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#### Anti-trust’s promise of reformed capitalist competition is a ruse to solidify American domination. Western academics erase imperialism from consideration, ensuring anti-trust cases will always hinge on American interests and never consider global impact.

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Limitations of liberal and progressive ‘techlash’ reforms

In response to the rise of Big Tech, the intellectual classes in the Global North, led by American scholars, researchers and journalists, have formulated a liberal/progressive critique of Big Tech and a corresponding set of capitalist reforms they call the ‘techlash’. Their framework, informed by progressive-era figures like Louis Brandeis and Franklin D. Roosevelt (FDR), aims to restore the Golden Age of Capitalism through enlightened state regulation. This circuit of intellectuals are drawn primarily from elite universities (Ivy League, MIT, Stanford, Oxford, etc.) and the corporate media. Money for their research is sourced from elite academia and media outlets, wealthy foundations, philanthropists and Big Tech itself. The techlash critics ignore or downplay the analytical and moral centrality of digital capitalism and colonialism, ecological context and the need for a socialist transformation. A de facto vanguard within the intellectual community tuned into tech, together with Big Tech itself, these elite intellectuals set the bounds of leftist discourse and exercise ‘tech hegemony’ over the broader narrative.37

There are two branches of critique put forth by the American techlashers: a legal branch which focuses on anti-trust as its centrepiece to reform digital capitalism and a human rights branch which focuses on discrimination, privacy, content moderation and workers’ welfare. These intellectuals are typically in agreement with each other and often weave their critiques and solutions together. Let us consider each in turn.

Legal reformers

Within the legal domain, a new wave of anti-trust scholars have occupied centre-stage to address the digital economy.38 At the leftmost end of the spectrum in the United States, ‘neo-Brandeisian’ anti-trust scholars draw inspiration from Louis Brandeis, who viewed a fair and just democracy as one without extreme concentrations of wealth and power into the hands of corporations. Neo-Brandeisians share with socialists the idea that socioeconomic inequality in part springs from the monopoly power of big corporations. However, anti-trust reformers depart from socialists in irreconcilable ways.

For one, they envision a ‘small business capitalism’ of private property owners kept intact by enlightened state regulators. Socialists, by contrast, argue that the capitalist system naturally concentrates wealth and objects to class inequalities and private ownership of the means of production. For another, neo-Brandeisians fetishise competition as a force for social good, rather than a force which pits owners and workers against each other in the battle for revenue, profits and market share.

Critically, the limits of economic growth are not acknowledged anywhere in the literature, nor are digital colonialism and American empire. This is an analytical failure because the fact that Big Tech corporations exercise global dominance should be evaluated in light of their international and environmental impact. It’s as if central features of the global tech economy – American empire and ecological crisis – don’t even exist. It is a moral failure because all parties affected should be involved in formulating and implementing remedies, but, instead, the United States’ scholars, lawmakers, courts and regulators are the ones making critical decisions about reforming American firms with global reach.

European counterparts share in the US anti-trust reformist agenda, with an added caveat: the Europeans are explicitly trying to cut down the American super-giants in order to build their own tech giants and colonise global markets.

In Europe, there are already tens of unicorns (privately held start-ups valued over $1 billion). Rich European countries dominate this race. The UK leads the pack and aims to produce its own trillion-dollar behemoth. President Emanuel Macron will be pumping €5 billion to tech start-ups in hopes that France will have at least twenty-five unicorns by 2025. Germany is attracting billions for its start-ups and spending €3 billion to become a global AI powerhouse and a world leader (i.e., market coloniser) in digital industrialisation. For its part, the Netherlands aims to become a ‘unicorn nation’. In 2021, the European Union’s competition commissioner, Margarethe Vestager, told the press in no uncertain terms that Europe needs to ‘build its own European tech giants’.39

Thus, the notion that European leaders are against Big Tech is demonstrably false. They are trying to shrink the American super-giants (GAFAM) so they can carve out market share for burgeoning European tech giants. It’s pure power politics – an inconvenient truth for America’s neo-Brandeisians, who laud and borrow ideas from their European counterparts.

The new anti-trust scholars erase these realities from within their own self-referential echo chambers, and instead act as if anti-trust is a matter of remedying harms to their own citizens. This is not a small point. Even if anti-trust reforms go through, the space created for new market entrants will almost certainly be dominated by the rich countries, who still have the most advanced engineers and resources to pay them high salaries and poach foreign talent.

#### The AFF is literal Koch brothers propaganda designed to mainstream libertarian opposition to any government restrictions on the freedom to transact.

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When Joe Biden launched his presidential campaign in late April at a Teamsters hall in Pittsburgh, his speech was characteristically long on talk of restoring America’s “heart” and “soul” and short on specifics. But after noting that “workers feel powerless, too often humiliated” and bellowing, “I make no apologies; I am a union man!” he mentioned another way in which workers were being screwed by runaway corporate profiteers: “Why should someone who braids hair have to get 600 hours of training?” he demanded to know. “It makes no sense. They’re making it harder and harder in a whole range of professions, all to keep competition down.”

The crowd sort of cheered, in a half-hearted and rather puzzled way, because that’s what they’d come to do. But Biden’s speech — or rather, those three sentences in the middle of it — prompted loud and sustained applause from small-government conservatives and libertarians. At Real Clear Politics, former Federalist and Washington Examiner reporter Philip Wegmann gloried in the vision of “reliably Democratic voters all cheering the kind of government deregulation that has been the pet project of libertarian billionaires like Charles and David Koch for half a decade,” expressing the hope that Biden’s shout-out “could begin a larger national discussion about state and local licensing rules that govern everything from hair braiding to pet walking.” Shoshana Weissmann, a fellow at the Koch-allied R Street Institute, called it a “BIG DEAL, especially for a Democrat,” not to mention “a big win.” Clark Neily, a vice president at the libertarian Cato Institute, was so carried away that he cracked, “heck, I might even vote for him.”

It was, indeed, a landmark moment of sorts for one of the oddest and most successful propaganda and policy campaigns in recent years: the Koch network’s legal, legislative, academic, and public-relations crusade against occupational licensure — the state and local rules under which professional boards, from doctors and nurses to truckers and electricians, certify that workers in hundreds of occupations are properly trained to do their jobs safely and well. Over the past half-century, as membership in labor unions has plummeted and manufacturing work has given way to service jobs, the number of professions requiring licenses has risen on an inverse curve; somewhere between one-quarter and one-third of American workers now go through mandated hours of training, take tests, and pay fees that allow them to legally practice their chosen trades. It can be a hassle, in terms of time and money. But licensed workers earn, on average, 15 percent higher wages — about the same benefit that union membership yields.

Free-market purists hate licensing with a red-hot passion — always have, ever since Milton Friedman railed about the incipient rise of “silly licensure laws” in his 1962 classic, “Capitalism and Freedom.” Licensing is just as offensive as organized labor, writes Wegmann of Real Clear Politics, because “both create barriers to entry into the workforce and shield workers from increased competition from newcomers.” For decades, conservative and libertarian economists have cooked up studies showing that licensed services cost consumers more, that the work of licensed professionals might not be substantially higher in quality, and that licensing’s only real benefit is to the trade groups that get to oversee it — along with state and municipal governments that take a cut, and training schools and community colleges that receive tuition for required courses. It’s downright un-American and economically unwise, as the Koch-funded Institute for Justice puts it, for people to need “permission slips from the government” to do a job. It’s socialism on wheels.

As the number of jobs requiring licensure multiplied over the years from dozens to hundreds, the howling from the free-marketeers grew louder. Except nobody else was listening. In the mainstream, most people viewed job licenses — if they thought about them at all — as ways to ensure safety and quality: the government was guaranteeing that you could hire an electrician to rewire your house, say, and be pretty sure she’d know how not to set the place on fire. Licensure also gives consumers a meaningful way to complain when the house is set ablaze, or when an elderly parent or a child is mistreated by a caregiver; the boards can take away licenses just as they can grant them. What could be controversial about that?

But just as Friedman predicted those many decades ago, licensing got a little out of hand. While licensing requirements aren’t typically onerous for those who want them — the average is $209 in fees, one exam, and nine months of training — in some states, for some jobs, they can be: Aspiring cosmetologists in a few places need 2,100 hours of beauty school training at a cost upwards of $20,000, to cite an example that critics can’t seem to repeat often enough. Some states license jobs that involve no clear public health or safety concerns. Those requirements provide grist for the anti-licensing mills: Do florists in Louisiana, for example, really need to be licensed?

Soon after the Kochs funded its inception in the early 1990s, the Institute for Justice — a legal nonprofit that likes to call itself “the national law firm for liberty” — began challenging licensing in court. The lawyers at IJ cannily chose cases that were low-hanging fruit, suing on behalf of aspiring and aggrieved casket-makers, tour guides, limousine businesses, computer technicians, eyebrow-threaders and, yes, florists. As a bonus, these people’s stories — why do I need an expensive license for that? — made lively human-interest fodder for local news. The results of the litigation were mixed, but in some instances, states and cities deregulated these occupations to get clear of the lawsuits. And some non-libertarian economists, most notably President Obama’s chief economic adviser, the late Alan Krueger, began to agree that licensing was locking some low-income Americans out of good jobs.

That was pretty much the extent of anti-licensing activism, until the Koch brothers decided they needed to rebrand their image. By 2014, Charles and David (who died in August) desperately needed a public relations facelift. Their massive corporate empire, Koch Industries, had become known for dangerous workplaces and for being one of the country’s top air, water and climate polluters. Their high-dollar activism on behalf of libertarian policies and far-right Republican candidates was making them equally toxic to many—especially after the rise of the Tea Party, which had been organized and underwritten by their main political arm, Americans for Prosperity, and the resulting radicalism that roiled state capitals and gridlocked Congress. On the Senate floor, Majority Leader Harry Reid began regularly ripping into the Kochs for “trying to buy America,” once famously declaring, “It’s time that the American people spoke out against this terrible dishonesty of these two brothers who are about as un-American as anyone that I can imagine.”

So the Kochs did what mega-billionaires do. They hired a pricey team of public-relations specialists, led by a PR whiz for the tobacco industry, and embarked upon what The New Yorker’s Jane Mayer called “the best image overhaul that money can buy.” After spending zilch on corporate advertising in 2013, Koch Industries flooded the airwaves in 2014 and 2015 with soft-focus ads about their life-giving products and their happy, diverse employees. More important, they sought out new policy initiatives to make them, in the words of public-relations specialist Mike Paul, “look more compassionate—and so their theme is that they care about the poor.”

The Kochs started doing all kinds of unexpected things. They poured money into a nonprofit group, the Libre Initiative, with a mission to “equip the Hispanic community with the tools they need to be prosperous”; the initiative began handing out free school supplies, Turkeys at Thanksgiving, and offering Spanish-language drivers’ education, English-proficiency classes, and free tax-preparation assistance. They gave $25 million to the United Negro College Fund. They started initiatives that offered “healthy life style” advice in low-income neighborhoods. They bankrolled criminal justice reform efforts, partnering with liberal organizations like the ACLU and NAACP. And in 2016, under the guise of defending low-income Americans’ “right to earn an honest living,” they declared war on occupational licensing.

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A few days before Christmas in 2015, the Anchorage Dispatch News published an op-ed by Mark Holden, Koch Industries’ senior vice president. “What should Alaska lawmakers’ New Year’s resolutions be?” Holden asked. “I have a suggestion: Break down barriers to opportunity for the least fortunate.” He knew just how they could do it: “Elected officials in Anchorage City Hall and the state government in Juneau should start by rolling back burdensome occupational licensing regulations, which stand in the way of low-income job-seekers and budding entrepreneurs.”

After reading Holden’s piece, which cited evidence from a Koch-funded think tank to bolster his argument, Dispatch News columnist Dermot Cole — finding it a little odd that a powerful Kochster would be taking the time to write about job licenses in Alaska — did a little digging around. He discovered that at least 35 papers across the country had published nearly identical op-eds by Holden, with just the cities and states and a few fill-in-the-blank statistics about their licensing laws altered. There were New Year’s resolutions for legislators in Reno, Nevada; Portland, Maine; Casper, Wyoming; Oklahoma City; Fort Myers, Florida; Wilmington, Delaware … the list went on. “It’s just like a Mad Lib, if Lib were short for ‘Libertarian,’” commented Andy Cush at Gawker. The job licensing argument, he noted, “is an unsurprising point for a Koch executive, considering his company’s stringent opposition to government regulation of all kinds.”

Holden’s New Year’s resolutions signaled the blast-off for a public-relations blitz behind licencing reform that hasn’t slowed down since. Publications like USA Today were writing uncritical features about the newly discovered plague of occupational licensing, and the Kochs’ fledgling campaign against, as Holden told the paper, “government overreach that is restricting the ability for people to help improve their lives and remove barriers to opportunity.” When the reporter asked how much the Koch network would spend on the effort, Holden responded: “We don’t constrain ourselves by a budget.”

Indeed, pretty much every big tentacle of the “Kochtopus” — the best of many nicknames for the sprawling policy, political, academic, industrial, and media empire — would be activated in the drive to gut occupational regulations. The Institute for Justice would step up the pace of its lawsuits. The American Legislative Exchange Council (ALEC) would write model bills for state legislators to copy-and-paste, and promote them at the lavish conferences it throws to wine-and-dine conservative lawmakers. Americans for Prosperity would organize its state chapters — the largest, in Wisconsin, has 130,000 volunteer activists, eight field offices, and a handful of paid organizers — behind those proposals. Koch-funded think tanks, including a newly opened one at Saint Francis University called the Knee Center for the Study of Occupational Regulation, would churn out research demonstrating the damage wrought by “licensing cartels.”

Meanwhile, Koch-funded websites like the libertarian Reason and the right-wing Daily Caller, along with the always-friendly Wall Street Journal, would publish op-eds by Koch allies, treat each new Koch-funded study and ALEC-inspired piece of legislation as news, profile the lawmakers sponsoring the bills, and gin up outrage with feature stories about the human casualties of runaway licensing the Institute for Justice was representing in court. When the Kochs were rethinking their image, Arthur C. Brooks, president of the (yes, Koch-funded) American Enterprise Institute, had advised them to “lead with vulnerable people” in making the case for their free-market agenda. “Telling stories matters,” he said. “By telling stories, we can soften people.”

So the Koch network told stories. There was the one about the boy shoveling his grandmother’s snow in Normandy, Missouri, who received a warning from police because he didn’t have a permit for snow-shoveling services. There was the kid who set up a lemonade stand outside the Saratoga County Fair in New York, only to be shut down by a state health inspector when licensed lemonade vendors at the fair complained. (“Sadly,” wrote Reason’s Scott Shackford, “not enough people make the connection between these lemonade crackdowns and the broader ways licensing and permitting laws restrict people’s ability to earn a living.”) There was the poor department store florist in Louisiana — a widow, mind you — who lost her job because she kept failing the state board’s floral arrangement exam, and ultimately “died in poverty in 2004 because the state had prevented her from working to support herself.” There were the inmate firefighters in California, risking their necks to save lives and homes, who would be barred upon release from making a living doing the same because state law didn’t allow anyone with a criminal record to become a professional firefighter. And who could soon forget the sad tale of the Kentucky minister who tried to “dispense eyeglasses to the poor,” and was blocked by the state boards of Optometric Examiners and Ophthalmic Dispensers?

But most of all, in story after story, there were the military spouses and the hair-braiders. The first lawsuit brought by the Institute for Justice, in 1991, was on behalf of an African-American hair-braiding shop in Washington, D.C., that had run afoul of the local cosmetology licensing board. When the case became a local news cause celebre, and the district wound up nixing the requirement for hair braiders to make the lawsuit go away, the Koch network knew it was onto something. The hair-braiding cases were easy to make, both legally and in the court of public opinion: Since the process doesn’t involve the use of chemicals, dyes, or scissors, why should its practitioners be required to go to pricey beauty schools, where hair-braiding usually isn’t even taught?

The fact that licensing requirements “disadvantaged black stylists in particular because of the braiding’s racial and cultural roots,” as The Atlantic put it in reporting on an Iowa lawsuit in 2016, made these stories pitch-perfect for the Kochs’ big adventure in rebranding: Now the evil white corporatists were doing their part to help African-American women keep their ancient tradition alive and make a business out of it. Recognizing the propaganda value inherent in this, the Institute for Justice set up a slick, full-blown website, Braiding Freedom. Hair braiders started calling the Institute to help them sue their states. Local media — along with, apparently, former Vice President Biden — were enamored of the women’s stories, all of which dutifully repeated the Koch rhetoric about the perils of “job-killing” occupational licenses holding ambitious Americans down.

The military spouse sagas illustrated, in stories overlaid with stars and stripes, the problem of “licensing portability” — the ability to use an occupational license from one state when you move to another, rather than having to go through your new state’s licensing regime. In The Wall Street Journal, Shoshana Weissmann and C. Jarrett Dieterle of the Koch-allied R Street Institute decried the plight of Heather Kokesch Del Castillo, who’d set up shop as a “health coach” in California; when the Air Force transferred her husband to a base in Florida, she restarted her business there until a Department of Health investigator “showed up at the door of their new home with a cease-and-desist letter and a $750 fine. … She retained the Institute for Justice, a public-interest law firm, to fight the law that stripped her of her livelihood.”

This was a genuine problem for military spouses, who move a lot. But when it came to the moral of such stories, the Koch network tended to stretch things a bit — as it did with the other tales of licensing woes. First, Weissmann and Dieterle suggested, the obstacles to getting licenses in new states “perhaps” account for the high unemployment rate of military spouses (16 percent). In a far broader context, the difficulties with licensing portability were used to explain a troubling development that economists had fretted about for years: As Morris Kleiner of the University of Minnesota has noted, “The overall interstate migration rate is about half what it was in 1980, and it can reduce the efficiency of the labor market in the economy.”

Licensing, of course, is only one factor in that historical trendline — and some economists have found that it has no impact on interstate mobility at all — but the idea that licensing was forcing people to stay in place became the rationale for some of the most ambitious reforms to emerge from the anti-licensing campaign. The first piece of federal legislation clamping down on licensing, co-sponsored by Republican Sens. Mike Lee and Ben Sasse was pitched as a solution to the plight of military spouses. But the law went far beyond that narrow concern: the Alternatives to Licensing that Lower Obstacles to Work Act (ALLOW) would have permitted the District of Columbia, military bases, and national military parks — as “federal enclaves” — to apply licensing laws “only to those circumstances in which it is the least restrictive means of protecting the public health, safety or welfare.”

Lee said he intended the bill as a model for state legislators to adopt — and several of them would. The upshot of this “model” was that the impetus would be put on licensing boards to prove that nothing short of their licensing regimes could protect the public from the potential health or safety perils of their services — a far higher legal bar than the one that previously existed.

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After nearly four years of sustained assault from the Koch network, the vast majority of occupational licenses remain in place. But the issue, which almost nobody had heard of or given a passing thought when Mark Holden began issuing his New Year’s resolutions in 2015, now actually is an issue that many Americans are aware of — and almost all their awareness involves horror stories of little guys and gals with their ambitions cruelly flattened by the iron fist of big government colluding with all-powerful trade associations. It’s a testament to the power of the propaganda that the Koch network can muster. And there’s every sign that they’re in this for the long haul. Regulatory regimes don’t tend to crumble quickly, as Kochworld knows. And labor unions weren’t gutted in a day.

The most tangible impact of the anti-licensing crusade, not surprisingly, has been a raft of states — upwards of 20 so far — exempting hair braiders from licensing requirements. Almost as many have eased restrictions on licensing ex-convicts. More than a dozen states have deregulated a host of other professions. Some look like no-brainers: Arizona rolled back requirements for citrus fruit packers, cremationists, assayers, and yoga instructors; Charleston, S.C., set tour guides free; Rhode Island de-licensed fur buyers, kickboxers, and beer line cleaners. But regulations have been eliminated or eased for several jobs for which safety and public health concerns are real; in Nebraska, for instance, audiologists, nurses, and school bus drivers now only need easy-to-obtain certificates to ply their trades.

The pace of legislative action has accelerated in the last two years. Already in 2019, more than 1,000 occupational licensing bills have been introduced in state capitals, up from around 750 last year. And in the past few years, at least seven states have passed laws that sound innocuous, but may ultimately be the most consequential: “sunset reviews” like the one that Ohio Governor John Kasich signed this past January. Once every six years, Ohio legislators will now decide which licensing laws stay intact — based on the question of whether they’re the “least restrictive form of regulation” for each profession. Those subjective decisions, in turn, can be challenged: If the Institute for Justice thinks that nurses could be regulated “less restrictively,” for instance, they’ll now have a basis for taking Ohio to court.

Most of the new laws, whatever form they take, incorporate a sentence taken straight from ALEC’s models: “The right of an individual to pursue a lawful occupation is a fundamental right.” You don’t have to rack your brain to see how that new “right” could lead to a raft of litigation that weakens licensing regulations going forward.

One of the reasons that it’s taken just a few years to turn licensing into a conservative cri de coeur is that Koch’s propagandists have been arguing in a void. While trade associations will unleash lobbyists and supporters when they’re directly challenged in a state legislature, you don’t see a lot of op-eds and feature stories singing the praises of licensing regimes. Who wants to read that? But in the last couple of years, as the propaganda has taken hold, economists have issued findings that shoot down many of the now-popular assumptions about the effects of licensing.

Rather than hurting low income Americans, for instance, a recent (non-Koch-funded) study found that licensing provides the greatest benefits, in terms of higher wages, to workers who don’t have a high school or college degree. Another shot down the idea that allowing people to move and still use their previous state licenses would increase “mobility” in the workforce. And the idea that licensing laws hold back African Americans economically? The opposite is true, according to multiple studies: Nobody gains more from holding a job license than black women and men. (Conversely, nobody benefits less from licensing than white men, who earn about the same with them or without them.) But where it used to be libertarians who hollered about licensing without being heard, now it’s the mainstream economists who find that licensing is good for less educated workers, for women, and for people of color who can’t get anybody to lend them an ear.

#### Anti-trust is the legal force behind economic imperialism. Competition law is a product of economic nationalism designed to fuel American capitalist expansion at the expense of the periphery.

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Abstract

Since 1945, US judges have extended numerous “domestic” US laws (including securities and antitrust laws) to govern economic transactions taking place “abroad”. However, they have generally failed to extend US labor and employment laws to govern employer– employee relationships outside “US territory”. Through a close reading of federal court decisions and drawing on recent work in the field of critical legal studies, this article makes an argument for centering the study of jurisdiction in International Relations scholarship and for approaching states as instantiated in their jurisdictional assertions. I suggest that such an approach enables us to capture the geographies—including the imperial geographies—of US law in the “normal,” everyday course of affairs. In particular, such an approach allows us to see that, since the mid-20th century, the legal authority and legal relations of the US government have come to be organized around the notion of the national economy (rather than simply around, for example, notions of territory or citizenship). What this means is that it is increasingly a posited relationship to this national economy that determines whether people and corporations, wherever in the world they are located, are subjected to or protected by US law.

Since 1945, US courts have frequently used US laws to adjudicate certain kinds of civil disputes arising anywhere in the world. They have also allowed the Department of Justice to use these laws to criminally prosecute individuals and corporations (including “nonUS” citizens and corporations) for certain kinds of conduct carried out “abroad”.1 US courts have justified these extensions of US laws (which are referred to as instances of “extraterritorial jurisdiction”) in a variety of ways, pointing, for instance, to a need to protect US citizens located abroad from acts of “terrorism” or to otherwise safeguard the vital “national interests” of the United States.

International Relations (IR) scholars have been increasingly attentive to these practices. However, reflecting the traditional realist and liberal, and more-recent constructivist, foci of the discipline, they have generally focused on how these practices have unfolded in two contexts—security and human rights (Liste, 2014, 2016; Lohmann, 2016; Shambaugh, 1999). With some important exceptions (Putnam, 2009, 2016; Slaughter, 1995; Slaughter and Zaring, 1997), IR scholars have been less attentive to extensions of US “economic” laws, such as antitrust and securities laws, to govern conduct taking place abroad. An important aspect of these extensions is their routineness. Unlike extensions of, for example, US “terrorist financing” laws, which are often represented as necessitated by “exceptional” circumstances, extensions of US economic laws are significant precisely because of such laws’ applicability to, and impact on, routine commercial activities. As such, studying such extensions allows us to capture an important modality through which the US government structures and regulates global economic activity. It further enables us to capture the geographies—including the imperial geographies—of US law in the “normal,” everyday course of affairs. Since World War Two, the extraterritorial extension of US economic laws has often taken place pursuant to the “effects doctrine.” As described by US courts, the effects doctrine states that governments may apply their own laws to conduct that takes place outside their territorial boundaries, but that has effects (of a particular magnitude) within such boundaries. Before 1945, courts, including the Permanent Court of International Justice (PCIJ), had used the doctrine to uphold jurisdictional assertions by governments over conduct taking place abroad but having physical effects within their territories (S. S. Lotus [France v. Turkey], PCIJ, 1927). The frequently-cited example was a bullet fired across an international border giving rise to jurisdiction where the bullet landed. However, in 1945, a US federal appellate court held for the first time that economic effects, within the United States, of extraterritorial conduct would be sufficient to trigger the application of US law. Specifically, in United States v. Aluminum Company of America (“Alcoa”), the Second Circuit Court of Appeals (1945) applied the Sherman Antitrust Act of 1890 to the allegedly-anticompetitive activities of a Canadian company, taking place in Switzerland. The court justified its decision by pointing to the effects of these activities on quantities of aluminum imported into, and on prices of aluminum within, the US In subsequent decades, US courts invoked this “economic” version of the effects doctrine in a variety of contexts, using it, for instance, to apply US securities and trademark laws to conduct taking place abroad (Schoenbaum v. Firstbrook, Second Circuit, 1968; Steele v. Bulova Watch Co., US Supreme Court, 1952). However, they failed or refused to apply the doctrine in other contexts, and in particular, refused to apply US employment and labor laws to govern conduct taking place abroad (Foley Bros. v. Filardo, US Supreme Court, 1949 (“Foley”); Equal Employment Opportunity Commission v. Arabian American Oil Co., US Supreme Court, 1991 (“Aramco”)). In this article, through an examination of US courts’ effects-based extraterritoriality since 1945, I do two things. First, I provide a descriptive account of the geographies of the jurisdictional boundaries of the United States, understanding “jurisdictional boundaries” as the shifting lines between spaces in which, and subject areas and people to which, US law does and does not apply. There has long been a disjuncture between these jurisdictional boundaries and the territorial boundaries that the US government claims as its own. This article moves beyond a simple demonstration of such a disjuncture, to trace its precise (though ever-changing) shapes. Through a close reading of US court decisions in the antitrust and employment/labor contexts, I show that, in the post-World War Two (“postwar”) period, in addition to the notion of territory, the jurisdictional boundaries of the United States have come to be organized around a (partly-legal) construct called the “national economy.” What this means is that it is increasingly a posited relationship to this national economy that determines whether US law applies in a particular case, and so also determines where US law applies. Through my descriptive account, I also make a broader argument for foregrounding jurisdictional assertions in IR scholarship, and for approaching states as both instantiated in and constituted by these jurisdictional assertions. In particular, I show the potential of such an approach in helping us think about the state “around” (Reid-Henry, 2010: 752) or “beyond” (Glassman, 1999: 669) the territorial trap.2 I show that, by foregrounding and tracing jurisdictional assertions, we are better able to empirically capture the shifting geographical coordinates of states’ legal boundaries. Furthermore, I show that, by foregrounding and tracing jurisdictional assertions, we are able to reconceptualize such legal boundaries, to see them as not static and singular, but shifting and multiple. Some such borders are “clearly visible in the landscape,” others are “hidden from immediate view” (Cowen, 2009: 70)—though no less consequential, and—crucially— no less “formal” or “legal” for that. In one sense, then, my argument is a very specific, empirical one about US extraterritoriality. I am not suggesting a similar rise in extraterritoriality elsewhere in the postWorld War Two period: rather, as I explain in the next section, I view postwar “economic” extraterritoriality as, until recently, a largely US practice, enabled primarily by and enabling of US economic preeminence. Yet my argument is also a broader one in its proposal of a particular approach to states’ boundaries, an approach which finds these shifting boundaries in the routine, seemingly-mundane jurisdictional assertions of states. I show that, by tracing these jurisdictional assertions, we can better capture the multiple ways in which legal authority is organized and authorized in the contemporary world— sometimes around and by the notion of territory, sometimes around and by the notion of the national economy, sometimes in still other ways. In highlighting the multiple ways in which legal authority is organized in the contemporary world, this article does not suggest that the notion of territory is no longer important—quite the contrary. My concern is rather with the political productiveness of the very assumption of the territorial organization of jurisdiction, of the assumption that legal authority is both supreme and even within, and limited by, territorial boundaries. For example, in settler-colonial states, the assumption of supremacy and evenness of the settler government’s jurisdiction within its claimed territory works to obscure rival indigenous forms of authority and law (Pasternak, 2017). So too, this assumption serves to obscure, and so enable, ongoing violent processes through which such jurisdiction needs to continually be imposed on, and is continually resisted by, indigenous peoples (Pasternak, 2017). At the same time, and as this article shows, the assumption of the territorial limitedness of the US government’s jurisdiction works to obscure, and so to enable, the routine reach of US law “abroad.” At its core, then, this article aims to counter these assumptions of the territorial exclusiveness and limitedness of jurisdiction, and so to make possible the consideration and tracing of other contemporary geographies of law, and specifically, of the imperial geographies of law. In the section “Centering jurisdiction”, drawing on work on jurisdiction and territory in IR and law (Dorsett, 2002; Dorsett and McVeigh, 2012; Elden, 2013; Kaushal, 2015; McVeigh, 2007; Pahuja, 2013; Ryngaert, 2016; Valverde, 2009), I detail my approach to jurisdiction, and describe how it diverges from conventional approaches to the same. In the sections “The emergence of effects-based extraterritoriality” and “Delineating the US economy”, I show that, since 1945, the jurisdictional boundaries of the United States have come to be organized around a construct called “national economy.” I do this in two steps. In the section “The emergence of effects-based extraterritoriality”, contrasting two cases decided 36 years apart, I demonstrate the importance of this construct, which was only at play in the latter case, in enabling the extraterritorial extension of US law. In the section “Delineating the US economy”, I detail the ways in which US judges continually construct the national economy through their decisions, by articulating some people and conduct to, and disarticulating other people and conduct from, that national economy. I suggest that, in doing so, these judges draw US jurisdictional boundaries in ways that include US corporations but exclude US workers employed abroad. The final section concludes. Centering jurisdiction IR scholars and international lawyers tend to think and talk about jurisdiction—the authority to speak or enunciate the law—primarily in terms of territorial sovereignty. Territorial sovereignty is generally seen as coming before jurisdiction, in two ways. First, territorial sovereignty is seen as giving rise to jurisdiction, as providing grounds for the authority to speak the law. Second, territory—already-formed territory—is seen as setting the spatial extent of jurisdiction: a state’s jurisdictional boundaries are seen as normally limited by its existing territorial bounds. Such an approach has crucial implications for the study of jurisdiction: as Sundhya Pahuja (2013: 70) writes, it casts jurisdiction as “a technical question concerned with whether a particular sovereign state, or any judicial or quasi-judicial body constituted according to [. . .] law, can exercise legal authority over a territory, dispute, person or issue.” Recent writings on jurisdiction by critical legal scholars (Dorsett and McVeigh, 2012; Kaushal, 2015; Pahuja, 2013) have called into question this view of territorial sovereignty as anterior to jurisdiction. These writings have instead stressed the “inaugural” quality of jurisdiction, the ways in which jurisdictional practices, rather than being carried out by already-constituted political communities, serve as important sites for the constitution and reconstitution of such community (with all the violent Irani 5 inclusions, displacements, and expulsions that such processes often involve) (Kaushal, 2015: 781–782).3 In this article, I draw on this flipped characterization of legal authority, but I add an emphasis on practice. In my account, legal assertions not only form, border, and construct “the state”: they are the state. The state is instantiated in its jurisdictional assertions: it is “the ever-changing snapshot emerging from [multiple] jurisdictional assertions, the very pattern of assertions of jurisdiction, not an entity that ponders whether to assert jurisdiction or not” (Malley et al., 1990: 1296). Changing jurisdictional assertions do not simply change what “the state” does: they further change what the state is, who and what it includes and excludes, and crucially, where it is located. Approaching the state as both constituted by and instantiated in its jurisdictional assertions effects a transformation in our understandings of the geographies of states and their borders. In particular, it enables us to better capture the imperial geographies of some states and their borders. Rather than entities that exert legal authority uniformly within, and only within, fixed lines-on-maps, states come to have multiple boundaries, formed in particular moments, through particular assertions. Territorial borders become only one among many legalized boundaries of state authority; territory becomes only one way of organizing and limiting state law. This opens up space to think about other (nonor less-territorial) legalized boundaries of state authority, other (non- or less-territorial) ways of organizing and limiting state law, ways that—far from being superseded at Westphalia or overcome with decolonization and the supposed universalization of the state form—actually exist in the contemporary world. In IR scholarship, the primary place these other ways of organizing and limiting jurisdiction make an appearance is in the historical scholarship on territory (Elden, 2013; Ruggie, 1993). Such scholarship generally describes a shift in the organization of legal authority, variously identified as taking place sometime between the 14th century and the Peace of Westphalia: while prior to this period, multiple legal authorities had coexisted in given spaces, during this time period, governments for the first time began to claim exclusive authority over bordered spaces and the people they “contained.” I draw from this work a recognition of the historical situatedness and specificity of the territorial organization of jurisdiction, a recognition which opens up space to both consider multiple ways of organizing jurisdiction and investigate their techniques and micro-politics— as I do below. But I diverge from this work in emphasizing that such multiple ways of organizing jurisdiction are contemporaneous and contemporary, rather than successive or primarily of historical interest.4 To capture the existence of multiple contemporaneous and contemporary ways of organizing jurisdiction, I employ the concept of jurisdictional rationalities, or modes of jurisdictional thought and action (Dorsett and McVeigh, 2012: 32). Much like political rationalities, different jurisdictional rationalities can be understood as different “conceptions of the proper ends and means of government” and law (Miller and Rose, 1990: 5). These rationalities can be distinguished by the particular “concept or category” around which jurisdiction is “centered” (for example, “territory” or the “national economy”) (Dorsett and McVeigh, 2012: 48). Different jurisdictional rationalities “engage” law differently: they are associated with different kinds of legal subjects, spaces, and institutions (Dorsett and McVeigh, 2012: 42, 48). For example, while “territory” (as a mode of jurisdictional thought and action) is associated with “sovereign-subject (or citizen) 6 European Journal of International Relations 00(0) relations distributed in territorial terms” (Dorsett and McVeigh, 2012: 41), the “national economy” is associated with—and brings into being—other kinds of subjects and relations (for example, relations between the “United States” and corporations located abroad whose actions are understood as affecting prices within the United States). Conversely, as I show below, thinking about legal authority in terms of a national economy can erase sovereign-citizen relations, when such relations are understood as unimportant to the economy of the United States. In subsequent sections, I examine the jurisdictional rationalities, the modes of jurisdictional thought, underlying US judges’ decisions about whether or not to extend US antitrust and labor laws to govern conduct “abroad.” I show that, while territory remains important as an organizing principle for legal authority, there emerged, in the postwar period, a new mode of thinking and talking about legal authority, which centered on the national economy. I show that, in decisions in this period in which judges considered whether or not to extend US laws abroad, they increasingly represented people, corporations, and activities in terms of their relationships to “US commerce” or “the US economy,” rather than solely in terms of where they were located, incorporated, or born. It is these relationships that served—and continue to serve—to make possible, or to preclude, the extension of US law. These relationships—between various people, corporations, and activities and the “US economy”—are not ones that pre-exist the decisions in which they are invoked, although they are portrayed by judges as such. Such relationships are not found or noticed by judges: judges create them. For instance, as I will show below, judges draw on general economic “laws” to make connections between extraterritorial agreements to restrain production of a particular commodity and prices of that commodity within the United States. In so doing, they characterize the parties to such agreements as affecting the US economy, and so as subject to the legal authority of the US government. Of course, in defining particular people and activities as “part of” or as “affecting” the US economy, judges delineate the US economy itself. It is, in part, in and through particular legal decisions that the national economy is given form and limits, and is modified, over and over again. What this means is that the national economy is constructed in and through the decisions for which it serves as jurisdictional grounds.5 I discuss this process of construction in subsequent sections. In doing so, I focus on judges’ reasoning, on the texts of their decisions. However, it bears mentioning that these decisions have material effects, in part because they are enforced. Enforcement is a complicated legal question in an international context: legal scholars generally agree that, while states may sometimes declare their laws applicable to particular kinds of conduct taking place anywhere in the world (a form of jurisdiction known as “prescriptive jurisdiction”), they may rarely legally “enforce” these laws or judgments in another state’s territory without permission (a form of jurisdiction known as “enforcement jurisdiction”) (Lowe, 2003: 338). Nonetheless, this general rule obscures the US government’s frequent use of “indirect territorial means” of enforcement (for example, the seizure of assets located within the United States, a ban on travel to the United States) to enforce the judgments of US courts (Ryngaert, 2008: 24–25). Crucially, “indirect territorial means” for enforcement are differently available to different states. Enforcement, in particular, depends on the material capabilities and Irani 7 economic positioning of states. In theory, any government can employ the economic effects doctrine to apply its domestic law to conduct taking place abroad. In practice, however, it is the “presence of assets” within the territorial boundaries of a state that “giv[es] these expansive jurisdictional claims bite,” because it is against such assets that a legal judgment can most easily be enforced (Raustiala, 2009: 113). As such, the centrality of the United States to global economic activity is absolutely crucial in enabling the effective exercise of extraterritorial jurisdiction by US courts. This point is obscured by US governmental officials who have defended the extraterritorial extension of US laws by suggesting that other states could similarly extend their laws to govern conduct taking place abroad (Bell, 1978). But it is crucial in understanding the practices described in this article, and specifically, in understanding the uniquely-broad scope of US extraterritoriality, the relative ease with which the United States is able to extend its laws to govern conduct taking place anywhere in the world.6 The emergence of effects-based extraterritoriality In the next two sections, I show that, in the postwar period, the legal authority of the US government has come to be organized around the notion of the national economy. In this section, I demonstrate the importance of this notion in enabling the emergence of (economic) effects-based extraterritoriality in the 1945 Alcoa case. In the next section, I show the ways in which US judges have constructed the national economy in the decades following Alcoa—specifically, in ways that include US consumers and importers, but exclude US workers located abroad. Prior to 1945, the United States and numerous European states routinely applied their laws to certain conduct taking place in much of the “non-European” world, for example, in China and Japan. However, with some exceptions, in relations between the former states, principles of international law and comity were understood to limit states’ legal authority to acts seen as taking place within their territorial boundaries. Within US law, the quintessential statement of this understanding could be found in American Banana Company v. United Fruit Company (“American Banana”), a 1909 US Supreme Court decision which—ignoring and obscuring the routine nature of US extraterritoriality outside of Europe—is sometimes described as marking the high point of strict territoriality in US law (Slaughter and Zaring, 1997: 3). American Banana was an action to recover damages, brought by the American Banana Company against the United Fruit Company for the latter’s alleged violations of the Sherman Act of 1890 (15 U.S.C.A. §§ 1–2), which, among other things, bans certain contracts or combinations in restraint of trade, as well as the monopolization or attempted monopolization of trade and commerce. The plaintiff, American Banana, alleged that the defendant, United Fruit, had violated the Act primarily through its anticompetitive conduct in what was considered, at various historical moments and by different parties, to be Colombian, Panamanian, and Costa Rican territory. American Banana accused United Fruit of entering into quantity- and price-fixing agreements, and of instigating the Costa Rican government to seize goods and materials destined for American Banana’s plantation (American Banana, US Supreme Court, 1909: 354). 8 European Journal of International Relations 00(0) Justice Holmes, writing for the Supreme Court, dismissed American Banana’s complaint, holding that since the Sherman Act did not apply in Colombian/Panamanian/ Costa Rican territory, the plaintiff had no legal basis on which to sue. The Court characterized its decision as dictated by “[t]he general and almost universal rule” “that the character of an act as lawful or unlawful must be determined wholly by the law of the country where the act is done” (American Banana, US Supreme Court, 1909: 356). Given this rule, the Court stated that “[f]or another jurisdiction, if it should happen to lay hold of the actor, to treat him according to its own notions rather than those of the place where he did the acts, not only would be unjust, but would be an interference with the authority of another sovereign, contrary to the comity of nations, which the other state concerned justly might resent” (American Banana, US Supreme Court, 1909: 356). For three decades after American Banana, Justice Holmes’ declaration—that “the character of an act as lawful or unlawful must be determined wholly by the law of the country where the act is done”—remained dominant in US relations with European states. In the 1945 Alcoa case, however, the Second Circuit Court of Appeals, acting as a court of final appeal because of the Supreme Court’s inability to muster a quorum, reversed course. Specifically, Judge Learned Hand held that the US Justice Department could use the Sherman Act as a basis for the prosecution of a Canadian corporation, Aluminum Limited, for its acts in Switzerland (and specifically, for its entry into a cartel agreement that aimed at limiting production of aluminum). Justifying his decision, Judge Hand pointed to the effects that this agreement could be presumed to have on quantities of aluminum imported into, and on prices of aluminum within, the United States. Judge Hand contended that these effects brought into play the general rule that “any state may impose liabilities, even upon persons not within its allegiance, for conduct outside its borders that has consequences within its borders which the state reprehends” (Alcoa, Second Circuit, 1945: 443, citations removed).7 How are we to understand the Alcoa decision in light of the earlier American Banana one? When one engages in a close reading of the two judgments, what quickly becomes apparent is the very different rationalities, the very different conceptualizations of the proper means and ends of federal government and federal law underlying each decision: these rationalities render different courses of action legitimate and desirable in each case. For Justice Holmes, the author of the earlier American Banana decision, federal government is about controlling and managing a bordered physical space. This understanding of the proper end of federal government is manifest in Justice Holmes’ concern with the locations of acts, his categorization of such acts as inside or outside particular lineson-maps, and the fact that such categorization is determinative of whether or not he thinks US law is to apply (American Banana, US Supreme Court, 1909: 355). Justice Holmes writes: “In the first place the acts causing the damage were done, so far as appears, outside the jurisdiction of the United States and within that of other states. It is surprising to hear it argued that they were governed by the act of Congress” (American Banana, US Supreme Court, 1909: 355, italics added). And, as mentioned above, after listing certain limited exceptions, Holmes continues: “[t]he general and almost universal rule is that the character of an act as lawful or unlawful must be determined wholly by the law of the country where the act is done” (American Banana, US Supreme Court, 1909: 356, italics added). Irani 9 Justice Holmes’ understanding of the proper end of federal government (that is, the control and management of a bordered physical space) is particularly visible in what he does not discuss, and in particular, in his lack of attention to factors other than location. For instance, in American Banana, there is no discussion of the economic implications of the dispute at hand “in” or “for” the United States. There is no discussion of the possible effects of the defendant’s foreign anticompetitive activities on US banana prices or on the overseas opportunities of other US-incorporated companies. Even the injuries to American Banana, itself a US-incorporated corporation, are only mentioned when Justice Holmes summarizes the plaintiff’s claims (that is, not when he discusses the jurisdictional question) (American Banana, US Supreme Court, 1909: 355). Such effects are not yet seen as relevant to the question of legal authority, or, at least, are not the terms in which legal authority can yet be explicitly discussed. In contrast, 35 years later, economic effects are central to Judge Hand’s decision in Alcoa: Judge Hand grounds the application of federal law in the presence of such effects within US borders. Yet, he does not identify any particular individuals or groups located within the United States who might be affected by Aluminum Limited’s agreement to limit production of aluminum. Instead, Judge Hand speaks in general terms about the effects of the aluminum cartel on imports and prices of aluminum, characterizing these effects as “consequences within [the United States’] borders which the state reprehends” (Alcoa, Second Circuit, 1945: 443–444). Implicit in the suggestion that the United States, as an entity, “reprehends” particular economic consequences is the notion of a single national economic unit with a single national economic interest: reduced imports and raised prices are bad for the United States itself, rather than for particular people or classes or even component US states. Although he never actually uses the term, we can see the centrality of what we might today call a “national economy” to Judge Hand’s decision. This economy is made up of components like imports, exports and prices, which need not be identified with any particular individuals, classes, or component states, but can simply be identified with the United States These components are linked: Judge Hand feels comfortable setting up a presumption that reduced imports into the United States will lead to uniformly higher prices throughout US territory (Alcoa, Second Circuit, 1945: 444–445). These components are all cast as located within the United States, since effects on these components are described as consequences “within [the United States’] borders” that the United States reprehends (Alcoa, Second Circuit, 1945: 443–444). Yet they are also cast as vulnerable to economic activities, such as agreements to limit production, taking place abroad: for example, Judge Hand declares that “a depressant upon production which applies generally may be assumed, ceteris paribus, to distribute its effect evenly upon all markets” (Alcoa, Second Circuit, 1945: 444–445). From Judge Hand’s discussion of effects in Alcoa, we can both extract, and see the implications of, a jurisdictional rationality that differs from the one at play in American Banana. In the American Banana decision, federal government is about governing a bordered physical space: as such, US law can be extended to govern, and only to govern, acts taking place within that bordered physical space. In contrast, in the Alcoa decision, federal government is not only about managing a bordered physical space (although it certainly is that). Rather, because that bordered physical space is cast as coterminous 10 European Journal of International Relations 00(0) with a national economy, protecting that space involves protecting that national economy (including its components like imports, exports, and prices) as well. And given the ease with which economic effects are seen to travel across borders, a necessary means to the end of economic protection is the extraterritorial extension of US law. The centrality of the national economy to Judge Hand’s 1945 decision, and its absence in Justice Holmes’ 1909 decision, is not surprising: at the time of Justice Holmes’ decision, no such construct was imagined to exist. As Timothy Mitchell (2005a; 2005b) and Hugo Radice (1984) have shown, in the United States, it was not until in the 1920s and 1930s that new practices of accounting, measuring, and calculating “formed. . .the economy as a new object of professional knowledge and political practice” (Mitchell, 2005b: 126).8 The discipline of Economics was a particularly important site in this process: in this field, innovations (like the practice of national income accounting) and publications (like Keynes’ General Theory of Employment, Interest and Money) enabled the economy to, for the first time, be imagined as the “self-contained structure or totality of relations of production, distribution and consumption of goods in a given geographic space” (Mitchell, 2008, p. 1116; see also Radice, 1984: 121).9 Developments outside the discipline, including in the legal field, also played a role in enabling this imagining of the national economy. For example, in domestic “Commerce Clause” decisions in the first half of the 20th century, federal judges began to link and draw together transactions and processes (like production, distribution, and sales) that they had previously represented as separate.10 In addition, they began to consider the effects of previously “local” transactions on “national” economic indicators. These decisions paved the way for the Supreme Court, by 1942, to explicitly speak in terms of a national economy, which, in a series of later New Deal cases, it assigned to the federal government (rather than the United States’ component states) for protection and promotion (Wickard v. Filburn, US Supreme Court, 1942a: 125–126; A.B. Kirschbaum Co. v. Walling, US Supreme Court, 1942b: 520–521). Judge Holmes was unlikely to suggest that the federal government had the authority to extend US law abroad to manage the US economy because he was unlikely to think in terms of such an economy at all. And, as Miller and Rose (1990: 6) write: “Before one can seek to manage a domain such as the economy it is first necessary to conceptualize a set of processes and relations as an economy which is amendable to management.” By the time of Alcoa, however, “[t]he birth of a language of national economy as a domain with its own characteristics, laws and processes that could be spoken about and about which knowledge could be gained” had enabled that national economy to “become an element in programmes which could seek to evaluate and increase the power of nations by governing and managing ‘the economy’.” (Miller and Rose, 1990: 6)11 As such, in Alcoa, Judge Hand was able to allude to a national economy as grounds for his extraterritorial extension of US law. Delineating the US economy In the previous section, I identified a jurisdictional rationality centered on a national economy and demonstrated its importance in enabling the extraterritorial extension of US law in a particular, and particularly-important, case. In this section, I move from Irani 11 identifying a jurisdictional rationality centered on a national economy, to demonstrating that the legal authority of the federal government of the United States has come to be organized partly in terms of that national economy. By this, I mean that people, entities, and conduct are often represented in extraterritoriality decisions in terms of their relationships to a national economy (rather than in terms of their citizenships or locations): it is these posited relationships that justify their subjections to particular US laws. These relationships are not self-evident or pre-existing, although they are often represented as such by judges, lawyers, and rationalist scholars of extraterritoriality (Putnam, 2009).12 Rather, judges construct these relationships in their decisions, articulating some to and disarticulating others from, the US economy: these articulations enable their extensions of, or refusals to extend, US law. In this way, in deciding against and for whom to bring into play the very material force of US law, judges draw the jurisdictional boundaries of the United States. To clarify my argument, it is useful to return to Asha Kaushal’s (2015) discussion of the “inaugural” function of jurisdiction. To recap, Kaushal (2015: 782) describes the “second order manifestation of inaugural jurisdiction” as the “attachment of an individual, place, or event to a legal and political order”. This is not simply the attachment of an individual, place, or event to an unchanging order: rather, the very act of attachment transforms the order itself, modifying what it contains, where it begins and ends. Below, I show how judges, through their decisions, engage in the work of attaching some, and not others, to the United States: I further identify the shifting coordinates of the political and legal orders that emerge from these attachments and detachments. I do this through a comparison of two legal contexts: antitrust and employment/labor law. Several authors have pointed to a disparity in these contexts: US judges have frequently extended US antitrust laws to govern extraterritorial conduct, but have generally refused to do the same for US employment or labor laws (Putnam, 2009: 460; Turley, 1990: 601–602). I show how this disparity has been enabled by judges’ different articulations, in these two contexts, of particular people and conduct to the United States.13 In decisions in which they invoke the effects doctrine, judges have articulated people and conduct to the US economy in two ways. First, judges have represented certain kinds of actors, activities, indicators, and goods as themselves part of the US economy. They have usually done so implicitly, without defending their decisions about membership but simply casting such membership as fact. Second, judges have represented people and conduct “outside” the US economy as affecting those actors, activities, indicators, and goods that they have already decided are “part of” the US economy. Again, they have usually done so without much explanation, often simply characterizing certain kinds of activities as the causes or consequences of others. Occasionally, however, judges have supported their causal assertions by citing basic and commonplace notions about economic tendencies and rules, making repeated references to, for example, the “laws” of supply and demand (Alcoa, Second Circuit, 1945: 44–45). Although they “may or may not be empirically valid on their own terms” (Weldes, 1999: 13), these causal relationships are important: they work to relate the allegedly causal actors or activities abroad to components of the US economy, and so to trigger Congress’ authority to protect that economy from externally-originating harm. As such, these relationships serve as “warranting conditions” (Weldes, 1999: 13), enabling extensions of US laws abroad.

Taking each of these moments of articulation in turn. First, judges have cast very different kinds of actors as themselves part of the US economy in the antitrust and labor contexts, that is, they have represented the composition of the US economy very differently in these two contexts. In antitrust cases, judges have represented US consumers as part of the US economy, so that their losses can be seen as national losses, their gains national gains. So, for example, as previously discussed, in Alcoa, Judge Hand described the higher prices of aluminum to be paid by US consumers as “consequences within [US] borders which the state reprehends” (Alcoa, Second Circuit, 1945: 443, citations removed). In addition, judges have represented US importers, searching for commodities abroad, as part of the US economy, so that interference with their business would amount to interference with the US economy itself. So, for example, in Occidental Petroleum v. Buttes Gas Company (Central District of California, 1971: 102–103), a US District Court stated that one US corporation’s interference with another US corporation’s “business of extracting and importing oil into the United States” through acts in the Persian Gulf would affect US commerce in ways that would, in theory, justify the extension of US law.14

In contrast, judges have defined the composition of the US economy much more narrowly in employment/labor cases. In particular, they have failed or refused to characterize US workers located abroad as part of the US economy. For example, only 4 years after Alcoa, the Supreme Court in Foley (1949: 284) refused to apply a federal overtime pay law to the activities of Foley Bros, a US corporation, undertaking construction projects for the US government in Iran and Iraq: it refused to do so despite the fact that the employee in question, Filardo, was a US citizen. This refusal to cast US workers abroad as part of the US economy continued half a century later. So, for example, in 1991, in Aramco (US Supreme Court, 1991: 247–248), the Supreme Court refused to extend Title VII of the Civil Rights Act (banning employment discrimination on the basis of, among other things, race, religion and national origin) to govern the conduct of a US incorporated corporation in Saudi Arabia, even though the employee in question, Ali Bourselan, was a US citizen and the employment relationship had begun in the US In both these cases, there was no suggestion that the lost wages of US citizens, like the lost profits of US importers, might amount to losses for the US economy (despite the fact that US citizens are often taxed on their global earnings). Instead, in failing to mention or use the economic effects doctrine to extend US law in Foley and Aramco, the Supreme Court characterized the lost wages of US citizens as both localized and private, as theirs alone.

Judges have not simply represented the composition of the US economy very differently in the antitrust and employment/labor contexts. They have also represented the relationships between economic activities, markets, or indicators across national borders very differently in the two contexts. In the antitrust context, judges have emphasized the cross-border consequences of anticompetitive activities, linking activities in one state to economic indicators in others. In Alcoa, for instance, the Second Circuit (1945: 444– 445) connected the contract to limit production, signed in Switzerland, to prices in the United States: it did so by invoking an economic “law” that “a depressant upon production which applies generally may be assumed, ceteris paribus, to distribute its effect evenly upon all markets.” In contrast, in the labor and employment contexts, US judges have routinely cast employment practices and labor markets in different states as unconnected and distinct. For instance, in the Foley and Aramco decisions described above, the Supreme Court never explicitly entertained the possibility that wages, hours or discriminatory employment practices outside US borders could have any effects on workers within what it considered US territory, despite the fact that the practices in question were those of US corporations employing US citizens abroad.

The economic worlds described by US courts in the antitrust and labor contexts are very different. In the antitrust context, courts have painted a picture of a world in which economic activities are not contained by national borders. In Alcoa, the Supreme Court went so far as to entirely ignore such borders, never mentioning how US tariffs might affect the “laws” of supply and demand. In contrast, in the employment/labor context, as in Aramco and Foley, courts have failed or refused to draw connections between working conditions across borders. There are many such connections that could be drawn. For example, courts could presume that discriminatory employment practices of US employers, of the kind at issue in Aramco, could result in greater unemployment within US borders, as discharged employees return home. Or courts could presume, using an often-invoked “race to the bottom” narrative, that weak employment laws abroad would lead to unemployment or to the lowering of labor standards within the United States, as American companies relocate to states that offered the most to employers, or threaten to do the same. In cases like Aramco and Foley, either presumption would have suggested the existence of sufficient effects within the United States to justify the extraterritorial extension of US law. However, rather than make any such connections, which are surely no more speculative than the connections invoked in antitrust cases like Alcoa, US courts tend to represent labor markets in different countries as unconnected, as distinct.

Contrasting extraterritoriality decisions in the contexts of antitrust and employment/ labor law, we can see how US judges draw some into the reach of US law, and eject others from that same reach. Approaching the state as constituted by and instantiated in its jurisdictional assertions, these moves, when coupled with enforcement, can be understood as moments at which the state is brought into being in particular locations and at particular times (quite possibly, to move on again). These decisions can be understood as instances of boundary-making, as judges draw lines, in particular cases, between the inside and the outside. The above discussion shows that the resultant boundaries are not perfectly, or even roughly, coincident with the lines-on-maps that are often understood to mark the boundaries of US territory. Rather, it shows that the resultant boundaries are organized around the notion of the national economy, as the US state expands to incorporate those deemed to be significant, and contracts to eject those deemed unimportant, to that economy.15

#### The American “national economy” can only sustain itself by externalizing the negatives of capitalist growth onto the periphery. Western capitalism is unsustainable, reform only prolongs imperial exploitation, escalating interventionism, and neoliberal austerity.

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To answer these questions, we must come to grips with a key feature of the world economy—one that pundits in the global North tend either to ignore or wish away—namely, the fact that capitalist growth is fundamentally dependent on imperialism. This arrangement, which has persisted now for 500 years in various forms, is beginning to come under significant strain, and climate breakdown is likely to widen the cracks. This opens up opportunities for change, but also poses significant dangers. Everything depends on how governments and social movements choose to respond.

The key thing to grasp is that, under capitalism, “growth” is not about increasing production in order to meet human needs. It is about increasing production in order to extract and accumulate profit. That is the overriding objective. To keep such a system going requires several interventions. First, you have to cheapen the prices of inputs (labor, land, materials, energy, suppliers, etc.) as much as possible, and maintain those prices at a low level. Second, you have to ensure a constantly increasing supply of those cheap inputs. And third, you need to establish control over captive markets that will absorb your output.

Growth along these lines cannot occur within an isolated system. If you place too much pressure on your domestic resource base or your domestic working class, sooner or later you are likely to face a revolution. To avoid such an outcome, capitalism always requires an “outside,” external to itself, where it can cheapen labor and nature with impunity and appropriate them on a vast scale; an outside where it can “externalize” social and ecological damages, where rebellions can be contained, and where it does not have to negotiate with local grievances or demands.

This is where the colonies come in. From the origins of capitalism in the late 15th century, growth in the “core” of the world economy (Western Europe, the United States, Canada, Australia, New Zealand and Japan) has always depended on the sabotage of labor and resources in the “periphery”. Consider the silver plundered from the Andes, the sugar and cotton extracted from land appropriated from Indigenous Americans, the grain, rubber, gold and countless other resources appropriated from Asia and Africa, and the mass enslavement and indenture of African and Indigenous people—all of which exacted a staggering human and ecological toll. On top of this, colonizers destroyed local industries and self-sufficient economies wherever they went, in order to establish captive markets. There was no lag between the rise of capitalism and the imperial project. Imperialism was the *mechanism* of capitalist expansion.

As the Indian economists Utsa Patnaik and Prabhat Patnaik put it, capitalist growth requires an imperial arrangement—not as a side gig but as a *structurally necessary feature*. Imperialism ensures that inputs remain cheap, and thus maintains the conditions for capital accumulation. But it also underpins the fragile inter-class truce that prevails in the core states. If you’re going to raise the real wages of the working classes in the core, or take steps to protect the local ecology, then in order to maintain capital accumulation you have to compensate for this by depressing the costs of labor and nature elsewhere, namely, among workers and producers in the global South. Ever since the rise of the labor movement in the late 19th century, capital’s concessions to the working classes in Europe and the United States have been possible in large part because of imperialism.

This arrangement came under strain in the middle of the 20th century, however, as radical anti-imperialist movements gained traction across the global South. After winning political independence, many Southern governments set about dismantling colonial systems of extraction. They protected their economies and supported their domestic producers using tariffs, subsidies and capital controls; they instituted land reforms; they nationalized key resources and industries; they rolled out public services and improved workers’ wages. This movement was successful in advancing economic sovereignty and improving human development across much of the South. But it also constrained the core’s access to cheap labor and nature, and reduced their control over Southern markets.

The collapse of the imperial arrangement posed a significant threat to Northern capital accumulation. This problem was mitigated for a time by Keynesian policy: massive government expenditure boosted aggregate demand in the global North and generated an extraordinary economic expansion, providing a temporary “fix” for capital. Further concessions to the working classes of the core were sustained under these conditions, permitting the rise of social democracy in some states. But this fix could only hold for so long. As wages rose in the core and the supply price rose in the periphery, growth ground to a halt, capital accumulation became increasingly untenable, and by the mid-1970s the economies of the global North were overcome by a full-blown crisis of stagflation. As it turns out, capitalism cannot function for long under conditions of global justice. Fair wages and decolonization are compatible with a functioning economy, but they are not compatible with a functioning capitalist economy, because they limit the possibility of capital accumulation.

To deal with the crisis of the 1970s, capital needed a way to restore the imperial arrangement, to once again depress Southern prices and regain access to Southern markets. To achieve this, the core states intervened to depose progressive leaders in the global South—including, most prominently, Mossadegh in Iran, Arbenz in Guatemala, Sukarno in Indonesia, Nkrumah in Ghana, and Allende in Chile—replacing them with regimes more amenable to Northern economic interests. But the final blow was delivered by the World Bank and the IMF, which during the 1980s and 1990s imposed neoliberal structural adjustment programs (SAPs) across the region. This move shifted control over economic policy from the national parliaments of the South to technocrats in Washington and bankers in New York and London, ending the brief era of economic sovereignty. SAPs dismantled protections on labor and the environment, privatized public goods and cut public spending, reversing the reforms of the anti-colonial movement in one fell swoop.

It worked: wages and prices in the South collapsed under structural adjustment, and the new “free trade” regime allowed Northern capital to shift production abroad in order to take direct advantage of cheap labor and inputs. This enabled a massive increase in the scale and intensity of appropriation from the global South during the 1980s and 1990s, restoring the imperial arrangement and resolving the crisis of capitalism. Those who see neoliberalism as the main problem, and who fantasize about reverting to a less destructive version of capitalist growth, fail to grasp this point. The neoliberal turn was not some kind of mistake; it was necessary to restore the conditions for growth in the core. It was the obligatory next step in capitalist development.

But now, as the 21st century wears on, the engines of imperial appropriation are slowing down again. This reality is evident in the declining rate of economic growth in the core states, which economists have come to refer to as “secular stagnation.” This is happening for several reasons.

First, in the wake of structural adjustment, the collapse of the USSR, and the semi-integration of China, there are few nation-states and territories left that have not been brought into the remit of the capitalist world system. Imperialist expansion has effectively reached the limits of the planet. Now, instead of shifting production to new pools of cheap labor, capital has to deal with the existing workforce and their demands for higher wages. Second, certain regions of the South—specifically China and the leftist states of South America—are managing to push back against imperialism and improve their terms of trade, even while operating within the basic structure of the capitalist economy. All of this is leading to a rising supply price, which spells trouble for capital accumulation — and growth — in the core.

But perhaps most importantly — and this is the clincher — climate change and ecological breakdown are beginning to undermine the conditions of production on the tropical landmass. This is beginning to manifest already, with climate chaos ravaging parts of Central America, the Middle East and North Africa, driving social dislocation and human displacement. Without some kind of dramatic change in direction it will get much worse. With existing policies, we are headed for 2.7 degrees of heating this century, which is likely to trigger multi-breadbasket failure and sustained food supply disruptions across large parts of the global South, displace more than 1.5 billion people, wipe out 30–50% of species, and render much of the tropics uninhabitable for humans.

This is a problem for capital, because growth in the global North depends utterly on production in the global South and depends utterly on Southern land and resources—today just as much as during the colonial period. Recent research finds that rich countries rely on a net appropriation of land equal to twice the size of India, a net appropriation of 10 billion tons of material resources per year, and a net appropriation of embodied labor equivalent to a standing army of 180 million workers. This means that as labor is displaced and disrupted, and as the productive capacity of land is constrained by heatwaves, wildfires, storms and desertification, this will lead to a rising supply price in the core that will trigger a severe crisis for capital—more serious than anything it has yet encountered.

The question is, how will the core states respond? To maintain the rate of growth and capital accumulation in the face of this crisis, they will have to find a way to cut the supply price once again.

There are two obvious possibilities. One option is to cut wages in the core states, shred the welfare system and privatize public services, all of which would help cheapen inputs and open up new frontiers for accumulation, giving some reprieve to capital. This option — domestic neoliberal austerity — was deployed in the US and Britain during the 1980s as part of the response to the initial collapse of the imperial arrangement. Now it is being increasingly taken up by the European social democracies themselves, including the Nordics.

Of course, the risk of this approach is that it could trigger a backlash from the domestic working class, which could coalesce into a socialist revolution. Aware of this danger, politicians will seek to promote anti-immigrant and white nationalist narratives. By directing working-class grievance toward an “other,” this approach gets people to accept their own immiseration, so long as they can feel an affinity with the ruling class on the basis of race, and feel superior to people of colour who are kept in conditions more miserable than their own. This strategy has long been used to support the neoliberal project in the United States, and the ruling classes of the UK and Europe are now also turning to this playbook. Boris Johnson is a master of this in British politics.

The second option is that the core states could double down on imperialism. It is not difficult to imagine new rounds of invasion and occupation intended to force Southern prices back down. The recent coup in Bolivia, backed by the U.S. with its rising appetite for cheap lithium, offers hints of what might come. And it is clear that the Biden administration, just as under Trump before him , is already preparing the grounds for aggression against China, among other things to constrain China’s domestic demand for resources. Imperialist interventions that cheapen the supply price would allow capitalists in the global North to maintain accumulation and sustain their truce with the working classes of the core for a little while longer, even as the world crumbles around them.

If left to itself, this is how the capitalist story will play out in the 21st century: neoliberal austerity, white supremacist ideology, and violent imperialist interventions—all for the sake of maintaining growth and capital accumulation in the core. Indeed, this barbarism is already well underway. Liberal politicians denounce the barbarism at every opportunity, and yet they cannot bring themselves to address its underlying causes because they remain fundamentally committed to capitalist growth. The solution that the liberals offer—capital accumulation without barbarism— is a chimera.

There is an alternative ending to this story, however. If the core states shift to a post-growth, post-capitalist economic model—in other words, if they abandon the growth imperative and curtail capital accumulation—this would obviate the need for austerity and imperialist interventions. This is the power of post-growth transition: it would liberate all of us, in North and South alike, from the predatory interventions that are required to sustain capital accumulation.

#### The alternative is a worker’s international. Latent unrest exists globally, international movements directed by the Global South can counter capitalist imperialism.

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Appearing simultaneously with this new reactionary political formation in the United States is a resurgent movement for socialism, based in the working-class majority and dissident intellectuals. The demise of U.S. hegemony within the world economy, accelerated by the globalization of production, has undermined the former, imperial-based labor aristocracy among certain privileged sections of the working class, leading to a resurgence of socialism.9 Confronted with what Michael D. Yates has called “the Great Inequality,” the mass of the population in the United States, particularly youth, are faced with rapidly diminishing prospects, finding themselves in a state of uncertainty and often despair, marked by a dramatic increase in “deaths of despair.”10 They are increasingly alienated from a capitalist system that offers them no hope and are attracted to socialism as the only genuine alternative.11 Although the U.S. situation is unique, similar objective forces propelling a resurgence of socialist movements are occurring elsewhere in the system, primarily in the Global South, in an era of continuing economic stagnation, financialization, and universal ecological decline.

But if socialism is seemingly on the rise again in the context of the structural crisis of capital and increased class polarization, the question is: What kind of socialism? In what ways does socialism for the twenty-first century differ from socialism of the twentieth century? Much of what is being referred to as socialism in the United States and elsewhere is of the social-democratic variety, seeking an alliance with left-liberals and thus the existing order, in a vain attempt to make capitalism work better through the promotion of social regulation and social welfare in direct opposition to neoliberalism, but at a time when neoliberalism is itself giving way to neofascism.12 Such movements are bound to fail at the outset in the present historical context, inevitably betraying the hopes that they unleashed, since focused on mere electoral democracy. Fortunately, we are also seeing the growth today of a genuine socialism, evident in extra-electoral struggle, heightened mass action, and the call to go beyond the parameters of the present system so as to reconstitute society as whole.

The general unrest latent at the base of U.S. society was manifested in the uprisings in late May and June of this year, which took the form, practically unheard of in U.S. history since the U.S. Civil War, of massive solidarity protests with millions of people in the streets, and with the white working class, and white youth in particular, crossing the color line *en masse* in response to the police lynching of George Floyd for no other crime than being a Black man.13 This event, coming in the midst of the COVID-19 pandemic and the related economic depression, led to the June days of rage in the United States.

But while the movement toward socialism, now taking hold even in the United States at the “barbaric heart” of the system, is gaining ground as a result of objective forces, it lacks an adequate subjective basis.14 A major obstacle in formulating strategic goals of socialism in the world today has to do with twentieth-century socialism’s abandonment of its own ideals as originally articulated in Karl Marx’s vision of communism. To understand this problem, it is necessary to go beyond recent left attempts to address the meaning of communism on a philosophical basis, a question that has led in the last decade to abstract treatments of The Communist Idea, The Communist Hypothesis, and The Communist Horizon by Alain Badiou and others.15 Rather, a more concrete historically based starting point is necessary, focusing directly on the two-phase theory of socialist/communist development that emerged out of Marx’s Critique of the Gotha Programme and V. I. Lenin’s The State and Revolution. Paul M. Sweezy’s article “Communism as an Ideal,” published more than half a century ago in Monthly Review in October 1963, is now a classic text in this regard.16

Marx’s Communism as the Socialist Ideal In The Critique of the Gotha Programme—written in opposition to the economistic and laborist notions of the branch of German Social Democracy influenced by Ferdinand Lassalle—Marx designated two historical “phases” in the struggle to create a society of associated producers. The first phase was initiated by the “revolutionary dictatorship of the proletariat,” reflecting the class-war experience of the Paris Commune and representing a period of workers’ democracy, but one that still carried the “defects” of capitalist class society. In this initial phase, not only would a break with capitalist private property take place, but also a break with the capitalist state as the political command structure of capitalism.17 As a measure of the limited nature of socialist transition in this stage, production and distribution would inevitably take the form of to each according to one’s labor, perpetuating conditions of inequality even while creating the conditions for their transcendence. In contrast, in the later phase, the principle governing society would shift to from each according to one’s ability, to each according to one’s need and the elimination of the wage system.18 Likewise, while the initial phase of socialism/communism would require the formation of a new political command structure in the revolutionary period, the goal in the higher phase was the withering away of the state as a separate apparatus standing above and in antagonistic relation to society, to be replaced with a form of political organization that Frederick Engels referred to as “community,” associated with a communally based form of production.19 In the later, higher phase of the transition of socialism/communism, not only would property be collectively owned and controlled, but the constitutive cells of society would be reconstituted on a communal basis and production would be in the hands of the associated producers. In these conditions, Marx stated, “labor” will have become not a mere “means of life” but “itself…the prime necessity of life.”20 Production would be directed at use values rather than exchange values, in line with a society in which “the free development of each” would be “the condition for the free development of all.” The abolition of capitalist class society and the creation of a society of associated producers would lead to the end of class exploitation, along with the elimination of the divisions between mental and manual labor and between town and country. The monogamous, patriarchal family based on the domestic enslavement of women would also be surmounted.21 Fundamental to Marx’s picture of the higher phase of the society of associated producers was a new social metabolism of humanity and the earth. In his most general statement on the material conditions governing the new society, he wrote: “Freedom, in this sphere [the realm of natural necessity], can consist only in this, that socialized man, the associated producers, govern the human metabolism of nature in a rational way…accomplishing it with the least expenditure of energy” in the process of promoting conditions of sustainable human development.22 Writing in The State and Revolution and elsewhere, Lenin deftly captured Marx’s arguments on the lower and higher phases, depicting these as the first and second phases of communism. Lenin went on to emphasize what he called “the scientific distinction between socialism and communism,” whereby “what is usually called socialism was termed by Marx the ‘first,’ or lower phase of communist society,” whereas the term communism, meaning “complete communism,” was most appropriately used for the higher phase.23 Although Lenin closely aligned this distinction with Marx’s analysis, in later official Marxism this came to be rigidified in terms of two entirely separate stages, with the so-called communist stage so removed from the stage of socialism that it became utopianized, no longer seen as part of a continuous or ongoing struggle. Based on a wooden conception of the socialist stage and the intermediary principle of distribution to each according to one’s labor, Joseph Stalin carried out an ideological war against the ideal of real equality, which he characterized as a “reactionary, petty-bourgeois absurdity worthy of a primitive sect of ascetics but not of a socialist society organized on Marxist lines.” This same stance was to persist in the Soviet Union in one way or another all the way to Mikhail Gorbachev.24 Hence, as explained by Michael Lebowitz in The Socialist Imperative, “rather than a continuous struggle to go beyond what Marx called the ‘defects’ inherited from capitalist society, the standard interpretation” of Marxism in the half-century from the late 1930s to the late ’80s “introduced a division of post-capitalist society into two distinct ‘stages,’” determined economistically by the level of development of the productive forces. Fundamental changes in social relations emphasized by Marx as the very essence of the socialist path were abandoned in the process of living with and adapting to the defects carried over from capitalist society. Instead, Marx had insisted on a project aimed at building the community of associated producers “from the outset” as part of an ongoing, if necessarily uneven, process of socialist construction.25 This abandonment of the socialist ideal associated with Marx’s higher phase of communism was wrapped up in a complex way with changing material (and class) conditions and eventually the demise of Soviet-type societies, which tended to stagnate once they ceased to be revolutionary and even resurrected class forms, heralding their eventual collapse as the new class or nomenklatura abandoned the system. As Sweezy argued in 1971, “state ownership and planning are not enough to define a viable socialism, one immune to the threat of retrogression and capable of moving forward on the second leg of the movement to communism.” Something more was needed: the continuous struggle to create a society of equals.26 For Marx, the movement toward a society of associated producers was the very essence of the socialist path embedded in “communist consciousness.”27 Yet, once socialism came to be defined in more restrictive, economistic terms, particularly in the Soviet Union from the late 1930s onward, in which substantial inequality was defended, post-revolutionary society lost the vital connection to the dual struggle for freedom and necessity, and hence became disconnected from the long-term goals of socialism from which it had formerly derived its meaning and coherence. Based on this experience, it is evident that the only way to build socialism in the twenty-first century is to embrace precisely those aspects of the socialist/communist ideal that allow a theory and practice radical enough to address the urgent needs of the present, while also not losing sight of the needs of the future. If the planetary ecological crisis has taught us anything, it is that what is required is a new social metabolism with the earth, a society of ecological sustainability and substantive equality. This can be seen in the extraordinary achievements of Cuban ecology, as recently shown by Mauricio Betancourt in “The Effect of Cuban Agroecology in Mitigating the Metabolic Rift” in Global Environmental Change.28 This conforms to what Georg Lukács called the necessary “double transformation” of human social relations and the human relations to nature.29 Such an emancipatory project must necessarily pass through various revolutionary phases, which cannot be predicted in advance. Yet, to be successful, a revolution must seek to make itself irreversible through the promotion of an organic system directed at genuine human needs, rooted in substantive equality and the rational regulation of the human social metabolism with nature.30 Freedom as Necessity Building on G. W. F. Hegel’s philosophy, Engels famously argued in Anti-Dühring that real freedom was grounded in the recognition of necessity. Revolutionary change was the point at which freedom and necessity met in concrete praxis. Although there was such a thing as blind necessity beyond human knowledge, once objective forces were grasped, necessity was no longer blind, but rather offered new paths for human action and freedom. Necessity and freedom fed on each other, requiring new periods of social change and historical transcendence.31 In illustrating this materialist dialectical principle, Lenin acutely observed, “we do not know the necessity of nature in the phenomena of the weather. But while we do not know this necessity, we do know that it exists.”32 We know the human relation to the weather and nature in general inevitably varies with the changing productive relations governing our actions. Today, the knowledge of anthropogenic climate crisis and of extreme weather events is removing human beings from the realm of blind necessity and demanding that the world’s population engage in the ultimate struggle for freedom and survival against catastrophe capitalism. As Marx stated in the context of the severe metabolic rift imposed on Ireland as a result of British colonialism in the nineteenth century, the ecological crisis presents itself as a case of “ruin or revolution.”33 In the Anthropocene, the ecological rift resulting from the expansion of the capitalist economy now exists on a scale rivaling the biogeochemical cycles of the planet. However, knowledge of these objective developments also allows us to conceive the necessary revolution in the social metabolic reproduction of humanity and the earth. Viewed in this context, Marx’s crucial conception of a “community of associated producers” is not to be viewed as simply a far-off utopian conception or abstract ideal but as the very essence of the necessary human defense in the present and future, representing the insistent demand for a sustainable relation to the earth.34 But where is the agent of revolutionary change? The answer is that we are seeing the emergence of the material preconditions of what can be called a global environmental proletariat. Engels’s Condition of the Working Class in England, published in 1845, was a description and analysis of working-class conditions in Manchester, shortly after the so-called Plug Plot Riots and at the height of radical Chartism. Engels depicted the working-class environment not simply in terms of factory conditions, but much more in terms of urban developments, housing, water supply, sanitation, food and nutrition, and child development. The focus was on the general epidemiological environment enforced by capitalism (what Engels called “social murder” and what Norman Bethune later called “the second sickness”) associated with widespread morbidity and mortality, particularly due to contagious disease.35 Marx, under the direct influence of Engels and as a result of his own social epidemiological studies twenty years later while writing Capital, was to see the metabolic rift as arising not only in relation to the degradation of the soil, but equally, as he put it, in terms of “periodical epidemics” induced by society itself.36 What this tells us—and we could find many other illustrations, from the Russian and Chinese Revolutions to struggles in the Global South today—is that class struggle and revolutionary moments are the product of a coalescence of objective necessity and a demand for freedom emanating from material conditions that are not simply economic but also environmental in the broadest sense. Revolutionary situations are thus most likely to come about when a combination of economic and ecological conditions make social transformations necessary, and where social forces and relations are developed enough to make such changes possible. In this respect, looked at from a global standpoint today, the issue of the environmental proletariat overlaps with and is indistinguishable from the question of the ecological peasantry and the struggles of the Indigenous. Likewise, the struggle for environmental justice that now animates the environmental movement globally is in essence a working-class and peoples’ struggle.37 The environmental proletariat in this sense can be seen as emerging as a force all over the world, as evident in the present period of ecological-epidemiological struggle in relation to COVID-19. Yet, the main locus of revolutionary ecological action in the immediate future remains the Global South, faced with the harsh reality of “imperialism in the Anthropocene.”38 As Samir Amin observed in Modern Imperialism, Monopoly Finance Capital, and Marx’s Law of Value, the triad of the United States, Europe, and Japan is already using the planet’s bio-capacity at four times the world average, pointing toward ecological oblivion. This unsustainable level of consumption of resources in the Global North is only possible because a good proportion of the bio-capacity of society in the South is taken up by and to the advantage of these centers [in the triad]. In other words, the current expansion of capitalism is destroying the planet and humanity. The expansion’s logical conclusion is either the actual genocide of the peoples of the South—as “overpopulation”—or, at the least, their confinement to ever-increasing poverty. An eco-fascist strand of thought is being developed which gives legitimacy to this kind of “final solution” to the problem.39 A New System of Social Metabolic Reproduction A revolutionary process of socialist construction aimed at building a new system of social reproduction in conformity with the demands of necessity and freedom cannot occur without an overall “orienting principle” and “measure of achievement” as part of a long-term strategy. It is here, following Mészáros, that the notion of substantive equality or a society of equals, also entailing substantive democracy, comes into play in today’s struggles.40 Such an approach not only stands opposed to capital at its barbaric heart but also opposes any ultimately futile endeavor to stop halfway in the transition to socialism. Immanuel Kant spelled out the dominant liberal view shortly after the French Revolution when he stated that “the general equality of men as subjects in a state coexists quite readily with the greatest inequality in degrees of the possessions men have.… Hence, the general equality of men coexists with great inequality of specific rights of which there may be many.”41 In this way, equality came to be merely formal, existing merely “on paper” as Engels pointed out, not only with respect to the labor contract between capitalist and worker but also in relation to the marriage contract between men and women.42 Such a society establishes, as Marx demonstrated, a “right of inequality, in its content, like every right.”43 The idea of substantive equality, consistent with Marx’s notion of communism, challenges all of this. It demands a change in the constitutive cells of society, which can no longer consist of possessive individualists, or individual capitals, reinforced by a hierarchical state, but must be based on the associated producers and a communal state. Genuine planning and genuine democracy can only start through the constitution of power from the bottom of society. It is only in this way that revolutions become irreversible. It was the explicit recognition of the challenge and burden of twenty-first-century socialism in these terms that represented the extraordinary threat to the prevailing order constituted by the Venezuelan Revolution led by Hugo Chávez. The Bolivarian Republic challenged capitalism from within through the creation of communal power and popular protagonism, generating a notion of revolution as the creation of an organic society, or a new social metabolic order. Chávez, building on the analyses of Marx and Mészáros, mediated by Lebowitz, introduced the notion of “the elementary triangle of socialism,” or (1) social ownership, (2) social production organized by workers, and (3) satisfaction of communal needs.44 Underlying this was a struggle for substantive equality, abolishing the inequalities of the color line and the gender line, the imperial line, and other lines of oppression, as the essential basis for eliminating the society of unequals. In “Communism as an Ideal,” Sweezy emphasized the new forms of labor that would necessarily come into being in a society that used abundant human productivity more rationally. Many categories of work, he indicated, would “be eliminated altogether (e.g. coalmining and domestic service), and insofar as possible all jobs must become interesting and creative as only a few are today.” The reduction of the enormous waste and destruction inherent in capitalist production and consumption would open up space for the employment of disposable time in more creative ways. In a society of equals—one in which everyone stands in the same relation to the means of production and has the same obligation to work and serve the common welfare—all “needs” that emphasize the superiority of the few and involve the subservience of the many will simply disappear and will be replaced by the needs of liberated human beings living together in mutual respect and cooperation.… Society and the human beings who compose it constitute a dialectical whole: neither can change without changing the other. And communism as an ideal comprises a new society and a new [human being].45 More than simply an ideal, such an organizing principle in which substantive equality and substantive democracy are foremost in the conception of socialism/communism is essential not only to create a socialist path to a better future but as a necessary defense of the global population confronted with the question of survival. Dystopian books and novels notwithstanding, it is impossible to imagine the level of environmental catastrophe that will face the world’s peoples, especially those at the bottom of the imperialist hierarchy, if capitalism’s creative destruction of the metabolism of humanity and the earth is not stopped mid–century. According to a 2020 article on “The Future of the Human Climate Niche” in the Proceedings of the National Academy of Sciences, based on existing trends, 3.5 billion people are projected to be living in unlivable heat outside the human climate niche by 2070, under conditions comparable to those of the Sahara desert.46 Even such projections fail to capture the enormous level of destruction that will fall on the majority of humanity under capitalist business as usual. The only answer is to leave the burning house and to build another now.47

The International of Workers and Peoples

Although untold numbers of people are engaged in innumerable struggles against the capitalist juggernaut in their specific localities all around the world, struggles for substantive equality, including battles over race, gender, and class, depend on the fight against imperialism at the global level. Hence, there is a need for a new global organization of workers based on the model of Marx’s First International.48 Such an International for the twenty-first century cannot simply consist of a group of elite intellectuals from the North engaged in World Social Forum-like discussion activities or in the promotion of social-democratic regulatory reforms as in the so-called Socialist and Progressive Internationals. Rather, it needs to be constituted as a workers-based and peoples-based organization, rooted from the beginning in a strong South-South alliance so as to place the struggle against imperialism at the center of the socialist revolt against capitalism, as contemplated by figures such as Chávez and Amin.

In 2011, just prior to his final illness, Chávez was preparing, following his next election, to launch what was to be called the New International (pointedly not a Fifth International) focusing on a South-South alliance and giving a global significance to socialism in the twenty-first century. This would have extended the Bolivarian Alliance for Peoples of Our America to a global level.49 This, however, never saw the light of day due to Chávez’s rapid decline and untimely death.

Meanwhile, a separate conception grew out of the efforts of Amin, working with the World Forum for Alternatives. Amin had long contemplated a Fifth International, an idea he was still presenting as late as May 2018. But in July 2018, only a month before his death, this had been transformed into what he called an Internationale of Workers and Peoples, explicitly recognizing that a pure worker-based International that did not take into account the situation of peoples was inadequate in confronting imperialism.50 This, he stated, would be an organization, not just a movement. It would be aimed at the

alliance of all working peoples of the world and not only those qualified as representatives of the proletariat…including all wage earners of the services, peasants, farmers, and the peoples oppressed by modern capitalism. The construction must also be based on the recognition and respect of diversity, whether of parties, trade unions, or other popular organizations of struggle, guaranteeing their real independence.… In the absence of [such revolutionary] progress the world would continue to be ruled by chaos, barbarian practices, and the destruction of the earth.51

The creation of a New International cannot of course occur in a vacuum but needs to be articulated within and as a product of the building of unified mass organizations expanding at the grassroots level in conjunction with revolutionary movements and delinkings from the capitalist system all over the world. It could not occur, in Amin’s view, without new initiatives from the Global South to create broad alliances, as in the initial organized struggles associated with the Third World movement launched at the Bandung Conference in 1955, and the struggle for a New International Economic Order.52 These three elements—grassroots movements, delinking, and cross-country/cross-continent alliances—are all crucial in his conception of the anti-imperialist struggle. Today this needs to be united with the global ecological movement.

Such a universal struggle against capitalism and imperialism, Amin insisted, must be characterized by audacity and more audacity, breaking with the coordinates of the system at every point, and finding its ideal path in the principle of from each according to one’s ability, to each according to one’s need, as the very definition of human community. Today we live in a time of the perfect coincidence of the struggles for freedom and necessity, leading to a renewed struggle for freedom as necessity. The choice before us is unavoidable: ruin or revolution.

#### That requires embracing an episteme of alternativity. Academic spaces must prioritize rejecting colonial scholarship, otherwise it will be used to justify colonial policies. Calls for “policy relevance” make debate an academic space that can only assist empire building. Instead, we have an ethical obligation to actively counter the prevailing order.

Gani & Marshall 22, Jasmine K. Gani: PhD of IR @ LSE. Senior Lecturer of IR @ St. Andrews. Jenna Marshall: PhD of Political Science @ Queen Mary University. Senior Researcher for Development and Postcolonial Studies @ U-Kassel (The impact of colonialism on policy and knowledge production in International Relations, *International Affairs*, Volume 98, Issue 1, January 2022, Pages 5–22, DOI: 10.1093/ia/iiab226)

Looking forward: academic and practitioner pushback against colonialism, and cautionary tales

Given the historical and ongoing mutual complicity between knowledge producers and policy-makers in upholding imperial and racial orders, we now consider the responsibilities, possibilities and challenges faced in altering the nature of that nexus. Doing so requires turning to what Danso and Aning call an ‘episteme of alternativity’;41 and the primary way for academics to enact this would be to draw on anti-colonial practice and legacies, rather than imperial competition, as the foundation of their theorizing.

Thus, in his article, Sizwe Mpofu-Walsh forefronts global South policy-makers and focuses on the nuclear order (a topic that is typically associated with realist IR) to demonstrate how it can be approached through an alternative, critical epistemology.42 Disrupting the ‘Great Power gaze’, Mpofu-Walsh asks what the politics of non-proliferation looks like from the perspective of the global South, especially the African continent as the sole nuclear weapon-free zone (NWFZ). There, denuclearization is fundamentally linked to decolonization. Thus anti-colonial goals, rather than hegemonic/imperialist competition, are at the root of both policy and theorizing. How different would IR knowledge and theories on nuclear weapons be if African praxis and the importance of NWFZs were taken seriously? Turning to the Middle East, Gani similarly argues in her article that the inclusion of non-western history and voices—from policy-makers to activists and scholars—in think-tank discussions can mitigate the latent colonialism that shapes western policy.43

Nevertheless, even with an incorporation of non-western practice and knowledge in policy making and scholarly theorizing, multiple perspectives that are marginalized even in the local context, owing to class or gender, may continue to go unheard.44 One crucial way in which both academics and practitioners can challenge such patterns is by adopting a more expansive reading of what constitutes ‘knowledge’ and indeed ‘practice’. In doing so, we can dismantle some of the constructed and false hierarchies between elite ‘knowledge’ and ‘research’ on one hand, and local ‘tradition’ on the other.45 The former is assumed to be objective, reliable and associated with western (and western-validated) universities; while the latter is viewed as subjective, unscientific and commonly associated with Indigenous, racialized, grassroots communities. Assumptions about who counts as a true knowledge producer or ‘expert’ is not only elitist but heavily racialized and gendered. Definitions of who counts as a ‘practitioner’ are equally narrow, so that scholars or policy-makers may place much weight on the views and actions of state, global governance and corporate practitioners, but do not view as equal practitioners those involved in everyday practice in their communities—those who in fact sustain their ecology, livelihoods, security and identities, all while having to navigate the impact of top-down policies.46

Both the articles by Jan Wilkens and Alvine Datchoua-Tirvaudey on climate justice, and by Althea Rivas and Mariam Safi on the organizing and practices of Afghan women, share knowledge from non-elite local communities and challenge the above binaries and hierarchies. In their article on climate justice in the Arctic and the Mediterranean, Wilkens and Datchoua-Tirvaudey explain that academic–practitioner knowledge exchange has often been a contributing factor in continued climate injustice.47 The existing patterns of this knowledge exchange on climate governance are dependent on hierarchies of knowledge, namely, the valorization of western/‘scientific’ knowledge production at the expense of the needs and knowledges of the Indigenous and local communities most affected by climate change (i.e. the community-based practitioners, rather than the institutional/state ones). Moreover, the spaces where such knowledge exchange takes place are often exclusionary (in who is invited, in the parameters of discourse and/or in the extortionate costs of participating), producing an intra-elite debate.48 Having identified these racialized patterns, they offer a corrective decolonial strategy for ethical climate governance, founded on practice-based knowledge and diverse ways of knowing that bring in those excluded insights.

The article by Rivas and Safi also provides an example of how the academic–practitioner nexus can be ‘decolonized’, one in which everyday knowledges of Afghan women, in all their diversity and complexity, are centred in peacebuilding efforts.49 Their article, co-written by an academic and a local practitioner, offers a methodology of how to take into account the internal hierarchies of positionality, interests and knowledges that are always present when engaging with grassroots communities for the sake of ‘research’. Rivas and Safi also demonstrate the importance of registering and valuing the unlooked-for, atypical knowledges from below, such as the subtle observations offered by Afghan women in rural areas that, contrary to wider assumptions, reflect their political engagement and interest.

Caution against extractivism in the search for such local knowledge exchange is at the forefront of both the above contributions.50 Thus academics should remain reflexive in what the purpose of their research is, and who really benefits. Moreover, a praxis of decolonizing such research necessarily entails taking time in a way that is at odds with the current culture of speedy and multitudinous productivity in academia: the rapid churning out of articles from ‘the field’ should raise appropriate questions about how, why and for whom that research is being conducted.

Of course, at issue is not just whom but also what we consider as worthy of scholarly and policy attention, and how inclusive we are of alternative methodologies. Dependence on state and official archives, ‘canonical’ theorists, written records and English-language sources all reproduce the racialized hierarchies inherent in the prioritization of certain types of knowledge and transmission.51 These factors also close the door on appreciating the power—both practical and ideational—generated by collective social action, whose impact cannot (and should not) be individualized to one or a few visible and often romanticized protagonists. Recognizing all this and reading into the silences of the archives should encourage greater attention to non-hegemonic record-keeping, story-telling and witnessing beyond elitist and prohibitive barriers—from oral histories, to poetry, art and independent publishing on paper and online. As anti-colonial and anti-racist thinkers and activists have long argued, these are the ways in which those who are dispossessed and marginalized, but also, consequently, autonomous, have kept their identities, cultures and memories alive, and sought to prevent their experiences from being suppressed and erased.52 In the face of systematic racism and the colonial dismantling of their histories, those who are marginalized are not, in fact, silent but continue to cultivate and share knowledge, even if they may lack the resources and type of support received by hegemonic knowledges (and people).53 Recognizing the equal validity of marginalized forms of knowledges in both academic and policy realms pushes back against the de-representation in knowledge exchanges within elite spaces and formats.

However, it would be erroneous to assume from these arguments that knowledge produced by so-called elite communities is always bad, and that knowledge or cultural production from the bottom up is always more authentic and supports the cause of justice. Srdjan Vucetic's article unsettles multiple binaries, between the elite and the ‘masses’, as well as between academics and practitioners.54 Drawing on the work of Stuart Hall, he complicates what we read as knowledge production and who we see as its progenitors, challenging the notion of purely top-down (and imperialist) identity construction. Exploring the role (and popularity) of nationalistic films and novels as signifiers of this consensus between policy-makers and wider society, Vucetic demonstrates that it is not enough to hold accountable only those deemed to possess political capital, be they policy-makers or academics. Rather, it is necessary also to challenge the broader pressures and expectations of the public that produce a collusion between elite and mass discourse, and help to foreclose the adoption of more critical, justice-oriented policies. Thus, if we focus solely on academics and practitioners in any anti-racist work, we miss the uncomfortable reality that narrow, exclusionary nationalism that foments such racism and imperialist foreign policies actually enjoys substantial ‘buy-in’ from people and may be an accepted part of a local (in this case British) identity.

This observation reinforces the need outlined above for a more expansive approach to defining knowledges, but this time when interrogating the generators of coloniality. This in turn allows us to bring into equal focus other facilitating institutions and mediums of knowledge dissemination, many of which play a pivotal role in making colonial tropes and erasures more palatable, accessible, even culturally and economically valuable. This theme runs through several of the articles in this special issue. As noted above, Vucetic's article focuses on cultural output; Antweiler looks at museums and schools; Baji considers the instrumentalization of local folklore for imperialist ideologies in Japan; Plonski and Manchanda examine the power of racial capitalism via Israel's surveillance industry and marketing; and Gani scrutinizes the impact of journalistic discourse and think tanks.

Thus far, a lot of responsibility for challenging the racial and colonial dynamics of the academic–practitioner nexus has been placed with knowledge producers, whether within or outside academia. But it is necessary to emphasize that efforts have already been under way, not only to ‘decolonize’ our academic disciplines, but to bring that discourse into the public realm. At that point practitioners need to carry their share of responsibility in listening to and applying the expertise (whether academic or community-based) that can foster more just policies. Instead, the attention policy-makers give to expertise is often selective and politicized, based not on what can actually improve people's lives but on what helps to justify the existing approaches adopted by governments. The current denigration and growing securitization of critical race theory, especially in the United States but increasingly elsewhere, is an example of attacks on emancipatory knowledges that challenge power and oppression. Offering another stark example of this, Amal Abu-Bakare explores in her article the lack of any serious attempts to confront Islamophobia in society, despite the wealth of research and expert advice from scholars and community-based practitioners available to policy-makers.55 Focusing on the cases of the UK and Canada, she highlights the way in which practitioner intervention, in this case that of security and police officials, has actively prevented the adoption of expert guidelines on tackling Islamophobia on the grounds that they might interfere with their counterterrorism strategies. In many ways this is a blatant acknowledgement from policy-makers that their counterterrorism strategy is inherently built upon racial tropes and discrimination. In contrast, so-called ‘neutral’ research on terrorism and/or counterterrorism is embraced by practitioners, precisely because such research might not ask uncomfortable questions about the racial foundations or assumptions that are necessary to enact their policies.

Abu-Bakare's article offers an example of the limitations of academic–practitioner knowledge exchange. Exhorting scholars to make their research policy relevant does not address the unequal receptivity towards critical research that may challenge policy. Nor does it sufficiently take into account the implicit disciplining that can take place in that process of knowledge exchange. Those very spaces or channels that are created to facilitate sharing, listening and negotiation between knowledge producers and practitioners (through all the blurred boundaries between them) may reproduce and reify hierarchies through unequal interactions. Is real dialogue possible if power dynamics render the interlocutors unequal?56 Or, in their efforts to be heard, taken seriously, and make their presence worthwhile, academics and other knowledge producers may find themselves being subtly socialized into the very modes of speech and thought that they sought to criticize. This can also happen in reverse when grassroots practitioners share spaces with scholars and elite institutions. The path-breaking and radical ideas needed to initiate change on some of the most deep-seated problems in politics and society may be diluted in such spaces for the sake of pragmatism and communication, undermining the ability to imagine real alternatives to the status quo. This is not to say that knowledge producers, whether academic or community-based, should not engage with policy-makers, but rather that they should be clear in what they seek to achieve—if, for example, constructive dialogue or receptivity to expertise is unlikely, it is at times necessary and an ethical responsibility simply to register alternative ideas or contestation. Returning to the point made at the start of this piece, this cautions us in how we champion ‘impact’ and knowledge–policy engagement, especially if we only recognize engagements that supplement and are ‘useful’ to systems of power rather than those that hold them to account.

Conclusion

This special issue introduces the readers of International Affairs to the relatively undertheorized and underhistoricized relationship between race, knowledge production and policy-making. The articles demonstrate the ways in which practitioners have historically relied on research produced within the academy to inform policy, initiating the establishment of departments and disciplines for this purpose, but they also show the reverse to be equally true: that policy, both foreign and multilateral, influences the possibilities and parameters of research, funding and recruitment practices, and retention of jobs.57 A key goal of this special issue has been to foster reflection on the ways in which knowledge production (in its multifaceted forms) contributes to or challenges the practice of racism and coloniality; and the ways in which policy and practice shape, validate, limit or ignore knowledge production—in ways that either perpetuate or interrogate coloniality. As the three categories delineated above show, the academic–practitioner nexus is best captured as a series of foreclosures that actively work to uphold narrowly espoused evolutionary myths of the discipline and entrench a naturalization of white-racialized subject positions in academic discourse on the ‘international’, while sidelining scholars and activists, notably women and people of colour, who have made undeniable contributions to analysis of the contemporary world.58 All this brings into view, as one scholar puts it, ‘the fundamental ways in which IR already is, and always has been, complicit in ordering politics’.59

As we have argued in this introductory piece, the exposure in this special issue of the deep academic–practitioner nexus confronts and challenges the ‘gaps’ discourse advanced at the expense of making visible the existing reciprocity that disciplines the boundaries of acceptable enquiry. The outcome of this disciplining at the theoretical level can be seen in the construction of paradigms that normalize Eurocentric presuppositions on ‘how the world is’. But such outcomes are also made manifest through material implications generated by narrow policy responses and policy instruments.

The special issue is not just an exposure, though; it is also a call for repair. To embark on a project of repair, those involved in knowledge production, dissemination and application—within academia, think tanks, museums, schools, cultural production and policy—first and foremost need to recognize that their work is not detached from the real world, even if they seek to make it so. If the articles in this special issue have shown anything, it is that there can be no realistic and honest demarcation between political and apolitical knowledge: to assert neutrality is like offering a blank slate that will inevitably be written over. It is worth knowing that even with the best intentions, a scholar's work is likely to be co-opted for political ends; and that one's erasures and blind spots regarding injustice, even if innocently produced, will be taken as justification for inaction and marginalization of these injustices in the real world.

Sincerity in seeking to prevent racist or imperialist co-optation necessitates more open interrogations of power and commitments to justice: and without doubt IR, whether ‘analytical’ or ‘critical’, and academia more broadly, are filled with sincere and honourable scholars who care about the world they live in and have the capacity to enact positive change. Questioning and challenging accepted and expected modes of academic enquiry requires courage and creativity, both of which are aided through collective effort. This special issue, then, is an invitation to adopt that courage and creativity in how we cultivate knowledge, in questioning the purpose and the ends of that knowledge, and to be discerning in how we try to put it into practice.

### 1NC---T: Business Practices

T Business

#### The aff only deals with board and hospitals; boards are either:

#### Licensing boards which are state agencies

Murphy 20 (ALLAINA M. MURPHY- University of Connecticut School of Law, J.D. 2020; Bates College, B.A. 2015. NOTE: Preponderance, Plus: The Procedure Due to Professional Licensees in State Revocation Hearings, 52 Conn. L. Rev. 943, 945. July 2020. Lexis, accessed online via KU libraries, date accessed 1/12/21)

A professional licensing board is a state agency, and, as such, its power is derived from authorizing statutes, it follows a procedural act, and it is responsible for the regulation of a specific field. State practice acts establish boards' missions, structures, and powers, and administrative procedure acts govern many board processes, especially for promulgating regulations and holding hearings. 57Boards add specificity to general legislative language through regulations, guidelines, and internal practices. 58State statutes grant the authority to conduct disciplinary hearings and ultimately suspend or revoke licenses. 59In addition to issuing licenses, state boards maintain standards of practice which they expect professionals to follow. 60If a professional is found to have committed a violation of practice standards, the licensing board "[has] the authority to impose discipline, which may range from a verbal sanction, such as a reprimand, to revocation of the license." 61

#### Or medical boards which are nonprofits

Drolet and Tandon 17 (Brian C. Drolet, MD. Vickram J. Tandon, MD. JAMA November 28, 2017 Volume 318, Number 20. <https://jamanetwork-com.www2.lib.ku.edu/journals/jama/articlepdf/2664451/jama_drolet_2017_lr_170116.pdf> , date accessed 1/12/21)

Nora and Faulkner suggest that the costs are appropriate, but justification of high costs and physician-derived revenue was not provided. They also claim that nonprofit organizations have no fiduciary responsibility to match revenue and expenditures. Yet the National Council of Nonprofits suggests otherwise.1 Fundamentally, the ABMS and member boards are nonprofit organizations funded by physicians. They are responsible for maintaining reasonable expenditures to meet their mission, minimizing fees to physicians and completely disclosing their finances. Toward these goals, we hope our study can better align the medical boards with their physician constituents.

#### Most hospitals are non-profits

Rosalsky 19 (Greg Rosalsky-Reporter, Planet Money. “How Non-Profit Hospitals Are Driving Up The Cost Of Health Care” , <https://www.npr.org/sections/money/2019/10/15/769792903/how-non-profit-hospitals-are-driving-up-the-cost-of-health-care> , October 15, 2019

In Washington, D.C., the hospital lobby is battling Medicare for All as well as efforts to end surprise billing, which is when Americans go to in-network providers but then — surprise! — end up getting billed for more expensive, out-of-network services. Three-quarters of Americans say they oppose the practice, and leaders from both political parties have been working to end it. Yet, hospital lobbyists are making reform really difficult. Which is weird, because most hospitals are nonprofits.

More Than Just Quid Pro Cuomo?

A recent study by Yale School of Public Health economist Zack Cooper and colleagues takes a look at hospital politics and helps shed light on why American health care is so insanely expensive.

In 2003, President George W. Bush began fighting for a major expansion of the Medicare program. The Bush Administration knew it would be a hard sell, alienating small-government Republicans and putting Democrats in the awkward position of supporting Bush's agenda before an election year.

Cooper says their study was inspired by one of his grad students, who served as a congressional aide when this legislation was being passed. "And the rumor was the U.S. Health Secretary, Tommy Thompson, was on the floor of the House with a notebook, writing down members of Congress who voted for the bill," Cooper says. Thompson allegedly did this to sweeten the deal for lawmakers on the fence, offering to reward supporters by "bumping up payment rates to hospitals in their districts" through a special provision, Section 508.

Cooper and his colleagues have spent years investigating whether this was true, filing Freedom of Information Act requests and crunching data. They've uncovered evidence that suggests it was true. They find that legislators who were on the fence and voted "yea" for the legislation were 700% more likely to see a large bump in Medicare payment rates to hospitals in their district. Between 2005 and 2010, Congress shelled out over $2 billion to 88 hospitals through the horse-trading Section 508 provision. It was a clear win for these hospitals, which spent the money on more equipment, buildings, services, and staff.

Dropping opposition to the Medicare expansion also ended up being a political win for lawmakers on the fence. Not only did the special provision funnel extra federal funds to their districts and create jobs; the lawmakers ended up seeing a 65% increase in contributions from people who worked in their state's health care industry and a 25% increase in overall campaign contributions. "It's suggestive to me that this was in a sense a quid pro quo," Cooper says, adding that their analysis shows how health care spending becomes a "piggy bank" for political influence.

Giving New Meaning To The Term "Nonprofit"

"Hospitals are the largest individual contributor to health care costs in the U.S," Cooper says. Americans spend over a trillion dollars a year at hospitals. That's about a third of national health spending, which now consumes almost 20% of U.S. GDP. Cooper's research shows that, after a long period of consolidation, the cost of hospital services has been exploding. Between 2007 and 2014, hospital prices grew 42 percent.

#### Those violate the plain meaning of “business”

Wisconsin Supreme Court 94 (SHIRLEY S. ABRAHAMSON, J. Opinion in Sprangers v. Greatway Ins. Co., 514 N.W.2d 1, 182 Wis. 2d 521 (1994). Google scholar caselaw. Date accessed 7/20/21).

In Newell-Blais Post No. 443 v. Shelby Mutual Insurance, 487 N.E.2d. 1371 (Mass. 1986), the Massachusetts Supreme Judicial Court was called upon to determine the meaning of the policy exclusion "engaged in the business of ... selling ... alcoholic beverages." 534\*534 Without careful analysis, the court concluded that the term "business" should be given its ordinary and usual meaning which is, according to a dictionary, a "usually commercial or mercantile activity customarily engaged in as a means of livelihood." Thus, the court concluded, the common meaning of the word "business" necessarily includes a purpose of gain or profit. Because the post was a non-profit veterans organization, it could not be considered to be engaged in the business of selling or serving alcohol.

#### VOTE NEG:

#### 1. LIMITS—being private is insufficient, the res specifies “business” practices—the aff opens the floodgates on nonprofit affs

#### 2. GROUND—disads like innovation and biz con rely on cracking down on businesses

### 1NC---Solvency

#### Next off is solvency—hold the 2AC to responding to these

#### 1. Status quo solves the aff—they’ve tried to be tricky but read the ev for us on these “thumpers”: Sage says that *NC Dental* will spur a trillion dollars in innovation; Allensworth says NC Dental “revolutionized” antitrust federalism; and Bulusu is specific to how the FTC has ramped up enforcement under Khan

#### 2. The aff doesn’t solve Parker—plan can only mandate private, non-public sector

-Card references Green Sols. Recycling, LLC v. Reno Disposal Co, where Parker immunity was applied to a private actor granted and exclusive contract for handling waste disposal for Reno, Nevada, the vast majority of private sector actions that qualify for immunity are like this, states or municipalities contracting out public services

LoBue 19 (Robert P, Co-Chair of the Firm and Managing Partner from 2007 to 2014, “Applicability of State-Action Immunity to Private Parties”, Patterson Belknap, 1/18, <https://www.pbwt.com/antitrust-update-blog/applicability-of-state-action-immunity-to-private-parties>) DB

The doctrine of state-action immunity derives from Parker v. Brown. In Parker, the Supreme Court held that “because ‘nothing in the language of the Sherman Act . . . or in its history’ suggested that Congress intended to restrict the sovereign capacity of the States to regulate their economies, the Act should not be read to bar States from imposing market restraints ‘as an act of government.’” FTC v. Phoebe Putney Health Sys., Inc., 568 U.S. 216, 224, (2013) (quoting Parker v. Brown, 317 U.S. 341, 352 (1943)). Following Parker, the Court recognized that “under certain circumstances, immunity from the federal antitrust laws may [likewise] extend to nonstate actors carrying out the State’s regulatory program.” Id. at 225. Given our “fundamental national values of free enterprise and economic competition,” however, state-action immunity is the exception rather than the rule, and the inquiry is even more exacting when a non-state actor invokes the protection of Parker immunity. See id. In Midcal, the Supreme Court set forth a two-part test for determining whether the anticompetitive acts of private parties are entitled to state-action immunity. Id. (citing California Retail Liquor Dealers Assn. v. Midcal Aluminum, Inc., 445 U.S. 97, 105 (1980)). First, “the challenged restraint must be ‘one clearly articulated and affirmatively expressed as state policy.’” Midcal, 445 U.S. at 105. Second, the policy “must be ‘actively supervised’ by the State.” Id. Applying these principles, the District of Nevada found that this case presented one of those rare circumstances where private parties are entitled to state-action immunity. The court first concluded that the clear-articulation prong of the Midcal test was met, because the statute at issue expressly authorized anti-competitive conduct by allowing municipalities to displace or limit competition in collection and disposal of waste. Moreover, the court found it foreseeable that the statute would result in a monopoly over the collection and disposal of materials that arguably qualified as waste. With respect to the second prong, the court emphasized that the active supervision requirement did not apply “when the ‘challenged activity is within a traditional municipal function,’” or “when ‘the actor is a municipality rather than a private party.’” Green Sols. Recycling, LLC, 2019 BL 4611, at \*9 (citations omitted). The court reasoned that the “traditional municipal function” exception applied, because waste disposal is “‘both typically and traditionally a local government function.’” Id. (citations omitted). The court likewise concluded that the second exception applied, because the true actor was the City of Reno, rather than Reno Disposal or WMON. The court explained that it was the City of Reno that was engaged in municipal regulation, and that Reno Disposal and WMON “have no authority to set pricing or in any way regulate the collection and disposal of garbage and other waste.” Id. The court held that both exceptions applied and that, accordingly, the defendants did not need to establish active supervision. While the court’s decision thus makes clear that non-state actors are entitled to state-action immunity only in narrow circumstances, it also illustrates the vitality of this doctrine.

#### 3. Even if the aff does solve all of Parker, 11th amendment blocks

Jordão 11 (Eduardo Ferreira Jordão-Visiting Researcher at Yale Law School; PhD in Public Law candidate at the Universities of Paris (Panthéon-Sorbonne) and Rome (La Sapienza), in a joint degree. Master of Laws (LL.M) at the London School of Economics and Political Science (LSE), University of London; Master in Economic Law at the University of São Paulo (USP); Bachelor of Laws (LL.B) at the Federal University of Bahia (UFBA). “BLAME IT ON THE STATES: A comparative analysis of the American and the European State Action Doctrines” , Revista do Programa de Pós-Graduação em Direito da UFBA, v.21, p. 213- 250, 2011. Accessed online via KU libraries, date accessed 12/17/21)

As we can see from the above, there is a wide scope for anticompetitive regulation in the United States. On the one hand, state regulation cannot be challenged under federal competition law, given the 11th Amendment and the Parker v Brown doctrine. On the other hand, the private lobbies promoting the passing of anticompetitive regulation are shielded from competition law, as they are encouraged as a manifestation of democracy. The outcome is that the public way has become the safest and most effective manner to seek restriction of competition in the United States.

#### 4. Even if 11th amendment doesn’t block, defendants would use other exemptions or immunities:

#### a. Noerr Pennington and good faith

Jorstad 78 (David W. Jorstad, "The Legal Liability of Medical Peer Review Participant's for Revocation of Hospital Staff Privileges," Drake Law Review 28, no. 3 (1978-1979): 692-717. Hein accessed online via KU libraries, date accessed 12/15/21)

\*language modified in brackets

Finally, for a plaintiff physician to succeed in an antitrust action for wrongful revocation of privileges, ~~he~~ [they] must withstand a number of defenses which the peer review committee members could assert. 77 These include the Parker, 78 Noerr-Pennington,7 1 and "good faith" defenses.80

#### b. filed rate doctrine

Laughlin 11 (Vonda Mallicoat Laughlin-Associate Professor of Business, Carson-Newman College; J.D. University of Tennessee College of Law; LL.M. in Insurance Law, University of Connecticut School of Law. "The Filed Rate Doctrine and the Insurance Arena," Connecticut Insurance Law Journal 18, no. 2 (2011-2012): 373-450

The court in In re Pennsylvania Title Insurance Antitrust Litigation recognized that the filed rate doctrine and the state action doctrine constitute two independent bases for antitrust immunity.102 A significantly lower standard of administrative review, however, is required in regard to the filed rate doctrine as compared to the state action doctrine. 03 Because the standard of administrative supervision required for application of the state action doctrine is higher, the filed rate doctrine would likely result in a viable defense in a larger number of cases.

#### c. McCarran-Ferguson

McGuire 94 (Charles R. McGuire-Chairperson and Professor, Department of Finance, Insurance and Law, Illinois State University; B.A., 1967, J.D. 1971, University of Illinois. "Regulation of the Insurance Industry after Hartford Fire Insurance v. California: The McCarran-Ferguson Act Antitrust Policies," Loyola University Chicago Law Journal 25, no. 3 (Spring 1994): 303-356. Hein accessed online via KU libraries, date accessed 12/21/21)

At least one commentator has observed an intimate relationship between the state action doctrine and the McCarran-Ferguson Act, 55 and even though the legislative history of the Act is quite clear in stating that it was intended to "enunciate" the Parker doctrine,'5 6 only one court has adopted that view.' 57

#### 5. Even if other exceptions don’t overwhelm, most cases get dismissed for other reasons

Lipsky 9 (Abbott B. Lipsky Jr.-Partner, Latham & Watkins LLP, Washington, D.C., "Improving Competitive Analysis," George Mason Law Review 16, no. 4 (Summer 2009): 805-826, Lexis, accessed online via KU libraries, date accessed 12/15/21)

It is a challenge nowadays for antitrust lawyers to keep up with their reading. U.S. courts and agencies alone generate volumes of new material that require substantial effort just to identify and collect, let alone to study and understand. Then there is a daily torrent of developments from the European Union and literally scores of other foreign jurisdictions that entered the global antitrust industry in the past few decades. Despite this gushing hydrant of antitrust, surprisingly little of it involves real "competition analysis"--trying to understand how markets function and to determine whether specific transactions or episodes of conduct represent a genuine threat to productivity and competitiveness. In the majority of U.S. cases, at least, full rule of reason analysis is not usually necessary, because the allegations do not hit on all cylinders. Many cases are dismissed or suffer judgment as a matter of law due to some missing element such as concerted action, market power, standing, causation-in-fact, "antitrust injury," or some other prerequisite to a successful claim. Other cases founder on issues of jurisdiction, the application of exemptions such as Noerr-Pennington, or regulatory exceptions exemplified by cases such as Credit Suisse Securities (USA) LLC v. Billing.2 Then there are numerous cartel cases (an increasingly prolific category) in which anticompetitive effect is often only a minor issue (because it is presumed or essentially uncontested).

#### 6. Even if the plan were well written, judges circumvent

Newman 19, University of Miami School of Law professor and a former attorney with the U.S. Department of Justice Antitrust Division. (John, 4-5-2019, "What Democratic Contenders Are Missing in the Race to Revive Antitrust", *Atlantic*, https://www.theatlantic.com/ideas/archive/2019/04/what-2020-democratic-candidates-miss-about-antitrust/586135/)

But the federal courts represent a massive stumbling block for any progressive antitrust movement. Reformers have identified two paths forward; both lead eventually to the court system. The first is relatively moderate: appoint regulators who will actually enforce the laws already on the books. Warren’s plan rests in part on this straightforward idea. The second, more audacious path requires congressional action to amend and strengthen our current laws. Warren’s call for a new ban on technology companies’ buying and selling via their own platforms falls into this category. Klobuchar has also proposed new antitrust legislation that would make it easier to block harmful mergers and acquisitions. But no matter its content, enforcing a law requires persuading a judge. When it comes to U.S. antitrust laws, federal judges—not Congress, and not regulatory agencies—are the ultimate arbiters. The Department of Justice Antitrust Division, one of our two public enforcement agencies, files all its cases in federal courts. And although the Federal Trade Commission (the other) can decide cases internally, the inevitable appeals eventually end up in court as well. No matter how strongly worded a law may be, ideologically driven judges can usually find a way around enforcing it. The cyclical history of U.S. antitrust law is proof that judges wield nearly limitless institutional power in this area. Soon after Congress passed the Sherman Act in 1890, a conservative Supreme Court began to chip away at its effectiveness. Congress reacted in 1914 with the Clayton Act, which sought to ban anticompetitive mergers. In 1936, at the height of the New Deal era, Congress passed the Robinson-Patman Act, which prohibits price discrimination (charging different prices to different buyers for the same product). These laws were actively enforced for decades. But starting in the late 1970s, conservative judges began to erode the Clayton Act. Today, megamergers among competitors such as Bayer and Monsanto barely raise eyebrows. So-called vertical mergers, which combine suppliers and their customers, are now all but immune from antitrust enforcement—see the DOJ’s failed challenge to AT&T and Time Warner’s recent tie-up. Under the business-friendly Roberts Court, the Robinson-Patman Act has similarly been eviscerated. By the 2000s, the ideas of the conservative Chicago School had become mainstream in antitrust circles. Robinson-Patman, a law intended to protect small businesses, was an easy target for Chicago School critics narrowly focused on efficiency and low consumer prices. Their attacks found a receptive audience in the federal judiciary. Among insiders, Robinson-Patman is now known as “zombie law.” It remains on the books, but regulators no longer bother trying to enforce it. If Democrats want to change antitrust law, they will first and foremost need to change the judges who apply it. Yet none of the 2020 contenders championing antitrust reform have even mentioned the possibility of appointing progressive antitrust thinkers to the bench. Conservatives, on the other hand, have long recognized the centrality of antitrust to broader questions about the apportionment of power in society. In his seminal work, The Antitrust Paradox, Robert Bork called antitrust a “microcosm in which larger movements of our society are reflected.” Battles fought in this arena, Bork wrote, “are likely to affect the outcome of parallel struggles in others.” Strong antitrust enforcement keeps powerful monopolies in check. Toothless antitrust allows the unlimited accumulation of corporate power. Recognizing the high stakes, the Republican Party has gone to great lengths to appoint conservative antitrust experts to the federal judiciary. Bork was an antitrust professor at Yale Law School before becoming an appellate judge in 1982.\* Frank Easterbrook practiced and taught antitrust before donning the black robe in 1985. Douglas Ginsburg served as the head of the Justice Department’s Antitrust Division before he became a federal judge in 1986. None of the three managed to join the Supreme Court, but not for lack of trying. Reagan nominated both Bork and Ginsburg to serve as justices, though Ginsburg withdrew and Bork was famously rejected after a contentious Senate hearing. And whom did the GOP select as its very first U.S. Supreme Court nominee during the Trump Administration? None other than Neil Gorsuch, who practiced antitrust law for more than a decade before joining the Tenth Circuit. Even as a judge, Gorsuch continued to teach a law-school course on antitrust until his confirmation to the Supreme Court in 2017. Once upon a time, progressives demonstrated similar concern about judicial treatment of antitrust laws. Justice Stephen Breyer, for example, served as special assistant to the head of the DOJ Antitrust Division before his judicial appointment by President Jimmy Carter. Earlier still, Justice John Paul Stevens was an antitrust lawyer, scholar, and professor before his appointment to the bench. Today’s Democratic 2020 hopefuls seem to have forgotten the lessons of history. Their antitrust proposals focus exclusively on appointing the right regulators and amending our current statutes. These are right-minded ideas, but they overlook the central role judges play in our political system. There is an old saying in the legal community: “Hard cases make bad law.” That may be true, but it is just as often the case that bad judges make bad law. Real antitrust reform will require more than regulatory and legislative tweaks; it will require the right judges.

### 1NC---Rural Health ADV.

#### Capitalist agriculture undergirds global imperialism. National reforms reify global dispossession while reproducing world hunger and ecological collapse.

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The AFF advances a for-profit agro-industrial complex that upholds capitalist superexploitation on a global scale:

1---increasing U.S. food production is bad. Outputs have been ‘dumped’ on the Third World in a manner that crushes indigenous production and creates vicious cycles of dependency on the Global North.

2---industrial agriculture is environmentally exploitative---groundwater contamination from pesticide and fertilizer runoff

THE POLITICAL ECONOMY OF INDUSTRIAL AGRICULTURE

The modern agriculture and food system is the fruit of settler-colonial advance, capitalist primitive accumulation, and accumulation on a world scale, leading to ecocidal landscape destruction and devastating health outcomes. From the outset, the huge plains of Australia and the Americas, including Canada, the world’s breadbaskets, came into being as a result of colonial genocide inflicted upon Indigenous peoples.11

The US food system, and to a lesser extent, the world food system, is oriented to production not for people, but for profit. On a world scale, 84 percent of farms are smaller than two hectares, but they only operate around 12 percent of farmland. The largest 1 percent of global farms operate over 70 percent of global farmland. And the trends North and South are worsening, not improving: in the US, the largest 7 percent of farms produce 80 percent of production value. In the EU, fewer than 3 percent of farms cover over 50 percent of the farmed land. In agricultural Tanzania, 108 recently imposed large farm investments control more land than the smallest two million total farm entities.12 The foundation of capitalist agriculture is private and highly concentrated ownership of the most basic element in production: the land.

Despite all that, on the one hand, on the global level, at least 50 percent of food, maybe more, is grown on smaller family farms, using various amounts of capital-intensive inputs.13 Many of these farms have at least a foot in agroecology.14 The remainder is grown by massive agribusiness corporations, or far larger farms which sell directly to those corporations. These farms are ever growing, gobbling up neighboring land and leading to ever more marked property concentration worldwide. And they use highly capital-intensive methods. Their aim is to produce as cheaply as possible in terms of dollar prices. At the same time, they are woven into a global corporate system. Seed, fertilizers, pesticide, farm equipment, and irrigation-technology companies are highly concentrated. Those firms want as many farmers as possible to buy and use and rely upon their technology. The buyers of agricultural commodities – soy, wheat, corn – and those companies which supply supermarkets want to buy farm products as cheaply as possible. None of those companies are interested in farmers or farmworkers earning a living wage or ensuring that the food people eat comes from healthy crops.

Furthermore, because margins are often very low, the companies need to buy and sell a lot of crops to make money. In this way, as capitalism enters and reshapes agricultural production, larger and smaller farmers alike produce and overproduce, in part because they are often trying to get out of debt. Government subsidies for cereals also lead to overproduction. Such cereals – corn, for example – are often processed into highly unhealthy corn syrup. Or soy into soy oil. Overproduction of wheat and soy led to US dumping of wheat and soy oil onto the Third World, from the 1950s onwards. In countries like Colombia, Tunisia, and Egypt, this policy damaged smaller farms, held land-to-the-tiller agrarian reform at bay, and destroyed national capacities to feed themselves, while Africa from the 1970s onwards became a structural food importer.15 In the Third World, most countries opted for focusing on agro-export. They emplaced Green Revolutions in their cereal sectors from the late 1960s onwards, using input-intensive methods, rather than trying to develop in different ways using their own capacities. This northern-assisted decision, too, was a great boon to the huge northern conglomerates which cornered the supply of those inputs. In the 1980s and the 1990s, this process accelerated. Southern agricultures, under pressure of the international financial institutions, opened up even more as a result of structural adjustment policies. Countries stopped supporting even medium-sized farmers and dismantled strategic grain reserves, while the Western-celebrated collapse of the Soviet bloc led to a collapse in world grain demand, helping keep prices lower at the costs of shattered lives in the former Second World.16 In 1995, the World Trade Organization began to promote “intellectual property rights” worldwide for genetically modified soybeans and maize, making southern agricultures even more dependent on northern inputs. In the process, major monopolies such as Monsanto, Bayer, and Syngenta, as well as Cargill, Coca-Cola, ArcherDanielsMidland, Tesco, Walmart, and Carrefour compounded their power over the world food system.17 They are, of course, sited in the North.

Finally, there is the imperial division of labor. During the colonial period, the Third World produced commodities like spices or coffee which could never be grown under any conditions in the First World. They were then drained from the Third World, producing widespread famine.18 That process slowed but did not stop with decolonization – which raises the centrality of national liberation to a reformed food system. With the advent of neoliberalism, dollar-cheap but land-and-labor-intensive tropical food imports, such as out of season fruits, vegetables, and other tropical goods, have been grown ever more on Third World lands.19 These crops simply cannot be produced in the North (except in small quantities in greenhouses). They rely on ultra-cheapened labor in the periphery and represent claims on the land and water and lives of those countries. Part of how that labor is made cheap is through vast labor reserves, which are maintained, and land cordoned off for export crops, through ruinously unequal rural agrarian structures, widespread malnourishment, and of course, punishment and siege against countries which defy the capitalist or colonial agrarian structure.20 The prerequisite for such a system of feeding has been preventing agrarian reform. As we will see, changing the food and agriculture system means changing who owns land.

The ecological and social consequences of these policies have been enormous. Modern agriculture uses artificial and resource- and energy-intensive fertilizers, which leach into water tables, poisoning groundwater. They produce massive run-off, inciting algal blooms at riverine termini. Modern agriculture compacts or over-tills the soil, causing erosion or other forms of soil damage. The land can no longer absorb water, in contrast to healthy soil, which is produced by mixes of animals and poly-crops, cover crops, and no-till farming. The effects in the US are not hypothetical: the massive 2019 floods that inundated the Midwest would largely have been avoided if the soil had been healthier. Whereas traditional agriculture suppresses pests through promoting predator-healthy habitats, industrialized agriculture soaks fields and their watersheds in pesticides, leading to bird and insect apocalypse, and infiltrating human tissue.21 Losing insects leads to declines in pollination and nutrient cycling. As insects die, so do the creatures that rely on them for food, including birds which play a vital role in seed distribution.

Furthermore, agriculture’s energetic basis is now topsy-turvy. So-called “traditional” agriculture relies on plants’ capacity to efficiently gather solar energy and convert it into forms usable by humans, an organic machine of absolute brilliance and grace. The new energetic basis of agriculture turns that logic on its head, using past flows of heat and light from the sun in the form of fossil fuels: “a change from ‘using sun and water to grow peanuts’ to ‘using petroleum to manufacture peanut butter.’”22 Corn in the US in 1970 produced just 2.6 calories per calorie invested.23 People estimate that now, advanced industrial societies use 4 and 15 calories for each unit of food they produce (interestingly, as little as 8 percent from mechanization).24 Such energetic inefficiency is only very partially due to industrialization. Of the energy used in the food system, a third is for production, a third for processing and packaging, and a third for distribution and preparation. Importantly, such interlinked chains do not manacle peoples and environments nearly as much in the “underdeveloped” countries.25

The North is “adept” at growing cereals, provided we do not mind topsoil blowing and silting up rivers, nitrogen fertilizers inciting hypoxic dead-zones in the Gulf of Mexico, and the specter of silenced springs as biodiversity evaporates in such factories-in-the-field. Such farming skill is one that treats living soil as dead. When we do so, we ought not to be surprised when the graveyards spread.

Furthermore, the quality of much of the food we eat lacks taste and nutrients, blights that worsen along lines of class and race: the poor with highly processed fast food (served to them by other segments of the poor) or other food soaked and laden in trans fats, doused in sugars, and otherwise ludicrously unhealthy even if affordable in dollar terms. It is furthermore overwhelmingly the poor who are forced to eat the products of the US agro-industrial food system: grain-stuffed and hormone-pumped animals versus the sustainable and grass-fed steers which are better for the environment but cost far more than poorer consumers can afford.

Modern food chains are also wasteful, substantially because of capitalist overproduction: if we produce more than we need, much of it will go to waste, whether (over)processed into ethanol or nutrient-free spongy bread, or fruits and vegetables discarded for not meeting aesthetic standards of one kind or another.26 In the US, around 6,000 calories of food are produced per person per day; 30–40 percent of it is lost, including in the many stages of capitalist production and transport, and around 10 percent goes to animal feed. This leaves around 3,700 calories per person. Humans need far less than that, although perhaps a more active and nature-engaged population would be a hungrier one, too. On a global basis, total calories available per person are closer to 3,100, with less food waste, especially in the Third World, including China and Greece. Food waste is intimately related to the syndrome of production that links industrial monocrops to urban and slum consumers. Elongated production chains are blighted with weak links and rust. They only make sense from the perspective of the monopolies that forge them and use them to strangle the planet and its poor. In rural areas, food waste is far lower. The longer the commodity loops are, the more food is wasted, the more such waste cannot return to the soil to restore its fertility, and the more carbon dioxide is produced when shipping and flying such foods around the world. City planning plays its part in inducing more food waste, while also removing that waste from the nutrient cycle.

Industrial agriculture has also meant farms without people. From 1940 to 1970, the push-pull factors of oil replacing rural labor, the seductions of suburban modernity, and evermore onerous difficulties of rural life halved the number of US farms. They went from about six to three million, and from 23 percent of the US population to 4.7 percent by 1970. By 1995, it was 2.2 million and 1.8 percent. Along racial lines, de-agrarianization was even sharper – Black farmers were 14.3 percent of farm operators in 1920 and 1 percent in 2000.27 Farmworkers themselves are predominantly Latino – a workforce partially made by the attack on the Latin American countryside through free trade agreements.28 Additionally, while the US has literally de-agrarianized, if one counts the number of workers elsewhere occupied in the food chain – in slaughterhouses mechanically ripping at chicken carcasses until their hands are quivering with carpal tunnel syndrome, as vividly recounted in the work of feminist geographer Carrie Freshour – or in the fast food industry, or for that matter at Walmart, the US’s largest employer, then the proportion of the US population working in the food industry overall is not all that much lower than the percentage of some Third World countries working in the agriculture sector.29 Labor in the food process has been displaced by machines, but labor is still quite present in the food system, and once again, it is very tough labor. “Modernization” has hardly meant the bettering of peoples’ lives.

Finally, “modernization” of agriculture has not saved people from hunger. Worldwide in 2019, two billion people did not have regular access to nutritious, safe, and sufficient food. Overwhelmingly, those people are concentrated in the Third World, including in countries which have seen a great deal of agricultural “modernization,” like India’s Green Revolution.30 Fourteen percent of India and the Philippines are undernourished.31 In Yemen, under a US-planned assault, 16 million people are food insecure, a telling example of why “the national question,” or freedom from foreign intervention, is still the foundation of popular development.32 Meanwhile, the capitalist organization of food supply doesn’t just produce problems of quantity, but also quality. As the Food and Agriculture Organization reports, “overweight increases in lower-middle-income countries are mainly due to very rapid changes in food systems, particularly the availability of cheap, highly processed food and sugar-sweetened beverages.”33

#### Justifying food policies through catastrophic geopolitical consequences naturalizes a liberal world order that’s the root cause of industrial agriculture and environment collapse

**Le Billon et al 14** [Melanie Sommerville, doctoral student in the Department of Geography at the University of British Columbia, Jamey Essex, Assistant Professor of Geography at the University of Windsor, & Philippe Le Billon, Professor at the University of British Columbia with the Department of Geography, “The ‘Global Food Crisis’ and the Geopolitics of Food Security,” *Geopolitics* 19:2, 2014]

Since 2007, rising prices and pronounced volatility in international food markets have combined to dramatically refigure global food security and produce what many have termed a ‘global food crisis’. Driven by a variety of factors including demand for agrofuels, the intersection of food with oil and financial markets, the steady erosion of agroecological systems and social safety nets, and pronounced inequalities in global agro-food systems, these food price shifts have had profound social and political effects. In many poorer countries, price spikes led to domestic unrest and widespread food riots, prompting emergency market-control measures by several governments. Increased unrest and rising food bills led many governments to reconsider their agricultural and food policies, with exporting states shutting down food surplus shipments, and several import-dependent countries further investing in offshore food production, a practice linked to a broader ‘global land grab’ with severe repercussions for small-scale farmers and the rural poor. For many observers, these combined social, economic, and political features have been read as the markers of a new ‘global food crisis’, which has continued into 2013, and shows few signs of imminent resolution. Internationally, concerns about a new global food crisis resulted in new funding streams, combining overseas development assistance with philanthropic capital, and emphasising the development opportunities associated with agriculture as the seat of rural economic growth. These new capital flows, in combination with strengthened activism by agrarian social movements, have reshuffled the global governance architecture around agriculture and food security, creating new political actors and allegiances and strengthening others. Yet with almost 870 million people continuing to suffer from chronic and acute hunger, there are genuine questions about whether the root causes of global food insecurity have been addressed, and indeed whether a solution to the crisis is within grasp.1 Price shocks and the broader ‘food crisis’ have brought considerable attention to the geopolitical dimensions of food security and the shifting political geographies of agro-food systems more generally. In both popular and policy forums, food security increasingly appears as a matter of urgent geopolitical calculation and strategy, and as an issue central to discussions of national and human security, climate change, development and global inequality. Leveraging neo-Malthusian predictions of an imminent descent into socio-political chaos amidst growing global food supply-demand imbalances, such narratives call forth liberal humanitarian interventions promising development for the hungry and security for the (privileged) rest of us in one tidy package. These doubly securitised framings are now being used to press forward technological and market-driven solutions to food insecurity with new urgency. Even as the global food crisis has offered a potent opportunity to challenge dominant agro-food political paradigms, then, it has also tended to reinstall them. Political geographic knowledges and geopolitical framings are not neutral in this process, but rather are deeply inscribed within it. This re-prioritisation of food security within political discussions and the geopolitical agenda appears to have gone largely unnoticed by political geographers. Indeed, agriculture and food issues have long occupied a somewhat marginal position within the subdiscipline, a curious situation given the growing attention they have garnered from scholars elsewhere in geography in recent decades.2 Our aim in this paper is to begin reversing this pattern of neglect and filling the gap that has resulted. Our paper proceeds in two main parts. In the first section, we examine the geopolitical framings of food security that have come to dominate popular and policy narratives in the last few years, and demonstrate the importance of critical political geography approaches for unseating these dominant narratives. We argue that these framings promulgate a neo-Malthusian and securitised reading of food security that privileges technological and market-extending responses deployed through further liberal humanitarian interventions. Rather than interrupting the structural conditions underpinning the current food crisis, such instances of ‘neoliberal geopolitics’ obscure both the continuing relevance of questions regarding inequality and domination within the global agro-food system, and the role of crisis narratives in depoliticising recent interventions into this system. We call for critical political geography perspectives to attend to the central role of geopolitical discourses in constituting the political economy of agro-food production and consumption, and to highlight counter- and alter-geopolitics readings of food security. In the second section, we take up this challenge by examining four key areas where such approaches can help question the status quo, while also finding common ground with contemporary research in agro-food studies. In so doing, we hope to inspire political geographers to direct more attention to food and agriculture as important areas of geopolitical inquiry.

#### Resource wars are a cover for liberal interventionism and you make environmental collapse inevitable

Kumari 12 -- International Relations Masters graduate @ University of Nottingham (Parmila, 1/29/12, "Securitising The Environment: A Barrier To Combating Environment Degradation Or A Solution In Itself?" http://www.e-ir.info/2012/01/29/securitising-the-environment-a-barrier-to-combating-environment-degradation-or-a-solution-in-itself/)

Secondly, the assertion that environmental degradation is a primary reason of conflict is purely speculative (Barnett 2003:10). Barnett suggests that the ‘evidence’ provided in support is a collection of historical events chosen to support the conflict-scarcity storyline and reify the realist assumption that eventually humans will resort to violence (Barnett 2001:66). This is as opposed to acknowledging that humans are equally capable of adapting. Thirdly, research shows that it is abundance of resources which drives competition, not scarcity (Barnet 2003:11). This makes sense because any territorial conquest to obtain resources will be expensive. A poor country suffering from resource scarcity would not be able to afford an offensive war(Deudney 1990: 309-11). The second and third points mean that environmental-conflict literature counteracts any attempts at solving the problem of environmental degradation. The discourse attributes high intentionality to people-because of scarcity they decide to become violent. This ignores the fact that human actions are not intended to harm the environment. The high intentionality given to people prevents them from being seen as victims who need help. Instead they are pictured as threats to state security. This view can exacerbate ethnic tensions as the state uses minority groups as scapegoats for environmental degradation. It also means that only those involved in conflict are relevant to environmental security, not those who are vulnerable (Detraz and Betsill 2009:307-15). In this way the South is scripted as “primeval Other” (Barnett 2001:65), where order can only be maintained by the intervention of the North, rather than by the provision of aid. The North’s agency in creating the environmental problems is completely erased. Instead environmental degradation is seen from the perspective of the individual state, questioning how it could affect the state, i.e. increased migration (Allenby 2000:18) and this leads to the adoption of narrow policies. Saad has said that securitising the environment in this way allows the North to justify intervening and forcing developing nations to follow policies which encapsulate the North’s norms (Saad 1991:325-7). In this way the powerful become stronger, and the weak weaker. This view may affect the South’s relations with the North. For example, Detraz and Betsill have commented on tensions between the North and South in the 2007 United Nations Security Council debate on climate change. Only 29% of the Southern states compared to 70% of Northern speakers supported the idea of the Security Council being a place to develop a global response to climate change. The reasons for this difference was that shifting decision-making to the Security Council would make Southern states unable to promote efficiently their interests in obtaining resources for climate adaptation and mitigation plans. Furthermore, Egypt and India argued that in suggesting this Northern countries were avoiding their responsibilities for controlling greenhouse gases, by trying to “shift attention to the need to address potential climate-related conflict in the South” (Detraz and Betsill 2009:312). In this way environmental security becomes a barrier because the traditional (realist) concept of security is used to immobilise any action towards dealing with the root causes of environmental degradation.

#### Food insecurity doesn’t cause war.

Vestby et al 18, \*Jonas, Doctoral Researcher at the Peace Research Institute Oslo, \*\*Ida Rudolfsen, doctoral researcher at the Department of Peace and Conflict Research at Uppsala University and PRIO, and \*\*\*Halvard Buhaug, Research Professor at the Peace Research Institute Oslo (PRIO); Professor of Political Science at the Norwegian University of Science and Technology (NTNU); and Associate Editor of the Journal of Peace Research and Political Geography. (5/18/18, “Does hunger cause conflict?”, *Climate & Conflict Blog*, <https://blogs.prio.org/ClimateAndConflict/2018/05/does-hunger-cause-conflict/>)

It is perhaps surprising, then, that there is little scholarly merit in the notion that a short-term reduction in access to food increases the probability that conflict will break out. This is because to start or participate in violent conflict requires people to have both the means and the will. Most people on the brink of starvation are not in the position to resort to violence, whether against the government or other social groups. In fact, the urban middle classes tend to be the most likely to protest against rises in food prices, since they often have the best opportunities, the most energy, and the best skills to coordinate and participate in protests.

Accordingly, there is a widespread misapprehension that social unrest in periods of high food prices relates primarily to food shortages. In reality, the sources of discontent are considerably more complex – linked to political structures, land ownership, corruption, the desire for democratic reforms and general economic problems – where the price of food is seen in the context of general increases in the cost of living. Research has shown that while the international media have a tendency to seek simple resource-related explanations – such as drought or famine – for conflicts in the Global South, debates in the local media are permeated by more complex political relationships.

### 1NC---Incumbents ADV.

#### The sharing economy is a trojan horse for imperialism.

Finger 17, Editor at the Journal of New Politics. Citing *Divided World Divided Class: Global Political Economy and the Stratification of Labour* by Zak Cope and *Imperialism in the Twenty-First Century: Globalization, Super-Exploitation, and Capitalism’s Final Crisis* by John Smith (Barry, Unequal exchange, *International Socialist Review*, Issue #103, Winter 2016-17)

The political implications of unequal exchange—if supportable—would be convulsive and transformative for how we think and how we engage in class struggle and class-struggle politics. For the thesis of unequal exchange, especially as Cope and Emmanuel extend it, calls into question the basis for international labor solidarity.

If first world workers produce less in value than their wages allow them to appropriate, they are simply no longer an exploited class, but a labor aristocracy, a new petty bourgeoisie. Emmanuel stated the implications bluntly. This does not mean workers and capitalists of the imperialist center have straightened out everything, which separates them. But what separates them is no longer an antagonistic opposition, that is to say, an opposition, which can only be resolved by going beyond the existing system; it is an opposition between partners for the sharing of the spoils in the framework of the system. This is the very meaning of reformism. They are therefore natural allies in any outcome in which it is a question of confronting the suppliers of these spoils.9

If first world workers, blue collar and white alike, are the objective allies of their employers in the modern structure of capitalism, which classes and which struggles should revolutionaries support? The question all but answers itself: To those classes in world capitalism that have a fundamental interest in overturning imperialism. Cope pulls no punches: “Since the entire population of the imperialist bloc benefits from imperialism to varying degrees, the anti-imperialist united front in the Third World must necessarily confront the First World in toto, and not just its haute bourgeoisie.”10

A “socialist” revolution, to paraphrase Emmanuel, in the privileged North—if such a thing, given this understanding of the structure of world capitalism, were even conceivable—would lead to a form of social imperialism. The property upon which rests the claims of first world capitalists to the fruits of international exploitation would be expropriated. But it would be an expropriation and redistribution downwards from one set of exploiters to their junior associates. It would leave the fundamental framework of unequal exchange and national privilege intact. A revolt on a pirate ship that expropriates the captain and the officers, redistributing the booty on an equal basis, cannot be said to create a pirate-commune since the pirates’ booty is based, above all, on wholesale

#### Their tech innovation enables the quantification of social relations and ushers in a new era of colonialism.

Couldry and Mejias, 2019

(Nick – professor of Media, Communications and Social Theory @ London School of Economics & Political Science, Ulises A. – professor of Communication Studies @ State University of New York, Oswego, “Making data colonialism liveable: how might data’s social order be regulated?,” Internet Policy Review 8.2, 2019, https://policyreview.info/articles/analysis/making-data-colonialism-liveable-how-might-datas-social-order-be-regulated)

A new order is being constructed through the continuous extraction of data from our social lives. This new order, optimised for the creation of economic value, may well become the social order on which the next phase of capitalism depends for its viability. As part of that emerging order, calls for the regulation of data processing have intensified in the past two years, unsurprisingly perhaps given that capitalism has shown that it needs to be regulated if it is to be made liveable (Polanyi, 2001). But this push for regulation has been framed entirely in terms of taming certain rogue forms of contemporary capitalism. This article argues, however, that to frame data issues solely in terms of a “bad” form of capitalism misses the full scope, scale and nature of what is happening with data. Legal, social and civic responses to what is underway need to be grounded in a broader argument about what we will call “data colonialism”. There is no doubt of course that what is happening with data today is inextricably linked to the development of capitalism. But is something even larger going on? We argue here that today’s quantification of the social—also known as datafication (Mayer-Schönberger and Cukier, 2013; Van Dijck, 2014)—represents the first step in a new form of colonialism. This emerging order has long-term consequences that may be as far-reaching as were the appropriations carried out by historic colonialism for the benefit of the capitalist economies and international legal order that subsequently developed. Recognising what is happening with data as a colonial move means acknowledging the full scope of the resource appropriation under way today through datafication: it is human life itself that is being appropriated so that it can be annexed directly to capital as part of a reconstruction of the very spaces of social experience. In arguing this, we share some common ground with Shoshana Zuboff’s well-known argument on “surveillance capitalism”, but there are also crucial differences, which we briefly summarise in three points here (and further unpack later). [1](https://policyreview.info/articles/analysis/making-data-colonialism-liveable-how-might-datas-social-order-be-regulated#footnote1_suwb96m) First, the transformation of what can be considered an input to capital actually goes well beyond what has been observed in the social media sector to include, for example, the rise of logistics, the new methods of control in the workplace, the emergence of platforms as new structures for profit extraction (for instance, in transportation and tourism), and most generally the reformulation of capitalism’s default business model around the extraction and management of data (Davenport, 2014). [2](https://policyreview.info/articles/analysis/making-data-colonialism-liveable-how-might-datas-social-order-be-regulated#footnote2_tm04pnm) What is going on with data, in other words, is much wider than a problem with a limited number of rogue surveillance capitalists who have gone astray, a problem that can be corrected by their reform. There is only one historic precedent for such a shift in the resources available for economic exploitation, and that is the emergence of colonialism in the late 15th and early 16th centuries. [3](https://policyreview.info/articles/analysis/making-data-colonialism-liveable-how-might-datas-social-order-be-regulated#footnote3_gk9kjph) Second, rethinking data processes on this longer 500-year time-scale allows us to see their implications for capitalism’s future in a broader way, too. Here we must recall that industrial capitalism itself was only made possible by the profits and socioeconomic reconfigurations that came with historic colonialism. Third, a colonial framing highlights two central aspects of today’s transformations that would otherwise seem like mere collateral: the subjugation of human beings that is necessary to a resource appropriation on this scale (relations of subjection to external powers were central to historic colonialism), and the grounding of this entire transformation in a general rationality which imposes upon the world a very singular vision of Big Data’s superior claim on knowledge (just as colonisers justified their appropriation on the ground of the West’s superior rationality). Our argument will consider the long-term historical relations between capitalism and colonialism in the first part of this article, and in the second part offer a discussion—informed by decolonial theory—of Carl Schmitt’s classic interpretation of historic colonialism’s relation to international law. We hope to give more substance to general calls to recognise the fight against “dataism” (Van Dijck, 2014) as “the most urgent political and economic project” of the 21st century (Harari, 2016, p. 459). This article, written from the intersection of social theory, decolonial theory, and critical data studies rather than policy studies, will hopefully be useful to those who wish to develop a more robust starting-point for critical work on data policy. A DECOLONIAL READING OF DATAFICATION In this first section, we summarise our arguments for analysing contemporary practices of data extraction and data processing as replicating colonial modes of exploitation (see Couldry and Mejias, 2018; Couldry and Mejias, 2019). This will allow us to provide the starting-point for our policy-related discussion later on. The public is often told that "data is the new oil" (Economist, 2017). A recent article in the Harvard Business Review goes further and argues not only that “data is the fuel of the new economy, and even more so of the economy to come,” but also that: Algorithms trained by all these digital traces will be globally transformational. It’s possible that new world order will emerge from it, along with a new “GDP” – gross data product – that captures an emerging measure of wealth and power of nations (Chakravorti, Bhalli and Chaturvedi, 2019). While the evocative idea of “new oil” might recall the benefits (for some) of historic colonialism, it obscures precisely the most important level at which data colonialism must be empirically studied. The most fundamental fact about data is that it is not like oil, but rather a social construct operating at a specific moment in history (Gitelman, 2014; Scholz, 2018), driven by much wider economic and social forces. The concept of data colonialism, therefore, highlights the reconfiguration of human life around the maximisation of data collection for profit. Without the resulting data flow, there would be no substance related to human life that could, even potentially, be called “oil”. The claim that data is like oil is thus an attempt to naturalise the outcome of data’s collection, and so make data extraction (and the categories it embeds in daily life) part of a social landscape whose contestability is hidden from view (Bowker and Star, 1999). Since regulating data depends, fundamentally, on opening up that contestability, it is essential to understand how the naturalisation of data collection occurs. To do this, we draw on critical political economy and decolonial theory to trace continuities from colonialism’s historic appropriation of territories and natural resources to the datafication of everyday life today. While the modes, intensities, scales and contexts of dispossession have changed, the underlying drive of today’s data processes remains the same: to acquire “territory” and resources from which economic value can be extracted. To do so in no way diverts us from an analysis of capitalism. On the contrary, it places datafication squarely within the centuries-long relations between colonialism and capitalism, whose separation is now widely contested (Williams, 1994; Beckert and Rockman, 2016). Far from being disconnected from capitalism, the current phase of colonialism (data colonialism) is understood as preparing the way for a new, still undefined stage of capitalism, just as historic colonialism paved the way gradually for industrial capitalism. The medium for this long-term transformation are the interdependencies and rationalities through which social relations, conducted and organised via processes of data extraction, become a normal part of everyday life. We therefore use the term “colonialism” not as a metaphor, [4](https://policyreview.info/articles/analysis/making-data-colonialism-liveable-how-might-datas-social-order-be-regulated#footnote4_s1tigoo) but to name an actual reality. In this non-metaphorical usage, however, our focus is on colonialism’s longer-term historical function: the dispossession of resources and the normalisation of that dispossession so as to generate a new fuel for capitalism’s global growth. Distinctive to data colonialism are the subjection of human beings to new types of relations configured around the extraction of data, and, even more broadly, the imposition on human life of a new vision of knowledge and rationality tailored to data extraction (the vision of Big Data). Each generates fundamental questions, in turn, about legal values such as freedom and autonomy, and challenges for existing systems of commercial regulation (we return to those challenges in the next section). Underlying our argument are two forms of analysis: an analysis of the political economy of the data industry, or what we call the social quantification sector; and an analysis of the multimodal forms of exploitation that unfold through our participation in digital platforms and data-processing infrastructures, or what we call data relations. These two terms deserve more explanation. The social quantification sector can be broken down into various sub-groups, starting with the manufacturers of digital devices and personal assistants: well-known media brands such as Amazon, Apple, Microsoft and Samsung, and less well-known makers of devices operating in the fast-expanding ‘Internet of Things’. Another group in the social quantification sector includes the builders of the computer-based environments and tools by means of which we connect: household names such as Alibaba, Baidu, Facebook, Google, TenCent and WeChat. Yet another group comprises the growing field of data brokers and data processing organisations such as Acxiom, Equifax, and (in China) TalkingData that collect, aggregate, process, repackage, sell and make decisions based on data of all sorts, while also supporting other organisations in their uses of data. In addition, the social quantification sector also includes the vast domain of organisations that increasingly depend for their basic functions on processing data from social life, whether to customise their services (like Netflix and Spotify), to link sellers and buyers (like Airbnb, Uber, and Didi), or to exploit data in areas of government or security, such as Palantir and Axon (formerly Taser). Finally, analytical consideration of the social impact of the social quantification sector needs to take into account the vast areas of economic life where internal data collection has become normalised as corporations’ basic mode of operation, for example in logistics (Cowan, 2014). Corporations such as IBM are key supporters of this wider infrastructure of business data collection (Davenport, 2014), even though they are not associated with either social media platforms or specialised data brokerage. By data relations we do not mean relations between data, but the new types of human/institutional relations through which data becomes extractable and available for conversion into economic value. When fully established in daily life, data relations will become as naturalised as labour relations, and together comprise a second pillar of the social order on which capitalism is based. [5](https://policyreview.info/articles/analysis/making-data-colonialism-liveable-how-might-datas-social-order-be-regulated#footnote5_fj3s8jb) This transformation—we propose—goes much further even than the shaping of social relations around the extraction of “surveillance capital” that Zuboff describes. Under data colonialism, human life becomes, as it were, present to capital without obstruction, although this “presence” is based on many levels of technosocial mediation. Data relations give corporations a privileged “window” onto the world of social relations, and a privileged “handle” on the levers of social differentiation. More generally, human life itself, including its relations to technology, becomes a direct input to capital and potentially exploitable for profit. Data relations make the social world readable to and manageable by corporations in ways that allow not just the optimisation of profit, but also new models of social governance, what legal scholars Niva Elkin-Koren and Eldar Haber (2016) call “governance by proxy”. In this context, digital spaces for social life and economic transactions called “platforms” (Gillespie, 2010; compare Bucher, 2016; Gerlitz and Helmond, 2013) have significance beyond their convenience for individuals and corporations. Platforms become software-constructed spaces that produce the social for capital. Social life is thereby transformed into an open resource for extraction that is somehow “just there” for exploitation. For sure, capitalism has always sought to commodify everything and control all inputs to its production process. But how “everything” is defined at specific historical moments varies. What is unique about this historical moment is that human life is becoming organised through data relations so that it can be a direct input to capital. This transformation depends on many things: shifts in daily habits and conventions, software architectures that shape human life through, as Lessig famously argued, “code” (Lessig, 2001), and explicit legal frameworks that legitimate, sanction and regulate such arrangements. In this article, we focus on the last, but including the underlying legal rationalities that, as Julie Cohen (2017) argues, work to frame data as owner-less, redefining notions of privacy and property in order to establish a new moral order that justifies the appropriation of data. To summarise the argument so far: humanity is currently undergoing a large-scale transformation of a social, economic and legal order, based on the massively expanded appropriation by capital of human life itself through the medium of data extraction. The long-term sustainability of this transformation depends, however, on the regulation or harmonising of various factors: the weight of habit and convenience in daily life; various social pressures on consumers, producers and workers towards datafication, which amount to something like a life force (Grewal, 2008); and, crucially, an emerging legal infrastructure. As a result, larger questions arise as to how to regulate this transformation and its emerging institutions. The answers depend on what approach we take to the question of what sort of transformation this is. We have argued, in condensed form, that this transformation can only be fully understood bifocally, that is, through the double lens of capitalism and colonialism. In the second part of the article, we extend this discussion into a brief review of current approaches to regulating personal data processing, and their limitations.

#### Disruptive digital innovation fails, reinforces imperialism, and linearly increases extractive violence.

Brand & Wissen 21, Ulrich Brand: Professor for International Politics @ University of Vienna. Markus Wissen: Professor of Social Sciences at the Berlin School of Economics and Law. Translated by Zachary King (The Imperial Mode of Living: Everyday Life and the Ecological Crisis of Capitalism, *Verso Books*)

EXTERNALIZATION AND RESISTANCE

Green capitalism is anything but inevitable. In many places, the creation of a green economy has encountered resistance from the fossil factions of capital and from people’s everyday practices. In the US especially, these forces have received an additional boost with the presidency of Donald Trump. There is a boom in the extraction of oil and gas through fracking, in tar sand oil extraction and in the exploration and exploitation of deep sea fossil energy sources. 42 In the EU, the transition to a renewable energy regime is slowed down by the Visegrád Group (Poland, the Czech Republic, Slovakia and Hungary). And even in places where green capital factions and practices are becoming socially relevant, they are in constant conflict with retrograde social forces. This description even applies to the ‘pioneer’ in renewable energies, Germany, where powerful social forces from industry, energy suppliers and trade unions are increasingly aggressive in articulating their resistance to the energy transition and find political advocates in state apparatus such as the German Federal Ministry for Economic Affairs and Energy. 43

Eventually, green capitalism will neither effectively manage the ecological crisis nor reduce inequality, let alone create good living conditions for all; instead, it will generate and externalize new socioecological costs. It will impose these costs on the workers in China, Africa or elsewhere who under miserable conditions extract rare earth metals and other raw materials that are indispensable for ‘green’ technologies; on the sugar cane workers on Brazilian plantations who risk life and limb to supply the US and European markets with ‘biofuels’; on the peasants who are evicted from their farms and villages because of land grabbing; on Kenyan women as they are ‘rewarded’ for reforestation activities with certificates of dubious value while they sacrifice food security to protect the climate; and on unpaid care work and poorly paid personalized services that are not considered in green economy concepts. 44

The power relationships between different factions of capital, as well as between the developed capitalist world and the emerging economies of the global South, will be readjusted; inequality will increase within industrialized and industrializing countries; relations with other parts of the world will be reorganized on the basis of military coercion and by actively pursuing ‘a raw materials diplomacy’. 45 The green capitalism project will therefore necessarily represent a spatially ‘fragmented hegemony’ with a highly unclear temporal perspective; it is characterized by exclusion and exploitation, and yet ensures the continuation of the imperial mode of living. 46

#### The AFF’s drive to maximize innovation reinforces colonial narratives of Western economic progress, inevitably forcing neoliberal governmentality onto the Global South.

Jimenez et al. 22, Andrea Jimenez: PhD from Royal Holloway University of London's School of Management and a Masters in Sustainable Development. Deborah Delgado: Department of Sociology, Pontifical Catholic University of Peru. Roger Merino: School of Public Management, Universidad del Pacífico. Alejandro Argumedo: Andes Asociation (A Decolonial Approach to Innovation? Building Paths Towards Buen Vivir, *The Journal of Development Studies*, DOI: 10.1080/00220388.2022.2043281)

Scholars have long argued that innovation is never neutral but rather always situated and entwined with politics historically (Cruz, 2021; Pansera & Owen, 2018). Nonetheless, much of the mainstream literature often portrays innovation in the form of new technologies and products introduced and adopted into a context, posing both challenges and opportunities (de Saille & Medvecky, 2016). In promoting innovation as a universally positive aspect in society, the literature promotes a logic of coloniality, understood as the long-standing patterns of power that stem from colonialism characterised by rationality, modernity, and epistemic imposition (Quijano, 2007).

This manifests in several ways. For example, much of the literature promotes innovation by emphasising its role in economic growth and the pursuit of competitive advantages in a capitalist society. This reinforces an interpretation that asserts that developing countries face poverty challenges because of a lack of innovation, assuming that wealthy countries are wealthy due to their innovation capacity, and conversely, ‘[…] developing countries face genuine barriers to innovation, which is precisely why they remain underdeveloped’ (Aubert, 2004, p. 6).

This approach results in efforts to explore how innovation can be promoted and implemented in the global South. Western-driven innovation concepts and models developed for far different contexts are then used to explore innovation—or lack thereof—in the South. Authors argue that many of these concepts fail to explain innovation activity and inactivity in the global South (Kraemer-Mbula, International Development Research Centre (Canada), & Organisation for Economic Co-operation & Development, 2010). The promotion of ‘National System of Innovation (NSI)’ as an approach is an example of this trend (Fagerberg & Srholec, 2008; Freeman, 1995; Lundvall, 2007). NSI proposes that the global South could study the experiences of the United States, Western Europe, and, to a lesser extent, East Asian countries to ‘catch-up’ to them (Perry, 2020). NSI aims to strengthen the local innovation ecosystem by prioritising top-down policy initiatives that use policies applied by wealthier and more industrialised countries as blueprints. As a result, it hardly goes beyond idealistic agendas for policy imitation and adaptation, let alone implementation in practise. Furthermore, the strong reliance on certain institutional preconditions as necessary for innovation has resulted in only rhetorical attention being paid to political and historical conditions in the global South (Perry, 2020).

Even when innovation concepts are conceptualised with the global South context in mind, significant challenges remain. The appropriate technology movement, popularised by Friedrich Schumacher in the 1970s, argued that Western innovation was environmentally destructive and exacerbated disparities between richer and poorer countries. The movement proposed that low-income economies produce low-cost goods that are affordable to low-income consumers (Kaplinsky, 2011). As a result of this critique, a slew of new concepts about innovation emerged to describe the various characteristics and examples where innovation progressively becomes a loose label, shifting away from a purely technological perspective and toward a more social and inclusive one. These include, but are not limited to, inclusive innovation, pro-poor innovation, frugal innovation, grassroots innovation, and other alternative forms of innovation (Pansera, 2013; Papaioannou, 2014; Zeschky, Widenmayer, & Gassmann, 2011). Although it is beyond the scope of this paper to define each of these concepts, many have described how their characteristics fall under the paradigm that emphasises innovation resulting from deprivation and poverty while ignoring the structural social and economic conditions that contribute to this situation in the first place (Jimenez & Zheng, 2017; Pansera & Owen, 2018). There is an overemphasis on narratives painting the very few successful innovators as heroes who overcame structural challenges, which further promotes an individualistic viewpoint (Christensen, Ojomo, & Dillon, 2019). This reinforces the belief that inefficiencies and resource scarcity are excellent opportunity for entrepreneurs to innovate (Yujuico, 2008).

Overall, these concepts describe innovation as a phenomenon that occurs to deal with problems of poverty, exclusion, and deprivation resulting from a lack of satisfactory institutional solutions (Chiappero-Martinetti, Houghton Budd, & Ziegler, 2017). Although proposed to challenge global paradigms of infinite growth, these concepts reproduce a logic of inclusion that fails to avoid the pitfalls of neoliberalism. These concepts also reinforce Western market-framed agendas, where values of individualism and competition are applauded and emphasised (Pansera & Owen, 2018).

When innovation is so closely entwined with a paradigm that presents Western contexts as ideal, colonial imaginaries of progress, individualism, and universalism are reinforced. Even though the notion of innovation was born in Western societies, decolonial theory explains how some categories might be reimagined through the knowledge and struggles of subaltern actors (Grosfoguel, 2000; Mignolo & Walsh, 2018). The following section introduces a decolonial approach that can be useful to reimagine innovation.

### 1NC---Federalism ADV.

#### Internal link is dumb---no relationship between political divides and some global catastrophic war

#### No civil war---wealth and military power erase challenges

Hanania 20, research fellow at Defense Priorities, and a postdoctoral research fellow at the Saltzman Institute of War and Peace Studies at Columbia University. (Richard, 10-29-2020, "Americans hate each other. But we aren’t headed for civil war.", *Washington Post*, https://www.washingtonpost.com/outlook/civil-war-united-states-unlikely-violence/2020/10/29/3a143936-0f0f-11eb-8074-0e943a91bf08\_story.html)

But scholars now prefer the opportunity model, thanks to large-scale studies that examine political violence worldwide with cutting-edge statistical methods. Grievances and societal cleavages exist everywhere, waiting to be exploited. What distinguishes the countries that descend into civil war from those that do not is the lack of state capacity to put down rebellion — for reasons rooted in politics, economics or geography.

You might expect, for instance, states that lack democracy, that have diverse populations or that discriminate against minorities would be at the highest risk of internal conflict, because such conditions foment bitter grievances. But in fact, those qualities are at most loosely correlated with civil war, as scholars like the Stanford University political scientists James Fearon and David Laitin and the University of California at San Diego’s Barbara F. Walter have shown.

Rather, civil wars happen where the state is weak. Lower levels of wealth predict civil war, because poor countries lack the law enforcement and military capability to put down armed rebellions. That helps to explain recent conflicts in such varied countries as Yemen and Congo. Power vacuums, as occurred during and after decolonization, after American regime-change wars and after the collapse of the Soviet Union, create uncertainty about who is in charge and can inspire those who seek power to take up arms. There are other factors, too: States that are rich in oil see more civil war because the potential payoffs of a successful rebellion are higher — but this applies only up to a certain level of income, after which point the government is often able to buy off or destroy any potential challengers.

The Balkans offer a ready example of how grievance based on ethnic tension must be intertwined with the collapse of order for groups to take up arms against one another. While various ethnolinguistic communities there long eyed each other with suspicion, going back to the days of the Ottoman and Austro-Hungarian empires, those tensions did not lead to violence for most of the region’s history, including during the nearly half-century of communist rule. But when the Soviet empire fell and communist governments were discredited, parts of Yugoslavia began to declare independence. Serbs, Bosnians, Croats and Albanians, incited by political opportunists and demagogues, fought wars against one another for a decade, drawing in the international community, until sovereign states emerged with new, widely accepted borders.

In one influential 2006 study representative of the new school of thought — one that examined 172 countries from 1945 to 2000 — the political scientists Havard Hegre, of the Center for the Study of Civil War, and Nicholas Sambanis, of Yale University, used advanced statistical tools to determine which of 88 factors most consistently predicted civil war. Grievance-based measures like authoritarian government and ethnolinguistic diversity ranked low or had no discernible effect (although the latter did predict internal conflict when the analysis included the lowest level of conflict measured, defined as 25 or more deaths in a year). In contrast, Hegre and Sambanis found that measures of opportunity like a small military establishment and rough terrain — which offers a base from which rebels can strike — had a much stronger and more consistent effect.

Geography is a surprisingly potent variable in predicting civil war — and can confound even moderately strong states. During such conflicts, governments usually control the cities, and rebels form bases in relatively inaccessible regions like mountains, forests and swamps. Countries that have had problems with mountain-based minorities include Russia, which has confronted rebels in Chechnya, and Turkey, which is still fighting Kurds in the southeast of the country. (Until the 1990s, the Turkish government even referred to Kurds as “Mountain Turks,” denying their identity while acknowledging the geographical nature of the problem.)

Even with the most difficult geographic conditions, however, wealth and government power tend to erase opportunities for rebellion. Consider that in 1948 and 1949, South Korea faced a communist-led uprising on Jeju Island — which lies in the Korea Strait, about 60 miles from the mainland — in a conflict that cost as many as 30,000 lives, mostly civilian. A poor, newly independent South Korea had difficulty bringing that island under control and relied on brutal tactics to do so, including summary executions. But now that South Korea has joined the club of modern, industrialized states with advanced militaries, the idea of a region like Jeju rebelling has become unthinkable.

Wealth and military power explain why, in the United States, civil war is likely to remain a metaphor. Its per capita gross domestic product is about $62,000 a year, among the highest in the world, and its military is clearly capable of wiping out any challenges to state power. (The U.S. Civil War occurred when the nation had a per capita GDP comparable to that of a developing nation today, and when military technology was limited to rifles and cannon.) The Pentagon has 1.3 million active-duty personnel, can find terrorists on the other side of the world and wipe them out with the push of a button, and boasts a command-and-control structure with no recent history of factionalization. There is no swamp or mountain peak that is beyond the easy reach of the U.S. military.

A recent survey by Nationscape revealed that 36 percent of Republicans and 33 percent of Democrats thought that violence was at least somewhat justified to accomplish political goals. The opportunity model suggests that while a survey result like this reveals disturbing things about our political culture, it does not presage civil war.

To be sure, riots and general discord can happen as long as leaders lack the political will to respond (or if, as today, leaders disagree about the line dividing peaceful protest from lawlessness). But as soon as the authorities perceive a serious enough problem, they can move quickly and decisively, a lesson learned by the anarchists who recently took over part of Seattle, declaring it the Capitol Hill Autonomous Zone. They were tolerated for just over three weeks until they were cleared out by local police in partnership with the FBI. Law enforcement at the local and national levels, from police to the military, remains united and under civilian control, willing and able to put down potential threats to our governing system or territorial integrity.

The wide availability of guns does make the American situation unique among developed countries — and leads to more horrific low-level violence, such as the 2019 El Paso shooting, in which a White racist angry about immigration is accused of targeting innocent Hispanics, killing 23 people. (He had apparently sought, but failed, to provoke a larger conflict.) But that is not civil war — and using such hyperbolic language may actually lead to more violence, as radicals come to believe that true civil war is possible and undertake copycat attacks.

In fact, the situation in Michigan suggests how intoxicating the idea of civil war can be. Had the recently arrested anti-government extremists not been under close federal surveillance — itself a reassuring sign of state capacity — they might have committed hideous political violence. Yet their goal of inciting civil war would have remained out of reach.

Those predicting civil war have correctly identified serious problems in American society: Ever-widening divisions based on factors including race, geography and partisanship make it difficult to respond to such varied threats as pandemics, economic crises and climate change.

But our problem remains bitter polarization and distrust, not the literal disintegration of the country. The United States faces monumental challenges in the coming months and years, from a rancorous election (and its aftershocks) to difficult racial issues to continuing environmental calamity. Extreme partisanship and political discord will absolutely make everything harder. But the sooner we realize that civil war is highly unlikely, the sooner we can focus on real problems.

# 2NC

## K

#### 1---Coordinated strikes solve---they disrupt global supply chains that are key to capitalism.

Fox-Hodess 21, Sociologist and cofounder of the International Labour and Logistics Research Network (Katy, June 16th, “Logistics Workers Make Global Capitalism — and They Can Break It, Too,” *Jacobin Magazine*, <https://www.jacobinmag.com/2021/06/logistics-industry-capitalism-unions>, Accessed 11-08-2021)

The logistics industry is key to the global circulation of goods under capitalism. Workers have immense power within it to grind that circulation to a halt — if they can get organized.

Over the past several decades, capitalism has broken up the production process into individual steps carried out in separate work sites scattered across the globe. As a result, logistics, the systems that organize the physical movement of goods through space and time, has become more central to global capitalism than ever, and that gives workers in the logistics sector — including ports, rail, trucking, and other industries — tremendous potential leverage over the capitalist class. Any attempt to think strategically about strengthening working-class power must therefore grapple with the sector and how it works.

#### 2---Movement fails is an elite fallacy---globalization allows international labor movements to combine their power.

Tavan 21, Host of Red Flag Radio Podcast (Luka, March 7th, “Worldwide revolution is possible and necessary,” *Red Flag*, <https://redflag.org.au/article/worldwide-revolution-possible-and-necessary/>, Accessed 10-12-2021)

But capitalism’s global nature means that revolts tend to spread across national borders. Workers today share increasingly similar experiences: conditions of work, forms of consumption, lifestyles and political cultures. And the global integration of production serves to transmit struggle from one country to another. In 1974, for instance, resistance to the brutal military dictatorship in Chile spread to East Kilbride, Scotland, of all places. Workers at the Rolls Royce factory there learned that the engines they were repairing were being used by the Chilean air force to drop bombs on workers resisting the coup. They downed tools and refused to work on the engines, keeping them out of the hands of the military junta for four years.

While nationalism still has a powerful hold on the consciousness of many, it’s increasingly clear that the real line of polarisation across the globe is between the minority ruling class and the majority working class. And when revolts break out in one part of the world, people can identify with the causes and motivations of their struggles, and draw comparisons with their own situation. “Languages remain different,” observed UK Marxist Chris Harman in 1992, “but what they say is increasingly the same”. Harman’s words ring true in every wave of political radicalisation.

1968 is remembered as a year of global revolt, when millions of workers, students and oppressed people drew inspiration from each other’s movements. Activists in the US were radicalised by the heroic resistance of the Vietnamese people to American imperialism. Irish civil rights activists emulated the militant politics of the Black Panthers. When students and workers united to launch a massive general strike in France in May, it taught student radicals in Australia that they needed to link up with the power of the organised working class in order to win.

The movements of 1968 united people across superficially very different societies. For decades, Cold War common sense had dictated that the greatest divide on the planet was between Western liberal capitalism and Stalinist “Communism”. But in 1968, both sides of the iron curtain exploded in revolt. The triggers for the struggles may have been different, but they were all responses to similar issues: inequality, exploitation and war, imposed by monstrous bureaucratic states.

In 2011, a poor Tunisian street vendor set himself alight to protest against police harassment. Within days, his act had inspired anti-government protests across the country. Within weeks, the protests escalated into a regional revolt that challenged regimes across the Arab world. One small act tapped into resentment against inequality, unemployment and state violence that engulfed an entire region. The radical wave spread even further: at a massive demonstration against an anti-union bill in the US city of Madison, Wisconsin, a man held up a poster with a picture of Egyptian dictator Hosni Mubarak beside Republican Governor Scott Walker. The caption read: “One dictator down. One to go”. The Arab revolutions went on to inspire the Occupy movement, which spread to more than 80 countries.

Today, more than ever, insurgent social movements and working-class uprisings are spurring action in other parts of the world—from Hong Kong to Chile, from Lebanon to France. One placard at a memorial for protesters murdered while resisting the military coup in Myanmar took up Marx’s incitement: “Workers of the world unite, you have nothing to lose but your chains”.

While the Russian Revolution is cynically held up by capitalist ideologists as the ultimate argument against international revolution, it actually proves the opposite. It shows that the goal is not only necessary, but also that it’s possible. The news of workers seizing power in Russia, overthrowing their capitalist government and declaring their withdrawal from WWI, created shock waves across the planet. Workers in Germany rose in revolt a year later, ending the war for good and building soviets, a form of radical working-class democracy inspired by the Russian example. This was followed by uprisings in France, Italy and Hungary.

The revolutionary wave spread further. A classified British government report from 1919 noted a “very widespread feeling among workers that thrones have become anachronisms, and that the Soviet may be the best form of Government for a democracy”.

The rising tide of radicalism had an impact in Australia too. Meatworkers in the Queensland city of Townsville donned red jumpers, stormed the local police station to free jailed unionists, and placed the city under workers’ control. The editor of the conservative Townsville Daily Bulletin lamented: “Townsville for the last year or so has been developing Bolshevism ... the mob management of affairs in this city, differs very little, from the Petrograd and Moscow brand”.

The Russian Bolsheviks, the revolutionary working-class party that led the revolution to victory in 1917, didn’t just passively wait for revolutions elsewhere. They actively organised to spread the revolt. In 1919, they established the Communist International, an organisation for debate, discussion and coordination between different revolutionary workers’ parties. Revolutionaries in Russia, Italy, France, Germany, the US, Australia and elsewhere attempted to clarify and develop a strategy for overthrowing capitalism everywhere. In none of these countries was there a party like the Bolsheviks, steeled in years of organising working-class struggle to overthrow the state, and capable of leading a revolution. But for a number of years, workers came close to overthrowing capitalism in several countries.

In periods of stability, when social conservatism dominates, international revolution can seem like a pipe dream. Defenders of the status quo actively work to reinforce this illusion. But history proves that the crises that the system generates are international, and that they will inevitably provoke international resistance.

Capitalism is a global system. It requires a global movement to tear it up, root and branch. But it also makes global revolution more possible, and more likely. The most important thing that socialists can do, whether you live in Hong Kong or France, Myanmar or Australia, is to get stuck into organising for it today.

#### 1---Saving capitalism DA: Including the AFF saps energy from academic and political movements against capitalism by making the system appear just. Anti-trust was designed as a mechanism to save capitalism from socialist movements.

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Behind antitrust is a faith in competition as a positive good. As socialists we should take exception to that. We already have too much competitive individualism in this society, and we don’t need any more. We need solidarity. Stimulating the war of each against all isn’t the way to get there.

A better way to handle bigness is to regulate the behemoths and encourage the growth of unions. That would do more to improve working conditions at Amazon than turning it into four or twenty little Amazons. As political economist Sam Gindin pointed out in an interview on my radio show, the deregulation movement of the 1970s and 1980s was a war on regulated oligopolies, and it was accompanied by union busting, wage cuts, and job losses. That could be a portent of life under monopoly busting.

Why is antitrust getting the attention of liberals these days? In his book on the history of American corporate governance, law professor Mark Roe notes that Franklin Roosevelt saw it as a war against “private” socialism that could stave off “government” socialism. We may be seeing something similar now. With socialism polling decently, socialists working their way into the Democratic Party, and the business class in disrepute with much of the population — Gallup reports that 73 percent of the public is either somewhat or very dissatisfied with major corporations, compared to 48 percent in 2001 — pursuing antitrust may be a campaign to restore the prestige of capitalism itself. Fronting small business as the emblem of commerce is a classic bourgeois self-defense strategy.

#### Turns case---economic predictions in enforcing anti-trust terminally fail and reproduce monopolization.

Rozga 20, J.D. @ BU and former FTC merger review and litigation expert (Kai, August 31st, “How tech forces a reckoning with prediction-based antitrust enforcement,” *Tech Law Decoded*, <https://techlawdecoded.com/how-tech-forces-a-reckoning-with-prediction-based-antitrust-enforcement/>, Accessed 09-12-2021)

In private antitrust litigation, plaintiffs and defendants alike rely on armies of economists to make out the elements of a case or defend against it. Too often, the result is a series of warring expert reports submitted by uber-qualified economists with stellar reputations who—based on the exact same factual record—reach diametrically opposing positions about a market’s dynamics or likely competitive effects. Equally troubling is how the uncertainty of the expert opinions can be seen fading away by the time the court chooses a winner, as the prevailing view achieves a supreme prescience when cited by the judge in support of its decision.

Alarm bells should be going off. An academic field’s reputation would seem to be put in doubt, and with it the foundation of an influential body of law that shapes our economy and society. Instead, academics and policymakers are more likely to be heard describing the rigor and rationality that they believe neoliberal economic thinking has brought to antitrust enforcement. And while some reforms proposed by the mainstream antitrust community might seem dramatic within the existing paradigm, they are trivial when considering how none tackle the fundamental flaws of the status quo.

And so, paradoxically, as antitrust turns its focus on increasingly difficult-to-predict markets, it does so increasingly with Economism-driven prediction as its lodestar—like a captain that insists on navigating a ship with the stars even when it is obvious that clouds cover the night sky.

#### Their reformed socialism is a trojan horse for imperialism---challenges to capitalism must originate from the global south not the west.

Finger 17, Editor at the Journal of New Politics. Citing *Divided World Divided Class: Global Political Economy and the Stratification of Labour* by Zak Cope and *Imperialism in the Twenty-First Century: Globalization, Super-Exploitation, and Capitalism’s Final Crisis* by John Smith (Barry, Unequal exchange, *International Socialist Review*, Issue #103, Winter 2016-17)

The political implications of unequal exchange—if supportable—would be convulsive and transformative for how we think and how we engage in class struggle and class-struggle politics. For the thesis of unequal exchange, especially as Cope and Emmanuel extend it, calls into question the basis for international labor solidarity.

If first world workers produce less in value than their wages allow them to appropriate, they are simply no longer an exploited class, but a labor aristocracy, a new petty bourgeoisie. Emmanuel stated the implications bluntly. This does not mean workers and capitalists of the imperialist center have straightened out everything, which separates them. But what separates them is no longer an antagonistic opposition, that is to say, an opposition, which can only be resolved by going beyond the existing system; it is an opposition between partners for the sharing of the spoils in the framework of the system. This is the very meaning of reformism. They are therefore natural allies in any outcome in which it is a question of confronting the suppliers of these spoils.9

If first world workers, blue collar and white alike, are the objective allies of their employers in the modern structure of capitalism, which classes and which struggles should revolutionaries support? The question all but answers itself: To those classes in world capitalism that have a fundamental interest in overturning imperialism. Cope pulls no punches: “Since the entire population of the imperialist bloc benefits from imperialism to varying degrees, the anti-imperialist united front in the Third World must necessarily confront the First World in toto, and not just its haute bourgeoisie.”10

A “socialist” revolution, to paraphrase Emmanuel, in the privileged North—if such a thing, given this understanding of the structure of world capitalism, were even conceivable—would lead to a form of social imperialism. The property upon which rests the claims of first world capitalists to the fruits of international exploitation would be expropriated. But it would be an expropriation and redistribution downwards from one set of exploiters to their junior associates. It would leave the fundamental framework of unequal exchange and national privilege intact. A revolt on a pirate ship that expropriates the captain and the officers, redistributing the booty on an equal basis, cannot be said to create a pirate-commune since the pirates’ booty is based, above all, on wholesale

#### Antitrust law designed around competition fails---the AFF is not the radical vision of anti-trust Paul is advocating for.

2AC Paul ’21 [Sanjukta; September 27; Law Professor at Wayne State University; Michigan Law Review, “Charting the Reform Path,” https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3931868]

But while competition is an important element *of* a healthy economy, it can never be the primary organizing principle *for* an economy. Instead, those organizing principles are supplied by us, collectively, in good part through our representative law-makers. We can make different choices about the organizing principles, but we cannot choose to abdicate decision-making about how to structure markets altogether. The key is that law as a whole, and antitrust law itself, already makes decisions about what forms of economic coordination it will permit, prohibit, discourage, or encourage.77 It also makes decisions about the terms on which competition will proceed:78 will firms compete by aspiring to quality, technical efficiency, and being good to their customers and workers? Or will they compete by gobbling up other firms, by dominating counter-parties and subjecting them to extractive contracts, and by imposing sweatshop wages and working conditions? There is no escaping these choices. Status quo antitrust law encourages economic coordination through powerful firms that are largely unaccountable to the public and are minimally constrained in their ability to impose terms on others. If we are going to replace that status quo with something else, we have to replace it with alternate, more democratic forms of economic coordination, and with fair competition—not just with competition in the abstract, and not just with limited or conditional democratic coordination as a “second best” to perfect competition.

CONCLUSION

The conversation about competition, labor markets, and antitrust law is a rapidly evolving one, and Block and Harris’ volume is a valuable contribution to it. It is important to note that the analytical frameworks I have described in this Review are sometimes messy and overlapping; moreover, much of this overlap and common ground is likely to persist even in case of the methodological shifts I have tried to motivate here. Even now, there are some who theorize labor markets in terms of imperfect competition who also espouse or at least have sympathy for a legalinstitutionalist or moral economy view of markets,79 while others may not. Constructing a new sort of law and economics is not an overnight project. Both tributaries of this interdisciplinary project are essential to it: one tending to emphasize the legal rules and institutional structures that form markets, the other tending to emphasize identifiable, emergent patterns of market dynamics that may arise across types of markets. The suggestion I make here is simply to caution against prematurely taking the precepts of neoclassical economic theory as primary, and as a stable and independent basis from which to derive the rules of law. Instead, I suggest that we re-center law within “law and economics.”

The abstract ideal of competitive markets will not organize a market or an economy on its own. It will always invite tacit, ad hoc policy preferences—whether those preferences tend egalitarian and democratic, or inegalitarian and hierarchical—that cannot really be derived from its abstractions. Building an egalitarian and democratic policy program on top of this ideal is tempting because of its generality, its apparent neutrality, and its current epistemic prestige. But logically speaking, there is ultimately no avoiding institutional specificity and direct engagement with moral values, even if doing so requires bucking an intellectual paradigm that can seem inescapable. We may as well get to the task sooner than later.

#### King is a CP not a cap solves card --- they have no evidence any of these solutions exist now.

2AC King 21 (David King, Founder and Chair, Centre for Climate Repair at Cambridge, University of Cambridge; and Jane Lichtenstein, Associate, Centre for Climate Repair at Cambridge, University of Cambridge; “Surviving the next 50 years is an existential crisis – 3 things we must do now,” The Print, 8-14-2021, https://theprint.in/opinion/surviving-the-next-50-years-is-an-existential-crisis-3-things-we-must-do-now/715069/)

The challenge of surviving the next 50 years is now seen as a planet-wide existential crisis; we need to work together urgently, just to secure a short-term future for human civilisation. Global weather patterns are violently disrupted: Greece burns; the south of England floods; Texas has had its coldest weather ever, while California and Australia suffer apocalyptic wild fires. All of these violent, record-breaking events are a direct result of rapid heating in the Arctic – occurring faster than in the rest of the world. A warm Arctic triggers new ocean and air currents that change the weather for everyone. The only way to reverse some of these catastrophic patterns, and to regain a kind of stability in climate and weather systems, is “climate repair” – a strategy we call “reduce, remove, repair” – which demands that we make very rapid progress to net zero global emissions; that there is massive, active removal of greenhouse gases from the atmosphere; and, in the first instance, that we refreeze the Earth’s poles and glaciers to correct the wild weather patterns, slow down ice-melt, stabilise sea level, and break the feedback loops that relentlessly accelerate global warming. There are no either/or options. Reducing emissions About 70% of world economies have net zero emissions commitments over varying timescales, but this has come too late to restore climate stability. The IPCC has asked for accelerated progress on this trajectory, but whatever happens, current emission rates of atmospheric greenhouse gases imply global warming of 1.5℃ by 2030 and well over 2℃ above pre-industrial level by the end of the century – a devastating outcome. In particular, melting ice and thawing permafrost are considered inevitable even if rapid and deep CO2 emissions reductions are achieved, with sea-level rise to continue for centuries as a result. In every area of the world, climate events will become more severe and more frequent, whether flooding, heating, coastal erosion or fires. There are definitely important steps that can still reduce the scale of this devastation, including faster and deeper emissions reductions. However, this is not enough on its own to avert the worst. Together there is real evidence that the massive removal of greenhouse gases from the atmosphere and solutions such as repairing the Earth’s poles and glaciers could help humanity find a survivable way out of this crisis. Removing greenhouse gases Taking CO2 and equivalent greenhouse gases out of the atmosphere, with the aim of getting back to 350ppm (parts per million) by 2100, involves creating new CO2 “sinks” – long-term stores from which CO2 cannot escape. Sinks operate at many scales, with forest planting, mangrove restoration, wetland and peat preservation all crucially important. Very large projects, such as the restoration of the Loess Plateau in China demonstrate scalable CO2 removal, with multiple add-on benefits of food production, bio-diversity enhancement and weather stabilisation. Habitat restoration can also make economic sense. In the Philippines, mangrove is the focus of a cost-benefit analysis. Mangrove captures four times more carbon than the same area of rainforest, provides numerous ecosystem services and protects against flooding, conferring socio-economic benefits and significantly reducing the cost of dealing with extreme weather events. Big new carbon sinks must be created wherever safely possible, including in the oceans. Interventions that mimic natural processes, known to operate safely “in the wild”, are a workable starting point. Promotion of ocean pastures to restore ocean diversity and fish and whale stocks to the levels last seen 300 years ago is one such possibility – offering new sustainable food sources for humans, as well as contributing to climate ecosystem services and carbon sinks. In nature, sprinklings of iron-rich dust blow from deserts or volcanic eruptions, onto the surface of deep oceans, generating – in a matter of months – rich ocean pastures, teeming fish stocks and an array of marine wildlife. Studies of ocean kelp regeneration show the full range of real-life impacts, from increased protein sources for human consumption, to restoration of pre-industrial levels of ocean biodiversity and productivity, and extensive carbon sequestration. Extending the scale and number of ocean pastures could be achieved by systematically scattering iron-rich dust onto target areas in oceans around the world. The approach is intuitively scalable, and could sequester perhaps 30 billion tons per year of CO2 if 3% or so of the world’s deep oceans were to be treated annually. Large-scale carbon-sink creation of this kind is pivotal if the atmosphere is to return to pre-industrial CO2 levels. A billion tons per year of sequestration is the minimum threshold coordinated by the Centre for Climate Repair at Cambridge given the intensity of the climate crisis. While the scale of intervention is sometimes called “geoengineering”, the approach is closer to forest planting or mangrove restoration. The aim is to remove CO2 from the atmosphere using natural means, to return us to pre-industrial levels within a single generation. Repairing the planet The immediate challenge is to stabilise the planet, achieving a manageable equilibrium that gives a last chance to shift to renewable energy and towards a circular global economy, with new norms in urban, rural and ocean management. “Repairing” systematically seeks to draw the Earth back from climate tipping points (which, by definition, cannot happen without direct effort), providing a supporting framework in which “reduce” and “restore” can happen. Political and societal will is needed. The most urgent effort is to refreeze the Arctic, interrupting a bleak spiral of accelerating ice loss, sea-level rise – and the acceleration of climate change and violent global weather changes that they cause. Arctic temperatures have risen much faster (and increasingly so) than global average temperatures, when compared with pre-industrial levels. Figure 1 shows this clearly from 1850 to the present day. Melting Arctic ice embodies a powerful feedback force in climate change. White ice reflects the Sun’s energy away from the Earth before it can heat the surface. This is known as the albedo effect. As ice melts, dark-blue seawater absorbs increasing amounts of the Sun’s energy, warming increases, and ever-larger areas of ice disappear each summer, expanding the acceleration. Arctic temperatures govern winds, ocean currents and weather systems across the globe. A tipping point is passing: sea-ice loss is becoming permanent and accelerating; Greenland ice will follow and will eventually raise global sea-levels by over seven metres. Total loss may take centuries but, decade by decade, there will be relentless incremental impacts. By mid-century the melting will be irreversible, and sea-level rise alone will leave low-lying countries like Vietnam in desperate circumstances, with reductions to global rice production a certainty, many millions of climate refugees and no obvious pathway forward for such nations. Figure 1: comparison between average global temperature change, and change in the Arctic region from 1850 to present day. Provided by Nerilie Abram using IPCC data, ANU, Australia, 2021 The rapid Arctic temperature increase is matched by the rapid and accelerating loss in minimum (summer) sea-ice volume (Figure 2), which further accelerates the temperature rise in a spiral of reinforcing feedback loops. Figure 2: decline in annual minimum Arctic Sea ice volume 1980-2020. Provided by Nerilie Abram using IPCC data, ANU, Australia, 2021 It is vital to pivot the world back from this ice-melt tipping point, and to repair the Arctic as rapidly as possible. Marine cloud brightening in which floating solar-powered pumps spray salt upwards to brighten clouds and create a reflective barrier between the Sun and the ocean, is known to cool ocean surfaces and is a promising way to promote Arctic summer cooling. It mimics nature, and can be scaled up or down in a flexible way. Studies of marine cloud brightening, its climate impacts and interactions with human systems, are underway. As with promotion of ocean pastures, such solutions must be critically analysed, but there is no longer any doubt of their crucial importance. What we do in the next five years determines the viability of humanity’s future. Even if we narrow our aspirations to “survival”, fixing on a timescale of 50 years or so, the challenges are daunting. Humanity deserves better. We know what to do to be able to imagine thousands of years of human civilisation ahead, as well as behind us.

#### Commercially viable CCS doesn’t exist.

Magrini 21, Climate Watch Columnist for Geographical (Marco, September 15th, “With just 20 facilities operating commercially, carbon capture and storage has failed, says Marco Magrini,” *Geographical*, <https://geographical.co.uk/opinion/item/4145-with-just-20-facilities-operating-commercially-carbon-capture-and-storage-has-failed-says-marco-magrini>, Accessed 11-07-2021)

It sounded so promising. Five years ago, the US multinational energy corporation Chevron committed to capturing and storing at least 80 per cent of the carbon dioxide emissions generated at its Gorgon liquefied natural gas project in Western Australia over its first five years. It would amount to around four million tonnes of CO2 per year, which would be injected beneath a small island. However, the five years are up and the plan has failed. Just four million tonnes of the greenhouse gas have been buried underground, instead of 20. A hefty fine will ensue.

Carbon capture and storage technology, or CCS, has a long string of fiascoes under its belt since it was hailed by George W Bush 20 years ago as a magic way to keep on burning fossil fuels. The basic idea is to extract CO2 from the smokestacks of coal plants or steel factories, compress it, transport it and finally inject it into some sort of underground reservoir, where (in theory) it will abide forever. But not only is the technology enormously expensive, it’s also largely unproven at scale.

Bush’s US$1.65 billion FutureGen CCS project folded in 2015. Numerous trial projects have been shut down since then. Environmentalists argue that CCS is a fig leaf, just another way to extend the fossil fuel industry’s life, and rightly so. Every oil and gas company has some flavour of ‘carbon capture’ included within its corporate plans and net-zero goals.

After 20 years of trial and error, a mere 20 commercial CCS projects are currently operating globally. They jointly capture about 40 million tonnes of CO2 a year, or one thousandth of current carbon emissions. According to the Global CCS Institute, a lobby group, 2.8 billion tonnes of CO2 must be sequestered annually by 2050 if we’re to reach the goals set in the Paris Agreement. This would mean scaling up carbon capture operations 70-fold in the next three decades. How many hundreds of miles of pipelines would be needed to accomplish that? How many subterranean aquifers with the right geology in the right location would need to be placed at our disposal?

Nevertheless, CCS enthusiasts keep on touting the idea. In October, Downing Street is expected to pick two or three hugely expensive CCS projects and provide them with financial support. Meanwhile, Chevron has already pledged to invest another US$3 billion just trying to fix its Gorgon CCS plant.

The technology that was supposed to buy us some time is now just wasting our time.

#### Growth and emissions are recoupling. Past decoupling was insufficient and temporary.

Parrique 21, PhD in economics from the Centre d’Études et de Recherches sur le Développement—University of Clermont Auvergne, France and the Stockholm Resilience Centre—Stockholm University, Sweden (Timothée, April 29th, “Is green growth happening?” *Uneven Earth*, <https://unevenearth.org/2021/04/is-green-growth-happening/>, Accessed 02-23-2022)

The decoupling rates are minuscule

The study analyses 18 developed economies (Sweden, Romania, France, Ireland, Spain, UK, Bulgaria, The Netherlands, Italy, United States, Germany, Denmark, Portugal, Austria, Hungary, Belgium, Finland, and Croatia) between 2005 and 2015, finding that emissions decreased by a median -2.4% per year during that decade.

This is tiny – three times smaller than the yearly 7.6% cut of global emissions that would be necessary to meet 1.5°C Paris target (and this number is from 2019; the cuts would need to be even larger today). One striking example is France. The study indicates that France decreased its consumption-based emissions by a yearly -1.9% over the period with barely any GDP growth (+0.9%). Now compare this to the French climate target, which is to reach 80 MtCO2 by 2050, an 80% reduction compared to 2019 levels of emissions.

The UK is another case in point. The country is often lauded to have achieved the fastest experience of decoupling on Earth. In the Le Quéré study, its consumption-based emissions decreased by -2.1% per year between 2005 and 2015 with positive GDP rates of around 1.1%. This is not much in the way of decoupling; the country has pledged to reduce emissions by twice that amount (5.1% per year). To actually comply with the Paris Agreement, the UK must achieve a yearly 13% cut in emissions, starting now and for the decades to come. This is much – much – more than what green growth can provide.

The authors themselves err on the side of caution: “as significant as they have been, the emissions reductions observed […] fall a long way short of the deep and rapid global decarbonization of the energy system implied by the Paris Agreement temperature goals, especially given the increases in global CO2 emissions in 2017 and 2018, and the slowdown of decarbonization in Europe since 2014.” Data from this year supports the authors’ precaution: de-carbonisation in many high-income economies has slowed down after 2015.

The fact that these rates are so small is worrying because we’re dealing here with the supposedly best country cases of decoupling. Assuming these rates can now suddenly accelerate would be like expecting Usain Bolt to triple his running speed. Even more unlikely, we would need all countries in the world to match the triple of these record levels.

A “sustainable” economy in any meaningful understanding of the term must consider all the complex interactions it has with ecosystems, and not only carbon

Minuscule is a long way from enough

In March 2021, the authors published a new study showing that 64 countries managed to cut their CO2 emissions by 0.16 GtCO2 every year between 2016 and 2019. This is good, but again, not good enough. And not good enough has dire consequences. To be precise, this is one tenth of what would be needed at the global level to meet the Paris climate goals; and if 64 countries managed to reduce emissions, 150 others did not. The latter increased their emissions by 0.37 GtCO2 each year. Put the two numbers together and you realise that global emissions have actually been growing by 0.21 billion tonnes per year.

This puts pressure on high-income economies. For developing countries to be able to increase their ecological footprint, affluent nations must reduce theirs as much as possible. Climate-neutrality at the national level by 2050 is not enough if we want today’s poorest to have the option of increasing their material consumption. And rates of reduction in rich nations of 1-3% are far from enough to compensate for the surge in resource use currently taking place in the global South.

This is only fair considering historical emissions. The global North is responsible for 92% of excess global CO2 emissions (the ones past the 350ppm threshold). For example, France has already overshot its fair share of the climate budget by 29.4 GtCO2. The Le Quéré study shows that it has decreased its emissions by 10 MtCO2 every year between 2005 and 2015. At that pace, and assuming carbon neutrality, it would take almost three millennia for France to resorb its climate debt.

Green growth without growth

Emissions in the 18 studied countries decreased by -2.4% each year, but how big was GDP growth during that period? The answer: small. These economies grew by a median +1.1%. Denmark, Italy, and Spain are leading the decoupling pack with yearly carbon reductions of -3.7%, -3.3%, and -3.2% respectively. This, however, can hardly be called green growth because these economies barely grew – or actually receded (+0.6% of GDP in the case of Denmark, -3.3% for Italy, and -3.2% for Spain).

The authors acknowledge that this period is nothing extraordinary: “These reductions in the energy intensity of GDP in 2005-2015 do no stand out compared to similar reductions observed since the 1970s, indicating that decreases in energy use in the peak-and-decline group could be explained at least in part by the lower growth in GDP.”

So, the paper most popularly cited to assert that carbon-free economic growth is possible also shows that part of the decarbonisation is due to the fact that there was little or no growth. It comes as no surprise then that, using simulations, the authors estimate that “if GDP returns to strong growth in the peak-and-decline group, reductions in energy use may weaken or be reversed unless strong climate and energy policies are implemented.”

Sustainability is more than just carbon

The authors’ study is about carbon, but carbon is one environmental problem among many others. Unfortunately, it is the only one that is adequately researched, with 80% of decoupling studies focusing on primary energy and greenhouse gases. This leaves only a few studies that have been conducted on other aspects of ecological breakdown, including material use, water use, land change, water pollution, waste, and biodiversity loss.

While there are a few inspiring stories of decoupling concerning carbon emissions, studies that track other indicators tell us a different story, one in which the economy is still strongly coupled with biophysical throughput. Materials are a good case in point. If the world economy was gradually de-materializing in the 20th century, this trend has since been reversing in the last two decades. This alone should temper optimism concerning an assumption of endless supplies of renewable energy, which after all, are dependent on the mining of finite quantities of minerals.

My point is that a “sustainable” economy in any meaningful understanding of the term must consider all the complex interactions it has with ecosystems, and not only carbon. A genuinely sustainable economy should not only be carbon neutral, but also remains within the regenerative capacities of all renewable resources, within the acceptable stocks of non-renewable resources, and within the assimilative capacities of ecosystems. Although sustainability ought to be understood as being about much more than only the condition of the biophysical environment, it seems evident that living within planetary boundaries is a minimum, non-negotiable condition for any kind of long-lasting prosperity.

Since GDP remains significantly coupled with carbon emissions and other environmental pressures, a good way of limiting ecological wreckage is to put limits on the scale of the economy

Temporary decoupling

Mitigating environmental pressures in a growing economy not only implies achieving absolute decoupling from GDP, but also requires maintaining such decoupling in time for as long as the economy grows (recalling that emissions must be reduced by at least 7.6% every year from now on). Said differently, continuous economic growth requires a permanent absolute decoupling between GDP growth and environmental pressures. Yet, in the same way that economic growth and environmental pressures can decouple at one point in time, they can just as easily recouple later on.

This happens more often than we think. Let’s reflect upon the time when the International Energy Agency declared that decoupling was “confirmed” after observing a levelling of global emissions in 2015 and 2016. Yet, this decoupling was short-lived. In fact, it was mainly due to China moving from coal to oil and gas at the same time that the United States was shifting to shale gas. The shift was temporary. After that, economic growth recoupled with carbon emissions.

Situations of recoupling can also happen with renewables. In the decade between 2005 and 2015, Austria, Finland, and Sweden greened their energy mix and, as a result, lowered their emissions. But once this shift is complete, further growth will require an expansion of the energy infrastructure, which will imply additional environmental pressures. In fact, this is what happened after the studied period. Austria decreased its emissions by -0.6% in 2006-2010 and -1.6% in 2011-2015, but emissions returned positive by +0.3% in 2016-2019. A similar story took place in Finland and Sweden; the rates of reduction accelerated between 2006 and 2015 but slowed down after that.

Some commentators hypothesized that the return of economic growth after the pandemic would be green, or at least, greener. Yet, global energy-related carbon dioxide emissions are on course to surge by 1.5 billion tons in 2021 – the second-largest increase in history – reversing most of the decline caused by the pandemic. The lesson from the corona crisis is this: slight oscillations from light to heavy ecological beating are not enough – we need to radically and immediately transform the economy.

#### 2---Capitalist renewables increase emissions.

Parrique et al. 19, Centre for Studies and Research in International Development (CERDI), University of Clermont Auvergne, France; Stockholm Resilience Centre (SRC), Stockholm University, Sweden, Barth J., Briens F., C. Kerschner, Kraus-Polk A., Kuokkanen A., Spangenberg J.H. (Timothee, July, Decoupling Debunked: Evidence and arguments against green growth as a sole strategy for sustainability, *European Environmental Bureau*, https://mk0eeborgicuypctuf7e.kinstacdn.com/wp-content/uploads/2019/07/Decoupling-Debunked.pdf)

Not leading to relevant innovations

Innovation is not in and of itself a good thing for ecological sustainability. The desirable type of innovation is eco-innovation or one that results “in a reduction of environmental risk, pollution and other negative impacts of resources use compared to relevant alternatives” (Kemp and Pearson, 2008, p.5). But this is only one type among several. In general, firms have an incentive to innovate to economise on the most expensive factors of production to maximise profits. Because labour and capital are usually relatively more expensive than natural resources, more technological progress will likely continue to be directed towards labour- and capital-saving innovations, with limited benefits, if any, for resource productivity and a potential rise in absolute impacts due to more production. But decoupling will not occur if technological innovations contribute to saving labour and capital while leaving resource use and environmental degradation unchanged.

Another issue is that technologies do not only solve environmental problems but also tend to create new ones. Assuming that resource productivity becomes a priority over labour and capital productivity, there is still nothing preventing technological innovations from creating more damage. For example, research into processes of extractions can lead to better ways to locate resources (imaging technologies and data analytics), to extract them (horizontal drilling, hydraulic fracturing, and automated drilling operations), and to transport them (Arctic shipping routes). These innovations may target resource use but with a result opposite to the objective of decoupling, that is more extraction. And this is not even considering unintended side-effects, which often accompany the development of new technologies (Grunwald, 2018).

Not disruptive enough

Another problem has to do with the replacement of harmful technologies. Indeed, it is not enough for new technologies to emerge (innovation), they must also come to replace the old ones in a process of “exnovation” (Kimberly, 1981). What is required is a “push and pull strategy” (Rockström et al., 2017): pushing environmentally-friendly technologies into society and pulling harmful ones, like fossil-based infrastructure, out of it.

First, in reality, such a process is slow and difficult to trigger. Most polluting infrastructures (power plants, buildings and city structures, transport systems) require large investments, which then creates inertia and lock-in (Antal and van den Bergh, 2014, p. 3). Let us, for instance, consider the energy, buildings, and transport sectors, which account for the large majority of world energy consumption and greenhouse gas emissions. Initial lifetime for a nuclear or a coal power plant is about 40 years. Buildings can last at least as much. The average lifetime for a car is 12-15 years, and this is about what it takes for an innovation to spread in the vehicle fleet. The wide availability of petrol refuelling stations gives an infrastructural advantage to petrol-based cars, whereas this is the opposite situation for electric, gas, or hydrogen vehicles that would require different and new supporting infrastructures. Building a highway or a nuclear plant is a commitment to emit for at least as long as these infrastructures will last – Davis and Socolow (2014) speak of “committed emissions.”

Energy is a good case in point: using more renewable energy is not the same as using less fossil fuels. The history of energy use is not one of substitutions but rather of successive additions of new sources of energy. As new energy sources are discovered, developed, and deployed, the old sources do not decline, instead, total energy use grows with additional layers on the energy mix cake. York (2012) finds that each unit of energy use from non-fossil fuel sources displaced less than one-quarter of a unit of its fossil-fuel counterpart, showing empirical support for the claim that expanding renewable energies is far from enough to curb fossil fuel consumption. The relative part of coal in the global energy mix has been reduced since the advent of petroleum but this occurred in spite of absolute growth in the use of coal (Krausmann et al., 2009).

# 1NR

## Sharing ADV

#### Disruptive digital innovation fails to solve warming, reinforces imperialism, and linearly increases extractive violence.

Brand & Wissen 21, Ulrich Brand: Professor for International Politics @ University of Vienna. Markus Wissen: Professor of Social Sciences at the Berlin School of Economics and Law. Translated by Zachary King (The Imperial Mode of Living: Everyday Life and the Ecological Crisis of Capitalism, *Verso Books*)

EXTERNALIZATION AND RESISTANCE

Green capitalism is anything but inevitable. In many places, the creation of a green economy has encountered resistance from the fossil factions of capital and from people’s everyday practices. In the US especially, these forces have received an additional boost with the presidency of Donald Trump. There is a boom in the extraction of oil and gas through fracking, in tar sand oil extraction and in the exploration and exploitation of deep sea fossil energy sources. 42 In the EU, the transition to a renewable energy regime is slowed down by the Visegrád Group (Poland, the Czech Republic, Slovakia and Hungary). And even in places where green capital factions and practices are becoming socially relevant, they are in constant conflict with retrograde social forces. This description even applies to the ‘pioneer’ in renewable energies, Germany, where powerful social forces from industry, energy suppliers and trade unions are increasingly aggressive in articulating their resistance to the energy transition and find political advocates in state apparatus such as the German Federal Ministry for Economic Affairs and Energy. 43

Eventually, green capitalism will neither effectively manage the ecological crisis nor reduce inequality, let alone create good living conditions for all; instead, it will generate and externalize new socioecological costs. It will impose these costs on the workers in China, Africa or elsewhere who under miserable conditions extract rare earth metals and other raw materials that are indispensable for ‘green’ technologies; on the sugar cane workers on Brazilian plantations who risk life and limb to supply the US and European markets with ‘biofuels’; on the peasants who are evicted from their farms and villages because of land grabbing; on Kenyan women as they are ‘rewarded’ for reforestation activities with certificates of dubious value while they sacrifice food security to protect the climate; and on unpaid care work and poorly paid personalized services that are not considered in green economy concepts. 44

The power relationships between different factions of capital, as well as between the developed capitalist world and the emerging economies of the global South, will be readjusted; inequality will increase within industrialized and industrializing countries; relations with other parts of the world will be reorganized on the basis of military coercion and by actively pursuing ‘a raw materials diplomacy’. 45 The green capitalism project will therefore necessarily represent a spatially ‘fragmented hegemony’ with a highly unclear temporal perspective; it is characterized by exclusion and exploitation, and yet ensures the continuation of the imperial mode of living. 46

## 1NR---Solvency

#### They say private = biggest issue---Sandefur is NOT quantitative, and says that government entities can engage in the same practices---so risk of the AFF starts at 40-50%

Sandefur 14 [Timothy Sandefur, \*Principal Attorney and Director of the Program for Judicial Awareness, Pacific Legal Foundation 2014 https://www.cato.org/sites/cato.org/files/pubs/pdf/nc-dental-merits-brief.pdf]

This Court should presume strongly against granting state-action immunity in antitrust cases. It makes little sense to impose powerful civil and criminal punishments on private parties who are deemed to have engaged in anti-competitive conduct, while exempting government entities—or, worse, private parties acting under the government’s aegis—when they engage in the exact same conduct. As Chief Justice Burger observed, if the antitrust laws were “‘meant to deal comprehensively and effectively with the evils resulting from contracts, combinations and conspiracies in restraint of trade,’” then it is “wholly arbitrary” to treat government-imposed restraints of trade as “beyond the purview of federal law.” City of Lafayette, La. v. Louisiana Power & Light Co., 435 U.S. 389, 419 (1978) (opinion of Burger, C.J.) (citation omitted).

#### It specifically overrides antitrust considerations---here’s evidence post-*NC dental* narrowing *Parker* BUT being overridden by the 11th amendment

Standley 18 (Nathan Standley, JD. “Antitrust and Regulatory Boards: Where Do We Go From Here?” , Journal of Nursing Regulation Volume 8, Issue 4, January 2018, Pages 56-60. Accessed online via KU libraries, date accessed 12/18/21)

On several occasions, the Eleventh Amendment has prevented NC Dental fallout cases from advancing. The Eleventh Amendment states “[t]he Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.” The Eleventh Amendment is a manifestation of sovereign immunity, which can be waived by the state, or by Congress in certain circumstances.

There are cases which courts ruled in favor of the defendant board based on immunity under the Eleventh Amendment. In Rodgers v. Louisiana State Board of Nursing (2016), the plaintiff sued the board based on its termination of the nursing program accreditation at the university she attended based on a failure of graduates to attain an 80% National Council Licensure Examination “First Time Taker Pass Rate.” In Jemsek v. North Carolina Medical Board (2017), Jemsek, a licensed physician, was disciplined for violating standards for treating Lyme disease patients and sued the board and current and past board members in their individual and official capacities. He maintained the disciplinary action was a Sherman Act violation, but the court found the defendants were entitled to immunity under the Eleventh Amendment (Jemsek v. North Carolina Medical Board, 2017).

#### They read this Page and Lopatka card. Their argument is status quo descriptive: they say don’t worry about 11th amendment (D) because it’s small now given that the overlap (A) is so big—they don’t assume the plan *necessarily* shrinking state action’s reach and increasing the amount that’s exclusively 11th amendment (D)

**Page & Lopatka 19** [William H. Page, Marshall M. Criser Eminent Scholar, University of Florida Levin College of Law, and John E. Lopatka, A. Robert Noll Distinguished Professor of Law, Penn State Law, ’19, Parker v. Brown, The Eleventh Amendment, and Anticompetitive State Regulation, 60 Wm. & Mary L. Rev. 1465 (2019), https://scholarship.law.wm.edu/wmlr/vol60/iss4/10

Both immunities constrain federal antitrust claims challenging anticompetitive state regulation, and the scopes of both depend in part on the nature of the named defendant and its relationship to the state. But standards of the two doctrines produce substantially different spheres of immunity. The differences have practical effects, which in turn raise policy questions. In this Part, we examine those practical and policy consequences by considering the four categories of cases that raise questions under these immunities: (1) actions that are subject to both immunities; (2) actions that are subject to state action immunity but not Eleventh Amendment immunity; (3) actions (alleging violations by state-connected actors) that are subject to neither immunity; and (4) actions that are subject to Eleventh Amendment immunity but not state action immunity. As explained more fully below, it is only the last category that poses a risk that Eleventh Amendment immunity will subvert antitrust policy.1" We can illustrate these categories by the following diagram, in which a circle illustrates the actions subject to immunity under each doctrine. The areas in which one, both, or neither of the immunities apply are designated with letters corresponding to the Sections of this Part in which we consider that category of actions:

Diagram, venn diagram

Description automatically generated

#### *NC Dental* was about section 5 of the FTC Act

Kornmehl 15 (Jason Kornmehl - Law Clerk, Maryland Court of Appeals. The author was previously an attorney in the Antitrust Bureau of the New York State Attorney General's Office. “ARTICLE: State Action on Appeal: Parker Immunity and the Collateral Order Doctrine in Antitrust Litigation”, 39 Seattle U. L. Rev. 1, 31. Fall 2015. Lexis accessed online via KU libraries, date accessed 2/1/22)

The state action doctrine was also raised by a different state dental board in a case originating from an unrelated FTC adjudicative proceeding. In North Carolina State Board of Dental Examiners v. FTC, 206 the FTC had issued an administrative complaint claiming the Board of Dental Examiners violated Section 5 of the FTC Act. Subsequently, the Board of Dental Examiners moved to dismiss the administrative complaint before an evidentiary hearing had taken place on the ground that its conduct was exempted by the state action doctrine. 207 However, the Commission denied the Board of Dental Examiners' motion to dismiss. In contrast to the South Carolina State Board of Dentistry, the North Carolina State Board of Dental Examiners did not immediately seek judicial review of the Commission's order denying its motion to dismiss on state action grounds. 208 Instead, the North Carolina State Board of Dental Examiners waited until after the Commission affirmed the administrative law judge's finding that the Board violated the FTC Act to appeal the denial of state action immunity to the Fourth Circuit. 209 The North Carolina State Board of Dental Examiners likely did not immediately appeal the Commission's denial of state action immunity on tactical grounds because the Fourth Circuit had already held in South Carolina State Board of Dentistry that denials of Parker immunity were not immediately appealable. Although the Fourth Circuit has found an FTC denial of state action immunity to not be immediately appealable as a collateral order, 210 it will be interesting to see how a circuit that has not encountered this issue will rule.

#### That’s what their Crane card is about (KU YELLOW)---means no deterrence

Crane 16 [Daniel A. Crane Frederick Paul Furth Sr. Professor of Law, University of Michigan Law School Adam Hester J.D., May 2016, University of Michigan Law School, 2016, State-Action Immunity and Section 5 of the FTC Act, 115 MICH. L. REV. 365, https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1510&context=mlr]

In the competition context, application of the consideration-of-alternatives requirement by the FTC could prompt state regulators to consider regulatory approaches that create fewer barriers to competition. In particular, where a state substitutes centralized planning for market-based determinations of production and distribution, the FTC could ensure that that the state articulates reasons why market-based solutions were inadequate to meet the regulatory objective.288 This, in turn, would require the state to explain not merely the market failures that prompted the regulatory decision, but also why those failures could not be corrected through less-intrusive regulatory actions.

A final important feature of hard look review is the requirement that any justifications for the regulatory decision be presented at the time of the regulatory decision, and not subsequently invented for litigation purposes.289 The contemporaneousness rule stands in contrast to rational basis review, under which a regulatory action is upheld if it could be supported by any conceivable rational basis. Not only must the regulatory decision be empirically supported, as opposed to merely rational, but the agency must think through the justifications upon which it will rely before promulgating the regulation. The basis for the regulation should be decided by the state actors making the regulatory decision, not by lawyers subsequently brought in to defend it.

In the competition context, the contemporaneousness requirement could increase the likelihood that state legislatures or regulatory bodies consult with economic or technological experts when framing statutes or regulations that impair competition. It would diminish the likelihood that states would act solely to insulate special interests from competition and then rely on legal arguments to defeat challenges to the anticompetitive regulatory decision. It would also diminish the likelihood that states would rely on theoretical or potential, rather than documented, market failures to justify measures that suppress competition. In short, the contemporaneousness requirement could prompt states to take a more careful look at the competitive effects of their decisions before taking actions that reduce market competitiveness, knowing that a failure to do so could lead to preemption by federal antitrust law.

The FTC might exercise its superior-preemptive authority to bolster the accountability of state legislatures and regulators when they regulate in anticompetitive ways. By developing a reputation for declaring anticompetitive state laws preempted unless based on a contemporaneously reasoned public record, with due consideration of market-based alternatives, the commission might provide a backstop to the worst abuses of special interest group legislation and regulation.

#### The FTC doesn’t have authority beyond the Sherman Act and can’t preempt; Crane’s argument is that they normatively *should*

Page and Lopatka 19 (WILLIAM H. PAGE-Marshall M. Criser Eminent Scholar, University of Florida Levin College of Law. JOHN E. LOPATKA-A. Robert Noll Distinguished Professor of Law, Penn State Law.ARTICLE: PARKER V. BROWN, THE ELEVENTH AMENDMENT, AND ANTICOMPETITIVE STATE REGULATION, 60 Wm. & Mary L. Rev. 1465, 1468. Lexis, accessed online via KU libraries, date accessed 2/1/22)

Under Parker, sovereignty is a constitutional attribute of state government, but it does not directly immunize states or their officers. 18 Instead, it functions as a background norm that requires a limiting construction of the Sherman Act. Because the doctrine excludes state-created restraints from the reach of the statute, 19 state action immunity forecloses any suits challenging covered restraints, whether brought by private antitrust plaintiffs, such as the raisin producer in Parker, 20 or public antitrust enforcers, such as the Federal Trade Commission (FTC) 21 [[FOOTNOTE 21 STARTS MIDPARAGRAPH]] 21 See, e.g., N.C. State Bd. of Dental Exam'rs v. FTC, 135 S. Ct. 1101, 1108-10, 1117 (2015) (applying the state action doctrine to a case brought by the FTC for a violation of the Federal Trade Commission Act (FTC Act) and holding that the state action doctrine does not provide immunity to a state board controlled by active market participants absent active supervision); FTC v. Phoebe Putney Health Sys., Inc., 568 U.S. 216, 222, 227 (2013) (applying state action doctrine to a case brought by the FTC for violation of the FTC Act and the Clayton Act § 7 and finding immunity absent for lack of clear state policy authorizing restraint); FTC v. Ticor Title Ins., 504 U.S. 621, 635 (1992) (noting that state action immunity had been considered in cases brought under the Sherman Act, and holding that the state action doctrine applied in this case brought by the FTC under the FTC Act). The FTC does not claim that it can preempt state law any more broadly under the FTC Act. See Ticor Title Ins., 504 U.S. at 635 ("[T]he Commission does not assert any superior pre-emption authority in the instant matter [than would exist under the Sherman Act]."); see also N.C. State Bd., 135 S. Ct. at 1107-10 (applying the state action doctrine to an action brought by the FTC, but finding that the board was not entitled to state action immunity because it did not receive active supervision); Phoebe Putney, 568 U.S. at 222, 224-25 (recognizing state action immunity in suit brought by the FTC only when the standards were satisfied). For a recent argument that the FTC should have "superior preemption authority," see Daniel A. Crane & Adam Hester, State-Action Immunity and Section 5 of the FTC Act, 115 MICH. L. REV. 365, 367-68 (2016). [[FOOTNOTE 21 ENDS] MIDPARAGRAPH]] or the Department of Justice (DOJ) in later cases. 22 Also notice that the quoted passage makes clear that the state action immunity applies not only to the agencies, but to their officials--both are immune or not immune in the same circumstances. 23 And because the immunity is based on an inference about congressional intent, Congress is presumably free both to expand the immunity and to restrict it by more explicit legislation. 24

#### a. it’s not a core antitrust law

Felsenfeld 93 (CARL FELSENFELD-Professor of Law, Fordham University School of Law. “Bank Holding Company Act: Has It Lived Its Life?” Villanova Law Review, Vol. 38, No.1, 1993, <https://core.ac.uk/download/pdf/144229861.pdf> , date accessed 9/4/21)

1. Core Laws

It is well established that, despite the "extensive blanket of state and federal regulation of commercial banking, much of which is aimed at limiting competition," 480 the United States' core antitrust statutes (the Sherman and Clayton Acts) apply to banks. 48 1 There is respectable opinion that "existing antitrust laws are fully adequate to guard against anticompetitive mergers or acquisitions, or other anticompetitive activity, in the banking industry." 482 A proposal to remove the BHCA, however, is not a suggestion that only the Sherman and Clayton Acts would impose antitrust limitations on banks. The other bank laws and regulations would continue in effect.483

Whether the antitrust laws are sufficient to curb bank abuse that is otherwise dealt with by the BHCA has been disputed. One relatively early opinion suggested that illicit bank behavior is "almost impossible to detect and prove in a court of law" and, consequently, explicit legislation, like the BHCA, which foreclosed banks from other fields was desirable.48 4 In contrast, a former Deputy Assistant Attorney General for Antitrust later opined that bank antitrust problems within the BHCA sphere are simply traditional antitrust issues that can be dealt with by those laws.485 He was countered by a then current Attorney General for Antitrust who believed the BHCA was essential to keep banks separate from commerce.486 Because these last two views were expressed in 1969 and 1970, one must assess current antitrust laws to analyze what view is valid today.4 7

There is a high degree of flexibility in the antitrust laws. One of the functions of the antitrust laws is to adapt their application to the particular industry under consideration and to the particular markets within which the industry operates. 488 The general approach of the antitrust laws towards a merger or consolidation of the sort that currently requires preapproval under the BHCA is to accept the industry in its existing form as the norm and then to establish the effects of the merger or acquisition in terms of its effects on that norm. The net effect is the antitrust laws' disposition in favor of the existing structure.

The Justice Department has the power under existing law to challenge banking mergers and acquisitions for violation of the antitrust laws even when the Fed has first found the BHCA's antitrust tests satisfied. 48 9 For example, in December 1990, the Justice Department challenged the acquisition of First Interstate of Hawaii, Inc. by First Hawaiian, Inc. under the BHCA even though the Fed had approved the transaction. The suit was settled by the agreement of the parties to a divestiture plan proposed by the Justice Department.490 InJuly 1991, theJustice Department challenged an acquisition by Fleet/Norstar of assets from the FDIC after the transaction was approved by the Fed under the Bank Merger Act.49 1 As these two cases show, the Justice Department has sufficient regulatory authority to police the antitrust aspects of bank acquisitions effectively without the BHCA statutory protections.

2. Federal Trade Commission Act

Secondary to the core antitrust laws, and of more potential than experiential significance in regulating bank holding company behavior in the absence of the BHCA, is the Federal Trade Commission Act (FTC Act). 49 2 In its broad scope the FTC Act is inapplicable to banks. 493 The FTC, however, may require banks to produce documentary evidence required during agency investigations. 494 The FTC Act's basic function is the prevention of precisely the type of activity that banks and their nonbank affiliates were accused of in the initial drafting of and amendments to the BHCA49 5-the perpetration of "unfair methods of competition. "496

#### b. the FTC can’t expand the scope

Cook 95 – Judge, Illinois Appeals Court, Fourth District

Justice COOK delivered the opinion of the court. Opinion in Springwood Assoc. v. Health Facilities Planning Board, 646 NE 2d 1374 - Ill: Appellate Court, 4th Dist. 1995, Google scholar caselaw

With regard to the Board's position, we note that the regulations must control in the event of a conflict between the regulations and the application instructions. The regulations have the force and effect of law ( Union Electric, 136 Ill. 2d at 391, 556 N.E.2d at 239); the application and instructions do not. The application and instructions merely represent the Board's interpretation of the information which it needs in order to determine the need for a proposed project. While such an interpretation is entitled to some deference, it is not binding on a court. Further, an agency interpretation cannot expand or limit the scope of the relevant statute. ( Van's Material Co. v. Department of Revenue (1989), 131 Ill. 2d 196, 202-03, 545 N.E.2d 695, 699, 137 Ill. Dec. 42.) The regulation in question here required "market studies of the area indicating the characteristics of the population to be served." ( 77 Ill. Adm. Code § 1110.230(a)(1) (1992-93).) This is not the same as a memo of the facility's own internal experiences. Other interested parties cannot easily question the facility's own internal reports. The fact that many of a facility's present patients are from a given area does not necessarily predict the future population of the facility.

#### Any form of state presence is sufficient

Delahunt 74 (Robert C. Delahunty, "New Mexico v. American Petrofina--State Immunity from Sherman Act Liability--More Confusion of Parker," Utah Law Review 1974, no. 3 (Fall 1974): 592-602. Accessed online via KU libraries, date accessed 12/18/21)

The language of Noerr and Pennington, like that of Parker, lends itself to sweeping application by lower courts faced with fact situations in which "influence" of public officials is a factor." Consequently, both the Parker "state action" and the Noerr-Pennington "political influence" doctrines have been used by lower courts to extend antitrust immunity to situations involving any form of state presence. 9

#### It specifically get raised in the context of licensing boards

Muris 4 (Timothy J. Muris, "Clarifying the State Action and Noerr Exemptions," Harvard Journal of Law & Public Policy 27, no. 2 (Spring 2004): 443-458. KU libraries, date accessed 12/20/21)

Two antitrust exemptions help protect and foster that regulatory growth: the state action and Noerr-Pennington doctrines. Both have been broadly interpreted by some courts, and their overbroad interpretation has been widely criticized from the right and from the left. For example, as early as 1978 Robert Bork observed "an enormous proliferation of regulatory and licensing authorities at every level of government," and warned that the "profusion of such governmental authorities offers almost limitless possibilities for abuse." 5 More recently, the Antitrust Section of the American Bar Association noted that antitrust "immunity drives a large hole in the framework of the nation's competition laws.",6

We know much of this growth in government harms consumers. It reflects rent-seeking, pure and simple. At its core, antitrust exists to protect consumers. Antitrust law is not a cure for rent-seeking, but I want to suggest today that it can be much better tailored to address the problem. To do so, we must properly interpret the two antitrust exemptions that protect not only legitimate government activity, but also rent-seeking.

#### It's broader than Parker

Makar 91 (Scott D. Makar, "Antitrust Immunity under Florida's Certificate of Need Program," Florida State University Law Review 19, no. 1 (Summer 1991): 149-190. Accessed online via KU libraries, date accessed 12/21/21)

ANTITRUST concerns may arise when health care companies that compete for certificates of need' enter into agreements among themselves that limit such competition. A critical issue is whether Florida's certificate of need program immunizes such agreements from the application of the federal and state antitrust laws under the state action doctrine 2 or the first amendment Noerr-Pennington doctrine.3 This Article concludes that Florida's certificate of need program satisfies the state action immunity test for only particular types of state-authorized and state-controlled conduct, thereby subjecting certain other unauthorized anticompetitive agreements to antitrust liability. First amendment petition clause immunity under the NoerrPennington doctrine, however, is much broader than state action immunity and may be available for legitimate "petitioning" activities in the legislative, administrative, and judicial forums.

#### It’s been granted in the absence of Parker immunity

Meyer 86 (David L. Meyer, "A Standard for Tailoring Noerr-Pennington Immunity More Closely to the First Amendment Mandate," Yale Law Journal 95, no. 4 (March 1986): 832-856. Accessed online via KU libraries, date accessed 12/19/21)

Courts have not dealt in a uniform manner with the problem of petitioning to solicit illegitimate governmental action. Several courts have granted Noerr-Pennington immunity in the face of a determination either that Parker immunity ' 4-which protects state action from antitrust liability-should be denied or that the governmental action sought was otherwise illegitimate.54 Other courts, however, have indicated that NoerrPennington immunity may be conditioned to some extent on the legitimacy of the governmental action taken. 55 Indeed, language in both Noerr and Trucking Unlimited ambiguously suggests that petitioning immunity may protect only efforts to induce valid governmental action."

#### The boards would claim the anticompetitive behavior was motivated by medical concerns

Jorstad 78 (David W. Jorstad, "The Legal Liability of Medical Peer Review Participant's for Revocation of Hospital Staff Privileges," Drake Law Review 28, no. 3 (1978-1979): 692-717. Hein accessed online via KU libraries, date accessed 12/15/21)

The final defense available to the peer review participants, and probably the most effective, is that of "good faith." Although motivation is not traditionally recognized as an issue in antitrust actions, the Feminist court acknowledged defendant physician's assertion of a "good faith" defense, noting the special circumstances of regulation of the medical profession and the statutory authorization for peer review organizations.1'0 The question raised by a "good faith" defense is whether the defendants were motivated by a bona fide concern over medical or ethical standards in their actions rather than by an anti-competitive animus,'05 with the burden of proving bona fides placed on the defendants.'"

#### And it’s not close—that’s 97% of cases!

Khan 19 (Lina; currently Chairperson @ Federal Trade Commission, JD @ Yale Law School; “The Separations of Platforms and Commerce,” *Columbia Law Review* 119(4), p. 973-1098 ; date accessed 9/23/21)

Outside of the merger context, appropriation of sensitive business information by a rival is more difficult to cognize as an antitrust harm. Exclusionary conduct cases are generally governed by the rule of reason.319 The standard follows a burden-shifting approach: In the first stage, the plaintiff must show a significant anticompetitive effect.320 If the plaintiff succeeds, then the defendant must demonstrate a legitimate procompetitive justification.321 If the defendant succeeds in doing so, then the plaintiff can show that the restraint is not reasonably necessary or that the objectives could be achieved by less restrictive alternatives.322 An empirical study of rule of reason cases found that courts dispose of 97% of cases at the first stage on the ground that there is no anticompetitive effect; courts balance the pro- and anticompetitive effects in only 2% of cases.323

## 1NR---Rural Health ADV.

3---creates a cover for liberal interventionism and you make environmental collapse inevitable

Kumari 12 -- International Relations Masters graduate @ University of Nottingham (Parmila, 1/29/12, "Securitising The Environment: A Barrier To Combating Environment Degradation Or A Solution In Itself?" http://www.e-ir.info/2012/01/29/securitising-the-environment-a-barrier-to-combating-environment-degradation-or-a-solution-in-itself/)

Secondly, the assertion that environmental degradation is a primary reason of conflict is purely speculative (Barnett 2003:10). Barnett suggests that the ‘evidence’ provided in support is a collection of historical events chosen to support the conflict-scarcity storyline and reify the realist assumption that eventually humans will resort to violence (Barnett 2001:66). This is as opposed to acknowledging that humans are equally capable of adapting. Thirdly, research shows that it is abundance of resources which drives competition, not scarcity (Barnet 2003:11). This makes sense because any territorial conquest to obtain resources will be expensive. A poor country suffering from resource scarcity would not be able to afford an offensive war(Deudney 1990: 309-11). The second and third points mean that environmental-conflict literature counteracts any attempts at solving the problem of environmental degradation. The discourse attributes high intentionality to people-because of scarcity they decide to become violent. This ignores the fact that human actions are not intended to harm the environment. The high intentionality given to people prevents them from being seen as victims who need help. Instead they are pictured as threats to state security. This view can exacerbate ethnic tensions as the state uses minority groups as scapegoats for environmental degradation. It also means that only those involved in conflict are relevant to environmental security, not those who are vulnerable (Detraz and Betsill 2009:307-15). In this way the South is scripted as “primeval Other” (Barnett 2001:65), where order can only be maintained by the intervention of the North, rather than by the provision of aid. The North’s agency in creating the environmental problems is completely erased. Instead environmental degradation is seen from the perspective of the individual state, questioning how it could affect the state, i.e. increased migration (Allenby 2000:18) and this leads to the adoption of narrow policies. Saad has said that securitising the environment in this way allows the North to justify intervening and forcing developing nations to follow policies which encapsulate the North’s norms (Saad 1991:325-7). In this way the powerful become stronger, and the weak weaker. This view may affect the South’s relations with the North. For example, Detraz and Betsill have commented on tensions between the North and South in the 2007 United Nations Security Council debate on climate change. Only 29% of the Southern states compared to 70% of Northern speakers supported the idea of the Security Council being a place to develop a global response to climate change. The reasons for this difference was that shifting decision-making to the Security Council would make Southern states unable to promote efficiently their interests in obtaining resources for climate adaptation and mitigation plans. Furthermore, Egypt and India argued that in suggesting this Northern countries were avoiding their responsibilities for controlling greenhouse gases, by trying to “shift attention to the need to address potential climate-related conflict in the South” (Detraz and Betsill 2009:312). In this way environmental security becomes a barrier because the traditional (realist) concept of security is used to immobilise any action towards dealing with the root causes of environmental degradation.

#### ONLY THE ALT solves food production best but rejecting all profit-based capitalist farming is a pre-requisite.

Ajl 21, Associated researcher with the Tunisian Observatory for Food Sovereignty and the Environment and a postdoctoral fellow with the Rural Sociology Group at Wageningen University (Max, A People's Green New Deal, *Pluto Press*)

STEPS TO PUT AGROECOLOGY AT THE CENTER OF PLANNING

Agriculture must be at the center of popular planning if a People’s GND in the core is to be internationalist and eco-socialist, and if popular provision is to break with neo-colonial commodity chains. From each according to their ability means the US will have to produce more of what it consumes, without foisting that labor onto an illegalized working class. Wrangling world-looping commodity circuits onto the continental US means that hard work cannot any more be the work of the world’s poorest for which they receive the worst salaries. Instead, that labor will have to be either eliminated – the techno-futurist tomfoolery of heaping more energy-gluttonous technology onto a world in which we need to shrink core energy use – or distributed fairly amongst all people in the US.34

A new planning system is the basis for such a transition. Shifts will occur partially through command-and-control measures based on shrinking quotas for carbon emissions, and the need for a high degree of organization in order to achieve the progressive socialization of property and planning. If social wealth is generally allocated based on labor inputs, relatively labor-intensive agroecology will receive more compensation. And since radical agrarian reforms will break apart large estates, in periphery and core alike, matching up labor and land is eased considerably. Command measures ought to extend to phase-outs of industrial agriculture, which has no justification for existing, and wholesale shifts in research spending away from conventional agricultural research and towards agroecology.

Farms should stop producing as much as possible, especially in the northern capitalist states. Instead, farms should have quotas based on how much they can produce using permanently sustainable production methods, including crop rotations and conservation plantings which regenerate soil and shield biodiversity. Corporate agribusiness should be simply dismantled through the nationalization of such corporations, and the use of their labs for people-centered agroecological research. Land should be redistributed everywhere. Each country should have total control over the food import and export trade, so that food dumping is impossible. Communities rather than farms should be in control of water, seed, and eventually land.35 This is the agenda of food sovereignty.36

Modern agriculture, including agroecology, really has one tough thing about it: the difficulty or extent of hard manual labor as a part of humanity’s common labor. Whether this is truly a trade-off depends on perspective. It will seem onerous from the perspective of the Western anti-peasant and anti-manual labor convention (although people do love going to gym). The need for a higher percentage of humanity to be engaged in agriculture than the US’s currently picayune 2 percent may seem not such an apocalyptic shift not merely when one considers the alternatives, but even when one looks to how so many people fill their free time when not under the lash of the wage system: in the core we care for home gardens, food and ornamental. We gather in community gardens and we go berry picking. And we cook, a central element of social reproduction, one which few seriously suggest automatizing, and one that is overwhelmingly the task of women and the lower class.37 Furthermore, with prices for produce reflecting labor costs, farmers will work a lot less hard than they do today. They will work even less hard as labor-saving, appropriate-scale technologies become more widely available and become the object and beneficiaries of more and more research.

Putting agriculture at the center of planning is not a call for a return to a pre-industrial civilization. It rests on recognizing that capitalists have over-industrialized the planet, blanketing it in a gratuitous technostructure and swamps of metallic and chemical waste. The species-specific things humans need and enjoy, necessary in adequate quantities and in as-good-as-possible quality, are shelter, food, medical care, and the industrial or manufacturing processes which help us access the first three. We also need the means of culture. Most of them, like books, arts, literature, and theater, are not themselves strongly dependent on industry.38 Aspects of medical care, of course, and computers, and transportation are absolute priorities for industrial processes.

#### Fear of migration-driven instability is a racist trope used to justify colonial control of the global south

Rodriguez 18 (Encarnacion, The Coloniality of Migration and the “Refugee Crisis”: On the Asylum-Migration Nexus, the Transatlantic White European Settler Colonialism-Migration and Racial Capitalism,” Refugee, 34.1)

Hall et al.6 discuss the significant role played by the media in establishing the hegemony of Thatcher’s authoritarian populism in late-1970s Britain. Hall et al. identified the media construction of Black Caribbean men as “muggers” as a strategy to establish a national consensus for the Conservative government through the incessant fabrication of news on black men attacking white people on the street. This consensus was achieved by mobilizing racism. This media spectacle reiterated the British Empire’s colonial vocabulary of racialization within the metropole and diverted attention from Thatcher’s dismantling of the welfare state, as well as the transformation causing mass unemployment and decreasing household incomes among the working and middle classes. Instead, the media spectacle contributed to the fabrication of an outsider to the nation to whom social and economic deprivation as well as feelings of individual insecurity were attributed. Thus, the media were key actors in the formation of a hegemonic bloc supporting Thatcher’s authoritarian populism. On the basis of his analysis of the political status quo, Hall7 developed his analysis of the specific conjuncture and contingency of racism. The spectacle of the black man as mugger produced an affective connection between the population and the government by creating “moral panic.” At the same time, the moral panic fuelled the government responses to this “crisis” with the introduction of police “stop and search” and racial profiling. This connection between media representation, affective connections, and ideological negotiations represented a contingent moment of the specific conjuncture of racism, orchestrated by a variety of actors representing a range of convergent and divergent financial, economic, and political interests. In the case of the production of the “refugee crisis” through media images, we have a similar convergence of media, affect, and politics. As I will develop here, the rhetoric involved in the production of the “refugee crisis” resurfaces within a specific conjuncture of racism in Europe. As I will argue, within this conjuncture colonial legacies of the construction of the racialized Other are reactivated and wrapped in a racist vocabulary, drawing on a racist imaginary combined with new forms of governing the racialized Other through migration control. The analysis of the media and political spectacle of the “refugee crisis” requires that we consider it as an articulation of a contingency of a specific conjuncture of racism in Europe, particularly in Germany.