# 1NC

## T

### 1NC T Prohibition

T Prohibition

**Prohibition requires forbidding a practice, that’s distinct from a mere hindrance**

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2. What are at issue legally are prohibitions and effective prohibitions, and not hindrances, as the Commission seems to suggest in its Notice. The term “prohibit” is not defined in the Act, but it has an ordinary meaning: to formally forbid (something) by law, rule, or other authority; or to “prevent, stop, rule out, preclude, make impossible.” A mere “hindrance” “is simply not **in accord with** the ordinaryand fairmeaning” ofthe termprohibit,104 and can provide no basis for additional Commission intrusions on local authority over wireless facilities. Much of what Mobilitie complains about is a “hindrance” at most (and usually a hindrance magnified by its own actions).

#### Violation—the aff is a presumption

Ahrens 2k (Deborah Ahrens-J.D., magna cum laude, New York University School of Law, 2000. NOTE:NOT IN FRONT OF THE CHILDREN: PROHIBITION ON CHILD CUSTODY AS CIVIL BRANDING FOR CRIMINAL ACTIVITY, 75 N.Y.U.L. Rev. 737, 764-765, June, 2000, Lexis, accessed via KU libraries, date accessed 12/22/21)

Statutes enacted in Arkansas, California, and Washington seem facially less troublesome; these statutes only affect the ability of persons convicted of sexual offenses against children to live in homes with children, and the Arkansas and Washington statutes only affect [\*765] convicted persons during the period of their probation. 128 Further, these statutes are presumptions against custody, in contrast with the Alabama statute's absolute prohibition (although the requirements to overcome these presumptions can be substantial). 129 Some aspects of these statutes, however, are actually tougher on released persons; in particular, none of these states makes exception for the person's own children. 130 California's statute, further, was amended in 1998 to create a presumption, not only against physical custody for persons convicted of sexual offenses, but against any legal custody, including visitation. 131

#### Vote Neg:

#### 1. Limits—there are infinite ways to tinker incrementally absent prohibition

#### 2. Ground—only forbidding a practice guarantees the neg link uniqueness for core DAs

## K

### 1NC—Policy

#### We’re in a cybernetic episteme -- communication is structured by extraction of surplus, producing feedback loops of information that have destroyed objective reality. Technology has become a project of extracting personhood from the subject to upload it into the cloud. Cybernetic neuropower infiltrates and manipulates decision-making in order to make all actions productive for capitalism. Cybernetic capitalism depends on colonialism, imperialism and environmental destruction – that causes extinction.

Emmelhainz 21, visiting scholar @ Vermont College of Fine Arts (Irmgard, “Authoritarianism and the Cybernetic Episteme, or the Progressive Disappearance of Everything on Earth”, e-flux journal, issue 122 November 21. <https://www.e-flux.com/journal/122/430488/authoritarianism-and-the-cybernetic-episteme-or-the-progressive-disappearance-of-everything-on-earth/>)

Life and society worldwide have been transformed by digital technology, including the fabrics of emotional relationships. Many believed the internet would be the largest ungoverned space in the world with unlimited emancipatory potential, and trusted Big Tech to make the world a better­ place. Yet power and capitalism filled that space with surveillance systems, the production of private capital, the monetization of data, and the control of human lives. Social media now shape daily life and many have lost faith in the possibility of a shared consensus reality. We are living in a scenario similar to one imagined by Black Mirror: our belief in digital communication and social media creates narcissistic personalities, selves dissociated and dislocated from their reflections online. Digital communication offers an opaque mirror that delivers egos without bodies, eliding alterity.

The collapse of reality, however, is not an unintended consequence of advancements in, for instance, artificial intelligence: it was the long-term objective of many technologists, who sought to create machines capable of transforming human consciousness (like drugs do). Communication has become a site for the extraction of surplus value, and images operate as both commodities and dispositives for this extraction. Moreover, data mediates our cognition, that is to say, the way in which we exist and perceive the world and others. The image—and the unlimited communication promised by constant imagery—have ceased to have emancipatory potential. Images place a veil over a world in which the isolated living dead, thirsty for stimulation and dopamine, give and collect likes on social media. Platform users exist according to the Silicon Valley utopian ideal of life’s complete virtualization.

The internet, moreover, has radically changed the political communications game and must be considered a complex propaganda apparatus. Although a single Tweet can destroy someone’s career, and fake news can start a real news cycle, meaning is subordinate to the circulation of vacuous content. The capitalist capture of data for profit does not rely on policing content; the production of capital only relies on the constant exchange and circulation of information. We don’t yet know the full extent of the manipulation of companies such as Facebook, Google, and Amazon in the last two elections in the US or in other elections around the world. But it is undeniable that digital platforms are actively censoring content in the interests of particular political actors. For instance: in October 2020, Zoom canceled a meeting hosting Palestinian human rights activist Leila Khaled; a month before, Facebook and Twitter censored information detrimental to Joseph Biden’s presidential campaign. The same two companies intervened and shut down pro-Trump accounts in 2020, even Donald Trump’s own Facebook and Twitter accounts.

After the attempted coup at the US capitol on January 6, 2020, Facebook’s recently instituted oversight board ruled that Trump had created “an environment where a serious risk of violence was possible.” In this light, it seems likely that he will continue to be banned from the platform. According to journalist Shoshana Zuboff, however, this is insufficient, given that the oversight board’s decision (whose work is supported by a $130 million endowment from Facebook) follows years of inaction by CEO Mark Zuckerberg, who indulged and appeased Trump while entrenching what Zuboff calls “surveillance capitalism.” A liberal might think that shutting up Trump and helping Biden is not bad, as they are actions that seemingly advance the interests of the Democratic Party. What is at stake here, however, is not whether the platforms take a “good” or “bad” stance on a particular issue; the problem is that they have immense unchecked power and can act as they please. Platforms are allowed to secretly extract behavioral data from users, whether or not users are aware, transforming the information into targeted ads, destroying privacy, changing human experience into data, altering elections, and reshaping human civilization. This structure can be termed the “cybernetic episteme,” and the new form of control, which goes beyond the previous regime of biopower, can be termed “neuropower.”

According to its Greek etymology, an “episteme” is a system of understanding. In The Order of Things, Michel Foucault uses the term “épistemè” to mean the nontemporal or a priori knowledge that grounds what is taken as truth in a given moment. Several epistemes coexist at a given time, as they constitute parts of various systems of power and knowledge. The cybernetic episteme, as defined by the collective Tiqqun some twenty years ago, describes our relationship to technology and machines (which are inseparable from the workings of capitalism). The cybernetic episteme is based on the modern tenet of progress and human-led transcendence achieved through science and technology.

Under neuropower, the sensible gives way to cognitive pathologies. These pathologies depend on the consumption of content rather than the sharing of meaning. As Thomas Metzinger explains, the internet has become an integral part of how we model ourselves, as we use it for external memory storage, as a cognitive prosthesis, and for emotional self-regulation. This has radically changed the structure of conscious experience, creating a new form of waking consciousness that resembles “a mixture of dreaming, dementia, intoxication, and infantilization.” Other effects of neuropower are humans’ growing invisibility to each other and a paroxysmal racism that infiltrates power, technology, culture, language, and work. For Franco “Bifo” Berardi, racism has become a “virus” that exacerbates fear—above all, the fear of extinction, which seems to have become one of the motors behind white supremacy in the world. Dissociated from our environment, alienated from each other, we are oblivious to the challenges that are being posed to humanity by the Capitalocene.

1.

Under lockdown, internet-based technology became embedded in everyday life more than ever before. Zoom and other platforms became the matrix of a production model that exacerbates the power of technology over society. A new lockdown economy has emerged in this disembodied communication space, where knowledge is subsumed under the rules of capital accumulation. The pandemic has led to extreme alienation, to the point that privilege is defined as depending on invisible laborers to sustain forms of life. This means that a new “virtual working class” has emerged that can take basics like food, water, and electricity for granted, knowing that they do not have to risk their bodies to have these comforts.

Until 2016, digital technology promised access to all human knowledge, unlimited exchange, self-expression, democratization, participation, opportunities to make money, the acceleration of bureaucratic processes, and the means for grassroots and popular power to challenge governments and corporations. The peak of this alluring cyber-utopia came around 2010–11, when social media played a crucial role in the Occupy and Arab Spring movements. But in 2016, when Cambridge Analytica was revealed to have intervened in the US elections that brought Donald Trump to power, the public’s belief in such technologies to change power structures began to shift. We witnessed the worldwide rise of right-wing governments and populist movements supported by wealth. Maurizzio Ferraris has called this the era of “post-truth,” when the deconstruction of a stable truth became an important political tool. In online public space, discourse has been shattered, truth has become indiscernible, and relativism has become the norm. The public sphere—the bastion of established and emerging democracies, bolstered by mass media—began to shatter.

Leaders such as Benjamin Netanyahu, Donald Trump, Andrés Manuel López Obrador, Jair Bolsonaro, and Narendra Modi have used digital communications to construct charismatic identities and disseminate populist messages, causing deep social and political polarization. Politics has profoundly mutated: while minorities and people at the margins have found ways to validate their speech by expressing their perspectives, individualized propaganda has become the order of the day. Algorithms feed users the information they search for, resulting in personalized information bubbles designed to engage preexisting biases. Much of the news media now functions by monetizing user engagement through this type of targeting, which has led to new forms of intensified racism and other types of prejudice. Author Andrey Mir has termed this “postjournalism.” He explains that, since mass media outlets have lost publicity revenue, they need to monetize engagement on the internet and do so by generating anger and hatred, usually directed at some specific group of people. For many, the news is the way to access the world, and rage has become currency: platforms drive and monetize anger as a mode of engagement.

A complex form of authoritarianism is emerging, linked to digital platforms owned by the powerful CEOs who make up the notorious “Silicon Six.” Under the new authoritarianism, populations are no longer commanded: they are asked to participate, and in this simulation of involvement, the “ideology of connection” replaces the idea of social relations, neutralizing democratic demands from users to have control over their own lives, rights, and data. In this way, people are made passive. Cédric Durand explains the difference between the original conception of the World Wide Web and the subsequent development of closed platforms. The WWW began as a decentralized architecture in which a generic transaction protocol (http) and a uniform identification format (URI/URL) generated a space of flat content. In this space, human and nonhuman agents could have access to information without any third-party mediation. In contrast, closed platforms use application programming interfaces, or APIs, to mediate interaction, giving way to data loops in which interactions are more dense. The technical object that sustains this hierarchical architecture is the API, each of which is owned by a platform. On the one hand, big platforms, by way of APIs, offer apps that incorporate basic and indispensable data for users. On the other, platforms have access to the additional information generated by the API, such as user activity and buying habits. As the ecosystem grows in complexity, the platform is able to accumulate more and more data. We become more densely connected with each other and with the platforms every day, as our lives get more and more tied to the cloud. Our dependency on platforms provides the ground for technofeudalism. Historically, feudalism was characterized by a fundamental inequality that enabled the direct exploitation of peasants by lords. The lord was both the manager and master not only of the process of production, but of the entire process of social life. In today’s technofeudalism, platform owners are the digital lords and users are the serfs. Rather than commodity production, these platforms are geared towards accumulation through rent, debt, and the privatization of the basic infrastructure that sustains our lives. What is at stake is no longer “true” or “fake” information but the cybernetic episteme upon which our lives and subjectivities have been built.

The cybernetic episteme is premised upon modernity’s enclosure of experience. In modern epistemology, which is the precondition of the cybernetic episteme, the self is externalized and experienced at a remove from the body. Perception is centered on the brain and eyes instead of the whole body, separating sensation from reason. The self’s relationship with the world is mediated through mirrors, camera lenses, the canvas, the microscope, and mathematical models. The cybernetic episteme, moreover, is inextricable from colonialism, which entails dispossession, dislocation, dissociation, and appropriation. Ariella Azoulay has called the logic underpinning these processes “the shutter”; this logic is materialized in photographic technology that separates humans from objects, self from the world, and people from their lands. The shutter is the principle of imperialism by which campaigns of plunder have left people both worldless and objectless. For Azoulay, the logic of the shutter was invented centuries before photography gave it a technological apparatus, and it enabled the dispossession of non-Western peoples in tandem with the accumulation of visual and material wealth in archives and museums in the West.

The cybernetic episteme is likewise conceptually constituted by this shutter, since it relies on capturing, naming, moving, and archiving subjects—as does imperialism. In this regard, the cybernetic episteme naturalizes the mediation of the self; it creates not only the condition of detachment from the world, but allows the appropriation of the cultures of others, as well as the dissolution of collective being. The shutter is akin to Heidegger’s Gestell or “representation,” which goes hand in hand with Eurocentrism and Anthropocentrism. The Gestell and the shutter both imply that the world and experience have become representation, through an aesthetic order in which what is produced as artifice becomes the reality of experience.

In a 2017 Facebook promo video for a new virtual reality technology, Mark Zuckerberg and his colleague Rachel Frank tele-transported themselves to Puerto Rico after a devastating flood. They intended to showcase the potential of the new technology, but instead revealed its inherent violence. The ability to transport oneself to faraway places “as if” one’s body were present gives the illusion that one we can make a difference in the world through technology. Another example, in a different register of colonial modernity is that way Western museums allow visitors to "transport" themselves by observing objects looted from elsewhere, like the Pergamon Museum in Berlin where museumgoers can roam around the Ishtar Gate, which has been on display in the museum since 1930. In a section of Ariella Azoulay’s video Undocumented: Unlearning Imperial Plunder (2020), she films actual visitors to the Pergamon while noting that dislocation is the essence of (imperial) modernity. The VR museum visitor is at the center of a world, but they are not really there (an effect similar to the dispositive of perspective in painting). For globalized Western culture, the ground for vision, enlightenment, culture, and even social change is the dislocation and disappearance of bodies.

Disembodiment and dislocation are also fundamental epistemological premises of transhumanist Silicon Valley ideology. In this ideology, the teleology of secular modern individualism culminates in the uploading of a person’s mind to a new biological, artificial, or biological-artificial body. The utopian goal of expanding and preserving human consciousness is physically and spiritually achieved. Transhumanism is the dream of enhancing the human body through technology, and ultimately escaping human suffering by transcending the “errors” of death and aging.

Posthumanism takes things a step further: its goal is to immortalize consciousness by uploading it to a robotic or synthetic body. Posthumanism does away with the biological dimension of the self, fundamentally altering what it means to be “human.” In both trans- and posthumanism, technology promises to give us the divine attributes of omnipresence, omnipotence, and omniscience, making humans into “pure consciousness,” achieving a kind of individual and secular transcendence. In the first episode of the British TV series Years and Years (2019), Bethany, an adolescent whose face is hidden behind a 3D emoji mask, announces to her parents that she is “transhuman.” She declares: “I don’t want to be flesh. I want to escape this thing and become digital, I want to live forever as information.” Eventually Bethany becomes a hero with transhuman superpowers: her mechanized eyes and brain, which are connected to all the data in the world, allow her to make visible the horrors that the British government have perpetrated in a refugee camp. This techno-utopian narrative implies a democratic ideology, insofar as one political goal of democracy is to make visible the ordeals of oppressed minorities—in this case through virtual disembodiment.

In contrast to this techno-utopian narrative, science fiction—especially cyberpunk literature— generally portrays transhumanism as a nightmarish apocalyptic scenario of social control and individual subjection. Several episodes of Black Mirror do this, for example. But what Black Mirror and Years and Years have in common is that technological advances and the increasing symbiosis between humans and machines are associated with political, economic, and social instability. In reality, “mind uploading” has attracted millions of dollars of investment from the billionaires of Silicon Valley and beyond. In a mixture of engineering and enlightenment, consciousness is now being hacked through biofeedback techniques, meditation practices, and microdosing drugs. Many critics have observed that the utopian ideology of transhumanism underpins the Valley’s culture of “move fast, break things, and make as much money as possible.” Technologies aiming to expand human consciousness are rooted in purely extractivist, capitalist values. In this sense, cybernetics is a political project on a planetary scale. As described by Tiqqun, cybernetics is a gigantic “abstract machine” made up of binary machines deployed by empire, and a form of political sovereignty that has merged with the capitalist extractivist project.

2.

In the pre-cybernetic era—that is to say, before the 1940s—machines were intended to emulate humans; their actions resembled human behavior, but ostensibly without intent or emotions. This is why Donna Haraway describes pre-cybernetic machines as “haunted.” They seemed animated by ghosts, reminiscent of Walter Benjamin’s automaton that was inhabited by a hunchbacked dwarf. Machines were not self-moving, self-designing, or autonomous. They could not achieve human dreams, only mock them. In turn, humans related to machines by using or acting upon them: switching them on or off, using them as tools to achieve an end. Today, the relationship between human and machine is based on internal, mutual communication in a feedback loop. Early machines were led; today, machines lead us. This does not mean that machines have simply become humanized through the proliferation of androids. Rather, humans have surrendered consciousness to AI, becoming obedient and predictable. In the twenty-first century, machines have blurred the distinction between the artificial and human mind, not only because machines can imitate human functions, but because humans have become increasingly passive, since we are now subject to neuropower.

Within the cybernetic episteme, it is no longer enough to talk about a “control society”; we must talk instead about a composite of interlinked forms of oppression (exploitation, alienation, and domination), in tandem with extreme securitarianism. Another way to see the cybernetic episteme is as the reconceptualization of social worlds into information-processing systems. Practices of computation are used to produce new organizational and infrastructural apparatuses, which in turn create value and profit by exploiting and disposing of human life. Social worlds are subsumed into technologies through techniques such as statistical forecasting and data modeling.

The cybernetic episteme stems from a world brought into being by Europeans; this world began with the discovery of the “new world” and the creation of empires and colonies (which coincided with the scientific revolution). In this sense, the cybernetic episteme is inseparable from the Western civilizing project for the whole world, which connected disparate places through technologies like the telegraph and steam shipping, often powered by the extraction of fossil fuels like coal. This project has culminated in globalization as the deregulation and financialization of world economies.

The Western civilization project, based on Enlightenment values including equality, peaceful public life, access to modern science, the rule of law, democracy, and technological progress, involved the creation of infrastructure to unify nations and the world. We can call this infrastructure the “technosphere.” The technosphere comprises not only digital technology but all machines, factories, computers, cars, buildings, railways, and mobility infrastructure, as well as systems of food production, resource extraction, and energy distribution. Today, the infrastructure of the world—the technosphere—is shaped by information, which means that the world we inhabit is designed by data.

The technosphere is a supplement humans have created to help overcome the limits of “human nature” insofar as humans cannot live independently from structures geared towards sustaining life. The technosphere has promised to enable us to increase production and reproduction with less human effort. Moreover, the technosphere is also regarded as the main tool humans have to fight decay, entropy, and death, since it comprises all the structures humans have built to keep themselves alive on the planet. The total mass of the technosphere amounts to fifty kilos for every square meter of earth’s surface—a total of thirty trillion tons, which coexists with the diminishing hydrosphere (water, the frozen polar regions) and the biosphere (all of earth’s living organisms). The ultimate price of the technosphere is global warming and environmental devastation. Like humans, the technosphere needs external energy input, which is not sustainable as long as it comes from fossil fuels that will eventually be depleted.

From this standpoint, the cybernetic episteme represents the gradual merging of human activity into the activity of what we have built and surrounded ourselves with. Much of this built environment is invisible. Infrastructure and data are partially occult because we are alienated from them, even as we are produced and managed by them. The invisible infrastructure that sustains our lives is what matters politically right now. And insofar as the technosphere is cybernetic, it is inextricable from capitalism and politics.

3.

Human communication is at the center of the cybernetic global order. The neural system of globalized networked society is digital communication. In a 1975 film called Comment ça va?, Anne-Marie Miéville and Jean-Luc Godard discuss the “illness” of information. They begin with an image of the Carnation Revolution in Portugal, published in the leftist newspaper Libération. At the time, photojournalistic images had begun to proliferate as a form of information, and Godard and Miéville critique Libération (the most left-wing newspaper in Europe in those days) for failing to include the reader in the creation and dissemination of information. They ask: “How is it that things enter and exit the machine?” (Comment ça va de l’entrée à la sortie de la machine?). This question is about how ideas, words, discourses, human interaction, and images become information and then reach readers and viewers.

In Comment ça va?, mass media represents an illness that has killed communication and language. Last year, Godard updated his critique of the media in an interview posted to Instagram. He stated: “Plato’s cave has been fixed on paper/screen.” For Godard, the consequence of the becoming-information of communication and language is the loss of ambiguity in communication. Digital technology has infiltrated every aspect of existence, and the margin of error between the transmission and the reception of a message has been eliminated by mediatization and digitization. For Godard, digital communication denies the force of the image or the word because it eliminates redundancy, misunderstanding, the possibility of reading between the lines, and the possibility of alterity.

In a more recent film of his—Adieu au language from 2014—Godard suggests that digital media have destroyed face-to-face communication. He asks: What kind of self could emerge in a time when objects and bodies are disfigurable and refigurable through virtual manipulation? Godard posits that the origins of today’s totalitarianism can be traced to the interruption of interior experience by the spectacle. In the film, Godard features a lengthy quote from Philippe Sollers explaining that the spectacle “cuts off” the subject from its interior life—a process that is, paradoxically, highly seductive. Furthermore, for Godard digital communication creates a new form of isolated solitude where people lack ties to others. In this light, technology has not become an extension of man, as Marshall McLuhan predicted, but has instead attained autonomy from man, since digital media can communicate amongst themselves without human mediation. For Godard, this means that the “face-to-face” encounter—a basic form of human relation that is the foundation of ethics—is no longer possible.

Sherry Turkle, a clinical psychologist and sociologist, comes to similar conclusions: daily conversations no longer involve eye contact, and face-to-face discussion has been replaced by words on a screen. According to Turkle, texts, tweets, Facebook posts, Instagram messages, and Snapchats split our attention and diminish our capacity for empathy. They have created new codes of etiquette; no longer do we feel restrained from reaching for our phones in the presence of other people. This new etiquette entrenches a culture of individualism and isolation from each other. This isolation cultivates the perfect ground for fascism.

The digitization of communication not only has political and communal consequences. It also affects the neuroplastic potential of the living brain. The cybernetic episteme reshapes our working memory by rearranging its contents. As Warren Neidich writes, the new focus of power is not only the false reproduction of the past (the manipulation of the archive), but the manipulation of our working memory—the type of memory that influences our decision-making. Authoritarian neuropower wants nothing less than to shape our future memory, argues Neidich.

If the nervous system of cybernetics is digital communication, at the center of digital communication is desire. Mark Fisher devoted his last lectures at Goldsmiths in 2017 to this subject. During one lecture, he played for his students a famous Apple TV commercial from 1984, directed by Ridley Scott and originally broadcast during the Superbowl. In an overt reference to George Orwell’s novel 1984, the commercial depicts a dreary, repressive control society. This society is seemingly liberated when a buxom blonde woman tosses a sledgehammer at a large screen broadcasting the image of an authoritarian figure, causing the screen to explode. The commercial ends with these lines crawling across the screen: “On January 24, Apple Computer will introduce Macintosh. And you’ll see why 1984 won’t be like 1984.” Fisher observes that the video counterposes top-down bureaucratic control to upstart entrepreneurialism. The dreary control society depicted in the commercial is an allusion to not only the Soviet Union, but also IBM, the dominant computer maker at the time. Apple posits itself as the dynamic, colorful new company that will liberate society from dreary IBM, ushering in a new, more vibrant world order. This new world order will fulfill our (capitalist) desires in a way that the communist world cannot. As Fisher suggests, we now live in that world of libidinal capitalism.

Elsewhere Fisher writes that what drives the circulation of information is the user’s desire to make one more connection, to leave one more reply, to keep on clicking. Capitalism persists because cyberspace is already under our skin, writes Fisher; to retreat from it would be like trying to retreat into some nonexistent precapitalist imaginary. In his view, we believe we have as much a chance of escaping capitalism as we do of crawling back inside our mother’s womb.

5.

By means of the cybernetic episteme, Silicon Valley has shaped the world we all live in. As we are poisoned equally by microplastics and fake news, losing our grasp of a shared reality, the “Silicon Six”—as Sacha Baron Cohen called the titans of Silicon Valley in a 2019 speech—propagate algorithm-fueled fear, propaganda, lies, and hate in the name of profit. As Baron Cohen pointed out, the major online platforms largely avoid the kind of regulation and accountability that other media companies are subject to. “This is ideological imperialism,” he said. “Six unelected individuals in Silicon Valley impos[e] their vision on the rest of the world, unaccountable to any government, and acting as if they are above the law.” He called digital platforms the greatest propaganda machine in history.

Democratic institutions have failed to reign in the information chaos and the destruction of the public sphere. As Shoshana Zuboff argues, we inhabit a communications sphere that is no longer a public sphere. She describes this situation as an “epistemic coup” that has taken place in four stages: First, by way of companies gathering personal data about us and then claiming it as their own private property. Second, through data inequality, which means that companies know more than we do. Third, through the epistemic chaos created by algorithms. And fourth, through the institutionalization of this new episteme and the erosion of democratic governance.

Baron Cohen observes that people can take a stand against platforms by recognizing our power to boycott them. (One example is the mass defection from WhatsApp to Telegram when the former announced that would share its user data with Facebook.) But we also need to defend the existence of facts and a shared reality, understanding the world not as something we see but as something we inhabit—treating life not as something we have, but as something we live. Anti-platform strategies might be accused of Luddism, but they are not necessarily opposed to technology—only to certain uses of technology.

It is also crucial that we regard the cybernetic episteme as inextricable from a broader malaise: humanity’s relationship to life and the planet is a toxic one. The very technologies that supposedly enable us to read, think, flourish, and desire are destroying the world we inhabit.

People continue to yearn for commonality, mutuality, and something to share. But the culture we currently share is largely mediated by repressive, profit-driven digital platforms. This is why we need to flee from the invasion of images, to distinguish between image and reality, and to affirm the opacity of the world and the ambiguity of language. We need to resist platform monopoly through presence, embodiment, immediacy, and human memory. We need to find ways to create life as opposed to turning it into data, combine emotional and intellectual knowledge, and regard visceral gut feelings as a form of human consciousness. We need to learn to exist in symbiosis with others and with the environment, not dislocated, uprooted, and detached.

#### Social and economic control is a means to grease the wheels of cybernetic capitalism. It’s unsustainable, so markets have replaced the “invisible hand” with industry sectors and legal restraints.

Tiqqun 1, they are a French collective formed in 1999! (“The Cybernetic Hypothesis”, http://theanarchistlibrary.org/library/tiqqun-the-cybernetic-hypothesis#toc4)

Nothing expresses the contemporary victory of cybernetics better than the fact that value can now be extracted as information about information. The commodity-cybernetician, or “neo-liberal” logic, extends over all activity, including that which is still not commodified, with an unflagging support of modern States. More generally, the corollary to the precarization of capitalism’s objects and subjects is a growth of circulation in information on their subject: this is as true for unemployed workers as it is for cops. Cybernetics consequently aims to disturb and control people in one and the same movement. It is founded on terror, which is a factor in its evolution — the evolution of economic growth, moral progress — because it supplies an occasion for the production of information. The state of emergency, which is proper to all crises, is what allows self-regulation to be relaunched, and to maintain itself as a perpetual movement. Whereas the scheme of classical economy where a balance of supply and demand was to permit “growth” and thusly to permit collective well-being, it is now “growth” which is considered an endless road towards balance. It is thus just to critique western modernity as a “infinite mobilization” the destination of which is “movement towards more movement.” But from a cybernetic point of view, the self-production that equally characterizes the State, the Market, robots, wage workers, or the jobless, is indiscernible from the self-control that moderates and slows it down.

It comes across clearly then that cybernetics is not just one of the various aspects of contemporary life, its neo-technological component, for instance, but rather it is the point of departure and arrival of the new capitalism. Cybernetic Capitalism — what does that mean? It means that since the 1970s we’ve been dealing with an emerging social formation that has taken over from Fordist capitalism which results from the application of the cybernetic hypothesis to political economy. Cybernetic capitalism develops so as to allow the social body, devastated by Capital, to reform itself and offer itself up for one more process of accumulation. On the one hand capitalism must grow, which implies destruction. On the other, it needs to reconstruct the “human community,” which implies circulation. “There is,” writes Lyotard, “two uses for wealth, that is importance-power: a reproductive use and a pillage use. The first is circular, global, organic; the second is partial, death-dealing, jealous... The capitalist is a conqueror, and the conqueror is a monster, a centaur. His front side feeds off of reproducing the regulated system of controlled metamorphoses under the law of the commodity-talion, and its rear side off of pillaging overexcited energies. On the one hand, to appropriate, and thus preserve, that is, reproduce in equivalence, reinvest; on the other to take and destroy, steal and flee, hollowing out another space, another time.” The crises of capitalism, as Marx saw them, always came from a de-articulation between the time of conquest and the time of reproduction. The function of cybernetics is to avoid crises by ensuring the coordination between Capital’s “front side” and “rear side.” Its development is an endogenous response to the problem posed to capitalism — how to develop without fatal disequilibrium arising.

In the logic of Capital, the development of the piloting function, of “control,” corresponds to the subordination of the sphere of accumulation to the sphere of circulation. For the critique of political economy, circulation should be no less suspect than production, in effect. It is, as Marx knew, but a particular case of production as considered in general. The socialization of the economy — that is, the interdependence between capitalists and the other members of the social body, the “human community” — the enlargement of Capital’s human base, makes the extraction of surplus value which is at the source of profit no longer centered around the relations of exploitation instituted by the wage system. Valorization’s center of gravity has now moved over to the sphere of circulation. In spite of its inability to reinforce the conditions of exploitation, which would bring about a crisis of consumption, capitalist accumulation can still nevertheless survive on the condition that the production-consumption cycle is accelerated, that is, on the condition that the production process accelerates as much as commodity circulation does. What has been lost to the economy on the static level can be compensated on the dynamic level. The logic of flows is to dominate the logic of the finished product. Speed is now taking primacy over quantity, as a factor in wealth. The hidden face of the maintenance of accumulation is the acceleration of circulation. The function of the control devices is thus to maximize the volume of commodity flows by minimizing the events, obstacles, and accidents that would slow them down. Cybernetic capitalism tends to abolish time itself, to maximize fluid circulation to the maximum: the speed of light. Such is already the case for certain financial transactions. The categories of “real time,” of “just in time,” show clearly this hatred of duration. For this very reason, time is our ally.

This propensity towards control by capitalism is not new. It is only post-modern in the sense that post-modernity has been confused with the latest manifestation of modernity. It is for this reason that bureaucracy developed at the end of the 19th century and computer technology developed after the Second World War. The cybernetization of capitalism started at the end of the 1870s with the growing control of production, distribution, and consumption. Information regarding these flows has since then had a central strategic importance as a condition for valorization. The historian James Beniger states that the first control-related problems came about when the first collisions took place between trains, putting commodities and human lives in peril. The signalization of the railways, travel time measurement and data transmission devices had to be invented so as to avoid such “catastrophes.” The telegraph, synchronized clocks, organizational charts in large enterprises, weighing systems, roadmaps, performance evaluation procedures, wholesalers, assembly lines, centralized decision-making, advertising in catalogues, and mass communications media were the devices invented during this period to respond, in all spheres of the economic circuit, to a generalized crisis of control connected to the acceleration of production set off by the industrial revolution in the United States. Information and control systems thus developed at the same time as the capitalist process of transformation of materials was growing and spreading. A class of middlemen, which Alfred Chandler called the “visible hand” of Capital, formed and grew. After the end of the 19th century, it was clear enough to PEOPLE that expectability [had] become a source of profit as such and a source of confidence. Fordism and Taylorism were part of this movement, as was the development of control over the mass of consumers and over public opinion via marketing and advertising, in charge of extorting from them by force, and then putting to work, their “preferences,” which according to the hypotheses of the marginalist economists, were the true source of value. Investment in organizational or purely technical planning and control technologies became more and more salable. After 1945, cybernetics supplied capitalism with a new infrastructure of machines — computers — and above all with an intellectual technology that permitted the regulation of the circulation of flows within society, and making those flows exclusively commodity flows.

That the economic sectors of information, communication, and control have taken ever more of a part in the economy since the Industrial Revolution, and that “intangible labor” has grown relative to tangible labor, is nothing surprising or new. Today these account for the mobilization of more than 2/3 of the workforce. But this isn’t enough to fully define cybernetic capitalism. Because its equilibrium and the growth depend continually on its control capacities, its nature has changed. Insecurity, much more than rarity, is the core of the present capitalist economy. As Wittgenstein understood by looking at the 1929 crisis — and as did Keynes in his wake — there is a strong bond between the “state of trust” and the curbing of the marginal effectiveness of Capital, he wrote, in chapter XII of General Theory, in February 1934 — the economy rests definitively on the “play of language.” Markets, and with them commodities and merchants, the sphere of circulation in general, and, consequently, business, the sphere of production as a place of the anticipation of coming levels of yield, do not exist without conventions, social norms, technical norms, norms of the truth, on a meta-level which brings bodies and things into existence as commodities, even before they are subject to pricing. The control and communications sectors develop because commodity valorization needs to have a looping circulation of information parallel to the actual circulation of commodities, the production of a collective belief that objectivizes itself in values. In order to come about, all exchanges require “investments of form” — information about a formulation of what is to be exchanged — a formatting that makes it possible to put things into equivalence even before such a putting of things into equivalence has effectively taken place, a conditioning that is also a condition of agreement about the market. It’s true for goods, and it’s true for people. Perfecting the circulation of information will mean perfecting the market as a universal instrument of coordination. Contrary to what the liberal hypothesis had supposed, to sustain a fragile capitalism, contracts are not sufficient unto themselves within social relations. PEOPLE began to understand after 1929 that all contracts need to come with controls. Cybernetics entered into the operation of capitalism with the intention of minimizing uncertainties, incommensurability, the kinds of anticipation problems that can interfere in any commodity transaction. It contributes to consolidating the basis for the installation of capitalism’s mechanisms, to oiling Capital’s abstract machine.

#### The plan is neoliberal ag’s dream---their analytic presumes trickle-down economics and ignores the devastating labor conditions on small farms

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The antitrust critique of industrial agriculture dominates discussions of the farm economy in progressive media and policy circles. In a fiery attack on Joe Biden’s agricultural team during the 2020 campaign, David Dayen argued that cattle ranchers, hog farmers, and crop producers are all at the mercy of corporate middlemen like Cargill and Bayer, who exert excessive control over the industry and bend farmers to their will. In her 2020 book Break ’Em Up, Zephyr Teachout uses the metaphor of “chickenization” to compare the plight of chicken farmers forced to use the feed supplied by Tyson to rideshare drivers who must accept Uber’s rate cuts. “Some of the biggest Fortune 500 companies may be in agriculture and are making huge profits,” Teachout writes, “but farmers are poor and insecure.” The antitrust movement is not wrong to focus on the power of corporations: agribusiness has helped transform huge swathes of the globe into biological wastelands, depopulated the countryside, and created a class of hyper-exploited workers. But the standard antitrust analysis overlooks how much US farmers benefit from, and are invested in, the current system. Farmworkers’ low pay and dangerous work conditions, meanwhile, put them in direct conflict with farmers. They have long led fights for environmental and labor reforms — and the industry’s dependence on their labor gives them potentially enormous bargaining power. They — not farmers — will be at the forefront of any effort to democratize agriculture. Affluent Farmers Most farmers in the United States today enjoy high incomes and wealth. The median farm household has a total income 21 percent higher than the overall median household and 75 percent higher than the rural median. Ninety-seven percent of farm households boast a higher net worth than the median household, and the median farm household has a nonfarm net wealth 2.5 times higher than the median household and a total net wealth nine times higher (both of these figures account for debts). The general farm economy is also strong. Despite innumerable reports that use total farm income to argue US farmers are in crisis, per farm net income has rarely been better. Five of the ten best farm income years since the Great Depression have come in the last decade. How, then, do antitrust writers produce so much data to suggest that farmers are poor? Most often, they misinterpret numbers that require a great deal more context. One of the most common antitrust arguments is that the farmer’s share of the food dollar has fallen from 37 cents in 1980 to around 15 cents today. This is true — though the share hasn’t changed much since at least 1993 — but total spending on food is up and the number of farms is down. The upshot: farm revenues are at near record levels today. Antitrust writers also often use summary statistics skewed by the Department of Agriculture’s idiosyncratic definition of “farm.” David Dayen writes that “more than half of all farm households are losing money.” But the USDA’s Census of Agriculture, the source of many such figures, includes an enormous number of “farms” that do very little farming, if any at all. After the USDA’s constituency of farmers declined sharply after World War II — and along with it, the department’s influence — it began to liberalize its definition of “farm,” counting rural properties with no agricultural production at all as farm operations when they are deemed capable of producing $1,000 in sales. If you have a hundred acres of grass and woodland, a fifth of an acre of fruit-bearing trees, or a fifteenth of an acre of berries — as many wealthy rural residents do — you’re a “farmer” according to USDA. Almost a quarter of the operations in the 2017 census did not sell any farm products whatsoever. Though the census reports around two million agricultural operations, two-thirds of these, according to the best available data, are retiree or “lifestyle” farms. Unsurprisingly, they drag down aggregate measures of farm income. Farm organizations portray low- or zero-sales farms as low-income families struggling to get back into agriculture. In reality, most of these farms are owned by wealthy rural and exurban residents who have no interest in farming as a business. The median household with a “residence” farm — a category that makes up almost all small-scale farms and the majority of all farms — lost $1,600 in farm income in 2019. But these same households, at the median, take in more than $100,000 in total income and hold around $450,000 in net nonfarm wealth — about four times the median US household. As journalist Maggie Koerth put it in a 2016 investigative report, most small farmers in the agricultural census “aren’t the farms of the poor; they’re the yards of the upper-middle-class.” Farm houseolds have significantly higher net worth than non-farm households. With only non-farm assets and debts included, the median residence farm household, which families tend to own for lifestyle reasons, has about 2.5 times as much net wealth as the median white household and 22 times as much as the median black household. With farm wealth included, the median residence farm has almost 5 times as much wealth as the median household. Commercial farms, which are responsible for the vast majority of all farm production, have an astronomical net wealth of $2.7 million — about 130 times that of the median black household. Almost all farmers, meanwhile, are white. The few farms that do engage in market production tend to make boatloads of money. Only about 340,000 farms, 80 percent of them family-owned, accounted for 90 percent of sales in 2012. These are what USDA calls “farm businesses,” excluding so-called “low sales farms,” which churn out almost no agricultural products. Even farm businesses with “moderate sales” boast a median farm income of $46,000, a median household income of $95,000, and a median net wealth of $1.8 million. “Midsize” farms make a median of $102,000 off farming and have a total net wealth of $2.4 million. These figures shoot through the roof for larger operations. What About Debt? Many readers will be surprised to read that farmers have so much wealth, since antitrust analysts and journalists often point out that total farm debt is at an all-time high. What they don’t mention — in addition to not adjusting for inflation — is that farm assets have increased at even higher rates. Farms also often have substantial nonfarm wealth they can draw on when their incomes dip. The net wealth figures cited throughout this piece account for both debts and inflation, while the total wealth figures account for nonfarm wealth. Animal farmers, who figure prominently in the conventional antitrust narrative, are no exception to the general rule of farmer affluence. David Dayen, in Monopolized: Life in the Age of Corporate Power, writes that “a 2013 Pew report noted that 71 percent of all chicken farmers earn incomes below the poverty line.” Zephyr Teachout uses the same figure in Break ’Em Up, as does the Open Markets Institute in an oft-cited report. The source for this figure appears to be an unpublished 2001 report that found 71 percent of households whose only source of income is a chicken farm were in poverty. The comparable number for today is not readily available, but data from the USDA (obtained for this article) show that even the lowest-sales broiler farm businesses boast a median household income of $69,000 and a net wealth of over $1 million. The figures are similar for cattle and hog farmers. Source: Special tabulation from USDA. None of this is to say that there aren’t chicken farmers, dairy farmers, and some other farmers who struggle. But the numbers tell us that farmers are overwhelmingly wealthy and overwhelmingly conservative. Studies of campaign contributions have concluded that agriculture is among the most conservative industries, and a poll last year found 80 percent of farmers approved of Donald Trump. The story is quite different for farmworkers. Exploited Farmworkers Farmworkers perform most of the labor in US agriculture, yet they are relegated to a second-class status. A special tabulation we received from the USDA shows that farmworkers work 60 percent of the hours on the farms that account for 90 percent of all agricultural production, while earning a fraction of the money. Farmers may only earn 15 cents of each food dollar, but farmworkers receive only 1.2 cents — and split those cents among more people, since there are far more farmworkers than farmers. Data on farmworkers in animal production is patchy, but an expert who studies farm labor in California found they may earn about $30,000 per year. Crop workers, meanwhile, have a median annual income of $17,500 to $20,000 and a third have family incomes below the poverty line. A leading expert estimates two-thirds are undocumented. They often lack safe drinking water, toil under body-destroying labor conditions, and are exposed to dangerous levels of pesticides (at much higher levels than farmers). With no hope to purchase enough land to enter commercial farming, researcher Philip L. Martin writes, they labor in “an apartheid industry.” And when things go wrong, farmworkers are often offered up as scapegoats. In the rare instance that authorities prosecute animal abuse on agricultural operations, it is almost always farmworkers who are punished. A familiar pattern has emerged when animal rights organizations release videos of feedlot animal abuse: owners express their shock and dismay, workers are fired, and local prosecutors charge those workers with animal abuse. The owners are not held criminally liable despite creating the working conditions that lead to such abuse. Many large farms also do their hiring through subcontractors that use the threat of deportation to keep wages down and unions out. While some farmers feel pressure from companies like Bayer, farmworkers feel a much more acute pressure from farmers themselves. The farm lobby and other conservative interests work hard to keep farmworkers under their thumb. Recently, they pushed to expand the H-2A visa program — which President Trump agreed to — a program many farmworkers and organizers compare to slavery. Farmworkers with an H-2A visa must stay with their employers and risk deportation if they complain. A 2020 study found that 38 percent of Department of Labor investigations of agricultural operations uncovered H-2A violations, while a 2020 analysis of one hundred interviews with H-2A workers found that 94 percent had suffered three or more “serious legal violations,” which included “seriously substandard housing,” “verbal threats,” and significant wage theft.” And perhaps most perversely, many farmworkers come to the United States in the first place because American foreign policy — trade deals, coups, and other meddling — destabilized their homes and drove them out in search of decent wages. Class Conflict in the Fields The antitrust movement is aware of many of these problems of worker exploitation and will readily concede the need for greater labor protections. But their unmistakable focus is on farmers, which has led them to endorse a trickle-down theory in which farmers, post-trust-busting, will grant their workers a cut of the extra profits. According to antitrust advocates Sandeep Vaheesan and Claire Kelloway, “Reducing the oppressive buyer power of massive retailers like Walmart, and dominant meat processors, like Tyson, would help return a larger share of the food dollar to producers, and, by extension, their workers.” This sounds logical — if farmers had more money, they’d have more of it to give to their workers — but it quickly falls apart under scrutiny. Farmers have plenty of income to share with their workers already, yet, as private businesses are wont to do, they share as little of it as they can. When profits spiked in the mid-2000s, wages didn’t budge. When they jumped again in the early 2010s, wages rose only a modest amount, with the largest hikes actually coming after farm income dipped again. Philip L. Martin, the scholar of farm labor, attributes a recent uptick in wages to a decline in immigration and state-level increases in the minimum wage, rather than generosity among hiring managers. Agricultural workers don’t need wealthier bosses, they need more rights — to unionize, to be free of harassment and mistreatment, to decent food and housing, and to collectively own the land they work. The antitrust approach also does little to solve more fundamental problems in agriculture. In 1524, the German peasant leader and preacher Thomas Müntzer lambasted the nobility for taking living creatures as their private property. He wrote, outraged, “that all creatures have been turned into property, the fish in the water, the birds in the air, the plants on the earth — all living things must also become free.” Karl Marx approvingly cited Müntzer three hundred twenty years later, when he argued that capitalism not only degrades how we relate to each other, but also how we relate to nature. As long as we treat living things as commodities, neither they, nor we, will be free. A programmatic path to the liberation of all things is beyond the scope of this essay — instead, we offer a critique. Antitrust enforcement can be a useful and even necessary tool at times. With at least two-thirds of farmland in the hands of the same wealthy owners responsible for 90 percent of sales, the antitrust movement would be well-served to renew calls for land reform that were popular with earlier US agrarian and left-populist movements. But when antitrust proponents use concentration to explain all the ills of agriculture, they distort reality. The break ’em up response to industrial agriculture may distribute human and animal misery more evenly (at best), but it does not address the root of this misery: exploitation. The standard antitrust analysis posits that tending to the needs of a small, highly conservative, and well-off constituency will ultimately benefit their workers and society. This is a mistake. Not only are there far more farmworkers than farmers — at least 2.5 times as many as there are farm businesses — farmers are already at the forefront of movements against environmental abuses and labor violations by their employers: that is to say, farmers. In recent years, farmworkers and their families have won collective bargaining rights in New York State, a new union in Washington, and safer pesticide regulations throughout the country, despite massive institutional and legal disadvantages. Still, farmworkers lack basic labor protections in most of the country, much less the kind of extravagant public support that farmers receive. Farmworkers understand that the size of a farm tells us next to nothing about its labor or environmental practices. As Margaret Gray and others have documented, smaller-scale and local farms often have among the worst working conditions and wages. Instead of idealizing yeoman farmers, we must fight for a future where we collectively hold the land together, and farmworkers labor for no one but themselves. Only they have the ability, through withholding and redirecting their labor, to shut down and reshape food production in the United States. Antitrust writers argue that breaking up agribusiness will help farmers and farmworkers alike. They dream of a cross-class alliance, but deny the intense conflict already with us, playing out every day in fields and farmhouses across the country.

#### The circulation of risk is a necessary component of cybernetic capitalism. Capitalists make risk a social responsibility that denies possibility for revolt.

Tiqqun 1, they are a French collective formed in 1999! (“The Cybernetic Hypothesis”, <http://theanarchistlibrary.org/library/tiqqun-the-cybernetic-hypothesis#toc4>) – ~~strikethrough~~ [modifies language]

Thus there is nothing surprising about the fact that the development of cybernetic capitalism has been accompanied by the development of all the forms of repression, by hyper-securitarianism. Traditional discipline, the generalization of a state of emergency — emergenza — are transplanted to grow inside a whole system focused on the fear of any threat. The apparent contradiction between the reinforcement of the repressive functions of the State and the neo-liberal economic discourse that preaches “less State” — and permits Loïc Wacquant for instance to go into a critique of the liberal ideology hiding the increasing “penal State” — can only be understood in light of the cybernetic hypothesis. Lyotard explains it: “there is, in all cybernetic systems, a unity of reference that permits one to measure the disparity produced by the introduction of an event within the system, and then, thanks to such measurement, to translate that event into information to be fed into the system; then, in sum, if it is a regulated ensemble in homeostasis, to annul that disparity and return the system to the quantities of energy or information that it had before... Let’s stop here a moment. We see how the adoption of this perspective on society, that is, of the despotic fantasies of the masters, of placing themselves at the supposed location of the central zero, and thus of identifying themselves with the matrix of Nothingness... must force one to extend one’s idea of threat and thus of defense. Since what event would NOT be a threat from this point of view? All are; indeed, because they are disturbances of a circular nature, reproducing the same, and requiring a mobilization of energy for purposes of appropriation and elimination. Is this too ‘abstract’? Should I give an example? It is the very project that is being perpetrated in France on high levels, the institution of an operational Defense of the territory, already granted an operating Center of the army, the specific focus of which is to ward off the ‘internal’ threat, which is born within the dark recesses of the social body, of which the “national state” claims to be the clairvoyant head: this clairvoyance is called the national identification registry; ... the translation of events into information for the system is called intelligence, ... and the execution of regulatory orders and their inscription into the “social body,” above all when the latter is racked by some kind of intense emotion, for instance by the panicked fear which would seize hold of it if a nuclear war were to be triggered (or if some kind of a wave of protest, subversion, or civil desertion considered insane were to hit) — such execution requires an assiduous and fine-grained infiltration of the transmission channels in the social ‘flesh,’ or, as some superior officer or other put it quite marvelously, the ‘police of spontaneous movements.’” Prison is thus at the summit of a cascade of control devices, the guarantor of last resort that no disturbing event will take place within the social body that would hinder the circulation of goods and persons. The logic of cybernetics being to replace centralized institutions and sedentary forms of control by tracing devices and nomadic forms of control, prison, as a classical surveillance device, is obviously to be expanded and prolonged with monitoring devices such as the electronic bracelet, for instance. The development of community policing in the English speaking world, of “proximity policing” in France, also responds to a cybernetic logic intended to ward off all events, and organize feedback. Within this logic, then, disturbances in a given zone can be all the better suppressed/choked off when they are absorbed/deadened by the closest system sub-zones.

Whereas repression has, within cybernetic capitalism, the role of warding off events, prediction is its corollary, insofar as it aims to eliminate all uncertainty connected to all possible futures. That’s the gamble of statistics technologies. Whereas the technologies of the Providential State were focused on the forecasting of risks, whether probabilized or not, the technologies of cybernetic capitalism aim to multiply the domains of responsibility/authority. Risk-based discourse is the motor for the deployment of the cybernetic hypothesis; it is first distributed diffusely so as then to be internalized. Because risks are much more accepted when those that are exposed to them have the impression that they’ve chosen to take them on, when they feel responsible, and most of all when they have the feeling that they control them and are themselves the masters of such risks. But, as one expert admits, “zero risk” is a non-existent situation: “the idea of risk weakens causal bonds, but in so doing it does not make them disappear. On the contrary; it multiplies them. ...To consider danger in terms of risk is necessarily to admit that one can never absolutely protect oneself against it: one may manage it, tame it, but never annihilate it.” It is in its permanence in the system that risk is an ideal tool for affirming new forms of power, to the benefit of the growing stranglehold of devices on collectives and individuals. It eliminates everything that is at stake in conflicts by obligatorily bringing individuals together around the management of threats that are supposed to concern all of them in the same way. The argument that THEY would like to make us buy is as follows: the more security there is, the more concomitant production of insecurity there must be. And if you think that insecurity grows as prediction becomes more and more infallible, you yourself must be afraid of the risks. And if you’re afraid of the risks, if you don’t trust the system to completely control the whole of your life, your fear risks becoming contagious and presenting the system with a very real risk of defiance. In other words, to fear risks is already to represent a risk for society. The imperative of commodity circulation upon which cybernetic capitalism rests morphs into a general phobia, a fantasy of self-destruction. The control society is a ~~paranoid~~ [fearful] society, which easily explains the proliferation of conspiracy theories within it. Each individual is thus subjectivized, within cybernetic capitalism, as a Risk Dividual, as some enemy or another [a “whatever enemy”] of the balanced society.

It should not be surprising then that the reasoning of France’s François Ewald or Denis Kessler, those collaborators in chief of Capital, affirms that the Providential State, characteristic of the Fordist mode of social regulation, by reducing social risks, has ended up taking responsibility away from individuals. The dismantling of social protection systems that we’ve been seeing since the start of the 1980s thus has been an attempt to give responsibility to each person by making everyone bear the “risks” borne by the capitalists alone towards the whole “social body.” It is, in the final analysis, a matter of inculcating the perspective of social reproduction in each individual, who should expect nothing from society, but sacrifice everything to it. The social regulation of catastrophes and the unexpected can no longer be managed by simple social exclusion, as it was during the Middle Ages in the time of lepers, the logic of scapegoating, containment, and enclosure. If everybody now has to become responsible for the risks they make society run, it’s only because they couldn’t exclude so many anymore without the loss of a potential source of profit. Cybernetic capitalism thus forcibly couples the socialization of the economy and the increase of the “responsibility principle.” It produces citizens as “Risk Dividuals” that self-neutralize, removing their own potential to destroy order. It is thus a matter of generalizing self-control, a disposition that favors the proliferation of devices, and ensures an effective relay. All crises, within cybernetic capitalism, are preparations for a reinforcement of devices. The anti-GMO protest movement, as well as the “mad cow crisis” of these last few years in France, have definitively permitted the institution of an unheard of tracking of Dividuals and Things. The accrued professionalization of control — which is, with insurance, one of the economic sectors whose growth is guaranteed by cybernetic logic — is but the other side of the rise of the citizen as a political subjectivity that has totally auto-repressed the risk that ~~he or she~~ [they] objectively represents. This is how Citizen’s Watch contributes to the improvement of piloting devices.

#### The alternative is to embrace speculation through a machine epistemology. As computation becomes intermingled with whiteness, the response is to create moments of dissonance -- ruptures in planetary computation.

CCB 21, a collective of researchers and writers working between technology and culture, computer science and information theory, aesthetics and politics. The members—Luciana Parisi, Ezekiel Dixon-Román, Tiziana Terranova, Oana Pârvan, and Brian D’Aquino—are situated in the US, the UK, and Southern Italy, and engage with networks spanning several continents to intervene in the techno-politics of racial capitalism and its recursive regeneration. (Critical Computation Bureau, “Editorial—“Dialogues on Recursive Colonialisms, Speculative Computation, and the Techno-social””, e-flux Journal, issue 123, https://www.e-flux.com/journal/123/438467/editorial-dialogues-on-recursive-colonialisms-speculative-computation-and-the-techno-social/)

Working in the strange attraction between speculative approaches, critical theorizations, and imaginary practices, this issue also asks how a technology or machine epistemology constituted by the entanglement between racial capitalism, recursive colonialisms, and computation can still overcome the overrepresentation of Man or Promethean cosmogonies. How does machine epistemology also allow for futures that run counter to a mere feeding into and from techno-social networks? In this procedure of abstraction, which could be called socio-technical or techno-sociogenic, the iterability of techno-signs through the flesh discloses the possibilities of otherwise languages, otherwise worlds, otherwise cognitions. If machine epistemology depended only on the cognitive extension or prosthetics of the brain’s neural networks, it would be just another version of the Promethean project of the mastery of tools. Machine epistemology does not articulate cognition in terms of embodiment in an environment, but rather in terms of a form of cognition. This entails a possibility for a techno-semiosis whereby the flesh at once remains and becomes the medium of the world and as such becomes a techno-sign of cultural formations. We have thus become aware of how the socio-technical or techno-sociogenic can inherit existing cosmogonies, not in a deterministic or imitative way, but through its iterability. But if techno-sociogenic flesh is shaped by repetition with alterity, it also takes on a mix of cosmogonies to make something else.

What we call “cosmo-computation” entails a fully automated recursive system for which there is supposed to be no human-in-the-loop. This term applies Yuk Hui’s concept of cosmotechnics (which calls for a technical mediation between metaphysics and cultures that do not conform to the universal standardization of knowledge) to the cognitive paradigm of technology by asking what it would mean to experiment with auto-imaging multiple ontologies and multiple metaphysics through computation. But cosmo-computation still maintains the specter of whiteness and intensified legacies of racial capital within itself. These are legacies whereby computational schema cannot erase anti-blackness or the brutalities and techno-semiotic hieroglyphics marked in flesh. In other words, cosmo-computation must also work on the cyber-mechanics of the machine in relation to slavery, to take on and step outside the dialectic of the human and the thing.

But how to run with cosmo-computational epistemologies without risking a reinforced universal logic or another plea to techno-cultural difference in the name of multiculturalism? What critical space is left to counter-actualize the recursivity of this double pincer that simply conceals the monologic discourse of self-determination through a proliferation of dualities? How can cosmo-computation—as a procedure of existing as techno-flesh—become a way to construct worlds from the heretical rules of what Denise Ferreira da Silva calls “difference without separability”?

Cosmo-computation does not coincide with any reclamation of the modern history of technology that starts from the local, the periphery, or the colonies of the West. Its critical possibility lies in exposing the operative power of the universalism-multiculturalism double pincer in preserving the overrepresentation of Man. This critical moment is undoubtedly haunted by the “continuous present” (Fred Moten) of the brutalities of racial capitalism, colonialisms, and slavery. Thus, it must also become surrounded by practices of fugitivity, by speculative moments, methods, and activities that spring out of the negative negation (da Silva) of the slave, the refugee, the woman, the immigrant, the trans through the existence of otherwise techno-flesh that refuses the saving promise of Promethean Man.

Our proposition is that machine epistemology, as a cosmo-computational affair, must not only challenge the view of techno-capital but also the human form. Within the history of machine epistemology, industrial capital took on the prototype of automation, replacing the archetype of enslaved labor. With the invention of the robot, the enslaved became enfleshed in machines as much as machines became the hosts of already brutally wounded flesh. Even if this modern form of recursive epistemology extended colonial mentalities into the model of global ecologies of extraction and commodity exchange, it had already voraciously incorporated into techno-capital an irreversible contagion that infiltrated the cosmogony of Man and his belief in the bio-economic myth of evolution.

From this standpoint, it seems essential today to not separate the critical from the speculative moment. Speculation is not the opposite of critique, but rather the whirlwind, the spiral, the vortex, the invaginations of critique inside-out. In the critical there is always the possibility of the speculative. As such, cosmo-computation can also be a space of transversal epistemological possibility whereby otherwise cosmogonies are not originated by, from, or against Promethean Man, but are rather ante-universal patterns, fractal algorithms that come before and run beneath, alongside of, and break across the pattern.

The dialogues in this issue are both critical and speculative interventions into practicing cosmo-computation as thinking with “difference without separability” and venturing into how AI—from expert systems to machine learning to interactive computational languages—contributes to defining what computational epistemologies can do. As much as recursivity preserves the iterability of functions and constitutes the structural parts of an overrepresentational whole, it also maintains a rhythm that is out of sync with itself, an atonality or dissonance in the beats. This out-of-sync rhythm and computational dissonance are the reverberations of a haunting that is not a trace of what was and no longer is, but rather tells us of the rhythm that stands apart. It tells us what exists within its elemental functions of counting infinities and of assembling together what falls out of patterns of recognition.

What recursivity therefore entails is how the complexity of critique and speculation cannot be separated into two forms—into models or paradigms that are in contradiction or that fall into a linear order. Recursivity tells us that critique and speculation can happen at once—multiple times in space and multiple spaces in time. But this simultaneity also demarcates the interlayering of techno-flesh in the ongoing project of Promethean cosmogonies that have returned across and within the computational forms of colonialisms and racial capitalism.

Speculation therefore works from within critique through the iterative moments exposing the continuous performance of anti-blackness and the renewed conjunctures of auto-poiesis that obliterate difference. From the techno-surrogacy of intelligent flesh to the necropower of planetary computation to the biopolitics of debilitation and the modulations of slow life/death, modes of haunting return to expose the 0 value of blackness across stateless and dispossessed realities of techno-social practices around the globe. What the enfleshed machine can do is to explode within recursive procedures of disability and debilitation anytime and everywhere.

## Case

### 1NC Solvency

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

#### 1. They don’t solve ag mergers

#### a. consolidation has happened—their impacts are about the problems with consolidated ag in the squo—the aff isn’t reverse causal: it doesn’t break up corporations

#### b. The aff doesn’t mandate an interpretation that includes *threat of loss of profits*—that’s key

1AC Tam and Bielskis 21, Kristen, BA, Environmental Science Policy, University of California, Los Angeles, Olivia, BA, Political Science & Human Biology and Society, University of California, Los Angeles, "Stimulating Antitrust Enforcement to Expand the Regenerative Agriculture Movement," 2021-04-01, <https://escholarship.org/uc/item/0m16g2r5>

IV. Recommendations

In order to uphold competition in the marketplace, the Courts and federal regulation agencies must take deliberate action against mergers that will inevitably have profound effects on long-term competition. In order to address prong one, where the Courts have not erred on the side of precaution and have not granted antitrust injury to parties that claim “the threat of loss of profits due to possible price competition,” the Courts should interpret American antitrust laws with Congress’s intent to protect competition, rather than through the lens of consumer welfare, a strategy that has failed to uphold empirical integrity, seeing as consumer prices have risen.110 Specifically, they should interpret Section 16 of the Clayton Act to allow for antitrust injury to include the threat of loss of profits due to possible price competition following a merger. Not only will this rightfully decrease the barrier to bringing forth an antitrust injury, but it will bring precedent back into alignment with the purpose and intention of the Clayton Act and prevent further consolidation in the agriculture marketplace.

#### c. “presumption”—the plan doesn’t make mergers impossible, just harder

#### d. corporate financing—(KU YELOW)

Merkle et al 21 (Magnus Merkle, School, l of Geosciences, The University of Edinburgh, Institute of Geography, Dominic Moran, Global Academy of Agriculture and Food Security, University of Edinburgh, Frances Warren, School of Geosciences, The University of Edinburgh, Peter Alexander, School of Geosciences, The University of Edinburgh, “How does market power affect the resilience of food supply”, Global Food Security, Vol. 30, September) DB

Food systems are characterised by vertically integrated and increasingly global commodity supply chains. In such systems, regional shocks can quickly cross geographies, causing price spikes and shortages for consumers. Shocks can be caused by a wide range of events, including extreme weather, unsustainable agricultural practices, political crises affecting trade, and pandemics (Bailey et al., 2015; Bakalis et al., 2020; Hamilton et al., 2020). Supply chain configuration can mitigate or exacerbate the associated risks to food supplies. Systems that are resilient have the capacity to maintain food supply in spite of unforeseen disturbances (Tendall et al., 2015). One characteristic of global food supply chains is the concentration of market power, which can emerge from consolidation through mergers and acquisitions assisted by the availability of alternative forms of corporate financing. Power imbalances are manifest in many food supply chain relations (ETC Group, 2015; Hendrickson, 2015; iPES Food, 2017; Renwick, 2012; Swinburn, 2019; Woodall and Shannon, 2018), and a split between corporate ownership and control can create tension between consumer and supplier interests, and those of often-remote shareholders. The power and influence of large companies in the food system has been likened to the role of “keystone species” crucial to the function of ecosystems (Österblom et al., 2015). This ecological analogy leads to the examination of the role of such actors in system resilience. More specifically, how their dominant position affords more or less resilience to other actors and to the overall system. While market concentration and elevated power of individual firms is critically framed in some food system literature, there is little systematic understanding of the effects that market power can have on the resilience of food supply. Literature on indicators of food system resilience (Cabell and Oelofse, 2012; Speranza et al., 2014; Tendall et al., 2015) overlooks the role of market power. Economic literature (Bakucs et al., 2014; McCorriston, 2013; Weldegebriel, 2004) focuses on short-term price movements, without considering resilience or wider adaptive capacity. Most studies either only consider one aspect of market power (e.g. Bakucs et al., 2014 considering market concentration), or else offer no explicit definition of market power (e.g. Woodall and Shannon, 2018). Sexton and Xia (2018) are an exception in considering a range of defined aspects of market power, and their potential effects on agricultural supply chains. Building on economic and socio-ecological systems literatures, we consider how market power affects supply chain resilience to external shocks. We also draw on experience from recent food supply shocks in the UK, a country that is considered to be threatened by “inherent systemic risks”, with 50% of its domestic food sales dependent imports (Benton et al., 2017). The UK also has a recent history of government inquiries into alleged anti-competitive market practices (see CMA, 2019). We outline a differentiated conceptualisation of market power for food system resilience research, and speculate on ways to improve the adaptive capacity of food systems. We first derive working definitions of resilience and market power from the literature. The resilience implications of different dimensions of market power is then analysed, using literature from multiple disciplines and cases from the UK. We end with a reflection on regulatory needs. 2. Resilience and market power The focus on the resilience of food supply arises as a desirable attribute of food systems and concern about food security more generally. This is particularly so when food systems are subject to an increasing array of foreseen and unforeseen shocks. Conceptually, resilience has roots in engineering as well as in ecological literature, which focus on the equilibrium of complex systems and the thresholds that define the boundaries of stable and unstable dynamic systems. Although resilience is defined differently by several disciplines (Thorén, 2014), it is commonly viewed in conjunction with the concept of vulnerability (Nelson et al., 2007). An early definition of system resilience is the dynamic ability of systems to persist in a functional way (Holling, 1973), which can also be termed as the capacity “to continue providing a function over time despite disturbances” (Tendall et al., 2015). Helfgott (2018) suggests specifying this function in terms of resilience of what, to what, for whom, and over what time frame. Following this suggestion, the focus of this study is on the resilience of food supply to external shocks for consumers, over the short to medium time frame. A similar focus on food supply is adopted by Tendall et al. (2015), who define food system resilience as. “the capacity over time of a system and its units at multiple levels, to provide sufficient, appropriate and accessible food to all, in the face of various and even unforeseen disturbances”. Food system resilience has been described as the stability dimension of food security (ibid.). It is also possible to frame system resilience from a perspective of environmental sustainability, or producer livelihoods, which imply a different focus and metrics. Resilience at one end of a supply chain does not always imply resilience at the other points in the chain, and it is important to consider conflicts and trade-offs that can appear (Oliver et al., 2018; Zurek et al., 2020). It is also important to consider larger-scale interactions between consumption, production and ecosystem services, which are all part of the same complex socio-ecological system, hierarchically linked through ecological and economic dependencies and systemic feedback loops (Nyström et al., 2019). A persistently stable food supply is thus underpinned by the sustainability of the whole system. Indicators for resilience in socio-ecological systems include capacity buffers, redundancy, flexibility, diversity, and the right balance between cooperation and autonomy (Cabell and Oelofse, 2012; Speranza et al., 2014). Resilience implies a system's capability to deal with change, namely (1) through system persistence, (2) through incremental system adjustments, or (3) through more fundamental transformational change to maintain a system's function (Doherty et al., 2019). These capacities have been reinterpreted as (1) Robustness to resist disruptions, (2) Recovery, the ability to return to a desired state following disruption, and (3) Reorientation, the ability to change to a different state in order to maintain the function despite the disruption (GFS-FSR, 2019). These three capacities can be conflicting, i.e. a highly robust system might lack capacity to change fundamentally and vice versa (Doherty et al., 2019). Market power refers to the influence of a firm (or a group of colluding firms) over its customers or its suppliers, which increases in less competitive markets (White, 2013). Power can be associated with different and sometimes interrelated causes, including (1) market concentration, for example in the current market for smartphone operating systems largely dominated by two firms, (2) cooperation and collusion between firms, for example in case of an oil oligopoly manipulating oil prices, (3) rigid contracts, for example when a supplier is locked into a contract preventing a change of business partners, (4) exclusive rights or unique products, for example when a firm owns an important patent providing it with a unique technology, or when consumers consistently consider a firm's product more desirable than comparable products by other firms; or (5) infrastructure and size, for example when economies of scale have enabled a firm to grow significantly larger than others, preventing rivals from competing in terms of handling capacity and cost advantage. In each case the extent of actual power and anti-competitive practice can be contested because of data challenges that hamper estimation (Sexton and Xia, 2018; Swinnen and Vandeplas, 2010), and the fact that market concentration indicators are not always indicative of market power (Adajar et al., 2019). Power can be deployed subtly and is difficult to measure as it does not always manifest in the same way. Firms can exercise power for different objectives, including the maintenance of supernormal profits, which is often considered socially detrimental in terms of consumer and producer welfare relative to perfectly competitive markets. In practice, power can enable a variety of outcomes that are tied to questions of accountability, agency, and contracts. In some cases, market power can enable higher levels of consumer welfare (Williamson, 1968). 3. Resilience implications of market power 3.1. Market concentration and vulnerability Market concentration can increase the power of individual firms, as suppliers and customers have fewer alternative firms to do business with. Concentrated markets in the food system include the global agricultural inputs market, where Bayer-Monsanto, Dow-Dupont, ChemChina-Syngenta, and BASF control 70% of the market (DeCarlo, 2018), or the UK retail market, where Tesco, Sainsbury's, Asda, and Morrisons control 67% of the market (KANTAR, 2020). In earlier studies, market concentration has been related to low levels of diversity and redundancy, and thus vulnerability to shocks (e.g. Hendrickson, 2015; Rotz and Fraser, 2015). The rationale is that a disruption hitting one dominant firm, will have more severe consequences for the food system, and low firm diversity is therefore expected to lead to systemic vulnerability. Market concentration at some levels can nevertheless coexist with system (functional) diversity elsewhere. A concentrated retail market, for example, is not necessarily vulnerable to supply disruptions if its upstream supply base remains diversified. Furthermore, a firm can have numerous subsidiaries, contractors, regionally distributed business locations, and functionally independent divisions and operations. Drucker (2010) makes an important distinction in emphasising the difference between economic diversity as “variety of heterogeneous activities comprising an economy at a specific time”, and industrial concentration as “the extent to which the economic activity of an industry or industrial sector is accounted for by one or a few large firms”. Garmestani et al. (2006) highlight that functional richness and functional diversity are central attributes of resilience and these do not necessarily correlate with market concentration. Vulnerability to shocks is associated with homogenous processes that are not robust, have low capacity of recovery, or for reorientation. A lack of diversity on a functional level can impair redundancy and therefore impair resilience (Cabell and Oelofse, 2012). Accordingly, food system resilience assessments need to specifically consider diversity at the functional level rather than only at the level of the market. 3.2. Firm size: a trade-off between infrastructure and flexibility? Power concentrated in fewer larger firms can often imply larger infrastructure and varying flexibility to address shocks. The last UK food security assessment noted that large conglomerates such as Cargill, Archer Daniels Midland and ConAgra help to safeguard supply by managing contracts and providing knowledge, capital, and infrastructure (DEFRA, 2010). This suggests that economies of scale, itself conducive to market power, can be beneficial for the resilience of food supply in terms of providing ability to handle bulk (Garmestani et al., 2006). Size might also be an asset in case of a regional crisis, when access to global infrastructure and strong logistics enable a firm to divert supply between production regions. In contrast, some have argued that large organisational structures can reduce the reactive flexibility to a shock, compared to smaller more diverse actors that are more flexible and reactive when conditions change (Garmestani et al., 2006; Hendrickson, 2015). When the hospitality sector was closed during the Covid-19 pandemic, for example, several small farms swiftly redesigned their business model to supply directly to consumers (Farming UK, 2020). Socio-ecological systems literature considers flexibility as a central prerequisite to be able to deal with changes (Nelson et al., 2007). Size can therefore imply a resilience trade-off between infrastructure and flexibility. Garmestani et al. (2006) suggest that industries with firms of varying sizes (i.e. some are big and some are small) might be the most resilient as they combine both capacities. 3.3. Conflicts between efficiency and resilience Economic theory suggests that reduced competition leads to lower production levels, economic efficiency and welfare, because the profit-maximising quantity in a non-competitive market is lower than in a competitive setting (White, 2013). However, when considering resource extraction and external costs, a less competitive “slower race” might enable more sustainable practices (Crona et al., 2016). Natural resource literature has shown that resource exploitation rates can be lower when competition is reduced (Solow, 1974; Stiglitz, 1976). When it comes to resource depletion and external costs, the advantages of imperfect competition may therefore offset its disadvantages. A similar efficiency vs. resilience trade-off is evident along supply chains. Efficiency, as defined in a competitive market, implies that slack or redundancy is minimal. Capital and other resources are fully employed, leaving little leeway to buffer disruptions. However, the ability to mitigate a shock impact requires some form of leeway, for example financial capacity to offset price fluctuations caused by a disruption in production. If this capacity to mitigate shock impacts results from additional profit margins due to market power, the higher prices for consumers or lower prices for producers could be considered as a resilience ‘insurance premium’ at the expense of sector efficiency. Price-buffering behaviour happens in the potash industry, where the dominant legal cartel has been able to maintain price stability despite frequent supply shocks (Gnutzmann et al., 2019). An illustrative case in the UK food system was the weather-induced Southern European vegetable shortage in 2017, where financial capacity enabled packers and retailers in the UK to maintain the supply of lettuce to consumers by contracting American producers at higher freighting costs (BBC Radio 4, 2018). However, as shown by price transmission research (Lloyd, 2017), a firm may not automatically make use of this buffering ability. McCorriston et al. (2001) as well as Weldegabriel (2004) analysed whether elevated profit mark-ups due to market power generally absorb price fluctuations, and concluded that this depends on assumed demand and supply elasticities. Without knowing firm-specific incentives, price transmission models are therefore ambiguous as to whether elevated profit mark-ups increase the resilience of food supply. 3.4. Costs and benefits of power imbalances Market power for any supply chain actor typically comes at the cost of reduced freedom and autonomy for other supply chain actors. If producers are dependent on a powerful buyer, a large part of their decision-making control is passed on to the buyer, who can now dictate rules and conditions for their business relationship. The impact of power imbalance on food system resilience is completely dependent on the powerful firm. Power can enable firms to act as positive change makers, for example, though the promotion of sustainable production practices (Folke et al., 2019; Rueda et al., 2017) or through the promotion of robustness in agricultural landscapes to better be able to withstand shocks (Macfadyen et al., 2015). Powerful retailers can also shape consumer attitudes and inform about environmental issues associated with certain food, in order to incentivise sustainable production and possibly higher resilience of ecosystems (ibid.). However, without accountability for social or environmental consequences, powerful retailers can be detrimental. An example are the North Sea cod crises of 2006 and 2019, where stocks fell below safe biological levels (MSC, 2019). As retailers diverted to Atlantic cod to offset the domestic shortage, consumers remained unaffected and unaware of the acute ecosystem depletion in the North Sea (Crona et al., 2016). Power in the supply chain structure prevented the price signal from signalling scarcity (Crona et al., 2016; Nyström et al., 2019). The cod crisis is an example for how continued supply at the consumer end can coincide with an undermining of resilience at the individual ecosystem and producer level. It can also be framed as an information failure wherein powerful firms fail to a transmit information about ecological impacts and, by extension, to promote ecosystem resilience. Similarly, if powerful firms systematically withhold information, knowledge and technology, they impair the adaptive capacity of other firms (iPES Food, 2017). Power imbalances can create both winners and losers, as they shift vulnerability to where there is least power in the supply chain. The combination of downstream competition (i.e. competition amongst retailers) with upstream buyer power (i.e. power of retailers towards suppliers), for example, may reduce consumer prices and hence be beneficial to ensure consumer access to food (Swinnen and Vandeplas, 2010; Zhao, 2019), but at the expense of producers who may be exploited (iPES Food, 2017). An example was the BSE crisis in 1996, when UK beef exports were stopped, and domestic beef consumption decreased drastically over concern that eating beef could lead to fatal Creutzfeldt-Jacob Disease. Using their buyer power, UK retailers reduced the prices paid to livestock farmers by twice the level of the decrease in retail prices, taking advantage of a shock to make additional profits at the expense of producers (Competition Commission, 2000; Lloyd et al., 2003). Beef producers were made doubly vulnerable due to the combined effects of BSE and their lack of bargaining power. Suggested indicators for agroecosystem resilience include social self-organisation, calibrated connectedness, global autonomy and local independence (Cabell and Oelofse, 2012). Dependencies, in contrast, reduce the ability of individual firms to act according to their own locally specific knowledge to adapt to changed circumstances (Hendrickson, 2015; iPES Food, 2017). If power imbalances imply low autonomy and reduced ability along the supply chain to react to changes, the net impact of power imbalance on resilience of food supply may be negative. 3.5. Competition vs. cooperation Collusion between firms increases their joint power in a market and is usually regulated by competition authorities to control any exploitative behaviour. In a crisis however, cooperation can increase capacity to maintain food supplies to consumers, because infrastructure, resources, logistics, and knowledge can be shared. Cooperation can enhance resilience, as long as cooperating firms face incentives to act in a benign way. Cases showing how cooperation increases both resilience and efficiency have been found in seafood supply (Nyström et al., 2019), pork supply (Leat and Revoredo-Giha, 2013) and UK retailer supply networks (Duffy and Fearne, 2004). The collaboration-competition tension was also illustrated during the Covid-19 pandemic, when the UK government relaxed competition laws allowing retailers to collaborate to address distribution challenges (UK Government, 2020). Concerns about the fine line between cooperation and collusion have nevertheless been raised (BBC, 2020). Sykuta and Cook (2001) observe that ownership structure of a firm can be a factor in the extent of cooperative contracting. If so, then the question of the distribution of power (i.e. who holds the firm) is an important corollary to resilience outcomes. A comparison of investor-owned and producer-owned firms illustrates how cooperative contracting between producers is more efficient than contracting in which distrust between the parties leads to an incentive to withhold information (ibid.). Producer ownership creates accountability towards producers, which can be an incentive to act in a resilience-promoting way. This was illustrated by a case from the UK milk supply chain in winter 2018, when cold weather conditions interrupted logistics and UK dairy farmers were forced to discard thousands of litres of milk that could not be collected (Perrett, 2018; Yates, 2018). Although this milk did not reach supermarkets, big co-operatives such as Arla continued to pay farmers for their production (ibid.). This decision to support producers is an example for producer risk diversification through cooperation, as Arla is owned by 2500 farmers (Perrett, 2018). However, the line between voluntary cooperation based on trust and involuntary cooperation based on coercion is difficult to determine (Dapiran and Hogarth-Scott, 2003), and power imbalances can prevail in cooperative and competitive systems. Regulatory scrutiny may sometimes find this distinction hard to detect. 4. Regulating for resilient food systems Resilience has been assumed as an emergent property of largely self-regulating market structures that comprise the food system in many countries. However, there is no guarantee that self-organisation, shared underlying infrastructures and other information flows between actors configure to generate a socially optimal compromise between lowest possible consumer prices and resilience to exogenous shocks. This includes stability of food supplies, plus consideration of other environmental and health external costs that might reasonably be expected of a system that seeks to promote sustainable production and consumption or a “whole society approach to food” (Lewis, 2020). The dominant food system in the UK is arguably focused predominantly on financial returns to shareholders, an objective that is not always convergent with this broader scope of resilience or transparent stewardship of the natural resource base on which it depends (Clapp and Isakson, 2018). As with the financial system at the time of the global financial crisis of 2007–2008, risk taking – arguably amplified by market power – is largely sanctioned by current regulation on the presumption that internal incentives align with broader social goals, and that the system has an in-built incentive not to fail. This presumption is an article of faith, both untested and risky. Notwithstanding largely coping with the recent stress-test from COVID-19 (Moran et al., 2020), there is nothing intrinsically self-correcting about current systems, which are responsible for a significant burden of national health and environmental externalities (Afshin et al., 2019; Springmann et al., 2018). Some have suggested that voluntary market discipline, corporate responsibility initiatives, and spontaneous collective action by some market participants, could correct detrimental social and environmental impacts. However, this notion has not been proven to be very reliable (Jones and Nisbet, 2011) and there are no market mechanisms to drive corrective actions to market failure. Expecting the delivery of a public good – resilience – by a system in private hands and increasingly concentrated in structure may therefore be hazardous. Regulation is a response to market failure. Current food system regulation largely monitors and controls some aspects of market power and the maintenance of food safety, the latter a credence attribute of food and therefore associated regulation is a public good function. If resilience is a public good, then there is a need for more regulation and research beyond market power and food safety, to understand risks and to untangle the additional elements of responsibility and agency of both private and public sectors with regards to resilience. 5. Conclusion Interest in food system resilience has increased in the wake of several regional and global crises, which have revealed systematic vulnerabilities that can be both amplified and neutralised by the presence of market power in parts of the supply chain. Power relations are not extensively discussed in resilience literature, and resilience is not extensively discussed in economic literature. Efficient markets constituted by profit-seeking actors have no built-in mechanism to deliver resilience. We highlight that some aspects associated with market power, such as infrastructure, financial capacity, and cooperation can be enablers for enhanced resilience in times of crisis. We equally highlight the need to consider how resilience can be jeopardised when the interests of dominant powerful firms are not aligned with societal interests, and when detrimental environmental and social effects are not regulated for. In such circumstances, risk is amplified by power imbalances. The provision of resilience – as a public good attribute of a system that is largely in private hands – potentially calls for wider scope of regulation that scrutinises elements such as functional diversity, flexibility, efficiency/redundancy trade-offs, autonomy, cooperation, agency and the regulation of environmental impacts to make firms accountable. This gets us nearer to whole society approach to food governance, suggested by some commentators.

#### e. narrowed PSA (Packers and Stockyards Act)

1AC Judge and Belkin 2020

[Patty, Iowa Lt. Governor and Iowa Secretary of Agriculture and serves currently as Co-Chair of Focus On Rural America, and Aaron, Director, Take Back the Court, “The Supreme Court Has Undermined Iowa’s Small Farms and Rural Communities”, <https://static1.squarespace.com/static/5ce33e8da6bbec0001ea9543/t/5e28472acbf4145143979997/1579697963585/Supreme+Court+Has+Undermined+Iowa%27s+Small+Farms.pdf>]

We show in this study that courts have not only upheld anticompetitive integration in the meatpacking industry, but have also dismantled the protections afforded to small farmers by the PSA. Three factors, in particular, warrant consideration. First, the PSA was intended to prohibit a monopoly in the meatpacking industry, but courts have held that corporate consolidation is not a violation of the PSA. Second, the clear language of the Act’s broad prohibitions has been reinterpreted by courts to apply only to clearly egregious cases, thus allowing systemic yet subtle anticompetitive behavior to flourish. Finally, courts have failed to properly apply the PSA to contracts between small farmers and large corporations, even when contractual terms expressly violate the Act. Many small farmers have challenged the dismantling of the PSA, but the Supreme Court has, without exception, denied them a hearing, thus ignoring the ways that lower federal courts have reshaped the law to favor agribusiness at the expense of local farms. The decisions of the Supreme Court and lower federal courts have resulted in the consolidation of agricultural industries, leaving small farms and rural communities unprotected from hardship.

#### 2. Even if they do solve ag merger rules,

Kelloway 20—(\*BA in political science from Carleton College; \*\*JD from Duke University, published in the Berkeley Business Law Journal, Harvard Law & Policy Review, and Nebraska Law Review; \*\*\*JD from Pennsylvania State University). \*Claire Kelloway, \*\*Sandeep Vaheesan, \*\*\*Zachary Burley. September 2020. “Redeeming the Democratic Promise of Agricultural Cooperatives”. Open Markets Institute. https://www.openmarketsinstitute.org/publications/redeeming-the-democratic-promise-of-agricultural-cooperatives. Accessed 6/9/21.

This paper explores whether and how a combination of increased antitrust enforcement and reform of the laws governing farmer co-ops can rebalance agricultural markets in ways that serve the public interest. In general, it finds that the answer is yes, particularly if these reforms are combined with the restoration of policies to manage the surplus supply of agricultural commodities.13 But the solution depends on keeping market power dispersed among many competing players, including cooperatives. It also requires stronger guidelines and public support to restore healthy, democratic governance within co-ops.

The principles at issue have larger applications. While this paper primarily focuses on agricultural marketing cooperatives, today it is not just farmers but also growing numbers of independent producers, contract workers, and smaller-scale business owners who need to cooperate with one another, as the markets they buy from and sell to become increasingly monopolized.14 The struggles of family farmers to work cooperatively in the face of giant agribusinesses parallel the struggles of Uber drivers and third-party venders on Amazon to organize and bargain collectively. Legislators, regulators, policymakers, advocates, and especially those who produce goods and services will find new relevance in understanding how anti-monopoly laws have historically intersected with cooperative enterprise to lessen structural inequalities and serve other beneficial public purposes.15

II. Cooperatives in the Early Anti-Monopoly Movement

A strong anti-monopoly movement emerged in the 1880s primarily in response to the growth of agribusiness and railroad monopolies.16 Organizations such as the Grange and the Farmers Alliance pressed for the breakup or tight regulation of giant "trusts" and for prohibitions on collusion among large, investor-owned corporations in setting wages, prices, and other terms of trade. Equally important to the agenda of this anti-monopoly movement were calls for increased coordination and cooperation among small-scale producers such as farmers and workers, both as a countervailing force against the market power of concentrated capital and as an alternative to financier-run and -dominated corporations.17 The Farmers Alliance and Knights of Labor, among others, promoted a long-term vision in which co-ops replaced corporations and democratized the economy.18

One of the earliest and most dramatic examples of this reform agenda was the founding of cooperatives to break the hold that investor-owned grain elevators had over Midwestern farmers. By banding together to build and operate their own elevators, farmers managed to increase the price they received for their grain by an estimated 6% to 12%.19

Cooperatives also sprang up among dairy farmers, who were also particularly vulnerable to concentrated downstream agribusinesses. High transportation costs and economies of scale meant that dairy processing plants tended to enjoy local monopolies, giving the proprietary firms that owned such plants a great deal of pricing power vis a vis farmers who sold them products.20 Farmers responded by coming together to market their milk collectively to privately owned dairy plants, or, in some cases, farmers collectively purchased and operated their own dairy plants.

Meanwhile, cooperatives such as the California Fruit Growers Exchange and the California Associated Raisin Company were formed to boost the market power of farmers by combining the production of hundreds or even thousands of farmers into a single business owned and controlled by farmers.21 Cooperatives also played a strong role as social movement builders; for example, local Grange halls provided opportunities for farmers to meet and build a sense of community across America’s sparsely populated regions.22

Much to their dismay, the antitrust legislation that Populist and Progressive reformers helped enact began to hinder this burgeoning co-op movement and, by extension, the very people whom antitrust was supposed to protect. When Congress passed the first federal antitrust law, the Sherman Antitrust Act of 1890, reformers hoped that its broad prohibitions on “restraint of trade" and on any and all attempts to "monopolize" markets would be used to bring criminal and civil cases against giant trusts such as Standard Oil.23 The act’s framers viewed combinations among capitalists and their corporations as fundamentally different from coordination among farmers and workers.24 In practice, however, the act was more often deployed against labor unions and farmers’ co-ops than corporate goliaths.25 In 1895, for example, Chicago-area milk distributors successfully sued a local dairy co-op by arguing that the co-op's insistence on an exclusive contract was an illegal restraint of trade under state antitrust law.26

This case exemplified how the courts could reinterpret the expansive language of the antitrust laws ("restraint of trade") to interfere with the right of small producers to coordinate with one another in setting output, prices, and terms of market entry. Hoping to bring greater clarity to antitrust law, Congress passed the Clayton Antitrust Act in 1914, which specifically exempted cooperatives from antitrust action so long as they did not sell stock and remained nonprofits.27 Congress also began passing annual appropriations riders that prevented the government from bringing antitrust actions against cooperatives for negotiating fair prices for farmers.28

Yet the legal status of cooperatives remained murky. When exactly did cooperation among farmers in controlling production quotas, prices, and distribution channels turn into illegal collusion? How could co-ops raise the capital they needed to compete with investor-owned agribusinesses, if they could not sell stock? What about co-ops that didn’t just seek higher prices for farmers but also engaged in food processing and distribution, whether through direct ownership or alliances with downstream businesses? What exactly was the difference between such a co-op and a cartel?

During the late 1910s and early 1920s, the courts were generally skeptical of the idea that cooperatives should operate free of antitrust enforcement.29 But state legislatures, with strong backing from rural constituents, passed legislation supporting the ability of cooperatives to engage in setting prices and other types of coordination.30 Meanwhile, at the national level, the cooperative movement enjoyed strong support not just among many Democratic and Republican Progressives, but also among conservative proponents of free enterprise.31

Congress offered legal clarity and strengthened the power of co-ops in 1922. In that year, a Republican Congress and president passed and signed the Capper-Volstead Act. This law provides farmers and ranchers broad protections to legally coordinate within cooperatives, regardless of whether they issue stock.

The authors of Capper-Volstead debated how best to allow farmer coordination while preventing the growth of new agricultural monopolies.32 The act empowers the secretary of agriculture to issue a cease and desist order if and when the government determines that a co-op has “unduly enhanced" the price of an agricultural product.33 But the law does not define what "unduly enhanced" means, and no secretary of agriculture has ever used this power.34 Furthermore, lawmakers were primarily concerned with cooperatives building monopoly power over large buyers, and did not take steps to address cooperatives’ potential buyer power over members, because it was presumed that cooperatives, by their very nature, existed to serve member owners.

Today, it is still not clear whether mergers between cooperatives are exempt from antitrust review, especially where buyer power over members is concerned.35 At a minimum, Supreme Court decisions have held that co- ops are subject to the Sherman Act's ban on monopolization or attempts to monopolize and that co-ops cannot join forces with non-cooperative entities to engage in restraint of trade.36 However, there’s leeway for non-farming entities to become co-op members and pursue similar ends.

Capper-Volstead contains no clear definition of which individuals or entities are allowed to organize cooperatives as "farmers, planters, ranchmen, dairymen, nut or fruit growers," though there's evidence that legislators did not intend for the law to cover food processors.37 The law is also vague about the rights of members and control over cooperative operations, only stating that cooperatives should be "operated for the mutual benefit of members," and adopt at least one of two principles: Either no members are “allowed more than one vote," or the co-op can "not pay dividends on stock or membership capital in excess of 8 per centum per annum."38

States have varying laws to regulate cooperatives. Similar to corporations, cooperatives are legal business entities chartered under state law. Some states have laws specifically governing agricultural cooperatives, and California even distinguishes among four types of agriculture cooperatives, whereas other states make no distinctions between co-op types and forms. All cooperatives must adopt and ratify legally enforceable bylaws, but only some states enumerate co-op members’ rights and obligations or other requirements for co-op bylaws.39 All cooperatives also must elect a board of directors, but only some states define specific board responsibilities. Oversight and transparency also vary. For instance, Wisconsin’s Department of Agriculture, Trade, and Consumer Protection has the authority to investigate the management of a cooperative and force disclosure of relevant management practices to members.40

Over the years, these federal regulatory ambiguities and state-level variations made room for large co-ops to adopt less accountable decision-making structures and to develop internal conflicts of interest among different members and different parts of their businesses. At the same time, Capper- Volstead freed farmers to build cooperatives into viable players in the agricultural economy, eventually becoming critical agents in New Deal farm and rural development policy. This history of how co-ops have or have not served farmers provides direction for reforming cooperatives today, as addressed in Part VII.

III. Cooperatives in the New Deal Era

Congress passed Capper-Volstead at a time when most American farmers were suffering. As European countries and their farm sectors recovered from World War I, American food exports fell sharply. Meanwhile, the emergence of giant national brands such as Kellogg’s, Birdseye, and Borden—and of giant grocery chains such as A&P—further eroded the market power of farmers, as a few, highly concentrated buyers turned farmers into price takers.41 At the same time, as John Deere and International Harvester tractors replaced horses and mules, and as chemical fertilizers, hybrid seed, and other new technologies came into use, farmers faced rising costs for inputs, while increasing yields drove down farm-gate prices.42 All these factors led to a deep depression across rural America, even as urban America prospered during the Roaring ‘20s.43

With the coming of the Great Depression, the plight of America's farmers only got worse. President Herbert Hoover attempted to stem the growing farm crisis by bolstering the resources and powers of cooperatives. He signed the Agricultural Marketing Act of 1929 to create a $500 million revolving federal loan program, administered by a newly formed Farm Board, which cooperatives could use to buy up surplus commodities and withhold them from the market until prices rebounded. Hoover saw support of cooperatives as strongly in the self-help tradition. In his mind, and in those of many other like-minded conservatives of the era, cooperatives helped foster the free enterprise system by allowing farmers to match the growing market power of larger agribusinesses.44

But as the Great Depression deepened, this approach alone proved inadequate to the task.45 Even when subsidized by federal loans, cooperatives were not able to fix the problem of overproduction because they ultimately lacked the ability to control output. Faced with this reality, President Franklin Delano Roosevelt during his first 100 days in office pushed through an Agricultural Adjustment Act (AAA) that created a federal supply management program to support crop prices. This program included the establishment of agricultural marketing agreements and orders. Each of these directives covered a single commodity, usually for a specific region, and set specific production quotas to prevent oversupply, taking the burden to move markets off cooperatives.

Conservative cooperative organizations steeped in the self-help tradition, such as the National Cooperative Council ( NCC), initially rejected the government interventions of the first AAA and viewed the bureaucracy it required as a competitor to cooperatives.46 But the NCC came to support subsequent versions of the AAA, which included expanded cooperative credit programs and permitted cooperative leaders to join elected farmer committees tasked with administering AAA marketing agreements and orders.47 In this way, cooperatives became vehicles for administering supply management programs. The 1937 Farm Security Administration (FSA) further promoted the development of cooperatives.48

These developments brought renewed strength to the cooperative movement during the following decades. Membership in agricultural cooperatives grew from 3.1 million to 3.4 million during the 1930s and then doubled to 7.1 million by 1950.49 In combination with other policies, the growth of co-ops contributed to a substantial increase in farmer incomes relative to the rest of the population. In 1934, the per person disposable income of people living on farms was 39% of the per person disposable income of all Americans. By the beginning of the 1970s, that ratio had increased to 100%.50

Cooperatives were particularly instrumental for Black farmers, who otherwise did not equally receive the benefits of—or worse, were displaced by—New Deal farm policy.51 In addition to FSA-supported cooperatives, which may have contributed to some moderate gains in Black Southern farmland ownership between 1940 and 1945, Black farmers sought to build power and circumvent discrimination by forming cooperatives during the civil rights movement (more below).52

IV. Consolidating Co-ops

During recent decades, the total agricultural business done by cooperatives has continued to increase. However, dramatic consolidation among co-ops has paralleled this growth, particularly since the 1970s. Even as co-ops did more and more business, there were fewer and fewer of them. Due primarily to mergers and buyouts, their number dropped from 6,445 in 1979 to only 2,186 in 2014, a decline of 66%.53 In the process, many larger cooperatives began to resemble the agribusiness firms that they were initially designed to combat, growing more distant from members and their interests, and leaving farmers with fewer buyers and less bargaining power once again.

This increasing concentration among co-ops occurred as the industries that co-ops deal with—including food processing, retailing, seed, and pesticide manufacturing, among others—were consolidating into much larger, investor-owned enterprises. Thirty agricultural chemical companies making insecticides, herbicides, and fungicides in the 1970s had merged by 2001 into only six. Concurrently, chemical companies bought up seed companies that had genetically engineered new plant forms that optimized the use of specific herbicides.54

These parallel processes of consolidation among co-ops and investor-owned firms occurred in the wake of a sea change in antitrust policy that started in late 1970s and accelerated during and after the Reagan administration. In this new paradigm, federal regulators and the courts issued new merger guidelines and reinterpreted antitrust laws in ways that made preventing mergers or breaking up monopolies very difficult.55 To appreciate the magnitude of the change in antitrust enforcement, consider that in the 1960s the Supreme Court ruled illegal a merger between two regional supermarket chains with a combined 7.5% market share in the Los Angeles metropolitan area.56 By contrast, the courts and federal regulators waved through 385 grocery mergers between 1996 and 1999 alone.57 The national market share of the top four grocery chains grew from 17% in 1994 to 40.3% in 2016.58

Courts and regulators have also for the most part stood by as many traditional farmer co-ops have grown into massive, integrated monopolies and oligopolies whose interests are not clearly and consistently aligned with that of their member farmers. Perhaps the most notorious example is Dairy Farmers of America. DFA was formed in 1998 as the result of a merger among four large dairy co-ops. At the time, as DFA's official corporate history explains, co-ops had to get bigger in order to compete: "As milk processors and grocers grew larger and more national in scope, it was clear that the regional structure of the traditional cooperative couldn't keep up."59

DFA would soon become far more than just a combination of traditional marketing co-ops. It soon integrated vertically into all aspects of dairy production. Not only did it come to control 46 manufacturing plants making everything from Dairy Pure milk to specialty coffee drinks, but DFA also struck deals to become the sole milk supplier for dominant milk processor Dean Foods in several regions.60 In these places, farmers had to either join DFA or sell through DFA controlled marketing agencies if they wanted to sell to Dean.61 Meanwhile, DFA's dominion expanded through its marketing arm, Dairy Marketing Services, into milk testing and trucking from farm to market.62 Before long, DFA Chairman Gary Harman was flying around the country in DFA’s corporate jet while collecting $31.6 million during his seven-year tenure with the cooperative.63

But the individual member farmers who nominally owned the co-op did not do so well. As DFA expanded into downstream businesses such as processing and distributing milk and milk products, the interests of DFA’s managers and its member farmers diverged. DFA's managers wanted to maximize the surplus revenue flowing to the enterprise—and, by extension, their own salaries and perks—by paying the lowest amount possible for the milk they bought for the food processing plants they controlled. In contrast, DFA’s members wanted the organization to maximize the prices farmers got paid for their milk. The members might have prevailed, had they been better organized and informed, but they were spread throughout the country and in most instances were working longer and longer hours to save their failing dairy farms as milk prices decreased. Ben Burkett, a produce and grain farmer and state coordinator for the Mississippi Association of Cooperatives, perfectly captures this dynamic between co-op members and management:

All farmers—regardless of what they raise—should be paid a fair price. A good cooperative will help their farmer members get fair prices, but many have become vertically integrated and act just like corporations, forgetting who supports them and for whom they’re supposed to provide services.64

In the case of DFA, many farmer members felt they had no other recourse for fair compensation but to bring lawsuits against their own co-op. In 2014, DFA paid $40 million to a group of Northeastern dairy farmers who alleged in their lawsuit that DFA had conspired with Dean Foods to lower milk prices in the Northeast. In a similar case in the Southeast, DFA agreed to pay $140 million to settle charges of conspiring with Dean Foods to eliminate competition from other milk buyers and reduce the farm-gate milk price. There are many instances of DFA coercing farmers to join DFA after the co-op bought up milk plants or supply contracts formerly held by different co-ops.65

#### 3. Even if immunity doesn’t block, cases dismissed for non-immunity 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).

#### c. “mergers”—the plantext doesn’t change acquisitions *at all*—they’re distinct

Hader and Syfert 99 (Stephen M. Hader, Esq.-B.A. 1984, State University of New York at Buffalo; J.D. 1987, Rutgers University. Mr. Hader is a partner in the International Division of Parker, Poe, Adams & Bernstein, LLP in Charlotte, North Carolina. Mr. Hader also served as General Attorney to the Immigration and Naturalization Service from 1987 to 1989. He practices in the areas of U.S. immigration and naturalization law. Scott D. Syfert, Esq.-B.C. 1990, The London School of Economics; B.A. 1991; The University of North Carolina at Chapel Hill; M.A. 1994, The University of Virginia; J.D. 1997, The University of North Carolina at Chapel Hill. Mr. Syfert is an associate in the International Division of Parker, Poe, Adams & Bernstein, LLP in Charlotte, North Carolina. He is involved in immigration, mergers and acquisitions, and general corporate law. “ARTICLE: The Immigration Consequences of Mergers, Acquisitions, and Other Corporate Restructuring: A Practitioner's Guide” , 24 N.C.J. Int'l L. & Com. Reg. 547, 24 N.C.J. Int'l L. & Com. Reg. 547, Spring, 1999, Lexis accessed online via KU libraries, date accessed 12/22/21)

A merger is not the same as an acquisition. In the M&A field, the term "acquisition" describes a transfer of ownership, generally of a corporation, by merger, stock or asset sale, or some combination thereof. 118 The term "merger," however, is a narrow technical term that relates to a statutorily created procedure in which two or more corporations or other entities combine into one. 119 A merger may or may not have anything to do with a corporate acquisition. A merger is one means by which an acquisition can be carried out.

## Advantage

#### K is an impact turn to their risk calculus and extinction logics – Emmelhainz describes that 1—circular nature of info production means aff is wrong and 2—fear of extinction is a motor behind white supremacy – that’s an independent reason to reject the team

# 2NC

### W/M

#### Advocates explicitly propose presumptions *in lieu of* prohibitions.

Kroll 16 (Kyle R. Kroll-J.D. Candidate 2016, University of Minnesota Law School; B.S.B. 2013, Carlson School of Management, University of Minnesota. NoteAnticompetitive Until Proven Innocent: An Antitrust Proposal To Embargo Covert Patent Privateering Against Small Businesses, 100 Minn. L. Rev. 2167, 2212. May, 2016. Lexis accessed via KU Libraries, date accessed 12/22/21)

Lastly, a blanket prohibition against the use of PAEs in patent litigation would probably not curb patent privateering. 290 First, it would be difficult for courts to determine if a company truly is a PAE or not, given the secretiveness of privateering arrangements. A court could employ the same criteria as listed in the proposed presumption in Section A, but if it did so, it might as well simply employ the presumption anyway. Second, benign uses of PAEs for litigation by inventors, universities, and small firms would be unjustifiably enjoined. 291 A blanket prohibition on privateering would thus be overly broad. Third, prohibition would still not solve the evidentiary difficulty of discovering the existence of a privateering arrangement or the identity of a sponsor. 292 Fourth, such a prohibition may violate Noerr-Pennington immunity, established by the First Amendment. A presumption, on the other hand, succumbs to none of these difficulties.

#### That’s due to being lighter

Parrish 8 (Austen Parrish- Vice Dean for Academic Affairs and Professor of Law, Southwestern Law School. J.D., Columbia University School of Law, 1997; B.A., University of Washington, 1994. The author is the Director of Southwestern's Summer Law Program in Vancouver, B.C., Canada, where he teaches courses in international and comparative law at the University of British Columbia. ARTICLE: The Effects Test: Extraterritoriality's Fifth Business, 61 Vand. L. Rev. 1455, 1470-1471. October, 2008.Lexis accessed via KU libraries, date accessed 12/22/21)

As territoriality lost its hold over law, 82 the prohibition against extraterritoriality weakened to a mere presumption. 83 Congress had [\*1471] the power to enact extraterritorial laws, but it was presumed not to have used that power in most circumstances. The development of the effects test, however, marked the beginning of the end for meaningful territorial limits on legislative jurisdiction.

#### They’re contextually distinct

Manne et al 18 (Geoffrey A. Manne (President & Founder, International Center for Law & Economics). Julian Morris (Executive Director, International Center for Law & Economics). Kristian Stout (Associate Director, International Center for Law & Economics). Dirk Auer (Senior Fellow, International Center for Law & Economics). “Comments of the International Center for Law & Economics on the Consumer Welfare Standard (Hearing No. 5)” , FTC Hearings on Competition & Consumer Protection in the 21st Century FTC Docket No. FTC-2018-0091 , <https://laweconcenter.org/wp-content/uploads/2019/01/ICLE-FTC-Hearings-CWS-Comments-12-2018.pdf> , December 31, 2018, date accessed 9/20/21)

Just as the CWS evolves to develop more nuanced analysis for conduct that was previously poorly understood and, therefore, subject to sub-optimal prohibitions or presumptions, the doctrine is also capable of growing in order to recognize more expanded claims, or to modify existing doctrine in light of new business practices. Under the CWS

antitrust law can replace rules that require detailed factual assessment of individual cases with simpler, more categorical rules, such as the per se prohibition of price fixing; the modified per se rule applicable to most tying arrangements under Jefferson Parish; presumptions such as those used in horizontal merger analysis: and abbreviated rule of reason standards which do not require plaintiffs to prove harm to competition. While antitrust law moved away from such short-hands in recent years, there is nothing about the [consumer welfare] paradigm that would preclude a movement of the pendulum in the other direction, as evidenced by past episodes of antitrust expansion in monopolization doctrine and enforcement policy.33

Recently, the Supreme Court took up just such a potential modification in Apple v. Pepper. 34 Apple v. Pepper emerged from a claim that Apple’s pricing model for its App Store violates US antitrust laws. The central dispute of the case is whether the Illinois Brick indirect purchaser doctrine35 — which limits standing in price fixing cases only to those parties directly injured, and prevents private actions by subsequent purchasers — can be used to prevent App Store users from suing Apple for its alleged anticompetitive pricing imposed on app developers.36 Those in favor of applying Illinois Brick to prevent the standing of users assert that — following Campos v. Ticketmaster in the 8th Circuit37 — it is the app developers themselves who are injured by the restrictive pricing (while users receive only a pass-through injury).38 Therefore, so the argument goes, end users do not have standing under Illinois Brick to bring an antitrust suit.

### AT: CI—TL

#### Presumptions can make bidirectional changes that weaken existing antitrust

Butler 84 (HENRY N. BUTLER, \*Assistant Professor of Management, Texas A & M University. B.A., 1977, University of Richmond; M.A., 1979, Ph.D, 1982, Virginia Polytechnic Institute and State University; J.D., 1982, University of Miami. W. J. LANE, \*\*Assistant Professor of Economics, Texas A & M University. B.A., 1974, Point Loma College; Ph.D., 1978, University of California, San Diego. and OWEN R. PHILLIPS \*\*\*Assistant Professor of Economics, Texas A & M University. B.A., 1974, Ph.D., 1979, Stanford University. ARTICLE: The Futility of Antitrust Attacks on Tie-In Sales: An Economic and Legal Analysis., 36 Hastings L.J. 173, 212-213, NOVEMBER, 1984, Lexis, accessed online via KU libraries date accessed 12/22/21)

Per se illegality is only appropriate when an act is certain, or almost certain, to create social losses. Furthermore, prohibition of an action must result in avoiding those losses at a reasonable enforcement cost. The Supreme Court, in maintaining its per se prohibition of tying, has chosen to ignore economists' well-reasoned attacks on the view that tying arrangements create monopoly power. Even if the Court's analysis of tying arrangements were correct, however, our analysis indicates that the per se prohibition of tie-in sales would not result in a significant increase in consumer welfare. The losses that allegedly result from tying arrangements are not avoided by a strict prohibition because firms shift their activities to different methods that are not illegal. Nonlinear pricing strategies, which are legally available to firms that, according to the Court's view, could otherwise use tying arrangments to extend their monopoly power, may be as profitable as tying arrangements. Thus, the potential gains from an effective prohibition of tie-in sales are small. Considering that the resources devoted to the enforcement of the prohibition may well exceed the potential gains from such enforcement, the per se prohibition should be abandoned.

[\*213] We conclude that the appropriate legal approach to tying is a rule of reason analysis that includes a presumption of legality. This approach would rid the courts of many cases in which there is no hope of any social gain from enforcing the law and would restrict attention to the few cases in which enforcment might improve the performance of the market. The Court should only prohibit tying when there is substantial likelihood of eliminating significant losses through legal action.

#### That allows the aff to turn core DAs like innovation or biz con

Lemos 6 (Margaret H. Lemos- Furman Fellow, New York University School of Law; B.A. (Political Science) Brown University, 1997; J.D. NYU School of Law, 2001. Article: The Commerce Power and Criminal Punishment: Presumption of Constitutionality or Presumption of Innocence?, 84 Tex. L. Rev. 1203, 1218-1219.April, 2006. Lexis, accessed online via KU libraries, date accessed 12/22/21)

The mismatch between the two standards for judicial review is even more remarkable when one recognizes that an explicit statutory presumption [\*1219] is actually far better for the defendant than a categorical findings-based prohibition. A statutory presumption is rebuttable; it gives the defendant an opportunity to make an individualized showing that his own conduct had no effect on commerce. An explicit presumption also ensures that the jury will resolve any factual disputes about the presumption's accuracy as applied to the defendant.

A categorical prohibition is far more difficult to challenge, and it removes the jury from the picture altogether. Because a findings-based statute defines the prohibited conduct without reference to interstate commerce, the defendant has no opportunity to raise the issue of commercial effects with the jury. Although the defendant can challenge the statute on constitutional grounds, his argument will be addressed to the judge rather than the jury, and he will bear the burden of proving that his conduct had no effect on interstate commerce. Indeed, even if the defendant can prove his innocence, so to speak, he still may not prevail in a constitutional challenge. As noted above, the question for the court is whether there is a rational basis for Congress's judgment that the class of prohibited conduct has the requisite connection to interstate commerce, not whether that judgment is correct with respect to the individual defendant.

## K

### Framework

#### 2—Critically interrogate their research – cybernetic capitalism predetermines their creation and use.

Jackson 20, Professor, Department of International Education @ Education University of Hong Kong (Liz, “‘But Is It Really Research?’ Mentoring Students as Theorists in the Era of Cybernetic Capitalism.” Educational Philosophy & Theory, vol. 52, no. 1, Jan. 2020, pp. 17–21. EBSCOhost, doi:10.1080/00131857.2019.1591150.)

As Michael Peters notes (2017, 2018), in this age of 'cybernetic capitalism', the global knowledge infrastructure is dominated by trillion-dollar multinationals. These forces are reshaping what counts as valuable knowledge, interpreting academic significance in terms of the capacity of research to directly lead to neoliberal market-oriented economic growth. An outgrowth of the rise of the age of cybernetic capitalism is the increased valuation and appreciation of big data over other kinds of evidence and bases for knowledge. As Kenneth Neil Cukier and Viktor Mayer-Schoenberger (2013) have noted, the subsequent rise of big data as the most valued currency can be characterised by 'the ability to render into data many aspects of the world that have never been quantified before'. To neoliberal institutions and nation-states, which provide public and private information infrastructure, such data is of tremendous use and power. Ordinary academics in this environment have tended to conform to capitalistic frameworks of value in this case, working to gather and analyse data in ways that benefit dominant social institutions and political economic actors. Some may assume there is a mutual benefit, as more funding will be granted, and greater significance ascribed, to researchers gathering data that is of more value under neoliberal growth models and agendas.

Educational researchers are far from immune to these pressures and these seductions. Major associations for educational research such as the American Educational Research Association celebrate their connections with government funders such as the National Science Foundation, which specifically funds 'scientific' research that aims to have an impact. By 'impact', it is implied that the research must agree broadly with the goals of institutions and the value of forwarding them, without major critique or investigation. By 'scientific', there is an emphasis on data. While one might say, following Peter Roberts ([ 7]), that all research is informed by data, as it is 'generated through human experience', in competitive environments in the age of cybernetic capitalism 'more data' is regarded as better data. Quantitative data becomes better than qualitative data, and so on.

There is perhaps no more vital task of educational theorists in this age than to understand and examine how economic growth models are shaping knowledge production agendas, as well as economic and information distribution, normally to benefit the visions of leading players in the age of cybernetic capitalism (Peters, [ 3]). Yet in this context, it would appear that academics researchers are more constrained than ever before by these political-economic forces when it comes to producing research, to be accountable to higher educational institutions and other funding bodies which follow the lead of multinational giants. Rather than setting agendas, most are complying, seeing little recourse and indeed lacking tools that have become devalued by, or may even now be regarded as inherently threatening to, the architects of neoliberal structures that frame information production agendas today.

In the context of ordinary higher education and research institutions, with the ability to gather more data has come greater possibilities for quantitative research. In education, as in other fields, quantitative research has retained a favoured status over qualitative and philosophical approaches for decades. Maths and sciences are still seen as the 'hard' and 'tough' sciences and fields, over the 'softer' arts. That this is senseless binary, particularly in education, has been argued by many philosophers of education (Pring, [ 5]). Qualitative researchers are not immune to the significance of numbers, and quantitative researchers should not be looking at numbers to the neglect of everything else. Yet today, one can see that this binary clearly does have a logic: to divide and differentiate research according to its value within the orientation to the world undergirding cybernetic capitalism.

In this framing, educational theory, with its focus on ideas, is even more of a loser than qualitative research, not even deemed as research by some due to its lack of big data—and lack of neoliberal priorities.

This is just the latest challenge educational theorists have faced in defending their position in the academy, given the way their work does not tend to fit perfectly with traditional conceptions of educational research, or of applied philosophy (Roberts, [ 7]). Philosophers of education have expressed for a long time a sense of a minority status in teacher education institutions as well, which are normally focused mostly on educational practice, and on training students in qualitative and quantitative research methods. Philosophers and theorists may be feel further crunched today, in education and other fields, as the datafication era aligns with the push for competitive large-scale grants in higher education, which also makes empirical and quantitative research appeal more than ever before.

In this context, educational theorists can do more than simply try to conform, in vain. Instead, they can take responsibility to question neoliberal assumptions about value and significance, interrogate contemporary political-economic influences on academic research and social life, and provide alternative accounts of what is good, significant, and 'productive'. As Roberts ([ 7]) writes, they can also resist 'some of the demands of a performance-driven world', for instance by taking time to pay attention to what is happening in their institutions and in the field today: not to be pragmatic or 'relevant' for the sake of developing neoliberal 'impact', but to reconsider the way their values and ideas do and do not align with the processes and value orientations experienced in the world around them. Additionally, they can train fellow researchers to focus on these issues to a greater extent than they had been focused on in the past. This can also entail cultivating communities which are dialogic and supportive of alternative visions in research and social life.

### 2NC—Cap Good

#### 1---Reject neoliberal optimism---all their green growth evidence is aspirational and disproven by status quo trends and empirics.

Brand and Wissen, 21

[Ulrich, PhD Poly Sci @ Goethe University, Prof. Int’l Politics @ U Vienna; and Markus, Prof. Social Sciences specialising on socio-ecological transformation @ Berlin School of Economies and Law: “False Alternatives: From the Green Economy to a Green Capitalism?” Chapter 7 in The Imperial Mode of Living: Everyday Life and the Ecological Crisis of Capitalism (2021) published by Verso Books. ISBN: 978-1-78873-936-8]//AD

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.

#### 2---Decoupling is insufficient---efficient growth still overwhelms planetary boundaries.

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The figures are confronting, to say the least. Let’s assume, as with the Ward et al (2016) scenario, that continuous economic growth at a modest 2.41% growth rate leads today’s developed nations (i.e. OECD) to expand their economies eight-fold by 2100. Let us also assume that by this time the world population will have reached 11 billion, in line with median U.N projections (UNDSEA, 2017). Let us finally assume that this population has by the end of the century, caught up to the per capita incomes of the OECD. If this scenario were ever to be achieved, the global economy would end up approximately 28 times larger than it is today!

Needless to say, ecosystems are already trembling under the pressure of one ‘developed world’ at the existing size. Who, then, could seriously think our planet could withstand the equivalent of a 28-fold increase in the size of the global economy? The very suggestion is absurd, and yet this very absurdity defines the vision of the global development agenda. It is the elephant in the room. If we remember that humanity is already in ecological overshoot by 70 per cent, then to achieve long-term sustainability humanity would need to achieve a factor 48 reduction in overall environmental impact (i.e. resource use, carbon emissions) per unit of GDP. Compare this 48-factor reduction with the 5-factor reductions that some techno-optimists think might be achievable via an efficiency revolution which has historically failed to fulfil its promise (Von Weizsacker, 2009; Lovins, 1998). Accordingly, even if these figures are overstated by an order of magnitude, the point would remain that efficiency gains could not possibly be expected to make the projected amount of GDP growth sustainable. The levels of decoupling required would simply be too much (Huesemann and Huesemann, 2011; Trainer, 2012). To think otherwise is not being optimistic but delusional.

#### 3---Renewables under capitalism heighten colonial exploitation and environmental destruction.

Hickel 19, PhD, Fellow of the Royal Society of Arts, Senior Lecturer at Goldsmiths, University of London. (Jason, 5-6-2019, "The Limits of Clean Energy", *Foreign Policy*, <https://foreignpolicy.com/2019/09/06/the-path-to-clean-energy-will-be-very-dirty-climate-change-renewables/>)

The phrase “clean energy” normally conjures up happy, innocent images of warm sunshine and fresh wind. But while sunshine and wind is obviously clean, the infrastructure we need to capture it is not. Far from it. The transition to renewables is going to require a dramatic increase in the extraction of metals and rare-earth minerals, with real ecological and social costs.

We need a rapid transition to renewables, yes—but scientists warn that we can’t keep growing energy use at existing rates. No energy is innocent. The only truly clean energy is less energy.

In 2017, the World Bank released a little-noticed report that offered the first comprehensive look at this question. It models the increase in material extraction that would be required to build enough solar and wind utilities to produce an annual output of about 7 terawatts of electricity by 2050. That’s enough to power roughly half of the global economy. By doubling the World Bank figures, we can estimate what it will take to get all the way to zero emissions—and the results are staggering: 34 million metric tons of copper, 40 million tons of lead, 50 million tons of zinc, 162 million tons of aluminum, and no less than 4.8 billion tons of iron.

In some cases, the transition to renewables will require a massive increase over existing levels of extraction. For neodymium—an essential element in wind turbines—extraction will need to rise by nearly 35 percent over current levels. Higher-end estimates reported by the World Bank suggest it could double.

The same is true of silver, which is critical to solar panels. Silver extraction will go up 38 percent and perhaps as much as 105 percent. Demand for indium, also essential to solar technology, will more than triple and could end up skyrocketing by 920 percent.

And then there are all the batteries we’re going to need for power storage. To keep energy flowing when the sun isn’t shining and the wind isn’t blowing will require enormous batteries at the grid level. This means 40 million tons of lithium—an eye-watering 2,700 percent increase over current levels of extraction.

That’s just for electricity. We also need to think about vehicles. This year, a group of leading British scientists submitted a letter to the U.K. Committee on Climate Change outlining their concerns about the ecological impact of electric cars. They agree, of course, that we need to end the sale and use of combustion engines. But they pointed out that unless consumption habits change, replacing the world’s projected fleet of 2 billion vehicles is going to require an explosive increase in mining: Global annual extraction of neodymium and dysprosium will go up by another 70 percent, annual extraction of copper will need to more than double, and cobalt will need to increase by a factor of almost four—all for the entire period from now to 2050.

The problem here is not that we’re going to run out of key minerals—although that may indeed become a concern. The real issue is that this will exacerbate an already existing crisis of overextraction

. Mining has become one of the biggest single drivers of deforestation, ecosystem collapse, and biodiversity loss around the world. Ecologists estimate that even at present rates of global material use, we are overshooting sustainable levels by 82 percent.

Take silver, for instance. Mexico is home to the Peñasquito mine, one of the biggest silver mines in the world. Covering nearly 40 square miles, the operation is staggering in its scale: a sprawling open-pit complex ripped into the mountains, flanked by two waste dumps each a mile long, and a tailings dam full of toxic sludge held back by a wall that’s 7 miles around and as high as a 50-story skyscraper. This mine will produce 11,000 tons of silver in 10 years before its reserves, the biggest in the world, are gone.

To transition the global economy to renewables, we need to commission up to 130 more mines on the scale of Peñasquito. Just for silver.

Lithium is another ecological disaster. It takes 500,000 gallons of water to produce a single ton of lithium. Even at present levels of extraction this is causing problems. In the Andes, where most of the world’s lithium is located, mining companies are burning through the water tables and leaving farmers with nothing to irrigate their crops. Many have had no choice but to abandon their land altogether. Meanwhile, chemical leaks from lithium mines have poisoned rivers from Chile to Argentina, Nevada to Tibet, killing off whole freshwater ecosystems. The lithium boom has barely even started, and it’s already a crisis.

And all of this is just to power the existing global economy. Things become even more extreme when we start accounting for growth. As energy demand continues to rise, material extraction for renewables will become all the more aggressive—and the higher the growth rate, the worse it will get.

It’s important to keep in mind that most of the key materials for the energy transition are located in the global south. Parts of Latin America, Africa, and Asia will likely become the target of a new scramble for resources, and some countries may become victims of new forms of colonization. It happened in the 17th and 18th centuries with the hunt for gold and silver from South America. In the 19th century, it was land for cotton and sugar plantations in the Caribbean. In the 20th century, it was diamonds from South Africa, cobalt from Congo, and oil from the Middle East. It’s not difficult to imagine that the scramble for renewables might become similarly violent.

If we don’t take precautions, clean energy firms could become as destructive as fossil fuel companies—buying off politicians, trashing ecosystems, lobbying against environmental regulations, even assassinating community leaders who stand in their way.

### AT: Cap Good---Space Colonization

#### 1---Private sector won’t invest, and governments won’t fund colonization.

Konrad Szocik 19. University of Information Technology and Management in Rzeszow, Department of Philosophy and Cognitive Science. 01/2019. “Should and Could Humans Go to Mars? Yes, but Not Now and Not in the near Future.” Futures, vol. 105, pp. 54–66.

6. Public opinion Public opinion is, at least in the near future, the main sponsor of space research and space exploration. Bertrand, Pirtle, and Tomblin, (2017) show that the public is interested in human mission to Mars. The most preferred space mission is a crew in orbit and a robot mission on Mars surface. In other words, public criteria is low risk and low cost. The German space agency follows public opinion and social interest because is focused on duty for society and oriented to social purposes as “climate change, mobility, communication and security” (Zypries, 2017). Politicians are prone to reduce space budgets or to not invest in long-term human settlement missions due to public opinion. Consequently, progress in space technology is still retarded. State of art in space transport means did not change qualitatively since the Space Race between the US and the Soviet Union. Impact of public opinion may differ in various countries. Max Grimard (2012), p. 6) shows how important is space program for public opinion in the US. Public sympathy for American presence in space is counterbalanced by the unpredictability of politician authorities, the tensions between presidents and the Congress (Grimard, 2012, p. 12), and the important role played by competition with Russia and China (Grimard, 2012, p. 6). Grimard adds that Russia is similar case but it is currently entire focused on stability of space programs, including renovation of old infrastructure than on new space exploration programs. According to Grimard (2012), p. 13), this fact excludes Russia from being the leader of international collaboration in space policy despite its historical advantages. China, according to Grimard, repeats space policies of the US and Soviet Union. By contrast, in Japan and Europe, prestige does not play role. Japan and Europe are focused on scientific and technological contexts. Space program is not a part of national policy. Due to its costs, politicians may decide to not risk negative approach of public opinion

. But public opinion does not threaten private investors which can consider space as object of their investment. 7. Commercial exploration of space is not a workable alternative Risk of funding the wall might be avoided by commercial exploration of space (Crawford, 2016). According to Crawford, some space projects such as next generation of large telescopes or crewed mission to Mars are non-profitable. While they are a governmental duty, they could be funded partially by profits from commercial exploration of space (for instance, space mining). Hope for private exploration sounds reasonable but is counterbalanced by commercial focus on profits. Because mission to Mars has only scientific profits, only public sponsors will be invested in this project. James S. J. Schwartz (2014) adds that two of the possible reasons for human space mission, such as improving human welfare and progress in scientific exploration, are well beyond interests of private companies. Newman and Williamson (2018) quite similarly expect that private space exploration will be focused on financial profits more than on environmental sustainability. Private investors are not obliged to act altruistically and to sacrifice their business for uncertain idea. W. Henry Lambright (2017) adds that private companies at least at first stages of Mars space program will not be able to fund it. For this reason, Mars space program requires multi-generational effort and political stabilization. The challenge of safety works against private investors in space program. Public space agencies have achieved high standards of safety. They behave in careful and conservative ways. Commercial, private projects do not have the same advanced technology, the large number of scientists and support staff, and the generous budgets. Catastrophe would likely break a private space program. The lack of experience of private companies in space exploration is partially responsible for higher risk of technological failures even in relatively easy tasks as crash of Momo-2 rocket launched by Japanese start-up on 30 June 2018 several seconds after launch. This does not mean that private investors are not able to explore space, but they are able to do that only when they receive profits. In scenario of commercial exploration of space, we should wait for some point in the future when a human space base appears as byproduct of commercial activity. A human base on Mars might be a by-product of hotels on LEO or space mining. Some investors who want to build space hotels may try to settle space regions beyond LEO and build hotels on the Moon and/or Mars. From touristic point of view, staying in the Moon or Mars hotel may be more attractive than on LEO. Investors working in asteroid mining may extend their business to the Moon and/or Mars. Both enterprises even if focused on purely commercial purposes, will not be easy (perhaps impossible) to achieve by private companies alone. Elvis (2012), p. 549) argues that asteroid mining will be challenging due to, among others, difficulties in detection of appropriate asteroids. He shows that among about 1200 analyzed meteorites only 13 of them contain high level of platinum profitable for their exploitation. Elvis suggests that NASA should reorient its strategy from focus on exploration to support for commercial utilization of space. Exploration will appear as a consequence of commercial profitable activity (Elvis, 2012, p. 549). Estimated profits of asteroid mining10 are counterbalanced by high costs of exploitation and possible decreasing of price of currently rare resources (Genta, 2014).11

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#### 3—Causes extraction and extinction by warming.

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Innovation organized by entrepreneurs of the self, of the cyberself, creates possibilities for arbitrage on those super-sets of labor-time, attention and life-time; and all the while, everyday risk management is underpinned and indeed anchored by the calculus of genocide. From the binary of the A-bomb to IBM’s punch-carding of the Nazi Holocaust, from the calculus of sovereign debt to that of social media, the lives of people (in Nagasaki, in Auschwitz, in Furguson), become the substrate that registers the meaning of the compute—at least the meaning as far as they may have been concerned. So many are posited as but renewable pawns in an endless game, and the game goes on. Dispossession and genocide, and the capacity to wreak these, guarantee the liquidity of the financial system by guaranteeing that there will always be some billions willing or forced to do anything for its money and the access to information, to informed matter and therefore to life that it provides. In our era, we see clearly that, under capital, the “stability” imposed by systemic integrations and its programs of finance, surveillance, security, mediation, and so on produces ever greater volatility, and we see that this volatility risk can be bought and sold; it can be cut up, bundled, bought, and resold, priced as content-indifferent numbers based upon volatility indices. Meanwhile the markets roil, dispossession rages, and the planet boils.

As history could confirm, by the mid-twentieth century, the complexity of the techniques for the management of societies, from markets to warfare, from media to cybernetics, and now from social media to the derivatives created by synthetic finance, all required discrete state machines to store and manage the pertinent inventories, schedules, and programs--their valuable information. Though usually thought of as properly belonging to the history of science, communication, mathematics, or computation, the socioeconomic endeavors composing the history of the discrete state machine and its ever more supple functionality are to be thought as part of the increasing complexity of capitalist abstraction and thus the abstraction of social relations. They are the elaboration of real abstraction, the expansive formalization of the field of exchange taking place “behind the backs” of living people. These socioeconomic endeavors such as Google, Facebook, the security state, are the effective occupation of the space and time at all scales by the logistics of exchange and its expanding field of production.

Datalogical representation is already risk management. Management, efficiency, optimization; Foucault’s entrepreneur of the self; and even Brian Massumi and Erin Manning’s “more than human of the human” all recognize a technological paradigm of control operating in and through (and as) the individual (Massumi 2018). We may also observe that the techno-logic of capitalism built upon efficiency—the maximum exploitation of the laboring substrate to meet the demands of the falling rate of profit—prevails across all organizational scales, from the individual to the laboratory to the university to the jail, the township, the state, and the nation-state. In “cultural” spaces, representative agents (a.k.a. subjects) manage and aggregate resources, offering themselves as profiles or brands that are themselves not only marketable, but marketable as derivative exposure to their underliers: their audiences, networks, assets, and currencies. I “friend” you to add you to me, to gain exposure to your network, to add you to my portfolio I am an “influencer.” “Culture,” too, understood as a semi-autonomous domain separable from materiality and technology, can today only be a fetish—another case of platform fetishism—because the generalization of computing means that culture as the connective, communicative tissue of the sociosemiotic is ever more subject to the granularization and grammartization of commodification on the “object’ side (and, its other aspect, the fractalization of fascism on the “subject” side) in what, from a global standpoint, is a racial capitalist sociocybernetic bio-techné. Such is “culture” today—an expression of an overall informationalization of social relations subject to historically imposed computability. Cultural form, computable because inseparable from computation, heretofore always a way of connecting to (or disconnecting from) a multiplicity of networks, is now itself a derivative—a social derivative. Its derivative condition explains what was known as “the postmodern condition,” and is instituted by the universal expansion of the factory code toward the total colonization of space, time, representation, and mind: sociality itself in the largest sense.

That the principles of the ordination of matter, being, time, and value by number (or of publics by statistics, and/or of opinions by likes) were perceived to be universal, that is, generally applicable to all phenomena, was more than convenient. It was, as we have said, colonial. It was racializing and gendering. It was capacitating and maiming (Puar 2017). The math, though famously “content-indifferent,” was never value free. Nor were the devices, from desktops to mainframes, from bombers to smartphones, that it spawned. As Diane Nelson (2015: 56) writes in *Who Counts?*, her astonishing ethnography of Mayan number systems and genocide and, also and as importantly, her scathing ethnography of western mathematics and genocide, “Double-entry bookkeeping is also an ‘ethnomathematics,’ but one with an army.” Double-entry bookkeeping was also a proprietary technique; its truth claims, in the form of accounts, implied pathways of control and functionality that served as conduits for capitalization and colonization. It was a system of representation that repressed noise (context) to clearly resolve the value signal called price in a calculus of profit and loss. In our own period, where we see very clearly (simply by looking at the business pages or, for that matter, the culture pages in any newspaper) that contemporary global capitalism is in lockstep with computation, we might expect that the politico-economic meaning of computation as an emergent order of proprietary organization is becoming clear. As new and powerful terms such as *platform sovereignty* (Bratton 2016), *algorithmic governance,* and *the society of metadata* or “*metadata society*” (Pasquinelli 2018) indicate, it appears that it is the information itself that has (or indeed is) value. But the argument here is that it is only valuable within the framework of computation, and indeed within the framework of computational racial capital—at least thus far. Information is the result of that framework; it is an ethno-graphic (not just anthropocentric) instantiation composed from, in, and on states of matter. The framework, a computational infrastructure that is also primarily fixed capital, emerges in conjunction with the myriad phenomena that are now treated informatically; the apparatus is the other side of the supposedly raw material of information. Information is and can only be a relation. The clear implication of this argument is that, just as a DVD presupposes a technical world that can record it and make it play, the very presence of “information” implies the background armature of computation as a mechanism of perception and organization that is fundamentally social and historical. This background armature of perception and organization further indicates the background armature of racial capital as the primordial condition—the meta-machine architecture—of the present system of accounts. We note, and not only in passing, that this way of narrating the epic poem of AI puts anti-Blackness, slavery, settler colonialism, indentured servitude, imperialism, sexism, proletarianization, racial capitalism, and the active organization of oppression for profit at the epistemic center of a computer that could be called world history. It is computation that perceives information, and it is capital expansion that requires the perceptual-instrumental process endemic to quantification, digitization, and computation. The entire system has its conditions of possibility and derives both its significance and its character from the history of capital accumulation, that is itself theft and only theft, and which is, to defer again to the chorus: colonialism, slavery, white heteropatriarchy, imperialism, globalization, financialization, and genocide.

### Solvency

Hader and Syfert 99 (Stephen M. Hader, Esq.-B.A. 1984, State University of New York at Buffalo; J.D. 1987, Rutgers University. Mr. Hader is a partner in the International Division of Parker, Poe, Adams & Bernstein, LLP in Charlotte, North Carolina. Mr. Hader also served as General Attorney to the Immigration and Naturalization Service from 1987 to 1989. He practices in the areas of U.S. immigration and naturalization law. Scott D. Syfert, Esq.-B.C. 1990, The London School of Economics; B.A. 1991; The University of North Carolina at Chapel Hill; M.A. 1994, The University of Virginia; J.D. 1997, The University of North Carolina at Chapel Hill. Mr. Syfert is an associate in the International Division of Parker, Poe, Adams & Bernstein, LLP in Charlotte, North Carolina. He is involved in immigration, mergers and acquisitions, and general corporate law. “ARTICLE: The Immigration Consequences of Mergers, Acquisitions, and Other Corporate Restructuring: A Practitioner's Guide” , 24 N.C.J. Int'l L. & Com. Reg. 547, 24 N.C.J. Int'l L. & Com. Reg. 547, Spring, 1999, Lexis accessed online via KU libraries, date accessed 12/22/21)

A merger is not the same as an acquisition. In the M&A field, the term "acquisition" describes a transfer of ownership

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, generally of a corporation, by merger, stock or asset sale, or some combination thereof. 118 The term "merger," however, is a narrow technical term that relates to a statutorily created procedure in which two or more corporations or other entities combine into one. 119 A merger may or may not have anything to do with a corporate acquisition. A merger is one means by which an acquisition can be carried out.

#### Every 1AC card that says mergers are bad also condemns acquisitions—Cargill itself was about an acquisition! Here’s their solvency advocate (KU YELLOW)

Lauck, 99

[Jon ,Editor in Chief, Minnesota Journal of Global Trade; Ph.D., MA, University of Iowa; BS, South Dakota State University. Jon TOWARD AN AGRARIAN ANTITRUST: A NEW DIRECTION FOR AGRICULTURAL LAW, 75 N.D. L. Rev. 449, North Dakota Law Review, 1999, LN, sh]

While an agrarian theory of antitrust has applications in all areas of antitrust law, it has particular relevance in merger analysis. The Sherman Act was motivated by a concern about mergers and their impact on levels of economic concentration. 304 Twenty-four years later, similar concerns motivated passage of the Clayton Act, 305 which embraced merger regulation as a method of stopping economic concentration in its "incipiency [\*497] before consummation." 306 Still concerned with concentration levels and the frequency of mergers that compounded concentration, Congress passed the Celler-Kefauver Antitrust Amendments in 1950, prohibiting corporate mergers the effect of which "may be to substantially lessen competition." 307 Congress again intended the merger provisions to serve as a "prophylactic measure" 308 which could "cope with monopolistic tendencies in their incipiency," 309 choosing to focus on "probable harm [to competition] rather than actual harm." 310 The Congressional mood is even reflected in the title of the law, a self-proclaimed "Antimerger Act." In the 1960s, courts met Congressional hopes for a restrictive merger policy. In United States v. Philadelphia National Bank, 311 for example, a merger was found to be presumptively illegal if it caused a "significant increase in [market] concentration." 312 In United States v. Von's Grocery, 313 the Supreme Court disallowed a merger between firms that would have had a mere 7.5 percent post-merger market share. 314 In Von's, the Court sought to "prevent economic concentration in the American economy by keeping a large number of small competitors in business." 315 In subsequent years, after the adoption of the merger guidelines by the Department of Justice, merger cases continued to focus on structural considerations such as market share. 316Link to the text of the note Unlike the restrictive merger policies of an earlier generation of cases, however, the current inquiry does not end with the consideration of structural factors. Enforcement agencies now extend their analysis beyond concentration levels, weighing a "variety of economic factors" which could determine the anticompetitive effect of a merger. 317 Such [\*498] factors include the potential efficiencies generated by the newly- combined firm 318 and the ease of entry into the merged firm's market. 319 Enforcement agencies do not adopt unique considerations for agribusiness mergers. 320Link to the text of the note Despite greater sophistication in recent years, the economic analysis of mergers has never overcome the shortcomings outlined by Derek Bok in the earliest stages of commentary on section 7 of the Clayton Act. In 1960, Bok maintained that the "the problem of indeterminateness," discussed earlier, would undermine any attempts to assess the probable competitive consequences of a merger. 321 The commentary of two of the foremost scholars in the field of antitrust law indicates the subjectivity, randomness, and pure chance of economic analysis in the context of conglomerate mergers, with no apparent irony: Th[e indeterminacy] problem could be moderated by the use of presumptions. One could, for example, adopt the presumptions earlier set forth. Yet one might remain skeptical; presumptions will not simplify the matter if rebutting economic evidence is allowed. On the other hand, conclusive presumptions could cover far too much. That result might not be cause for great concern if such mergers never benefitted the economy, but they sometimes do. 322Link to the text of the note [\*499] More recent commentators have recognized this difficulty with particular reference to the efficiencies defense in merger cases. 323 Despite alleged advancements in economic theory 324 and the ubiquity of "efficiency" as a justification for business activities, 325 it is still extremely difficult to predict the existence of efficiencies in a merged firm. As FTC chairman Robert Pitofsky has noted, the efficiencies defense is "easy to assert and sometimes difficult to disprove." 326 One court has termed efficiency claims by defendants in merger cases "speculative self-serving assertions." 327 Doubts about the competitive consequences of mergers and efficiency claims and the problems of proof both present have even crept into the analysis of Chicago school stalwarts such as George Stigler, Richard Posner and Robert Bork. 328 The most reliable source of doubt about efficiency claims is the poor economic record of mergers. 329 The largest merger of the 1980s, for example, was recently [\*500] reversed, earning a high rank in "the century's pantheon of financial ignominy." 330Link to the text of the note Debating the economic effects of mergers also crowds out the consideration of other policies undergirding the anti-merger provisions of the antitrust laws. In passing the Celler-Kefauver Amendment in 1950, Congressional action was premised on concerns about economic concentration and the tendency of mergers to further increase concentration. 331 Congress was concerned about the effects of concentration on personal freedoms, the disappearance of small businesses and the impact of concentrated economic power on democratic institutions, 332 and "efficiency was of small concern." 333 Thus, failing to consider non-economic concerns undermines the broader purposes and concerns of the statute. 334 The prominence of these considerations led courts in [\*501] the 1960s and 1970s to condemn mergers, despite possible efficiencies. 335 Judicial deference to Congressional concerns about mergers contributing to economic concentration was wise, especially in light of the inability to confirm or deny the presence of economic efficiencies. A merger analysis that devolves into irresolvable economic theorizing and fails to weigh structural considerations undermines agrarian antitrust. Failing to consider concentration levels per se diminishes the importance of the overall bargaining context. The calculation of economic outcomes, which often involves solely a debate over the potential for price increases, and the consideration of efficiencies also indicates a decidedly pro-consumer bias in merger analysis, offering little or no opportunity to consider the negative impact of a merger on suppliers. A possible component of an efficiencies defense, for example, is that a merged firm will be able to maintain "bargaining advantages" over other economic actors. 336 Such an argument implicitly recognizes that those who sell to a large firm resulting from a merger will often be at a disadvantage, but it fails to consider the impact on suppliers as an autonomous factor in merger analysis. A stricter merger policy in the past could have made a critical difference to the industrial structure of farm product buyers. 337 In the early part of the century, the food industry was defined by numerous small firms that started to grow larger and more powerful in the 1920s, partly through merger. 338 In the postwar period, concentration concerns [\*502] became more pronounced as the number of food manufacturers dropped by over fifty percent from 1947 to 1972. 339 Then, in the mid-1960s, "an avalanche of mergers broke loose in the U.S. economy" referred to as "merger mania," 340 and from 1971-1975 food-tobacco manufacturing firms made twenty-five percent of all large manufacturing acquisitions. 341 A.C. Hoffman, an early pioneer in the field of competition in the food industries, claimed that "never before in the history of capitalism [had] such great aggregations of economic power been created." 342 The abandonment of Warren-era merger policies by enforcement agencies and the courts, which "virtually [stopped] all but very small mergers by the leading ten food chains," 343 contributed to the "record volume of food manufacturing acquisitions" in the 1980s. 344 One study concluded that two-thirds of the increase in [\*503] concentration levels during the 1980s could be explained by mergers and acquisitions, many of which violated the Department of Justice's own merger guidelines. 345Link to the text of the note Throughout this period, very little attention was paid to farmer organization in merger analysis. In Cargill v. Monfort, a major 1980s Supreme Court case involving the merger of the second- and third-largest beef packers, the issue of supplier interests was not even considered. 346 The controversy stemmed from a lawsuit brought by Monfort against Cargill, the second-largest beef packer, which was attempting to acquire Spencer Beef, then the third-largest beef packer. 347 Monfort argued that the resulting firm would be able to price in a manner that economically undermined Monfort. 348 The case thus focused on the legitimacy of such an antitrust "injury." 349 The District Court and the Court of Appeals accepted Monfort's argument that Cargill would undercut Monfort's prices to retailers and outbid Monfort for cattle from suppliers, causing a "price-cost squeeze" which would injure Monfort. 350 The Supreme Court, however, cited case law requiring that the injury suffered by Monfort as a result of the merger actually derive from a violation of the antitrust laws, not simply the merger itself, and reversed the lower court holdings. 351 Such a holding is hardly [\*504] remarkable. The remarkable aspect of the case is that suppliers of cattle to the newly-merged firm did not protest the merger. More recently, after a decade of agribusiness consolidation and farmer concerns about the concentration issue, an antitrust theory invoking agrarian concerns was not employed by farmers or any other parties involved in a merger of major cereal companies. 352 Suppliers should start protesting. One possible approach would be to argue for a return to the Philadelphia National Bank (PNB) standard for mergers in the agribusiness sector. In PNB, the Supreme Court stopped the merger of the second- and third-largest banks in Philadelphia, holding that the combination of large firms in a market created an inferential violation of section 7. 353 Such a presumption, the court held, was particularly important in an economic sector where concentration was increasing. 354 A similar presumption in the case of agribusiness mergers would address the historic and contemporary concerns of farmers with the concentrated power of their buyers, a consideration particularly important after the growth of concentration in the last decade. A presumption would begin to compensate for overlooking the impact on suppliers in recent cases such as Cargill v. Monfort. Moreover, the presumption would tip the balance in favor of farmers in merger cases which are prone to inconclusive determinations about economic effects, more faithfully addressing Congressional concerns about economic concentration and the bargaining power of farmers. 355 C. Applying the Theory: The Case of the Cargill-Continental Merger In the midst of the concerns over concentration in agriculture, Cargill, Inc., the largest privately-owned company in the United States, [\*505] announced plans to acquire the grain trading operations of Continental Grain Company, described as its "chief rival." 356 The purchase, which is estimated to cost as much as $ 1 billion, would give Cargill an additional six export terminals, twenty-seven river terminals and thirty-two country elevators, increasing its total to three hundred grain facilities in the United States. 357 As a result, Cargill would handle forty-two percent of corn exports, one-third of soybean exports and twenty percent of wheat exports. 358 The deal also increases Cargill's total storage capacity to 566 million bushels, ahead of Archer-Daniels-Midland's 464 million bushels. 359Link to the text of the note Many farmers and farm advocates have voiced concerns over the merger. Secretary of Agriculture Dan Glickman wrote to the Department of Justice and indicated his "significant antitrust concerns" with the deal. 360 Senator Charles Grassley (R-IA) has noted that "many farmers fear that further concentration in agribusiness will significantly diminish competition from companies that buy, store and trade their commodities." 361 Attorney General Mark Barnett of South Dakota and Attorney General Mike Hatch of Minnesota both opposed the merger. General Hatch argued that "antitrust law has not fulfilled its promise to prevent excessive market concentration." 362Link to the text of the note Cargill responded to the expressed concerns by arguing that the merger is beneficial. Cargill's President of North American grain operations argued that the merger "will allow us to better serve producers in terms of how we buy grain, how we load and transport grain and how we sell grain." 363 Another spokesperson argued that the merger will "allow us to take costs out of the system and provide better service at lower costs." 364 Focusing on consumer effects, the chairman of Cargill argues that the merger "will extend farmers' reach into new markets and [\*506] improve service to a world of increasingly demanding consumers." 365 The chief executive of Continental espoused the benefits that the two companies combined assets would have for farmers and emphasized that "what's important for farmers is to have the most efficiency." 366 The invocation of consumer impacts and efficiency considerations shows that officials for Cargill and Continental have anticipated the inquiries that are common in current merger policy. In July of 1999, the DOJ set forth its "Proposed Final Judgment" in the Cargill-Continental merger case. 367 The DOJ took note of certain "captive draw areas" where farmers were forced to sell almost exclusively to Cargill or Continental. 368 Corn and soybean farmers in North Dakota, South Dakota, Minnesota, Nebraska, and Iowa, for example, must rely on competition in the Pacific Northwest between Cargill's port facility in Seattle and Continental's port facility in Tacoma. 369 DOJ quite obviously stopped Cargill's acquisition of Continental's facilities in areas such as the Pacific Northwest where the acquisition would leave only one major grain buyer. 370 In short, DOJ prevented duopoly from devolving into monopoly. While recognizing a monopsonistic consequence of the merger and preventing complete monopsonization of some grain buying markets, the DOJ applied a very simplified and generic merger analysis. It failed to recognize the great potential for cooperation and collusion in heavily concentrated markets. It failed to recognize the unique bargaining power disparity between disorganized farmers and large-scale agribusiness firms. And it failed to respect a series of statutes passed by Congress and state legislatures concerned about the concentration problem in agricultural markets. DOJ's passivity has triggered pressure from farm groups and farm-state legislators for a challenge to the merger by state attorneys general. 371Link to the text of the note [\*507] If state attorneys general advance an agrarian antitrust theory when challenging the Cargill-Continental merger they could scuttle the deal. The concentration factor would weigh heavily against the merger, given that Cargill and Continental occupy the top two positions in the export market, Cargill with twenty percent and Continental with fifteen percent. Plaintiffs could appeal to the Congressional intent to stave off concentration by preventing the merger of large firms. Blocking concentration trends in their incipiency would also avoid the puzzle of oligopoly. If firm sophistication were a factor in the analysis, Cargill would occupy the highest end of the spectrum, given its sheer size and its involvement in many different economic sectors. 372 In terms of information, Cargill commands an international network of agents in an industry known for extreme secrecy. 373 Further, the merger would give Cargill control of a large percentage of the Chicago Board of Trade's 79-million-bushel storage capacity for wheat, corn and soybeans, giving it great influence over an important source of price information for farm goods. 374Link to the text of the note The Cargill-Continental merger presents the opportunity to seek a new judicial merger policy that applies to agribusinesses. Plaintiffs could seek a ruling that such a merger among major agricultural firms that buy farm products is presumptively illegal, appealing to older cases such as Philadelphia National Bank. Doing so would give structure its appropriate weight as a consideration in antitrust cases. Instead of accepting a school of economic analysis that tends to find most corporate activity competitive and efficient, a court could recognize the serious limits on economic knowledge and prediction. It could weigh more heavily developing theories of monopsony and sophistication as rationales for finding large agribusiness mergers presumptively illegal, more faithfully honoring Congressional intentions to err on the side of [\*508] decentralization in merger cases. Furthermore, such a judicial policy would recognize the persistent Congressional imperative of promoting a more balanced bargaining relationship between farmers and the buyers of their products. Judicial acceptance of such an argument is more likely given that concentration concerns have historically been expressed in merger law. 375 Merger policy thus provides the most accessible outlet for addressing concerns about concentration in agricultural markets and, following Congressional concerns, addresses the problem before it worsens. IV. CONCLUSION Farmers actively sought antimonopoly legislation in the late nineteenth century and have continued to support its application to the present day. Due to the recent judicial embrace of certain economic theories, however, the antitrust laws have failed to meet their expectations. More recent developments in the interpretation of the antitrust laws offer the opportunity to satisfy farmer expectations more completely. Greater judicial recognition of the limits of economic theory and the existence of power imbalances within markets, especially in light of legislative policies designed to promote the bargaining power of farmers, presents the opportunity to establish an agrarian-specific antitrust analysis.