AMERICAN INSTITUTE FOR ECONOMIC RESEARCH

AIER Papers #09
April, 2025

A Tale of Two Populisms:

Deconstructing The Neo-Brandeisian and National Conservative Models of Antitrust Law and Political Economy

JOSEPH V. CONIGLIO[1]

The American Institute for Economic Research educates people on the value of personal freedom, free enterprise, property rights, limited government, and sound money. AIER's ongoing scientific research demonstrates the importance of these principles in advancing peace, prosperity, and human progress.

250 Division Street
PO Box 1000
Great Barrington, MA 01230
Telephone: 1-888-528-1216
Fax: 1-413-528-0103
info@aier.org

AIER is a 501(c)(3) Nonprofit registered in the U.S. under EIN: 04-2121305

I. Introduction

"It was the best of times, it was the worst of times."[2] Such has been the *gestalt* of U.S. antitrust law for the last several years. For many, it is an "age of wisdom" and a long-needed move away from, in the words former President Biden, a 40-year-long failed experiment in neoliberal law and economics.[3] Known as the "neo-Brandeisian" antitrust movement, what began with a (flawed) law review article rose, in just a few short years into the leadership of both the Department of Justice's (DOJ) Antitrust Division and the Federal Trade Commission (FTC) under the Biden administration.[4] For the neo-Brandeisians, the neoliberal vanguard abandoned the democratic foundations of antitrust in the name of neoclassical economics and in so doing helped to create a New Gilded Age where large corporations wield oppressive economic and political power.[5] To save democracy, the neo-Brandeisians sought to re-politicize antitrust law and brought blockbuster lawsuits against leading corporations, and especially technology firms like Amazon, Apple, and Google.

For those who would defend the neoliberal order, the neo-Brandeisian capture of the antitrust institutions reflected a Dickensian "age of foolishness." That is, the neo-Brandeisians' populist program was one of reaction, not progress, and an errant counterrevolution in the name of antitrust's *ancient regime* where big meant bad and the antitrust laws stifled the very competition they were supposed to foster.[6] Specifically, the neo-Brandeisians sought to return to an antitrust paradigm aimed at promoting decentralized market structures but which proved unable to sufficiently distinguish between business conduct that harms competitors and concentrates markets — a phenomenon inherent in a healthy competitive process — and that which actually harms competition and should be found unlawful. And, by making competition policy part of a campaign to save democracy, the antitrust enterprise was itself undermined by forfeiting its hard-fought status as a bipartisan institution rooted in the rule of law, instead of one subject to the political whims of a particular administration.

With the advent of a second Trump administration, for many it is now a populism from the right which captures the spirit of the age — a new "epoch of belief," to borrow again from Dickens — and one which may define the antitrust policies of the new government. What was for the neo-Brandeisians 40 years of anti-democratic corporate consolidation, and for neoliberal stalwarts a renaissance of economic growth and innovation, is for these conservative critics chiefly a period of unceasing cultural decay and the waning of the traditional institutions that sustain flourishing communities. To be sure, as with the neo-Brandeisians, large technology companies feature prominently in this narrative of decline, including as emblematic of a new "tyranny" that rules in the land.[7] On this view, whether by censoring conservative speech, squeezing local media, or even interfering in elections, these large technology companies must be brought to heel if the social order is to be restored — including through the use of antitrust.

At the same time, for others, it is very much the "age of incredulity." The great post-war project of global liberal capitalist democracy that was once believed to represent the "end of history" is threatened by a loss of faith in the liberal order and a resurgence of totalitarianism both at home

and abroad.[8] In the face of this seemingly unthinkable thought, policymakers of this mold seek to double down on the core institutions of modern liberal democracy, including antitrust law, to do nothing less than save the world before it's too late. To overcome populist forces on both the left and right, these liberal reformers seek an alternative legal and economic framework to the free-market neoclassical model of the Chicago School that can counter the excesses of corporate power within the existing administrative framework of the liberal technocratic state.

Amongst these sirens songs of populism and denialism both left and right, could it also be what Dickens called "a new season of light?" For some, with the end of neoliberalism comes the opportunity to reorient antitrust law and political economy around driving the innovation and dynamism that has transformed our world in recent decades, but in a way which takes into account the higher order values that animate competition and which the neo-Brandeisians, the neoliberals, and the liberal reformers all ignore.[9] On this approach, in a world of rapid technological change and renewed great power conflict, antitrust and political economy must not just move beyond neoliberalism and avoid antitrust populists left and right, but focus on fostering Schumpeterian "creative destruction" and the "entrepreneurial spirit" which sustains it if the West is to continue to lead the world amidst the gales of the twenty-first century.

This paper deconstructs and critiques the neo-Brandeisian and national conservative populisms primarily from this Schumpeterian vantage point. At bottom, the neo-Brandeisians, as exemplified by former FTC Chair Lina Khan, not only get the economics wrong, but make the same mistake as the Chicago schoolers they despise by divorcing competition from any higher conception of moral or natural order. Moreover, the neo-Brandeisian theory of law is found wanting not just by virtue of its general politicization of antitrust but, and here again like the neoliberals, its penchant for positivism and formalism. On the right, while the national conservatives' thinking on political economy, for which commentator Sohrab Ahmari — heralded as "the conservative who turned against corporate America"[10] — has emerged as a leading exponent, appears superior to that of neo-Brandeisians, this path too is deeply unsatisfactory. In fact, not only does Ahmari commit many of the same errors as the neo-Brandeisians, including both the attempt to democratize political economy as well as replace free enterprise with interventionism, but he misapplies the very Catholic social thought tradition he more generally purports to represent.

The central thesis of this paper is that the prevailing left and right populisms do not present desirable models for grounding the next generation of U.S. antitrust law, and in fact share important key flaws. Indeed, while the end of the Biden administration marks the departure of the neo-Brandeisian revolutionists' from the halls of power — albeit not before leaving key antitrust institutions like the FTC in near shambles[11] — the new Trump administration must take great care not to adopt a national conservative approach to law and political economy that repeats the mistakes of the neo-Brandeisians in the Biden administration. In particular, antitrust law should not be politicized to achieve purportedly democratic ends, and nor should competition enforcement reflect an ingrained hostility to the large technology firms which are critical to driving the innovation and growth that are essential to maintaining America's leadership in an increasingly dire techno-economic rivalry with China.

II. The Neo-Brandeisians

The neo-Brandeisian movement, in less than a decade and seemingly contrary to the expectations of some of its initial critics,[12] went from a law student note to the dominant ideology of the Biden administration's antitrust policy — an impressive and rapid rise perhaps only comparable to the Chicago School revolution it wished to replace. In fact, and here again in conflict with much of the received wisdom, the neo-Brandeisian approach to antitrust law and political economy was not only not a mirror image of the earlier progressive paradigm that the Chicago schoolers superseded, but had much in common with the latter's neoliberal model of law and economics. And yet, in its essential respects, the neo-Brandeisian movement, which is itself merely an instance of a broader and ongoing left-wing and populist project associated with the Yale-based Law and Political Economy Project,[13] represents a deeply problematic theory of antitrust law, political economy and competition policy.

A central tenet of the neo-Brandeisian movement is the rejection of antitrust law as private law, and specifically the longstanding consensus that antitrust is designed to promote consumer or economic welfare. For neo-Brandeisians like former Chair Khan, the neoliberal paradigm of antitrust as a "consumer welfare proscription" erred in "orienting antitrust toward material rather than political ends."[14] Instead, neo-Brandeisians see antitrust as public law in service of the "public interest," which for them effectively function as code words for a political program to redistribute economic power.[15] That is, "antitrust and other de-concentration rules should be understood not solely as part of corporate law, but also as part of political law" and as a tool for "improving democratic self-government in ways that are typically associated with campaign finance reform."[16] As such, the neo-Brandeisians conceive of antitrust as an almost *quasi*-constitutional body of law "derived from the work of Thomas Jefferson and principles of autonomy that were central to American political ideology."[17]

This constitutional framing of neo-Brandeisian antitrust betrays a fundamental misunderstanding of the American experiment. To be sure, Jefferson, Madison and the Framers generally understood how private power or "factions" can subvert democracy and act in a way that is adverse to "the permanent and aggregate interests of the community."[18] But, contrary to the neo-Brandeisians, the Founding Fathers' answer to the issue of faction and the corruption of democracy by private interests was not the politicization of law to attack private power. As Jefferson himself explained, private economic power and inequality was not a problem to be corrected by the state, but a fact of life that cohered with the rule of a "natural aristocracy" that constitutes "the most precious gift of nature for the instruction, *the trusts*, and the government of society."[19] Rather, to check the deleterious effects of factions, the American constitutional order was designed to limit *political power* through separation of powers, federalism, and the rule of law to protect of individual rights and ensure "the preservation of liberty"[20] — a vision inapposite with the politicization of antitrust law championed by the neo-Brandeisians.

The neo-Brandeisians' enmity toward large firms flows from this errant conception of antitrust enforcement as an exercise in political law and democracy promotion. For the neo-Brandeisians,

"[e]ver-increasing corporate size and concentration undercut democratic self-governance by disproportionately influencing government actors, as recognized by campaign finance reformers."[21] This undue influence, in their view, leads to a world where "concentration of economic power also consolidates political power, 'breed[ing] antidemocratic political pressures.'"[22] To save democracy from economic concentration — which, notwithstanding the neo-Brandeisians' claims to the contrary, has actually not meaningfully grown over the last two decades[23] — antitrust serves as a tool to effectively democratize markets and thus safeguard political democracy. In other words, political democracy requires economic democracy, understood in terms of deconcentrated markets constituted by small firms.

It is not hard to see why reducing the general problems of faction and undue political influence to market power doesn't hold water. First, market power is not a necessary condition for political power: investment banks and asset managers, for example, are often extremely politically influential notwithstanding the fact that they compete in relatively competitive markets. And of course, powerful business interests in Washington include small firms that are tightly and effectively organized, such as the Association of American Justice or the National Association of Car Dealers. Conversely, market power certainly isn't a sufficient condition for subverting democracy: a small pharmaceutical company may have heavily entrenched monopoly power by virtue of a patented new drug but lack any ability to meaningfully influence the political process. Indeed, rather than harm democracy, monopoly power that spurs forces like Schumpeterian creative destruction and innovation may not just be a way to check the totalitarian temptation of the modern superstate, but also disrupt the incumbent firms who dominate the *status quo* and thus foster inter-elite rivalry and ultimately increased democratic engagement.[24]

The neo-Brandeisians' plan to "democratize antitrust"[25] and their resultant animus to large firms is closely intertwined with a distrust of markets, free enterprise, and, ultimately, economic growth. In this regard, the neo-Brandeisians simply mirror other critics of economic liberalism who, over the centuries, were skeptical that a free enterprise system will bring about the economic results they want — for the neo-Brandeisians, sufficiently deconcentrated markets to supposedly promote democracy. This unease is particularly apparent with the network and data-intensive platform industries that define the New Economy, which in the words of former Chair Khan "yield to dominance by a small number of firms."[26] However, former Chair Khan also appears to also reject the idea of private economic order more generally, writing that both "[t]here are no such things as market 'forces'" and "political economy is structured *only* through law and policy."[27] That is, for neo-Brandeisians it is inherently the role of government to "shap[e] markets and economic outcomes,"[28] and especially market structures, which are themselves "deeply political" in the sense of ensuring adequate effective competition to safeguard democracy.[29]

The neo-Brandeisian antagonism to free enterprise, especially in digital markets, is mistaken at many levels. First, the neo-Brandeisians' seemingly categorical denial of economic forces in shaping market outcomes not only discounts obvious realities like supply and demand, but that the assumptions of self-correction they so harshly rebuke were often justified by neoliberals on instrumentalist and predictive grounds and not as "natural market forces."[30] Moreover, with

respect to the digital economy, it's just not true that these markets invariably tip toward dominance, which is evident by practices like multi-homing which facilitate competition in markets such as ridesharing, where consumers regularly use both Lyft and Uber apps.[31] What's more, the Schumpeterian competition that typifies the digital space is broadly cumulative, whereby the number of competitors increases with each technological wave. For example, what was a "Wintel" software-hardware duopoly at the beginning of the digital revolution has given way to competition to win in the next technological wave — namely, artificial intelligence — amongst numerous large firms who each gained a foothold in various markets (e.g., Apple in mobile, Amazon in Ecommerce, Google in search, Meta in social media) and are now competing with one another, new Schumpeterian entrants (e.g., OpenAI, Anthropic), and other large firms who reinvented themselves (e.g., Nvidia).

Despite their many differences, in several respects the neo-Brandeisian system of law and economics is not very different from that of the neoliberals. To begin, the neoclassical model of economics that the neoliberals championed is rooted in a materialist outlook of man as *homo economicus*. As such, it is divorced from any higher-order conception of natural law or right where, as in the Smithian classical model, the market is understood as a natural order and the invisible hand a *de facto* natural law.[32] A similar materialism can be found amongst neo-Brandeisians, albeit of a more Marxian, rather than utilitarian, variety.[33] For example, former Chair Khan herself has not only mocked the idea of natural or "metaphysical" economic forces, but channeling Marx frames the central problematic of antitrust law in terms of "ideology" and class conflict,[34] albeit first and foremost in the name of small businesses and the petit bourgeoisie, rather than the working class and the proletariat — two groups whose interests, needless to say, often do not coincide.[35] As such, just as the neoliberals make economic analysis the *raison d'etre* of law, so too does the neo-Brandeisian understanding of the relation between law, politics and economic deconcentration reflect a form of economic reductionism, now in the service of incremental or *quasi* "Fabian" program that redeploys capitalist institutions to Marxist ends, as distinct from the more traditional and radical revolutionary approach of classical Marxism.[36]

While a thorough discussion of the Marxist methodological position utilized by the neo-Brandeisians is well beyond the scope of this paper, here again Schumpeter provides a helpful and concise reference point. For Marx, the social relations of an economic system are driven by its modes of production: "[t]he hand-mill gives you society with a feudal lord; the steam-mill, society with the industrial capitalist."[37] For Schumpeter, this analysis is as insightful as it is incomplete. As he explains, antiquated social values like a "a mystic glamour and lordly attitude" can not only persist long into modern capitalist society, but play a critical role in the social and political structures that sustain it.[38] In addition, Schumpeter gives the example of a society that through military conquest entered into feudal social relations and which in turn shaped the forces of production by *"influenc[ing] conditions of production, wants and technology."*[39] In other words, while base economic forces no doubt play an important part in forming the "socio-psychological *superstructure*" that attends to particular model of economic organization, they are neither a sufficient nor necessary condition the latter.[40]

In keeping with the movement's overall materialist outlook, the neo-Brandeisian theory of antitrust law appears to be strongly positivist in nature — yet another commonality with the neoliberals who saw "positive economics" as the foundation for antitrust rules.[41] Indeed, former Chair Khan has not only stated that the meaning of the antitrust laws should be a function of the "statutory text, history, judicial precedent, and congressional intent,"[42] but expressed support for the textualist theories of statutory interpretation that were influential in the broader conservative legal movement, stating critically that "despite the ascendance of textualism, antitrust analysis has been remarkably devoid of actually grappling with the underlying statutory text."[43] To be sure, in addition to being an attempt to create a new antitrust consensus with the right, any affinity for this method of statutory interpretation on the part of the neo-Brandeisians is no doubt due in large part to the belief that the broad language of the U.S. antitrust laws, the populist intentions behind them, and old case law are all conducive to an antitrust program that is highly adverse to large firms and free enterprise.[44] Still, the fact remains that, in general, neo-Brandeisians appear to be strongly positivist in their interpretation of the antitrust laws and not reliant upon any underlying comprehensive theory of morality.[45]

General application of this methodology of statutory interpretation in antitrust law is clearly subject to criticism on pragmatic grounds. As the Supreme Court has itself stated, "the Sherman Act is treated as a common-law statute" which progressively "evolves to meet the dynamics of present economic conditions" in a way that goes beyond the limitations set by a fixed understanding of original intent, text and century old case law.[46] Moreover, on the traditional or classical common law approach, legal analysis is not bound by consideration of social facts like text, purpose, and precedent, but as Blackstone famously set forth, must cohere with certain moral standards.[47] Indeed, the Supreme Court has not only made clear since the landmark *Standard Oil* case that the Sherman Act was in effect an extension of the common law,[48] but up until the progressive era expressly adopted a non-positivist or broader moral interpretation of antitrust's purpose in terms of both fighting the "evils arising from unrestricted competition"[49] as well as serving to "preserve the freedom of trade."[50]

The neo-Brandeisian preference for positivism is accompanied by a fondness for formalism, which here again reflects continuity with the neoliberals. However, whereas neoliberals like Friedman sought to formalize antitrust along the lines of neoclassical economics and general assumptions of rationality and self-correction, the neo-Brandeisians seek a return to more *per se* rules and structural presumptions as a way to easily condemn firm behavior. For example, former Chair Khan has argued that a *per se* rule preventing vertical integration by platforms, such as Amazon offering an ecommerce platform for third-party sellers but also competing with them as a first party seller, "obviates the need to engage in lengthy rule-of-reason type analysis."[51] The neo-Brandeisians' desire for greater formalism is also clearly evinced in the area of merger enforcement, with former Chair Khan noting well in advance of their finalization that the new 2023 FTC and DOJ Merger Guidelines were intended to "improve administrability and predictability" including through "greater reliance on strong presumptions."[52]

The irony of the neo-Brandeisians' inclination toward formalism is that it is wholly unsuitable to the economic realities of the digital contexts to which they purportedly seek to respond. For instance, the reduced structural thresholds in the aforementioned new Merger Guidelines that attempt to tie increased market concentration with anticompetitive harm are not simply long understood as being inadvisable in traditional static contexts,[53] but totally belied by the well-documented inverted-U relationship which obtains between increased market concentration and the innovation that benefits consumers and drives long-run economic growth.[54] Put simply, big is definitely not bad when it comes to maximizing innovation. Moreover, as concerns business conduct generally, it has long been recognized that behavior that may harm consumers in the short term can have offsetting long run dynamic benefits in a way that defies not just the formalistic legal rules the neo-Brandeisians would like to apply, but any ready economic understanding.[55]

The upshot is as follows: the key tenets of neo-Brandeisian law and economics — indeed, even those general outlooks they share with the neoliberals — suffer from serious faults. As such, rather than constitute an improvement upon the old neoliberal antitrust *status quo*, the neo-Brandeisian campaign is in many ways even worse than the progressive approach to antitrust law and political economy that neoliberalism replaced: not only were the progressives generally legal realists,[56] but they were far less antagonistic to concentrated economic power than the neo-Brandeisians — at least when it was in the hands of the government, rather than private industry. Indeed, it is this type of progressive New Deal economics we will consider next with Ahmari and the national conservatives who, unlike the progressives of their day, seek to complement this model of political economy with a theory of natural law and ultimately influence the direction of the new Trump administration and conservatism more broadly.

III. The National Conservatives

If the now dethroned neo-Brandeisians exemplify the program of antitrust law and political economy for populists on the left, the national conservatives provide a prime example of the antitrust agenda on the populist right.[57] Included in their ranks are the so-called "Khanservatives" who are represented in the new Trump administration by no less a figure than Vice President Vance.[58] While the core focus of the national conservatives is typically on social and cultural issues, several themes have emerged that implicate antitrust law and political economy. Their concerns center around large technology companies, whom national conservatives believe represent a bastion of "woke" values antithetical to conservative mores and engage in the alleged censorship of conservative voices.[59] While there are several varieties of national conservatism, the contours of one theory for political economy have been sketched by commentator Sohrab Ahmari in his book *Tyranny*, which claims that decades of neoliberalism have resulted in a "private tyranny" where large corporations effectively dominate political and economic life.[60]

Like the neo-Brandeisians, Ahmari seeks to bring back the "political" in a political economy he sees as being dehumanized by the forces of neoliberalism. To do this, Ahmari broadly advocates for a system of "political-exchange capitalism" that "alters the distribution of the social income for the better" to "promote[] equality."[61] Without question, Ahmari's notion of equality is sub-

stantive, as opposed to the more formal "equality of opportunity." Indeed, Ahmari describes the idea of "social mobility," which has characterized so much of the American experience as "one of the most seductive and enduring utopian visions."[62] In other words, Ahmari makes common cause with the neo-Brandeisians by advocating for a democratic and egalitarian political program to counter private economic power that, as we shall see, gives short shrift to the critical need for innovation and growth.

However, while the neo-Brandeisian approach is ostensibly aimed at protecting small businesses and the interests of the petit bourgeoisie, Ahmari follows Marx and appears focused on privileging the interests of workers and the proletariat. This distinction helps to illustrate an important difference between Ahmari and the neo-Brandeisians on the issue of concentration and market structure. Specifically, although Ahmari shares with the neo-Brandeisians the desire to re-politicize economic institutions, he offers a different perspective on the issue of whether "big is bad" and in so doing escapes this pitfall of the neo-Brandeisian worldview. That is, in contrast to the neo-Brandeisian conception of competitive order which sees structural deconcentration as necessary to safeguard a democratic political system that serves the interests of the many, Ahmari appears to have no qualms with big firms *per se*. Rather, following the progressive and socialist path, for Ahmari the demands of democracy first and foremost require not necessarily private decentralization but public centralization, and specifically the empowerment of the state and other public institutions (i.e., labor unions) to exercise countervailing power along Galbraithian lines against the power of private economic actors.

When analyzing political economy and the norms that shape it, unlike both the neoliberals and neo-Brandeisians, Ahmari's orientation in *Tyranny* is strongly realist to the point of being essentially anecdotal in its analysis. Neoliberals, Ahmari writes, "mistook the private economy for a general safe harbor from coercion, rather than a site of ubiquitous coercion, mostly meted out by a powerful few to the powerless many."[63] Similarly, with respect to labor specifically, Ahmari devotes considerable attention to a walkout at Amazon, whose labor practices he claims are comparable to those of a "Chinese slaughterhouse."[64] As such, *Tyranny* channels the economic institutionalism that played a crucial role in progressive era thinking and which eschewed the formalistic classical liberal models of law and economics for a supposedly more real-world look at how economic life is shaped by power imbalances.

Unlike the neo-Brandeisians, Ahmari's model of political economy — especially when viewed in conjunction with his other writings — is clearly undergirded by a conception of natural order, something which he finds lacking in neoliberalism. To illustrate his point, Ahmari quotes a science fiction author characterizing the neoliberal system as a world where "[n]ature itself... has given way 'for the last time to the tax shelter and the corporate car park.'"[65] However, Ahmari's critiques are not limited to the utilitarian *homo economicus* of the Chicago School. Indeed, Ahmari goes further, and explicitly calls out Austrian economic thinkers like Friedrich Hayek — who did put forward a theory of economic order[66] — and opines upon what he believes to be the absurdity of thinking that Hayek's ideas of "spontaneity and the individualism it fostered...

could be traced all the way back to the West's deepest origins, never mind classical and Christian thought's emphasis on the primacy of the common good."[67]

Rather than follow Hayek and the moderns, Ahmari is clearly in favor of a more traditional and classical view of natural right that affirms the existence of an intrinsically ordered world, or natural teleology, and in particular an Aristotelian-Thomistic variant of essentialism.[68] As such, and as he makes clear elsewhere, Ahmari's underlying moral framework for thinking about political economy is undoubtedly informed by classical natural law.[69] In fact, as concerns legal theory specifically, Ahmari has expressly spoken out against the "poverty of today's prevailing legal theories, left and right" and endorsed the jurisprudence of Adrian Vermeule, whose "common good" approach is heavily rooted in natural law and rejects the overarching legal positivism that, as we have noted, is common to both the neoliberals and neo-Brandeisians.[70]

For Ahmari, neoliberalism's "autonomy-maximizing liberalism" is not just responsible for the immiseration of the masses, but reflects a superstition that takes the form of "a great horror of the state, of traditional authority and the use of public power to advance the common good, including in the realm of public morality."[71] Indeed, Ahmari's natural law and common good underpinnings provide a crucial even if often unstated basis for his rejection of liberal economics in *Tyranny*. For example, to articulate a theory of capitalist exploitation and class conflict, *Tyranny* directly appeals to Catholic social thought in the form of *Rerum Novarum*, which over a century ago noted a "conflict now raging" in economic life.[72] Ahmari also argues that "[i]n the Catechism of the Roman Catholic Church, withholding just wages from workers is one of the grave sins that 'cry to heaven,'" and even goes so far as to criticize the late Justice Antonin Scalia as someone who "publicly touted their fidelity to the Catholic faith" but helped "give[] the sanction of law to wage theft."[73]

While Ahmari's national conservatism may avoid some of the shortcomings associated with neo-Brandeisianism, it errs in at least two similar respects. First, there is its political egalitarianism. By advocating for countervailing public power to address distributional and democratic goals, Ahmari walks headlong into a black box: what level of distributional equality should the state impose? When is efficiency enhancing automation that eliminates some jobs but creates others acceptable? How do potential short run benefits that accrue from allocating wealth from capital to labor affect innovation and long run economic growth? While Ahmari may very well believe that such tradeoffs can be ignored and that the scales of justice always tip toward workers, *Tyranny* does not even provide anything near an analytical framework for thinking about how to deal with either these types of specific issues, related problems associated with making interpersonal utility comparisons,[74] or the more general difficulty associated with state-imposed substantive economic equality. Accordingly, and like other institutionalist tracts before it, in the final analysis *Tyranny* reveals itself to be primarily of "polemical" value when it comes to thinking about how to create a political economy that can replace neoliberalism and the comprehensive system for thinking about law and political economy that it provided.[75]

What's more, in some places Ahmari's egalitarianism runs contrary to the Catholic social

thought tradition he attempts to invoke. For example, in multiple instances *Tyranny* speaks approvingly of a policy of *laissez faire* with respect to collusion and refusals to deal by labor — a mechanism for exercising countervailing public power — such as the aforementioned walkout at Amazon. And yet, nowhere does Ahmari address *Quadragesimo Anno*, which commends an economic system where "strikes and lock outs are forbidden."[76] In other words, while Ahmari — a convert to Roman Catholicism who does not appear to have ever practiced law — fails to cite in *Tyranny* any decision where Justice Scalia — a life-long and devout traditional Catholic, widely regarded as one the greatest jurists of his age — condoned "wage theft," Ahmari's own affinity for walkouts is directly contrary to relevant Catholic teaching. And, of course, given that productivity and wages have more or less grown in tandem for the last forty years, where exactly is Ahmari's neoliberal wage theft anyway?[77]

Like his redistributive political program, Ahmari's disposition against free enterprise not only similarly fails to anticipate basic criticisms but also overlooks important parts of Catholic social thought. For example, as concerns the technology space, Ahmari claims that "technologies hatched in the Bay Area often widen material inequalities without actual producing anything of real value."[78] He must be ignoring relational databases, e-commerce, GPS mapping, word processing programs, artificial intelligence, and the countless other business and consumer applications that have powered the innovation and productivity growth that has kept the American economy strong in contrast to other advanced economies like Europe, which opted for an egalitarian social market economy approach, missed the digital revolution, and saw its global share of wealth fall by half.[79] Indeed, this blossoming of technological progress over the neoliberal period has not only brought huge economic benefits, but it has enhanced human flourishing. As Pope Benedict explained in *Caritas in Veritate* (yet another encyclical *Tyranny* fails to mention):

> In technology we express and confirm the hegemony of the spirit over matter. "The human spirit 'increasingly free of its bondage to creatures, can be more easily drawn to the worship and contemplation of the creator." Technology enables us to exercise dominion over matter, to reduce risks, to save labour, to improve our conditions of life. It touches the heart of vocation of human labor: in technology, seen as the product of his genius, man recognizes himself and forges his own humanity. Technology is the objective side of human action whose origin and *raison d'etre* is found the subjective element: the worker himself. For this reason, technology is never merely technology. It reveals man and his aspirations toward development, it expresses the inner tension that impels him gradually to overcome material limitations. *Technology, in this sense, is a response to God's command to till and keep the land* (cf. Gen. 2:15) that he has entrusted to humanity...[80]

Ahmari's patently limited understanding of the modern high-tech economy is again made manifest in his discussion of media and technology. Ahmari complains about how "Big Tech monopolists killed off (and continue to extinguish) scores of local papers by drying up their ad revenue," and has elsewhere argued for the imposition of a bargaining code to force Google and Meta to pay for content.[81] Of course, the decline in old media is not just a function of "Big Tech" but technological change more generally that includes the rise of myriad small digital publishers. In other words, the Internet and the digital revolution were bound to change the information landscape, regardless of whether certain markets were ultimately dominated by many or

a few firms. Additionally, while Ahmari recognizes that conservatives have much to appreciate about the rise of new media, he finds that these benefits have come too much at the expense of community and contributed to alienation and polarization. But this important conclusion is not subjected to even a little scrutiny in *Tyranny*: the new media landscape has without question been a political boon for conservatives, who had for decades been badly losing the "culture war" in the old media world.[82] The failure in *Tyranny* to seriously grapple with the positive effects of the digital revolution on either democratic engagement or conservatism exposes yet another monumental gap in Ahmari's overall argument.

More broadly, the unprecedented reduction in global poverty wrought by the post-war American-led free enterprise system seems to be wholly overlooked by Ahmari notwithstanding its relevance to the common good. For example, in *Populorum Progressio* Pope Paul IV made clear that "[t]he progressive development of peoples is an object of deep interest and concern to the Church" and in particular "in the case of those peoples who are trying to escape the ravages of hunger, poverty, endemic disease and ignorance, of those who are seeking a large share in the benefits of civilization and a more active improvement of their human qualities; of those who are consciously striving for fuller growth."[83] Surely, there are good things that can be said on this score about neoliberalism, under whose watch hundreds of millions of people around the world were lifted out of absolute poverty. Here again, we thus find Ahmari's analysis in *Tyranny* vitiated by his piecemeal consideration of the Catholic social thought tradition he seeks to champion.

When considering the relevance of Ahmari's professed traditional Catholicism to his rejection of liberal economics, it is possible that Ahmari believes that economic freedom will undermine either natural law, or alternatively a sufficiently strong union between church and state. But as to the former concern, the notion that order and liberty are incommensurable is itself belied not just by the ancient republics of Greece and Rome, but the modern American experiment in ordered liberty, which has thrived upon the idea of individual liberty in conjunction with a conception of order[84] — indeed, for some, the very type of classical natural right model that Ahmari supports.[85] As to the latter issue, and as Ahmari is surely well aware, Pope Paul VI in *Dignitas Humanae* clearly affirmed that the "human person has a right to religious freedom" such that all are free from "coercion on the part of individuals or of social groups and of any human power.[86] That is, even if economic freedom undermined a strong church-state "integralism," that would not be disqualifying under modern Catholic social thought.

At bottom, the national conservative approach to political economy, as embodied in commentators like Ahmari, may be a slight improvement upon the left-wing populism of the neo-Brandeisians by virtue of its realism, its recognition of the importance of moral order to economics and law, as well as its openness to firms achieving size and scale. However, Ahmari also commits several of the same mistakes of the neo-Brandeisians. Most importantly, he rejects the free enterprise system as well as politicizes economic life in service of an egalitarian agenda — all while downplaying the importance of innovation and growth. And, not only has Ahmari failed to deal seriously with problems associated with introducing a theory of substantive equality into political economy, but in several respects he appears to have ignored crucialparts of the

Catholic social thought tradition that clearly animates his broader worldview — both traditional encyclicals like *Quadragesimo Anno*, as well as key post-Vatican II tracts like *Caritas in Veritate* and *Populorum Progressio*.

IV. Conclusion: The New Neoconservatism

As distinct from social conservatives like Ahmari, or the business conservatives both he and the neo-Brandeisians castigate, perhaps no movement over the past several decades has been more influential on the right than neoconservatism, which advocated for an interventionist foreign policy around the world, and especially in the Middle East, ostensibly to promote democracy. But rather than constitute an organic development on the right, the neoconservative movement reflected a political realignment where a group of former leftists "mugged by reality" joined the Republican Party and incorporated their ideas into a new conservative "New Right" consensus: social conservatism, economic neoliberalism, and neoconservative foreign policy. In other words, although neoconservative ideas were much more in sync with prevailing attitudes in the Democratic Party than the pre-war "Old Right," they nonetheless became the dominant worldview in the post-war "New Right."

Today, while neoconservativism is sometimes said to be on the decline, national conservatives like Ahmari are clearly picking up the neoconservative mantle by again using the language of democracy and equality as a Trojan horse to again radically reshape the American right, this time in political economy rather than foreign policy. That is, Ahmari's national conservative agenda is focused on moving the Republican Party away from the economic restraint that animated both the postwar New Right (and also, generally, the pre-war Old Right) in favor of economic interventionism through the imposition of countervailing power by supercharged public institutions in the service of purported democratic ends. This strategy is analogous to how the neoconservatives moved the political right away from foreign policy restraint and toward interventionism imposed by a superpower hegemon in the name of promoting democracy.

Like its predecessor in foreign affairs, this new national conservative neoconservatism in economic policy is also not an organic development on the right, but a worldview whose rejection of free enterprise, growth, and the rule of law has, as we have seen, much in common with progressives and populists on the left. As we have seen, like the neo-Brandeisians, national conservatives such as Ahmari advocate for a broad New Deal-style of government intervention to attack large corporations in the name of fighting "private tyranny." The only major difference is that whereas the neo-Brandeisians prefer to break large corporations up, Ahmari supports building up the state to exercise countervailing power — in the context of foreign affairs and neoconservatism, a choice between regime change and Iran-Contra.

Indeed, this interpretation of *Tyranny* is further evinced by Ahmari's own intellectual development. Much like the Trotskyist origins of the neoconservatives of old, Ahmari was a Marxist — with many of his socialist tendencies clearly remaining intact — and then neoconservative before embracing national conservatism.[87] At its core, *Tyranny* seeks to do for political economy in

a new "New Right" what neoconservatism did for foreign policy in the old "New Right" by effectively making formerly left wing policies —a New Deal model of political economy — acceptable if not normative for conservatives. Moreover, just like neoconservative foreign policy attempted to disguise itself within the "anti-communist" rhetoric that long defined the American right, Ahmari seeks to smuggle historically left-wing ideas on political economy into a new "New Right" using the backdrop of traditional Catholic natural law, a moral system more than familiar to modern conservatism.

Like neoconservatism in foreign policy, if adopted by the Trump administration this new economic neoconservatism spells doom for the future not just of the right, but America. Just as neoconservative foreign policy ultimately proved to be a primary cause of the unraveling of America's unipolar moment, national conservative neoconservatives like Ahmari would exacerbate this decline by calling a crusade against America and the West's leading large-scale technology companies amidst an increasingly dire and technologically driven rivalry with China — an unforced error that will aid China in its own quest for techno-economic dominance.[88] To be sure, while none of this may bother Ahmari, who has stated that he's "at peace with a Chinese-led twenty-first century,"[89] it should be a concern for anyone right or left who cares about the future of America and wants to fight for a Western-led twenty-first century.

With Ahmari and *Tyranny*, one thus finds what is tantamount to a "Benedict option" for political economy: a resignation regarding the future of West against a rising China conjoined with a *faux* traditionalism that does not withstand even the most rudimentary inquisition when examined under relevant Papal encyclicals.[90] Worse still, it is contradicted by the long history of the Roman Catholic Church rising to the defense of Western Civilization when it was challenged both by internal subversives — including those who, like Ahmari and the neo-Brandeisians, preach revolution in the name of economic equality, which as Pope Pius XII made clear represents "[a] pseudo-ideal of justice, of equality and fraternity in labor" that "subverts the social order"[91] — and threats from the East. It is as plain as it is telling that *this* type of traditional Roman Catholicism does not appear to have any bearing on Ahmari's project.

In the face of the perilous journey that lies ahead in defending and restoring Western Civilization, conservatives, and not least those crafting policy in the new Trump administration, must like wary Odysseus take care to avoid the neo-Brandeisian Scylla and the national conservative Charybdis respectively championed by former Chair Khan and commentators like Ahmari, which are respectively tantamount to Fabian communism and a renegade Christian socialism. Instead, the crisis of late capitalism and neoliberalism must be met not only by casting away the neoconservative mentality and putting forward a renewed program of free enterprise to continue to empower American innovation and growth, but by embracing the true values that make Schumpeterian creative destruction work: "the romance and heroism…of *navigare necesse est, vivere non necesse est*"[92] that outstrips not just the moral program of the modern conservatism, but the classical version of natural right championed by Ahmari.[93] Perhaps, in so doing, as did much-enduring Odysseus, so too may the right reach better shores, and America and the West rise to meet the challenges of the twenty-first century — and prevail.

ENDNOTES

1. Director, Antitrust and Innovation Policy, Information Technology and Innovation Foundation. The author is grateful for helpful comments from Rob Atkinson, Tim Muris, William Ruger, and Ryan York, as well as editorial assistance from the team at the American Institute for Economic Research.

2. Charles Dickens, *A Tale of Two Cities* (1859).

3. President Joseph R. Biden, Remarks by President Biden At Signing of An Executive Order Promoting Competition in the American Economy (July, 9, 2021) ("We're now 40 years into the experiment of letting giant corporations accumulate more and more power.…I believe the experiment failed.").

4. Lina M. Khan, *Amazon's Antitrust* Paradox, 126 Yale L.J. 710, 739 (2017) [hereinafter *Amazon's Antitrust Paradox*]. But see Robert D. Atkinson & Michael R. Ward, *The Flawed Analysis Underlying Calls for Antitrust Reform: Revisiting Lina Khan's "Amazon's Antitrust Paradox"*, ITIF (March 2023).

5. *See, e.g.*, Tim Wu, The Cure Of Bigness (2018).

6. *See, e.g.*, Timothy J. Muris, *Neo-Brandeisian Antitrust: Repeating History's Mistakes*, American Enterprise Institute (June 2023).

7. Sohrab Ahmari, Tyranny, Inc. How Private Power Crushed American Liberty — and What to Do About It (2023) [hereinafter Tyranny].

8. Francis Fukuyama, *The End of History and the Last Man* (1992).

9. *See* Joseph V. Coniglio, *A Theory For All And None: A Neo-Schumpeterian Model of Antitrust Law and Political Economy*, Journal of Law, Economics and Policy (forthcoming 2024), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4927126.

10. Michael Kazin, *The Conservative Who Turned Against Corporate America*, The New Republic (Sept. 8, 2023).

11. *See*, e.g., Joseph V. Coniglio, *Antitrust in a Second Trump Term: Six Challenges Facing the New Administration*, ITIF (Nov. 7, 2024).

12. *See generally* Joshua D. Wright et al., *Requiem for a Paradox: The Dubious Rise and Inevitable Fall of Hipster Antitrust*, 51 Arizona State Law Review. 293 (2019).

13. *See, e.g.*, Lina M. Khan, Chair, Fed. Trade Comm'n, Remarks at Resourcing a New Paradigm: The Future of Antimonopoly Research (July 19, 2022) ("I think that the [Law and Political Economy Project's] clarity of vision in recentering the role of law in shaping markets and economic outcomes…is essential").

14. *Amazon's Antitrust Paradox* at 742.

15. *See generally* K. Sabeel Rahman & Lina Khan, *Restoring Competition in the U.S. Economy*, in Untamed: How to Check Corporate Financial Monopoly Power at 21 (Roosevelt Inst. At al. eds., 2016) (supporting a "public interest" or "citizen welfare standard). As Chair Khan explains regarding the purposes behind the Sherman Act, while concerns about concentration are economic in nature, "the underlying source of the grievance was also political." *Amazon's Antitrust Paradox* at 741.

16. Zephyr Teachout & Lina Khan, *Market Structure and Political Law: A Taxonomy of Power*, 9. The Duke Journal of Constitutional Law & Public Policy 37, 72-3 (2014).

17. *Id.* at 64.

18. *See* Federalist No. 10. (J. Madison).

19. Letter from Thomas Jefferson to John Adams (Oct. 28, 1813) (emphasis added). Later in life Jefferson himself appears to have become much more explicitly Hamiltonian so that America could better compete with Britain. For a discussion, see Robert D. Atkinson, *Computer Chips vs. Potato Chips: The Case for a U.S. Strategic-Industry Policy*, ITIF (January 2022).

20. *See* Federalist No. 51 (J. Madison).

21. Zephyr Teachout & Lina Khan, *Market Structure and Political Law: A Taxonomy of Power*, 9 The Duke Journal of Constitutional Law & Public Policy (2014).

22. *Amazon's Antitrust Paradox at 740 (quoting Robert Pitofsky, The Political Concent of Antitrust*, 127 U. Pa. L. Rev. 1051 (1971)).

23. *See, e.g.*, Carl Shapiro & Ali Yurukoglu, *Trends in Competition in the United States: What Does the Evidence Show?*, NBER Working Paper 32762 (July 2024); Robert D. Atkinson & Filipe Lage de Sousa, *No, Monopoly Has Not Grown*, ITIF (June 7, 2021).

24. *See generally* Joseph A. Schumpeter, Capitalism, Socialism and Democracy (1942) (describing how large firms spur dynamic competition and how competition for political leadership ultimately defines the reality of democratic politics) [hereinafter *Schumpeter*].

ENDNOTES

25. Lina M. Khan, *The End of Antitrust History Revisited*, 133 Harv. L. Rev. 1655, 1678 (2020).

26. *Amazon's Antitrust Paradox* at 785.

27. Lina Khan, *The New Brandeis Movement: America's Antimonopoly Debate*, 9 J. Eur. Comp. L. & Practice 131 (2018) (emphasis added).

28. *See* Lina Khan, Chair, Fed. Trade Comm'n, Remarks Given to the Law and Political Economy Project (July 27, 2022), *available at* https://techpolicy.press/expanding-antimonopoly-thinking-to-pursue-social-racial-and-economic-justice/.

29. Zephyr Teachout & Lina Khan, *Market Structure and Political Law: A Taxonomy of Power*, 9 The Duke Journal of Constitutional Law & Public Policy, 37 (2014).

30. Milton Friedman, *The Methodology of Positive Economics*, in Essays in Positive Economics 3, 15 (1953) ("...the relevant question to ask about the 'assumptions' of a theory is not whether they are descriptively 'realistic,' for they never are, but whether they are sufficiently good approximations for the purpose at hand").

31. *See, e.g.*, Catherine Tucker, *Network Effects and Market Power: What Have We Learned in the Last Decade?* Antitrust 72 (Spring 2018).

32. Michel Foucault, The Birth of Biopolitics. 61- 62, 247 (Michel Senellart et al. eds., Graham Burchell trans., 2008).

33. See, e.g., Comm'r Christine S. Wilson, *Marxism and Critical Legal Studies Walk into the FTC: Deconstructing the Worldview of the Neo-Brandeisians*, Remarks for the Joint Conference on Precautionary Antitrust: The Rule of Law and Innovation Under Assault, Classical Liberal Institute at NYU School of Law and Schumpeter Project on Competition Policy at the Information Technology and Innovation Foundation (Apr. 8, 2022).

34. *See* Lina M. Khan, *The Ideological Roots of America's Market Power Problem*, 127 Yale Law Journal. 960, 969 (2018).

35. *See, e.g.*, Robert D. Atkinson, Big is Beautiful 64-67 (2018); Trelysa Long, Corporate Concentration Is Good for Productivity and Wages, ITIF (May 2024).

36. Despite their pro-democracy rhetoric, the neo-Brandeisians ironically appear to be well aware that they are unlikely to achieve their goals democratically through Congress, as legislation like the Open App Markets Act and the American Innovation and Choice Online Act (AICOA) has stalled in Congress. As such, capture of the administrative agencies became their preferred strategy, but which faced scrutiny from the courts, who not only rejected key neo-Brandeisian challenges in *Meta/Within* and *Microsoft/Activision*, but are more generally increasingly skeptical of certain aspects of the administrative state. See, e.g., Loper Bright Enters. et al. v. Raimondo, No. 22-4751, 2024 WL 3208350 (U.S. June 28, 2024) (overruling Chevron deference for administrative agencies).

37. Karl Marx, The Poverty of Philosophy 49 (1847).

38. Schumpeter at 160 (describing the entrepreneur tragically "los[ing] the only sort of romance and heroism that is left it in the unromantic and unheroic civilization of capitalism").

39. *Id.* at 13.

40. *Id.* at 121.

41. Milton Friedman, *The Methodology of Positive Economics*, in Essays in Positive Economics (1953).

42. Lina M. Khan, Chair, Fed. Trade Comm'n, Remarks at the Fordham Annual Conference on International Antitrust Law & Policy 1 (Sept 16, 2022).

43. *Id.* at 2.

44. *See, e.g.*, Robert H. Lande, *Textualism as an Ally of Antitrust Enforcement: Examples from Merger and Monopolization Law*, 4 Utah Law Review. 813 (2023); Robert H. Lande, *A Traditional and Textualist Analysis of the Goals of Antitrust: Efficiency, Preventing Theft from Consumers, and Consumer Choice*, 81 Fordham Law Review. 2349, 2354 (2013) [hereinafter Lande, A Traditional Textualist Analysis]; Robert H. Lande, *Wealth Transfers as the Original and Primary Concern of Antitrust: The Efficiency Interpretation Challenged*, 34 Hastings Law Journal. 65, 69–70 (1982).

45. Specifically, to the extent the neo-Brandeisians' appear to make recourse to moral discourses in justifying their program, they seem tethered to the social facts that for them constitute the meaning of the antitrust laws in a way that is consistent with what has been termed "inclusive positivism." *See generally* Lawrence B. Solum, *Legal Theory Lexicon 065: The Nature of Law*, Legal Theory Blog (last visited Aug. 14, 2024) (discussing both exclusive and inclusive positivism).

46. Leegin Creative Leather Products, Inc., v. PSKS, Inc., 127 S.Ct. 2705, 2720 (2007).

47. *See, e.g.*, William Blackstone, I Commentaries on the Laws of England 42 (1778).

48. Standard Oil Co. of New Jersey v. United States, 221 U.S. 1, 50–51 (1911).

49. United States v. Trans-Missouri Freight Association, 166 U.S. 290, 321 (1897).

50. United States v. Colgate Co., 250 U.S. 300, 307 (1919).

51. Lina M. Khan, *The Separation of Platforms and Commerce*, 119 Colum. L. Rev. 973 (2019).

52. Keynote Remarks of Lina M. Khan, Remarks at the International Competition Network Berlin Germany (May 6, 2022).

53. *See* Harold Demsetz, *Industry Structure, Market Rivalry, and Public Policy*, 16 J. L. & Econ. 1 (1973).

54. *See, e.g.*, Philippe Aghion et al., *Competition and Innovation: An Inverted-U Relationship*, 120 Q. J. Econ. 701 (2005).

55. *See* Harold Demsetz, *The Intensity and Dimensionality of Competition*, in The Economics of the Business Firm: Seven Critical Commentaries. 137, 144 (1995).

56. William H. Page, *Legal Realism and the Shaping of Modern Antitrust*, 44 Emory Law Journal 1, 4 (1995).

57. By "national conservatism" I mean to invoke a broad "political-intellectual coalition that includes West Coast Straussians and paleoconservatives, realists, traditionalists" and thus encompasses thinking associated with both the Claremont Institute as well as conservatives like Ahmari. *See* Yoram Hazony, *National Conservatism and its Discontents*, Claremont Review of Books (Spring 2024). More precisely, Ahmari's thinking may be characterized as "post-liberal," a label which he himself accepts. *See Sohrab Ahmari on Post-Liberalism*, Persuasion (Aug. 12, 2023). To be sure, Ahmari himself has been critical of national conservatism, and specifically in aspects of foreign policy where it finds common cause with what he terms "the Washington Brussels establishment." Sohrab Ahmari, *The Return of Liberal Nationalism*, CompactMag (May 12, 2022). Indeed, many have noted how post-liberalism may be "an awkward fit in the broader National Conservative movement," and in particular because its unique variety of social conservative "integralism" which is not shared by other wings of the movement. James M. Patterson, An Awkward Alliance: Neo-Integralism and National Conservatism, Acton Religion & Liberty: Volume 32 No. 1&2 (Apr. 11, 2022). However, in the area of political economy, which is the focus of this article, Ahmari well embodies the general outlook of many national conservatives, who are typically "deeply skeptical of free markets and favor a return to working-class politics of the 'Old Left,' namely of labor protections, aggressive tariffs against American enemies/competitors, reshoring of industries to make American production more self-sufficient, antitrust actions on Big Tech corporations, and tight restrictions on immigration." Id. In other words, while many post-liberals may find themselves at odds with "national conservative" factions on the right when it comes to foreign policy and the role of state in religious matters—i.e., Claremont West Coast Straussians and Yoram Hazony's national conservativism—a large number appear to broadly share an economic vision that is distrustful of markets and their ability to function in the national interest or common good, especially in the case of what they perceive as the abuses of large technology companies.

58. *See, e.g.*, Joseph V. Coniglio, *Banana Republicanism: Khanservatism Will Not Address Censorship Concerns*, ITIF (July 29, 2024).

59. *See, e.g.*, Press Release, Fed. Trade Comm'n, Federal Trade Commission Launches Inquiry on Tech Censorship on Tech Censorship (Feb. 20, 2025). To be sure, while there is certainly at least some general concern with the effects of technology on society for the socially conservative right, *see, e.g.*, *A Future for the Family: A New Technology Agenda for the Right*, First Things (Jan. 29, 2025), criticisms from some corners of the broader national conservative right appear to be focused on "Big Tech," rather than the role of technology in society more generally, and can even be supportive of what is termed "little tech." *See, e.g.*, Letter to AAG Kanter from China Tech Threat, Claremont Institute et al. (Mar. 21, 2024) (praising the Department of Justice for its antitrust lawsuit against Apple).

60. *Tyranny* at xxii.

61. *Id.* at 181.

62. *Id.* at 134. While not a focus on this paper, critiquing formal equality of opportunity in this way is at the very least curious if not somewhat problematic given that realizing substantive theories of equality is presumably much more pie in the sky than implementing formal ones.

63. *Id.* at 166–7. As a note, it is interesting that some of the cases of coercion discussed in *Tyranny* have nothing to do with large "monopsonistic" corporations, which is consistent with Ahmari's divergence with the neo-Brandeisian position on whether "big is bad."

64. *Id.* at xvii.

65. *Id.* at 177.

66. *See* Friedrich A. Hayek, *The Use of Knowledge in Society*, in Individualism and Economic Order (1948); *see also* Friedrich A. Hayek, The Constitution of Liberty (1960) (discussing the importance of the rules of just conduct to economic order).

67. *Tyranny* at 164.

68. *See* Leo Strauss, Natural Right and History 166, 181, 186 (1953) (describing "classical natural right"); *see* also Sohrab Ahmari, *A New Brand of Biblicism*, First Things (Mar. 18, 2021) (criticizing the view that denies "natural teleology" or that "human beings have natural ends proper to them as rational animals").

69. *See* Sohrab Ahmari, The Unbroken Thread (2021).

70. This is taken from Ahmari's blurb for Adrian Vermeule's Common Good Constitutionalism (2022).

71. *See* Sohrab Ahmari, *Against David French-ism*, First Things (May 29, 2019).

72. *Tyranny* at 144.

73. *Id.* at 59.

74. *See, e.g.*, Jonathan Baker and Steven C. Salop, *Antitrust, Competition Policy, and Inequality*, 104 Geo. L.J. 1, 5 (2015) (noting both that interpersonal utility comparisons are beyond standard economic models and indicating how making reduction of inequality a goal of antitrust would result in difficult distributional questions for merger policy).

75. See Herbert J. Hovenkamp, Coase, *Institutionalism, and the Origins of Law and Economics*, 86 Ind. L.J. 499, 525–6 (2011) (noting how institutionalist economics "too often decayed into a descriptive, polemical historicism").

76. Pope Pius XI, *Quadragesimo Anno* 94 (May 15, 1931).

77. *See* Robert D. Atkinson & David Moschella, Technology Fears and Scapegoats 163–170 (2004).

78. *Tyranny* at 193.

79. *See* Joseph V. Coniglio and Lilla Nóra Kiss, *The Draghi Report: Right Problem, Half-Right Solutions for Competition Policy*, ITIF (Oct. 2, 2024).

80. Pope Benedict XVI, *Caritas in Veritate* 69 (June 29, 2009)

81. Sohrab Ahmari, *Big Tech and the News: A Problem of Countervailing Power*, American Affairs Journal (March 2023).

82. See Joseph V. Coniglio, *"Khanservatives" Are Wrong About Big Tech*, ITIF (May 1, 2024).

83. Pope Paul IV, *Populorum Progressio* 1 (Mar. 26, 1967).

84. *See, e.g.*, The Federalist No. 61 (A. Hamilton) (discussing how the republics of Sparta and Rome reflected a "blend [of] stability with liberty").

85. *See, e.g.*, Henry V. Jaffa, *To Good to be True?* The Review of Politics (2009) ("Correctly understood, the principles of the Declaration represent the principles of classical natural right in the most perfect form possible in a political world dominated by Christian monotheism.").

86. Pope Paul VI, *Dignitatis Humanae* 2 (Dec. 7, 1965).

ENDNOTES

87. *See* Sohrab Ahmari, From Fire by Water: My Journey to the Catholic Faith (2019).

88. Robert D. Atkinson, *China is Rapidly Becoming a Leading Innovator in Advanced Industries*, ITIF (Sept. 16, 2024).

89. *See* Sohrab Ahmari, Twitter (May 3, 2021), E0e3gdRWQAIG3c_ (898×395) (twimg.com).

90. *See* Rod Dreher, The Benedict Option: A Strategy for Christians in a Post Christian Nation (2017).

91. Pope Pius XI, *Divini Redemptoris* 8, 14 (Mar. 19, 1937).

92. Schumpeter at 160.

93. Joseph V. Coniglio, *A Theory For All And None: A Neo-Schumpeterian Model of Antitrust Law and Political Economy*, Journal of Law, Economics and Policy (forthcoming 2024), *available at* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4927126.

250 Division Street | PO Box 1000
Great Barrington, MA 01230-1000
Telephone: 1-888-528-1216 | Fax: 1-413-528-0103
Press and other media outlets contact
888-528-1216
press@aier.org