

# **CAPITALISM, DEMOCRACY AND THE NEOLIBERAL AUTHORITARIAN TRIFECTA**

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Since the US Declaration of Independence, which parroted John Locke's call for the pursuit of 'life, liberty and happiness', and near-simultaneous publication of Adam Smith's tome, *The Wealth of Nations*, capitalism has been promoted as synonymous with freedom and democracy. Marx well understood the extreme one-sidedness of bourgeois depictions here, as captured in his quip of capitalist society as an 'Eden of the innate rights of man [... where] alone rule Freedom, Equality, Property, and Bentham' (Marx 1977: 280).

In the economic domain, Marx's analysis pierced through the view of 'Free Trader Vulgaris' of market 'exchange' bringing about economic 'coordination without coercion' (Friedman 2002 [1962]: 13). Marx understood that capitalism 'frees' human material reproduction from webs of interpersonal relations of domination and subordination in which it was ensnared in pre-capitalist societies. Yet, it replaces pre-capitalist extra-economic coercion with *economic* coercion, such that as individuals pursue their self-seeking proclivities in the market, capital wields these at a systemic level in ways that serve its abstract purpose of value augmentation or profitmaking, and also reproduce capitalist class relations. Such 'freedom of the individual and tyranny of the whole' remains a fulcrum for bourgeois ideology (Albritton 2007: 51)

In the political domain, things are more complex for Marx. Recognising that no determinate link exists between capitalist social relations of production and political democracy, Marx's grasp of capitalist superstructural forms built upon historical examination of the economic and social class conditions in the transition from pre-capitalist feudal

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society, as well as analysis of nascent capitalist social contradictions (Hook 1962: 160-2). For the purposes of discussion below, the latter question assumes greatest significance. While Marx is often accused of espousing a restrictive notion of class rule, careful excavations of his corpus demonstrate highly nuanced treatments by both he and Engels of social class conflicts and their superstructural expressions at the centre of nascent democratic forms across major advanced economies of his day (Hunt 1984: Ch. 3).

This article builds upon Marx's sensitivity to capitalist change and its implications for the superstructure to, first, explore the broad types of democracy which accompanied major capitalist transmutations across its world historic stages of development. What is shown in this analysis is that even as the franchise expanded across major democracies, a confluence of economic changes and structuring of electoral systems served to limit popular sovereignty and thwart significant challenges to ruling class interests. In turn, second, it delineates the key economic changes marking the neoliberal era as a period of capitalist decay. Understanding this helps us contextualise the superstructural shifts of the neoliberal era.

Third, it then exposes three interrelated anti-democratic tendencies secreted by contemporary neoliberal polities in advanced economies. 'Legalisation of politics' entails systemic overriding of electoral efficacy and political decision-making in major democracies by courts and judges, leaving a wasteland of depoliticised mass publics in its wake. What is dubbed the 'new constitutionalism' captures the ensnaring of national polities in webs of rules crafted by, or at the behest of, major corporations. This endows them with extraordinary powers which effectively subordinate national polities irrespective of political orientation – social democratic, liberal and so forth. Finally, the 'state of exception' devolves from a provision embedded in most democratic constitutions granting unlimited authority to executive branches in times of emergency. As protests to the neoliberal excrescence mount, it is increasingly wielded as a truncheon against them. Particularly insidious here is that, rather than overt impositions of authoritarianism such as dictatorship or fascism, these tendencies envelop neoliberal society under the guise of constitutionality and the rule of law.

### Stages of capitalism and types of democracy

The periodising or theorising of stages of capitalism is represented in an extremely wide-ranging literature.<sup>1</sup> In the perspective adopted here, theorising stages of capitalism constitutes a synchronic mid-range ‘level of analysis’, which captures major historical structures of capital accumulation and their superstructural supports. Its *raison d'être* is to mediate the movement in thought from what is variously referred to as Marx’s ‘basic’, ‘general, or ‘pure’ economic theory of capitalism in *Capital*, to analysis of the diachronic rough-and-tumble agency domain of capitalist history where causal forces other than capital, such as race or patriarchy, factor into social outcomes.

Marx’s project in *Capital* theorises capitalism in its most fundamental incarnation, unfolding all its economic categories in their logical immanence to demonstrate how capital wields the labour and production process of society as a vehicle for value augmentation (Westra 2012/13). However, in capitalist history, the logic of capital always appears as a specific type or form of accumulation which, being historically contingent, cannot be ‘read-off’ the logic of capital. While it is an ontological tendency of capital to create an ‘economic society’ managed by a self-subsistent economic substructure of self-regulating markets, across its history the capitalist market is always supported to varying degrees by a non-economic superstructure (Westra 2019b). In short, mid-range stage theory enables Marxian political economy to exorcise tendencies toward economic or class reductionism. Simultaneously, it empowers political economic analysis to discern both the causal impact of capital and force of class oppression within the complex and shifting interplay of social forces, social oppressions and resistances to these which mark capitalist history.

Current critical social scientific studies of the relationship between democracy and capitalism continue to follow Marx’s lead in exploring the historical emergence and persistence of democracy through the prism of class conditions (Moller and Skaaning 2013: Ch. 8). However there has been a paucity of analysis of how shifting economic and social class

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<sup>1</sup> The only book I am aware of which treats the full spectrum of major approaches to stages of capitalism under a single cover, including both Marxist and non-Marxist interventions, is Westra (2019a).

contradictions, along with the ramifications of these for democracy, play-out in the context of major structural transformations of capitalism.

Exploration of changing superstructural patterns, concomitant with major structural shifts in types of accumulation, is indebted to the ground-breaking work on bourgeois democracy of C.B Macpherson (1977). Macpherson argues that to grasp the specificity of bourgeois or 'liberal democracy', it is necessary to study its origins and development within the context of capitalist class structure. Macpherson, thus, eschews teleological understandings of democracy, given how those populating 2000 years of history from the Athenian exemplar onward presuppose the operation of democracy within social milieus which were *not* class divided. Liberal democracy, on the other hand, is formulated from the outset to 'fit' a democratic system onto a class divided society (Macpherson 1977: 9-10). For Macpherson, the Nineteenth Century constituted a 'break' in both the theory and practice of democracy. Moreover, notwithstanding the institutional idiosyncrasies of democracy from the Nineteenth Century in this or that bourgeois or liberal democratic state, Macpherson typologises democracy into the post-World War II (WWII) era according to three broad 'models'.<sup>2</sup>

The first form of liberal democracy – what Macpherson (1977: 23-5) dubs 'protective democracy' – consolidated in the Nineteenth Century capitalist stage of *liberalism*, rather than what may be considered the initial stage of capitalism, Eighteenth Century *mercantilism* (Albritton 1991: 66-9). There are several reasons why protective democracy took shape in the capitalist stage of liberalism. First, industrial capital emerged as the dominant faction of the capitalist class. It was industrial capital, represented in Britain by increasingly urban mechanised factory systems in cotton textile manufacturing, which operated as the closest historical exemplar to the 'pure' theoretical understanding of a self-subsistent substructure of self-regulating markets managing economic life. Capital itself was atomised, entrepreneurial and competitive in both its domestic orientation and international projection, captured in the notion of *laissez-faire*. Second, by the mid-1830s, the last legal vestiges of extra-economic, paternalistic, labour mobility-restricting legislation – previously secured by mercantilist merchant capital – were swept away. This fostered a national labour force of commodified labour power – 'free' in the double sense of separation

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<sup>2</sup> Macpherson delineates a fourth 'model', 'participatory democracy', though questions if it could ever be realised in a capitalist society.

from means of production and from extra-economic interpersonal social relations of domination and subordination. Third, after operating with regularity in Britain from the 1840s, the cyclical oscillations of the economy – which absorbed labour from and expelled it back into the industrial reserve army, and also hurled bankrupted entrepreneurs back into the proletariat – were accepted with a sense of fatalism by all social classes.

For Macpherson, the superstructural question built upon the ideological assumptions about human nature which had increasingly diffused across nascent capitalist societies of human beings as monadic, self-aggrandising benefit maximisers bent upon acquiring and safeguarding property. On the one hand, the form of state had to be such that the self-seeking proclivities of individuals (including the newly ‘freed’ direct producers) – pursued ‘without coercion’ on the market – were protected along with their property so acquired. This freedom of the individual, with its deep emotive content, embodied the original zeitgeist of the rising bourgeois class in its challenge to the interpersonal social relations of domination and subordination characteristic of the feudal order. On the other hand, given the bourgeois view of human nature as self-aggrandising, individuals (particularly the property acquiring-bourgeoisie) should be protected from the government necessarily composed of such individuals, particularly given the powers allocated to governments over citizens. With general agreement in Britain by the mid-Nineteenth Century (and, ultimately, other ‘early’ capitalist developers) over procedural mechanisms to ensure the foregoing – secret ballots, regular elections with the possibility of changing governments, freedom of the press, and so on – the only remaining issue to be worked-out was the extent of the franchise (Macpherson 1977: 34).

It was precisely this latter problematic that called forth what amounted to a competing, later Nineteenth Century variant of liberal democracy: ‘developmental democracy’ (Macpherson 1977: 44-6). Its conceptualisation accompanied the perceived growth in class consciousness of working classes and trepidation felt among elites for extending the electoral franchise. Developmental democracy held that the merit of democratic society was its enablement of human capacities for individual betterment. In this fashion, it infused a moral dimension into democratic thinking, with the intention of ameliorating the starker implications of protective democracy for the propertyless.

Two major factors, however, explain why ruling class fears over popular class electoral empowerment never came to pass. One is political; the second, economic. On the political side of the equation, Macpherson (1977: 65-6) argues, the political party system itself – refined during the late-Nineteenth and early-Twentieth Centuries in major liberal democracies – served to ‘blunt the edge of apprehended or probable class conflict [...] so as to save the existing property institutions and the market system from effective attack’. It mattered little whether the party system took the form of two dominant parties purportedly representing class interests, as in the Labour and Conservative party face-off in Britain; or, as in the United States and Canada, two predominant parties representing amalgams of diverse regional and sectional interests; or, finally, the Western European multi-party system, reflecting a multiplicity of cleavages (class, religious, and so on), which ultimately produced coalition governments. In the first instance, parties are compelled to shed their strong class position and adopt more centrist platforms that appeal to broad ‘national’ interests in order to win elections. In the second, major parties are driven to act in an ever-more-similar fashion to position themselves in increasingly ‘indefinite’ ways as all-things-to-everyone. To the extent that third or fourth parties arise espousing more definite class (or other) positions, these are prompted to adjust to the procedures of the major parties the closer they get to displacing the first or second in electoral contests. Finally, in multi-party systems – which all but guarantee coalition governments – parties eschewed narrow, determinate platforms that would inevitably be subject to coalition compromise (Macpherson 1977: 66).

On the economic side, the momentous changes experienced by capitalism across its heartlands at the turn of the Nineteenth and early-Twentieth Centuries led to important superstructural shifts. First, characteristic of *imperialism*, the third stage of capitalism, the economies of scale and investment exigencies of the ‘second industrial revolution’ of heavy steel and industrial chemicals significantly reconfigured capital. Combined vertical and horizontal integration of industrial processes in a single firm drove tendencies toward oligopoly and monopoly. The high up-front fixed capital costs led to the remaking of industrial capital as finance capital. If industrial capital innovated by drawing on firm profits and borrowings from money markets populated by commercial banks, finance capital added access for giant firms to alternate sources of liquidity across imperialist societies through the formation of equity or capital markets. Second, the sheer economic weight of commanding heights oligopolies

rendered them 'too big to fail', thereby bringing the state back-in from its *laissez-faire* posture to enact protectionist policies in home markets and prosecute imperialist policies internationally. Imperialist policies, which entailed carving economic territories out of the non-capitalistically developed world to emplace infrastructures of extractivism, led to rivalries among imperialist states and increases in military spending. Third, the restructuring of capital fostered a segmentation of the working class in major advanced economies, creating an 'aristocracy of labour' which tended to identify with new 'middle classes' spawned by financial and industrial sector bureaucratisation. Imperialist extractivism gave working classes access to myriad new exotic consumption goods, as it enabled states to offer handouts to workers and, thus, further dampen potential working-class radicalism (Westra 2016: 123-8). Fourth, the ratcheting-up of military spending to support imperialist policies engendered increasingly bellicose nationalisms, which served to sublimate class division by projecting antagonisms toward alleged external enemies (Albritton 1991: 215).

To return to the question of the developmental democracy model, it justified the growing state expenditures by major capitalist economies of the imperialist era on public education, healthcare and other forms of social insurance. Public education, in particular, emerged as an important transmission mechanism for the imperialist ideology of strident nationalism. For example, it was during the imperialist era of the early Twentieth Century that American schoolchildren were compelled to pledge allegiance to the flag prior to classes. New mass literacy through universal primary school education also opened further avenues for elite manipulation of working-class views (Albritton 1991: 215-8). As Macpherson explains, as important a role as the party system played in deflecting class antagonisms, it would never have accomplished the task without the power of nationalist ideology and aforementioned imperialist economic transmutations fomenting segmentation within working classes. Indeed, into the Twentieth Century, political theory itself veered away from concern over social class toward belief that welfare or 'regulatory' states will align democracy with capitalism, such that 'rational, well intentioned citizens, who had [...] a whole variety of different interests, could adequately adjust their differences in the peaceful, rational, give-and-take of parties and pressure groups and the free press' (Macpherson 1977: 71).

Following an interregnum punctuated by two World Wars, socialist revolution and major economic depression, capitalism manages to reconstitute itself by the mid-Twentieth Century in a new stage of *consumerism*.<sup>3</sup> If capitalist production of *imperialism* impeded capital to increasingly ‘organise’ accumulation with extra-market support, the shift away from untrammelled markets of *liberalism* arguably reached its capitalist apogee in this stage. To produce the characteristic product or ‘use value’ of complex consumer durables typified by the automobile, capital – in its frontier mode – morphed once again into corporate capital, as represented by multinational corporations (MNCs). MNCs coordinated supply and distribution of thousands of standardised parts and components in multi-plant, multidivisional oligopolies, integrating production, design, marketing and so on in vast economies of scale and scope. These, in turn, increasingly eschewed market transactions for intra-firm, intra-industry ‘transfer pricing’.

The ability of leading MNCs to self-finance freed a new managerial class fragment to implement long-term investment strategies. Exorbitant up-front and ongoing costs for corporate capital of semi-automatic assembly-line mass production was compensated by high throughput. This lowered unit costs, thereby making profit dependent upon ever-expanding mass consumption. On the one hand, this mass consumption was supported by ‘class accords’ between labour and capital, which accepted labour union roles in ensuring high wage compensation calibrated to productivity gains as long as unions remained politically quiescent. On the other hand, it was supported by state roll-out of an unprecedented raft of welfare policies, guaranteeing the unemployed, aged and infirm could continue the consumption fete. As put by Frieden (2007: 238-47): ‘Modern societies may simply have required social democratic welfare states to survive. It is otherwise hard to explain why every industrial society developed social insurance schemes whose similarities far outweigh their differences’. Finally, banished were remaining residues of market fatalism. States engaged in economic programming with countercyclical macroeconomic policies to maintain economies in conditions of semi-boom (Westra 2016: 138-41).

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<sup>3</sup> As explored in Westra (2019a), a wide variety of appellations have been applied to the post-Second World War stage of capitalism. In the periodisation of capitalism advanced here, stages are named according to the characteristic, stage-specific state policy supporting capital accumulation. Hence, the stages mercantilism, liberalism, imperialism, and consumerism.

The shift in modalities of capital accumulation marking the stage of *consumerism* had momentous impacts on social class conditions. Through the development and generalisation of mass media technologies such as the television, the pressing necessity of ever-expanding mass consumption for capital saw mass advertising promote mass consumption as a 'new secular religion'. This equated human happiness with the drives of notionally sovereign consumers to satiate their virtually infinite desires for commodities. This ideological propensity, along with the mass consumption bonanza available to average workers – automobiles, electronic goods, a bevy of home appliances, all potentially enjoyed in private homes purchased by workers through increasingly available credit – served to suppress social class distinctions. Rather, the capitalist stage of *consumerism* secreted a peculiar capitalist 'egalitarianism' or 'populism', which constructed society as an amorphous mass of 'hyper-individual' consumers – with vastly different incomes, to be sure, but where the dollar of one is deemed equal to the dollar of another (Albritton 1991: 247-9).

Paired with populist ideology of consumption was also a strong ideology of anti-collectivism. In part, this manifested in the form of vehement anti-communism in accordance with the mid-Twentieth Century Cold War division of the world. However, it was even more crucial for capital to ideologically counter the sheer extent to which economic and political life is shaped by vast, organised collectivities – from MNCs that manage economies of scale and scope akin to the operations of a Soviet state, to the sprawling policy bureaucracies of the welfare state itself.

For Macpherson, it was into this transformatory mix that the third model of democracy inserts itself. 'Equilibrium' or 'pluralist elitist' – sometimes 'pluralist elitist equilibrium' – democracy is 'pluralist' in that it draws on liberal democratic views of individuals with multiple identifications and interests, which they express politically within 'plural' societies. It is 'elitist' given that democracy is broadly understood as a 'mechanism' for choosing and authorising governments, with the process composed of a competition among 'self-chosen' elites (politicians) arranged in political parties. Political 'issues' are not decided by the electorate but by elites, with voters relegated to choosing among those elites to make decisions (Macpherson 1977: 77-8). This elitist dimension of post-WWII democracy has been fuelled, in part, by the sheer extent of corporate capitalist organisation and collectivisation characteristic of *consumerism*, as well as the congruent swelling of 'big government'. It was precisely the exigencies of requisite technocratic decision-making under such large-

scale organisational conditions which led economic commentators to suggest an affinity between Soviet and advanced capitalist society for management by elite experts (Westra 2019a: 70-1). Across advanced capitalist polities, given the bloating size of government bureaucracies, administrative decision-making has tended to eclipse that of elected legislatures in key policy areas – increasingly bringing to bear questions of legal remedy, rather than electorates, as a constraint upon elite decision-making (Albritton 1991: 259). As we shall see, one element of ‘legalisation of politics’ germinates in this trend.

Finally, ‘equilibrium democracy’ has leached out what moral content had seeped into bourgeois democracy in its ‘developmental’ model. Its core presupposition is that, as with the notion of consumer sovereignty – where individuals cast their dollar ballots for the commodities they desire – voters register their political choices for the purveyors of this or that batch of political goods. Those ‘purveyors of the batch which gets the most votes become the authorised rulers until the next election; they cannot tyrannise because there will be a next election’ (Macpherson 1977: 78). Equilibrium democracy extrapolates from the neoclassical rendering of the rational, maximising consumer acting under conditions of free political competition, akin to that of the economists’ beloved coercion-free market. However, already from the 1950s, the same advertising companies which fashioned mass consumption into a secular religion were being recruited for political campaigns. As one ad executive put it: ‘I think of a man in a voting booth who hesitates between two levers as if he were pausing between competing tubes of tooth paste in a drugstore’ (quoted in Cohen 2004: 332). Macpherson is under no illusion over how wealth and power to manufacture ‘choice’ reproduces only ‘an equilibrium in inequality’ in liberal democracy, which engenders the ills of bourgeois democracy, such as festering political apathy (Macpherson 1977: 86).

### **The neoliberal era and capitalist decay**

The matrix of extra-market, extra-capitalist support for accumulation, including the accoutrement of the welfare state and macroeconomic policymaking, was never an option for capital in the stage of *consumerism*. Yet, notwithstanding such support, capital never completely suppressed market operations during its ‘golden age’. In turn, beginning in the late 1960s and spreading across major advanced economies into the 1970s, the

seemingly dampened contradictions of capitalist production returned with a vengeance (Westra 2019a: 132-8). The resulting crisis conditions in both individual advanced economies and across the global economy, in conjunction with the gathering environmental debacle arising from automobile-based societies, appeared to necessitate strengthening social democratic elements of the welfare state. Specifically, this conjuncture seemingly called for subjecting capital to increasing social control to redistribute wealth and utilise a raft of emerging eco-sustainable technologies. Macpherson's fourth model of 'participatory democracy' was a potential fit within the foregoing. Though, as Macpherson makes clear, its instatement demands not only a material foundation in radical diminution of inequalities, but a superstructural seachange from the 'populism' of hyper-consuming individuals to that of people as exerters and developers of their human capacities (Macpherson 1977: 99-100).

As the global economy lurched toward its epochal crossroads in the mid-1970s, ruling classes within advanced economies faced the anathematic prospect of greater economic redistribution and strengthened social democracy. However, at this stage, it was not readily appreciated that the alternative, neoliberal course adopted would not only continue to further unravel capitalism, but also hasten destruction of humanity in the process. The genesis and core tenets of neoliberalism as an ideology have been well elaborated. Here, it is firstly necessary to debunk the core emotive postulate of neoliberalism as a reloading of the capitalist market. Let us explore the economic changes of the neoliberal era through the prism of their impacts upon the collectivities central to the capitalist stage of *consumerism*.

First, despite variations among advanced economies, the global tendency from the 1980s has been for capital to abdicate its class accords and the mass commodified labour forces these accords preserved. It has accomplished this at the level of individual MNCs by disinternalising its mass production accoutrement, and economy-wide by disarticulating full-scale integrated industrial systems to outsource the making of things across the globe. Given capital has sought to maintain mass consumption economies of consumer durables and associated electronic gadgetry as its leading sectors, there was no question of simply reconstituting full-scale industrial economies and mass commodified labour forces elsewhere. Indeed, this would have simply pulled other economies into the ambit of the same contradictions from which capital was seeking to escape. Thus, the preferred source for production was less-developed economies with

vast, often subsistence agriculture-based, surplus populations, from which quasi-peasant, casual, contingent labour could be drawn and remunerated below costs of reproduction. Hardly a model of market proletarianisation, this mode of labour relations harks back to the ‘putting out’ systems of Eighteenth Century merchant capital, as it establishes a template for ‘precarity’ worldwide (Westra 2018). Further, though regimes hosting global productive capacity may have been regulatorily lax over working conditions, they have tended to be authoritarian states with imposing armatures of extra-economic social control, including that over labour mobility itself.

Second, as commanding heights MNCs in key sectors abdicated their production-centred activities, little in this global relocation of marketable productive capacity – euphemised as ‘globalisation’ – entailed anything resembling a reloaded capitalist market. Production became the prerogative of a new breed of oligopolistic non-equity mode (NEM) ‘contract-suppliers’. Those in less-developed economies tended to operate from special economic zones (SEZs), supported by multiple host government subsidies. SEZs largely service global demand with few substantive spill-over effects (beyond proprietary knowledge poaching) for local economies. It is through these that casual, quasi-peasant labour forces float. In advanced economies this system gave rise to giant retail conglomerates which, in tandem with the shift of production to NEM suppliers, drove casualisation across the employment landscape. Thus, by the early Twenty-First Century, the retail giant Walmart emerged as the single largest employer in the US. Further, the trend of the stage of *consumerism* for commanding heights MNCs to eschew market transactions for intra-firm, intra-industry ‘transfer pricing’, only amplifies in the neoliberal era with the caveat that traversing what are dubbed ‘global value chains’ (GVCs) are no longer flows of goods but sub-products. With the advent of the information and computer technology (ICT) revolution, MNCs maintain centralised global control over this sliced and diced production and distribution edifice. The sheer extent of extra-market, end-to-end ICT management by Walmart of production, distribution and sales has seen it touted as a model for future socialist planning (Phillips and Rozworski 2019).

Finally, let us explore neoliberal policy impacts upon its arch nemesis: the collectivity of the welfare state. In quantitative terms of total government spending as a percent of GDP, except for brief diminutions due to privatisation in the early days of neoliberal triumphalism, current total

state spending in most advanced economies has exceeded levels reached during the ‘golden age’ (Westra 2019a: 244). Yet, state spending profiles did morph. The key neoliberal trope animating this change has been the notion of central bank ‘independence’. In fiat money regimes since the stage of *consumerism*, an ‘optimal’ supply of money could *only* be achieved through policy, while it is the state which now chooses to delegate this power to ideologically vetted bank functionaries. Neoliberals reasoned that politically motivated fiscal policies of social wage support and macroeconomic countercyclical spending distorted markets. To remedy this, they held that central banks should limit their actions to monetary policy and let financial markets decide broad questions of spending and investment across all sectors.

At the outset, however, because debt levels from domestic and international lending in the dying ‘golden age’ years brought commercial ‘relationship’ banking to its knees in the US, financial markets needed a reset. A new architecture of lending soon spawned, where banks ‘originate’ loans, only to ‘distribute’ them off balance sheets – packaged in ‘investment vehicles’ – to a burgeoning world of ‘secondary markets’. Such ‘securitisation’ in secondary markets enables the financial system as a whole to expand lending well beyond what it holds as ‘capital reserves’. As this process unfolded, neoliberals fought to strike out ‘golden age’ regulations to ‘free’ swelling pools of social and private savings. Already by the 1990s, the magnitude of these savings in hands of pension, insurance, money market mutual funds significantly exceeded real capital held by production-centred business. With new regulations soon emplaced, sanctioning practices that decades earlier were deemed tantamount to casino gambling, the activities of myriad ‘funds’ – rechristened as ‘institutional investors’ – fostered the emergence of a ‘shadow banking’ system. So intoxicated were neoliberals by the apparent wealth effects of this excrescence, that even valuations of commanding heights MNCs shifted away from ‘real’ profit concerns to the pursuit of ‘shareholder value’ on secondary markets. As perceived US GDP growth success into the Twenty-First Century saw this ‘model’ of financial market governance foisted upon the world, so the role of the US dollar as global currency hub led Wall Street and US shadow banking to a dominating role in global ‘financialisation’ (Westra 2019a: 211).

Lost in this reset was any semblance of real economic validation of debt levels. When commercial banks lent to business, the collateral was material accoutrement of some kind. But on secondary markets, the

investment vehicle or security itself *is* the collateral. Neoliberal re-regulating rendered these assets ‘money-like’ to such an extent that the shadow banking system metastasised into a net supplier of cash to the financial system as a whole (Westra 2019a: 210-1). Predictably, global debt exploded as did financial sector assets, each well outpacing global growth, and with precious little of this booty flowing into ‘real’ profit making investment. Yet, national accounting systems measured the preponderating finance, insurance and real estate (FIRE) sector contributions to growth akin to production of material output. In turn, central banks supported it by expanding the money supply and lowering interest rates on borrowing, while governments slashed tax rates on the gains accruing to the ‘assets’ traded on secondary markets.

What neoliberal blinkers missed was the birth of their financial reset in a government bailout of gargantuan proportions. As the neoliberal ‘model’ was foisted upon the world, it ushered-in an era of what are dubbed ‘rotating meltdowns’ (Westra 2012: chapter 5). This commenced with the ‘Black Monday’ 1987 global stock market crash and culminated in the great meltdown of 2008 with its 2011 aftershocks in Europe (EU). In all these, when financial sector exposure in the US and advanced economy allies portended collapse, ‘big government’ leaped into the rescue with taxpayer largesse. While neoliberal central bankers celebrated inflation-targeting monetary policy, which purportedly yielded a ‘Great Moderation’, a new cyclical dynamic of asset bubbles and bursts had overtaken the global economy. The neoliberal three-piece dream suit of ‘freed’ finance, interest rate manipulation and tax reduction never revitalised the production centred economy.

Thus, in lieu of private sector investment, government deficit spending only increased. Indeed, neoliberal financial market governance acted as a surreptitious industrial policy driving commanding heights MNCs to continue divestment of factories and commodified labour forces to concentrate on their ‘core competencies’ of finance, proprietary knowledge, design and so forth. Major economies have been so consumed by shadow bank asset play and its wealth effects that central banks have largely commandeered financial markets with ‘lender-of-last-resort’ guarantees to supply the whole casino with liquidity in perpetuity (Westra 2019a: 245). This has starved remnants of real economies of funds, as it foreshadowed never-ending austerity and predatory expropriations for working people to cover casino markers as each new bubble burst.

Finally, while the neoliberal dream of a reloaded capitalist market has always been a chimera, their ‘nightmare’ (Slobodian 2018: 93, 259) – of ‘economic nationalism’, around which advanced economies were rebuilt in the aftermath of WWII – has been exorcised.

### **Legalisation of politics**

With neoliberal claims of resurrecting *laissez-faire* shown to give ideological cover to new forms of state regulation – which empowered the exploitative, wealth inequality-generating practices of MNCs and predatory finance – the article now turns to three authoritarian political trends which support this neoliberal economic grip on society.

Legalisation or ‘judicialisation’ of politics is the first neoliberal authoritarian propensity to be discussed. In approaching this superstructural form, this transmutation of judicial review, an important constituent of constitutional democracy, is not readily appreciated in legal studies. Work elaborating legalisation of politics recognises its development in ‘concrete social, political and economic struggles’ (Hirschl 2002: 217-8), but the analysis does not explicitly link it to neoliberalism. Let us attempt to forge some connections. The current trends in legalisation of politics are threefold. First is the inordinate expansion of ‘civil liberties jurisprudence’ revolving around questions of individual freedoms, while the ‘private sphere’ is perceived as threatened by the state. Second is concern with ‘ordinary rights jurisprudence’, relating to a raft of issues including accountability, transparency and fairness in civil and criminal procedures, as well as in public policymaking and over ‘process-heavy’ policy questions such as immigration. Third, and most nuanced, is what Hirschl describes as the judicialising of ‘mega-politics’. These are the substantive ‘political questions’ which define nations and polities at the most fundamental level, including: the scope of executive branch prerogative over economic policymaking, national security, superintending of electoral processes, judicial defining of issues from national identity to the very *raison d’être* of the polity, and so forth. It is in this latter facet of legalisation of politics, where courts decide ‘watershed political issues’ – including ones not directly addressed in constitutions – that sees non-majoritarian, ‘juristocracy’ most radically trump judicial review (Hirschl 2008: 98-9).

In our above treatment of changes experienced by liberal democracy in the period referred to as *consumerism*, we touched on rudiments of a 'functionalist' argument for legalisation of politics. This constitutes its expression of the enlarging policy and regulatory footprint of the welfare state and administrative 'complexities' of modern polities (Hirschl 2008: 95). Similarly, 'rights discourse' explanations of judicialisation capture the increasing opportunities that expanded legal mobilisation affords to groups and individuals suffering either underrepresentation or disenfranchisement in polities (Hirschl 2008: 96). Here, the 'equal right' to enjoy the mass consumption fete is extended to other areas. That is, during the 'golden age', law and courts increasingly became vehicles for advancing ethical concerns over issues like the rights of women and racial minorities to good education, jobs and so on – rights traditionally enjoyed by white males (Albritton 1991: 257, 261).

However, in the neoliberal era, the incantation of 'there is no alternative' to capitalism and 'the market' has been accompanied by similar chanting over democracy. Democracy, in the 1990s, was suddenly elevated into a prime empirical research area in university political science departments, as it was increasingly found on agendas of governments and international organisations. Yet, as this formal interest in democracy swelled, democracy was being fundamentally redefined in a way that saw judicialisation tending to overrun liberal democracy itself. While authors like Macpherson already shattered perceptions of political party systems and elections realising anything more than a limited popular sovereignty, the redefinition of democracy in play served to expunge its popular, electoral component in favour of emphasis placed upon its constitutional component. It is 'not elections [...] that make for democracy, but rather the courts' (Mair 2013: 7-11).

This extirpating of the popular component of contemporary democracy, according to Mair, has much to do with the failings of political parties. For example, the 'elitist' element of Macpherson's liberal democracy model had become so exaggerated that it cultivated an unbridgeable gap between rulers and ruled, which populist parties have attempted to fill as the only choice beyond rule by the elitist 'non-political expert' (Mair 2013: 20). Moreover, notwithstanding perceived 'competition' between parties, there exists scant substantive 'opposition' on policy-based issues – in a sense, extrapolating to conclusion Macpherson's grasp of the role of party systems as 'blunting the edge of class conflict'. Meaningful opposition, it

is maintained, now erupts outside party politics in social movements, popular street protests and so on (Mair 2013: 68, 88).

Given the constitutive role political parties played in class-divided societies, it is important to offer some account of why they failed in the neoliberal era in a way ultimately hollowing-out liberal democracy. This is but a corollary of the hollowing-out of production-centred economies which had marked capitalism from its inception. A distinct international dimension of accumulation is always generated in each stage of capitalism. The hallmark of capital in the *liberalism* stage, however, has been the virtuous connect established by capital within its geospatial containers between profitmaking and production of basic goods that people need and want as its byproduct. It was initial bourgeois trepidation over the fact that expansion of the franchise could potentially threaten capitalist property, as such, that the party system helped assuage. Yet, as the integrated material infrastructure of capital has become disarticulated across the globe, and effective control over finance and sundry non-material property titles vested in an opaque offshore world (Hendrikse and Fernandez 2019), there is 'no alternative' that may readily be achieved by a party of whatever stripe getting its hands on the levers of government.

Hence, accepting Macpherson's admonition over electoral contestations driving ostensibly social class-based parties toward the 'centre', even those truncated polarisations have been superseded by a new 'non-partisan' 'politics of depoliticisation' (Mair 2013: 51). Elites have retreated to their role as public office managers, where they often pursue their own particularistic interests, as mass publics continue to disengage from participation (Mair 2013: 97-8). Through that disengagement, the latter also turn to their individual interests, as these have been interpellated by the powerful ideology of mass consumption as tantamount to their 'freedom'.

Notwithstanding neoliberal economic changes taking contestation over material affairs off the political table, the remaining semblance of 'issue' divides tends to unfold through courts. Examining the US case, Brown (2018) bemoans the marshalling of the US constitution and Supreme Court as a truncheon against those social gains that underrepresented groups eked out in the post WWII period. In terms of legalisation of politics, this arguably germinates in what Hirschl refers to as civil liberties jurisprudence, but extends into the realm of his mega-politics. Judicialisation makes this leap when it rules on 'private sphere',

constitutionally protected freedoms in a way that serves to answer such a substantive nation-defining, political question as ‘the Christianisation’ of public life in the US, emphasised by Brown (2018: 124-6). Yet, the very fact that Christian ire against minorities remains such an issue for neoliberalism is instructive. Brown rails against US President Trump for his ‘revenge’ philosophy, in this regard, as imbibed by his political base (Brown 2019: 178). However, with its strident claims for its policy package to reinvigorate ‘golden age’ mass public prosperity so overwhelmingly discredited, it is easy to read neoliberalism itself as a revenge philosophy over something its formative cabals could never get over. That is, liberalism, with its self-regulating market, coincides with only one stage of capitalism which history rapidly outpaces.

### **The new constitutionalism**

In its basic incarnation, the new constitutionalism derives from similar factors as the judicialising of politics. Though neoliberal policy was implicated in the remaking of the world economy, it did not follow a carefully worked-out script. While global ruling classes soon came to accept the emergent neoliberal order for delivering wealth and property protection, they remained ‘risk-averse’ and, thus, sought further ‘insurance’ (Hirschl 2014: 97). The first dimension of such ‘insurance’ is what Gill refers to as ‘disciplinary neoliberalism’ and its counterpart ‘panopticonism’, which each operate to ‘lock in’ patterns of accumulation and flows of wealth established by neoliberal economic transmutations (Gill 2008: 137-8).

Its crucial test-case was the ‘disciplining’ of the non-developed world. Recall the extra-economic, extra-capitalist organising of economies in the stage of *consumerism*, with their ‘economic nationalist’ macroeconomic management of prosperity cocooned by a new international monetary system and set of supporting supranational institutions. The latter – including the United Nations (UN), World Bank (WB) and International Monetary Fund (IMF) – represented one of the most significant changes in the history of capitalism by demanding a modicum of policy compliance from member states (Frieden 2007: 259-60). Of course, at the outset of the ‘golden age’, the model of mass consumption society was applicable only to a select group of ‘free world’ advanced economies. Yet, a fantasy was offered to the decolonised, non-developed world: if they followed some

basic economic strictures, they would ‘modernise’ in a similar fashion. The problem here was that even as advanced economy prosperity unravelled in the 1970s, many non-developed states never gave up the ‘golden age’ dream and turned to the UN with a bid for support to create a new international economic order (NIEO). The perfect storm of festering crisis in advanced economies, along with frustrated ‘modernisation’ across the non-developed world, appeared sufficiently pregnant with potential challenges to the rule of capital that advanced economy ruling classes plotted a fightback. Neoliberal ideology suffused this plotting with the intention of repurposing existing supranational institutions and the spawning of new ones corresponding to its beliefs (Slobodian 2018: 259-62).

Importantly, the reset of banking and finance at the dawn of the neoliberal era was triggered by US commercial bank exposure to unrepayable debt, incurred by non-developed economies seeking to realise the ‘golden age’ dream.<sup>4</sup> As their debts were securitised on secondary markets, desperately needed funds for suffering economies were tied to ‘conditionalities’ framed by the WB and IMF – themselves repurposed from ‘economic nationalist’ cocoons to institutional debt repayment enforcers. The ‘discipline’ entailed financial markets deciding where in the neoliberal global scheme these economies best fit – as primary good exporters, sites of extractivism or subproduct producers within global value chains.

Concomitantly, ‘panopticonism’ involves surveillance by holders of debt securities through the WB and IMF to ensure ‘credible’ government policies as per disciplinary neoliberal dictates (Westra 2012: 88-93). As the aforementioned financialisation-induced meltdowns ‘rotated’ across the globe, the same manoeuvres were applied, where advanced economy financial system exposure was covered by taxpayers with target debtors subjected to discipline and panopticonism. When financial meltdowns shook advanced economies in the Twenty-First Century, the now practiced discipline and panopticonism to prosecute austerity and exact ‘credible’ policies from governments ‘consistent’ with debt servicing, was applied to them (Gill 2008:139).

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<sup>4</sup> Major US bank exposure reached levels it did because banks in the 1970s were awash in ‘petrodollars’, while real interest rates fell below the rate of inflation under the ‘stagflation’ conditions of the time. The lending and borrowing bonanza ended abruptly under Fed Chair, Paul Volcker’s, unilateral interest rate hike of the early 1980s, which rendered much global debt unrepayable.

A second dimension of 'insurance' bestowed by the new constitutionalism on the neoliberal world is the endowment of extraordinary 'citizenship rights' upon MNCs. This process transcends states rewriting laws to recognising matters like capital mobility, and the rights of capital against national expropriation and to extract resources. It allows capital to build on this rewritten state law protecting property to enact 'private' laws that realise a form of 'private government' where some rules exist beyond review by public bodies (Gill 2014: 37-8). Globally, this edifice is encased in a web of over 3200 bilateral and multilateral treaties sanctioning MNC investment practices (Westra 2019a: 225). The intensity of such 'lock-in' reregulation is evidenced by 1944 rule changes tracked by the UN across economies in the first decade of the Twenty-First Century, most supporting investor 'freedoms'.

At its core, the goal of such protections is to protect international capital from any potential shift in government approach across policy areas concerning the macroeconomy, health, environmental sustainability and so forth, that might affect MNC profit expectations. Disputes over such agreements are adjudicated by quasi-judicial investment arbitration tribunals featuring corporate lawyers steeped in commercial and investment law (Schneiderman 2014: 165, 171-2). This logic has been codified, for example, in the proliferation of investor-state dispute settlement (ISDS) mechanisms in myriad free trade agreements and investment treaties. ISDS enables foreign investors to sue governments for damages in an international tribunal in response to changes in national law or policy they claim will harm their investment. More broadly, this global architecture of rules has 'quasi-constitutional status' in its subordination of the economic and political life of states, irrespective of domestic political regime type, to corporate power (Gill 2008: 167-8). Of course, to recalcitrant extractivist targets like Bolivia in recent years, there is also more direct interventionism or, as put by corporate oligarch Elon Musk, 'we will coup whoever we want' (Prashad and Bejarano 2020).

The third dimension of the new constitutionalism is the tendency toward relegating decision-making over defining economic and social questions to purportedly non-partisan elite experts. In this way, profoundly political questions, especially in times of major economic and societal crises, are pegged as 'technical issues' – the resolution of which fall outside bounds of democratic contestation (Gill 2014: 40-1). A contributing factor to the rise of populism and engine of 'depoliticisation', its neoliberal template is the doctrine of central bank independence. Each neoliberal bubble and

burst dynamic in advanced economies brought ‘big government’ taxpayer largesse to bailout a broadening spectrum of financial sector and MNC assets. The global financial meltdown of 2008 and its EU aftershocks in 2011 saw central bank, lender-of-last-resort guarantees provided to the shadow banking system. While there was evidence of a monstrous bubble readying to burst in 2019, bringing back central bank support for the shadow banking system with a vengeance, central bank responses to the COVID-19 epidemiological emergency in 2020 fired securities markets ‘on a moonshot’ (Noland 2020). The biblical 4.5 trillion dollars in the US alone also impelled central banks like the US Federal Reserve into new bailout territory. That involves guarantees to major asset managers holding securitised MNC debt which burgeoned exponentially over the past several years. Again, the devastating consequences for mass publics are predictable (Dayen 2020).

### **The state of exception**

Conceptual grounding for the state of exception reaches back into the formative crafting of bourgeois constitutions. Within the ambit of Montesquieu’s doctrine of the separation of powers, the state of exception constitutes a ‘fail safe’ mechanism of sorts, embedded in democratic constitutions, to invest executive branches with untrammelled power in ‘exceptional’ circumstances. Its ambiguity resides in the fact that, whereas law and constitutionality are suspended by legal means in its application, activation of the legal suspension of law and constitutionality remains a political act decided by the ‘sovereign’ (Agamben 2005: 1-2). Interest in this obscure constitutional provision has mounted following the response to the events of September 11, 2001. It empowered then-President, George W. Bush, to revive and rejig an initially spurned omnibus legislative ‘*Crime*’ Bill from 1995 – instructively sponsored by Senator Joe Biden (US Congress 1995) – and pass it into law as the *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism* or *USA Patriot Act* in 2001 (US Congress 2001). What was remarkable about promulgation of the *Patriot Act* is not simply that that it invokes the state of exception to empower the executive to legally override constitutionality and the rule of law. Rather, in contrast to previous implementations, which had limited durations and geospatial scope (as in civil war or foreign attack), the state of exception is now aimed

at an ‘enemy’ subject to constant redefinition in a global ‘war’ of unlimited duration (US Department of State 2001).

Justification by the *Act* of torture, secret detentions and so on, as well as its catalysing similar rule changes in allies such as Britain and the EU, has received abundant scholarly treatment (Paye 2007). Yet, the way the state of exception imbricates with judicialised depoliticisation, disciplinary neoliberalism and panopticonism to cement the authoritarian trifecta of neoliberalism is not clearly understood. The node at which it initially intersects with the foregoing is the way the crime of ‘terrorism’ is legally defined akin to that governing ‘criminal organisations’. This then brings to bear issues like ‘pre-emption’ (as in the charge of ‘conspiracy’), as well as extraordinary powers granted to police over surveillance, search-and-seizure and detention which, in turn, subordinates activities of judicial systems to ‘legalising’ proactive policing after the fact. What metastasises in the end is the domination of the exception over law, with such decisions effectively at the whim of executive power (Paye 2007: 188-94).

A case-in-point is that of the US Department of Homeland Security, which was created in the immediate aftermath of 9-11 with virtually no political opposition. Its essential mission is prevention of terrorist attacks within the US. Yet into the second decade of the Twenty-First Century, we find it preoccupied with ‘securing borders’ to ‘enforce immigration laws’ against Latin America (Anderson 2019). Subsequently, during the Obama/Biden administration, the Department of Homeland Security partnered with the duo’s new Countering Violent Extremism program to surreptitiously liaise with community healthcare and social workers, teachers and so on, as a means to ‘preemptively’ identify individuals – predominately in the Muslim community – open to vaguely-defined ‘radicalisation’ (Dandia 2020).<sup>5</sup> This odious program – with counterparts elsewhere, like Britain – appears to fall within the initial Homeland Security mandate. Yet, it has rapidly morphed to incorporate ‘community policing’: deploying a ‘pre-emptive’ rationale by utilising ICT to detect ‘racially motivated violent extremism’ in black communities as the Black Lives Matter (BLM) movement has activated (Rizvi and Thompson 2020). As BLM protests erupted following the killing of George Floyd, the Department of Homeland Security dispatched its paramilitary unit from southern border

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<sup>5</sup> This was subsequently retrofitted by the Trump regime with the recent Targeted Violence and Terrorism Prevention program launched by the Department of Homeland Security.

enforcement operations to quell protests in US cities in a ‘national police force’ capacity (Chotiner 2020). That BLM protestors find themselves charged with ‘felony’ and ‘terrorism’ offences captures a disturbing trend of criminalisation of protests (Lacy 2020).

The broader significance of the foregoing resides in hollowed-out, substantively depoliticised polities, where states are ‘locked-in’ to governance formulas hatched on behalf of MNCs and financial markets. The only genuine opposition springs from street protests, social movements, ‘occupies’ and so forth. In the neoliberal dystopia, these are destined to become more fervid. Legal systems already contained strictures denying the political bent of social movements and referring their actions to criminal courts. However, under the permanent state of exception with its redefinable category of ‘terrorism’ and ‘terrorist’, all political opposition is open to criminalisation. This entails much more than the ‘disparaging’ of the ‘political’ (Brown 2019: 58). Rather, it *effaces* it by reversing the very relationship between civil society and government – even taking account of the limitations of its liberal democratic expression. Tyranny, to paraphrase Macpherson, is no longer averted by a ‘next election’. It is now the state or ‘government that [...] legitimises society, that forces the latter to conform to its model or, if necessary, criminalises it’ (Paye 2007: 252). It is this new ‘paradigm of government’, according to Agamben (2005), which has now supplanted liberal democracy.

## Conclusion

To sum up, this article maintains that there is no necessary link between capitalism and a democratic superstructure. Even when democracy does take hold in advanced capitalist economies, it is always circumscribed in ways that ensure capitalist property and wealth remain unchallenged. Democracy also changed in the measures by which the foregoing is ensured, paralleling major transmutations in the form of accumulation across the stages of capitalist development. While promising renewed prosperity, neoliberal economic measures foster economic decay and new forms of finance-induced crises rotating around the globe. Yet, it locks in modes of government reregulation which perpetuates increasing inequality and predatory expropriation of social wealth.

To further insure the immutability of neoliberal policies and outcomes, three authoritarian tendencies are secreted by neoliberal polities. These are

the legalisation of politics, the new constitutionalism, and the state of exception. What this article demonstrates is that these tendencies differ from dictatorship or fascism, in that they are instated in erstwhile democracies under cover of constitutionality and the rule of law. This makes them far more insidious than direct authoritarian rule and mandates the attention to them as undertaken in this study.

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