FRAMING ELITE CONSENSUS, IDEOLOGY AND THEORY & A CLASSCRITS RESPONSE

Athena D. Mutua*

TABLE OF CONTENTS

INTRODUCTION

I recently attended a dinner party (a fundraising party no less) in which the conversation turned to the current conditions in the United States. With Walgreen's attempts to relocate to Switzerland in order to avoid U.S. taxes on my mind,[1] I imprudently questioned the ethics of modern-day big business (and by implication, its business leaders). Offended, a prominent business man in attendance informed me that he had a lot of faith in the business community, and that he had run a number of businesses that created jobs in America. Of course he had a point. My father, too, owns a business, and I have made a similar point.[2]

1. Andrew Ross Sorkin, *At Walgreen, Renouncing Corporate Citizenship*, N.Y. TIMES (June 30, 2014), http://dealbook.nytimes.com/2014/06/30/renouncing-corporate-citizenship/?_r=0.

2. This is a small locally-based tree service company, employing approximately ten people. *See* Athena D. Mutua, *Stuck: Fictions, Failures and Market Talk as Race Talk*, 43 SW. U. L. REV. 517, 521 (2014).

The businessman's and my position may not have been that far apart. I was referring to big business and particularly multinationals as opposed to small businesses. I believe small businesses are more grounded in the community, create multiplier effects for that community, may hire people in that community and neighborhood, may support other civic organizations in the community and often struggle if the community is struggling. These businesses thus may bring other perspectives. So for instance while Wal-Mart, Burger King and other big businesses fight against increases in the minimum wage laws, a recent poll suggests that at least 62 percent of small businesses believe that the minimum wages should be increased and that if customers have more money in their pockets their businesses will benefit.[3]

This paper—really a thought piece—suggests that neoliberal practices, theory and ideology frame an elite consensus that makes elites feel good emotionally but which are ethically, intellectually, and structurally problematic for the social well-being of almost everyone except the top 1% of the country's population. It thus warrants change. Focused primarily on the United States, the thought piece takes as its specific target neoclassical economic theory, the theory upon which neoliberalism rests. In doing so, it briefly seeks to outline, in plain language, the neoclassical story and proposes a potential ClassCrits response to it. It builds on the examination I began in the Foreword of the ClassCrits VI symposium.

Part I of this paper discusses the relationship between neoliberalism and neoclassical economic theory and tentatively suggests that they present feel-good ideas for elites that potentially inform their neoliberal consensus. Part II examines a number of business practices that make visible the current elite consensus about the way the benefits and burdens of the society should be produced, distributed and shared and the effects of these practices. It does so by chronicling the recent behavior and practices of large corporations on issues such as regulation, taxes, wages, production, job creation, outsourcing and government largesse.

Part III summarizes the neoclassical economic theory about how the market works; a story that, I believe, undergirds and supposedly justifies much of the behavior of business elites described. This part then turns to my stab at outlining, in plain language, a basic ClassCrits response to this story (and the precepts implicit in it). Part IV tests some of these ideas against the changes in airline travel as chronicled by Tim Wu.

---

3. *62 Percent of Employers Think Minimum Wage Should Be Increased, Finds New CareerBuilder Survey*, CAREERBUILDER (Sept. 25, 2014), http://www.careerbuilder.com/share/aboutus/pressreleasesdetail.aspx?sd=9%2F25%2F2014&id=pr843&ed=12%2F31%2F2014.

I. FRAMING THE ELITE CONSENSUS

Thought: Neoclassical theory, free market ideology and neoliberal politics are emotional feel-good candies for elites . . .

Returning to the dinner party conversation with the now offended prominent business man, the tone of the conversation bothered me. It reminded me of a reported conversation between Steve Jobs and President Obama about the relatively few jobs that Apple, Inc. had created in the United States relative to some of its overseas operations.[4] Jobs, as the news account read, rather haughtily commented that those jobs were never coming back to the U.S.[5] This, to me, was a curious response as, according to the economist Marianna Mazzucato, the U.S. government spearheaded and funded almost all of the technology that makes the Apple iPad, iPhone, and related technologies so smart, including the Internet itself, GPS, touch screen display and the recent SIRI voice activated personal assistant.[6] Mazzucato goes on to note:

> Such radical investments – which embedded extreme uncertainty – did not come about due to the presence of venture capitalists, nor of "garage tinkerers." It was the visible hand of the State which made these innovations happen. Innovation that would not have come about had we waited for the "market" and business to do it alone – or government to simply stand aside and provide the basics.[7]

It struck me when I read this account about Steve Jobs, and then again during the dinner party, that these folks, these elites, did not seem to give any credit to or to fully appreciate the contribution that the people who work for their companies (whether here or abroad) make to their businesses' success. Nor did they seem to have any appreciation for, let alone any felt obligation to,[8] the countries that invested in the human, social, and technological capital or other infrastructure that made this success possible. Instead, the response seemed to imply that these business elites, all by their lone selves,[9] were responsible for their businesses' successes and that they should be praised for doing society a big favor – for which they receive little in return. Steeped in

---

4. Charles Duhigg & Keith Bradshier, *How U.S. Lost Out on iPhone Work*, N.Y. TIMES, Jan. 22, 2012 at 1.

5. *Id.*

6. MARIANA MAZZUCATO, THE ENTREPRENEURIAL STATE: DEBUNKING PUBLIC VS. PRIVATE SECTOR MYTHS 11 (2013).

7. *Id.*

8. DAVID HARVEY, A BRIEF HISTORY OF NEOLIBERALISM 35 (2005) (discussing whether class power is transnational or defines its loyalties to a particular state).

9. *See generally* CHUCK COLLINS, ET AL., I DIDN'T DO IT ALONE: SOCIETY'S CONTRIBUTION TO INDIVIDUAL WEALTH AND SUCCESS (2004).

an exaggerated sense of individualism, this attitude struck me as both untrue and ethically problematic, but nonetheless integral to, and shaped by, neoliberal ideology and orientation.

Neoliberalism is a set of ideas, policies and practices meant to ground and preserve in social reality a particular set and type of market relations (of which there are many different types) that it ideologically refers to as a "free market" and which is based on the intellectual scaffold of neoclassical economic theory.[10] As such, it comprises a theory, an ideology, and a set of policies and practices.[11]

The intellectual theory of neoclassical economics can be traced to late 19th century thinkers such as Alfred Marshall. However, its neoliberal intellectual variant roughly begins in the 1940s and has been institutionalized over the last forty years through neoliberal politics,[12] a politics that includes the cultivation of an ideology that champions the promotion of unfettered markets (free market fundamentalism). As several scholars have chronicled,[13] a small group of passionate advocates promoted neoliberal neoclassical economic thinking, then a marginal branch of economics. The neoliberal label, according to David Harvey, "signaled adherence to the free market principle" of these late 19th century thinkers[14] but also embraced Adam Smith's observation, though made in the historical and regional context of his time, that markets, through individuals pursuing their own economic interests, are self-regulating. Neoliberalism thus eschews government intervention. These views were in contrast to then mainstream economic ideas, which promoted a mixed economy and saw the rise of Keynesian economics.[15] Keynes had suggested, in part, that insufficient aggregate demand (caused by unemployment) could lead to stagnation in the economy requiring government intervention, a condition, he argued, was more common in the real economy than neoclassical economists' theories suggested. The social movements of the 1960s together with the economic ills of stagflation (stagnating wages and inflation), among others in the 1970s,

---

10. Matthew Titolo, *Privatization and the Market Frame*, 60 BUFF. L. REV. 493, 496-97, 498-99 (2012) (suggesting that neoliberalism comprises a set of idea and policy and practices); *see generally* John Schlegel, *On the Many Flavors of Capitalism or Reflections on Schumpeter's Ghost*, 56 BUFF. L. REV. 965 (2008) (discussing the many varieties of capitalism).

11. *Id.* at 495-96.

12. *See* HARVEY, *supra* note 8, at 20.

13. *See generally, e.g.*, HARVEY, *supra* note 8; GÉRARD DUMÉNIL & DOMINIQUE LÉVY, CAPITAL RESURGENT: ROOTS OF THE NEOLIBERAL REVOLUTION 11 (Derek Jeffers trans., 2004); THE RISE AND FALL OF NEOLIBERALISM: THE COLLAPSE OF AN ECONOMIC ORDER? 23 (Birch and Mykhnenko, eds., 2010); Jamie Peck, CONSTRUCTIONS OF NEOLIBERAL REASON (2010).

14. *See* HARVEY, *supra* note 8, at 20.

15. *See id.* at 21.

created space for neoliberalism's emergence and later predominance, [16] an emergence for which its proponents were well prepared.[17] Factions of the moneyed elite, including many corporations, enthusiastically funded these ideas. These were powerful corporations, generating revenues that constituted about half of the United States' gross national product (GNP).[18] These backers funded think tanks, foundations, academic programs and scholarships for those interested in "economics" contributing to the spread of neoclassical thinking, funding practices that continue today. Finally, Ronald Reagan in the U.S. and Margaret Thatcher in Britain furthered this project by institutionalizing and deepening the spread of market fundamentalism through government, deregulating a host of industries and privatizing government services.[19]

Neoliberalism, inspired by neoclassical economic theory, has two major policy recommendations and practices; these recommendations and practices include deregulation of the economy and privatization of government functions. But it also includes policies promoting tax cuts (particularly for businesses), "free trade," financial liberalization in the name of liberty, while manifesting a hostility toward unions and social safety net provisions ("which, theoretically, decrease the incentive of recipients to work").[20] All of this rest on "a belief in the power of 'free markets' to produce optimal social welfare."[21] However, the financial crisis of 2008 – the Great Recession – along with increasing inequality,[22] and stagnant worker wages within a context of deteriorating, alienating, and polluted social and ecological environments seem to belie the notion that a "free market" will solve all of society's ills, or even most of them, and may in fact exacerbate them.

Recognizing the reality that one must have money or some other tradable good or service in order to play in the "free market," begins to explain why those who have more money and capital assets might be advantaged by the market, and perhaps also why almost everything has been increasingly

---

16. *See generally* DUMÉNIL & LÉVY, *supra* note 13.

17. *See* HARVEY, *supra* note 8, at 43.

18. *See id.*

19. *See id.* at 1.

20. Titolo, *supra note* 10, at 495 n.12, 498 n.24, 515.

21. *Id.* at 497 (noting that "neoliberalism is both an intellectual framework and a set of institutionalized political and social practices, including a constellation of familiar concepts: neoclassical/rational-actor economics, market self-regulation, the efficient market hypothesis, a fundamental belief in the power of "free markets…").

22. Many have written about the growing inequality in the U.S. (and abroad). *See* Mutua, *supra* note 2, at 530 n.52.

financialized.[23] But it may also explain the contradictory feature of neoliberalism around state power. That is, though neoliberalism expresses distrust of the state, consistent with *neoclassical intuitions*, neoliberalism, as politics and in the face of human needs and activities, such as union disruption, requires and inures the authoritarian coercive power of the state. That is, state power is needed in order to protect and preserve the rights of "private property, individual liberties, and entrepreneurial freedoms"[24] central to the "free market" as envisioned. These notions sound in the tradition of neoclassical theory, which argues that the state is only to provide basic background rules and environment for the market, such as protecting private property, in order for individual self-interest and activity to result in increased social welfare.

However, the necessity of a powerful state or set of institutions to maintain this system, as neoliberal politics recognize, runs counter to the neoclassical idea that the market through individual activity will simply take off in a self-regulatory manner once these background conditions are met. In other words, neoliberal politics recognize that the market is not self-regulating. The trick to masking this contradiction, at least at the popular level, seems to be "free market ideology." This ideology *ignores* both the substantial powers of the state in actually organizing the market *and* the efforts of free market proponents to control and direct state power in a particular way *while it simultaneously demonizes* state action as unnecessary and incompetent. The goal is to constrain, control and (re)direct state actions toward desired (elite?) ends while using the rhetoric of a self-regulating market and government incompetence to both confuse and galvanize popular consent for this redirection.[25] The basic message of the ideology is that the market is good, is more efficient at delivering goods and services than the government and thus will improve the well-being of all who are willing to work hard, as well as the message that government is bad and dangerous. For example, protesters who, in objecting to government interference in the market, proclaimed that the government should keep its hands off their Medicare, may well be evidence of the ideology's effectiveness at masking government's role in society and the market. Lost on the protesters was the

23. *See generally* David A. Westbrook, *Dinner Parties During "Lost Decades": On the Difficulties of Rethinking Financial Markets, Fostering Elite Consensus, and Renewing Political Economy*, 36 SEATTLE U. L. REV. 1187 (2013).

24. HARVEY, *supra* note 8, at 21.

25. The rhetoric suggests the desired ends are to improve social welfare but the practices suggest that the desired ends are to use state power through the rule of law, among other things, to move social resources into private hands, enhance elite class power and then to constrain any disruptive forces that result, a thesis David Harvey forwards. *See id.* at 78.

fact that Medicare, a pretty well-functioning program, is a government program, even though it in some small respects partners with private companies.[26]

For elites, believing in this theory (and ideology) is very attractive and comforting. According to the theory, elites can benefit society by aggressively pursuing their own interests – they need not consider anybody or anything else. Further, they are justifiably and handsomely rewarded by the efficiencies they generate in *neutral market processes* based on their individual superior talent, hard work or strategic investment. In addition, a politics (a set of policies and practices) that prefers decision making by experts, from Wall Street, the IMF, the local chamber of commerce, etc. – institutional networks of which elites are often a part—further bolsters elite self-regard because it amplifies the value of their opinions, participation and decision-making, despite its anti-democratic underbelly.[27] In other words, the theory not only serves elite economic interests but massages elite egotism, supplying emotional justifications and support – emotional candy – for actions that are basically self-serving. As such, it is unsurprising that elites are unconcerned with the inconsistency posed by the notion of a self-regulating market and the reality of a market that requires constant intervention by a state, nor the anti-democratic threat their own actions pose in the context of such a state. And it is further unsurprising that they are resistant to the idea that the theory and the decisions they make in its name fail to work for anyone other than them.

Now the elite class, comprised of wealthy individuals and elite business managers and owners, is not monolithic.[28] In fact, one might argue that the productive elites, always combatting their own internal competitive struggles, are in a major struggle with the financial elites, as Wall Street's recent criticisms of and potential threat of harm to JetBlue Airlines because of its consumer-friendly policies, might well exemplify. In addition, some

26. Although the usual argument is that private industry can provide services better and more efficiently (cheaper) than government, this was apparently not always the case with health insurance costs. *See* Joseph R. Antos & Alfredo Goyburu, *Comparing Medicare and Private Health Insurance Spending*, HERITAGE FOUND. (Apr. 8, 2003), http://www.heritage.org/research/reports/2003/04/comparing-medicare-and-private-health-insurance-spending (arguing that the increase in cost and coverage was about the same). *But see* Anne Underwood, *Medicare — That's a Government Program?*, N.Y. TIMES (Aug. 21, 2009, 5:14 PM), http://prescriptions.blogs.nytimes.com/2009/08/21/medicare-thats-a-government-program/?_r=0.

27. This may be particularly rewarding when the decisions operate within what Matthew Titolo calls the technocratic frame, allowing experts to pontificate on findings of efficiencies instead of engaging the messiness of normative discussions about what is right (*e.g.*, is dropping drones cheaper rather than are dropping drones ethical). Titolo, *supra* note 10, at 529, 530, 532, 532-33.

28. *See, e.g.*, COLLINS, *supra* note 9.

might argue that the ethics of business elites are profoundly shaped not only by the privileges, but also by the extreme competitive pressures of globalization. But globalization itself (as well as the maxim to maximize profit (at all cost) as the primary business goal) is a policy *decision*, with some countries, regions, and governments having more power to shape the policies and practices that shape globalization than do others. In any event, though the financial elites currently seem to have the upper hand in dictating which businesses thrive, both the productive and financial elite seem committed to the shared goal of minimizing both the power of non-elite working people and governments,[29] the latter, at least, to the extent that governments might serve the interests of the broader society.

II. PRACTICE: BUSINESS AS USUAL AFTER CRISIS

Thought: The effects of a range of business practices have been social unrest around wages, increasing inequality, a disappearing middle class, increased poverty, displaced young people, and the diminishment of people's life chances in general, as well as, an endangered social infrastructure and safety net in the U.S. But for elites the neoclassical inspired neoliberal business practices have been a boom . . .

Past Classcrits' call-for-papers note that "[t]he economic crisis of 2008" appeared to be a "referendum on the failures of deregulation and neoliberal ideology all over the world."[30] They also questioned whether theories such as neoclassical economics, among others, would change in some of its basic assumptions or whether its current thinking would simply "rebound like the Dow."[31] However, the ClassCrits VI call-for-papers concluded that, "whatever the initial shock [of the Great Recession] to the social order, political and financial elites everywhere have since doubled down on the failed neoliberal project with a mania for balancing budgets in the name of discredited austerity policies. These policies have only accelerated neoliberalism's upward transfer and concentration of wealth and intensified the class stratification in contemporary global societies."[32]

29. Paul R. La Monica, *You're Fired. Stock Rises. Wall Street Loves Layoffs*, CNN MONEY (Oct. 1, 2013, 1:23 PM), http://buzz.money.cnn.com/2013/10/01/layoffs-stocks/.

30. Brochure, ClassCrits VI Workshop presented by Southwestern Law Review: Stuck in Foreword? Debt, Austerity, and Possibilities of the Political (Nov.15-16, 2013), *available at* http://www.swlaw.edu/pdfs/studentaffairs/lrsymp_classcritsvi_brochure.pdf [hereinafter ClassCrits VI].

31. Mutua, *supra* note 2, at 524.

32. ClassCrits VI, *supra* note 30.

The doubling down on the neoliberal project and policy has continued and may say something about the current nature of U.S. social and legal economic arrangements. But it may also say something about the character of modern elites,[33] who seem to resist any effort that may have the effect of putting the well-being of the majority of people at the center of economic activity.[34] Four sets of examples illustrate this point and the way in which elites seem to think the benefits and burdens of social organization should be distributed. For example, after the 2008 economic collapse and financial bailout, caused in part by financial institutions, these same institutions and their leaders mightily resisted reform, particularly the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.[35] Having failed to defeat its passage, the industry redoubled "its efforts to make sure the law [was] never implemented." They did so by insisting "that every rule and regulation passed to implement the Act be subjected to an exhaustive process" of cost-benefit analysis[36] – a favorite in the neoclassical economic toolkit. This tool suggests that the benefits of the public interest outweigh the costs of regulation in any analysis. However, in practice the analysis tends to subordinate the general public's overall interests to the costs associated with a particular industry's regulation. This is so in part because public benefits are often hard to quantify and in this case include a safe

---

33. *See generally* RICHARD RAVITCH, SO MUCH TO DO: A FULL LIFE OF BUSINESS, POLITICS, AND CONFRONTING FISCAL CRISES (2014).

34. *See generall*y PAUL A. SAMUELSON & WILLIAM D. NORDHAUS, ECONOMICS (19th ed. 2009) (this idea is contrary to Adam Smith's idea that the self-interest of individuals in the market inadvertently benefits the whole). *But see generally* D. Joseph Stiglitz, *Moving Beyond Market Fundamentalism to a More Balanced Economy*, 80 ANNALS OF PUB. & COOP. ECON. 345 (2009), *available at* https://sipa.columbia.edu/sites/default/files/j.1467-8292.2009.00389.x.pdf (arguing that Adam Smith's theory is flawed in that it applies to small businesses operating in a competitive environment absent the domination of large firms).

35. Dodd-Frank Wall Street Reform Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010). *See* Peter Schroeder, *Wall Street Prepares Dodd-Frank Assault*, HILL (Dec. 17, 2014), http://thehill.com/policy/finance/227363-emboldened-wall-street-ready-to-dismantle-dodd-frank-financial-law (discussing how Wall Street continues to take every opportunity to scale back Dodd-Frank reform).

36. DENNIS KELLEHER, STEPHEN HALL, & KATELYNN BRADLEY, SETTING THE RECORD STRAIGHT ON COST-BENEFIT ANALYSIS AND FINANCIAL REFORM AT THE SEC, BETTER MARKETS, INC. 3 (2012), *available at* http://www.bettermarkets.com/sites/default/files/Setting%20The%20Record%20Straight.pdf (arguing in part that the financial industry's profit-making must be subordinated to the public interests of preventing another crisis like the 2008 crisis for which the industry was primarily responsible and suggesting that cost-benefit analysis for a variety of reasons privileges the industry's cost over the public interests). *But see* PAUL ROSE & CHRISTOPHER WALKER, THE IMPORTANCE OF COST-BENEFIT ANALYSIS IN FINANCIAL REGULATION, CTR. FOR CAP. MKT. (2013), *available at* http://www.centerforcapitalmarkets.com/wp-content/uploads/2010/04/CBA-Report-3.10.13.pdf.

financial system.[37] Yet, even a "law and economics" proponent of further developing cost-benefit analysis, has suggested that cost-benefit analysis, for the purposes promoted by the financial sector, is not ready for primetime.[38] Nevertheless, corporations appear to be pursuing a similar idea – circumventing government regulations and trying to force governments to pay for diminution of expected corporate profits even in the face of presumably democratically enacted regulations meant to protect the public welfare – through international means such as the Trans-Pacific Partnership agreement (TPP). [39]

But other efforts against the Dodd-Frank Act persist. So for instance, the industry lobbied and secured a provision, written by Citibank, which significantly narrowed section 217 of the Dodd-Frank Act.[40] The provision had eliminated government funding support for risky bank investments (support through FDIC insurance and the like) by requiring "commercial banks to push their riskiest swaps into separately capitalized subsidiaries" (using their own corporate money instead of government-backed money).[41] The industry stifled these efforts and maintained such support. The industry also secured, from the Federal Reserve Bank, a delay of the Volcker provision (section 216), which complimented section 217, and prohibits federally insured institutions and affiliates from trading, acquiring or retaining ownership interests in hedge funds or private equity funds, including collateralized loan obligations.[42] This provision would have forced

37. It is hard to conceive that the benefit to the public is that difficult to quantify given the quantifiable size of the crisis caused by the financial services industry. *See* KELLEHER, HALL & BRADLEY, *supra* note 36.

38. John C. Coates IV, *Cost-Benefit Analysis of Financial Regulation: Case Studies and Implications*, 124 YALE L.J. 882 (2015).

39. Joseph E. Stiglitz, *On the Wrong Side of Globalization*, N.Y. TIMES (Mar. 15, 2014, 5:06 PM), http://opinionator.blogs.nytimes.com/2014/03/15/on-the-wrong-side-of-globalization/?_r=0.

40. *See 'Enough is Enough': Elizabeth Warren Launches Fiery Attack after Congress Weakens Wall Street Regs*, WASH. POST (Dec. 12, 2014), http://www.washingtonpost.com/blogs/wonkblog/wp/2014/12/12/enough-is-enough-elizabeth-warrens-fiery-attack-comes-after-congress-weakens-wall-street-regulations/ (video discussing the provision and Citibank's role in drafting it); Erika Eichelberger, *Elizabeth Warren: Wall Street Just Got Another Giveaway*, MOTHER JONES (Dec. 19, 2014, 4:54 PM), http://www.motherjones.com/mojo/2014/12/volcker-rule-extension-federal-reserve (noting Citibank's role but also discussing implementation of Volcker rule).

41. David Dayen, *Wall Street Is Dismantling Financial Reform Piece by Piece*, NEW REPUBLIC (Dec. 19, 2014) http://www.newrepublic.com/article/120606/volcker-rule-delayed-how-wall-street-dismantling-financial-reform (noting that "[l]ast week, it was a key Dodd-Frank provision. This week, it's the Volcker rule financing.").

42. CLOs are "bundles of loans that are broken into pieces and sold to investors." Erika Eichelberger, *The House Just Passed a GOP Bill Wiping out Wall Street Reforms*, MOTHER JONES (Jan. 12, 2015), http://www.motherjones.com/politics/2015/01/dodd-frank-bill-house-gop-hr-37.

banks to unwind from these entities or products if they owned them. The Federal Reserve Bank delayed implementation of the Volcker provision until 2017 (some seven years after enactment of the Dodd-Frank Act).[43] However, apparently that was not sufficient. In January 2015, the House passed a bill that, if enacted, would delay implementation of the Volcker rule until 2019.[44] The bill also proposes to change another dozen or so provisions of the Act, many of which, like sections 216 and 217, specifically sought to address problems which contributed to the 2008 financial crisis.[45] As a general matter, the financial industry has responded to the crisis by returning to, or insisting that they be allowed to return to, business as usual.[46]

The second example involves companies like Wal-Mart, whose practices raise several concerns. First, Wal-Mart,[47] among other discount stores and fast food restaurants, refuses to pay a living wage to its employees, while consistently attacking efforts at union formation. In fact, with regard to wages, Wal-Mart has been shown to encourage its (underpaid) employees to seek government supplied safety net support, such as food stamps, while company leaders at the same time lobby to eliminate some of the very same government supports.[48] Because of this practice, many claim the government is subsidizing Wal-Mart's profits and low wages.[49] Second, though CEO-to-worker pay ratios in the US are unconscionably high (CEOs make 331 times more pay than the average worker),[50] and American CEOs make more money

43. Zach Carter, *Fed Delays Volcker Rule, Giving Wall Street Another Holiday Gift*, HUFF. POST (Dec. 18, 2014, 6:36 PM), http://www.huffingtonpost.com/2014/12/18/volcker-rule-federal-reserve_n_6351190.html.

44. Kevin Cirilli & Cristina Marcos, *House Passes Dodd-Frank Changes*, HILL (Jan. 14, 2015, 12:40 PM), http://thehill.com/blogs/floor-action/house/229482-house-passes-dodd-frank-changes.

45. Marcy Gordon, *House Passes Bill Easing Rules Regulating Wall Street*, YAHOO (Jan 14, 2015, 4:28 PM), http://news.yahoo.com/congress-moves-toward-easing-bank-wall-street-rules-083625057--finance.html.

46. *See, e.g.*, Brock Blake, *Bank of America Small Business Lending: Criticize or Applaud?*, FORBES (Jan. 26, 2013, 2:36 PM), http://www.forbes.com/sites/brockblake/2013/01/26/lendio-bank-of-america-small-business-lending-criticize-or-applaud/.

47. One of the leading employers in the United States.

48. Rick Ungar, *California to Wal-Mart: Enough! No More Taxpayer Subsidized Profits For You*, FORBES (June 3, 2013, 11:28 AM), http://www.forbes.com/sites/rickungar/2013/06/03/california-to-wal-mart-enough-no-more-taxpayer-subsidized-profits-for-you/.

49. *See, e.g.*, Clare O'Connor, *Report: Walmart Workers Cost Taxpayers $6.2 Billion in Public Assistance*, FORBES (Apr. 15, 2014), http://www.forbes.com/sites/clareoconnor/2014/04/15/report-walmart-workers-cost-taxpayers-6-2-billion-in-public-assistance/?partner=yahooti; Ungar, *supra* note 48.

50. Kathryn Dill, *Report: CEOs Earn 331 Times As Much As Average Workers, 774 Times As Much As Minimum Wage Earners*, FORBES (Apr. 15, 2014, 11:32 PM), http://www.forbes.com/sites/kathryndill/2014/04/15/report-ceos-earn-331-times-as-much-as-average-workers-774-times-as-much-as-minimum-wage-earners/.

than their counterparts at similar sized companies in other countries,[51] the gap between Wal-Mart's executive pay and its average worker is startling. In 2012/13 Wal-Mart paid its executive 588 times more than it paid its average worker ($7,412 an hour as compared to $13.28 an hour).[52] Finally, it is clear that the wealth of Wal-Mart is not broadly shared by its workers; but the wealth of the Walton family is stunning. The Walton family held $89.5 billion in shareholder wealth – as a family – constituting more than the family wealth of 41.5% of American families combined – families who have seen their wealth decline.[53]

Third, the vaunted company Apple, Inc., has sought to avoid paying its fair share of taxes, even as its products are based on the development of technology spearheaded by the tax-payer-funded U.S. government.[54] Apple, Inc., of course, is not alone in avoiding taxes.[55] Many of the biggest corporations paid no new taxes over a period of years, including Verizon, General Electric and Boeing,[56] while some of the most profitable U.S. companies "paid an average federal tax rate of just 9 percent" in 2012, including ExxonMobil, Apple, Microsoft, and JPMorgan Chase.[57] In

---

51. *CEO-to-Worker Pay Ratios Around the World*, AFL-CIO, http://www.aflcio.org/Corporate-Watch/Paywatch-Archive/CEO-Pay-and-You/CEO-to-Worker-Pay-Gap-in-the-United-States/Pay-Gaps-in-the-World ("Average" CEO pay amounts are calculated in U.S. dollars based on 2012 or 2011 CEO pay levels for companies from the available in the S&P Capital IQ database. CEO-to-worker pay ratios are calculated using 2011 average annual wages in U.S. dollars as reported by the OECD.Stat database.).

52. Schuyler Velasco, *CEO vs. Worker Pay: Walmart, McDonald's, and Eight Other Firms with Biggest Gaps*, CHRISTIAN SCI. MONITOR (Dec. 12, 2013), http://www.csmonitor.com/Business/2013/1212/CEO-vs.-worker-pay-Walmart-McDonald-s-and-eight-other-firms-with-biggest-gaps/AT-T; *see also* Dill, *supra* note 50 (Wal-Mart's ratio is similar to other CEO pay ratios when they are compared to their company's minimum wage workers).

53. Josh Bivens, *Inequality, Exhibit A: Walmart and the Wealth of American Families*, ECON. POL'Y INST. (Jul. 17, 2012, 10:25 AM), http://www.epi.org/blog/inequality-exhibit-wal-mart-wealth-american/.

54. MAZZUCATO, *supra* note 6, at 2; *see also* Mark Bittman, *Is it Bad Enough Yet?*, N.Y. TIMES (Dec, 13, 2014), http://www.nytimes.com/2014/12/14/opinion/sunday/mark-bittman-is-it-bad-enough-yet.html (discussing the wealth of the Walton family).

55. Charles Duhigg & David Kocieniewski, *How Apple Sidesteps Billions in Taxes*, N.Y. TIMES (Apr. 28, 2012), *available at* http://www.nytimes.com/2012/04/29/business/apples-tax-strategy-aims-at-low-tax-states-and-nations.html?pagewanted=all&_r=0; MAZZUCATO, *supra* note 6, at 171, 173, 174 (discussing how Apple avoids paying corporate taxes).

56. Gavin Aronsen, *10 Big Companies That Pay No Taxes (and Their Favorite Politicians)*, MOTHER JONES (Apr. 13, 2012, 6:00 AM), http://www.motherjones.com/mojo/2012/04/top-tax-dodging-companies-politicians.

57. Alexander Eichler, *10 Most Profitable U.S. Corporations Paid Average Tax Rate of Just 9 Percent Last Year: Report*, HUFF. POST (Aug. 6, 2012, 10:21 AM), http://www.huffingtonpost.com/2012/08/06/most-profitable-corporations-tax-rate_n_1746817.html; Maxwell Strachan, *These 26 Companies Pay No Federal Income Tax*, HUFF. POST (Feb. 26, 2014), http://www.huffingtonpost.com/2014/02/25/corporation-tax-

addition, many fast food companies use tax loopholes which result in government subsidies for high executive pay while these companies, including Burger King, McDonald's and Dominos, pay their workers a pittance and at least initially fought against laws raising the minimum wage.[58]

In fact, corporate profits in the US "hit a 60-year high in 2011, right as the effective corporate tax rate hit a 40-year low. America's largest companies . . . [have not] paid the full corporate tax rate in 45 years, and 26 [of these companies] have avoided taxation altogether for years [at a time]."[59] Apparently, given the way the American society is currently organized, it makes sense to require workers to contribute to the public welfare by paying taxes on the income their labor generates (and collect such taxes) but inappropriate for large companies to contribute to the public welfare by paying taxes on the profits they generate through the use of private and public resources as well as the labor of others.[60]

In the meantime, US productivity grew 80.4% between 1973 and 2011, while the growth of real wages stagnated for the median worker, growing a mere 10.7%.[61] In short, workers have not shared in this increased productivity, which they in part helped to create; and by almost "every major

---

rate_n_4855763.html. *But see* Peter R. Orszag, *As Foreign Profits Rise, Corporate Tax Rates Fall*, BLOOMBERG VIEW (Jan. 22, 2013, 6:30 PM), http://www.bloombergview.com/articles/2013-01-22/as-foreign-profits-rise-corporate-tax-rates-fall (attributing the fall in corporate tax rates to globalization and the rise in foreign profits).

58. Sarah Anderson, *Fast Food Giants Use Loopholes to Avoid Taxes on CEO Pay*, MOYERS & CO. (Dec. 3, 2013), http://billmoyers.com/2013/12/03/fast-food-giants-use-loopholes-to-avoid-taxes-on-ceo-pay/.

59. Travis Waldron, *Corporations Pay Historically Low Tax Rates While Lobbying to Make Them Even Lower*, THINK PROGRESS (Mar. 27, 2013, 12:00 PM), http://thinkprogress.org/economy/2013/03/27/1781921/corporate-tax-rates-lobbying/; *see also* Damian Paletta, *With Tax Break, Corporate Rate Is Lowest in Decades,* WALL ST. J. (Feb. 3, 2012, 1:02 PM), http://www.wsj.com/news/articles/SB10001424052970204662204577199492233215330?mg=reno64-wsj&url=http%3A%2F%2Fonline.wsj.com%2Farticle%2FSB10001424052970204662204577199492233215330.html (stating that the corporate tax rate is the lowest it has been in over forty years).

60. *See* Waldron, *supra* note 59; *see also* Paletta, *supra* note 59.

61. Press Release, Lawrence Mishel, Econ. Pol'y Inst., The Wedges Between Median Productivity and Median Comp. Growth (Apr. 26, 2012) (https://docs.google.com/viewerng/viewer?url=http://www.epi.org/files/2012/ib330-productivity-vs-compensation.2012-04-26-16:45:37.pdf&hl=en_US); James Joyner, *What Happened to the Wage and Productivity Link?*, *OUTSIDE THE BELTWAY* (July 22, 2012), http://www.outsidethebeltway.com/what-happened-to-the-wage-and-productivity-link/. *But see* João Paulo Pessoa & John Van Reenen, *Wage Growth and Productivity Growth: The Myth and Reality of 'Decoupling'*, CENTREPIECE (2013), *available at* http://cep.lse.ac.uk/pubs/download/cp401.pdf (comparing the U.S. and U.K., agreeing that wage inequality is increasing but that there is not the kind of de-coupling which requires redress between profits and wages).

statistical measure,"[62] income inequality has increased substantially.[63] In fact, the country has not seen the current level of the gap between the rich and the rest in terms of income and wealth since the 1920s. And yet suspicion of regulation and specious calls for lower taxes, particularly for businesses, remain, even in the aftermath of a major financial collapse.[64]

Calls for fiscal discipline and restricted state spending, in general, while seemingly benign, do not seem to translate into policies requiring that tax revenues be assessed, collected and used to invest in the human, social, and physical capital that put people back to work, increase demand, and improve productivity – which might also aid in reducing the deficit.[65] Instead, calls for fiscal discipline and restricted government spending, under a neoliberal framework, translate into the skewed recommendations that the U.S. cut investment in people, including spending on the social infrastructure of which social security, and social supports like food assistance and unemployment benefits are a part.

---

62. *Income Inequality*, INST. POL'Y STUD., http://inequality.org/income-inequality/ (last visited Apr. 10, 2014) (documenting the growth of income inequality over the last three decades); Robert Shiller, *Better Insurance against Inequality,* N.Y. TIMES (Apr. 12, 2014), http://www.nytimes.com/2014/04/13/business/better-insurance-against-inequality.html?_r=0 (arguing that inequality, particularly between the 1% and the rest has grown significantly).

63. Dozens of authors have both talked and written about increasing inequality in the U.S. *Income Inequality, supra* note 62.

64. While it is true that the U.S. has the third highest marginal tax rate in the world at 39.1 percent, the Tax Foundation notes that "larger, more industrialized countries tend to have higher corporate income tax rates than the world as a whole." Kyle Pomerleau, *Corporate Income Tax Rates around the World, 2014*, TAX FOUND. (Aug. 20, 2014), http://taxfoundation.org/article/corporate-income-tax-rates-around-world-2014. And it may be that the U.S. tax rate is about right for a country with its massive resources and yet extreme levels of inequality. The report continues:

> The G7, which is a group of the seven largest nations in the world by net wealth, has an average corporate income tax rate of 30.7 percent (34.7 percent weighted). The 34 nations of the [Organization for Economic Co-operation and Development] OECD have an average corporate tax rate of 25 percent (32 percent weighted).

Id.

The Foundation also found that corporate tax rates have declined over the past decade. *Id*. This is a curious fact as it appears global inequality has likely grown since the 1980s. However, it does not appear that most large American corporations pay anything near the US highest marginal tax rate or even those un-weighted rates of the OECD countries. Again, it is curious that with all the talk of lowering the corporate tax rate and closing the tax loopholes for corporations, given corporation success in weakening the Dodd –Frank Act, that nothing on this has yet been done. Could it be that it is more advantageous to avoid paying taxes while still having the luxury of complaining about the high tax rate rather than actually doing something about it?

65. Joe Weisenthal, *There's Only One Way to Fix the Deficit — And Actually It's Totally Painless*, BUS. INSIDER (Dec. 28, 2012, 1:51 PM), http://www.businessinsider.com/closing-the-deficit-is-painless-2012-12#ixzz36lDCepbf.

Ignored are the realities (1) that tax cuts reduce government revenues and as such presumably make social investment/spending more difficult to accomplish;[66] (2) that job losses that necessitated increased spending for unemployment benefits and food support resulted from a recession that was caused primarily by the financial industry and lax government regulation for which the industry advocated;[67] (3) that the 2001 recession resulted in a jobless or slow job recovery,[68] and that job growth after the 2008 recession also has been sluggish – though the creation of low-wage jobs has increased lately, with the so-called "job creators" free to create jobs anywhere, if at all;[69] and (4) that the golden age of American capitalism occurred during a time of high corporate taxes and widely approved of significant government regulation.[70] Equally important is the reality that although globalization has had an impact on these outcomes, these are policy driven social arrangements (including globalization itself) established and cemented often through legislation which benefit some (the rich) and not others (the rest) and are not the result of some inevitable, naturally occurring invisible economic hand. The increasing inequality spawned by these implemented policy choices have left in their wake a disappearing middle class, increased poverty, and displaced young people.[71]

Fourth and finally, these policy choices have meant that the country has not addressed pressing problems such as, measures to prepare for climate change and needed physical infrastructure repair.[72] In terms of climate change, the Intergovernmental Panel on Climate Change (IPPC) recently

---

66. JAMES ARNT AUNE, SELLING THE FREE MARKET: THE RHETORIC OF ECONOMIC CORRECTNESS 113-14 (2001).

67. *See, e.g.*, MATTHEW SHERMAN, A SHORT HISTORY OF FINANCIAL DEREGULATION IN THE UNITED STATES, CTR. FOR ECON. & POL'Y RES. 11 (2009), *available at* http://www.cepr.net/documents/publications/dereg-timeline-2009-07.pdf (describing industry discussions with SEC which led to a hands off approach to companies).

68. Alex Lach, 5 *Facts about Overseas Outsourcing*: *Trend Continues to Grow as American Workers Suffer*, CTR. FOR AM. PROGRESS (July 9, 2012), http://www.americanprogress.org/issues/labor/news/2012/07/09/11898/5-facts-about-overseas-outsourcing/.

69. Josh Mitchell, *Job Growth Rebounds, But Wages Lag*, WALL ST. J. (Oct. 3, 2014), http://www.wsj.com/articles/u-s-job-growth-rebounds-in-september-1412339557.

70. *See, e.g.*, AUNE, *supra* note 66 at 29 (making a similar point). Of course the other half of the story regarding the "golden years" is that the U.S. economy was the only large economy left standing after World War II, leaving American business with unlimited access to other markets in need of goods and services.

71. Jonnelle Marte, *Young Americans Missing out on Job Gains: Why So Many Young Americans Feel Stuck in Place*, MARKETWATCH (Dec. 7, 2013, 8:43 AM), http://www.marketwatch.com/story/why-young-americans-are-stuck-in-place-2013-11-20.

72. *See* Bittman, *supra* note 54 (referring to a "[r]otting infrastructure and an unsafe "safety net" [and] [a]n inability to respond to climate, public health and environmental threats.").

released its report indicating that the climate is unequivocally warming and the country and world *will* adapt to the forthcoming changes either reactively or proactively.[73] The world, the report suggests, should *plan* for these changes and move to mitigate as many of the expected negative outcomes as possible.[74] In the U.S., in particular, there will be increased stress to the water supply, costal zones and crop production, but almost all areas of society will be affected if the climate continues to warm unabated.[75]

Regarding the physical infrastructure in the U.S., under-investment in transportation alone costs Americans billions of dollars a year.[76] These costs will grow exponentially if investments are not made. However, the national infrastructure includes not only the transportation system of roads, bridges, ports, and rail, among others, but also includes systems for drinking water, wastewater, solid waste, levees, dams, public parks, and energy – including the electric grid. American infrastructure earned a grade of D+ according to the American Society of Civil Engineers (ASCE).[77] It estimates that it will take $3.6 trillion to bring American infrastructure up to par.[78] And still, the calls for decreased government spending, unregulated markets, and an array of austerity measures grounded in neoclassical economic theory and the neoliberal project continue unabated.[79]

Each of the examples demonstrates a set of practices and policies which are working well for business elites but not necessarily for the society as a whole. They manifest a skewed distribution of the benefits and burdens of social organization in the society. In fact what the Occupy Wall Street movement called the 99% are not faring well. And yet elites can say that they are doing just what neoclassical theory suggests: aggressively pursuing their self-interests and putting their businesses in a position to maximize shareholder profit. Perhaps the problem is the theory. Perhaps abandoning the theory, despite its elite financial class and self-regarding enhancing

---

73. *See generally*, INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, CLIMATE CHANGE 2014: SYNTHESIS REP. (2014) (The 2014 report can be found at the American Society of Civil Engineers site, along with helpful and interesting summaries).

74. *Id.* at 20.

75. *Id.* at 65.

76. Ashley Halsey III, *Decaying Infrastructure Costs U.S. Billions Each Year, Report Says*, WASH. POST (July 27, 2011), http://www.washingtonpost.com/local/decaying-infrastructure-costing-us-billions-report-says/2011/07/27/gIQAAI0zcI_story.html; AM. SOC'Y OF CIV. ENGINEERS, 2013 REPORT CARD FOR AMERICA'S INFRASTRUCTURE (2013), *available at* http://www.infrastructurereportcard.org/a/documents/2013-Report-Card.pdf [hereinafter 2013 REPORT CARD].

77. 2013 REPORT CARD, *supra* note 76, at 67.

78. *Id.*

79. One wonders if, in allowing infrastructure to decline to a precipitous level, neoliberalists are setting the government up for a fire sale of infrastructure assets.

propositions, might be a first step toward putting the welfare of the entire public at the center of economic activity.[80]

III. NEOCLASSICAL ECONOMICS & A CLASSCRITS RESPONSE

Thought: The economy is more complex than supply, demand and equilibrium analyses suggest; it therefore requires a range of interdisciplinary tools to understand not just the market, but the economy as a whole . . .

Many American economists, to some extent, believe in the private ordering and organization of the economy through the market where voluntary exchanges are encouraged and private property is protected (capitalism). Neoclassical economists, however, focus primarily on the market (exchanges), as opposed to production and distribution. They suggest that markets are beneficial for society, where perfect competition exists, because markets efficiently allocate scarce resources, goods and services through the price mechanism. The story they tell, while having some value, builds on faulty and incomplete assumptions, minimizes the reality of an imperfect socially constructed mechanism, overplays the value of efficiency – as it defines it, as well as promotes the status quo, including the increasing concentration of wealth by ratifying current allocations and distributions as efficient (and thus fair?). In suggesting that this market is self-regulating, the theory opposes government intervention into the market except in limited circumstances.

A. The Neoclassical Theorized Story

The neoclassical story, as captured in part by Albelda, Drago and Shulman, begins with the importance of competition.[81] Competition stifles the obtainment of market power preventing an individual buyer(s) or seller(s) from setting the price of a good. Thus competition is key to the market because it allows the price mechanism to function – it allows the market to arrive at the price of a good. In other words, where there are many buyers and sellers, relatively homogenous products and perfect information, there is perfect competition, in which the price of a good arises from the interaction

---

80. Other elite arguments include: the government does not have enough information to make market-like decisions, other parts of the world are prospering, and elite success is the product of their hard work.

81. This summary is inspired by their description of the theory. *See* RANDY ALBELDA, ROBERT DRAGO & STEVEN SHULMAN, UNLEVEL PLAYING FIELDS: UNDERSTANDING WAGE INEQUALITY AND DISCRIMINATION 43-45 (1997).

of multiple exchanges in a good or service.[82] A corollary to this idea is that competition, particularly in the economic context, aids in improving the quality of goods and services (e.g. competition forces sellers to improve a good in order to distinguish it), and more generally that competition itself is good. The theory also understands and is based on the idea of a utility maximizing individual, a selfish and solely self-regarding person, who only seeks to maximize his or her own well-being, which all people are said to be. That is, human beings are seen as rational individuals engaged in voluntary transactions, using the (perfect?) information at their disposal to maximize their pleasure and reduce their pain. As such, they weigh the cost and benefits of a particular decision operating within their limited means (scarcity) and the cost of forgone choices. One corollary of this idea is that the rational actor would not engage in an exchange if it did not render him or her better off. This supports the idea that these exchanges are voluntary. Corporations are said to operate similarly but should do so primarily for the purpose of maximizing profit.[83]

Supply and demand are the two most important variables in the neoclassical economic story and serve as the source of its limited predictive power (as well as its ideological response to any particular outcome). It holds that when the price of a good goes up, supply will increase because more firms seeking additional profit will be willing to supply that product, within certain constraints; and demand will decrease because consumers will be less willing to buy that product, assuming there are substitutes (e.g. if you raise the price of labor through raising the minimum wage, the demand for labor will go down, which means there will be fewer jobs). Human labor also operates within a market and is sometimes viewed as indistinct from products and services.

At the price where supply and demand intersect or connect is equilibrium. Equilibrium in the market is the price at which the quantity supplied and the quantity demanded are equal,[84] such that everything produced is purchased and no desired purchases go unmade – the market clears.[85] A corollary of equilibrium and the system as a whole is that each person is doing what he or she wants; the market does not care or evaluate people's predetermined preferences, it works to fulfill them. At the same

82. *Id.* at 44.

83. KARL MARTIN EKORNES MERTENS, MILTON FRIEDMAN AND SOCIAL RESPONSIBILITY: AN ETHICAL DEFENSE OF THE STOCKHOLDER THEORY 5, 84 (2013), *available at* https://www.duo.uio.no/bitstream/handle/10852/38408/Mertens_Filsosofi_Master.pdf?sequence=1.

84. ALBELDA, DRAGO & SHULMAN, *supra* note 81, at 50.

85. *Id.*

time those making exchanges need not know or care (or discriminate against those)[86] who are buying or selling a product. This promotes individual choice and liberty; including the choice to value leisure over work even though this may lead to the chooser's failure to prosper. When one person cannot be made better off without harming someone else, then the allocations are considered "efficient." A corollary of efficiency is that resources are being used where they are most valued. If there is dis-equilibrium, more of a product made than desired so that there is excess supply, then the theory predicts that the price will fall until that point where supply again meets demand. And, Voilà (!) a self-regulating market exists that efficiently allocates scarce resources.

Given this, government should not interfere with the market except in minor ways in narrow circumstances.[87] To do so would distort efficient market allocations; and in any event, likely have a perverse or the opposite effect on its intended goals.[88] A corollary to this idea is that government is largely incompetent, but in any case, is vastly inferior to the market in efficiently allocating scarce resources – in part because it cannot garner as much of the necessary information as the market for making such decisions. To the extent the government must allocate resources it should establish market-like allocation processes; and much of what government does, could and likely should, be privatized. That is, even functions such as investing in and supplying clean water, or investing in developing human capital through providing education and health should be subject to quality-enhancing effects of competition, individual rational choice and the profit-maximizing behavior of firms.

It is a simple story in a complex economy and world. Limited to providing some insight into the movement and exchange of ordinary goods, the neoclassical story yields some insights. But the story purports to do far more than that. Prioritizing efficiency as a central policy goal, the theory claims to determine what is efficient, regardless of other factors, for the economy and society as a whole across the full range of commercial, economic, social and policy issues, as well as, to delineate a theory of human behavior.

---

86. GARY S. BECKER, THE ECONOMICS OF DISCRIMINATION 6-10 (1957) (discussing a "taste for discrimination" and suggesting that discrimination will dissipate through market processes).

87. This is so except in four situations: namely, in the case of market failures, externalities such as pollution, under-produced public goods and socially intolerable inequalities. SAMUELSON & NORDHAUS, *supra* note 34, at 35-39; ALBELDA, DRAGO & SHULMAN, *supra* note 81, at 56-57.

88. AUNE, *supra* note 66, at 20-37 (discussing the principles of rational choice and in case studies on the minimum wage, the farm crisis and labor unions debates).

B. A ClassCrits Response

As I have noted before, ClassCrits has always been suspicious of the rhetoric and ideology around the "market"; "ClassCrits sees the economy as something more than just the market, with social provisioning or providing for the society as a whole, the primary purpose of it."[89] The economy involves production (as well as reproduction of humans which constitute the labor force, the consumer and the policymakers), distribution and exchange. "In a market economy, the market is a *tool*, presumably a mechanism of exchange," embedded within the society, "that allocates resources through the price system (the invisible hand) and aids in organizing productive activity."[90] As such, the market is just part of the economic system and thus is limited or at least should be. Yet several prevalent fictions about the market and its attributes remain in the culture. These fictions, often supported by neoclassical economic logic, suggest that the market is natural, that the market is a fair, neutral, non-judgmental and optimal allocator of almost any kind of good and service.

In contrast to neoclassical economics, as I have explained elsewhere,[91] ClassCrits maintains that the market is not natural, like trees, rather it is the product of human activity expended over time and is shaped and embedded in society and its values. Though markets, even capitalist markets in China, Japan, France or Ghana, for example, may manifest similar tensions and trends because they are capitalists, and have been mutually influenced, intertwined with, and/or constructed by one another over time, they are not organized the same nor do they represent the same priorities, among other things. Nor is the market neutral or necessarily fair even when an exchange is fair; rather "it is biased in favor of money. *If you do not have money (or some other desired tradable good), you cannot play!"*[92] Neither is it value neutral. Rather it sees people as selfish and solely self-regarding; and it actually changes the value of some goods and services by placing a price on them.[93] And finally, the market and its free market ideologues "prioritize competition over other types of cooperative behavior" and eschew "democratic allocation of resources and *universal access* as polic[ies] for [the distribution of] some goods and services."[94]

89. Mutua, *supra* note 2, at 527.
90. *Id.*
91. *Id.* at 528.
92. *Id.*
93. *Id.*
94. *Id.*

Many scholars from within and without the economic field have leveled innumerable theoretical and empirical challenges against neoclassical economic theory's basic premises, prescriptions and predictions (or lack thereof), many of which remain unanswered. ClassCrits generally agrees with many of the critiques of neoclassical economic theory's basic assumptions, among others. So for instance:

1. Perfect competition rarely, if ever, exists. Thus the price mechanism is always distorted or influenced by factors other than simply supply and demand (as most economists recognize).

2. Supply and demand are simply two factors in a complicated market and economy, rendering simplified, elegant models but models which are in many ways unconnected to reality.

3. The idea that if the price of a good increases, then the supply will increase and the demand for it will decrease will depend on other factors; and this state of affairs can be differently interpreted. So for instance, the prediction that if the price of labor increases, the demand for labor will decrease rendering fewer jobs is debatable.[95] It could be that as the price of labor rises, more people have jobs and money that can be spent, thereby increasing demand for goods and services and thus rendering an increase in employment opportunities – increased jobs to meet this increased demand.

4. Competition is but one mechanism for distinguishing and distributing goods and services and may be appropriate in some arenas and for some goods and not others.

5. The selfish and sole self-regarding utility maximizing individual or the economic notion of human behavior leaves out much about human nature and at best exaggerates human rationality. Rather, human rationality is bounded. Humans work off of imperfect information (there are information asymmetries), and they often suffer from cognitive bias, under-estimating future costs, among other things. Further, humans are also altruistic, manifesting a whole host of other characteristics.

6. The notion that individual preferences are exogenous to the market as opposed to shaped by the market, as well as, by the society, of which groups, classes, institutions and the market are a part, misstates reality.

95. *See, e.g.*, David Card & Alan B. Krueger, *Minimum Wages and Employment: A Case Study of the Fast-Food Industry in New Jersey and Pennsylvania: Reply*, 90 AM. ECON. REV. 1397, 1398 (2000); DAVID CARD & ALAN B. KRUEGER, MYTH AND MEASUREMENT: THE NEW ECONOMICS OF THE MINIMUM WAGE 1-2 (1995) (both finding that raising the minimum wage has little effect on unemployment); *cf.* Joseph J. Sabia, et al., *Are the Effects of Minimum Wage Increases Always Small? New Evidence from a Case Study of New York State*, 65 INDUS. & LAB. REL. REV. 350, 372 (2012) (finding that the minimum wage can negatively affect demand for low-skilled workers).

Consider, for example, the way in which advertisement influences the very clothes we wear as mediated through the fashion industry. Are the clothes we wear individually determined or shaped by society?[96]

7. Equilibrium is a concept, the shifts of which the theory fails to explain.[97]

8. Exchanges undertaken because of dire economic circumstances are not "voluntary."[98]

9. Efficiency is a valuable goal but is one among many and may be an inappropriate measure in many transactions, among other things. So for instance, the first and primary concern about whether to send drone missiles to another country should be whether this is the right thing to do, not whether it is more efficient than another option. Further, to the extent that the "efficient use of resources" is primarily determined by the person who is willing to pay the highest price for securing the resource, this type of efficiency does not necessarily result in those resources being used where they are most valued. Rather, it may simply reflect the possibility that the buyer can most afford those resources while those who value it more, cannot. For example, Sandel notes that the most enthusiastic fans at many baseball games he has attended, fans who stayed to the end of the game, were not in the box seats but in the bleachers.[99]

10. Government through law and policy shapes the market and as such always "interferes" in it. In addition the Government, among other institutions, should play a role in the market and not simply in countercyclical ways but, for example, in spearheading innovation and aiding in creating other networks of institutions, perhaps such as civil society institutions to protect metadata or the commons.[100]

11. The market is *not* self-regulating, as even neoliberalism apparently concedes,[101] in that the market requires a package of laws and other policies and actions to ensure that it functions in the *desired* way. Further, even if it could be seen as self-regulating, the time it takes to recover after a crisis is

---

96. ALBELDA, DRAGO & SHULMAN, *supra* note 81, at 126 (discussing men wearing ties as a cultural phenomenon).

97. *See, e.g.*, MARC LAVOIE, INTRODUCTION TO POST-KEYNESIAN ECONOMICS 13-14 (2009).

98. MICHAEL J. SANDEL, WHAT MONEY CAN'T BUY: THE MORAL LIMITS OF MARKETS 186 (2012).

99. *Id.* at 31-32.

100. *See* Peter Barnes, *Sky Trust*, YES! MAG. (June 30, 2001), http://www.yesmagazine.org/issues/reclaiming-the-commons/sky-trust, for a discussion by Peter Barnes on trust for the protection on the commons.

101. *See* Timothy Kuhner, *Citizens United as Neoliberal Jurisprudence: The Resurgence of Economic Theory*, 18 VA. J. SOC. POL'Y & L. 395, 398 (2011).

much longer than humans can usually tolerate, resulting in government or people acting to intervene.

12. Neoclassical theory, because it focuses on the market, has little to say about institutions and organizations that mediate social norms or power relations. And it has even less to say about ideas and practices of justice, equality, and democracy in its relation to – not just exchanges – but to social provisioning – providing for the society as a whole.

However, one of ClassCrits' major critiques of neoclassical economic theory is that by focusing primarily on the market it ignores the context in which the market operates.[102] Studying the market "mechanism" substitutes for studying the economy and consequently, and most importantly, "ignores who has money, access to human necessities, and other goods and services and who does not and why." As I have previously argued, this focus:

> Ignores: Path-dependent structures, decisions, social patterns, and technologies that exist now (history); the way in which individual preferences are shaped by groups or for that matter, advertisement (culture); and the way laws, rules, policies, and other social arrangements construct, shape and impact markets (politics). [Because…] the market is embedded in the economy and the larger society…it reflects, reinforces, structures, shapes and is shaped by other social structural biases such as classed, racial, ethnic, and gender hierarchies, among others, [through which] *inequalities in access* to income and wealth (e.g. money), capital assets (e.g. homes, tools, [factories]), social capital (e.g. networks and role models), and personal or human capital (e.g. health, quality schooling, training) remain institutionally and systemically grounded.[103] In addition, by ignoring context and this embeddedness, the neoclassical story ignores the potential that current allocations and distributions represent and build upon corrupt or inhuman practices of the past or ill-gotten gains.[104]

The problem is not just that the neoclassical story in its focus on the market ignores the context of the market's social embeddedness and obscures the historical maldistribution of resources, access and opportunity. Rather, efficiency rhetoric "justifies, and reinforces the assumed fairness, and correctness of *current* allocations and distributions . . . ,"[105] thereby ratifying and approvingly upholding the status quo whether or not these "arrangements

102. An emphasis on context is a central feature of critical thought. It is also a central focus of political economic thought. *See generally* ALBELDA, DRAGO, & SHULMAN, *supra* note 81, at 122.

103. *See, e.g.*, MELVIN L. OLIVER & THOMAS M. SHAPIRO, BLACK WEALTH/ WHITE WEALTH: A NEW PERSPECTIVE ON RACIAL INEQUALITY 2 (1997).

104. Mutua, *supra* note 2, at 529 (internal citations omitted).

105. *Id.* at 529-30 (citing, for example, on the rhetoric of efficiency Martha T. McCluskey, *How Equality Became Elitist: The Cultural Politics of Economics from the Court to the "Nanny Wars"*, 35 SETON HALL L. REV. 1291 (2005)); AUNE, *supra* note 66 at 75-76.

work for the overall benefit of society."[106] Further, "in eschewing government intervention . . . the story, ideologically, hinders efforts to . . . change these arrangements . . . ."[107]

In addition, ClassCrits sees and promotes analyses that explore class relations in the U.S. and globally, that explore the humanity and real-life needs of labor – human beings who work and require input into their work processes, living wages, and an environmentally healthy and sustainable setting. And further, ClassCrits understands and defines liberty in realistically rich ways that recognize that people in dire economic circumstances cannot meaningfully exercise choice as well as analyses that explore alternative economic and social arrangements.

In this vein, this paper suggests, ClassCrits would add these insights to the neoclassical economic critiques listed above and promote analytical practices that:

- Understand that whether the government and/or the market is judged competent in a particular area, changes depending on the goods, services, industry, policies, time and place in question.
- Account for the fact that because the market is embedded in the economy and in the greater society, it reflects, shapes, and often reinforces other social structural biases such as classed, racial, ethnic, and gender hierarchies, among others, where vast inequalities in access to income, wealth, capital assets, social capital and human capital exist.
- Recognize that to the extent efficiency in the neoclassical market is determined by money and access to resources, and the neoclassical story eschews government intervention, it ratifies current allocations and distributions reinforcing past inequalities and injustices. It thereby promotes the status quo, as well as, the increasing concentration of wealth by those who benefit most from current social arrangements.
- Value the idea that liberty and individual choice requires "freedom from want" in order that one might have the freedom to do what one wants, that is, to have meaningful choice.
- Realize that labor is a human activity involving human beings and requires both compensation on which human

106. Mutua, *supra* note 2, at 530 (citing SAMUELSON & NORDHAUS, *supra* note 34 at 38-39 (explaining that the market, even when working perfectly, will not necessarily lead to a fair or tolerable distribution of goods)).

107. *Id.*

beings can live and re-arrangement of social structures to ensure that people who work and those who depend on them can flourish.

- Appreciate that organizations, institutions, structures, social norms and power relations, among other factors, as well as history, politics and culture form the context for the market, the economy and society, and are important in understanding each.

Ultimately, there exists a host of other economic and social theories, and practices that offer a range of helpful insights into the economy's workings and which could supply recommendations for the better functioning and understanding of it.

IV. A RIDE ON JETBLUE AIRLINES: A DISCURSIVE AND INTELLECTUAL BATTLE

Thought: Human beings' choices are always constrained by *circumstance and structure. But neoclassical inspired neoliberal thought suggests poor people, who have little, can change everything about their circumstances while elites who have tremendous power and money can do nothing about their economic circumstances including the businesses they run . . .*

In reading my list to make plain where ClassCrits appears to stand in relation to neoclassical economics, my colleague David Westbrook commented that everybody was familiar with the limitations of neoclassical theory, or the story, and knew the real economy did not work in the way its models assumed. Further, he noted that business people, among others, face complicated structural constraints. Of course he is correct. And yet people, particularly those supportive of neoliberal policies, are resistant to acknowledging the real structural impediments that constrain the attempts at well-being of people of lesser means, impediments for which elites may well be in part responsible. Instead they often attribute poorer people's conditions as simply being the result of their lack of "hard work."

My colleague agreed. In addition, he suggested that the current ways and lenses used to understand what is actually happening in the economy are seriously flawed, dated and in need of change.[108] And he emphasized that despite the fact that the Great Recession had laid bare defects in the theory, the elite consensus, of which financiers and economists' thinking are but a

108. Westbrook does this in his own work. *See, e.g,* Westbrook, *supra* note 23, at 1204 (suggesting the financial industry be viewed as having a serious custodial role in the economy).

part, had not moved. Chuckling, he exclaimed that the same old theories and frames had in fact simply "rebounded like the Dow,"[109] a refrain he enjoyed. Nevertheless, he argued that the goal was to move/shift the current elite consensus – to engage in, what others term as a discursive and intellectual battle, among other activities.

While my colleague and I agreed on much, I doubted whether *everybody* knew or understood the limitations of neoclassical theory and the neoliberal policies it inspired. For instance, neoclassical economic theory is hegemonic in the field (and teaching) of economics. As E. Roy Weintraub brags, neoclassical theory is practically the only type of economic theory taught in schools,[110] from K-12 to graduate schools.[111] Further, it is/was the foundation of the Law and Economics movement in legal education. And, neoclassical inspired neoliberalism seems to dominate policy discussions and spaces within the U.S. and abroad. So for instance, President Obama's policies, despite his stimulus package, employ some of the same old neoclassical thinking. He, like his predecessors on trade, seems eager to get fast track approval for the Trans-Pacific Partnership agreement, a dubious Treaty, which has been negotiated in secret by the principal participants – corporations and various "captured" finance ministers.[112] In addition, his approach to healthcare reform, while moving in the correct direction in terms of universal healthcare, primarily entailed replicating and creating "markets." As for the current Congress, it seems poised to unravel the little bit of regulation that the Dodd-Frank Act imposed on banks and other financial institutions, while the Supreme Court is seen by many as a major voice and advocate for forwarding the prerogatives of elite businesses at the expense of the public welfare. It has been referred to as the 1% Court,[113] and charged with employing neoclassical inspired neoliberal jurisprudence, to the detriment of U.S. democracy.[114]

---

109. Westbrook made this comment while I was conversing with him.

110. E. Roy Weintraub, *Neoclassical Economics*, CONCISE ENCYCLOPEDIA ECON. (David R. Henderson, ed., 1st ed. 1993), *available at* http://www.econlib.org/library/Enc1/NeoclassicalEconomics.html (suggesting that when Nixon declared, "We're all Keynesians now," what he should have said is, "We're all neoclassical now, even the Keynesians," "because what is taught to students… today, is neoclassical economics.").

111. *See, e.g.*, JOHN SIEGFRIED, ET AL., VOLUNTARY NATIONAL CONTENT STANDARDS IN ECONOMICS PREFACE vi, 17-23 (2d ed. 2010), *available at* http://www.councilforeconed.org/wp/wp-content/uploads/2012/03/voluntary-national-content-standards-2010.pdf (noting the standards rely on neoclassical economics and for grades 4, 8 and 12).

112. Stiglitz, *supra* note 39.

113. *See, e.g.*, Michele Gilman, *A Court for the One Percent: How the Supreme Court Contributes to Economic Inequality*, 2014 UTAH L. REV. 389 (2014).

114. Kuhner, *supra* note 101, at 397.

However, I believe that most ordinary people, including some policy makers, simply know pieces of the neoclassical story – "something about supply and demand and the magic of markets" – enough to make them ripe for internalizing the more general messages of free market ideology.[115] That is, I doubt they have a framework for thinking critically or through the limitations of the theory. In addition, even those who are new to ClassCrits are looking for summaries of the critique and literature that explores multiple ways of thinking about the economy and current conditions. In this respect, work that presents, in plain easily understandable language, the limitations of the theory and alternative ways to think about economics, may help both to counter some of the power of this ideological way of thinking and provide guidance to those seeking better understandings. Work that draws on people's everyday lived experiences may be a good way to do this.

So for instance, anybody who travels on airplanes knows that air travel, though often necessary, is a hassle. This lived experience, for many, may raise the kind of questions that allow us to inspire more critical evaluation of the theories discussed as well as better assess our current quality of life under neoliberal values.

My favorite two airlines are JetBlue and Southwest, both considered low-costs airlines. JetBlue, for example, has new clean planes with small television sets for every seat, and roomy comfortable chairs. In addition, it is a wide open plane for all – it does not have separate sections for "first" or "business" or innumerable other classes of passengers. Further, and importantly, the airline for the most part does not charge, in addition to the ticket prices, a host of additional fees for Wi-Fi, baggage, priority boarding, snacks, etc., as do most other airlines. It is an airline that charges a reasonable price for travel and treats people decently.[116] But all this is about to change; as Tim Wu informs us in his recent magazine article entitled, "Why Airlines Want to Make You Suffer."[117]

According to Wu, a Wall Street analyst recently chastised JetBlue for being "overly brand-conscious and customer focused."[118] Apparently such a focus is inappropriate. It appears the analyst was castigating JetBlue for not following the airline crowd, and for, I suspect, thereby leaving money on the table that would increase profits and perhaps share prices, at least in the short term. Now under new management, JetBlue announced plans to institute the

---

115. Tayyab Mahmud, Athena Mutua & Francisco Valde, *LatCrit Praxis @ XX: Toward Equal Justice in Law, Education and Society*, 90 CHI.-KENT L. REV. 361, 410 (2015).

116. Tim Wu, *Why Airlines Want to Make You Suffer*, NEW YORKER (Dec. 26, 2014), http://www.newyorker.com/business/currency/airlines-want-you-to-suffer. I agree.

117. *Id.*

118. *Id.*

fee-based model in its entirety as used by other airlines and charge these additional fees for baggage, Wi-Fi, etc. I suspect it will not be long before those roomy seats too disappear . . .

Most airlines have been using a fee-based model for years. "In 2013 the major airlines combined made about $31.5 billion in income from fees, as well as other ancillaries . . . ."[119] "[F]ees [] have been the fastest-growing source of income for the main airlines, having increased [a whopping] twelve hundred per cent since 2007."[120] The fees can range anywhere from an additional "forty dollars to three hundred dollars,"[121] including fees to alter flight plans. And the fees are not always transparent.

But increased fees are not the only things that cause suffering, as Wu argues. Airlines have also crammed more seats into the economy section, making them smaller and placing them closer together. The result, crammed, uncomfortable airplane rides for non-elite customers but more seats for the airline to sell. Further, instead of following research that suggests that even random plane boarding may be faster than many current processes, boarding may become even slower as airlines create multiple status categories by which to load passengers – first class, business class, priority seating, etc., what Wu calls the "status racket," inequality in your face.[122] This practice creates opportunities for the airlines to charge additional fees or to encourage passengers to pay for higher priced tickets.

Wu argues that these practices are good for the airlines but they are not good for customers. He suggests that the fee model, and I would argue all of these practices, "comes with systematic costs that are not immediately obvious."[123] He continues:

> In order for fees to work, there needs be something worth paying to avoid. That necessitates, at some level, a strategy that can be described as "calculated misery." Basic service, without fees, must be sufficiently degraded in order to make people want to pay to escape it. And that's where the suffering begins.[124]

Having described and explained this decline in the quality of air travel in the U.S., Wu concludes by noting: "But when an airline like JetBlue is punished for merely trying to treat all of its passengers decently, something isn't right."[125]

---

119. *Id.*
120. *Id.*
121. *Id.*
122. *Id.*
123. *Id.*
124. *Id.*
125. *Id.*

Now to be fair to the industry, though the industry is booming now – its projected profits for 2014 are twenty billion dollars[126] – it has had a more troubled past. Discussing this past is part of putting the current situation into context, something that the "lack of hard work" crowd does not appear to do when considering the situations of people of lesser means. In considering this context, it should be noted that the industry was deregulated in 1978;[127] and this was beneficial for customers because prices came down (particularly for high-traffic and long distance routes), and air travel exploded. Much of these benefits were due to the entry of low-cost carriers such as Southwest (low costs attributed to "lower hourly employee wages, higher productivity, and no pension deficits"[128]), and changes in routes and pricing.

However, deregulation was not nearly as beneficial to the industry as a whole. Between "1979 through 2012, there [were] at least 194 airline bankruptcies," most of which "affected small airlines that were eventually liquidated."[129] However, "the more recent bankruptcies . . . [have been] among the largest corporate bankruptcies . . . ."[130]

Throughout this period capacity continued to grow and low cost airlines remained profitable. However the legacy airlines, those established before deregulation, experienced only cyclical profitability – moving with the state of the economy – but even then with only thin profit margins (an experience with which poor people are very familiar).[131] Though deregulation adjustments were not unexpected, some of the most serious problems the industry faced had to do with events. Thomas Piketty, in his new book, theorizes a condition that could result in escalating inequality;[132] but one of

---

126. *Id.*

127. Fred L. Smith Jr. & Braden Cox, *Airline Deregulation, in* CONCISE ENCYCLOPEDIA ECON. 6 (David R. Henderson ed., 2d ed. 2008), *available at* http://www.econlib.org/library/Enc/AirlineDeregulation.html.

128. *Id.*

129. *Airline Industry Consolidation: Hearing Before the Subcomm. on Aviation Operations, Safety, & Sec. of the Comm. on Commerce, Sci., & Transp.*, 113th Cong. 11 (2013).

130. *Id.* at 11-12; *see also* SVEN TUZOVIC, ET AL., UNBUNDLING IN THE AIRLINE INDUSTRY: AN EMPIRICAL STUDY OF AIRLINE FEES AND THEIR CONSEQUENCES ON CUSTOMER BEHAVIOUR (2013), *available at* https://www.academia.edu/4405282/Unbundling_in_the_airline_industry_An_empirical_study_of_airline_fees_and_their_consequences_on_customer_behaviour (explaining that "[b]etween 2000-2005 U.S. airlines lost $35 billion. Global industry losses were projected to reach $11 billion in 2009. Having lost more than $85 million per week in the first quarter 2006, Northwest Airlines introduced a range of passenger fees, now categorized as 'ancillary revenue.'").

131. *Airline Industry Consolidation: Hearing Before the Subcomm. on Aviation Operations, Safety, & Sec. of the Comm. on Commerce, Sci., & Transp.*, 113th Cong. 4 (2013).

132. THOMAS PIKETTY, CAPITAL IN THE TWENTY-FIRST CENTURY (Arthur Goldhammer trans., 2014) (arguing that when that rate of return on capital/wealth is higher than growth of GNP,

his most important insights and caveats is that human actions and events determine what goes on in an economy.[133] In the airline industry, three of the most significant sets of events that affected its stability, profitability and growth, were the swings in fuel prices, "9/11," and the 2008 financial crisis.

Today, the industry's profitability is driven by low fuel prices (though most have not repealed fuel surcharges), the industry's fee/price structures and industry consolidation. To the latter point, the industry has seen four mega-mergers in five years including the mergers of American and U.S. Airways (the latest merger and now the largest airline); Delta and Northwest; United and Continental; and Southwest and Air Tran.[134] In the last twelve years "what had been 10 major U.S. airlines [are now] down to four mega-carriers."[135] We can expect that prices will increase, especially along low-traffic routes, among other things.

Given these pressures and constrains, what is JetBlue to do? It is true that businesses and their leaders work under competitive and other social constraints and these need to be understood for a thorough analysis of what ails them. However, at this point all sorts of people become structuralists – it is not the people, the capitalists, the elite that are the problem, rather, it is the structure. That is, the implication is that business leaders are so constrained by their circumstances that they have no agency, no choice, or responsibility for activities engaged or the directions in which their businesses go. This is disturbing given that the theory to which many subscribe not only suggests that people with few means should pull themselves up by their own bootstraps and are capable of simply changing their circumstances, but that the failure to do so is a result of their laziness, choice, and lack of values. That is, elites who have innumerable resources both individually and collectively to change or influence their lives and their business circumstances, are understood to be able to do nothing about economic relations that constrain them, but poorer people are told they are in complete control of their lives and circumstances.

So, in the case of JetBlue, is there anything that the managers could do, assuming they wanted to do something different? They could have stayed the course. These same theories tell us that if the quality of the product is superior to others, then presumably the company will gain more customers

---

as it is in most places, then the wealthy accumulate additional wealth and capital faster than others in society).

133. *Id.*

134. *The Runway to the Final Four*, CNN MONEY, http://money.cnn.com/infographic/news/companies/airline-merger/ (last visited Apr. 10, 2015).

135. *Id.*

and be more profitable in the long run.[136] In addition, management could have polled JetBlue shareholders to explore whether they supported the continuation of JetBlue's business model, possibly forgoing short-term gains in exchange for a quality airline and perhaps (?) long-term gain even in the face of Wall Street's short-termism. Finally, in this process, JetBlue management could have begun acting collectively with others to alter a host of policies including the business maxim of profit maximization, fighting instead for providing workers a share in productivity gains, increasing consumers' satisfaction and safety, and adhering to the highest level of environmental sustainability. Would this make JetBlue less competitive here and around the globe? Perhaps, but it might also provide the incentive to create an environment where all business are motivated to meet these standards.

The JetBlue example also raises other questions; for instance:

1. Competition – The industry at the moment does not appear very competitive, given recent mergers and bankruptcies. In fact, the Justice Department brought an anti-trust challenge against the American-U.S. Airways merger and there was testimony that both airlines were in pretty good positions before the merger. Thus they did not need to merge, thereby decreasing competition.[137] But high levels of competition in the past apparently did not seem to help either, given the industry's fragility. Other industries may be more competitive, or less so. What the right mix is, seems to depend.

2, Quality – Quality, in terms of seating space and fees began declining even before the mergers.[138] Arguably, these fees and additional seats were needed in order to keep most of the airlines afloat. Thus, over the last couple of decades where quality is concerned, it does not seem to matter whether the industry is doing well or not, is more or less competitive; quality seems optional.

3. Life happens. The market is part of society. We can talk about some of the industry's problems in terms of supply and demand and that may be an important part of the story. But events within and without the market happen and effect it.

---

136. WEI JIANG, BUSINESS PARTNERSHIPS AND ORGANIZATIONAL PERFORMANCE: THE ROLE OF RESOURCES AND CAPABILITIES 44-45 (2014).

137. *Justice Department Files Antitrust Lawsuit Challenging Proposed Merger Between US Airways and American Airlines*, DEPT. JUST. OFFICE PUB. AFF. (Aug. 13, 2013), http://www.justice.gov/opa/pr/justice-department-files-antitrust-lawsuit-challenging-proposed-merger-between-us-airways-and.

138. *See* Wu, *supra* note 116 (discussing a report demonstrating that the seats were bigger in the 1990s); TUZOVIC, *supra* note 130 (noting fees were introduced in 2006).

4. Non-elite people who worked for the airline industry do not appear to have done well after deregulation, unsurprisingly.[139] Do the airlines provide some kind of discount to workers that would allow them to use their company's products and services? After all, Ford paid his workers the kind of wages that allowed them to buy his cars. Do these types of ethics exist among the current business elites? Or has globalization rendered them as powerless as the homeless or those who live on $2.00 a day?

5. Government action – Some would like to see the government deregulate the other operations related to air travel, such as the air-traffic control system.[140] Perhaps this would be advantageous, perhaps not; it depends. However, it appears the government will have to intervene in the market to encourage and perhaps nurture the establishment of new airlines in underserved areas. Further, it may have to actually use anti-trust regulations to keep the industry from further consolidating. In any event it intervenes and will continue to do so. The question is, who benefits?

There are so many more questions that could be asked here. Perhaps this should be left to the "economists." Or not.

CONCLUSION

Turing Pharmaceuticals CEO Martin Shkreli, called by some the most-hated man in America (at least during September-October 2015), may not be the poster boy of modern day elites but his actions and comments betray the Zeitgeist of their consensus. Turing Pharmaceuticals bought a sixty-two-year-old drug that cost $1.00 to produce and is commonly used by HIV and cancer patients (those with depressed immune systems). The company then raised the selling price of one pill from $13.50 to $750, roughly a 5,000 percent increase. When criticized, Martin Shkreli justified the company's actions on a number of business and market reasons and analogies, noting that the drug, Daraprim, "is still underpriced relative to its peers."[141] Though doctors, hospitals, politicians, and even the pharmaceutical association (Pharmaceutical Research and Manufacturers of America (PhRMA)) condemned the CEO and company's actions, this practice, as several news articles explained, is not isolated; rather, it is increasingly common in the

139. Justice Breyer, *Airline Deregulation, Revisited*, BLOOMBERG BUS. WK. (Jan. 20, 2011), http://www.businessweek.com/stories/2011-01-20/airline-deregulation-revisitedbusinessweek-business-news-stock-market-and-financial-advice.

140. *See* Smith & Cox, *supra* note 127.

141. *U.S. Pharmaceutical Company Defends 5,000% Price Increase*, BBC NEWS, September 22, 2015 at http://www.bbc.com/news/world-us-canada-34320413.

pharmaceutical industry.[142] When Hillary Clinton, a presidential candidate, also denounced the price increase, Wall Street immediately registered its contrary views; namely stock prices in pharmaceuticals dropped more than five percent, presenting perhaps a structural buffer supporting Shkreli's decision. But then, this problematic Zeitgeist and its structural manifestations are not just limited to this particular industry.

Neoclassical and neoliberal thought and practice give aid and comfort to elites and provide support for the structures and practices that perpetuate their material well-being at the expense of the vast majority of the world's people. This is so currently, whether intentional or not.

Many scholars are in a discursive and intellectual battle with this body of thought, suggesting there are alternative understandings and policies which will better serve the society as a whole. ClassCrits is a part of that battle.

ClassCrits may also have to translate some of its intellectual work into plain and popular language in order to challenge free market ideology in the public sphere. And, importantly, ClassCrits also may have to advocate for and participate in alternative practices on the ground in coalitions with others to have broader effect.

142. *See, e.g.*, *id*.; Bariana Eunjung Cha, *Drug and Biotech Industry Trade Groups Give Martin Shkreli the Boot*, WASH. POST, Sept. 24, 2015 at https://www.washingtonpost.com/news/to-your-health/wp/2015/09/24/why-big-pharma-hatesmartin-shkreli-too/; Andrew Pollack, *Drug Goes from $13.50 a Tablet to $750, Overnight*, N.Y. TIMES, Sept. 20, 2015 at http://www.nytimes.com/2015/09/21/business/a-huge-overnight-increase-in-a-drugs-price-raises-protests.html; Lydia Ramsey, *2 Weeks after Controversial Pharma CEO Martin Shkreli Announced He Would Lower the Price of Daraprim, It's the Exact Same Price*, BUSINESSINSIDER.COM, Oct. 7, 2015 at http://www.businessinsider.com/martin-shkreli-update-on-daraprim-price-2-15-1-.