeping arguments about power and order. These hegemonic realists argue that international order is a by-product of the concentration of power. Order is created by a powerful state, and when that state declines and power diffuses, international order weakens or breaks apart. Out of these dynamic circumstances, a rising state emerges as the new dominant state, and it seeks to reorganize the international system to suit its own purposes. In this view, world politics from ancient times to the modern era can be seen as a series of repeated cycles of rise and decline. War, protectionism, depression, political upheaval—various sorts of crises and disruptions may push the cycle forward. This narrative of hegemonic rise and decline draws on the European and, more broadly, Western experience. Since the early modern era, Europe has been organized and reorganized by a succession of leading states and would-be hegemons: the Spanish Hapsburgs, France of Louis XIV and Napoleon, and post-Bismarck Germany. The logic of hegemonic order comes even more clearly into view with Pax Britannica, the nineteenth-century hegemonic order based on British naval and mercantile dominance. The decline of Britain was followed by decades of war and economic instability, which ended only with the rise of Pax Americana. For hegemonic realists, the debate today is about where the world is along this cyclical pathway of rise and decline. Has the United States finally lost the ability or willingness to underwrite and lead the post-war order? Are we in the midst of a hegemonic crisis and the breakdown of the old order? And are rising states, led by China, beginning to step forward in efforts to establish their own hegemonic dominance of their regions and the world? These are the lurking questions of the power transition perspective. But does this vision of power transition truly illuminate the struggles going on today over international order? Some might argue no—that the United States is still in a position, despite its travails, to provide hegemonic leadership. Here one would note that there is a durable infrastructure (or what Susan Strange has called “structural power”) that undergirds the existing American-led order. Far-flung security alliances, market relations, liberal democratic solidarity, deeply rooted geopolitical alignments—there are many possible sources of American hegemonic power that remain intact. But there may be even deeper sources of continuity in the existing system. This would be true if the existence of a liberal-oriented international order does not in fact require hegemonic domination. It might be that the power transition theory is wrong: the stability and persistence of the existing post-war international order does not depend on the concentration of American power. In fact, international order is not simply an artifact of concentrations of power. The rules and institutions that make up international order have a more complex and contingent relationship

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with the rise and fall of state power. This is true in two respects. First, international order itself is complex: multilayered, multifaceted, and not simply a political formation imposed by the leading state. International order is not “one thing” that states either join or resist. It is an aggregation of various sorts of ordering rules and institutions. There are the deep rules and norms of sovereignty. There are governing institutions, starting with the United Nations. There is a sprawling array of international institutions, regimes, treaties, agreements, protocols, and so forth. These governing arrangements cut across diverse realms, including security and arms control, the world economy, the environment and global commons, human rights, and political relations. Some of these domains of governance may have rules and institutions that narrowly reflect the interests of the hegemonic state, but most reflect negotiated outcomes based on a much broader set of interests. As rising states continue to rise, they do not simply confront an American-led order; they face a wider conglomeration of ordering rules, institutions, and arrangements; many of which they have long embraced. By separating “American hegemony” from “the existing international order,” we can see a more complex set of relationships. The United States does not embody the international order; it has a relationship with it, as do rising states. The United States embraces many of the core global rules and institutions, such as the United Nations, International Monetary Fund (IMF), World Bank, and World Trade Organization. But it also has resisted ratification of the Law of the Sea Convention and the Convention on the Rights of the Child (it being the only country not to have ratified the latter) as well as various arms control and disarmament agreements. China also embraces many of the same global rules and institutions, and resists ratification of others. Generally speaking, the more fundamental or core the norms and institutions are—beginning with the Westphalian norms of sovereignty and the United Nations system—the more agreement there is between the United States and China as well as other states. Disagreements are most salient where human rights and political principles are in play, such as in the Responsibility to Protect. Second, there is also diversity in what rising states “want” from the international order. The struggles over international order take many different forms. In some instances, what rising states want is more influence and control of territory and geopolitical space beyond their borders. One can see this in China’s efforts to expand its maritime and political influence in the South China Sea and other neighboring areas. This is an age-old type of struggle captured in realist accounts of security competition and geopolitical rivalry. Another type of struggle is over the norms and values that are enshrined in global governance rules and institutions. These may be about how open and rule-based the system should be. They may also be about the way human rights and political principles are defined and brought to bear in relations among states. Finally, the struggles over international order may be focused on the distribution of authority. That is, rising states may seek a greater role in the governance of existing institutions. This is a struggle over the position of states within the global political hierarchy: voting shares, leadership rights, and authority relations. These observations cut against the realist hegemonic perspective and cyclical theories of power transition. Rising states do not confront a single, coherent, hegemonic order. The international order offers a buffet of options and choices. They can embrace some rules and institutions and not others. Moreover, stepping back, the international orders that rising states have faced in different historical eras have not all been the same order. The British-led order that Germany faced at the turn of the twentieth century is different from the international order that China faces today. The contemporary international order is much more complex and wide-ranging than past orders. It has a much denser array of rules, institutions, and governance realms. There are also both regional and global domains of governance. This makes it hard to imagine an epic moment when the international order goes into crisis and rising states step forward—either China alone or rising states as a bloc—to reorganize and reshape its rules and institutions. Rather than a cyclical dynamic of rise and decline, change in the existing American-led order might best be captured by terms such as continuity, evolution, adaptation, and negotiation. The struggles over international order today are growing, but it is not a drama best told in terms of the rise and decline of American hegemony.

### Telecommunications

#### Green tech doesn’t solve

Giorgos **Kallis 18**. ICREA professor at ICTA, Autonomous University of Barcelona. 09/2018. “The Case for Degrowth.” Degrowth, Agenda Publishing.

The implausibility of green growth Difficult is not the same as impossible. Green growth refers to the aspiration to both grow GDP and reduce carbon emissions, material flows, biodiversity loss or ecological footprint. “Absolute decoupling” between environmental pressures and GDP should be distinguished from “relative decoupling”, where environmental pressures grow but at a slower pace than GDP. Until now, economic growth and environmental impact/resource use have been tightly coupled, with at best some relative decoupling, especially for carbon emissions, which have grown more slowly than GDP (Бigure 4.9). That absolute decoupling has not been observed in the past does not mean that it cannot happen in the future. One may speculate that sustained reductions in resource intensity will turn relative decoupling into absolute decoupling. But as John O’Neill (2017) puts it, whereas “it is logically possible to have increasing GDP and a decreasing physical and energy throughput in an economy ... it is a fallacy to move from claims about what is logically possible to claims about what is physically possible and another from what is physically possible to what is empirically actual”. The logical possibility of absolute decoupling is built into the very convention of GDP as a monetary metric detached from any physical limit (Mitchell 2011). The question is whether absolute decoupling is physically possible. If we follow the theory of the economy and growth built in this book, green growth seems implausible (especially for resources and energy in general, compared with, say, a single resource or source of energy, which can be substituted by another, temporarily solving one problem by creating another). Physical work is an important fountain of growth. This is why energy use is associated with GDP. In theory, one could substitute diminishing inputs of energy with increasing inputs of human labour. However, there are physical limitations to such substitutions (try flying an aeroplane without kerosene); additionally, human population cannot grow to the numbers required to substitute fossil fuels (remember that a barrel of oil contains the equivalent of 10,000-25,000 hours o f human work (Latouche 2009)). A second possibility is substitution: of fossil fuels with renewables, say, (>r of resource-intensive goods with resource-efficient ones. This is often what is referred to as “technological change”: the development of solar panels or wind turbines. Remember, though, that physical technologies are manufactured products that use labour, energy and materials too. The transformation of the grid in order to accommodate renewable energy, the research, development and installation of huge batteries to store intermittent renewable power, or the construction of solar and wind farms might plausibly burn substantial quantities of fossil fuels. And a massive energy transition will divert considerable amounts of labour, resources and investments from other sectors, possibly dampening growth (van den Bergh 2017). Furthermore, in a scenario of continuous (green) growth, the resources or land used by the substitutes will also grow. Infinite growth powered by wind energy,

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for example, would require infinite land devoted to wind farms, which is physically and logically impossible. During an initial phase, substitution from more resource-intensive products to less resource intensive ones may reduce overall resource use, but once the substitution is complete any further growth will mean a growth in resource use. For non-substitutable resources such as land, water, raw materials and energy, efficiency gains may be possible, but there are minimum requirements for these resources that are ultimately governed by physical realities. In the very long term, i.e. once all substitution possibilities are exhausted and efficiency limits reached, more absolute decoupling will be impossible (Ward et al. 2016). Physical technologies should be distinguished from social technologies: that is, improvements in organization that increase the amount of product that can be extracted from a given amount of resources and human effort. Here, there is some room for improving the efficiency with which resources are used. But it is implausible to expect growth to be sustained forever just by organizing and reorganizing and squeezing more and more out of a diminishing amount of resources (and without spending more human effort on such reorganizing).

## 2NC

#### Extinction

Yangyang Xu 17, Assistant Professor of Atmospheric Sciences at Texas A&M University; and Veerabhadran Ramanathan, Distinguished Professor of Atmospheric and Climate Sciences at the Scripps Institution of Oceanography, University of California, San Diego, 9/26/17, “Well below 2 °C: Mitigation strategies for avoiding dangerous to catastrophic climate changes,” Proceedings of the National Academy of Sciences of the United States of America, Vol. 114, No. 39, p. 10315-10323

We are proposing the following extension to the DAI risk categorization: warming greater than 1.5 °C as “dangerous”; warming greater than 3 °C as “catastrophic?”; and warming in excess of 5 °C as “unknown??,” with the understanding that changes of this magnitude, not experienced in the last 20+ million years, pose existential threats to a majority of the population. The question mark denotes the subjective nature of our deduction and the fact that catastrophe can strike at even lower warming levels. The justifications for the proposed extension to risk categorization are given below.

From the IPCC burning embers diagram and from the language of the Paris Agreement, we infer that the DAI begins at warming greater than 1.5 °C. Our criteria for extending the risk category beyond DAI include the potential risks of climate change to the physical climate system, the ecosystem, human health, and species extinction. Let us first consider the category of catastrophic (3 to 5 °C warming). The first major concern is the issue of tipping points. Several studies (48, 49) have concluded that 3 to 5 °C global warming is likely to be the threshold for tipping points such as the collapse of the western Antarctic ice sheet, shutdown of deep water circulation in the North Atlantic, dieback of Amazon rainforests as well as boreal forests, and collapse of the West African monsoon, among others. While natural scientists refer to these as abrupt and irreversible climate changes, economists refer to them as catastrophic events (49).

Warming of such magnitudes also has catastrophic human health effects. Many recent studies (50, 51) have focused on the direct influence of extreme events such as heat waves on public health by evaluating exposure to heat stress and hyperthermia. It has been estimated that the likelihood of extreme events (defined as 3-sigma events), including heat waves, has increased 10-fold in the recent decades (52). Human beings are extremely sensitive to heat stress. For example, the 2013 European heat wave led to about 70,000 premature mortalities (53). The major finding of a recent study (51) is that, currently, about 13.6% of land area with a population of 30.6% is exposed to deadly heat. The authors of that study defined deadly heat as exceeding a threshold of temperature as well as humidity. The thresholds were determined from numerous heat wave events and data for mortalities attributed to heat waves. According to this study, a 2 °C warming would double the land area subject to deadly heat and expose 48% of the population. A 4 °C warming by 2100 would subject 47% of the land area and almost 74% of the world population to deadly heat, which could pose existential risks to humans and mammals alike unless massive adaptation measures are implemented, such as providing air conditioning to the entire population or a massive relocation of most of the population to safer climates.

Climate risks can vary markedly depending on the socioeconomic status and culture of the population, and so we must take up the question of “dangerous to whom?” (54). Our discussion in this study is focused more on people and not on the ecosystem, and even with this limited scope, there are multitudes of categories of people. We will focus on the poorest 3 billion people living mostly in tropical rural areas, who are still relying on 18th-century technologies for meeting basic needs such as cooking and heating. Their contribution to CO2 pollution is roughly 5% compared with the 50% contribution by the wealthiest 1 billion (55). This bottom 3 billion population comprises mostly subsistent farmers, whose livelihood will be severely impacted, if not destroyed, with a one- to five-year megadrought, heat waves, or heavy floods; for those among the bottom 3 billion of the world’s population who are living in coastal areas, a 1- to 2-m rise in sea level (likely with a warming in excess of 3 °C) poses existential threat if they do not relocate or migrate. It has been estimated that several hundred million people would be subject to famine with warming in excess of 4 °C (54). However, there has essentially been no discussion on warming beyond 5 °C.

Climate change-induced species extinction is one major concern with warming of such large magnitudes (>5 °C). The current rate of loss of species is ∼1,000-fold the historical rate, due largely to habitat destruction. At this rate, about 25% of species are in danger of extinction in the coming decades (56). Global warming of 6 °C or more (accompanied by increase in ocean acidity due to increased CO2) can act as a major force multiplier and expose as much as 90% of species to the dangers of extinction (57).

The bodily harms combined with climate change-forced species destruction, biodiversity loss, and threats to water and food security, as summarized recently (58), motivated us to categorize warming beyond 5 °C as unknown??, implying the possibility of existential threats. Fig. 2 displays these three risk categorizations (vertical dashed lines).

#### Independently neoliberalism also ruins democratic legitimacy by consolidating power into the hands of the most wealthy – that allows strognmen leaders like trump to obtain power which weakens democracy broadly

**Kuttner 19** – Co-founder and co-editor of The American Prospect, and professor at Brandeis University’s Heller School

Robert Kuttner, “Neoliberalism: Political Success, Economic Failure,” The American Prospect, 6/25/19, https://prospect.org/economy/neoliberalism-political-success-economic-failure/

Yet when growth faltered in the 1970s, libertarian economic theory got another turn at bat. This revival proved extremely convenient for the conservatives who came to power in the 1980s. The neoliberal counterrevolution, in theory and policy, has reversed or undermined nearly every aspect of managed capitalism—from progressive taxation, welfare transfers, and antitrust, to the empowerment of workers and the regulation of banks and other major industries.

Neoliberalism's premise is that free markets can regulate themselves; that government is inherently incompetent, captive to special interests, and an intrusion on the efficiency of the market; that in distributive terms, market outcomes are basically deserved; and that redistribution creates perverse incentives by punishing the economy's winners and rewarding its losers. So government should get out of the market's way.

By the 1990s, even moderate liberals had been converted to the belief that social objectives can be achieved by harnessing the power of markets. Intermittent periods of governance by Democratic presidents slowed but did not reverse the slide to neoliberal policy and doctrine. The corporate wing of the Democratic Party approved.

Now, after nearly half a century, the verdict is in. Virtually every one of these policies has failed, even on their own terms. Enterprise has been richly rewarded, taxes have been cut, and regulation reduced or privatized. The economy is vastly more unequal, yet economic growth is slower and more chaotic than during the era of managed capitalism. Deregulation has produced not salutary competition, but market concentration. Economic power has resulted in feedback loops of political power, in which elites make rules that bolster further concentration.

The culprit isn't just “markets”—some impersonal force that somehow got loose again. This is a story of power using theory. The mixed economy was undone by economic elites, who revised rules for their own benefit. They invested heavily in friendly theorists to bless this shift as sound and necessary economics, and friendly politicians to put those theories into practice.

Recent years have seen two spectacular cases of market mispricing with devastating consequences: the near-depression of 2008 and irreversible climate change. The economic collapse of 2008 was the result of the deregulation of finance. It cost the real U.S. economy upwards of $15 trillion (and vastly more globally), depending on how you count, far more than any conceivable efficiency gain that might be credited to financial innovation. Free-market theory presumes that innovation is necessarily benign. But much of the financial engineering of the deregulatory era was self-serving, opaque, and corrupt—the opposite of an efficient and transparent market.

The existential threat of global climate change reflects the incompetence of markets to accurately price carbon and the escalating costs of pollution. The British economist Nicholas Stern has aptly termed the worsening climate catastrophe history's greatest case of market failure. Here again, this is not just the result of failed theory. The entrenched political power of extractive industries and their political allies influences the rules and the market price of carbon. This is less an invisible hand than a thumb on the scale. The premise of efficient markets provides useful cover.

The grand neoliberal experiment of the past 40 years has demonstrated that markets in fact do not regulate themselves. Managed markets turn out to be more equitable and more efficient. Yet the theory and practical influence of neoliberalism marches splendidly on, because it is so useful to society’s most powerful people—as a scholarly veneer to what would otherwise be a raw power grab. The British political economist Colin Crouch captured this anomaly in a book nicely titled The Strange Non-Death of Neoliberalism. Why did neoliberalism not die? As Crouch observed, neoliberalism failed both as theory and as policy, but succeeded superbly as power politics for economic elites.

The neoliberal ascendance has had another calamitous cost—to democratic legitimacy. As government ceased to buffer market forces, daily life has become more of a struggle for ordinary people. The elements of a decent middle-class life are elusive—reliable jobs and careers, adequate pensions, secure medical care, affordable housing, and college that doesn't require a lifetime of debt. Meanwhile, life has become ever sweeter for economic elites, whose income and wealth have pulled away and whose loyalty to place, neighbor, and nation has become more contingent and less reliable.

Large numbers of people, in turn, have given up on the promise of affirmative government, and on democracy itself. After the Berlin Wall came down in 1989, ours was widely billed as an era when triumphant liberal capitalism would march hand in hand with liberal democracy. But in a few brief decades, the ostensibly secure regime of liberal democracy has collapsed in nation after nation, with echoes of the 1930s.

As the great political historian Karl Polanyi warned, when markets overwhelm society, ordinary people often turn to tyrants. In regimes that border on neofascist, klepto-capitalists get along just fine with dictators, undermining the neoliberal premise of capitalism and democracy as complements. Several authoritarian thugs, playing on tribal nationalism as the antidote to capitalist cosmopolitanism, are surprisingly popular.

#### Which causes global wars

Diamond ’19 [Larry; 2019; Professor of Sociology and Political Science and at Stanford University, Ph.D. in Sociology from Stanford University; Ill Winds, “Conclusion: A New Birth of Freedom,” Ch. 14]

In such a near future, my fellow experts would no longer talk of “democratic erosion.” We would be spiraling downward into a time of democratic despair, recalling Daniel Patrick Moynihan’s grim observation from the 1970s that liberal democracy “is where the world was, not where it is going.” 5

The world pulled out of that downward spiral—but it took new, more purposeful American leadership. The planet was not so lucky in the 1930s, when the global implosion of democracy led to a catastrophic world war, between a rising axis of emboldened dictatorships and a shaken and economically depressed collection of self-doubting democracies.

These are the stakes. Expanding democracy—with its liberal norms and constitutional commitments—is a crucial foundation for world peace and security. Knock that away, and our most basic hopes and assumptions will be imperiled.

The problem is not just that the ground is slipping. It is that we are perched on a global precipice. That ledge has been gradually giving way for a decade. If the erosion continues, we may well reach a tipping point where democracy goes bankrupt suddenly—plunging the world into depths of oppression and aggression that we have not seen since the end of World War II. As a political scientist, I know that our theories and tools are not nearly good enough to tell us just how close we are getting to that point—until it happens.

#### Our interpretation enhances the understanding of antitrust – Antitrust reform requires a philosophy of how to guide it which means debating about that philosophy is a core part of this topic

**Khan 18** – Chairwoman of the Federal Trade Commission and associate professor of law at Columbia Law

Lina Khan, “The Ideological Roots of America's Market Power Problem,” The Yale Law Journal Forum, 6/4/18, https://heinonline.org/HOL/Page?collection=journals&handle=hein.journals/yljfor127&id=962&men\_tab=srchresults

As public recognition of this problem grows, increased attention is focusing on antitrust law. Politicians, advocacy groups, academics, and journalists have all questioned whether the failure of antitrust is to blame for declining competition, and whether the law must be reformed in order to tackle the monopoly problems of the twenty-first-century. For example, members of the House of Representative recently created an Antitrust Caucus, a forum for Congress to study and address monopoly issues. Democrats, meanwhile, last year identified renewed antitrust as a key pillar of their economic agenda, promising to "revisit our antitrust laws to ensure that the economic freedom of all Americans - consumers, workers, and small businesses - come before big corporations that are getting even bigger."' The interest is bipartisan: a Republican Attorney General, for example, is leading an antitrust investigation into Google, explaining, "We need to have a conversation in Missouri, and as a country, about the concentration of economic power." In recent months, The American Prospect, The Nation, and The New York Times Magazine have all devoted stories to America's monopoly problem." No longer the exclusive purview of a small group of lawyers and economists, antitrust is going mainstream.

The Yale Law journal's recent series on the future of antitrust, "Unlocking Antitrust Enforcement," offers potential solutions to our market power problem. Generally, the authors seek to map out paths for stronger enforcement under current law. They do so by identifying (1) areas where cases could fix past judicial errors;12 (2) areas where enforcers have not brought cases that they could;" and (3) areas requiring enforcers to recognize traditional harms in new settings.14

The commentary offered by many of these Features is timely and valuable. What is missing from these pieces, however, is any discussion of what philosophy should guide antitrust law and its enforcement. Some of the authors explicitly ratify the current "consumer welfare" approach, which holds that out- put maximization is the proper goal of antitrust." Others do not address the topic directly, but nonetheless offer recommendations embedded in the current frame.16 And for others, perhaps, this question falls beyond the scope of the project: because the goal is to identify opportunities for more enforcement under the current regime, debating the guiding framework of the law is to them merely academic.

But neglecting this question is misguided. The sweeping market power problem we confront today is a result of the current antitrust framework. The enfeebled state of antitrust enforcement traces directly to an intellectual movement that fundamentally rewrote antitrust law - redefining its purpose, its orientation, and the values that underlie it. Addressing the full scope of the market power problem requires grappling with the fact that the core of antitrust has been warped. To be sure, many of the ideas the Features authors introduce are worth pursuing. But they pick at the symptoms of an ideology rather than the ideology itself.

Engaging the issue, by contrast, will go to the heart of why the current regime is crippled, enabling us to tackle the underlying theories and assumptions that have defanged antitrust. It will help ensure that calls for reinvigorated enforcement are not misdirected or exploited, and help ensure that doctrine develops to promote - and not undercut- the proper values of antitrust. Doing so is also likely to reveal or illuminate additional areas of unused authority, underused doctrine, or contestable areas of both.

Moreover, politicians and public figures are debating the framework head-on: a Senate hearing last December asked whether "consumer welfare" is the right standard," while a cable TV host in January said our current approach to antitrust undermines key freedoms." Strikingly, critiques of the current philosophy have come from The American Conservative and The Nation alike." Ignoring the broader conversation risks reinforcing the latent sense that antitrust experts are blind to the society-wide impacts of their profession and dismissive - or even unwelcoming - of the public's interest.20

This Response explains why addressing America's market power problem requires recognizing its ideological roots. Part I describes the Chicago School's interventions in antitrust. Part II explains how this ideological intervention bears on enforcement. Part III considers how the recommendations offered in the Col- lection are useful but will likely prove inadequate to address the scope of the problem, and Part IV offers some concluding thoughts.

#### The preservation of the core tenants of “competition policy” means that every time economic crisis happen we embark on surface level changes to the economy that fail millions – this reinforces neoliberalism while making pivots to other economic systems impossible – wholescale rejection is key

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ALFREDO SAAD-FILHO, “CRISIS IN NEOLIBERALISM OR CRISIS OF NEOLIBERALISM?,” Socialist Register, 1/25/19, https://brill.com/view/book/9789004393202/BP000018.xml

NOT MOVING FORWARD

The financial collapse delivered a stunning blow to the neoliberal consensus, as was aptly illustrated by Alan Greenspan’s confession of ‘shocked disbelief’.25 The Economist was nothing less than apocalyptic:

[E]conomic liberty is under attack and capitalism ... is at bay ... but those who believe in it must fight for it ... In the short term defending capitalism means, paradoxically, state intervention. There is a justifiable sense of outrage ... that $2.5 trillion of taxpayers’ money now has to be spent on a highly rewarded industry. But the global bailout is pragmatic, not ideological ... If confidence and credit continue to dry up, a near-certain recession will become a depression, a calamity for everybody.26

For a few weeks in 2008 global capitalism seemed to bleed uncontrollably, as losses reportedly climbed towards US$ 40 trillion or, alternatively, 45 per cent of the world’s wealth.27 Several states nationalized key financial institutions, guaranteed deposits and financial investments, cut interest rates and implemented expansionary fiscal policies and so-called ‘quantitative easing’ to support finance, aggregate demand and employment. It is impossible to calculate the cost of these initiatives. They included central bank purchases of temporarily worthless financial assets, which may gain value as the global economy stabilises, ‘Keynesian’ initiatives to protect employment, which partly pay for themselves through additional tax revenues and reduced social security transfers, and a significant amount of borrowing to fund regular spending, which became necessary because of the crisis-driven decline in taxation. These measures were unsurprising: they reflect, on the one hand, the post-Great Depression consensus that aggressive expansionary policies can avert a deflationary spiral, and, on the other, the neoliberal claim that financial sector stability is paramount.

Heavy state spending and the socialization of losses and risks stemmed the haemorrhage of bank capital and postponed the collapse of some large manufacturing conglomerates, especially the old US automakers. However, they did not revive bank credit, and their huge costs have triggered severe fiscal problems especially in the US, UK, peripheral European economies and fragile Gulf states. As Joseph Stiglitz put it,

[T]he very actions that saved the economies of the world have presented a new problem for fiscal policy, as questions are being raised about governments’ ability to finance their deficits. There are speculative attacks against the weakest countries, which find themselves caught between a rock and a hard place ... The financial markets that caused the crisis – which in turn caused the deficits – went silent as money was being spent on the bailout; but now they are telling governments they have to cut public spending. Wages are to be cut, even if bank bonuses are to be kept.28

Despite their tactical proficiency, instantly coming up with trillions of dollars to support the banks and shore up the global economy, the neoliberal bourgeoisies and their paid economists have demonstrated a staggering lack of strategic imagination. Even the most promising recovery scenarios offers only slow growth, a decade of austerity and a wave of unemployment which may last for an entire generation. The emerging consensus is that the system of accumulation can be fixed with a little financial regulation, marginal exchange rate adjustments, a rebalancing between exports and domestic demand in Germany and East Asia, and austerity for wages and public consumption in the UK and eventually in the US. These cosmetic changes are unlikely to rebalance the global economy or make much of a contribution to managing the ongoing restructuring of accumulation. Their simplicity is symptomatic of the mainstream’s superficial understanding of the crisis; they point to a slow and very bumpy recovery, with the emergence of deep financial, fiscal, exchange rate and unemployment crises in one country after another, and over a long period of time.

Most recovery plans bypass the need for an alternative mechanism of social integration, fail to recognise that the manipulation of personal debt will be insufficient to stabilise demand and employment, and ignore the fact that the contraction of credit, wages and pensions and the need for fiscal retrenchment will compromise long term demand growth. Although state spending has plugged the gap during the crisis, this is unsustainable without significant changes in taxation and the distribution of income, but these are not currently on the cards.29 Recovery plans also presume that contractionary fiscal policies are essential to protect state credit ratings in the short-run and avoid inflation in the long-run, and envision that, after the return of ‘normal’ conditions, the manipulation of interest rates should become once again the most prominent macroeconomic policy tool. That is, the neoliberal camp essentially expects the global system of accumulation to get back to its pre-crisis state (plus or minus some marginal tinkering) after a prolonged and rather costly period of instability.30

Even more alarmingly, although many proposals to address the crisis and prevent a repeat have been aired, three years after the onset of the crisis and two years after the collapse of Lehman Brothers very little of substance has actually happened. The ideas on the table or being discussed in the world’s legislatures include a devaluation of the dollar to help rebalance the US economy, a coordinated set of higher inflation targets to erode public debts while preventing explosive capital movements to low inflation countries,31 the taxation of bank assets and financial transactions, a review of supervisory agency responsibilities, the prohibition of certain types of short-selling, regulatory changes requiring the financial institutions to prepare ‘living wills’ and/or buy insurance against possible failure, and rules to increase capital requirements countercyclically, constrain leveraging and speculation, ban proprietary trading, restrict the hedge funds and cap bonuses. Other suggestions include stricter regulation of the credit rating agencies, increased transparency in derivatives trading (for example, through the creation of centralized exchanges), and stronger consumer protection against predatory lending.32

However, no significant macroeconomic adjustments have taken place yet, and the financial institutions have been lobbying ferociously against any attempt to curb their operations. They argue that the US and UK should not deliberately maim a large industry in which they have a comparative advantage, and that taxation or regulation would lead to the mass exodus of banks, hedge funds and traders to Switzerland, Singapore or the Gulf.33 Their well-funded campaign is only part of the problem.

Macroeconomic adjustments have been hamstrung by a number of major economic challenges that remain in place. A first is the conflicting pressures on the dollar (it must fall to help correct the US current account deficit, but it tends to rise whenever there is uncertainty elsewhere, especially in the systemically important countries or the Eurozone); China’s parallel unwillingness to let its currency appreciate is a second. Structural contradictions within the Eurozone are a further difficulty: between surplus and deficit countries; between entrenched monetary conservatism and the need to deploy expansionary policies to address the crisis in the smaller countries; and – more fundamentally – between monetary unification and continuing fiscal fragmentation.

A fourth obstacle is the extraordinarily inflexible monetary policy apparatus that has remained in place to lock in low inflation.34 Its rigidities are compounded by significant monetary policy differences between the US, Japan, the UK and the Eurozone. For example, the first two do not have legally binding inflation targets to raise, the UK cannot act in isolation, and the ECB has been built to enforce low inflation, and its governance structure makes it difficult to change course.35 Complications of a different order would arise if inflation rose too fast in certain countries, because governments would be compelled to limit their fiscal stimuli and raise interest rates, potentially stalling the recovery.

Finally, another set of difficulties concerns reaching legislative agreement about how to tax the financial sector, set capital requirements, dismantle institutions that are too big to fail (and, therefore, that have in-built incentives to behave recklessly), and unscramble players’ incentives (bonuses are outrageously high in the good times, and absurd when the financial sector refuses to lend even though it is being propped up by the state). These difficulties are especially visible in the debates surrounding the financial market reform bill in the US Congress. In conclusion, the largest economic crisis since 1929 has demonstrated that transferring control of capital to finance fosters speculation and systemic instability and does not improve macroeconomic performance. Yet, the institutional imperatives of reproduction of neoliberalism make it difficult for governments to introduce a new economic policy framework.

#### Current conceptions of antitrust must be completely rejected – they rely on years of junk judicial decisions completely divorced from congressional intent

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Sandeep Vaheesan, “The Profound Nonsense of Consumer Welfare Antitrust,” The Antitrust Bulletin, 2019, https://journals.sagepub.com/doi/pdf/10.1177/0003603X19875036

Consumer welfare antitrust is built on three profound falsehoods. First, it is based on false history. Congress, in enacting the primary antitrust statutes, had broader aims than protecting “consumer welfare.” Second, it is based on a false conception of the market. The state constructs and structures the market through legal rules: The market is not a force of nature as the law and economics ideology underpinning antitrust presumes. Third, it is based on false economics. Extensive empirical research has shown, for example, that mergers do not promote consumer welfare and that predatory pricing is real. Despite this evidence, the federal antitrust agencies and courts continue to evaluate mergers and predatory pricing claims relying on simplistic toy models of the world.

These myths have freed corporations from antitrust rules and supercharged their power over the economy, politics, and society. First, antitrust enforcers and federal judges have rewritten legislative intent to focus exclusively on one manifestation of corporate power and downplay or outright ignore other aspects of it. Second, they have naturalized corporate prerogatives and omitted their foundation in law and policy. Third, they have developed and disseminated theories that depict the enhancement and exercise of corporate power as generally beneficial to consumers. Jointly, the three myths function as a potent punch for entrenching corporate privilege.

The present state of antitrust demands fundamental reconstruction. A project to strengthen antitrust rules based on empirical economics is worthwhile but wholly inadequate. It would not address the other foundational nonsense on which contemporary antitrust is based. A coherent antitrust requires deeper change and will be built on law and realism, not myths. Going forward, antitrust should be true to congressional intent, acknowledge the legal and political construction of the market, and informed by real-world evidence. Current-day antitrust is built on a bed of nonsense—false history, false concepts, and false economics—that have been useful to powerful corporate interests and deeply damaging for everyone else.

#### Roads are a much larger internal link to warming and they do nothing about it – only an alternative based in massive regulations of emissions can even has a chance to solve

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Taylor Martin, September 28 2021, “Building Roads is Worse for the Environment Than Building Electric Cars,” Motor Biscuit, https://www.motorbiscuit.com/building-roads-worse-for-environment-than-building-electric-cars/

Let’s get some sciency stuff out of the way first: emissions are measures in tonnes of CO2 produced. Metric tonnes are about 204 lbs heavier than a ton (2000 lbs), and a single tonne of CO2 would look like a 27 ft by 27 ft cube of dense carbon. Considering we produce over 30 billion tonnes of CO2 a year, that’s a cube of carbon one and a half times larger than the Grand Canyon.

Producing cars is just one of the factors that add up to that massive number, and when it’s all said and done, the emissions from building a car don’t add up to much. It takes a lot of [energy to build a car](https://www.motorbiscuit.com/how-much-energy-to-build-a-car/), and that energy will produce more or fewer emissions depending on the kind of car being built.

A brief estimate from the Low Carbon Vehicle Partnership looked into the emissions lifecycle of cars. For a standard gasoline car, it’ll take about 5.6 tonnes of CO2 to build a single car. For electric cars, that number bumps up to 8.8 tonnes. This doesn’t include the emissions from the tailpipe, but in this article, we’re only focusing on manufacturing. And those numbers shy in comparison to the emissions released when building a road.

Mixing and manufacturing asphalt is cheap, but it’s also incredibly dirty. To build just one mile of one lane (hence referred to as one lane-mile), it takes 3,500 tons (or 3175 tonnes) of CO2 ([Sightline Institute](https://transdef.org/media/Sightline-GHG-analysis.pdf)). And that’s just one mile of road. [I-95, a highway I drive frequently](https://www.motorbiscuit.com/strangest-rv-park-motor-hotel-in-america/), is a two or three-lane highway spanning 1908 miles. Do some rough math, and that’s 12-18 million tonnes of CO2 to build that one highway.

#### The alt solves - Critique of domination is key to fundamental changes to the distribution of economic and political power – it deemphasizes the centrality of judicial review in favor of regulation and social movement advocacy

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K. Sabeel Rahman, “Domination, Democracy, and Constitutional Political Economy in the New Gilded Age: Towards a Fourth Wave of Legal Realism,” *Texas Law Review*, vol. 94, 2016, pp. 1353-1359, https://texaslawreview.org/wp-content/uploads/2016/09/Rahman.pdf.

IV. Constitutional Political Economy and Fourth-Wave Legal Realism

This admittedly brief recasting of legal realist and Progressive Era thought highlights some valuable starting points for developing an alternative conceptualization of political economy. While there is much more to be said about how exactly we might adapt and apply antidomination regulatory strategies like antitrust and public utility or expand democratic agency through urban, regulatory, or social-movement-driven governance, for our purposes what matters is this central conceptual framework animating these different approaches to reconstituting economic and political processes. In this framework, the problem of capitalism is understood as a problem of domination and economic power. The response to such power must entail attempts to expand the democratic capacities of citizens. This approach to political economy offers a substantive alternative to the laissez-faire political economy of the Roberts Court. It also importantly departs from conventional traditions of New Deal liberalism. While the New Deal, in many ways, gave voice and reality to Progressive Era aspirations for expanded government regulation of the economy and for creating economic opportunity through the forging of the modern social contract, it also represented a significantly thinner vision of political economy, placing too much emphasis on economic growth and technocratic management in place of more robust commitments to full economic equality, inclusion, and democracy. 95 The focus on domination and democracy suggests a more far-reaching vision of political economy.

What, then, is the relationship between constitutionalism and this antidomination, democratic-agency account of political economy? The Progressive Era thinkers, referenced above as catalysts for constructing this vision of political economy, were also notably hostile to courts and judges. 96 While we may temper somewhat our own views of the judiciary in comparison to theirs, we can take note of the theory of change suggested by Progressive Era reformers. Certainly there are important points of tangency between the kind of economic and political restructuring needed to redress problems of domination and expand democratic agency and major interpretive battles over the Constitution itself, from campaign finance to voting rights to class actions and questions of congressional power and federalism, not to mention the continued battles over equality, discrimination, and fundamental rights under the Fourteenth Amendment. But this account suggests a different mode of constitutionalism and social change - one where courts might still play a role, but a secondary and downstream one. At the level of ideas, it was the intellectual battle over laissez faire that was paramount; for the Progressives this meant unmasking the realities of power operating under the surface in the market economy and arguing for the value of popular sovereignty. At the same time, change also manifested through reforms that focused on the underlying structures of economy and politics - through attempts to shift the basic legislative, regulatory, and legal foundations of modern capitalism. The primary sites of contest are therefore in the realms of public philosophy, legislation, and regulatory governance.

Constitutionalism appears at two levels. First, it appears at the level of fundamental values. The critique of domination and the value of democratic agency help give further content to core moral values of equality, freedom, and democracy that animate so much of constitutional discourse. The second way in which this account of political economy is constitutional stems from its view of how power is distributed and can be reallocated: through radical changes to the basic structure of economic and political order. Thus, while many of the Progressive Era thinkers profiled above were deeply skeptical of judges and courts, they nevertheless offered a constitutional vision of political economy in this particular sense. Their constitutionalism was not the constitutionalism of text, interpretation, and doctrine. Rather, their account sought to make real fundamental public values of freedom, democracy, and equality; and it sought to do so through reforms that would literally reconstitute basic economic, political, and social structures to make these values real. From economic structural changes like antitrust and public utility regulation to radically different political structures like regulatory agencies and municipal Home Rule, the democratic political economy excavated above was thus deeply constitutional.

This is not the "big-C" constitutionalism of constitutional text, doctrine, or Supreme Court jurisprudence. It is rather what we might think of as the "small-c" constitutionalism of our basic economic and political structures: how we constitute the market economy through laws that define its basic forces and dynamics, and how we constitute the polity through regulations and processes that shape the allocation of political power. So on this understanding of constitutionalism, looking for a constitutional claim of right under the constitutional text is, in a sense, looking in the wrong place. Instead, constitutional political economy has its impact by informing diagnosis, critique, and reform through the vectors of legislation, regulation, and social movements. Thus, we might turn to the constitution of the market, looking to legislative and regulatory regimes like antitrust and public utility to curb private power. We might see the impact of constitutional political economy in efforts to rebalance the political power of new forms of worker association and grassroots social movements, and more democratically participatory vehicles for governance and policymaking through regulation and local government. We might also see shifting public discourse and norms through the contestation and mobilization of civil society and social movement actors.

There is an important reason why we might want to understand constitutionalism in this way - as values and as basic structure. Reconceptualizing constitutionalism and constitutional political economy in this vein helps pull the high politics of constitutionalism outside of its narrow province in the courts and in constitutional theory, deemphasizing the primacy of courts, doctrine, and text. It also helps to elevate legislation, regulation, public philosophy, and social movements as sites of law, politics, and contestation that implicate our most critical normative values and shape our most foundational economic and political structures. These are not merely domains of "ordinary politics" or technical public policy. Imbuing them with the stature of constitutionalism appropriately elevates the moral and structural concerns that are at stake in these domains.

Joseph Fishkin and William Forbath's forthcoming The Anti-Oligarchy Constitution and the Essays in this Symposium represent exactly this kind of effort to reimagine our fundamental constitutional values of democracy and equality in context of our New Gilded Age of economic and political inequality. Their account of constitutional political economy is most compelling in these two senses: as engaging the fundamental moral questions of what freedom, opportunity, and democracy mean in today's society, and as securing this moral vision through laws that alter the basic structure of our economy and politics. Such moral and structural change can be accomplished through a particular approach to law and social change, prioritizing the synergies between normative arguments, social movements, and legislative and regulatory changes to the basic structure. Nor are Fishkin and Forbath alone in this. In the aftermath of the financial crisis and in the face of the Roberts Court, this emerging wave of legal scholarship can open up a variety of avenues for deeper critique and reform. While some of these legal and policy arguments do involve battles in the Supreme Court, many of them take place more directly on the terrain of regulation, legislation, state-and local-level policy, and social movement advocacy.

Indeed, this wave of legal scholarship might be considered another heir to the legal realism of the early twentieth century. Like the legal realists of a century ago, there is a growing cascade of scholarship that takes as its focus the investigation of the deep underlying structures of our economy and political process, and is closely linked with questions of public policy and social change. In addition to this very Symposium, consider for example the rich new scholarship unpacking the legal and intellectual foundations of political economy and modern capitalism, 97 or the booming scholarship since the 2008-2009 financial crisis on how law constitutes the financial system, and how this system can be reconstituted to create a better balance between private power and public values. 98 We also are seeing new literature on political-process design in the context of regulatory agencies, in particular, along the front lines of participatory and democratic institutional design. 99 Many other areas of law might be cited as well. The point is that, like the legal realists reacting to the First Gilded Age, we see in legal scholarship today a wide array of scholars in diverse subfields employing different methodologies to critique, unpack, and deconstruct contemporary political economy - all with an eye towards deconstructing problematic forms of economic and political power - and recovering the ideas, policies, and reforms that might shift us in a more democratic and egalitarian direction.

In context of the broader moral challenges of political and economic inequality, these trends suggest what we might call a "fourth wave" of legal realism. Conventionally, the legal realist movement is understood to have two primary successors, each of which revolutionized legal scholarship: law and economics, and critical legal studies. Each of these movements in turn developed a key aspect of the original legal realist method, yet faced important limitations as they developed. The turn to empirical social science and expertise is modeled by the rise of law and economics, while the antiformalist critique has helped fuel the deconstructive project of critical legal studies. 100 Yet the law-and-economics revolution of the late twentieth century, with its focus on efficiency, welfare, and neoclassical economic models, has been rightly criticized as a revived formalism. 101 Similarly, the antiformalism of legal realism was more deeply developed by the critical legal studies (CLS) movement, 102 which unmasked the many ways in which law reproduced hierarchies of power and unfreedom. Yet CLS suffered from its own limitations: while it was effectively disruptive of both legal-process and law-and-economics accounts, as a whole it ultimately did not provide a constructive alternative vision for a more egalitarian and democratic political economy. As Roberto Unger himself argued, CLS "largely failed in its most important task: to turn legal thought into a source of insight into the established institutional and ideological structure of society and into a source of ideas about alternative social regimes." 103

In the last twenty-five years or so, there has been a third wave of legal realism, a hybrid combination of these two heirs into a more pragmatic focus on policy and institutional design. Legal realism in this wave manifested itself, in the leveraging of behavioral, empirical, and institutional analysis, to suggest changes to policy-making processes to make them more efficient and just. 104 This third wave of legal realism repurposed the critique of formalism as a way to open space for policy expertise - expertise which can be achieved by leveraging the insights of social science, including law and economics. 105 The critical project of revealing how law constructs inequalities along racial, gendered, or class lines is, therefore, now paired with an analytical focus on policy design, and on assessing comparative institutional competencies. 106 Similarly, the insights of law and economics, on this view, can be seen not as a hostile ideology against democratic or egalitarian values, but rather as a way to analyze micro-scale behaviors and macro-scale costs and benefits of different institutional systems. 107

But as the anxieties about neo-Lochnerism and the Supreme Court underscore, the challenges for law and public discourse in this New Gilded Age of economic and political inequality go beyond the scope of pragmatic policy design. We need to harness these institutional design insights towards the substantive ends of counteracting domination, rebalancing economic and political power, expanding opportunity, and reviving democratic agency. The techniques of contemporary legal scholarship, from behavioral analyses to contextually rich studies of law and society to comparative institutional analyses, offer tremendous potential. But absent a fuller engagement with the normative question of values, these approaches risk falling into an overly narrow or seemingly neutral policy science. 108 A fourth wave of legal realism could build on these traditions, linking the analysis of underlying ideas and structures to a substantive moral vision of democratic political economy.

The import of this kind of a project points to a final mode in which we might understand this focus on values and structures as "constitutional" - in the political aspiration to literally reconstitute American political economy today. The timing of Fishkin and Forbath's project - and of the remarkable confluence of scholarly interest in issues of inequality, power, structure, and democracy on display at the symposium - suggests as much. Arguably we find ourselves in a unique moment today, often referred to as a "Second Gilded Age," where the country faces a confluence of economic and political inequality. But I suspect that the reason why so many scholars are gravitating towards these questions of inequality, exclusion, oligarchy, and power is because many of us sense that this moment is also unique in its capacity to shift - perhaps radically - our broad understandings and structures of political economy. We are living in a moment of rupture. And so the stakes of this moment are not just in its negative dimensions, in the problems of inequality and disparities of power and opportunity we see all around us. The stakes are in the as-yet-unrealized potential for the emergence of new constitutional understandings and basic structures. We may be in a Second Gilded Age, but done right, the politics and potential of this moment could be a Third Reconstruction - or a new refounding.

The Populists, Progressives, and Labor Republicans of the late nineteenth century certainly understood themselves as participating in a battle to redefine the fundamental and literal constitution of the country (the 1892 People's Party platform, for example, styled itself deliberately as a Second Declaration of Independence). This ferment eventually produced the ideas that became the New Deal settlement a generation later. These projects of constitutional political economy appearing in a variety of forms and disciplines in legal scholarship today could help contribute, in some small way, to a similar constitutional shift - one that, if we are lucky and if done right, would not merely recreate the New Deal settlement, but instead reinvent it for a radically different social, economic, and political context.

#### Growth – Alt solves best – promoting an equitable distribution of power would reshape the way our economy works in ways that allow individuals to access benefits of wealth creation – while this could include antitrust action it would NOT be close to what the aff does

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Sandeep Vaheesan, “Privileging Consolidation and Proscribing Cooperation: The Perversity of Contemporary Antitrust Law,” UC Davis Journal of Law and Political Economy, 2020, https://escholarship.org/content/qt8cj0z1tq/qt8cj0z1tq.pdf

An antitrust policy that seeks to promote a more equitable distribution of power and wealth would have radically different foundations. Replacing the consumer welfare objective with the economic and political objectives that animated the Congresses that enacted the Sherman, Clayton, and Federal Trade Commission Acts is a critical step. Consumer welfare captures a relatively thin slice of corporate power. Equally important is rewriting the rules of antitrust to both curtail the consolidation and monopolization of business property and permit certain forms of coordination between independent actors.

Restrictions on mergers should be a core part of a progressive antitrust. Merger policy should be greatly strengthened for narrow consumer welfare grounds alone. Mergers and acquisitions fail to produce the promised efficiencies and often lead to higher prices and profit margins. But more importantly, mergers combine business assets and centralize power. Larger businesses, whether measured by market share or size, wield greater power over consumers, suppliers, workers, and citizens. A strong anti-consolidation norm should be a mainstay of progressive antitrust, as it was from 1950 through the early 1980s.20

An anti-merger norm would not be a categorical ban on business growth but would instead encourage growth through other means. The Clayton Act’s anti-merger provisions restrict corporate growth through mergers, not corporate growth in general (Peritz 1996). It channels growth strategy away from buying rivals, suppliers, and distributors toward investment in new facilities and technologies. An implicit presumption of an anti-merger statute is that corporations will grow through internal expansion. Philadelphia National Bank, 473 U.S. at 370. Even accepting the unsupported theory that corporate consolidation yields more efficient enterprises, a strong anti-merger rule is not a recipe for stunted firms and a loss of productive efficiencies. Indeed, it could be the basis for a far more productive and technologically dynamic corporate sector.21

Along with hostility toward corporate consolidation, antitrust law and policy should adopt a more nuanced view of collusion among independent actors. As a threshold matter, recognizing that antitrust law permits certain forms of coordinated activity, including mergers and acquisitions, is critical. As Sanjukta Paul has written, antitrust allows business firms to coordinate the activity of their employees, including across separate corporate entities under common ownership (Paul 2020). For instance, if antitrust law categorically promoted competition, it would prohibit two divisions of a single corporation or two members of a joint venture from setting prices—but the Supreme Court has clearly rejected such rules and treated these arrangements as the action of a single entity (Paul 2020). See Copperweld, 467 U.S. at 771; Dagher, 547 U.S. at 6. Instead it singles out price-setting among independent actors. The ban on collusion means small players are robbed of the one mechanism that allows them to govern markets while maintaining their independence (Paul 2020).

The tolerance of certain forms of collusion (or cooperation) is already built into the body of antitrust law. For instance, the courts have interpreted the Clayton Act, Norris-La Guardia Act, and National Labor Relations Act as permitting employees (though not other workers) to engage in some forms of coordinated activity. Apex Hosiery Co. v. Leader, 310 U.S. 469, 512 (1940). In agriculture, the Capper- Volstead Act, 7 U.S.C. § 291, allows “[p]ersons engaged in the production of agricultural products as farmers, planters, ranchmen, dairymen, nut or fruit growers” to undertake collective action as sellers without running afoul of antitrust law.

Instead of viewing these legislative exemptions as ad hoc “concessions” to certain groups, progressive antitrust advocates, enforcers, and scholars should treat them as a core part of an anti-monopoly program. Congress enacted the antitrust laws to constrain the power of monopolists and trusts, not to promote “competition”—even a socially destructive competition that further weakens the positions of workers and small firms—indiscriminately across the economy (Vaheesan 2019). Accordingly, a progressive antitrust should be built on constraining the autonomy of powerful corporations and protecting the freedom of workers, professionals, and small firms to join in solidarity. To put it in concrete terms, medium-sized and large corporations would face tight restrictions on acquiring rivals and controlling markets, whereas workers, professionals, and small firms would have the freedom to organize and engage in collective action against more powerful actors (Vaheesan and Schneider 2019).22 (Importantly, small-player coordination should not be carte blanche for all forms of cooperation: for example, small firms should not be permitted to collude against their workers and keep their wages down.)23 Such an antitrust regime would redistribute and democratize power downward (Paul and Vaheesan 2019) and even lay the groundwork for a radical transformation of corporations and the entire American economy (Schneider and Vaheesan 2019).

#### Best stats verify this read – our redistributive mode of politics would massively boost growth

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Andrew Berg, Jonathan D. Ostry, Charalambos G. Tsangarides, and Yorbol Yakhshilikov, “Redistribution, inequality, and growth: new evidence,” *Journal of Economic Growth*, vol. 23, no. 3, 2018, no page numbers, https://sci-hub.se/https://link.springer.com/article/10.1007/s10887-017-9150-2.

8 Conclusion

We have taken advantage of a new comprehensive data set to look at the relationships among inequality, redistribution, and growth; earlier work on the inequality–growth relationship has generally confounded the effects of redistribution and inequality. Our focus has been on the medium and long term: growth over 5-year periods and the duration of growth spells. Several important conclusions emerge.

First, inequality is a robust and powerful determinant both of the pace of medium-term growth and of the duration of growth spells, even controlling for the size of redistributive transfers: more equal societies grow faster and more sustainably than less equal ones. And second, there is surprisingly little evidence for the “leaky bucket” hypothesis, that is, for the growth-destroying effects of fiscal redistribution at a macroeconomic level; fiscal redistribution, unless it is extreme, may be a win-win policy via its equality-inducing effects. We do find some mixed evidence that very large-scale redistribution may have direct negative effects on growth duration. But for non-extreme redistributions, there is no evidence of any adverse direct effect. Third, we find evidence for many of the other mechanisms posited in the literature. Inequality is associated with lower investment in human and physical capital, higher fertility, and weaker political institutions. Considering in addition our estimates of the impacts of these variables on growth, inequality seems to lower growth mainly through its effects on education, life expectancy, and especially fertility.

For our analysis we have used the best—really the only—available comparable data on both variables that cover a large number of countries and time periods. We have subjected our results to a variety of alternative samples and even, for the much smaller OECD sample, to alternative data sources of the highest possible comparability and quality. And we have looked at alternative estimation methods, explicit consideration of the effects of measurement error in these variables and, for the panel growth regressions, weak-instrument robust confidence intervals. We have looked at two entirely different empirical approaches, in addition to simple graphs. Our main results—the significant negative effect of inequality and the general insignificance of redistribution—are remarkably robust.48

#### And only we have an internal link to the LIO – absent a strong administrative state China will destroy us in international competition

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Robert Atkinson, “The Case for Legislation to Out-Compete China,” Information Technology & Innovation Foundation, 3/29/21, https://itif.org/publications/2021/03/29/case-legislation-out-compete-china

It is time for U.S. policy analysts, pundits, and policymakers to take a fresh and unbiased look at the role of the state in industry and technology advancement. An unwillingness to do so will mean, at best, the incremental development of a weak, generic form of advanced industry policy that will almost surely fail in addressing the existential China technology challenge.

The United States must jettison the prevailing economic doctrine that disparages a more active role of government in promoting industrial competitiveness and technological innovation that reflects the complex and hence public-private character of modern technologies and the industrial supply chains that deliver them.

Casting off the shadows of long defunct (and also current) economists who conceive of innovation industries as the same as commodity-based “widget” industries, and who deny the very validity of the concept of national industrial competitiveness, is a necessary first step because it opens the debate to fresh, empirically-based, pragmatic analysis, rather than the ideological edicts related to industrial strategy that now pass for expert insight from economists.

But as important as that is, this new recognition needs to be translated into concrete policy action. There are many steps Congress and the Biden administration should take—steps the Information Technology and Information Foundation (ITIF) has detailed in numerous reports.3 Near the top of the list should be passing and funding the Endless Frontiers Act, including charging (and funding) the National Institute of Standards and Technology (NIST) with expanded functions; significantly expanding the research and development tax credit; and instituting within the federal government a role for sector-by-sector industrial strategy analysis. Regardless of what path Congress takes, the country needs big, bold, and sustained action if it is to maintain its technological and advanced industry leadership.

What Is Industrial Strategy?

Ever since the concept of a national industrial strategy was first proposed in the late 1970s, it has received scorn from virtually all neoclassical economists, who advocate it be treated as the economic equivalent of chiropractors (who are looked down upon by medical doctors). But the idea is getting a new life, largely because of the growing awareness of the economic, technology, and national security threats posed by China.

Policymakers on both sides of the aisle are rejecting the dead-end, intellectual straightjacket of conventional economics. The House Republican’s China Task Force Report calls for a national industrial strategy, including doubling federal funding for basic science, expanding industry-university-federal lab partnerships, expanding funding to help spur innovation in lagging regions, and doubling the research and experimentation tax credit.4 Democrats Chris Coons (DE), Chuck Schumer (NY), Krysten Sinema (AZ), and Mark Warner (VA) and Republicans John Cornyn (TX), Tom Cotton (AR), Marco Rubio (FL), and Todd Young (IN) have all sponsored or co-sponsored key competitiveness legislation. Similar bipartisan efforts have been introduced in the House. And President Biden’s Build Back Better plan includes funding for industrial strategy programs.5

But what exactly is an industrial strategy (or as it has also been termed, industrial policy)? As Robert Reich once quipped, industrial policy “is one of those rare ideas that has moved swiftly from obscurity to meaningless without any intervening period of coherence.”6 But this lack of coherence is because, just as in other areas of policy—energy, transportation, health, defense, and others—the ideal policy not only differs depending on who is advocating for it, but evolves over time. Industrial policy is no different. Critics know that if they can define industrial policy so broadly that it includes Brazil putting tariffs on imports as well as Defense Advanced Research Projects Agency (DARPA) funding GPS and the Internet, they make the term meaningless.

The definition of an advanced industry and technology strategy (AITS) is simple: It is a set of policies and programs explicitly designed to support specific targeted industries and technologies. As figure 1 shows, the R&D tax credit would not qualify as an industrial or technology policy tool because its focus is not on any particular industry or technology, but rather on R&D generally. It is, however, an overall innovation or competitiveness strategy tool. Likewise, the CHIPS (Creating Helpful Incentives to Produce Semiconductors) Act, which was designed to spur the domestic growth of the semiconductor industry, is a component of AITS because it targets a particular industry. But it is also a component of a broader competitiveness or innovation strategy. Expanding funding for the NSF-led National Robotics Initiative would be an AITS policy because it is specifically designed to support the development of a particular technology. In contrast, any program that expands STEM (science, technology, engineering, and math) education would not be an AITS tool, but would be an innovation or competitiveness strategy tool.

Figure 1: Conceptualization of industrial strategy tools

An AITS doesn’t mean reflexively supporting every industry and technology. To the contrary, it means picking particular ones to support. There are four main criteria for such support:

The industry or technology must be one that without proactive government policy support would underperform, either in general or because of foreign competition.

The United States has some potential for success in the industry or technology because of existing assets and strengths.

Success in the industry or technology must be important to achieving key national goals, such as national defense and security, energy security and climate, a better trade balance, or faster productivity growth.

The firms in the industry should want support and be willing to invest at least some of their own resources in the efforts.

## 1NR

### K

#### the alt solves warming without re-entrenching social inequality and reliance on the market – only critical analysis of carbon removal tech solves

Wakefield 18 – charity sector worker in the UK with an interest in climate change, geoengineering, and sustainable agriculture.

James Wakefield, “Avoiding Climate Imperialism: A Leftist Vision of Geoengineering,” *The Trouble*, 18 October 2018, <https://www.the-trouble.com/content/2018/10/18/avoiding-climate-imperialism-a-leftist-vision-of-geoengineering>

“Carbon dioxide removal” is the other wing of geoengineering, drawing down and sequestering carbon from the atmosphere rather than reflecting sunlight away. Its methods range from afforestation, biochar (storing carbon in the soil), iron fertilization and ambient air capture, aiming to address the source of the climate crisis: greenhouse gas emissions.

As deforestation is a significant source of greenhouse gas emissions (by some estimates the second largest source of carbon dioxide emissions after fossil fuels), the reforestation and afforestation of areas of Earth is an obvious method to reduce levels of carbon dioxide in the atmosphere. Described as the most efficient and environmentally benign method of geoengineering, it can have a “significant impact” on atmospheric carbon dioxide levels on a long-term basis.

“Carbon farming” is another geoengineering technique. This involves changing agricultural practices, including the use of biochar and agroforestry to enhance carbon sequestration. This coupled with reforestation can incidentally also help to reverse the desolation of the world’s soils and mitigate the declining carbon sequestration ability of existing forests, and help to contribute to what Murray Bookchin called radical agriculture.

Moving from land to the sea, the “fertilization” of phytoplankton blooms with iron nutrients is another method of carbon drawdown that avoids land-use conflicts, although scientific uncertainty persists. The sequestering of carbon as organic detritus that fall to the ocean floor can remove carbon from the carbon cycle for thousands of years, but as the plankton decay they can create oxygen-deprived dead zones. Some phytoplankton species can produce dimethyl sulfide, which on a large enough scale can enhance cloud cover and increase cloud albedo, but like other forms of solar radiation management would negatively affect precipitation and water resources in Europe and parts of Africa and the Middle East. Plantations of algae is another method of drawing down carbon dioxide while avoiding competition for agricultural land or freshwater, and will prove extremely effective when integrated with bioenergy.

Another method is to utilize what the Royal Society called “carbon capture and storage infrastructure”. This involves extracting carbon dioxide from the air and using the captured gases for agriculture or synthetic fossil fuels. This machine-driven carbon capture may be necessary if biological limits are reached, but it is easy to see how such approaches can be absorbed into existing capitalist practices -- in 2015 Bill Gates was the world’s top funder of geoengineering research.

All of these techniques are huge steps towards reducing atmospheric carbon dioxide levels. But the necessity of scaling them up to be effective will have negative effects. Based on current estimates, the land requirements for forest carbon sequestration could be immense, affecting food security by competing for fertile soils in the same way biofuels did earlier this century. The researchers behind the Atlas for the End of the World are more direct: there will not be enough land “to utilize forestry as the single mechanism for carbon sequestration.” As Holly Jean Buck writes, Carbon Dioxide Removal is complex and possibly perilous -- and it needs to be talked about.

All forms of geoengineering need to be reviewed and scrutinized, but some of these techniques will be more conducive to a leftist approach, whereas others are likely to entrench capitalist power structures. Whether geoengineering is a leftist project or a capitalist project depends on the extent to which it can be used to maximize democracy and accountability, broad participation, and produce a fair distribution of its consequences. If a technique would further entrench economic inequality, give power to a small ruling elite, and maintain an extractivist, ecocidal approach to the natural world, it must be jettisoned. A capitalist geoengineering is another way for capitalism to extend its tentacles into the web of life, maintaining its extractivist nature, wasteful levels of production, and providing a “lifeline” for the survival of business-as-usual. It is a geoengineering that is already taking place.

Dozens of countries currently maintain cloud seeding programs, with China’s weather modification over Tibet occupying the boundary between tweaking rainfall and full-blown geoengineering. In the future, individual countries -- pursuing their own agendas and self-interest -- will not hesitate to pursue geoengineering programs to save themselves in a warming world, reducing local negative impacts regardless of the impact on their neighbours. This would encourage the weaponization of the climate, ENMOD be damned -- “one nation’s emergency can be another’s opportunity.”

This would be a world disciplined not just by capital but by a technocratic elite, profiting from climate inaction and patented geoengineering technologies while allowing climate-induced scarcity to ravage the rest of us: a world of green and gated oases of affluence surrounded by a population under siege.

But what would a leftist geoengineering look like?

Socialism is the democratization of production. This would involve democratically-organized, decentralized, coordinated control of the technologies that can modify the atmosphere, on small and large scales. It would involve collective control over energy technologies and industrial processes with the removal of the profit motive from all decision-making. It would be a high-tech planned economy, in which greenhouse gas levels are monitored via remote sensing technologies and local observatories via horizontal coordinating committees.

The science behind proposed geoengineering must be sound and transparent. Under capitalism there is a disincentive to communicate information -- knowledge is patented, hidden, squirrelled away for short-term competitiveness, encouraging technocratic cultishness. We need “socially responsible science” in the interests of wider society, not for the interests of capitalism and the state. Something like the Durham Resolution, written by the British Society for Social Responsibility in Science, is a good starting point.

The infrastructure required for socially just geoengineering is in the hands of the capitalist class -- like all means of production, it needs seizing and utilizing for the global good. It will cost trillions of dollars to sequester enough carbon dioxide to stave off climate catastrophe. This will be a Herculean feat, something never before achieved. It is imperative that the working class controls and steers these programs, or the biosphere will be the latest (and maybe last) victim sacrificed to the appetite of capital.

To paraphrase Albert Camus, geoengineering is a danger only in the way that it would be employed under capitalism. The benefits must be accepted even if its ravages are rejected.

Leftist or not, geoengineering is not a silver bullet**.** Technocratic solutions which reject popular participation or understanding will do nothing to rectify the climate crisis. As science fiction author Kim Stanley Robinson emphasized, the best geoengineering technology is “a rapid shift to social justice and an end to capitalism.” And we have reasons to be hopeful -- we already have the know-how to properly mitigate the climate crisis. It won’t be easy, but it is possible.

But geoengineering has a part in a broader leftist strategy to halt the biocrisis and evolve beyond capitalism. It has to work together with systems of degrowth, reducing economic growth and redistributing wealth. Geoengineering can easily mesh with the goal of full decarbonization and 100% renewable energy generation.

At the same time, it can help soften the blows of climate change impacts too late to stop, helping us to create socially-just adaptation infrastructures, promoting networks of mutual aid, resistance, and disaster communism.

The left must not be afraid to make demands for a progressive geoengineering. Reforestation projects with mass public participation, improving soil carbon stocks on local farms, calling for the public ownership of carbon removal infrastructure, demands for public investment and research into the risks and uncertainties of geoengineering -- these are just some ways to integrate geoengineering into our climate demands and at the same time time educating the public on what a leftist geoengineering would look like.

To ignore the possibility of large-scale environmental modification leaves the battlefield of ideas open to exploitation by the forces of reaction, of distant technocrats and remorseless capitalists.

We cannot let the planet’s thermostat be controlled by the invisible hand. We’re stewards of this world, whether we want the role or not.

#### And we have a better internal link to broader technological change – governments are key actors in technological innovation because they are the ones who feel comfortable to take on risk!

**Mazzucato 21** – Professor in the Economics of Innovation and Public Value at University College London (UCL), where she is Founding Director of the UCL Institute for Innovation & Public Purpose (IIPP)

Mariana Mazzucato, “MISSION ECONOMY: A Moonshot Guide to Changing Capitalism,” Penguin Publisher, 1/28/21, https://www.penguin.co.uk/books/315/315191/mission-economy/9780241419731.html

The role of top management is to identify essential data and make sure it reaches the right people; it’s also to be constantly refocusing on the problem in a process of communication where information flows freely up and down the hierarchy and across departments. Staff in implementing agencies can consolidate project results from the portfolio to see what works best. Missions therefore need the freedom to say how resources are allocated within and between projects and to decide on progress milestones and technical goals during a project’s life.

Running a mission-oriented system of innovation requires leadership that – like NASA – encourages risk-taking and adaptation and can attract the best talent. It is important that agencies carrying out missions have sufficient autonomy to take risks without their authority being questioned. Autonomy also makes room for the organizational flexibility necessary for a mission-oriented body to respond quickly to changing conditions and the development of novel technologies. Allowing autonomy in pay helps agencies to recruit top talent with the skills to manage complex networked missions. With this combination of autonomy, flexibility and support from high levels in government, implementing agencies can empower their staff to embrace the inherent risk and push forward the projects that emerge to carry out the mission, while turning off the funding tap for those that turn out to be less promising.

Risk-taking and learning in government require working outside of the usual silos, coordinating across policy fields and finding the synergies that turn the components of cooperation into a whole that is larger than the sum of its parts. A mission can easily span ministries, departments, regional and local government bodies. But the greater the need for organizational transformation, the harder it is to accomplish. This is the ‘complexity paradox’ of modern public policy: the more complex policy issues are, the more compartmentalized policymaking becomes, fragmented into different and sometimes competing government departments and initiatives.10 On top of that, complex organizational structures with rigid, formal processes can limit the flow of information, reduce openness and constrain creativity. Breaking down silos means setting up a more horizontal relationship between departments, as Mueller did. A mission to tackle air pollution, for example, would need to work across all relevant departments, such as energy, environment, transport, health and finance. Each department retains clear responsibility for its contribution, but the synergies arise from co-ordination from the top of government, while stimulating the innovation from below, as described above. Organizational innovation is both a necessary propellant of missions and a result of them.11

NASA’s decentralization, with delegation of authority to laboratories such as the Jet Propulsion Laboratory (JPL) in Pasadena California (part of Caltech), was key to its success. So was its ability to sidestep the usual bureaucratic procedures. As discussed by Arnold Levine in his study of management inside NASA, vital for its dynamism and speed was the ability to ‘negotiate contracts up to a specified amount, to transfer funds between programs, to start new research tasks without seeking specific authorization, to shift manpower from one division to another, and so on. The strategy of senior management was to give the centers what they needed to get the job done but not so much that their work would lose its relevance to the agency’s mission.’12 Furthermore, dynamic procurement and HR practices allowed NASA to attract talent and contract to the most innovative firms. As Levine further writes:

Another element in the success of the NASA organization was flexibility: flexibility for the Administrator to appoint to excepted positions, to award major R&D contracts without competitive bidding, to reprogram within appropriation accounts and to transfer between them, to devise and administer a custom-tailored entrance examination, and the like. Examples such as these represent flexibility within the system, not a departure from it; variances from the norm were allowed by Congress, the Bureau of the Budget, and the Civil Service Commission. This flexibility allowed for that ‘free play of the joints’ without which institutional rigor mortis sets in. The use of excepted positions, for example, served not only to retain employees within the organization but also to bring in new blood and to expose NASA to outside influences.13

In 1958, the same year as NASA was founded, the US government also set up DARPA, the innovation agency of the US Department of Defense – most noted for its investment in what became ARPANET, today’s internet. Both were results of Cold War investments. And, similarly to NASA, DARPA’s key characteristics are its organizational flexibility, which includes independence from government, flat internal structures, hiring outside of standard government processes, and flexible contracts.14 The organization encourages bottom-up design, which means that design is left to people like programme managers. They allow discretion in project choice and offer active project management. And indeed, without DARPA there would be no internet to have fuelled the twenty-first- century innovations. Better understanding the organizational structures that have encouraged problem- solving, risk-taking and horizontal collaborations is thus key to understanding the wave of future radical change.

Spillovers: serendipity and collaboration

The successes of organizations that take risks and are directed at large goals are often unpredictable. Innovation itself is often characterized by unpredictable spillovers: the search for one thing leads to the discovery of another – unexpected technological benefits from R&D that can also produce wider managerial, social and economic benefits. Viagra, for example, was initially intended to treat heart problems and then was found to have another application. Innovation is fuelled best when serendipity is allowed, so that multiple paths are pursued, bringing advances in unknown areas. Embracing that uncertainty and serendipity is key for any entrepreneurial organization, whether in the public or private sphere. And as the story below illustrates, such serendipity in technological innovation can also bring great societal benefits.

#### The alt is also key to create a strong administrative state that can effectively control and make sure new tech is safely used

**Tajdeh 21** – Senior Editor for National Defense Magazine

Yasmin Tajdeh, “Commission: AI Dominance Requires Bold Action,” National Defense, 3/16/21,

https://www.nationaldefensemagazine.org/articles/2021/3/16/commission-ai-dominance-requires-bold-action

The United States must pump billions of dollars into artificial intelligence research if the nation wants to be “AI-ready” by 2025 and successfully compete with great power competitors China and Russia, according to new findings from a congressionally chartered panel.

The National Security Commission on Artificial Intelligence — which was established under the fiscal year 2019 National Defense Authorization Act to examine ways to advance the development of AI for national security and defense purposes — recently released its final report to Congress in March after two years of work.

“To win in AI, we need more money, more talent [and] stronger leadership,” said Chairman Eric Schmidt, the former head of Google’s parent company Alphabet.

The 700-plus page report includes recommendations to the Biden administration and Congress that will require sweeping changes to better posture the nation for competition with other AI-enabled nations, such as China and Russia.

The technology will impact the United States profoundly in the coming years, but despite some “exciting experimentation” and a few small programs, “the U.S. government is a long way from being ‘AI-ready,’” according to the report. The Defense Department and intelligence community must be AI-ready by 2025 to avoid falling behind, the commissioners said.

Reaching that goal will require the government to create a Technology Competitiveness Council akin to the National Security Council, said former Deputy Secretary of Defense Robert Work.

“The U.S. has no mechanism to organize for a tech competition,” he said. The National Security Council was created at the beginning of the Cold War to manage a long-term competition with the Soviet Union, he noted.

“We need the same type of approach [for the current era of great power competition] at the White House level by establishing the Technology Competitiveness Council, [which] we believe should be chaired by the vice president and includes all the cabinet secretaries to develop and oversee a strategic national approach to emerging technologies like AI,” he added during a public meeting where the commission voted on the report before transmitting it to the Biden administration and Capitol Hill.

The government will also need to make major investments in research to spur domestic AI innovation, Schmidt said. “We do need more money, particularly in AI R&D, so that by 2026 we get to $32 billion per year,” he said.

Schmidt has previously said that China is rapidly catching up to the United States in AI, noting that the nation is only a year or two ahead of Beijing.

China has made “a massive investment in this area with many, many, many smart people working on it. We have every reason to think that the competition with China will increase,” Schmidt said during the meeting.

The commission’s report is split into two parts: “Defending America in the AI Era” and “Winning the Technology Competition.”

The first focuses on implications and applications for AI for defense and national security, Schmidt said. The second recommends actions that the government must take to promote AI innovation to improve national competitiveness and protect critical U.S. advantages in the bigger strategic competition with China.

The report features four pillars of action including leadership, talent, hardware and innovation.

“If I’ve learned anything in studying the way the government works, leadership — especially from the top — is critical to get the bureaucracy to move to the next challenge and the next opportunity,” Schmidt said.

Meanwhile, there is a “huge talent deficit” in the federal workforce, he said.

“We need to build new talent and expand existing programs in government,” Schmidt said. “We need the world’s best to come and stay to cultivate homegrown talent.”

One key recommendation of the report is to scale up digital talent within the government. This includes establishing new talent pipelines, including a U.S. Digital Service Academy to train current and future employees. The commissioners also called for a civilian National Digital Reserve Corps to recruit skilled employees including industry experts, academics and college graduates. Additionally, there needs to be a Digital Corps, which would be modeled on the Army Medical Corps.

When it comes to hardware, it is critical the nation stays ahead, Schmidt said. However, it is very close to losing its edge when it comes to microelectronics — which underpin some of the Defense Department’s key capabilities including artificial intelligence, advanced manufacturing and space systems — because of the United States’ reliance on Taiwan.

“We need to revitalize domestic semiconductor manufacturing and ensure that we’re two generations ahead of China,” he said.

Work noted that Taiwan is potentially vulnerable. If “China absorbed Taiwan — which is the source of many of the world’s hardware — that would really be a competitive problem for us,” he said.

Fostering domestic innovation will come with a high price, Schmidt said.

“AI research is going to be incredibly expensive,” he said. “We need the government to help set up the conditions for accessible domestic AI innovation.”

The commission worked on its report with a great sense of urgency, Work said. Each of the 15 commissioners believe that AI-enabled systems will pose a threat to free and open societies in the future.

“AI tools will be weapons of first resort, particularly between great powers,” he said.

The U.S. armed services’ competitive military technical advantage could be lost within the next decade if the nation does not accelerate the adoption of artificial intelligence and other advanced technologies across its missions, Work said.

“Our major military rivals are really all-in on military AI applications,” he said. “Defending against AI-capable adversaries without employing AI is an invitation to disaster. AI-enabled applications will operate at machine speeds and humans simply will not be able to keep up with them without help from their own algorithms and their own AI.”

Speaking during a plenary meeting discussing a draft version of the report in January, commissioner Chris Darby, president and CEO of In-Q-Tel, an independent, non-profit strategic investor for the CIA and the broader U.S. intelligence community, said the United States faces five AI-related threats which illustrate a new society level of conflict that the United States must organize and defend against.

The first is AI-enabled information operations.

“AI applications and associated technologies will increase the magnitude, the precision [and] persistence of maligned information ops,” he said. The government should create a joint interagency task force within the Office of the Director of National Intelligence to lead and integrate public-private efforts to counter foreign-sourced maligned information.

The second is targeted data harvesting, Darby said. Information security and integrity must be viewed through a national security lens. The government must protect its own data from adversarial interference or theft by defending against attacks.

The third threat is AI-enhanced cyber capabilities.

“Though the threats are still developing, in the future, AI-automated and enabled malware could make compromises such as the SolarWinds cyber attack orders of magnitude more effective, delivering greater precision, tailoring speeds, stealth and persistence at scale,” he said, referring to a massive hack that rocked the government and was discovered in December. Government agencies have pointed the blame at Russia, and it is believed that the breach went undetected for many months.

To close gaps in the nation’s cyber defenses, the United States should continue to adopt recommendations suggested by the U.S. Cyberspace Solarium Commission, which last year released a major report to Congress, Darby said.

The document — which featured 80 recommendations to lawmakers — broke its recommendations into six pillars, including: reform the U.S. government’s structure and organization for cyberspace; strengthen norms and non-military tools; promote national resilience; reshape the cyber ecosystem; operationalize cybersecurity collaboration with the private sector; and preserve and employ the military instrument of national power.

Additionally, to head off future threats and accelerate countermeasures to current threats, the government should develop and deploy AI-enabled information sharing, anomaly detection and malware mitigation across its networks, Darby said.

A fourth threat the United States must be aware of is adversarial AI against U.S. platforms, Darby said. These types of acts are here today and already impacting commercial machine learning systems, he added.

“Among other moves to improve AI assurance, the government should create government-wide red teams to attack and harden our own AI applications,” Darby said.

The fifth threat is more troublesome against the backdrop of the COVID-19 pandemic: AI-enabled biotechnology. New technologies such as clustered regularly interspaced short palindromic repeats — more commonly known as CRISPR — enable gene editing and make biology programmable, he said.

“Biotech, sadly, can also have a dark side,” Darby side. “AI may enable the engineering of genetically targeted pathogens or the mental and physical bio-enhancement of … adversary combatants.”

To address this, the government should increase the profile of biosecurity issues within U.S. national security agencies, as well as update the National Biodefense Strategy to include a wider vision of biothreats, Darby said.

Commissioner Katharina McFarland, chair of the National Academies of Science Board of Army Research and Development, said the application of biotechnology can protect the United States against some threats as well as create new ones.

“As we see the democratization of biotechnology and the expansion of … dual-use applications, we need to be of course sensitive to ... nations that don’t share our values, but work with the nations that do share our values to strengthen our ability to use these technologies appropriately and defend against when they’re not used appropriately,” she said.

Commissioner Safra Catz, CEO of Oracle Corp., said the report is meant to be a wake-up call for the government.

“There are some very, very bold actions we’re asking for,” she said. “This is pretty much the critical moment for our country and the investment that’s necessary.”

Jim Shaw, executive vice president of engineering at the Crystal Group, a Hiawatha, Iowa-based manufacturer of high-performance computers, artificial intelligence systems and rugged computing platforms, said the commission’s report is a good start, but more work needs to be done.

“We’re late to the game,” he said. “That’s one of the things that we probably need to just recognize right away. This is becoming an urgent need for us to spend resources to gain skill sets and talent … through universities and industry to try to, frankly, catch up with China and Russia.”

The Pentagon and Congress should get on board with the commission’s recommendations, and take them even further, he said.

“My hope is that it will snowball into quite a bit of activity,” Shaw said. “That’s essential for us to preserve” the nation’s edge.

### Telecommunications

#### Market logics discourage collaboration and investment in R&D which stifles tech innovation and diffusion – only a strong administrative state can spur communication and confidence

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Department of Land Economy, Silver Street, Cambridge, UK [4]

David Bailey, Amy Glasmeier, Philip R Tomlinson, Peter Tyler, “Industrial policy: new technologies and transformative innovation policies?,” Cambridge Journal of Regions, Economy, and Society, 5/17/19, https://academic.oup.com/cjres/article/12/2/169/5490915

New technologies and transformative innovation policy

Especially in the context of innovation policy, the advent of new technologies became a particular focus of Post-War industrial policy. Two related developments encourage the latest round of technology-rich industrial innovation. First, policymakers increasingly foster initiatives to enhance technologies positively. Innovative activities are expected to generate new ‘value’, a key stimulant of increasing productivity and economic growth. As such, public investment in science and technology is generally politically considered palatable. Harkening back to the recognised importance of specificity and distinction, countries are seen to embody historically specific and differential advantages: the military might of the USA unleashed a plethora of innovations related to discoveries made during World War 2.

A new model of industrial prowess emerges that is centred on the nexus of science and technologies embedded in a matrix of industry, government and higher education. Japan’s post-War reconstruction included the formation of strong central government institutions, like the Ministry of International Trade and Industry (MITI) that directed national industrial policy for decades (see Johnson, 1982). Furthermore, a new model is made essential since private investment in R&D can be sub-optimal given that, at a point in time, firms may lack the ability to appropriate the full return of their investment due to the public-goods nature of (new) knowledge (Stoneman and Vickers, 1988). Also, uncertainty and asymmetric information can hinder markets in nurturing effective collaboration between firms, universities and state agencies to enhance innovation.

Similarly, a lack of knowledge about new technologies (and their applications) can stifle market demand and technological diffusion. In each case, the state—through its various agencies—can facilitate new network connections (Block, 2011) while also validating and demonstrating new technologies to raise confidence and enhance adoption (Hauser, 2014). Beyond the private/social wedge, the state—often through international state collaboration—also plays a critical role in addressing risky and long-term societal missions such as space exploration and tackling climate change (Mazzucato, 2013).

The present day

The revived interest in industrial policy comes at a time of a new technological transformation, and the arrival of radical and disruptive technologies associated with the applications of artificial intelligence, automation and machine learning. Industry 4.0 (I4.0) and the so-called ‘Fourth Industrial Revolution’ embody technologies such as advanced robotics, increased automation, digitalisation and data exchange in manufacturing technologies supported by artificial intelligence, cyber-physical systems, platform economy innovations and cloud computing. Further development of these technologies can unleash a significant disruptive process, requiring changes in the organisation of production from within and outside the workplace, among firms, and across the manufacturing and services sectors. These new technologies rely on platforms that utilise big data analytics to identify and enable new business opportunities and facilitate more significant interaction between producers and consumers in the process of customising products (Bailey and De Propris, forthcoming). The increasing advance of such technologies poses real challenges for industrial policy and wider socioeconomic cohesion. With new capital intensive technologies capable of displacing labour, much speculation exists as to whether beneficiaries will reside in more dynamic regions exacerbating and extenuating further socioeconomic and regional divides.

#### Firms amass power and don’t invest

**Sell 20** – School of Regulation and Global Governance, Australian National University, Acton, ACT Australia

Susan K. Sell, “What COVID-19 Reveals About Twenty-First Century Capitalism: Adversity and Opportunity,” National Center for Biotechnology Innovation, 2020, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7644989/

Going beyond the broad ‘neoliberalism’ label, John Braithwaite has described capitalism as ‘variegated’; he identified two aspects that are particularly relevant to global health—‘Wall Street’ capitalism and ‘monopoly capitalism’ (Braithwaite 2019). Wall Street capitalism captures the globalization of finance and the increased economic and political power of the financial sector. Financial markets, motives, institutions and elites have come to dominate the global economy affecting everything from production, consumption, regulation and health (Epstein 2005). Monopoly capitalism, or ‘intellectual monopoly capitalism’ (Pagano 2014), captures intellectual property (e.g., patents, copyrights and trademarks) owners’ preference to avoid competition. Ownership of intellectual property (IP) gives owners the right to exclude others from using the IP, reduce competitive supply and increase prices.

The quest to be competitive in global markets has led to economic concentration, oligopolies and a reduction in competition (Azmanova 2018). Economic power has shifted from the mainstays of the real economy (commodity producers and traders) to the controllers of global value chains (GVCs) who own intangibles such as intellectual property and financial instruments. According to Medeiros and Trebat,’the “core” business of every TNC (transnational corporation), irrespective of its particular branch, is to control and capitalize on these intangible assets’ in order to maximize shareholder value and generate large rents (Medeiros and Trebat 2017: 407). Firms that are relatively immune to competitive pressure are ‘less compelled to invest’ in the real economy (Durand and Milberg 2018: 34). As Azmanova points out, ‘competition-induced productivity … does not condition growth on employment’ and has resulted in so-called ‘jobless growth’ and ‘jobless recovery’ after economic crises (Azmanova 2012: 453). Economic globalization has reduced the power of labour and has accelerated an increase in ‘labour flexibility’ that translates into precarious employment. Post-the 2007–2008 global financial crisis, austerity programs, cuts in social spending and labour market transformation have had negative effects on health outcomes and health equity (De Vogli 2014).

#### That’s uniquely true in climate change tech – capitalism utilizes negative emissions tech to maintain fossil fuel emissions which not actually making the situation any less existential

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Wim Carton, “‘Fixing’ Climate Change by Mortgaging the Future: Negative Emissions, Spatiotemporal Fixes, and the Political Economy of Delay,” *Antipode*, 2019, [http://sci-hub.tw/https://onlinelibrary.wiley.com/doi/full/10.1111/anti.12532](http://sci-hub.tw/https:/onlinelibrary.wiley.com/doi/full/10.1111/anti.12532)

This essentially means that vast amounts of fossil fuel assets risk becoming stranded on the road to climate change mitigation (Surprise 2018). This would entail a fixed capital devaluation of epic proportions and can rightly be seen as the capitalist crisis that commentators have described it as. But note that this crisis for capital does not follow directly from the biophysical conditions associated with a changing climate. It is a crisis that first and foremost exists in socially mediated form, meaning that the direct “threat” comes from increasing social demands for mitigation and the political drive towards regulation rather than from increasing temperatures or rising sea levels. This is directly reflected in the way fossil fuel companies articulate the problem. Shell, for example, one of the world’s largest oil and gas companies, in its 2017 annual report for the first time acknowledged that climate change poses a risk to its operations (Shell 2018a). Yet it nowhere mentions actual climate change as a problem; rather, it is “rising climate change concerns” that are the issue, because they “have led and could lead to additional legal and/or regulatory measures which could result in project delays or cancellations, a decrease in demand for fossil fuels, potential litigation and additional compliance obligations” (Shell 2018a:13). As I discussed above, it is well worth taking seriously this distinction between the social articulation of climate change and its biophysical basis, given how it speaks directly to the different fixes that are, and can be pursued. Among others it suggests that one does not necessarily need to mitigate climate change at all in order to fix (i.e. displace and defer) the crisis of legitimacy that it produces.

The negative emissions concept illustrates this. Negative emissions take the carbon budget concept to its inevitable conclusion, by accounting not just for carbon “expenditures” (i.e. emissions), but also a range of proposed carbon “incomes”. This idea takes its inspiration from a number of biological (e.g. photosynthesis) and chemical (e.g. weathering of rocks) processes that remove CO2 from the atmosphere, and imagines that these could be deployed at a massive scale in order to make a limited carbon budget stretch further. The aforementioned BECCS is one example of such negative emissions technology (NET), but there are many others, including afforestation, soil carbon sequestration, direct air capture, enhanced weathering of rocks, etc. Because of the scale at which these technologies would need to be implemented, and the fact that their commercial and technological viability is in many cases unknown, models assume that NETs will only be operational at scale in the second half of the century. Essentially, this means that the negative emissions concept acts as a debt mechanism: the carbon budget for the first half of the 21st century can be extended on the basis of the assumption that large amounts of carbon will be removed in the second half (Geden 2016, 2018; Parson 2017). As Geden (2018:381) puts it, integrated assessment modellers have in this way “adopted the standard approach pursued by most governments instead of disciplining them: run huge deficits, betting on payback by future generations”.

The significant, negative social and environmental consequences that one could expect with the actual implementation of some NETs have already been alluded to in the introduction. The negative emissions concept—as modelled in IAMs— however has concrete implications already now (Beck and Mahony 2018). By enabling a pathway to the 2°C target in the face of a tight carbon budget, it helps preserve a sense of normality in climate policy, fostering the notion that current policy commitments are appropriate and sufficient, that ambitious climate targets are still within reach and that governments are putting in place adequate measures to achieve them (Anderson and Peters 2016; Beck and Mahony 2017; Geden 2016; Pielke 2018). As Larkin et al. (2018:692) note, “IAM outputs risk delivering overly optimistic, unrealistic and potentially flawed message about future change [in which] challenging, but incremental energy policy is sufficient to deliver on the Paris Agreement”. The negative emissions concept in this way helps in “masking political inaction” (Geden 2016:794) and serves to legitimise mainstream climate policy in the face of 30 years of institutionalised delay. It does this without any NETs actually being implemented, indeed, irrespective of whether they will ever be implemented at all, but merely on the basis of its promised future arrival by climate models (Geden 2016; see also Markusson et al. 2017). Despite their so-far immaterial form, negative emissions help to pre-empt a crisis of political legitimacy by seemingly answering calls for ambitious climate action, all the while deferring the most difficult questions to the future.

#### decoupling is impossible even under perfect conditions

Hickel 18 [Jason Hickel is an anthropologist, author, and a fellow of the Royal Society of Arts. Why Growth Can’t Be Green. Foreign Policy Magazine. September 12, 2018. https://foreignpolicy.com/2018/09/12/why-growth-cant-be-green/]

Warnings about ecological breakdown have become ubiquitous. Over the past few years, major newspapers, including the Guardian and the New York Times, have carried alarming stories on soil depletion, deforestation, and the collapse of fish stocks and insect populations. These crises are being driven by global economic growth, and its accompanying consumption, which is destroying the Earth’s biosphere and blowing past key planetary boundaries that scientists say must be respected to avoid triggering collapse.

Many policymakers have responded by pushing for what has come to be called “green growth.” All we need to do, they argue, is invest in more efficient technology and introduce the right incentives, and we’ll be able to keep growing while simultaneously reducing our impact on the natural world, which is already at an unsustainable level. In technical terms, the goal is to achieve “absolute decoupling” of GDP from the total use of natural resources, according to the U.N. definition.

It sounds like an elegant solution to an otherwise catastrophic problem. There’s just one hitch: New evidence suggests that green growth isn’t the panacea everyone has been hoping for. In fact, it isn’t even possible.

Green growth first became a buzz phrase in 2012 at the United Nations Cosnference on Sustainable Development in Rio de Janeiro. In the run-up to the conference, the World Bank, the Organization for Economic Cooperation and Development, and the U.N. Environment Program all produced reports promoting green growth. Today, it is a core plank of the U.N. Sustainable Development Goals.

But the promise of green growth turns out to have been based more on wishful thinking than on evidence. In the years since the Rio conference, three major empirical studies have arrived at the same rather troubling conclusion: Even under the best conditions, absolute decoupling of GDP from resource use is not possible on a global scale.

A team of scientists led by the German researcher Monika Dittrich first raised doubts in 2012. The group ran a sophisticated computer model that predicted what would happen to global resource use if economic growth continued on its current trajectory, increasing at about 2 to 3 percent per year. It found that human consumption of natural resources (including fish, livestock, forests, metals, minerals, and fossil fuels) would rise from 70 billion metric tons per year in 2012 to 180 billion metric tons per year by 2050. For reference, a sustainable level of resource use is about 50 billion metric tons per year—a boundary we breached back in 2000.

The team then reran the model to see what would happen if every nation on Earth immediately adopted best practice in efficient resource use (an extremely optimistic assumption). The results improved; resource consumption would hit only 93 billion metric tons by 2050. But that is still a lot more than we’re consuming today. Burning through all those resources could hardly be described as absolute decoupling or green growth.

In 2016, a second team of scientists tested a different premise: one in which the world’s nations all agreed to go above and beyond existing best practice. In their best-case scenario, the researchers assumed a tax that would raise the global price of carbon from $50 to $236 per metric ton and imagined technological innovations that would double the efficiency with which we use resources. The results were almost exactly the same as in Dittrich’s study. Under these conditions, if the global economy kept growing by 3 percent each year, we’d still hit about 95 billion metric tons of resource use by 2050. Bottom line: no absolute decoupling.

Finally, last year the U.N. Environment Program—once one of the main cheerleaders of green growth theory—weighed in on the debate. It tested a scenario with carbon priced at a whopping $573 per metric ton, slapped on a resource extraction tax, and assumed rapid technological innovation spurred by strong government support. The result? We hit 132 billion metric tons by 2050. This finding is worse than those of the two previous studies because the researchers accounted for the “rebound effect,” whereby improvements in resource efficiency drive down prices and cause demand to rise—thus canceling out some of the gains.

Study after study shows the same thing. Scientists are beginning to realize that there are physical limits to how efficiently we can use resources. Sure, we might be able to produce cars and iPhones and skyscrapers more efficiently, but we can’t produce them out of thin air. We might shift the economy to services such as education and yoga, but even universities and workout studios require material inputs. Once we reach the limits of efficiency, pursuing any degree of economic growth drives resource use back up.

These problems throw the entire concept of green growth into doubt and necessitate some radical rethinking. Remember that each of the three studies used highly optimistic assumptions. We are nowhere near imposing a global carbon tax today, much less one of nearly $600 per metric ton, and resource efficiency is currently getting worse, not better. Yet the studies suggest that even if we do everything right, decoupling economic growth with resource use will remain elusive and our environmental problems will continue to worsen.

Preventing that outcome will require a whole new paradigm. High taxes and technological innovation will help, but they’re not going to be enough. The only realistic shot humanity has at averting ecological collapse is to impose hard caps on resource use, as the economist Daniel O’Neill recently proposed. Such caps, enforced by national governments or by international treaties, could ensure that we do not extract more from the land and the seas than the Earth can safely regenerate. We could also ditch GDP as an indicator of economic success and adopt a more balanced measure like the genuine progress indicator (GPI), which accounts for pollution and natural asset depletion. Using GPI would help us maximize socially good outcomes while minimizing ecologically bad ones.

But there’s no escaping the obvious conclusion. Ultimately, bringing our civilization back within planetary boundaries is going to require that we liberate ourselves from our dependence on economic growth—starting with rich nations. This might sound scarier than it really is. Ending growth doesn’t mean shutting down economic activity—it simply means that next year we can’t produce and consume more than we are doing this year. It might also mean shrinking certain sectors that are particularly damaging to our ecology and that are unnecessary for human flourishing, such as advertising, commuting, and single-use products.

But ending growth doesn’t mean that living standards need to take a hit. Our planet provides more than enough for all of us; the problem is that its resources are not equally distributed. We can improve people’s lives right now simply by sharing what we already have more fairly, rather than plundering the Earth for more. Maybe this means better public services. Maybe it means basic income. Maybe it means a shorter working week that allows us to scale down production while still delivering full employment. Policies such as these—and countless others—will be crucial to not only surviving the 21st century but also flourishing in it.

#### Empirics – market manipulation and regulations have failed to make any progress for decades

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Patrick Bigger and Jessica Dempsey, “Reflecting on neoliberal natures: An exchange,” Environment and Planning E: Nature and Space, 2018, https://journals.sagepub.com/doi/10.1177/2514848618776864

The lack of action on climate change in this decade is one of the most illustrative and deeply troubling trends. In the past decade, we have witnessed a series of failed, or close to failed United Nations Framework Convention on Climate Change (UNFCCC) negotiations – with the most spectacular being Conference of Parties (COP) 15 in Copenhagen, which crushed many climate activists’ hopes. Along with disappointing supranational agreements, in this decade, we decisively moved from climate change models to climate change impacts. Heat waves (Christidis et al., 2015), forest fires (Abatzoglou and Williams, 2016), aquatic mass die-offs (Hughes et al., 2017): all of it is happening. The decade saw a slew of socio-natural catastrophes, particularly super storms that impact the poor and racialized more than anyone else, from Houston to the Philippines, which experienced 5 of its 10 most deadly typhoons since 2006. Such superstorms can now, at least in part, be attributed to anthropogenic greenhouse gas (GHG) emissions (Harvey, 2018). One of the bright spots in the last decade has been the concerted effort to mainstream climate change as a moral, ethical and/or justice issue, demonstrated perhaps best by the divestment movement’s tagline: if it is wrong to wreck the climate, it is wrong to profit from it.

But even if climate change is increasingly understood in term of injustices along raced and classed lines, the outrageous, take-your-breath-away fact is that world oil production between 2006 and 2016 increased by 11%, and even more tellingly, world proven oil reserves grew by a third over the same time period (BP, 2017). Governments have been loath to impose meaningful restrictions on production, despite knowing that the vast majority of this newly exploitable oil must be kept in the ground. Instead, most states have preferred to dabble with regulations on the consumption side through mechanisms like automobile fuel efficiency standards, while trusting capital markets to regulate hydrocarbon producers through stock valuation. These valuations, according to (neo)liberal orthodoxy, should govern future capacities to extract those fuels, but stable share prices suggest capital markets foresee no impending slowdown in extraction. As Christophers (2017) demonstrates, this is emblematic of neoliberal governance strategies that rely on data disclosure and rational financial actors to achieve desired outcomes; the same logic that defines financial (self)regulation drives hydrocarbon (self)regulation. Yet when it comes to huge and necessary GHG emissions reductions, such strategies have yet to deliver, a point made over and over by critics of mechanisms ranging from disclosure to emissions markets (Carton, 2014; Kama, 2014; Klein, 2015). Zombie climate neoliberalism lurches along, with little sign of the necessary brain-crushing blow to the head (Lane and Stefan, 2014). The gap between an emphasis on disclosure of climate risks in capital markets and the felt effects of climate change on the bodies of poor people of color is appalling.

In many ways, the decade of inaction reflects the sine qua non of neoliberal natures – the shift from government to governance, or the re-placing of critical regulatory functions from the state to non/quasi-state actors, driven by policy failures (a la Copenhagen) and also by ideologies that privilege the efficiency and rationality of markets often coupled with a mistrust or outright disdain for direct state regulations. Yet, the deadlock in the governmental sphere is also yielding innovations through the typical power structures of the state, namely the courts. There are a spate of climate justice-like cases that look to make fossil fuel firms and governments accountable for knowingly causing harm from New York to India,3 reflecting the discursive shift to understanding climate change in the terms of uneven costs and benefits that can be tried in court. However, such cases flow against the grain, as governance strategies for actual mitigation of environmental issues tend not only toward self-regulation, but also by actively facilitating new financial incursions into non- human natures.

#### Tech barriers – its ineffective and can’t be scaled up without increased environmental destruction

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Paul Brown, “Carbon capture and storage won’t work, critics say,” Eco-Business, 1/19/21, https://www.eco-business.com/news/carbon-capture-and-storage-wont-work-critics-say/

One of the key technologies that governments hope will help save the planet from dangerous heating, carbon capture and storage, will not work as planned and is a dangerous distraction, a new report says.

Instead of financing a technology they can neither develop in time nor make to work as claimed, governments should concentrate on scaling up proven technologies like renewable energies and energy efficiency, it says.

The report, from Friends of the Earth Scotland and Global Witness, was commissioned by the two groups from researchers at the UK’s Tyndall Centre for Climate Change Research.

CCS, as the technology is known, is designed to strip out carbon dioxide from the exhaust gases of industrial processes. These include gas and coal-fired electricity generating plants, steel-making, and industries including the conversion of natural gas to hydrogen, so that the gas can then be re-classified as a clean fuel.

The CO2 that is removed is converted into a liquid and pumped underground into geological formations that can be sealed for generations to prevent the carbon escaping back into the atmosphere.

Fossil fuel CCS is a distraction from the growth of renewable energy, storage and energy efficiency that will be critical to rapidly reducing emissions over the next decade.

Attempts abandoned

It is a complex and expensive process, and many of the schemes proposed in the 1990s have been abandoned as too expensive or too technically difficult.

An overview of the report says: “The technology still faces many barriers, would only start to deliver too late, would have to be deployed on a massive scale at a scarcely credible rate and has a history of over-promising and under-delivering.”

Currently there are only 26 CCS plants operating globally, capturing about 0.1 per cent of the annual global emissions from fossil fuels.

Ironically, 81 per cent of the carbon captured to date has been used to extract more oil from existing wells by pumping the captured carbon into the ground to force more oil out. This means that captured carbon is being used to extract oil that would otherwise have had to be left in the ground.

The report also makes clear that the technology has not lived up to expectations. Instead of capturing up to 95 per cent of the carbon from any industrial process, rates have been as low as 65 per cent when they begin and have only gradually improved.

Despite these drawbacks and a number of failed CCS developments in the UK, the British government has just ploughed another £1 billion (US$1.36bn) into more research and development of the technology, and to provide infrastructure. The report says this reliance by government on CCS means it is unlikely to reach its target of zero emissions by 2050.

The report says that CCS features prominently in many energy and climate change scenarios, and in strategies for meeting climate change mitigation targets. These include the approaches backed by the Intergovernmental Panel on Climate Change, the European Commission, the International Energy Agency and the UK Committee on Climate Change.

But it is apparent that the current trend of CCS deployment worldwide has yet to reach the pace of development necessary for these scenarios to be realised.

If CCS is to have a meaningful role in mitigation, deployment would need to accelerate markedly, the report says.

Policy change needed

Friends of the Earth and Global Witness say that because of the clear failure of the technology to live up to expectations there should be a change of emphasis by governments. Policy should be directed towards renewables, particularly solar, onshore and offshore wind, because they have by contrast exceeded all targets in both cost and deployment and provide real hope of solving the carbon dioxide problem.

These now proven renewable technologies, plus battery and other storage ideas and a much-needed energy efficiency drive, will deliver carbon reductions far more quickly and cheaply, the writers say.

The two organisations add: “It is the cumulative emissions from each year between now and 2030 that will determine whether we are to achieve the Paris 1.5°C goal. With carbon budgets increasingly constrained, the report shows that we cannot expect carbon capture and storage to make a meaningful contribution to 2030 climate targets.

“In this context, fossil fuel CCS is a distraction from the growth of renewable energy, storage and energy efficiency that will be critical to rapidly reducing emissions over the next decade.”

### Harmonization

BUT growth unsustainable

#### The aff only affects 10 % of the economy that’s

1ac McGinnis and Sun, 21 – John O. McGinnis, Professor at Northwestern University and Linda Sun, Associate at Wilmer Pickering Hale & Dorr LLP and J.D. 2020 at Northwestern Pritzker School of Law, Winter, “Unifying Antitrust Enforcement for the Digital Age,” *78 Wash. & Lee L. Rev. 305*, p. Nexis – Iowa

1. The Need for Certainty in Antitrust Regulation of Technology

A unified approach to antitrust regulation is especially important when it comes to the technology industry for three reasons. First, the rapidly growing technology industry is at the center of the U.S. economy: in 2018, the internet sector accounted for $2.1 trillion of the economy and 10 percent of the GDP. 48 Uncertainty about antitrust rules created by dual enforcement hinders economic growth.

#### Which means they don’t access their 1AC impact because 1AC Baird is clear recovery must be equal which they don’t cause! But the alt defiantly does all the things outlined way better

1AC Zoë **Baird 20**, A.B. Phi Beta Kappa and J.D. from the University of California, Berkeley, Member of the Aspen Strategy Group, CEO and President of the Markle Foundation, Former Trustee at the Council on Foreign Relations and Partner in the law firm of O’Melveny & Myers, “Equitable Economic Recovery Is a National Security Imperative”, in Domestic and International (Dis)Order: A Strategic Response, Ed. Bitounis and King, October 2020, p. 89-90

Broadly shared economic prosperity is a bedrock of America’s economic and political strength—both domestically and in the international arena. A strong and equitable recovery from the economic crisis created by COVID-19 would be a powerful testament to the resilience of the American system and its ability to create prosperity at a time of seismic change and persistent global crisis. Such a recovery could attack the profound economic inequities that have developed over the past several decades. Without bold action to help all workers access good jobs as the economy returns, the United States risks undermining the legitimacy of its institutions and its international standing. The outcome will be a key determinant of America’s national security for years to come.

An equitable recovery requires a national commitment to help all workers obtain good jobs—particularly the two-thirds of adults without a bachelor’s degree and people of color who have been most affected by the crisis and were denied opportunity before it. As the nation engages in a historic debate about how to accelerate economic recovery, ambitious public investment is necessary to put Americans back to work with dignity and opportunity. We need an intentional effort to make sure that the jobs that come back are good jobs with decent wages, benefits, and mobility and to empower workers to access these opportunities in a profoundly changed labor market.

To achieve these goals, American policy makers need to establish job growth strategies that address urgent public needs through major programs in green energy, infrastructure, and health. Alongside these job growth strategies, we need to recognize and develop the talents of workers by creating an adult learning system that meets workers’ needs and develops skills for the digital economy. The national security community must lend its support to this cause. And as it does so, it can bring home the lessons from the advances made in these areas in other countries, particularly our European allies, and consider this a realm of international cooperation and international engagement.

Shared Economic Prosperity Is a National Security Asset

A strong economy is essential to America’s security and diplomatic strategy. Economic strength increases our influence on the global stage, expands markets, and funds a strong and agile military and national defense. Yet it is not enough for America’s economy to be strong for some—prosperity must be broadly shared. Widespread belief in the ability of the American economic system to create economic security and mobility for all—the American Dream— creates credibility and legitimacy for America’s values, governance, and alliances around the world.

After World War II, the United States grew the middle class to historic size and strength. This achievement made America the model of the free world—setting the stage for decades of American political and economic leadership. Domestically, broad participation in the economy is core to the legitimacy of our democracy and the strength of our political institutions. A belief that the economic system works for millions is an important part of creating trust in a democratic government’s ability to meet the needs of the people.

The COVID-19 Crisis Puts Millions of American Workers at Risk

For the last several decades, the American Dream has been on the wane. Opportunity has been increasingly concentrated in the hands of a small share of workers able to access the knowledge economy. Too many Americans, particularly those without four-year degrees, experienced stagnant wages, less stability, and fewer opportunities for advancement.

Since COVID-19 hit, millions have lost their jobs or income and are struggling to meet their basic needs—including food, housing, and medical care.1 The crisis has impacted sectors like hospitality, leisure, and retail, which employ a large share of America’s most economically vulnerable workers, resulting in alarming disparities in unemployment rates along education and racial lines. In August, the unemployment rate for those with a high school degree or less was more than double the rate for those with a bachelor’s degree.2 Black and Hispanic Americans are experiencing disproportionately high unemployment, with the gulf widening as the crisis continues.3

The experience of the Great Recession shows that without intentional effort to drive an inclusive recovery, inequality may get worse: while workers with a high school education or less experienced the majority of job losses, nearly all new jobs went to workers with postsecondary education. Inequalities across racial lines also increased as workers of color worked in the hardest-hit sectors and were slower to recover earnings and income than White workers.4

The Case for an Inclusive Recovery

A recovery that promotes broad economic participation, renewed opportunity, and equity will strengthen American moral and political authority around the world. It will send a strong message about the strength and resilience of democratic government and the American people’s ability to adapt to a changing global economic landscape. An inclusive recovery will reaffirm American leadership as core to the success of our most critical international alliances, which are rooted in the notion of shared destiny and interdependence. For example, NATO, which has been a cornerstone of U.S. foreign policy and a force of global stability for decades, has suffered from American disengagement in recent years. A strong American recovery—coupled with a renewed openness to international collaboration—is core to NATO’s ability to solve shared geopolitical and security challenges. A renewed partnership with our European allies from a position of economic strength will enable us to address global crises such as climate change, global pandemics, and refugees. Together, the United States and Europe can pursue a commitment to investing in workers for shared economic competitiveness, innovation, and long-term prosperity.

The U.S. has unique advantages that give it the tools to emerge from the crisis with tremendous economic strength— including an entrepreneurial spirit and the technological and scientific infrastructure to lead global efforts in developing industries like green energy and biosciences that will shape the international economy for decades to come.

#### Aggregate demand – neoliberalism concentrates wealth into the hands of elites crushing the worth of the dollar and diminishing demand

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Josh Bivens, “Inequality is slowing US economic growth,” *Economic Policy Institute*, 12 December 2017, pp. 3-9, https://files.epi.org/pdf/136654.pdf.

This new attention to the crisis of American pay is totally proper. The failure of wages of the vast majority of Americans to benefit from economy-wide growth in productivity (or income generated in an average hour of work) has been the root cause of the stratospheric rise in inequality and the concentration of economic growth at the very top of the income distribution. Had this upward redistribution not happened, incomes for the bottom 90 percent of Americans would be roughly 20 percent higher today. 3 In short, the rise in inequality driven by anemic wage growth has imposed an “inequality tax” on American households that has robbed them of a fifth of their potential income.

There would be huge benefits to American well-being from blocking or reversing this upward redistribution. This welfare gain stemming from blocking upward redistribution is the primary reason to champion policy measures to boost wage growth and lead to a more equal distribution of income gains. Put simply, a dollar is worth more to a family living paycheck to paycheck than it is to families comfortably in the top 1 percent of the income distribution.

Proponents of increases in the minimum wage and other measures to boost American wages have often argued that there are benefits to these policies besides the welfare gains stemming from pure redistribution. These proponents have often argued that boosting wages would even benefit aggregate economic outcomes, like growth in gross domestic product (GDP) or employment.

Recent evidence about developments in the American and global economies strongly indicate that these arguments are correct: boosting wages of the bottom 90 percent would not just raise these households’ incomes and welfare (a more-than-sufficient reason to do so), it would also boost overall growth. For the past decade (and maybe even longer), the primary constraint on American economic growth has been too-slow spending by households, businesses, and governments. In economists’ jargon, the constraint has been growth in aggregate demand lagging behind growth in the economy’s productive capacity (including growth of the labor force and the stock of productive capital, such as plants and equipment). Much research indicates that this shortfall of demand could become a chronic problem in the future, constantly pulling down growth unless macroeconomic policy changes dramatically.

Our rising inequality is being driven by the slowdown in wage growth for the bottom 90 percent

It is now well-known that incomes in America grew much less equally after 1979. Probably the most important fact about this growing inequality is that it has overwhelmingly been driven by trends in market-based income rather than in the taxes and transfers component of income. Table 1 shows the sources of income growth for the top 1 percent of households in the three decades before the Great Recession. It uses Congressional Budget Office (CBO 2016) data on comprehensive household income, which includes noncash market-based income such as employer contributions to health insurance premiums as well as non–market-based income such as government transfers. The CBO data show that inequality is increasing (the share of all income that is going to the top is rising) because the top 1 percent are getting a greater share of each type of market income and because the types of market income that are most concentrated at the top (particularly capital gains and business income) constitute a growing share of all income, whereas income from less-concentrated sources (particularly labor compensation) is falling as a share of overall income. The data in the table also indicate that the direct, arithmetic influence of taxes and transfers has been minimal, with rising inequality of market incomes explaining more than 100 percent of the rise in the after-tax income share of the top 1 percent.4

The first block of columns simply shows the top 1 percent share of overall household income and of various income types as identified in CBO (2016). A clear finding is that the top 1 percent share of every source of income except government transfers rose significantly between 1979 and 2007. The share of overall income held by the top 1 percent more than doubles (rising from 8.9 to 18.7 percent of total income) between 1979 and 2007. And even with the enormous blow to top 1 percent incomes dealt by the 40 percent loss in the stock market from 2007 to 2010, the top 1 percent share in 2012 of 17.3 percent was almost double its 1979 level. Particularly salient to this analysis is the rough doubling of both labor and total capital shares claimed by the top 1 percent from 1979 to 2007 and 2012.

The next block of columns shows each income category’s share of overall household income. The most striking finding here is the large decline in the labor compensation share of total income, falling from 70.6 percent in 1979 to 61.0 percent in 2007 and 2012. Correspondingly, the share of total capital and business income (driven by capital gains and business income) rose substantially, from 17.5 percent in 1979 to 22.1 percent in 2007. 5 Due to the stock market crash in 2007 and the hangover from that crash through 2010, capital income shares (and thus total capital and business income) remained lower in 2012 than in 2007, but still above the 1979 levels. Finally, pension payments and transfer incomes have risen steadily over time as shares of total income.

The third block of columns calculates how much growing concentration within each income category contributed to the increasing top 1 percent share of income from 1979 to 2007 and from 1979 to 2012. The growing concentration of particular income types in the top 1 percent of households contributed 7.2 percentage points to the 9.8 percentage-point increase in the top 1 percent’s income share from 1979 to 2007, accounting for essentially three quarters of the rise. The vast majority of this concentration within income sources is accounted for by labor and capital incomes. The last block of columns summarizes how much the shift from less-concentrated (labor) income to more-concentrated (capital) incomes boosted the top 1 percent share of overall household income. The sum of these shifts contributed 2.6 percentage points to the growth of the top 1 percent share from 1979 to 2007, and 0.4 percentage points from 2007 to 2012.

One way to summarize what these data tell us is that the vast majority of households (those outside the top 1 percent) are losing out in claiming their proportionate share of total income growth in two significant ways. First, workers as a group are losing out to capital owners, with the shift from labor to capital income explaining a significant portion of the rise of the top 1 percent. Second, the bottom 99 percent of income earners in America are able to claim only an ever-shrinking portion of the overall wage bill, with the highest-paid workers in the top 1 percent more than doubling their share of labor income over the last three and a half decades.

In our view, these are simply two sides of the same coin: a pronounced reduction in the collective and individual bargaining power of ordinary American workers that led to pay growth lagging productivity so badly in recent decades. If wages of the bottom 99 percent had kept pace with productivity growth for most of the past generation (the way that typical workers’ wages did in the post-WWII generation), then most of the increase in income inequality we have seen simply would not have had space to develop, as concentration within labor incomes would not have grown and the share of total output available to be claimed by capital owners would have been significantly smaller. 6

But wages for the vast majority of workers stopped keeping pace with economy-wide productivity growth in the late 1970s, and the cumulative wedge between productivity and typical workers’ pay has risen ever since, as shown below in Figure A. This figure shows growth in economy-wide productivity, defined as the amount of income and output generated in an average hour of work in the economy. While the pace of productivity growth slowed down in the late 1970s, productivity still grew steadily in the following decades. The figure also shows a measure of hourly pay (including both wages and benefits) for production and nonsupervisory workers in the U.S. economy. This nonmanagerial group includes roughly 80 percent of the private-sector workforce. After growing right in line with productivity for decades following World War II, hourly pay for these workers all but stagnated after 1979. Because productivity kept growing but pay for 80 percent of the private-sector workforce stagnated, this means that the economy continued to generate growing incomes on average each year, but pay for typical workers slowed radically. In short, the growing wedge between these lines represents the disproportionate share of economic growth claimed by those at the top after 1979.

Table 1 and Figure A together tell a clear story about the rise in American inequality: it has been made possible by the suppression of wage growth for the vast majority of American workers. Until this wage suppression ends and hourly pay for the vast majority of workers begins rising in lockstep with economy-wide productivity, there is very little reason to hope that rising inequality can be arrested. This makes focusing policy attention on boosting wage growth absolutely crucial.

“Secular stagnation,” or, the chronic shortage of aggregate demand constraining economic growth

A useful (if admittedly too-simple) way to think about an economy’s growth is as an interplay between the economy’s productive capacity and the level of aggregate demand. The economy’s productive capacity is a measure of potential that includes three major “inputs” of production: the labor force, the capital stock, and the state of technology. However, for these potential inputs to be fully utilized, aggregate demand—or spending by households, businesses, and governments—must be strong enough to mobilize them. Take the example of a hotel’s economic fortunes from 2007 to 2010. In 2007, the building and physical plant existed, the systems for taking reservations existed, and there were plenty of workers, both actual employees and potential workers willing to take jobs at the right wages. Also in that year, there were customers; rooms were likely booked to capacity and the owners may have even considered adding rooms. In 2010, this hotel still had a physical plant and reservation systems, and while their own staff was likely much smaller because of layoffs in the wake of the Great Recession, there was a huge increase in potential workers looking for jobs that could have been hired. But what kept the hotel’s hiring constrained and profits low in 2010 was lack of customers, not slow growth in the economy’s potential (or productive capacity).

Recently, a number of economists have noted that evidence over recent decades indicates that growth has been constrained more by slow growth in aggregate demand than by slow growth in the economy’s productive capacity. For example, the full business cycle between the peaks of 2001 and 2007 saw the slowest economic growth then on record. The result of this slow growth was that the unemployment rate never returned to prerecession levels, and the prime-age employment-to-population (EPOP) ratio never approached prerecession levels. (See Bivens and Irons 2008 for a full accounting of this business cycle’s place in historical comparisons.) All of this indicates that the slow growth that took hold even before the Great Recession hit was likely a function of too-slow growth in aggregate demand—or spending by households, businesses, and governments.

Before the Great Recession, most macroeconomists would have rejected the idea that economic growth could be constrained for long periods of time by too-slow demand growth relative to the economy’s productive capacity. The typical view was that growth in productive capacity was driven by long-run trends that did not change very fast, such as the aging of the population (which determines the pace of potential labor force growth), the accumulation of plants, equipment, and buildings that is the result of decades of past investment, and accelerations and decelerations of technology that were largely exogenous (unrelated to the state of the business cycle). In this view, ensuring that growth in productive capacity (or growth in potential GDP) is fully realized essentially means ensuring that aggregate demand grows quickly enough to keep resources (labor and capital) fully employed.

In past decades, policymakers considered it relatively easy to keep aggregate demand growing fast enough high enough to fully utilize the economy’s productive capacity. In fact, macroeconomic policymakers thought their most difficult task was restraining, not boosting, growth in aggregate demand. When aggregate demand for economic output outstrips the economy’s productive capacity to meet that demand, the result is inflation. So policymakers focused on controlling inflation—or ensuring that aggregate demand did not run chronically too fast. Of course, the U.S. economy underwent recessions during which demand growth lagged behind potential GDP growth, but it was thought that the demand shortfalls could be easily solved by the Federal Reserve reducing short-term interest rates to spur more spending. Because aggregate demand was thought to need policy restraint, not stimulus, this implies that overall growth was constrained by how fast the economy’s productive capacity could grow. Any worry that persistently slow growth (say lasting more than one year) in aggregate demand could be a primary constraint on economic growth over a meaningfully long time period was largely dismissed. We now know that this dismissal was premature, and that sluggish demand growth can pull down economic growth for long periods of time.

The data show we are in such a period, and likely have been for over a decade. The extraordinarily weak GDP growth between 2001 and 2007 was accompanied by decelerating wage growth, and low inflation and interest rates. These trends are strong indicators that demand was lagging growth in productive capacity. This weakness in demand was especially striking given that aggregate demand (or spending by households, businesses, and governments) was buoyed in those years initially by near-zero interest rates (set by the Federal Reserve in the early 2000s) and then by an enormous asset bubble in residential real estate that increased household wealth in the mid-2000s. The housing bubble burst, ushering in the Great Recession. The recovery from that recession was even slower than the recovery from the 2001 recession, despite extraordinarily expansionary monetary policy in the wake of the Great Recession.

#### Financialization – instead of regulating markets, the government bails them out which creates inefficient investment efforts that trigger economic collapse and ruins innovation

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Finance is financing FIRE

The first problem is that the financial sector has largely been financing itself. Most finance goes back into finance, insurance and real estate rather than into productive uses. The acronym for this is FIRE (finance, insurance, real estate) – appropriate in the sense that it is burning the foundations on which long-term economic growth rests. In the USA and the UK, only about a fifth of finance goes into the productive economy (such as companies that want to innovate, infrastructure that needs building). And in the UK, 10 per cent of all UK bank lending helps non-financial firms; the rest supports real estate and financial assets.18 In 1970 real estate lending constituted about 35 per cent of all bank lending in advanced economies; by 2007 the figure had risen to about 60 per cent.19 The current structure of finance thus fuels a debt-driven system and speculative bubbles which, when they burst, bring banks and others begging for government bailouts. Some of these institutions are deemed ‘too big to fail’, as were banks in the 2008–9 financial crisis: if they failed, the entire system would come crashing down with them. So the banks got the bailouts: FIRE profits are private; FIRE losses are public. Bailing out the banks involved ‘moral hazard’ because, being judged too important to fail, they lived with an implicit government guarantee which tempted them to take excessive risks without having fully to face the consequences if their bets went wrong.

Business is focusing on quarterly returns

The second problem is that business itself has become financialized. In recent decades, finance has generally grown faster than the economy and, within non-financial sectors, financial activities and their accompanying attitudes have come to dominate business. An ever greater share of corporate profits has been used to boost short- term gains in stock prices rather than provide long-term investment in areas like new capital equipment, R&D and worker training: skills are insufficiently developed, too many jobs are ‘McJobs’ and insecure, and wages stay low.20 Indeed, one of the reasons for the high level of private debt in the USA and the UK – driven by a form of capitalism that is aimed at maximizing the returns to shareholders, not all stakeholders – is that many workers need to take on debt to maintain their living standards but cannot earn enough to reduce or pay it off.21 But, unfortunately, the problem goes even further in

Scandinavia, where deregulation of the financial sector has also led to a rise in private debt (also due to home equity withdrawal-based consumption) and overinvestment in FIRE sectors.22

By purchasing its own shares, a corporation can artificially boost its stock price and that of its executives, who are paid in these stocks. In just the ten years to 2019, total buybacks by the Fortune 500 (an annual list of the 500 biggest US companies compiled by Fortune magazine, measured by revenues) exceeded nearly $4 trillion, with many companies spending over 100 per cent of their net income on a combination of buybacks and dividend pay- outs, thus raiding their capital reserves. Over the same period, six of America’s biggest airlines spent an average of 96 per cent of their free cash flow on stock buybacks – the aircraft manufacturer Boeing spent 74 per cent of its free cash flow on stock buybacks – which didn’t deter these companies from asking for federal government help when the COVID-19 crisis struck.23

The excuse often heard from business for doing this is that there are no ‘opportunities for investment’. But, given that the greatest buybackers are in industries where opportunities clearly exist – pharmaceuticals and energy – this is unconvincing. Are there really no opportunities for innovation in antibiotics or treatments for tropical diseases that mostly affect poor people in developing countries, not to mention vaccines? (This question became particularly pertinent with the arrival of COVID-19.) Are there really no opportunities for aircraft manufacturers to invest in renewable energy and other green technologies? The chief culprit is a form of corporate governance obsessed with ‘maximization of shareholder value’ – essentially, maximizing stock prices. Even Jack Welch, the late CEO of General Electric, one of America’s biggest companies, later in life called shareholder value ‘the dumbest idea in the

world’. He explained: ‘Shareholder value is a result, not a strategy ... Your main constituencies are your employees, your customers and your products. Managers and investors should not set share price increases as their overarching goal ... Short-term profits should be allied with an increase in the long-term value of a company.’24

In practice, maximizing shareholder value has often involved loading companies with debt – a supposedly efficient model which leverages a company’s capital base – with the risk that the company is dangerously exposed to unexpected turns of events, such as a pandemic or a market downturn. In 2017, for example, the USA suffered a severe retail slump. The long-established US retailer Toys ‘R’ Us went into liquidation. It had been acquired in 2005 by two private equity firms, Bain Capital and Kohlberg Kravis Roberts, and a real estate firm, Vornado Realty Trust. To buy the company they used the usual private equity formula, saddling it with debt to increase the return later.25 Indeed, company debt rose soon after the takeover from $1.86 billion to nearly $5 billion. By 2007 debt interest payments were 97 per cent of the company’s operating profit. The retail slump of the following years was severe, but the high debt burden imposed on Toys ‘R’ Us impaired its ability to adapt and increased its vulnerability to the downturn.26 The excessive financialization of companies and remorseless pursuit of shareholder value has left many other major companies open to similar charges of moral hazard: ingenious financial structures benefit owners more than other stakeholders such as workers, suppliers and customers – let alone the wider communities in which companies operate.

#### COVID proves that absent major changes to our mode of economics future crashes will happen

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Even before the COVID-19 pandemic hit in 2020, capitalism was stuck. It had – and has – no answers to a host of problems, perhaps most crucially the environmental crisis. From global heating to biodiversity loss, human activity is eroding the conditions necessary for social and environmental stability.1 Under current mitigation policy commitments, global surface temperatures are on track to increase by over 3°C relative to pre-industrial times – a magnitude that is widely accepted to have catastrophic outcomes.2 Species extinction has increased 100 to 1,000 times the background extinction rate, leading some scientists to announce that we are witnessing the sixth mass-extinction event.3

Rather than having a sustainable growth path, capitalism has built economies that inflated speculative bubbles, enriched the already immensely wealthy 1 per cent and were destroying the planet. In many Western and Western- style capitalist economies, real earnings for all but a few have barely risen in more than a decade – in some cases, such as the USA, in several decades – exacerbating inequalities between groups and regions despite high levels of employment.4 The dynamics of inequality explain why the profits-to-wages ratio has reached record highs. Between 1995 and 2013, real median wages in Organization for Economic Co-operation and Development (OECD) countries grew at an annual average rate of 0.8 per cent versus 1.5 per cent growth in labour productivity.5 In the period 1979–2018, real wages for the 50th and 10th percentiles of the wage distribution stagnated: there was 6.1 per cent cumulative real wage change over the whole period for the 50th percentile, 1.6 per cent for 10th percentile – versus 37.6 per cent for 90th percentile. In rich countries, private wealth-to-income ratios increased from 200–300 per cent in 1970 to 400–600 per cent in 2010.6

These economies were also, after 2008, hooked on the drug of quantitative easing – central banks injecting massive amounts of liquidity into the system – although economic growth and productivity improvement remained weak.7 Personal debt was back to levels last seen in the early years of this century. By 2018, private debt to GDP reached 150 per cent in the USA, 170 per cent in the UK, 200 per cent in France and 207 per cent in China – all substantially higher than levels at the turn of the century.8

And much of business has been plagued by a dangerous combination of low investment, short-term management and high rewards to shareholders and company bosses.9 In advanced economies, business investment has barely recovered to 2008 levels.10 In the UK in the 1980s, typical CEO pay was twenty times higher than that of the average worker. By 2016, the average FTSE 100 CEO’s pay was 129 times greater than that of the average employee.11 Since 1980, UK dividend pay-out ratios have remained constant, irrespective of profitability. Share buybacks have increased in importance, consistently exceeding UK share issuance over the past decade. In the USA, total pay-outs to shareholders have come to almost $1 trillion, equalling pre- crisis peaks, increasing from around 10 per cent of internal cash flow in the 1970s to 60 per cent by 2015.12

And difficulties are also being experienced in authoritarian, state-capitalist societies. Today, China, the leading authoritarian economy, remains weighed down by inefficient and heavily indebted state industries, a banking system with huge ‘zombie’ loans, an ageing population, and the massive task of shifting the economy away from excessive export dependency and towards greater domestic consumption. To be fair, it is making progress, and has real ambition about greening its economy, with over $1.7 trillion being invested as part of its five-year plan. But a central planning model is not likely to be one that will be able to take on the bold reforms to public and private collaboration that this book envisages.

The COVID-19 crisis also revealed just how fragile capitalism really is. People working in the gig economy have no security. High levels of corporate debt – partly taken on to pay dividends, buy back companies’ own shares and indirectly boost senior executive pay – have left many companies with little to fall back on. Their strategy of relying on attenuated global supply chains to cut costs and reduce the bargaining power of their on-site workers proved to be an Achilles heel when the pandemic disrupted production globally and created fierce competition for even basic items, such as face masks. Some governments, particularly those of the UK and the USA, had outsourced so much of their capacity to the private sector and consultancies that they were not able to manage the crisis properly. This led to deadly blunders, as governments faced shortages in basic PPE and failed to set up enough testing for their populations.13 The ultimate irony was that governments long wedded to austerity abruptly switched their affections to public spending, borrowing and creating deficits on a scale that would earlier have caused ideological apoplexy, as they struggled to do ‘whatever it takes’ to keep their national economies alive. Hammered under the twin blows of a collapse in output and a collapse in demand – largely induced by the government to suppress the virus – the Thatcher–Reagan model of the economy and society has broken down, and the global economy is wrestling with an historically severe depression.

A sluggish global economy, which spells particular disaster for developing countries and the less well-off in developed countries, has exacerbated social and political tensions that have been intensifying for decades. For far too many people, life feels precarious, either because they are in debt or their savings at most cover one month of rent.14 Even in the USA, the world’s biggest economy, whose working class was once a byword for prosperity, a report found that nearly three in ten adults would need to borrow money or sell something to cover a $400 unexpected expense.15

The balance of power has shifted away from workers and towards employers – for example, the relationship between an Uber driver and Uber as a multinational corporation is deliberately designed to shift risk from company to worker – and this, along with other cost-cutting practices that have reduced labour’s negotiating power, is one of the reasons why the ratio of profits to wages has reached a record high in the last decade.16 Others live hand to mouth on zero- hour contracts. Even when they have regular work, many people still depend on welfare to make ends meet.17 Yet it is the low-paid and disregarded workers – garbage collectors, postal staff, hospital cleaners, care workers, bus drivers – upon whom society came to depend most during the COVID-19 crisis, not corporate bosses, financiers and residents of tax havens.

Long-standing political rifts have grown wider: between nationalism and internationalism, democracy and autocracy, efficient and inefficient governments. A deep sense of injustice, powerlessness and distrust of elites – especially business and political elites – has eroded faith in democratic institutions. The global, multilateral system painfully constructed after World War Two and the broadly liberal, open values it embodies are under unprecedented strain. National salvation has trumped international co-operation, much to the delight of ‘strongmen’, demagogues and authoritarian regimes who can ride a tide of populism and exploit a climate of fear. To add to all of this, governments have continued to procrastinate in properly tackling the climate emergency. We can do better. But to do better, we need to fully understand how we got into the mess we are in.

To grasp the true scale of this challenge, it is important to understand that the issues described above are the consequences of deeper forces that together have led to a dysfunctional form of capitalism. There are (at least) four key sources of the problem: (1) the short-termism of the financial sector, (2) the financialization of business, (3) the climate emergency, and (4) slow or absent governments. In each, the way that organizations are structured and how they relate to each other are part of the problem. Their restructuring must, therefore, be part of the solution.