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ARTICLE

Assembling Eurocapitalism

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This article traces the creation of Eurocapitalism as a response distinct from neoliberalism to the challenges of the 1970s. By reconsidering the historical relationship between the European project's competition law regime and its environmental policies, it suggests that the European Community has, since the late 1960s, constituted a unique form of Eurocapitalist development project, one that, in several fundamental respects, differed markedly from the neoliberal developments that characterized the American Leviathan. The article thereby also unearths the global origins of a Eurocapitalist ecology, demonstrating the long lineage of industrial programs like the EU's Green Deal as tools to tackle climate change.

Animated by the socioeconomic catastrophe of the global financial crisis, scholarship since the late 2000s has traced the spread of neoliberalism to every corner of the globe. Over the past five decades, the neoliberal creed, whose intellectual seeds have been germinating since the interwar years, has grown political and intellectual roots from Rio to Reykjavik and from San Francisco to Seoul.[1] The rewards of this vast academic undertaking cannot be overstated. We have learned not just where neoliberal ideas came from, who spread them, and what rendered them politically feasible and socioeconomically ruinous, but also how they came to order our existence at every conceivable level, from the patenting of DNA and the algorithmic governance of our everyday lives to the structuring of family relations, the hollowing out of social housing programs, and the

[1]Quinn Slobodian, *Globalists: The End of Empire and the Birth of Neoliberalism* (Cambridge, MA, 2018); Jamie Martin, *The Meddlers: Sovereignty, Empire, and the Birth of Global Economic Governance* (Cambridge, MA, 2022); Clara E. Mattei, *The Capital Order: How Economists Invented Austerity and Paved the Way to Fascism* (Chicago, 2022); Angus Burgin, *The Great Persuasion: Reinventing Free Markets since the Great Depression* (Cambridge, MA, 2012); Rob van Horn, "Reinventing Monopoly and the Role of Corporations: The Roots of Chicago Law and Economics," in Philip Mirowski and Plehwe, eds., *The Road from Mont Pelerin: The Making of the Neoliberal Thought Collective* (Cambridge, MA, 2009), 204–37. On regional forms of neoliberalism see, for instance, Quinn Slobodian and Dieter Plehwe, eds., *Market Civilizations: Neoliberals East and South* (Brooklyn, 2022); Nour Dados and Raewyn Connell, "Neoliberalism in World Perspective: Southern Origins and Southern Dynamics," in Damien Cahilll, Melinda Cooper, Martijn Konings, and David Primrose, eds., *The SAGE Handbook of Neoliberalism* (London, 2018), 28–39.

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architecture of international trade.[2] Never has the neoliberal order in its many guises been better understood.

Stripped down to its fundamental components, the term "neoliberalism" has come to refer to the process—and the ideology of neoliberalism to the idealization of the process—of liberating the movement and accumulation of assets from democratic and redistributive oversight.[3] Importantly, neoliberals valorize inequality, perceiving it as an essential and welcome feature of superficially unencumbered markets.[4] Because of the inherent goodness of this quasi-sacred market, a goodness measured by the GDP-driving innovations forged in the fires of fierce and individual competition, the market form had to be integrated into every aspect of daily life, leading to the thorough commodification of social, political, economic, and environmental relationships.[5] When I use the term "neoliberalism" on the following pages, it is this process and its foundational ideology that I have in mind, though my efforts to contrast Eurocapitalism and neoliberalism will add meat to the bare bones of this adumbrated characterization.

The history of neoliberalism continues to undergo important revisions. Recently, scholars have begun to take off the "neoliberal lens," in the words of Timothy Shenk, and are discovering alternative forms of political economic organization amidst the thirty years of uncommon economic growth that began after the end of World War II.[6] In the United States, the policies of New Democrats such as Bill Clinton that were once perceived as neoliberal have recently been recast as the expression of what Brent Cebul terms "supply-side liberalism," providing a throughline to New Deal social and industrial policy that blurs the division between progressive left and neoliberal right.[7]

[2]For a small selection of the relevant literature see Melinda Cooper, *Life as Surplus: Biotechnology and Capitalism in the Neoliberal Era* (Seattle, 2008); Veena Dubal, "On Algorithmic Wage Discrimination," *Columbia Law Review* 123/7 (2023), 1929–92; Wendy Brown, *Undoing the Demos: Neoliberalism's Stealth Revolution* (Brooklyn, 2015); Melinda Cooper, *Family Values: Between Neoliberalism and the New Social Conservatism* (Princeton, 2017); Erik Baker, *Make Your Own Job: How the Entrepreneurial Work Ethic Exhausted America* (Cambridge, MA, 2025); Ariane Leendertz, *Der erschöpfte Staat: Eine andere Geschichte des Neoliberalismus* (Hamburg, 2022); Gary Gerstle, *The Rise and Fall of the Neoliberal Order: America and the World in the Free Market Era* (Oxford, 2022); Philipp Ther, *Die neue Ordnung auf dem alten Kontinent: Eine Geschichte des neoliberalen Europa* (Berlin, 2014); Jonas Elvander, *Disciplinerat demokrati: EU:s nyliberala historia* (Stockholm, 2024); Charles S. Maier, *The Project-State and Its Rivals: A New History of the Twentieth and Twenty-First Centuries* (Cambridge, MA, 2023); David Harvey, *A Brief History of Neoliberalism* (Oxford, 2005); Dara Orenstein, *Out of Stock: The Warehouse in the History of Capitalism* (Chicago, 2019); Nicholas Mulder, "The Neoliberal Transition in Intellectual and Economic History," *Journal of the History of Ideas* 84/3 (2023), 559–83.

[3]Jamie Peck, Neil Brenner, and Nik Theodore, "Actually Existing Neoliberalism," in Cahill *et al.*, *The SAGE Handbook of Neoliberalism*, 3–15; Gerstle, *Rise and Fall*, 1; Slobodian, *Globalists*.

[4]On the importance of inequality as a definitional feature see Fritz Bartel, *The Triumph of Broken Promises: The End of the Cold War and the Rise of Neoliberalism* (Cambridge, MA, 2022), 3.

[5]Michel Foucault, *The Birth of Biopolitics: Lectures at the Collège de France, 1978–1979*, ed. Michel Senellart (London, 2008); Brown, *Undoing the Demos*.

[6]On the "neoliberal lens" see Timothy Shenk, "Taking Off the Neoliberal Lens: The Politics of the Economy, the MIT School of Economics, and the Strange Career of Lawrence Klein," *Modern Intellectual History* 20/4 (2023), 1194–1218.

[7]Brent Cebul, *Illusions of Progress: Business, Poverty, and Liberalism in the American Century* (Philadelphia, 2023); Cebul, "Supply-Side Liberalism: Fiscal Crisis, Post-industrial Policy, and the Rise of the New Democrats," *Modern American History* 2/2 (2019), 139–64.

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But the embeddedness of neoliberal forms of governance in New Deal thinking had crystallized even earlier, when US advisers traversed Latin America after 1945, transforming welfarist developmental projects in the Americas into the financialized and privatized engines of austerity commonly associated with neoliberalism.[8] Once these New Dealers returned to the US in the 1960s, they brought their novel expertise with them.[9]

In a similar vein, what Elizabeth Popp Berman has described as the "economic style" in public policy centered on efficiency, choice, and competition that is often identified as a key determinant of neoliberalism's rise is now understood to spring not solely from the isolated heads of neoclassical American economists, but from center left technocrats across the United States and Europe.[10] Whether in environmental, health, or housing policy, economistic thinking vectored by the standard of efficiency became entrenched in Washington even before Ronald Reagan entered the White House.[11] By the turn of the millennium, "Third Way" politicians, including Gerhard Schröder in a reunified Germany and Tony Blair in Great Britain, began to update the social welfare systems of their respective countries as well.[12]

In addition to detecting novel political economic arrangements that disrupt the clear movement from New Deal to neoliberalism, scholars have paid closer attention to the many coexisting varieties of neoliberalism itself. Beyond the Chicago school most commonly associated with Milton Friedman, the Virginia school's desire to circumscribe the taxation and spending power of all levels of government has proven particularly salient in the American context.[13] In Europe, the historical trajectory of the Geneva school has revealed how a group of thinkers that included F. A. Hayek and Ludwig von Mises longed to "scale up," in Quinn Slobodian's apt phrase, the ordoliberal notion of an "economic constitution" to enclose the globe, while Berlin has emerged as a shared birthplace of both the "Old Chicago" neoliberalism of Henry Simons and the influential ideas developed by the Freiburg school.[14]

[8]The quote is from Amy C. Offner, *Sorting Out the Mixed Economy: The Rise and Fall of Welfare and Developmental States in the Americas* (Princeton, 2019), 6.

[9]Ibid., Ch. 7; Cebul, *Illusions of Progress*, Chs. 5, 6.

[10]On the "economic style" see Elizabeth Popp Berman, *Thinking like an Economist: How Efficiency Replaced Equality in US Public Policy* (Princeton, 2022). See also Stephanie L. Mudge, *Leftism Reinvented: Western Parties from Socialism to Neoliberalism* (Cambridge, MA, 2018); and Daniel T. Rodgers, *Age of Fracture* (Cambridge, MA, 2003).

[11]The quote is from Popp Berman, *Thinking like an Economist*, 180. See also Charles Halvorson, *Valuing Clean Air: The EPA and the Economics of Environmental Protection* (Oxford, 2021); and Leendertz, *Der erschöpfte Staat*.

[12]Mudge, *Leftism Reinvented*, Ch. 8. See also Daniel Stedman Jones, "The Neoliberal Origins of the Third Way: How Chicago, Virginia and Bloomington Shaped Clinton and Blair," in Cahill *et al.*, *The SAGE Handbook of Neoliberalism*, 167–78.

[13]Melinda Cooper, *Counterrevolution: Extravagance and Austerity in Public Finance* (Brooklyn, 2024), 20.

[14]On the Geneva school see Slobodian, *Globalists*. On Berlin see Stefan Kolev and Ekkehard A. Köhler, "Transatlantic Roads to Mont Pèlerin: "Old Chicago" and Freiburg in a World of Disintegrating Orders," *History of Political Economy* 54/4 (2022), 745–84. On ordoliberalism see Kenneth Dyson, *Conservative Liberalism, Ordo-liberalism, and the State* (New York, 2020). See also the chapters in Cahill *et al.*, *The SAGE Handbook of Neoliberalism*; and in Thomas Biebricher, Werner Bonefeld, and Peter Nedergaard, eds., *The Oxford Handbook of Ordoliberalism* (Oxford, 2022).

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The European project, too, is no longer understood to be a neoliberal bastion. As one political scientist suggested two decades ago, "promoters of Europe did not trade off preferences any more than they converted to a coherent set of neoliberal ideas."[15] More recently, historians such as Laurent Warlouzet have begun to highlight the "syncretic" character of European competition law and the inchoate nature of the European Union's neoliberal turn.[16] Together, such accounts reveal that rather than determining the political economy of European integration, the market served as a useful vessel into which national and European actors from across the political spectrum could pour their political and economic preferences. The resulting concoction reflected the visions of European integration following the challenges of the 1970s, without fitting into neatly demarcated categories such as "social Europe," neomercantilism, or neoliberalism.[17]

Building on the insights developed by these significant new strands in the history of twentieth-century capitalism, I suggest that rather than continuing to rely on the language of syncretism, synthesis, or partiality, it would be analytically and empirically desirable to introduce a novel category of capitalism to describe the European project, one that clearly distinguishes it from the process and ideology of neoliberalism. Specifically, a reconsideration of the development of the EU's competition law regime and its environmental thinking demonstrates that the European Community has since the late 1960s constituted a Eurocapitalist development project whose modus operandi has differed markedly from the reorientation of the American Leviathan's vigor and capacity towards a very narrow set of priorities. Along with substantial government support in select areas, including computing and military technology, the United States responded to the challenges of the 1970s by foregrounding the "encasement" of markets and the sanctioning of inequality through the often violent protection of property rights at home and abroad.[18] Because the development of both competition or antitrust law and environmental policy are central to understanding the Eurocapitalist and neoliberal American projects, probing their historical trajectories reveals the degree of divergence between these two models of political-economic organization.

[15]Nicolas Jabko, *Playing the Market: A Political Strategy for Uniting Europe, 1985–2005* (Ithaca, 2006), 29.

[16]Laurent Warlouzet, "Towards a Fourth Paradigm in European Competition Policy? A Historical Perspective (1957–2023)," in Adina Claici, Assimakis Kominos, and Denis Waelbroeck, eds., *The Transformation of EU Competition Law: Next Generation Issues* (Alphen aan den Rijn, 2023), 33–52. Kiran Klaus Patel, *Project Europe: A History* (Cambridge, 2020), 111–12.

[17]On the social, neomercantilist, and neoliberal responses to the crises of the 1970s see Laurent Warlouzet, *Governing Europe in a Globalizing World: Neoliberalism and Its Alternatives Following the 1973 Oil Crisis* (London, 2018).

[18]On American military industrial policy see Susannah Glickman, "AI and Tech Industrial Policy: From Post-Cold War Post-industrialism to Post-neoliberal Re-industrialization," *AI Now*, March 2024, at https://ainowinstitute.org/publications/ai-and-tech-industrial-policy-from-post-cold-war-post-industrialism-to-post-neoliberal-re-industrialization. On encasement see Slobodian, *Globalists*. See also Megan Black, *The Global Interior: Mineral Frontiers and American Power* (Cambridge, MA, 2018); Cooper, *Family Values*; and Leendertz, *Der erschöpfte Staat*.

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Without a competition framework, one of the subject's leading legal scholars suggests, the European Community would be "unimaginable."[19] Indeed, what started as a "sleepy administrative backwater"—and the European Community's first supranational policy—has soared in importance until it became the policy area in which the European project's integration and the supranational powers of the Brussel's bureaucracy have advanced most forcefully.[20] For several decades now, competition policy has been what one political scientist described as the "jewel in the crown of EU regulation, the apotheosis of Commission regulatory power."[21] This process rapidly accelerated in the 1980s, when competition law became, in the words of Laurent Warlouzet, "the first neoliberal policy waged by the European Commission."[22] But the zealous embrace of competition was not confined to the European project. Energized by the end of history, competition became a central feature of capitalist societies across the planet, and we now live in a world of pervasive, all-encompassing competition in which our selves have become comprehensively economized.[23] Nowhere was this process more starkly on display than in the United States, where the "generalization of the economic form of the market … throughout the social body" has been "much more complete and exhaustive" than in German ordoliberalism, as Michel Foucault famously suggested.[24] As American competition law has, since the antitrust revolution of the 1970s, been dominated by the Chicago school's economistic judicial apparatus, my focus lingers on the work of figures such as Aaron Director, Richard Posner, and Robert Bork, rather than on the ideas developed by the Virginia, Bloomington, or Geneva schools.[25]

While only receiving treaty status with the 1986 Single European Act, the environment is similarly fundamental to the Eurocapitalist project.[26] Knowledge of the threat of climate change, long suppressed by fossil-fuel companies, entered the political arena

[19]David J. Gerber, "Constitutionalizing the Economy: German Neo-liberalism, Competition Law and the 'New' Europe," *American Journal of Comparative Law* 42/1 (1994), 25–84, at 49.

[20]The quote is from Lee McGowan, *The Antitrust Revolution in Europe: Exploring the European Commission's Cartel Policy* (Cheltenham, 2010), 122–3. On the origins of the European Community's competition framework see also Liane Hewitt, "Monopoly Menace: The Rise and Fall of 'Cartel Capitalism' in Western Europe, 1918–1957" (Ph.D. dissertation, Princeton University, Jan. 2024).

[21]R. Daniel Kelemen, *Eurolegalism: The Transformation of Law and Regulation in the European Union* (Cambridge, MA, 2011), 145.

[22]Warlouzet, *Governing Europe*, 156. See also Hubert Buch-Hansen and Angela Wigger, *The Politics of European Competition Regulation: A Critical Political Economy Perspective* (London, 2011), 53–4.

[23]Michelle Cini and Lee McGowan, *Competition Policy in the European Union* (New York, 1998), 2; Pierre Dardot and Christian Laval, *The New Way of the World: On Neoliberal Society*, trans. Gregory Elliott (New York, 2014).

[24]The quote is from Foucault, *The Birth of Biopolitics*, 243. See also Brown, *Undoing the Demos*; Randy Martin, *Financialization of Daily Life* (Philadelphia, 2002); Cooper, *Life as Surplus*; and Lina M. Khan, "Amazon's Antitrust Paradox," *Yale Law Journal* 126/3 (2017), 710–805.

[25]Beginning in the 1990s, there emerged a "post-Chicago synthesis" combining the Chicago school's emphasis on consumer welfare and economic efficiency with the Harvard school's focus on the importance of polypolistic market structures. See, for instance, David J. Gerber, *Global Competition: Law, Markets, and Globalization* (Oxford, 2010), 193–4; and Herbert Hovenkamp, "Post-Chicago Antitrust: A Review and Critique," *Columbia Business Law Review* 2001/2 (2001), 257–336.

[26]The SEA paved the way for the European Union by allowing for qualified majority voting rather than requiring unanimity in several domains.

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in the mid-1980s.[27] In fact, the European Parliament first called for a common policy addressing this seemingly novel danger in the same year as the Single European Act was passed.[28] After the eighty-nine scientists assembled at a landmark 1985 conference in Villach, Austria, warned that, should present trends continue, "the combined concentrations of atmospheric CO_2 and other greenhouse gases would be radiatively equivalent to a doubling of CO_2 from pre-industrial levels" perhaps as early as 2030, the parliament urged the European Council to increase funding for climatology and reafforestation efforts, and to warn the public.[29] As the United States began to abandon its pioneering role in the formulation of a robust and innovative environmental policy initiated, though not without cynicism, by Richard Nixon, the European Community increasingly portrayed itself as the stalwart champion of environmental protection, cultivating what political scientists Andrea Lenschow and Carina Sprungk have memorably described as the "myth of a Green Europe"—a myth intended to stabilize the European project's persona as an innocuously "civilizing" power.[30]

Competition policy and the environment are thus important on their own terms. But they also interlock in fateful ways, as the European Commission's state aid regime has recently returned to the limelight by virtue of its connection to industrial projects aimed at mitigating the climate crisis. Against this backdrop, it has become more important than ever to trace the relationship between competition law and environmental thinking. Confronted with dramatic changes to the Earth's climate, there appears to have been a rebirth of industrial policy around the world.[31] State aid frameworks, however, have long been central to the Eurocapitalist project's ability to contend with environmental problems, determining the effectiveness of member state industrial policies by deciding the amount of money they are allowed to funnel to companies and public projects aimed at lowering emissions. In this light, the vague expansiveness with which recent Commission communications on the "Green Deal Industrial Plan for the Net-Zero Age" discuss the extension of state aid provisions represents a

[27] Benjamin Franta, "Early Oil Industry Knowledge of CO_2 and Global Warming," *Nature Climate Change* 8/12 (2018), 1024–5.

[28] European Parliament, "Resolution on Measures to Counteract the Rising Concentration of Carbon Dioxide in the Atmosphere (the 'Greenhouse' Effect)," *Official Journal C* 255, 13 Oct. 1986, 272–3.

[29] World Climate Programme, *"Report of the International Conference on the Assessment of the Role of Carbon Dioxide and of Other Greenhouse Gases in Climate Variations and Associated Impacts," Villach, Austria, October 9–15, 1985* (Geneva, 1986), 2; European Parliament, "Rising Concentration of Carbon Dioxide," 272–3. See also Andrew Jordan and Tim Rayner, "The Evolution of Climate Policy in the European Union: A Historical Overview," in Jordan and Rayner, eds., *Climate Change Policy in the European Union: Confronting the Dilemmas of Mitigation and Adaptation?* (Cambridge, 2010), 52–80.

[30] Andrea Lenschow and Carina Sprungk, "The Myth of a Green Europe," *Journal of Common Market Studies* 48/1 (2010), 133–54; Jan Zielonka, "Europe's New Civilizing Missions: The EU's Normative Power Discourse," *Journal of Political Ideologies* 18/1 (2013), 35–55. On Nixon's cynicism see Paul Sabin, *The Bet: Paul Ehrlich, Julian Simon, and Our Gamble over Earth's Future* (New Haven, 2014), 50–51.

[31] See, for instance, Anna Herranz-Surralés, Chad Damro, and Sandra Eckert, "The Geoeconomic Turn of the Single European Market? Conceptual Challenges and Empirical Trends," *Journal of Common Market Studies* 62/4 (2024), 919–37. On the history of industrial policy in the global South see Atul Kohli, *State-Directed Development: Political Power and Industrialization in the Global Periphery* (Cambridge, 2004). For a longer history of US industrial policy see Stefan Link and Noam Maggor, "The United States as a Developing Nation: Revisiting the Peculiarities of American History," *Past and Present* 246/1 (2020), 269–306.

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time-honored strategy that the European project's executive branch pioneered in its first communication on the matter half a century ago.[32]

In contrast to American neoliberalism's devolution of responsibility for environmental protection to individuals, industrial policy to decentralized organizations such as the Defense Advanced Research Projects Agency (DARPA), and antitrust doctrine to general courts spellbound by the myth of self-correcting markets, the coordination and disbursement of state aid remained central to the Eurocapitalist project.[33] State aid could, according to the Commission, "correct market failures" and "help to promote sustainable development."[34] The stark differences between the law and economics revolution ushered in by Chicago school neoliberals and a Eurocapitalist competition system built on the Commission's political authority ultimately constituted alternative responses to what, from the global North, appeared to be a "shock of the global."[35] But neither the American nor the European response was obvious or predetermined. Constructing Eurocapitalism was a contentious, global process, the result of a drawn-out dust-up between a European left at the zenith of its postwar power and a tenacious tradition of Christian democracy against the backdrop of an environmental revolution, Cold War tensions, and international competition. The dawning sense that Europe was becoming less influential—politically, culturally, and technologically—rankled an elite that had no desire to give up status or power.[36] Slowly, two distinctive forms of political economic organization emerged on opposite shores of the Atlantic.

From Freiburg or Chicago to Brussels? Assembling a Eurocapitalist competition regime

Even before jurists such as Robert Bork and Richard Posner popularized the ideas pioneered by the Antitrust Projects at Chicago, there were fundamental differences between the competition law regimes of the United States and Europe.[37] Rather than rest on case law shaped by private litigation and the capaciousness of the 1890 Sherman Act's economic language and adaptability, as in American antitrust law, Eurocapitalist competition policy was determined by an executive political organ: the Commission's

[32]European Commission, "Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: A Green Deal Industrial Plan for the Net-Zero Age," COM(2023) 62 final, 1 Feb. 2023; Commission of the European Communities, "Community Approach to State Aids in Environmental Matters (Commission Memorandum to the Member States)," 4 Nov. 1974, SEC(1974) 4264.

[33]Pollyanna Rhee, *Natural Attachments: The Domestication of American Environmentalism, 1920–1970* (Chicago, 2025); Rachel S. Gross, *Shopping All the Way to the Woods: How the Outdoor Industry Sold Nature to America* (New Haven, 2024); Fred Block, Matthew R. Keller, and Marian Negoita, "Revisiting the Hidden Developmental State," *Politics and Society* 52/2 (2021), 208–40; Khan, "Amazon's Antitrust Paradox."

[34]Commission of the European Communities, "Community Guidelines on State Aid for Environmental Protection (2008/C 82/01)," *Official Journal C* 82, 1 April 2008, 4.

[35]On the "shock of the global" see Niall Ferguson, Charles S. Maier, Erez Manela, and Daniel J. Sargent, eds., *The Shock of the Global: The 1970s in Perspective* (Cambridge, MA, 2011).

[36]Wolfram Kaiser, *Christian Democracy and the Origins of European Union* (Cambridge, 2009); Aurélie D. Andry, *Social Europe, the Road Not Taken: The Left and European Integration in the Long 1970s* (Oxford, 2023).

[37]Gerber, *Global Competition*; Van Horn, "Reinventing Monopoly."

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Directorate-General IV (now called DG COMP) and the commissioner for competition.[38] And rather than encourage private litigation through the possibility of recouping treble damages, European public authorities preferred to take matters into their own hands.[39] Legal scholars have framed such differences between European and American competition law as an "Atlantic divide in antitrust."[40]

At its core, the European competition system that emerged in the 1960s represented a confluence of French and German thinking on cartels and dominant positions, though one that was filtered through the lens of European civil servants such as the Dutch jurist and diplomat Pieter verLoren van Themaat, who would draft the famous Regulation 17, to which we will return below. The system's turn to stringency in the 1980s, meanwhile, was a product of the vigor displayed by European commissioners, including former Irish attorney general Peter Sutherland, and his personal friend and professional headache, Jacques Delors, who had served as finance minister in Pierre Mauroy's Socialist government in France. Like the leading second-generation ordoliberals Ernst-Joachim Mestmäcker and Hans von der Groeben, the latter of whom had served as the European project's first competition commissioner between 1958 and 1967, Sutherland understood that what set the European Community apart was "its investment in creating a political community 'by means of the law.'"[41] From its beginnings in 1962, Eurocapitalist competition law had been caught between the twin desires to increase the global competitiveness of European industry and to maintain an undistorted common market. The challenges of the 1970s further emphasized the negotiated character and institutional embeddedness of Eurocapitalist competition policy, as the aim of reigning in state aid was temporarily subordinated to the fight against unemployment and, increasingly, environmental protection. The political and administrative necessities of the European construct ensured that even as the Cold War came to an end, the ambitions of the "fathers of Europe" remained alive in Sutherland's and Delors's respective desires to witness the births of a "federal" and a social "Europe."[42]

As such, Eurocapitalist competition law differed both from Chicago school neoliberalism and from German ordoliberalism. Chicago school neoliberalism has rested on three pillars exemplified by the work of Bork and Posner. First, these economically minded legal scholars favored "consumer welfare," reduced to meaning "lower prices,"

[38]The European Court of Justice has the final word. See also Giorgio Monti, *EC Competition Law* (Cambridge, 2007).

[39]Gerber, *Global Competition*, 136, suggests that treble damages were specifically added to encourage private litigation.

[40]Chase Foster, "Varieties of Neoliberalism: Courts, Competition Paradigms and the Atlantic Divide in Anti-trust," *Socio-economic Review* 20/4 (2022), 1653–78; Daniel J. Gifford and Robert T. Kudrle, *The Atlantic Divide in Antitrust* (Chicago, 2015).

[41]Slobodian, *Globalists*, 209. Historical Archives of the European Union (HAEU), INT273, Peter Sutherland, interviewed by Brigid Laffan, Histoire interne de la Commission européenne 1973–1986, 14 June 2011.

[42]HAEU, INT273, Sutherland interview, 4. On the idea of a "social Europe" see also Andry, *Social Europe*. Isabelle Petit, "Dispelling a Myth? The Fathers of Europe and the Construction of a Euro-identity," *European Law Journal* 12/5 (2006), 661–79.

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over protecting competition.[43] As Bork put it, "the only legitimate goal of American antitrust law is the maximization of consumer welfare," which should be "the sole value that guides antitrust decisions" in federal courts.[44] Unlike in the Eurocapitalist project, this was not seen to require the direct involvement of the federal government. After all, another legal scholar at the University of Chicago summarized the argument, the "desire to make a buck leads people to undermine monopolistic practices."[45]

This notion is intimately linked to the doctrine's second pillar: the idea of an organic, self-correcting market, any intervention in which would necessarily lead to fateful distortions. From the early 1950s, the lawyers and economists at the Antitrust Projects became convinced that monopolies were self-correcting because they embodied the market—that they would, in other words, resolve themselves.[46] In fact, recent research demonstrates that Chicagoan neoliberals had not been interested in protecting competitive markets since the 1930s, and that by 1979 many of them considered monopolies "beneficial."[47] The final pillar of Chicago antitrust law flowed naturally from its single-minded focus on consumer welfare and self-correcting markets: the belief that government intervention "was likely to produce more harm than good."[48]

But Eurocapitalist competition law also differed from the ordoliberal German approach. Whereas the latter established notionally independent administrative courts to protect competition from the state, democracy, and monopolies, the Commission was a "political organization," although one that until the late 1990s largely depended on the "soft law" of recommendations and clarifications.[49] While ordoliberalism and Eurocapitalist competition law shared a strong preference for the "allocative" efficiency of relatively stringent enforcement, as opposed to the "productive" efficiency represented by the lax enforcement of monopolies favored by Chicago school neoliberals, the Commission's Competition Directorate was never independent from the wider political project of European integration.[50] By the same token, the more stringent enforcement of EC competition law that began with Duch commissioner Frans

[43]See also Laura Phillips Sawyer, "US Antitrust Law and Policy in Historical Perspective," Harvard Business School Working Paper 19-110, 2019.

[44]Robert H. Bork, *The Antitrust Paradox: A Policy at War with Itself* (New York, 1978), 51.

[45]Frank H. Easterbrook, "Workable Antitrust Policy," *Michigan Law Review* 84/8 (1986), 1696–1713, at 1701.

[46]Van Horn, "Reinventing Monopoly," 209. See also Thomas Philippon, *The Great Reversal: How America Gave Up on Free Markets* (Cambridge, MA, 2019).

[47]Caroline K. Colton, "The Imitation Economy: How AT&T's Contestability Doctrine Transformed the Neoliberal Project" (Ph.D. dissertation, University of Technology, Sydney, Sept. 2021), 2.

[48]The quote is from Gerber, *Global Competition*, 142; for an insight into what the confluence of these three pillars looked like in neoliberal legal thinking see Aaron Director and Edward H. Levi, "Law and the Future: Trade Regulation," *Northwestern University Law Review* 51 (1956), 281–96.

[49]Warlouzet, *Governing Europe*, 157; Michael Blauberger, "Of 'Good' and 'Bad' Subsidies: European State Aid Control through Soft and Hard Law," *West European Politics* 32/4 (2009), 719–37.

[50]Pinar Akman and Hussein Kassim, "Myths and Myth-Making in the European Union: The Institutionalization and Interpretation of EU Competition Policy," *JCMS: Journal of Common Market Studies* 48/1 (2010), 111–32; Josef Hien, "The Rise and Fall of Ordoliberalism," *Socio-economic Review* 22/4 (2023), 1947–66.

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Andriessen in the early 1980s—and which to some scholars heralded the beginning of a neoliberal turn in the European project—would have outraged Chicagoan neoliberals.[51]

Indeed, if this Eurocapitalist competition system was inspired by Windy City intellectuals, its blueprint was the work of "classical liberals" such as Henry Simons, who considered monopolies a grave threat to democracy. It had very little to do with the neoliberalism of an Aaron Director, a Milton Friedmann, or a Robert Bork.[52] Consolidating a type of administrative, broadly political competition policy, Regulation 17—by which the Commission's Directorate-General IV in 1962 became "investigator, prosecutor, and judge" in matters relating to competition in the European Community—bore the marks of French and German influence, combined with the political imagination of the early European civil servants who desired a political as well as an economic union.[53] Margaret Thatcher may well have considered the latter vastly more desirable than the former, but even in the supposedly neoliberal Competition Directorate and among its commissioners the belief that enforcing competition and harmonizing tax provisions paved the way for more than an austerity-driven internal market persisted.[54] As the European Parliament stressed at the beginning of the decade, competition may well be "one of the most important goals in the Treaties and an indispensable part of a socially responsible market economy." But as such it should be thought of not "in isolation," but as an integral part of a larger "community politics" (*Gemeinschaftspolitik*) in which trade and industrial policy were equally central. In times of crisis in particular, competition had to be subordinated to broader European Community concerns.[55]

These differences, going back both to the Sherman Act of the 1890s and to the Law and Economics Revolution of the 1970s, suggest that there has always existed a vast chasm between the competition regimes of the American and the Eurocapitalist projects. Because companies, in the eyes of Chicagoan neoliberals, embodied the market, and that market was self-equilibrating, any direct intervention by the state was greeted with a piercing glare. Eurocapitalist competition law, by contrast, constituted a political–administrative project guided by a powerful, supranational directorate-general slotted into the wider project of European integration. But there was nothing preordained about this outcome. The Chicago revolution of the 1970s arrived on the heels of what is widely considered the most stringent antitrust regime in US history, after the long downturn of the Great Depression had inspired drastic changes on both sides of the Atlantic.

[51] Buch-Hansen and Wigger, *The Politics of European Competition Regulation*, 77; McGowan, *Antitrust Revolution in Europe*, 136–40.

[52] Van Horn, "Reinventing Monopoly."

[53] The quote is from German Federal Archives (Bundesarchiv, NA-GER), B 136/23698 Band 1, Europäisches Parlament, "Bericht im Namen des Ausschusses für Wirtschaft und Währung über den zehnten Bericht der Kommission der Europäischen Gemeinschaften über die Wettbewerbspolitik (Dok. 1-195/81)," 16 Nov. 1981; HAEU, INT671, Ernst Albrecht, interviewed by Jan van der Harst and Veronika Heyde, Histoire interne de la Commission européenne 1958–1973, 4 March 2004, 20.

[54] HAEU, PSP-245, DG IV, "Study Paper," 23 Oct. 1987, 2; Buch-Hansen and Wigger, *The Politics of European Competition Regulation*, 77.

[55] NA-GER, B136/23698 Band 1, European Parliament, "Bericht im Namen des Ausschusses," 5–6.

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Difficult births, different trajectories: a longer history of transatlantic competition law

In the 1920s, both the United States and Weimar Germany oversaw a permissive, pro-trust environment, though for different reasons. The US system was characterized by a desire for growth and a belief in the ability of conglomerates to rejig the economy from a wartime to a peacetime one at scale. By the beginning of the 1930s, however, the "competitive model of economic organization" that had obtained during the United States' boom years of the previous decade was put into question amidst the depths of the Depression, and calls for stricter state intervention arose.[56] Meanwhile, the economic troubles of Weimar Germany nourished a newfound ill will against cartels that inspired the introduction of a cartel law in 1923, after these powerful entities had enjoyed an outsized role in the development of German industrial capitalism throughout the nineteenth century.[57] But the loose judicial mooring and experimental character of the 1923 law meant that enforcement was spotty.

In the United States, two distinct strands of activity rose to prominence. While the period following the breakup of Standard Oil in 1910 had witnessed a yearning for competition in the classical liberal sense, the state was now tasked with a very different mission: setting prices and organizing output in a form of "consumer welfare" that contrasted markedly with that of Chicago school neoliberals. The first area in which changes occurred was litigation. In *Nebbia* v. *New York* (1934), the Supreme Court decided that New York state was allowed to regulate milk prices, while *Old Dearborn* v. *Seagram* (1936) granted states "police powers" to fix the prices even of nonessential goods.[58] Just after the American entry into World War II, the Court dramatically expanded the federal government's powers further by allowing the latter to regulate the wheat production of an Ohio farmer in *Wickard* v. *Filburn* (1942).[59]

In a similar vein, the list of per se rules began to balloon around 1940. While the Court had briefly permitted horizontal output cartels in *Appalachian Coals* v. *United States* (1933) in what is now viewed as a "Depression-era aberration," *United States* v. *Socony Vacuum Oil* (1940) quickly overturned this ruling and established per se rules against price fixing.[60] In the meantime, the landmark *Alcoa* case (1945) affirmed that a 90 percent market share was in itself illegal, regardless of any abuse of its position.[61] This line of thinking culminated in the 1960s with *Brown Shoe* (1962), *Philadelphia National Bank* (1963), and *Von's Grocery* (1966), which together tightened the *Alcoa* position to a 5 percent market share and reversed the burden of proof for mergers.[62]

The other strand of government activism was administrative. The Robinson-Patman Act of 1936 prohibited price discrimination and predatory pricing, while the 1937

[56] Phillips Sawyer, "US Antitrust Law," 12–13; Kovacic and Shapiro, "Antitrust Policy," 46–7.

[57] Christopher Harding and Julian Joshua, *Regulating Cartels in Europe* (Oxford, 2010), 69–79.

[58] *Nebbia* v. *New* York, 291 US 502 (1934); *Old Seaborn Co.* v. *Seagram-Distillers Corp.*, 299 US 183 (1936); Phillips Sawyer, "US Antitrust Law," 14.

[59] *Wickard* v. *Filburn*, 317 US 111 (1942).

[60] *Appalachian Coals, Inc.* v. *United States*, 288 US 344 (1933); *United States* v. *Socony-Vacuum Oil Co.*, 310 US 150 (1940). The quote is from Kovacic and Shapiro, "Antitrust Policy," 48.

[61] *Alcoa*, 148 F.2d 416.

[62] *Brown Shoe*, 370 US 294; *Philadelphia Nat. Bank*, 374 US 321; *Von's Grocery Co.*, 384 US 270.

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Miller-Tydings Act instituted performance and payments bonds for certain government contracts. At the same time, Thurman W. Arnold oversaw a 500 percent staff increase at the Department of Justice's Antitrust Division over a two-year period and won almost every case he brought to trial.[63] The short-lived National Industrial Recovery Act (NIRA), moreover, provided President Roosevelt with terrific powers over cartel creation and price reflation, though the Supreme Court struck it down in 1935 after only two years for amounting to an "unconstitutional delegation of congressional authority."[64]

Legal scholars now consider the 1960s a period of extraordinarily misguided antitrust policy.[65] Seen in a different light, however, the period was a testament to the defining characteristic of US antitrust law: an adaptability unmatched by the administrative regimes that have taken shape in most other parts of the world. Responding rapidly to a changing environment, one in which the criticism that John Kenneth Galbraith leveled at corporate concentration found fertile ground, legislation may well have overcorrected in the 1960s. But these fluctuations also emphasized the degree to which the ability to reverse substantive legal provisions was encoded in the institutional DNA of US antitrust policy.[66]

In Europe, the destruction of World War II failed to sweep concerns with competition from official agendas. The American occupation government in Germany required the enactment of a competition law, which, after a twelve-year struggle against Germany's industrial giants, was won by ordoliberals in 1957 with the passing of the Law against Restraints of Competition (GWB). Enforced by the Federal Cartel Office, it resembled an administratively organized rule-of-reason process focused on cartel prohibitions, vertical agreements such as tying arrangements, and a vague category that dealt with "market-dominating firms."[67] Much like the competition provisions in the newly formed EEC, the German law was a distinctly hybrid construction.

Competition rules had been central to the European Community from the outset. They were a cardinal demand of German negotiators at the 1955 Messina conference and, via ordoliberal German jurist Hans von der Groeben and French economist Pierre Uri's presence on the Spaak committee, found their way into the latter's influential 1956 report detailing the path towards a customs union.[68] France and Germany, by far the largest countries at the negotiating table in the run-up to Rome, formed competing poles, with the former supported by Italy, while the Netherlands, Belgium,

[63] Phillips Sawyer, "US Antitrust Law," 14.

[64] Ibid., 13.

[65] Kovacic and Shapiro, "Antitrust Policy," 51.

[66] Stephen Macekura, *The Mismeasure of Progress: Economic Growth and Its Critics* (Chicago, 2020), 120. John K. Galbraith, *The Affluent Society* (Boston, 1958); Galbraith, *The New Industrial State* (Boston, 1967).

[67] "Gesetz gegen Wettbewerbsbeschränkungen," third section, §§22–7, *Bundesgesetzblatt* 41 (9 Aug. 1957). See also Gerber, *Global Competition*, 168–70; Laurent Warlouzet and Tobias Witschke, "The Difficult Path to an Economic Rule of Law: European Competition Policy, 1950–91," *Contemporary European History* 21/3 (2012), 437–55.

[68] McGowan, *Antitrust Revolution in Europe*, 94–5; Katja Seidel, "DG IV and the Origins of a Supranational Competition Policy: Establishing an Economic Constitution for Europe," in Wolfram Kaiser, Brigitte Leucht, and Morten Rasmussen, eds., *The History of the European Union* (London, 2009), 129–47.

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and Luxembourg favored the German model.[69] Interestingly, the French and German positions reversed between the creation of the European Coal and Steel Community in 1951 and the signing of the Treaties of Rome in 1957: whereas France had initially supported strict anti-cartel provisions in an effort to fragment the vertically integrated German coal and steel producers, Paris, *contra* Berlin, now opposed strict enforcement.[70]

Since the signing of the Treaties of Rome in 1957, a strong consensus has formed around the idea that this new European constitution was ordoliberal in nature because it included several articles centered on competition—most notably Articles 3(f) and 85–6 EEC—and because, as political scientist Kenneth Dyson puts it, in "the early years of the European Commission, competition policy became a German domain."[71] Whereas Article 3(f) declared that the European Community would pursue "the establishment of a system ensuring that competition shall not be distorted in the Common Market," Articles 85 and 86 targeted, respectively, horizontal and vertical "agreements between enterprises" and firms taking "improper advantage of a dominant position."

Three features deserve highlighting. First, mergers and acquisitions were absent from these rules, a loophole that would not be fixed until a sixteen-year struggle resulted in the 1989 Merger Guidelines.[72] Second, the cartel clause was so weak as to be virtually nonexistent. After laying out the illegality of price fixing, market-sharing, and other practices in Article 85(1) EEC, the treaty spelled out wide-ranging exceptions, including "any agreements or classes of agreements between enterprises," as long as these did not "eliminate competition in respect of a substantial proportion of the goods concerned," or "impose on the enterprises concerned any restrictions not indispensable to the attainment" of the objectives laid out earlier in the treaty, and which only the Commission could grant (Article 85(3) EEC). Finally, in banning only "improper"

[69]In the negotiations leading up to the ECSC, the alliances had been different: Germany had been supported by Belgium and Luxembourg, all of whom had not wanted their coal and steel behemoths to be deconcentrated, while France's efforts to do just that were supported by Italy and the Netherlands. Matthieu Montalban, Sigfrido Ramirez-Perez, and Andy Smith, "EU Competition Policy Revisited: Economic Doctrines within European Political Work," *Cahiers du GREThA* 33 (2011), 1–46.

[70]For two competing explanations on France's rationale behind the Schuman Plan see A. W. Lovett, "The United States and the Schuman Plan: A Study in French Diplomacy, 1950–1952," *Historical Journal* 39/2 (1996), 425–55; William I. Hitchcock, "France, the Western Alliance, and the Origins of the Schuman Plan, 1948–1950," *Diplomatic History* 21/4 (1997), 603–30.

[71]Dyson, *Conservative Liberalism*, 374; see also John Gillingham, *European Integration 1950–2003: Superstate or New Market Economy?* (Cambridge, 2003), 249–58; Wernhard Möschel, "The Proper Scope of Government Viewed from an Ordoliberal Perspective: The Example of Competition Policy," *Journal of Institutional and Theoretical Economics* 157/1 (2001), 3–13. Van Horn, "Reinventing Monopoly," 209; Seidel, "DG IV and the Origins of a Supranational Competition Policy"; Antoine Vauchez, *Brokering Europe: Eurolawyers and the Making of a Transnational Polity* (Cambridge, 2015), 58–60; Biebricher, *Political Theory*. Sutherland himself has argued that Art. 85(3) EEC constitutes the EC's "rule of reason." Peter Sutherland, "The Competition Policy of the European Community," *St. Louis University Law School* 30 (1985), 149–70.

[72]Council of the European Communities, "Council Regulation (EEC) 4064/89 of 21 December 1989 on the Control of Concentrations between Undertakings," *Official Journal L* 395, 21 Dec. 1989, 1–12; on the struggle over merger control see Hubert Buch-Hansen, "Rethinking the History of European Level Merger Control: A Critical Political Economy Perspective" (Ph.D. dissertation, Copenhagen Business School, 2008), 114–47.

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conduct—that is, monopolization rather than monopoly—the cartel clause recalls the permissive attitude of early Sherman Act rulings such as *E. C. Knight* (1895), in which the Supreme Court had decided that only interstate commerce, not manufacturing, fell under the purview of the Act. Famously, this almost immediately led to a wave of mergers that included a Sugar Trust controlling 98 percent of the domestic sugar refining industry.[73]

This Eurocapitalist legal system was a negotiated and fledgling one. It was not purely ordoliberal, nor was it a "social market economy" modeled on the Federal Republic, which resembled a form of redistributive ordoliberalism.[74] Neither was the new competition regime particularly neoliberal in nature. And while the United States played an important role in pushing for the creation of the European Community, this was also by no means a carbon copy of American judicial practice.[75] Instead, a distinctive Eurocapitalist system was emerging. This system encapsulated the experience of German legal thinking on cartels and their misuse during World War II, of the strong French state and American doctrines such as the rule of reason, and of ordoliberal concerns with "complete competition."

Ultimately, the Eurocapitalist system at whose heart this competition regime was located represented one particular response to the momentous global changes of the 1970s. Threatening the viability of European industry and challenging any technological edge the Old Continent might yet possess, the energized economies of East Asia and Latin America necessitated, it seemed, a unified response.[76] Alone among the many international organizations in which the member states held a stake, the European bureaucracy in Brussels was able to make decisions of a nationally binding nature. As a result, Western Europe, in part reluctantly, put its faith in the European Community and the tentacular reach of the Commission.[77] Protecting the single market, after all, required an executive body with enormous powers. In sharp contrast to the meekness of the American Federal Trade Commission, the European Commission's Directorate-General IV enjoyed the ability to determine, prosecute, judge, and sentence offenders on its own.[78] Member states could only appeal to the European Court of Justice, which frequently sided with the Commission.

The belief that granting such powers to the Commission institutionalized a largely ordoliberal approach has become entrenched, although recent work foregrounds the

[73] *United States* v. *E. C. Knight Co.*, 156 US 1 (1895); Buch-Hansen and Wigger, *The Politics of European Competition Regulation*, 53. McGowan, *Antitrust Revolution in Europe*, 104, suggests that this constitutes a rule-of-reason approach, and was specifically intended as such by Groeben and his chef de cabinet, Ernst Albrecht, and principal legal adviser, Hans-Joachim Mestmäcker.

[74] Gerber, "Constitutionalizing the Economy," 60.

[75] See, for instance, the debate between Alan Milward and Michael Hogan regarding the importance of the Marshall Plan. Alan Milward, *The Reconstruction of Western Europe, 1945–1951* (London, 1984); Michael J. Hogan, *The Marshall Plan: America, Britain and the Reconstruction of Western Europe, 1947–1952* (Cambridge, 1987).

[76] Wayne Sandholtz, *High-Tech Europe: The Politics of International Cooperation* (Berkeley, 1992).

[77] Patel, *Project Europe*.

[78] But see Blauberger, "Of 'Good' and 'Bad'"; Tim Büthe, "The Politics of Competition and Institutional Change in the European Union," in Sophie Meunier and Kathleen R. McNamara, *The State of the European Union* (Oxford, 2007), 175–94.

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"syncretism" and "partiality" of European competition law.[79] But this was not an administrative court system that protected, as ordoliberals would have it, "the market" from the state and democracy on the one hand—although this was certainly the case—and monopolies on the other.[80] Nor was it a judicial system built on private litigation and case law. This would have made it highly sensitive to changes in economic thinking, a characteristic that had facilitated the rapid American shift to neoliberal Chicagoan antitrust policy. Instead, it was geared from the start towards achieving a relatively broad and open-ended goal: that of paving the way towards European integration—through a common market, in the first instance, but ultimately through political centralization and the construction of a European "superstate."[81] Such fundamental differences are mirrored in the history of American and European environmental thinking.

New environments: assembling a Eurocapitalist ecology

By collapsing time and space into something called the "global," the 1970s represented a seedbed for alternative conceptions of scale.[82] On the one hand, the brittleness of national borders had been demonstrated by environmental catastrophes such as acid rain and expansive oil spills, destabilizing the idea of the territorial nation-state as a meaningful political unit. Galvanized by this conceptual shift, Sicco Mansholt, president of the European Commission from 1972 to 1973, called for the establishment of a "World Pollution Authority" to overcome what the Dutch Labor politician considered the "out-of-date" concept of "sovereign" states.[83] On the other, the development of recombinant DNA in 1973 would soon focus the attention of polities in the global North on the question of biotechnology and its many promises and perils.[84] Combining the microscopic and the globe-spanning gave rise to a sense of "planetary" urgency, which was "reflected in the idea that all humans share a common, terrestrial home."[85] When Apollo 8 astronaut William Anders snapped "Earthrise" in 1968, he trained a flash on the fragility of our "blue marble," adrift in an endless black void, and exhorted humans to perceive their fates as tied to one another.[86]

At the same time, the cybernetic idea of the planet as a "Spaceship Earth" that emerged in this period underlined humanity's "hubris of control," fueling the

[79]See, for instance, Warlouzet, "Towards a Fourth Paradigm"; McGowan, *Antitrust Revolution in Europe*, 111–12; Slobodian, *Globalists*, 207; Warlouzet, *Governing Europe*, 157.

[80]Although it was more of an administrative than a juridical system. Sutherland, "The Competition Policy of the European Community," 156.

[81]Gillingham, *European Integration 1950–2003*.

[82]John S. Dryzek, *The Politics of the Earth: Environmental Discourses* (Oxford, 2005), 5; Joachim Radkau, *Die Ära der Ökologie: Eine Weltgeschichte* (Munich, 2015).

[83]Cited in John Lambert, "World Pollution Authority Proposed," *Forum: Environment Is Politics* 5 (9 June 1972), in Maurice Strong Papers, Environmental Science and Public Policy Archives (ESPP), Harvard University, EV0507, Box 41, Folder 406.

[84]Cooper, *Life as Surplus*.

[85]Ben Huf, Glenda Sluga, and Sabine Selchow, "Business and the Planetary History of International Environmental Governance in the 1970s," *Contemporary European History* 31/4 (2022), 553–69, at 554.

[86]Robert Poole, *Earthrise: How Man First Saw the Earth* (New Haven, 2008).

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creation of what historian Megan Black has described as a "global interior" ripe for exploitation.[87] In this new environment, "sustainable development" represented the subordination of the planetary to the global, a channeling of the neoliberal drive to flatten the world into an interconnected market.[88] And while extending the market ever deeper into the planet's fabric was an aim of both the neoliberal American and the Eurocapitalist projects, there were substantial differences in how these two entities went about this task.

It is important to remember that the United States was a leading force for stricter regulations at the start of the environmental revolution in the late 1960s and early 1970s. Even though Richard Nixon signed the executive order creating the Environmental Protection Agency (EPA) in 1970 purely for the public eye while privately considering environmentalists "enemies of the system," the early EPA was an innovative frontrunner on a number of environmental policies.[89] The 1966 Endangered Species Act, for instance, already operated on the precautionary principle that would become a hallmark of West German, and later European, environmental policy. Similarly, Congress prohibited the use of chlorofluorocarbons, or CFCs, as aerosols in 1977 following concerns over ozone depletion—much earlier than its transatlantic neighbors.[90] Meanwhile, with the 1970 Clean Air Act Amendments, Congress instructed the EPA to determine national ambient air quality standards, and the agency was notably not allowed to consider "economic costs and technological feasibility in setting standards."[91] To stay within the limits determined by the Clean Air Act—a successful piece of legislation that decreased the emission of virtually every pollutant bar carbon dioxide—US states also had to devise their own plans, which parallels the functioning of directives in European Community law.[92]

While the Commission was not specifically "tasked" with setting standards, this was one of the responsibilities shared by the EPA and the Commission. Both also oversaw progress towards these targets—although European member states were the ones administering specific policies—and could sue (member) states for noncompliance.[93] In addition, the European project learned from early American innovations in environmental policy. Environmental impact statements (EIS), in particular, found favor across the Atlantic, and Germany and France quickly adopted the practice in 1975 and 1976 respectively. A decade later, the Commission mandated what it called

[87]Christophe Bonneuil and Jean-Baptiste Fressoz, *The Shock of the Anthropocene: The Earth, History, and Us*, trans. David Fernbach (London, 2016); Black, *Global Interior*, 175–7.

[88]Huf, Sluga, and Selchow, "Planetary History of International Environmental Governance," 555.

[89]Sabin, *The Bet*, 50–51.

[90]R. Daniel Kelemen and David Vogel, "Trading Places: The Role of the United States and the European Union in International Environmental Politics," *Comparative Political Studies* 43/4 (2010), 427–56.

[91]Halvorson, *Valuing Clean Air*, 72.

[92]Ibid., 7, 72; Michael E. Kraft, "Environmental Policy and Politics in the United States: Toward Environmental Sustainability?", in Uday Desai, ed., *Environmental Politics and Policy in Industrialized Countries* (Cambridge, MA, 2002), 29–70. Whereas EC/EU directives establish a binding goal that member states must achieve however they see fit, regulations are binding in their entirety.

[93]Halvorson, *Valuing Clean Air*, 72.

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"environmental impact assessments" for a wide range of public and private projects, forcing stragglers to catch up.[94]

Despite such similarities, the paths of American and Eurocapitalist environmental thinking diverged rapidly in response to the challenges of the 1970s, in concert with the materialization of distinct models of political economic organization. Notably, the acceleration of an "asset economy" in the United States tied environmental movements more deeply into real-estate markets, hampering the development of inclusive environmental-justice projects.[95] But the individualization of responsibility that this process entailed was part of a larger refashioning of American life. Neoliberalization saw the devolution to private actors and markets, encased by a protective and upwardly redistributive legal cocoon, of spheres of governance including environmental protection that in the European project remained within the direct remit of national governments and, increasingly, the Brussels bureaucracy.[96]

The European Community's First Environmental Action Program, agreed in 1973 in the wake of the United Nations Conference on the Human Environment held in Stockholm the year before, adumbrated the contours of an emerging Eurocapitalist ecology. Organized around the common market, the program warned that disparities in the "measures taken by each Member State to ensure compliance with the limits established for the protection of the environment could give rise to distortions of competition." This would be "incompatible with the functioning of the common market" and necessitated the harmonization of European Community environmental measures.[97] Because nothing could "jeopardize free trade and competition," the First EAP's anthropocentric vision already offered an early glimpse of what fifteen years later would be popularized as sustainable development, declaring that it was necessary to "bring expansion into the service of man by procuring for him an environment providing the best conditions of life."[98] By 1980, the unification of growth and conservation was complete. While emphasizing the continued need for economic expansion, the Commission declared that environmental policy "has also taken on a new significance: sensible and careful management of natural resources including land-use planning."[99]

[94]Council of the European Communities, "Council Directive of 27 June 1985 on the Assessment of the Effects of Certain Public and Private Projects on the Environment," *Official Journal L* 175, 5 July 1985, 41.

[95]Lisa Adkins, Melinda Cooper, and Martijn Konings, *The Asset Economy* (New York, 2020); Rhee, *Natural Attachments*; Gross, *Shopping All the Way to the Woods*.

[96]Slobdian, *Globalists*. On taxation see Cooper, *Counterrevolution*; on care see Cooper, *Family Values*; on housing see Leendertz, *Der erschöpfte Staat*.

[97]Council of the European Communities, "Declaration of the Council of the European Communities and of the Representatives of the Governments of the Member States Meeting in the Council of 22 November 1973 on the Programme of Action of the European Communities on the Environment," *Official Journal C* 112, 20 Dec. 1973, 30–31. See also Marc Dorpema, "The Netherlands, the Environment, and European Integration in the Early 1970s," *Journal of European Integration History* 26/2 (2020), 229–46.

[98]European Council, "Programme of Action," 20 Dec. 1973, 5.

[99]Commission of the European Communities, "Communication to the Council," draft by Natali (VP), COM(80) 222, undated, 7. Dryzek suggests that the idea of "sustainable development" could just as well be traced back to many indigenous cultures. See Dryzek, *Politics of the Earth*, 148.

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Just as the Eurocapitalist project had adopted the "polluter-pays principle" from the OECD, it absorbed the idea of marrying environment and development, and turning the mixture into its own brand of Commission-guided "ecological modernization," from development economists such as Mahbub ul Haq, who would go on to devise the Human Development Index in 1990 after a stint as finance minister of Pakistan.[100] In the run-up to the 1972 Stockholm conference, Canadian oilman and conference organizer Maurice Strong was guided to the realization that slowing down growth to save the environment was off the table by economists from the global South, including ul Haq, who repeatedly pointed out the hypocrisy of Western calls for putting the brakes on economic development now that they had achieved relative comfort, and while the United States was perpetrating an "ecocide" in Vietnam.[101] To Adebayo Adedeji, head of the Nigerian delegation at Stockholm, calls for environmental protection rang "hollow in the face of calculated and deliberate bombardment of Vietnamese cities and countryside with bombs and vegetation destroying chemicals on a scale and level unknown even in the Second World War."[102] Summarizing the position of many delegations from the global South, Indira Gandhi declared that "poverty and need are the greatest polluters."[103]

While the United States would soon withdraw any bid for international environmental leadership to focus on protecting the valuable patents of American multinationals, the Eurocapitalist project was happy to play along.[104] Imbibing and operationalizing the connections between environment and development allowed the European Community to refashion its civilizing mission for the environmental age. As countries in the global South came to rely on deforestation to pay down strictly conditioned IMF debt burdens that broke open global markets, European technocrats, who were aware of what they themselves termed the "debt–development–environment question," crafted a generous developmental machinery at home and protected their producers with strict tariff regimes.[105] Imperial habits, it turned out, were hard to shake.[106]

[100]Archives of the Organization for Economic Cooperation and Development (OECD), ENV/M(70)1, OECD Environment Committee, "Summary Record of the 1st Session Held at the Château de la Muette, Paris, on 24th and 25th November, 1970," 23 Dec. 1970. The "polluter-pays principle" demands the internalization by firms of the costs of their environmental destruction. On "ecological modernization" see Stephen G. Gross, "Energy Economics after the Oil Shock in America and West Germany: The Rise of Ecological Modernization," *Journal of Modern History* 95/1 (2023), 111–48; Dryzek, *Politics of the Earth*.

[101]David Zierler, *The Invention of Ecocide: Agent Orange, Vietnam, and the Scientists Who Changed the Way We Think about the Environment* (Athens, GA, 2011).

[102]HAEU, CM 2/1972-0506, "Statement by the Head of the Nigerian Delegation Professor Adebayo Adedeji, Federal Commissioner for Economic Development and Reconstruction," undated.

[103]HAEU, CM 2/1972-0506, "Address of Indira Gandhi," 14 June 1972.

[104]Cooper, *Life as Surplus*; National Archives of the United Kingdom (NA-UK), PREM 19/3974, Richard Shaw to William Chapman, 30 Dec. 1991.

[105]On the "debt–development–environment question" see Commission of the European Communities, "The Conservation of Tropical Forests: The Role of the Community," *Official Journal C* 264, 16 Oct. 1989, 19.

[106]On the past and present of European empire see Hans Kundnani, *Eurowhiteness: Culture, Empire, and Race in the European Project* (London, 2023); and Megan Brown, *The Seventh Member State: Algeria, France, and the European Community* (Cambridge, MA, 2022).

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Present in the 1973 Environmental Action Program, this developmentalist approach to environmental protection became a central feature of a Eurocapitalist ecology based on the European Community-guided disbursement of state aid and the harmonization of environmental legislation across member states, as well as strict "end-of-pipe" regulations and more market-oriented measures such as environmental charges and emissions trading. Through a slew of programs including SAVE (energy efficiency), Altener (renewable energy), Thermie (novel energy technologies), Joule (energy research to combat greenhouse gases), Regen (energy and transport infrastructure in the European "periphery"), and Valoren (local energy infrastructure in the European "periphery"), the Commission spent billions of ECUs and later euros on environmental and energy projects itself. But far more significant, at least in monetary terms, was its support for state aid in the environmental field.[107] While it is true that the Competition Directorate's successive guidelines dictated the modality of support for environmental projects, this did not mean that member states have been prohibited from pursuing industrial policies to address environmental challenges. Rather, the European Community framework for environmental state aid has long constituted a distinctive form of supranational industrial policy.

A genealogy of European environmental state aid

In its first brief communication on the relationship between state aid and environmental protection, the Commission appeared vague and insouciant, an attitude born in part of the firm belief that environmental problems would be dealt with expeditiously. The 1974 letter to the then nine member states declared that actions in the field of environmental state aid were a "matter of [the states'] own judgment"—as long as these measures were not implemented "to the detriment of the common interest," by which the Commission meant "distortions" of the common market.[108] In a transitional phase of six years between January 1975 and December 1980, "state aids designed to assist existing firms in adapting to laws or regulations imposing major new burdens relating to environmental protection" would be exempt under Article 92.3(b) EEC for constituting aid "to promote the execution of important projects of common European interest."[109]

In this first communication, the Commission only accepted aid for investments intended to "reduce or eliminate pollution," through either new equipment or more efficient processes, and stipulated a degressive timeline that allowed for a net after-tax subsidy of 45 percent in 1975 and 1976, 30 percent in 1977 and 1978, and 15 percent in 1979 and 1980.[110] These provisions only applied to existing companies, as new businesses were expected to adhere to environmental standards as a matter of

[107]On these projects see Commission of the European Communities, "Energy and Economic and Social Cohesion (Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee)," COM (93) 645 final, 14 Feb. 1994, Annex II; Commission of the European Communities, "Energy Planning in the European Community (at Regional Level) (Communication from the Commission)," COM (91) 53 final, 8 May 1991.

[108]European Commission, "Environmental Matters," 1–6.

[109]Ibid., 6–8.

[110]Ibid., 8.

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course. Exceptions would, however, be considered for firms confronted with international competitors that operated on standards different from those in the European Community, or which themselves received some form of aid. The Commission specifically excluded the possibility of providing operating aid to relieve companies of the financial burden caused by polluting activities, which in practice meant that firms could not be reimbursed for any environmental charges levied by public authorities.[111]

While this initial framework might seem relatively strict, it also remained unenforced. State aid cases were purposefully ignored as the crises of the 1970s buffeted the European Community. In fact, records for exemptions under Article 92.3(b) EEC on projects of common European interest in the categories of energy and environmental protection, which constituted the vast majority of such cases, were not kept until 1980. The result was that Manfred Caspari, director general of DG IV during Sutherland's tenure as competition commissioner, was forced to report that "it may well be that before 1980 an indeterminate number of cases were exempted under paragraph 3(b)."[112]

In 1980, the Commission decided to extend this transitional regime virtually unchanged until the end of 1986. It specified that investment aid could only be granted to firms seeking to update installations that had been in operation for at least two years and fell short of new environmental standards, and fixed the net grant equivalent at 15 percent.[113] The Commission again extended the new regime in December 1986, just after the passage of the Single European Act, to cover the period of the Fourth Environmental Action Program, which ran from 1987 to 1992.[114] By this point, it began to dawn on the Commission that the need for environmental protection would not disappear any time soon, and, contrary to its initial optimism, it appeared that companies were slow to adopt the polluter-pays principle. After the Maastricht Treaty and the Fifth European Environmental Action Programme consolidated the idea of the "environmental imperative" adopted at the June 1990 European Council meeting in Dublin, the Commission presented an expanded framework in 1994.[115] A much more detailed document, the 1994 communication opens with an exegesis on the changing landscape of environmental policy, arguing that the "need to integrate environmental with other policies also means taking into account the objectives of economic and social cohesion

[111]Ibid., 11–12.

[112]The first case to be exempted under Art. 92.3(b) EEC was the Airbus project in 1974. HAEU, PSP-245, M(anfred) Caspari, "Note for the Attention of Mr. Sutherland," undated, 1. The aid framework for environmental protection was spelled out in the Environmental Action Program (EAP) in 1973, while energy came under the purview of Art. 92.3(b) EEC with the European Commission's *Seventh Report on Competition Policy* (Brussels, 1978), 173–9.

[113]Commission of the European Communities, *Tenth Report on Competition Policy* (Luxembourg, 1981), 157. See also Gerry Facenna, "State Aid and Environmental Protection," in Andrea Biondi, Piet Eeckhout, and James Flynn, eds., *The Law of State Aid in the European Union* (Oxford, 2003), 245–64.

[114]Commission of the European Communities, *Sixteenth Report on Competition Policy* (Brussels, 1987), 176–7.

[115]Commission of the European Communities, "Towards Sustainability: A European Community Programme of Policy and Action in Relation to the Environment and Sustainable Development," COM(92) 23 final, 27 March 1992.

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in the Community," as well as contending with "the requirements of maintaining the integrity of the single market, and international commitments in the environmental field."[116]

The realization in the mid-1980s that climate change posed a significant and lasting threat to humanity's survival necessitated new types of policy, such as the ill-fated dual carbon/energy tax, as well as new types of state aid.[117] Rather than restrict environmental measures in line with neoliberal austerity, the Commission decided to accept certain types of operating aid in addition to investment support, including grants to cover the operating costs of waste facilities and water treatment plants. It also allowed "horizontal support measures" in such fields as research and development for less polluting technologies, environmental audits, and informational campaigns.[118] In addition, it carved out exceptions for renewable energy sources, which had been slow to benefit from European Community funding.[119] The Commission also began to look favorably upon "aid that encourages consumers and firms to purchase environmentally friendly products."[120] Prefiguring the vagueness of recent Commission communications, it suggested, moreover, that "such aid is normally only justified when adverse effects on competition are outweighed by the benefits for the environment"—a meaningless definition since no one knew, or indeed knows, how to adequately measure environmental benefits.[121] Investment aid to comply with existing standards remained fixed at 15 percent (now gross rather than net), but the Commission also accepted 30 percent for investments that exceeded standards; small- and medium-sized firms could receive an extra 10 percent.[122] Aid for informational campaigns was no longer considered aid and therefore did not fall under the purview of the Commission's competition regime.[123] Finally, the purchase of environmentally friendly products (by either firms or individuals) could be supported at up to 100 percent of "extra environmental costs."[124]

[116]Commission of the European Communities, "Community Guidelines on State Aid for Environmental Protection (94/C 72/03)," *Official Journal C* 72, 10 March 1994, 3.

[117]On the energy tax see Anthony R. Zito, *Creating Environmental Policy in the European Union* (London, 2000), 88–90.

[118]European Commission, "Environmental Protection (94/C 72/03), 4–5.

[119]On why solar was less popular than nuclear energy see Elizabeth Chatterjee, "The Poor Woman's Energy: Low-Modernist Solar Technologies and International Development, 1878–1966," *Journal of Global History* (2023), 1–22.

[120]European Commission, "Environmental Protection (94/C 72/03)," 4–5.

[121]Ibid., 5. On the difficulty of environmental modelling see William Rankin, "The Accuracy Trap: The Values and Meaning of Algorithmic Mapping, from Mineral Extraction to Climate Change," *Environment and History* 29/1 (2023), 15–47; and Robert S. Pindyck, "The Use and Misuse of Models for Climate Policy," NBER Working Paper No. 21097, April 2015.

[122]This also applied in the absence of mandatory standards. European Commission, "Environmental Protection (94/C 72/03)," 6–7.

[123]Ibid., 7–8.

[124]Ibid., 8. There were some exceptions. See Council of the European Communities, "Council Directive of 26 June 1991 Amending Directive 70/220/EC on the Approximation of the Laws of the Member States Relating to Measures to Be Taken against Air Pollution by Emissions from Motor Vehicles (91/441/EEC)," *Official Journal L* 242, 30 Aug. 1991, 1–106.

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This substantially revised framework lasted until 1999, when it was twice extended, unamended, until 31 December 2000.[125] Against the looming backdrop of climate change, the Commission realized the degree to which "competition policy and environmental policy are not mutually antagonistic." Rather, it now explicitly understood that "the requirements of environmental protection need to be integrated into the definition and implementation of competition policy, in particular so as to promote sustainable development."[126] As such, the Commisison's approach shifted from a "corrective" one to the slightly more ambitious and proactive environmental policy outlined in the Fifth Action Programme.[127] For one thing, this meant the specific application of less stringent *de minimis* rules to the environmental field. Whereas aid of €100,000 no longer fell under the purview of Article 87 after 2001, for certain environmental projects that number was now raised to €5 million; in the Commission's 2008 guidelines the figure was raised again, to €7.5 million for investment aid and €5 million for operating aid.[128] Under the most recent General Block Exemption Rules, investment aid of less than €30 million for individual environmental projects no longer needs to be notified.

At the same time, the Commission felt that seven years after the adoption of the Fifth EAP and given the Kyoto Protocol's advocacy for "market instruments and proper pricing," investment aid should no longer be granted to bring companies into line with existing standards, except in the case of small- and medium-sized firms, which would continue to receive 15 percent. Vagueness remained critical: "Where no standards exist, eligible costs consist of the investment costs necessary to achieve a higher level of environmental protection than that which the firm or firms in question would achieve in the absence of any environmental aid."[129] Investment aid was also acceptable for firms investing to improve on common standards (30 percent) and for energy-saving measures (40 percent). Since the production of renewables was now "one of the long-term objectives that should be encouraged most," they could be supported up to 100 percent of eligible costs where they were shown to be necessary (and up to 40 percent where not).[130]

Seen in this light, the Commission's new flagship initiative in the field of industrial policy—its so-called Important Projects of Common European Interest, or IPCEIs—represents the formalization of a vague legal framework that is half a century old. Created in 2014, the name of the Commission's new initiative was lifted directly from Article 92.3(b) EEC, in what political economists have described as the

[125]Commission of the European Communities, "Extension of the Validity of the Community Guidelines on State aid for Environmental Protection," *Official Journal C* 14, 19 Jan. 2000, 8; Commission of the European Communities, "Extension of the Validity of the Community Guidelines on State aid for Environmental Protection," *Official Journal C* 184, 1 July 2000, 25. See also Allard Knook, "Energy State Aid," in Lucilla de Almeida and Josephine van Zeben, eds., *Law in the EU's Circular Energy System: Biofuel, Biowaste and Biogas* (Cheltenham, 2023), 226–38.

[126]Commission of the European Communities, "Community Guidelines on State Aid for Environmental Protection (2001/C 37/03)," *Official Journal C* 37, 3 Feb. 2001, 3.

[127]Ibid., 5; European Commission, "Towards Sustainability."

[128]European Commission, "Environmental Protection (2001/C 37/03)," 18; European Commission, "Environmental Protection (2008/C 82/01)," 26.

[129]European Commission, "Environmental Protection (2001/C 37/03)," 18.

[130]Ibid., 6–8.

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"institutional activation" of a "dormant legal resource."[131] So far, ten IPCEIs have been approved in sectors including microelectronics, batteries, hydrogen, and cloud computing. At €37.2 billion, the combined amount of state aid that these projects have been able to mobilize has, however, been meager.[132] Since the IPCEI initiative is, moreover, eclipsed in both financial muscle and operational flexibility by the funding mechanisms that were available under the Biden administration's Inflation Reduction and CHIPS Acts, many companies simply "dropped out" of the scheme and decided to seek their fortunes across the Atlantic.[133]

Rather than represent a fundamental reorientation in the Commission's approach to state aid, then, its most recent communications and the IPCEI initiative are part of a longer genealogy with roots in the 1970s.[134] Neither did the Commission's state aid regime in the field of energy and the environment become more stringent following what some scholars describe as the neoliberal turn of the 1980s, an idea that is itself, as we have seen, based on a problematic understanding of neoliberal Chicago antitrust policy. Instead, the Commission's communications became more detailed and expansive, gaining a stronger emphasis on new technologies and larger structural projects, while excluding entire categories of environmental protection that were no longer considered distortive. While much of the gloom surrounding Europe's failure to lead a global green transition is down to poor marketing—the European project's share of renewable energy in final consumption almost doubles that of the US and was a quarter higher than China's in 2022—this should not distract from the simple fact that its efforts remain insufficient to address the unfolding climate catastrophe. Eurocapitalism might be better for the planet than carboniferous neoliberalism, but it too devours the material basis of its own existence, as well as that of everyone else.[135] It currently takes four to five years to receive funding through an IPCEI, critical years that the planet may run out of soon.[136]

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Strong, state-led industrial projects to address environmental problems have always been possible under the watchful gaze of the European Leviathan. Even after the Commission abolished the notification system and established the principle of a "one-stop shop" allowing the Commission to intervene against any anticompetitive merger in the European Community in what one political scientist described as the "European Antitrust Revolution," the market was understood by European officials to require

[131]Timo Seidl and Henrique Lopes-Valença, "Waking a Dormant Legal Resource: Institutional Activation and the Origins of Important Projects of Common European Interest," OSF preprints, 15 Oct. 2024.

[132]Luuk Schmitz, Timo Seidl, and Tobias Wuttke, "The Costs of Conditionality: IPCEIs and the Constrained Politics of EU Industrial Policy," OSF preprints, 2 Aug. 2024, 3.

[133]Ibid., 19–20. On the continuities between "Bidenomics" and an earlier age of American neoliberalism see Desiree LeClercq, "Participatory Pluralism and the Vestiges of Neoliberalism," University of Georgia School of Law legal studies research paper (forthcoming).

[134]European Commission, "A Green Deal Industrial Plan."

[135]On "carboniferous capitalism" see Lewis Mumford, *Technics and Civilization* (London, 1934).

[136]Schmitz, Seidl, and Wuttke, "Costs of Conditionality."

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direct guidance.[137] To this extent, the Commission's 2008 guidelines constituted a familiar refrain, facilitating aid levels of up to 100 percent for renewable energy, for cogeneration, for district heating, and for firms seeking to be more environmentally friendly than European Community standards demanded, whether the enterprise was large or small.[138] Sluiced through the Commission's information channels and complementing its own initiatives, including close to $300 billion of funding for "sustainable development" through its Cohesion and Structural Funds, it is important to clearly distinguish between neoliberal reregulation and Eurocapitalist governance.[139] While responsibility for everything from "family values" to environmental policy has been shifted from a selectively hollowed-out state to private individuals in the United States, the European Union constructed, in the words of two economists, the "world's largest regional development policy programme."[140]

The point is not that there are no corners of the EU that are neoliberal, because there certainly are. Neither is it to suggest that Eurocapitalism is necessarily more benign than neoliberalism. Instead, the purpose of tracing the disparate histories of American neoliberalism and Eurocapitalism through the prism of competition law and environmental policy is to suggest that taking off the "neoliberal lens" serves as more than just an analytical innovation. It clarifies our options for dealing with a superheating planet by beginning to historicize the recent turn towards environmental industrial policies from China to the United States to Europe, in the process demonstrating the precarious nature and contentious construction of different political strategies to tackle catastrophic climate change. Viewing the history of Eurocapitalism through the overlaid lenses of environment and competition offers hope that on the horizon there is something beyond what Christophe Bonneuil and Jean-Baptiste Fressoz have described as the "peaceful and reassuring project of sustainable development," with its emphasis on markets and efficiency.[141] Something, perhaps, beyond neoliberalism in its many guises.

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[137]Council of the European Communities, "Council Regulation (EC) No. 1/2003 of 1 December 2002 on the Implementation of the Rules on Competition Laid Down in Articles 81 and 82 of the Treaty," *Official Journal L* 1, 4 Jan. 2003, 1–25; Council of the European Communities, "Council Regulation (EC) No. 139/2004 of 20 January 2004 on the Control of Concentrations between Undertakings (the EC Merger Regulation)," *Official Journal L* 24, 29 Jan. 2004, 1–22. On the "European Antitrust Revolution" see McGowan, *Antitrust Revolution in Europe*, 150–75.

[138]These figures refer to ceilings in cases in which the recipient is decided through a bidding process. In other cases, the figures are 80 percent for small firms, 70 percent for medium-sized firms, and 60 percent for large enterprises. European Commission, "Environmental Protection (2008/C 82/01)," 33.

[139]European Commission, "European Structural and Investment Funds: 2023 Summary Report of the Annual Programme Implementation Reports Covering Implementation in 2014–2020," COM(2024) 6 final, 15 Jan. 2024, 8–9

[140]Cooper, *Family Values*; Philip McCann and Raquel Ortega-Argilés, "EU Cohesion Policy: The Past, the Present and the Future," in Daniel Rauhut, Franziska Sielker, and Alois Humer, eds., *EU Cohesion Policy and Spatial Governance* (Cheltenham, 2021), 17–25.

[141]Bonneuil and Fressoz, *The Shock of the Anthropocene*, Ch. 2.

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