# Aff vs NYU CT- Texas Round 5

# MSU KV KAff 1ac

### Adv One

#### Advantage One is Federalism

#### The status quo upholds “Parker immunity” – a doctrine that doesn’t account for interstate spillovers.

Rosch 12 [J. Thomas Rosch, Commissioner, Federal Trade Commission 10-3-2012 https://www.ftc.gov/sites/default/files/documents/public\_statements/returning-state-action-doctrine-its-moorings/121003stateaction.pdf]

The FTC’s State Action Report

Over a decade ago, the FTC became concerned that the lower courts had expanded the scope of the state action doctrine beyond what the Supreme Court had intended. In 2001, the FTC established a State Action Task Force, which issued a Report two years later that analyzed the current state of the law, identified areas of concern, and recommended clarifications to the law.28 The Report observed that the scope of the state action doctrine had expanded dramatically since first articulated by the Supreme Court in 1943. The doctrine had become unmoored from its original objectives, the report concluded, and was frequently invoked to protect private commercial interests with no relation to state policy.

The report identified a number of specific concerns with the way in which some lower courts had applied the state action doctrine. Chief among these was a persistent weakening of the clear articulation and active supervision requirements. In particular, some courts had found that a legislative grant of general corporate powers satisfied the clear articulation requirement. Although the exercise of these powers in the private sector had no particular antitrust significance, some courts had reached the opposite conclusion when the powers were granted through legislation.

The Report also found that there was a lack of clear standards to guide the application of the active supervision requirement. Without guidance on how to implement the various formulations of the requirement articulated by the lower courts, the active supervision requirement had had a minimal impact.

The Task Force raised several other concerns. Some courts, according to the Report, had interpreted the state action doctrine in a manner that ignored interstate spillovers, which forced the citizens of one state to absorb the costs imposed by another state’s regulations. In addition, some courts had interpreted the doctrine to shield virtually any municipal activity, despite the fact that municipalities were increasingly engaging in business on a for-profit basis, while simultaneously using their law-making power to block competitive challenges.

#### Our arg is not “State’s Rights are categorically good”. Rather, failing to account for out-of-State externalities means State reforms seem better than they truly are. Limiting Parker is key.

Sack 21 [John Sack, J.D., Duke Law School, Class of 2022, B.S. University of Michigan, 2019, 2021 – modified for language that may offend - https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1196&context=djclpp\_sidebar]

III. DOCTRINAL CRITICISM

Although the Court has continued to re-affirm Parker v. Brown’s central holding, many have criticized the Parker doctrine. Both scholars and the Federal Trade Commission (FTC) have highlighted problems with the doctrine and offered a number of solutions for how to remedy its faults.63

The first common critique of the doctrine is that it does not account for out-of-state economic effects. Unless a regulation runs afoul of another constitutional barrier, no consideration of interstate spillovers applies.64 One need not look farther than Parker itself to see how the state action doctrine can impose costs on out-of-state residents, even though those residents have diminished political capital in the state. At the time Parker was decided, between 90 and 95 percent of raisins produced in California entered interstate commerce and California provided almost all of the nation’s raisins.65 Most American raisin consumers lived outside of California and had no political means to oppose the state’s legislative program, yet they bore the costs of California’s state-sanctioned monopoly.66

Second, similar concerns about political representation animate critiques of Parker immunity. The policy at issue in Parker restricted output and artificially raised prices, two results federal antitrust law generally seeks to prohibit.67 Although the benefits of such a program were borne almost exclusively by California, the costs of the program were incurred by raisin consumers across the nation.68 The political incentives to promote such a program follow closely with economic costs and benefits.69 California raisin producers have a strong incentive to lobby their own government to install such a program, but it would be nearly impossible for non-California residents to challenge such a policy through the normal political channels.70 The government of California is not the appropriate body to properly weigh the benefits to in-state raisin producers with the costs to out-of-state consumers, yet the Parker doctrine grants California per se immunity on federalism grounds.71 Although the California program was implicitly endorsed by Congress, one is just as likely to find similar programs with no similar implicit endorsement.72

The U.S. Constitution embodies a system of federalism where the federal government is sovereign in some respects, and the several states are sovereign in others.73 This system of federalism gives states the power to regulate local matters and the federal government the power to regulate issues that states are less suited to regulate.74 When costs spill over into other states, the national government becomes the appropriate body to regulate the costs and benefits of such a program.75 The Court has recognized such spillover effects, and how political actors, even government entities, can act solely in self-interest.76 Such state self-interest can directly harm consumers outside of its territorial jurisdiction.77

Parker immunity, as it ~~stands~~ (exists), runs counter to longstanding ideals of national unity that harken back to the Founding era. The law has long prohibited states from imposing excessive costs on the nation as a whole, solely for the purpose of furthering its own intrastate policy interests. McCulloch v. Maryland illustrates the Court’s wariness of self-serving state action.78 In McCulloch, Chief Justice Marshall held that states may not tax the national bank, as they would be wielding power against the whole of the United States, even though the whole of the United States is not represented by each state.79 Similar to a state tax being problematic since it is the part acting on the whole, anticompetitive restraints by the states would unduly impose costs on the nation. The people of the United States, acting through Congress, christened competition and free markets through the Sherman Act.80 Just as one state could not tax the resources of the United States, one state should not be allowed to use state policy to burden the national economy. Because the potential costs to state-created monopolies are so high,81 federal policy should prohibit states from allocating those costs beyond their borders. Any state that wishes to impose monopoly costs outside of its borders to benefit itself and undermine competition should be carefully scrutinized when it does so. This scrutiny would not be fatal-in-fact for the legislation, but it should be enough for states to second-guess an attempt to enrich itself to the detriment of its sister states.

IV. PROPOSED SOLUTIONS

The Sherman Act, and specifically Parker immunity, should be interpreted in light of the above concerns. After all, the Sherman Act is the standard-bearer for the U.S. free market system, and so our interpretation of it should evolve with our understanding of constitutional principles and economic conditions.82 Justice Burger’s concurrence in City of Lafayette elaborates on this point:

Our conceptions of the limits imposed by federalism are bound to evolve, just as our understanding of Congress’ power under the Commerce Clause has evolved. Consequently, since we find it appropriate to allow the ambit of the Sherman Act to expand with evolving perceptions of congressional power under the Commerce Clause, a similar process should occur with respect to “state action” analysis under Parker. That is, we should not treat the result in the Parker case as cast in bronze; rather, the scope of the Sherman Act’s power should parallel the developing concepts of American federalism.83

As states impose costs on each other through state-sanctioned monopolies, the Court’s understanding of federalism and the Commerce Clause counsels scrutiny of the Parker doctrine. An entirely new doctrine is not necessary to curtail Parker immunity. Rather, the issue can be resolved by applying Parker immunity in light of the American dual system of federalism and the Commerce Clause. Modern scholarship critiques the lack of concern for interstate spillovers. By that token, the modern Parker doctrine fails to account for economic efficiency and undermines political representation values meant to be protected by federalism.84 So while scholars almost universally recognize that interstate economic spillovers are problematic, there is no consensus on what remedy is most appropriate.

#### Well-crafted models are ideal – but the iterative learning process is only *accurate* if costs are internalized

Adler 12 [Jonathan, John Verheij Memorial Professor of Law and Director of the Center for Busi‐ ness Law & Regulation, Case Western Reserve University School of Law, “INTERSTATE COMPETITION AND THE RACE TO THE TOP,” March 2, www.harvard-jlpp.com/wp-content/uploads/2013/.../35\_1\_89\_Adler.pdf]

Not only does decentralization enable policymakers to take advantage of localized information about policy problems and their potential solutions, but decentralization and interjurisdictional competition also foster policy discovery and policy entrepreneurship. Decentralization allows for states to act, in Jus‐ tice Brandeis’s famous characterization, as “laboratories of democracy.”32 Different states may adopt different approaches to various public policy concerns, whether because of regional differences, variable preferences, or different expectations about the viability or practicality of competing policy approaches. State‐level policy initiatives often are experiments from which others may learn. States learn from each others’ successes and failures, fostering an iterative process through which state‐level policy can improve over time.

Allowing state‐level experimentation also reduces the risks of policy failures. When states try different things, all of the proverbial eggs are not in a single basket. If the policy succeeds, other states retain the ability to follow suit (as does the federal government, which has often modeled federal measures on successful state initiatives).33 If the policy fails, however, only one jurisdiction must undo it, and others can learn to avoid such mistakes. This discovery process can be slow and messy, but the federal alternative—as it exists in practice—is no better.

Even though there is a strong case for presuming that decentralization is favorable, it is rebuttable. Leaving policy questions in state hands might be desirable more often than not, but in some instances there are persuasive justifications for federal intervention. Appropriate federal intervention can even reinforce the competitive dynamic across jurisdictions.

Perhaps the most compelling case for federal intervention is the existence of interstate spillovers, such as pollution generated in one state that crosses into another.34 If, for example, pollution generated in one state causes problems in another state, there is a case for federal action. Allowing such spillovers to exist undermines interjurisdictional competition because spillovers enable states to extraterritorialize the costs of their own policy decisions onto other jurisdictions.35 In a truly competitive dynamic, on the other hand, each jurisdiction would bear the costs and reap the benefits of its own decisions.

#### Pricing-in State spillovers improves the data set that informs well-crafted actions.

Adler 12 [Jonathan, John Verheij Memorial Professor of Law and Director of the Center for Busi‐ ness Law & Regulation, Case Western Reserve University School of Law, “INTERSTATE COMPETITION AND THE RACE TO THE TOP,” March 2, www.harvard-jlpp.com/wp-content/uploads/2013/.../35\_1\_89\_Adler.pdf]

Federalism is an essential part of the Constitution’s design. The division of sovereign power between the States and the federal government helps foster interjurisdictional competition, which, in turn, checks government power.1 Provided a right of exit is maintained, the excessive imposition of economic burdens in one jurisdiction will cause taxpayers and businesses to flee to other jurisdictions. For this reason, federalism often is seen as a friend of the free market.2 The existence of competing jurisdictions disciplines state intervention in the marketplace.3 But it would be a mistake to assume that interjurisdictional competition invariably favors market‐oriented policies, at least insofar as alternative policy measures would enhance the welfare of state residents. Federalism is not just for free marketeers.

Provided states cannot externalize the costs of their own policy choices, robust interjurisdictional competition facilitates the enactment of better public policy at the state level.4 Rather than inducing a “race to the bottom,” such competition can create a race toward the top.5 Although those of us who generally favor freer markets believe federalism will advance that cause, those who believe more stringent regulation is welfare‐enhancing should support interjurisdictional competition too. On both theoreticaland empirical grounds, competition among jurisdictions is a powerful means to discover and promote the policies that are most effective at providing people with what they desire.

#### With or without government, biological and synthetic tech is inevitable. Accurate data from state regulatory experiments avoids downsides and maximize benefits.

McGinnis 11

(John, George C. Dix Professor of Law, Northwestern Law School, “LAWS FOR LEARNING IN AN AGE OF ACCELERATION,” <http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=3404&context=wmlr>)

The twenty-first century’s information age has the potential to usher in a more harmonious and productive politics. People often disagree about what policies to adopt, but the cornucopia of data that modern technology generates can allow them to better update their beliefs about policy outcomes on the basis of shared facts. In the long run, convergence on the facts can lead incrementally to more consensus on better policies. More credible factual information should over time also help make for a less divisive society, because partisans cannot as easily stoke social tensions by relying on false facts or exaggerated claims to support conflicting positions. Thus, a central task of contemporary public law is to accelerate a politics of learning whereby democracy improves a public reason focused on evaluating policy consequences. Government should be shaped into an instrument that learns from the analysis of policy consequences made available from newly available technologies of information.1 Greater computer capacity is generating more empirical analysis.2 The Internet permits the rise of prediction markets that forecast policy results even before the policies are implemented.3 The Internet also creates a dispersed media that specializes in particular topics and methodologies, gathers diverse information, and funnels salient facts about policy to legislators and citizens.4 But a public reason focused on policy consequences will improve only if our laws facilitate it. For instance, constitutional federalism must be reinvigorated to permit greater experimentation across jurisdictions, because with the rise of empiricism, decentralization has more value for social learning today than ever before.5 Congress should include mandates for experiments within its own legislation making policy initiatives contain the platforms for their own selfimprovement.6 Creating a contemporary politics of democratic updating on the basis of facts is a matter both of great historical interest and of enormous importance to our future. In the historical sweep of ideas, a government more focused on learning from new information moves toward fulfilling the Enlightenment dream of a politics of reason—but a reason based not on the abstractions of the French Revolution, but instead on the hard facts of the more empirical tradition predominating in Britain. By displacing religion from the center of politics, the Enlightenment removed issues by their nature not susceptible to factual resolution, permitting a focus on policies that could be improved by information.7 The better democratic updating afforded by modern technology can similarly increase social harmony and prosperity by facilitating policies that actually deliver the goods. For the future, a more consequentially informed politics is an urgent necessity. The same technological acceleration that potentially creates a more information-rich politics also generates a wide range of technological innovation—from nanotechnology to biotechnology to [AI] artificial intelligence. Although these technologies offer unparalleled benefits to mankind, they may also create catastrophic risks, such as rapid environmental degradation and new weapons of mass destruction.8 Only a democracy able to rapidly assimilate the facts is likely to be able to avoid disaster and reap the benefits inherent in the technology that is transforming our world at a faster pace than ever before. Every industry that touches on information—book publishing, newspapers, and college education to name just a few—is undergoing a continuous series of revolutionary changes as new technology permits delivery of more information more quickly at lower cost. The same changes that are creating innovation in such private industries can also quickly create innovation in social governance. But the difference between information-intensive private industries and political institutions is that the latter lack the strong competitive framework for these revolutions to occur spontaneously. This Essay thus attempts to set out a blueprint for reform to make better use of some available information technologies. Part I describes the reality of technology acceleration as the acceleration both creates the tools for democratic updating and prompts its necessity. Technological acceleration is the most important development of our time—more important even than globalization. Although technologists have described and discussed its significance, its implications for law and political structure have been barely noticed. Part II briefly discusses how better social knowledge can change political results. A premise of the claim is that some political disagreements revolve about facts, not simply values. As a result, better social knowledge can help democracies design policies to achieve widely shared goals. Social knowledge energizes citizens to act on those encompassing interests, like improved public education, because they come to better recognize the policy instruments to advance those interests. Better social knowledge provides better incentives for citizens to vote on these interests. Part III considers the mechanisms for creating a contemporary politics of democratic updating that begins to meet the needs of the age of accelerating technology. It focuses on two of the new resources that can have substantial synergies in improving social common knowledge and shows how an increase in common knowledge can systematically improve political results by providing better incentives for citizens to work for encompassing social goods. First, Part III considers the improvement in empirical analysis of social policy that flows from increasing computational capacity. It then discusses how specialized and innovative media does much more than disseminate opinions: it widely distributes facts and factual analysis. The combination of these technologies can better discipline experts and representatives, providing stronger incentives for them to update on the basis of new facts. Part IV discusses the information-eliciting rules that will maximize the impact of new technologies of information. These steps include a program of restoring, where possible, governmental structures that permit appropriate decentralization for experimentation, empirical testing, and learning. Congress and regulatory agencies should structure legislation and regulations to include social experiments when such experiments would help resolve disputed matters of policy. The Supreme Court should generally refrain from imposing new substantive rights for the nation so that it is easier to evaluate the consequences of different bundles of rights chosen by the states. But it should also protect the dispersed media, like blogs, from discriminatory laws, because this dispersed media plays a crucial role in modern policy evaluation. In short, the Supreme Court needs to emphasize a jurisprudence fostering social discovery and the political branches need to create frameworks for better social learning. Constitutive structures encouraging and evaluating experimentation become more valuable in an age where better evaluation of social experiments is possible. I. TECHNOLOGICAL ACCELERATION It is the premise of this Essay that technological acceleration is occurring and that our political system must adapt to the world it is creating. The case for technological acceleration rests on three mutually supporting kinds of evidence. First, from the longest-term perspective, epochal change has sped up: the transitions from hunter-gatherer society to agricultural society to the industrial age each took progressively less time to occur, and our transition to an information society is taking less time still. Second, from a technological perspective, computational power is increasing exponentially, and increasing computational power facilitates the growth of other society-changing technologies like biotechnology and nanotechnology. Third, even from our contemporary perspective, technology now changes the world on a yearly basis both in terms of hard data, like the amount of information created, and in terms of more subjective measures, like the social changes wrought by social media. From the longest-term perspective, it seems clear that technological change is accelerating and, with it, the basic shape of human society and culture is changing.9 Anthropologists suggest that for 100,000 years, members of the human species were hunter-gather- ers.10 About 10,000 years ago humans made a transition to agricultural society.11 With the advent of the Industrial Revolution, the West transformed itself into a society that thrived on manufacturing.12 Since 1950, the world has been rapidly entering the information age.13 Each of the completed epochs has been marked by a transition to substantially higher growth rates.14 The period between each epoch has become very substantially shorter.15 Thus, there is reason to extrapolate to even more and faster transitions in the future. This evolution is consistent with a more fine-grained evaluation of human development. Recently, the historian Ian Morris has rated societies in the last 15,000 years on their level of development through objective benchmarks, such as energy capture.16 The graph shows relatively steady, if modest, growth when plotted on a log linear scale, but in the last 100 years development has jumped to become sharply exponential.17 Morris concludes that these patterns suggest that there may be four times as much social development in the world in the next 100 years than there has been in the last 14,000.18 The inventor and engineer Ray Kurzweil has dubbed this phenomenon of faster transitions “the law of accelerating returns.”19 Seeking to strengthen the case for exponential change, he has looked back to the dawn of life to show that even evolution seems to make transitions to higher organisms ever faster.20 In a more granulated way, he has considered important events of the last 1000 years to show that the periods between extraordinary advances, such as great scientific discoveries and technological inventions, have decreased.21 Thus, both outside and within the great epochs of recorded human history, the story of acceleration is similar. The technology of computation provides the second perspective on accelerating change. The easiest way to grasp this perspective is to consider Moore’s Law. Moore’s Law—named after Gordon Moore, one of the founders of Intel—is the observation that the number of transistors that can be fitted onto a computer chip doubles every eighteen months to two years.22 This prediction, which has been approximately accurate for the last forty years,23 means that almost every aspect of the digital world—from computational calculation power to computer memory—is growing in density at a similarly exponential rate.24 Moore’s Law reflects the rapid rise of computers to become the fundamental engine of mankind in the late twentieth and early twenty-first centuries.25 The power of exponential growth is hard to overstate. As the economist Robert Lucas has said, once you start thinking about exponential growth, it is hard to think about anything else.26 The computational power in a cell phone today is a thousand times greater and a million times less expensive than all the computing power housed at MIT in 1965.27 Projecting forward, the computing power of computers twenty-five years from now is likely to prove a million times more powerful than computing power today. To be sure, many people have been predicting the imminent death of Moore’s Law for a substantial period now,29 but it has nevertheless continued. Intel—a company that has a substantial interest in accurately telling software makers what to expect—projects that Moore’s Law will continue at least until 2029.30 Ray Kurzweil shows that Moore’s Law is actually part of a more general exponential computation growth that has been gaining force for over a 100 years.31 Integrated circuits replaced transistors that previously replaced vacuum tubes that in their time had replaced electromechanical methods of computation.32 Through all of these changes in the mechanisms of computation, its power increased at an exponential rate.33 This perspective suggests that other methods under research—from carbon nanotechnology to optical computing to quantum computing—are likely to continue growing exponentially even when silicon-based computing reaches its physical limits.34 Focusing on the exponential increase in hardware capability may actually understate the acceleration in computational capacity in two ways. First, a study considering developments in a computer task using a benchmark for measuring computer speed over a fifteen-year period suggests that the improvements in software algorithms improved performance even more than the increase in hardware capability.35 Second, computers are interconnected more than ever before through the Internet, and these connections increase collective capacity, not only because of the increasing density among computer connections, but because of the increasing density of connections among humans made possible by computers. The salient feature of computers’ exponential growth is their tremendous range of application compared to previous improvements. Almost everything in the modern world can be improved by adding an independent source of computational power. That is why computational improvement has a far greater social effect than improvements in technologies of old. Energy, medicine, and communication are now being continually transformed by the increase in computational power.36 As I will discuss in Part II, even the formulation of new hypotheses in natural and social science will likely be aided by computers in the near future. The final perspective on accelerating technology is the experience that the contemporary world provides. Technology changes the whole tenor of life more rapidly than ever before. At the most basic level, technological products change faster.37 Repeated visits to a modern electronics store—or even a grocery store—reveal a whole new line of products within very few years. In contrast, someone visiting a store in 1910 and then again in 1920—let alone in 1810 and 1820—would not have noticed much difference. Even cultural generations move faster. Facebook, for instance, has changed the way college students relate in only a few years,38 whereas the tenor of college life would not have seemed very different to students in 1920 and 1960. Our current subjective sense of accelerating technology is also backed by more objective evidence from the contemporary world. Accelerating amounts of information are being generated.39 Information, of course, is a proxy for knowledge. Consistent with this general observation, we experience exponential growth in practical technical knowledge, as evidenced by the rise in patent applications.40 Thus, the combination of data from our present life, together with the more sweeping historical and technological perspectives, makes a compelling case that technological acceleration is occurring. It is this technological acceleration that creates both the capacity and the need for improving collective decision making. As technology accelerates, it creates new phenomena, from climate change to biotechnology to artificial intelligence of a human-like capacity. These technologies may themselves have very large positive or negative externalities and may require government decisions about their prohibition, regulation, or subsidization to forestall harms and capture their full benefits. They may also cause social dislocations, from unemployment to terrorism, that also require certain collective decisions. Society can best handle these crises not only by making better social policy to address them directly but by improving social policy more generally to create both more resources and more social harmony to endure them. Thus, society must deploy information technology in the service of democratic updating if it is to manage technological acceleration

#### Synthetic-Bio viruses already sit in labs. They cannot be wished away. Lab accidents will kill millions. Some positive regulatory scheme is needed.

Wilson ‘13

(Grant Wilson has an extremely diverse academic and professional background is former Representative for several nations at the 2010 Climate Change Conference in Cancun. Mr. Wilson \*also\* holds a JD, as well as a Certificate in Environmental and Natural Resources Law, both from the Lewis & Clark Law School. He \*also\* has worked on issues related to the environment and human rights in Kenya, South Korea, Hungary, Mexico, Belgium, the United States. He \*also\* is currently the Deputy Director at the Global Catastrophic Risk Institute (GCRI), a nonprofit think tank that engages in research, education, and professional networking in areas related to global catastrophic risks. “MINIMIZING GLOBAL CATASTROPHIC AND EXISTENTIAL RISKS FROM EMERGING TECHNOLOGIES THROUGH INTERNATIONAL LAW” – Virginia Environmental Law Journal – 31 Va. Envtl. L.J. 307 – lexis; allrev)

States should consider creating an international treaty to regulate emerging technologies if they perceive these technologies to pose a GCR/ER. This section considers the current and future risks and benefits posed by three emerging technologies--bioengineering, [\*313] nanotechnology, and AI. This section concludes that bioengineering is the only emerging technology that poses an immediate GCR/ER, while nanotechnology and AI pose future GCR/ERs. 1. Bioengineering Simply defined, bioengineering is the "engineering of living organisms." n23 Bioengineering is commonly associated with genetically modified ("GM") foods made from crops that scientists develop to have qualities like pest resistance or increased nutrition. However, bioengineering is rapidly expanding beyond agriculture into fields like medicine, disease control, and life-extension. The technology behind bioengineering has also developed quickly, with scientists now able to understand and manipulate life at the molecular level such that biology is viewed as a "machine" that can be tweaked, like in genetic engineering, or even built from the ground up, like in synthetic biology. n24 While breakthroughs in bioengineering research could significantly benefit mankind and the environment, bioengineering research can also be misused to the detriment of humans, animals, and environmental health. n25 Such "dual use" research currently poses significant risks to humankind and even greater risks in the future. Furthermore, both current and future bioengineering technologies pose the risk of an accident that has significant detrimental effects. In exploring these issues, this section demonstrates that bioengineering poses an immediate GCR/ER. a. Current technology Bioengineering is already widely used to modify existing organisms, and scientists are on the cusp of creating entirely synthetic organisms. For example, scientists controversially use bioengineering to "improve" natural biological products and activities, resulting in increased nutrient value, bigger yields, and insect and disease resistance n26 in various types of crops. n27 In 2011, ninety-four percent by acre of soybeans in the [\*314] United States were genetically engineered, while seventy-three percent of all U.S. corn was genetically engineered to be insect resistant and sixty-five percent to be herbicide tolerant. n28 Another controversial current bioengineering technology is genetically engineered viruses, highlighted by the 2011 genetic engineering of the H5N1 virus to become highly contagious amongst ferrets. Many scientists argue that creating this genetically engineered virus was necessary to develop a remedy in case the H5N1 virus mutates naturally, but skeptics argue that the modified H5N1 virus is dangerous because of risks that the virus will escape or that malicious actors will engineer a similar virus. n29 Another example of recent advancements in bioengineering is a project spearheaded by biologist Craig Venter that transplanted a completely synthetic DNA sequence, or "genome," into an E. coli bacteria. Scientists then also added DNA "watermarks" such as the names of researchers and famous quotes. Craig Venter termed this "the first self-replicating species we've had on the planet whose parent is a computer." n30 Bioengineering has also become vastly cheaper and more accessible to the general public. For example, massive databases of DNA sequences are available online from the Department of Energy Joint Genome Institute ("JGI") and the National Center for Biological Information's GenBank(R) database. n31 To materialize these DNA sequences, individuals can order custom genomes online for a few thousand dollars, which are "printed" from a DNA synthesis machine and shipped to them, opening the door for amateur biologists to engage in genetic engineering. n32 DNA synthesis machines can print DNA strands long enough for certain types of viruses, which untrained [\*315] individuals can obtain within six weeks of purchase. n33 Even the synthesizing machines themselves can be purchased on the Internet on sites like eBay. n34 Much like bioengineering costs, the necessary expertise to engage in bioengineering is also plummeting. For example, since 2003, teams of entrepreneurs, college students, and even high school students submitted synthetic biology creations to the International Genetically Engineered Machine ("IGEM") competition, such as UC Berkeley's "BactoBlood" creation--a "cost-effective red blood cell substitute" developed by genetically engineering E. coli bacteria. n35 b. Forthcoming technology Perhaps the greatest forthcoming development in bioengineering is synthetic biology, which includes techniques to "construct new biological components, design those components and redesign existing biological systems." n36 This is in contrast to the traditional form of bioengineering that utilizes "recombinant DNA" techniques in which the DNA from one organism is stitched together with DNA from other organisms or synthetic DNA. n37 One method of synthetic biology involves "cataloguing" DNA sequences like "Lego bricks" and assembling them in unique ways (assembling natural molecules into an unnatural system, like combining the molecules from several types of bacteria to create new bacteria with novel properties). Another method of synthetic biology involves using DNA synthesizers to create life "entirely from scratch" n38 in what has been called the "the biological equivalent of word processors" n39 (using unnatural molecules to emulate a natural system, like creating the synthetic equivalent of a natural strand of influenza). n40 One way to generate synthetic DNA is to insert [\*316] the DNA into a "biological shell"--an organism, often a bacteria, that had its own genes removed--that can run the synthetic DNA like a computer runs software. n41 And while the technology to create eukaryotic cells (i.e., "a cell with a nucleus, such as those found in animals, including human beings") is a long ways away, synthetic viruses and bacteria are just around the comer. n42 c. Benefits of bioengineering Bioengineering is already demonstrating its potential to remedy major human health and environmental problems. For example, bioengineering is responsible for some important pharmaceuticals and vaccines, such as modern insulin and a vaccine for Hepatitis B, while "gene therapy" employs genetically engineered viruses to help treat cancer. n43 Environmental benefits resulting from the 15.4 million farmers who grew genetically modified crops in 2010 include increased yield of six to thirty percent per acre of land, pest-resistant crops that require fewer pesticides (resulting in 17.1 percent less pesticide use globally in 2010), lower water use for drought-resistant crops, decreased CO[2] emissions, and crops that do not require harmful tilling practices. n44 Forthcoming benefits to human health could be a new wave of ultra-effective drugs (e.g. antimalarial and antibiotic drugs), bioengineered agents that kill cancer cells, and the ability to rapidly create vaccines in response to epidemics. n45 Bioengineering could also serve as a beacon of human diagnostics by analyzing "thousands of molecules simultaneously from a single sample." n46 Meanwhile, forthcoming benefits to the environment could be organisms that remedy harmful pollution and superior forms of biofuel, for example. n47 Bioengineering could also spur an environmental revolution in which industries reuse modified waste from biomass feedstock and farmers grow [\*317] bioengineered crops on "marginally productive lands" (e.g. switchgrass). n48 d. Risks from bioengineering While bioengineering offers current and future benefits to humans and the environment, there are also significant yet uncertain risks that could devastate human life, societal stability, and the environment. n49 This paper focuses on three predominant GCR/ER risks arising from bioengineering: (1) the accidental release of harmful organisms (a "biosafety" issue), (2) the malicious release of harmful organisms ("bioterrorism"), and (3) the bioengineering of humans. The first two are current GCRs/ERs, while the third is a future GCR/ER. i. Risk of an accident The accidental release of a bioengineered microorganism during legitimate research poses a GCR/ER when such a microorganism has the potential to be highly deadly and has never been tested in an uncontrolled environment. n50 The threat of an accidental release of a harmful organism recently sparked an unprecedented scientific debate amongst policymakers, scientists, and the general public in reaction to the creation of an airborne strain of H5N1. n51 In September 2011, Ron Fouchier, a scientist from the Netherlands, announced that he had genetically engineered the H5N1 virus--his lab "mutated the hell out of H5N1," he professed--to become airborne, which was tested on ferrets; a laboratory at the University of Wisconsin-Madison similarly mutated the virus into a highly transmittable form. n52 The "natural" H5N1 killed approximately sixty percent of those with reported infections (although the large amount of unreported cases means that this is higher than the actual death rate), but the total number of fatalities--346 people--was relatively small because the virus is difficult to transmit from human to human. The larger risk comes from the possibility that a mutated virus would spread more easily amongst [\*318] humans, n53 which could result in a devastating flu pandemic amongst the worst in history, if not the very worst. n54 To put this in context, about one in every fifteen Americans--twenty million people--would die every year from a seasonal flu as virulent as a highly transmittable form of H5N1. n55 Lax regulations and a rapidly growing number of laboratories exacerbate the dangers posed by bioengineered organisms. While lab biosafety n56 guidelines in the United States and Europe recommended that projects like reengineering the H5N1 virus be conducted in a BSL-4 facility (the highest security level), neither laboratory that reengineered the H5N1 virus met this non-binding standard. n57 Meanwhile, a 2007 Government Accountability Office ("GAO") report indicated that BSL-3 and BSL-4 labs are rapidly expanding in the United States. While there is significant public information about laboratories that receive federal funding or are registered with the Centers for Disease Control and Prevention ("CDC") and the U.S. Department of Agriculture's ("USD") Select Agent Program, much less is known about the "location, activities, and ownership" of labs that are not federally funded and not registered with the CDC or the USD Select Agent Program. n58 The same report also concluded that no single U.S. agency is responsible for tracking and assessing the risks of labs engaging in bioengineering. n59 While some claim that critics are overreacting to the risk from this genetically engineered H5N1 virus, there have been a series of accidental releases of microbes from laboratories that demonstrate the risks of largely unregulated laboratory safety. In 1978, an employee died from an accidental smallpox release from a laboratory on the floor below her. n60 Many scientists believe that the global H1N1 ("swine flu") [\*319] outbreak in the late 2000s originated from an accidental release from a Chinese laboratory. n61 Reports concluded that the accidental releases of Severe Acute Respiratory Syndrome ("SARS") in Singapore, Taiwan, and China from BSL-3 and BSL-4 laboratories all resulted from a low standard of laboratory safety. n62 In the United States, a review by the Associated Press of more than one hundred laboratory accidents and lost shipments between 2003 and 2007 shows a pattern of poor oversight, reporting failures, and faulty procedures, specifically describing incidents at "44 labs in 24 states," including at high-security labs. n63 In 2007, an outbreak of Foot and Mouth Disease likely came from a laboratory that was the "only known location where the strain [was] held in the country" n64 because of a leaky pipe that had known problems. n65 This long history of faulty laboratory safety is why some experts, such as Rutgers University chemistry professor and bioweapons expert Richard H. Ebright, believe that the H5N1 virus will "inevitably escape, and within a decade," citing the hundreds of germs with potential use in bioweapons that have accidentally escaped from laboratories in the United States. n66 While the effects of such lapses in laboratory safety have not yet been felt aside from relatively small events such as the swine flu outbreak mentioned above, the increasing ability of less-sophisticated scientists to engineer more deadly organisms vastly increase the possibility that a lapse in biosafety will have detrimental effects. An accidental or purposeful release of a bioengineered organism has potentially grave consequences. For example, researchers in Australia recently accidentally developed a mousepox virus with a 100 percent [\*320] fatality rate when they had merely intended to sterilize the mice. n67 Scientists in the United States also created a "superbug" version of mousepox created to "evade vaccines," which they argue is important research to thwart terrorists, sparking a debate amongst scientists and policymakers about whether the benefits of such research is worth the associated risks. n68 If such a bioengineered organism escaped from a laboratory, the results would be unpredictable but potentially extremely deadly to humans and/or animals.

#### Ironically, SynBio’s upsides are important since the way to counter accidental releases is re-utilizing SynBio against itself.

Philp ‘14

et al; Jim C. Philp – formerly a Reader in Environmental and Industrial Biotechnology at Edinburgh Napier University. The report was drafted primarily by Jim Philp with significant contributions from Mineko Mohri. Mohri earned her law degree at Keio University in Tokyo. She has also served as a lecturer at Keio University. From: “Emerging Policy Issues in Synthetic Biology”, which was published June 4th, 2014. Available in full text via Google Books. p. 40

Synthetic biology principles are providing new opportunities for the design of attenuated pathogens for use as vaccines. Wimmer and Paul (2011) described the first synthesis of a virus (poliovirus) in 2002 accomplished outside living cells. They commented on the reaction of lay people and scientists to the work, which shaped the response to de novo syntheses of other viruses. In pioneering a safe live vaccine Coleman et al (2008) synthesised de novo large DNA molecules for the rational design of live attenuated poliovirus vaccine candidates. They postulated that this strategy could be used to attenuate many kinds of viruses. Similarly, the synthetic attenuated virus engineering approach was applied to influenza virus strain A/PR/8/34 for the rational design of live attenuated influenza virus vaccine candidates. Mueller et al. (2010) state that the approach can be applied rapidly to any emerging influenza virus in its entirety, an advantage that is especially relevant for seasonal epidemics and pandemic threats, such as H5N1 or the 2009 H1N1 influenza. During the latter pandemic, vaccines for the virus became available in large quantities only after human infections peaked. To accelerate vaccine availability for future pandemics, a synthetic approach that rapidly generates vaccine viruses from sequence data has been developed (Dormitzer et al.. 2013).

(Note: A/PR/8/34 - internally referenced – is a strain of influenza)

## Plan

#### The United States Federal Government should limit the state action immunity doctrine

### Adv Two

#### Adv Two is Practitioner Shortages:

#### Antitrust authority would check such shortages. The FTC does challenge State-Level “*Scope Of Practice*” restrictions on Nurse Practitioners. But they lose due to Parker immunity. An untouched market can’t solve - local elites use leverage to cement a physician-only squo.

McMichael ‘20

Internally quoting the Udalova and MEPS data sets. Benjamin McMichael – Faculty, University of Alabama School of Law. McMichael earned a BS in Mathematical Economics from Wake Forest University and a JD and PhD in law and economics from Vanderbilt University. Before joining the faculty at Alabama, Benjamin served as a law clerk to Judge Carolyn Dineen King on the United States Court of Appeals for the Fifth Circuit. Benjamin’s research is interdisciplinary, relying on empirical methods developed in the social sciences—particularly economics—to generate new insight into the ways in which the law influences the provision of healthcare - “Occupational Licensing and the Opioid Crisis” 54 U.C. Davis L. Rev. 887 - December, 2020 – some footnotes included for context and elaboration – but no text omitted other than the OG Table of Contents after the opening abstract - #E&F - https://lawreview.law.ucdavis.edu/issues/54/2/articles/files/54-2\_McMichael\_color.pdf

The United States’ affordable care crisis and chronic physician shortage have required nurse practitioners to assume increasingly important roles in the healthcare system. Nurse practitioners can address critical access-to-care problems, provide safe and effective care, and lower the cost of care. However, restrictive occupational licensing laws — specifically, scope-of-practice laws — have limited their ability to care for patients. Spurred by interest groups opposed to allowing nurse practitioners to practice independently, states require physician supervision of nurse practitioners. Research has discredited many of the traditional reasons for these restrictive laws, but emerging arguments assert that independent practice will deepen the ongoing opioid crisis by allowing unsupervised nurse practitioners to overprescribe opioids. The opioid crisis has become one of the defining public health emergency of this generation, so these arguments warrant serious investigation. If granting nurse practitioners independence will exacerbate the opioid epidemic, restricting their practices may be justified despite the clear benefits that independence could create for patients and the healthcare system.

This Article provides new empirical evidence on the role of nurse practitioner independence in opioid prescriptions by analyzing a dataset of approximately 1.5 billion individual opioid prescriptions. Containing information on approximately 90% of all prescriptions filled at outpatient pharmacies between 2011 and 2018, this dataset provides unprecedented insight into the ongoing opioid epidemic. An analysis of these data reveals that allowing nurse practitioners to practice independently reduces the quantity of opioids prescribed across all physicians and nurse practitioners. Thus, this Article demonstrates that, contrary to exacerbating the opioid crisis, granting nurse practitioners independence is a valid policy option for addressing this crisis. These results can inform the ongoing state and national debates over nurse practitioner scope-of-practice laws and the opioid epidemic more generally. And based on these results, the Article proposes several policy options at the state and federal levels that could both address restrictive scope-of-practice laws and ameliorate the ongoing opioid crisis.

INTRODUCTION

For many people, access to healthcare means the difference between life and death, the difference between constant pain and the ability to get out of bed in the morning, or the difference between an all-consuming mental illness and the ability to remain an active member of society. Even nearly a decade after the passage of the Affordable Care Act (“ACA”), however, access to healthcare continues to dominate local and national health policy debates, and the issue remains unresolved. The ACA certainly reinvigorated the country’s interest in access to care in unprecedented ways, and it drastically altered healthcare and healthcare provision in the United States. Unfortunately, it effected both of these changes with a near laser-like focus on increasing access to health insurance.1 For all of its virtues, this treatment of access to healthcare as effectively coextensive with access to health insurance has obscured a more fundamental problem with access to care as the following example from the New York Times illustrates.

A lifelong resident of rural Nebraska and registered nurse, Murlene Osburn saw a desperate need for mental health care in her community.2 To meet this need in an area where psychiatrists refused to practice, Osburn completed a master’s degree and a national certification process to become a psychiatric nurse practitioner (“NP”).3 Unfortunately, when she was ready to begin caring for patients, Osburn found herself stymied by the problem that spurred her to action in the first place: the lack of psychiatrists. Nebraska law prohibited NPs from practicing without physician supervision, and the nearest physician who could supervise her “was seven hours away by car and wanted to charge her $500 a month” for that supervision.4

This example illustrates the importance of access to healthcare providers in addition to access to health insurance. 5 And access to providers is far from given, with many areas of the country experiencing shortages of healthcare providers that experts expect to worsen over the next decade. 6 The New York Times example also highlights both a viable policy option to address these shortages - the increased use of NPs to provide care - and an important obstacle to implementing this policy - restrictive laws.

NPs are registered nurses who have undergone additional training to provide healthcare services historically provided by physicians. 7 They represent the principal source of care in many geographic areas 8 and are more likely than physicians to practice in rural and underserved communities. 9 This makes the 200,600 practicing NPs a natural option to address chronic, critical, and worsening physician shortages across the country. 10 While NPs provide healthcare services across the country, their ability to do so is not equal in all areas. State scope-of-practice ("SOP") laws - a subset of the occupational licensing laws that govern NPs and many other professionals - determine what services [\*891] NPs may provide and the conditions under which they may provide those services.

States often justify SOP laws as necessary to ensure patient safety by preventing unqualified individuals from providing care. 11 Though these laws can further this goal, excessively restrictive SOP laws undermine the ability of NPs to care for patients. Prior work has shown that eliminating restrictive SOP laws and allowing NPs to practice independently of physicians can facilitate access to care, 12 improve the quality of care, 13 reduce the use of intensive medical procedures, 14 and reduce the price of some healthcare services. 15 Based on this evidence, the Obama and Trump administrations along with the National Academy of Medicine and other organizations have urged states to relax their SOP laws. 16 A minority of states have responded by granting NPs the authority to practice independently, but the ongoing debate and [\*892] political battle over SOP laws has only intensified over the last decade. 17 Physician organizations, in particular, vigorously oppose the relaxation of these laws and have been successful in discouraging states from granting NPs independence. 18

9 See Peter I. Buerhaus, Catherine M. DesRoches, Robert Dittus & Karen Donelan, Practice Characteristics of Primary Care Nurse Practitioners and Physicians, 63 NURSING OUTLOOK 144, 144-50 (2015) [hereinafter Practice Characteristics] (finding that NPs are more likely to care for Medicaid patients, vulnerable populations, and rural populations); Grant R. Martsolf, Hilary Barnes, Michael R. Richards, Kristin N. Ray, Heather M. Brom & Matthew D. McHugh, Employment of Advanced Practice Clinicians in Physician Practices, 178 JAMA INTERNAL MED. 988, 988-89 (2018) (finding that NPs are likely to be employed in primary care).

10 Occupational Employment and Wages, May 2019, 29-1171 Nurse Practitioners, U.S. BUREAU LAB STAT., https://www.bls.gov/oes/current/oes291171.htm (last visited Nov. 11, 2020) [https://perma.cc/5A4C-9H7S].

11 See Morris M. Kleiner, Enhancing Quality or Restricting Competition: The Case of Licensing Public School Teachers, 5 U. ST. THOMAS J.L. & PUB. POL’Y 1, 3, 8 (2011) (“The general rationale for licensing is the health and safety of consumers. Beyond that, the quality of service delivery . . . [is] sometimes invoked.”).

12 Benjamin J. McMichael, Beyond Physicians: The Effect of Licensing and Liability Laws on the Supply of Nurse Practitioners and Physician Assistants, 15 J. EMPIRICAL L. STUD. 732, 764-65 (2018) [hereinafter Beyond Physicians]; Jeffrey Traczynski & Victoria Udalova, Nurse Practitioner Independence, Health Care Utilization, and Health Outcomes, 58 J. HEALTH ECON. 90, 103-04 (2018); see also John A. Graves, Pranita Mishra, Robert S. Dittus, Ravi Parikh, Jennifer Perloff & Peter I. Buerhaus, Role of Geography and Nurse Practitioner Scope-of-Practice in Efforts to Expand Primary Care System Capacity, 54 MED. CARE 81, 83-88 (2016).

13 Traczynski & Udalova, supra note 12, at 97

14 See, e.g., Sara Markowitz, E. Kathleen Adams, Mary Jane Lewitt & Anne L. Dunlop, Competitive Effects of Scope of Practice Restrictions: Public Health or Public Harm?, 55 J. HEALTH ECON. 201, 209-16 (2017) (showing a reduced probability of intensive procedures related to pregnancies in states that allow nurse practitioners to practice with no barriers).

When opposing NP independence, physician groups often argue that requiring physician supervision promotes patient safety and the delivery of high-quality care. 19 Although existing clinical evidence undermines these claims, 20 physician groups have recently emphasized the troubling possibility that allowing NPs to practice independently will increase opioid prescriptions. 21 The reasoning offered is straightforward: If NPs can prescribe opioids without physician supervision, then they will inappropriately overprescribe opioids and deepen the ongoing opioid crisis. 22 This Article engages with the debate [\*893] over NP SOP laws by empirically analyzing the impact these laws have on opioid prescriptions. Given the severity of the ongoing opioid crisis, the claim that allowing NP independence will deepen that crisis by increasing opioid prescriptions warrants careful consideration. On one hand, allowing NPs to practice independently can address critical access-to-care issues and improve the healthcare system in other important ways. On the other hand, restricting the practices of NPs may be justified despite these benefits if doing so avoids exacerbating the opioid crisis. This Article provides critical new evidence on the effect that NP SOP laws have on opioid prescriptions. Specifically, I analyze a dataset of approximately 1.5 billion individual opioid prescriptions, which represent approximately 90% of all opioid prescriptions filled at outpatient pharmacies between 2011 and 2018. This dataset provides unprecedented insight into the ongoing opioid epidemic and the role of healthcare providers in that epidemic. Because this dataset covers nearly the universe of opioid prescriptions in the United States over eight years and is organized at the individual-prescription level, I am able to develop more complete and more granular evidence on the role of NP SOP laws in opioid prescriptions than has previously been possible. The analysis reveals that allowing NPs to practice independently reduces the quantity of opioids prescribed across all physicians and NPs by approximately 4.4%. 23 In contrast to physician groups' claims, the evidence developed here suggests that relaxing NP SOP laws reduces opioid prescriptions. Thus, this Article demonstrates that, rather than exacerbating the opioid crisis, granting NPs independence is a valid policy option for addressing that crisis. These results can inform the ongoing debates over both NP SOP laws and the opioid epidemic more generally, and this Article uses this evidence to recontextualize the debate over SOP laws and offer specific policy recommendations. In addition to joining various scholars and [\*894] organizations in urging states to reform their SOP laws, this Article engages with potential federal policy options that can both address the dire healthcare provider shortages across the country while ameliorating the opioid crisis. Federal options, such as the ones discussed below, will become increasingly relevant as state legislation has proven difficult to obtain in certain states. 24 This Article proceeds in four parts. Part I details the contributions that NPs make to the healthcare system and the ways SOP laws impact their ability to do so. 25 Part II provides context for the empirical analysis that is the focus of the Article by detailing the progression of the opioid crisis. 26 Part III discusses the empirical methodology and reports the results of the empirical analysis. 27 Part IV engages with the policy implications stemming from the results of that analysis, 28 and a brief conclusion follows.

I. REGULATING HEALTHCARE PROVIDERS

Historically, physicians have delivered most of the healthcare in the United States. While other providers, such as registered nurses, have always played important roles in healthcare, physicians have been responsible for directing most care delivery. Physician dominance, however, has begun to recede as NPs and other types of healthcare providers are providing "[a] growing share of health care services." 29 And this trend will likely continue because the growth rate of NPs outstrips that of physicians, 30 which only adds urgency to resolving the debate over NP SOP laws. To provide context to that debate, this Part [\*895] begins by discussing the role of NPs in the healthcare system before outlining the contours of the debate over the SOP laws that regulate NPs.

A. Nurse Practitioners and the Laws that Govern Them

To qualify as an NP, an individual must first become a registered nurse, which often involves completing a bachelor's degree in nursing. 31 Most registered nurses practice for several years before returning to complete a master's or doctoral degree to become an NP. 32 Their training involves clinical and didactic courses that prepare future NPs to diagnose and treat patients, order and interpret tests, and prescribe medication. 33 Following their training, NPs practice in a wide variety of medical settings, but over 60% choose to provide some form of primary care. 34 With this training, NPs provide care alongside physicians across the country, 35 but where they choose to practice and which patients they choose to care for often differs substantially from the choices made by physicians. Relative to physicians, NPs more often choose to practice in primary care and to care for underserved populations, including Medicaid patients. 36 They also provide care in rural or underserved areas to a [\*896] greater extent than physicians. 37 The predilection of NPs to practice in isolated areas and care for patients who have difficulty accessing care is particularly important in an era of worsening physician shortages. For example, the Association of American Medical Colleges estimates that, by 2032, the United States will face a physician shortage of between 46,900 and 121,900. 38 Such a shortage has implications for the country generally, but it will impact rural areas to a greater degree. Recent estimates suggest that the number of physicians practicing in these areas could decline by 23% by 2030. 39 With approximately 200,600 NPs delivering care in 2019 40 NPs can alleviate physician shortages in rural and other areas. Indeed, NPs outnumber primary care physicians, 41 practice in convenient locations like retail and urgent care clinics, 42 and represent the principal source of healthcare in many parts of the country. 43 However, the ability of NPs to function as the principal source of healthcare depends heavily on the SOP laws in place. Prior work has [\*897] classified NP SOP laws in slightly different ways. 44 Each classification system has advantages and disadvantages, but I adopt a classification scheme based on two recent studies that that focus on specific statutory and regulatory language. 45 Where necessary, I updated the classifications based on more recent statutory and regulatory information. This approach to classification eliminates the risk of mis-classification that can occur by relying on inconsistent secondary sources. It also isolates the specific statutes and regulations that policymakers may change to achieve specific results in their healthcare systems. 46 Using these statutes and regulations, I classify each state in each year as either allowing NPs to practice independently or restricting the practices of NPs. To be classified as allowing "independent practice," a state must (1) have no requirement that physicians supervise NPs and (2) grant NPs full prescriptive authority, i.e., allow NPs to prescribe the same range of medications as physicians. 47 States that either require physician supervision of NPs or restrict their prescriptive authority fall into the "restricted practice" category. [\*898] Figure 1 provides an overview of NP SOP laws during the time period analyzed here. In 2011, fourteen states allowed NPs to practice independently, and thirty-seven states restricted the practices of NPs. 48 Of the thirty-seven states restricting NP practice, fourteen changed their laws prior to the end of 2018 to allow NPs to practice independently. 49 Figure 1 separately highlights each of the states that always allowed NPs to practice independently, always restricted NP practice, and changed from restricted to independent practice. As Figure 1 illustrates, the trend among states decidedly favors NP independence, with half of all states that currently allow independent practice adopting a law to that effect in the last decade. This trend has not emerged without opposition, however, and the debate between opponents of relaxing NP SOP laws and advocates of greater NP autonomy has become quite heated. The next subpart engages with this [\*899] ongoing debating, tracing the contours of each side's arguments and the evidence that supports their arguments.

B. The Scope-of-Practice Debate

As NPs have assumed greater roles in the delivery of care, some groups have objected to liberalizing the SOP laws that govern NPs to allow them to provide more services and practice with greater autonomy. Principal among the opponents of relaxing NP SOP laws are physician groups, with the American Medical Association ("AMA") offering some of the strongest resistance to granting NPs greater independence. 50 Advocates of greater NP autonomy include nursing groups, policy think tanks of various political orientations, the National Academy of Medicine, and the Obama and Trump administrations. 51 Opponents of greater NP autonomy often emphasize the greater education completed by physicians and argue that NPs cannot provide safe or high-quality care without physician supervision. 52 Proponents often respond that NPs deliver care of similar quality as physicians and that allowing greater NP autonomy lowers the cost of care and improves access to care. 53 This Part engages with each of these sets of arguments in turn.

1. Independent Nurse Practitioners and the Quality of Care

Perhaps the most contentious point in the debate over NP SOP laws concerns the ability of NPs to deliver high-quality care without physician oversight. Opponents of NP independence generally argue that, without physician supervision, NPs cannot safely care for patients. For example, the California Medical Association has stated that it "opposes any attempts to remove physician oversight over [NPs] and believes that doing so would put the health and safety of patients at risk." 54 Some groups frame their arguments about quality of care in [\*900] terms of the different levels of education completed by NPs and physicians. 55 These arguments require the additional inferential step that more education is required to provide the type of care delivered by NPs, but they are effectively equivalent to statements that unsupervised NPs cannot safely care for patients. 56 Advocates of greater NP autonomy respond to these arguments by pointing to the available evidence that demonstrates NPs generally deliver care of comparable quality to that delivered by physicians. 57 Multiple studies have investigated the ability of NPs to deliver high-quality care, often comparing NP-supplied care to physician-supplied care. 58 A recent comprehensive analysis compared the quality of care delivered to Medicare beneficiaries by NPs and physicians and found that physicians perform better on certain quality measures and NPs perform better on other measures. 59 Related work has found no meaningful differences between NPs and physicians in caring for HIV [\*901] patients, 60 managing diabetes, 61 providing primary care, 62 prescribing medications, 63 or providing critical care. 64 Reviewing the evidence, the National Academy of Medicine concluded "that access to quality care can be greatly expanded by increasing the use of ... [NPs] in primary, chronic, and transitional care." 65 Opponents of broader NP SOP laws have criticized this evidence as irrelevant because these studies are often "performed in a setting of physician oversight and collaboration." 66 They argue that "using data from studies of nurse practitioners working under physician supervision to demand independent practice is a flawed practice, as there is no proof that nurse practitioner care without physician oversight is either safe or effective." 67 However, studies that have explicitly examined the role of relaxing NP SOP laws - as opposed to the role of NPs generally - in promoting the delivery of high-quality care have concluded that NP independence either improves or has little effect on the quality of care delivered. A 2017 study found that NP "independence had no statistically significant effect on any of the three [clinically verified indicators of [\*902] healthcare quality] studied." 68 In contrast to claims that NP SOP laws are necessary for the protection of patients, 69 this study "did not substantiate the use of [SOP] restrictions for the sole purpose of consumer protection." 70 A separate study "cast[] further doubt on the theory that state regulations limiting NPs practice are associated with quality of care." 71 Examining patient-reported quality across many years of a nationally representative dataset, a recent study found that NP independence increases the probability that patients report being in excellent health. 72 Another study found that NP independence had no effect on infant mortality rates, an important indicator of healthcare quality. 73 Overall, existing evidence does not support the contention that unsupervised NPs provide unsafe or low-quality care. To be sure, physician groups are correct in their assertion that NPs are not trained to provide the same range of services as physicians - NPs do not perform surgery, for example. Within the scope of their training, however, the evidence demonstrates that NPs perform similarly to physicians.

72 Traczynski & Udalova, supra note 12, at 98, 99 tbl.7.

2. Scope-of-Practice Laws and the Cost of Healthcare

Though healthcare quality tends to receive the most attention from experts within the SOP law debate, concerns over the cost of care predominate among the patients who are most affected. Indeed, the health policy conversation over the last two decades has focused heavily [\*903] on the ability of patients to obtain affordable care. 74 Advocates of greater NP autonomy have argued that removing restrictive SOP laws will facilitate the use of lower cost providers and ultimately reduce costs within that system. For example, Kathleen Adams and Sara Markowitz have explained that "achieving productivity gains is one way to reduce cost pressures throughout the health-care system" and that such gains can be realized "by using lower-cost sources of labor to achieve the same or better outcomes." 75 The "high payment rates for physicians in the United States" makes the increased use of NPs a particularly appealing strategy for cost-reduction. 76 Recent research has demonstrated that abrogating restrictive SOP laws can reduce costs within the healthcare system to the benefit of patients and the public. A study by Morris Kleiner and others found that granting NPs independence reduces the price of a common medical examination by between 3% and 16%. 77 A separate economic evaluation estimated that liberalizing SOP laws would save approximately $ 543 million annually in emergency department visits alone. 78 Though specific to certified nurse midwives instead of NPs, a recent study found that eliminating restrictive SOP laws for nurse midwives would save $ 101 million by reducing reliance on more intensive forms of care during birth. 79 Other studies have found that payments in connection with Medicare beneficiaries cared for by NPs were between 11% and 29% lower than those cared for by physicians, 80 the savings achieved by using retail health clinics in lieu of emergency departments are higher when NPs have more independence, 81 and Medicaid costs either decrease or remain flat when NPs are granted more autonomy. 82 On the other side of the debate, opponents of NP independence can point to some evidence that NPs and SOP laws allowing them to practice independently may increase healthcare costs. In a recent report, the [\*904] Medicare Payment Advisory Commission ("MedPAC") highlighted several studies finding that NPs tend to increase costs. 83 One study found that NPs utilized more healthcare resources in caring for patients than physicians, suggesting that more extensive use of NPs may increase costs. 84 A separate study found that NPs order more medical imaging services than physicians in primary care settings. 85 Medical imaging, such as magnetic resonance imaging ("MRI") and computed tomography ("CT") scans can be expensive, so this study suggests that NP independence may increase costs over time. More recent work that examines a larger population contradicts these results, however. Examining data on Medicare and commercial insurance claims, a 2017 study found that NP independence does not result in more medical imaging and does not increase healthcare costs. 86 Similarly, research conducted by economists at the Federal Trade Commission ("FTC") revealed no evidence that relaxing NP SOP laws increases healthcare costs or prices. 87 Overall, a growing body of research suggests that allowing NPs to practice independently can reduce costs and the prices patients must pay for care, while only a few studies have found evidence to the contrary. 88

3. Nurse Practitioners and Access to Healthcare

Turning to the debate over the role of SOP laws in access to healthcare, the evidence more heavily favors advocates of greater NP autonomy than it does in either the cost or quality debates. Advocates of greater NP autonomy have argued that "by unnecessarily limiting the tasks that qualified [NPs] can perform, SOP restrictions exacerbate [healthcare provider] shortages and limit access to care." 89 An Obama administration report noted that "easing scope of practice laws for APRNs represents a viable means of increasing access to certain primary care services," 90 and the evidence generally supports this conclusion. For example, one study concluded that states with less restrictive SOP laws "overall had more geographically accessible" NPs. 91 Similarly, a 2018 study found that relaxing SOP laws increases access to healthcare generally but has the largest positive effect in counties that have the least access to healthcare. 92 This evidence suggests that "restrictive licensing laws limit the growth in the supply of [NPs] who could deliver care in communities with relatively few practicing physicians." 93 Extending this evidence to more specific measures of healthcare access, a third study concluded that granting NPs more autonomy increases the likelihood that individuals receive a routine check-up, have access to a usual source of care, and can obtain an appointment with a provider. 94 NP independence also reduces the use of emergency departments for conditions that can be addressed in less intensive (and less expensive) settings, as patients can more easily access a healthcare provider when NPs can practice independently. 95 [\*906] The response to the argument that allowing NPs greater autonomy increases access to healthcare by opponents of NP independence often does not focus explicitly on healthcare access. While not every study has found that relaxing SOP laws increases access to healthcare providers, 96 the existing evidence generally supports this conclusion. 97 Opponents, therefore, typically offer only indirect arguments on the access issue. In opposing a bill that would relaxing California's SOP laws, the president of the California Medical Association offered an example of a common argument: "We must ensure that every American, regardless of age or economic status, has access to a trained physician who can provide the highest level of care. Expanding access to care should not come at the expense of patient safety and we will not support unequal standards of care... ." 98 In other words, expanding access to NP-supplied care does not amount to expanding access to care generally because NPs provide inferior care. Though framed as an access-to-care argument, this contention is more accurately characterized as an argument about the quality of care provided by NPs, which as addressed above, appears to be equal in basic practice areas.

4. The State of the Scope-of-Practice Debate

The debate over NP SOP laws is not new, and multiple national organizations - both governmental and non-governmental - have weighed in on this debate after conducting extensive reviews of the available evidence. Perhaps the most relevant organization to opine on SOP laws to date has been the National Academy of Medicine (formerly, the Institute of Medicine). The Academy criticized restrictive SOP laws, noting that "what nurse practitioners are able to do once they graduate varies widely for reasons that are related not to their ability, education or training, or safety concerns, but to the political decisions of the state in which they work." 99 Calling for an end to restrictive SOP laws, the Academy clearly stated that NPs "should practice to the full extent of their education and training." 100

[\*907] Researchers at the FTC reached a similar conclusion, albeit for somewhat different reasons. The FTC has no authority to enforce federal antitrust laws against states that restrict the practices of NPs with SOP laws because these laws fit squarely within the state-action immunity articulated in Parker v. Brown. 101 However, FTC researchers applied the economic principles that underlie those antitrust laws and concluded that restrictive SOP laws "deny[] health care consumers the benefits of greater competition." 102 They further concluded that the harms to healthcare services markets - higher prices and decreased access to care - associated with restrictive SOP laws were not offset by any attendant benefits. 103 Consistent with these conclusions, the FTC has regularly opposed state laws that restrict the practices of NPs and supported the passage of bills that relax the SOP laws. 104

#### Scope of Practice – or “S.O.P.” – restrictions *block access* and *hamper options for patient health*.

LDI ‘20

Internally quoting Dr. Margo Brooks Carthon - LDI Senior Fellow, a Nurse Practitioner, PhD, RN, FAAN, and is also an Associate Professor at Penn’s School of Nursing. The LDI is the Leonard Davis Institute of Health Economics at the University of Pennsylvania (Penn). Six expert panelists are quoted and we are quoting the section from Margo Brooks Carthon – “Scope of Practice Restrictions and Vulnerable Populations: LDI Virtual Conference Explores The Issue's Changing Dynamics” - November 21, 2020 - #E&F - https://ldi.upenn.edu/our-work/research-updates/scope-of-practice-restrictions-and-vulnerable-populations/

The most heavily publicized debates around the SOP issue over the last 60 years have been about nurse practitioners whose work is often focused on underserved communities that lack the most basic kinds of medical care. Panelist and LDI Senior Fellow Margo Brooks Carthon, PhD, RN, FAAN, is an NP and health services researcher in that field. She is also an Associate Professor at Penn’s School of Nursing, and a core faculty member at the Penn Center for Health Outcomes Policy Research.

“There are over two hundred thousand NPs in the United States working under varying degrees of scope of practice restrictions, depending on the states where they’re employed,” Carthon said. “These barriers have implications for population health as well as health equity.”

“Twenty-two states and the District of Columbia fully license NPs to practice independently. Others require career-long collaborative agreements with a supervising physician. Some require a physician to review a percentage of NP charts — ten percent every year in Alabama and Georgia; twenty percent every 30 days in Tennessee. NPs are often limited in the distance they can be from a physician and are required to jump through other hoops just to provide basic care.”

#### Solvency is *empirical* and the *impact is significant*. Some States have relaxed SOP restrictions to differing degrees. Studies confirm this has saved many lives *per day* *per State*.

Chung ‘20

Bobby W. Chung is a labor economist. He receives his Ph.D.in Economics at Clemson University. He is now a postdoctoral research associate at the School of Labor and Employment Relations in the University of Illinois (Urbana-Champaign). He is also a network member of the Human Capital and Economic Opportunity Global Working Group. His recent work includes social network, occupational licensing, and kidney-exchange network. “The Impact of Relaxing Nurse Practitioner Licensing to Reduce COVID Mortality: Evidence from the Midwest” - #E&F - http://publish.illinois.edu/projectformiddleclassrenewal/files/2020/06/The-Impact-of-Relaxing-Nurse-Practioner-Licensing8413.pdf

Nurse practitioners (NP) are well-trained health care personnel for primary, acute, and specialty care in the US. However, 32 states have restrictions on their scope of practice and Illinois is one of them.

In response to the shortage of health care workers during the coronavirus pandemic, twenty-one states granted NP full practice authority to cope with the increasing demand for health care services. In the Midwest, Kansas, Indiana, Michigan, Missouri, and Wisconsin, adopted a more expansive scope of service for NP.

This report evaluates the effect of this policy change on the rate of COVID-related deaths in the Midwest states, which expanded NP authority and sheds light on healthcare policy in Illinois.

Findings:

NP in Illinois have full practice authority only if they have had 4,000 hours of clinical experience and completed 250 training hours.

Illinois and Ohio are the only two Midwest states, which did not expand the scope of practice for NP during the pandemic.

In the states that did expand the scope of practice for NP, COVID related deaths were potentially reduced by 10 cases per day

If Illinois had expanded the scope of practice, 8% fewer COVID-19 deaths would have occurred in Cook County, which is the most affected area in the state.

The findings reveal that granting NP full practice authority is effective in easing the shortage of health care workers and improves health care quality. Our result echoes the findings by other healthcare researchers that granting NP independent practice authority improves patient outcomes. This report recommends that health care regulators in Illinois grant all NP independent practice authority in order to meet the states’ growing health care demand.

Introduction

The shortage of healthcare professional in the US has been a notable concern among health policy makers. According to the Bureau of Health Workforce, in 2017 only 55 percent of the need for primary care professional was met.1 For Illinois, the Bureau estimated that 468 extra primary care health providers were needed to address the shortage problem, which is roughly 188% of the existing number of primary care providers in the state. The shortage problem is the biggest in the Midwest.

The nationwide healthcare labor force shortage manifests itself even more during the COVID-19 pandemic. To address the health workforce shortage, a number of states temporarily expanded the scope of practice for nurse practitioners (NP). NP are well-trained health care personnel, typically requiring post-graduate training. According to the American Association of Nurse Practitioners (AANP), NP with full autonomy are authorized to \evaluate patients; diagnose, order and interpret diagnostic tests; and initiate and manage treatments".2 Although they are well-prepared to provide primary, acute, and specialty care, their scope of practice varies by state. According to the classification by AANP, in a state with "restricted/reduced practice," NP need to have a collaborative agreement with, or work under direct supervision of a licensed health professional (e.g. physician, dentist). The limited authority of NP has not only reduced health access in rural areas, but also significantly increased the administrative burden of the supervising personnel. It has also reduced the amount of time dedicated for patient care (Traczynski and Udalova, 2018). Healthcare researchers have claimed that granting NP independent practice authority would have a positive impact on patient outcomes.

This report estimates the impact of expanding the scope of practice for NPs on COVID mortality in the Midwest. In the region, seven states were classified prior to the pandemic as "restricted/reduced NP practice" by the AANP. Among those, Kansas, together with Indiana, Michigan, Missouri, and Wisconsin granted NPs independence, whereas Illinois and Ohio did not implement changes.3 In the empirical exercise, we leverage on this quasi-experimental setting to compare daily COVID mortality in the treated states with that in Illinois and Ohio before and after the emergency response. Although the discussion evaluates the recent emergency response under the pandemic, the finding here contributes to the ongoing debate of whether NP should be granted independent authority.

According to our estimates, expanding the scope of practice for NPs potentially reduced COVID-related deaths by ten per day. To put this figure into context, the number amounts to a reduction of 8% of in those states that implemented the changes the average death toll in Cook County during the sample period. These results add support to granting NP full independent authority to ease the healthcare workforce shortage.

Restriction on NP and State Emergency Response

The scope of practice for nurse practitioners varies by state. According to the American Association of Nurse Practitioners (AANP), five of the Midwest states allow full practice (light blue in Figure 1a), meaning that NP can work independently and are authorized for patient diagnosis and prescription.

Illinois with four other Midwest states (Figure 1a) classify NP under "reduced practice" restrictions. Illinois regulations amended in 2017 do allow a subset of NP full practice authority, but the change only applies to NP who have had at least 4,000 hours of clinical experience and completed 250 training hours.4 In contrast, North Dakota, South Dakota, Nebraska, Minnesota and Iowa permit a full scope of practice for all NP without a minimum threshold of accrued work hours.

In Illinois, NP are required to have a collaborative agreement with a health professional (e.g. licensed physician), listing the types of care, treatment and procedures the NP is allowed to perform. NP in Illinois and five other Midwest states can work quasi-independently because physicians are not required to be physically present with the NP. Prior to the pandemic outbreak, Missouri and Michigan had the most restrictive rules, requiring that NP work under direct supervision of a physician (Figure 1a).

As the pandemic unfolded, states with reduced or restricted practice authority began to expand the scope of practice for NP. The aim of the change was to enlarge the healthcare workforce capable of providing COVID-19 care.

Among the Midwest states shown in Figure 1b, Missouri and Indiana were the first to waive part of the supervision requirements. At the date of this report, Illinois and Ohio were the only two states, which have not taken action to expand the scope of practice for NP.

Policy Effect on COVID-related Mortality

To evaluate the effectiveness of expanded scope of practice, this report looks into the impact on COVID-related mortality. Data on county level daily mortality are retrieved from the New York Times.5

To estimate a cause-and-effect relationship between expanded scope of practice and COVID-19 mortality, this report employs the synthetic control method (Abadie and Gardeazabal, 2003; Abadie, Diamond, and Hainmueller, 2010). The essence of this statistical technique is to construct a counterfactual which mirrors the post-policy mortality that would have been observed had the policy not happened. We then obtain the daily policy effect by directly comparing the counterfactual mortality with the observed mortality. To ensure the counter-factual offers a valid comparison, we make use of several important indicators that would predict COVID-related deaths. These include the pre-policy number of COVID death, pre-policy number of confirmed cases (also retrieved from the New York Times database), and county characteristics (number of NPs, population size, percent of 65+ population, percent of black, number of hospital, and number of beds) obtained from the Area Health Resource Files (AHRF, 2020).

An important property of the synthetic control technique is that the pre-policy number of COVID death has to be informative enough to produce reliable post-policy predictions. In other words, we rely on the pre-policy trend to predict the post-policy movement. This limits the start of the sample period to late March because many counties did not record any COVID deaths until then. For this reason, we are not able to produce a dependable counterfactual for the counties in Missouri and Indiana because they granted authority to NP prior to reporting any COVID-19 deaths.

Figure 2, shows the estimation result for Kansas, Wisconsin, and Michigan. The solid line of each graph represents the actual daily mortality of a state (average of all counties), whereas the dotted line shows the predicted counterfactual using the synthetic control technique. The red vertical line in the middle of each graph represents the day before the policy takes place. For example, in the top-left corner, the solid line shows that Kansas counties recorded an increasing number of COVID-related death with a modest decline in magnitude since April 22, which is the date Kansas started to authorize temporary independent practice for NPs. The trend afterward clearly diverges from the predicted no-policy counterfactual, which implies that the policy slowed down the death toll. Until the end of the sample period, the maximum impact by the policy reduces the daily death toll by 10 cases. We also observe a similar pattern in Wisconsin and Michigan, though the magnitude of death reduction in Michigan is smaller.

There is however the possibility that the reduction in deaths was caused by some other concurrent policies and any reduction in fatalities would then be falsely attributed to the expanded scope of practice. This concern is particularly valid because there were many policies adopted in response to the nationwide health risk.

Therefore, to check the robustness of our prediction of reduced deaths associated with NP scope of authority, we tested to see if the social distancing policy, a major attempt by states in response to the pandemic, had the same associated improvement on the cases of COVID-19 deaths.

For Kansas, Wisconsin, and Michigan, social distancing measures were implemented in late March. We therefore implemented the same estimation procedures using the synthetic control method but moving the treatment date in each state to correspond to the start of the state's shelter-in-place order. As shown in Figure 3, in each of the three states, the actual cases of death continues to grow at a higher rate than the predicted counterfactual. This finding suggests that the lock down policies did not produce the same reduction in the number of COVID-related fatalities as the expanded scope of practice

Conclusion and Policy Implication

Amid the unprecedented health crisis, it is important that state regulators consider the cost of occupational regulations.

The argument for occupational licensing is that it protects the consumer. In the case of NPs scope of practice, regulators often worry about the quality of service if the scope is widened. This report however suggests there is empirical evidence that granting NPs independent authority has contributed to a reduction in COVID-19 deaths.

#### The Aff can solve.

#### Malleability holds in contingent instances - Health access is distinct from other modes of violent power. Claiming it as “liberalism” creates false equivalencies. Such State-Alarmism is wrong and generates support for ACA rollback.

Schotten ’15

Dr. C. Heike Schotten is an Associate Professor of Political Science and an affiliated faculty in Women’s and Gender Studies at The University of Massachusetts-Boston. What following is from Schotten’s own faculty bio: Her research lies at the unlikely intersection of Nietzsche studies, queer theory, and revolution. “Against Totalitarianism: Agamben, Foucault, and the Politics of Critique,” Foucault Studies, No. 20, pp. 155-179, December 2015, Modified for language that may be objectionable - #E&F – the letter “u” is moved from Capitalized to a lower-case in one instance – this is for readability. <http://rauli.cbs.dk/index.php/foucault-studies/article/view/4935/5361>

III. Moralism and Totalitarianism

Foucault’s methodological and political commitments are all the more significant in light of Agamben’s demanded corrective of Foucaultian biopolitics and understanding of sovereignty. For even as Foucault expands his methodological rejection of the state as ahistorical political principle or sociological object, Agamben effects not simply a return to sovereignty, as already argued, but a return to sovereignty in what, following Foucault, we must recognize as totalitarian forms. This is the case not only methodologically, as will become clear, but also morally, an aspect of political critique that does not even enter into the Foucaultian schema. Methodologically, Agamben’s persistent focus on Auschwitz as the West’s political paradigm and Nazism as the teleological culmination of sovereignty’s political trajectory results in his offering an “anti-totalitarian” theory of sovereignty that renders any other historical or political outcome besides totalitarianism impossible. Hence Agamben’s dispute with Foucault is actually a “corrective” of Foucault, a disappointingly moralizing rebuke rather than a constructive scholarly engagement.

In BB, Foucault says his choice to talk about governmentality rather than the state is purposeful, a methodological choice that is “obviously and explicitly a way of not taking as a primary, original, and already given object, notions such as the sovereign, sovereignty, the people, subjects, the *state, and civil society*, that is to say, all those universals employed by sociological analysis, historical analysis, and political philosophy.”92 Rather, Foucault says, he would like to do “exactly the opposite” and, instead of using “state and society, sovereign and subjects, etcetera” as points of departure, he wants to show how they “were actually able to be formed” so that their status can be called into question.93 At one level, this is simply Foucault’s methodological preference. At another level, as we have seen, it is a political commitment, insofar as refusing to begin with these sociological givens facilitates resistance to the power-effects of what he calls “totalitarian theories.” While, in “SMBD,” these totalitarian theories were Marxism and psychoanalysis, in BB the target is now what Foucault calls “historicism,” which he describes as a practice of taking universals and running them through the mill of history in order to deduce their “meaning.” Significantly, historicism, like Marxism and psychoanalysis, unfolds a similarly reductive and deductive logic that “starts from the universal and, as it were, puts it through the grinder of history.”94 Instead, Foucault suggests the supposition “that universals do not exist. And then I put the question to history and historians: How can you write a history if you do not accept a priori the existence of things like the state, society, the sovereign, and subjects?”95 Insofar as historicism in BB functions the way Marxism and psychoanalysis do in “SMBD,” then historicism can also be considered a totalitarian theory that Foucault seeks to critique. In seeking to undertake an analysis that is “exactly the opposite of historicism,”96 Foucault is in some sense continuing his practice of thwarting or undermining totalitarian theories, a methodology that is animated by a specifically political commitment to insurrection.97

Foucault is also cautious about indulging the fearful discourse of the all-powerful state. He names this anxiety “state ~~phobia~~” 98 (“state alarmism”) and says it has two related versions: first,

the idea that the state possesses in itself and through its own dynamism a sort of power of expansion, an endogenous imperialism constantly pushing it to spread its surface and increase in extent, depth, and subtlety to the point that it will come to take over entirely that which is at the same time its other, its outside, its target, and its object, namely: civil society.99

If this leaves the impression of a kind of suffocating beast whose tentacled grasp is ever extending over and sliding in between any cracks of resistance to its domination, this is no accident: Foucault refers to this as the “cold monster” version of the state, the “threatening organism above civil society.”100 Foucault does not spend much time unpacking the problems with this theory, presumably because they are self-evident on the basis of his earlier work: not only is the state here presupposed as a causal entity that exists “above” its subjects, but it is also possessed of a kind of vitalism or life principle that Foucault dismisses out of hand as an inadequate or irresponsible account of power. The state as “cold monster” is, quite literally, yet another version of the Leviathan, the great sea monster from the book of Job, for whose beheading Foucault has already vigorously advocated.

The second bit of “critical commonplace”101 regarding the state that Foucault seeks to avoid is the notion that there are no significant differences between or among different forms of it. This is the notion that, as Foucault puts it,

there is a kinship, a sort of genetic continuity or evolutionary implication between different forms of the state, with the administrative state, the welfare state, the bureaucratic state, the fascist state, and the totalitarian state all being, in no matter which of the various analyses, the successive branches of one and the same great tree of state control in its continuous and unified expansion.102

Here Foucault explicitly puts totalitarianism and the state together in order to distinguish “the totalitarian state” as a *distinct*ive state form, rather than the paradigm case of the state itself.

Indeed, here we might understand Foucault as attempting to disentangle a kind of doubling of totalitarianism in state phobia, wherein the cold monster view anoints the state with the kind of omniscience and omnipotence often ascribed to totalitarian versions of it. This specifically totalitarian version ultimately becomes synonymous with the state itself.

What links the “cold monster” view and the “genetic continuity” view is their consideration of the state as a malevolent principle in itself, such that distinctions among types become irrelevant and *any state action* can be interpreted as a sign of its increasing repressiveness and violence. Foucault uses the example of an unduly harsh criminal sentence, which he says can be interpreted as evidence of the increasing fascism of the state, regardless of whatever may actually be true—this is once again a correct answer produced by the particular truth mill that is “state phobia.” Foucault warns that this kind of thinking can verge on ~~paranoid~~ (alarmist) fantasy, which ~~sees~~ (perceives) evidence of the ever-growing, increasingly-fascistic state everywhere it looks. In this case, one’s “grasp of reality”103 is not what matters, but rather the endless confirmation and reproduction of the theory itself. It can also issue in absurd (illogical) conclusions, such as the following:

As soon as we accept the existence of this continuity or genetic kinship between different forms of the state, and as soon as we attribute a constant evolutionary dynamism to the state, it then becomes possible not only to use different analyses to support each other, but also to refer them back to each other and so deprive them of their specificity. For example, an analysis of social security and the administrative apparatus on which it rests ends up, via some slippages and thanks to some plays on words, referring us to the analysis of concentration camps. And, in the move from social security to concentration camps the *requisite* specificity of analysis is diluted.104

While Foucault is referencing right-wing fantasies about governmental power (one is reminded of Sarah Palin’s warnings about “death panels” should Obama’s Affordable Health Care Act pass the U.S. Congress), his caution is also apposite to left anarchist discourses that similarly ~~see~~ (perceive) the state as a malevolent principle in itself. In suggesting that the state has no essence or is “nothing else but the mobile effect of a regime of multiple governmentalities,”105 Foucault is not claiming that we should be uncritical of the state or exercises of state power. Quite the opposite. In destabilizing the operative presumptions about the state in history, sociology, philosophy, and politics, Foucault is instead working to make the state something that is possible to critique and resist. We lose sight of this possibility when the state is presumed to be a prime mover of history or politics, an omnipotent principle or an essentially annihilatory institution that culminates, inevitably, in the genocidal logic of concentration camps. Part of the task of proceeding in the exact opposite manner as that of historicism is admitting that mechanisms of power *are* transferable and that they do not exhaustively characterize any particular society.106 Foucault’s resistance to historicism and state phobia, then, are yet further resistances to totalitarianism—of theory (or science) but also of specific state forms and beliefs about the state and its forms that function in totalitarian ways.

As is perhaps already evident, Agamben’s approach to the state in Homo Sacer epitomizes both the historicism and state ~~phobia~~ (“state alarmism”) that Foucault explicitly rejects. Rather than seeking, from below, to untangle and document the subjugated knowledges that have produced existing dominations, Agamben instead seeks to read these latter for what they reveal about the essential workings of Western politics. Indeed, Agamben presumes that power inheres in the sovereign demarcation of the zoē/bios divide, the status of which exhaustively defines life and politics in “the West” (itself an underspecified geographical and historical entity). The method of Homo Sacer is thus clearly expressed in Foucault’s description of “historicism”: Agamben starts from a universalist claim regarding the sovereign exception and then proceeds to examine how history has inflected it in the West. This is what allows him to conflate all versions of the state with the totalitarian one and also to suggest that all versions of sovereignty culminate inevitably in the Nazis’ creation of concentration camps. As he says, the camp is “the hidden paradigm of the political space of modernity, whose metamorphoses and disguises we will have to learn to recognize.”107

Like all declension narratives, this one too echoes the chronology of the fall from grace, except that, in Agamben’s version, the pre-lapsarian moment dates from Aristotle rather than the Creation. The result, however, is a valorized hypostatization of an at-best questionable moment of origin, from which the logic of the events of Western history can be understood to have unfolded and to be still in the process of unfolding to this day.108 At one end, then (at “the beginning,” or archē), stands the Aristotelian distinction between zoē and bios; at the other end (“now,” or in modernity), lie the Nazi death camps. These two moments are tied inevitably, irretrievably together by the exceptional logic of sovereignty:

The totalitarianism of our century has its ground in this dynamic identity of life and politics, without which it remains incomprehensible. If Nazism still appears to us as an enigma, and if its affinity with Stalinism (on which Hannah Arendt so much insisted) is still unexplained, this is because we have failed to situate the totalitarian phenomenon in its entirety in the horizon of biopolitics. When life and politics—originally divided, and linked together by means of the no-man’s-land of the state of exception that is inhabited by bare life—begin to become one, all life becomes sacred and all politics becomes the exception (148, original emphasis).

Nazism will remain “an enigma,” on this telling, insofar as we fail to “situate” it within the essential principle of Western biopolitics—the sovereign exception, the zoē/bios divide. Once we do that, however, the meaning of Nazism becomes clear and we understand how there could ever have been death camps, perhaps the real question Agamben is trying to answer in this text. Already latent in the zoē/bios divide, then, is the concentration camp, which is why its historical development inevitably culminates there.

Agamben’s political theory thus not only re-iterates the assumptions of the sovereign model as Foucault explains it, but itself becomes a kind of totalitarian theory of sovereignty in the West that can only ever issue in the same answer over and over again: the camp. Agamben’s methodological historicism is what allows him to come to the political conclusions Foucault explicitly repudiates above; namely, that there is no meaningful difference between democratic states and totalitarian ones, and this because the sovereign exception is a formation of power that fundamentally defines the entity “Western politics” from its earliest days through to its catastrophic contemporaneity. Thus it is perhaps also unsurprising that Agamben concludes there is no difference between democratic and totalitarian regimes insofar as their “fundamental referent” is bare life; the “only real question to be decided,” he says, is “which form of organization would be best suited to the task of assuring the care, control, and use of bare life.”109 As well, Agamben’s state ~~phobia~~ (“state alarmism”) , in which we can recognize both the “cold monster” and “genetic” versions, predictably culminates, as do the absurdist theories Foucault documents, with nothing other than concentration camps. U(u)nless the enigma of the sovereign exception is solved, Agamben insists, we will remain mired in totalitarianism and death camps: “Today politics knows no value (and, consequently, no nonvalue) other than life, and until the contradictions that this fact implies are dissolved, Nazism and fascism—which transformed the decision on bare life into the supreme political principle— will remain stubbornly with us.”110 The consequence of Agamben’s methodology here is not simply a return to sovereignty, then, but in fact a resurrection of the sovereign and the restoration of his omnipotence in what, following Foucault, can be called totalitarian forms. Agamben’s reading of the text of Western politics from the guiding principle of the sovereign exception leaves us no other option, no other conclusion, than that with which Foucault claims his work is constantly being misinterpreted as saying: “This is the way things are; you are trapped.”111 This outcome is all the more ironic, of course, given that the entire exercise of Homo Sacer was ostensibly spurred by Agamben’s desire to “correct” Foucault’s oversight regarding 20th century totalitarian regimes and, presumably, overcome the disastrous legacy of Nazism and totalitarianism.

\*Note to students: the word “endogenous” means having an internal cause or origin)

#### Elements of the squo echo this call for an untouched market. That pro-rollback perspective would place *millions of lives at risk*.

Gee ‘20

et al; Emily R. Gee is a senior fellow and the senior economist for Health Policy at American Progress. In her role, she guides policy development and advocates for reforms to expand coverage and improve care. Her areas of expertise include health coverage and affordability, health care financing, and the Affordable Care Act. She has been quoted and her work has been cited in The New York Times, The Washington Post, Politico, Forbes, Vox, and other publications. Prior to joining American Progress, she was an economist in the Office of the Assistant Secretary for Planning and Evaluation at the U.S. Department of Health and Human Services and worked on implementation of the Affordable Care Act. Gee also served as an economist on the staff of the Council of Economic Advisers in the Obama White House, tracking health care coverage and reviewing regulation related to provider payments, prescription drugs, and insurance. Gee earned her doctorate in economics from Boston University, where she researched health insurance markets and taught health economics. She holds a bachelor’s degree in government from Harvard College. “10 Ways the ACA Has Improved Health Care in the Past Decade” - March 23, 2020 - #E&F – modified for language that may offend - https://www.americanprogress.org/issues/healthcare/news/2020/03/23/482012/10-ways-aca-improved-health-care-past-decade/

Ten years ago this month, the Affordable Care Act (ACA) was signed into law. Since then, the law has transformed the American health care system by expanding health coverage to 20 million Americans and saving thousands of lives. The ACA codified protections for people with preexisting conditions and eliminated patient cost sharing for high-value preventive services. And the law goes beyond coverage, requiring employers to provide breastfeeding mothers with breaks at work, making calorie counts more widely available in restaurants, and creating the Prevention and Public Health Fund, which helps the Centers for Disease Control and Prevention (CDC) and state agencies detect and respond to health threats such as COVID-19.

Despite the undeniably positive impact that the ACA has had on the American people and health system, President Donald Trump and his allies have (~~been on a mission~~ (strived) to dismantle the law and reverse the gains made over the past decade—first through Congress and now through a lawsuit criticized by legal experts across the political spectrum. Even if the U.S. Supreme Court rules the ACA constitutional after it hears the California v. Texas health care repeal lawsuit this fall, President Trump’s administration cannot be trusted to put the health of the American people ahead of its political agenda. Trump’s administration hasn’t delivered on Trump’s commitment to “always protect patients with pre-existing conditions.”

The consequences of ACA repeal would be dire:

Nearly 20 million people in the United States would lose coverage, raising the nonelderly uninsured rate by more than 7 percent.

135 million Americans with preexisting conditions could face discrimination if they ever needed to turn to the individual market for health coverage.

States would lose $135 billion in federal funding for the marketplaces, Medicaid, and the Children’s Health Insurance Program (CHIP).

Insurance companies would no longer be required to issue rebates when they overcharge Americans. In 2019, insurance companies returned $1.37 billion in medical loss ratio rebates to policyholders.

The tax revenue that funds the expanded health coverage under the ACA would become tax cuts for millionaires, who would receive an average of $46,000 each.

As the nation awaits a final ruling on the lawsuit, the Center for American Progress is celebrating how the ACA has helped the American people access affordable health care in the past decade. In honor of the law’s 10th anniversary, here are 10 ways in which it has changed Americans’ lives for the better. Each of these gains remains at risk as long as the Trump administration-backed lawsuit remains unresolved.

1. 20 million fewer Americans are uninsured

The ACA generated one of the largest expansions of health coverage in U.S. history. In 2010, 16 percent of all Americans were uninsured; by 2016, the uninsured rate hit an all-time low of 9 percent. About 20 million Americans have gained health insurance coverage since the ACA was enacted. The ACA’s coverage gains occurred across all income levels and among both children and adults, and disparities in coverage between races and ethnicities have narrowed.

Two of the biggest coverage expansion provisions of the ACA went into full effect in 2014: the expansion of Medicaid and the launch of the health insurance marketplaces for private coverage. Together, these programs now cover tens of millions of Americans. Nationwide, 11.4 million people enrolled in plans for 2019 coverage through the ACA health insurance marketplaces. Medicaid expansion currently covers 12.7 million people made newly eligible by the ACA, and the ACA’s enrollment outreach initiatives generated a “welcome-mat” effect that spurred enrollment among people who were previously eligible for Medicaid and CHIP.

2. The ACA protects people with preexisting conditions from discrimination

Prior to the ACA, insurers in the individual market routinely set pricing and benefit exclusions and denied coverage to people based on their health status, a practice known as medical underwriting. Nearly 1 in 2 nonelderly adults have a preexisting condition, and prior to the ACA, they could have faced discrimination based on their medical history if they sought to buy insurance on their own.

The ACA added a number of significant new protections for people with preexisting conditions. One group of reforms involved changes to the rating rules, prohibiting insurers from making premiums dependent on gender or health status and limiting their ability to vary premiums by age. The ACA also established guaranteed issue, meaning that insurers must issue policies to anyone and can no longer turn away people based on health status.

Another crucial protection for people with preexisting conditions is the ACA’s requirement that plans include categories of essential health benefits, including prescription drugs, maternity care, and behavioral health. This prevents insurance companies from effectively screening out higher-cost patients by excluding basic benefits from coverage. The law also banned insurers from setting annual and lifetime limits on benefits, which had previously prevented some of the sickest people from accessing necessary care and left Americans without adequate financial protection from catastrophic medical episodes.

3. Medicaid expansion helped millions of lower-income individuals access health care and more

To date, 36 states and Washington, D.C., have expanded Medicaid under the ACA, with 12.7 million people covered through the expansion. While the Medicaid program has historically covered low-income parents, children, elderly people, and disabled people, the ACA called for states to expand Medicaid to adults up to 138 percent of the federal poverty level and provided federal funding for at least 90 percent of the cost.

Medicaid expansion has led to better access to care and health outcomes for low-income individuals and their families across the country. A large body of evidence shows that Medicaid expansion increases utilization of health services and diagnosis and treatment of health ailments, including cancer, mental illness, and substance use disorder. Medicaid expansion is associated with improvements in health outcomes such as cardiac surgery outcomes, hospital admission rates for patients with acute appendicitis, and improved mortality rates for cardiovascular and end-stage renal disease. Beyond health outcomes, evidence points to improved financial well-being in Medicaid expansion states, including reductions in medical debt and improved satisfaction with one’s current financial situation. A study that assessed eviction rates in California found that Medicaid expansion is “associated with improved housing stability.”

Evidence shows that Medicaid expansion saves lives. According to a 2019 study, Medicaid expansion was associated with 19,200 fewer deaths among older low-income adults from 2013 to 2017; 15,600 preventable deaths occurred in states that did not expand Medicaid. As the Center on Budget and Policy Priorities points out, the number of adults ages 55 to 64 whose lives would have been saved in 2017 had all states expanded Medicaid equals about the number of lives of all ages that seatbelts saved in the same year.

#### We do not defend the law in all instances – but in the contingent realm of health provision, government policy is much better than the de facto Alt of an untouched market.

Parento ‘12

Professor Emily Whelan Parento is as Associate Professor and the Gordon D. Schaber Health Law Scholar at McGeorge School of Law at the University of the Pacific. Her primary scholarly focus is the intersection of domestic health law and policy with the human rights framework for the right to health and health equity. The author holds a JD and LLM, from The Georgetown University Law Center and a BBA, from the University of Notre Dame. Earlier in her career she served as a federal judicial clerk and practiced litigation at Davis Polk & Wardwell in New York and California. From the article: “Health Equity, Healthy People 2020, and Coercive Legal Mechanisms as Necessary for the Achievement of Both” - 58 Loyola Law Review 655 - Fall, 2012 - #CutWithRJ – Modified for potentially offensive language – This Loyola Law Review article was re-published at Racism.org – http://www.racism.org/index.php?option=com\_content&view=article&id=1424:racisthealthcare&catid=88&Itemid=274&showall=1&limitstart=

Although health equity was not a part of seventeenth-century political discourse, Montesquieu accurately captured the conflict that surrounds the concept today. In theory, people are born with equal potential for healthy lives, yet the minute their lives begin, a confluence of factors render some people immensely more likely than others to have the capability to lead healthy lives. These disparities in individuals' capabilities to achieve good health raise important social justice questions--What obligation does society have to take measures to reduce health disparities based on race or ethnicity, socioeconomic status (SES), gender, sexual orientation, education, disability, and other factors, particularly where behavioral risk factors are a contributing factor to disease? Stated differently, how much “choice” do individuals *truly* possess regarding their health, and what can and should government do to address the societal influences that negatively impact health status?

Routinely, society looks at an individual health outcome and ascribes the result to modifiable lifestyle choices, good or bad, with the implicit assumption that people who are healthy deserve praise for their responsible choices and those who are not deserve at least partial blame for failing to act in ways that would improve their health. However, this personal responsibility framework fails at a population level. It is well-documented that there is a socioeconomic gradient to health, in which individuals are likely to be healthier as their socioeconomic status increases. But no serious scholar ascribes population level socioeconomic health disparities to the superior willpower of the wealthy in making healthy lifestyle choices. Similarly, there is a persistent racial and ethnic component to health that is not explained by other factors, pursuant to which certain racial and ethnic groups are more likely to have worse health outcomes than others. But no one argues that African-Americans have worse health outcomes on average than whites because African-Americans are not as motivated as whites to protect their health. There is no basis for making such population-wide generalities about motivation regarding health behavior. Yet in the face of these widespread and presumptively inequitable disparities, the law has done little. This paper argues that coercive legal mechanisms are an essential element of eliminating health disparities and achieving health equity. Moreover, the paper argues that Healthy People 2020 (HP 2020), which is the nation's “master blueprint for health” and explicitly seeks to achieve health equity, has not fully incorporated the principles of health equity in the formulation of its objectives and indicators because HP 2020 fails to recognize the varying distributive effects of policies that could achieve population health targets. To truly incorporate the principles of health equity, HP 2020 should advocate for those demonstrably effective coercive legal mechanisms that would both achieve its population health objectives and reduce health disparities.

The federal government has monitored health disparities in one form or another since at least 1985 and has advocated for the elimination of health disparities since at least 2000, with the release of the Healthy People 2010 goals. However, decisive action on the reduction of disparities has been lacking, and, on average, disparities have not improved over at least the past fifteen years. Although health equity is a mainstay of health law and policy discourse, the concept has not had a significant role in mainstream political discussions. As it is commonly understood, health equity exists when “all people have an equal opportunity to develop and maintain their health, through fair and just access to resources for health.” There are strong philosophical and social justice reasons that support government action to reduce disparities--among them are human rights principles of equality underlying the right to health; Nussbaum's theory of health as an essential human capability necessary to fully function in life; Amartya Sen's theory of the capability for health as an instrumental human freedom; and principles of equality and nondiscrimination among people based on characteristics such as SES, race or ethnicity, gender, sexual orientation, religion, disability, rural/urban geography, and other characteristics historically linked to discriminatory treatment.

The question, then, is, What means are both necessary and effective for reducing health disparities and achieving health equity? It is here that distributive consequences of policies become important, leading to the conclusion that coercive legal mechanisms such as direct regulation and taxation are essential to a serious strategy to reduce disparities. While coercive legal mechanisms are not suited to solve every problem and must always be balanced against concern for personal liberties and principles of autonomy, there are many instances in which coercive legal mechanisms are demonstrably *the most effective way of reducing health dispariti*es and improving population health. Unfortunately, when discussing these mechanisms, advocates are often cowed by advocates of “personal choice” into watering down interventions to the point that the likely result is--even with an improvement in population health--no change or a worsening in health disparities. This approach is problematic from a health equity standpoint, given that health equity by its nature requires the elimination of health disparities associated with social disadvantage.

The U.S. government has made the achievement of health equity and the elimination of health disparities a national priority in HP 2020, recognizing the importance of working toward the realization of health equity. Every ten years since 1979, the Department of Health and Human Services (HHS) issues new “Healthy People” nationwide health goals for the forthcoming decade, the most recent of which are HP 2020. The essential aim of the Healthy People project (the Project) is to establish national health priorities by setting targets for improvement of health across a broad spectrum of topics, ranging from access to health services to environmental health to more discrete diseases such as cancer and heart disease and, for the first time in HP 2020, including the social determinants of health. In some instances, HP 2020 advocates the adoption of specific coercive legal mechanisms that would both further a population health goal and reduce disparities--for example, passage of smoke-free legislation would both reduce overall population exposure to secondhand smoke and more strongly affect disadvantaged groups (who have higher rates of smoking and are more likely to work in places where smoking is permitted), thereby resulting in a reduction in the disparity in rates of exposure to secondhand smoke. This advocacy is laudable. However, in most instances, HP 2020 chooses to set broad, population-based targets for health measures without expressing a preference between means of achieving those targets, as in the case of access to health insurance coverage, where HP 2020 sets a target of 100% coverage without acknowledging the obvious--that there is no evidence that anything other than a coercive legal mechanism is a realistic way to achieve that goal.

The determination of which coercive legal mechanisms HP 2020 supports appears to be made not on the ground of epidemiological evidence of a policy's effectiveness; rather, HP 2020 seems to be willing to advocate for direct regulation only in areas that are relatively politically uncontroversial, such as helmet laws and certain tobacco control measures. This paper argues that a true internalization of the principles of health equity requires that HP 2020 acknowledge the predictably different distributive consequences of various policy interventions and urge the adoption of those coercive legal mechanisms that are demonstrably effective in reducing health disparities. Without such a framework under which to operate, the likely result is that, even if overall population health improves, health disparities will widen between the most vulnerable population groups and the already advantaged, or remain essentially stagnant, as they did under HP 2010.

More broadly, this paper argues that health equity demands the use of coercive legal mechanisms in certain circumstances given the existence of current disparities and the evidence of effectiveness of direct regulation as compared to its alternatives. This is true for a number of reasons, including that purely voluntary policy initiatives often result in little impact on the most vulnerable populations (e.g., in the case of trans fat initiatives, discussed infra Part III.B.3), and because market-based initiatives have failed to adequately account for the health needs of certain population groups (as in the case of access to health services, discussed infra Part III.B.1). Only with a candid assessment and acceptance of the critical role that coercive legal mechanisms play in furthering population health can progress be made toward the achievement of the HP 2020 goals and ultimately, health equity. Part II of this paper discusses health equity in the U.S. and how HP 2020 incorporates health equity into its goals. Part III discusses the importance of law in public health and health equity and uses specific HP 2020 goals and objectives as examples of the essential role of coercive legal mechanisms in achieving those goals while also furthering health equity. Part IV proposes certain additional legal mechanisms that could inform selection of strategies for achieving the HP 2020 goals and health equity, including the use of a “health in all policies” approach to government, the use of health impact assessments in policymaking, and the use of various indices to measure the effects of various policies and assess progress toward disparities reduction.

# 2AC

### 2AC Federalism

Synthetically-produced diseases already exist – a lab accident coming within 10 years and millions of people will die. That impacts outweighs – it access both teams frameworks because the impact would disparately impact communities lacking privilege.

The Alt – even if it functioned perfectly to end the State – would have no apparatus to stop these lab releases.

Narrowly and contingently retaining government is the LONE viable path. It wouldn’t re-create all the USFG writ-large – it would simply regulate these labs AND to promote counter-research to check their inevitable release.

### US key arg

#### ( ) We don’t need to win US key – our ag is that good data from State-level regs create models that could be used anywhere in the globe.

#### ( ) We do have a US key warrant – our 1AC ev is about how 20 million would die IN THE US absent strong regs. Our cards also outline a larger risk in the US due to the level of US experimentation with Syn Bio.

#### ( ) US is key – that’s where the worst regulations and most dangerous research is taking place.

Garrett ‘13

Laurie Garrett is senior fellow for global health at the Council on Foreign Relations and a Pulitzer Prize winning science writer. “Biology's Brave New World” – Foreign Affairs - November/December 2013 – #E&F – available via Political Science Complete Database.

When Venter's team first created the phi X174 viral genome, Venter commissioned a large analysis of the implications of synthetic genomics for national security and public health. The resulting report warned that two issues were impeding appropriate governance of the new science. The first problem was that work on synthetic biology, or synbio, had become so cheap and easy that its practitioners were no longer classically trained biologists. This meant that there were no shared assumptions regarding the new field's ethics, professional standards, or safety. The second problem was that existing standards, in some cases regulated by government agencies in the United States and other developed countries, were a generation old, therefore outdated, and also largely unknown to many younger practitioners.

Venter's team predicted that as the cost of synthetic biology continued to drop, interest in the field would increase, and the ethical and practical concerns it raised would come increasingly to the fore. They were even more prescient than they guessed. Combined with breakthroughs in another area of biology, "gain-of-function" (GOF) research, the synthetic genomics field has spawned a dizzying array of new possibilities, challenges, and national security threats. As the scientific community has started debating "human-directed evolution" and the merits of experiments that give relatively benign germs dangerous capacities for disease, the global bioterrorism and biosecurity establishment remains well behind the curve, mired in antiquated notions about what threats are important and how best to counter them.

In the United States, Congress and the executive branch have tried to prepare by creating finite lists of known pathogens and toxins and developing measures to surveil, police, and counter them; foreign governments and multilateral institutions, such as the UN and the Biological Weapons Convention, have been even less ambitious. Governance, in short, is focused on the old world of biology, in which scientists observed life from the outside, puzzling over its details and behavior by tinkering with its environment and then watching what happened. But in the new biology world, scientists can now create life themselves and learn about it from the inside. As Venter put it back in 2009, "What we have done so far is going to blow your freakin' mind."

CODING LIFE

Shortly after Venter's game-changing experiment was announced, the National Academy of Sciences' Institute of Medicine convened a special panel aimed at examining the brave new biology world's ethical, scientific, and national security dimensions. Andrew Ellington and Jared Ellefson of the University of Texas at Austin argued that a new breed of biologists was taking over the frontiers of science -- a breed that views life forms and DNA much the way the technology wizards who spawned IBM, Cisco, and Apple once looked at basic electronics, transistors, and circuits. These two fields, each with spectacular private-sector and academic engagement, are colliding, merging, and transforming one another, as computer scientists speak of "DNA-based computation" and synthetic biologists talk of "life circuit boards." The biologist has become an engineer, coding new life forms as desired.

Gerald Joyce of the Scripps Research Institute in La Jolla, California, frets that as the boundaries blur, biologists are now going to be directing evolution and that we are witnessing "the end of Darwinism." "Life on Earth," Joyce has noted, "has demonstrated extraordinary resiliency and inventiveness in adapting to highly disparate niches. Perhaps the most significant invention of life is a genetic system that has an extensible capacity for inventiveness, something that likely will not be achieved soon for synthetic biological systems. However, once informational macromolecules are given the opportunity to inherit profitable variation through self-sustained Darwinian evolution, they just may take on a life of their own."

This is not hyperbole. All the key barriers to the artificial synthesis of viruses and bacteria have been overcome, at least on a proof-of-principle basis. In 2002, researchers at SUNY Stony Brook made a living polio virus, constructed from its genetic code. Three years later, scientists worried about pandemic influenza decided to re-create the devastating 1918 Spanish flu virus for research purposes, identifying key elements of the viral genes that gave that virus the ability to kill at least 50 million people in less than two years. What all this means is that the dual-use dilemma that first hit chemistry a century ago, and then hit physics a generation later, is now emerging with special force in contemporary biology.

#### The other big Syn Bio research entity is the EU – but they, unlike US State governments, are much more apt to have a good regulatory model.

Philp ‘14

et al; Jim C. Philp – formerly a Reader in Environmental and Industrial Biotechnology at Edinburgh Napier University. The report was drafted primarily by Jim Philp with significant contributions from Mineko Mohri. Mohri earned her law degree at Keio University in Tokyo. She has also served as a lecturer at Keio University. From: “Emerging Policy Issues in Synthetic Biology”, which was published June 4th, 2014. Available in full text via Google Books. p. 117-126

Synthetic biology is a scientific field that cannot be linked to a single professional branch. In addition to synthetic biologists, chemists, engineers, physicists and computer scientists are also involved in synthetic biology projects The biosafety problem in this respect is not necessarily related to a potential malevolent intent, but rather to the lack of proper biosafety training or attitude (Schmidt et al. 2009) There is therefore a need for training programmes especially designed for non-synthetic biologist practitioners, such as standard microbiologists, synthetic chemists or computer engineers. In this respect the National Science Advisory Board for Biosccurity (NSABB) and the Industry Association Synthetic Biology (IASB) envisaged the development of a web-accessible advice portal for "experiments of concern", in order to provide scientific and biosafety-related advice for companies or single practitioners (IASB. 2008). The open source nature of synthetic biology creates both biosafety and biosecurity concerns. In the last two decades, the Internet has enormously expanded the potential to diffuse information "from the laboratory to the basement" In parallel, synthetic biologists have extensively used the Internet to increase the openness of this new life science, in line with an approach that favours openness, communication and innovation. The primary goals of this new approach were new ideas and better-informed public opinion As this eventually led to the release of scientific information outside the academic and scientific sphere, an increasing number of amateur practitioners are now likely to have little notion of biosafety (NSABB. 2010). The initial aim of enhancing innovation through public diffusion has therefore been slowly leading to a phenomenon now known as "garage biology" (Schmidt. 2008). At present a contained and relatively small issue, its importance may increase over time. At the very least, it requires monitoring by policy makers. The potential for improper or malicious use of synthetic biology challenges the need for regulation, at least at the level of DNA synthesis. Among the greatest challenges facing those who develop such regulations will be weighing the costs and benefits of rules and developing an effective enforcement system. The situation in the United States and the European Un-ion is described by Bar-Yarn et al (2012), bearing in mind that many other countries have their own procedures. Policies for regulating synthetic biology should aim to ensure the implementation of well-crafted regulations that do not hinder beneficial research. The most critical difference for regulation between synthetic biology and genetic modification (GM) lies in the ability to make tailored DNA sequences. GM technology is restricted to complex laboratory operations. In synthetic biology, the design of DNA can theoretically be done from a computer in any location, without organisational regulation Biigl (2007) argues that modern DNA synthesis challenges the existing recombinant DNA safety framework on two fronts: 1. DNA can be readily designed in one location, constructed in a second and delivered to a third. The resulting use of the material can therefore take place far from its originators. 2. Synthesis max provide an effective alternative route for those who seek to obtain specific pathogens in order to cause harm, thereby circumnavigating national or international approaches to ensuring biosecurity. Although much additional expertise would be needed to produce infectious agents from the resulting genetic material, such work may not be subject to review or oversight. The DNA synthesis industry requires regulatory protocols to ensure that it does not become a vehicle for biosafety biosecurity violations. The industry can only continue to advance and realise the potential of synthetic biology if it supports best practices in biological safety and security. Sec. for example. IASB on the effective deterrence and investigation of criminal uses of synthetic DNA." A broader role for government policy is the achievement of international consensus. Harmonisation among countries is important. Otherwise potential violators of biosecurity regulations may simply transfer their design and construction activities to a less regulated country Means of obtaining regulatory interaction among governments, synthesis companies and customers are summarised in Figure 6.2. It represents the collective views of all founding members of the International Consortium for Polynucleotide Synthesis as well as the individual opinions of members of the US Federal Bureau of Investigation, executives of several leading synthetic biology companies and members of academia. Comparisons of the regulatory instruments employed in the United States and the European Union help to see how broader international regulation may evolve. Table 6.1 shows that international regulation is virtually at the level of the Cartagena Protocol, which governs the trans-boundary movement of genetically modified organisms (GMOs). Most GMO-exporting countries have not ratified the Cartagena Protocol. However, given that importing countries increasingly place restrictions on imports that are in line with the rules in the Protocol, the rules may have an impact on policies in exporting countries even if they have not ratified the agreement (Falkner. 2007). There is a body of opinion arguing that Annex III of the Cartagena Protocol should be modified to allow comparative safely assessments based on the properties of the introduced trait, rather than the current testing requirements (OECD. 2013). The aim of a screening process is to avoid the intentional or unintentional sale of synthetic DNA to unreliable costumers By analysing US biological companies. Schmidt and Giersch (2011) concluded that the main aspects to be controlled are sequence screening for select agents to avoid synthesis of known pathogens or toxin-related DNA, customer screening to avoid shipment to dubious clients, and licensing of equipment and substances required for the synthesis of oligonucleotides. Until recently, the role of governmental institutions in controlling synthetic DNA trade and production has been relatively marginal. However, this has changed slightly since US administrative bodies such as the NSABB have started to take a proactive role in promoting security standards in gene synthesis companies. Documents such as the NSABB Addressing Bio-security Concerns Related to the Synthesis of Select Agents (NSABB, 2010) represent government efforts to try to address security at the institutional level Nevertheless, government involvement is currently limited to recommendations. The engagement of US governmental agencies could represent a step towards a more global approach to synthetic biology security. In explaining the objectives of its Screening Framework Guidance for Providers of Synthetic Double-Stranded DNA, the US Department of Health and Human Services (HHS) pointed out that "the Guidance was composed so that fundamental goals, provider responsibilities, and the screening framework could be considered for application by the international community". Box 6.1 lists some of the screening recommendations made by the HHS. as well those of a working paper co-ordinated by the Berkeley SynBio Policy Group. Besides customer screening practices, a fairly new challenge needs regulatory attention: the phenomenon called "split orders'. These are the alleged action of a mal-intentioned person or organisation that tries to circumvent the detection systems of DNA synthesis companies by splitting up one piece of DNA into many smaller, harmless-looking pieces and ordering them from a variety of companies (Schmidt and Giersch 2011). However, one of the barriers to this scenario is represented by synthetic biology itself the complexity of assembling the pieces, along with transport uncertainties and environmental conditions, are considered serious obstacles. However, the split orders issue remains a potential problem that needs to be monitored, most of all at the international level. "...if ever there were a science guaranteed to cause public alarm and outrage, this is it. Compared with conventional biotechnology and genetic engineering, the risks involved in synthetic biology are far scarier " (Ball, 2004, consultant editor for Nature) "Much of what is currently called synthetic biology is congruent with recombinant DNA technology discussed in Asilomar 30 years ago This includes bacteria that express heterologous genes, proteins in which amino acids have been replaced, and cells with altered regulatory pathways. Placing a new name on an old technology does not create a new hazard." (Benner and Sismour. 2005) These two quotations highlight an issue at the heart of the public engagement and acceptance debate that has shadowed GM technology. There has been an enduring disconnect between the scientific community, government and the public. Public and stakeholder pressures tend to reinforce demands for more regulation and stricter governance, related in the case of synthetic biology to biosafety. Biosecurity, trade, global justice, and the morality of creating novel life forms (Tait. 2009) However, governance in the life sciences has led to an increasingly onerous and lengthy regulatory process that may eventually stultify innovation. Given the serious concerns of public opinion regarding GMOs. Europe has adopted very stringent provisions. The legal framework is very complex and is based, among others, on EC directive 90/220/CEE (contained use) and EC Directive 2001/18/EC (deliberate release). (Figure 6.3). In the on-going debate about whether or not there is already enough regulation, it is worth re-emphasising that GM concerns have been much more of an issue in Europe than in other regions It is not a significant issue in much of Asia, the Americas and the partner economics, and it is not clear whether these regions would agree that new or more regulation is required The voice of civil society has traditionally been much stronger on the issue of GM in Europe; this is likely to be the case for synthetic biology as well. It is weaker in the United States, let alone in Asia or other parts of the Americas, where it barely registers as a political factor EU and US GMO regulations differ fundamentally in terms of the conceptual bases upon which they were established. In the United Stales, environmental legislation has been based on regulatory impact analysis which, by and large, is founded on the idea that "regulation must be based on learning: once more is known about a certain risk, regulation must be adjusted accordingly" (Aerni. 2006). By contrast, in the European Union, environmental legislation has adopted the precautionary principle as the basis for evaluating the applicability of life science innovations. The principle relies on the premise that, if scientific data do not permit a full evaluation of the environmental risks of the introduction of a substance into the environment, the relevant authorities should block its diffusion (Aerni. 2006). Yet. a recent EC report (European Commission. 2010) concluded that biotechnology, and in particular GMOs are not per se more risky than con-ventional plant breeding technologies, after having spent more than EUR 300 million on more than 130 biosafety research projects, covering a period of more than 25 years, and involving more than 500 independent research groups. As in the European Union, regulations in the United States do not deal with synthetic biology as such; typically, the processes and products of synthetic biology are covered by regulations that deal with GMOs. While it is often said that European regulations tend to be stricter than their US counterparts, the US situation is also complex and involves multiple agencies (National Institutes of Health. Environmental Protection Agency. US Department of Agriculture. Food and Drug Administration). The contained use of synthetic biology in research laboratories and in industrial bioreactors is much less likely to raise public concerns than deliberate or accidental release to the environment. After all, GM strategies for the production of new medicines have been used for decades (Goeddel et al. 1979) and create little controversy. Fears arise when GM is moved beyond controlled environments and into the outdoors The forest products sector is looking for new opportunities to produce value-added products while securing access to emerging carbon capture markets (Sheppard et al. 2011). Extending the limits of conventional breeding of trees, a very slow and inefficient process, to realise faster and more accurate trait improvement for application in plantation forests (such as faster growth, improved pest and disease control\*, has the potential to lead to easier and cheaper development of goods, such as second-generation biofu-els. However, because of public sentiment against GMOs. researchers and companies have used conventional and less efficient technologies (e.g. marker-assisted selection). Several countries and international bodies are developing the concept of a bioeconomies evidenced by the publication of strategies, in the early months of 2012, by the United States (The White House. 2012) and the European Union (European Commission. 2012). and by earlier work by the OECD (2009). Bioeconomy strategies at national (eg Sweden and South Africa) and regional levels (e.g. Flanders) (Sormann. 2012) are under development. R&D in synthetic biology has initially addressed biofuels. which are themselves contentious, and products such as bio-based chemicals and plastics, which are hallmark products of a bioeconomy A second phase, which involves a much broader spectrum of industry sectors, such as food, cosmetics, pharmaceuticals and medicine, is now emerging for synthetic biology. Bioeconomy strategies focus on sustainability and the application of biotechnology to grand and societal challenges such as climate change mitigation, and energy and food security. The one indicator of sustainability that seems to be universally accepted is reduction of greenhouse gas (GHG) emissions. Many of the products of industrial biotechnology are designed to move away from dependence on fossil fuels and to reduce GHG emissions. A particular concern associated with industrial biotechnology, however, is the impact on land use of the large amounts of biomass required for nonfood purposes. With the increasing number of applications of synthetic biology techniques to the manufacture of these products, the land use issue can be addressed by improving crop resistance to pests and drought, increasing yields of crops, using gas fermentations ih.it do not require land for the production of biomass. and the industrialisation of photosynthesis (Pavanan ct al., 2013). For the controlled release of GM technology into the environment (fields, unless the plant cultivation is performed indoors), regulation is going to involve controversial policy decisions. Synthetic biology applications to plants in the field will inevitably face the same acceptance problems as GM. and the problems are similar to those already described for GM technologies. To the extent that the general public already has a negative opinion of transgenic plants, the notion that genetic engineering is against nature makes itself felt on regulators (Streiffer and Hedemann. 2005). Lack of communication among the regulatory bodies involved in research, biosafcly and trade also hampers developments in this field (Ramessaret al. 2008) The regulatory challenges for molecular farming and how they differ from those for first-generation transgenic crops were reviewed by Spok et al (2008). The most important issue is to segregate GM crops from non-GM crops to prevent intermixing It is very difficult to maintain complete segregation of GM and non-GM crops in open fields (USDA. 2006). even with stringent confinement The European Parliament and the Council of the European Union have allowed GM presence of up to 0.5% in non-GM food or feed where the presence of the genetically modified material in non-GM material is technically unavoidable (European Parliament. 2003). For plant-made substances other man pharmaceuticals that do not pose hazardous risks, the threshold limit for contamination of non-GM crops is 0.9% (Spok, 2007). Another important issue is labelling of GM products. However, mandatory labelling may not be economically justifiable and may not provide the consumer with the required information. Alternatively, information domains can be built to provide consumers with essential information related to GM content. A system that traces products in the market to their source and a good strategy for post-market monitoring and surveillance may also be a solution Regulatory conflicts and disconnects are likely to be significant on at least three levels: 1. Between countries and regions, such as the EU that apply the precautionary principle, with a focus on process as well as product and a presumption in favour of regulations, and the United States, where regulation is risk-based/evidence-based, the precautionary principle is not dominant, and there is no willingness to regulate process as well as product ("equivalence", which the European Union does not accept).

### One Actor Enough, Decentralized Remedy Bad

#### Their “low-risk” case D morphs to bad self-assessment paradigm. One actor’s Bravado becomes enough.

Savulescu ‘12

et al; Dr. Julian Savulescu. Savulescu is a philosopher and bioethicist. He is Uehiro Professor of Practical Ethics at the University of Oxford and Head of the Melbourne–Oxford Stem Cell Collaboration, which is devoted to examining the ethical implications of cloning and embryonic stem cell research. He is the editor of the Journal of Medical Ethics, which is ranked as the #1 journal in bioethics worldwide by Google Scholar Metrics as of 2013. In addition to his background in applied ethics and philosophy, he also has a background in medicine and completed his MBBS (Hons) at Monash University. “Engineering and ethical perspectives in synthetic biology” – EMBO Reports – July 2012; 13(7): 584–590. Published online Jun 15, 2012. doi: 10.1038/embor.2012.81

There are also further questions about who should be charged with applying the ‘reasonable risk' framework: national-level professional bodies, individual research institutions and scientists, or companies? There might be good reasons for vesting the ultimate responsibility of decision-making in an international body. The constituent members of such a group would ideally include leading scientists in the field of synthetic biology in addition to an ethical, industrial and governmental component. First, this would help to avoid duplication of work and confer economies of scale. Second, given that the release of new organisms into the environment could have significant consequences for everyone, basic democratic principles would dictate that such a body should represent the interests of all. Third, releasing a new organism into the environment can have irreversible effects. If individual institutions separately assessed the reasonableness of risks and act on their own assessments, it would take only one institution to underestimate the risks in order for irreversible harm to be done.

### 2AC – Nurse Practioners

#### 32 States block Nurse Practitioners and that kills hundreds of people each day.

#### The Aff’s empirical solvency supports our malleability thesis – States that got rid of Scope of Practice laws have better outcomes than those that didn’t.

#### Even if we somehow didn’t solve this advantage, we’d still independently win on a disad that we’ve framed vs. the Alt.

#### Our Schotten ev impact turns their State Links – proves the K’s logic defaults to an untouched market. Millions die from ACA rollback.

#### That internal link turns their identity impact – AND it outweighs because the same premise holds for every identity formulation. It’s unique because our Gee ev proves the ACA is a contingent reform that at least supports health equity now.

#### Here’s more ev establishing unique offense vs. the Alt.

Garrett ‘16

et al; A. Bowen Garrett is an economist and senior fellow in the Health Policy Center at the Urban Institute. His research focuses extensively on health reform and health policy topics, combining rigorous empirical methods and economic thinking with an understanding of the policy landscape to better inform policymaking. Previously, Garrett was chief economist of the Center for US Health System Reform and has taught quantitative methods and economic statistics at Georgetown University. “Who Gained Health Insurance Coverage Under the ACA, and Where Do They Live? ACA Implementation—Monitoring and Tracking” - December 2016 #E&F – modified for language that may offend - https://www.urban.org/sites/default/files/publication/86761/2001041-who-gained-health-insurance-coverage-under-the-aca-and-where-do-they-live.pdf

The Affordable Care Act (ACA) became law nearly seven years ago. Today the number of Americans lacking health insurance ~~stands~~ (is) at a historic low, and the ACA is credited with reducing the number of uninsured by about 20 million. In this brief, we take stock of who has gained coverage since 2010 and where they live. Using data from the American Community Survey, we examine health insurance coverage changes from 2010 to 2015 by demographic groups based on age, gender, race/ethnicity, education status, and state. Our main findings are as follows:

• An estimated 19.2 million nonelderly people gained health insurance coverage from 2010 to 2015, based on our analysis that accounts for population changes over the period.

• Coverage gains were broad-based; the number of uninsured fell substantially among all Americans under age 65, for both men and women, and across subgroups based on race/ethnicity, levels of educational attainment, and states.

• An estimated 2.8 million children from birth to age 18 gained coverage, suggesting that coverage expansions under the ACA and other policy changes for children’s coverage implemented from 2010 to 2015 reached children in families above the progress made by prior expansions targeting low-income children.

• The number of uninsured adults ages 19 to 34 declined by 8.7 million (42 percent), and the number of uninsured adults ages 35 to 54 declined by 5.6 million (33 percent). More than 2 million adults ages 55 to 64, who are at or approaching typical retirement ages, gained coverage from 2010 to 2015.

• Approximately 5 million women of childbearing age (19 to 44 years old) gained coverage from 2010 to 2015.

• Among those gaining coverage from 2010 to 2015, 8.2 million (43 percent) were non-Hispanic white, 2.8 million (15 percent) were non-Hispanic black, 6.2 million (32 percent) were Hispanic, and 2.0 million (10 percent) were other non-Hispanics.

• The large majority (87 percent) of adults gaining coverage from 2010 to 2015 did not have a college degree. Among them, 6.2 million were non-Hispanic white and 7.9 million were nonwhite or Hispanic.

• Americans in every state gained health insurance coverage. States that expanded Medicaid under the ACA saw larger percentage reductions in their number of uninsured residents than did states that chose to not expand Medicaid (45 percent compared with 29 percent). Nonetheless, 6.9 million people living in states that did not expand Medicaid gained health insurance.

• California’s uninsured rate fell 53.4 percent, translating into 3.8 million people gaining coverage. More than 2.3 million people gaining coverage from 2010 to 2015 lived in the Midwestern states of Illinois, Michigan, Ohio, and Wisconsin, with uninsured rates declining between 38 and 49 percent. Florida and Texas, two non-expansion states in the South, saw about 3.3 million people gain coverage as statewide uninsured rates fell 36 percent and 27 percent, respectively.

Congress is now considering options to repeal and replace the ACA. Repeal of the ACA without new policies capable of maintaining the coverage gains achieved since 2010 would result in millions of Americans, of all ages and backgrounds and in all states, losing health insurance along with the access to health care and financial protections it affords.

### 2AC – Health Ks – No Link

#### Their Ks of health, healthcare, and physicians don’t contextualize to NPs – there’s a distinction between medicine and nursing – their Ks are about “medical work” but NPs aren’t simply facsimiles for physicians. NPs provide “care work” that’s a transformative approach to the medical encounter that accounts for social and economic determinants of health outcomes

#### NPs professional norms are fundamentally different from physicians – their approach to care includes addressing social determinants and providing holistic care

Entman 20 [Liz Entman, Vanderbilt University Medical Center reporter, internally citing LaTonya J. Trotter, Assistant Professor of Sociology at Vanderbilt, 6-10-2020 https://news.vanderbilt.edu/2020/06/10/nurse-practitioners-practice-more-than-medicine/]

In More than Medicine: Nurse Practitioners and the Problems They Solve for Patients, Health Care Organizations, and the State, Trotter observed the work of a group of nurse practitioners at a clinic that served 400 elderly African American patients with complex health problems and limited financial resources. What she realized was that NPs were not simply healthcare professionals capable of performing virtually all the same tasks as physicians, but they also worked to solve many other non-medical challenges their patients faced related to poverty. In many cases, these problems may have once been addressed through the public social safety net, but no longer are—or never have been.

“It’s not just a question of high demand and scarcity of providers that nurse practitioners can help bridge,” she said. “The problem is that the work NPs do tends to reflect a broader lack of coordinated health care by the state. In the United States, medical care is privately provided, but 75 percent of it is publicly funded. What I observed raises important questions about how government could reconsider what it means to fund health care.

Transforming the medical encounter

The nurse practitioners Trotter observed were not solely focused on the medical challenges their patients faced. They also ended up dealing with the dozens of other issues that impacted their ability to care for themselves, such as going grocery shopping, keeping up with their homes or finding someone to help a patient with post-operative care.

“Many of the problems health care organizations—and nurse practitioners especially—are tasked with solving aren’t just medical problems, but social ones,” Trotter said.

Utility players for their organizations

Trotter found that nurse practitioners filled a number of roles that were not directly related to medical care. That could mean picking up administrative tasks, coordinating care with other providers and addressing customer service issues. Not only were they providing holistic care to their patients, she said, they were providing holistic care, in a way, to their employer. That willingness reflects a distinctly nursing perspective, Trotter said.

“Nurses really do feel that their roles are different than physicians’,” she said. “So they’re not always doing this extra work simply because they feel pressed into it, but because their professional norms orient them toward feeling that this is part of what it means to be a nurse. They’re much less likely to look at a task and say, ‘That’s not my job.’ They’re much more likely to do that work on behalf of their employer as well as their patients.”

### Alt is worse for their Root Cause and Enviro Health args

#### Root Cause goes Aff. State’s better for eco-Health than Post-Alt unregulated markets. Even if the Aff fails, this is a disad to Alt

Parento ‘12

Professor Emily Whelan Parento is as Associate Professor and the Gordon D. Schaber Health Law Scholar at McGeorge School of Law at the University of the Pacific. Her primary scholarly focus is the intersection of domestic health law and policy with the human rights framework for the right to health and health equity. The author holds a JD and LLM, from The Georgetown University Law Center and a BBA, from the University of Notre Dame. Earlier in her career she served as a federal judicial clerk and practiced litigation at Davis Polk & Wardwell in New York and California. From the article: “Health Equity, Healthy People 2020, and Coercive Legal Mechanisms as Necessary for the Achievement of Both” - 58 Loyola Law Review 655 - Fall, 2012 - #CutWithRJ – This Loyola Law Review article was re-published at Racism.org – http://www.racism.org/index.php?option=com\_content&view=article&id=1424:racisthealthcare&catid=88&Itemid=274&showall=1&limitstart=

Environmental Health

Environmental Health (EH) is an HP 2020 topic that has particular relevance to health equity and is well-suited to coercive legal interventions. In economic terms, environmental effects are an oft-cited example of “negative externalities”--that is, that pure free-market mechanisms do not properly allocate the costs and benefits of actions with an environmental impact. The classic example is a factory that dumps its waste into a river, shifting environmental and financial costs of its business activities onto the general population. Thus, in most instances, coercive regulatory interventions are required in order to achieve optimal environmental health outcomes, and HP 2020's failure to include such interventions within its EH objectives is a missed opportunity.

HP 2020 uses the WHO definition of environmental health: “all the physical, chemical, and biological factors external to a person, and all the related behaviors.” Environmental health involves “preventing or controlling disease, injury, and disability related to the interactions between people and their environment.” There are six key themes of the EH topic in HP 2020, all of which are well-suited to coercive legal interventions. Indeed, existing legal mechanisms already address these topics to some degree, which raises the issue of the adequacy of such mechanisms given that current environmental health levels are both inadequate overall and within population groups. There are significant disparities in environmental health among racial and ethnic groups, as well as among socioeconomic levels. In addition, there is evidence that poor environmental health is linked to poor health outcomes, particularly in children. Thus, successful interventions seeking to reduce disparities in environmental health would have a strongly positive impact on health equity.

The HP 2020 outdoor air quality objective is an example that demonstrates that coercive legal mechanisms must be a key element of a successful environmental health strategy. First, in order to achieve the objective of fewer bad air quality days, an obvious legal mechanism would be the imposition of more significant statutory penalties for large-scale carbon emitters. There is currently no “carbon tax” in the United States. It is here that the combination of market mechanisms and coercive regulatory authority in a “cap and trade” system might be quite useful. A proposal by the Center for American Progress is illustrative: in essence, total emissions would be capped, but companies could buy and sell emissions permits (auctioned off by the government) among themselves, thereby maintaining some flexibility.

There are, however, two obvious health equity concerns in any such proposal: the risk that energy prices would increase, which would disproportionately affect lower-income individuals, and the risk that pollution would become more concentrated in relatively underprivileged regions of the country. The Center's proposal effectively addresses the first concern by advocating that nearly half of the proceeds of the permit auctions be allocated to help offset increased energy costs for low and middle income Americans, but it does not address the pollution concentration risk (perhaps on the theory that the enormous projected reduction in overall carbon emissions over the longer term would outweigh any concentration concerns). A more detailed analysis of environmental regulations is beyond the scope of this paper; carbon emissions are an example of the way in which coercive legal mechanisms are vital to achievement of the HP 2020 environmental goals and to the furtherance of health equity, yet HP 2020 takes no position on achieving cleaner air beyond the enforcement of existing laws.

Other examples of the effectiveness of coercive legal mechanisms at achieving environmental health goals are numerous, but two deserve particular mention in light of their health equity implications. First, in regard to the EH objective of increasing the use of alternative modes of transportation for work, the experience of central London is instructive. Voluntary policies urging people to drive less and use public transportation to navigate Central London were unsuccessful. Thus, in 2003, the City of London implemented a “congestion charge” with the objective of decreasing car traffic and increasing use of public transportation. The tax was successful in that the City has seen a 6% increase in bus traffic, and all funds raised (nearly $240 million) must be used to improve transport in London. However, no data is available on the distribution of the increase in bus traffic across population groups, though one might reasonably infer that those individuals who are most price-sensitive (i.e., lower-income persons) would be the most likely to switch to public transportation following the imposition of the congestion charge. Thus, given that longer commute times (with negative quality of life and health effects) could result from the switch to public transportation, and given that the congestion charge would disproportionately affect lower-income individuals, the congestion charge may also be an example of an instance in which coercive legal mechanisms without adequate safeguards could worsen health equity. A better coercive legal mechanism, though likely more difficult to administer, could be to have a sliding scale of charges based on income, to ensure that incentives were relatively similar across socioeconomic groups. Regardless, HP 2020's failure to recognize the varying distributive consequences of policies around alternative transportation calls into question how thoroughly the principles of health equity have permeated the formulation of its objectives.

Another example of an EH objective for which a coercive legal solution is essential to achieving health equity is EH-15, which seeks to increase the number of single family homes built with radon reducing features, particularly in high-radon-potential areas. Principles of health equity require that persons with fewer resources not be subject to higher levels of environmental toxins like radon; however, free market mechanisms without a minimum level of regulation would almost certainly lead to an inequitable outcome. To advance an equitable environmental health framework, the use of the coercive legal mechanism of a building code requiring an adequate level of radon protection is required--indeed, twenty-five states already have either statewide or local building codes requiring a minimum level of radon protection. HP 2020 sets a target of 100% of new single family home construction in high-radon-potential areas having radon reducing features (an increase from the current estimate of 28.6%), but the Project takes no position as to how that target could be achieved. To truly advance health equity, the Project should acknowledge that the environmental health benefits of radon reducing features will only accrue to the entire population through the use of a broadly applicable coercive legal mechanism like a building code and advocate for passage of state or federal legislation reflecting that reality.

Environmental health is an HP 2020 goal whose achievement would significantly improve health equity, particularly because it is already vulnerable persons (who are disproportionately minority and/or of lower SES) who suffer most from a lack of environmental health. Moreover, evidence and analysis of voluntary or pure free market mechanisms strongly indicate that it is only through the use of coercive regulatory mechanisms that disparities in environmental health can realistically be improved. Thus, HP 2020 does not fully incorporate health equity in its EH objectives when it fails to acknowledge that legal mechanisms are in many instances the only realistic means of reducing disparities in environmental health.

### Turn – Crony Capitalism

#### Turn – the aff solves an example of violent capitalism that cloaks private entities in the power of the state

Shapiro 14 [Ilya Shapiro, Senior fellow in constitutional studies at the Cato Institute and director of the Robert A. Levy Center for Constitutional Studies, 10-20-2014 https://www.cato.org/commentary/will-real-government-crony-please-stand]

Whatever one’s opinion of antitrust law—mine isn’t too favorable because the law is typically too slow‐​acting to befit a dynamic marketplace—existing immunity doctrines are dangerous because they allow private entities cloaked in government authority to raise prices and restrict choice. Worse, state‐​established cartels frequently harm constitutional rights, such as the right to earn a living, by barring new businesses from opening. The North Carolina case is a prime example of private actors arbitrarily abusing government power to block entrepreneurs from entering an industry and providing for themselves and their families.

Occupational Licensing Laws Are a Government Racket

As George Will put it in his recent column on the case, occupational licensing laws and the monopoly power they grant “are growth‐​inhibiting and job‐​limiting, injuring the economy while corrupting politics. They are residues of the mercantilist mentality, which was a residue of the feudal guild system, which was crony capitalism before there was capitalism. Then as now, commercial interests collaborated with governments that protected them against competition.”

Cato and PLF filed a Supreme Court brief supporting the FTC—you know it’s a bad case when we’re on the federal government’s side!—arguing that courts should only rarely immunize private parties who act on government’s behalf. The Fourth Circuit was not only correct in applying the “active supervision” requirement, but existing immunity doctrines are too lax.

Instead, courts should grant antitrust immunity to private entities acting under state law only where state law commands their restraint on competition, and where that restraint substantially advances an important state interest. This test would help protect the constitutional right to economic liberty against the only entity that can normally create monopolies and yet which today enjoys immunity from antimonopoly laws: the government.

**Substantially – 2AC**

#### We meet – “substantially” modifies “prohibitions” – 1AC proves immunity is broadly allowednow – effect is large increase in prohibitions in this context

#### Arbitrary --- their ev doesn’t say less is insubstantial, no intent to exclude --- mixes burdens --- crushes Aff and makes limits entirely self-serving --- legitimizes “counter-interpretation: only our Aff is topical”

#### Substantial means “considerable amount” – *qualitative* not *quantitative*

**Prost 4** (Judge – United States Court of Appeals for the Federal Circuit, “Committee For Fairly Traded Venezuelan Cement v. United States”, 6-18, http://www.ll.georgetown.edu/federal/judicial/fed/opinions/04opinions/04-1016.html)

The URAA and the SAA neither amend nor refine the language of § 1677(4)(C).  In fact, they merely suggest, without disqualifying other alternatives, a “clearly higher/substantial proportion” approach.  Indeed, the SAA specifically mentions that no “precise mathematical formula” or “‘benchmark’ proportion” is to be used for a dumping concentration analysis.  SAA at 860 (citations omitted); see also Venez. Cement, 279 F. Supp. 2d at 1329-30.  Furthermore, as the Court of International Trade noted, the SAA emphasizes that the Commission retains the discretion to determine concentration of imports on a “case-by-case basis.”  SAA at 860.  Finally, **the definition of** the word “**substantial**” undercuts the CFTVC’s argument.  The word “substantial” generally means “**considerable in amount**, value or worth.”  Webster’s Third New International Dictionary 2280 (1993).  **It does not imply a specific number** or cut-off.  What may be substantial in one situation may not be in another situation.  The very breadth of the term “substantial” undercuts the CFTVC’s argument that Congress spoke clearly in establishing a standard for the Commission’s regional antidumping and countervailing duty analyses.  It therefore supports the conclusion that the Commission is owed deference in its interpretation of “substantial proportion.”  The Commission clearly embarked on its analysis having been given **considerable leeway to interpret a particularly broad term**.

#### We meet – scope of state action immunity is vital to antitrust enforcement – Crane & Sack

#### Prefer it

#### Aff flex---“expand the scope” massively constrains the aff---innovation prevents a sitting duck

#### Overlimits---they box out nuanced industry-specific debates and force repetitive, stale, giant innovation debates

#### Solves ground---stable direction of increasing prohibitions ensures links

#### Functional limits check---few advocates, advantages, and short list of “core” legislation

#### Reasonability best – competing interps cause a race to the bottom and substance crowd-out

---

#### That’s best – assigning one singular meaning wrecks predictability---no broad intent to define---only within a specific context different from rez

**Stadler 93**  [Linda “NOTE: Corrosion Proof Fittings v. EPA: Asbestos in the Fifth Circuit--A Battle of Unreasonableness ” Tulane Environmental Law Journal Summer, 1993 6 Tul. Envtl. L.J. 423

n3 Matthew J. McGrath, Note, Convergence of the Substantial Evidence and Arbitrary and Capricious Standards of Review During Informal Rulemaking, 54 GEO. WASH. L. REV. 541, 546 n.30 (1986), (quoting H.R. REP. NO. 1980, 79th Cong., 2d Sess. 45 (1945)), reprinted in ADMINISTRATIVE PROCEDURE ACT LEGISLATIVE HISTORY, S. DOC. NO. 248, 79th Cong., 2d Sess. 11, 233, 279 (1945). The substantial evidence standard does however possess some ambiguity as to the definition of "substantial." See, e.g., Chemical Mfrs. Ass'n v. EPA, 899 F.2d 344, 359 (5th Cir. 1990) (stating that "'substantial' is an **inherently imprecise** word"). However, 'substantial' is generally **held to a reasonableness** standard, i.e., would a **reasonable mind** accept it as adequate to support a conclusion. E.g., Consolidated Edison Co. v. NLRB, 305 U.S. 197, 229 (1938).

### Substantially – Counter Interp – 1AR

#### “Substantially” means important. It’s “know it when you see it”, proven by evidence.

#### There’s legal consensus for qualitative definitions

**Baez 6** (H. Beau Baez III, Assistant Professor of Law, Liberty University School of Law; J.D. 1994 & LL.M. (taxation) 1995, Georgetown University Law Center, “The Rush to the Goblin Market: The Blurring of Quill's Two Nexus Tests,” 29 Seattle U. L. Rev. 58, Spring 2006)

Examining the **legal definition** of "**substantial**" provides some light as to what the Court meant by "substantial nexus" in Quill. Black's Law Dictionary defines "substantial" as "belonging to substance; actually existing; real; not seeming or imaginary; not illusive; solid; true; veritable." n108 This legal definition furnishes evidence that "**substantial" is defined** **qualitatively**, **not quantitatively**. **Webster's** Dictionary also lends support to the **qualitative** nature of the word by defining its primary meaning as "consisting of or relating to substance; not imaginary or illusory: real, true; important, essential," n109 while the notion of "**substantial**" as **quantitative** is relegated to a **secondary meaning of the word**. n110

# 1AR

OV

Federalism: Even if capitalism is destroyed, 20 MILLLION will die as we said in our previous two speeches. Their Weiss evidence doesn’t solve SYN BIO. None of their EV talks about syn bio - our IMPACT. IMpact outeighs. 100 % risk of death if the aff does not go through and the perm Havent really proven that our arguments are not real Real people are  suffering real people are dying, and the aff can implement the K while also saving lives and lessening suffering while also giving NPs more security in their licenscing

Also, timeframe, the alt will take time. Revolutions TAKE time. In that time, people will die. We outweigh on impact, magnitude, and framework.

NPs:

Their Kohli evidence is nonsense. “over-totalizing reliance on expert medical knowledge..” BUT THAT saves LIVES. And Common sense…. Reliance on pandemic vaccines has saved life. That’s science. Fact.

## Fed

### Federalism:

### Your D really doesn’t assume SynBio

#### (  ) Neg disease args don’t assume *SynBio Viruses*. Intent was malevolent, but accident’s way worse.

Marlow ‘13

Jeffrey Marlow, Geobiologist and explorer at the California Institute of Technology. Contributor to Wired.com. Wired – “The Next Bioweapon May be a Text File” –  Nov 1st – http://www.wired.com/2013/11/the-next-bioweapon-may-be-a-text-file/

In 2011, at a meeting in Malta, Dutch scientist Ron Fouchier announced that he had created a *particularly dangerous strain* of the H5N1 flu virus using the tools of *syn*thetic *bio*logy. Unlike all previously known versions of H5N1 – known colloquially as the “bird flu” – this variant could be spread through the air between people, potentially leading to a global pandemic. This may sound like the machinations of a supervillain bent on global destruction, but it was instead the pronouncement of a medical scientist who hoped to hasten pandemic preparation through preemptive study of the most virulent flu strains. Fouchier’s bombshell alarmed many public health experts, who questioned the reasoning and overall benefit of intentionally bolstering the disease’s potency. The episode also highlighted the frighteningly real challenges of “dual-use research of concern” (DURC) in the synthetic biology field.

### Regs solve – Short Extension

#### Regs *can* solve:

n  Boosts *cost* of SynBio – “using the market against itself” to price-out garage bio.

n  Lab *safety standards*.

**Disease Response Time module**

#### SynBio key to rapid reaction times in the face of new viruses. FDA’s regs are key.

Rodemeyer ‘14

(et al; Michael Rodemeyer, J.D., and Visiting Professor in the Dept of Engineering & Society, School of Engineering and Applied Science at the University of Virginia, Charlottesville, Virginia, “SYNTHETIC BIOLOGY AND THE U.S. BIOTECHNOLOGY REGULATORY SYSTEM: Challenges and Options” – May 2014 – http://www.jcvi.org/cms/fileadmin/site/research/projects/synthetic-biology-and-the-us-regulatory-system/full-report.pdf)

The rapid production of vaccines upon the emergence of a new human or animal microbial pathogen is a likely new direction for synthetic biology. A group including scientists from the J. Craig Venter Institute and Novartis recently demonstrated the generation of influenza viruses using only the virus’ DNA sequences. Using synthetic biology methods, vaccinologists will be able to construct specific vaccine seed viruses rapidly, cutting weeks or perhaps months from the current interval between virus identification and vaccine availability (*Dormitzer, et al., 2013*). Such a vaccine falls under FDA’s strong pre-market and post-market authorities.

**Alarm/Danger Reps**

#### (  ) Alarmist SynBio reps Good – spurs regs. Also, K doesn’t mean Our impact claim’s false.

Revill ‘14

(Dr James Revill of the Harvard Sussex Program, University of Sussex. James holds the title of Research Fellow for the Science Policy Research Unit – His research expertise includes: biological weapons, Biosecurity, chemical weapons, and International Organization “Synthetic Biology and Biosecurity: How Scared Should We Be?” – May –  http://www.kcl.ac.uk/sspp/departments/sshm/research/Research-Labs/CSynBI@KCL-PDFs/Jefferson-et-al-(2014)-Synthetic-Biology-and-Biosecurity.pdf)

It was argued that failure to react – and to be seen to be reacting – to known risks, *particularly dread risks,* would be politically unacceptable. It was also suggested that while caution is needed when faced with the hyperbole of synthetic biology, developments in the field should not be discounted: *just because it is hyped it does not mean it should be ignored*. Discussion in this session began by returning to complaints about media reporting of scientific issues. It was argued that dual use is not a new problem, but the context in which the debate arises has changed, and the way the mass media covers the issues is now part of the problem. The media was criticised for seeking controversy; focusing on shock and horror; maliciously, deliberately or inadvertently distorting the facts; oversimplifying subtle and complex issues; trivialising them by picking sound bites and grabbing headlines; a lack of proportionality; and episodic coverage, meaning that there is no consistent measured coverage of an issue. Instead, halftruths and myths such as those described in the Scoping Report for this workshop get recycled and get a life of their own and become the established wisdom. Overall, media coverage was considered to be unscientific. Moreover, recent trends in the media mean that news bulletins have to be filled every half hour and journalists do not have the time to consider long-term issues. It was pointed out that similar things could be said about diplomats and politicians. When security experts have to explain an issue to senior civil servants or ministers, the information has to be very short and condensed. Thus, although scientific experts from the UK Government produce in depth well researched reports of high quality, diplomats who attend the BWC meetings usually do not have the time to read them. Some participants pointed out, however, that not all media coverage of synthetic biology was negative and that the field had, in fact, managed to distance itself - so far - from debates about genetically modified organisms. Participants from the security community explained that misuse scenarios and speculative hypotheses can serve a variety of functions. For example, *in policy contexts* they can be used to pose questions *for the existing regulatory system in order to address issues before they emerge.* This does not necessarily involve a misrepresentation of the science, but encourages discussion of potential long-term security challenges. In this sense, it was argued that it can be useful to think of the myths in terms of future trends rather than as absolutes. For example, it may be more accurate and helpful to speak of synthetic biology making the engineering of biology easier, rather than easy.

### Nurse Practioners:

### Malleability/Gaffney – 1AR

#### Extend our malleability arg: completely dropped by the neg

#### We can win on this alone.

#### The *Simkins decision*, *Medicare* and *the Krieger study* disprove State-pessimism in the context of health law.

#### Their structural uniqueness claim is inverted. Neg examples are Aff examples because they’ve occurred in under-regulated health markets that the Aff ends

#### Our embedded scholarship from Matthew is more nuanced that their Root cause and ontology claims. For those lacking privilege, no utopian act – including the Alt – generates perfect health. But access is a pre-req for any new care that could emerge in world of the Neg. And, only the Aff alters implicit bias – turning the premise of their civil society and health care K’s.

#### Malleability’s also offense within their role of the ballot. The Neg causes material violence to black and brown populations through an Alt that slow-rolls workable fixes to the market. This offense survives their framework tricks because they don’t fiat an Alt, either. It always about what we’re learning – and last line of Gaffney proves the Neg discussion teaches violent lessons about financing and access.

## T

## We gave multiple counter definitions as well as counter interps with reasoning meaning that we meet the word definition of substantially that is what a counter definition is for if they do not answer our counter defs we are topical - they did not answer all the counter definitions meaning that we meet and the aff is topical

## They were tone policing in our cross ex and it is our cross ex and they did the same thing to me in my cross ex by talking over me and not letting me answer fully, we are asking questions and not allowing filibustering by them in our cross ex this is not a voting issue also they don’t get to assume how much we are debating and if we are laughing this is a outside of debate arugment on debate that is new in the rebuttal and answer the counter definitions is how you win topicality- we are not throwing at the wall and seeing what sticks and we said qualitative not quantitive we don’t have to give a number that’s what qualitative means and sorry if you think we are being rude but we think you are being rude a well so lets do a mutual apology sorry

## 

### Substantially – Counter Interp – 1AR

#### “Substantially” means important. It’s “know it when you see it”, proven by evidence.

#### There’s legal consensus for qualitative definitions

Baez 6 (H. Beau Baez III, Assistant Professor of Law, Liberty University School of Law; J.D. 1994 & LL.M. (taxation) 1995, Georgetown University Law Center, “The Rush to the Goblin Market: The Blurring of Quill's Two Nexus Tests,” 29 Seattle U. L. Rev. 58, Spring 2006)

Examining the legal definition of "substantial" provides some light as to what the Court meant by "substantial nexus" in Quill. Black's Law Dictionary defines "substantial" as "belonging to substance; actually existing; real; not seeming or imaginary; not illusive; solid; true; veritable." n108 This legal definition furnishes evidence that "substantial" is defined qualitatively, not quantitatively. Webster's Dictionary also lends support to the qualitative nature of the word by defining its primary meaning as "consisting of or relating to substance; not imaginary or illusory: real, true; important, essential," n109 while the notion of "substantial" as quantitative is relegated to a secondary meaning of the word. n110

### Substantially – Arbitrary DA – 1AR

#### Their interpretation’s arbitrary.

#### No intent to define or exclude. Doesn’t say less isn’t substantial.

#### Forcing aff to reduce BY “x” amount is solvency based – potentially excludes all affs and mixes burdens

#### Makes it contrived and unpredictable.

#### They shift the goalposts to exclude the Aff.

#### Legitimizes “counter-interpretation: only our Aff is topical”---best limits

#### Quantitative thresholds are ridiculous and don’t have legal basis---that’s Stadler

#### ~~There’s no clear legal standard for substantial~~

~~Jakubowitz 4 [David \* J.D. Candidate, St. John's University School of Law, NOTE: "HELP, I'VE FALLEN AND CAN'T GET UP!" NEW YORK'S APPLICATION OF THE SUBSTANTIAL FACTOR TEST, Spring, 2004 18 St. John's J.L. Comm. 593 lexis~~

~~As a consequence, no clear legal standard exists on how to interpret "substantial" and the determination of substantial factor is based solely on the varying subjective lay-opinions of jurors. n134 Therefore, in the interests of honesty and accuracy, the "substantial factor" test should be renamed the "subjective factor" test in order to more precisely describe the process of how causation is analyzed. n135~~

## K

### FW

#### Framework – the ballot’s about the plan’s desirability – their framework is self-serving, structurally favors the neg – voter for fairness

#### Clash that we learn from second-level testing of predictable claims breaks down biases and learn tactics for change – focusing on the contingent question of the resolution is key to unpack neoliberal motivations – their framework is reductionist – that’s Watts

### Link

#### No link – we agree competition theory is flawed now – regulated innovation is how we reign in capitalism – they have no link ev the plan causes what their impacts talk about – that’s Mazzucato

#### If the alt avoids the link, it can’t solve synbio OR NP – only innovation systems can solve in time – abandonment fails

#### Links turn themselves

Cleary 21 (Joe Cleary, Professor of English, Yale University, Ph.D. Columbia University, 1997, November 15th 2021, “Policy, citizen engagement and corporate strategy to transition to a sustainable world in the decisive decade” Energy Hub, <https://energyhubplus.org/wp-content/uploads/2021/06/20211115-Joe-Cleary-COP26-Paper.pdf>) CULTIV8

Neoliberal doctrine that views government as an institution existing only to correct market failure ‘creates a self-fulfilling prophecy whereby government does too little, too late’. To challenge this, Mazzucato advocates not for ‘big’ or ‘small’ government, but a different ‘type of government’. Government itself must become an innovative organization capable of continual development, from being ‘merely an “enabler” or even a “stifler” of innovation to becoming the engine of innovation’.

### PNCP

#### Extend the Perm – do the plan and non-competitive parts of the alt – mixed economies solve market failures but we’re winning offense in the area of the plan – radical reform combined with antitrust is best and mobilizes coalitions – that’s Mazzucato and Berk

#### The perm’s iteration checks the market

Mazzucato 21 (Mariana Mazzucato is Professor in the Economics of Innovation and Public Value at University College London where she is the founding director of the UCL Institute for Innovation and Public Purpose. She is winner of international prizes including the 2020 John von Neumann Award and the 2018 Leontief Prize for Advancing the Frontiers of Economic Thought. January 28th 2021, “Mission Economy: A Moonshot Guide to Changing Capitalism” via kindle, pages 174-175) CULTIV8

To co-create value and shape markets, public and private organizations need dynamic capabilities of experimentation and learning. While the need to be a learning organization is often emphasized in the private sector, it is not so true in the public sector which has, as discussed in Chapter 3, been relegated to the role of a simple market fixer and enabler of value created by business. A more proactive, market-shaping approach requires rethinking the ways in which public organizations create and implement strategic actions (from leadership capabilities to how they engage with groups, other organizations and even individuals in society), rethinking how the civil service is developed (from training to performance assessment and promotion), and rethinking how work in public organizations is managed (from cross-sectoral teams to iterative experimentation, a process which goes through several stages, developing the concept and testing it to produce a workable innovation).9

#### Capitalism creates markets as useful tools that check the worst excesses

Berman 14 – Sheri Berman, Professor of Political Science at Barnard College and the author, most recently, of The Primacy of Politics: Social Democracy and the Making of Europe’s Twentieth Century, “A Middle Ground for the European Left”, Dissent, Volume 61, Number 3, Summer 2014, Project Muse

Often overshadowed by both the neoliberal right and the anti-capitalist left is a middle-ground position that rejects the primacy of economics that is at the foundation of both of these positions—the belief that capitalism necessarily dictates the form and dynamics of politics and society—and is instead built upon an appreciation of both the costs and benefits of capitalism. Colin Crouch’s new book, Making Capitalism Fit for Society, is an attempt to explain the flaws of neoliberalism and anti-capitalism and reinvigorate the middle-ground position. Crouch, an eminent social scientist who has written numerous books and articles on capitalism, democracy, and European political economy, is well positioned to make this case.¶ Crouch begins by pointing out that despite all the talk of ours being a “new” or “global” era, capitalism has certain persistent characteristics that should guide our thinking about it. Twenty-first-century capitalism of course differs from its predecessors in important ways, but many of the basic challenges confronting Europe and the West today—ensuring social stability, limiting the encroachment of markets, coping with economic volatility—are nothing new. Alongside recognizing capitalism’s downsides, Crouch insists on recognizing its upsides. Capitalism, according to Crouch, has proven to be flexible and adaptable, as well as compatible with many different types of societies. It is, moreover, the most effective engine for producing the economic growth and material resources that are the prerequisites for many other social and political goals. For Crouch, the greatest hindrance to progress today is not capitalism itself but rather the pernicious and erroneous views of it that dominate contemporary debate:¶ [N]egative developments are not produced [End Page 96] by ineluctable forces beyond human control, but are the results of political choices. True, certain ~~more or less unavoidable factors in the global economy do not make it easy to avoid increasing inequality; but that makes it even more remarkable that so many political decisions gratuitously intensify rather than counter such trends. … There are alternatives, not in the sense of utopian possibilities, but in real existing examples we can see around us. However, these examples are … being threatened by the onward march of anti-egalitarian orthodoxy.¶ Debunking mistaken views of capitalism and the contemporary crisis is thus a main focus of Making Capitalism Fit for Society. And while Crouch has little patience for anti-capitalist, globalization-phobes on the left, he is primarily focused on fighting back the neoliberal right, which is clearly the more powerful force today. In particular, he identifies two forms of neoliberalism that distort thinking about politics and economics. The first—the pure neoliberals—“believe that society is at its best when the conditions of perfect markets can be achieved in all areas of life.” This libertarian position is certainly misguided and even dangerous but not, in Crouch’s view, the most consequential form of neoliberalism today. Instead, another type of neoliberalism—what Crouch calls “actually existing neoliberalism”—is more pernicious and influential. According to Crouch, this doctrine shares some of the market glorification of pure neoliberalism but is really devoted to directing market benefits toward narrow corporate or elite groups. This type of neoliberalism produces, in his words, a “politicized economy very remote from what economists understand by a liberal market economy and a polity so unbalanced by plutocratic power that it seriously compromises the idea of liberal democracy.”¶ Opposed to these two types of neoliberalism is a third position that, while also accepting “the value and priority of markets in the economy,” differs from other forms of neoliberalism in also being aware of markets’ “limitations and deficiencies.” During the postwar period, this position was filled by social democracy, but according to Crouch this is no longer the case. The lack of a powerful ideology and a movement capable of defending and reining in the market is, in Crouch’s view, the major problem facing Europe and the West today, and one that Making Capitalism Fit for Society aims to remedy. Rather than champion some entirely new ideology or movement, Crouch insists that social democracy remains the most logical alternative to pure and corporate versions of liberalism. But in order to fulfill its role, social democracy will have to undergo some dramatic changes.¶ Crouch argues that social democracy has become defensive, associated with a rearguard attempt to protect a sclerotic, inefficient old order rather than the drive to create a dynamic and just new one. Parts of the social democratic movement also adopted too uncritical a view of capitalism during this period (such as the English “Third Way” or the German Neue Mitte), alienating those who suffered from the destabilizing consequences of capitalism while at the same time losing ground to more committed and unadulterated champions of neoliberalism. Much of Making Capitalism Fit for Society is devoted to outlining what a new and attractive social democracy should be. For Crouch, it is absolutely crucial that social democracy avoid the tendency so prevalent on parts of the left of fighting rather than embracing change. Capitalism has always brought with it constant change, so clinging to the institutions and policies of the past is a recipe for economic decline and social frustration. Instead, social democrats must figure out ways to shape capitalism, to prove [End Page 97] to European citizens that it “is the force most capable of bringing … innovation to society at large.”¶ As was the case during the postwar period, social democracy’s policies must remain grounded in a recognition that markets should be used where “possible and useful” as well as a “willingness to check, regulate and offset their effects where they threaten to destroy some widely shared goals and values.” (Crouch, like many other social democrats, recognizes Karl Polanyi as an intellectual godfather here, drawing on his recognition of the deeply political nature of capitalism.) The precise ways in which this “balancing act” will manifest itself will vary, but Crouch offers some guidelines for action. For example, alongside efficiency, social democrats must retain a concern for distribution, particularly of essential goods like health care and education, and must be willing to intervene to ensure that such things are allocated in a manner that provides equal life chances for all. Indeed, social democrats should take an activist approach in areas where markets alone produce suboptimal outcomes or generate high social costs (such as situations characterized by imperfect competition, inadequate information, public goods, and externalities).¶ This does not mean that social democrats should always be looking for areas in which to intervene, but they “should always be open to persuasion that in particular cases improving markets may well be the best solution to a problem.” This includes breaking down monopolies; improving transparency so both consumers and businesses can make better decisions; providing equal access to schooling, retraining, and health care, so all citizens are better able to participate in an evolving marketplace; and strengthening environmental regulation to deal with the diffuse costs of pollution. Social democrats should also view their primary postwar accomplishment, the welfare state, through this lens—as a mechanism that protects individuals from the harsh and destabilizing consequences of economic change but also helps them adjust to it. And so as capitalism has changed, so must the welfare state. Here Crouch praises the contributions of a group of mainly European scholars who advocate a “social investment welfare state”—one that provides not merely “a passive defense … against the vagaries of the market, but which uses social policy to strengthen competitiveness.” It accepts competitiveness and market performance as “indicators of success” while also “seeing value in policies that amend and seek to structure how markets operate” and prepare “workers for participation in changing, innovative economic activities. It is therefore part of an assertive policy, and secures protection from uncertainty by equipping people to embrace change.”¶ Crouch correctly notes that welfare states that most closely approximate this model, particularly those in Nordic countries, have created societies that are both highly competitive and egalitarian. Indeed, those countries that more closely approximate the assertive social democratic model have weathered the crisis better than those that do not. So why then has this “revivified” social democracy been so rare, even losing support in many of its Nordic strongholds in recent years?~~

### Sustainability

#### Sustainability is not offense and doesn’t flip calculus – they don’t have link evidence that the aff prevents solutions to these problems – and, there’s no evidence the alt can solve those problems – proves the perm is key

### Alt

#### Alt fails – extend Smith

#### can’t solve case – policy intervention into markets is key to both advantages – [what they do] can’t resolve our internal links

#### 2. Transition war – quick recession causes lash-out, probing, and interventions during restructuring – magnified by corporate capture

Slobodian 21 (Quinn, Associate professor at Wellesley College, previously was a Residential Fellow at the Weatherhead Center for International Affairs, Harvard University, “The Backlash Against Neoliberal Globalization from Above: Elite Origins of the Crisis of the New Constitutionalism,” April 7th, 2021, https://doi.org/10.1177/0263276421999440)//NRG

Journalists later revealed that funding for the film came from the country’s second-largest steel company, Nucor, funneled through a non-profit organization (Timiraos and Ballhaus, 2018). Both film and book followed closely the talking points of Nucor’s CEO at the time, Dan DiMicco. Singled out as an exemplary CEO in Death by China, DiMicco is also quoted as saying: ‘We’ve been in a trade war with China for more than a decade. But they are the only ones firing the shots!’ (Navarro and Autry, 2011: 66, 242). DiMicco spoke on behalf of one of the perceived losers of free trade globalization as employment in steel had been hit by the so-called ‘China Shock’ of import competition alongside the much more consequential increase in productivity (Griswold, 2019). He pioneered many of the points later taken up by Trump, including the attack on China’s ‘mercantilist and predatory trading practices’, including currency manipulation and illegal subsidies, and the call for domestic energy independence and protection of domestic manufacturing (DiMicco, 2009). In an op-ed co-authored with Navarro, DiMicco described China as a global threat that needed to reform or ‘be engulfed in a trade war largely of its own making’ (Navarro and DiMicco, 2010).

The echoes of DiMicco in Trump’s rhetoric are not coincidental. DiMicco was one of Trump’s campaign advisors, alongside Navarro and a range of hedge fund managers and real estate CEOs, along with veterans of the neoliberal think tank archipelago like Stephen Moore of ALEC and Club for Growth and the inspiration to Reagan’s top marginal tax cuts, Arthur Laffer (Matthews, 2016; Moore and Laffer, 2018). DiMicco took the lead on trade policy for Trump, steering the transition team on the USTR and interviewed for the job himself before the selection of Lighthizer (Fares and Lawder, 2016). True to DiMicco and Navarro’s threats, among the first acts of the new government was the commencement of a trade war through steel and aluminum tariffs with China as a primary target. This was done first through a ‘national security clause’ (Section 232) followed by further tariffs authorized by a Section 301 investigation led by Lighthizer (Park and Stangarone, 2019; Slobodian, 2018a). A 25 percent tariff was placed on steel in 2018, lifted for Canada and Mexico in 2019. Trump tweeted regularly about steel, perhaps most memorably on 2 March 2018, when he wrote: ‘We must protect our country and our workers. Our steel industry is in bad shape. IF YOU DON’T HAVE STEEL YOU DON’T HAVE A COUNTRY.’

How to make sense of the steel industry’s apparent capture of US trade policy? In sponsored vehicles for their message like Death by China, steel lobbyists crafted a persuasive narrative about the immiseration of the heartland and those left behind by globalization, reproduced by many journalists and politicians despite the sparse evidence that tariffs have the capacity to reverse the symptoms identified. Protection did pay off in the short run for Nucor’s shareholders as the stock price doubled from January 2016 to January 2018, though it has fallen since. Was Trump’s steel-friendly trade policy the opposite of New Constitutionalism? A ‘post-neoliberal’ return to ‘power’ after the 1990s dogma of ‘rules’?

One must draw distinctions between the economic imaginaries of Trump’s advisors. Lighthizer continues to adhere to ‘competitive liberalization’, according to which unilateral action can be market-opening, producing a more ‘level playing field’ (to use the common metaphor) and perhaps even a future multilateral settlement (Wraight, 2019). Arriving at this destination requires many of the tools of the New Constitutionalism. Lighthizer is keen on extending the purview of economic juridicization well beyond the Chinese border into its court system to ensure compliance with intellectual property laws. In this sense, we see an intensification of some aspects of the legalized political economy of the 1990s and certainly the market-opening protectionism of the 1980s (Miller, 2018).

**Their refusal (or inability) during cross multiple times and their speeches to answer the classic questions of “what does the ALT look like” and “how does it dismantle capitalism” is overwhelming proof of its failure**

Sam **Gindin 19**, was research director of the Canadian Auto Workers from 1974–2000. He is co-author (with Leo Panitch) of The Making of Global Capitalism (Verso), and co-author with Leo Panitch and Steve Maher of The Socialist Challenge Today, “We Need to Say What Socialism Will Look Like,” Jacobin, 3/6/19, https://www.jacobinmag.com/2019/03/sam-gindin-socialist-planning-models

Of the two central tasks the making of socialism demands — **convincing a skeptical populace** that a society based on public ownership of the means of production, distribution, and communication could in fact **work**, and **acting** to end capitalist rule — the **overwhelming focus** of those still committed to socialism has been on the **political battle** to defeat capitalism. **What the society at the end of the rainbow might actually look like** has, with some notable exceptions, tended to receive only **rhetorical** or **cursory** attention. But in the gloomy shadow of socialism’s marginalization, **the cavalier assertion of socialism’s practicality will no longer do.** ~~Winning people over to a complex and protracted struggle to introduce profoundly new ways of producing, living, and relating to each other demands a much deeper engagement with socialism’s actual possibility.~~

~~For socialists, establishing~~ **~~popular confidence~~** ~~in the~~ **~~feasibility~~** ~~of a socialist society is now an~~ **~~existential challenge~~**~~. Without a~~ **~~renewed~~** ~~and~~ **~~grounded~~** ~~belief in the~~ **~~possibility~~** ~~of the goal, it’s~~ **~~near impossible~~** ~~to imagine reviving and sustaining the project. This, it needs emphasis, isn’t a matter of proving that socialism is possible (the future can’t be verified) nor of laying out a thorough blueprint (as with projecting capitalism before its arrival, such details can’t be known), but of presenting a framework that contributes to making the case for socialism’s plausibility.~~

~~When Hope “Rings Oddly in Our Ears”~~

~~The Communist Manifesto’s famous rebuke of the utopians for spending their time on “castles in the air” went beyond the tension between dreaming and doing, though it of course spoke to that as well. In underscoring that one’s visions and corresponding actions need to be grounded in an analysis of society and identification of social agency, Marx and Engels introduced what amounted to an early exposition of historical materialism. Without a historical lens, they argued, the utopians simultaneously lagged and yet prematurely raced ahead of history: lagged in missing the significance of a newly emerging revolutionary actor, the proletariat; rashly raced ahead in absorbing themselves with detailing a distant world that could then only be imagined in the most general and abstract terms.~~

~~This deeper critique of utopianism discouraged future generations of revolutionary socialists from~~ **~~serious engagement~~** ~~with the~~ **~~feasibility of socialism~~** ~~— a reluctance that, as noted, largely persists today. The orientation of socialist politics turned to~~ **~~analyzing~~** ~~the political economy of capitalism, grasping its~~ **~~dynamics~~** ~~and~~ **~~contradictions~~**~~, and facilitating the formation of the dispossessed into a coherent class with the potential to remake the world. Only in the process of fighting to transform capitalism, Marxists insisted, could the collective capacities for building socialism emerge, and only in the process of confronting the new dilemmas thrown up, might institutional solutions surface.~~

~~Such an orientation is clearly indispensable to the socialist project. The intent here is certainly not to belittle it. Yet it doesn’t justify, especially in the current conjuncture, the common Marxist~~ **~~disdain for utopian contemplations~~**~~. In the wake of the profound~~ **~~defeat of the socialist left~~** ~~and the consequent~~ **~~widespread fatalism~~** ~~over~~ **~~transformative alternatives~~**~~, it’s~~ **~~not enough~~** ~~to focus on getting there. It is now at least as important to convince prospective socialists that~~ **~~there really is a “there” to get to.~~**

~~Looking back, the warnings of Marx and Engels against fixation on an unknowable future have a convincing air about them. At that early stage of capitalism, the car — never mind the airplane, electronic computer, and internet — had not yet been invented. Trade unions were just appearing, universal suffrage was still an epoch away, the modern state wasn’t yet recognizable, and above all the Russian Revolution and the new questions it posed had not yet burst onto the political stage. To have debated then what socialism might later look like certainly does, in retrospect, confirm how presumptuous it would have then been to devote much attention to the workings of a socialist society.~~

~~Moreover, capitalism’s relative youth at the time of the Manifesto left that period comparatively more open to envisioning its rejection: the barriers of traditional cultural, religious, and family ties blocked capitalism’s full sway and the absorption of the working class into the new social system remained incomplete. In the decades after 1873, the year that Marx coined the derisive catchphrase “writing recipes for the cook shops of the future,” socialism was in the air in a way that it no longer is today. Socialism was widely discussed among workers, and in London it was “fashionable for even West-end dinner parties to affect an interest in and knowledge of it.” Mass socialist parties were emerging across Europe and this was widely followed, whether anxiously or hopefully. In the US, though a mass socialist party never took hold, the second half of the nineteenth century ushered in a “long era of anti-capitalism” that included an “urge to overthrow the new order of things.”~~

~~This openness to socialism persisted after World War i. As the preface to a newly translated work of Karl Polanyi on socialist accounting notes, in the early 1920s Polanyi was “just one of many social scientists who found accounting, prices, and socialism to be the most exciting topic of the day.” Surprisingly, this attitude existed even within neoclassical economics, which had emerged in the shadow of the Paris Commune essentially as a counter to Marx. At the end of the 1920s the president of the prestigious American Economic Association began his keynote by declaring that “Like most teachers of economic theory, I have found it quite worthwhile to spend some time studying any particular problem at hand from the standpoint of a socialist state.” In going on to address how a society without private ownership of the means of production might determine prices and allocate resources, he confidently asserted that its authorities “would have no difficulty finding out whether the standard valuation of any particular factor was too high or too low,” concluding that “this much having been learned, the rest would be easy.”~~

~~Later, Murray Rothbard, a lifetime disciple of the archconservative Ludwig von Mises, lamented that when he entered grad school after World War ii “the economics establishment had all decided, left, right, and center, that … socialism’s only problems, such as they might be, were political. Economically, socialism could work just as well as capitalism.” With socialism carrying such a degree of economic credence, the elaboration of the details of a functioning socialist society seemed decidedly less pressing for socialists than developing the politics of getting to it.~~

~~But such openings to a different world, however qualified, have today strikingly contracted. Erik Olin Wright begins his monumental treatise on “real utopias” by wistfully recalling that “There was a time, not too long ago, when both critics and defenders of capitalism believed that ‘another world was possible.’ It was generally called ‘socialism.’” Wright continues on to lament that “Most people in the world today, especially in its economically developed regions, no longer believe in this possibility.”~~

~~The oft-noted paradox of our time is that~~ **~~even as popular frustrations with capitalism intensify, belief in transformative alternatives continue to languish~~**~~. There is clearly an~~ **~~appetite for change~~** ~~and the discourse of “anticapitalism”~~ **~~pervades protests~~**~~, but the elevated language of~~ **~~hope~~** ~~in a~~ **~~systemic alternative~~** ~~“~~**~~rings oddly in our ears~~**~~.” The~~ **~~persistence~~** ~~and even strengthening of capitalism through great crises seems to further~~ **~~verify its permanence~~**~~. The Manifesto’s faith in “capitalism’s grave diggers” comes up against the atomization of workers, the depth of their defeats, their multidimensional integration into capitalism, and their painful inability to defend past gains — never mind advance radical agendas. The overwhelming prospect of taking on a global capitalism that seems beyond the purview of any particular state seemingly leaving us with no tangible target, reinforcing the now pervasive cross-generational sense that “there is no alternative.”~~

~~If we add the betrayals of Third Way social democracy, the fateful collapse of the Soviet Union, the Chinese road to capitalism, the failures of other twentieth- and twenty-first-century revolutions that occurred in the name of socialism, and the recent political reversals in Latin America and Europe (Corbynism perhaps being an exception), it becomes clear that “radical change” is more often than not a~~ **~~calling card of the Right~~**~~. Today the zeitgeist that no alternative to capitalism is possible seems, some stubborn pockets aside, settled. The liberatory confidence that the Manifesto radiated has been replaced with a ubiquitous skepticism of transformative possibilities.~~

~~In these dispiriting times the need for structures to more effectively organize and mobilize struggles is clear enough, but~~ **~~transcending pessimism~~** ~~and reviving revolutionary hope needs~~ **~~an animating vision~~** ~~as well, a~~ **~~utopia~~** ~~that is both dream and~~ **~~possible reality~~**~~. A good number of Marxists have indeed increasingly argued that far from seeing the preoccupation with alternatives negatively (a diversion), it is the very~~ **~~absence of alternatives~~** ~~that contributes to the Left’s marginalization. This has led them to mine Marxist political economy for insights to the “concept of alternatives.” Yet as insightful as such work is, in today’s discouraging context it remains~~ **~~too conceptual~~** ~~to revive and popularly spread the socialist idea. Going beyond the frustrations and demoralization wrought by capitalism demands a more expanded and convincing defense than we currently have of socialism’s practical possibilities. However valid Marx and Engel’s historical criticism of the utopians may have been for their era, there is a compelling case — equally historically driven — to take a different turn in our times.~~

~~Developing a more systematic consideration of socialism’s possible functioning, even if what we offer remains relatively general, incomplete, and even speculative, has today become a requirement for reviving a receptivity to achievable utopias and the willful action to achieve them. As Robin Hahnel recently asserted, without a plausible alternative “we~~ **~~cannot expect people to take the risks necessary to change things”~~** ~~nor “forge a strategy of how to get~~ **~~from here to there.”~~** ~~An~~ **~~institutionally elaborated alternative~~** ~~is now~~ **~~elemental~~** ~~to~~ **~~encouraging social movements~~** ~~to~~ **~~press beyond protest~~**~~, to sustaining socialists who are wavering, and to~~ **~~recruiting~~** ~~the newly discontented. Such an alternative has, in Ernst Bloch’s poetic capture of both despair and hope, become an indispensable spur “to make the defeated man try the world again.”~~

~~Submerging Socialist Contradictions~~

~~On those occasions when Marxists have engaged the nature of a future socialist society, they too often shied away from problematizing future difficulties in favor of assuring the unconvinced that the difficulties involved in the construction of a socialist society had been vastly exaggerated. Yet working people well understand from their experience of capitalism that building a new society will be far from simple. To engage those that we expect to lead in the making of socialism by misleading them about the difficulties involved is~~ **~~patronizing~~** ~~and ultimately~~ **~~self-defeating~~**~~. What is instead needed is an~~ **~~honest presentation~~** ~~of the~~ **~~risks~~**~~,~~ **~~costs~~**~~, and~~ **~~dilemmas~~** ~~the socialist project will face, alongside~~ **~~credible examples~~** ~~and promising indications of~~ **~~how~~** ~~the problems might be creatively addressed.~~

~~The primary quandary of socialism lies in how to~~ **~~concretely manifest social property in the means of production~~**~~. Can workers run their workplaces? If social property is organized through the state, where does worker control fit in? If social property is divided among worker collectives, how do the particular interests of each collective mesh with the social interest? And can these fragmented collectives counteract the centralized power? That is, can the concentrated power that comes with comprehensive planning be democratized?~~

~~Such dilemmas —~~ **~~contradictions~~** ~~may be more apt — cannot be~~ **~~conjured away~~** ~~by appealing to the further development of the productive forces inherited from capitalism, whether that involves the “end of scarcity” or the explosion of computer power, artificial intelligence, and big data. Nor can they be resolved through expectations that the experience of~~ **~~“revolutionary praxis~~**~~” in the course of ending capitalism will bring a level of socialist consciousness that similarly disposes of such questions. And neither can concern with the concentration of power in the central plan be escaped by asserting — on the basis of some combination of the end of scarcity, higher social consciousness, and a hoped-for democratization — the “withering away of the state.”~~

### ~~Sustainability~~

#### ~~Innovation key to sustainability – next 5 years is key to unlock active removal, refreezing, and shift to circular economies that break feedback loops – they dropped that mitigation alone even for centuries can’t solve in time – err aff we cite the IPCC – gold standard for climate data – that’s King~~

#### ~~Empirically denied, long time-frame, and perm solves~~

#### ~~It's sustainable---by every metric cap causes improvements~~

~~Schrager~~ **~~‘~~**~~20 [Allison; Winter 2020; Ph.D. in Economics from Columbia University, Senior Fellow at the Manhattan Institute; "Why Socialism Won't Work," https://foreignpolicy.com/2020/01/15/socialism-wont-work-capitalism-still-best/]~~

~~WITH INCREASINGLY UBIQUITOUS IPHONES, internet, central air conditioning, flat-screen TVs, and indoor plumbing, few in the developed world would want to go back to life 100, 30, or even 10 years ago. Indeed, around the world, the last two centuries have brought vast improvements in material living standards; billions of people have been lifted from poverty, and life expectancy across income levels has broadly risen. Most of that progress came from capitalist economies.~~

~~Yet those economies are not without their problems. In the United States and the United Kingdom, the gap between the rich and poor has become intolerably large as business owners and highly educated workers in urban areas have become richer while workers' wages in rural areas have stagnated. In most rich countries, more trade has brought a bigger, better variety of goods, but it has also displaced many jobs.~~

~~With social instability in the form of mass protests, Brexit, the rise of populism, and deep polarization knocking at the capitalist economies' doors, much of the progress of the last several decades is in peril. For some pundits and policymakers, the solution is clear: socialism, which tends to be cited as a method for addressing everything from inequality and injustice to climate change.~~

~~Yet the very ills that socialists identify are best addressed through innovation, productivity gains, and better rationing of risk. And capitalism is still far and away the best, if not only, way to generate those outcomes.~~

~~TODAY'S SOCIALISM IS DIFFICULT TO DEFINE. Traditionally, the term meant total state ownership of capital, as in the Soviet Union, North Korea, or Maoist China. Nowadays, most people don't take such an extreme view. In Europe, social democracy means the nationalization of many industries and very generous welfare states. And today's rising socialists are rebranding the idea to mean an economic system that delivers all the best parts of capitalism (growth and rising living standards) without the bad (inequality, economic cycles).~~

~~But no perfect economic system exists; there are always trade-offs--in the most extreme form between total state ownership of capital and unfettered markets without any regulation or welfare state. Today, few would opt for either pole; what modern socialists and capitalists really disagree on is the right level of government intervention.~~

~~Modern socialists want more, but not complete, state ownership. They'd like to nationalize certain industries. In the United States, that's health care--a plan supported by Democratic presidential candidates Elizabeth Warren (who does not call herself a socialist) and Bernie Sanders (who wears the label proudly). In the United Kingdom, Labour Party leader Jeremy Corbyn, who was trounced at the polls in mid-December, has set his sights on a longer list of industries, including the water, energy, and internet providers.~~

~~Other items on the socialist wish list may include allowing the government to be the primary investor in the economy through massive infrastructure projects that aim to replace fossil fuels with renewables, as Green New Deal socialists have proposed. They've also floated plans that would make the government the employer of a majority of Americans by offering guaranteed well-paid jobs that people can't be fired from. And then there are more limited proposals, including installing more workers on the boards of private companies and instituting national rent controls and high minimum wages.~~

~~For their part, modern capitalists want some, but less, state intervention. They are skeptical of nationalization and price controls; they argue that today's economic problems are best addressed by harnessing private enterprise. In the United States, they've argued for more regulation and progressive taxation to help ease inequality, incentives to encourage private firms to use less carbon, and a more robust welfare state through tax credits. Over the past 15 years, meanwhile, capitalist Europeans have instituted reforms to improve labor market flexibility by making it easier to hire and fire people, and there have been attempts to reduce the size of pensions.~~

~~No economic system is perfect, and the exact right balance between markets and the state may never be found. But there are good reasons to believe that keeping capital in the hands of the private sector, and empowering its owners to make decisions in the pursuit of profit, is the best we've got.~~

~~ONE REASON TO TRUST MARKETS is that they are better at setting prices than people. If you set prices too high, many a socialist government has found, citizens will be needlessly deprived of goods. Set them too low, and there will be excessive demand and ensuing shortages. This is true for all goods, including health care and labor. And there is little reason to believe that the next batch of socialists in Washington or London would be any better at setting prices than their predecessors. In fact, government-run health care systems in Canada and European countries are plagued by long wait times. A 2018 Fraser Institute study cites a median wait time of 19.8 weeks to see a specialist physician in Canada. Socialists may argue that is a small price to pay for universal access, but a market-based approach can deliver both coverage and responsive service. A full government takeover isn't the only option, nor is it the best one.~~

~~Beyond that, markets are also good at rationing risk. Fundamentally, socialists would like to reduce risk--protect workers from any personal or economywide shock. That is a noble goal, and some reduction through better functioning safety nets is desirable. But getting rid of all uncertainty--as state ownership of most industries would imply--is a bad idea. Risk is what fuels growth. People who take more chances tend to reap bigger rewards; that's why the top nine names on the Forbes 400 list of the richest Americans are not heirs to family dynasties but are self-made entrepreneurs who took a leap to build new products and created many jobs in the process.~~

~~Some leftist economists like Mariana Mazzucato argue that governments might be able to step in and become laboratories for innovation. But that would be a historical anomaly; socialist-leaning governments have typically been less innovative than others. After all, bureaucrats and worker-corporate boards have little incentive to upset the status quo or compete to build a better widget. And even when government programs have spurred innovation--as in the case of the internet--it took the private sector to recognize the value and create a market.~~

~~And that brings us to a third reason to believe in markets; productivity. Some economists, such as Robert Gordon, have looked to today's economic problems and suggested that productivity growth--the engine that fueled so much of the progress of the last several decades--is over. In this telling, the resources, products, and systems that underpin the world's economy are all optimized, and little further progress is possible.~~

~~But that is hard to square with reality. Innovation helps economies do more with fewer resources--increasingly critical to addressing climate change, for example--which is a form of productivity growth. And likewise, many of the products and technologies people rely on every day did not exist a few years ago. These goods make inaccessible services more available and are changing the nature of work, often for the better. Such gains are made possible by capitalist systems that encourage invention and growing the pie, not by socialist systems that are more concerned with how the existing pie is cut. It is far too soon, in other words, to write off productivity.~~

~~Here, it is worth considering the lessons of a previous productivity boom: the Industrial Revolution. As the economist Joel Mokyr has shown, it took new innovations like the steam engine more than 100 years to appear in productivity estimates. The same could be happening today with smartphones and the internet. Meanwhile, even as that upheaval transformed the human experience, creating a more comfortable existence for most everyone, it was also messy and disruptive. The early part of that innovative cycle--like others since--displaced existing workers while the gains flowed to the owners of capital first, causing social instability.~~

K

**Framework—debate is about the plan’s desirability—key to fairness because the plan is the locus of aff offense and there are infinite arbitrary neg frameworks**

**Perm – do plan and all non-competitive parts of the alt**

**Perm solves and there is no link --- The aff addresses an example of violent capitalism that cloaks private entities in the power of the state**

**Shapiro 14** [Ilya Shapiro, Senior fellow in constitutional studies at the Cato Institute and director of the Robert A. Levy Center for Constitutional Studies, 10-20-2014 https://www.cato.org/commentary/will-real-government-crony-please-stand]

Whatever one’s opinion of antitrust law—mine isn’t too favorable because the law is typically too slow‐​acting to befit a dynamic marketplace—existing **immunity doctrines are dangerous** because they allow private entities **cloaked in government authority** to raise prices and restrict choice. Worse, state‐​established cartels frequently harm constitutional rights, such as the right to earn a living, by barring new businesses from opening. The North Carolina case is a prime example of private actors arbitrarily abusing government power to block entrepreneurs from entering an industry and providing for themselves and their families.

Occupational Licensing Laws Are a Government Racket

As George Will put it in his recent column on the case, occupational licensing laws and the monopoly power they grant “are growth‐​inhibiting and job‐​limiting, injuring the economy while **corrupting politics**. They are residues of the mercantilist mentality, which was a residue of the feudal guild system, which was **crony capitalism** before there was capitalism. Then as now, commercial interests collaborated with governments that protected them against competition.”

Cato and PLF filed a Supreme Court brief supporting the FTC—you know it’s a bad case when we’re on the federal government’s side!—arguing that courts should only rarely immunize private parties who act on government’s behalf. The Fourth Circuit was not only correct in applying the “active supervision” requirement, but existing immunitydoctrines are **too lax**.

Instead, courts should grant antitrust immunity to private entities acting under state law only where state law commands their restraint on competition, and where that restraint substantially advances an important state interest. This test would help protect the constitutional right to economic liberty against the only entity that can normally create monopolies and yet which today enjoys immunity from antimonopoly laws: the government.

**Alt’s vague---no actor or mechanism---voting issue: jacks ground and means the alt doesn’t solve**

**No impact---it’s empirically denied, long time-frame, and perm solves**

**Alt fails---transition is impossible and causes conflict. Even if transition occurs, it doesn’t solve**

**Smith 19** [Noah; 4/5/19; Bloomberg Opinion columnist, former assistant professor of finance at Stony Brook University; "Dumping Capitalism Won’t Save the Planet," https://www.bloomberg.com/opinion/articles/2019-04-05/capitalism-is-more-likely-to-limit-climate-change-than-socialism]

It has become **fashionable** on social media and in certain publications to argue that **capitalism is killing the planet**. Even renowned investor Jeremy Grantham, hardly a radical, made that assertion last year. The **basic idea** is that the **profit motive** drives the **private sector** to **spew carbon** into the air with reckless abandon. Though many economists and some climate activists believe that the problem is best addressed by modifying market incentives with a carbon tax, many activists believe that the problem can’t be addressed **without rebuilding** the **economy** along centrally planned lines.

The climate threat is certainly dire, and carbon taxes are unlikely to be enough to solve the problem. But eco-socialism is probably **not**going to be an **effective method** of addressing that threat. **Dismantling** an **entire economic system** is **never easy**, and probably would **touch off armed conflict** and **major asdasd upheaval**. In the scramble to win those battles, even the socialists would almost certainly abandon their limitation on **fossil-fuel use** — either to support **military efforts**, or to keep the population from turning against them. The precedent here is the **Soviet Union**, whose multidecade effort to **reshape its economy** by **force** amid **confrontation** with the West led to profound **environmental degradation**. The world's climate does not have several decades to spare.

Even **without international conflict**, there’s **little guarantee** that moving away from capitalism would **mitigate our impact** on the environment. Since socialist leader Evo Morales took power in Bolivia, living standards have improved substantiallyfor the average Bolivian, which is great. But this has come at the cost of higher emissions. Meanwhile, the capitalist U.S managed to **decrease its per capita emissions** a bit during this same period (though since the U.S. is a rich country, its absolute level of emissions is much higher).

In other words, in terms of **economic growth** and **carbon emissions**, Bolivia looks similar to more capitalist developing countries. That suggests that **faced with a choice** of enriching their people or helping to save the climate, even **socialist leaders** will often choose the former. And that same political calculus will probably hold in China and the U.S., the world’s top carbon emitters — leaders who demand **draconian cuts** in **living standards** in pursuit of environmental goals will have **trouble staying in power**.

The **best hope** for the climate therefore lies in **reducing the tradeoff** between **material prosperity** and **carbon emissions**. That requires **technology** — **solar**, **wind** and **nuclear power**, **energy storage**, **electric cars** and other vehicles, carbon-free cement production and so on. The **best climate policy** plans all involve **technological improvement** as a **key feature**.

**Conditionality is a voter---creates time and strategy skews, argumentative irresponsibility---dispo solves**

**Cap’s sustainable and ensures global prosperity and environmental protection**

**Rhonheimer 20**—teaching professor at the Pontifical University of the Holy Cross (Martin, “Capitalism is Good for the Poor – and for the Environment,” <https://austrian-institute.org/en/subjects-en/catholic-social-doctrine-2/capitalism-is-good-for-the-poor-and-for-the-environment/>, dml)

It is **not social policy** but **capitalism** that has **created today’s prosperity**.

What is important is that what **made today’s mass prosperity possible** – a phenomenon **unprecedented in history** – wasnot social policy or social legislation, organised trade union pressure, or corrective interventions in the capitalist economy, but rather **market capitalism**itself, due to its **enormous potential for innovation** and the **ever-increasing productivity** of human labour that resulted from it.

Increasing prosperity and quality of life are **always the result** of increasing labour productivity. **Only increased productivity** enabled **higher social standards**, **better working conditions**, the **overcoming of child labour**, a **higher level of education**, and the **emergence of human capital**. This process of increasing triumph over poverty and the constantly rising living standards of the general masses is taking place on a **global scale** – but **only** where the **market economy**and **capitalist entrepreneurship are able to spread**.

From industrial overexploitation of nature to ecological awareness

The **first phase** of industrialisation and capitalism was characterised by an enormous **consumption** of resources and frequent **overexploitation** of nature, which soon **gave the impression** that this process **could not be sustainable**. Since the end of the 19th century, **disaster** and **doom** scenarios have **repeatedly been put forward**, but in retrospect they have **proved to be wrong**: The combination of **technological innovation**, **market competition**, and **entrepreneurial profit-seeking**(with the compulsion to **constantly minimise costs**) have meant that these scenarios **never occurred**. The **ever-increasing population** has been **increasingly better supplied** thanks to **innovative technologies**, **ever-increasing output** with **lower consumption** of resources **less harmful** to the environment – e.g. **less arable land** in agriculture, or **oil** and **electricity** instead of **coal** for rapidly increasing mobility. More recent disaster scenarios, such as those spread by **reputable scientists** since the late 1960s and in the 1970s, have also proved to be **inaccurate**.

The **reason** things developed differently was the **always underestimated innovative dynamism** of the **capitalist market economy**, a **growing ecological awareness** and, as a result, legislative intervention that **took advantage** of the logic of market capitalism: As a result of the ecological movement that had come out of the United States since 1970, wise legislation began to use the price mechanism to apply market incentives to internalize negative externalities. Environmental pollution was **given a price-tag**.

This led to an **enormous decrease in air pollution** and **other ecological consequences** of growth, which is **only possible in free**, **market-based societies**, because the production process here is characterized by **competition**and **constant pressure to reduce costs**, i.e. to the **most profitable use** of resources. On the other hand, **all forms of socialism**, i.e. a state-controlled economy, have proved to be **ecological disasters** and have left behind **destruction of gigantic proportions**, without providing the population with **anything** that is **near comparable in prosperity**, often even by **destroying existing prosperity**, such as happened in **Venezuela**.

Capitalist profit motive combined with digitalization as a solution: Increasing decoupling of growth and resource consumption

Moreover, **technological innovations** combined with **capitalist profit-seeking** and **market competition** have led to a new and surprising phenomenon over the past decades, which is still **hardly noticed** in the public debate: the **decoupling** of growth and resource consumption (“**dematerialization**”). In a **wide variety** of industrial sectors, the developed countries, above all the U.S., are now achieving **ever greater productive output** with **increasingly fewer resources**. This has a lot to do with technology, especially the digitalization of the economy and of our entire lives.

As the well-known MIT professor Andrew McAfee shows in his book More from Less, published in October 2019, this process also follows the logic of **capitalist profit maximization**. To get it going, we do not need politics, even though wise, properly incentivizing legislation can be helpful and sometimes necessary. Above all, however, it is the **combination of technological innovation**, **capitalist profit-seeking**, and **market-based entrepreneurial competition** that will also **solve** the problem of man-made **global warming**.

In addition, **property rights** and their protection are **decisive** for the **careful use of natural resources**. And where this is not possible, legal support for collective self-governing structures, in accordance with the principle of subsidiarity, are important—as is analysed by Nobel Economic Prize winner Elinor Ostrom. By contrast, the growing ideologically motivated **anti-capitalist eco-activism**, and the policies influenced by it, are leading in the **wrong direction**, **distracting precisely** from what would be **best for the climate** and the **environment**—and **distracting us** from what could **help protect us** against the **inevitable consequences of global warming**.

**Their refusal (or inability) to answer the classic questions of “what does the ALT look like” and “how does it dismantle capitalism” is overwhelming proof of its failure**

Sam **Gindin 19**, was research director of the Canadian Auto Workers from 1974–2000. He is co-author (with Leo Panitch) of The Making of Global Capitalism (Verso), and co-author with Leo Panitch and Steve Maher of The Socialist Challenge Today, “We Need to Say What Socialism Will Look Like,” Jacobin, 3/6/19, https://www.jacobinmag.com/2019/03/sam-gindin-socialist-planning-models

Of the two central tasks the making of socialism demands — **convincing a skeptical populace** that a society based on public ownership of the means of production, distribution, and communication could in fact **work**, and **acting** to end capitalist rule — the **overwhelming focus** of those still committed to socialism has been on the **political battle** to defeat capitalism. **What the society at the end of the rainbow might actually look like** has, with some notable exceptions, tended to receive only **rhetorical** or **cursory** attention. But in the gloomy shadow of socialism’s marginalization, **the cavalier assertion of socialism’s practicality will no longer do.** Winning people over to a complex and protracted struggle to introduce profoundly new ways of producing, living, and relating to each other demands a much deeper engagement with socialism’s actual possibility.

For socialists, establishing **popular confidence** in the **feasibility** of a socialist society is now an **existential challenge**. Without a **renewed** and **grounded** belief in the **possibility** of the goal, it’s **near impossible** to imaginereviving and sustaining the project. This, it needs emphasis, isn’t a matter of proving that socialism is possible (the future can’t be verified) nor of laying out a thorough blueprint (as with projecting capitalism before its arrival, such details can’t be known), but of presenting a framework that contributes to making the case for socialism’s plausibility.

When Hope “Rings Oddly in Our Ears”

The Communist Manifesto’s famous rebuke of the utopians for spending their time on “castles in the air” went beyond the tension between dreaming and doing, though it of course spoke to that as well. In underscoring that one’s visions and corresponding actions need to be grounded in an analysis of society and identification of social agency, Marx and Engels introduced what amounted to an early exposition of historical materialism. Without a historical lens, they argued, the utopians simultaneously lagged and yet prematurely raced ahead of history: lagged in missing the significance of a newly emerging revolutionary actor, the proletariat; rashly raced ahead in absorbing themselves with detailing a distant world that could then only be imagined in the most general and abstract terms.

This deeper critique of utopianism discouraged future generations of revolutionary socialists from **serious engagement**with the **feasibility of socialism** — a reluctance that, as noted, largely persists today. The orientation of socialist politics turned to **analyzing** the political economy of capitalism, grasping its **dynamics** and **contradictions**, and facilitating the formation of the dispossessed into a coherent class with the potential to remake the world. Only in the process of fighting to transform capitalism, Marxists insisted, could the collective capacities for building socialism emerge, and only in the process of confronting the new dilemmas thrown up, might institutional solutions surface.

Such an orientation is clearly indispensable to the socialist project. The intent here is certainly not to belittle it. Yet it doesn’t justify, especially in the current conjuncture, the common Marxist **disdain for utopian contemplations**. In the wake of the profound **defeat of the socialist left** and the consequent **widespread fatalism** over **transformative alternatives**, it’s **not enough** to focus on getting there. It is now at least as important to convince prospective socialists that **there really is a “there” to get to.**

Looking back, the warnings of Marx and Engels against fixation on an unknowable future have a convincing air about them. At that early stage of capitalism, the car — never mind the airplane, electronic computer, and internet — had not yet been invented. Trade unions were just appearing, universal suffrage was still an epoch away, the modern state wasn’t yet recognizable, and above all the Russian Revolution and the new questions it posed had not yet burst onto the political stage. To have debated then what socialism might later look like certainly does, in retrospect, confirm how presumptuous it would have then been to devote much attention to the workings of a socialist society.

Moreover, capitalism’s relative youth at the time of the Manifesto left that period comparatively more open to envisioning its rejection: the barriers of traditional cultural, religious, and family ties blocked capitalism’s full sway and the absorption of the working class into the new social system remained incomplete. In the decades after 1873, the year that Marx coined the derisive catchphrase “writing recipes for the cook shops of the future,” socialism was in the air in a way that it no longer is today. Socialism was widely discussed among workers, and in London it was “fashionable for even West-end dinner parties to affect an interest in and knowledge of it.” Mass socialist parties were emerging across Europe and this was widely followed, whether anxiously or hopefully. In the US, though a mass socialist party never took hold, the second half of the nineteenth century ushered in a “long era of anti-capitalism” that included an “urge to overthrow the new order of things.”

This openness to socialism persisted after World War i. As the preface to a newly translated work of Karl Polanyi on socialist accounting notes, in the early 1920s Polanyi was “just one of many social scientists who found accounting, prices, and socialism to be the most exciting topic of the day.” Surprisingly, this attitude existed even within neoclassical economics, which had emerged in the shadow of the Paris Commune essentially as a counter to Marx. At the end of the 1920s the president of the prestigious American Economic Association began his keynote by declaring that “Like most teachers of economic theory, I have found it quite worthwhile to spend some time studying any particular problem at hand from the standpoint of a socialist state.” In going on to address how a society without private ownership of the means of production might determine prices and allocate resources, he confidently asserted that its authorities “would have no difficulty finding out whether the standard valuation of any particular factor was too high or too low,” concluding that “this much having been learned, the rest would be easy.”

Later, Murray Rothbard, a lifetime disciple of the archconservative Ludwig von Mises, lamented that when he entered grad school after World War ii “the economics establishment had all decided, left, right, and center, that … socialism’s only problems, such as they might be, were political. Economically, socialism could work just as well as capitalism.” With socialism carrying such a degree of economic credence, the elaboration of the details of a functioning socialist society seemed decidedly less pressing for socialists than developing the politics of getting to it.

But such openings to a different world, however qualified, have today strikingly contracted. Erik Olin Wright begins his monumental treatise on “real utopias” by wistfully recalling that “There was a time, not too long ago, when both critics and defenders of capitalism believed that ‘another world was possible.’ It was generally called ‘socialism.’” Wright continues on to lament that “Most people in the world today, especially in its economically developed regions, no longer believe in this possibility.”

The oft-noted paradox of our time is that **even as popular frustrations with capitalism intensify, belief in transformative alternatives continue to languish**. There is clearly an **appetite for change** and the discourse of “anticapitalism” **pervades protests**, but the elevated language of **hope** in a **systemic alternative** “**rings oddly in our ears**.” The **persistence** and even strengthening of capitalism through great crises seems to further **verify its permanence**. The Manifesto’s faith in “capitalism’s grave diggers” comes up against the atomization of workers, the depth of their defeats, their multidimensional integration into capitalism, and their painful inability to defend past gains — never mind advance radical agendas. The overwhelming prospect of taking on a global capitalism that seems beyond the purview of any particular state seemingly leaving us with no tangible target, reinforcing the now pervasive cross-generational sense that “there is no alternative.”

If we add the betrayals of Third Way social democracy, the fateful collapse of the Soviet Union, the Chinese road to capitalism, the failures of other twentieth- and twenty-first-century revolutions that occurred in the name of socialism, and the recent political reversals in Latin America and Europe (Corbynism perhaps being an exception), it becomes clear that “radical change” is more often than not a **calling card of the Right**. Today the zeitgeist that no alternative to capitalism is possible seems, some stubborn pockets aside, settled. The liberatory confidence that the Manifesto radiated has been replaced with a ubiquitous skepticism of transformative possibilities.

In these dispiriting times the need for structures to more effectively organize and mobilize struggles is clear enough, but **transcending pessimism** and reviving revolutionary hope needs **an animating vision** as well, a **utopia** that isboth dream and **possible reality**. A good number of Marxists have indeed increasingly argued that far from seeing the preoccupation with alternatives negatively (a diversion), it is the very **absence of alternatives** that contributes to the Left’s marginalization. This has led them to mine Marxist political economy for insights to the “concept of alternatives.” Yet as insightful as such work is, in today’s discouraging context it remains **too conceptual** to revive and popularly spread the socialist idea. Going beyond the frustrations and demoralization wrought by capitalism demands a more expanded and convincing defense than we currently have of socialism’s practical possibilities. However valid Marx and Engel’s historical criticism of the utopians may have been for their era, there is a compelling case — equally historically driven — to take a different turn in our times.

Developing a more systematic consideration of socialism’s possible functioning, even if what we offer remains relatively general, incomplete, and even speculative, has today become a requirement for reviving a receptivity to achievable utopias and the willful action to achieve them. As Robin Hahnel recently asserted, without a plausible alternative “we **cannot expect people to take the risks necessary to change things”** nor “forge a strategy of how to get **from here to there.”** An **institutionally elaborated alternative** is now **elemental** to **encouraging social movements** to **press beyond protest**, to sustaining socialists who are wavering, and to **recruiting** the newly discontented. Such an alternative has, in Ernst Bloch’s poetic capture of both despair and hope, become an indispensable spur “to make the defeated man try the world again.”

Submerging Socialist Contradictions

On those occasions when Marxists have engaged the nature of a future socialist society, they too often shied away from problematizing future difficulties in favor of assuring the unconvinced that the difficulties involved in the construction of a socialist society had been vastly exaggerated. Yet working people well understand from their experience of capitalism that building a new society will be far from simple. To engage those that we expect to lead in the making of socialism by misleading them about the difficulties involved is **patronizing** and ultimately **self-defeating**. What is instead needed is an **honest presentation** of the **risks**, **costs**, and **dilemmas** the socialist project will face, alongside **credible examples** and promising indications of **how** the problems might be creatively addressed.

The primary quandary of socialism lies in how to **concretely manifest social property in the means of production**. Can workers run their workplaces? If social property is organized through the state, where does worker control fit in? If social property is divided among worker collectives, how do the particular interests of each collective mesh with the social interest? And can these fragmented collectives counteract the centralized power? That is, can the concentrated power that comes with comprehensive planning be democratized?

Such dilemmas — **contradictions** may be more apt — cannot be **conjured away** by appealing to the further development of the productive forces inherited from capitalism, whether that involves the “end of scarcity” or the explosion of computer power, artificial intelligence, and big data. Nor can they be resolved through expectations that the experience of **“revolutionary praxis**” in the course of ending capitalism will bring a level of socialist consciousness that similarly disposes of such questions. And neither can concern with the concentration of power in the central plan be escaped by asserting — on the basis of some combination of the end of scarcity, higher social consciousness, and a hoped-for democratization — the “withering away of the state.”