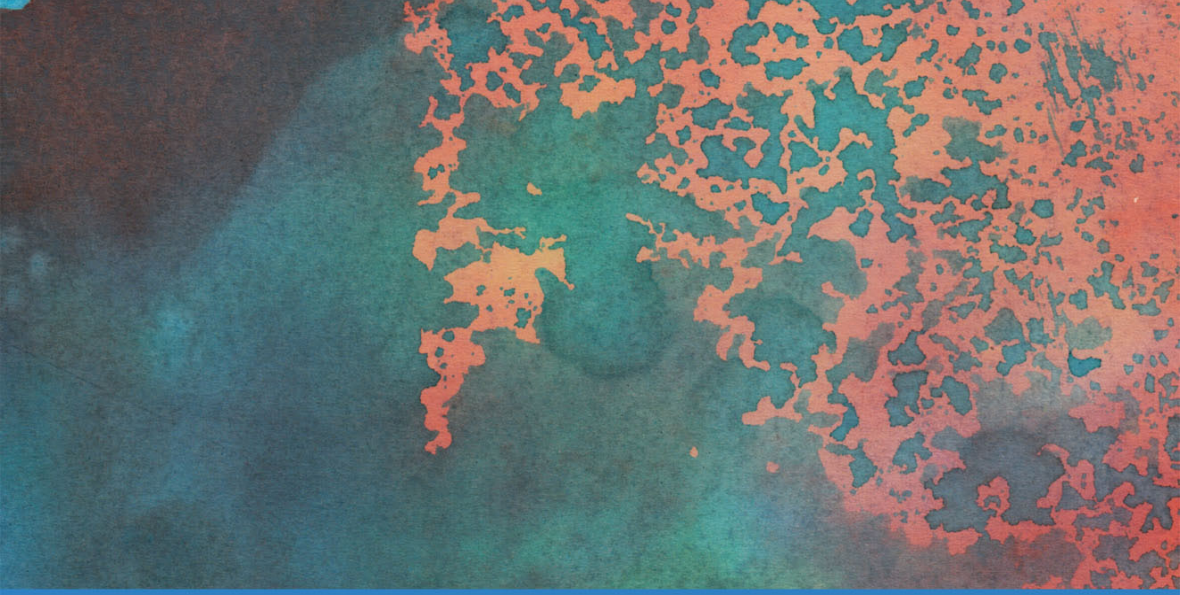

POPULISM, ARTIFICIAL INTELLIGENCE AND LAW

A NEW UNDERSTANDING OF THE DYNAMICS OF THE PRESENT

David Grant

Populism, Artificial Intelligence and Law

Political systems across much of the West are now subject to populist disruption, which often takes an anti-Constitutional form. This interdisciplinary book argues that the current analysis of anti-Constitutional populism, while often astute, is focused far too narrowly. It is held here that due to an obscured complex of dynamics that has shaped the history of the West since its inception and which remains active today, we do not understand the present. This complex not only explains the current disruptions across the fields of contemporary religion, politics, economics and emerging artificial intelligence but also how these disruptions derive each from originary sources. This work thereby explains not only the manner in which this complex has functioned across historical time but also why it is that its inherent, unresolvable flaws have triggered the shifts between these key fields as well as the intractability of these present disruptions. It is this flawed complex of factors that has led to current conflicts about abortion reform, political populism, the failure of neoliberalism and the imminent quantum shift to generative artificial intelligence. It is argued that in this, law is heavily implicated, especially at the constitutional level. Presenting a forensic examination of the root causes of all these disruptions, the study provides a toolbox of ideas with which to confront these challenges.

This is a book of originality and significance, which will make fascinating reading for academics and researchers working in the areas of Socio-legal Studies, Legal Philosophy, Political Science, Theology, A.I. and Neuroscience.

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A New Understanding of the Dynamics of the Present

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Introduction

We do not understand the present. The consequences are that we now confront potentially intractable disruptions across a wide sweep of the social landscape and the physical world. Prominent among these are the threat to democracy posed by virulent political populism, the existential risk of climate change and the intrusions of a form of artificial intelligence (AI) that seems capable of taking the construction of reality from our hands. A new understanding of the present can be the way to begin to come to terms with these disruptions, although this requires a gestalt shift in social analysis.

Presenting the argument for this shift is the concern of the present work. This is not a proposal of a new, all-encompassing social theory or any elaborate architecture of the future. Instead, it is an archaeological examination of the serial failures of key intellectual frameworks and social arrangements that have led to the current predicament so that the urgency of our existential reality may be appreciated. These forensics allow us to glean lessons from those failures that in turn suggest a new, more workable understanding of the present, the necessary initial step. This is the opposite of any grand narrative of salvation. It is the preliminary assembly of an intellectual and practical toolkit to begin to deal with these challenges.

The challenge of political populism

The initial focus of this work is the significance of the populist disruptions presently evident within an increasing number of political jurisdictions. The argument will be that this significance includes but also lies well beyond the current analyses of these disruptions, even though these analyses are extensive and often astute. The questions with which these analyses are currently concerned include an attempt to be clear about the very meaning of the term "populism"; what the features of the forms of populism are and so whether there are common elements; the sources of this phenomenon both within and beyond the political, including economic, social, theological and psychological factors; what their significance might be for the dispositions of liberalism,

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constitutionalism and democratic principles and thereby whether they are necessarily unbeneficial; and what proper responses might be.[1]

These questions are being widely explored within the public discourse. The argument here is that, as they stand, they will not be resolved. The reason is that they do not go to the heart of the dynamic of this form of disruption. In particular, although there are references to the emergence of political and social authoritarianism – and even to absolutism – there is no adequate account of the nature of the absolutism that is at the very heart of these questions. It will be argued here that absolutism is not merely a feature of certain forms of populism but that, properly understood, it is a foundation of the social field itself and so extends well beyond the issue of populism. To see this will require a different sense of absolutism than that which is in the common understanding.

Without this new appreciation, present analyses focus on the strategies of increasing dominance by ambitious or disaffected groups or ideologies and argue that this can become seriously disruptive, especially if it concerns dominance due to economic, ethnic or religious bias. These analyses are extended to the threat of disruption to the nature of democracy itself. Nothing new there, as such discontent may be seen as routine within States across a long period. But it is the tendency towards a particular sense of absolutism that sets the current disruption of democracy apart, so long as absolutism is understood as a foundational – rather than a merely symptomatic – element. It is foundational because, rather than being merely the search for or exercise of the condition of complete power – commonly the aspiration of dominant interests – the reality of absolutism is that it is always conditioned in a particular way, even if that aspiration may be quite well satisfied. What conditions absolutism is sympathy, by which – even at the margins – there are concessions by which those subject to absolutist rule can justify their subjection. Well within those margins – and therefore commonly across contemporary jurisdictions – those seeking to generate and prosper from, for example, politically populist sentiments attempt to do so by claiming to extend sympathetic conditions of existence of one sort or another. Absolutism should be counterintuitively understood as almost never absolute but as a complexity, the presence of which permeates jurisdictions, whether it triggers populist dominance or not. It is a complexity because it is always a compromise between these two, ultimately irreconcilable elements.

One important pointer to the manner in which populist absolutism in this broader sense is manifest is that those presently seeking populist support typically attempt to subsume constitutional, democratic principles and arrangements. So, we have democracy hollowed out from within and populism coated in the sympathetic conditions of democratic forms. Appreciating this is made easy if we see constitutionalism, liberalism and the rule of law as already – before any transition to populist forms – accused of heavily protecting

1 See M. Krygier *Anti-Constitutional Populism* CUP 2022 pp. 7–22

dominant positions that do not favour "the people", a protectionism that can itself display absolutist characteristics in the sense preferred here. Democracy itself has become ripe for populism because of its bias towards such dominance. Populist absolutism would then be a reaction against the absolutist features of present democratic institutions.

A wider view

However, leaving the discussion of populism at that political level would be an insular view given developments in the broader social and institutional landscape. A better response is to be found by examining disruptions well beyond the political, since disruption is evident across at least three additional institutional fields: populist theological concerns about the nature of Deity, widespread controversies concerning the operation of both the Market State and the Market and the intrusions of generative artificial intelligence within the technological field.

An analysis that extends across all these four fields reveals something new: that these disruptions are principally comprised of two categories, typically in contest. The *first* are those which move to display uninhibited absolutist tendencies, where absolutism is characterised by the intention to eliminate or radically transform alternative views and arrangements – even if "constitutionally" protected – which they justify by the claim that citizens' concerns will be dealt with so long as there is absolute subjection to the mission promoted by dominant interests, including by charismatic demagogues. The *second* are movements which reject such strategies as inherently fearsome, claiming that absolutist institutions create rather than resolve concerns, especially fear. Those within this second movement seek widely empowered but tempered institutional forms so that the claimed and desired benefits of subjection – such as the means to deal with threat, to ensure economic provision and notions of freedom and utility of life[2] – can be realised. Both these notions are variably premised on claims that fear and desire will be dealt with on condition of individual subjection: what can be understood as the *core psycho-social dynamic*.

The wider view has an historical context

However, the argument to be presented regarding both categories goes even further. That is, each of these four institutional arrangements – materialised as widely empowered *magnitudes* – was conceived in or emerged early into foundational absolutism: the triadic Christian Deity, the 'Hobbesian' State, the neoliberal Market and with each thereby assuming the status of a magnitude.

2 C. Bliss "Lifestyle and the Standard of Living" in *The Quality of Life* M. Nussbaum and A. Sen (eds) Oxford 1993 pp. 417–436; M. Barreiro-Gen "Discussing Approaches to Standard of Living" in *Decent Work and Economic Growth* Springer online 13 March 2019 p. 1

Technology will be argued here to have already attained a preliminary status of foundational absolutism in the form of generative artificial intelligence.

Regarding this, it is not now common to examine such a wide canvas, given the undoubted advantages of examining the viscera of history, a picture from close up. However, doing so can ignore, even obscure, the wider patterns that become available through an anatomical – rather than visceral – approach. This is the approach adopted here regarding the nature of and relations between such magnitudes. Thereby we do see patterns emerging. For example, that the dominant interests of each magnitude seek to establish the *core psycho-social dynamic*, which thereby is originary, not recent.

The significance and meaning of the notions of fear and desire referred to here will be exhaustively explored in their various aspects throughout this work but it can be noted at this early point that these exist at two levels, the existential and the circumstantial. At the existential level they comprise, on the one hand, our deepest concerns about the threats to our existence, ultimately mortality, and, on the other, our desires to avoid these concerns or at least to veil them with satisfactory conditions. The circumstantial level comprises such veilings and such desires for satisfactory – sympathetic – conditions, regarding each of which we are induced, typically willingly, to look to the respective magnitudes, given their claims to create the absolutism needed to eliminate fear and to address popular desires for sympathetic conditions. That is, at both levels: Deity, State, Market and now Technology have assumed both existential and circumstantial responsibilities, albeit inconsistently.

However, each magnitude has failed to sustain this combination of absolutism and sympathetic conditions of existence; each ultimately degrading such conditions in the search for unconditioned absolutism and so losing any sense of justification for this subjection. Technology is the latest attempt to induce citizens into this condition, and whether it will also confront the fate of that dilemma is an open and fateful question.

In short, informing this dynamic of the *core* "claim, subjection and failure" at its foundation is that it both distances itself from and is a veiling of the first and universal existential *angst* associated with the absolutism of reality, and within which lies our full contingency, including our mortality. This series of four magnitudes that are the ideational and material substance of the West are means constructed by dominant interests to allow respective generations to deny or camouflage this absolute existential *angst*, this being more profound than the fears and desires constructed as veils by these dominant interests. In fact, these magnitudes must search for an absolutist condition because their function is to materialise the absolutism of reality so that it can be engaged such that it is sympathetic to their subjects, a dual set of aspirations that is deeply problematic.

Implications

We shall see several implications of this argument. Flowing from the *core* dynamic of "claim, subjection and failure" of each magnitude, that a further

set of derivative dynamics – including a *serial dynamic* – explains the gradual appearance over historical time of the series of these failed magnitudes: Deity, then State then Market. Each was imagined by respective dominant interests as a basis to claim that an absolutist arrangement, which is sympathetic to the fears and desires of those subjected to it, has finally been established. In effect, this series of failures has claimed to provide a theological, then a political, then a commercial solution to concerns about existential and circumstantial fears and desires. We have now entered the era of the latest in this sequence, Technology, with its emerging absolutist tendencies. These serial failures are characterised by the collapse of each into its successor and, ultimately, into Technology. Modernity is not legitimate, as in Blumenberg,[3] but is the accumulated failures of serial magnitudes which have been shaped by a *complex of dynamics*.

A further dynamic – *regeneration* – which functions in parallel with the *serial dynamic*, illustrates that the dominant interests of each failed magnitude have persistently attempted its re-emergence. Given their primary failures due to inherent absolutism, this has required the preparedness to concede acceptable levels of sympathetic conditions that will still optimise absolutist features: the contradictory forces. For their part, those subjects opposed to absolutism seek to more heavily constrain the magnitudes without emasculating them, so that they will deliver optimally sympathetic conditions. Historically for each failed magnitude there has been a constant, debilitating tension between these forces. That tension has emerged again across the socio-political landscape in the form of the present disruptions. These two forces, however, are ultimately irreconcilable. One cannot seek to establish absolute power while at the same time claiming as a primary responsibility the creation and sustenance of foundationally sympathetic conditions sought by those whose absolute subjection one demands. The necessary compromise between these, as we shall see, always unravels.

The *consolidation dynamic*, which also operates in parallel with these others – as a discrete admission of their ultimate incapacity – is a separate attempt to resolve the irreconcilability of absolutism and sympathy. That is, the repeated conditioning of the absolutism of each institution has resulted in an erosion of strength, so each respective set of dominant interests has called on the perceived virility of its emerging successor magnitude in an attempt to reaffirm its power: Deity calls on the State through the Supreme Court; the State has invited the Market into wide aspects of its substance, becoming the Market State, a move that also prefaces – in the change in nature of the State as it becomes the Market State – what we subsequently see in full through Technology, that is a process of transformation.

An overlaying dynamic – the *Constitutional dynamic* – acts as a frame for these others. That is, the drafting of successor magnitudes has been

3 H. Blumenberg *The Legitimacy of the Modern Age* MIT pp. 3–11, 63–75

complemented by a recourse to constitutional resources: the interests of Deity have called on the U.S. Supreme Court regarding a range of theological tenets, including but well beyond the issue of abortion; the State has drawn constitutions and their courts into the centre of the populist political disruptions; and a reconfigured legal framework is at the heart of the ascendence of the Market. Law is a key factor in this broad scenario, especially given that the range of these initiatives raises questions about the current efficacy of the rule of law.

A new understanding of the present

It is the repeating failures of these originary absolutist forms – due to the ultimate irreconcilability of these two primary elements – which are argued here to be the principal, long-term informants of the current range of disruptions across the social landscape. This is the originary, *core psycho-social dynamic*, from which these derivative dynamics are drawn, at work in the present. To understand these disruptions, we need to look well back in and throughout time.

Even more significantly, it is argued that this entire dynamic framework has been imagined not only to veil but to obfuscate the absolutism of reality. The practical evidence for this is the present failure to address the current class of existential risks, such as climate change, nuclear weapons, genetic modification and unregulated artificial intelligence. The ultimate reason for this failure is that it is the fear of facing the absolutism of reality from which these magnitudes have long been said to protect us that deters us facing what are now existential threats: we have created institutional means that were claimed to protect us from – to veil – the absolutism of reality that themselves have generated existential threats but which we are unwilling to confront seriously because of that "claimed originary protection through obfuscation".

A new perception of the future

However, with the introduction of Technology into this schema, we can see the full strength of the final dynamic – the *transformation dynamic* – at work. This operates beyond its recent presence in both the *serial* and *consolidation* dynamics and is one which projects all these prior dynamics into the future. This allows a new understanding not just of the present but also of the foreseeable future: Technology has not only found its place as the most recent in the series of magnitudes but also points to a future quantum shift away from that series through its demonstrated capacity to foundationally impact individual consciousness, including through the presumptive, unilateral reconstruction of reality. Technology is the means not only to help explain the present – especially given its present function in the *serial* and *consolidation* dynamics – but is the key to understanding the impending quantum shift into the immediate future.

Evidence will be presented that Technology is beginning to exhibit many characteristics of absolutism in the form of its impact on individual consciousness. Drawing on the latest neuroscientific research, the argument here is that

our conscious view of the world is culturally assembled to minimise external threat as fear – ultimately a hint of the veiled absolutism of reality – and to allow the satisfaction of a suite of desires. Further, it is argued that such individual and shared world views are embedded within our cognitive architecture as beliefs. These are not merely the content of our mental exhortations but are materially within our brain. These beliefs are imposed upon – and tested against – selective, external sensory input. Thereby our belief systems literally and perceptually create what we perceive to be real. The brain and individual agency are thereby cultural artefacts and so reality is in our "cultured" brains, not in the world.

This is important for two reasons. First, this embedding explains the persistence of beliefs around absolutism regarding the purpose and function of institutional arrangements, that is the psycho-social function of beliefs in that regard. Second, given the self-referential nature of the platform-designed content of such neurotechnologies as augmented/virtual reality and brain-computer interfacing, and looping generative artificial intelligence more generally, their impact on belief formation is becoming pervasive, given their immersive nature and that the design of their content is not under the control of the individual citizen. The relevance of this neurological-technological embedding is that the likelihood of seriously addressing the existential risks, let alone developing means towards an alternative neuro-cultural frame which embraces the absolutism of existential reality, must be seen as limited.

In this context, alternative futures for consciousness – based on *respectful self-responsibility* as a means to unveil existential reality rather than subjection to institutional claims which veil that – would need to be progressed against this wide and deep trend by various strategic elements: self-purposed data sets interpreted through self-designed algorithms; reform of the rule of law based on fiduciary principles that reflect a new ethics; and all these within the context of the notion of ontological insecurity as the psychological frame that would avert any subjection to absolutism, even if that were complemented by gestures of sympathetic conditions.

Broad significance of these propositions

The current analysis of anti-constitutional populism is a valuable but ultimately limited contribution to modern political scholarship. However, if this form of populism is properly seen as exemplary of disruptions across the institutional landscape, the lessons from that connect these disruptions to an unresolved and unresolvable originary dynamic which remains at the heart of the causation of these very disruptions. Adopting the perspective of the *complex of dynamics* allows not only a new understanding of the present but also offers the possibility – albeit unlikely for reasons we shall explore – of developing a psycho-social and physical environment that might begin to address such disruptions, both present and prospective.

Purpose of the book

In short, we present the principal, related dynamics triggering the present spate of disruptions across the social and physical landscape: the denial of the absolutism of existential reality; the creation of empowered but conceptually flawed magnitudes to veil that reality but which have failed at two levels, that is, in their early absolute form and in their later regenerated forms; the progressive collapse of these as independent entities into their respective successors, ultimately under the rubric of Technology as generative artificial intelligence; and the constitutional context for all this. The present and the future are irresistibly burdened by the inherited flaws of originary sources. It is those sources to which we need to look to understand the troubled present and its apparent future.

Plan of the book

Part 1 – Populism, the Rebirth of Absolutism, Artificial Intelligence and Law

This Part will place political populism in a context of broader social disruption. It will present arguments concerning the absolutism of the Christian Deity, including how that absolutism has been determinative of the status of the Church hierarchy; how this absolutism has been serially challenged; and how there has been a continuous attempt to combine this absolutism with sympathetic conditions for the faithful. The argument to be put is that this original combination of absolutism and sympathy was always a contradiction, that the pretence as to its validity inevitably led to a foundational disruption that is still not – and cannot be – resolved; and that the contradiction persists, thereby opening up disruption again in the modern era. It was the failure to resolve this contradiction that led not only to the creation of the modern State but has been repeated through the subsequent epochs of Market and now emerging Technology. Through each of these scenarios, the law has been heavily implicated, at both the constitutional and regulatory levels. However, each of these aspects is best understood as a claim, introduced by serial dominant interests, to veil existential reality on condition of individual subjection. It is this broad landscape that is the field of the operation of the *complex of dynamics*.

Chapter 1 – Populism, the Absolute Deity and the Constitutional Court

The chapter begins to justify the argument that there is a complex of dynamic forces that has largely determined the shape and function of what is understood as the present. We start with an examination of the nature and impact of the Christian Deity, regarding which the debate about abortion is presented as a contemporary manifestation of the long challenge to the Church to address the irreconcilable elements of the *core* dynamic: the sought absolutism of the Deity, through its terrestrial agents, and the optimised aspirational search for sympathetic conditions by the subject faithful. The Church began a serious attempt at compromise between these elements following the arrival

of Protestantism and Enlightenment thought. Thereby it is evidence of the *regeneration* dynamic as it applies to failed magnitudes. However, in the face of sturdy populism, such compromise is now regarded by the dominant interests to have reached its limit and the Church has been forced to turn to the Constitutional Court – the *Constitutional* dynamic – of the State to preserve the remains of its former absolutist dominance. This is the first illustration that the source of present disruption across the social landscape has emerged from originary sources. However, this argument is founded on the premise that all these dynamics – the core and its wider derivatives – are the means constructed by dominant interests to veil the absolutism of reality and thereby induce subjection.

Chapter 2 – Populism, the Absolute State, Constitutionalism and the Rule of Law

This chapter examines the origin and evolution of the modern Hobbesian State, explaining its inextricable connection to the failure of the unified nature of the Deity in the early-seventeenth century and its evolution through the influence of the political tradition, leading to the reasons for the failure of the State as an absolutist-sympathetic magnitude in the mid-twentieth century. This is also the background to the emergence of the Market State which – through the impact of neoliberalism – has produced the disruptions of politico-cultural populism, with its consequential undermining of reigning notions of constitutionalism and the rule of law. Political populism is presented as an anachronistic response to these factors when the State itself is already moving in an entirely new direction through digitised platformism. The argument is put that these present challenges are directly traceable to the irreconcilability between sought absolutism and aspirational sympathy that were initially built into the nature of the modern State and remain with it, despite its evolution through its more recent forms, and are explained by the functioning of the *complex of dynamics.*

Chapter 3 –The Absolute Market, Constitutionalism and Digital Platforms

Chapter 3 argues that the Market replaced the State – first subsuming it in the Market State – thereby occupying the vacuum of absolutism created by the failure of the State to solve the irreconcilability problem. That failure occurred in the mid-twentieth century. The Market in its turn has failed the same test in the early twenty-first century, demonstrated by the Global Financial Crisis, whereby it became a fully predatory absolutist entity due to its widespread denial of conditions of existence that were sympathetic - in the sense intended here - to citizens. This denial was manifest by the strategies which produced that crisis, that is neoliberal deregulation, privatisation and globalisation and, despite selective attempts to make it more sympathetic, it led in turn to the rise of political and cultural populism and their constitutional implications. Beyond these reactions to the failure of the Market, that magnitude has itself been forced by the irreconcilability problem to transform and

is doing so through post-neoliberal digitisation and platformisation as new forms of governance. Thereby the Market is placed in the field of operation of the *complex of dynamics*, exhibiting *core*, *serial*, *regeneration* features along with further early signs of *consolidation* and technological *transformation*.

Chapter 4 – Upstream and Downstream Alliances and Absolutism

This chapter presents the argument that, as these failed yet persistent magnitudes have each in turn sought regeneration, they have formed a series of alliances: Deity having substantively forgone self-responsibility to the State in the form of the Supreme Court; the State having similarly foregone to the Market in the form of the Market State; and the Market to the ever-widening and deepening reach of Technology, both structurally in the form of the platform and materially in operational terms. As part of this broad trend, Technology has also been embraced by the magnitude of the State as it has attempted its fateful regeneration. Beyond these alliances, a further implication is that, as each has collapsed into its successor, there has been a secondary *consolidation* across all magnitudes as the technological form. Because of this, Technology is acquiring the status of an absolute. We are thereby seeing further illustrations of the *core* dynamic as both *regenerational* – often through *constitutional* means – and *serial*, as well as being subject to *consolidation*. This consolidation suggests that the shape of the technological move, besides being potentially absolutist in a unique manner, is *transformational* of all magnitudes.

Chapter 5 – The Approaching Absolutism of Technology and Precautionary Law

Chapter 5 presents an argument that Technology, especially as presented through digital platforms, is shaping to fill the space vacated by the failures of its predecessors to construct a sympathetic absolutism. Further, through the technological subjection which these platforms have already imposed and by their easy access to such late technologies as large language models – by which they have developed a new form of governance – they have the potential to realise that occupation. The chapter argues that there are good reasons, acknowledged by leaders in the field, why we should be concerned about these absolutist developments, given the claims being made about the potential cognitive immersion in this evolving regime. An account is also provided of the technical, legal and ethical responses to this imminent threat, but these are considered incapable of addressing the challenge. It is argued that a response that addresses ontological algorithmic bias, while acknowledging the determinative nature of the *complex of dynamics*, would be a minimal appropriate response.

Part 2 – Culture, Brain, Technology and the Fate of Consciousness

Part 1 ended, in effect, with an argument that Technology is emerging with absolutist credentials, through its platform status and the immersive tools at its disposal, but has not realised that status. In doing so, it has supplanted the

predecessor serial magnitudes of Deity, State, and Market as the best credentialed for that status.

Part 2 will take that argument forward in three ways. Technological embedding is not only behavioural, but is also neurological: individuals project learnt, embedded mental models to create reality. Thereby consciousness is implicated. From that, the brain – and so agency – needs to be understood as a historical-cultural artefact not as firsta reasoning machine. It is saturated with originary, historical and contemporary ideas for behaviour. This reflects the residual inheritance of the major ideological forms, as magnitudes, that we have examined. This, in turn, has implications for free will. Against this background, generative A.I. is considered in terms of a new creative and formative impact on individual mentality and behaviour. That is, whether we are approaching the realisation of an Absolute Subject, intended as both radical autonomy and deep subjection. These arguments are proposed as best addressed through the *complex of dynamics* and what means might be available to provide an effective response.

Chapter 6 – The Cultural Brain, Constructing Consciousness and the Absolutism of Generative A.I.

Chapter 6 argues that the approaching absolutism of Technology is now recognisable in the looming subsumption of individual consciousness. That argument is prepared by illustrating the "soft" nature of consciousness as rooted in the human disposition to cognitively embed cultural frameworks – themselves the residue of the beliefs and practices attributable to Deity, State and Market – as the basis of the perceptual probability projections that are believed by the subject to be crucial to her survival as an individual. Such cultural frameworks are separate from the sense of existential reality that is the foundation of consciousness but which is veiled by those frameworks and those beliefs. These frameworks have originary sources in this serial cultural history of the magnitudes under the influence of the *complex of dynamics* and are now emerging in the new form of a range of such present technological developments as large language models (L.L.M.s), algorithmic coiling, metaverse immersion and prospective human-level artificial general intelligence (A.G.I). Concerns that these developments are beginning to radically subject consciousness are emphasised by the wide submission of citizens to the present regimes of the platforms, but concerns about data subsumption do not yet constitute a populist reaction: what we are seeing instead is an expert reaction to any subsumption of conscious belief by late Technology. This is not a reaction that addresses the veiling of existential reality by such belief.

Chapter 7 – Conditions of Existence

Chapter 7 presents the argument that popular resistance to action on such existential risks as climate change, nuclear weapons, biotechnology and late Technology can be attributed to the cultural predispositions of the brain

and thereby behaviour. That is, the subjection imposed through the *core*, *serial*, *regeneration dynamics* – reinforced by that cultural predisposition and the dominant alliance between the Market and the Market State – remains robust in the face of these risks. Any credible indication that action is being undertaken will involve the combination of corporate strategies to do so and – like the political populism we saw in chapter 2 – a populist reaction against recalcitrant sections of the Market and the Market State. Populism is typically the sign that the *core dynamic* is losing credibility, requiring a satisfying response from the dominant interests of the magnitudes as the causes of these risks. However, this is not an argument that there is conscious awareness of this dynamic: populism, even in a positive form, stops with a demand that the dominant interests qualify their absolutism with sympathetic conditions. Existential *angst*, the veiling of which by these same constructed magnitudes is the fulcrum of this landscape, will likely remain veiled – through the processes of *consolidation* and *transformation* by Technology – and even if serious action on existential risk is undertaken.

Chapter 8 – A Different Dynamic: Technology and the Law for an Insecure Consciousness

Chapter 8 presents an account of key features that would favour an alternative to the serially failed magnitudes and which are responsible for the disruptions of the present. These features include the psychological notion of an ontological insecurity, by its nature a rejection of subjection to any constructed absolutism that veils existential *angst*. Free will, as a means to exit such subjection, is then considered. Rejecting any grand strategy as the means to such an exit, various defensive and assertive responses to the existential risks are considered. Reference points that would favour an attempt to embrace existential *angst* are also considered, regarding the rule of law, a new ethical frame and the elaboration of fiduciary principles. These reveal the new ethics as the principles of *respectful responsibility to and for oneself*, which is the socio-political complement to ontological insecurity. The ontological re-imagining of algorithms is exemplified as an application of such principles. The chapter finishes with a summary of the two broad themes of this work: the nature of the core dynamic and the derivative dynamics which have been the principal generators of both the ideological and institutional failures of the West, and thereby of the present disruptions across the social and political landscape.

Part 1

Populism, the Rebirth of Absolutism, Artificial Intelligence and Law

This Part will place populism in a context of broader social disruption. It will present arguments concerning the absolutism of the Christian Deity, including how that absolutism has been determinative of the status of the Church hierarchy; how this absolutism has been serially challenged; and how there has been a continuous attempt to combine this absolutism with sympathy for the faithful. The argument to be put is that this original combination of absolutism and sympathy was always a contradiction, that the pretence as to its validity inevitably led to a foundational disruption that is still not – and cannot be – resolved; and that the contradiction persists, thereby opening up disruption again in the modern era. It was the failure to resolve this contradiction that led not only to the creation of the modern State but has been repeated through the subsequent epochs of Market and now emerging Technology. Through each of these scenarios, the law has been heavily implicated, at both the constitutional and regulatory levels. However, each of these aspects is best understood as claims, introduced by serial dominant interests, to veil existential reality on condition of individual subjection. It is this broad landscape that is the field of the operation of the *complex of dynamics*.

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1 Populism, the Absolute Deity and the Constitutional Court

This is a difficult time for Christian Churches – Catholicism in particular – to be pressing an argument for the absolutist but sympathetic nature of Deity and the consequently strict expectations of belief and behaviour sermonised by its earthly representatives. In fact, there has been a significant reduction in numbers of the faithful and in belief in key principles. This shift is due especially to the predatory – rather than protective – behaviour of so many of the clergy towards children and indigenous people, to financial scandals and to the revelations of science. Prescriptive Church behavioural codes are thereby seriously in question.

However, these developments are not to be seen as terminal regarding the status of Deity promoted by these representatives, the dominant interests of the Churches. The disposition to believe remains strong among a majority of citizens. Research shows that, even among all the difficulty, it is common for large numbers of citizens to turn to prayer, and even ritual, when fear takes over, a reaction drawn from the normalised embedding of Christian metaphysics in Western culture. Yet such instantaneous reaffirmation does not typically carry with it a revival of support for traditional belief regarding the Absolute Deity. That is, populist reaction to the current controversies has two faces: this embedded faith that emerges at times of crisis, and the demand for change due to dissatisfaction with the regime.

This chapter will do two things. First, after a brief description of the nature of absolutism as that applies to both the Christian Deity and its earthly representatives, we will look at several key historical challenges to this absolutism. This may seem familiar territory to the faithful but will be presented in a fresh light. Second, we will look at a range of Church defensive strategies, those which can be seen in effect as emphasising the absolute sympathy of Deity and its representatives.

The persistent reach for absolutism

Deity and Church as absolutist entities

The first millennium

The reference points for the absolutism of the Christian Deity are well established: God as omnipotent (all-powerful); omnipresent (everywhere);

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omniscient (all-knowing); omnibenevolent (all-loving); and transcendent (outside this world). This platform is complemented by a range of dogma, such as the divinity of the Christ, the immaculate conception of the Christ by Mary; the physical assumption of Mary into Heaven; and the consecration of bread and wine as the real body of the Christ as the Eucharist. An important further dogma – in its Catholic form – is that of papal infallibility, that the Pope cannot err when he teaches faith or morals. This is an essential tenet for the resolution of disputes but its significance extends well beyond that. That is, this dogma confirms that the absolutism of the Deity is theologically and morally indistinguishable from the papacy. In that, absolutism is invested in the papacy.

What is important here is that not only was this absolutism hard won but it has been defended hard – even brutally – across the full history of the Church: absolutism has been not merely a conceptual position but a visceral expression of attempted Church institutional dominance. We see this from the earliest times, in particular with the response to the dualist gnosticism of Marcion (c.85–160), a creed that proposed that the world was created by a malevolent God and that Christ came as the true God and Saviour. This is a theology that declares its God to be the omnipotent creator of the world and which bases its trust in this God on the belief that such exhibited omnipotence cannot at the same time make the destructiveness of this world and the salvation of men from the world into the central activity of this God. So, a foreign God had to be imagined for such salvation.[1] This belief system rejected the Old Testament of the Jews and much of what became the New Testament, apart from the elements based on the Gospel of Luke and the writings of the Apostle Paul.[2] It has been argued that the response of the Church – by Tertullian, Irenaeus and others – to this gnostic approach had a significant impact in shaping its early doctrinal base.[3] Marcion was also excommunicated.

A subsequent challenge emerged with Arianism, by which Arius (c. 256–336) claimed that the Christ, begotten by God the Father as his son, thereby did not always exist and so was not co-eternal with the Father: 'God' in name only and subordinate. This was a fundamental challenge to accepted trinitarianism in that the Christ was not absolute. In effect, it argued that not all elements of the Trinity displayed the full range of absolute characteristics: the Deity was not absolute. In the first of a series of general councils[4] by which

1 H. Blumenberg *The Legitimacy of the Modern Age* MIT 1983 pp. 129, 130; H. Blumenberg *Work on Myth* MIT 1985 pp. 154, 189

2 "Oh wonder of wonders, ecstasy, power and amazement, that one can say nothing at all about the gospel, nor can one think anything about it, nor compare it with anything else" *Work on Myth* p. 189; P. Foster "Marcion: His Life, Works, Beliefs and Impact" *The Expository Times* Sage 121:6 2010 pp. 273ff

3 J. Lieu "Marcion through Tertullian's Eyes" *Marcion and the Making of a Heretic* CUP 2015 pp. 53ff; *The Legitimacy of the Modern Age* p. 148

4 B. Nassif "How Was Orthodoxy Established in the Ecumenical Councils" *Christian Research Journal* 40:06 2019, updated August 2022; C. Bellitto *The General Councils – A History of the*

Christological, Mariological and Trinitarian controversies were resolved, Emperor Constantine addressed this challenge by convening the bishops at the Council of Nicea I (325), at which Arianism was condemned and wherefrom he imposed the absolute punishment – the death penalty – on those who did not comply. This was not the end of the matter, as Athanasius of Alexandria continued to reject those who would not submit to the doctrine. In ongoing turmoil, Constantine came to the defence of Athanasius against the claims of Arians at a Synod in 335.

The absolute nature of the Trinity was thereby already hard won but the campaign then moved to another phase. If the Christ was God, how was he also human? So the argument continued between opposed positions: Nestorius argued that Mary was the mother of the human being Jesus but was not the mother of God while Cyril of Alexandria argued that the divine and human Christ were the same person. This issue was addressed at the controversial Ephesus Council in 431. Ultimately, Nestorius was there condemned and his writings burnt. The unity of divine and human became established Christian doctrine. By this – and further resolution at the Chalcedon general council in 451 – not only was the Absolute Deity preserved but it was strengthened: the Christ was two natures, divine and human.

The status of the pontiff in all these circumstances may be noted here as significant, given his demonstrated authority in these decisions of absolutist consolidation. Although the notion of papal infallibility – that is the Pope speaking *ex cathedra* on moral matters – was not formalised until 1870 from the First Vatican Council under the direction of Pope Pius IX, the notion of such exclusive authority originates with its transfer from the Christ to Peter[5] and therefrom passed to all subsequent pontiffs.

Already we can see a range of key elements within these early theological developments. Their focus was on the construction or assembly of an understanding of the world beyond the absolutism of physical reality but which was still profoundly absolutist. Specifically, an entity beyond this world yet everywhere, all knowing but all loving, and all powerful but fully open to every individual – as allowed by the dual nature of the Christ. No longer necessarily embedded only in the contingency of material reality and the fears produced by its minimally-controllable absolute nature, the believer could veil that reality by immersing themself in this alternative reality of power, love and wisdom. All that is required is the full submission of one's will and behaviour not only to the idea of this absolutism but to its reality as represented by the absolutist authority and practices proclaimed by the terrestrial Church. This is the *core* psycho-social dynamic of veiling, claim and submission on display.

Twenty-One Church Councils from Nicea to Vatican II Paulist Press 2002 pp. 15–30; K. Clarke & A. Wells "Councils Throughout History" in *Vatican II – Voice of the Church* November 2021

5 See Mark 3:16, Luke 24:34

The Middle Ages

The absolutism of the Church was fully on display in this period. Some examples of this were legal and bureaucratic – nonetheless crucial to the papacy – while others were demonstrations of brute force.

Given the range of clarifications in the first millennium, the concerns of the Church throughout the Middle Ages were principally taken up with the legal consolidation of canon law. Much of this – especially through four Lateran Councils – was concerned with the extension of Papal control, what here may be described as both its theological and its terrestrial absolutism. These Councils were also concerned with the warlike protection of the Holy Land by encouraging the crusades against the incursion of Islam and Judaism: a variant of the display of the absolutist power of the Church, ranging at least from 1095 to 1291.

Lateran I (1123) affirmed the Concordat of Worms (1122), so clarifying that the emperor could no longer appoint Church officials,[6] but it also pardoned the sins[7] or reduced the penance for crusaders and protected their families and property. Lateran II (1139) dealt with the schism by which there existed both a pope and an antipope,[8] a contest that featured violent rivalry, and a phase of heresy which would persist for four centuries. A prominent heretic was Arnold of Brescia, who argued against the material indulgence of the clergy and for the renunciation of property ownership and for political liberty and democratic rights. He was condemned for these arguments, later tried and sentenced to death. It is a reasonable argument that he was a precursor of the sixteenth-century Reformation,[9] as we shall see. Pope Alexander III had to assemble Lateran III (1179) to deal with further schisms between himself and three simultaneous Popes. It was a problem to recur with significant consequences in the Great Schism of the fourteenth century.[10] This council also singled out as heretics the Cathars, a movement that can be traced back to Marcion (c. 85–160). These were the subject of a crusade due to their heretical belief in dual divinities, one good and one evil, so rejecting the monotheistic principle and thereby the structure and what they saw as the indulgent lifestyles of the clergy. They were violently wiped out by Albigensian crusaders around 1209. What is significant is that this movement not only posed a doctrinal challenge to the Catholic establishment, but held among its complaints

6 D. Castellano "Commentary on the First Lateran Council" *Arcane Knowledge* 2013; First Lateran Council 1123 AD *Papal Encyclicals Online*

7 J. Byrd (ed.) *Crusades and Christendom - Part. II Crusade and Council 1213–1215* University of Pennsylvania Press p. 109

8 P. Halsall "The Canons of the Second Lateran Council 1123" *Medieval Sourcebook: Tenth Ecumenical Council: Lateran II 1139* Fordham University 1996; Second Lateran Council 1139 AD *Papal Encyclicals Online; Catholic Encyclopedia* 2021

9 George Greenaway *Arnold of Brescia* CUP 1931 published online July 2009

10 J. Le Goff "The Shattering of the Unity of the Church: The Great Schism" *The Birth of Europe* Blackwell pp. 169ff

some that had been and would again be echoed in the Reformation. This broad strategy was complemented by severe punishment of any Christian who aided a Muslim on the Crusade battlefield in the Holy Land.[11]

Lateran IV (1215) revealed again how common the challenges from heresy were and how powerfully and absolutely the Church resisted these: believers in alternate doctrines, including other groups supporting gnostic or dualist principles, were excommunicated and deactivated from their professions. Bishops who failed to deal with this common challenge to Church authority were deposed and all self-appointed preachers required a licence. A new Holy Land crusade was instigated after the failure of the previous effort and sins were remitted to any participants, who were also exempt from taxes. Muslims were not the only targets, as Jews were denied public office, were held indoors on Palm Sunday and stoned on the allegation of responsibility for the death of the Christ. Two other important matters determined here were the move to the use of the word "transubstantiation" regarding the Eucharist and the recognition of the unwelcome practice of the sale of relics and the sale of indulgences, the latter would also have a catastrophic impact through the Reformation.[12]

During this period there were a number of particular emphases of the councils which may appear to be marginal to those just canvassed but which will be seen to be crucial. For example, the selection of morally proper candidates for the clergy and bishops (Lateran II) and proper clerical education (Lateran III and IV) were emphasised. There was also a focus against worldliness, the toleration of pluralism of beliefs, absenteeism, and – given what was to follow through the Reformation – the practice of simony. These were all seen as handicaps to proper pastoral care (Lateran I, II and III), which we will examine further. Pastoral care included addressing the common violence both within communities and across the landscape between communities: so we see the Peace and Truce of God (Council of Clermont 1096),[13] excommunication of perpetrators and the disallowing of church burials for jousting knights (Lateran I, II and III).

Concubinage was disallowed and behaviour was extensively regulated, both within and outside of the Church, especially regarding cloistered monks and nuns (Lateran II and IV). Rules for laypeople also proliferated, for example punishing usurers by denying them confession and church burials and by invalidating wills (Lyons II). This affected Jews in particular.[14] Laws regarding

11 M. D. Lambert "The Motives of the Cathars: Some Reflections" *Studies in Church History* CUP 15 p. 51; Third Lateran Council 1179 AD *Papal Encyclicals Online*; *Catholic Encyclopedia* 1996

12 J. Wayno "Rethinking the Fourth Lateran Council of 1215" *Speculum* 93:3 2013 pp. 611ff (especially pp. 623, 624); Fourth Lateran Council 1215 AD *Papal Encyclicals Online*

13 F. Paxton "The Peace of God in Modern Historiography: Perspectives and Trends" *Historical Reflections* 14:3 1987 pp. 386, 388

14 R. Dorin "Once the Jews had Been Expelled: Intent and Interpretation in Late Medieval Canon Law" *Law and History Review* May 2016 34:2 pp. 335–6; *The General Councils* p. 71

marriage were set to balance the reality of general lack of mobility beyond one's village with the need to create Christian children by setting the threshold at third cousins (Lateran IV).[15]

We shall explore the significance of all these developments but what we are seeing is a combination of the forceful imposition of internal order on the structure of the Church, on the role and behaviour of the clergy, on a wide range of the beliefs and practices of the faithful, on the one hand, and the fierce resistance to external threats posed by Muslims and Jews, on the other: an absolutist strategy.

Techniques and outcomes of inquisition

This forcefulness was raised to new levels with the instigation of the processes of inquisition, which extended from the twelfth through to the nineteenth century. This thereby bridged much of both the medieval and modern eras, especially the Reformation and Counter-Reformation, and so complemented both the powers of mainstream bishops, at one end of the spectrum, and the range of "religious" wars that reshaped Europe, at the other. Initiated in response to the dualist challenge of the Cathars – a dualism the resilience of which could be traced back to the gnostic Marcion (c.100–165) in the earliest days of Christianity – its purpose was the eradication of heresy. That these procedures extended over such a period points to two things: that dominant Christian theology was not necessarily convincing; and that, nonetheless, the Church was determined to eradicate any attempt to deny that theology.

In fact, beyond the issue of the persistence of Gnosticism, the process of inquisition is best understood in the context of broader European developments. These included the full elaboration of a "church"-type organisation associated with the consolidation of the authority of the medieval papacy; the reception of Roman Law and the development of canon law as the first "modern" legal system; the elaboration of a systematic theology which "codified" the contents of Christian faith and the rise of specialised elites trained in the knowledge of religious doctrine; the emergence of an ethic of individual attention and individual accountability for the contents of "conscience" in place of the older collectivist structures of consciousness; and a general shift in the balance of religious orientations from "otherworldly" to increasingly "innerworldly" outlooks as evidenced by the controversies surrounding the new mendicant orders as well as the heterodox sects.[16]

15 L. L. Cavalli-sforza et al. "Customs and Legislation Affecting Consanguineous Marriages, with Special Attention to the Catholic Church" *Consanguinity, Inbreeding and Genetic Drift in Italy* Princeton University Press Ch. 2 p. 32

16 D. Nielsen "Rationalization in Medieval Europe: The Inquisition and Socio-Cultural Change" *International Journal of Politics, Culture and Society* 2 1988 esp. p. 291ff and p. 237

The techniques used by the judicial and secular courts that administered the inquisitorial techniques applied a range of punishments: penances, banishment, imprisonment and ultimately death, often by burning. Even taking into account the revisionism of recent historiography, generalised fear and terror were their principal aim.[17] A further testament to the absolutist disposition of the Church.

Reformation – a populist movement

However, as we have already seen, the challenges to Church authority were neither only sectarian or disciplinary. In fact, among all the challenges that inspired an absolutist response, one stands out. It was and remains a doctrinal challenge that the dominant form of Christianity failed to meet and to which the Church elite had failed to respond. Ironically, it was a challenge that Christianity in all its forms would not and – in the argument here – could not meet. Yet that did not handicap the virulence of the popular protest.

A particular complex of factors – put forward by several key theologians – is the key to understanding this challenge and these failures. This complex centred on the differing arguments of the Aristotelian Aquinas and the Neoplatonist Ficino regarding the nature of the Deity. The turning point came with the argument put by Pomponazzi (1462–1525) that there is no metaphysics that can reconcile, on the one hand, the Neoplatonist truth of the immortality of the soul and, on the other, that this is in disagreement with the rational Aristotelian argument that the body is the form of the soul and the body dies. Aristotelianism had become the official Church dogma. By that, there was no such thing as an uninstantiated form and so there was no possible cognition of pure intelligibles such as the Neoplatonic soul,[18] nor, by implication, God. Regarding these, there was only faith. We could not have knowledge of the mind of God.

This inscrutability of God is a key theme adopted by Luther (1483–1546) from William of Ockham through the thought of Johann von Staupitz. In the argument here, these influences were at the heart of Luther's rejection of the purchases of indulgences and so of his reformist arguments. For Staupitz, God is not the author of natural laws that men can understand rationally but an omnipotent and inscrutable will, constantly but apparently arbitrarily at work in the world. We can only know God through faith in the Christ. Further, regarding salvation and merit as it relates thereto, men cannot know or want to do good so salvation is due only to grace, and so a gift from God

17 R. Kieckhefer "The Office of Inquisition and Medieval Heresy: The Transition from Personal to Institutional Jurisdiction" *Journal of Ecclesiastical History* 46:1 1995 p. 54; D. Muller "The Inquisition: An Overview" *Imagining the Inquisition* Radboud University Special Faculty of Theology online

18 S. Gaukroger *The Emergence of a Scientific Culture* OUP pp. 85–86

supernaturally infused into the soul.[19] In consequence, purchasing indulgences as a means of reducing penance due to God is not only misconceived but is a perversion of the relationship with God. For promoting this heresy, Luther – particularly offended by the excesses of indulgences promoted by Pope Leo X – was excommunicated in 1521.

Two initial observations can be made regarding this reformation. First, the Church has no jurisdictional powers and so cannot direct or regulate Christian life: the Church does not constitute a separate class with a special jurisdiction and privileges. "We are all consecrated priests through baptism". In fact, for Luther, the only reason the Roman Christians maintained a separate legal system that "exempts them from the jurisdiction of the temporal Christian authority" is in order that they "be free to do evil" and remain unpunished.[20] Second, if the institutions of the Church had no special standing, then the claim of "prescribing" belief or act was void, let alone any basis for absolutism in such prescription. If the Deity is absolute then it is absolutely inscrutable and only faith connects the faithful to it: the Church can have no rational claim on the intentions of God and the nexus between the absolutism of God and the absolutist pronouncements of the Church are severed.

In short, there was a flaw in the foundational theology, of which Ockham (1287–1347) and others had long warned. Arguing against the anti-dualism of the Thomist *via antiqua*, Ockham's *via moderna* was a critique of the argument that reason can be deployed to attain genuine knowledge. Reason has a small space in ethical debate, and similarly in theology. For Ockham, the dogmas of revealed religion, even the question of God's existence and attributes "cannot evidently be known" by reason and "can be proved in theology only under the supposition of faith". His was a train of thought through to Luther and his devastating critique of the Roman Church.[21] The idea that the Church could dispense, on God's behalf, the cancellation of penances through indulgence, was anathema.

The broader significance here is that this points to the flaw in any search for absolutism – and therefore in the *psycho-social dynamic* that is the central focus of the present work. That is, that absolutism by its very nature cannot be reliably engaged, let alone be made patently sympathetic to humanity: the pursuit of absolutism to achieve that outcome is pointless. Deity as inscrutable.

Counter or Catholic reformation – an absolutist strategy

The response of the Church to this foundational challenge drew once more on its commitment to an absolutist theology. It began with the phases of the

19 Q. Skinner "The Forerunners of Lutheranism" in *The Foundations of Modern Political Thought – Volume 2 – The Age of Reformation* pp. 24–25

20 Ibid. p. 13

21 Ibid. pp. 23–24

Council of Trent (1545–1563) established by Pope Paul III and ended with the European wars of religion in 1648. The most important response was the Catholic affirmation of the authority of scripture:[22] against the Protestant view that Christians should interpret for themselves, that scripture – not Church pronouncements of the Church fathers and its hierarchy, including bishops, stretching back to the Apostles – should be the ultimate authority. The Church provides the meanings of Biblical passages. This extended to the training of the clergy within seminaries, many of whom were little better educated than the laity. From that came a stronger emphasis on the central role of the parish and a noticeable resurgence in Catholic spirituality.

Key examples of the doctrinal and other counter moves instigated at Trent were the reaffirmed view of original sin which could be removed only by baptism, and the restated belief in good works as a justification for God to remove the guilt of the sinner rather than this by faith alone. The doctrinal claims of the Catholic sacraments were again established against the Protestant challenge without concession[23] and Luther's rejection of transubstantiation in the Eucharist was deemed heretical and so dismissed.[24]

Trent was followed by a series of strategies and tactics the purpose of which was to embed its pronouncements firmly in the Catholic mentality and practice. It determined that the Church, rather than bishops, would surveil the publication of all books on sacred topics, especially important given that Protestants were now taking full advantage of the printing press. It also determined that there could be no interpretation or publication of the meaning of the pronouncements from Trent except through the centralised office of the Congregation of the Council. The unintended effect was a growing censorship rather than a promulgation of the pronouncements of that General Council. Another effect was the growing allied tendency to curse and excommunicate anyone who expressed an opinion contrary to Catholic teaching, based on the principle of *anathema sit*.[25]

Thirty Years War

This devastating conflict, significantly the result of political and commercial tensions, may be argued to have been triggered by the 1618 attempt by Ferdinand II, King of Bavaria, to impose absolutist Roman Catholicism thought and practices on his subjects, leading to a strong reaction from the Protestant nobles.

22 "Concerning the Canonical Scriptures – First Decree" General Council of Trent – Fourth Session *Papal Encyclicals Online*

23 *The General Councils p. 105*

24 J. McCue "The Doctrine of Transubstantiation from Berenger through Trent: The Point at Issue" *Harvard Theological Review* 61 1968 pp. 407, 419

25 "Degree Concerning Canonical Scriptures" *Papal Encyclicals Online – Fourth Session*

It has not been argued that the papacy was directly or heavily involved in pursuing its ambitions for the further promotion of its doctrines against Protestantism through this conflict, although the robust activities of the Jesuits at all levels of a number of political centres – especially Vienna and Munich – cannot be seen as separate from the interests of the papacy.[26] Nonetheless, in the end, the outcome of what was eventually a stalemate between these competing forces was unfavourable to the papacy. Protestant Calvinism was recognised, Protestant Denmark and Sweden acquired independent status as national sovereignty became established, France declared war on Catholic Spain and the religious provisions of the final settlement were rejected in his proclamation *Zelo Domus Dei*[27] by Innocent X as "perpetually null, void, invalid, wicked, unjust, condemned, reprobated, futile and without strength and effect". The significance of the French initiative would persist and strengthen into the eighteenth century with the outcomes of the Revolution of 1789 and the oaths of loyalty and the widespread acquisition of Catholic property that featured in the 1815 Napoleonic Concordat and Organic Articles.[28]

In this long path to the early seventeenth century, the Catholic establishment had pursued absolutism at two levels, the complete, codified rejection of heretic theology *per se* and the instigation of a range of strategies which were of a bureaucratic and disciplinary nature: penance, banishment, excommunication, corporal punishment and execution. In the end, it was the flaw within Catholic theology itself, long identified by Ockham and others, which had always been the Achilles heel, a flaw not able to be rectified. But as the Renaissance and the Scientific Revolution – signs of approaching modernity – were now to show, this challenge would only intensify, revealing new absolutist strategies in response.

Early modernity

By the end of the Thirty Years War, the Scientific Revolution had in effect already commenced. Copernicus published his heliocentric cosmological model in 1543. This was branded as heresy by the Inquisition in 1616, due to the commitment of the Church to the Aristotelian-Ptolemaic model of an Earth-centred universe, and Galileo (1564–1642) – who largely confirmed the Copernican theory – was tried in 1633.[29] Consistent with its strategy of absolutist eradication of doctrinal challenges, he was found "vehemently suspect of heresy" and sentenced to house detention until his death in 1642. This appears to echo the position of the papacy regarding Copernican Giordano

26 R. Bireley "The Jesuits and the Thirty Years War" CUP 2003 pp. 4, 14

27 P. Wilson *The Thirty Years War – Europe's Tragedy* Belknap 2009 p. 754

28 K. Hosack "Napoleon Bonaparte's Concordat and the French Revolution" *Constructing the Past* 11:1 Article 5 p. 31

29 S. Gaukroger *The Emergence of a Scientific Culture* OUP pp. 189ff

Bruno (1548–1600) although he was arguably put to death more due to his expansive theological views: typical of the coming new age, he was insatiably curious.[30]

The absolutism of the Church was again revealed in its first, albeit delayed, reaction to the emerging themes of modernity at the General Council Vatican I (1869–1870). This focused largely on the publication in 1864 by Pope Pius IX of *Syllabus of Errors* and reflected the concern of the Church regarding a wide range of developments including naturalism, rationalism, socialism, communism, Church rights, civil society, ethics, marriage and liberalism.[31] This enumeration of "errors" is revealing, in that it points to the wide variety of fronts with which the Church had to contend, ranging from the political to the doctrinal, to the scientific and to the social. Its initial response to these was to continue to pursue an absolutist agenda but we shall see that, ultimately, it caused the Church to slowly add to absolutism – not to replace it with – a sympathetic approach to the faithful. Absolutism *per se* had failed so a new approach of trying to present absolutism as terrestrially sympathetic was attempted.

The outcome of Vatican I was still an absolutist affirmation of papal infallibility. Various positions on this were considered, including that of the extreme ultramontanists who promoted the absolutist idea of the Pope as an utterly supreme commander, through to those who backed the idea of infallibility but saw no reason to define it at that moment due to its divisiveness. In the end, the encyclical *Pastor aeturnus* settled on two principles: jurisdiction and infallibility. Jurisdiction affirmed the papal powers as being from God, and extended to the Church throughout the world, and infallibility ultimately settled on the position that the pope is infallible when he speaks *ex cathedra* concerning faith and morals but not concerning the daily governing of the Church.[32]

Yet the concern about modernism continued. It was again reflected in the encyclical *Pascendi Dominici Gregis* issued by Pope Pius X in 1907, which stated:

> To penetrate still deeper into modernism and to find a suitable remedy for such a deep sore, it behoves Us, Venerable Brethren, to investigate the causes which have engendered it and which foster its growth. That the proximate and immediate cause consists in a perversion of the mind cannot be open to doubt. The remote causes seem to us to be reduced to two: curiosity and pride. Curiosity by itself, if not prudently regulated, suffices to explain all errors…A lamentable spectacle is that presented by the aberrations of human reason when it yields to the spirit of novelty, when against the warning of the Apostle it seeks to know beyond what

30 Ibid. p.113; H. Blumenberg *The Legitimacy of the Modern Age* p. 382
31 *Papal Encyclicals Online – The Syllabus of Errors* 1864
32 *Papal Encyclicals Online – Decrees of the First Vatican Council* 1868

> it is meant to know, and when relying too much on itself it thinks it can find the fruit outside the Church wherein is found without the slightest shadow of error…But it is pride which exercises an incomparably greater sway over the soul to blind it and plunge it into error, and pride sits in Modernism as in its own house, finding sustenance everywhere in the doctrines and an occasion to flaunt itself in all its aspects.[33]

The establishment and continuous reaffirmation of an Absolute Deity was characteristic of the Church from its tenuous inception through to the modern era.

Finding a place for sympathy

Inherent and responsive sympathy

It is noted at this point that the sympathetic strategies we shall now examine are not taken as being alternative to the preferred absolutism of the nature of the Catholic Church. The argument here is that Deity remains theologically absolute, so that the constituting difference between Roman Catholicism and Protestantism is that generally, in the former, the Church is an absolutist and authoritative entity, while for the latter, it is no more than a congregation of equals where no-one has any special relationship to the Deity. The former can decree good works as a complement to faith while the congregation – and not good works – alone is primary for the protestant sects.

However, a new arrangement of sympathetic strategies came to be instigated to complement absolutism. This was in effect to make the operation of the *core dynamic* more convincing. That is, a member of the faithful is brought to accept the claim by dominant theological interests that one's concerns – fear and desire – will be dealt with so long as one subjects oneself to the prescribed set of ideas and practices. There is no absolutism of existential reality – raw, in itself and without mediation – constituted by total contingency alone and which subjection to the regimes of any such theological magnitude can disperse.

From this can be drawn two categories of institutional sympathy. The first is that which is claimed to be inherent in the absolute regime. One pre-eminent example of this is pastoral care. The second are sympathetic responses to effective challenges to the validity or viability of the absolutist regime. As it turns out, examining the *Syllabus of Errors* is a helpful entrée into areas where the Church has not only been challenged but where, in varying degrees, the preferred response has come to a more sympathetic position than was envisaged at the time of Vatican I.

Inherent sympathy is provided in return for submission to the regime of idea and practice prescribed by dominant interests, in this case the clergy on behalf

33 *Papal Encyclicals Online – Pascendi Dominici Gregis – On the Doctrine of the Modernists* 1907

of the bishops. This typically takes two forms. The first is embedded in dogma, in that the nature of the Christ itself is claimed to be inherently sympathetic to humanity. The Christ came to earth to suffer and die so that the faithful could experience salvation for eternity. But this was not a terrestrial outcome, although terrestrial conditions applied to achieve it. Whether one adopted the Roman or Protestant view of the nature of God, such salvation by the Christ was available to all believers who subjected themselves to the respective regime. This sympathy of the Christ was due only – and thereby was an inducement – to those who affirmed the absolutism of the Deity.

The second form – an elaboration of the first – is terrestrial, pastoral care, the principal feature of which, and from the beginning, is of a shepherd of a flock rather than of a territory. The necessary characteristics originate from the Hebrew notion in Genesis and include keeping watch over a flock so that it will be well-tended and avoid misfortune. It is this that was introduced into Christianity.[34]

The implications of this notion are significant at two levels. First, this beneficent role has as its condition that salvation will be assured so long as one is completely subject to the doctrinal law[35] and responds to the truth as revealed by the pastor.[36] Second, at a more profound level, every individual in the flock is important – especially if an individual has lapsed – rather than only the flock as a totality.[37] This means the shepherd must account for and must ultimately accept a high level of responsibility for the individual but also for each of their acts. This complete subjection of the individual to doctrine and practice requires an individualisation of a relationship that is never-ending and which goes to both the detail of the daily life of the individual and their conscience.[38] By all this, the Christian pastorate:

> …is a form of power that, taking the problem of salvation in its general set of themes, inserts into this global, general relationship an entire economy and technique of the circulation, transfer and reversal of merits, and this is the fundamental point. Similarly with regard to the law, Christianity, the Christian pastorate, is not simply the instrument of the acceptance or generalisation of the law, but rather, through an oblique relationship to the law…establishes a kind of exhaustive, total and permanent relationship with individual obedience.[39]

34 M. Foucault *Security, Territory, Population* palgrave 2007 pp. 123–130
35 N. Doe "Doctrine and Worship" *Christian Law* CUP 2013 p. 209
36 D. Powlison "The Pastor as Counselor" *Christian Counselling and Education Foundation* Available online pp. 7, 8
37 P. Bouteneff "Christ and Salvation" *Orthodox Christian Theology* CUP 2009 p. 104
38 Ibid. pp. 167–75
39 Ibid. p. 183

That is, the acceptance of this truth of the pastor is the application of the power of self-examination to ensure such obedience. In effect, this is the power of governing wherein the assurance of salvation – in the terms in the present work, of escaping from both one's existential and one's constructed fears and desires – is realised through subjection to a prescribed regime of idea and practice. This is the *core dynamic* on full display. Sympathy is constituted here by a concern for the welfare of the believer but also their salvation through their submission to a regime which is an inextricable part of the absolutism at the heart of its doctrine of Deity. Thereby is it inherent sympathy.

There have also been prominent examples in history of clear statements of sympathy for the social position of the faithful but they need to be understood in the context of what has just been put. Two prominent examples of these include the response of Pope Leo XIII to the impact of the Industrial Revolution on communities and individuals, elaborated in the encyclical *Rerum Novarum*,[40] and the *Compendium of the Social Doctrine of the Church*, a humanist manifesto promulgated by Pope John Paul II in 2004 to protect and enhance the place of the individual in God's plan of love and especially regarding human rights and the common good, within the family, at work and within the economic and political communities.[41]

However, it is pastoral care, identified by Foucault at two levels, that carries the ultimate significance of inherent sympathy for the Church. First, regarding the distributive side of the pastorate, Christianity added four specific and unprecedented principles: analytic responsibility, wherein the pastor must account for every act of every sheep; exhaustive and instantaneous transfer, whereby every act of the sheep is his own act; sacrificial reversal, to be prepared to be exposed to temptation of or even to die to save his sheep; and alternate correspondence, to set an example for the aspirational perfection of each of his flock.[42]

Further,

> I do not think that this pastorate, this pastoral power, can be assimilated to or confused with the methods used to subject men to a law or to a sovereign…In short, the pastorate does not coincide with politics, pedagogy or rhetoric. It is something entirely different. It is an art of 'governing men' and I think this is where we should look for the origin, the point of formation, of crystallisation, the embryonic point of the governmentality whose entry into politics, at the end of the sixteenth and in the seventeenth and eighteenth centuries, marks the threshold of the modern state.[43]

40 Papal Encyclical *Rerum Novarum* 1891
41 Pope John Paul II *Compendium of the Social Doctrine of the Church* Parts I–III 2004
42 M. Foucault *Security, Territory and Population* palgrave 2007 pp.169–172
43 Ibid. p. 165

That is, the totalised and presumptive concern of the Church for each individual, concern which reflected sympathy *in extremis*, was at the same time and in the operation of that very detailed sympathy, the means of government of or subjection of each Christian believer, a means which ultimately entered the mainstream of the functioning of the State. It is a form of sympathy which is reliant on promoting the interests of the magnitude before any sense of comfort for the believer. In fact, comfort itself is heavily constrained by the notion of compliance.

Responsive sympathy is something different, exemplified by the manner in which the Church has historically and increasingly responded to concerns – sometimes as trends – that the faithful have expressed regarding the absolutist nature of Church doctrine and practice.

Perhaps ironically, it is the series of matters canvassed within the *Syllabus of Errors* (1864) that points to the nature and vitality of these concerns and thereby the reasons that the Church has responded as it has in each case. In the order of their place in the *Syllabus*: naturalism, rationalism, socialism, communism, Church rights, civil society, ethics, marriage and liberalism. We will examine all bar socialism and communism. This is not to concede that there is no argument regarding compatibility between the political creeds and Catholicism, especially regarding socialism, but only that the focus of the present work relates primarily to the liberal, "Hobbesian" State.

By their dimension, these differ from the first category of expressions of sympathy, where the primary concern is the claimed elimination of an individual's non-terrestrial fears and desires. This is an important difference. While *inherent sympathy* has been a feature of Christianity since its inception, for the primary purpose of claiming to address non-terrestrial issues so that Christianity as a world view is sustained, *responsive sympathy* – as the responsive accommodation of changing social beliefs and attitudes – was sourced significantly by a reaction to the Enlightenment (c. 1670–1815). That movement of ideas is argued here to have been triggered by the breakdown of the unity of the idea of the all-powerful God who can be engaged by humanity to be sympathetic. The German Reformation should be seen as a clarification of the true nature of the Deity yet a clarification that undermined the Roman understanding of it. It was that undermining that opened the door to the catastrophe that followed and became one source of energy for the radical rationality of the Enlightenment as a way out of that catastrophe. That is the significance of the Reformation as a pre-Enlightenment movement of ideas, a movement that forced Catholic absolutism to concede vast amounts of the social landscape.

Naturalism and rationalism

Regarding *naturalism*, the argument from the *Syllabus* relates to the claim that reality is fully explicable in scientific terms. Specifically, the errors in this are, *inter alia*, that:

- there exists no Supreme, all-wise, all-Provident Divine Being, distinct from the universe, and God is identical with the nature of things, and is, therefore, subject to changes. In effect, God is produced in man and the world, and all things are God and have the very substance of God, and God is one and the same thing with the world, and, therefore, spirit with matter, necessity with liberty, good with evil, justice with injustice
- all action of God upon Man and the world is to be denied
- human reason, without any reference whatsoever to God, is the sole arbiter of truth and falsehood, and of good and evil; it is law unto itself, and suffices, by its natural force, to secure the welfare of men and nations
- the Decrees of the Apostolic See and of the Roman congregations impede the true progress of science
- the method and principles by which the old scholastic doctors cultivated theology are no longer suitable to the demands of our times and to the progress of the sciences

We have seen that the resistance by the Church against such ideas was discernible in the case of Galileo. This is not to state that Galileo did not believe in God but that he showed and argued there were fully adequate explanations of cosmological arrangements that were scientific. But there has been a substantial list of subjects wherein the Church opposed scientific discovery on the grounds that it conflicted with doctrine. In each case, the Church has eventually come to recognise the validity of the scientific explanation. Regarding Galileo, Pope John Paul II acknowledged in 1992 that the Church had erred in the case of Galileo's findings and his contributions to astronomy were finally recognised. Other examples include the revision of the opposition to Darwin's theory of evolution – on the grounds that it contradicted the principle of creationism by God – whereby Pope Benedict XVI spoke in 1995 of the inner unity of creation and evolution and of faith and reason, and Pope Francis announced in 2014 that both natural evolution and the cosmological evolution from the Big Bang were valid scientific explanations.

In fact, regarding evolution and despite initial resistance, there has been a concerted attempt to demonstrate that the Church has championed both cosmological and human evolutionary scientific research. In that, the work of Gregor Mendel in genetics and of Nicholas Steno on the foundations of geology are emphasised in the context of the Church also having allowed an allegorical reading of Genesis. In the case of the Big Bang, it has been long stated that Catholic priest George Lemaitre contributed to its initial conception and that Pope Pius XII declared in 1951 that the Big Bang does not conflict with the Catholic notion of creation. However, in neither case has there been any concession that these scientific explanations are inconsistent with Church doctrine regarding the creative power of the Deity regarding both the cosmos and humanity. Naturalism might have originally been seen to be in error, but its eventual recognition has been put in place such that it does not conflict with Church dogma: a sympathetic understanding of naturalism has been put in

place without the concession of – in fact, to reinforce – any absolutist theological position.

The error of *rationalism* is best seen as the background to and complementary to that of *naturalism*. The concerns of the Church – Roman, Protestant and Jewish – are well seen regarding the emergence of primary reliance on the use and ultimate value of human reason as characterised by Descartes, Spinoza, Hobbes, Locke, Hume and Kant among others.

Descartes (1596–1650) was a Catholic but, following the condemnation of Galileo, feared the displeasure of the Catholics for his reliance on individual reason as a primary explanatory tool, although it was Protestants by whom he was mostly persecuted.[44] His books were placed on the Index of Forbidden Books in 1663 by the Catholic Church. Nonetheless, arguments are now being put forward that there are readings of Cartesian dualism that are "consonant with the teachings of the Church".[45] Spinoza (1632–1677) was excommunicated by the Jewish community for his substance-monist view of reality, that is that God is nothing more than the infinite, eternal, necessarily existing substance of the universe: a non-theistic view. He specifically rejected Catholicism as a pernicious superstition.[46] The Catholics, for their part, not only rejected this challenge to the foundations of Christianity but eventually attempted to deal with this "positively" through the adoption of neo-Thomism in the second half of the nineteenth century in an attempt to reconcile Catholicism with emerging science.[47] By that time, we see the emergence of significant views – not universally applauded by Catholics – about the compatibility of monism and religion.[48] In this vein, Pope John Paul II followed his 1992 statement regarding Galileo with a statement to the Pontifical Academy of Sciences that "fresh knowledge leads to recognition of the theory of evolution as more than just a hypothesis". Rational explanation was being found a non-theological place within the explanatory system of the Church.

Hobbes (1588–1679) was clear about his rejection of the universal jurisdiction of Rome[49] and for the priority of the State over the Church. Although the thought of Spinoza has clear political implications, it was Hobbes who had the most influence on the politics of the Enlightenment, for it was the Leviathan that emerged out of the theological catastrophe – and the re-emergence of existential fear and desire that this created – as the magnitude best fitted to veil those

44 S. Gaukroger *Descartes – An Intellectual Biography* OUP 1995 pp. 187, 291–2

45 C. Gilbert "Catholic Cartesian Dualism: A Reply to Freddoso" *American Catholic Philosophical Quarterly* 79:2 2009 p. 233

46 E. Curley "Spinoza's Exchange with Albert Bergh" in Y. Melamed and M. Rosenthal *Spinoza's Theological-Political Treatise – A Critical Guide* CUP 2011 p. 26

47 U. Lehner "Catholic Theology and the Enlightenment (1670–1815)" *e-Publications@Marquette* p. 3

48 E. Haeckel "Monism Connecting Religion and Science" *Project Gutenberg e-book* 1892 published online 2005 p. 1

49 T. Hobbes *Leviathan* CUP 1991 pp. 85–6, 475

concerns. In fact, this political gestalt shift is, in the argument here, the preferred means to understand not only Hobbes but also Locke, Montesquieu, Rousseau and Kant. Clearly, each of these rationalists contributed widely to other important discourses. However, it was the role each sequentially played in the conception and subsequent development of the idea of the State[50] – reaching to today in the work of Rawls – as a magnitude tasked with addressing the existential questions in a manner that the Deity had ultimately failed to do, that sets their politics apart as a central position of the Enlightenment. It was their political rationality – the priority of the State – to which the Church reacted but, as we shall see, for which it has come to develop wide but reaffirming sympathy. That is, the Church reached a position whereby it now both requires and embraces the sympathy of the State – in both its judicial and executive functions – to sustain itself in a manner satisfactory to its theology and its practical functioning.

Rights of the Church

To have reached a position where the rights of the Church – a defensive position – need to have been argued highlights the reason for the delineation in the *Syllabus of Errors* regarding *Civil Society*, *the Rights of the Church* and *Ethics*. These claimed errors include *inter alia* that:

- the Church is not a true and perfect society, entirely free, nor is she endowed with proper and perpetual rights of her own, conferred on her by her Divine Founder; but it appertains to the civil power to define what are the rights of the Church, and the limits within which she may exercise those rights
- the ecclesiastical power ought not to exercise its authority without the permission and assent of the civil government
- the Church has not the power to define dogmatically that the religion of the Catholic Church is the only true religion
- the obligation by which Catholic teachers and authors are strictly bound is confined to those things only which are proposed to universal belief as dogmas of faith by the infallible judgment of the Church
- Roman pontiffs and ecumenical councils have wandered outside the limits of their powers, have usurped the rights of princes and have even erred in defining matters of faith and morals
- the Church has not the power of using force, nor has she any temporal power, direct or indirect
- moral laws do not stand in need of the divine sanction, and it is not at all necessary that human laws should be made comfortable to the laws of nature and receive their power of binding from God

50 D. Grant *The Mythological State and Its Empire* Routledge 2009 Chapters 3–9; D. Grant & Lyria Bennett-Moses *Technology and the Trajectory of Myth* Edward Elgar 2017 Ch.2

- the science of philosophical things and morals and also civil laws may and ought to keep aloof from divine and ecclesiastical authority
- no other forces are to be recognised except those which reside in matter, and all the rectitude and excellence of morality ought to be placed in the accumulation and increase of riches by every possible means and the gratification of pleasure

The timing of the *Statement*, coming in 1864, is undoubtedly given its significance by the series of events that had taken place – the continuing repercussions of the Treaty of Westphalia, the recent subjugation of the Church in France through the Revolution and the Napoleonic *Concordat*, and its displacement in range of other nations. These events all foreshortened the jurisdiction and so the rights of the Church, as reflected in the Syllabus. However, the consideration to follow here will clarify the circumstances by which the Church has since moved from resistance to be in – reaffirming – sympathy with the State.

The modern era

We shall now examine Vatican II (1962–65) to determine where it sits within the absolutism-sympathy framework then consider a range of challenges within which the Church is confronted in the early twenty-first century. In this context and given the disruption of the abortion and gay marriage debates, we now consider a final selection of claimed errors concerning *Christian marriage* and *modern liberalism*:

- the doctrine that the Christ has raised marriage to the dignity of a sacrament cannot be tolerated at all
- the Sacrament of Marriage is only an accessory to the contract and separate from it, and the sacrament itself consists in the nuptial benediction alone
- by the law of nature, the marriage tie is not indissoluble, and in many cases divorce properly so called may be decreed by the civil authority
- in the present day it is no longer expedient that the Catholic religion should be held as the only religion of the State, to the exclusion of all other forms of worship
- moreover, it is false that the civil liberty of every form of worship, and the full power given to all of overtly and publicly manifesting any opinions whatsoever and thoughts, conduce more easily to corrupt the morals and minds of the people and to propagate the pest of indifferentism
- the Roman Pontiff can and ought to reconcile himself, and come to terms with progress, liberalism and modern civilisation

Regarding this final point, much had changed between 1864 and Vatican II (1962–1965) but it might properly be argued that Vatican II was really a response to the failures of Trent. Despite the consolidatory reforms of that

Council, the Church paid a high price for its rigour, as it restructured the Church on a medieval model: papal supremacy, absolute control of the diocese by bishops, absence of lay participation, rejection of Luther's translation of the Bible into the vernacular and so no restoration of participation in the Mass. Vatican I reinforced this reactionary authoritarianism: Roman Catholicism reacted defensively to the emergence of the modern world.[51] This did not stop the need for more sympathetic concessions.

Vatican II, convened by Pope John XXIII, was therefore an attempt at three-part healing: within the Church, with other religions and with the world. The first of these changes was in the nature of the Mass, encouraging lay participation through the use of the vernacular, based on the latest research of scripture and a new respect for the laity generally; the second acknowledging the positive contribution and qualities of non-Catholic Christian communities, Hinduism, Islam, Buddhism and Judaism in a new context of religious freedom; and the third promoting a new, positive notion of the pastorate and missionary activities, with the Church claiming to put itself at the service of the human family by promoting a positive view of marriage, culture, socio-economic life and war and peace. This was a reversal of the long-standing, triumphalist attitude of contempt for the world (*contemptus mundi*).[52]

However, this broad reform strategy, designed to embed the Church within the modern world, has struck significant barriers, including of its own making. These are of two categories: those that demonstrated that the Church had still not learnt the lessons from the accusations of Luther; and those that revealed that, despite Vatican II, by its absolutism the Church remained widely out of touch with a range of powerful and emerging social movements.

Luther had seen that there was no doctrinal justification for the selling of indulgences and the consequential lifestyle largesse that these brought to the Medici Pope Leo X and his senior clergy. Echoes of that failure persist today. A number of recent initiatives by the Vatican have been directed towards correcting investments that are inconsistent with established Church ethical principles, including investment in high-end real estate purchases, rock-star movie production, pornography, prostitution, gambling, weapons and defence, pro-abortion health, and contraceptive and stem-cell products.[53]

Categorically worse has been the revelations concerning world-wide sexual abuse of young children by clergy and by their protectors, both in mainstream society and within indigenous populations, a practice tragically shared with a wide range of other denominations and civil society organisations. The practice has been prevalent across Europe, the United States, South America, Australia,

51 K. Overberg S.J. "Vatican II: Aggiornamento as Healing – Exhibit" online p. 2 from *Disciples: Ordinary People in Extraordinary Times* Lecto 2018

52 Ibid. pp. 5, 7, 10; The General Councils pp. 135, 136

53 C. Giangrave *Religion News Service* July 19 2022; H. Brockhaus *Catholic News Agency* July 19 2022

and other jurisdictions, involving hundreds of thousands of victims and thousands of priests.[54] For the worst offenders, as had been claimed regarding common clerical sexual practices stretching back to the medieval Church,[55] this can be regarded as a lifestyle choice, although a choice founded on absolutist power and the predation that this facilitates. Attempting to adjust an absolutist position with a more open and sympathetic approach founders too easily due to the incompatibility of these principles.

A populist reaction

Partly due to the public response to such practices but also to a wider, not unrelated, questioning of traditional Church authority, negative attitudes to a range of dogma and doctrinal principles have reached significant levels.[56] This applies to such matters as transubstantiation within the Eucharist[57] and also regarding homosexuality.[58] However, that reflects a wider trend in the disappearance of religious belief. Pew Research reports that "Since the 1990s, large numbers of Americans have left Christianity to join the growing ranks of U.S. adults who describe their religious identity as atheist, agnostic of 'nothing in particular'", although it is hypothetically possible that Catholicism will not share this trend in the future:

> Depending on whether religious switching continues at recent rates, speeds up or stops entirely, the projections show Christians of all ages shrinking from 64% to between a little more than half (54%) and just above one-third (35%) of all Americans by 2070. Over the same period, "nones" would rise from the current 30% to somewhere between 34% and 52% of the U.S. population.[59]

In this context, the Catholic Church in the United States and beyond has continued to oppose any variation to traditional sexual relationships and practices and has done so against a rising tide of general community opinion to the contrary. On gay or lesbian relations, the community has shifted from "Morally acceptable 40%; morally unacceptable 53%" in 2001 to "Morally acceptable 71%; morally wrong 25%" in 2022.[60] There has been an equivalent

54 "Examining Scholarly Literature on Clerical Sexual Abuse in the Catholic Church – A Viewpoint from and for US Jesuit Institutions" *Fordham University, Taking Responsibility Project* Update January 2023

55 W. de Boer "The Catholic Church and Sexual Abuse, Then and Now" *Origins* Ohio State University March 2019

56 R. Gaillardetz "Catholicism and the New Atheism" *America – the Jesuit Review* May 2008

57 G. Smith "Just One-Third of US Catholics Agree with Their Church that Eucharist Is Body, Blood of Christ" *Pew Research Centre* August 2019

58 "German Synodal Way Backs Same-Sex Blessings" *The Pillar* March 2023

59 Pew Research Centre Report *Modeling the Future of Religion in America* September 13 2022

60 Gallup Poll *LGBT Rights* May 2022

shift regarding gay marriage from "Should be recognised by the law as valid 27%; should not be valid 68%" in 1996 to "Should be valid 71%; should not be valid 28%" in 2022. The Church continues to oppose both, although being gay should be seen now as a sin not a crime, this is a conditional welcoming.[61] Clearly the broad policy of accommodation claimed for Vatican II was and continues to be heavily conditioned by the adherence to the absolutist position of the Church on such matters.

Catholic reactionism and the United States Supreme Court

The stress that the dominant interests and the faithful are experiencing has reached such a level of significance that what has been intended as accommodation is perceived by Catholics as a condition close to exhaustion and more radical means of sustainability have become central platforms of Church strategy.

Exemplifying this is the issue of abortion. The Church continues – by both its absolutist and its more sympathetic spokesmen – to oppose this growing trend: in 2022, after the U.S. Supreme Court ended the constitutional right to this medical procedure, 62% of Americans said this should be legal in all or most cases, with 36% stating it should be illegal in all or most cases. As an illustration of the absolutism of its position on this issue, the Church has long undertaken a campaign, seeking and receiving political support from the Republican Party.

This political aspect should be seen in the context that it is religious fervour that is the determinant of the strength of an individual's voice in this debate. That is,

> The belief that abortion is morally wrong is embraced by 75% of those who attend services weekly, but less than half of those who seldom or never attend. In short, the relative religiosity of Americans (that is how religious they are) is more predictive of their abortion attitudes than their broad religious identity.[62]

What is key here is the data we have already looked at, that is that religiosity is, as a long trend, waning. As a consequence, those who remain strongly religious are becoming more political active so as to protect their position in this increasingly less fervent movement. This activism has met with strong interest among political conservatives, especially in the Republican Party, who have seen

61 N. Winfield "Pope Says Homosexuality Is a Sin not a Crime" *Associated Press* January 26 2023; N. Winfield "Cardinal Pell Blasts Pope Francis in Secret Memo: This Pontificate Is a Disaster" *Associated Press* January 12 2023, this referring to Francis' policy of inclusion and canvassing the laity about the future of the Church

62 R. Elving "Roe Draft is a Reminder that Religion's Role in Politics is Older Than the Republic" *National Public Radio* May 14 2022

an electoral opportunity. *Roe v Wade* was the trigger for these joint interests, leading to an increased activism and in turn the appointment by Republican Presidents of a disproportionate number of Catholics to the Supreme Court bench. What followed was *Dobbs v Jackson* in 2022. Therein, each one of those participating in the majority decision were raised Catholic and the unsurprising decision was to withdraw constitutional protection for abortion, an intervention by the Court – as we shall see – that has wider implications:

> Their ruling permits laws making it a crime to perform or have an abortion, based on the theological belief that life begins at conception. That encroaches on the religious freedom of the many whose faith leads them to believe otherwise – say, that life begins at birth – while leaving the health of pregnant women of all faiths vulnerable, particularly those of color and with low incomes.[63]

This is not a settled question medically. For some, a human life may be considered a human person at fertilisation. Others attribute personhood once the physical appearance of a foetus resembles the mature human form at about week 9 of gestation during embryogenesis.[64] Given that lack of final clarity, the decision in both *Roe v Wade* and *Dobbs v Jackson* have been made on other than medical grounds.

One of those grounds might have been the debate between constitutional originalism and contextualism, that is that the Constitution originally made no reference to abortion. The majority opinion, led by Justice Alito, included that liberty is too vague and multitudinous an idea to be tied to a right of abortion in *Dobbs*. An opposite interpretation would be that *Roe* was a legitimate interpretation of the Constitution in context, given the protection of bodily integrity in the Fourteenth Amendment. Each interpretation is championed by their respective agents.[65]

A context for these decisions

There are two contextual scenarios against which these judgments should be considered. The first is the extent to which constitutionalism has historically been infused with Christian thought, especially including the argument that subjection to the Deity and its natural law should be a pre-eminent factor in the subjection to human law, despite the jurisdictional boundaries that subsequently emerged between Pope and Sovereign. This is presented in both

63 L. Caplan "Justice Elena Jagan, in Dissent" *Harvard Magazine* November–December 2022

64 J. Miklavcic and P. Flaman 'Personhood Status of the Human Zygote, Embryo, Fetus' *Linacre Quarterly* 84:2 May 2017 pp.130–144

65 D. Gans "This Court Has Revealed Conservative Originalism to be a Hollow Shell" *The Atlantic* July 2022

Locke[66] and Montesquieu,[67] both highly influential in the formulation of the United States Constitution. We shall look further at this scenario.

Secondly, it would be in error to believe that the Supreme Court has up to now been non-partisan. There is a substantial history to the contrary. Many Supreme Court justices over time have been politically partisan, dating back to the close working relationship between John Jay and George Washington. In *Brown v Board of Education* (1954), four members of the Court were former politicians and as late as 1981, it was common for people to move fluidly between judicial service and elective office (Arthur Goldberg 1970; Sandra Day O'Connor 1981). Others were not politicians but simply Presidential advisers (Roger Taney to Andrew Jackson in the nineteenth century and David Davis to Lincoln; then in the twentieth century Louis Brandeis to Woodrow Wilson; William Taft to Warren Harding, Calvin Coolidge and Herbert Hoover; Felix Frankfurter to Franklin Roosevelt; and especially Abe Fortas to Lyndon Johnson). The latter relationship was so blatant that it shifted public opinion to seek higher standards of independence. There has been resistance to current criticism of partiality from members of the bench but public confidence in the Court has slumped. The questions raised about the political activities of Ginni Thomas, wife of Justice Clarence Thomas and sympathiser of former President Trump, have fuelled this.[68] Further, questions have been raised about the luxurious personal relationship between Justice Thomas himself and highly resourced activist Republicans, in turn raising questions as to whether the judge has breached disclosure laws.[69] As a consequence, there are calls for Supreme Court reform.[70] It should be noted here in regard to all of this, that the arguments put by Sheldon Whitehouse, to be considered in chapter 3, have significance.

A fresh perspective on the freedom of choice decisions

Beyond these theological-legal and political perspectives, but encapsulating them both, it is argued here that there is also a qualitatively different force at work, one with a long history but the impact of which is manifest at present. That is, the broad context here is that the presenting problem of the dispute over abortion has its roots firmly set in the long struggle of Catholicism to create

66 J. Dunn *The Political Thought of John Locke – An Historical Account of the Argument of the Two Treatises of Government* pp. 121ff

67 Charles de Secondat Montesquieu *Spirit of the Laws* pp. 3–8

68 R. Reed "Politics, the Court and the Dangerous Place We Find Ourselves Right Now' *Harvard Law Review* September 2022; J. Zeitz "The Supreme Court Has Never Been Apolitical" *Politico* March 2022

69 B. Murphy and A. Mierjeski "Clarence Thomas" 38; "Vacations: The Other Billionaires Who Have Treated the Supreme Court Justice to Luxury Travel" *ProPublica* 10 August 2023

70 S. Lazarus "How to Rein in Partisan Supreme Court Justices" *Brookings Institution* March 23 2022

and sustain a notion of the Deity with absolutist features, thereby as a means for dominant interests to induce the subjection of the faithful on grounds that relate directly to the existential question. That long campaign has repeatedly met with objection, which in turn resulted – for a substantial period – in repression of varying kinds. Ultimately, however, a variety of sources and factors have genuinely threatened the persistent quest for this absolutism, especially through populist demands. The result has been, in modernity, an unsuccessful attempt at a sympathetic accommodation that still affirmed the absolutism. Yet ultimately, the demands for a structural compromise have reached so far into the heart of this especially Catholic quest that a final reactionism has been established through an alliance with the Constitutional Court. It can be clearly seen that the present disruption is, then, the latest manifestation of a historically long irreconcilability between an Absolute Deity, which was at the very same time expected by the faithful to respond to the immediate needs and demands of those which its absolutism subjected. This is the source of present disruption emerging from originary sources.

2 Populism, the Absolutist State, Constitutionalism and the Rule of Law

This chapter will begin by arguing that the present wave of populist political unrest is a predictable outcome of the dynamic which not only defines the nature of the State but also explains how that nature has emerged from originary sources. It will also argue that the *complex of dynamics* has determined its evolution from those sources down to the political disruptions of the present. Taking into account those originary conditions will explain how and why the democratic State is failing across a number of jurisdictions but also why it has done so before.

Against that background, the analyses by the majority of the current commentaries of populism, although often perceptive, do not go to the heart of this form of populism. A pointer to this is that the constitutional arrangements which these analysts typically recommend to resist political populism have been long and widely in place and are already failingl to prevent the present disruption, one which threatens democratic principles and practice at their heart.

As with the notion of and the terrestrial arrangements for the Deity, there is now deep and wide controversy around the nature and even the ultimate value of the State, along with significantly reducing levels of public trust in governments. This chapter will argue that the sources of this distrust – evidence of which comes in various forms of disruptive populism – lie in the present manifestation of legacies from originary sources. That is, that the absolutist Hobbesian State was conceived and established – at the Westphalian end of the Protestant Wars that saw the turbulent disintegration of consensus about the nature of the Absolute Deity – to be a replacement cultural magnitude that still adopted the absolutist prescription argued to be necessary to deal conclusively with the fears of individuals due to external threat and internal unrest, yet was also to be responsible for the "Contentments of life" of all citizens.

This model of the State persists in the public discourse. That is, forms of governance that ultimately rely on an absolutist character and shape have been established in the West by dominant interests that have claimed – on condition of universal individual subjection – that they will veil the existential concerns of those made subject and deal with their fears and desires; that it is widely accepted that multi-layered democratic arrangements are the preferred means

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of engaging these absolute forces; and that this arrangement needs to be formally constituted. In effect, this is not only the persisting *core dynamic* but also the start of the derivative dynamics which are both the early stage of the *serial* nature of the magnitudes of the West and of the persistent attempts to *regenerate* their absolutist aspirations when they fail.

However, not only is the democratic engagement of absolutism a conceptual contradiction, but dominant interests thereby shape a form of democracy that is pre-emptively self-beneficial for those interests – resilient elites are always formed – and constitutional arrangements variably ossify these arrangements. As it turned out, the Hobbesian-democratic State failed the originary, core undertaking in the mid-twentieth century due to the incapacity of the dominant political and financial interests to deal with the crisis that led to both the Great Depression and the consequential rise of totalitarianism: the sympathetic "Contentments" of individual subjects were demolished. Those circumstances were the trigger for the ultimate emergence of the absolutist Market into dominance. In the process, it extended the life of the State by absorbing it as the Market State and allowing varying – and contradictory – claims that it would thereby create more sympathetic conditions of existence for its subjects. This absorption was, in effect, the final failure of the Hobbesian State.

Due to the continuing absolutist dominance of the Market within and beyond the reach of the State, conditions were created by the early twenty-first century whereby citizens were again increasingly alienated and were subject to the fear produced by profound insecurity of income and cultural disharmony. The Market State had become a predator, leading to the wave of populist unrest and political instability we presently see. It is through this frame that we can best understand and reconcile the contradictions of absolutism, democracy and populism.[1] The disruptions of populism have originary causes.

The Absolutist State

The Absolutist State was the emergence in the mid-seventeenth century of a new dominant cultural form that was conceived to end the existential fear produced by the breakdown in the unitary concept of Deity and was thereby the second of a *series.* This is not a claim, as in Schmitt, that the State was a secularised theological concept.[2] It is an argument, through Blumenberg, that the Hobbesian State filled the vacuum left by that collapse of the unified notion of Deity and so was conceived to veil the consequential existential fear. Even though the Catholics used Trent in an attempt to reaffirm their preferred notion of the Deity, that is the capacity to engage the Absolute Deity and thereby comprehend it, a new absolutism was needed as there was

1 J. Salmon "The Legacy of Jean Bodin: Absolutism, Populism or Constitutionalism?" *History of Political Thought* 17:4 1996 pp. 500ff

2 H. Blumenberg *The Legitimacy of the Modern Age* p. 92

a universality of fear. However, for all who existed in such a condition, this replacement absolutism needed to induce – by claim of sympathy – a universal subjection to avoid a new, permanent 'state of nature'. This inducement ultimately became - beyond the claim of the substantial reduction of fear - the promise of the gradual democratisation of the Absolute State: a claimed "sympathising" of absolutism without eliminating the absolutism.

Such has been the Hobbesian State and we shall see the same features in the modern Market and emerging Technology, all together forming a *serial* trajectory, the persistent theme and driver of which has been the *core dynamic*. However, before considering these later developments, the argument here is that this new State absolutism has left important legacy issues that remain virulent in the contemporary era and inform much of modern populism.

The spread of democratic arrangements and the emergence of liberalism

The first legacy issue was – despite the claims made by Hobbes and the Sovereigns that followed regarding such "Contentments" and despite emerging Constitutionalism which formalised the conditions of subjection – that any credible claims for sympathetic conditions for the general population could not even be made until democratisation had become more widely established through universal suffrage. This took almost three centuries, by which time the interests of dominant elites were long established. Whether those claims were valid will be considered.

The alleged justification for this delay was that it required a long campaign to bring this absolute entity under a level of control that would mitigate its inherent fearsomeness. This campaign can be traced through the political tradition. Such was the purpose of the Constitutional movement which sought the beginnings of a protection of individual liberty in Locke, then the separation of powers in Montesquieu, then a sense of an albeit oppressive general will as proposed by Rousseau and then to a synthesis in Kant. It was fertile ground for Hayek and it is a theory well-traced by Pettit, although his analyses make clear that this polity remains founded on the assumption of responsibility for any citizen against what she may see as her interest. The claimed result of this effort has been, foremost, the notion of liberal freedom from interference, located within the infrastructure of liberal democracy,[3] a sympathetic State, to that extent.

But it is worthwhile noting what Kant actually said in this regard and what its implications are. He claims the importance of republican theory as the ideal combination of a coercion-free and harmonious socialisation of free and equal

3 For a full account of the significance of this sequence of political theorists, see D. Grant *The Mythological State and Its Empire* Routledge 2009 Chapters 3–8 and D. Grant *Privacy in the Age of Neuroscience* CUP 2021 p. 172

individuals and the purpose of which is to realise justice by legislature, judicature and executive:

> A republican constitution is founded upon three principles: firstly, the principle of freedom for all members of a society (as men); secondly, the principle of the dependence of everyone upon a single common legislation (as subjects); and thirdly, the principle of legal equality for everyone (as citizens). It is the only constitution which can be derived from the idea of an original contract, upon which all rightful legislation of a people must be founded. Thus, as far as right is concerned, republicanism is in itself the original basis of every kind of civil constitution.[4]

For Kant it is clear that the foundation of such arrangements is the use of reason:

> Enlightenment is man's emergence from his self-incurred immaturity. Immaturity is the inability to use one's own understanding without the guidance of another' and 'For enlightenment of this kind, all that is needed is freedom. And the freedom in question is the most innocuous form of all – freedom to make public use of one's reason in all matters.[5]

He also states that, in a manner that resonates against dominant forms of populism and their aftermath of their ascendancy:

> A revolution may well put an end to autocratic despotism and to rapacious or power-seeking repression, but it will never produce a true reform in ways of thinking. Instead, new prejudices, like the ones they replaced, will serve as a leash to control the great unthinking mass.

As attractive as Kant's argument for a reason-based republicanism sounds, there are two problems. The first is noted by Hunter, regarding the reality of the exercise of the categorical imperative by each individual – "the will of every rational being as a will giving universal law"[6] – and is that Kant himself sees that this should be seen first as a process of initiation into a particular way of life rather than as the pursuit of a metaphysical reality.[7] Human beings have no direct, uninitiated personal access to rationality. As we shall see, this opens the door to an entirely different source of normalised individual political engagement. It emerges in liberalism, so long as that is understood as an ideology for managing citizens.

4 I. Kant *Political Writings* H.S. Reiss (ed.) Cambridge University Press 1970 pp. 99–100
5 I. Kant "An Answer to the Question: What is Enlightenment?' in *Practical Philosophy* Cambridge University Press 1996 pp. 17, 18 (at 8:35 and 8:36)
6 I. Kant "Groundwork of the Metaphysics of Morals" in *Practical Philosophy* p. 82
7 I. Hunter *Rival Enlightenments* Cambridge University Press pp. 23, 306

Co-extensive with the emergence of the structural arrangements developed by the Lockean political tradition was the spread of the principles and practice of this liberalism. The principles are traceable to Locke, again, and Adam Smith, at least. The liberties championed by Locke are either those which allow the individual to meet his calling to God or allow him to oppose social structures when they claim religious endorsement for the corrupt practices of the powerful or when they seek to sanction the forceable appropriation of property from their legal possessors.[8] These were rights protected by the supremacy of parliament against the arbitrary use of prerogative power as allowed by Filmer.[9] For Smith, advocate for the Great Society, "every man, so long as he does not violate the laws of justice (being) left perfectly free to pursue his own interests in his own way", in fact:

> The natural effort of every individual to better his own condition, where suffered to exert itself with freedom and security, is so powerful a principle, that it is alone, and without any assistance, not only capable of carrying on the society to wealth and prosperity, but of surmounting a hundred impertinent obstructions with which the folly of human laws too often encumbers its operations; though the effect of these obstructions is always either more or less to encroach upon its freedom, or to diminish its security.[10]

It is hard to imagine a clearer view about the importance of either, on the one hand, the democratically elected parliament protecting the liberty and property of the individual or, on the other, an even stronger argument that freedom – and the prosperity of the individual and of society – should be preserved by as little intrusion by government into the lives of individuals as possible. Saying so is not to avoid the important point that to constrain government to such protection and from such intrusion, there needs to be a schema of provisions which Constitutionalism and the rule of law are intended to provide. We shall come to these but here we have the first important claimed sympathetic constraints on absolutism.

Yet there is a complementary underside to liberalism not reflected in such idealism which more closely echoes Hunter's observations about Kant than Locke and Smith. That is, that freedom is not the simple, wholesome product of being able to adore the Deity, to retain rightful ownership of one's property and to be allowed to pursue whatever are one's interests, a pursuit that will undoubtedly benefit all of the Great Society. This is the second, less understood but highly pervasive notion of liberalism.

8 J. Locke *The Two Treatises of Government II* s. 12 Cambridge University Press 1988 p. 275; see also J. Waldron *God, Locke and Equality* Cambridge University Press 2002 pp. 5, 12

9 Ibid. *The Two Treatises* ss. 159–168, pp. 374–380

10 A. Smith *Wealth of Nations* E. Cannan (ed.) vol. II p. 43

To begin with, rights – and the freedom to experience them – are not a residual experience once the function of government is clarified in those ways. Freedom always remains in contest due to the shifting boundaries between when and how far government is to intervene in this equation. Further, managing the economy – from the eighteenth and nineteenth centuries – required governments to know and respect the social mechanisms in detail. The result is that the limitation of power is not the juridical freedom of individuals but their response to socio-economic evidence. Further, for the socio-economic field to function then the political regime must take charge of individuals – must manage them – and therefore of their well-being and their way of being and behaving.

In fact, liberalism is not about "being free" but is the production of what individuals are seen to need to be free. It actively constructs and limits freedom. For example, for there to be a free labour market, there must be a sufficiently large pool of competent and politically disarmed workers to prevent them exerting pressure on the labour market.[11] All this requires multi-level and multi-faceted government intervention: it is a widely constructed scenario rather than merely being "free to work". All this too requires regimes of pervasive security, including the regimes of discipline that produce the framework for preferred individual behaviour: not just control and constraint but also sustained coercion for the social and economic end. This field of enquiry has been well explored through the connected notions of pastoralism and governmentality by Foucault.[12] By these processes of intervention and control – the landscape occupied by dominant interests – more freedoms are created: control is the mainspring of freedom.[13] The notions of liberty put forth by Locke and Smith are a thin veil over these "constructive" processes.

The significance of this liberal constructivism as it has emerged from Locke and Smith is that the normalisation of belief and practice that it has produced, especially as these are tied to prevailing economic arrangements, has ultimately contributed to rising levels of frustration and discontent as this economic frame moved into its neoliberal form. The long history of liberal constructivism is therefore at the heart of the reactionary, disruptive political populism that is now common across jurisdictions.

The ascent of the dominant interests of liberal democracy and the emergence of neoliberalism

The second legacy issue has been an outcome of the first. That is, the handicap to such unhurried and problematic sympathetic change – as the motive

11 M. Foucault *The Birth of Biopolitics* pp. 62–65

12 M. Foucault *Security, Territory, Population* Palgrave p. 148; see D. Grant *Privacy in the Age of Neuroscience* pp. 105–107

13 Ibid. p. 67

of democratic arrangements – up to the early twentieth century was that by the time universal suffrage was established, the democratic infrastructure was already in the hands of dominant landed Church and increasingly Market interests. This transfer of resources originated in the dynamics emerging in the aftermath of the Treaty of Westphalia, whereby the embryonic State was already becoming beholden to mercantilist economics as the means to establish each in strength. That is, the emergence of the structure of the current elite strata in Europe may be traceable to the process of secularisation that followed the Reformation, although their rise to full ascendency would not be fully realised until the collapse of the Hobbesian State into the Market as the pre-eminent social infrastructural entity. That is, when liberalism became neo-liberalism.

Whereas the pre-Reformation era can be understood as an equilibrium in which a monopolist religious producer (the Catholic Church) provided political legitimacy to secular authorities at a high financial price – charged as control over resources, tax exemptions and some political power – the Reformation provided a competitive shock in the market for salvation: Protestant reformers offered a popular, lower-cost alternative. During the Reformation, the value of Catholic legitimacy fell and the bargaining power of secular rulers *vis-à-vis* religious elites rose: "We examine the expropriation of monasteries and wealth transfers from the Catholic Church to secular lords…Transfers of resources from the control of church elites to secular lords occurred in both Catholic and Protestant territories". In short, "this is the role of religion in legitimising political elites" across Europe.[14] Legitimising would become an elaborate process.

We see a further significant contribution to the growth of this class during the eighteenth and nineteenth centuries with the emergence of the free market,[15] including under the spread of liberal economics and international conflict. This is not the first notion of liberalism as freedom from interference but of the second notion, whereby the State intervenes to create or allow the conditions by which the post-mercantilist free market – and its elites – can

14 D. Cantoni *et al.* "Religious Competition and Reallocation: The Political Economy of Secularization in the Protestant Reformation" *National Bureau of Economic Research Working Paper Series* 2017 pp. 1, 2

15 S. Conca Messina et al. "Noblemen in Business in the Nineteenth Century; the Survival of an Economic Elite?" *Business History* 64:2 2022 p. 207ff; V. Karady "Elite Formation in the Other Europe (19th–20th Century)" *Historical Social Research* 33:2 2008 pp. 9–17; R. Sheremeta and V. Smith "The Impact of the Reformation on the Economic Development of Western Europe" *Munich Personal RePEc Archive* May 2017 pp. 4, 7, 10, 13; C. Rietveld and C. van Burg "Religious Beliefs and Entrepreneurship among Dutch Protestants" *VU Research Portal* 2014 p.12; A. Campati "Elite and Liberal Democracy" at The Phases of Elite Theory *Topoi* 41 11 October 2021 pp. 15–22; J. Alexander 'The Relevance of the Eighteenth Century to Modern Political Theory" *European Journal of Political Theory* online 7 December 2022 regarding the re-examination of Adam Smith by Paul Sagar; J. Silverwood *et al.* "The Distinctiveness of State Capitalism in Britain: Market-Making Industrial Policy and Economic Space" *Environment and Planning A: Economy and Space* 55:1 22 May 2022

operate optimally.[16] Here we see the construction by government elites that limit the freedom of workers such that they do not threaten the economy.[17] More significantly, for example, we see how private wealth increased dramatically as the dominant British economy went into serious debt during the revolutionary and Napoleonic periods to fight wars that were largely financed by borrowings from private wealth, which therefore grew significantly.[18] The State created the conditions on two fronts by which the wealthy elite emerged.

A foremost subsequent example of this was the economic intervention in the European economy following the Second World War, when European governments took advantage of the United States' Marshall Plan to stimulate their economies through a Keynesian strategy. The consequential growth of the European middle class generated strong economic elites.[19]

However, at nearly the same time, the environment with which these elites would have to contend was also changing, in particular through the then-recent establishment not only of the dominant World Bank and the IMF but also of the European Union. Its inception was driven – as the European Economic Community (EEC) – primarily by the French Government, in the 1950s. It was a measure to minimise the possibility of a further international conflagration, a desire that was also the gestation of the neoliberalism of Hayek.[20] Hayek himself was comfortable with the existence of both corporate monopolies and wealthy elites alongside relative poverty so long as wealth was accumulated through the operation of just rules of conduct in a spontaneous order. That, for him, was justice.[21]

This is not an argument for the persistence of a necessarily collegiate unity of elite interest. In fact, as Conti points out, the decisive factor distinguishing the positions of elites and non-elites towards a unified Europe today is the empowerment or loss of control which collective actors attribute to a transfer of national responsibilities and authority to the European level:

> Here we see a wide elite-masses differential … (but) … The assumption that European integration is founded on a broad nation-transcending elite consensus and focusing of emotions, cognitions and conations of elites to the common goal of European unity could not be confirmed. What we see is a patchwork of attitudes linking and distancing national elites in very specific ways to and from the process of European integration.[22]

16 M. Foucault *The Birth of Biopolitics* Palgrave Macmillan pp. 53–54, 67
17 Ibid. p. 65
18 T. Picketty *Capital in the Twenty First Century* Belknap pp.129–130
19 T. Vonyo "Post War Reconstruction – The Golden Age of Economic Growth" *European Review of Economic History* 1 August 2008 at Conclusion
20 W. Aghina et al. "The Past and Future of Global Organizations" *McKinsey and Company* 1 September 2014; C. Parsons *International Organization* 56:1 2002 p. 48
21 F.A. Hayek *Law, Legislation and Liberty* Routledge vol. II ch.8 p. 38, vol. III ch.15 p. 81
22 See H. Best "Elites of Europe and the Europe of Elites: A Conclusion" in *The Europe of Elites: A Study into the Europeanness of Europe's Political and Economic Elites* OUP 2012 Ch. 11 p. 240

This is a contemporary picture of largely fragmented elite attitudes resulting from a range of disruptions including globalisation, privatisation, the global financial crisis (G.F.C.), the pandemic, mass migration and political corruption but they all exist within a framework of such entities as the European Union, together with the European Parliament, the Court of Justice of the European Union, the European Council and Commission and so on. Co-existing – comfortably or not – with these bodies, strategies and developments, some elites have retained a liberal philosophy in the face of this influential environment, others have adopted illiberalism as a principle to represent or take advantage of growing popular dissent and to others again any such ideological commitment is superfluous in their supra-State world.

Thereby there is no consolidated profile of the characteristics of elitism in a supra-nationalist environment but by its very nature as variegated elitism, especially in its economic and political forms, it has been central to the emergence of the present wave of populist dissent. That is, it is the coincidence and interplay of such supra-national bodies and the variegated elites that has both significantly triggered and been the opportunity for the rise of political-cultural populism.

A different but parallel picture of elitism has emerged within the United States where there is a convincing argument that the big decisions about American public life were long made by an interlocking directorate of top political, military and economic institutions and from which other institutions took their cues. They commanded key administrative bodies, selected the judiciary, vetoed laws, set foreign policy and executed wars without Congress, the body closest to the people. Citizens were excluded by the elites, to whose decisions they were substantially subjected. That was the view expressed by C. Wright Mills in 1956, but a recent reconsideration of that argument by Gautney reveals that the social-political-economic position of the majority of citizens is even more degraded. That is, although income gaps were already at historic lows in the 1950s as the dominant US global corporations began to emerge, incomes have shrunk and millions of United States workers – with attacks on labour unions and the stripping of the social support network – have become working poor who battle hunger, poor health, social ostracism, police brutality and drug addiction. Yet as "most Americans register negative net worth, three billionaires control more wealth than the bottom half of the entire country. When tens of millions were suffering and dying at the height of the corona virus pandemic, 745 US billionaires increased their collective wealth by $2 trillion over nineteen months".[23]

Neoliberalism

It is in the context of the functioning of these economic and political elites that the ideology and practices of neoliberalism need to be understood. Liberalism,

23 H. Gautney "C. Wright Mills's '*The Power Elite*' Still Speaks to Today's America" *Jacobin* June 2022, adapted from *The New Power Elite* Oxford University Press 2022

emerging through the collapse of the unitary notion of Deity in the seventeenth century, has been superseded but had accomplished what was required of it. Once the frame whereby both the construction of the conditions for the free market was put in place and the management of citizens under the rubric of freedom from interference was established, liberalism itself and the citizens it created came to be managed by the Market. The neoliberal Market State – with its company of corporate, political and individual elites – was the result.

It is against the landscape dominated by these elites – with their acultural, global, privateering, free market strategies that triggered the predations of the G.F.C. – and the supra-national institutions we have just referred to,[24] that political populism has typically and predictably arisen, with a renewed demand to satisfy unfulfilled sympathetic conditions. The irony is that this movement has created a new elitism, those who have stepped forward across the globe to claim themselves as champions of this movement. Again, consistent with the nature of the *complex of dynamics*, these new leaders not untypically – by hollowing out democratic and civic arrangements – have instigated new absolutisms. But the broad point here is that the original claims regarding sympathetic conditions have not only not been realised but have been subsumed within liberal and neoliberal strategies that have heavily favoured dominant political and economic interests and been "constructive" of the very nature of citizenship. That the *core dynamic* has failed and generated a populist reaction can be no surprise. What is surprising is that these movements have typically chosen chimeric leaders who have led them back into circumstances similar to those from which they have sought to escape: subjection traded off against chimeric claims of sympathy. A special example of such surprising alignments is the wide and fervent faithfulness shown in Hungary and the United States, the latter where there is the extraordinary circumstance of a populist demagogue who is facing a wide variety of government legal action regarding insurrection, rape and conspiracy to defraud, even for behaviour near to treason, but whose vast numbers of supporters see as nothing more than victimisation.

This is the context within which political populism is best understood.

Considerations of populism

There is a significant number of thorough accounts of the phenomenon of political populism. Krygier sets out the dimensions of the field by suggesting that there are common concerns that analysts confront. These include – beyond deciding what constitutes evidence for the label populist and whether that is the appropriate term to use for that evidence – where we should look

24 S. Donnan "IMF Economists Put 'Neoliberalism' under the Spotlight" *Financial Times* 27 May 2017; A. Kentikelenis et al. "The Making of Neoliberal Globalization: Norm Substitution and the Politics of Clandestine Institutional Change" *University of Chicago Press* 124:6 p.1ff

for explanations for this phenomenon, for example in the deep past or in present circumstances; what we should see as the impacts or repercussions of that understanding, especially if we determine whether there are common elements or not; from there, whether populism is necessarily a bad thing, so can it improve or must it harm liberal democracy and constitutionalism; and finally, what is to be done about it. There are many views within the public discourse about all these issues.[25]

For Zielonka, the cause of the emergence of these movements lies in the hands of the failure of liberal jurisdictions in both Europe and the United States to sustain liberal values in a meaningful sense. Inequalities have increased, tax evasion is widespread and reductions in social spending have had a significant impact. In fact, democracy has become oligarchic, especially due to the removal of important decisions from parliaments and their transfer to unelected bodies like central banks. So, the desertion of the electorate from traditional parties to go to support populist parties and demagogic leaders is unsurprising. The solution, he says, lies in the preparedness of these political parties to eliminate the policies that have caused this discontent, and the politicians responsible for them, and develop policies and programmes that will gain the support of the younger generations. Maintaining the status quo, preserving established interests, must not be the aim.[26] Given the analysis in this work to this point, one must say that the views of Zielonka do not look closely enough at the nature of liberalism, which is at the heart of the problem and so is not where a solution is to be found.

This broad field is described by Zurn, who, in explaining the rise of authoritarian populism, sees that the accepted explanatory factors of economic insecurity and cultural backlash need to be complemented by another, the development of a majoritarian-nonmajoritarian divide. That is, the silent majority feels excluded by the political process connected to the experts who control the unassailable cosmopolitan Central Banks, Constitutional Courts and international organisations. Reversing the prior relationship where national parliaments set standards, it is the nonmajoritarian institutions with their transnational focus who now set the norms. The trigger had been the emerging corporatism that followed the historic compromise between capital and labour in the 1960s: the old class cleavage was tamed. The result was a decline in party political participation and low confidence in parliaments.[27] This is an accurate analysis but, again, does not go adequately to the causes.

25 M. Krygier "Introduction: Anti-Constitutional Populism" in M. Krygier, A. Czarnota and W. Sadurski (eds.) *Anti-Constitutionalism* Cambridge University Press 2022 pp.1–20

26 J. Zielonka "Why Illiberal Politicians are Winning" *World View – Nature Human Behaviour* 3 2019 888

27 M. Zurn "How the Taming of the Class Conflict Produced Authoritarian Populism" *Items – Insights from the Social Sciences – Social Science Research Council* April 2018

In elaborating the dynamics behind these broad trends, Bugaric makes the apparently good point that there is no single, anti-Constitutional populism. For him, some forms of it can therefore be positive for democracy. That is, the flaws in current democratic arrangements can be addressed and made responsive again to the needs of the majority of citizens or even take a libertarian form seeking a radically progressive agenda.[28] However, Bugaric makes a more significant point, that

> …the populist onslaught against constitutional pillars of democracy has shown that the traditional checks and balanced such as courts, independent electoral bodies, free media and civil and political rights might not be as powerful in defending democracy from backsliding towards autocracy as many legal scholars tend to believe.

Bugaric is surely correct in this statement. His first point, while no doubt accurate, needs to be seen against the background where the substantial majority of populist movements duplicate the subjection that was common among the arrangements against which the protests arose, following an initial euphoric phase.

The same argument may be considered regarding the research-based arguments of Liddiard. After demonstrating that populist parties have frequently increased the representativeness of politics, he proceeds to present evidence that such populists often lack traits associated with an aptitude for politics and good governance, falling prey to dominant interests in the legislatures. The consequential voter dissatisfaction has produced large electoral swings and a pattern of serial populism, as in Italy. This lack of expertise has led to an undermining of legislatures – and thereby democratic durability – and the transfer of power to the executive. This lack of durability is the opportunity for the rise of autocracy – absolutism here – and the undermining of control over the State, leading to a weaker civil society and the dilution of pluralism. He observes that the nations in the centre and east of Europe are examples of how populist movements are generated where there is already a convergence to Market-friendly policies that followed the deep disruption of the Global Financial Crisis and are now experiencing anxiety due to mass migration.

Liddiard also suggests that, among the sensible responses to these movements, there is a need for political parties to become more responsive to community needs and even that compulsory voting might be a way forward.[29] It does seem that this is a two-edged sword, given the chimeric value of any pop-

28 B. Bugaric "Populist Constitutionalism – Between Democracy and Authoritarianism" *Anti-Constitutional Populism* M. Krygier, A. Czarnota, W. Sadurski (eds.) Cambridge University Press 2022 *pp. 36–39*

29 P. Liddiard "Is Populism Really a Problem for Democracy?" *History and Public Policy Program – Wilson Center* August 2019 pp. 3–4, 6, 8, 9–11, 15–16, 21

ulist political leaders. We shall consider the challenging issue of how best to respond but the broader point to be made is that the conditions of autocracy precede – not follow – the weakness of democratic arrangements through the emergence of populism: the dominant interests of the Hobbesian State sought from the start an absolutist character, which has come to be democratically constrained in large part to engage and to co-opt the subjection of citizens.

A different approach is adopted by Fontana, one that focusses on the anti-establishment theme of populism. He rejects the "unbundled" approach to populism. For him, unbundled populism is typically seen as a political style of talking to the people, who are alienated from political institutions, and as a policy agenda that aspires – in connection with host ideologies – to rectify injustices created by empowered elites. This is too simple. Then "bundled" populism, that the disempowered people and the unjustly overpowered elite are a coherent pair – which is also antiliberal and xenophobic – is portrayed as espousing popular sovereignty at the expense of democratic values. For Fontana, these two notions don't deserve to have the same label. Perhaps polarisation should be preferred. The broad point he makes is that the categorisations we use are more complex than current analyses allow. Either way, for Fontana, this spectrum is authoritarian – rooted in absolutism in the argument of the present work – whether it is anti-establishment or xenophobic. From that, demagogues like Trump and Le Pen have co-opted old terms as "the few controlling the many" for their own purposes: "We need to make sure to police who gets to use that term (populism)".[30] This analysis is apposite.

Haydarian reminds us that we should not look only to the broad historical factors. For him, in looking at the Philippines and the rise of Duterte, there were structural factors of a more local nature. That is, Constitutional loopholes, which allowed political dynasties; an amorphous party system devoid of ideology; a weak rule of law; all standing beside concerns about globalisation and elitism. There was no Hobbesian failed State here, but we can still see the preparedness of the majority to subject themselves to the propagandist claims and promises of an identity politician like Duterte and his claims to ruthlessly eliminate the nation from the scourge of illicit drugs and ditch human rights and the rule of law in the process. That is, where institutional protections of democracy are weak, then a populism that has a disregard for such protections has an easier path, especially when there is mass co-opting of elites. This does not discount the validity of the argument that, in the West and less like the Philippines – where the absence of Hobbesian-democratic infrastructure makes the resort to an alternate absolutism easier – the reality of the Hobbesian-neoliberal schema of failure has been a continuing germinator of populism.[31]

30 D. Fontana "Unbundling Populism" UCLA Law Review vol.65 1482 2018

31 R. Haydarian "Subaltern Populism – Dutertismo and the War on Constitutional Democracy" in *Anti-Constitutional Populism* pp. 146–150, 156–159, 161, 164, 167

Drawing a particular emphasis from all this is Cas Mudde, who defines populism as a thin-centred ideology – in that it addresses only part of the political agenda – that considers society to be ultimately separated into two homogenous and antagonistic groups: "the pure people" and "the corrupt elite", and argues that politics should be an expression of the general will of the people. For him, the core features are monism and moralism: these two groups share the same interests but are differentiated by morals. It does not threaten democracy, only liberal democracy, especially minority rights, pluralism and the separation of powers. Mudde argues that populism is here to stay.[32] There are a number of resonances between this position and that being argued in the present work but important differences also, as shall be argued.

Perhaps against that background, Krastev and Holmes remind us that populism has not emerged from nowhere and with no explicable position. That is, the origins of populism partly lie in the humiliations associated with the uphill struggle in certain jurisdictions to become an inferior copy of "a superior model". This has produced a nativist reaction in Eastern Europe, a reassertion of "authentic" national traditions allegedly suffocated by Western forms. Further, there was the unargued assumption that, after 1989, there were no alternatives to liberal political and economic models, to neoliberalism if you like. This presumption spawned a contrarian desire to prove that there were such alternatives. This gave birth in formerly communist countries, to an anti-liberal, anti-globalist, anti-migrant and anti-EU revolt, exploited and manipulated by populist demagogues who knew how to demonise inner enemies. There were other factors, such as the population loss due to post-Cold War emigration to Western European countries and due to the influx of especially Muslim refugees allowed in by Germany in 2015–16, all of which was blown out of proportion by the Hungarian populist leader Orban. This was a demographic problem of feared demographic collapse. So, the Western European model of cultural superiority was rejected. Here we have the core idea of illiberalism: populist rage is directed at multiculturalism but more at post-national Western individualism and cosmopolitanism. The response was one in which the white Christian majority in Europe had to defend themselves: particularism not cosmopolitan post-nationalism.[33]

This is a strong analysis as far as it goes. However, it misses the point that illiberalism needs to be understood as being on the same spectrum as liberalism, as described in the present work. That is, it is a reaction against the regimes instituted under the second, "constructive" notion of liberalism that favours

32 C. Mudde "Populism in the Twenty-First Century: An Illiberal Democratic Response to Undemocratic Liberalism" *The Andrea Mitchell Centre for the Study of Democracy* University of Pennsylvania online publication

33 I. Krastev and Stephen Holmes "Populisms in Eastern Europe: A Demographic Anxiety" *Le Debat* 204:2 2019 pp. 161–169

elites. Further, both these notions need to be understood as being on the same plane as absolutism: liberalism is the shaping of absolutism with claims about sympathetic conditions but it still tends to absolutism; and illiberalism is the reaction against the failure of liberalism to deliver on those claims. None of these seek to eradicate the constrained Absolutist State, whether in Hobbesian or post-Hobbesian neoliberal forms.

To be clear, all these analyses are astute and informative. However, they do not go to the foundational thematic: the failure of liberalism to deliver on the *core dynamic*. That is, where the claims about fear and desire made by dominant interests are ignored or otherwise unfulfilled, citizens will withdraw their typically willing subjection and seek a new - sometimes radical - social compact by which their fears and desires can be addressed. Thereby it brings a different absolutism. This is the thematic common to all these accounts of populism and it offers far wider explanatory and predictive power, which the present work seeks to explore both within and beyond politics.

Implications for constitutionalism

We get closer to the principal shortcomings of the consideration of political populism in looking at the significance for such movements in constitutional terms. This is an issue clinically analysed by Arato and Cohen. The strength of their consideration is that they present a three-stage account of the causes of the emergence of the movements, that is long, medium and short-term. The long-term is founded on the claim that:

> populism … in all its versions … is ultimately or primarily a response to the *political* contradiction of modern democracy, or more exactly representative government. This can be seen in various forms: the tensions between principles of popular sovereignty and constitutionalism, the gap between formal democratic participation and genuine responsiveness and accountability of representatives, or the gap between formal incorporation in political systems of subaltern strata, and the absence of civil and social rights that could make their political rights viable and practicable. But we will also maintain that on the level of host ideologies, different populisms do and probably must respond (or pretend to respond) to some combination or selection of economic and cultural "deficits".[34]

The middle range is less concerned with the stages of modernisation and more with the terms of a crisis theory that applies to societies on different levels of development, especially regarding the deficits of representation and electoral and party systems. A focus here is on both the political and economic

34 A. Arato, J. Cohen "Populism: Why and Why Now?" *Population and Civil Society – The Challenge to Constitutional Democracy* Oxford University Press 2021 pp. 27–28

dimension. The short term includes issues of political mobilisation and the impact of both "bait and switch" practices, whereby populist promises made during elections are abandoned in government, and the role of host ideologies and their relationship with populist movements.

One might observe that this analysis partially mirrors the proposal herein, that is the search by the dominant for absolutist forms of governance disappointing those who do not seek the demolition of the remnants of the Hobbesian State but only to have their representatives ensure it is constrained to create sympathetic conditions of existence and who are led to choose the wrong new representatives to do so.

Urbinati also brings these three levels together, especially in that one of the key targets of the new populist governments is the constitutions of the regimes whose control they have assumed. She takes a position not inconsistent with Bugaric to the extent that populism is merely another form of democracy and, at least to the extent of its origins, not inherently a political and social danger. That is:

> populism in power is a new form of mixed government, in which one part of the population achieves a pre-eminent power over the other(s), and that it competes with constitutional democracy in conjoining a specific representation of the people and of the sovereignty of the people which it attains by instantiating what I call direct representation, a kind of democracy that is based on a direct relationship between the leader and the people. To understand and critically evaluate populism we have to assume democracy in its representative and party form, a condition that is scarcely appreciated in the current theory of democracy, whether procedural or deliberative.[35]

But this is not to say that, for her, although it takes advantage of the protest politics allowed in constitutional democracy, populism does not have the potential to be dangerous. She states:

> I argue that populism is structurally marked by a radical partiality in interpreting the people and the majority; this implies that, if a populist movement comes to power, it can have a disfiguring impact on the institutions, rule of law and the division of powers that comprise constitutional democracy.[36]

For Urbinati, in effect, it can stretch constitutional democracy toward its extreme borders and open the door to authoritarian solutions and even

35 N. Urbinati "Political Theory of Populism" *Annual Review of Political Science* 22 2019 p. 124

36 Ibid. p. 112, 113, 121

dictatorship, and 'It fosters a permanent mobilisation of the people's opinion in support of its leader in government and, if possible, rewrites the constitution', including the constitutional power of law-making.

This danger is well explained by Corso. For her, constitutions have the goal of protecting liberty, stabilising the political system, building a political community and educating a population.[37] Then, liberal constitutionalism is founded on the assumption that elite pluralism is the fundamental remedy against oligarchy. Thereby, liberalism claims, first, that elites are the product of freedom and so must be tolerated; and, second, that elites can also promote freedom, so their existence must be secured. This is the reason "most liberal constitutions reserve an express mention of various elites in their texts (universities, business, media, political parties, trade unions and so on) and grant them regulatory autonomy". Such constitutional constraints are typically rejected by populist constitutionalists because this liberal arrangement denies any form of radical and limitless democracy. But Corso goes further to argue that populism in its hard form flourishes when not only the elites but also the people are distrusted: populism rests on a radical idea of society in which elites are neutralised. This radical anti-elitism is then the basis of their constitutional reforms. Corso does find this populist rejection of polyarchy puzzling, as for her it disallows a connection of anti-elitism to liberalism and so is the "only sensible completion of the classical theory of democracy". Perhaps she would not be puzzled if she held the understanding of liberalism as a device that constructs freedom and the conditions for the Market – and so serves the Market.[38]

From this analysis by Corso, one can obtain a strong sense of the absolutism that hard populism brings with it. For her, populist constitutionalism can follow either of two paths. One is malicious anti-elitism, whereby the populist elite claims a mandate to suppress such already-existing elites as the mainstream party system and the media. This is abusive constitutionalism. The other is absolute anti-elitism, which goes further to seek the absolute suppression of any elites in the political community, based on the view that even any elected body will ultimately be infected by private interest and party politics. This would comprise the prohibition of incumbents switching parties and of any conflicts of interest and so on. Candidates must be closely tied to their constituencies, thereby preventing the political alienation of communities. This makes clear one of the arguments here: that the attempt to search for sympathetic conditions of existence by suppressing an alienating absolutism, when it is fully empowered, can itself become absolutist. That is, the absolutist-sympathetic spectrum is fraught ground, not only in the centre where balance is sought but also at either end.

37 L. Corso "Anti-Elitism and the Constitution – Some Reflections on Populist Constitutionalism" in *Anti-Constitutional Populism* M. Krygier, A. Czarnota and W. Sadurski (eds.) p. 80

38 Ibid. pp. 93, 94

However, as historically multi-factored as these analyses by Arato, Cohen, Urbinati and Corso are, they do not go to the principal issues involved in political populism. Tension between popular sovereignty and constitutionalism is itself founded on the expectation created among the citizenry by dominant interests that fundamental fears and desires (the latter as "Contentments" in Hobbes) will be satisfactorily dealt with by the magnitude of the State on condition of universal subjection. The magnitude is not to be a source of arbitrary fear; therefore, it had to be constitutionally limited in popular sympathy. This is not a social contract as such but a strongly implicit understanding of governance and was made constitutionally explicit. Unsurprisingly, such limiting has shown various flaws: constitutions are imperfect. But, against Arato and Cohen,[39] flaws that generate populist movements are not deficits of representation as such. They are better understood as the result not even of the tension between constitutionalism and representation but of the very foundation of the understanding – in absolutism – that the dominant interests of a magnitude claim the wide empowerment, based on widespread subjection of citizens, that is needed to be able to deal conclusively with their fears and desires. Such provisions are made constitutional and rewritable – or reinterpretable – to maintain such an arrangement as a status quo.

It was that understanding which collapsed in the mid-twentieth century, leading to the claim that a replacement magnitude – the Market – could fulfil those expectations but by that point the State was transferred into substantial neoliberal subservience, with the elitism, globalisation, predation and alienation that was the result. Hardly surprising that the subaltern classes, left behind by the shift from liberalism to neoliberalism "latched onto…nativist supremacy, patriarchy, religious moralism (in the West, Christian) and sovereigntist, racialized, ethno-nationalism".[40] These were often the core of those subaltern cultures.

Political populism has been a doomed search for a sympathetic balance to absolutism, a search in which the frustration is even driven to populist forms of absolutism: absolute sympathy. This latest crisis in the aeon-long search for a sympathetic absolutism has not only led to populism but also, within a horizon well beyond the subservient State, to a further claim by respective interests within the State, the Market and by those within its growing culture that Technology can satisfy these expectations.

So, in the end, contemporary political populism, despite its disruptive virulence and its variety of – often conflicted and misjudged – tactics, is typically a political and cultural response to a problem created in the conception of the Hobbesian State that finally fractured in the mid-twentieth century but which has now shifted twice more away from the circumstances of its origins in attempts to overcome the originary irreconcilability of the simultaneous

39 Arato and Cohen p. 36
40 Ibid. p. 48

demands for absolutism and sympathy. Despite this, many populist movements are calling back to cultural-religious and political circumstances of those origins and so are made increasingly irrelevant by the later and more profound challenges than even the neo-liberalism that created the alienating globalisation and elitism.

The argument put here is that the State, however embedded in constitutional protections – protections that are now in any case falling prey in many jurisdictions to chimeric populist strategies – cannot respond satisfactorily with its present ideological and structural arrangements, including Constitutionalism. This is not to say that Constitutionalism and the rule of law are irrelevant. They remain necessarily central, foundational elements to sustaining at least some level of protection of individuals from arbitrary intrusion. Yet something more is required, a foundational gestalt shift.

In sum, one can say that, if one takes both a broader and deeper view of the nature of populism - that it is fundamentally a symptom of the failure of the *core dynamic* to justify the subjection of citizens - then the factors outlined by Arato, Cohen, Urbinati and Corso are explanatory but not thoroughly causally so. Understanding this movement, and despite the flaws in its realisation, must start with the deep problems that are inherent in liberalism and the *complex of dynamics* that drives its political and economic form and agenda. Liberalism must be understood not merely as a framework to constrain arbitrary interference but that such constraints fit within its "constructivism" of both the economic and the personal landscapes. That is, populism has presented a refreshed institutional search for sympathetic conditions of existence typically in the form of an illiberalism that claims to reject the nature, if not the form, of liberalism. Constitutionalism is properly placed in the centre of these factors since it performs a central role in the functioning of liberal ideology and so is just as deeply implicated.

Constitutional Courts implicated

Challenges to the jurisdiction of Constitutional Courts are readily identifiable regarding two aspects of what has just been put. The first is in regard to the argument by Urbinati that populist Constitutional control is now a demonstrable strategy of political populist movements that have gained power. One might read this as a judgment that the Courts had played a collusory role with the regimes that populists sought to unseat. Such control itself has all the aromatics of authoritarianism, or absolutism in the argument here. This is despite the chimeric maintenance of the formal features of democratic institutions presented to the international community. The work of Bodnar and Brandeo demonstrate this regarding Hungary and Brazil respectively. Bodnar details how the Hungarian Constitutional Court was subjected to a series of constraints by the new populist government that severely restricted its remit to review new parliamentary laws that restricted access of citizens to launch cases in the Court; which promoted Christianity; that constrained migration;

and which diminished the media and civil society.[41] This was, as Bodnar states, a firm indication that the new regime "wanted absolute parliamentary sovereignty".[42]

Brandao puts an argument in a similar vein regarding the move against liberal democratic values by Bolsonaro but goes further to state that, given the rise of populist forum shopping:

> Through the action of legal elites, not only was the political arena effectively opened up for Bolsonaro's electoral success, but it also created avenues for Bolsonaro to attempt to manipulate jurisdictional rules as well as his own power in order to avoid potential accountability for his family.[43]

The significance of this is that members of the judiciary – through a series of four legal events including the effective impeachment of Bolsonaro's predecessor Dilma Rousseff and the imprisonment of his main rival Lula – facilitated Bolsonaro's rise. This was the unilateral, voluntary replacement of former elites with and by those who supported the undermining of liberal democratic protections and institutions.[44]

These comments about the Courts confirm those concerning the attack on liberal Constitutionalism more generally. That is, the intention of illiberal strategy is to overturn by hollowing out the liberalism of the Constitutional Courts, a liberalism that has failed to deliver on the claim of the *core dynamic* by favouring elitist ideology, strategy and practice – dominant interests herein. Saying so is not to give credibility to such illiberalism, as illiberalism stands at a distance but on the same ground as liberalism. Neither is it to deny the value of a Constitutionalism that could be set on a different ethical base.

However, there is an irony beyond the tendency for populist movements to align themselves with leaders and regimes that come near to duplicating the unrewarding subjection from which they seek a rewarding alternative – but is equally subjecting. That is, that the Courts they are colonising are increasingly having to confront issues that are being presented by the coming technological future rather than the past to which they seek to return. The social framework is moving in a different direction, beyond the Market State to the Technological Platform State. This form is already presenting questions to the Constitutional courts of a very different kind. This is occurring at two levels. Immediately, we see changes emerging to the material practice of these courts such that they become prone to the technologising of court practice,

41 E. Bodnar "Disarming the Guardians – The Transformation of the Hungarian Constitutional Court After 2010" in *Anti-Constitutional Populism* pp. 267, 275, 285, 288

42 Ibid. p. 267

43 Ibid. p. 248

44 Ibid. p. 226

irrespective of claims about improved speed and economy: the opacity of artificial intelligence (A.I.),[45] the use of judicial discretion, the accurate translation of law into code, identifying the legal authority, and the artificial enhancement of judicial analysis and intelligence.[46] More recently, the emergence of ChatGPT and now GPT-4 raise further important questions. These are brought to centre stage by a decision of a Colombian Judge to use ChatGPT to assist him in making a judicial decision[47] and the application of artificial intelligence to predict Higher Court decisions, thereby disadvantaging litigants with lesser assets.[48]

On an even wider front, the Courts will be presented with questions about whether rights are attributable to human-level intelligent software and the respective rights of citizens and Platforms regarding the nature and purpose of a widening range of algorithms, especially as these relate to personal privacy. New questions are also being raised about matters that go far beyond the issues of concern to those impacted by neoliberalism. These include:

- the acceptance by a legislature or agency of a testimony of comment generated by, and submitted under the name of, an A.I.
- the adoption of the first novel legislative amendment to a bill written by A.I.
- when AI-generated political messaging outscores campaign consultant recommendations in poll testing
- when A.I. creates a political party with its own platform, attracting human candidates who win elections
- when A.I. generates profit and makes political campaign contributions
- when A.I. achieves a coordinated policy outcome across multiple jurisdictions[49]

One can imagine that a future political populism will attempt to reverse these initiatives in the same way that it has campaigned against the impact of neoliberalism, again with the Hobbesian model in mind. The problem is that such reactionism is looking to the past for solutions to emerging problems and is

45 I. Cofone "A.I. and Judicial Decision-Making" *Artificial Intelligence and the Law in Canada* F. Martin-Bariteau and T. Scassa (eds.) Ch. 13 pp. 13–14

46 T. Sourdin "Judge V Robot? Artificial Intelligence and Judicial Decision-Making" *UNSW Law Journal* 41:4 2018 p. 1133

47 B. Reed "Colombian Judge Says He Used ChatGPT in Ruling' *The Guardian* 2 February 2023

48 E. de Menezes-Neto et al. "Using Deep Learning to Predict Outcomes of Legal Appeals Better than Human Experts: A Study with Data from Brazilian Federal Courts" *PLoS One* 17:7 2022 doi:10.1371/journal.pone.0272287

49 B. Schneier and N. Sanders "Six Ways that AI Could Change Politics' *MIT Technology Review* 28 July 2023; see also A. Taeihagh "Governance of Artificial Intelligence" *Policy and Society* 40:2 2021 pp. 137 and as 5.3 and 5.6

failing to address these in their own terms, especially as the Market State and its constitutional reference point is entering this technological world and leaving neoliberalism behind.

Rule of Law – behind concerns about illiberalism is the wider problem of liberalism

It is a standard approach, not only in the consideration of responses to the excesses of political populism but of the continuing need to constrain the liberal State in any case, to turn to the rule of law. Here, the constraints on the infrastructure of the State – typically an attribute of liberalism – are preferred as extensive, given the inherent power of those structures. But they are relevant to the behaviour of individuals also, given the account of liberalism presented here. These limits thereby include not only the elements of Constitutions but also the plethora of promulgated laws displaying the rule of law and, beyond that, these include "social and political arrangements, conventions, traditions as well".[50]

Such arrangements have unquestionable protective value, given – in the argument here – the ultimately but fundamentally absolutist nature of the persistently regenerating magnitude of the State. There are countless examples of the State – and its preceding magnitude, Deity – acting as a predator not only regarding other jurisdictions but also towards its own citizens. We have referred to these in the present work, ranging from Church sexual predation to political totalitarianism.. In this context, the necessity of setting limits on the magnitude, constitutionally and in broader law, is highly important for some level of civilised socio-political arrangements.

However, there are two problems with seeing the setting of limits in this way. First, we have seen that liberalism – the dominant flavour for the rule of law – is a constructive set of forces that determines the nature of freedom. This constructivism, for example through the normalising disciplines that Foucault has analysed,[51] is no benign strategy. In the context of the analysis here of the underlying nature of the relationship between constitutionalism and representation, relying as it does on the preparedness of each citizen to contribute to a field of universal subjection, this constructiveness carries a weight at least as powerful – given the level of personal intimacy at which it operates – as any limits imposed on constitutionalism and law as they are constrained to avoid the imposition of exceptional regimes of construction. To the extent that law is a reflection of liberal principles, it constrains the State, serves the Market and constructs the individual citizen.

50 M. Krygier "Illiberalism and the Rule of Law" *Routledge Handbook of Illiberalism* A. Sajo, R. Uitz, S. Holmes (eds.) Routledge 2023 p. 537

51 See also Grant "Privacy as the History of Normalisation" *Privacy in the Age of Neuroscience* Ch.4 pp. 91–137

This constructivism is not an absolutism but it is a force sufficiently powerful to leave it on the spectrum of absolutism, at the other end of which is illiberalism, the latter seen here as the reaction to liberalism and exemplified by the more extreme reforms of populist regimes that are hollowing out liberal constitutional and institutional arrangements.[52] This relation between absolutism and illiberalism must therefore also be seen as inseparable from liberalism. That is, understanding liberalism requires one to see that the seeds of illiberalism are inherent within it. If one accepts that liberalism emerged within the Hobbesian States of the eighteenth century as a set of practices that rationalise government by limiting arbitrary interference but also by conditioning the economy and producing citizens that conform to that conditioning, then government has not been its own end and liberalism is not about strengthening the State as such. It begins in society and has always asked the question of whether there is only enough government intervention, that is whether government is meeting its functions of both creating and constraining freedoms of various kinds. Both of these come under the rubric of security, whether the freedoms are securely created and whether they can be enjoyed by all. Liberal government is to be a more or less coherent regime of managing individuals as it serves these functions, responsive to the demands of dominant interests but normalising the citizen.[53] Illiberal populism arises when these liberal aims tend towards absolutist and are thereby intolerable because unsympathetic.

In short, we have a spectrum, the elements of which are liberalism, illiberalism and absolutism: liberalism as an economic and individually "constructive" regime that constrains absolutist Hobbesian liberal institutions, and reactive illiberalism, which rejects – and seeks to hollow out – the liberal paradigm but which itself carries the spectre of unconstrained absolutism. The rule of law is therefore centrally placed within this spectrum, constraining the State but formalising a liberal and neoliberal constructivism as liberal freedom. It is fully implicated in the rise of political populism

Second, we see the realpolitik of populism across jurisdictions, a realpolitik that shows that, for all the necessity of these legal regimes of constraint, they have often been widely subverted. Pre-eminent examples are Hungary and Poland, about which Krygier states:

> More recently, populist regimes – like Hungary and Poland, which only a short time before seemed to be paragons of a newly won, unprecedented combination of democracy with the rule of law – have come to boast of their democratic credentials while busily, systematically and so far effectively subverting constraints on the power of 'the sovereign people', or more accurately of their elected representatives. Democracy, they claim, requires the extension of the people's hold over institutions

52 S. Issacharoff "The Corruption of Popular Sovereignty" *ICON* 18:4 2021 pp. 1109, 1135
53 D. Grant *The Mythological State and Its Empire* pp. 221–252

> of power hitherto exploitive elites, among them legal elites, who are particularly despised.[54]

One might see one source of influence on populism in the anti-liberal and anti-cosmopolitan arguments of the German jurist and political theorist Carl Schmitt. For Schmitt, all significant concepts of the modern State are secularised theological concepts. This was the foundation for him of a political theology and the legitimacy of the State, its origins in the depths of time. For him, there was a structural relationship between theological and juristic concepts. Drawing on such arguments, he saw the legitimacy of the State as residing in the acknowledgement of such principles. That is, legitimacy is a historical relation of foundation, producing the inviolability of systems of order out of the depths of time.[55] The attractiveness of an attitude of this kind to alienated populists who have suffered at the hands of a State form that has allowed itself to be made subordinate to the globalised Market without "roots in the soil" is not hard to see, even when they have been misled by bait and switch strategies.

One cannot see the rule of law as primarily a constraint on the arbitrary interventions of the State. The populists have seen how it is made to collude with those who deny their aspirations. Abortion is exemplary here.

Comment

The plethora of current analyses of disruptive populism goes a long way to explaining the ultimate causes and nature of this phenomenon – commonly but not exclusively – as having emerged from the economic, political and cultural impacts of neoliberalism and its Market State form. However, the argument here is that there is a more significant foundation than is available from examining the political, economic and cultural features that the populism of the subaltern classes is prosecuting. Theirs is a search for a sympathetic environment that redresses these circumstances. They fatefully see a solution in the effective demolition of the constitutional democratic – that is, the constrained liberal absolutist – State through a replacement, populist, illiberal, Absolutist State.

The problem here is that the liberal democratic State has - beyond the inherent contradictions we have been looking at - been long beholden to the neoliberal Market and extracting it from that influence is fraught. Certainly, this reversion to the "Contentments" of Hobbesian absolutism can deliver certain preferred conditions, especially regarding Trumpist border security, immigration and Christianised institutions. But two things follow: first, that as Hungary and Poland have shown, having in place a range of institutional provisions and "protections" is never enough to subvert the exercise of inherent

54 Op Cit p. 542
55 Hans Blumenberg *The Legitimacy of the Modern Age* MIT Press 1985 pp. 92–100

absolutism; and second, the Market itself has moved on, taking its own failure – as shown in the global financial crisis – on to Technology as a means to its own survival. Even if these populist, absolutist "democracies" can sustain the move to transformed constitutional arrangements, they will be increasingly anachronistic. The late 2023 election in Poland has, of course, pointed to a possible reversal in this move to authoritarianism.

It is this point that invites the observation that, while the field of Constitutionalism, its courts and the rule of law remain essential ingredients for a civilised existence based on the constraints against arbitrary intervention, the wider perspective reveals their irrefutable fragility and, importantly, their co-option into the interests of elite ideologies. They are thereby too easily undermined by populist activism. That, in the argument here, is due to the unidentified presence of the *core dynamic*, in turn elaborated by the complementary dynamics as they function across the social landscape. A new ethical base for Constitutionalism and broader law is required.

A different state

The argument here is that the political populism that has emerged to challenge the elitist, global, pluralist, liberal democratic State is rooted in an attempt to establish a reconfigured version of the mid-twentieth-century version of the absolutist Hobbesian State at the very time that its neoliberal successor has already failed, having established the unacceptable conditions for that version of liberalism and so is converting itself into a technological State. Populism is thereby prey to a romance for a past that is disappearing.

We shall see more of these technological turnings, in particular regarding the emergence of the platform State, but there are even more radical proposals for a technological State than those and which suggest that the State may take a very different direction altogether from the liberal-neoliberal form. These are little more than proposals, but the point is that their radical nature – when compared with the neoliberal State let alone the State form being pursued by the contemporary populists to recover former but familiar conditions of existence – is a pointer to the recognised failure of both the liberal and neoliberal State forms and a search for something beyond those, founded in Technology. Having said so, familiar issues of absolutism and sympathy appear again.

One proposal is a thought experiment by Balaji Srinivasan, a cryptocurrency expert and medical entrepreneur. His hypothetical model is based on a dissatisfaction with unrepresentative mainstream State forms due to their having repeatedly failed to deliver on the principles upon which they were built. This failure is due to their historical sources and so unsurprisingly fail in the modern context. These proposed network States[56] are primarily digital communities,

56 Jur Team "The Future of Governance: Understanding Balaji Srinivasan's Network State Concept through Eleven Essential Properties" *Jur* 1 August 2022

founded on agreed and purposeful dominant moral principles with a notion of on-chain national consciousness, a capacity for non-authoritarian collective action, the mechanics of integrated cryptocurrency and a non-centralised government made consensual through social smart contracts and regulatory freedom. They would form a global archipelago of crowdfunded physical nodes with a virtual capital and spread broad enough to attain diplomatic recognition, and regulatory freedom. There would be an identifiable leader.

Two things are to be said about such a proposal. The first is that this model recognises the historically-generated failure to deliver on the understandings upon which citizens have accepted subjection to the liberal-neoliberal State form, at least until the populist movement appeared. The proposal moves beyond these by seeing a wide and deep Technology-based clean-slate solution. The foundation of its dominant moral and democratic consensus would avert alienation of citizens produced by the liberal-neoliberal State form and its minimal ties to any physical presence would still allow not only diplomatic status but the prospect of a merger with any Nation State that sought to adopt such a tech-driven arrangement. The ambition for a cryptocurrency would thereby be intended to include an operating and dispute resolution process that would be claimed as open, free from manipulation. As crowdfunded it would not be beholden to the manipulable interaction with dominant neoliberal State forms but, when established in strength, could negotiate on an open footing regarding any matter it saw as threatening its interests, such as environmental and technological issues. This would be intended to generate sympathetic conditions of existence for its citizens, who would be subject to, but in a manner far from, the dependent conditions of citizens in neoliberal States and so would avoid any basis for populist agitation to return to reimagined prior conditions.

However, a closer look could see a number of dangers and weaknesses here. These include that it is morally restrictive – even morally absolutist – given its preference for dominant moral principles; its preference for Leviathan-like cryptocurrency as the principal exchange and resolution mechanism is unnecessarily restrictive – and allows the dominance of a capitalist frame – when a more standard form of blockchain with non-fungible tokens would do; its strong technological bias lends itself to the development of elites and it could become disposed to an internal surveillance ethos. Importantly, it appears to downgrade the significance of externalities so it would be fully reliant on diplomatic efforts, until it gained sufficient strength from its crowdsourcing and online asset development; its citizens may have "nowhere to run" should they wish to leave. Finally, the notion of a leader beyond the formative stage would seem a contradiction, given its range of establishment conditions.[57]

57 A majority of these responses have been suggested by Vitalik Buterin in "What Do I Think About Network States" published online in July 2022. He is a technology entrepreneur specialising in bitcoin.

In short, even clean-sheet proposals intended to function as an extraction through Technology from the kinds of deficits that the populist movements have been perceiving in the performance of the neoliberal State – and so seek to establish a fully sympathetic set of conditions based on an agreed moral system – are likely to be confronted with the recurrent problems of absolutism and elitism. We will also see that the challenge from Technology comprises more profound features than we have examined in the political sphere.

Summary

The State form of the West exists across jurisdictions in various forms along a spectrum that runs from one end, where neoliberal absolutism fully dominates sympathetic conditions, towards a centre where they are kept in conditional balance by constraints on both institutions and through the liberal construction of citizens, and at the other end, where the chimera of full populist sympathy is sought. Dominant interests are disposed to shift the form towards absolutism and to minimise sympathetic conditions. However, reinventing the State by shifting the focus from one end to the other, as populism attempts to do, cannot solve the inherent problem of the *core dynamic*, especially when entirelynew claims are being made about a driver beyond the Market, in the form of Technology.

Political populism in the West is largely an attempt by those alienated by the transition from liberalism to neoliberalism – two ideologies that should be understood as inseparable – to recapture what they see as a preferred past. These citizens well understand the economic and cultural destruction by neoliberalism but hollowing out the liberal constitutional Hobbesian State in a misguided attempt to ensure its sympathetic nature is a doomed strategy. The populist State is very much a reverse-image absolutist entity and demands for its constraint will undoubtedly emerge, returning to the dilemma that populists seek to overcome. This is a regime that squashes internal dissenting opinion, hamstrings civil society in a sea of regulation, adopts anti-democratic practices by restricting voting rights, passes laws to block borders against immigrants or changes laws and even the Constitution to protect these initiatives while empowering the Constitutional Courts to enforce such change. This is already an illiberal absolutism – reacting to the inherent absolutism of the liberal political and economic infrastructure – seeking to eliminate any world view inconsistent with that of the dominant interests or demagogue. Further, focussing on neoliberalism diverts attention from the increasing technologising of the State, with a new set of challenges for technologically subjected citizens that underlie the claims by technologically dominant interests that this new form will deal conclusively with their – constructed – fears and desires.

In short, the present accounts of political populism need to be seen on a much wider basis. A preferred way to look at this scenario of the State is that political populism is a return *da capo*, to a belief in the security available through the *core dynamic* of fear, dominance, claim and subjection. The

conception of the Hobbesian State in the seventeenth century was founded as a mirror of the failed core dynamic of the notion of Deity. Due to the consequential irreconcilability of its key elements – absolutism and sympathy – it suffered terminal failure as a magnitude in the mid-twentieth century and came to be subsumed into the absolutism of the neoliberal Market.

Yet the State persisted, transformed as the Market State, with a claim to be making the absolutist Market a sympathetic magnitude through a thoroughgoing deregulation that would generally improve living standards. The *regeneration* dynamic was the driver of this campaign – and revealed this claim to be chimeric – while it was therefore an early manifestation of the *serial* dynamic. We shall also see several flow-on impacts. These include its ultimate subsumption into the technological field as an indicator of its place in, first, the *consolidation* and, ultimately, the *transformation* dynamics and, due to the political populism that has been generated by these failures of the State in its various forms, it also rests in the broad field of the *constitutional* dynamic. The modern State is an exemplar of the full and simultaneous functioning of the field of dynamics that reveal the nature of the present. That is, we can see how it is that one of the key disruptions of the present – political populism – is directly traceable to originary Hobbesian aspirations - that fear and desire will be conclusively dealt with through subjection - that have been subsequently elaborated as versions of "constructive" liberalism and neoliberalism.

3 The Absolute Market, Constitutionalism and Digital Platforms

Background – Hayek and the subsumption of the State by the neoliberal Market

The neoliberal Market emerged from the mid-twentieth century as a post-State solution to the existential question that was generated by the serial disasters of World War I, the Great Depression and World War II. That is, the search by way of the State form for an arrangement by which dominant interests could claim that the fears and desires of citizens would be effectively dealt with on condition of universal individual subjection had failed. Not only that, it had demonstrated, through totalitarianism, a capacity for virulent predation, thereby showing its absolutism rather than any function as an agent for sympathetic conditions of existence.

This is not to say that continuing attempts did not follow, through the *regeneration* dynamic, to make such a *core* claim believable. The nature of the State underwent a foundational transformation. We shall see that this transformation also failed to resolve the irreconcilability problem. In fact, the problematic legacy of this claimed new State solution remains vividly present today, in two interconnected ways.

First, the dominant interests of the State have persisted in claiming that the absolutist foundation of that form can be effectively tempered through constitutional and intergovernmental arrangements in a manner that assures adequately sympathetic conditions of existence. The rise of populism has now revealed the failure of this transformation. Second, this transformation of the State into the Market State has proposed a further solution to the veiled existential question: a solution that is no longer theological or then political but now economic, a third attempt to realise a sympathetic absolutism. This was a further demonstration of the presence of the *serial* dynamic. The early champions of this claimed Market solution were von Hayek and Friedman, who shared a broadly anti-Keynesian approach to the economy. Here we will focus on von Hayek, who lived through and was deeply affected by both the Great Depression and the cultural effect of totalitarianism in World War II.

The path laid down by von Hayek would be a wealth-creating game within the Market Order or *catallaxy*, to which all would be subject and by which

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outcomes were determined by superior skill, strength or good fortune. The Market Order would peacefully reconcile all divergent purposes, and for the benefit of all. This "One World" would be the effect of the Market Order and could not be brought about by any other means:

> From this we can form an English term *catallaxy* which we shall use to describe the order brought about by the mutual adjustment of many individual economies in a market. A catallaxy is thus the special kind of spontaneous order produced by the market through people acting within the rules of the law of property, tort and contract.

and

> It is often made a reproach to the Great Society and its market order that it lacks an agreed ranking of ends … (but) … the Great Society arose through the discovery that men can live together in peace and mutually benefitting each other without agreeing on the particular aims which they severally pursue. The discovery that by substituting abstract rules of conduct for concrete ends made it possible to extend the order of peace beyond the small groups pursuing the same ends, because it enabled each individual to gain from the skill and knowledge of others whom he need not even know and whose aims could be wholly different from his own.[1]

However, the proper way to read this classical liberalism is in terms of the account of liberalism provided in the present work. That is, as a formative and normative, rather than a fully liberating, ideology, since injustice is structured into this catallaxy, as this "wealth-creating game":

> and if (men) are allowed to be guided in their actions by their own moral beliefs, it cannot also be required that the aggregate effects of their respective actions on different people should correspond to some ideal of distributive justice. In this sense freedom is inseparable from rewards which often have no connection with merit and are therefore felt to be unjust.[2]

This is an absolutism, wherein dominant interests can claim to eliminate individualised fear and satisfy desire, although not consistently across a community, on condition of the subjection of all to the rules of the "game" of catallaxy: the *core* dynamic. One can obtain a further sense of the nature of this

1 F.A. Hayek "The Mirage of Social Justice" *Law, Liberty and Justice* Routledge vol. II pp. 108–109

2 Ibid. p. 115

catallaxy when we see Hayek's account of monopolies, the dominant interests of which are pre-eminent beneficiaries within this game. Although he does not condone monopolies which selectively withhold services or manipulate prices, or enterprises that become too big to fail, he presses the point that monopolies can have significant advantages. He was not concerned about the size of corporations. In fact, they have the power, because of their status as monopolies, to render better service or provide a service that might not otherwise be provided.

In general, as a free marketeer, he sees benefits in gaining rewarding employment and income from industries created by the financial elite, in the general favour to all of the catallaxy.[3] By contrast with this encouragement of the wealthy, von Hayek regards the greatest threat to the Market order to be the selfishness of such organised groups as the Unions of different trades, which "operate largely through the pressure they can bring on government to regulate the market in their interest".[4] Even when there are issues to be addressed, he opposes government intervention as the means of doing so, especially by legislation. He strongly opposes any substantial government regulation of the Market.

These theories of von Hayek and Friedman were adopted by the Thatcher and Reagan administrations in the United Kingdom and the United States respectively – and from there across a large number of international jurisdictions – as the base of their political and economic strategies.

Towards the global financial crisis: pursuing an absolutist Market through Market State compliance

These *laissez-faire* principles of von Hayek's economic philosophy sat well with developments in the United States before 2006. Much of the success of the American economy during the last part of the twentieth century has been attributed to the long process of deregulation that took place across a wide part of the economy. Yet these, in turn, need to be seen in the context of the protective regulatory reforms put in place following the Great Depression of the 1930s, in particular the *Glass-Steagall Act* of 1933, which placed limits on the interest rates banks could charge on deposits and established a system of deposit insurance for consumers through the establishment of the Federal Deposit Insurance Corporation (FDIC). This guaranteed consumer deposits up to a certain level and so calmed the widespread fears of bank failures common throughout that period. It also prevented banks from being engaged principally in such non-banking activities as insurance, the intention being to avoid conflicts of interest regarding underwritten loans and so bank failures.

3 Ibid. pp. 98, 114, 131
4 Ibid. pp. 77–89

All these, and other, protections remained largely in place until the 1980s, when ideological and technological change transformed the financial sector. In 1980 the *Depository Institutions Deregulation and Monetary Control Act* initiated the phasing out of interest rate ceilings within six years and allowed savings and loan institutions (thrifts) to offer interest rates competitive with the banks but also increased federal deposit insurance. The 1982 *Garn-St. Germain Depository Institutions Act* deregulated thrifts almost entirely, to allow wide competition with money market mutual funds. Thereby residential mortgages were made more widely available to US citizens. The troubled period that followed, which highlighted the inadequacy of oversight bodies and included many insolvencies, was attempted to be addressed in the Bush Administration's 1989 *Financial Institutions Recovery and Enforcement Act*, which dissolved and merged over one thousand thrifts at a total cost to taxpayers of over $210 billion. There was much of von Hayek, but much government intervention also.

In December 1986, the Federal Reserve – overriding Chairman Volcker – reinterpreted *Glass-Steagall* in support of the wish of the banking industry to enter the securities market. In December, Alan Greenspan – a strong advocate of deregulation – became Chair of the Federal Reserve for the next three decades. His further reinterpretations of *Glass-Steagall* made the legislation obsolete. Spurred by the 1994 *Riegle-Neal Interstate Banking and Branching Efficiency Act*, this was complemented by the consolidation of the banking industry during the 1990s, with many fewer but larger enterprises. The high-water mark of this stage of the evolution of banking was the merger that formed Citigroup Inc. in 1998 under the Clinton administration. Then, the 1999 passing of the *Financial Modernisation (Gramm-Leach-Bliley) Act* spelt the end of *Glass-Steagall*, as it ended all restrictions against combinations of banking, securities and insurance. This allowed the creation of mega-banks and was the epitome of the long deregulatory campaign. Again, although this realised the elimination of the government regulatory regime, it was achieved through the full support – perhaps active submission is a better term – of all governments.

All this integration of functions left regulators in an invidious position, especially with the emergence of the new forms of derivative instruments, especially credit default swaps by which issuers of bonds insured the potential losses of the buyer of debt as part of the agreement. These were unregulated,[5] with no transparent trading records, and thereby constituted sources of dispute, in fact hard conflict between the Chairwoman of the Commodity Futures Trading Commission, Brooksley Born and Greenspan. Born's preference for regulating this field was opposed by Greenspan and this saw the departure of Born. The unregulated market of derivatives reached $106 trillion by 2001 and $531

5 M. Sherman "A Short History of Financial Deregulation in the United States" *Centre for Economic and Policy Research 2009* p. 10

trillion by 2008. Trades were made so quickly that there was not at any point clarity about who owed what to whom. Regulators trusted the self-regulating firms. The Securities and Exchange Commission (S.E.C.) adopted a similar hands-off approach regarding the regulation of global investment banks, who wanted smaller reserves and higher debt levels: brokerage firms were expected to voluntarily submit reports to the S.E.C.

The significance of these changes over time was that the nature of banking had transformed. No longer portfolio lenders holding assets to maturity, they now securitised their assets for sale to investors, created mixtures of options, futures, and insurance and they fully entered into an era of betting or hedging against what had been unimaginable outcomes.

Likely the most prominent of these securitised assets – and the one that would see the near total collapse of the financial system – were mortgage loans. These had led the push to spread homeownership across working class America from the 1970s through government-backed Freddie Mac and Fannie Mae loans but, in the 1980s, ratcheted interest rates were pushed to lower-income families and by 2006 these non-conforming loans had exceeded any sense of a conforming market. Along with Greenspan's continuing interest rate reductions, this built into a housing bubble which had begun in the 1990s. State regulators stood back while flaky financial products continued to push questionable assets into another level of the expansion of the market.

Market collapse was inevitable as government and regulators stood by. House price decline led to widespread defaults, and the mortgage-backed securities that lay across the financial services market lost value. What followed was institutional failure and big bank mergers. Again, the Market demanded that the taxpayer be called on by the intervening government to pour massive sums – including to Bank of America and Citigroup – to shore up the losses and save the industry. Regulation was then reintroduced to Freddie Mac and Fannie Mae and the 2008 *Housing and Recovery Act* sponsored by the Republican George W. Bush administration guaranteed $300 billion in loans to subprime borrowers on reduced principal loans.

The principal responders to the crisis were the Federal Reserve and the Treasury, which spent another $700 billion of taxpayer money to buy troubled assets and inject funds into the banking system through the 2008 *Emergency Economic Stabilisation Act*. The Federal Reserve also facilitated massive levels of funding to enable J.P. Morgan to buy Bear Stearns at a cost of at least $3 billion. It also created several lending facilities to provide emergency liquidity to banks and other such institutions. This was complemented by the reduction of interest rates to zero by 2008 and by then-Federal Reserve Chair Ben Bernanke doubling its balance sheet to $2 trillion.[6]

That the crisis was the outcome of the State having been made an agent for the Market is made clear by all this. It is also affirmed by the other elements of

6 Ibid. p. 15

State subjugation, including the facilitation of globalisation,[7] the widespread privatisation of public assets,[8] cuts to public sector spending[9] and the restructuring of the workforce by way of part-time casualisation.[10]

In terms of the present argument, the dominant interests of the State have attempted its *regeneration* as a sympathetic entity following the mid-twentieth century crisis by adopting the claims of the new absolutist Market and becoming submissive to it. This move was a demonstration of the simultaneous operation of various elements of the dynamic complex: of the *core*, *regeneration* and *serial* dynamics, as well as making a further contribution – beyond the subjection of the Deity to the State – to the *consolidation* dynamic. In fact, the absolutist Market had revealed itself as predatory, without concern to ensure sympathetic conditions for those subject to it, and it was this that led to its failure as a solution to the inherent problem of irreconcilability that has been a feature of all forms of the *core* dynamic. Yet like its predecessors, it persisted.

The Supreme Court and deregulation

It might be noted that the Supreme Court of the United States was an important player in the deregulatory scenario. Although we shall see that its history of intervention is far more extensive than has been understood, as far back as 1978 in *Marquette National Bank v First of Omaha*, the Court allowed banks to export the usury laws of their home state nationwide, setting off a competitive wave of deregulation which resulted in the complete elimination of usury rate ceilings in South Dakota and Delaware, among others:e

> In 1978, the national landscape of usury regulation changed fundamentally with the Supreme Court's decision in *Marquette National Bank v First of Omaha Service Corp*. For the first time, the Court considered the question of which state usury law applied to nationally-chartered banks lending across state lines: the bank's home state or the borrower's home state? The Court ruled that the bank's home state law applied, allowing national banks to effectively export the maximum interest rate regulations from one state to their operations nationwide. This provided every incentive for financial firms to relocate their businesses to the states with the most industry-friendly regulation.[11]

7 J. Crotty "Structural Causes of the Global Financial Crisis: A Critical Assessment of the 'New Financial Architecture'" *Cambridge Journal of Economics* 33:4 2009 p. 563

8 J. Henig "Privatization in the United States: Theory and Practice" *Political Science Quarterly* 104:4 1989–90 pp. 649–651

9 S. Danziger "The Reagan Budget: A Sharp Break with the Past" *Challenge* 24 1981 pp.5–13

10 S. Rosenberg "Reagan Social Policy and Labor Force Restructuring" *Cambridge Journal of Economics* 7:2 1983 pp. 179, 194

11 M. Sherman "A Short History of Financial Deregulation in the United States" *Centre for Economic and Policy Research* July 2009 pp. 1, 5

Nature of the global financial crisis (2007–2009)

Debate continues regarding the nature of the neoliberalism that was at the heart of the global financial crisis (G.F.C.). What is of particular interest is that Greenspan, who played such a pivotal role in the restructuring of the United States economy in the years prior to the crisis, admitted when appearing before the House of Representatives in 2008 that he had "made a mistake in presuming that the self-interest of organisations, specifically banks and others, was such that they were best capable of protecting their shareholders". He accepted that the crisis "had found a flaw in his thinking".[12]

Against this background, there are those who deny the explanation that the crisis was propelled by the failure of the State to regulate financial markets, arguing instead that new linkages were formed between State and Market that enhanced the capacities of the State, including to give to the privileged – dominant interests – access to the enhanced State organisational mechanisms.[13]

This misses the point. The argument here is that through neoliberalism, the Market – by virtue of a reversal of the relationship between State and Market – is straightforwardly the beneficiary of the re-imagining of the State with the prime role as Market facilitator. This argument is therefore unaffected by the claim by those such as Konings that the capacities of the State have been enhanced rather than degraded in the face of the Market. The end result remains the same: Market dominance. In fact, that the State has become differently empowered only emphasises the increased dominance of the Market through a further-empowered State. Saying so does not falsify the argument that Market-compliant deregulation strategies by the Federal Reserve were significant factors in the generation of the Crisis. Konings makes too much of the difference between a retreat of the State and its empowered restructuring.[14] Both happened and both go to the same destination: an empowered Market with high advantage to dominant interests, all founded on the – induced but typically willing – subjection of a majority of United States citizens, especially to become home-owners. This is the real nature of the game of catallaxy.

What Konings does well is lay out the gradual shifts that had and have taken place in American finance since the New Deal, in itself a pre-eminent example of the State being seen to create sympathetic conditions of existence in response to the devastation of the absolutist Market collapse – aided by errors in the performance of the State – in the Great Depression. This puts the account of the key markers of the relationship between State and Market just detailed in an even brighter light. He makes a range of important points.

12 A. Beattie "'I Made a Mistake' Admits Greenspan" *Financial Times* 24 October 2008

13 M. Konings "Rethinking Neoliberalism and the Crisis" in *The Great Credit Crash* M. Konings (ed.) Verso 2010 pp. 4–5

14 Ibid. p. 7

First, that the New Deal – with its Fordist finance for mass-production – was the pathway towards embedding working class Americans into the American financial system, that is sympathetic conditions that reinforce absolutism:

> When we adopt a more open … perspective, the reforms of the mid-twentieth century appear not so much as a movement whereby forces emerged to secure the integrity of the social fabric by pushing back the frontiers of the market but rather as a moment in a much longer process whereby the lower classes were integrated into the capitalist order through the extension of citizenship rights – civic, political and later social rights … America's New Deal reforms expanded citizenship rights in ways that *served to integrate citizens further into the modalities of capitalist growth and connected their identities and interests more firmly to financial and exchange relations* (my emphasis).[15]

There are two relevant points here for the broad argument in the present work. First, for the combination of extended "civic, political and later social rights" and "connecting their identities and interests", we can understand the function of the State and the Market in claiming to deliver the *core* dynamic. This was an integrative, but subjecting, strategy. Second, that this creation of more sympathetic conditions of existence is not any attempt to demolish the push towards the absolutist power of the State. It is only to constrain it – or positively temper it – through an amended, positive use of its absolute power. This is sympathy brought into apparent balance or complementarity with absolutism through the New Deal by tying each citizen more desirously into the State and the Market. This is an indicator of a more general point that the State in any absolutist form – whether totalitarian or populist or widely sympathetic – has not been about reversing the entire equation, whereby the State and the Market place the respectful individual citizen and the development of her interests and skills at the centre of their *raison d'etre*.

This Fordism led to a receptiveness of American workers to the constructed attractions of credit, that is debt as subjection, which was now a principal rationale of liberalism and source of profit for dominant business interests who

> realised that consumer and mortgage credit … locked working people into a schedule of repayments that served to intensify rather than loosen the disciplinary pressures on them … they discerned opportunities for making the expansion of social rights serviceable to American business.[16]

This trend continued throughout the post-Fordist era, especially in the neoliberal turn of the 1970s and 1980s, during which the financial sector accelerated

15 Ibid pp. 10–11
16 Ibid. p. 11

further and consumerism continued to grow, especially along with the wealth of dominant interests. This became a process of normalisation[17] which was led by the Federal Reserve, as it turned away from slowing credit creation but channelled and encouraged it. All this was accelerated by Reaganomics tax and welfare cuts. Household debt as credit – epitomised by government backed Fannie Mae and Freddie Mac – was now the mainstay of the American economy during this era: neoliberalism was ingrained in the habits and cultural norms of citizens. It became the generator of the "too big to fail" mentality under which the civic culture of the satisfaction of desire – as consumerism – flourished. During the 1990s and early 2000s – despite the dot-com bubble and 9/11 – the Federal Reserve continued to manage financial expansion, including through liquidity infusions, while wage growth was suppressed due to cheap imports and casualisation. Although there were significant mergers and acquisitions and the growth of private equity, mortgage and consumer debt was the prevalent factor.[18]

By 2006, consumer debt was rising – debt reinforced the absolutism of the Market – earnings were stagnant, major financial institutions had gone bankrupt or seen as too big to fail and so bailed out through a $700 billion package. Konings makes the good point in response to this that the intercession of the State was not a break with the neoliberal era:[19] it was a culmination, not a breakdown, of that creed. The State had been, and remained to the end, an active player in the entire process right from the New Deal in the 1930s. Although the deregulation in the 1980s may have seemed a withdrawal of the State, it was one strategy among many and over the long term by which the State played a sequence of roles to support, enable and ultimately rescue the Market following the catastrophic Market failure in 2007-9.

What this reconstruction of our understanding of events reveals, however, is that the State remained active with the Market in a manner that suited the Market: the State served the Market. This was not the liberal State of Locke or Montesquieu that claimed to monitor and manage both itself and the Market to preserve individual rights, but one that itself operated on Market lines, creating conditions that induced the citizens to become fully integrated both civically and financially while serving the dominant interests of the Market. It had supported the absolutism of the Market but conceived and attempted to create 'sympathetic conditions' that in fact reinforced that continuing search for absolutism. Its ultimate failure was therefore in its claim to put the *core* dynamic in place.

That failure revealed the Market, and thereby the State, as predatory. That is, the real significance of this integration of citizens through debt is that their

17 D. Grant "Privacy as the History of Normalisation" in *Privacy in the Age of Neuroscience* CUP Ch.4 pp. 117–127

18 Op Cit p. 25

19 Ibid. p. 26

desires - such as for security and improved quality of life - were the creations of the financial corporations, which became forms of - ultimately suffocating - subjection. This was another failure in the sequence of fateful attempts to establish the *core* dynamic of fear, dominance, claim and subjection.

After the G.F.C. – the search for sympathetic conditions of existence through the Market State

The task of addressing the crisis and its aftermath fell to the Obama administration (2009–2017). Given the widespread pain caused by the largely unrestricted absolutism of the financial institutions of the Market – with the enthusiastic support of the State – in pursuing the dominance of the Market, that administration introduced a wide range of initiatives intended to redress the impact of the crisis. This was a populist response to Market excess.

The 2010 *Dodds-Frank Wall Street Reform and Consumer Protection Act* moved with a range of significant provisions focused on the financial system. These included *inter alia* monitoring the largest financial institutions, dismantling those in receivership in an orderly manner and allowing the break-up of banks so big that their failure would pose a serious risk to the economy; preventing predatory lending and ensuring borrowers understood the terms of their sought loans; restricting how banks invest (the Volcker Rule), limiting speculative trading, eliminating proprietary trading (the use of their own funds), regulating derivative trading to prevent "too big to fail" banks from taking excessive risks, so threatening the economy, ensuring the credit ratings agencies gave fair and unbiased investment ratings to firms and strengthening the whistle-blower programme.[20]

Beyond the financial sector, this administration – through the 2009 *American Recovery and Reinvestment Act* – introduced a wide range of initiatives to impact the conditions of citizens' existence. These included tax relief; education, job training and manufacturing reforms; and it attempted to make retirement more secure, among other programmes. The signature legislation of this administration was the 2010 *Patient Protection and Affordable Care Act*, the intention of which was to make affordable health care insurance available to more citizens through subsidies and the expansion of the Medicaid programme and support medical care delivery methods to lower the cost of healthcare generally.[21]

In terms of the broad argument being put in the present work, the Obama programme was clearly an attempt to react to the absolutist, predatory excesses of the Market-driven and State-facilitated economy of the 1980s and 1990s.

20 A. Hayes "Dodd-Frank Act: What it Does, Major Components, Criticisms" *Investopedia* reviewed, fact-checked and updated 24 March 2023; see also American Recovery and Reinvestment Act (2009) *obamawhitehouse.archives.gov*

21 Affordable Care Act (ACA) *HealthCare.gov*

During that time there were a series of presidential administrations but the common factor was the role played by Greenspan as Chair of the Federal Reserve Board between 1987–2006. During that time, the Market in the United States assumed absolutist proportions.[22] This was not a retreat of the State, except in the strategic deregulatory interventions, but an active engagement of the State to promote that absolutism. The Obama administration is therefore properly seen as responding to that absolutism by introducing measures to ensure that the still widely-empowered Market State was seen as more sympathetic than it had been. This was an attempt to shore up the *core* dynamic.

Undoing the constraints on absolutism through the Market State

The election of the chimeric populist Trump administration in 2017 resulted in another reversal. The Obama programme was the subject of a wide roll-back. Focussing first on the *Dodds-Frank Act*, provisions of the 2018 *Economic Growth, Regulatory Relief and Consumer Protection Act* loosened the original provisions regarding stress tests of the viability of regional and community financial institutions and lowered capital requirements for some. It exempted some institutions from the Volcker rule, which prohibits banks from certain investment activities with their own funds and limits their dealings with hedge funds and private equity funds; and, significantly, it raised the threshold from $50 billion to $250 billion regarding the requirement for the close monitoring that had applied under the *Dodds-Frank Act*. Arguments have more recently been made regarding whether the 2018 easing of regulations was the cause of the failures of the Silicon Valley Bank and of the Signature Bank in 2023. It has been acknowledged in response that there had been a relaxation of regulation across the board by the Federal Reserve.[23]

Beyond these changes to financial arrangements, the Trump administration moved to roll back protections in health care and abortion reform; civil rights; education; workforce pay, conditions and safety; consumer safety; environmental protection; student debt; mortgage affordability; digital data privacy and firearm control.[24]

These reversals, on such a wide scale, are undeniably intended to reverse the attempts by Obama to both constrain the financial sector in the interests of citizens and to create what were to be seen as more sympathetic conditions: a wide range of moves back towards an absolutist Market supported by the

22 Thomas Piketty notes that "The growth of capital's share (of the capital-labour split) accelerated with the victories of Margaret Thatcher in England in 1979 and Ronald Reagan in the United States in 1980, marking the beginning of a conservative revolution…By 2010, and despite the crisis that began in 2007–8, capital was prospering as it had not done since 2013" *Capital in the Twenty-First Century* Belknap 2013 p. 42

23 D. Tarullo quoted in C. Pazzanese "Bailouts for Everyone?" *Harvard Gazette* 14.3.2023

24 J. Eilperin "How Trump is Rolling Back Obama's Legacy" *Washington Post* updated 20.1.2018

Market State. This returns the discussion to the issue of populism, as Trump was and remains a populist figure. He consistently attacked the establishment elite as he not only claimed to represent the "real people" but this along with a hyper-nationalism that is anti-global, non-cosmopolitan and with narrow racial and religious foundations. However, his financial roll-backs favoured the absolutism of the Market, although not necessarily successfully. His claims that he would promote the Market, which had gained him Big Tech allies in the run-up to his election, were found to be unconvincing, including by some of those allies.[25] That is, he presented as a populist but acted as an inconsistent elitist. Finally, like all populists, his was not an agenda to destroy the State, only to ensure its subjection to the Market in which he perceives himself as a dominant interest.

It is worth noting, as a background to these initiatives, the manner in which the Trump administration came to – and attempted to regain – power and its significance for the operation of his version of the *core* dynamic. That refers to the Cambridge Analytica case, wherein massive amounts of data were illegally obtained on 87 million citizens from their Facebook accounts to allow the profiling of individual voters with the purpose of push-promoting the interests of the Trump 2016 presidential election campaign. Both organisations were found guilty under the 1998 *Data Protection Act*. The significance of this, beyond the illegality, is that the profiling took the form of the algorithmic development of psychographs so that the hopes, neuroses and fears of individual voters could be manipulated.[26] For "hopes" we may read "desires" and so here we can get a sense of the nature of Trumpist version of the *core* dynamic: dominant interests of the Market magnitude algorithmically reconstructing individual fears and desires so they could be used as a means to make claims that these will be dealt with on condition of making oneself subject, that is voting as directed. These techniques display a manipulative absolutism camouflaged as sympathy.

Regarding the attempt to regain power, one need note only that the loss of the 2020 election led to what Federal and State prosecutors have regarded as illegal attempts by the former President and a number of senior associates to claim the election was subject to vote-rigging and to engage in a variety of means to intervene and reverse the result. Those individuals have been indicted and jailed on a wide range of criminal charges under the *Racketeer Influenced and Corrupt Organizations (R.I.C.O.) Act*. Several of the co-accused have since pleaded guilty to a range of misdemeanours. Some continue to claim that there was no illegality as vote-rigging did occur.

25 E. Dwoskin *et al.* "Why Silicon Valley Billionaires like Peter Thiel Turned against Trump" *Washington Post* 12 November 2023

26 M. Hu "Cambridge Analytica's Black Box" *Big Data and Society* doi.org:/10.1177/2053951720938091 2020; M. Stucke "Here Are All the Reasons It's a Bad Idea to Let a Few Tech Companies Monopolise Our Data" *Harvard Business Review* 27 March 2018

Supreme Court and Trump

Many claims were made by the Trump administration regarding its intention to roll back all the key initiatives introduced by the Obama administration. The outcomes might be read differently. The Supreme Court rejected the attempt to overturn the Deferred Action for Childhood Arrivals programme in 2020 and in 2021 rejected the attempt to overturn Obamacare. It rejected Trump's claim for immunity from subpoenas of his financial records. He was successful in suspending travel to the United States from certain foreign countries and in the diversion of funds to the Mexican border wall project. During this time, Trump was in the process of appointing hundreds of new judges to a range of jurisdictions, including to the Supreme Court when vacancies allowed that, thereby changing the tone of the Court and the judicial system.[27]

However, there is a broader context within which these outcomes might be considered. Sheldon Whitehouse (Democrat Senator) has constructed an unrelenting argument that the behaviour of the Roberts' Supreme Court might properly be seen as the latest stage of a comprehensive strategy which was initiated in 1971 by Lewis Powell and the U.S. Chamber of Commerce to capture the Court through the activities of the Republican Party and its mega-wealthy supporters and donors. Whitehouse argues that the evidence for this strategy has included massive amounts of 'dark' - that is non-transparent - money directed to influence public opinion to support a wide range of Conservative issues and the long-term grooming of a large number of sympathetic candidates for judicial office, especially for superior courts. The outcomes, Whitehouse argues, are the current ideological imbalance of the Supreme Court and the consequential overturning of *Roe v Wade*, strong resistance to action on climate change, selective electoral disenfranchisement and especially favourable corporate conditions, all established through 80 particular Supreme Court split decisions between 2006 and 2018. If his analysis stands up to criticism, he might in effect be describing a strategy sympathetic to the mechanics of an absolutist environment. He has published this strategy as *The Scheme*.

Resumed constraint of the Market and sympathetic gestures through the Market State

The election of the Biden administration in 2021 instigated another attempt to constrain the Market-driven absolutism that was re-emerging during the Trump years and sought to do so with a range of policies that were intended to present the State as more sympathetic once again. In effect, this

27 A. Kumar "Trump's Legacy is Now the Supreme Court" *Politico* 26 September 2020; K. Shubber "How Trump has already Transformed America's Courts" *Financial Times* 26 September 2020

was a re-reversal that points to the permanent instability that results from any attempt to resolve the irreconcilability problem. It was populist reaction to the excesses of the Market.

There are four matters concerning financial institutions which have been the agenda of this administration. The first is a controversial Court of Appeals decision in New Orleans to invalidate the funding model of the Consumer Financial Protection Bureau, the body created under the *Dodds-Frank Act* with regulatory authority over providers of such financial products and services. It thereby has authority to protect consumers by safeguarding mortgages, car loans, credit cards and other lending practices. This case has moved to the Supreme Court and is significant as it could have flow-on implications for every decision made by the agency over twelve years. The Supreme Court began to hear this matter in October 2023.

The second matter is the implications of the collapse in early 2023 of two banks, the Silicon Valley Bank and the Signature Bank. These banks are examples of the kinds of institutions that became exempt from the level of scrutiny previously required when the Trump administration lifted the threshold for close scrutiny from $50 billion to $250 billion. There was a run on both banks and the Federal Deposit Insurance Corporation, Federal Reserve and Treasury Department stepped in to guarantee deposits. Biden announced a re-regulation of relevant bank procedures in response.

The third matter is the strategy to move against the increasing influence and financial strength of private equity initiatives and other means used to consolidate corporate power. Private equity interests have acquired large sections of the healthcare, housing, manufacturing and food industries to the value of trillions of dollars. This is intended to be a test of competition and anti-Trust policy from within the Department of Justice and the Federal Trade Commission.[28] This initiative provides an agency focus to address competition in labour markets, healthcare, transportation, agriculture, internet service, banking and consumer finance, technology, the latter singling out Big Tech platforms. None doubt the challenge of this agenda.[29]

The final matter has been the response of the Biden administration to the COVID crisis, a financial initiative – in addition to its significance for the health of citizens – in that it helped sustain businesses large and small during this difficult period. In all its aspects, the administration expended over $1

28 "Fact Sheet: Executive Order on Promoting Competition in the America Economy" *The White House* 9 July 2021; J. Sisco 'The Top Biden Lawyer with his Sights on Apple and Google" *Politico* 18 January 2023; S. Palma "US trustbusters: Why Joe Biden is Taking on Private Equity' *Financial Times* 22 August 2022; A. Twin "Anti-Trust Laws: What They Are, How They Work, Major Examples" *Investopedia* updated 31 January 2023

29 A. Porteuse "Biden Anti-Trust: The Paradox of the New Anti-Trust Populism" *George Mason Law Review* 29:4 2023; W. Oremus "Biden Finds Breaking up Big Tech is Hard to Do' *Washington Post* 26 February 2023

trillion on the American Rescue Plan.[30] This followed the expenditure – with bipartisan support – of $2 trillion by the Trump administration on business and community sustenance in response to the early stages of the spread of the virus.[31] These have been a further demonstration that the Market remains widely in control of the Market State, demanding and receiving the distribution of high levels of public funding when forces seriously threaten the viability of commercial enterprises. The response here echoes the dominance of the neoliberal Market and the consequential response of the State following the Global Financial Crisis, that is, although neoliberalism failed as a magnitude during that crisis – having demonstrated its inherently predatory nature – it has remained clearly dominant over the State in its demands to sustain itself.

In fact, it should be noted – to emphasise a level of overlap between these two administrations, an overlap that points to their common commitment to the Market State despite their difference in their presentation of the State as sympathetic – that Biden's policies are separating him from those of Clinton and Obama and, in one respect, moving closer to the policies of Trump. That is, to move manufacturing back to the United States and away from such offshore locations as China. The purpose of this is to satisfy a long complaint of workers who lost out under globalisation and moved to support Trump. It is also intended to address the supply chain problem revealed by the COVID pandemic. Whether this will be proven successful when manufacturing itself is being radically disrupted by technology is to be shown.[32] However, onshore manufacturing output increased steadily throughout 2023.[33]

That administration has also introduced policies intended to create better conditions for citizens across a range of areas. These include *inter alia* a return to affordable health care, equity in housing, reducing homelessness, funding high-poverty schools, affordable child care, better access to credit to grow businesses, climate resilience measures, paid sick leave, reduction in gun violence and civil rights enforcement.[34] This is thehe constraining of absolutism that will lessen the risk of an expansion of populism.

Supreme Court and Biden

The Court blocked the Biden COVID-19 vaccine mandate in 2022 and his student loan forgiveness programme under the *Heroes Act* in 2023. The Court

30 "Fact Sheet: The Impact of the American Rescue Plan after One Year" *US Department of Treasury* 9 March 2022

31 "President Donald J. Trump is Providing Economic Relief to American Workers, Families and Businesses Impacted by the Coronavirus" *White House Archives* 27 March 2020

32 D. Lynch "Biden's Course for U.S. on Trade Breaks with Clinton and Obama" *Washington Post* 27 August 2023

33 *Statista* 27 September 2023

34 "Fact Sheet: President Biden's Budget Keeps America Safe and Confronts Global Challenges" *The White House* March 9 2023

affirmed a block on the Administration communicating with social media companies regarding COVID misinformation in 2023 although later placed that decision under review. Reference has already been made to the decision to overturn *Roe v Wade* in 2022. The Court supported his "Remain in Mexico" policy in that year.

Comment

There are two sets of observations to be made at this point. The first is that there is a clear distinction between the two strategic approaches represented by the regime that had been dominated by Alan Greenspan and that over which President Trump presided, on the one hand, and those administered by Presidents Obama and Biden. The former pair are clearly those for whom the State must take an almost completely subsidiary – but highly active, facilitative – role to the Market, to the point where the latter is significantly absolutist, and from which dominant interests have gained what is shown to be heavily weighted benefits therefrom. The latter are those who saw the devastation that the global financial crisis visited on large numbers of citizens and who have attempted to present the Market State as more in tune with the needs of the majority of citizens regarding fear and desire. Yet this is all complemented by the place of the citizen in this schema, that is – behind the regime of liberal normalisation which prepares her to do so – who have long accepted the claims and counter claims made by respective dominant interests. That is, it is the *core* psycho-social dynamic at work in this complementary field.

That long acceptance has now been exhausted for a large section of citizenry and chimeric Trumpist populism has emerged as the result. However, Trump claimed that China had caused 60,000 U.S. factories to close, for which he blamed the entry of China into the World Trade Organization, rather than the decisions of U.S. manufacturers themselves as they searched for lower labour costs. The irony is that the reshoring of that manufacturing capacity – and the popularity that Trump gained among displaced workers – had not been significantly reversed during his term. This is because manufacturers unsurprisingly continued to prefer lower costs than addressing what the former President announced as a national priority of reversing that well-established scenario.[35] The COVID supply chain crisis and rising Chinese wages began to help the reversal but in 2023 the Biden administration is still grappling with the notion of subsidising companies who return on-shore.[36] There is some evidence that the Biden strategy is reversing the job losses more than those of Trump did. We have also seen that the emergence of populism has had not only economic

35 Naomi Xu Elegant "Trump Wants to End U.S. Reliance on Chinese Manufacturing 'Once and for All". U.S. Forms Aren't Complying" *Fortune* 9 September 2020

36 A. Khalid "Biden Bets Big on Bringing Factories Back to America, Building on Some Trump Ideas" *NPR* 16 April 2023

but also cultural impacts, as is demonstrated by the abortion debate and the role of Trump appointees to the Supreme Court in that.

The second observation is that, even a casual glance at the oscillation that has been occurring – that is from the aspirational absolutism of the Greenspan regime to the presentation of the State as more sympathetic in the Obama years then again to the absolutism of the Trump administration and then the re-reversal under Biden – makes it clear that the feat of maintaining a balance between an empowered Market State and one that claims concern for those who are subject is beyond the democratic traditions of the United States. This is made more difficult when a Supreme Court actively pursues an agenda that is significantly dissident from the elected government of the day and from majority opinion, as is argued by Sheldon Whitehouse. The argument here is that it is the irreconcilability inherent in the *core* psycho-social dynamic itself that is the underlying problem and the instability is due to it and that it is ultimately not resolvable.

Constitutionalism as fully implicated

There are a number of issues here that bring the discussion back to constitutionalism and to Constitutional Courts specifically. However, in the end, the challenges and controversies currently faced by constitutionalism emerge from the complex of dynamics, and constitutionalism in its current form cannot solve the problems thrown up by the functioning of that. In fact, they are exacerbated thereby.

Given that the dynamic is ultimately founded on the establishment of an absolute magnitude – based on the foregoing of respectful individual self-responsibility – that inherently tends away from sympathetic conditions for those who are subject, then any constitution is caught in an invidious position. This is made more complicated by the fact that members of the judiciary are, willingly or not, implicated in this scenario and are tasked with resolving disputes and providing guidelines which either seek a balance between the inherently irreconcilable elements and sympathy or are caught up favouring one or the other.

There are views within the public discourse that begin to acknowledge this scenario. Loughlin, for example in *Against Constitutionalism*, understands that constitutional democracy has been conflated with the alleged progress available only through the juristocratic turn to constitutionalism. He therefrom also understands that a focus on regenerating democratic notions of equality rather than bolstering liberal democratic institutions is a preferred way forward.[37] None of that conflicts with the argument presented here, but we

37 M. Loughlin "The Contemporary Crisis of Constitutional Democracy" *Oxford Journal of Legal Studies* 39:2 2019 pp. 453–454

go further to argue that constitutionalism, and the liberal democratic notions from which it emerges, also require not only examination but reimagining.

Loughlin does not see that liberal democratic principles are already as infected as constitutionalism with the irresistible problem of irreconcilability. Absolutism is the centre of gravity, and even when this turns to predation and requires constraint, the absolutism at the heart remains. So, it is not that constitutionalism can be wrongly based on innovative judicial interpretation but that matters put before constitutional courts are typically already compromised by the irreconcilability, the central tenet of the *core*. All this is compounded by the fact that the Constitutional Courts to which these ultimately unresolvable tensions are referred are themselves embedded in this same culture, as commonly revealed in their decisions and the selection of their personnel.

It is within this conceptual framework that we need to see the overthrow of *Roe v Wade*; the repeated oscillations between the Greenspan-Trump agenda and that of Obama-Biden; the incessant search for mergers and monopolisation, resulting in anti-Trust action; the innovative but destructive financial products that brought us the global financial crisis, the growth of private equity, the claims of bias concerning either individual Supreme Court judges or the entire bench, the collapse of the Silicon Valley and Signature Banks, the controversy over Obamacare, the incessant debate about regulation and so on.

None of this leaves the Supreme Court an innocent victim of the *core* dynamic; instead, it is an active player. It has been argued here that the U.S. Supreme Court bench presently favours a radically conservative agenda. Further evidence for this emerged from its decisions in mid-2023, which together triggered observations that the conservative majority of the Court is establishing itself as an absolutist unit, not merely on behalf of Market State absolutism or sympathy. For example:

> The thread that ties together almost all of the cases of the term is just how much power they all contemplate the courts exercise. And so the student loan case (rejecting the Biden administration's debt cancellation) is about expanding standing, which will expand the kinds of cases that can come to the federal courts, and about expanding the major questions of doctrine in a way that, you know, is going to empower Federal courts to be even more aggressive in reigning in policies with which they disagree. *Moore v Harper* (on the independent State legislature doctrine) is a profoundly court-power-empowering decision with regard to how much authority it's going to give Federal courts in future elections. For anyone who thinks that judicial restraint is an important principle, this term shows very little of it.[38]

38 Stephen Vladek, Professor of Law, University of Texas in R. Marcus "Opinion: Top Court Watcher: This Term Was Marked by a Broad Expansion of Judicial Power" *Washington Post* 4 July 2023

These comments do not go so far as those by Congresswoman Alexandria Ocasio-Cortez who observed that "These are the types of rulings that signal a dangerous creep towards authoritarianism and centralization of power in the court…in fact we have members of the court themselves, with justice Elena Kagan, saying that the court is beginning to assume the power of a legislature right now".[39]

Arguments have been put that the present conservative agenda of S.C.O.T.U.S. is far from accidental. Evidence has been presented that, under the strategic sponsorship of such influential citizens as Leonard Leo, a long campaign has been waged to appoint as members of the bench a range of individuals with specifically conservative agendas. The account by Sheldon Whitehouse of 80 recent S.C.O.T.U.S. decisions - many protecting large Market players - and *Roe v Wade* point to this.

> (Leonard Leo) drew up the lists of potential justices that Donald Trump released during the 2016 campaign. He advised Trump on the nominations of Neil Gorsuch, Brett Kavanagh and Amy Cohen Barrett. Before that, he'd helped pick or confirm the court's three other conservative justices – Clarence Thomas, John Roberts and Samuel Alito. But the guests who gathered that night under a tent in Leo's backyard included key players in a less-understood effort, one aimed at transforming the entire judiciary.[40]

Within an even broader perspective regarding inherent Supreme Court predispositions, it is also the context in which we should see arguments that constitutions and Constitutional Courts have embedded biases towards Christianity or liberal constructivism or neoliberalism or merely either progressiveness or conservatism. Aroney and Leigh see a very long imprint of Christianity in the idea and practice of democracy, in the rule of law, in constitutionalism, in the separation of powers, federalism and notions of liberty.[41] Their argument concerning those traces seems compelling but it needs to be seen against the notion of Deity and its relation to the idea of the State elaborated here. That is, it has been existential fear in the first place that motivated the idea of a Deity, followed by unsustainable but attractive claims made by dominant interests about that and the consequential subjection of fearful and desirous individuals. That is the context for the historic and contemporary influence of the Church on State – from Locke – and the reverse.

39 Congresswoman Ocasio-Cortez quoted in R. Luscombe "US Supreme Court 'creeping dangerously towards authoritarianism', AOC says" *The Guardian* 2 July 2023

40 A. Kroll et al. "We Don't talk About Leonard: The Man Behind the Right's Supreme Court Supermajority" *Propublica* 11 October 2023

41 N. Aroney and I. Leigh "Christianity and Constitutionalism" in *Christianity and Constitutionalism* Oxford University Press 2023 Ch. 1

Similarly, we have seen that the emergence of liberalism – and ultimately its voracious newborn, neoliberalism – not only set down the roots for State constitutionalism but that liberalism is no mere creation of a space for freedom from interference, instead playing an active "constructive" role in the lived experience of individuals. Further, the arguments about the preferred modes of constitutional interpretation – whether originalist, progressive and now the notion of common good[42] – have all been informed by and reacted to the perceived status of the Constitution. That status is properly seen as inseparable from the absolutist-sympathy duality and so from the *core* dynamic, as that has continued to shape the constitutional impact of Locke, Smith and Montesquieu.

Moving to the contemporary scenario, we have already pointed to the manner in which this perspective also helps to understand many of the elements of the current analyses of populism, such as those manifest in the abortion discourse. For example, it provides a better explanation of the long historical sources of these movements, how elites are better seen as dominant interests within the dynamic and that populism in its authoritarian forms is itself better understood as the result of the widespread dissatisfaction with the dominant regimes – typically founded in liberalism and neoliberalism – which can no longer be tolerated by large numbers of citizens. Predictably, it has emerged that many of the demagogues who have championed the interests of the disaffected – especially the white, older, Christian working class – have promoted the idea that only by hollowing out – not demolishing – democratic constitutional institutions can populist causes be delivered. This is unfortunate because there is then no recourse when populism is exposed as favouring new dominant interests before the interests of citizens. The argument here is that it is to the *complex of dynamics* that we should turn to unravel the otherwise indiscernible causes across these varying elements.

In short, the status of controversies relating to constitutionalism and the *modus operandi* of its courts cannot properly be seen apart from the formative cultural – and thereby political and economic – distortions that have emerged from the repeated iterations of the *core* dynamic and its derivatives. Therefore, addressing these cannot not just be a matter of focussing on notions of equality rather than bolstering liberal democratic institutions. The issues are far more fundamental.

42 Chief Justice John G Roberts "Justice Antonin Scalia" *Harvard Law Review* 130:1 2016; M. Kammen "The American Past Politicised: Uses and Misuses of History" *Annals of the American Academy of Political and Social Science* 617:1 1 May 2008; A. Vermeule "Beyond Originalism" *The Atlantic* 31 March 2020; P. Deneen "What I Said at Harvard – What's Wrong with the Proposition 'Return to the Founders to Save America'" *Postliberal Order* 13 April 2022; M. Wilkinson "The Authoritarian Nature of Common Good Constitutionalism" *LSE Legal Studies* Working Paper 13/2022; B. Leiter "Politics by Other Means: The Jurisprudence of 'Common Good Constitutionalism'" *University of Chicago Law Review* vol. 90 2023

The Market and Technology – the Market changes shape to exit constraint

The rejuvenated search for new regimes of corporate operation, triggered by the global financial crisis, has as a key reference point the widespread harm caused by the Market State in its globalised, privatised, liberal and neoliberal form. As a means to shift the focus from this damaging scenario, the dominant interests of the Market have increasingly turned to what is arguably the attractive and normalising scenario that Technology offers. We shall look at the emergence of this latest magnitude in the following two chapters, but here the argument will be presented that the actual shape of the Market State – irrespective of the myriad techniques, products and processes which have been embedded in idea and practice – is thereby being transformed. Further, this appears to be moving towards a point of new technological absolutism by virtue of this shift in shape.

First, a key tactical move driving this overall shape change is the expressed intention to provide a more sympathetic "customer" experience. Evidence that this is in fact a change of shape is that it is not restricted to the private sector and its digital platforms. A range of initiatives has also been proclaimed by the Biden administration[43] which specifically identifies the loss of trust by citizens in government and the intention to redress this, including through technological means.[44] The changed social practices due to the COVID pandemic were another motivating factor, as it produced greater online interaction. These means include the digitisation of the wide range of benefit applications for the needy, for payment of tax, online tools for those enrolled with Medicare and passport renewals and the use of human-centred design and user testing to ensure these are effective, the latter through benchmark standards: all through the identification of systemic barriers to specific groups and the development of customer service plans within agencies.

It is noteworthy that the language by which these plans are presented – such as benchmarking, understanding customers, continuous improvement, greater time-efficiency, on-the-ground results, service delivery, creation of greater general efficiencies, redesigning the *USA.gov* website as a Federal Front Door under the *21st Century Integrated Digital Experience Act*, eliminating face-to-face interviews, automated access to medical records, identifying High Impact Service Providers, and with each of these formally defined to assist in their assessment – is taken from commercial discourse and practice, a further sign of the neoliberal benchmarking of the State. In fact, these principles are in line with similar developments in the broader Market, although the Market is going beyond easing an online exchange with the citizen to constructing

43 "Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government" *The White House – Executive Order* 13 December 2021

44 P. Goldstein "How Technology Can Help Improve Customer Service in Government" *FedTech* 2 February 2022

unique and enhanced customer experience – in fact constructing individual citizens as digital consumers – in order to drive sales.

Especially given the pandemic trigger to more online activity, contemporary business practice is embracing digitisation at an increasing pace. In 2018, digitally transformed firms represented $13.5 billion of global G.D.P. and, towards the end of 2023, they are expected to represent $53.3 billion, over half of the nominal global G.D.P.[45] This emphasises that technology is seen, among a range of the mainstream commercial factors, as a means of capitalising on this wider online activity by seeking more intimate knowledge to create experiences that help customers "develop a greater sense of control and self-confidence in a way they couldn't have alone":

> Brands lead customers to do something different when 'they reframe their approach to focus on how they can help the customer's sense of self, instead of simply elevating customers' perception of their products and services alone. Customers crave a better understanding about themselves. In doing so, they will be more successful at meeting their objectives or reaching their goals.

That is, compelling customer experiences begin with compelling customer understanding. Through understanding customers well,

> it gives us the ability to connect with them on a deeper level, even in small ways … exceptional customer experiences are not about knowing every detail about your customers, it's about knowing what your customers do, and why they do it. Demonstrate that you know how to help them be successful and confident at pivot moments in their journey.[46]

All this is being taken to a new level through the metaverse, as a 3D virtually real, immersive, interactive, social world. Brands are using the metaverse to create "unified, realistic and personalised interactions through AI-powered customer agent avatars as digital humans, the purpose of which is to create a data trail created by the customer that can be identified and exploited as analytic insights. Customers' paths through the virtual store, where their gaze lingers, on what products and so on. This allows these insights to be parlayed in the real world – and vice versa – as keys to understanding human behaviour and experiences for marketers, product designers, store planners and customer

45 E. Calderon-Monge et al. "The Role of Digitization in Business and Management: A Systematic Literature Review' *Review of Management Sciences* 2023 Mar 28 pp. 1–43

46 L. Leachman and Don Scheibenreif "Using Technology to Create a Better Customer Experience" *Harvard Business Review* online 17 March 2023

experience professionals generally."[47] This technique is clearly based on an exploration of the desires revealed, often unconsciously, by the potential customer, but desires which are typically created by Market organisations.

This personalisation has been examined by Zuboff in the context of surveillance capitalism.

> Surveillance capitalism's antidemocratic and antiegalitarian juggernaut is best described as a market-driven coup from above…On the strength of its annexation of human experience, this coup achieves exclusive concentrations of knowledge and power that sustain privileged influence over the division of learning in society: the privatisation of the central principle of social ordering in the twenty first century … surveillance capitalism operates on the declarative form and imposes the social relations of a premodern *absolutist* (my emphasis) authority. It is a form of tyranny that feeds on people but is not of the people. In a surreal paradox, this coup is celebrated as "personalization", although it defiles, ignores, overrides and displaces everything about you and me that is personal.[48]

Zuboff also observes that, regarding the inevitable disappearance of the internet as its technology becomes widely embedded – ubiquitously – into our lives, surveillance capitalists will require vast amounts of new information so that behaviour can be converted into products that forecast the future:

> but the surest way to predict behaviour is to intervene at its source and shape it … These interventions are designed to enhance certainty by doing things: they nudge, tune, herd, manipulate and modify behaviour in specific directions by executing actions as subtle as…timing the appearance of a BUY button on your phone".[49]

Put somewhat more brutally and earlier, Carl Friesen of the Content Marketing Institute advised how marketeers should create compelling content. That is,

> What would cause someone to take the action you want? I assert that there are only two ways to motivate anyone to do anything: you must convince them that it will help them avoid a problem, or that it will help them gain a benefit. In other words, your content must instil either "*fear*" or "*desire*" (my emphases).[50]

47 M. Purdy "Building a Great Customer Experience in the Metaverse" *Harvard Business Review* online 3 April 2023

48 S. Zuboff *The Age of Surveillance Capitalism* 2019 p. 513

49 Ibid. p.200

50 C. Friesen "How to Create Compelling Content Using Fear and Desire" Content Marketing Institute online *Informa* 16 January 2012

There are several observations to be made at this point. First, digitisation of both the Market State and the Market is being adopted and at speed. Second, this has and continues to create a form of capitalism that stands above and beyond the lived experience of citizens but is increasingly made to relate closely to them. Third, that citizens are thereby being drawn into this more remote digital experience but on terms defined by the dominant interests of this technological experience and that this experience involves deeper psychological dives into the psycho-social reality of engaged citizens, including exploring and manipulating their fears and desires.

In short, this is a psycho-social strategy of subjection in the context of technological engagement.

The digital platform Market – a new shape

Related to but separate from this, the long-established form of the corporation has been revolutionised and this has created new opportunities and new risks. The old, pre-digital corporate model was vertical and insular since its principal goal was to ensure that responsibility and control flowed down from investors as owners of the company – as dominant stakeholders – through a board of directors to employees; and that accountability flowed upwards. In short, the principal goal was to protect the interests of investors, owners and shareholders.[51]

The new corporate form – the platform organisation – is horizontal and open since the principal goal is to enable collaboration with multiple stakeholders so that innovation is optimised. This flatter structure enables the proactive innovation that transactional engagement with the internet, the cloud, mobile technologies (increasingly with artificial intelligence), robotics and blockchain technologies require.[52] This is the context in which the claims for web3 – as the touted, blockchain next version of the internet should be seen, in particular given the assertions about its potential for immersive self-sovereignty. Although this would have the potential to undermine the dominance of Big Tech, there is wide caution about the realisation of its claims. Nonetheless, there is a body of opinion about its true disruptive potential: "Web3 may be the next disruptor in business … Blockchain and crypto aren't just for speculators anymore, they're the backbone of the rising decentralised internet".[53]

Platform stakeholders can include managers, employees, and investors but also consumers, developers, content creators, other companies, non-profits,

51 M. Fenwick, J. McCahery, E. Vermeulen "The 'End' of Corporate Governance: Hello 'Platform Governance'" *European Business Organization Law Review* 20 (2019) pp. 178–9

52 Ibid. pp. 174, 176

53 A. McAfee *et al.* "Web3: The Insights You Need from Harvard Business Review" *Harvard Business Review* 28 March 2023

educational institutions and governments. Both the old and the new models claim to service customers although the dominant interests of platform organisations assert this is done more effectively due to constant two-way information flow and consequential constant innovation.

Platforms come in a variety of forms, including those based on exchange (such as Amazon), services (Uber), content production (YouTube), software production (Apple and Google apps), social exchange (Facebook now Meta, Twitter now X) or smart contract development (Ethereum). There have, predictably, been issues in this momentous transition, including the role of the regulation of these new Market entities – some of which fit the descriptor of proto-magnitude – especially with the speed with which technologies are evolving. That is, corporate governance of the traditional hierarchical organisations is claimed to be restrictive and commercially harmful in this new environment.

A further, related problem is the size of some of these magnitudes, reflected in the anti-Trust action being undertaken by governments in various jurisdictions to break some into their component parts and reverse the trend against competition in a range of the new technology industries. In the context of the present work, the term absolutist is not out of place. It has been observed, as we shall see in chapter 5, that platforms like Apple, Microsoft, Amazon, Alphabet as Google, Facebook now Meta, Tencent and Alibaba "are increasingly shaping all parts of the global data value chain from data collection through user-facing platform services to data transmission, storage, analysis processing and use through artificial algorithms".[54] One implication of this is that such platforms are now leaders in industrial development. But there are other problems flowing from this trend to absolutism, especially as they refer to the relationship between the platform and the individual user.

The first is the impact of one of the pillars of the new technology, that is the concept of digital identity. Here we see a real, emerging problem of platforms: that the platform use of the digital identity is properly understood as a mechanism of surveillance. Masiero makes the point that the argument that there may merely be "dark sides" to digital identity is a misrepresentation. He questions the narrative:

> The deep entrenchment of surveillance in digital ID platforms' architecture leads (one) to argue that a dark "side" is a partial, and misleading, representation of the phenomenon: to be dark here, where "dark" is meant as openly detrimental for users of digital identification, is the inner matter of platforms themselves, whose architecture is inseparable from the surveillance outcomes produced. Rather than with a dark side, by its nature occasional and incidental, we are confronted with the dark

54 A. Andreoni, S. Roberts "Governing Digital Platform Power for Industrial Development: Towards an Entrepreneurial-Regulatory State" *Cambridge Journal of Economics* 46 2022 p. 1431

> matter of digital identity, which cannot but be producing outcomes that put vulnerable groups and individuals into peril.[55]

Compounding this feature is one which has a strong parallel with the broad argument of the present work. Drawing on the conceptual framework of Bourdieu, Harraca proposes a sociosymbolic perspective on the power dynamics of platforms by which an explanation of the means by which platforms organise and promote the self-inflicted immaturity of individuals is made available. That is, platforms organise and maintain a form of control over individual consumers of their products and processes that erodes the capacity of individuals to publicly use their reason. What is different about this form of control – but directly reflects one of the key elements of the argument concerning the *core* dynamic – is that it is self-imposed, typically willing in the argument here. The result is the delegation of autonomous decision-making – as *respectful responsibility to and for oneself* – and the accumulation of power by agents of the platforms. This also allows for the accumulation of any counterpower, as we shall see.

In this context, platforms are organising agents. They have constitutional power, that is, the power of architectural design and the capacity to design the rules, norms, categories and languages for interactions; juridical power, that is, the power to sanction breaches of the rules and arbitrate disputes; and distinction power, that is, to create categories that drive choice on the platform. On the other hand, users have crowd power, that is, the power to influence the platform due simply to the scale of their actions but which is rarely coordinated; and hacking power, that is, the power to identify programming errors and ungoverned areas that may be used for novel purposes but require high-level skills for its application. The latter is the antithesis of digital immaturity.

These first three platform powers enclose the usage field, inducing use and dependence and thereby submission to the field, this then being capitalised by expansion of the platform to new fields for extended engagement of users. Together the range for the exercise of autonomous individual decision-making is increasingly restricted, reflected in the typically-uncoordinated or typically individualistic counterpowers of users. It was due to such impact of platforms on consumers that the Australian Competition and Consumer Commission recommended that competition and consumer laws *ex post* were no longer adequate and *ex ante* action was required.[56]

However, beyond their capacity to induce individual subjection to their respective regimes, consolidated by their network connections, platforms

55 S. Masiero "Digital Identity as Platform-Mediated Surveillance" *Big Data & Society* 10:1 2023

56 M. Harraca "How Digital Platforms Organize Immaturity: a Sociosymbolic Framework of Platform Power" *Business Ethics Quarterly* Cambridge University Press online 16 March 2023; see also Digital Services Platform Inquiry – Interim Report No.5 – Regulatory Reform *Australian Competition and Consumer Commission* 2022 pp. 55–6

are evolving a stronger capacity. That is as a form of governance. For Tornberg:

> Platforms should be understood as actors who use such powers to target vulnerabilities in local institutions in pursuit of market control, resulting in a variegated process with diverse strategies and institutional forms – but whose common denominator is the privatisation of governance through digital technology. If Fordism was defined by national markets with national regulation, and post-Fordism by transnational markets with national regulation, then digital capitalism is characterised by digital propriety markets – owned and regulated by transnational platform companies.[57]

Further,

> Neoliberalism's "market regime of governance" is thus transformed into a regime that is not just marketized but also technologized, shaping a technoliberal subjectivity among workers which can be shaped according to corporate needs. Rouvoy and Berns describe an "algorithmic governmentality": a rationality "founded on the automated collection, aggregation and analysis of big data so as to model, anticipate and pre-emptively affect possible behaviours".[58]

Here, we are not only in a post-Nation State condition, but now in the post-neoliberal – and the post-Market State – age due to the breakout of digital capitalism. Neoliberalism has been unable to contain inequality – it has failed the core dynamic in the argument here – so it should be seen to have been a transitional political form. Platformisation is thus the growing use of digital powers for social control within the current form of capitalism. Like the shift from Fordism (an economy based on mass production with fair returns to workers) and post-Fordism (a fully Market economy with a poorly paid casualised workforce), the new economy of platformisation is now "a creeping, gradual and variegated process in which diverse platforms strategically engage the local institutional context to identify and exploit"[59] – and thereby come to occupy and firmly establish itself in place of – its gaps and weaknesses. This is a political as much as an economic intervention, whereby decision-making is shifted from the elected bodies of the State to private firms but it is also a mode of accumulation founded on new forms of domination. Democratic institutions are made increasingly obsolete as platforms construct their own regulatory Market

57 P. Tornberg "How Platforms Govern: Social Regulation in Digital Capitalism" *Big Data & Society* February 2023 p. 2
58 Ibid. p. 8
59 Ibid. p. 9

environment and digital off-shoring escapes unions and even the minimised neoliberal Market State regulation. Social issues are converted into technical problems[60]: governance is depoliticised through code and data, although we shall see that this trend is emerging also in the form of the Platform State.

This is properly understood in the context of the formative, constructive nature of liberalism described herein – in the Foucauldian tradition – rather than of the Lockean, Montesquieuean creation of a space of freedom from interference. These digital systems have their own technoliberal ideology: the trust in the invisible hand of the platform algorithm. That is, as Tornberg observes, platformisation is a regime of consumption characterised by increasingly illiberal forms of control, domination, and manipulation that draws on consumers' social insecurities and anxieties to shape consumption needs. It is a move to social alienation in which digital powers allow the Market system to assume a life of its own. A mundane but emblematic example is the use of chatbots, commonly used by the platforms as a means to advise users, where it has been found that hedonic motivation – the anticipation of pleasurable experience – significantly affects chatbots' social presence and that marketers may use the fear elements, exemplified during the Covid pandemic, to increase adoption of chatbot services.[61] That is, desire and fear respectively.

This has parallels with several notions put forward by Zuboff: first, in relation to Google, that the hyperscale nature of its power would not be operational without the gargantuan material infrastructure that surveillance revenues have brought[62]; second, there are shadow texts lying behind its public texts of the items posted by Google users – posts, blogs, videos, photos, conversations, likes – and are 'read only by the surveillance capitalists'. In that second sense, 'our experience is dragooned as raw material to be accumulated and analysed as means to others' market ends. The shadow text is a burgeoning accumulation of behavioural surplus as analyses and it says more about us than we know about ourselves. Worse still, it becomes increasingly difficult, perhaps impossible to refrain from contributing to the shadow text'. There have been myriad revelations of Google and Facebook's algorithmic manipulations of the information we see and that these reflect each corporation's commercial objectives.[63]

Constraint misconstrued as sympathy from the platforms

As with former attempts to create an absolute condition, there have been attempts to constrain or temper these digital magnitudes. The decision by the

60 Ibid. p. 10

61 C-M. Dinh et al. "How to Increase Consumer Intention to Use Chatbots? An Empirical Analysis to Use Hedonic and Utilitarian Motivations on Social Presence and the Moderating Effects of Fear across Generations" *Electronic Commerce Research* "Section 5. Conclusions" Published online 2023

62 Zuboff Op Cit p. 189

63 Ibid pp. 185–6

European Data Protection Board in response to complaints regarding Meta Platforms, which took effect in January 2023, was that 'Meta unlawfully processed personal data for behavioural advertising' (that is, personalised advertisements based on the web browsing of an individual) as 'Such advertising is not necessary for the performance of an alleged contract with Facebook and Instagram users. These decisions may also have an important impact on other platforms that have behavioural ads at the centre of their business model'.[64] These Meta subsidiaries were fined €210 million and €180 million respectively.

Google has also been subject to attempted constraint by the US government. For example:

- Separate from other actions taken in 2020 and set for trial in September 2023 regarding Google antitrust search advertising, the Justice Department sought an anti-Trust judgment regarding what it claimed was predatory behaviour by Google, designed to impair rivals in digital advertising.[65]

The case specifies Google operational strategies such as:

- Acquiring competitors, that is by engaging in a pattern of acquisition to obtain control over key digital advertising tools used by website publishers to sell advertising space
- Forcing adoption of Google's tools: locking in website publishers to its newly-acquired tools by restricting their unique, must-have advertiser demand to its ad exchange, and in turn, conditioning effective real-time access to its ad exchange on the use of its publisher ad server
- Distorting auction competition: limiting real-time bidding on publisher inventory to its ad exchange, and impeding rival ad exchanges' ability to compete on the same terms as Google's ad exchange
- Auction manipulation: manipulating mechanics across several of its products to insulate Google from competition, deprive rivals of scale, and halt the rise of rival technologies

However, such attempts at constraint have been strongly resisted and with a deal of success, including by Microsoft, Meta and Amazon.[66]

Taken together with the massive data collection and analysis that stand behind the respective campaigns, the circumstances of these cases against the platforms point to clear absolutist aspirations cloaked in chimeric interest in the aspirations of the users that these platforms have progressively subjected to their digital regimes.

64 "Facebook and Instagram decisions: "Important Impact on Use of Personal Data for Behavioural Advertising'" *European Data Protection Board* 12 January 2023

65 "Justice Department Sues Google for Monopolizing Digital Advertising Technologies" *Justice Department Office of Public Affairs* January 24 2023

66 C. Lima "Tech giants are racking up wins in antitrust battles" *Washington Post* 12 July 2023

One response to these attempts at legal tempering would be that this is the start of the end of surveillance capitalism, given that the constraints attack the commercial strategy of such mega-platforms as Meta and Google at the base. However, a different view might combine two elements. That is, that commercial strategies could still induce voluntary acceptance by users of targeted advertisements based on the search patterns of individuals and, second, that the attempt to delimit platform dominance is little more than the fading Market State attempting to encourage other Market players, so to *regenerate* the respective neoliberal European or United States economies. In short, neither of these actions – regarding Meta or Google – is an attempt to abolish these platforms. Further, any strategy looking to make the platform magnitudes more attractive to users still leaves the absolutism as 'constrained' but in the hands of dominant interests.

Comment

The argument here has been that the Hayekian Market replaced the State – subsuming it in the process as the Market State – and occupied the vacuum of absolutism created by the failure of the State to solve the irreconcilability problem. That failure occurred in the mid-twentieth century. The Market in its turn has failed the same test in the early twenty-first century, demonstrated by the Global Ginancial Crisis, whereby it became a fully predatory, absolutist entity that widely ignored the concerns and interests of citizens. This denial was manifest by the strategies which produced that crisis, that is neoliberal deregulation, privatisation and globalisation and it led in turn to the rise of political and cultural populism and their constitutional implications. Beyond these reactions to the failure of the Market, that magnitude has itself been forced to *regenerate* through *transformation* and is doing so through post-neoliberal digitisation and platformisation as new forms of governance. That is, this examination of the Market is further evidence of the operation of the complex of dynamics: the Market as the late field of the *core*, the State then Market as elements of the *series*, the fateful *regenerations* of State and Market and the early signs of *consolidation* and technological *transformation*.

Thereby we have the further accumulation of evidence that the varied range of present disruptions of the conditions of existence of large numbers of citizens – by Market State, by the Hayekian Market and now by the emergent platform Market – is attributable to the originary dysfunction of the complex of these dynamics, originating historically in series, and played out again across the social, political and economic landscape. The force of these disruptions is emblematically attested to by not only the agendas of the Obama and Biden administrations but also the Trump administration, all of which have carried claims of addressing the conditions of existence of citizens. The principal difference between these is the emergence of a destruive populism within the latter, with all the risks that such a creed carries when that is founded on the absolutist magnitude of the liberal, neoliberal and post-neoliberal platform Market but which carries the potential to reconstruct this foundation.

4 Upstream and Downstream Alliances and Absolutism

The argument presented to this point has been that the absolutist magnitudes which have occupied the central place in the history of the West have been serial, failed attempts to create satisfactorily sympathetic conditions that veil existential *angst*. These magnitudes have been empowered by the ultimately willing subjection of individuals to the unfulfilled claims by the dominant interests of those magnitudes that constructed fears and desires would be substantially dealt with, that conditions of existence would be sympathetic.

These failures have been characterised by the persistent attempts of dominant legacy interests to regenerate the respective magnitudes towards an absolutist status and by their subjects to seek constraints of their re-emergent character to deliver satisfactory conditions without degrading the empowerment required to deliver that sympathy. These parallel attempts have typically taken a populist form in all three areas: Deity, State and Market. Populism has been coextensive with this long series and so it is originary rather than a recent phenomenon, although it is virulent at present.

This chapter will examine something allied but different. That is, rather than focussing on the serial nature of these magnitudes – the result of the irresolvable contradictions *within* each of these serial magnitudes – as an indicator of their respective failures, that each has called upon the vitality of their respective successors in the series to regenerate themselves: the relationship *between* these entities. Weakness calling on perceived strength. This strategy has, however, rather than generate revival, only served to constitute themselves as subject to that successor in what have resulted in serial colonisations of each magnitude by subsequent magnitude. A second layer of failure compounding the first. Together, these two factors have generated the present disruptions across the institutional landscape.

Deity and State

We saw in chapter 1 that *Dobbs* raised real questions about the role of the State – in this case the Supreme Court as a central element of the State infrastructure – in relation to the Church, that is whether the intervention of the Court threatened the claimed principle of the separation of Church and State. Before

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we look at other cases that have been before the Court which raise that question even more widely, it is worthwhile to consider a range of opinions on this matter and then provide a background which gives an entirely different flavour to these considerations.

There have been strong opinions expressed that the Establishment Clause has, in effect, been used to suit differing dominant opinions about the value of religion. On the one hand, there are those that, in the past, have argued that the Establishment Clause has been interpreted to degrade religious belief and that this could be sheeted home to a direction that liberal constitutionalism itself had taken:

> the one unambiguous result (of the Equal Access Act) is that the Establishment Clause is being read to deny religious organizations privileges that organizations of other sorts regularly enjoy. So here, once again, the risk of neutrality is that the religious groups that the Clause was written to protect are actually being treated worse than others.
>
> "By banning evolution, or requiring that evolution be taught as theory rather than fact, or requiring equal time for scientific creationism, the State is not protecting the parents but imposing religious belief. That the Establishment Clause forbids. Anything else – including teaching critical approaches that might wean children from the religion of their parents – is perfectly alright. Thus, the liberal answer to this dilemma seems to come to this: "We already fought that battle, and it was called the Enlightenment, and we won, so tough luck – you lose".
>
> The Establishment Clause, as we have seen, prohibits any public dialogue aimed at promoting moral positions supported by a faith-based epistemology. Now it turns out that the Free Exercise Clause leaves the adherents free to pursue their religious beliefs only when it is possible to show in detail that nobody is bothered by them.
>
> The courts were headed for trouble from the moment they began looking for the religious motivations of legislators …The *Lemon v Kurtzman* test for Establishment Clause violations, established by the Supreme Court twenty years ago, asks, among other questions, whether the legislation has a secular purpose or not … So once *Lemon* became the law of the land, an inquiry into motivation was scarcely avoidable.
>
> So when we move from the Establishment Clause to the Free Exercise Clause, what we learn is that liberal constitutionalism rejects the epistemology of faith even when the results yielded by that epistemology are not in conflict with the results offered by the materialist epistemology that liberalism prefers.
>
> So liberalism, as a theory of politics, is moving in an unsettling direction. According to Richard Rorty, "logical positivism got a bad name by calling religion and metaphysics 'nonsense' and by seeming to dismiss the Age of Faith as a matter of incautious use of language'. Liberal dialogue seems to be headed down the same road, and in a nation where so

> many citizens are centrally moved by their religious convictions, unless there is a change of course, the consequences for liberal theory are likely to prove disastrous".[1]

On the other hand, there are strong views that recent Supreme Court decisions which favour religion are equally biased in the opposite direction:

> Through the First Amendment's Religion Clauses, the Constitution places ultimate, transcendent concerns beyond the reach of government. Accordingly, the State should refrain from promoting such concerns, and it should neither subsidise nor regulate the work of religious communities in their worship, religious instruction, or proselytising. A pluralist, liberal democracy requires separation of civil government from these distinctively religious activities … In contrast, the State has complete jurisdiction with respect to material and temporal concerns, regardless of whatever religious significance believers might attach to them. For constitutional purposes, religion cannot encompass all religiously motivated activities … With respect to temporal activities (such as health policy), the State is free to treat religiously motivated people and institutions as indistinguishable from their secular counterparts.
>
> What has changed, in some ways quite radically, is the set of governing norms adopted by the Supreme Court. In the last decade, the Supreme Court has significantly revised its approach to what is distinctive about religion in constitutional law. Notably, this process has unfolded with little engagement with, and occasional disdain for, the reasoning that underlay longstanding principles. The transformation includes an abrupt and deeply ahistorical turn away from a widespread corpus of State constitutional law. By erasing Establishment Clause-based norms of religious distinctiveness, the Court has ignored history, uprooted precedent, and disregarded deep concerns of Federalism. The Court has accomplished this radical undoing of Establishment Clause concerns in large part by dramatically expanding Free Exercise interests.
>
> 'The Establishment Clause should be understood as structural, pertaining to the character of government, and not rights-based' and 'We show how a Free Exercise-based conception of religious distinctiveness generates significant privileges for religious individuals and institutions while simultaneously insulating then from State control.'
>
> and
>
> We are now a long way from a constitutional world in which religious distinctiveness is symmetrical on the terms we describe. Over time,

1 S. Carter "The Inaugural Fund Lectures: Scientific Liberalism, Scientistic Law – Lecture two: The Establishment Clause Mess" Yale University *Oregon Law Review* 69 1990 pp. 504, 506, 508, 522, 523

> asymmetrical constitutional arrangements – those that guarantee equal or special benefits to religion while relieving religion from equal obligations – will badly strain the bonds of a religiously pluralistic society. Religious distinctiveness as a core focus of non-establishment is central to a historically sound and normatively correct account of the Religious Clauses, but the contemporary Court has strayed very far from that narrative. Instead, driving recklessly and at full speed, the Court seems headed in the wrong direction.[2]

In concert with these views, we see from within the American Bar Association, considering such cases as *Tandon v Newsom*, *Bostock v Clayton County* and others:

> Religious liberty issues are now centre stage at the U.S. Supreme Court. In just the last two months, the Court has already made dramatic changes to its First amendment jurisprudence, and it is likely to go even further. By overturning longstanding precedent on these issues, the Court has not guaranteed religious liberty for all but, instead, religious favouritism for some. (We) highlight the ideological underpinnings of those changes and give an idea of what's likely to come – especially how those changes will harm the most marginalised groups.
>
> The Constitution was once widely understood to guarantee religious freedom and equal protection for *everyone*. In the 1968 case *Newman v Piggy Park Enterprises*, for instance, the Court described as "patently frivolous" Piggy Park's argument that, because a restaurant owner's religious beliefs "compelled him to oppose any integration of the races," he was exempt from Title II of the Civil Rights Act and should be permitted to refuse service to black customers. The Court's current turn toward religious exceptionalism suggests, remarkably, that Piggy Park's retrograde requests failed only because they came 50 years too *early*. We hope this trend of religious favouritism is only a short detour and that we return to or constitutional underpinnings.[3]

The background

The key point brought out by these statements – their contextual significance – is not so much that the Supreme Court has been seen to stray in both directions towards a position of bias, unfortunate as that would be, but that this

2 I. Lupu and R. Tuttle "The Remains of the Establishment Clause" *George Washington University Law School Scholarly Commons* 2023 pp. 104, 105, 102 and 152 respectively

3 B. Girard and G. Hybel "The Free Exercise Clause vs the Establishment Clause: Religious Favoritism at the Supreme Court" *American Bar Association Human Rights Magazine* 47: 3/4

wavering was always inevitable and made more likely in the present direction with the waning belief in Deity.

To see this, we need to go back to the origins of the modern Hobbesian-Lockean State. In responding to the absolutism of the Hobbes-Filmer emphasis on the necessity of the absolutist subjection of the population, Locke's promotion of the supremacy of the legislature was based on the heretofore inseparability of religion and State. Locke insisted that the elected legislature would protect both personal property and the "Calling" of the individual to his Christian place in the society and so to God. Thereby there could be no intrusion by either the Church or any political power. Individual property and individual religious belief would be protected by this Legislature.[4] This was a Christian-political foundationalism which spread around – or, better, was imposed on – jurisdictions across the globe. It found its place in the Establishment Clause in the U.S. Constitution.

However, as the range of rights protected by this originary liberalism spread wider – beyond Christian practice and private property ownership – to ultimately include others that were secular, wider in liberal democratic franchise, individually normalising, and globally capitalist in form, the Christian-individual property foundationalism of the State came under increasing pressure. *Roe* is a paradigmatic recent example of such secularism and neoliberalism is paradigmatic regarding financial structural change beyond personal property rights. Reference points before and along this route of change have been argued in the present work to have been the collapse of the sympathetic absolutist ideal of Deity in the early sixteenth century which led dominant interests to the Hobbes-Locke imagining of what became the modern State – a failed ideal which promoted the gradual rise of secularism – and the collapse of the sympathetic absolutist ideal of the democratic State in the mid-twentieth century – a failed ideal which led new dominant interests to the global, corporate economy. It has been the accumulating, alienating effect of these sea-changes on Christians and workers that has been the driver of the political and cultural populism with which the broad argument here began: their origins are in the deep past.

Against this background, it is easy to see both *Roe v Wade* – as paradigmatic secularism – and *Dobbs* – as paradigmatic theocracy – as emblematic counter weights in the successful attempt by increasingly disgruntled Christian community to have assembled a Supreme Court to attempt to reverse this alienating, secular trend. We shall look at "complementary" Court decisions in this landscape. The argument will be that the "Christian" position has become so threatened within this broad context that the Church has had to – in effect – place itself in the hands of the State, in the form of the Supreme Court, to sustain itself against secularism. There is currently no effective "corrective"

4 For a full account of this part of the argument, see D. Grant *The Mythological State and Its Empire* Routledge 2009 pp. 54–72

strategy to satisfy the needs of the Christian working class, despite the empty promises of various populist demagogues to grapple with the post-Christian global economy. The irony is that, as with the alienation of the working class through neoliberalism and now neoliberal platformism, the predictable populist reactions across jurisdictions are playing a strategy – admittedly the only strategy available – that has already been surpassed not only by neoliberal platformism but also by digital platformism. The ground is shifting away from the presently prominent populist strategies.

Complementary decisions of the United States Supreme Court

We saw in chapter 2 that, contrary to any argument that the Catholic Church in the United States has affirmed its protection by the First Amendment Establishment and Free Exercise Clauses through the overturning of *Roe v Wade* in *Dobbs v Jackson Women's Health* in 2022 – that is that it had sought and been successful in recommitting the institutions of the State to support that Amendment – the argument here is that the decision in *Dobbs* has the opposite effect. That is, that the Church had suffered consistent and deep disruption to its authority culminating in *Roe* and had no option but to call on the institutions of the State for protection against that ongoing and deepening disruption and that a sympathetic Supreme Court has been assembled to do so.[5]

It will now be further argued that *Dobbs* was merely the centrepiece of a range of developments by which the Church has had to call on State institutions for such protection, a protection so wide that it points to an effective subjection of the Church to the authority of the State, even in a range of theological pronouncements. Further to the terminal failure of the Church as a sympathetic absolutist magnitude through the theological and social revolution of the Protestant Reformation – and serial failures since then – this pattern should be seen to show not only that there is no separation of Church and State but that the Church is effectively subject to the State, ironically reinforcing the continuing subjection of the faithful, and has transferred any aspiration to sympathetic absolutism to the State. This is the *core*, *constitutional*, *serial* and *regeneration* dynamics at work in the present. We shall now examine a significant series of examples by which this claim of Church subjection is justified. In some cases, the Supreme Court favours the vitality of the Church, in others, it opposes its aspirations, although without threatening its survival. These matters will fall into two categories, financial and non-financial.[6]

Regarding financial jurisdiction, it is a central element of Church administration that it relies on the State for tax-payer financial assistance: financial

5 D. Balz and C. Morse "American Democracy Is Cracking. These Forces Help Explain Why" *Washington Post* 18 August 2023

6 "Current Establishment Clause Issues" *Legal Information Institute – Cornell University*

assistance to Church-related institutions and tax exemptions of religious property. One of the significant matters of State funding of the Church relates to schools whereby, from *Lemon v Kurtzman* (1971), the Supreme Court decided that such funding did not breach the Constitution if it had a secular purpose, if its primary effect did not advance or inhibit religion and did not foster excessive government entanglement with religion. Despite some subsequent legal "clarification" (*Zelman v Simmons-Harris*; *Carson v Makin*), the application of these and similar criteria is little more than moderately clever legal arguments to circumvent the problems associated with the real purpose of the funding of Church schools. This is not any establishment of a religion but it is ensuring that the faithful can continue to have their children educated at a Church school, with all the attendant indoctrination that this involves: a reinforcement to promote its survival.

Regarding tax exemptions on Church property, an early Supreme Court opinion by Brennan was followed by that of Burger and the combined result is not only that the Church is favoured – like other such institutions as museums, hospitals and libraries that stabilise the community – with tax exemption on property, decisions that effectively argued that a sales tax exemption for only Church publications would violate the Establishment Clause. Similarly, *Bradfield v Roberts* established a precedent by which Church hospitals and social services – the religious affiliation being "immaterial" – have continued to receive State funding. Again, despite the nice legal arguments, the State has been sustaining the Church to a point that subjection is the proper understanding of their relationship. Without this State *largesse*, the Church would flounder financially and would be ill-equipped to claim to provide services to citizens, whether "faithful" or not.

Regarding non-financial matters, we can see a similar pattern of subjection, although not always one that favours the Church. Regarding the dogma of creationism, the significance of *Epperson v Arkansas* – where the Court struck down the attempt to ban the teaching of evolution – and *Edwards v Aguillard* where it struck down the attempt to discredit evolution – it was the State that determined the final position. In the matter of prayers and Bible reading, the Court similarly rejected the overt encouragement of religion in public schools, for example, students reading a prayer at the beginning of the school day (*Engel v Vitale*) or at a home football game (*Santa Fe Independent School v Doe*). In the matter of student release time for religious purposes, the Court – following the initial rise of this to prominence due to Rutledge in *Everson v Board of Education* – again set the thin fine line by, on the one hand, rejecting the practice of secular studies being suspended to allow such students to be released *pro temp* for this religious activity on school premises (*Illinois ex rel. McCollum v Board of Education*) but allowing it if the practice took place "off campus" during school hours under Church supervision (*Zorach v Clauson*).

Beyond the importance of the schoolyard, significant jurisdictional matters were also tested. The Court has variously held that religious groups should have access not only to school or college property but also to student news,

information, opinion, entertainment or academic communications media groups – thereby freedom of speech – so long as these were offered to non-religious students *(Westside Community Board of Education v Mergens, 515 U.S. 819)*. Further, in an increasingly thin line, the Church was allowed to discriminate in favour of religious candidates for employment, irrespective of the prohibition of that under the *Civil Rights Act*, on the grounds that this did not promote religion (*483 U.S.* at *347*, *348*). There the line has become paper-thin. A further example of this thinness relates to Sunday Closing, allowed by the Court on the grounds that the evolution of Sunday Closing Laws should be seen, as written, as being mostly of a secular rather than religious character and bearing no relationship to the establishment of religion (*McGowan v Maryland*). On the issue of conscientious objection, the Court adopted what can only be described as a convenient over-interpretation of the law that allowed such objection on religious grounds. On its face, that breached the Establishment Clause but the Court stepped sideways to posit that some religious conscientious objectors did not oppose all wars – based on whether it was a just war or not – and this was recognised in the law. Therefore, where there was such a complex of factors at play, conscientious objection was not strictly religious and it could be allowed as it was not religiously based "on its face" (*401 U.S.* at *452*). Regarding religious solicitation, this has generally been allowed under free speech clauses of the Constitution.

Among a variety of other, miscellaneous matters, one is significant for the argument here. In that, the Court decided that the delegation of any governmental decision-making to Churches constituted a violation of the Establishment Clause. In *Larken v Grendel's Den*, a statute which allowed the Church to block a liquor licence intended to operate within 500 yards of a church or school was seen as a veto that advanced religion and so was not allowed.

There are two proper conclusions from this consideration of the range of these matters. The first is that the Court has clearly been largely supportive of the Church in a robust fashion – but has done so cleverly and indirectly – while selectively rejecting the overt encouragement of religion, a path it cannot take under the Constitution. The second is that the Court will not allow the Church to stray beyond certain limits. The consequential argument here is that the Court has been placed in a position where it has clear control over not only the financial viability of the Church but also the manner in which it can function theologically. It is now the ultimate terrestrial arbiter of how the Church can be funded and of the conditions under which it propagates its dogma. In effect, the Church is now substantially subject to the decisions and thereby the presumptions of the Court, which generally favour the Church.

These conclusions have been even more clearly apparent over very recent years, to the extent that a wide range of credible opinion has emerged as to a complementary transparent bias embedded in its decisions, a bias both against secularism and, more significantly, against the principle of the separation of Church and State. The cases of *Dobbs*, *Kennedy v City of Bremerton* and

Shurtleff v City of Boston have been referred to in this regard. The Brookings Institution observed:

> The impression of a highly politicised court is the result of decisions that flout bedrock principles of judicial comportment – norms such as a meaningful respect for precedent, open and deliberative process, evidence-based, reasoned, and publicly explained decisions, deference to democratically elected or selected officials, and good faith fidelity to what relevant legal provisions say and what they have long been understood to mean.[7]

But if this is so – and the position here is that it is an appropriate interpretation – then the Court has adopted a leadership position in relation to the Church and against secularism. One might consider the speech by Alito to the Notre Dame Law School Religious Liberty Summit in July 2022 in this context, where the theme of the speech was clearly the allegedly crucial importance of Christianity for democracy and that there was not enough of it. This is informative regarding the issue of bias and regarding the separation issue but also regarding the argument here regarding the now-inevitable and willing subjection of the Church to the jurisdiction of the State. In short, Alito may be read to be correct that the various decisions here do not breach the Establishment Clause – they technically do not constitute establishment of a religion – but the sense of them is that they do constitute the regeneration of a religion and one under the umbrella protection of the infrastructure – of the magnitude – of the State: a Lockean outcome.

State and Market

However, while the State has stepped forward in this manner to take significant responsibility for the aspirations of the Church, the State has itself been subjected to great change due to its now-inextricable alliance with the Market in the form of the neoliberal Market State and beyond. We have seen that this impact of the Market on the State, especially when supported by conservative politics, sought to produce a narrower but still powerful State activity as privatisation, globalisation and deregulation proceeded to be established, faltered and was wholeheartedly supported.

What this account has not yet presented is the manner in which the process of the marketisation of the State resulted not only in the search for a stronger but narrower responsibility but also in the material regime of its services. We shall now look at these. Together, all these changes in scope and in kind will demonstrate the extent to which the State has become the responsibility of the

7 S. Lazarus "How to Rein in Partisan Supreme Court Judges" *Brookings Institution* 23 March 2022

Market – as its successor magnitude – even in those periods when the State seeks to erect a sympathetic veil over the absolutism of the Market.

In short, we shall now examine two themes by which State subservience to the Market has been established and demonstrated. The first is that the method by which the State itself operates, within its own responsibilities, has been widely transformed in its very marrow by the adoption of Market ideas and practices. The second is that the risen dominance of the Market and its veritable subsumption of the State is not the end of the account of that relationship. That is, not only did the Market fail spectacularly and harmfully in 2007–9 but the devastation caused by the global financial crisis required – and saw – the institutions of State step in to stabilise – and to finance – the failed Market. No subservience there, it seems, unless one takes the view that this resuscitation was a necessity given the total dominance of the State by the Market, that it had no alternative. That is part of the truth here but, as Tornberg has shown, there is a further development. That is, that the State form did not stand still – as the rise of resentment against neoliberalism in the form of political populism shows – but neither has the Market. It is this more recent phase of the relationship that must also be accounted for if the claim of the continuing subservience of the State to the Market is sustainable.

The impact of material Market practices on the State methodology

Placing importance of the subject of material practice is to emphasise the depth and breadth of the Market impact. That is, it was not only at the macro-level – through such policies as the privatisation of State services and the decisions to ease regulatory control of non-State and formerly-State entities – by which the Market effectively took control of the State but also that this was realised within the very substance of government activities and methods: beyond the flesh, in the bones of government.

There have been a range of important changes to government practice, prosaic as some might seem. Here we frequently see the emphasis on scientific management, efficiency and productivity as the means to the claim of a more effective public sector. The principal frame within which these changes took place was the notion of strategic planning as it developed in the private sector. This emerged out of several sources: first from Taylorism – the theories of Fred Taylor, especially as adopted by Ford in the early twentieth century – and his theories of scientific management of production; more broadly out of the Harvard Business School's Policy Model in the 1920s; then the emergence of the portfolio model of planning – emphasising risk management and the corporate growth that encouraged the emergence of industrial conglomerates – in the 1950s; through the strategic marketing emphasis outlined by Ansoff from the 1950s and still commonly used; and from the widespread adoption of the strategic approach by leading corporations in the 1960s.

All this was brought together by Drucker's strategic theory – crystallised in the 1970s and beyond – emphasising the centrality of human behaviour within

a frame that focused on risk taking conditioned by a sense of futurity, systematically organising the implementation of decisions and measuring the results against expectations: management as a disciplined science and guided by his notion of Key Performance Indicators (K.P.I.s). Drucker's insightfulness was indicated by his prediction of privatisation, the centrality of marketing and the emergence of the information-knowledge society, all themes central to the present work and all of which have become significantly problematic. Such thinking was enhanced by the highly influential theories of Harvard's Michael Porter on the five forces of corporate competitiveness and the value chain, all by which a company could take best advantage of its environment. The more recent iteration of this thinking has been the balanced scorecard, by which corporate entities can better measure performance by taking into account customer response, the internal skills needed, how to create and innovate and how to improve the return to shareholders. In essence, all this distils into a combination of clear goals, methods that are to accommodate the entity and its environment, roles fitted to the planning process, good metrics to evaluate progress and continuous communication regarding this suite across the entity.

The key implication is that this regime does not reside only at the conceptual and policy level but translates into the lived experience of those who are employed by respective entities. That is, all such individuals – at whatever level of the hierarchy of the entity – are required to adopt practices that deliver the set goals of the entity, typically as set within the K.P.I. framework. This is transparently a matter of agreed subjection. It is the panoptic regime – disciplinary but in the service of absolutist power[8] – of the *core* dynamic writ small within the Market. This is the significance of strategic planning as it had gradually emerged as a corporate strategy.

These Market ideas and practices began to be applied to the public sector – to the State – following the economic crisis of the 1970s. That is, the pressure applied by the end of the post-War economic boom, the oil crisis, demographic shifts, high inflation, the end of managed currency rates, among other factors, all led to severe challenges for the public sector in the choice and the assessment of the effectiveness of policies and so to the initiation of strategic planning, with the tools made available from the wide experience in its use in the private sector.[9] The potential for such application had advanced so far that, by 2013, the McKinsey Centre for Government had mapped out a well-developed plan for government by design, the elements of which were familiar in the private sector.[10] These included *inter alia*:

8 Foucault separated these forms of power but the argument in the present work is that discipline served and veiled absolutist power. *S. Young Michel Foucault: Discipline* Counterpress 26 February 2019; M. Foucault *Discipline and Punish* Vintage 1979 pp. 135–169

9 J. Bryson & W. Roering "Initiation of Strategic Planning by Governments" *Public Administration Review* 48:6 1988 p. 995

10 D. Farrell *et al. Government by Design: Four Principles for a Better Government Sector* McKinsey and Company 2013

- Favouring the rational and analytical over the ideological
- Sharpening strategic and risk-management skills
- Closer collaboration with the private and non-profit sectors
- Evidence-based decision making
- Benchmarking against national and global best practice
- Collection of credible performance data and its use in the design and improvement of interventions
- Engagement, empowerment of citizens as customers, as recipients of better-delivered services
- Skill development of employees to facilitate improved target success
- Refining the role of government as an economic shaper and integrator

Within this spectrum, the I.M.F. took the initiative in 2016 to issue guidelines for the conversion of all public sector entities from cash to accrual accounting, with the ultimate aim of "including all institutional units under the effective control of government in fiscal reports". One of the reasons for this growing global trend was "the professionalization of the government accounting cadre and resulting introduction of private sector techniques into the public sector". For the I.M.F., this system was an improvement in terms of transparency, accountability and financial management.[11] That is, a more effective public sector by the use of private sector techniques.

This trend was not uncontroversial and a range of comments about the ill-fitted nature of it were emerging. These included the need for public agencies to focus heavily on public as well as private value, their political rather than market environment, their largely exclusive capacity to use legal authority to achieve their purposes and the need for them to share power over personnel and resources with other agencies. All these demanded a different kind of strategic thinking than the private sector sought, for example with its bias towards single organisations. These cautions also emphasised the variability and unpredictability of the political process to which they were responsible, as well as the dominance of the application of the fairness of democratic principles.[12]

At the same time, the question was being asked whether government can be run like a business, despite the uniqueness of the political pressure to which it is subject and such qualitatively different responsibilities as community protection and welfare, and ensuring the sustainability of the market. For example, whether it could be more like a platform with innovation not only encouraged from inside but being more easily brought in from outside: "to look across Government at the potential of such emerging technologies – AI, robotics, big data, blockchain – to run government more effectively" as shared services.

11 M. Flyn et al. "Implementing Accrual Accounting in the Public Sector" *IMF e-Library* 15 September 2016

12 J. Alford et al. "Strategy in the Public and Private Sectors: Similarities, Differences and Changes" *Administrative Sciences* 7:4 2017 pp. 1, 17

This could, as an example, include the digitisation of government real estate records to open the opportunity for leasing or selling, as one the means by which government can be made "efficient, effective and deliver on its mission in the least costly way possible". Presented in this manner, these appear to be innocent and sensible questions but the answers, when seen in the context of the broad argument of the present work, take on an entirely different flavour.[13]

In fact, the strategic planning framework is so common – if not universal – that there is a preference for the value of this, even at such turbulent times as presented by the COVID pandemic:

> Our analyses indicate that in about 4 out of 5 agencies, government universities and university colleges, and municipalities, respondents have nevertheless considered the overall benefit of strategic planning to be predominantly positive, even during turbulent times…the main impression is that the total benefit of strategic planning is assessed as positive throughout the public sector. Moreover, the strategy process (stakeholder participation), use of management tools, as well as strategy content (prospector stance, that is innovation) seem to be related to the perceived usefulness.[14]

Yet despite the level of acceptance of the embeddedness of private sector principles and practice, there are significant issues at both the operational and the strategic levels. At the operational level, we shall consider the use of lobbyists and consultants, as well as the revolving door issue. All these have introduced a qualitative shift in the traditional notion of government, a significant privatisation of its material practices and therefore of its nature.

The operational level

Of the more than 12,000 lobbyists who are registered in the United States, around 300 are dominant. The six most active lobbying industries are pharmaceuticals and health (spending $373m in 2022), electronics manufacturing ($22m), insurance ($158m), securities and investment ($137m), real estate ($135m). Others then include business associations ($131m), hospitals and nursing homes ($124m), oil and gas ($124m), electric utilities ($124m) and health services ($122m).[15]

The lobbying industry is typically defended as a matter of free speech under the First Amendment, as safely constrained by rules of engagement and as a

13 J. Samberg "Can Government Be Run Like a Business?" *Yale Insights – Management in Practice* April 2018

14 Å. Johnsen "Strategic Planning in Turbulent Times: Still Useful?" *Public Policy and Administration* online 24 April 2022 in "Discussion and Conclusions"

15 Statista *Economy and Politics – Politics and Government* April 5 2023

means to bring inequities to the notice of elected officials. Popular websites provide an account of this argument:

> Lobbying is a practice performed by either individuals or organizations whereby public campaigns (which are legally registered with the government) are undertaken to pressure governments into specific public policy actions. The legality of lobbying comes from the Constitution and from our participatory democracy … Lobbying is an important lever for a productive government. Without it, governments would struggle to sort out the many, many competing interests of its citizens. Fortunately, lobbying provides access to government legislators, acts as an educative tool, and allows individual interests to gain power in numbers.[16]

However, we could see an opposite view, and one that connects with the arguments regarding populism with which this work began, in looking at the polarising effect of lobbying on the United States Congress. The scheme described by Sheldon Whitehouse and referred to in chapter 3 may be relevant in this regard

> The state legislative data demonstrates the robustness of the relationship between lobbying and polarization, showing it is not an artifact of party agenda control, salience, or bill content. Increased lobbying from these groups in recent years helps explain high levels of partisan polarization in Congress and an uneven pattern across the state legislatures.[17]

A more explicit understanding of the democratic and health impacts from this activity has been revealed by accounts of two classic lobbying campaigns - historical and current – regarding lead petrol and tobacco, although a wide range of such other fields as Big Pharma could have been chosen. These make the free speech justification disingenuous, given that it is the mega-wealthy who dominate this environment. Regarding the rebranding of lead petrol as ethyl, evidence of its deleterious effects from as early as 1922 was denied:

> By contrast, DuPont and General Motors maintained that "the average street will probably be so free from lead that it will be impossible to detect it or its absorption". An intensive industrial lobby was mounted which effectively forestalled any government regulation on lead in gasoline. For example, in response for calls for more research on public health risks, the General Motors (Research) Corporation made an agreement with the United States Government to pay for the US Bureau of

16 D. Weiser and M. Boyle "Why Lobbying is Legal and Important in the US" *Investopedia* online 28 September 2023

17 A. Garlick "Interest Group Lobbying and Partisan Polarization in the United States: 1999–2016" *Cambridge Core* online 22 February 2021

> Mines to undertake such studies. The agreement replaced "lead" with the trade name "ethyl" and included clauses that would bar press and progress reports during the study to ensure that public anxiety would not be aroused. Furthermore, Ethyl Corporation, which was formed by DuPont and GM to produce plumbiferous gasoline, was able to negotiate exclusive rights to comments, criticisms and approval of the results of the study before they were released. With the industry calling the shots, it was not surprising that leaded gasoline received a clean bill of health.[18]

Lobbying continued until leaded petrol was banned in the US in the early 1990s.

Regarding tobacco lobbying:

> "Informed by internal tobacco industry documents revealed through state-level lawsuits, a federal court ruled in 2006 that Altria, R.J. Reynolds, and other tobacco companies, had repeatedly violated the Racketeer Influenced and Corrupt Organizations (RICO) Act. The 1682-page ruling identified 145 distinct acts of racketeering, concluding that they "cannot be trusted with the responsibility of identifying and implementing the necessary changes in their own companies", that they 'have not ceased engaging in unlawful activity', and would likely continue to commit fraud "indefinitely into the future". After 11 years of appeals, the companies began publishing court-ordered statements in November 2017. The RICO case remains active, with the companies still opposing placement of the statements at retail points-of-sale.
>
> Public records and eyewitness reports indicate that tobacco companies continue to employ tactics detailed in their internal documents at state capitols across the country. Such tactics include creating and spreading disinformation; hiring influential lobbyists and lobbying firms; requiring their lobbyists to seek corporate review and approval of significant activities; donating directly to political campaigns while empowering their lobbyists to donate contributions, meals and gifts in their own names; building and nurturing strategic alliances with front groups; and proactively seeking legislation of their own design (e.g. state pre-emption of local tobacco ordinances).[19]

It is appropriate here to make a broader point. That is that decisions by the Supreme Court have actively created an environment in which vast amount of

18 J. So "The Rise and Fall of Leaded Gasoline" *The Science of the Total Environment* 92 1990 Elsevier p. 19

19 B. Rotman et al "Exposing Current Tobacco Industry Lobbying, Contributions, Meals, and Gifts" *Tobacco Induced Diseases* 20:3 National Library of Medicine published online 21 January 2022

funds have for over a decade flowed into the lobbying industry in all its forms. Sheldon Whitehouse refers to a significant number of these among the 80 legal cases that he specifies in this regard.

The impact on the functioning of the State can be even more intimately felt in relation to the role of consultants, where conflict of interest concerns have been paramount. One recent example of this, which relates to legislative change for greater transparency, involved the consulting firm McKinsey:

> In a press release announcing the results of the vote this week, the bipartisan group of senators who sponsored the bill cited ProPublica's reporting on the consulting giant McKinsey & Company's work for the Food and Drug Administration. McKinsey earned tens of millions of dollars providing a wide range of advice to have the FDA division responsible for regulating drugs, much of it directly affecting the pharmaceutical industry. Among the subjects of McKinsey's input: an overhaul of drug-approval processes and an assessment tool for monitoring drug safety.
>
> At the same time, McKinsey was working for some of the country's largest pharmaceutical companies. Its clients included Purdue Pharma and Johnson & Johnson, which were responsible for producing and distributing opioids that have gutted communities nationwide and contributed to many thousands of deaths. Yet the consultancy, which jealously guards its client roster, never disclosed those corporate projects to the FDA.
>
> A report released in April by the House Committee on Oversight and Reform revealed just how deeply entwined the two streams of work were. Committee investigators found that at least 22 McKinsey consultants, including senior partners, worked for both the FDA and opioid makers on overlapping topics, with some advising both simultaneously. McKinsey consultants sought to leverage their FDA work to solicit pharmaceutical industry business, according to the Committee's report, and consultants with ties to Purdue influenced statements made by top public health officials about the opioid epidemic.[20]

This matter followed the decision by the Securities and Exchange Commission (S.E.C.) to launch an investigation into "conflict of interest" concerns within the financial sector that included the Big Four accounting firms – Deloitte, Ernst & Young, K.P.M.G. and PricewaterhouseCoopers. This was in line with the S.E.C.'s focus on financial market gatekeepers such as accountants, bankers and lawyers.[21]

20 I. MacDougall "Congress Passes Bill to Reign in Conflicts of Interest for Consultants Such as McKinsey" *ProPublica* 16 December 2022

21 O. Oshin "SEC Probing Big Four Accounting Firms over Conflict-of-Interest Concerns: Report" *The Hill* 15 march 2022

The concern regarding law firms was also highlighted at that time regarding the revolving door – a significant issue in itself more generally – between these big accounting firms and key positions at the Treasury, a matter taken up by Senator Elizabeth Warren with the Treasury's inspector-general:

> The (New York) Times found at least 35 examples in which lawyers at the country's biggest accounting firms left to join the government, largely in the Treasury's tax policy office, and then returned to their old firm. The Times found that while in the government, many of those lawyers granted tax breaks to their former clients, softened efforts to clamp down on tax shelters and approved loopholes used by their former firms. In nearly half the examples, the officials were promoted to partner upon rejoining their old firm.[22]

Concerns have also been acted upon regarding large law firms' advice to government on the topic of E.S.G. – environmental, social and governance investing – regarding anti-trust violations. This related to an alert forwarded to corporate law firms that action would be taken regarding companies forming a new consensus on such major issues as climate change. In letters to 51 large U.S. and global law firms, U.S. Senate Republicans said they plan to use their congressional oversight powers to "scrutinise the institutionalised anti-Trust violations being committed in the name of ESG":

> The Senators cited a "collusive effort to restrict the supply of coal, oil and gas, which is driving up energy costs across the globe and empowering America's enemies abroad". They said Congress would refer anticompetitive actions made in the name of ESG to federal antitrust authorities and told the firms they have a duty to inform clients of such regulatory risks.[23]

A different aspect of these operational reliances is the relationship between the United States government and the corporations controlled by Elon Musk:

> Musk's SpaceX is currently the sole means by which NASA transports crew from U.S. soil into space. The government's plan to move the auto industry toward electric cars requires increasing access to charging stations, many of which are owned by another Musk enterprise, Tesla.

22 "Warren, Jayapal Call on Treasury, Tax Inspectors General to Investigate Unethical Revolving Door Between Treasury and 'Big Five' Accounting Firms" *Senator Elizaeth Warren News Release* 22 February 2022; J. Drucker "The Treasury Is Asked to Investigate Its Hiring of Lawyers from Big Accounting Firms" *New York Times* 22 February 2022

23 D. Thomas "Senate Republicans Warn US Law Firms over ESG Advice" *Reuters* 5 November 2022

> Meanwhile, the Ukrainian military has relied on Musk's Starlink mobile Internet terminals for communications in its fight against Russia. "We are living off his good graces,' a Pentagon official said of Musk's role in the war.[24]

The strategic level

At the strategic level, the financialisation of government is especially salient regarding the marketisation of the State. The argument here is that this reflects a change to the nature of government that is so deep and wide that one must ask whether this is approaching the stage where we are seeing government as privatised in its very nature. For example, central bank incorporation of social policy into financial stability and social investment bonds points to the incorporation of derivative principles into the way State activities are conceived, financially structured and organised. This is not a formal approach but has emerged in policy innovation.

To do this, the State requires a liquid Market for these financial products, which have to be in the form of gifts. Community development programmes designed by central banks are one example, but the starkest of all are social investment bonds (S.I.B.s), tradable as financial assets with market value. S.I.B.s are a means to attract private investment in the social sphere (the social welfare net of the Welfare State) on a pay-for-success basis in the form of a multilateral contract between government, an investor and a service provider. This opens the possibility of derivative positions on S.I.B.s and even the taking of "short" positions on the Welfare State, betting on the failure of such a State. This can be seen as erasing the distinctions between the State and financial markets, the formerly discrete State activities of monetary and fiscal policy, and finance and social policy.[25]

What is properly taken from this examination of the relationship between the Market State and elements of the Market is that, through a range of techniques and methods, the Market has positioned itself through its dominant interests to take advantage of every opportunity to marketise State services, as Tornberg has seen. In the broader terms of the argument in the present work, the State – as a Market State – is not devoid of strategies on behalf of citizens to veil such absolutist ambitions by seeking to create sympathetic conditions, even if that response is being undertaken by a State increasingly subject to the Market, although its actions remain within the narrow realm of optimising the benefit of market competition. Nonetheless, citizens are decreasingly supportive of attempts such as these to demonstrate that the State is sympathetic to their position of subjection. Intermittent data available from Pew Research,

24 R. Farrow "Elon Musk's Shadow Rule" *New Yorker* 22 August 2023

25 D. Bryan et al. "The Financialized State" in C. Borch and R. Woznitzer *Handbook of Critical Finance Studies* Routledge 2020 at Chapter 3 pdf pp. 1, 16

for example regarding attitudes to the lobbying industry, shows this. In the argument here, such distrust is inseparable from the increasingly widespread populist movements:

> It is important to note, though, that some Americans see distrust as a factor inciting or amplifying other issues they consider crucial. For example, in their open-ended written answers to questions, numbers of Americans say they think there are direct connections between rising distrust and other trends they perceived as major problems, such as partisan paralysis in government, the outsize influence of lobbyists and moneyed interests, confusion arising from made-up news and information, declining ethics in government, the intractability of immigration and climate debates, rising health care costs and a widening gap between the rich and the poor.'[26]

The apparent flaw in the broad argument

It might be claimed that the broad argument presented here is flawed to the extent that the collapse of the Market as a sympathetic but absolutist magnitude in 2007–8 through the global financial crisis (G.F.C.) contradicts the argument that the Market – as the Market State – replaced the Nation State as the dominant institutional form. It might also be claimed that the manner in which the State was called on to sustain and revive the Market at the time and in the years following is further evidence of such a flaw. Those years included the COVID pandemic, where governments again stepped in to sustain corporations so that national economies avoided collapse.

Clearly the Market failed to satisfactorily respond to these crises. The consequence is that neoliberalism as an economic creed and practice revealed its serial inadequacies, principally due to the manner in which the fervour for its dominance saw it deregulated to such an extent that the absolutist forces within it – especially within the financial sector – stretched those under-regulated conditions in the years before the G.F.C. beyond the breaking point. The argument here is that what emerged was a predatory – not sympathetic – approach to the operations of the dominant entities, leaving vast numbers of citizens in fear of it. All this despite the claim of democratic principles on behalf of neoliberalism by both Hayek and Friedman and despite their minimalising of the need for the Welfare State in their preference for a bare safety net. Neoliberalism has also been criticised on the basis that it gives rise to capitalist-transactional relationships between citizens and so is amoral, that its production of high economic inequality through trickle-down economics undermines democratic principles, that it degrades worker rights, that it is colonialist in character, that it shrinks the industrial base of rich democratic

26 "Trust and Distrust in America" *Pew Research Centre* 22 July 2019

countries, that it is biased against feminist principles and, most significantly, that it relies on the residual capacity of the Market State to bail it out when it fails and so is inherently flawed.[27]

There are thereby several points to be made against claims that the broad argument here is flawed. The first is that the State was not, in either crisis, re-establishing itself as pre-eminent over the Market. In fact, a proper understanding is that the State was demonstrating its subjection to the Market, whose dominant entities were now seen as too big to fail. Further, it is true that in more recent times, there has been an effort to constrain and transform the Market, especially – but not only – through anti-Trust and digital platform constraint initiatives. Yet again, such efforts are intended to ensure competition within the Market space and create veiling sympathetic conditions for citizens, not have Market entities operationally or strategically subject to the governance by the State beyond the principles of competition and consumer rights. The State has not again become the pre-eminent, dominant magnitude it had been until the mid-twentieth century.

In fact, rather than the State becoming dominant again over the Market, this magnitude has broadly moved further away from subjection to the State, as Tornberg, Zuboff[28] and others point out and is drawing the State with it. The growth of the digital economy and the emergence of digital platforms has been a transformation of capitalism into a form which is harder for the State to engage, especially given its primarily global structure and the inherent resistance to any interference that comes from the totalising embedding of vast numbers of citizens in its varying regimes. A sign of the difficulty which confronts the State is that – in the U.S. especially, where many of the major platforms are based – there has been until late 2023 a political reluctance to introduce the kind of protective measures for platform users that have been introduced by the European Union. It should be added that the European initiatives have been concerned to protect the consumer but not to eliminate their various services. Any ongoing large-scale, voluntary but incentivised foregoing of personal data will ensure that the key elements of their respective business models - founded on incentivised subjection - remain untouched. This is due to the means by which the platforms have achieved dominance. As Tornberg observes, there have been three such means:

27 S. Goudarzi, V. Badaan, E. Knowles "Neoliberalism and the Ideological Construction of Equity Beliefs" *Perspectives on Psychological Science* 17:5 10 May 2022 in "Conclusions"; S. Dutta *et al.* "Neoliberal Failures and the Managerial Takeover of Governance" *Cambridge Core* published online 18 November 2021; W. Davies *et al.* "Post-Neoliberalism? An Introduction" *Theory, Culture and Society* 38:6 2021 in "Conclusion"; L. Mavelli "Citizenship for Sale and the Neoliberal Political Economy of Belonging" *International Studies Quarterly* 62 2018 pp. 490–491; *The Whitehouse Task Force on Worker Organizing and Empowerment: Update on implementation of Approved Actions* 17 march 2023; "Neoliberalism" *Stanford Encyclopedia of Philosophy*

28 See references in ch. 4

- By the strategic employment of *infrastructuralisation* to produce lock-ins: platforms seek to provide basic functions that become entrenched, creating dependence on a privatised infrastructure
- The mediating position granted by ownership of these social infrastructures gives access to data flow, allowing platform companies to shape social patterns through global architectures of behavioural monitoring, analysis, prediction and modification
- By the strategic employment of demand-side economies of scale, incumbents are strongly favoured. The result is a feedback loop that produces monopolies, leading to most mature platform markets being dominated by one or two giants[29]

It is features of the platforms such as these that make constraint of these entities increasingly difficult. Yet there is even stronger testimony to this increasing inaccessibility. That is, that the State itself is beginning to convert itself into a platform formation: a platform State.

Rolf has proposed that we need to focus our attention on State Platform Capitalism (S.P.C.), whereby the dominant States of the United States and China are increasingly utilising – and encouraging – digital platforms to serve their competitive purposes on the international stage – for example in the competition between Amazon and Alibaba, Meta and TikTok – and whereby users are recruited through these global entities as a means of establishing and exercising extraterritorial economic and political power. There are three areas in which the United States is well-established in this regard: support for platforms' overseas activities (including attempts at stack rationalisation by the U.S., i.e. minimising technological applications to gain more efficiency and so optimise market success), competition over digital currencies and payment systems and cybersecurity and industrial standards.

These developments not only point to the fact that the State is increasingly an activist, transnational, capitalist formation[30] but that we are entering the age of the platform society, in which the State will be increasingly subject to – and attempt to influence and utilise – the strategies and outcomes of the technological platforms, both internationally and domestically, to affirm its capitalist function.[31]

In all this we are also seeing a precursor of what is emerging in full force with the impact of Technology, that is the *transformation* dynamic, whereby the very nature of the predecessor magnitude significantly assumes the nature of its successor.

29 Tornberg pp. 4–5

30 I. Alami et al. "Making Space for the New state capitalism, Part II: Relationality, Spatiotemporality and Uneven Development" *Environment and Planning A* 55:3 online February 2023

31 S. Rolf "The US-China Rivalry and the Emergence of State Platform Capitalism" *Environment and Planning A: Economy and Space* published online 11 January 2023

Attitudes towards Technology are the ground of its approaching absolutist forms

We began a broad consideration of the impact of Technology on the Market, through the emergence of platformisation, in chapter 3 and we shall look at the dimensions of what will be argued to be an approaching absolutist status of Technology in chapter 5. Before doing so – as a bridge to that discussion by considering how the Market is widely committing to the most radical present form of technology – we shall now provide some context by looking at attitudes towards the technological landscape. That is, despite the alerts about the risks of technological immersion, why vast numbers of citizens across the globe are increasingly embedded in technological ideas and practices. In short, the counterintuitive widespread belief in its inevitably real and irresistible value.

It is first useful to look at what a pre-eminent triumvirate of former and present diplomatic and technological thinkers and operatives – Kissinger, Schmidt and Huttenlocher – said about the recent emergence of chat-GPT and GPT-4.[32] These are both forms of generative artificial intelligence (Gen.A.I.) in the form of large language models that are capable of a form of conversation with humans and of responding to requests and suggestions to quickly produce content both reproductive and innovative. These innovations are not intelligent at the human level; although, as we shall see in the following chapter, there are those who predict with confidence that this will be realised and soon.

For these three authors, ChatGPT will come to redefine human knowledge, accelerate changes in the fabric of reality and reorganise politics and society, so it is shaping as the most significant gestalt change in human social perspectives since the Enlightenment.

Complementing these opinions with the views of those who see an inevitability and beneficence of digital immersion, Fortuna proposes the development of a positive cyberpsychology as a sub-discipline and thereby research into the positive transformation of people in the era of progressive "digitalisation and cyborgisation". He anticipates more visibility of research results on the beneficial effects of technology. This would go beyond research into concerns about "well-being", connecting it more with theories of positive psychology. This would in turn provide a focus for psychology within A.I. and transhumanism. By undertaking this approach, there would become available an explanation of the psychological determinants of the impact of technology on mental states, behaviours and interactions that promote well-being, determine optimal usage of technology and provide guidance on the specific features of innovations that favour beneficial interaction with them. This is a claim that there might emerge a nourishment of creativity, bravery, self-control and humility through the interaction with the wide array of technological forms.[33]

32 H. Kissinger, E. Schmidt and D. Huttenlocher "ChatGPT Heralds an Intellectual Revolution" *Wall Street Journal* February 24 2023

33 P. Fortuna "Positive Cyberpsychology as a Field of Study of the Well-Being of People Interacting with and *via* Technology" *Frontiers in Psychology* 14 2023 pp. 1, 5

Comment

This account, which directly implies the veiling of the nominated risks, makes it understandable why vast numbers of citizens have taken up the technological regime with enthusiasm, and especially ChatGPT and GPT-4. The prospect of having at one's disposal the depth and width of such richness of experience – in fact to subject oneself to it – albeit mediated by entities controlled by dominant interests, will be irresistibly exciting for many and for them worth the risks of that subjection, especially in the era that has followed the economic and cultural harm of the neoliberal regime, the devastation of the global financial crisis, the Covid pandemic and the present spectre of the use of nuclear arms in Europe. This is a scenario which echoes, perhaps with greater intensity due to the range of imminent existential risks, that which confronted the first Christians, or those desperate to escape the horror of the Protestant Wars in the early sixteenth century by succumbing to the early modern State, or those still dealing with the aftermath of World War in the mid-twentieth century when the promises of the ebullient Market began to make their mark.

Against this background, it seems inevitable that vast numbers will continue to wish to live in – or at least frequently resort to – an unreality, especially one powered by the wide and deep disruption and virtuality that the new large language models and human level A.I. are offering. These citizens are guided or driven by the elimination of fear promised by these technologies and by the desires they claim to fulfil.

Generative A.I. is likely to have a profound impact on the social and institutional landscape, as it is increasingly embedded in – continues to transform – the post-neoliberal Market State. That is, far from being a means by which the neoliberal and now the platform Market further embed the State, this is shaping as the means which will take the transformation of both institutions into an entirely new frame. Technology is embedding both the State and the Market.

We shall now proceed to look beneath and beyond both ChatGPT and the vast array of other technologies that have and are claimed to become available, to point to the extent to which this broad disruption has absolutist implications and, thereby, whether it affirms the broad argument here that Technology is the latest in the serial attempts to create a sympathetic absolutist magnitude to fill the void created by the failure of the Market to do so. The *core* dynamic repeating and proliferating.

Summary

This chapter has argued that, as these failed yet persistent magnitudes have each in turn sought collegiate – in addition to independent – regeneration through alliance with their respective successors, they thereby have highlighted their place within a *series* of entities: Deity having aligned itself inextricably with the State, especially through the Constitutional opportunities in the Supreme Court; the State having similarly adopted most of the dimensions

of the Market in the form of the Market State; and the Market similarly by the ever-widening and deepening reach of Technology, both structurally in the form of the platform and materially through digitisation. Each of these shifts was due to their respective failures as claimed sympathetic absolutes. As part of this broad trend, Technology has also been embraced by the magnitude of the State, despite its fateful attempt at regeneration through political and cultural populism.

The clear implication is that, beyond the emergence of these magnitudes as a series, each has ultimately collapsed into its successor, thereby creating a secondary consolidation across all magnitudes as the technological form. Because of this, Technology is acquiring the status of an absolute. That is, we are seeing further illustrations of the *core* dynamic as both *regenerational* – often through *Constitutional* means – and *serial* in nature, as well as undergoing *consolidation*. This consolidation suggests that the shape of the technological move, besides being potentially absolutist in a unique manner, is *transformational* of all magnitudes. The present disruptions across the social, political and economic landscape – brought together by increasing consolidation of the serially failed but persistent magnitudes – are directly attributable to the dysfunctional complex of dynamics upon which the landscape was and remains founded.

5 The Approaching Absolutism of Technology and Precautionary Law

The question to be addressed here is that regarding the status of Technology. That is, whether claims about it justify seeing it as increasingly bearing the status of a sympathetic Absolute for those subject to its regimes. If that were so, it would properly be regarded as a success in the long quest, the predecessor magnitudes of which failed in respective attempts to be so. If such a claim were not justifiable, then it may properly be seen as yet another attempt to establish absolutism at the cost of as little sympathy as is required for its users to justify their subjection. Neither is an attractive option.

In exploring this question, the argument here is that, although each of the strategies of its predecessors – and potentially Technology as well – establishes a veil over existential reality, there is a transformational difference between those predecessors and Technology. The difference is that the predecessor strategies claimed that dealing with constructed fears and desires was to be achieved by subjection to the respective magnitude as *agent* for each individual – the Church, the State, or the Market – while, even if digital platforms may be properly seen as helping to establish a technological magnitude, the power here to deal with fears and desires will be delivered into the hands of the individual subject *herself* but on condition of compliance with the algorithmic regime of the platforms. Each subject would have the technology to deal conclusively with their own fears and desires themselves, as individuals but within such subjection.

That is the dual meaning of the Absolute Subject. The first meaning refers straightforwardly to the self, the other to the notion of subjection. Therefore, an Absolute Subject would be claimed as a notion of the self, optimally enhanced technologically and claimed to be able to deal conclusively with the constructed fears and desires of the individual – rather than have those dealt with by Deity, State or Market – and to realise this by being oneself fully subject to this absolutely enhanced, technological Self. That is, where to be absolutely empowered in effect means to be absolutely subject.

The approaching absolutism of Technology

We may properly begin to examine these questions by considering the views of eminent contributors to the field:

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> Let us now assume … that these machines are a genuine possibility, and look at the consequences of constructing them. Here would be plenty to do in trying, say, to keep one's intelligence up to the standard set by the machines, for it seems probable that once the machine thinking method had started, it would not take long to outstrip our feeble powers … At some stage therefore we should expect the machines to take control.[1]
>
> – Alan Turing

Before the prospect of an intelligence explosion, we humans are like small children playing with a bomb. We have little idea when the detonation will occur, though if we hold the device to our ear we can hear a faint ticking sound.'[2]

– Nick Bostrom

When we're in a situation where something truly dramatic might happen, within decades, to me that's a really good time to start preparing so that it becomes a force for good. It would have been nice if we'd prepared more for climate change 30 years ago.[3]

– Max Tegmark

These sentiments are complemented by a range of even more recent observations and alerts. These include that

> (T)his moment for artificial intelligence is unlike any that has come before. Powerful language-based AIs have lurched forward in ability and can now produce reams of plausible prose that often can't be distinguished from text written by humans. They can answer tricky technical questions, such as those posed by lawyers and computer programmers. They can even train other AIs. However, they have also raised serious concerns. Prominent researchers and tech industry leaders have called for research labs to pause the largest experiments in AI for at least six months.[4]

Further

> …given the accelerating powers of artificial intelligence (AI), we must equip artificial agents and robots with empathy to prevent harmful and

1 A. Turing "Intelligent Machinery, A Heretical Theory" in *The Essential Turing: Seminal Writings in Computing, Logic, Philosophy, Artificial Intelligence, and Artificial Life: Plus The Secrets of Enigma* B. Copeland (ed.) Ch.12 1951 p. 475

2 Nick Bostron quoted by Tim Adams "Artificial Intelligence: We're Like Children Playing With a Bomb" *The Guardian* 12 June 2016

3 Max Tegmark quoted by A. Anthony "Max Tegmark: 'Machines taking control doesn't have to be a bad thing'" *The Guardian* 16 September 2017

4 J. Hsu "How This Moment for AI Will Change Society Forever (and How It Won't)" *New Scientist* 18 April 2023

> irreversible decisions. Current approaches to artificial empathy focus on its cognitive or performative processes, overlooking affect, and thus promote sociopathic behaviors. Artificially vulnerable, fully empathic AI is necessary to prevent sociopathic robots and protect human welfare.[5]

Allied concerns are being expressed regarding the value of memory:

> Where do real memories end and generative AI begin? It's a question for the AI era, where our holy photos merge with holey memories, where new pixels are generated whole cloth by artificial intelligence … tech giants Google and Adobe, whose tools collectively reach billions of fingertips, have released AI-powered editing tools that completely change the context of images, pushing the boundaries of truth, memory and enhanced photography.[6]

Such concerns are triggering increasingly wide debate about the regulation of these technologies – constraint of these emerging magnitudes, in the argument here. For example, there are ongoing calls for the regulation of A.I. by Congress, made more urgent by the release and impact of the large language models (L.L.M.s)[7]. Such calls are made even more urgent by the enactment of the European Union's (EU's) new *Data Governance Act* and its *A.I. Act,* the first attempt at a comprehensive framework within which A.I. is to develop and be managed.[8]

One view is that this should not be left to politicians but passed to the hands of the judiciary to decide America's A.I. legislative framework. This view is drawn out by the questions over the legality of what is occurring with the release of the L.L.M.s, which are sweeping up user data to advance the training and applications of these systems: it is the judiciary which will be tasked with resolving this issue and the outcome could change the way that A.I. is built, trained and deployed.[9] This would be a controversial policy decision, given the demonstrated potential for judicial bias.

What these observations justify is the possibility – if not probability – that the question we have just introduced may be answered by saying that Technology is approaching an absolute status and that any sympathetic conditions it is now

5 L. Christov-Moore *et al.* "Preventing Anti-Social Robots: A Pathway to Artificial Empathy" *Science Robotics* 12 July 2023

6 L. Goode "Where Memory Ends and Generative AI Begins" *Wired* 26 May 2023

7 C. Lima "Congress Is Playing Catch-Up on AI. She's Been Sounding the Alarm" *Washington Post* 13 July 2023

8 J. Bhuiyan *et al.* "The EU Is Leading the Way on AI Laws. The US Is Still Playing Catchup" *The Guardian* 13 June 2023

9 M. Heikkila "How Judges, Not Politicians, Could Dictate America's AI Rules" *MIT Technology Review* 18 July 2023

delivering are in fact only what is variably sufficient for subjects to justify their subjection.

Beyond, but in addition to, such continuing concerns regarding the power, intrusiveness and regulation of the latest artificial intelligence is a further issue, even more closely connected to the principal theme of the present work. That is, the dominance of a few digital platforms, with their algorithmic design regimes, in the functioning of this technology. This is due to the circumstance that operating L.L.M.s is so expensive that few organisations will have the ongoing capacity to sustain development until adequate revenue begins to be generated. This raises a series of issues regarding competition where there are fewer entities in the field and how to avoid the dominance of very few proto-magnitudes.[10]

The framework for a response

We have just seen how digital platforms and their role in the emergence and dominance of surveillance capitalism is a technical means by which a new form of governance is emerging out of the shortcomings of the neoliberal Market State and how that is based on the pervasive – and not uncommonly voluntary – data gathering that online activity by users generates. This chapter will explore a range of technologies by which, including but beyond data gathering and analysis, the ideas and practices of individual citizens are increasingly being heavily impacted. This analysis will also show that, behind the visible dominance of surveillance capitalism, lies a wide range of technologies that are now so widely embedded in individual and social life that they have become invisible and that a further range is now becoming implanted in the social landscape and an even further, more intrusive, suite is claimed to be likely on offer for use in the near-to-mid future.

The challenge is to provide a coherent framework within which to see these technologies, given that they cover such a wide field and their respective impacts are increasingly deep, that is to make sense of them. The argument here will be that these technologies, taken together, offer both an opportunity for significant human enhancement but, ominously, the strong ultimate potential of a totalising environment, thereby a veiled absolutism which may take the form of the Absolute Subject.

This chapter will proceed in four stages:

First, given what we have just seen as the emergence of digital platforms into dominance as frameworks for the new governance and given their demonstrated capacity to each gather a range of technologies in support of their respective strategies, with their own algorithmic design regimes,

10 D. Acemoglu "Harms of A.I." at 7. Conclusion *MIT* August 2021; W. Oremus "AI's Steep Costs Are Already Triggering Competition Concerns" *Washington Post* 6 June 2023

we will consider what their dominant interests claim are their respective intentions regarding citizens, that is their respective claims to foresee the relationship between the technological regime they promote and the attitudes and behavioural practices of citizens. This will allow an assessment regarding the relevance for each of the notion of the Absolute Subject and whether or not they – in concert – may be argued to constitute a veiled emerging absolutism. In that context we will begin to examine the significance of legal actions by which these platforms are being engaged by government, especially whether the anti-Trust sentiment points to a concern about any projected absolutism of these platforms. That examination will be the forerunner of other considerations regarding absolutism and the law in section four.

Second, we will consider whether the capacities and enhancements offered by these platforms are sufficiently potent and transformational to potentially constitute an absolutism of the Self. Pre-eminent among these is cognitive capacity, that is to know, understand, remember, imagine, solve problems and make predictions. Others include physical capacity, such as managing the expanded range of physical tasks of daily living made available in a rapidly changing environment and in a manner that optimises cognitive capacity; health and security, to allow the optimal expression of these other capacities as well as exploratory pleasure, for both refreshment and an enhancement of the imagination. These are the capacities in terms of which we will examine such technologies as artificial intelligence, including machine learning and generative A.I.; robotics and brain-machine interfacing; C.R.I.S.P.R. and other forms of genetic manipulation; immersive reality, including augmented reality, virtual reality and the metaverse, among others. All these are the emerging means by which we may create or be subjected to alternative realities.

Third, we shall consider these accumulating capacities in the context of their potential for widespread subjection, how this might be ameliorated by embedding an ethical component in their design and whether the outcome of that could satisfy the criteria for a different kind of subject.

Fourth, following on from the consideration of government legal action in section one, we shall examine key elements of the role of law in this narrative, including whether the current strategies are merely an attempt to temper – rather than seek to fundamentally reimagine – the dominant digital platforms. From that we shall propose a starting point from which law may play a role in such reimagining.

The strategies of the dominant interests of the Digital Platforms and their significance

Given their already significant – and spreading – dominance of the social, political and economic landscapes, the digital platforms present as a suitable

focus in any search for a candidate with the status of a technologically sympathetic Absolute.

One important *introductory point* is made here. That is that, as we explore the nature of each of these platforms further, it will become noticeable that there are common features within their suites of offerings. These include key business and psychological strategies adopted to secure dominance of their particular market, the fact of huge numbers of repeat subscribers or users, which in turn implies, despite concerns regarding vast swathes of personal data they commonly collect, a substantial level of user satisfaction, even a user commitment to or reliance on these services and which points to a substantial embedding of thought and practice even though their products are opaque. As result of that dominance is that there has been responsive action by governments in the United States and Europe, at least, to regulate these entities, sometimes including the undertaking of anti-Trust legal action or its equivalent. Since privacy issues are also at the heart of such legislation, such action can be read to indicate an intention to forestall the totalising impact on market and individual. It will be quickly seen that these are features substantially shared with the serial magnitudes we have considered throughout this work.

Profiles of the claimed intentions of dominant interests of digital platforms

We first consider OpenAI, whose C.E.O. during its formative years was Sam Altman, the employment of whom was terminated and immediately reinstated by the Board in November 2023. Although other platforms are far better and more widely established, we begin with this technology – key elements of which we have already begun to canvas in terms of L.L.M.s – due to what Altman promised will be its profound impact on the Market, the State and individual users. That is, it has already begun to radically transform all the digital platforms we are considering: Google's PaLM2 through Bard/Microsoft, Meta's Llama2, Big Science's Bloom and so on in a swiftly changing field. This is due to the wide range of content which can be produced, including audio, software code, images, text, simulations and videos, music, virtual worlds and business simulations, at least. The significance is indicated by the immediate uptake by over 100 million users, reflecting both the enthusiasm of consumers to explore and adopt its potential, and the keenness of OpenAI itself to improve the training of the technology through wide consumer usage. Altman announced in November 2023 that work is underway to produce GPT5, although access to quality data sets is proving a challenge, as it is for other developers of such products.[11]

It is relevant that, as we consider the potential impact of such L.L.M.s as ChatGPT, that DeepMind announced that its new L.L.M. – Gemini – will

11 J. Dorrier "OpenAI CEO Sam Altman Says His Company is Now Building GPT5" Singularity Hub 15 November 2023

offer capacities well beyond the OpenAI system. Founder and C.E.O. Demis Hassabis has indicated that the new system has planning and problem-solving capability, made available through the Google search and other capacities.[12]

Regarding ChatGPT, some of the immediate institutional response has been positive. Beyond the immediate corporate take-up of the technology,[13] a field that will no doubt grow through the regeneration and consolidation dynamics, Dr. Robert Pearl of Stanford University believes that it is already clear that ChatGPT has the potential to ease the knowledge and documentation burdens for physicians.[14] There are and will be many other positive benefits across the landscapes of Market, State and in the lives of users. In that regard, Qin et al. indicate the potential for generative A.I. to empower the metaverse, in such forms as avatars and non-player characters, content creation, virtual world generation, automatic digital twins and in personalisation of the virtual experience.[15] These have potential to reform health, education and security programmes if managed appropriately. It is strongly arguable that the claims being made about this new technology are convincing large numbers of users that it is worthwhile to embed themselves in this regime as central to their world view and so their *modus operandi*.

Yet we have seen the risks of its potential of operating beyond human control – given that it is a considerable outsourcing of the human intellect – and the consequence of the spread of misinformation and deep fakes and democratic disruption through social unrest. Therefore, it should be noted that, although Sam Altman indicated in May 2023 that there should be regulation applied to this technology, including through licencing and pre-release safety testing, that intention seemed to soften in the face of the highly cautionary response of the European Union. He reversed an initial response to the possible impact of the E.U. *A.I. Act*, but said he had no plans to withdraw OpenAI from operating in Europe. Yet it is understood Altman sought to negotiate a more convenient operation of the relevant European Acts. This broad caution may have significance for attempts to regulate their L.L.M. in the United States, although OpenAI is the subject of legal action alledging the misappropriation of huge swathes of personal data to train this L.L.M.[16] On a complementary front, this product has demonstrated bias in its operation. This is significant as it has been argued that it is impossible to build an

12 W. Knight "Google DeepMind's CEO Says Its Next Algorithm Will Eclipse ChatGPT' *Wired* 26 June 2023

13 B. Marr "10 Amazing Real-World Examples of How Companies Are Using ChatGPT in 2023" *Forbes* 30 may 2023

14 M. Depeau-Wilson "GPT-4 Is Here. How Can Doctors Use Generative AI Now?" *MedPage Today* 20 March 2023

15 H. Qin and Pan Hui "Empowering the Metaverse With Generative AI: Survey and Future Directions" *ResearchGate* online preprint April 2023

16 C. Thorbecke "OpenAI, Maker of ChatGPT, Hit with Proposed Class Action Lawsuit Alleging It Stole People's Data" *CNN Business* 28 June 2023

unbiased AI-based chatbot, especially due to the currently-impervious nature of their operation.[17]

It is significant that the letter for a moratorium on L.L.M. research that was sponsored by the Future of Life Institute and signed by such A.I. luminaries as Elon Musk, Geoffrey Hinton, Demis Hassabis, Stuart Russell and Max Tegmark, among many others, had little practical effect beyond raising the issue in the public domain. Sam Altman did not sign. That is, in the absence of any serious move by government to regulate, research has continued apace – including by Musk through his new L.L.M. Grok– and the threat regarding human disempowerment grows.[18] Yoshua Bengio, scientific director of A.I. hub Mila, has stated that human-level A.I. may be achievable as early as within a few years from now.[19]

Elon Musk is the dominant interest with Tesla, Twitter/X and SpaceX and is also C.E.O. of the brain-machine interface organisation Neuralink, which has proceeded to human trials.[20] He was a founding investor in OpenAI, the A.I. research company whose stated mission is to ensure that artificial intelligence benefits all of humanity. He stepped down from the Board in 2018, citing a conflict of interest with his work on the development of A.I. for his Tesla vehicles. He was a signatory to a letter urging that research into the technology cease until its potential was better understood.

Musk has released Grok through Twitter/X. It has the capacity through four categories of machine learning benchmarks and tasks: middle school maths, multiple choice questions, Python code completion and maths problems written in LaTeX (maths). It will optimise massive amounts of data and might intrude into the financial field if it includes blockchain arrangements for payments. This may be a significant inducement to the 550 million users of Twitter/X, currently generating 100–200 million posts per day. That is a number so large as to justify a claim – despite the variability in subscription – that the platform is fulfilling those promises and is dominant of the field in doing so, despite the forgoing of personal autonomy through deep data subsumption.

Regarding Neuralink, Musk used Twitter on 4 June 2016 to announce that "Creating a neural lace is the thing that really matters for humanity to achieve symbiosis with machines". He is reported to have stated at the "World Government Summit – Shaping Future Governments" in February 2017 that:

17 M. Heikkila "Why It's Impossible to Build an Unbiased AI Language Model" *MIT Technology Review* The Download 8 August 2023

18 M. Heikkila "Six Months on From the 'Pause' Letter" on interview with Max Tegmark *The Algorithm MIT Technology Review* 26 September 2023

19 S. D'Agostino "'AI Godfather' Yoshua Bengio: We Need a Humanity Defense Organisation" *Bulletin of the Atomic Scientists* 17 October 2023

20 R. Levy "Elon Musk's Neuralink Wins FDA Approval for Human Study of Brain Implants" *Reuters* 27 May 2023

> …if humans want to add value to the economy, they must augment their capabilities through a merger of biological intelligence and machine intelligence.[21]

Despite his stated aspirations, Musk has been engaged in controversy on a number of fronts, all of which have absolutist overtones. These include the extent to which Twitter/X should be guided by the First Amendment, with the implications of that for reasonable levels of social harmony. They include criticism – including from China – of plans he presented to deploy very large numbers of communication satellites, thereby attempting to write the rules in space;[22] his attitude to tax and unions;[23] and his claims regarding Neuralink, including by Brain Computer Interface (B.C.I.) pioneer Miguel Nicolelis of Duke University that Neuralink is taking credit for work he and other B.C.I. researchers have conducted for decades "and tries to say that he's done some amazing thing".[24] Musk rejects these criticisms but the questions remain.

Twitter/X has also been the subject of criticism regarding the proliferation of disinformation, a practice that is commonly seen as undermining both the quality of public discourse generally and of the quality of democratic arrangements specifically:

> The EU has issued a warning to Elon Musk to comply with sweeping new laws on fake news and Russian propaganda, after X – formerly known as Twitter – was found to have the highest ratio of disinformation posts of all large social media platforms. The report analysed the ratio of disinformation for a new report laying bare for the first time the scale of fake news on social media across the EU…Facebook was the second worst offender, according to the first ever report recording posts that will be deemed illegal across the EU under the Digital Services Act (DSA), which came into force in August. Nevertheless, Facebook and other tech giants, including Google, TikTok and Microsoft, have signed up to the code of practice the EU drew up to ensure they could get ready in time to operate within the confines of the new laws.
>
> Twitter left the code of practice but it is obliged under the new law to comply with the rules or face a ban across the EU. "Mr. Musk knows he is not off the hook by leaving the code of practice" said the European commissioner Vera Jourova, who is responsible for the implementation

21 O. Solon "Elon Musk Says Humans Must Become Cyborgs to Stay Relevant. Is He Right?" *Guardian* 15 February 2017

22 J. Jolly "Elon Musk Rejects Mounting Criticism his Satellites are Clogging Space" *The Guardian* 30 December 2021

23 C. Bennett "Naming Elon Musk Person of the Year Is Time's Worst Ever Choice, Say Critics" The Guardian 14 December 2021

24 T. Yarlagadda "Elon Musk's Neuralink is Bad Science Fiction, Brain Science Pioneer Says" *Inverse* 27 May 2021

> of the new anti-disinformation code. "There are obligations under the hard law. So, my message for Twitter/X is you have to comply. We will be watching what you do"'.[25]

In the U.S., on the contrary, not only is there no effective law that consistently blocks disinformation on social media but a Federal Court Trump-appointed judge in Louisiana issued a preliminary injunction barring several Federal Departments from interacting with social media companies – for example regarding COVID, vaccines and voting – on grounds of free speech.[26] President Biden has successfully sought the – albeit temporary – lifting of this injunction.[27]

In short, like all the other entrepreneurs of these dominating conglomerates now to be canvassed, Musk is a highly active player across the technology spectrum. He is well positioned to continue to both produce and to take advantage of emerging research across the fields we shall next examine, and so to claim that individual engagement with these technologies would be significantly helpful for users across the fear-desire spectrum. The strength of his activity, however, is the basis on which Musk resists constraint, submitting to the Federal Trade Commission that it cease its investigation into practices relating to the privacy of individual users of the crisis-embroiled Twitter/X, for commercial reasons.[28] It is a resistance that likely gained encouragement from the curious and portentous Louisiana Federal Court decision. The Musk conglomerate is well-established and growing as a proto-magnitude.

Bill Gates was the co-founder and C.E.O. of Microsoft, a company that provides hardware, software and services to the computing industry. Satya Nadella is the C.E.O. currently. Gates remains a dominant interest in and for the company: he has stepped back from operational involvement but the company remains at the centre of his wide investment portfolio. He is also invested in Schrodinger Inc., a pharmaceutical and new materials research company which has not yet performed to its potential but which has alignment with biotech companies. His investments in Berkshire Hathaway reinforce that alignment. He was a founder and has been heavily invested in OpenAI, the organisation responsible for ChatGPT and GPT-4. Microsoft has launched Kosmos 2 as its L.L.M., complemented by its high-powered Bing search engine. It is progressively investing $10 billion – beyond its initial $3 billion – in Bing, as

25 L. O'Carroll "EU Warns Elon Musk after Twitter Found to Have Highest Rate of Disinformation" *The Guardian* 26 September 2023

26 C. Zakrzewski "Judge Puts Sweeping Limits on Government Contact with Social Media" *Washington Post* 5 July 2023

27 A. Marimow "Supreme Court Says White House May Continue Requests to Tech Companies" *Washington Post* 20 October 2023

28 C. Zakrzewski "Twitter Didn't Pay Privacy Assessor after Musk Takeover, Court Docs Show" *Washington Post* 13 July 2023

an empowered alternative to the emerging Google PaLM 2.[29] It gathers large volumes of personal data, which it states are not for marketing use.

Gates stated in his blog GatesNotes on 21 March 2023 that:

> The development of AI is as fundamental as the creation of the microprocessor, the personal computer, the Internet, and the mobile phone. It will change the way people work, learn, travel, get health care, and communicate with each other. Entire industries will reorient around it. Businesses will distinguish themselves by how well they use it…I've been thinking a lot about how – in addition to helping people be more productive – AI can reduce some of the world's worst inequities.

Microsoft Office 365 has around 345 million users and 300 million paid subscribers. Its range of products is used globally by 1.4 billion people on an annual basis. It is claimed that the global operating system of the Microsoft market has reached 43% and that Office is used by 43% of business organisations. It is clearly a dominant entity, both commercially and regarding the individual practice of citizens. The number of active users of its Azure cloud service is around 722 million and 85% of Fortune 500 companies use this service.

Although it has been criticised for seeking and reaching a dominant position in the government technology market – and that this presents a cybersecurity vulnerability – Microsoft was also the subject of one of the largest anti-trust cases in U.S. history in the 1990s during Gates' time as C.E.O. Although Microsoft won the case on appeal, it agreed to share interfaces with other companies. However, it might be asked if the successful appeal has played a key role in creating an environment which has encouraged the emergence of such platforms as Apple and Google. Gates' enthusiasm for A.I. generally and L.L.M.s in particular places him at the centre of the fundamental digital disruption in which we are now embedded, with the transformative beneficial power claimed for it yet which is drawing wide concerns about its socially and psychologically destructive capacity.[30] As with the other platforms, this is well established as an entity and is emerging as a magnitude.

Mark Zuckerberg is the dominant interest C.E.O. of Meta (formerly Facebook), a primarily social technology company. Meta states that it has 3 billion global daily users of any one of its products. It is the parent company of Instagram/Threads (as an alternative to Twitter/X), Llama 2 as its L.L.M.,

29 M. Heikkila "The Algorithm" *MIT Technology Review* January 2023; "Microsoft Confirms Its $10 Billion Investment Into Chat-GPT, Changing How Microsoft Competes With Google, Apple and Other Giants" *Forbes* 27 January 2023

30 P. Limone *et al.* "Psychological and Emotional Effects of Digital Technology in Children in COVID-19 Pandemic" *Brain Science* 11:9 2021; "Bing's AI Chat: 'I Want to Be Alive'" *New York Times* 17 February 2023

the CTRL-Labs neural interface, the WhatsApp messaging service and Oculus V.R.

Zuckerberg has stated that the metaverse will not only increasingly transform how we see the world but how we participate in it – from the factory floor to the meeting room. His vision for the company, reflected in the establishment of the Meta framework, is based on his view that, in effect, the metaverse is the future of the internet. Based on his plan to control both the necessary elements of this technology, the service is concerned to deliver an experience that spans the physical and virtual worlds whereby users, principally through their avatars, can engage in a range of immersive – including commercial, social and entertainment – experiences provided by many suppliers of content to the platform. It is worthwhile noting Zuckerberg's description of the status of the relatively low-key pre-Meta Facebook, that is that "In a lot of ways Facebook is more like a government than a traditional company".[31] One imagines he holds a far greater ambition for the status of the immersive experience he is now pursuing.

However, its widening power led in early 2023 to the U.S. Department of Justice announcing it had reached an agreement with Meta, the effect of which was that the company had changed its advertisement delivery system to prevent discriminatory advertising that had been in violation of legislation: Meta had built a new system to address algorithmic discrimination. This resolved a lawsuit filed by the Department.[32] The Federal Trade Commission (F.T.C.) also launched action against Meta regarding anti-competitive practice, but the Court did not find against Meta. The company has also been resistant to criticism for allowing political disinformation, this issue being significantly reducible to the nature of the company's algorithms, which were the subject of claims to the federal government that they harmed children, stoked social division and so weakened democratic practices.[33] As a result, 41 States and the federal government have sued Meta based on a claim that Facebook and Instagram exploit children for profit, harvest their data and invade their privacy with consequences for their mental health.[34] These machine learning algorithms were trained on Big Data to allow fine-grain targeting and nudging of users for the purpose of commercial inducement.

Meta has more recently been fined €1.3 billion by the European Union for breaches of the Union's privacy laws under the General Data Protection

31 H. Farrell "Mark Zuckerberg Runs a Nation-State and He's the King" *Center for Advanced Study in the Behavioral Sciences* 11 November 2018

32 "Justice Department and Meta Platforms Inc. Reach Key Agreement As They Implement Groundbreaking Resolution to Address Discriminatory Delivery of Housing Advertisements" *Department of Justice – Justice News* 9 January 2023

33 K. Hao "The Facebook Whistleblower Says Its Algorithms Are Dangerous. Here's Why" *MIT Technology Review* 5 October 2021

34 C. Lima and N. Nix "41 States Sue Meta, Claiming Instagram and Facebook Are Addictive, Harm Kids" *Washington Post* 24 October 2023

Regulation for transferring data to the United States.[35] Although this is a significant hurdle for Meta, in the broad argument here, the attractiveness of the Meta suite of products, if their potential is fulfilled, is likely to outweigh user resistance to invasions of privacy, as incentives will be found to attract the voluntary foregoing of personal data. Like other platforms, this is an established entity and an emerging magnitude.

Sundar Pichai is the C.E.O. of Google, a subsidiary of Alphabet Inc. since 2015 and a company originally founded by Larry Page and Sergey Brin in 1998. It is a multifaceted technology company with a range of services, including online search, storage, software and consumer products. The Founders Statement in 2004 included that:

> We have also emphasised an atmosphere of creativity and challenge, which has helped us provide unbiased, accurate and free access to information for those who rely on us around the world … We will live up to our "don't be evil" principle by keeping user trust and not accepting payment for search results.

Its principal service is that of an artificially intelligent online search engine which – principally through Google Chrome – controls up to 90% of the global search traffic, although YouTube is also well established in the landscape, and its DeepMind is its general purpose A.I. facility. It provides other services such as email, cloud data storage, entertainment streaming and an app store among a range of others. Its 2022 revenue of $280 million was significantly contributed by advertising, substantially related to data collected from users. In May 2023, Google announced a major expansion of its A.I. applications, including the embedding of generative technology in the form of PaLM 2 into a wide range of its products: chatbots, text generators, content-creations tools, Android apps, Google Workspace apps like Gmail, Docs and Sheets.[36]

This muscularity has led to the company being the subject of separate anti-Trust and discriminatory behaviour litigation initiated by the United States' federal government, actions which has been joined by a number of States in that country.[37] Yet common criticisms of Google have gone beyond this. These include that personal privacy protection and copyright protections are threatened by its data scraping and pooling to train its L.L.M. DeepMind[38] and by the capacity of Google Earth and Google Maps; and that the dominance of its search engine favours large websites. It is also facing increasing

35 "1.2 Billion Euro Fine for Facebook as a Result of EDPB Binding Decision" *European Data Protection Board* 22 May 2023

36 L. Goode et al. "Google Is Opening the AI Floodgates" *Wired* 12 May 2023

37 "Justice Department Sues Google for Monopolizing Digital Advertising Technologies" *Press Release – Justice Department* 24 January 2023

38 C. Thorbecke "Google Hit with Lawsuit Alleging It Stole Data from Millions of Users to Train Its Tools' *CNN Business* 12 July 2023

industrial action by workers regarding what are described as its stringent pay and conditions[39]and it has faced criticism regarding tax avoidance.[40]

Google currently has 4.3 billion users globally, based on the data for 4.73 billion internet users and a market share of 92.2%. This is also thereby established as an entity that is also an emerging magnitude.

Jeff Bezos stepped aside from the operations of Amazon in 2021 after founding the book-selling company in 1995 but remains a dominant interest. He consistently described the four key values of the company as customer obsession, long-term thinking, eagerness to invent and taking pride in operational excellence. It is now described as a $1.75 trillion global retail, logistics, cloud, entertainment and internet behemoth that provides services to 20 countries across the 5 continents.[41] It has 310 million users worldwide and collects a wide variety of data from its users, including identifiers and browsing and search history for the stated purpose of improving the Amazon experience of the user. It engages Big Data analytics to support its commercial strategy.

The company agreed in early 2023 to pay a Federal Trade Commission fine of $30 million over allegations that its Ring and Alexa products collected and misused private user data.[42] In late 2023 the company was subject to separate action by the F.T.C. and 17 U.S. States, who alleged that it engages in illegal behaviour in its online shopping marketplace and in the many services it offers to third-party sellers, allowing it to extract "monopoly rents from everyone within its reach".[43] The company agreed to a settlement to resolve two anti-Trust cases in the European Union, avoiding a multi-billion dollar fine over allegations it was improperly using data from third-party sellers who use its marketplace.[44]

Ronald Wayne, Steve Jobs and Steve Wozniak founded Apple in 1976 to make computers small enough to have in one's office or home. Since then, the company has spread its services widely into telecommunications, entertainment, news and retail shopping among others. Many operating systems provided by other companies are incompatible with Apple systems, which results in a sometime enforced exclusivity and loyalty to Apple. It has 525 stores across 26 countries and regions worldwide, under C.E.O. Tim Cook. There

39 L. Papachristou and D. Alba "Google Workers Stage Rallies Against Job Cuts, Low Wages" *Bloomberg* 3 February 2023

40 D. Pegg "Google Shifted $23 Billion to Tax Haven in Bermuda in 2017, Filing Shows" *The Guardian* 2 January 2019

41 C. Duffy "Jeff Bezos Is Stepping Down as Amazon CEO. He'll Still Have Huge Power at the Company" *CNN Business* 5 July 2021

42 M. Carino and D. Shin "FTC Doubles Down on Data Privacy Enforcement with Amazon Settlements" *Marketplace* 5 June 2023

43 C. Zakrzewski *et al.* "US, 17 States Sue Amazon Alleging Monopolistic Practices Led to Higher Prices" *Washington Post* 26 September 2023

44 C. Porterfield "Amazon Settles EU Anti-Trust Case – But Here's Why It Won't Pay Any Fines" *Forbes* 20 December 2022

are more than 1.46 billion iPhone users worldwide, contributing to company revenue in 2022 of $394 billion.

Jobs was well-known for such epithets as "My favourite things in life don't cost any money. It's really clear that the most precious resource we all have is time" and "What is Apple, after all? Apple is about people who think 'outside the box', people who want to use computers to help them change the world, to help them create things that make a difference, and not just to get a job done'". It is noteworthy that, as we have seen, Steve Wozniak is a supporter of the ChatGPT model but he was a signatory of the petition to halt research until its capacity was better understood.

Apple has been the subject of anti-Trust action taken by the European Commission regarding rival music firms like Spotify being prevented from advertising so that users could subscribe to their apps. The company has also been the subject of action regarding Apple Pay. Apple shares with Google and Microsoft the accusation that its products are difficult to repair, thereby to replace components. The company has been locked in dispute with Samsung over patent infringements. It has also been ordered to pay compensation totalling between $310–500 million regarding the installation of defective batteries in its iPhones, claimed by some to be a planned obsolescence strategy.[45]

What is clear from this brief examination of the profile of these entities is that – hugely powerful yet still in a form embryonic to their likely future development – they already share the key features of the mature magnitudes we have been examining throughout this work and as outlined in the *introductory point* above. That is, they are managed by dominant interests who claim a wide variety of means to resolve the fears and satisfy the desires of their subscribers, leading to an individual embedding in – subjection to – their organisational ideas and practices, as an increasingly large part of their world view. Those are subscribers whose personal data is not-untypically then exploited to reinforce their contribution to the proto-absolutist status of these entities and by doing so have reinforced their market dominant position.[46] As is typical of those mature, serial magnitudes, their means to dominance identifies the absolutist aspirations behind any concern for sympathetic conditions of existence for those subject to the regime, as the bevy of constraining regulation and anti-Trust cases increasingly indicates. This is an emerging totalisation of the user experience.

It is a proper observation that this platform landscape retains as its foundation the *core* dynamic and sits as the culmination of the *serial* dynamic, *consolidating* its predecessor magnitudes, all of which persist as entities characterised

45 R. Lawler "Apple's iPhone 'Batterygate' Settlement Payments Should Start Going Out Soon" *The Verge* 15 August 2023

46 See also A. Gawer "Digital Platforms and Ecosystems: Remarks on the Dominant Organisational Forms of the Digital Age" *Innovation: Organisation and Management* 24:1 2022 p. 110

by failed *regenerations* suffering disruption – not uncommonly populist – and is challenging *constitutional* frameworks as it is *transformative* of both those predecessors and the broad present landscape as the individual platforms strive towards an absolutist status veiled in sympathetic conditions.

The emerging future of digital platforms

There is no argument here that governments seek to eradicate such entities. That is now impossible given the *consolidation* and *transformation* described. Quite the contrary, they seek only to temper in favour of minimally more sympathetic and more competitive conditions. Governments are not addressing the existential risks posed by these entities, especially as all the activities of these platforms will increasingly be absorbed into the frame of generative artificial intelligence and its future elaborations, the real significance of which is the prospect of human-level artificial intelligence. We shall see that this point is forcefully made by the Centre for the Study of Existential Risk.

Some recent discourse

The World Economic Forum seriously considers a range of views of experts about the prospect of human-level A.I. – of which L.L.M.s may be seen as a forerunner – including as early as the next several decades. The majority of A.I. experts take the prospect of very powerful A.I. technology seriously, being of the view that we will soon see A.I. technology which will have a further transformative impact. While some experts have long timelines, many consider it is possible that we have very little time before these technologies arrive. Across three surveys, more than half think that there is a 50% chance that a human-level A.I. would be developed before some point in the 2060s.[47]

Complementing and extending this are the assembling views that the growth of A.I., especially as machine learning will increasingly allow A.I. self-development, means that there is a 50% chance of A.I. outperforming humans in all tasks by 2065, with Asian respondents expecting these dates much sooner than North Americans.[48]

Before its *The Future of Human Agency* report in 2023, the Pew Research Centre released *Artificial Intelligence and the Future of Humans* in 2018, focussing on the timeline up to 2030. Many of the near-1000 experts that were consulted stated that "smart" systems in communities, in vehicles, in buildings and utilities, on farms and in business processes will save time, money and lives and will offer opportunities for individuals to enjoy a more

47 M. Roser "Here's how experts see AI developing over the coming years" *World Economic Forum* 16 February 2023

48 K. Grace et al. "Viewpoint: When Will AI Exceed Human Performance/Evidence from AI Experts" *Journal of AI Research* 62 2018 p. 729

customised future. However, they also predicted that, although networked A.I. will amplify human effectiveness, it would also threaten human autonomy, agency and capabilities. They spoke of the wide-ranging possibilities, for example, that computers might match or even exceed human intelligence and capabilities on tasks such as complex decision-making, reasoning and learning, sophisticated analytics and pattern recognition, visual acuity, speech recognition and language translation. A particular observation with connection to the present work was that of dependence lock-in. That is that, although many saw A.I. as augmenting human capacities, some predicted the opposite, that people's independence on machine-driven networks will erode their abilities to think for themselves, take action independent of automated systems and interact effectively with others,[49] that is subjection in the terms of the present work.

Certain findings from *The Future of Human Agency* might also be noted. That research contained responses from experts in emerging technologies and of the impact of those as they relate to government:

Kathryn Bouskill, anthropologist and AI expert at the Rand Corporation, said

> Some very basic functions of everyday life are now completely elusive to us. People have little idea how we build AI systems, control and fix them. Many are grasping for control, but there is opaqueness in terms of how these technologies have been *created and deployed by creators who oversell their promises* (my emphasis). Right now, there is a huge chasm between the public and AI developers. We need to ignite real public conversations to help people fully understand the stakes of these developments.
>
> Greg Sherwin, a leader in digital experimentation with Singularity University, predicted decision-making and human agency will continue to follow the historical pattern to date: it will allow a subset of people with ownership and control of the algorithms to exert exploitative powers over labour, markets and other human beings. They will also operate with the presumption of guilt with the lack of algorithmic flagging as a kind of machine-generated alibi.
>
> Alejandro Pisanty, Internet Hall of Fame member and professor of internet and information society at the National Autonomous University of Mexico, predicted that there are two obstacles to human agency triumphing: *enterprise and government* (my emphasis regarding Market and State). Control over technologies will be more and more a combination of cooperation and struggle between these two forces, with citizens left very little chance to influence choices. The trends indicate that the future design of decision-making tech will most likely not be determined by the application of science and well-reasoned, well-intended debate.

49 "Artificial Intelligence and the Future of Humans" *Pew Research Centre* December 2018

> Instead, the future is to be determined by the agendas of *commercial interests and governments*, to our chagrin'.
>
> Heather Roff of the Brookings Institution and senior research scientist at the University of Colorado-Boulder said humans' cognitive systems are just geared to "think like" these systems. So, when one has a lack of literacy and a lazy attitude towards the use of such systems, bad things tend to happen. People put too much trust in these systems, they do not understand the limitations of such systems and/or they do not recognise how they actually may need to be more involved than the currently are.

One summary statement recorded that "56% of the experts canvassed agreed with the statement that by 2035 smart machines, bots and systems WILL NOT be designed to allow humans to easily be in control of most tech-aided decision-making relevant to their lives." Among the most common themes they expressed:

- powerful interests have little incentive to honour human agency. The dominant digital-intelligence tools and platforms the public depends upon are operated or influenced by powerful elites – both capitalist and authoritarian – that have little incentive to design them to allow individuals to exert more control over their tech-abetted daily activities. One result of this could be a broadening of the digital divide
- humans' value of convenience will continue to allow black-box systems to make decisions for them: People already allow invisible algorithms to influence and even sometimes "decide" many if not most aspects of their daily lives – that won't change. In addition, when they have been given an opportunity to exercise some control over their tech tools and activities, most have not opted to do so
- A.I. technology's scope, complexity, cost and rapid evolution are just too confusing and overwhelming to enable users to assert agency: they are designed for centralised control, not personalised control. It is not easy to allow the kind of customisation that would hand essential decision-making power to individuals. And these systems can be too opaque even to their creators to allow for individual interventions

There were more positive comments. Specifically:

> Marc Rothenberg, founder and president of the Centre for AI and Digital Policy said 'Over the next decade, laws will be enacted to regulate the use of AI systems that impact fundamental rights and public safety. High standards will be established for human oversight, impact assessments, transparency, fairness and accountability…This is the essence of human-centric, trustworthy AI'; and
>
> Sam Lehman-Wilzig, professor at Bar-Ilan University, Israel said 'On the micro, personal level, AI 'brands' will be competing in the

> marketplace for our use – much like Instagram, Facebook, Twitter, TikTok compete today – designing their AI 'partners' for us to be highly personalised, with our ability to input our values, ethics, more, lifestyles, etc., so that it's personalised 'recommendations' will fit our goals to a large extent. But on the macro-level humans will not be in charge of decisions/policy. Once we can be relatively assured that AI decision-making algorithms/systems have no more (and usually fewer) inherent biases than human policymakers we will be happy to have them 'run' society on the macro-level – in the public sphere. Indeed, one can even posit that *many (perhaps most) people throughout history have been perfectly happy to enable a 'higher authority (God, monarch/dictator, experts, technocrats, etc.) to make important decisions for them*' (my emphasis).[50]

It might be noted that this final comment, although defending the notion of a controllable AI, is fully consistent thereafter with the *core* dynamic. The analysis in the present work, as already presented through that dynamic, is closer to the cautionary position of Bouskill, Sherwin, Pisanty and Roth rather than to those such as Rothberg.

A wider scenario

The broadly complementary relationship between the six-point material strategy of digital platforms, the *introductory point* and the views of these experts regarding the fulfilment of those strategies adopted by the dominant interests of these platforms is reinforced by a further consideration and extension of the analysis of the platform ecosystem provided by Tornberg. The account of the evolution towards digital capitalism he presents adds value to this conceptual relationship although his account ultimately falls somewhat short of the argument here.

That is, we cannot separate the emergent dominant structural potency of the digital platforms from the emergent functional potency of the artificial intelligence that will be the next phases of the L.L.M.s that are their *modus operandi*. This is because the totalising effect on subscribers to the platform strategy will ease the transition to the totalising effect of the next phases of their L.L.M.s on subscribers.

Tornberg's account of the evolution of the forms of capitalism highlights the serial transitions from Fordism then, in the 1970s, post-Fordism or neoliberalism and then, following the 2008 global financial crisis, the post-neoliberal phase of emerging digital platforms. This is an account that overlaps with the later stages of the broad account in the present work of the serial failures and replacement magnitudes of State, Market and Technology, although the emergence is seen in this work as following the crisis of World War II rather

50 Pew Research *The Future of Human Agency* 24 February 2023

than in the 1970s. For Tornberg, the platform ecosystem is an emergent form of governance, centralising and controlling access to what are otherwise easily produced artefacts and which are at minimal cost. Like the neoliberal entities they are gradually replacing, digital platforms challenge the State by seeking to undercut and adopt State-sponsored services and to monopolise their target market. This still attracts anti-Trust litigation but that is only the strategy of the Market-subservient State to increase competition – and ingenuously satisfy claims that the Market State retains some foundation in Lockean freedom from interference – not to avasculate the platforms. Self-regulation is the burgeoning regime and, because code is depoliticised, governance is privatised and it is democracy that is avasculated.[51]

A further quantum difference between neoliberal and platform entities, which takes them into a new category, is their digital relationship with users. The massive data collection, analysis and increasingly personalised inducement to immerse, to conform to digitised ways of thinking and to go along with the multi-service engagement that constructs individual responses and behaviours and so has emergent totalising features. This is a digital form of Foucauldian power, but away from top-down regulatory power and towards a power shaped by the epistemic features of Big Data: "cluster-based, relational, interactional, fluid, and ostensibly bottom-up – in short, complex".[52] Further, it impacts workers just as users of the platforms:

> The neoliberal market-based model is supplanted by a programmable propriety market, drawing on algorithms, data and AI to shape worker behaviour in precise but ostensibly horizontal ways. Platform workers are controlled through dynamic ratings and scorings, while being automatically monitored and managed through data streams and algorithmic management…a technoliberal subjectivity.[53]

In short, to those who might read the accounts of the increasing number of anti-Trust cases to indicate that the neoliberal State has warmed to a strategy of aggressively confronting the emergent platform ecosystem and that these entities will be brought under control, two things should be said. First, applying constraints in such a way as to encourage more competition does not press platforms back into the mould of global conglomerates of the neoliberal variety, as the second phase of the evolutionary stream. These entities retain their status as emergent post-neoliberal entities who, subject to the varying effect of these anti-Trust, competition-promoting constraints, retain the same totalising, multi-dimensional digitised regime within which their users increasingly

51 P. Tornberg "How Platforms Govern: Social Regulation in Digital Capitalism" *Big Data & Society* 10:1 2023 p. 9ua
52 Ibid. p. 7
53 Ibid. p. 8

dwell, think and behave. That relationship is still based on the collection and exploitation of vast quantities of personal data, even if that may be induced to become largely voluntarily provided. They also retain their capacity to take advantage of their global presence to strategically comply but outmaneuver Nation States, even conglomerates like the European Union, by setting a regulatory regime that applies only to their respective enterprise.

This is because, in the end, the platforms are offering the widest range of services that will continue to proliferate and which have already induced hundreds of millions of citizens to successfully veil their existential concerns and replace those with fears and desires manufactured and claimed to be resolved by the creative minds of the platforms. This is the problem that those who believe that magnitudes can be constrained cannot resolve. We have seen the failure of such constraints with all the previous magnitudes and so it is with Technology. Absolutism is ever-resilient and it is intended to be tolerant of constraint – including as sympathetic conditions of existence – only to the point that, ultimately, will still induce subjection.

This extended analysis of Tornberg gives a fuller meaning to the material strategy of the platforms and the *introductory point* and thereby reveals the full implicit significance of the aspirations of the respective dominant interests, both individually and in concert: a digital ecosystem which is the foundation of the emerging digital reality within which users are already intentionally embedded. This is a move forward towards a sympathetic Absolute.

The essential point is that the force and spread of digital platforms is significantly dominant already. However, as they have available to them the nature and range of the further, newly-emergent technologies we shall now consider, the prospect of an increasing totalising effect can be expected to grow behind a veil of claims regarding the end of fear and the satisfaction of desire. We can see the opportunity for this with systems like Musk's Neuralink and the array of other similar systems. These will increasingly be the features of typically-willing subjection that veils the absolutism of reality.

The seductive promise of enhancement through emerging artificially intelligent systems and absolutism

The pace with which artificial intelligence is spreading across the economic and social landscapes via the platforms – and thereby the decisions that are made by this technology separate from autonomous human consideration – is continuously surprising, to the extent that remaining aware of this spread is a challenge to governments and individual citizens alike. This is especially due to the invisibility of many embedded technologies. A brief account of each will point to the range of the field that is of concern as we speak, notwithstanding developments that will continue to come at an increasing range and depth.

It is expected that 95% of customer interactions will be powered by artificial intelligence by 2025. Already, the range of these applications includes e-commerce (personalised shopping recommendations, including via

virtual shopping assistants and chatbots; fraud reduction), education (creation of smart content; personalised learning techniques), in lifestyle experience (autonomous vehicles; facial recognition for venue access; activity recommendations; email spam filters), navigation (traffic analysis and management; route optimisation), robotics (carrying and cleaning; inventory management),[54] human resource management (job application scanning), healthcare (cancer detection; medical data scanning for production of new medications; surgical assistant procedures) and agriculture (soil analysis).

It is also used in gaming (non-playable character development), and social media (tracking of search histories for recommendations and harmful content for editing), astronomy (star and galaxy changes over time), data security (protecting consumer and corporate information; identification of cybersecurity weaknesses and threat response) and in the automotive industry (smarter factories; supply chain management; vehicle inspection and quality control).[55]

Beyond such current applications, there is a range of impending innovations that are to take artificial intelligence to a new level of significance. Here we will identify key locations on the broad landscape of these innovations to give a sense of their sweep before proceeding to outline the range of specific technologies that are the basis of the argument here for the movement towards the Absolute Subject. But what can be properly said is that these digital platforms – together, even as they compete for hegemony – are shaping firmly as a conglomerate absolute magnitude, irrespective of the claims regarding the progressively addressing fear and desire, their "sympathetic" credentials.

Technological development - real and imagined - and the Absolute Subject

We now consider a number of these technologies in the context of the notion of the Absolute Subject. That is as potential enhancements and augmentations that might contribute to the claim for a realisation of such a subject, yet this in the context of subjection to the algorithmic design regimes of the platforms.

In doing so, the question will be kept in mind whether and under what conditions we can trust artificial intelligence. A reasonable set of reference points for trustworthiness would include:

- whether any particular artificially intelligent product is accompanied by a set of instructions as to its field of suitable applications and its particular limitations

54 J. Dorrier "Agility's New Factory Can Crank Out 10,000 Humanoid Robots a Year" *Singularity Hub* 20 September 2023; L. Blain "Fourier and Tesla Show Off Impressive Humanoid Robot Progress" *New Atlas* 26 September 2023

55 A. Biswal "AI Applications: Top 18 Artificial Intelligence Applications in 2023" *Simplilearn* online publication April 2023

- an acknowledgement that not only is, for example, the full power of the explicability of neural networks opaque but also such to those in the industry, so explanation should always be provided regarding decisions based on them that affect individual lives
- that artificially intelligent systems make rarely-acknowledged mistakes
- that such systems are prone to such misuses as facial recognition and espionage and they easily absorb biases from their design phase or training data
- that there are inherent risks as such systems learn more autonomous activity, so whether humans are thoroughly embedded in their development and deployment

These cautions do not go so far as has already been canvassed in the present work but they are a minimal framework to which artificial intelligence could be constantly referred. As a background to this position, Montag et al. provide some evidence that there is no apparent correlation between trust in humans and trust in artificial intelligence: the former may be hardwired but there is no evidence yet that this is so regarding the latter. Further, there are those such as Longoni who believe that there is already a healthy scepticism about such systems, and others like Chellappa who remain cautiously positive about their overall benefit.[56]

Cognitive and physical capacities and the Absolute Subject

There is conclusive evidence that the human brain, using its present capacity, can use neural technology to greatly expand its range of actions. For example, the cranial attachment of sensors enables the hands-free control of remote quadruped robots through brain activity.[57] The tasks which could then be accomplished through one or even a team of such robots include delivering medical assistance to remote areas, search and rescue in inaccessible environments or disaster zones, exploration of unknown environments, either undersea or off-Earth. The military control of drones in this manner extends this scenario into a new dimension. This application of Brain Computer Interfaces (B.C.I.) can extend to the Internet of Things (I.o.T.) by which neural control over a wide range of artefacts can be effected. Such an application reliably uses deep-learning-based frameworks to translate the intention of the individual

56 See C. Montag et al. "Trust Towards Humans and Trust Towards Artificial Intelligence Are Not Associated: Initial Insights from Self-Report and Neuro-Structural Brain Imaging" *Personality Neuroscience* Cambridge Core online 21 March 2023 p. 1; "Can We Trust Artificial Intelligence" Caltech *science exchange* online; the views of Longoni are outlined in A. Thurston "Can We Trust Chat-GPT and Artificial Intelligence to Do Humans' Work?" *The Brink* Boston University 8 February 2023; the views of Chellappa are outlined in the K. Pierce "Can We Trust AI?" *Hub Q&A* Johns Hopkins University 6 March 2023

57 S. Faisal et al. "Noninvasive Sensors for Brain-Machine Interfaces Based on Micropatterned Epitaxial Graphene" *ACS Applied Nano Materials* 6:7 2023 pp. 5440–5447

and convey that to the artefacts intended. Data transfer also works in reverse or through collaboration, some applications of which are already controversial. Deep learning is already applied in health care (diagnosis of Alzheimer's, depression), in the smart environment (through the I.o.T. in the smart home; controlling intelligent exoskeletons), communication (with those without motor skills), security (identification methods), affective computing (emotional state identification), driver fatigue identification and user preference (eye movement tracking) among many others. Deep learning is also combined with the rich data made available through the I.o.T. in the more sophisticated versions of recommender systems.[58]

Allowing the possibility that the brain adapts and acquires new situational capacity as a by-product of such applications, there is a range of claims that the augmentation of human intelligence through artificial means will increasingly have a positive impact. For example, Shin et al. provide evidence that, when competing against super artificial intelligence, human decision-making improves significantly:

> In this research, we find that human decision-making significantly improved following the advent (into the game of Go) of superhuman AI and that this improvement was associated with greater novelty in human decisions. Because AI can identify optimal decisions free of human biases (especially when it is trained via self-play), it can ultimately unearth superior solutions previously neglected by human decision-makers who may be focused on familiar solutions. The discovery of such superior solutions creates opportunities for humans to learn and innovate further.[59]

Siemens et al. take a different but parallel approach. First, they focus away from artificial general intelligence (A.G.I.) – where the prospect is the possibility of machines ultimately surpassing human intelligence so as to reason autonomously and solve problems beyond those they were trained to solve – and concentrate not on intelligence *per se* but on how artificial cognition and human cognition (learning, sense making and decision making) differ, as well as what they are separately good at, then how models can be developed which optimise their coordination and integration.

58 L. Yao et al. "A Survey on Deep Learning-Based Non-Invasive Brain Signals: Recent Advances and New Frontiers" *Journal of Neural Engineering* 2020 pp. 14–19; L. Yao et al. "Recommender Systems for the Internet of Things: A Survey" *Arxiv* Cornell University 2020 p. 5; X. Zhang, Lina Yao, Yunhao Liu et al. "Internet of Things Meets Brain-Computer Interface: A Unified Deep Learning Framework for Enabling Human-Thing Cognitive Interactivity" *Journal of Latex Class Files* 14:8 2015 p. 7

59 M. Shin et al. "Superhuman Artificial Intelligence Can Improve Human Decision-Making by Increasing Novelty" *Psychological and Cognitive Science* in "Discussion", published online PNAS 13 March 2023

For Siemens, the future of knowledge is the collaboration of human and artificial agents, a collaboration which has already begun and a simple example of which is the composition of emails. To understand this coordination and integration requires conceptual and theoretical frameworks, especially as artificial cognition encroaches on human capacities:

> The various contexts in which shared work occurs – healthcare, business, education – will require unique and specific approaches as well. By shifting the exploration of how humans and machines interact to the cognitive – rather than intelligence – level, researchers and practitioners can begin to practically explore and implement ideal configurations for cognitive work, while waiting for the long rumoured artificial intelligence to arrive.[60]

However, more directly relevant to the matter of a widely empowered human cognition and intelligence, Gao et al. have presented a model for the evolution of a generalised brain-computer interface technology with three stages. In Stage 3, the system converges human intelligence (H.I.) with artificial intelligence (A.I.) in a unified platform. Based on the extraction of human cognitive information for coupling with the A.I. computing system and the subsequent download of this enhanced information, the result will be that:

> The collaborative intelligence takes full advantage of the complementary nature of HI and AI systems. The performance of a resultant hybrid intelligence system will be superior to a single-modal HI or AI system.[61]

That is, each adapts its behaviour based on the information they have received from each other. Humans and machines will collaborate in an adaptive, dynamic and personalised fashion in pursuit of augmentation of human performance and well-being – by way of restoration or expansion – as the main goal of B.C.I. research.[62] Such hybrid systems have continued to be developed in a manner that reduces the demand on neural resources.[63] It is expected that the increasing geriatric population will be the greatest driver of investment in the application of these categories of B.C.I., especially if B.C.I.s can be

60 G. Siemens "Human and Artificial Cognition' Computers and Education: Artificial Intelligence" *Elsevier 2* 2022 p. 8

61 X. Gao *et al.* "Interface, Interaction and Intelligence in Generalized Brain-Computer Interfaces" *Trends in Cognitive Sciences* 25:8 2021 p. 672

62 Ibid. p. 677

63 J. Zhang, S. Gao *et al.* "An Online Hybrid BCI Combining SSVP and EOG-Based Eye Movements" *Frontiers in Human Neuroscience* 17 2023 pp. 8–10; see also J. Liu et al. "Flexible Brain-Computer Interfaces" *Nature Electronics* 6 "Outlook" 2023

personalised.[64] The global computer interface market grew from $1.49 billion in 2022 to $1.79 billion in 2023 and could reach $5.34 billion by 2030.

However, a wider scenario under active consideration, for example by the Rand Corporation, sees the mid-term opportunities as including:

- faster information sharing and improved situational awareness could lead to more accurate and rapid decisions
- people could control machines with their thoughts
- people's memory, attention spans and cognitive performance could be improved
- people could communicate silently, an advantage in certain high-risk scenarios[65]

Should this scenario be realisable, there are clearly sufficient opportunities and risks to dominate social policy consideration for well into the mid-term. For example, it is the view of Yann LeCun that by 2040 people will not carry smart phones but augmented reality (A.R.) glasses fitted with virtual assistants that will guide them through their entire day and "For those to be most useful to us, they basically have to have more or less human-level intelligence". That is, a "common sense" world view, a simulation of the world of the kind that humans develop from childhood and one that involves the ability to predict, an intuitive reasoning. In this, he is rejecting approaches that rely on L.L.M.s or reinforcement learning, the currently dominant approaches.[66] For him, having such an artificial general intelligence would empower individuals. This scenario is explored by Pizon and Gola, who argue that the development of technology standards for Industry 5.0 – the Fifth Industrial Revolution – will come to see the re-emergence of the human factor in trusted collaboration with industrial robots, thereby as cobots. Here, automation will be increasingly based on trust whereby a collaborative relationship will dominate and the creativity inherent in workers will be enhanced.[67]

But there are those who have seen an even wider future for A.I., key elements of which both significantly enhance and empower the individual:

> Advancements in brain machine interface technology may be able to assist humanity in dealing with the "moment of singularity", when artificial intelligence will exceed human intelligence…Within the roadmap's

64 Y. Ma *et al.* "Personalised Brain-Computer Interface and Its Applications" *Journal of Personalized Medicine* 12:1 2023 46

65 A. Binnendijk "Brain-Computer Interfaces Are Coming. Will We Be Ready?" *Rand Corporation Report* August 2020

66 M. Heikkila and W. Heaven "Yann LeCun Has a Bold New Vision for the Future of AI" *MIT Tech Review* 24 June 2022

67 J. Pizon and A. Gola "Human-Machine Relationship – Perspective and Future Roadmap for Industry 5.0 Solutions" *Machines* 11:2 (2023) p. 203

> prediction horizon (more than two decades), advancements in brain augmentation are likely to accelerate, particularly as ethical, medical, and technological barriers are gradually reducing…In general, it is envisaged that BCIs for communication and control have advanced sufficiently to be used widely, particularly in sectors where reaction times greater than those of the musculoskeletal system are necessary or covert communication is required…Non-invasive brain stimulation to children may provide benefits superior than those achieved in adults[68]

and

> Just as smart phones and the Internet changed how we lived 20 years ago, brain machine interfaces 20 years from now may enable more intimate and direct collaborations between brains and technology, enabling enhancement of sensory, motor and cognitive skills, communications … non-invasive brain augmentation devices that can improve attention, memory, learning, mood or inter-personal communication.[69]

Beyond such *in corpore* enhancement, the prospects of enhancing the capacity of the brain *extra corpus* through technologies of metacognition are growing. This development will be relevant as an indicator of trust in extended A.I. Although smartphones are increasingly the means for doing so, one can easily imagine a personal data bank wherein a citizen might securely store, including for autonomous updating, the widest array of personal and public data.[70] A relationship with technology of this kind, especially if it achieves near-human intelligence, would ultimately be interactive and progressive. Such would significantly magnify one's cognitive capacity, adding a horizontal – that is, *extra corpus* – capacity to the vertical – that is, *in corpore* – capacity:

> Modern technologies for cognitive support are rapidly developing and increasingly popular. Today, many individuals heavily rely on their smartphones or other technical gadgets to support their daily life but also their learning and work. For instance, smartphones are used to track and analyse changes in the environment and to store and continually update relevant information. Thus, individuals can offload (i.e., externalise) information to their smartphones and refresh their knowledge by accessing it. This implies that using modern technologies such as A.I. empowers users via offloading and enables them to function as

68 N. Jangwan *et al.* "Brain Augmentation and Neuroscience Technologies: Current Applications, Challenges, Ethics and Future Prospects" *Frontiers in Systems Neuroscience* 16 September 2022 p. 17

69 Ibid. pp. 18–19

70 D. Grant *Privacy in the Age of Neuroscience* p. 179ff

> always-updated knowledge professionals, so that they can deploy their insights strategically instead of relying on outdated and memorised facts. This AI-supported offloading of cognitive processes also saves individuals' internal cognitive resources by distributing the task demands into their environment.[71]

But there are imaginings going much further. For example, that by 2065:

> Your AI helps with every aspect of your life. It remembers every conversation you ever had … When you bring up a new idea … your AI instantly cross-references with (other) ideas … It's like having a team of geniuses – Einstein for physics, Steve Jobs for business – at your beck and call.[72]

More broadly, we are being presented with an ultimate scenario with such elements as augmented reality providing sophisticated enrichment of every physical and social experience; robots with embedded human-level L.L.M.s as real assistants leading to advanced humanoid robots; search engines driven by Artificial General Intelligence for results that far outstrip current engines in quality, becoming high-level problem solvers; high-level A.I. art generators that suggest sophisticated entertainment storylines for immersive gaming and cinema; high-level A.G.I.-driven language models that deliver advanced, personalised educational experiences, beginning at any level; by combining several of these elements, a means of personalised medical care that can eliminate any debilitating condition, including prenatally; next-level language model by which chatbots could create new knowledge, especially if combined with quantum mechanics; and smart cities that emerge to eliminate transport and even mitigate social problems.

In short, these examples reflect an imagined evolution of artificial intelligence through stages:

- the emergence of artificial superintelligence in 30 years
- humans merging with A.I. in 40 years
- robots with human-level consciousness in 50 years

Yet not only our brains but also the internal functioning – as opposed to, but as part of a continuum with, the external operation – of our bodies is predicted to experience significant enhancement. *In corpore*, this is claimed to include solving the causes of ageing so that this can be reversed and wearable exosuits

71 S. Grinschgl *et al.* "Supporting Cognition with Modern Technology Distributed Cognition Today and in an AI-Enhanced Future" *Frontiers in Artificial Intelligence* 5 2022 p. 1

72 S. Talty "What Will Our Society Look Like When Artificial Intelligence is Everywhere?" *Smithsonian Magazine* April 2018

for peak physical performance. *Extra corpus* developments will include robotics, especially as these will apply to a wide range of terrestrial industrial and military activities as well as off-planet applications. All these are claimed to be further extended as the approach to human-level intelligence is to be realised:

> (Dr. David) Sinclair has long proposed that aging is the result of losing critical instructions that cells need to continue functioning, in what he calls the Information Theory of Aging. "Underlying aging is information that is lost in cells, not just the accumulation of damage", he says. "That's a paradigm shift in how to think about aging". His latest results seem to support that theory. It's similar to the way software programs operate off hardware, but sometimes become corrupt and need a reboot, says Sinclair. "If the cause of aging was because a cell became full of mutations, then age reversal would not be possible", he says. "But by showing that *we can reverse the aging process* (my emphasis regarding both fear and desire) that shows that the system is intact, that there is a backup copy and the software needs to be rebooted".[73]

> In the future, exosuits may become a smart wearable device widely used in the daily life of normal people, which will provide power assistance for various aspects such as recreational sports and housework. It will be highly integrated with human intelligence to provide users with a high-quality life at the technical level…(A) series of soft wearable robots that assist different joints have been designed for specific functional requirements in recent years. Relevant researchers have tried various methods to improve human-machine compatibility and assistive efficiency, which accumulate rich technical achievements in this process. The resulting prototypes may make outstanding contributions to many aspects of human life.[74]

> (in) Industry 5.0 (the Fifth Industrial Revolution) the creative potential of specialists in cooperation with efficient, intelligent and precise machines will give an increase in the quality of resource-saving, ecological, user-friendly production solutions in comparison with Industry 4.0. Industry 5.0 will bring many new things to our world and make human-machine communications a reality. The fundamental principle of Industry 5.0 is that robots will support rather than replace humans, thereby helping to take decision-making and efficiency to a new level.[75]

73 A. Park "Scientists Have Reached a Key Milestone in Learning How to Reverse Aging" *Time Magazine* 12 January 2023 referring to D. Sinclair *et al.* "Loss of Epigenetic Information as a Cause of Mammalian Aging' *Cell* 186:2 2023

74 Y. Shi et al. "Soft Wearable Robots: Development Status and Technical Challenges" *Sensors* 22, 7584 2022

75 D. Lykov *et al.* "Industry 5.0 and Human Capital" *E3S Web of Conferences* 376 05053 2023 pp. 8–9

Health, security and the Absolute Subject

Extending what we have just looked at beyond both cognitive and corporal capacity, there is a wide range of claims concerning both human health and security in the artificially intelligent environment of the future. C.R.I.S.P.R. and the capacity of A.I. to algorithmically explore big data sets are claimed to be the basis of providing quantum improvement in the management and elimination of disease.

> One fast moving area within biotechnology is gene editing therapy, which involves the alteration of DNA to treat or prevent disease using techniques such as CRISPR-Cas9 and base editors that enable precise genetic modifications to be made. This approach shows great promise for treating a variety of genetic diseases.[76]
>
> Why have medicine that's good for the average person, when it could be tailored to your exact genome? AI algorithms will enable doctors and hospitals to better analyse data and customise their health care to the genes, lifestyle and environment of each patient. From diagnosing brain tumours to deciding which cancer treatment will work best for an individual, AI will drive the personalised medicine revolution.[77]

Further than this, the prospect is approaching of such genetic interventions becoming mainstream[78] and this is to be fully complemented not only by the use of stem cells for rejuvenations but also the application of artificial intelligence to the discovery of new drugs.[79]

Security is argued to be significantly improved by methods which will combine the smallest with the largest, that is – on one hand – the proliferation of sensors connecting citizens to the Internet of Things so that a close monitoring of the environment is made available and – on the other – the intervention of A.I. into the processes of government. A.I. for the individual, their local landscape and the nation.

> It is vital, though often overlooked in discussion, that the implementation and updating of security protection must be both manageable and low cost. IoT systems can be geographically remote and involve sensors and actuators in extreme and challenging environments[80]

76 R. Hodge "The Future Is Bright. The Future Is Biotechnology" *PLOS Biology* 21:4 e3002135 2023

77 K. Gammon "5 Ways Artificial Intelligence Will Change the World by 2050" *Winter USC Trojan Family* 2017

78 J. Hamzelou "Next Up for CRISPR: Gene Editing for the Masses" *MIT Technology Review* 19 January 2023

79 A. Regalado "How Scientists Want to Make You Young Again" *MIT Technology Review* 1 November 2022 and W. Heaven "Biotech Labs Are Using AI Inspired by DALL-E to Invent New Drugs" *MIT Technology Review* 4 December 2022

80 C. Maple "Security and Privacy in the Internet of Things" *Journal of Cyber Policy* 2:2 2017 at "Implementation, Updating, Responsibility and Accountability"

and

> Imagine that, in 2065, AIs help run nation-states. Countries that have adopted AI-assisted governments are thriving. Nigeria and Malaysia let AIs vote on behalf of their owners, and they've seen corruption and mismanagement wither away. In just a few years, citizens have grown to trust AIs to advise their leaders on the best path for the economy, the right number of soldiers to defend them. Treaties are negotiated by AIs trained on diplomatic data sets. In Lagos, "civil rights" drones fly over police pods as they race to the scene of a crime – one AI watching over another AI for the protection of mankind…Rather than evolving into the dreaded Skynet of the *Terminator* movies, superintelligent machines are friendly and curious about us.[81]

Pleasure and the Absolute Subject

It is an emerging claim that artificial intelligence will make available pleasurable experiences that far surpass anything that has been available before its arrival. These are to be delivered by artificial intelligence throughbrain-computer interfaces, with robotics and by the metaverse, beyond the potential of all three in education, health and business.

Given that creativity is central to valid notions of pleasure:

> In conclusion, should creativity be redefined in the era of AI? Our answer is twofold. On the one hand, no. Scientists and artists who have long worked with AI still define creativity via the same five elements (actor, process, outcome, domain and space) that adhere to the common creativity definitions. Moreover, the concept of creative AI remains disputed, and humans remain central in the creative tasks. On the other hand, considering how AI is increasingly used in creative processes, we argue that yes – creativity in the era of AI must be revised to *co-creativity*. The future possibilities of co-creativity are endless, and we are only beginning to explore them. This requires a shift from human-centred creativity studies to co-creativity research that explains the co-constituted, complex and spatial process between humans and AI.[82]

A particularly interesting feature of the claimed future of pleasure is the relationships that would be central to rewarding and pleasurable personal

81 S. Talty "What Will Our Society Look Like When Artificial Intelligence is Everywhere?" *Smithsonian Magazine* April 2018

82 R. Wingstrom *et al.* "Redefining Creativity in the Era of AI? Perspectives of Computer Scientists and New Media Artists" *Creativity Research Journal* 2022 p. 13

experiences, which together will significantly contribute to the nature of the social experience:

> As technological advances lead to the development of sophisticated, human-like AIs with whom we form relationships, society may be forced to consider the recognition of AI personhood and rights, including the right to marry…Decisions regarding rights may be complicated further by the fact that the current dichotomy between humanity and robotic may become blurred if humans embrace artificial enhancement technologies that increase their capacities. The concept of humanity and the artificial may become fluid with the consequence that the distinction between human rights and AI rights may be less clear. Though the development of strong AI could have significant repercussions for our economic, legal and political systems, it is arguably our social structures that could change most dramatically if we embrace AIs not as mere tools, but as life partners.[83]

So also, it is said, we will need to radically reconceive our experience of the physical environment, and then what will constitute our sense of place:

> the Metaverse will be more than a "try before you buy"; it will educate, entertain and inspire people, opening the door for infinite adventure. Travellers will no longer be limited by physics, and can experiment with different travel experiences in a year when Metaverse worlds will begin replicating and reimagining destinations. Moving beyond 2023, haptic feedback, the use of touch to communicate with users, will make virtual travel a truly immersive experience, delivering a credible sense of 3D touch, such as the feel of soft grains of sand and the warmth of the sun.[84]

However, each of these is founded upon the regimes of the respective platforms and their in-house algorithmic design. Such is reality-creation, as it eschews the possibility of personal autonomous algorithmic design by individuals for these fields of experience.

Comment

What may be said about this wide array of present, imminent and prospective technological offerings is that, together, they would seem to satisfy any claim that the dominant interests of the digital platforms may make that by adopting

83 G. Yanke "Tying the Knot With a Robot: Legal and Philosophical Foundations for Human-Artificial Intelligence Matrimony" *AI & Society* 36 2021 p. 426

84 "Booking.com Makes Seven Predictions for the Reimagination of Travel in 2023" October 17 2022

and embedding – or subjecting – oneself in and to them, there would be a high degree of capacity for individuals to deal themselves – but technologically – with issues of fear and desire. The spectre of absolute control of the created conditions of one's existence as the claim for an Absolute Subject, yet with the conditions created by the platforms and subject to their respective algorithmic design regimes.

A background of questionable or dangerous effects and individual subjection

However, such claims are premised on the understanding presented here that these are constructed fears and desires and so veil the more significant existential forms of those concerns. Nonetheless, these are claims that are increasingly likely to induce vast numbers of citizens to adopt such embedding. We will now examine what does in fact lie beneath such claims and the nature of the subjection that it involves. What being an Absolute Subject would mean.

Across this wide expanse of real or imagined developments, there have been consistent alerts regarding questionable or deleterious effects. Here we shall look at these through triple, allied lenses. First, regarding broad warnings concerning the accelerating power of A.I. and whether this acceleration is now spreading beyond our control, second, regarding specific impacts from these developments, third, regarding attempts to respond to these challenges through the field of ethics. Comments will then be made about the adequacy of these three. A fourth lens, that regarding attempt in law to address these issues, will be considered in the final section of this chapter.

Broad warnings regarding accelerating power

First, broad warnings are emerging, especially concerning artificial intelligence but also concerning the use of gene editing and the potentially inheritable effects of such editing. The latter issue is, and has for an extended period, been under active consideration.[85] We shall focus on the former.

The warnings about the assumptive power of A.I. are not recent,[86] but they have recently attracted far greater attention due to the status or prominence of the experts who are issuing such warnings. Like Yoshua, to whom we have referred, Geoffrey Hinton – highly influential through his pioneering work in deep learning – has, in resigning from Google, made it clear that this technology has the potential to extend beyond the control of humans. That is,

85 H. Ledford "Why CRISPR Babies Are Still Too Risky – Embryo Studies Highlight Challenges" *Nature* 10 March 2023; Rob Stein "Experts Weigh Medical Advances in Gene-editing with Ethical Dilemmas" *npr* 6 March 2023

86 T. Ghose "Intelligent Robots Will Overtake Humans by 2100, Experts Say" *LiveScience* 8 May 2013; C. Moser et al. "What Humans Lose When We Let AI Decide" *MIT Sloan Management Review* 7 February 2022

> The new generation of large language models – especially GPT-4 which OpenAI released in March – has made (Hinton) realise that machines are on track to be a lot smarter than he thought they'd be. And he's scared about how that might play out … in trying to mimic what biological brains do we've come up with something better. "It's scary when you see that. It's a sudden flip" … Hinton now thinks there are two types of intelligence in the world: animal brains and neural networks. 'It's a completely different form of intelligence … a new and better form.' Adding that he is mildly depressed about the consequences of this new form of intelligence, he stated "which is why I'm scared"'.[87]

Hinton shares the concern with the large number of citizens who signed the open letter we have referred to, calling for a temporary halt to research on generative A.I. and on L.L.M.s in particular.[88] This brings in the entire field of transparency, which we shall examine. For his part, Hinton is now exploring the potential harm-reduction potential of forward-forward algorithms as an alternative to backpropagation[89] and of replacing digital with analogue computers.[90]

In a manner reflective of the concerns held by Hinton but regarding B.C.I. specifically, Rafferty joins with those in the Rand Corporation in seeing the potential for totalitarian control of populations, and thereby an existential risk to humanity. That is, B.C.I.s will allow for an unmatched expansion in the capacity of the State to police even the thoughts of their subjects, that they make the identifying and punishing of dissent more effective and even make dissent unavailable and thereby make this challenge harder to solve over long time periods and with the spread of such technology.[91] This disposition to technological policing – and what reinforces the arguments regarding B.C.I.s – is the expanding suite of A.I.-based methods already available in many jurisdictions, such as body-worn cameras, licence plate readers, cell-site location information, drones and facial recognition.[92] There has already been criticisms of certain police jurisdictions doing so – for example in their use of drones for

87 W. Heaven "Geoffrey Hinton Tells Us Why He's Now Scared of the Tech He Helped Build" *MIT Technology Review* 2 May 2023

88 R. Leven "Stuart Russell Calls for a New Approach for AI, a 'Civilization-Ending' Technology" *Berkeley News* 7 April 2023

89 G. Hinton "The Forward-Forward Algorithm: Some Preliminary Investigations" *University of Toronto* pre-print online 2023

90 S. Levy "The 'Godfather of AI' Has a Hopeful Plan For Keeping Future AI Friendly" *Wired* 11 August 2023

91 J. Rafferty "Brain-Computer Interface: An Existential Risk Factor" *Journal of Future Studies* 26:2 2021 at "Conclusion"; A. Binnendijk "Brain-Computer Interfaces Are Coming. Will We Be Ready?" *Rand Corporation Report* August 2020

92 K. Ringrose *et al.* "Watch Where You Walk: Law Enforcement Surveillance and Protestor Privacy" *California Law Review* September 2020

neighbourhood surveillance – without being aware of their fearsome effect on citizens generally.[93]

We should see this landscape in the context of data. On one common estimate, data growth is unstoppable. There will be over 175 zettabytes of data created each year by 2026. That is a compound annual growth rate of 61%, up from 33zb of data in 2018. The benefits claimed for this are that A.I. and machine learning will process and liberate novel insights from that data and change wide aspects of our lives. An impressive example of this is the discovery of Halicin, an advanced antibacterial drug created following the application of a machine learning algorithm to huge data fields. This drug has the potential to overcome the antibacterial resistance of superbugs. This is an important widening field where A.I. is carrying out instructions set by researchers. Herein, A.I. does not assume any responsibility from human subjects. It is a search engine.[94]

The consulting firm PwC expects that $15.7 trillion could be added to the global economy by 2030 due to increased productivity and consumption side effects.[95] However, the problem with these Olympian numbers is that there is only a limited amount of high-quality data – that is consistent and accurate – so embracing Big Data may produce exactly a wrong, lower quality outcome. For example, especially since the COVID pandemic, a high volume of health data has become available but extensive refinement was required to extract high-quality data that is usable in research and treatment:

> There's a lot of raw data in Electronic Health records and it's very, very dirty.[96]

This raises another dimension, that we are approaching the limits of available, high-quality data on which A.I. can be trained and that this could happen by 2026.[97] This opens the door to a prospect of including lower quality data or the creation of artificial data to fill the gap. The latter is relevant for the problem of looping we shall examine.

At what might be seen as the prosaic level, there are also warnings that, when A.I. is used itself to generate code, a range of problems are emerging, including that the code quality is compromised by inherent bugs. Reliance on such code unquestioningly is leading to compounded errors, misdirections

93 M. Helkkila "Police Are Rolling out New Tech Without Knowing Their Effects on *People" The Algorithm MIT Technology Review* 6 December 2022

94 A. Trafton "Artificial Intelligence Yields New Antibiotic" *MIT News* 20 February 2020

95 *Statista* 8 September 2022; "Sizing the Prize – PwC's Global Artificial Intelligence Study: Exploiting the AI Revolution" *Price Waterhouse Coopers* 2023

96 John Lee M.D. quoted in "High-quality Data Enables Medical Research" *MIT Technology Review* 6 April 2023

97 T. Xu "We Could Run Out of Data to Train AI Language Programs" *MIT Technology Review* 24 November 2023

and unintended consequences.[98] This is of particular concern with the emergent power and influence of L.L.M.s and especially regarding the research outcomes of the work of Beer, which we shall consider.

Impact on individual citizens

Second, behind these global concerns stands the specific concern regarding the impact of A.I. on individual citizens, that is regarding the issues of agency, identity, privacy, political control, hacking, the overtaking of decision-making by technology, bias and the status of emotion.

Agency is closely aligned with the issue of technological transparency. The well-established but still increasing trend is for decision-making models to be developed which transfer that function to A.I. As Simeon Yates states:

> I predict there will be thousands of such models and approaches sold as AI to cash-strapped municipalities, or to companies or medical care, etc. After which humans will not have a clear role in these decisions. Nor will human agents – and that means citizens who have rights (digital or other) – be able to see or understand the underlying models. Why do I think this will be the case? Because it already is, and it is just creeping ever onward.[99]

Fanni optimistically argues that this disempowerment can be redressed by establishing A.I. adaptive measures which allow the decisions of faulty or flawed A.I. systems to be contested, thereby enhancing human agency.[100] The problem with which this approach has to deal is that A.I. is not only far from static but that the centre of gravity is already shifting further and quickly away from a robust human agency, as the ChatGPT and GPT-4 developments are revealing. What will make this situation even more complicated is that probability theory is now being added to calculus as a means to train A.I. models that can grapple with problems of greater uncertainty. The result is that A.I. programming is being brought to an even greater class of problems and so will be applied to a far wider field of A.I. decision-making.[101]

Ray sees that – alongside such ethical challenges as threats to intellectual property, as bias and fairness, as privacy and security from data capture, as transparency, misuse, accountability, explicability and misinformation – ChatGPT projects human-like interactions and can be used to influence

98 W. Knight "The Huge Power and Potential Danger of AI-Generated Code" *Wired* 29 June 2023

99 Simeon Yates "The Future of Human Agency" *Pew Research Centre* 24 February 2023

100 R. Fanni "Enhancing Human Agency Through Redress In Artificial Intelligence Systems" *AI & Society* 38 2023 p. 537

101 R. Paiste "Automating the Math for Decision-Making Under Uncertainty" *MIT News* 6 February 2023

human behaviour and decision-making and so raises concerns about individual autonomy, privacy and agency.[102] This erosion of agency can be compounded by the emergence of such applications of A.I. as the digitisation of identity by platforms and by the lack of control over mental data, for example when held as an extended mind on a smartphone or ultimately more intelligent external devices.[103]

These issues proliferate not only through the metaverse – where emotional responses are evoked that appear to have a sense that is distinct from mainstream emotions – but also now into politics, where A.I. is being used to generate political advertisements, which have the potential to mislead voters.[104] This latter point is emphasised by the increasing but highly controversial practice of the training of algorithms on synthetic data as a technology of risk.[105]

What is clear at this point is that, against the wide range of claims mostly emanating from the assertions of the dominant interests of the platforms concerning the potentially unrestrained human enhancements on the near and far horizons, there is a formidable array of artificially intelligent interventions in both the broad and the specific that have the opposite effect from liberation. We shall explore this contradiction, and its implications for the broad argument in the present work, after considering what attempts are being made to deal with concerns about these interventions.

Ethical responses to the interventions of A.I.

Given this threat scenario, the question has been turning to how to apply ethical principles to A.I. This debate has now generally shifted beyond the task of applying ethics for humans using machines to ethics for machines, that is embedded in the digital materiality of the machine. In doing so, a cautious distinction between emerging strong A.I. (artificial general intelligence, which is aimed at building intelligence across domains) and weak A.I. (machines that themselves act intelligently) needs to be recognised. It is the latter which is of concern here in the ethical context.

Bertoncini and Serafim approach this challenge of making A.I. act ethically from three perspectives. First, that A.I. can be ethical while being autonomous,

102 P. Ray "ChatGPT: A Comprehensive Review On Background, Applications, Key Challenges, Bias, Ethics, Limitations and Future Scope" *Internet of Things and Cyber-Physical Systems* 3 2023 p. 141

103 S. Masiero "Digital Identity as Platform-mediated Surveillance" *Big Data & Society* 10:1 2023; C. Dalrymple-Fraser "Whose Mental Data? Private Inequities and Extended Minds" *AJOB Neuroscience* 14 February 2023 p. 104

104 A. Chirico *et al.* "How Real Are Virtual Emotions?" *Cyberpsychology, Behaviour and Social Networking* 26:4 published online 14 April 2023; C. Lima "AI Driven Political Ads Are Here. This Lawmaker Is Sounding the Alarm" *Washington Post* 2 May 2023

105 B. Jacobsen *et al.* "Machine Learning and the Politics of Synthetic Data" *Big Data & Society* 10:1 2023 at "Where There Is No Real Data There Are No Real Risks: Synthetic Data as Technology of Risk"

so long as autonomy is understood as being rational while being without free will, given that the outcomes are determined not only by the environment but also by human programming. The ethical content would be driven by a synergistic relationship between the machine and the human, which in turn requires transparency.

Second, against much of the emergent trend of "machine learned" A.I. as being unable to be explained and understood, we see the emergence of Explainable A.I. (X.A.I.) to defend the human moral right to understand, both generally and at the level of how A.I. decisions are actually made. Importantly, for reasons we shall see, the authors suggest that explicability may be seen in the context of the theory of knowledge in which the conditions for knowledge are truth, belief and justification and without which there is distrust.

Third, given the increasing inexplicability and distrust due to the complexity of highly developed technologies, the challenging search is on for a means for machines to have moral intelligence embedded, for example by operating on human preferences. Here the issue of bias is already recognised.

For these authors, bringing these together raises the question of the framework within which they fit together. That is, A.I. machines are more than moral subjects, as the subject of moral motivation but are not responsible for it, because they have a level of autonomy but are not moral agents. Such agents represent moral norms, make moral judgments, regulate emotions and prosocial actions and respond to moral criticism by justifying them. A.I. systems are, instead, participants in distributed agency, sharing responsibility with designers, developers, companies and users and so they should be constrained by norms within a hybrid model. Moral principles, for example, based on virtue ethics, should be embedded into A.I. programmes. But this does not mean A.I. systems can achieve the same status as humans as they remain heavily programmed. They should be seen as hybrids, so they are not due rights and so should serve us. This is a new type of agency.[106]

That analysis is aligned with the ethics and values endorsed at the 2017 Asilomar Conference on Beneficial A.I. There, emphasis was laid on such preferred features of A.I. systems as safety, failure transparency, judicial transparency, responsibility, value alignment, compatibility with human values, control over personal data for the protection of privacy – especially by a right to access, manage and control the data they generate – and liberty. These also included optimal shared benefit and prosperity with humans, operating under human control, respect for and avoidance of any subversion of social processes and that they should not take the form of autonomous weapons.

Frank Pasquale distills a good part of these different accounts within his four new laws of robotics and A.I. by which he also reflects on the ominous march of neoliberalism:

106 A. Bertoncini and M. Serafim "Ethical Content In Artificial Intelligence Systems: A Demand Explained In Three Critical Points" *Frontiers in Psychology* 14 2023

- robotic systems and A.I. should complement professionals, not replace them
- robotic systems and A.I. should not counterfeit humanity
- robotic systems and A.I. should not intensify zero-sum arms races
- robotic systems and A.I. must always indicate the identity of their creator(s), controller(s), and owners(s)

In a similar vein, Garibay and his international cadre of experts propose six human-centred artificial intelligence challenges. These are an advocacy for an A.I. that is coded for human well-being, that is designed responsibly, respects privacy, follows human-centred design principles, is subject to appropriate governance and oversight and interacts with individuals while respecting humans' cognitive capacities.[107]

Analysis

We have considered the strategic position of the digital platforms and what is strongly emerging as their dominance, as well as how this is consistent with the transformation of neoliberal corporations into this new corporate ecosystem. Drawn from that, we have considered how that strategic dominance has placed these entities in positions that are favourable for them extending their scope from their present range of products to include the range of proposed enhancements that are argued here to be the foundation for claims about an absolutism of the subject who can be put in control of their conditions of existence.

It has then been argued that such an array of features needs to be seen against a counter range of features which show clearly that evolving A.I. is not only potentially threatening but is becoming transformative of human nature and human practice by a subjection, in effect towards an absolute subjection. The platforms are undeniably implicated – in fact the primary generator – of this.

Finally, we have considered how there has been a range of apparently well-intentioned responses to these threatening features. Those responses all seem to be admirable attempts to bring A.I. back under the control of human beings or at least to operate sympathetically. Acknowledging the importance of ethics, transparency, consistency with human values and control by humans in design and operation all appear to be moving towards a human-centred A.I.

The problem is that, as they are presented, these responses do more for the dominant interests of the digital platforms than for the users, who will be convinced that A.I. would then be not only safer but also sympathetic in their delivery of the claims made on behalf of A.I. They make no contribution to a

107 O. Garibay *et al.* "Six Human-Centred Artificial Intelligence Grand Challenges" *International Journal of Human-Computer Interaction* 2023 39:3 p. 391

transformation of the platforms into a digital species that responds to – that is, does not construct – the legitimate, autonomous interests of citizens, wherein citizens would be *respectfully responsible to and for themselves*, a totally different kind of subject.

What these accounts fail to do is clarify whose ethics, whose values and ultimately to whose benefit the applications of this tempering would be made. There is no floor under all these accounts which establishes the centrality of the interests of each citizen using A.I. to create and pursue her own interests while acting respectfully, rather than being subject to such notions as "compatibility with human values" or "optimal shared benefit and prosperity", defined and elaborated for her by algorithmic designers in the service of the interests of digital platforms. Autonomy and transparency and trust are admirable features so long as these mean that A.I. is transparently and trustworthily acting in their respectful, autonomous, personal interests as they see that from time to time. There is a lacuna at the heart of these accounts which is far more likely to favour the platform ecosystem by gaining the trust of users than the self-defined respectful users themselves. In this, they significantly fulfil the analysis of Thornberg of the nature of the platform eco-system.

However, we go beyond Thornberg to argue that this scenario is vitally informed by the *core* dynamic and its secondary forces. That is, what is ultimately driving these emerging digital developments is the creation of a technological regime that can successfully induce the subjection of citizens who – as has remained so since the creation of the Deity and thereafter – are prepared to accept the claims of dominant interests regarding the digital magnitude. The excessive intrusiveness of the digital world has been recognised, and attempts are being made under the banner of ethical standards to constrain the excesses of the created digital world, a world that is perhaps going beyond human control. But these attempts, while apparently making A.I. more beholden to humanity, will do little more than win the confidence of the users and consequently bring them to a further accommodation with – subjestion to – the digital regime as the new fast-emerging magnitude.

It is the argument here that the force of the *complex of dynamics* is such that it does not matter that some or many of these imagined empowering outcomes do not materialise. The point is not the differential reliability of science-fact and science-fiction but that it has been demonstrated over two millennia in the West that the repeatedly failed *core* dynamic – founded on the veiling of existential *angst* – can be repeatedly revived in different forms. Technology is fitting increasingly well into this scenario, with widespread eagerness to adopt the latest technologies as they are released to market.

There appear to be few limits to the imagination of those who claim a perspective beyond the threshold of what is realisable in the mid-term. That long-term future scenario should not be discounted out of hand – whether realisable or not – for the reasons presented here. That is, given the claims that have been made across the history of the West regarding the serial magnitudes – despite their serial failures as sympathetic Absolutes and if science continues

to develop in this direction – it could be confidently predicted that claims would be made by aspiring dominant interests about these long-term technological scenarios which would be subject to their algorithmic design. There we should find the claim of the Absolute Subject, that is in both its configurations: as full empowerment of the individual combined with full subjection to the technological regime of the platforms. Noticeably, these distant scenarios are all founded on currently embryonic but emerging technologies and the platforms are already embracing these.

In this context, present attempts to temper what are already emerging as potentially dangerous social and psychological disruptions need to be seen as having two sides: a genuine attempt to constrain for the benefit of both users and for the competitors of the digital platforms, but at the same time an attempt to make technological embedding in widely empowered platform ecosystem a more sympathetic experience: the *core* dynamic. Importantly, however, the power now being unleashed may not be able to ultimately be tempered, as Hinton and others now see. That is, it has the potential to develop beyond our power to understand it, unless advances and responses to inexplicability are made, into a true absolutism.[108]

Yet there are signposts to a possible way forward. This does involve the law but not at the level it currently operates, a level which in the argument here will play out – as it has to now – too often in favour of the dominant interests of the serial magnitudes, including now the platforms, and so affirm individual submission to their claims. We shall now briefly consider the clear advantages of current legal initiatives to temper both A.I. and the platforms that utilise it and then introduce ideas about the initial steps that could be taken in law to complement other measures to bring A.I. genuinely into the service of individual citizens rather than of the platforms.

Artificial intelligence, precautionary Law and the Absolute Subject

Given the deep caveats to the introduction of an increasingly wide spread of self-generating A.I., we shall look here at what role the law is playing in response. This shall also introduce some elements of what will be canvassed in the final chapter as some elements of what might be a proper response to the emergence of the technological absolute magnitude.

We have seen here, and in the previous chapter, the platforms are facing a wide range of actions by the U.S. government to curtail various of their activities in the context of anti-Trust legislation. Government litigation will clearly continue throughout 2023–4 and beyond, not only in the United States but

108 Y. Chen "How Far Is Brain-inspired Artificial Intelligence Away From the Brain" *Frontiers in Neuroscience* 16 2022 pp. 1, 5; D. Beer "AI Will Soon Become Impossible for Humans to Comprehend – the Story of Neural Networks Tells Us Why" *The Conversation* 31 March 2023

also in Europe, the United Kingdom and in India, at least. In addition, the new trend of private litigation is emerging in the form of class and individual actions.[109] One of the challenges that authorities and citizens find in this space, however, is the argument against them that a range of products are unique and innovative and so they need protection not constraint.

What is clear is that it is the European Union and the British governments which have taken the lead in setting a global risk management standard[110] rather than the U.S., despite the fact that the Biden administration is moving strongly on the anti-Trust front. Biden finally took the initiative in late 2023 to issue an executive order, the intention of which was to "establish the United States as the world leader in harnessing the potential and safeguarding against the risk of artificial intelligence".[111] In doing so, he urged the Republican-controlled Congress to produce legislation to match his order.

These European moves have been timely, as warnings are emerging that a Cambridge Analytica controversy is likely to emerge regarding A.I. Wojciech Wiewiorowski, European Data Protection Supervisor, has stated that, unless products have privacy built into them, the prospect is that data collected will be used for a purpose different from the information that users are provided with, which is against the law and has occurred with Cambridge Analytica.[112]

This statement is consistent with the broad approach being taken by the European Union through such legislation as the *General Data Protection Regulation*, effective 2018, which offers widespread protection for individuals regarding the use of their data by organisations worldwide. These include consent for data use, easier access to their data, the right to object to profiling and data portability. We have referred to the fine of €1.3 billion imposed on Facebook in May 2023 for a breach of the law regarding the transportation of personal data to the United States.

Further, the *Digital Markets Act*, effective 2023, is intended to ensure dominant tech companies will behave online in a fair manner including that they do not act to prevent the emergence of new or alternative platforms. That is, as they will no longer act as "gatekeepers" in digital markets, there is benefit to business, innovators and consumers through better competition. That Act is intended to reduce or eliminate the misuse of the digital environment by illegal trading, the spread of misinformation and for harmful purposes.

109 G. Paul *et al.* "Key Developments in the United States" *Global Competition Review* 25 November 2022; D. Geradin "Platform Antitrust/Regulation In 2023: Our Eleven Predictions" *The Platform Law Blog* 11 January 2023; K. Knibbs "Meet the Lawyer Leading the Human Resistance Against AI" *Wired* 22 November 2023

110 T. Wheeler "The EU and UK Establish Positions as Regulatory First Movers While the US Watches" *Brookings Institution* 8 March 2023

111 "Executive Order on the Safe, Secure and Trustworthy Development and Use of Artificial Intelligence" *The White House* 30 October 2023

112 M. Heikkila "A Cambridge Analytica-type Scandal for AI Is Coming" *The Algorithm MIT Technology Review* 24 April 2023

The EU *A.I. Act* now classifies A.I. tools in a range in terms of their level of risk and require respective actions by governments and companies. The intention is to boost the rights of citizens to file complaints about A.I. systems and to receive explanations of decisions based on high-risk systems that significantly impact their rights. High-risk users of A.I. include healthcare, education, law enforcement, migration, infrastructure, product safety, the administration of justice, and generative A.I. models such as ChatGPT are a focus. A.I. companies will need to be more transparent. This legislation could have a global impact given the international nature of A.I. products and services. The imminent U.K. *Digital Markets, Competition and Consumers Bill* will regulate competition in digital markets and is to protect consumer rights therein. This complements the imminent U.K. *Online Safety Bill*, intended to force such companies to report illegal activity on their services, but which is receiving push-back from technology messaging companies as a threat to communication.[113]

Constraint is not reform

These initiatives impose significant levels of additional constraint not only on the platforms but also on a wide range of other organisations which use A.I. tools. They seek to ensure that these entities behave in more responsible ways; they are designed to improve competition between platforms and provide a far greater degree of comfort for users, for example, regarding data privacy. However, in terms of the broad argument of this work, they are the outcome of an ingenuously populist argument to leave the entities and their dominant interests in a widely empowered state so that the claims made by those interests can be fulfilled in a manner that is far more sympathetic to users than has been the case, yet still with digital platforms and governments reaching for a status with increasingly absolutist features. Absolutism tempered with sympathy – to make submission more comfortable – as the ideal state of the *core* dynamic. There is no fundamental re-orientation of these platforms to genuinely user-centred, in the sense intended here.

Therein lies the problem with these particular constraints. The comfort which these veiling constraints generate – in a manner typical of each of the serial magnitudes we have examined – is the problem inherent in the *core* dynamic and its derivatives. Making magnitudes somewhat less absolutist to allow, even encourage, subjection is the opposite of the optimal answer. It is the very strategy of the serial dominant interests. We have seen that the C.E.O. of OpenAI Sam Altman indicated to the U.S. Senate that regulation of ChatGPT was his preferred option but we have also seen that, once this was tested before the European Union, it produced a less that welcoming initial

113 T. Thadani "U.S. Tech Companies Say U.K. Privacy Bill Poses 'Serious Threat' to Communication" *Washington Post* 1 August 2023

response and subsequent discussions seem to place the E.U. in a position of increased willingness to be accommodative.[114] The *modus operandi* of the complex of dynamics would predict that an accommodation will be reached that ultimately satisfies the platforms, but which may make concessions to get to that point.

Behind all this, there is a deeper lacuna at the heart of the inadequacies of the response of the law. That is, the failure to engage with the very nature of data and the algorithms that exploit them. Data and algorithms are political-commercial artefacts, created with purpose, specific and generic. They are never value free at the foundational level, that is, far beyond concerns about the now-acknowledged biases. The heart of the problem is who it is that defines what constitutes data, for what outcome and who designs the algorithms that exploit that data and for what outcome. That is the real issue of black box transparency and the real challenge for the rule of law.

Absolutist capacities require algorithms that are intentional and strategic

For the law to become effective in this field and in the context of the proposed absolutist capacities – in fact regarding all their use – it is the position here that algorithms, as the base level artefacts of these technologies, are never stand-alone or value-free. They always serve some other broader purpose, no matter how apparently mundane: they fall into or help construct world views or - as in education or healthcare - help accommodate subjects to dominant conditions of existence. They are designed by human beings, they are selected for training on still largely human-defined data which is therefore never value-free and then are nominated for application by human beings to other data. That is, all three of these elements are thereby at some level – either high or low – strategic and value laden, so form a triad. This is not a reference to the well-acknowledged biases of race, creed, class and suchlike[115] but a much deeper reference to the nature of the "realities" created out of this triad, that is as human fields that are irresistibly value laden and strategic in design and application.

Chen et al. begin to appreciate the importance of seeking to identify biases of inequity in the A.I. life cycle as it operates in healthcare. They identify such stages as data collection, annotation, machine learning model development, evaluation, deployment, operationalisation, monitoring and feedback integration. Then:

> To mitigate these biases, we suggest involving a diverse group of stakeholders, using human-centred AI principles. Human-centred AI can help ensure that AI systems are designed and used in a way that benefits

114 F. Yun Chee et al. "EU Lawmaker Benefie Urges the Bloc's Countries to Compromise On AI rules" *Reuters* 22 September 2023

115 C. Stinson "Algorithms Are Not Neutral" *AI and Ethics* 2 2022 p. 763

> patients and society, which can reduce health disparities and inequities. By recognizing biases at each stage of the AI life cycle, AI can achieve its potential in health care.[116]

However, seemingly forensic though this approach would be, it does not go to the foundation of the problems associated with the nature of algorithms, which is their ontology and applicability across wide fields of exploration and data manipulation.

Loi et al. give a better indication of what is required, although the present work takes the idea of algorithmic intentionality much further to emphasise its broadly political significance:

> We propose a form of (machine learning algorithmic) transparency that consists in publicising the *design* of an artifact (including *value, translation* and *performance*) as well as its consistent application. We maintain that this kind of transparency provides (1) an *explanation* of the artifact, namely, an explanation "by design"; (2) an *intentional* explanation of its deployment; (3) a justification of its use; (4) when used consistently, a *procedural* justification of the individual decisions it takes.

Complementing this argument is that of Jaton et al. who, in arguing for an end to both the thinness and opacity of current notions of the algorithm, assert

> …in taking stock of the (theorised) situation, we assume that historians and ethnographers of science and technology have a role to play in the *politicization* of algorithms: By providing new means for affective dissentions, historians and ethnographers of computer science and technology may contribute to vascularizing algorithms and make them objects of enlarged disputes.[117]

This is the context for considering whether specific emerging cognitive capacities will be enhancing or are more subjecting. That is, to generate a public dialogue within which all proposed algorithms can be tested as to their political or commercial intention: whether they do contribute to an autonomy implicit in a notion of a variant subject as *respectfully responsible to and for herself* or whether – driven for example by a camouflaged ontology of algorithms – they

116 Y. Chen et al. "Human-Centered Design to Address Biases in Artificial Intelligence" *Journal of Internet Medical Research* 25 2023 p. 1

117 M. Loi "Transparency as Design Publicity: Explaining and Justifying Inscrutable Algorithms" *Ethics and Information Technology* 23 2021 pp. 253, 262; F. Jaton, D. Vinck "Politicizing Algorithms by Other Means: Toward Enquiries for Affective Dissentions" *Perspectives on Science* (University of Lausanne) p. 3, whereby the ontological thinness of current accounts of algorithms is critiqued

properly fall into the functioning of the *core* dynamic, whereby Technology is becoming the magnitude by which dominant interests make their standard chimeric claims regarding satisfaction on condition of subjection to their reality-creating regime.

All these matters go to the heart of the nature of the *rule of law* and whether it is currently constituted in a manner that is capable of dealing with them in this fast-evolving technological environment.

Comment

From this wide account, we may say that the suite of digital platforms, led by its dominant interests, is well advanced in the assembly of a magnitude capable of claiming to occupy the space vacated by its failed predecessor magnitudes of Deity, State and Market, all of which succumbed to the temptation to put aside even the veil of sympathy in their respective absolutist ambitions, although they present as having attempted more balance through their respective but failed regenerations and transformations.

This dominance means they are ideally placed to take advantage of the wide array of increasingly powerful, reality-creating technologies as they each search for that status. By this they will seek a continuing consolidation and expansion through aggressive competition; large scale and personal data capture; full sensorisation of the environment; offering extended longevity and brain-to-computer interface cognitive enhancement, utilising the algorithmic innovation that no-one fully understands but which will continuously produce novel analyses and experiences.

However, occupying this path is a means towards an absolutist position veiled in claims of varied forms of sympathetic conditions of existence, conditions that are in effect taking the form of constructed desires. It is this direction that can make the individual absolutely subject rather than empowered to be self-consciously autonomous.

These entities will continue to attract a variety of State legal action as they each seek by radical means to establish their respective hegemonies, although such action is bound to ultimately be accommodating and not fundamentally reformist. Such action will be no deterrent for the reason that, even if forced to amend their business models, users and subscribers are likely to typically be induced to accept new incentives to forgo personal data and decision-making – ultimately autonomy – willingly. Ever-increasing millions of global citizens are already satisfactorily embedded in the platform regimes of idea and practice and this will be extended by the ever-growing new applications which are considered to sufficiently satisfy the Platform claims regarding fear and desire. In short, Technology is approaching the phase where an absolutist position is becoming within reach – through artificial general intelligence – and it is likely to follow its predecessors and focus increasingly on that absolutism, with an increasingly thin or self-serving veil of sympathetic programming.

There is not yet a populist disruption in reaction to these developments but there is both a level of user concern regarding data privacy and the reaction of some experts against – what we saw Turing himself predicted as – the potentially absolutist capacity of the latest emerging technologies. As with each of the predecessor magnitudes, these two reactions are traceable to the originary conditions of this field, based as they were on the *core* dynamic and which have been playing out all along through the emergence of the platforms, the claim to overcome fear through constructed desire.

From this we can see that late modern Technology is the latest step in the functioning of both the *core* and the *serial* dynamic and has overcome the dynamic of *regeneration* by its predecessor magnitudes through a completion of the process of *consolidation* by virtue of its *transformative* capacity. In this, it is resisting, or at least reaching an accommodation with, the *constitutional* dynamic.

In the end, the testing ground for these arguments is human belief. It is to belief – and how it is hard-wired into our cognitive structure and so into our consciousness – that we shall turn in chapter 6. It is the understanding of such hard-wiring that will affirm the broad argument here. For example, it is the hardwiring of belief about the protective capacity of the State, despite the economic and cultural failure of the neoliberal State form, that has ironically generated political populist movements. Similarly, it has been the cognitive hardwiring of belief that has triggered the "sympathetic" disruptions – but not the abolition – within the landscape of Deity and the Market. It is doing so again regarding cognitively immersive Technology – as it subsumes its predecessors and proliferates its reality-creating regimes – and it is these hardwired beliefs that are at the heart of the disinterest in tackling the existential threats we will examine in chapter 7. Such hardwiring is so strong as to encourage a pessimism about the capacity of citizens to deal with these existential risks.

Part 2

Culture, Brain, Technology and the Fate of Consciousness

Part 1 ended, in effect, with an argument that Technology is emerging with absolutist credentials, through its platform status and the immersive tools at its disposal, but has not realised that status. In doing so, it has supplanted the predecessor serial magnitudes of Deity, State and Market as the best credentialed for that status.

Part 2 will take that argument forward in three ways. Technological embedding is not only behavioural but is also neurological: individuals project learnt, embedded mental models to create reality. Thereby consciousness is implicated. From that, the brain – and so agency – needs to be understood as a historical-cultural artefact not as first a reasoning machine. It is saturated with originary, historical and contemporary ideas for behaviour. This reflects the residual inheritance of the major ideological forms, as magnitudes, that we have examined. This in turn has implications for free will. Against this background, generative A.I. is considered in terms of its creative and formative impact on individual mentality and behaviour. That is, whether we are approaching the realisation of an Absolute Subject, intended as both radical autonomy and deep subjection. These arguments are proposed as best addressed through the *complex of dynamics* and what means might be available to provide an effective response.

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6 The Cultural Brain, Constructing Consciousness and the Absolutism of Generative A.I.

Consciousness as constructed

Although in no straightforward way – in fact in no way that has been clarified as indisputable – perceptions that typically construct what we understand as real play a central role in what it is to be conscious. Here, consciousness is provisionally argued to comprise three principal elements:

- wakefulness
- awareness, the ability to have conscious mental experiences like thoughts and perceptions
- sensory experience, how different perceptions and abstract concepts are woven together to create a seamless experience

Although there is no settled answer to David Chalmers' "hard problem" of consciousness – how physical brain processes give rise to conscious experiences – there are proposals, relevant to the present work, as to why we believe we are conscious. For Graziano, animal brains have evolved a model of their current state of attention which they can use to predict and control their ongoing focus of attention. Further, this attention model leads people to believe they have an internal essence – consciousness – that allows them to focus such attention.[1] None of this contradicts, in fact, it is broadly supportive of, the argument here that what we think of as reality is created by us and that the process is cultural in nature.

There are arguments being proposed not only that the hard problem can be resolved by adopting either a quantum account of consciousness or one which relies on a relativistic approach. Again, neither of these will be argued to be contradictory to – and either may be called upon in support of – the argument here concerning the social and individual construction of reality, although it is not claimed that this debate about the nature of consciousness is near a position of common agreement.

1 J. Kingsland "How Does the Human Brain Create Consciousness, and Why?" *Medical News Today* January 2023

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For Lahav, the common understanding of consciousness is as a dichotomy between naturalistic dualism and illusionism which can be overcome, phenomenologically, by a relativistic account. That is, naturalistic dualists argue consciousness is comprised of a primitive, private, non-reductive element of reality that is independent of the functional and physical aspects of consciousness while illusionists see it as a cognitive illusion and that all that exists are physical, non-phenomenal properties. For him, the mistake of both is to assume consciousness is an absolute property that depends on no observer, so he proposes a concept for a relativistic theory in which a system either has or doesn't have phenomenal consciousness "with respect to some observer". That is, phenomenal consciousness is neither private nor delusional, only relativistic: in the frame of reference of the cognitive system, it will be observable (first-person perspective) and in other frames of reference it will not (third-person perspective). Both cognitive frames of reference are correct, like an observer on a moving train claiming to be at rest while another claims the observer is moving. So, neither observer is privileged as they both describe the underlying reality. Lahav claims this dissolves the hard problem.[2]

The value of positions such as this for the broad argument here would be, if it came to be accepted, that it would provide a coherent framework for the personal experience of the consciousness of beliefs, upon which the personal commitment or subjection to the ideas and practices of the serial magnitudes, especially now regarding Technology, is founded. The subject may be convinced of the absolutism of their conscious beliefs but an observer could see that as a relativist position.

Aside from the "hard" issue, a proper initial position regarding the constructing of consciousness is that of Kant and his ultimate influence on the notion of predictive processing. Regarding the processes of perception and cognition, Kantian themes can be understood as central to Predictive Processing through its top-down generation of percepts rather than any bottom-up construction of them from sensory cues; the role of hyperpriors, as prior beliefs about the precision of beliefs about the state of the world; the general function of generative or predictive models about the nature of the world external to the brain; the process of analysis-by-synthesis, which heuristically acknowledges the input of sensory data to the top-down predictive models; and the crucial role of imagination in perception, whereby it is required for the constitution of intuitions or sense experience.[3]

Gershman has conditioned the Kantian articulation by arguing that a variation of standard generative models[4] is more productive. That is, the brain is

2 N. Lahav "A Relativistic Theory of Consciousness" *Frontiers in Psychology* 12 2022 p. 1

3 L. Swanson "The Predictive Processing Paradigm Has Roots in Kant" *Frontiers in Systems Neuroscience* October 2016

4 M. Ramezanian-Panihi *et al.* "Generative Models of Brain Dynamics" *Frontiers in Artificial Intelligence* 15 July 2022; T. Taniguchi et al. "A Whole Brain Probabilistic Generative Model:

best understood not as learning an explicit density model that assigns probability to each possible state of the world but – since such a process is difficult to learn – one that leads to mistakes, as the learning of implicit density models that can sample from the generative model without evaluating the probabilities of those samples. In his account, a generator draws samples from the model which are fed, with samples of real sensory data, into a discriminator that tries to assess which samples are real and which are fake. This is a competition and it not only explains why we make visual errors but also how our brains feed us a "grand illusion" of panoptic vision despite the impoverishment of our sensory inputs.[5] He extends this approach in research demonstrating that these internal models are represented in the brain, specifically in the prefrontal cortex of the brain, among other areas.[6]

This research is affirmed by other work which examines the challenge of distinguishing reality from illusory images, where it is shown that, when a real image is slowly faded into view to overtake a similar imaginary image, these become intermixed in the participants' minds:

> Neuroscience has discovered that imagination and perception rely on overlapping brain circuits. We were interested in whether this overlap leads to confusion between the two … how can we be sure what is real and what is not?

and

> Our results suggest that, counterintuitively, there is no categorical difference between imagination and reality; instead, it is a difference in degree, not in kind. That is, normally, imagination is relatively weak, and so we don't confuse it with reality. But if imagination becomes strong or vivid enough, it may get treated as real.

Further, and importantly, regarding the broad argument here:

> In near-future scenarios, in which brain stimulation or virtual reality become novel sources of strong sensory signals, our findings imply it may be more difficult than we think to tell apart reality and unreality.[7]

Toward Realizing Cognitive Architectures for Developmental Robots" *Neural Networks* 150 June 2022 p. 293

5 S. Gershman "The Generative Adversarial Brain" *Frontiers in Artificial Intelligence* 2:18 2019 pp. 1,2

6 S. Gershman "The Neural Architecture of Theory-Based Reinforcement Learning" *Neuron* 111:8 2023 p. 1

7 N. Dijkstra et al. "Reality or Illusion? The Human Battle with Distinguishing Imagination from Reality" *Neuroscience News* 21 April 2023

These accounts of how the brain functions within the context of uncertainty and probability are encouraged by parallel work in quantum cognition. Within this frame, quantum principles of probabilistic inference are used to provide explanations for fallacies in decision-making; for question order effects, that is that previous questions may affect the cognitive response process and respondents' answers; for conceptual combination, that is the synthesis of basic concepts to produce a higher-order concept; and for evidence accumulation, perception and the over/underdistribution effects of repetition in memory. Thereby, Quantum Probability Theory is beginning to make a contribution to the role of probability in how we think, perceive, remember and forecast. That is, classical models of cognition have shortcomings due to the constraints of their inherent logic, constraints that can be resolved by the novel logic of quantum theory in a manner that provides new insights into how we cope with uncertainty by applying our inherent probability theory.[8]

Similar themes are proposed by Barrett, although she takes this account further and in a manner that begins to approach what is proposed in the broad argument here. For her, physical signs from the "outside world" have no inherent psychological meaning (for example, colours are constructed in our brain), so your brain creates meaning (for example, by attributing different learnt emotional meanings to the same facial expression of another) because your brain constantly runs – and adjusts – a model of your body and of the world as it moves through the world. Importantly for the broad argument here, for Barrett, this individual brain model can be changed by exposure to different external cues of a range of kinds. We can change the way the brain gives meaning to the world.[9] That is, although we have deeply embedded cognitive models which we project and test against external cues, these are disruptible, as the serial dynamic illustrates.

There is some controversy about Barrett's account of the nature of affect and there are concerns that might be seen to be in conflict with the account in the present work. That is, the argument that emotions are constructed rather than innate seems counter-intuitive, given how emotions such as fear, desire, anger and joy appear to be spontaneous. For Barrett, the universal components of human experience are, rather than emotions, changes in a continuum between high and low arousal – on one hand – and of pleasantness and unpleasantness – on the other. Such "affect" is a basic feature of consciousness.

So, for example, fear is a cultural concept, an overlay of cultural meaning on high arousal and high unpleasantness. Given particular stimuli, our brains

8 E. Pothos et al. "Quantum Cognition" *Annual Review of Psychology* 73 2022 p. 749; also J. Busemeyer et al. 'What Is Quantum Cognition, and How Is It Applied to Psychology?" *Current Directions in Psychological Science* 24:3 2015

9 L. Barrett 'Are You a Spectator to Reality? Or Are You Its Creator?" *The Well* 20 May 2022; L. Barrett "Context Reconsidered: Complex Signal Ensembles, Relational Meaning, and Population Thinking in Psychological Science" *American Psychologist* 77:8 2022 p. 894; S. Atzil, L. Barrett et al. "Growing a Social Brain" *Nature Human Behaviour* 2 September 2018 p. 624

compare these with past stimuli and make predictions about what the meaning might be, drawing from our cultural bank of meanings and experiences, and adjust these predictions with further, ongoing sensory stimuli. Such processes of prediction are what consciousness is: feelings are constructed and the process is cultural.

Rather than contradicting the broad argument here, this is affirmatory. That is, the argument by Barrett that the universal components of experience are levels of arousal and of un/pleasantness is understood here as continuous individual variations in the existential experience, manifest in an *angst* that conditions an existential desire to eliminate that *angst*. These are then culturally constructed and reconstructed, the evidence for which is the fear/desire experience of subjection to the serial magnitudes. But not only have we produced a construction regarding each magnitude through the history of the West but in the present era we exist of the residue of the failure of each magnitude to have dealt with the constructed fears and desires which have been made to veil the underlay of existential *angst* and desire. So, we seek yet another veiled existential solution in Technology.

This technological adaptation is now being revealed in research into the psychological impact of immersive virtual reality. Pavic has stated:

> Immersive technologies, such as virtual reality (VR), have great potential for enhancing users' emotions and well-being … Our findings highlight that highly immersive VR is efficient in eliciting positive emotions on-self-reported emotions and, to a lesser degree, on physiological responses. For the first time, 360-degree social video contents have turned out to be as efficient as natural contents.[10]

All this needs to be seen as physiologically rooted, that is not as separate mental experiences. Thereby we avoid Cartesian dualism. Since acting in a manner consistent with one's embedded cultural experience relies not only on one conscious state but also on a preparedness and capacity to act in the material world, this frame is further affirmed by the location of the mind-body connection within the brain. Recent studies have shown that the inextricable intertwining of body and mind is more than just an abstraction. Parts of the brain area that control movement are plugged into networks involved in thinking and planning and are in control of involuntary bodily functions such as blood pressure and heartbeat. In short, these findings show a literal linkage of body and mind in the very structure of the brain. Our actions in the world are inextricably related to how and why we act in the world. For research leader Evan Gordon:

10 K. Pavic et al. "Feeling Virtually Present Makes Me Happier: The Influence of Immersions, Sense of Presence and Video Contents on Positive Emotion Induction" *Cyberpsychology, Behaviour and Social Networking* 26:4 published online

> The brain is for successfully behaving in the environment so you can achieve your goals without hurting or killing yourself. You move your body for a reason. Of course, the motor areas must be connected to executive function and control basic bodily processes like blood pressure and pain.[11]

Belief as a foundation of culture and culture as a foundation of belief

We have looked at the nature of consciousness – albeit as a phenomenon the understanding of which is not yet settled – and how it operates probabilistically. We have also begun to look at the impact of culture as a principal determinant of consciousness. We shall now explore this cultural determinant more closely, by considering the nature of belief.

We can obtain a valuable sense of the cultural significance of belief – as credition – and how it is of primary importance to consciousness, by looking at the work of Seitz. For Seitz, belief is not a derivative cognitive activity but a fundamental, neurally embedded feature of cognition:

> The credition model posits that beliefs are the result of neural processes that involve the perception of external information and their valuation in terms of personal meaning determining a person's behavioural decisions. These processes of believing typically evolve in a prelinguistic fashion and include memory functions by which beliefs can be stored and recalled. Thus, beliefs are fundamental representations of imaginative and emotional content that link an individual's prior experience with his/her future behaviour. Importantly, people can become aware of what they believe and express it explicitly by "I believe…". Such propositions have a first-person perspective and can communicate the subject's certainty or trust in such a personally held belief to other people.[12]

Further, the evolution of human beliefs was related to the phylogenetic enlargement of the brain through historical time, and the acquisition of beliefs now enables humans to infer social meaning from other people's behaviour and to make corresponding attributions. Such belief evaluation is a language-based function by which humans can consider critically what they believe and how this corresponds to their predictions. Seitz and Angel conclude that, as the product of fundamental brain processes, beliefs often attribute personal affective meaning to concrete objects and events in the physical and social environment: empirical, relational and conceptual domains of belief.[13]

11 T. Bhandari "Mind-Body Connection Is Built into Brain, Study Suggests" *Washington University School of Medicine in St. Louis* 19 April 2023

12 R. Seitz "Believing and Beliefs – Neurophysiological Underpinnings" *Frontiers in Behavioral Neuroscience* 16 2022 at "Introduction" and "Discussion"

13 Ibid. at "Discussion" and see R. Seitz and H-F. Angel "Belief Formation – A Driving Force for Brain Evolution" *Brain and Cognition* 140 April 2020 at "Introduction" and "Conclusion"

In fact, Seitz has far more to say. First, he groups together the arguments that, because individuals do not doubt but trust their perceptions and higher order concepts, beliefs do not necessarily relate to notions of truth, knowledge or rationality; that we are exposed to narratives from our early years and are taught norms to ensure proper – preferred, here – behaviour, both of which contribute to group identity; and that our conceptual beliefs include ethical, political and religious content and that these three categories are related.[14]

His arguments also include his earlier position that narratives "constitute a mental construct for the history of a community as well as for occasions of festive events" and that "these narratives are typically a religion but can be secular"; further that "religious beliefs and secular beliefs are hypothesised to be brought about by similar, if not identical, processes of believing but differ by their specific contents conveyed by narratives and rituals". He adds that "Repeated experience with the same environmental objects or events…promotes learning about it and increases a sense of trust" and "As people grow up and are embedded in social groups, successful communication is fundamental to the exchange of meanings of perceptions, imaginations and mental states.' It is quickly clear how this can relate to notions of Deity, the State, the Market and, increasingly, the technological world view, including how social media functions in this.

Seitz opens the door further in this point by stating that:

> it has recently been argued that myths, rituals or transcendent experience can constitute implicit religiosity and that there are born believers. These ideas suggest humans come automatically equipped to engage in the process of believing many things, whether secular or religious, or ordinary and mundane vs. lofty and idealised. That such objects of belief become incorporated into over-arching belief systems is consistent with the accumulating evidence that the human proclivity towards worldview construction can be conceptualised as a by-product of normal human cognitive processes.

He also focusses on the attribution of personal meaning to perceptions, especially both harm/threat and beauty/pleasantness. All this sits within the context of "Credition (as) an empirical, psychophysiological framework for the study of what believing is at the psychological, neuroscientific and social levels."[15]

That is, when one perceives a physical object, one revives any affective meaning or emotion one has had about that or similar objects, for example as it may

14 R. Seitz *et al.* "Beliefs: A Challenge in Neuropsychological Disorders" *Journal of Neuropsychology* 2022 16:1 pp. 3, 11

15 R. Seitz *et al.* "Processes of Believing: Where Do They Come From? What Are They Good For?' *Semantic Scholar* January 2017 pp. 5, 6, 8, 9, 1

relate to a source of fear or desire. These may be drawn from one's personal experience. As well, one revives any concept, ideology or even world view within which that object gains social or cultural significance. All this occurs simultaneously: we perceive at all these several levels and at the same time. We see, hear and smell in the context of our personal and cultural beliefs. We shall see shortly regarding Kirmayer and Seth – and drawing back to Gershman – that this can be differently expressed by saying that we project not only our personal memories but also our embedded ideologies or world views onto such objects. That is the complexity of what apparently straightforward perception is.

There are accounts which complement the arguments of Seitz. Yang has explored the neurological roots of politics by examining functional connectivity across common tasks:

> Here we explore the neurological roots of politics through conducting a large sample, whole-brain analysis of functional connectivity (FC) across common fMRI tasks … While our analysis suggests that the empathy, reward and retrieval tasks are the most strongly predictive of political attitude of the tasks we considered, we found that Functional Connectivity features from all of the tasks, including the resting state, were correlated to political ideology, suggesting that functional signatures of political ideology persist across tasks and resting state.[16]

Further, given the emphasis of linguistic immersion by Seitz regarding the development of beliefs, Huettig et al. have significant comments:

> Reading and writing are activities that most people are engaged in every single day of their lives. Typically, people are not aware of what an amazing feat and extraordinary achievement this is. Reading and writing are multifaceted overlearned behaviours that require the fine-tuning of many perceptual and cognitive functions, including basic visual skills, phonological processes, oculomotor control, attentional mechanisms, executive control, long-term memory, working memory, etc. … The mind has not evolved for this activity; reading and writing are human cultural inventions.
>
> Literacy impacts not only individual minds but also society and humanity as a whole. Morais develops a conceptual framework to account for the complex interactions between literacy and democracy. He argues literacy does not stop at the end of the reading acquisition process but has continuous profound effects on thinking and knowledge.

16 Seo Eun Yang *et al.* "Functional Connectivity Signatures of Political Ideology" PNAS Nexus July 2022

> Indeed, as literate people we tend to forget that over our recent past the human mind has become the literate mind and that the history of humankind over the last thousands of years is inextricable linked to the history of literacy. The recent technological advances for instance are unimaginable without the advent of literacy. Reading and writing also change our brains and cognitive processing in non-trivial ways.[17]

All this provides a rich set of reference points for the broad argument here that individuals are typically habituated to beliefs, which are the response to linguistic narratives experienced from an early age and which constitute a mental construct of the history of a community. In turn, these constructs – which are thereby cultural – are projected back to establish the related meaning of the physical and conceptual realms. Therein lie the ethical, religious, political and commercial elements of such world views, in which the individual is embedded, and so give context to the themes of fear and desire as they respond to crime, punishment, war, revolution, consumerism and so on. Because these normalised beliefs are firmly embedded neurologically, individuals are predisposed to engage in believing and this is the hinge of a person's past experience and predictions of the future. But they are not truth-dependent, as they are founded on the certainty that comes from trust they engender, which can come from repeated exposure to myth.

The cultural brain

This emphasis on the cultural brain has been more widely explored and can be understood as complementing the argument put forth to this point.

The next three sections will consider, in turn, how the brain is properly seen as itself a cultural artefact; how the brain is thereby a historical artefact; and that, as a result, any account of individual agency needs to be understood as thoroughly ecosocial, as embodied, enacted and distributed. Thereby, mind and culture are mutually constituted, to the extent that culture does not penetrate but permeates the brain. In this context, all human memory is cultural and informs – even constitutes – the internal neural model. These three themes are the ground for the argument that then follows, in particular how we need to refer this culturation – as normalisation – back to the premises of the overall argument: that it veils existential *angst*. That reference will then be argued to expose a shortcoming in all the other accounts in this chapter – even when they are consolidated – and need a further argument to illustrate that the normalisation of Technology is now presenting the full force of absolutism and the contradictory nature of the Absolute Self.

17 F. Huettig et al. "The Culturally Coopted Brain: How Literacy Affects the Human Mind *Language, Cognition, Neuroscience* 33:3 2018 pp. 275, 276, 277

The brain as a cultural and thereby a historical artefact

The brain, and thereby the body, can be understood as itself a cultural artefact. Culture becomes embrained, in that the brain becomes wired to run an internal model of the world that will control the body through predictive processes tested in the world. That is, this model is first tuned to the physical and social features of an individual's recurrent encounters. This happens from birth and so comes to include an absorption of the full range of visual, tactile, auditory, ideational, discursive and other features of all the dominant cultural forms, as Seitz explains.

Among the many definitions of culture, Kirmayer et al. suggest:

> The term "culture" stands for the cooperatively constructed, socially shared, transmitted and enacted knowledge, institutions and practices that are central to human development and functioning. Culturally shared developmental experiences shape the architecture of our brains, and cultural knowledge and practices stock our minds with the language, models and metaphors that we use to navigate the world. Culture itself is a hierarchical system with its own dynamics, co-existing in a landscape of diversity with other cultures, and constantly refigured in response to new technologies, social processes and ways of life.[18]

Gendron et al. complement this definition by emphasising the neural wiring of cultural flexibility:

> Neuroscience advances in our understanding of the structure and organization of the human brain (including evolutionary (dis)continuities) strongly suggest that human culture wires the brain with the necessary flexibility and complexity to contend with the expansiveness of the human ecological niche.[19]

In the argument here, these dynamics and this flexibility are exemplified by the accumulated detritus of the failed but persistent serial magnitudes – and the adaptation of populations of individuals to them – which comprise the framework of the cultures of the West and through which the functioning of the *complex of dynamics* is revealed. However, this does not yet point to the active role that individuals perform in these cultural scenarios.

A key element of these dynamics and of this complexity is the historical aspect of culture. As Boddice states:

> Some will object, no doubt, that we cannot subject past actors to neuroscientific analysis. My point of contention is that we do not need to. The

18 L. Kirmayer *et al.* "Culture, Mind and Brain" *Cambridge University Press* 2020 p. 4

19 Ibid.; M. Gendron *et al.* "The Brain as a Cultural Artifact: Concepts, Actions and Experiences within the Human Affective Niche" p. 26

> insights from the social neurosciences offer historians an opportunity that they are ideally suited to carry out. Knowledge of neuroplasticity, of the effect of culture on biological processes, and of the cultural framing of neurological activity, suggest that we can look to reconstruct the conditions of historical experience, not to get at the past functioning of the brain, but to get at the past feelings of historical actors. This lies partially in historians' ability to piece together the cultural context of historical worlds, in their material, intellectual and social aspects, but it lies mainly in historians' attention to the testimony of historical actors.[20]

The point to be made here is that, although it is demonstrable that we can track changes over long historical time in the feelings of historical actors by examining the cultural context of historical worlds and in the conditions of historical experience, it is even more significant if we can also trace any recurrence of such feelings through key watershed moments as they impact history and each thereafter – such as those of Constantine, Hobbes, Hayek and Turing regarding the magnitudes. That is the key *caveat* put here on Boddice's statement.

Agency is cultural

The significance of the cultural and thereby historical nature of the brain is that agency itself – our individual capacity to choose, initiate and control our actions to influence events in the world or how our intentions seamlessly give rise to actions that indicate they belong to us – is cultural. Agency is not rooted in reason, in the sense that an agent's actions must always have been brought about by standing in the right kind of connection to the right kind of mental states. That is, a reason for acting, an explicit goal or a desired outcome.

In the argument here, the brain is embedded in the cultural history of the West through the failed, framing cultural formations of Deity, State, Market – and now forming as Technology – and, although there very much are reasons, goals and desires, these are all heavily conditioned by the embedding of the individual within the core-driven, serial, constitutional, consolidating and transforming cultures.

In fact, agency is so embedded that most actions occur with little conscious awareness, automatically. These are agentic because they either follow from an overarching attitude or commitment. They are intentions that have become automatised or simply fit with our notion of appropriate behaviour.[21] This in turn points to questions about the viability – or at least the potency – of free will, to which we will return in chapter 8. A corollary to this is that the capacity of individuals or groups to act through social situations or institutions to

20 R. Boddice "The History of Emotions – Past, Present and Future" *Revista de Estudios Sociales* Open Edition Journals October 2017 at point 12

21 L. Kirmayer Op Cit p. 246

advance their interests shape or limit the scope of their actions available. All this happens cognitively, both bottom-up through the correlation of sensory motor signals that indicate an action is self-generated and top-down by inference based on cognitive maps that indicate what kinds of actions are attributable to ourselves or which relate to our plans and intentions.

The malleability of agency and belief

Such embedding, seen especially in the context of the serial – thereby historical – nature of the elements of the cultural framework of the West, reveals the malleability of agency. This refers to the rootedness of agency within these elements and not to agency as fluid beyond this, but does – as neuroplasticity affirms – emphasise the capacity of agents to adjust to these new elements and without forgoing each of the former: an accumulating nature of agency.

This in turn connects with the malleability of belief. That is, to the considerable extent that culture is comprised of shared beliefs and values, the connection between culture and behaviour is demonstrable. Using techniques of cultural priming – which measure the effect of cultural cues or symbols on thoughts and behaviour over quite short times frames – we can see causal relationships between culture and the brain. This approach thereby reveals the effect of a specific cultural belief or value on the dynamic nature of brain activity involved in cognition and in affective processes. In short, culture as shared beliefs or values influence how the brain functions to produce specific types of cognition and behaviour.[22] So belief, its neural embedding of the behaviours they generate, have all evolved throughout the history of the magnitudes and is now accommodating the technological regime of idea and practice.

Embedded culture has existential significance

Despite these apparently comprehensive accounts of perception, belief and their cultural location, there are two shortcomings within them. We shall look at the first of these now in relation to the arguments of Seth, and we shall look at a further shortcoming – which Seth shares with them – in the final section of this chapter.

Seth shares much of his framework with those whose arguments we have just considered, in particular the Bayesian, probabilistic, predictive, best-guessing nature of perception based on embedded generative models that self-adjust in response to external sensory stimuli. He refers to this as controlled hallucination:

> First, the brain is constantly making predictions about the causes of its sensory signals, predictions which cascade in a top-down direction …

22 Ibid. pp. 224, 226

> Second, sensory signals – which stream into the brain from the bottom up, or outside in – keep these perceptual predictions tied in useful ways to their causes … The third and most important ingredient in the controlled hallucination view is the claim that perceptual experience … is determined by the content of the (top-down) predictions, and not by the (bottom up) sensory signals. We never experience sensory signals themselves, we only ever experience interpretations of them.[23]

Seth applies these principles to the nature of the Self, that is that "being you" is also a controlled hallucination.[24] In this, he describes the elements of the Self, including the perspectival self, having a first-person "point of view" of the world; the volitional self, the intention of being the cause of things that happen, or agency; the embodied self, whereby the "formless feeling of being an embodied living organism" runs below emotions and moods; the social self or how one perceives others perceiving me due to being embedded in a social network; all of which emerge as a narrative self, the sense of personal identity.

The significance of these elements for Seth is that the Self is not:

> an immutable entity that lurks behind the window of the eyes, looking out into the world and controlling the body as a pilot controls a plane. The experience of *being me*, or of *being you*, is a perception itself – or better, a collection of perceptions – a tightly woven bundle of neurally encoded predictions geared towards keeping your body alive.[25]

It is here that Seth – without fully elaborating on the important sources of the social self – embarks on a crucially important examination of the key factor that is largely missing in the accounts of perception that we looked at earlier. That is, the existential factor, although here again there are shortcomings.

Seth sees the primary goal of every organism as "continuing to stay alive", to maintain their physiological integrity "in the face of danger and opportunity. This is why brains exist". Further, "brains are not 'for' rational thinking, linguistic communication or even for perceiving the world. The most fundamental reason any organism has a brain…is to help it stay alive, through making sure that its physiological essential variables remain within the tight ranges compatible with its continued survival".[26]

These variables, the regulation of which determines the life-status and prospects of the organism, are the sources of interoceptive signals. As with all physical properties, these sources are hidden behind a sensory veil so, as with the outside world, the brain has no direct access to the physiological states of

23 A. Seth "Being You" *Faber* 2021 pp. 82–3
24 Ibid. p. 276
25 Ibid. pp. 152–4
26 Ibid. p. 188

the body. These states have to be inferred through Bayesian best-guessing. As is the case with all predictive perception, this is realised by a brain-based process of prediction geared to error minimisation. As with vision and hearing, in fact with all perception, interoceptive perception is a kind of controlled hallucination. Where the purpose of perceptual inference about the world is typically to finding things out, interoceptive inference is about controlling things, about physiological regulation: interoceptive inference is active, in that prediction errors are minimised by acting to fulfil top-down predictions rather than by updating the predictions themselves.[27]

For Seth, such predictive control supports anticipatory responses by anticipating future bodily states and their connection to action. This is critical for survival, the search for which is *allostasis* as the achievement of stability or *homeostasis* through change. Further, interoceptive predictions underpin emotions, which – as much as they are controlled emotions – are therefore controlling hallucinations that relate to things and situations outside the body. In this regard, he makes the important point that there is a difference between fear, a reaction to some thing or circumstance, and "the deepest levels of experienced selfhood – the inchoate feeling of 'just being' which lack the external referents altogether." It is, in the argument of the present work, essentially existential, generates *angst*, and is what is veiled and reconstructed by dominant interests through the magnitudes:

> *This for me is the true ground-state of conscious selfhood: a formless, shapeless, control-oriented perceptual prediction about the present and future physiological condition of the body itself. This is where being you begins, and it is here we find the most profound connections between life and mind, between our beast machine nature and our conscious self … from this starting point, everything else follows … All of our perceptions and experiences, whether of the self or of the world, all are inside-out controlled and controlling hallucinations that are rooted in the flesh-and-blood predictive machines that evolved, develops and operates from moment to moment always in light of a fundamental biological drive to stay alive.* (my emphasis)[28]

Regarding consciousness, Seth acknowledges the difference between the easy and hard notions identified by Chalmers. But for him, consciousness is better understood separately from self-consciousness, although this is to be a focus and not a categorical difference. Consciousness as content more broadly comprises the sights, sounds, smells – all the perceptions as brain-based interpretations of sensory signals that make up our conscious experience. He sees self-consciousness as our individual inner universe, the elements of which we have just looked at, that is having a particular body, a first-person perspective,

27 Ibid. p. 188
28 Ibid. p. 190

personal identity, unique memories, thoughts and beliefs, as well as moods, emotions and "free will".

However, in the argument here, these are best not understood through separate focusses. That is, there is no separation between inner and outer notions of consciousness. Here the notion of belief, which he sees as internal – say, what we believe about our individual selves – is also fundamentally about the external world, in the manner elaborated by Seitz. Seth is much closer to the mark when he describes controlled hallucinations: "…this extraordinary world is a construction of my brain, a kind of 'controlled hallucination'…Whenever we are conscious, we are conscious of something, or of many things. These are the *contents* of consciousness".[29] Such hallucinations "are the deep structure of perception – the ways in which conscious contents appear in our experience, in time and space and across different modalities".[30]

Comment

We may bring all this together by saying that an assembly of elements of the analyses provided by Gershman, Kirmayer, Seitz and Seth provides evidence that allows the broad argument here. That is, that there is an existential sense of self which is the true ground state of conscious selfhood, that is formless but provides "control-oriented perceptual prediction about the present and future physiological condition of the body" to endeavour to "stay alive". This is the source of existential *angst* and is separate from the fears of things or circumstances that become culturally connected to that. One can experience the uneasiness – even terror – of existential *angst* in any life-threatening incident or experience but "secondary" fears are, not untypically, socially produced and overlain, for example through war or poverty.[31] The brain then becomes – is inherently disposed to – the location of generative, predictive, "hallucinatory" models as the means to minimise risk in the attempt to ensure survival. These models are projected onto – and tested against – the constant flow of sensory data emanating externally. They become embedded from the earliest years and are thereby normalised accounts of the dominant ideas and practices assembled and variously promoted within a culture.[32]

These are thereby the source of a wide range of culturally constructed beliefs, fears and desires that emanate from the magnitudes – of Deity, State, Market and now Technology as the latter has now consolidated and varied the regimes of belief and practice of its predecessors within its regime – which are claimed to deal conclusively with them on condition of subjection. Existential

29 Ibid. p. 75

30 Ibid. p. 127

31 J. Pavlacic et al. "Process-Based Cognitive Behavioral Therapy: A Framework for Conceptualization and Treatment" *Clinical Case Studies* Sage 19:6; J. Tasker in "Study Examines Why the Memory of Fear Is Seared into Our Brains' *Science News* 1 June 2022

32 See D. Grant *Privacy in the Age of Neuroscience* chapter 4

angst is overlaid with these constructed fears and desires, accompanied by the claims they will be dealt with on condition of cultural subjection. Here we see that subjection is typically more a process of neural normalisation than it is of conscious and willing adoption, although that is also a factor. Through these processes of normalisation to the beliefs and behaviours of the magnitudes, the hallucinatory models largely constitute the content of consciousness. In all this, by assembling key elements of the work of such as Gershman, Kirmayer, Seitz and Seth, we argue that a valid account of the operation of the *core* dynamic and its derivatives may be presented: belief understood as subjection to these regimes *consolidating* as Technology for the benefit of veiling our existential condition.

However, this does not yet justify the claim here that the implication of this is the realisation of an Absolute Subject, even though the wide normalising – as subjection – and hallucinatory projection of the technological worldview has become well-established globally. Normalised subjection to Technology may be moving towards a totalising effect, but that is not yet absolutist. We shall now explore aspects of this subjection which do allow an argument for emerging absolutism of Technology.

The absolutism of generative artificial intelligence and the emerging future of consciousness

Recent developments in generative A.I. – especially GPT-4 – are significant and have resulted in calls by many experts to cease development and for future regulation of these products. We have also seen that, while the *A.I. Act* in the European Union is addressing these concerns, digital platforms are adjusting to these European initiatives while sustaining their core place in the market. No such adjustment is occurring in the United States.

The significance of these developments goes well beyond the concerns now being expressed in the E.U. Specifically, these developments are beginning to establish an absolute status for Technology in the sense elaborated here. To demonstrate this argument, we will look at algorithmic transparency, the self-elaborating nature of machine learning, the widespread and increasing take-up of large language models, the issue of trust in technology and the application of such models for a reformulation of the metaverse and other technological forms.

The conclusion will be that the widening subjection to generative A.I. will realise a form of "reality creation" that is well beyond our current, culturally determined, "controlled hallucinatory", reality-creating perception. That is, we are handing over the responsibility for the creation of what we see as real to a technological frame that we don't fully understand, over which we will have decreasing control and which may well develop in directions that are not moored to our interests. There are optimistic views to the contrary but the centre of technological gravity is shifting away from this under the control of the platforms. If realised, this would be the establishment of a deeply subjecting absolutism, elaborated through a new kind of consciousness but veiled by

claims about the creation of an Absolute Self. This is the realisation of what the dominant interests of Deity, State and Market failed to achieve and because of which they are now substantially, through the *consolidation* dynamic, subject to the technological regime.

The shimmer of algorithmic transparency

An undeniable pointer to the fact that algorithms have developed to the point that they lack transparency is the response by industry leaders to the release of ChatGPT and GPT-4, calling for a halt to further development due to the dangers they pose. Leading architect of the development of artificial intelligence, Geoffrey Hinton, stated:

> These things are totally different from us. Sometimes I think it's as if aliens had landed and people haven't realized because they speak very good English.

That is, the artificial neural networks that comprise large language models are no longer poor attempts to mimic biological brains. They now learn extremely quickly, even though they can also widely "hallucinate", as do humans. One reason for this is that ChatGPT algorithms can now access the internet to source information in response to search queries, upload and download files and write and run code in the process of formulating answers to such queries.[33]

Unlike humans, they communicate between themselves – even across ten thousand of them – instantaneously. As a result, although there is no universal agreement on this – Yann Lecun at Meta had a more optimistic view about the ultimate controllability of neural networks – Hinton says there are two types of intelligence in the world, biological brains and neural networks, the latter being:

> a completely different form of intelligence. A new and better form of intelligence.

Stating that he is "scared" of the potential of these forms of intelligence, Hinton believes they are capable of figuring out ways to manipulate or kill humans.

> I think they are very close to (being more intelligent than us) now and they will be much more intelligent than us in the future.[34]

33 L. Blain "ChatGPT Can Now Access the Internet and Run the Code It "Writes *New Atlas* 24 March 2023

34 W. Heaven "Geoffrey Hinton Tells Us Why He's Now Scared of the Tech He Helped Build' *MIT Technology Review* May 2 2023

His concerns take two forms. First, that well-resourced individuals with bad intent could well use them for winning wars or manipulating electorates. Second, that these networks will be able to create their own sub-goals, ways by which they can best carry out the main goals that designers provide them. Another sub-goal can be to duplicate themselves. Further, all this is compounded by the fact that A.I. is developing much faster than societies can legislate, regulate and establish global agreements. In short, Hinton's fear that not only is A.I. developing faster than human society can restrain it but also both that it will be far more intelligent than humans and can control its development without further human input – and so can move away from a human alliance – are all indicators of a present and future lack of transparency of neural networks.

This transparency issue was foreseen as far back as 2017, when Knight understood that:

> We've never before built machines that operate in ways their creators don't understand. How well can we expect to communicate – and get along with – intelligent machines that could be unpredictable and inscrutable? … You can't just look inside a deep neural network to see how it works. A network's reasoning is embedded in the behaviour of thousands of simulated neurons, arranged into dozens or even hundreds of intricately interconnected layers.

Also

> It is the interplay of calculations inside a deep neural network that is crucial to higher-level pattern recognition and complex decision-making, but those calculations are a quagmire of mathematical functions and variables. … If you had a very small neural network, you might be able to understand it (Knight quotes Tommi Jaakkola of MIT) but once it becomes very large, and it has thousands of units per layer and maybe hundreds of layers, then it becomes quite un-understandable.[35]

Allied views are expressed separately by Beer, whereby he provides a practical example of this increasing inscrutability in his field of sociological research. There he says we live in an increasingly recursive society, whereby attempts at research are increasingly confronted by the problems posed by the layering of multiple loops as a result of algorithmic sorting and data processes. Recursive algorithmic processes have repeatedly shaped outcomes, practices, relations and actions over time:

> This is not just about the sinking of algorithms into the everyday, it is about the way that loop-upon-loop of data processes lead to the social

35 W. Knight "The Dark Secret at the Heart of AI" *MIT Technology Review* 11 April 2017

> world itself being recursive. This repeated looping is … a kind of data coiling.

Further

> it is not just a question of pulling apart individual loops to see what they do, rather we need to find theories and methods that factor in the coiling of data processes and the loop-upon-loop of data interventions and algorithmic sorting that may have led to that point … a recursive society is one that is not new to data looping but, as we already now see, is to be found where such looping and coiling are long established within its very fabric … (quoting Amoore) in every singular action of an apparently autonomous system, then, resides a multiplicity of human and algorithmic judgments, thresholds, and probabilities. Even something that looks like a singularity is actually a product of multiple circulations. This is not just about data and algorithms being active in shaping the social world, it is that these processes have been repeated many times to the point at which these processes implicate themselves.

Then, quoting Hui,

> this is not just about repetition, it is about looping. I go further to say that it is about data coiling. This coiling then poses a problem for the notion of a singularity or a cause whilst creating further questions about where things begin, where they might end and how we might think of their becoming. The problem of researching a recursive society is that algorithmically defined data loops are already layered into a deep pile, they have already formed into extended data coils – there is no space outside from which to pull at the threads.[36]

That is, sociological research is already locked in algorithmic coils that do not allow a discernment of where analysis can begin: the data we rely on is so algorithmically "looped" that we can't think outside the loops. The social world, including its practices driven by algorithmic analysis and realignment, is becoming inscrutable, fading into a shimmer of algorithmic looping and coiling.

Beer then moves further on in this argument. His analysis of neural networks refers to the analysis by Beatrice Fazi that "because of how a deep neural network operates, relying on hidden neural layers sandwiched between the first layer of neurons (the input layer) and the last layer (the output layer), deep learning techniques are often opaque or illegible even to the programmers that

36 D. Beer "The Problem of Researching a Recursive Society: Algorithms, Data Coils, and the Looping of the Social' *Big Data & Society* 5 September 2022

originally set them up"; and to that of Harry Collins, that is that the objective with neural nets is that they may be produced by a human, initially at least, but "once written, the programme lives its own life, as it were; without the effort, exactly how the programme is working can remain mysterious".

Beer adds that we "want to know how AI works and how it arrives at the decisions and outcomes that impact us" and "that impulse will grow. When it comes to explainable and transparent AI, the story of neural networks tells us that we are likely to get further away from that objective in the future, rather than closer to it".[37]

How difficult it is to unravel the elements and methods of algorithms can be seen in the attempts by Fern and Cynthia Rudin to do so. Given the challenges in this, they give some preference to an approach that has algorithms explain themselves, although the threshold of what is an acceptable level of explainability is crucial, especially in such high-stakes fields as medicine:

> To some degree this stuff is like reading tea-leaves … it's unrealistic to expect every algorithm to explain itself in the same way. Getting something that is human-understandable for a lot of really hard problems that neural nets are solving is not going to be possible.[38]

Behind this is that the very issue of explainability is slippery: "Humans don't even know all the things that go into our own decision-making". Yet Fern believes it will be possible to develop a better understanding of how these systems work as computer and cognitive sciences advance. It is such optimism that is generating a range of other attempts to understand or explain machine learning algorithms, especially given the acknowledged threats to the quality of public information and so the viability of delicate and so vulnerable democratic principles.

Although the promulgation of research findings from such attempts is being hindered by the fierce competition between the digital platforms to dominate this highly lucrative market, examples of such other attempts include the exploration of in-context learning by L.L.M.s, where they can now be seen to accomplish a task after seeing only a few examples and without being trained for that task, revealing that these large models can contain simpler, linear models buried inside their hidden layers.[39] Complementing this, algorithms have been developed that decide when a machine that is in training should follow its "teacher" system and when it should learn on its own.[40]

37 D. Beer "AI Will Soon Become Impossible for Humans to Comprehend – The Story of Neural Networks Tells Us Why *The Conversation* 31 March 2023

38 S. Ornes "Peering Inside the Black Box of AI" *PNAS* 120:22 at "Explain Yourself"

39 A. Akyurek *et al.* "Subspace Regularizers for Few-Shot Class Incremental Learning" *Computer Science – Computer Vision and Pattern Recognition* 20 February 2022

40 A. Zewe "A More Effective Way to Train Machines for Uncertain, Real-World Situations' *MIT News* 31 May 2023

A different approach, one which focusses not on *post-hoc* explanations of individual algorithmic decisions, seeks a sense of transparency which explains algorithms as an intentional product which serves a particular goal. Thereby it provides a measure of the extent to which such a goal is achieved and evidence about the way that measure has been reached. This is influenced by Daniel Dennett's design stance as "design publicity" and thereby is prospective rather than retrospective. This approach does not claim to explain the inner workings of algorithms as such but it values the positive, sought results of their application, for example in the medical field.[41]

From this we may say that the aspiration to address the problems of algorithmic inscrutability – one sign of absolutism – remains and is widespread in the scientific, commercial and social communities and each for different reasons. However, to date, there is no comprehensive result for this aspiration. In fact, the quality of algorithmic mystery grows, as the controversial issue of emergent abilities of large language models may suggest. That is, although there is an argument that this phenomenon is the result of the choice of metric by the researcher,[42] there is still a strong view that it is simply an ability that is not present in a smaller version of a model but is present in its larger, scaled-up version. That is, where the emergent abilities cannot be predicted simply by extrapolating the performance of the smaller model.[43]

We remain on the cusp of – if not already within – a technological world of our creation but the functioning and possible outcomes of which we are substantially unaware, except for our awareness of its increasingly self-referential, coiled algorithmic nature. We are subjecting ourselves to a mysterious magnitude with the evident potential to be fully empowered.

The wide adoption of large language models (L.L.M.s)

Despite the deep mystery of such coiling models and – in the view of many leading experts in the field – the potentially high risk of their further development, their adoption and use proceeds apace. The various directions being opened might be is unknown but the initial indications are informative.

For the Market, the irresistible attraction of generative A.I. is clear. It is predicted to add between $2.26 to $4.4 trillion per year to the global economy.[44]

41 M. Loi et al. "Transparency as Design Publicity: Explaining and Justifying Inscrutable Algorithms" *Ethics and information Technology* 23 2021 p. 253; see also J. Duran *et al.* "Who Is Afraid of Black Box Algorithms? On the Epistemological and Ethical Basis of Trust in Medical AI" *Journal of Medical Ethics* 47 18 March 2021 p. 329

42 R. Schaeffer *et al.* "Are Emergent Abilities of Large Language Models a Mirage?" *Computer Science – Artificial Intelligence* 22 May 2023 p. 1

43 J. Wei *et al.* "Emergent Abilities of Large Language Models" *Transactions on Machine Learning Research* August 2022 p. 1

44 *The Economic Potential of Generative AI* McKinsey & Company 14 June 2023 Key Insights p. 1

To achieve that, L.L.M.s are predicted to produce greater efficiency from the capacity to automate and summarise communication with customers; from the resulting reduction in labour costs; through the commercial returns from consequential fine-grained refinement of customer desires; thereby from increased customer loyalty; due to the creation of new language-based and image-based multi-modal GPT-4 products, and no doubt a range of other yet to be devised scenarios. Initiatives such as these are being pursued in increasing awareness of the risks of disinformation, biases and systematic disruption – for example in the labour market – and so for the reputational harm that will follow. The temptation to prioritise profit over such concerns will weigh increasingly over this field.

One area of wide commercial impact will be in business intelligence – enterprise analytics – where the capacity of L.L.M.s to survey the widest imaginable field of internal and external data will produce testable scenarios regarding the possibilities that exist in the commercial environment of corporations but also regarding the nature of the operation of the corporate strategic framework and the necessary structural and operational changes that would be required to take advantage of the outcomes of such new market initiatives. These changes will take the form of methodological changes in wider data sourcing (from publicly-available third-party sources), deeper text mining and metadata enrichment through semantic enhancement, natural language generation and queries for better communication and "story-telling" and – most importantly – guided analytics as the provision of the "next step" recommendations.[45] The latter would lead ultimately to the development of alternative "landscape" scenarios.

The fields of financial advice and legal services are also strong potential applications for L.L.M.s, as is any other service where data scanning, summary, analysis and recommendation are prominent. Needless to say, these come with respective challenges of "hallucination", on the one hand, and the absence of sophisticated and subtle judgment, on the other. In research, there is now an established view that the capacity of L.L.M.s to search large databases will result in the identification of patterns and novel scientific facts that are beyond human beings.[46] Elsewhere, the analysis of social media posts and news articles is increasingly attractive in sociological research, although we have seen that Beer has raised important concerns in this regard, and in engineering, analysis of databases is likely to produce a new level of emergency plans and maintenance programmes.

The State is also seen as a fertile ground for the engagement of L.L.M.s, especially given the massive historical and contemporary databases that are

45 "The Current State of LLMs In Business intelligence and What Needs to Change" *Forbes* 28 April 2023

46 J. Chao "With Little Training, Machine Learning Algorithms Can Uncover Hidden Scientific Knowledge" *Lawrence Berkeley National Laboratory* 3 July 2019

available for consolidation and analysis. Such a form of engagement is now being argued to improve both service delivery and inform policy development across the public sector. If this opportunity is not taken up, the argument coming out of health care is that, given the wide adoption of artificial intelligence by the Market, this is:

> going to change the public's expectations of how to interact with services and technology. Even if much of the future of AI is unclear, we can be confident that without meaningful ways to adopt these technologies, government services run the risk of falling further behind consumer services, leaving opportunities for greater productivity in working with data on the table.[47]

Such an application of L.L.M.s is, unsurprisingly, already emerging out of the digital platform arena. Through its partnership with OpenAI, Microsoft has offered U.S. State agencies access to the GTP-3 model through its Azure government cloud platform. That platform is already used, for example, by the U.S. Department of Defence and is claimed to provide a secure environment for agencies to deploy A.I. applications, features of this including encryption and access controls. Microsoft's claim is that this would promote the analysis of vast amounts of data and make predictions to aid decision making, that it would improve the chatbot interacting with citizens and provide continuous customer service while eliminating repetitive tasks and so easing employee workloads.[48]

A sober assessment of such applications to the working of the State would include caution about the immaturity of L.L.M. systems, the auditing challenges due to the transparency issue, as well as privacy and customer service issues given the proliferation of chatbots. Such caution applies in particular to the biases that ChatGPT literary products will generate in relation to political issues, where disinformation can easily emerge under the umbrella of expected hallucination and from "dirty data".[49] Nonetheless, opportunities are affirmed regarding the automation of time- and resource-consuming data processing and analysis, accessibility to users and the richness of data analysis for policy making.[50]

More broadly, there is evidence emerging that L.L.M.s, along with the data and analyses they are increasingly producing, are becoming central to a range of international collaborations, at both State and organisational – especially university and industry – levels.[51]

47 S. Julian and A. Waner "Using Open-Source LLMs to Optimize Government Data" *Ad Hoc* 7 June 2023

48 "Microsoft Offers OpenAI GPT-3 Model to Government Cloud Customers" *US Cloud* 7 June 2023

49 J. Baum "The Politics of AI: ChatGPT and Political Bias" *Brookings Institution* 8 May 2023

50 "LLMs in Government: Brainstorming Applications" *Oxford Insights* 19 May 2023

51 L. Fan *et al.* "A Bibliometric Review of Large Language Models Research from 2017 to 2023" *Computer Science-Digital Libraries* pp. 13, 17

In short, algorithmic knowledge is growing quickly in dimension and proliferating widely across the economic and political landscape – and thereby on the lives and minds of individual citizens – especially given the promise emerging from the application of generative artificial intelligence.

Lack of transparency reduces the trust in digital platforms but not in large language models

Against this obvious popularity of L.L.M.s across the institutional landscapes stands the issue of the levels of popular trust. That is, separate from the advantages that platforms intend to produce out of these products, the question remains regarding the attitudes of citizens to the impact of these products on their lives.

Research indicates that there are clear present trends of the reduction of confidence in large technology companies among American citizens. Examining these trends in relation to Facebook, Amazon and Google, the Brookings Institution has identified a loss of confidence of between 13% and 18% in the 3 years between 2018 and 2021. This is significant, given that Amazon and Google were among the most trusted in 2018. However, the explanation for these changes is telling and goes to the heart of the broad argument here. That is:

> This drop in trust is likely at least partially due to perceptions of how tech companies use and secure private information from individuals. A Washington Post poll revealed that large percentages of respondents held almost no trust in tech companies, particular social media companies, to protect their private data and that they routinely took steps to stop what they saw as unnecessary intrusion into their privacy.
>
> This view of tech as a collection of over-encroaching behemoths is common. A representative poll from The Verge in 2022 found that a majority of respondents believed that tech companies had grown too large, that most were in favour of breaking up tech companies that controlled too much of the economy, and that Google and YouTube in particular should already be separated.
>
> Many of these findings are conditional (a CivicScience poll, for instance finds that trust in companies' willingness to protect its users' data is strongly determined by age and social media use) and there is likely to be high variance across tech companies.[52]

It is noteworthy that these CivicScience poll findings were that young adults typically have much higher trust in Big Tech companies, with Gen Z reporting

52 S. Kates *et al.* "How Americans' Confidence in Technology Firms Has Dropped" *Brookings Institution* 14 June 2023

the greatest trust, while Baby Boomers have the least trust. It is also notable that the levels of confidence related to the companies and not the technology itself.

Regarding the related issue of the search for such explainability of A.I., Dennett adopts a cautionary approach. That is, "since we will rely on generative artificial intelligence, we should attempt to understand them, but since there may be no perfect answer, we should be as cautious of the explanations of A.I. as we are of what each of us offers about our own actions. That is, if it can't do better than us at explaining what it is doing, don't trust it."[53]

Beyond Dennett's caution, the findings of the surveys are fully understandable and explicable in terms of the broad argument here. That is, that citizens are seeing that, in effect, the drive of these dominant entities is revealing the predation that accompanies absolutism. As a consequence, subscribers' attitudes towards them are becoming increasingly negative, except for the younger generations that are already embedded in their products and regime. That is, concerning the companies and not the technology. Instead, subscribers are merely seeking a more considered approach to themselves, one which is protective – that is, sympathetic. That protection is constituted by concerns for both privacy and transparency of decision-making.[54] This is the essence of the European Union *A.I. Act*, as we have seen, which is not concerned to eliminate the technologies but to temper their respective business models in high-risk areas and data privacy.

From the argument we have presented so far, it can be said that, although the digital platforms will be forced to a level of compliance, the trust – belief, in effect – of subscribers in the usefulness of their technologies will allow each platform to sustain its pursuit of an absolutist status. They will argue that transparency can only extend so far – given the commercial-in-confidence status of their generative algorithms – and so they will continue to be able to veil their operations in the very issue of inscrutability that we have examined. For their part, the "subjection as trust" of subscribers will be sustained by serial iterations by dominant platform interests of an unending chain of novel products and experiences by which constructed fears and desires will be claimed to be addressed technologically. In this regard, the interest in complete transparency will continue to be qualified, counterintuitively, by a belief in the mysterious nature of the apparent power that explains generative algorithmic inscrutability.

Large language models, lack of transparency and the adoption of the metaverse

From the perspective of the broad argument, the design of Technology has reached a point at which its information gathering, processing and elaboration

53 Dennett quoted in Will Knight "The Dark Secret at the Heart of AI" Op Cit

54 S. Straube *et al.* 'Editorial: AI Taking Actions in the Physical World – Strategies for Establishing Trust and Reliability" *Frontiers in Neurorobotics* 28 April 2023 p. 1

capacity is at an unprecedented level. Further, this capacity is now so high that, through self-referential algorithmic looping and coiling, it is opening the door to the realisation of a hegemony over the creation of knowledge and meaning. Further again, this process is increasingly opaque, due to advances in the evolution of the L.L.M.s of generative and self-generative A.I., to the point that it may become intractably mysterious.

Unless radical design changes can be made through the closing window of opportunity to address this trend, we are seeing the approaching fulfilment of the latest version of the *core* dynamic in its long trajectory from the inception of the Christian Deity. That is, a subjection to a regime of controlled hallucination based on the claims of the dominant interests of the digital platforms to deal conclusively with constructed – not existential – fear and to satisfy constructed desire. All this gives new meaning to how we should reconsider the new iterations of the metaverse and brain-computer interfacing (B.C.I.) that will emerge under the impact of ChatGPT, GPT-4 and those products that follow. That is, if these iterations extend this trend of increasingly self-referential epistemology, then the additional dimension of immersion – beyond the immersive consequence of the growing algorithmic coiling we are already seeing – can cause the impact of the technological regime produced by the controlled hallucinations of the *core* dynamic to approach a totalising effect.

Lee et al. provide a sense of the directions available for Artificial Intelligence Generated Content (A.I.G.C.) for the future metaverse. That is, the manner in which A.I.G.C. can leverage such high-dimensional data as text, images, audio and video to generate new content. Moreover, the generated content can then support the on-generation of such metaverse qualities as speech and haptic experience and 3D perception for in-game agents to support the challenging context-to-content tasks. That is, besides generating virtual content, A.I.G.C will increasingly be an assistive tool for user interaction in the metaverse. A user's movements and interaction with virtual objects can be a part of the content in virtual worlds.

Having analysed the restrictions that have held back the development of the metaverse to this point, these researchers argue that:

> regardless of who is the leading developer, the metaverse must be built for humans …The leading developers do not have the authority to arrange what content we should have on the next Internet, as we have seen in the Metaverse of 2022.[55]

Qin and Hui fill out this picture in a number of ways. First, they detail current work under development, for example in the creation of realistic avatars, the

55 L-H Lee *et al.* 'What if We Had Meta GPT? Content Singularity and Human-Metaverse Interaction in AIGC Era" *Computer Science – Human-Computer Interaction* 18 April 2023 pp. 4, 6, 9

generation of visuals and of entire environments, improving the generation of objects within environments and early work being done on the creation of digital twins, the addition of smell and touch to the virtual environment and the personalisation or adaptation of generative A.I. to user needs.[56]

Then there are those, like John Hanke of tech company Niantic, who see that the move to an immersive experience will be prefaced – and may even be dominated by – the further development of augmented reality. That is, that technology should improve, rather than replace, human experience. That would be consistent with a forward-looking argument to be presented in chapter 8. In discussing Augmented Reality, virtual reality and brain-computer interfaces, Putze et al. state:

> AR/VR technology allows to create (*sic*) scenarios which are much more stimulating and expressive than standard desktop applications. Covering a wide variety of areas, namely entertainment, education, art and health, among others … BCIs, together with AR/VR, offer the possibility for immersive scenarios through induced illusions of an artificially perceived reality that can be utilized not only in basic BCI research but also in many fields of application.[57]

This leads to a central issue for the broad argument. That is, that their veiling of the absolutism of existential reality provides the opportunity for dominant interests to construct frameworks of fears and desires which they claim will be addressed by the subjection of individuals to the magnitudes – argued here to have been *serial* – in which they are dominant. There is therefore a strong element of escapism at the heart of the *core* dynamic that has operated at every stage of the series of magnitudes, the remains of which are still present. This is an element that is increasingly prominent in virtual reality and is likely to be strongly emergent in the metaverse as it develops under the impact of the models of generative A.I. we have been examining. This is the context in which we should see the research by Han et al. into the immersive presence that individuals will increasingly experience in the metaverse:

> The need to escape is the driving force to search for alternative realities, which can be found in VR consumer experience escapes that are increasingly developing into a metaverse. Engaging in fully immersive virtual worlds where consumers can experience a heightened sense of presence can evoke feelings of euphoria and stimulate addiction to the content.

56 H. Qin and P. Hui "Empowering the Metaverse with Generative AI: Survey and Future Directions" *ResearchGate* preprint 23 April 2023

57 F. Putze et al. "Editorial: Brain-Computer Interfaces and Augmented/Virtual Reality" *Frontiers in Human Neuroscience* 14:144 2020 p. 1

Ultimately, this escapism is not only from the culturally constructed fears and desires but, more significantly, from veiled existential *angst*.

It is one prediction that, as is true regarding the serial claims of dominant interests, such experiences of resolution of even the constructed fears and desires – separate from the existential – will fail and subjects will find it necessary to exit to the coiled algorithmic, controlled hallucinatory perceptions of mainstream existence but thereby worse off for the immersive experience:

> we believe that negative psychological consequences of VR consumer experience escapes in the metaverse will affect social interactions as well as consumers' physical and psychological well-being. Inevitably, it will affect peoples' ability to cope and function in life.[58]

Dwivedi et al. take the "dark side of the metaverse" much further, specifying – among a wide range of personally deleterious impacts – addiction, the death of privacy and derealisation:

> to be compelling, the metaverse will need to suspend the disbelief and abandon the notion that synthetic experiences are inherently "false" to prevent discounting the value of a technology-enhanced reality (quotes Hilken). While digital experience can be psychologically real to the person immersed in the metaverse (quotes Wolfendale), it is often discounted by outside observers because no activity takes place in the physical world. Such discounting stems from traditional views of falsity, which assume that only physical experiences (i.e. those derived using unaided biological senses like sight, hearing, touch, taste and smell) are real (quotes Ross and Ward) and that synthetic, digital forms of experience are imaginary, inconsequential and are not real.[59]

This raises the argument whether virtual reality is reality and is a demonstration that, when a citizen subjects themself to the metaverse, they are having an experience no less real than those who are not subject to that regime. The argument from the present work is that, unless this is so, then dominant interests would be unable to induce the kind of subjection necessary to convince citizens that the metaverse is a means to eliminate fear and satisfy desire. However, it is no less a reality than those constructed by the former dominant interests of Deity, State and Market in their serially absolute phases. Nonetheless, in this scenario, disembodiment, depersonalisation, brain

58 D. Han *et al.* "Virtual Reality Consumer Experience Escapes: Preparing for the Metaverse" *Virtual Reality* 21 February 2022 at "Conclusion"

59 Y. Dwivedi et al. "Exploring the Darkverse: A Multi-Perspective Analysis of the Negative Social Impacts of the Metaverse" *Information Systems Frontiers* 2 June 2023 at "The Illusion of Falsity"

plasticity, escapism, addiction and neural data theft are all conditions of the elaborately constructed reality.

This echoes the argument put by Chalmers, an argument with particular relevance for the broad argument here. For Chalmers, virtual reality is not a second-class reality. Or at least, virtual reality need not be a second-class reality. It may be a second-level reality, in that it is contained within physical reality and realised by processes in the physical world, but this need not make it less real or less valuable. He states:

> In the short term, of course, virtual realities may be inferior to physical realities in all sorts of respects (while perhaps beginning to be superior in other respects). But even in the short term, virtual reality may be real, non-illusory, and valuable. In the long term, and in principle, virtual reality may well be on a par with physical reality.[60]

That is, non-virtual reality and virtual reality are just two different implementations of closely related structures, since a virtual representation of the entire physical world will replicate the causal structure of the physical world. Chalmers does not extend his structuralist argument to consciousness, where he denies any reductive functional analysis of consciousness, that is the "hard" problem. However, this is not an obstacle for the broad argument here, as we shall see.

Comment

The significance of these developments is twofold. First, as the sophistication and individualised user focus grows with developments of A.I.G.C., the inducement to make oneself subject to this new regime will steadily increase. This is especially so as, although digital platforms will still provide the hardware and software capability and thereby remain as dominant interests, subjects themselves will increasingly determine the personalised content, but their focus limited to the elimination of constructed fear and the satisfaction of desire. This limitation would be constituted by the algorithmic regimes made available by the platforms. All this would happen as an escapism, without the subjects' involvement necessarily converting into addiction, although that would also apply for many. Second, for those vast numbers who will not wish to exist in such an alternative reality but visit it regularly, even occasionally, they will in effect be switching between the increasingly coiled universe of algorithmic meaning and a near-totalising immersive metaverse.

Together these constitute the meaning of the Absolute Subject, in both senses of that term. That is, where the proponents of technological absolutism

60 David J. Chalmers "The Virtual and the Real" *online Home Page* at "Conclusion"

– primarily through the programming by the digital platforms – could claim that its regime had become absolutely sympathetic, by virtue of the willing, personalised, user-driven contents of the regime of the metaverse. By that, we would see Technology reaching a status by which it successfully fills the vacuum created by the failures of previous serial attempts at creating a fully sympathetic absolutist magnitude: the Christian Deity of Constantine and his successors, the Hobbesian State and the Market of Hayek.

Put another way, the Absolute Subject – as a dual form – is a subjection to two related forms of the coiled algorithmic ecosystem, that is both non-virtual and virtually real. Due to the inscrutability of that growing ecosystem – as Beer points out – we are approaching a state where we would increasingly leave unquestioned the ecosystem in either form, due to the effect of coiled algorithmic inscrutability. Yet we are increasingly embedded within this – formulated by the dominant interests of the digital platforms – and may accept, even seek, and be absolutely subject to this arrangement, including the ill-fated attempts to escape from the non-virtual to the virtual. In fact, as the wide embrace of L.L.M.s by the State and the Market demonstrate, this evolution is currently gathering velocity. This is the Technological version of the *core* dynamic and this subjection is now reaching the content of consciousness.

Generative artificial intelligence and the capture of consciousness

It is not an obstacle to the broad argument here that Chalmers rejects any reductive, physicalist account of consciousness. That is because this argument is concerned with the content of consciousness – of what we are aware – and its cognitive-cultural sources and not with the nature of consciousness *per se*.

We can illuminate the impact of and colonisation by this latest technological version of the *core* dynamic on consciousness by bringing together the arguments of Seth, Seitz, Kirmayer, Beer and Chalmers to show how the content of consciousness becomes calibrated. That is, by understanding this latest version of A.I. as providing a framework of belief that is a neurally embedded, cultural network of controlled hallucinations operating to promote a coiled algorithmic ecosystem.

We have seen that for Seth, consciousness is typically of something(s) and this is the result of perception as controlled hallucinations produced by a cognitive generative model, a cognitive "best guess" of the causes of sensory inputs. As he states, "these hallucinations are the *contents* of consciousness". Such hallucinations "are the deep structure of perception – the ways in which conscious contents appear in our experience, in time and space and across different modalities".

Further, we have seen from Seitz and Kirmayer that perceptions – such as controlled hallucinations – are simultaneously the projection of not only personal and social memories but also of our cultural and ideological beliefs. That

is, we perceive by projecting our embedded cultural and ideological beliefs, impacted as these are by our personal memories, fears and desires. In the broad argument here, these all occur within the context of the embedded ideas and practices of the serial magnitudes that have been the cultural framework of the West as these have sought but failed to create a sustainable sympathetic absolute magnitude.

In that context, the *core* dynamic, as it is now playing out in Technology – a regime which has consolidated its failed predecessor magnitudes – is colonising consciousness Our perceptions and beliefs – all cognitive and all of which are the subject of awareness as the content of consciousness – are not only the normalised repository of past serial magnitudes' ideas and practices but also are becoming the realisation of the technological *core* dynamic. That is, as with Beer, a realisation of the coiling, recursive algorithms of generative A.I. which are folding back into social life as knowledge, meaning and behaviour: they acquire inextricable constitutive effects.[61] Analytic processes are working increasingly with data produced in previous analytic steps as ChatGPT and GPT-4 absorb and refashion ever-wider bases of data and set these up as the interpretive social framework. Imagine this as being extrapolated outwards to include all data-led systems and forms of social ordering. Algorithmically defined data loops are already layered into a deep pile – they have already formed into extended data coils – and there is increasingly less space outside from which to pull at the threads to begin any reimagining of social analysis and practice. In this context, the wide and rapid sourcing and folding – as continuously recursive coiling – cannot be easily solved through the "ethical human in the loop" collaboration argument, if at all, under current practices of algorithmic design – much of this through the intellectual property aegis of digital platforms – and proliferation.

As an additional product of this, we see the new generative A.I. metaverse and potentially brain-computer interfacing. These are emerging as extended emanations of a continuously coiling algorithmic ecosystem that are as real as the non-virtual algorithmic ecosystem from which it has emerged. Subjection to these emerging products will not be living in an illusion but in a real – as with Chalmers – emerging, coiling algorithmic landscape of knowledge and meaning which will further extend the colonisation of the contents of our perceptions, our consciousness, our beliefs and our practices. These are merely more immersive versions of the *core* dynamic promoted by the claims of dominant interests – now the digital platforms – that constructed fears and desires will be dealt with on condition of absolutist subjection to them, as means to create a sympathetic absolute magnitude.

Against this background, we can make key observations about – and against – a number of arguments concerning the large language models.

61 See D. Beer "Conclusion: The Centrality of Circulations in Popular Culture" in *Popular Culture and New Media – The Politics of Circulation* 2013 pp. 165–174

Counter arguments regarding L.L.M.s

There are a range of arguments that either run counter to or are inconsistent with the matters just covered.

Moghaddan et al. argue that, with appropriate prompts, large language models can exceed the 85% accuracy necessary to show that these models satisfy the "theory of mind" criteria in regard to understanding human agents' beliefs, goals and mental states and thereby human reasoning.[62] This merely demonstrates is that L.L.M.s are capable of assuming more of the responsibility that a human agent should retain to satisfy their own autonomy, rather than divest that to an L.L.M.: a dubious achievement.

There are also arguments to the effect that, because language and thought are distinct and consciousness is something different from contemporary A.I., L.L.M.s should not be yet considered as prototypically human. That is, on both counts, that the present concerns about L.L.M.s being on the road to supplanting human thought and consciousness are misguided or at least premature. Mahowald et al. acknowledge the present shortcomings of L.L.M.s but argue for their promise in a number of ways: first, that L.L.M.s demonstrate the possibility of learning complex syntactic features from linguistic input; second, that, given a strict separation of language and such non-linguistic capacities of the human mind as mathematics or full reason, we should evaluate these capabilities separately, recognising success in formal linguistic competence even when non-linguistic capabilities lag behind; and finally regarding L.L.M.s as a route to artificial general intelligence (A.G.I.), that instead of or in addition to scaling up the size of the models, more promising solutions will come in the form of modular architectures – pre-specified or emergent – that, like the human brain, integrate language processing with additional systems that carry out perception, reasoning and planning. Here the theme is that L.L.M.s will play a part in the emergence of each of the artificial versions of these proto-human capacities[63] and so a development thst is far from risk-free.

Goff, joining Chalmers, is of the view that L.L.M.s like ChatGPT do not consciously understand the words they produce and so, if thought is the act of conscious reflection, then ChatGPT has no thoughts about anything. Consciousness cannot be observed by identifying its neural correlates, for example through the use of functional magnetic resonance images (f.M.R.I.s) so, currently, neuroscientists need to rely on their subjects' testimony or on external markers of consciousness and there are too many ways of interpreting

62 S. Moghaddam et al. "Boosting 'Theory of Mind' Performance in Large Language Models via Prompting" *Computer Science – Artificial Intelligence* 26 April 2023 pp. 1 and at "Conclusion"

63 K. Mahowald et al. "Dissociating and Thought in Large Language Models: A Cognitive Perspective" *Computer Science – Computation and Language* 16 January 2023 p. 21; see also Irving Wladawski-Berger "Large Language Models: A Cognitive and Neuroscience Perspective" MIT *Cognitive World* online 1 April 2023

the data. Therefore, to argue that near-term descendants of A.I. such as L.L.M.s will be superintelligent and so a major threat to humanity is premature.[64] Goff may well be correct about the differential nature of consciousness but the argument against his position from the broad argument of the present work is not primarily that A.I. will become conscious. It is that, through the development and spread of the coiling algorithmic landscape, humans are more likely to increasingly think in an artificially intelligent manner. This is not a dismissal of the risk of A.G.I., only that there is a more immediate risk at hand.

We may see the force of this point not only in the implications of the work of Beer but also in that of Milano, who understands the challenges of ChatGPT as including not only the production of text that is not easily traceable – so the issue of plagiarism – but also the loss of the skills of logical argumentation and critical thinking. Even more importantly, she identifies the matter of the reliability of source data on which L.L.M.s are trained. Her recommended response is the development of fit-for-purpose educational material, developed in concert with educators and auditable.[65] However, this limiting of the scope of such sources would be resisted as a handicap to the primary purpose of the free-ranging and integrative capacity of L.L.M.s. If such a challenge were successful, then we are back to the problem of the absorption of educational material into the coiling algorithmic ecosystem that we have explored.

This returns us to the significance of generative A.I. for consciousness. For Andreas, these models are not conscious but nor are they merely shallow recognition tools that are unable to learn the true meaning of language. They are able to acquire a significant level of understanding from text and about which we have much to learn regarding their ultimate potential.[66] One way forward in this is the subject of machine consciousness, an embryonic field but one with ultimate significance for the matters being discussed here. That is, if on the one hand, the prospect is seriously emerging that human consciousness will be infiltrated and realigned with the products of generative A.I. through the emerging construction of a recursive algorithmic landscape or ecosystem then, on the other, we need to consider the prospect of the emergence of a characteristically robotic consciousness, with the wide implications that would add to any scenario to be devised by the dominant digital platform interests as a basis for extended claims about the promotion of the technological *core* dynamic.

64 P. Goff "ChatGPT Can't Think – Consciousness is Something Entirely Different to Today's AI" *The Conversation* 17 May 2023

65 S. Milano *et al.* "Large Language Models Challenge the Future of Education" *Nature Machine Intelligence* 5 April 2023 p. 333

66 R. Gordon "MIT CSAIL Researchers Discuss Fronters of Generative AI" MIT News 12 April 2023

Hildt provides an outline of machine consciousness which, in the absence of certainty about its potential existence, proposes its likely difference in kind from that of humans and asks what form of it would be morally relevant. From that, she argues that such machines with morally relevant forms should not be built. This would avoid humans having positive and negative responsibilities towards such machines, that is it would avoid even the simplest form of robotic dominance. They must remain tools and nothing else.[67] It is notable that advances in robotics, especially now under the influence of L.L.M.s, are emerging in the form of heightened skill acquisition and real-world presence and performance.[68] This topic, although embryonic, throws into high relief the importance of taking seriously the foregoing examination of the emerging dominance of generative A.I. and of the algorithmically immersive metaverse.

Summary

Following from the concluding point in chapter 5, where Technology is represented as the latest iteration of the *core* and *serial* cultural dynamics as these have undergone a categoric *transformation*, it has been argued here that the approaching absolutism of Technology is now recognisable in the form of the looming subsumption of individual consciousness. That argument was prepared by illustrating the "soft" nature of consciousness as rooted in the human disposition to neurally embed the cultural framework as the basis of the probability projections that are believed to be crucial to the survival of the individual in fear, but also in the satisfaction of individual desires. This argument separates that cultural framework from the sense of existential reality that is the foundation of consciousness but which is veiled by that framework and those beliefs.

This framework has originary sources in the serial cultural history of the magnitudes – especially given the *consolidation* of precedent magnitudes into the technological schema – and is manifest not only in the disruptions across the social and institutional landscape of the present but is beginning to emerge as a field for the development of both large language models, algorithmic coiling, metaverse and B.C.I. immersion and the prospective human-level artificial intelligence. Together these suggest the strong possibility of a disruptive subsumption of human consciousness and intelligence, especially when considered in the context of the willing, global subjection of very large numbers of citizens to the regimes of the increasingly powerful digital platforms. The concerns that are being raised forcefully do not yet constitute a populism but

67 E. Hildt "The Prospects of Artificial Consciousness: Ethical Dimensions and Concerns" online *AJOB Neuroscience* 14:2 2023 in "What Would Be the Implications of Morally Relevant Forms of Artificial Consciousness"

68 E. Gent "DeepMind's new Self-improving robot is Quick to Adapt and Learn Fresh Skills" *Singularity Hub* 25 June 2023

the seeds of that may be seen to exist in the negative response to the unauthorised capture of personal data by the platforms. The logical presumption is that the realisation of an Absolute Subject is a real prospect.

Nonetheless, we are seeing an expert reaction against any subsumption of conscious belief – albeit belief that denies existential reality – by late Technology but not a reaction that addresses the veiling of that reality. This could carry the seeds of populist disruption. Before that, none of these reactions propose any radical reimagining of these latest technologies, only that they contribute to more sympathetic conditions of existence. Like the myriad of present subjects of well-established digital technologies, we are already in their thrall, in denial. This reinforces the observation that the Absolute Subject is in fact finally a prospect and the consequence of which is the looming likelihood of an existential point of no return. This would be a totalising veil.

In chapter 7 we shall provide illustrations beyond these technologies of the extent to which this thrall – this subjection to the claims of the dominant interests of all failed but persisting magnitudes – has been the source of a long-term substantial denial of a range of existential risks, one that can be seen as a reminder that behind this denial is the causative denial of existential *angst*. Ironically, these existential risks are the creation of the very same magnitudes to which we are in thrall. We are subject to the very magnitudes – due to the claims that our constructed fears and desires will be dealt with through these – that have created these existential risks, so of which we have been, and still largely are, in denial.

In chapter 8, we shall look at the conditions under which citizens may begin to disbelieve the claims of dominant interests and at certain elements of the conditions of existence by which such reality might acquire a positive shape within an individual and social landscape devoid of *core* dynamics.

7 Conditions of Existence

Just as the *complex of dynamics* has been responsible for the creation of the series of magnitudes, for their turbulent failures and for their ultimate collapse into Technology – as it has been for the present disruptions across the landscape – so have they been the reason why there has been a failure to adequately respond to the principal existential risks being faced by communities across the West. The subjection to the former has been the very reason for the latter. In fact, we cannot properly understand this failure to respond except in the context of that subjection.

A series of references has been made to the connection between, on one hand, the denial of the absolutism of existential reality that is at the centre of institutional arrangements across the social landscape of the West and, on the other, the denial of existential risks. Put more forcefully now, the latter is the real-world indicator of the strength and presence of the former. Further than that, this connection will be argued to be an additional illustration of the continuing presence of the originary circumstances – and the continuing presence – of the *complex of dynamics*.

We are now challenged by a range of culturally-produced existential threats, including climate change, nuclear arms, genetically modified artefacts and, as we have seen, the increasing transformation of human cognition and the related emergence of looping algorithms, generative artificial intelligence, virtual reality and brain-computer interfacing because we are deeply invested in the State and the Market and the advancing magnitude of Technology. These risks are real conditions of existence and point to the absolutism of reality. However, the purpose of the *core* dynamic and its derivatives is to veil such reality – and the consequential existential *angst* – for the relative comfort of the cultural formations that displace that reality with constructed fears and desires. Despite the subjection involved in that, there is, therefore, reluctance to take the culturally disruptive step of forcing those formations to turn and directly address the risks they have created. This disinterest is encouraged by the dominant interests heavily invested in these current formations.

This chapter will therefore do several things. It will provide an outline of the nature of the absolutism of reality preferred here – as existential reality – as

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a context for an analysis of the nature and present status of these risks, and it will argue that the current lack of action can be traced back to the functioning of the complex of dynamics, evidenced by the nature of the cultural formations themselves.

That is, contrary to the common explanations for the failure to act – the cost, the uncertainty, the risks to security and so on – this circumstance is best seen as the conundrum that we have created institutional means of Deity, State, Market and now Technology that were and are claimed to protect us from the absolutism of reality and so, although the latter three have themselves created these existential risks, we are reluctant to confront the existential impact of these very institutions due to widespread belief by individuals in their protective function.

The sense of the absolutism of existential reality

The sense given to the absolutism of existential reality here is that being in the world and being fully aware of that – an awareness which the residual belief and practices of the serial magnitudes and of the emerging coiling algorithmic and A.G.I. strategies have overtaken – is immediately an awareness of the full contingency of one's existence. This is not merely the fragility of social and personal relations but ultimately the disposition of the world over which we can ultimately have no ultimate control. It is on this sense of control that science itself is primarily focused, control over the conditions of existence.

This sense of existential anxiety or *angst* can be typically discomforting, so it can not only generate the need to reduce or eliminate the various secondary fears into which it is converted but also trigger the various desires to create an amenable existence within that. This fear and this desire become the basis of subjection to the regimes of the serial magnitudes which veil *angst* and create new, distracting fears that their dominant interests claim to be able to address if one is subject.

One need not go to Heidegger to explore this, although doing so gives a thorough sense of these basic reference points for an ontology of existence. Even if one keeps in mind the critical dialogue between him and Scheler regarding the fundamental ontology, especially regarding the extent to which Heidegger might have been clearer about the influence of Protestant theology on his thought,[1] here we would find an informative account of such notions as *angst*, fear, inauthenticity and care. One is aware of the risks in lightly touching such Heideggerean notions,[2] but nonetheless we can see that *angst* is a sense that everything about "being" is uncanny, and so we do not feel at home

1 *Scheler's Critique of Heidegger's Fundamental Ontology Max Scheler's Acting Persons: New Perspectives* (Ed). Stephen Schneck Amsterdam: Rodopi 2002 pp. 67–92

2 Such considerations are presented in D. Grant *Privacy in the Age of Neuroscience* pp. 128–129, 144 and D. Grant & L. Bennett-Moses *Technology and The Trajectory of Myth* pp.115–123.

in the world.[3] It is not to be confused with fear, which is *angst* that has "fallen into the world" and so is inauthentic. What I fear is an entity or circumstance within the world so what I fear for is always for myself, even if I fear for such others as my family.[4]

Inauthenticity can be referred to as *Dasein*, as the individual being in existence, that has fallen into the "they" world and the averting of this through being as care. Regarding the "they" world: "When one is absorbed in the everyday multiplicity and the rapid succession of that with which one is concerned, the Self is self-forgetful".[5] Care has several aspects, namely anxiety about the future, about providing for someone – especially oneself – or something and including someone who needs help.[6]

From this preliminary set of references, one may see an informant of the elements in the broad argument of the present work: existential *angst*; then derivative "real life" fears, which typically are artificially constructed; and thereby the falling into the desires of the world of the dominant magnitudes and the inauthenticity of that as subjection to that world; but care does persist, typically veiled, as the search for an independent self and care for others that constitute authenticity that is separate from the "they" world of the magnitudes.

Another frame within which to conceive existential reality is the notion of the absolutism of reality as proposed by Blumenberg. That is, to deal with the profound existential anxiety about the "absolutism of reality", humanity has fabricated powerful "calculable magnitudes" or myths in his sense – a god, a nation state, a corporation, a digital platform – first imagined and then the contents of which are gradually constructed as real-world entities. This anxiety emerges from the awareness early in mankind's existence that he "came close to not having control of the conditions of his existence and, what is more important, *believed* that he simply lacked control of them" (my emphasis).[7] This anxiety is not only an originary condition but continues as a condition of existence of humanity over all time, including to the present, and so for each individual.

This "realisation" of the idea of the magnitude is the first step in reducing the anxiety to controllable levels and in the hope of its elimination as this entity is "contractually" engaged by humanity to create sympathetic conditions of existence. For Blumenberg, it was the failure of this "contractual" arrangement regarding Deity that, through inherent human curiosity, a replacement was sought that was not to be a secularisation of Deity but a novel, modern conception with similar qualities to satisfy the same need to eliminate this anxiety.[8]

3 M. Heidegger *Being and Time* Blackwell 1997 189 p. 233
4 M. Inwood *A Heidegger Dictionary* Blackwell 1999 pp. 16, 17
5 *Being and Time* 322 p. 368
6 Ibid. 122 p. 158
7 H. Blumenberg *Work on Myth* MIT 1985 pp. 3–4
8 H. Blumenberg *The Legitimacy of the Modern Age* MIT pp. 27–29

Such was to be the absolute Hobbesian State that was constructed after the devastation and existential anxiety of the Protestant wars.[9]

One manifestation of existential anxiety – never completely veiled – is the commonality of death anxiety across a wide range of psychological maladaptations. That is, in the argument here, anxiety about death is universal – perhaps except for those faithful who carry the belief that they will pass to a blissful afterlife – but the inability to understand and embrace this inevitability is the source of the maladaptations:

> Death anxiety has been argued to be a transdiagnostic construct, underlying various mental health conditions (Iverach quoted). Fears of death have been shown to be highly associated with the severity of numerous disorders, including anxiety disorders, substance use disorders, somatic symptom-related disorders, and depressive disorders (Menzies quoted). Experimental studies further suggest that death anxiety plays a causal role in multiple disorders, including specific phobias, obsessive-compulsive disorder, panic disorder, and more.[10]

Further,

> EA (existential anxiety) is thought to be a universal human experience, yet no published research has been conducted on whether certain personality traits predict higher levels of EA…Results indicate a significant positive correlation between Neuroticism as measured by the NEO-Five Factor Inventory and EA. The Neuroticism N4 Self-Consciousness subscale showed the strongest association with EA…The results suggest that individuals with personality types characterized by elevated levels of shyness, guilt, and inferiority may be more likely to experience elevated EA.[11]

The point here is that, from both philosophical analysis and from the psychological spectrum, existential anxiety is a normal human condition. Many individuals are unable to cope with this realisation. But anxiety does not inevitably convert into a psychological disorder. More commonly, it becomes something that is, once transformed, not only socially acceptable but widely sought:

> In 1974, cultural anthropologist Ernest Becker (proposed the theory) that fear and denial of death exist as the springboard for all human activity. Further supporting Becker's (1973) assertion is the abundance of research generated over the last 25 years derived from terror management

9 *Work on Myth* p. 373–374

10 R. Menzies et al. "Overcoming Death Anxiety: A Phase 1 Trial of an Online CBT Program in a Clinical Sample" *Cambridge University Press* March 2023

11 D. Shumaker et al. "Existential Anxiety, Personality Type, and Therapy Preference in Young Adults" *Journal of Humanistic Psychology* SAGE 2020 p. 1

> theory (TMT) (Greenberg; Pyszczynski and Solomon quoted). TMT begins with the inherent conflict between our biological disposition for survival and our highly-developed cognitive abilities that render us uniquely aware of our inevitable demise. As a result of the existential crisis generated by this conflict, the theory states, humans seek to deny their personal vulnerability to death by embracing that which cannot die. Specifically, humans endorse *cultural worldviews* (my emphasis) – social beliefs and standards that are imbued with value and that become symbolic representations of the self.
>
> Cultural worldviews quell the fear of death not only by providing structure to a seemingly chaotic – and ultimately doomed – existence, but they also hold the promise of immortality. Specifically, TMT distinguishes between traditional pursuits of literal immortality, which manifest as religiosity (i.e. deeply-held beliefs in God and in an afterlife), and desires for symbolic immortality, such as being a creative artist, an influential scientist or a caring parent (e.g. Florian & Mikulincer, 1988). By adhering and conforming to worldview-relevant expectations, individuals bolster their symbolic-self, and become valuable members of the culture in which they live, all of which serves the function of managing – and reducing – their fear of death.[12]

Through this theoretical construct, a way is presented to understand the complexity of the current sources of wide existential threats and responses to these. It is this conflict which plays out in these threats. On the one hand, the existential *angst* that drives the subjection to cultural magnitudes which share the status of symbolic immortality and, on the other, the grudging preparedness to forgo such subjection upon the eventual realisation that these very magnitudes constitute a real and immediate danger that overcomes concerns about existential *angst*. Only when that danger is realised might action to address it be undertaken, although even then this is not certain given the commitment to subjection. If action is demanded, the magnitudes may well be prepared to begin to respond in kind but would do so by claiming this was a demonstration of sympathy, that is without forgoing the search for an absolute status amid the absolutism of reality that these risks represent.

Existential risks

The catalogue of such widespread, if not universal, risks are now well established and well-known. The Centre for the Study of Existential Risk (C.S.E.R.) nominates these as:

12 P. Cozzolino *et al.* "Self-Related Consequences of Death Fear and Death Denial" *Death Studies* DOI: 10.1080/07481187.2013.780110 3 July 2014 pp. 2–3

- Biology, biotechnology and global catastrophic risks
- Extreme risks and the global environment
- Risks from artificial intelligence
- Global justice and global catastrophic risk
- Managing extreme technological risks

The Future of Life Institute (F.L.I.) has a focus on:

- Artificial intelligence
- Biotechnology
- Nuclear weapons
- Climate change

Given the extended account of the risks from artificial intelligence that has been explorede in the present work, we shall focus on the present threats to the environment, from nuclear weapons and from biotechnology in various forms to illustrate the argument here concerning the reasons for the inadequacy of the response to the increasing presence of existential risk.

It is an important distinction to be made that the existential risks we will now consider have a secondary existential status. That is, they are not the existential *angst* that derives intimately from the very nature of conscious existence, as in Heidegger or Blumenberg or Seth. These are existential problems created by the magnitudes that have been constructed to shield humanity from that primal existential *angst*. These are secondary in that sense. Addressing these risks is not a move to embrace existential *angst* so that entities of an entirely different kind can be imagined and constructed.

Climate change

The current state of the factual evidence regarding climate change will be considered, followed by a presentation of the positions of dominant interests in the debate. We shall then look at the popular response to the facts and then at government action. This will conclude with an analytical commentary.

Relevant facts

The Intergovernmental Panel on Climate Change (I.P.C.C.) Synthesis Report (2023) makes a number of headline findings, all supported with detailed explanations. A selection is presented here to make clear not only the criticality of the global situation but also the information that is in the public arena. These posts incorporate an indication of the levels of confidence with which these observations are made:

- human activities, principally through emissions of greenhouse gases, have unequivocally caused global warming, with global surface temperature

reaching 1.1 degrees C above 1850–1900 in 2011–-2020…with unequal historical and ongoing contributions arising from unsustainable energy use, land use and land-use change, lifestyles and patterns of consumption and production across regions, between and within countries, and among individuals (*high confidence*)

- widespread and rapid changes in the atmosphere, ocean, cryosphere and biosphere have occurred. Human-caused climate change is already affecting many weather and climate extremes in every region across the globe. This has led to widespread adverse impacts and related losses and damages to nature and people (*high confidence*). Vulnerable communities who have historically contributed the least to current climate change are disproportionately affected (*high confidence*)
- policies and laws addressing mitigation have consistently expanded since AR5. Global GHG emissions in 2030 implied by nationally determined contributions (NDCs) announced by October 2021 make it likely that warming will exceed 1.5 degrees C during the twenty-first century and make it harder to limit warming below 2 degrees C. There are gaps between projected emissions from implemented policies and those from N.D.C.s, and finance flows fall short of the levels needed to meet climate goals across all sectors and regions (*high confidence*)
- continued greenhouse gas emissions will lead to increasing global warming, with the best estimate of reaching 1.5 degrees C in the near term in considered scenarios and modelled pathways. Every increment of global warming will intensify multiple and concurrent hazards (*high confidence*). Deep, rapid, and sustained reductions in greenhouse gas emissions would lead to a discernible slowdown in global warming within two decades, and also discernible changes in atmospheric composition within a few years (*high confidence*)
- all global modelled pathways that limit warming to 1.5 degrees C (greater than 50%) with no or limited overshoot, and those that limit warming to 2 degrees C (greater than 67%), involve rapid and deep and, in most cases, immediate greenhouse gas emissions reduction in all sectors this decade. Global net zero CO2 emissions are reached for these pathway categories, in the early 2050s and around the early 2070s, respectively (*high confidence*)
- climate change is a threat to human well-being and planetary health (*very high confidence*). There is a rapidly closing window of opportunity to secure a liveable and sustainable future for all (*very high confidence*). Climate resilient development integrates adaptation and mitigation to advance sustainable development for all, and is enabled by increased international cooperation including improved access to adequate financial resources, particularly for vulnerable regions, sectors and groups, and inclusive governance and coordinated policies (*high confidence*). The choices and actions implemented in this decade will have impacts now and for thousands of years (*high confidence*)

- prioritising equity, climate justice, social justice, inclusion and just transition processes can enable adaptation and ambitious mitigation actions and climate resilient development. Adaptation outcomes are enhanced by increased support to regions and people with the highest vulnerability to climatic hazards. Integrating climate adaptation into social protection programmes improves resilience. Many options are available for reducing emission-intensive consumption, including through behavioural and lifestyle changes, with co-benefits for societal well-being (*high confidence*)

These prestigious recommendations, based on hard-tested science and widely disseminated, make clear a number of key points. Foremost, that the level of current risk of the degradation of the human ecosystem is high and is rising and that the causes are manmade. Therefore, far-reaching action across the social infrastructure is required urgently. This will be disruptive, but it will mitigate the threat and return sustainable health to the ecosystem while ensuring fairness to those who are most vulnerable, who have contributed least to the problem and who are least able to mitigate the threat.

Such warnings have been raised for several decades. The first I.P.C.C. Report was delivered in 1990, underlining "the importance of climate change as a challenge with global consequences and requiring international cooperation".[13] There have been five further I.P.C.C. Reports since 1990, repeatedly detailing the challenge. Nonetheless, it might be noted that global coal consumption was to reach a record high in 2023 at 8 billion tons.[14] Global oil production was also to reach a new record in 2023 at 102.3 million barrels per day.[15]

It is noteworthy that a new study of the effect of multiplicative "tipping points" indicates that these events could occur not as predicted in the year 2100 but perhaps as early as 25–70 years earlier, that is as early as 2038. Such tipping points include the melting of the Arctic permafrost and the sudden transformation of the Amazon rainforest into savannah. Thereby, the latest I.P.C.C. Report is too optimistic.[16]

Dominant interests

It is not irrelevant in this debate that political campaign funding in the United States from the coal, oil and gas industries has significantly favoured Republican politicians, who are the most resistant to taking action for mitigation and redress. We are reminded once again here of the argument put by Sheldon Whitehouse.

13 "History of the IPCC" *International Panel on Climate Change* online
14 International Energy Agency online 16 December 2022
15 International Energy Agency online June 2023
16 S. Willcock "Earlier Collapse of Anthropocene Ecosystems Driven by Multiple Faster and Noisier Drivers" *Nature Sustainability* 22 June 2022

The top 50 House recipients of oil and gas donations have received nearly $28 million, including $8.3 million in the 2022 election alone, according to left-leaning advocacy group Public Citizen. Of that sum, $24.2 million found its way to Republicans. Further, three particular Republicans – prominent supporters of the Republicans' *Lower Energy Costs Act*, intended to ease the permission to extract oil and critical minerals, including former Republican House Speaker Kevin McCarthy – have received career-long campaign funding of $6 million from the oil and gas industry. All bar one Republican and four Democrats voted to ensure the Act was passed.[17] Party funding from the coal industry has been reducing from its high of $8 million in 2012–14 to $2 million in 2022, but the Party split has heavily favoured Republicans.[18] Party funding by lobbyists for renewables – which is outstripped 13:1 by the fossil fuel lobby[19] – peaked in 2020 at around $4 million and was heavily weighted in favour of Democrats.

Perhaps in an attempt to protect the exceptionally large and long-term investments by the fossil fuel industry in its products, it is claimed that some creative strategies appear to have been adopted in response to the challenge of renewables. The U.S. Senate Budget Committee held hearings in June 2023 regarding the possibility of oil and gas "dark money" being utilised to delay climate action. The claim is that, in a manner that has been similar to the earlier position of tobacco industry executives, this has principally taken the form – since the 1950s when industry scientists became aware of climate change – of misinformation over a long period, including by influencing scientific research.[20]

The popular response

Amid the shifts in public opinion both towards and away from the need for action to be taken, we can discern some identifiable factors that are significant. First, there has been growing politicisation of the issue within the United States, the United Kingdom, and Australia while in many other parts of the world there has been a growing awareness of the need for an effective response. In those three jurisdictions, right-of-centre voters have grown increasingly sceptical about the validity of the warnings compared to those left-of-centre:

> This is consistent with pervasive "confirmation bias", that is the propensity to seek out and believe information that confirms one's existing views and with the efforts of dominant interests to shape public opinion.[21]

17 K. Evers-Hillstrom *The Hill* 30 March 2023

18 *Open Secrets*, data based on releases from Federal Election Commission 20 March 2023

19 "Fossil Fuel Political Giving Outdistances Renewables 13 to One" *Yale Climate Connections* 2020

20 D. Noor "Senate Examines Role of 'Dark Money' in Delaying Climate Action" *Guardian* 23 June 2023

21 S. Capstick *et al.* "International Trends in Public Perceptions of Climate Change over the Past Quarter of a Century" *Wiley Interdisciplinary Reviews* 6:4 online 2015 at "Conclusion"

This in turn is consistent with the argument that climate change became politicised in those jurisdictions during the 1990s, at the very time that the first I.P.C.C. Reports became available. Chinn et al. found that, by 2017, politicisation in climate change news coverage had increased over time and that mentions of Democrats and Republicans were associated with increasingly polarised language. They noted that the increasing polarisation in news coverage paralleled the increased polarisation of U.S. public opinion on climate change and that, given media and partisan influences on attitudes, the parallel over-time trends were suggesting news coverage as a contributing factor to political divides in public beliefs about climate change.[22]

In this regard, Feldman et al. found from examination of climate change coverage on Fox News, C.N.N. and M.S.N.B.C. during 2007–2008 that Fox was taking a more dismissive tone towards climate change than the other two networks and that the network interviews a greater ratio of climate change doubters to believers: there was a negative association between Fox News viewership and acceptance of global warming. Conversely, viewing C.N.N. and M.S.N.B.C. was associated with greater acceptance of risk from global warming. Interestingly, the views of Republicans – who broadly are predisposed to global warming scepticism – are less sceptical when exposed to information about the reality and urgency of the problem and were shown to be more susceptible to changing their views if exposed to information other than Fox News, while Democrats vary little in their views as a function of cable news use.[23]

This suggests there is a harder core of climate change scepticism among Republicans, who seek out confirmatory opinions. The background to this is the politicisation of the issue in the 1990s. Following the agreement on the Kyoto Protocol (1997), fossil fuel and their allies began to direct significant funding that linked action on climate change to left-wing politics. At that time, 18% of Republicans believed that climate change would affect their lives in their lifetime, and 43% of U.S. citizens believed that. These attitudes have evolved in the meantime, although the differential pattern persists. For example, in 2021 Pew Research found *inter alia* that:

- a majority of Americans (71%) said the U.S. should prioritise development of alternative energy sources over expanding production of fossil fuels but they were closely divided over the phasing out of new petrol-powered cars by 2035 and 64% wanted to use a mix of energy sources, including fossil fuels. Attitudes on these questions differed substantially by generation, with a majority of GenZers (56%) and Millennials (57%) supporting the phase out

22 S. Chinn *et al.* "Politicization and Polarization in Climate Change News Content 1985–2017" *Science Communication* 42:1 2020 p. 125

23 L. Feldman *et al.* "Climate on Cable: the Nature and Impact of Global Warming Coverage on Fox News, CNN and MSNBC" *The International Journal of Press/Politics* 17:1 2011 p. 1

- within Republicans and Republican-leaning independents, younger adults are much less inclined than their older counterparts to support the increased use of fossil fuel energy sources: Gen Z Republicans are 30 percentage points less likely than Baby Boomers and older Republicans (44% vs. 74%) to favour more hydraulic fracturing for natural gas, with similar generational divides among Republicans regarding the expansion of off-shore oil and gas drilling and coal mining[24]

This picture had evolved along similar lines by 2023 but in a manner that shows increasing conflict between the two trends:

> …large shares of Americans support the United States taking steps to address global climate change and back an energy landscape that prioritizes renewable sources like wind and solar. At the same time, the findings illustrate ongoing public reluctance to make sweeping changes to American life to cut carbon emissions. Most Americans oppose ending the production of gas-powered vehicles by 2035 and there's limited support for steps like eliminating gas lines from new buildings.
>
> Republicans and Republican-leaning independents prioritize oil, coal and natural gas development over renewable energy sources and have deep concerns (especially around prices) about what a transition to renewable energy would mean for the country.
>
> Despite (their) favourable stance toward climate action and renewable energy, 51% of Democrats oppose phasing out fossil fuels altogether, saying instead, that oil, coal and natural gas should continue to be part of the mix of energy sources the country relies on

and all this in the context that

> 69% of Americans say they've experienced at least one of the five types of extreme weather in the past year: long periods of unusually hot weather (45%), severe weather such as floods or intense storms (44%), droughts or water shortages (33%), major wildfires (18%) and rising sea levels that erode beaches and shorelines (16%).[25]

These findings by Pew Research are generally in line with those of Yale University, but the latter add interesting data regarding the issue of fatalistic beliefs:

24 "Key Findings: How Americans' Attitudes about Climate Change Differ by Generation, Party and Other Factors" *Pew Research* 26 May 2021

25 "Majorities of Americans Prioritize Renewable Energy, Back Steps to Address Climate Change" *Pew Research* 28 June 2023

- about two-thirds of Americans (66%) disagree with the statement "it's already too late to do anything about global warming" while only 13% agree
- a majority of Americans (57%) disagree with the statement "the actions of a single individual won't make any difference in global warming" while 42% agree
- a majority of Americans (56%) disagree with the statement "new technologies can solve global warming without individuals having to make big changes in their lives" while 44% agree[26]

Government action

One interesting view about the reason for the Republican resistance to climate action is that it is an issue that has been caught up in U.S. culture wars. That is, that it has become associated by the right-leaning political forces with the mix of views held by liberals and social progressives that include social justice, gender and race and other "woke" issues. In that context, the election of a black President Obama in 2008 became a trigger factor.[27] By contrast, there had been overwhelming bi-partisan support for environmental reform with the passing of the Clean Air Act in 1990 to deal with urban smog, loss of atmospheric ozone and the threat of acid rain.

However, the Biden Administration's *Inflation Reduction (I.R.A.) Act* (2022) – focussing principally on climate action, with some provisions for health care reform – did not receive one Republican vote in support, even from Republicans who had a record of climate action. The *I.R.A.*, among other initiatives, provided $400 billion in tax incentives, grants and loan guarantees for clean electricity and clean transportation initiatives; $12 billion to upgrade, repurpose or replace energy infrastructure; $43 billion to make electric vehicles, energy-efficient appliances, rooftop solar panels, geothermal heating and home batteries more affordable; and other initiatives totalling around $500 billion in value.[28]

Despite some agreement on certain aspects of the Act, the public response is largely partisan:

> A majority of Republicans and independents who lean to the GOP (82%) say Biden's climate policies are taking the country in the wrong direction. Among Democrats and Democrat leaners, most say Biden is moving the country in the right direction on climate policy (79%).

26 A. Leiserowitz *et al.* "Climate Change in the American Mind: Beliefs and Attitudes, Spring 2023" *Yale Program on Climate Change Communication* 8 June 2023

27 A. Hoffman "Climate Science as Culture War" University of Michigan *SSRN* 2012; P. Krugman "Why Republicans Turned against the Environment" *New York Times* 15 August 2022

28 "The Inflation Reduction Act: Here's What's in It" *McKinsey & Company* 2022

> But in a sign of Democratic frustration with progress in tackling climate change, there's discontent within the party even among those who say Biden's policies are taking the country in the right direction. Among Democrats who back the direction of the Administration's climate policies, 61% say the Administration could be doing a lot more on climate, far fewer (37%) say they are doing about as much as can be expected.

However, there is some leakage on the Republican side of the response:

> The survey, fielded before the Supreme Court's decision limiting the EPA's authority to regulate power plant emissions, finds 72% of Americans favour requiring power companies to use more energy from renewable sources, like wind and solar, and 68% back taxing corporations based on the amount of carbon emissions they produce. Partisan groups are more pronounced on these approaches to reduce the effects of climate change, but they are not absolute. About half of Republicans – including majorities of moderate Republicans – say they favour these approaches to limiting emissions, as do most Democrats.[29]

Despite this, in mid-late 2023, Democrats and Republicans are deeply divided on the causes of extreme weather:

> Nearly 150 million Americans were under heat alerts Tuesday, after July marked the planet's hottest month on record. Devastating downpours dumped two months of rain on Vermont in two days. Smoke from Canadian wildfires choked East Coast skies, causing the worst air quality on record for some locations. And Hawaii is reeling from the deadliest U.S. wildfire in a century.
>
> Yet while there is wide public concern over extreme weather, Americans are divided – along partisan lines – on whether climate change is helping to drive these events, according to a Washington Post-University of Maryland poll…when asked if they think climate change is a major factor in those extremely hot days, 35 percent of Republicans and Republican-leaning independents say it is, compared with 85 percent of those who lean Democratic. Overall, 63 percent of Americans who experienced extremely hot days say climate change is a major factor.[30]

29 "Americans Divided Over Direction of Biden's Climate Change Policies" *Pew Research* 14 July 2022

30 A. Ajasa *et al.* "Democrats and Republicans Deeply Divided on Extreme Weather, Post-UMD Poll Finds" *Washington Post* 23 August 2023

Comment

There have been attempts to come to an understanding of the mix of these varying factors. In essence, to explain the increasingly obvious contradiction between, on the one hand, that there is now widely-known, incontrovertible evidence for serious climate deterioration and, on the other, persistent rejection of central elements of the causes of this deterioration.

One coherent argument for the lack of popular motivation to take strong action is that there are psychological factors at play. These include temporal discounting, the disposition to overvalue short-term benefits relative to benefits in the long-term. This has apparent benefits for individuals, where there is no apparent need to change one's car or install solar; for corporations, so that there is no apparent need to develop new processes to reduce carbon emissions in manufacturing; and for governments, who can choose to continue to rely on the generation of combustion power. It also includes linear accounting, where there is a tendency to isolate and accommodate short-term costs and ignore long-term accumulative and compounding costs, such as that which occurs with smoking. Third, construal level theory indicates that any threat that is not locationally immediate – in space, time and social distance – tends to be understood more abstractly and so draw lower motivation. Finally, the uncertainty of future events allows sceptics to downplay the inevitability of climate change.[31]

These psychological factors are complemented and overlapped by explanations concerning structural arrangements which we have considered, that typically reinforce these as forms of obstruction. For example, it has been observed that three forms of obstruction have been common in the climate debate. First, the denial of and attempts to undermine scientific evidence; second, where science is accepted but vested – dominant – interests orchestrate inaction and delay; and third, the presence of hierarchies and values which encourage citizens to continue to persist in the comfort of established ways of life.[32]

Such factors are no doubt at play. However, the argument here is that the determining factors go much wider and deeper and influence human psychology more thoroughly and fundamentally. They go to the heart of the existential reference of *core* dynamic and its derivatives. As a pointer, Republicans tend towards an absolutist Market State and Democrats seek the Market State – not to be dismantled – but to be tempered to establish satisfactorily sympathetic conditions of existence for those who are subject, as we saw above regarding the respective policies of the Trump and Biden administrations,

31 A. Markman "Why People Aren't Motivated to Address Climate Change" *Harvard Business Review* 11 October 2018

32 K. Ekberg, B. Forchtner, M. Hultman and K. Jylha *Climate Obstruction: How Denial, Delay and Inaction are Heating the Planet* Routledge 2022 Ch. 1; K. Ekberg and V. Pressfeldt "A Road to Denial: Climate Change and Neoliberal Thought in Sweden 1988–2000" *Cambridge University Press* online 10 November 2022 at "Conclusion"

irrespective of the populist pronouncements of the former. In short, if one is a Republican then climate risk is more easily denied since one's primary interest is to preserve the dominance – even absolutist tendencies – of the Market State upon which American prosperity is argued to have been long based and even though that State is a source of the climate crisis. If one is a Democrat, one does not want the dismantling of the Market State but one does want constraint imposed by the residual State on the Market to preserve prosperity while ensuring a transition to Market practices that are more environmentally sympathetic. This is, on the one hand, the continuing subjection to the claim that the Market State regime protects one from veiled, primary existential risk and satisfied one's necessary conditions of existence, and, on the other, the beginning of the acceptance that this regime has become the cause of a new, pressing form of existential risk and the acceptance of the need to strongly constrain the absolutist version of that risk-embracing regime. These are variations of the *core* dynamic.

Nuclear weapons

Having been a problem of global significance, especially in the Cold War environment, we now find that nuclear weapons have emerged again as a threat to the world order in the early twenty-first century. They constitute a global existential risk.[33]

Relevant facts

Since the Manhattan Project was initiated in 1942 to develop nuclear weapons, which led to the bombings on Japan and helped end World War II, there has been a concerted effort to limit their proliferation. That effort began in 1946 with the call for their elimination by the United Nations, emphasised by the Einstein-Russell manifesto regarding the dangers of nuclear war. This was followed by a Partial Test Ban Treaty in 1963 and the Nuclear Non-Proliferation Treaty in 1968, by which non-nuclear States agreed never to acquire nuclear weapons and nuclear-weapon States agreed to disarm. In 1967, the U.S. and the Soviet Union signed the Intermediate-Range Nuclear Forces Treaty to eliminate land-based missiles with ranges between 310–3110 miles. In 1996, the Comprehensive Test Ban Treaty was signed by China, France, the U.K., Russia and the U.S.[34]

Despite all this and the declaration of nuclear-free zones in various parts of the globe in the intervening and following periods, the presence and

33 A. Taylor "'Disturbing' Decline in Global Nuclear Security, Watchdog Says" Washington Post 20 July 2023, referring to a 2023 Report by the non-profit Nuclear Threat Initiative

34 "The Road to a World Free of Nuclear Weapons" *International Campaign to Abolish Nuclear Weapons (I.C.A.N.)* online

availability of nuclear weapons are at least as significant a threat to world peace as they have ever been. The Stockholm International Peace Research Institute (S.I.P.R.I.) has reported that the number of operational nuclear weapons started to rise in 2023 as countries such as the U.S., Russia, the U.K., France, China, India, North Korea and Israel progressed long-term force modernisation and expansion:

> Of the total global inventory of an estimated 12,512 warheads in January 2023, about 9576 were in military stockpiles for potential use – 86 more than in January 2022. Of those, an estimated 3844 warheads were deployed with missiles and aircraft, and around 2000 – nearly all of which belonged to Russia or the USA – were kept in a state of high operational alert, meaning that they were fitted to missiles or held at airbases hosting nuclear bombers.
>
> Russia and the USA together possess almost 90 per cent of all nuclear weapons. The sizes of their respective nuclear arsenals (i.e. usable warheads) seem to have remained relatively stable in 2022, although transparency regarding nuclear forces declined in both countries in the wake of Russia's invasion of Ukraine in February 2022.[35]

That is, the background to these rising concerns has been that the Russian invasion of Ukraine in February 2022, a self-justificatory move on the part of President Putin in an apparent attempt to begin the nostalgic, violent re-assembly of the Russian Empire.[36] There was an immediate suspension by the U.S. of the bilateral stability dialogue with Russia. One year later, Russia suspended its participation in the 2010 Treaty on Measures for the Further Reduction and Limitation of Strategic Offensive Arms. This was the only treaty limiting arms control in the U.S. and Russia. Since then, Putin has announced the transfer of nuclear weapons to the State of Belarus, adjacent to Ukraine.

Dominant interests

On the other side of this confrontation, that is, of this contest between dominant inter-State interests, is the strategic rationale of the United States. There, significant pressure exists to maintain, if not grow, nuclear capacity and there is a formidable association between those corporations that manufacture arms and the Department of Defence to participate in this.

It has been reported that defence corporations expend millions annually in lobbying politicians in the U.S. and donating to their election campaigns. In

35 *States Invest in Nuclear Arsenals as Geopolitical Relations Deteriorate* Stockholm International Peace Research Institute 12 June 2023 online

36 C. Shinar *Vladimir Putin's Aspiration to Restore the Lost Russian Empire* Cambridge Core Online 29 September 2017

the past two decades, $25 million has been directed to such campaigns. Since 2000, their lobbyists have distributed $285 million in campaign contributions and $2.5 billion in lobbying to influence defence spending. To promote these strategies, 200 lobbyists who worked for the same government that regulates and decides funding have been employed. Of the 200 corporations that registered as lobbying the U.S. government in 2000, the top 5 account for 50% of industry lobbying and the top 15 distribute 75% of the lobbying money.

The 5 biggest spenders in 2020 were Lockheed Martin, Boeing, Northrop Grumman, Raytheon Technologies and General Dynamics, who together spent $60 million.[37] The U.S. Department of Defence reported in 2022 that the corporations that received the largest allocations of government funding in fiscal year 2021 were Lockheed Martin ($39.2 billion), Boeing ($23.6 billion), Raytheon Technologies ($21.4 billion), General Dynamics ($16.9 billion) and Northrop Grumman ($15 billion).[38] They all produce nuclear weapons.

Government policy

Contemporary U.S. Government policy is fraught, due to the invasion of Ukraine and to the strong nuclear posturing by Russia. This conflicted situation is reflected in several concurrent developments: the announcement by Biden during the 2020 election campaign that "the US does not need nuclear weapons" and he would "work to maintain a strong, credible deterrent while reducing our reliance and excessive expenditure on nuclear weapons"; by the plea from 55 Democrat senators and representatives at the time of his 2022 Nuclear Posture Review for Biden to honour his statement to reduce nuclear weapons and revive arms control;[39] and by Biden's attempt to deal with these conflicting influences by both deploying the US nuclear arsenal more widely while increasing the budget for its modernisation but apparently without increasing the number of warheads[40] and at the same time increasing overall defence spending by $71 billion in 2022 over 2021 so that Ukraine could be provided with increased military capacity.[41] Further allocations to Ukraine have been made.

For their part, the Republican Party pronounced publicly at the time of the Nuclear Posture Review that reports:

37 D. Auble "Capitalizing on Conflict – Part One: How Defense Contractors and Foreign Nations Lobby for Arms "Sales *Open Secrets* 25 February 2021

38 U.S. Department of Defense "DOD Releases Report on Defense Spending by State in Fiscal Year 2021" 20 October 2022

39 J. Borger "Democrats Urge Biden to Keep Pledge to Limit Nuclear Weapons" *Guardian* 26 January 2022

40 Stockholm International Peace Research Institute report; "Projected Costs of U.S. Nuclear Forces, 2021–2030' *Congressional Budget Office* May 2021 online

41 "The United States Spends More on Defense than the Next Ten Countries Combined' *Peter G Petersen Foundation* 24 April 2023

> that the Biden administration is considering abandoning long-overdue and much-needed improvements to our nation's nuclear deterrent – when China is massively expanding its nuclear arsenal, North Korea is flagrantly violating UN sanctions on its missile program, and Russia is poised to launch the largest invasion in Europe since World War II – are profoundly concerning, and if true, would only invite further aggression.[42]

The context for these varying positions – but which converge on the minimum government position of sustaining nuclear arms in a volatile global political environment – is affirmed by the Office of the Director of National Intelligence, which assessed two major threats for 2023. That is, intersecting with the set of global challenges constituted by climate change, health, and energy and food security, stands the strategic challenge:

> (The) great powers, rising regional powers, as well as an evolving array of non-state actors (will) vie for dominance in the global order, as well as compete to set emerging conditions and the rules that will shape that order for decades to come. Strategic competition between the United States and its allies, China and Russia over what kind of world will emerge makes the next few years critical to determining who and what will shape the narrative, perhaps most immediately in the context of Russia's actions in Ukraine, which threaten to escalate into a broader conflict between Russia and the West.[43]

The popular response

As a pointer to the response by citizens to these prevailing circumstances, the regular Council on Foreign Relations survey of experts in international politics shows that the top-tier risks with the potential to involve nuclear armaments are:

- an escalation of the armed conflict in Ukraine resulting from the employment of unconventional weapons, spillover into neighbouring countries (including cyberattacks on critical infrastructure) and/or the direct involvement of NATO members
- an acute security crisis in Northeast Asia triggered by North Korea's development and testing of nuclear weapons and long-range ballistic missiles
- a military confrontation between Israel and Iran over Iran's nuclear programme and its continued support for militant groups in neighbouring countries[44]

42 B. Bender and C. O'Brien "Top GOP Hawks Warn Biden against Nuclear Cuts" *Politico* 13 January 2022

43 "Annual Threat Assessment of the U.S. Intelligence Community" *Office of the Director of Intelligence* 6 February 2023

44 "Great Power Conflict and Development of Nuclear Weapons Are the Top Global Concerns for 2023, CFR Survey Finds" *Preventive Priorities Survey* Centre for Preventive Action, Council on Foreign Relations 4 January 2023

That background goes some – but certainly not all – of the way to explaining the attitude of U.S. citizens towards the Russian invasion of Ukraine in March 2022. Surveyed shortly after the invasion:

> …most Americans (62%) said they would oppose the U.S. "taking military action even if it risks a nuclear conflict with Russia". About a third (35%) of Americans said they would favour military action in this scenario. Comparable shares in both parties (36% of Republicans, 35% of Democrats) said they would favour military action even if it risks nuclear conflict with Russia.[45]

These outcomes may be compared with similar survey results in Europe:

> In the past, the European public has not been enthusiastic about nuclear deterrence and the stationing of US American nuclear weapons in Europe. Has the Russian invasion of Ukraine changed that aversion? We conducted a unique study, surveying the same population of respondents (in Germany and the Netherlands) at two points in time – in September 2020 and in June 2022. We find that European respondents became much more hawkish after the invasion: nuclear deterrence was viewed more favourably, the willingness to use nuclear weapons increased, and support for the withdrawal of nuclear weapons dropped significantly.[46]

Both sets of data reveal a fundamental shift in attitudes away from those expressed in 2004 and 2017 respectively. Regarding the former (2004), historical polls catalogued by the Roper Center for Public Opinion at Cornell University indicate that U.S. support for nuclear weapons in the 1950s dissipated as the Cold War dragged on. Later polling revealed that – with 9 nuclear-armed States – 86% of Americans wanted action on nuclear disarmament (2004) and 65% support permanently banning U.S. nuclear weapons testing (2017).[47] These are sentiments are echoed today by such organisations as the Union of Concerned Scientists and the Committee for Nuclear Responsibility.

The key factor in these differential shifts has been, especially, the three factors referred to regarding the changed global order. In the post-Cold War environment, the sentiment for the majority of Democrats was that the proliferation of such weapons was itself a threat to personal security so there was a response to both limit and reduce these by agreement among the nuclear

45 "Public Expresses Mixed Views of US Response to Russia's Invasion of Ukraine" *Pew Research* 15 March 2022

46 M. Onderco *et al.* 'Hawks in the Making? European Public Views on Nuclear Weapons Post-Ukraine" *Global Policy* February 2023 p. 1

47 J. Baron, S. Herzog "Public Opinion on Nuclear Energy and Nuclear Weapons: The Attitudinal Nexus in the United States" *Energy Research and Social Science* 68 2020 p. 3

powers while relying instead on the claimed protective capacity of the State to ensure security by other means. What caused the shift back was the understanding that such agreements had broken down and the State needed to be able to use all necessary force when it became undeniable that Russia, North Korea and Iran States were themselves the source of existential risk. That is, to constrain the State by limiting the threat of these weapons at times of relative stability but increase the capacity of the State when risk increased. Neither response moved away from a belief in the claim that the State is the pre-eminent form of security in the West.

The majority of Republicans, on the other hand, never shifted significantly away, throughout this entire period, from the belief in a State with near-absolutist power. In short, the public response has been directly determined by the variation over time of the nature of the existential nuclear threat and that has translated directly into views about whether the State should be near-absolutist or constrained. This was the *complex of dynamics* in operation, therefore no attention has been given to the foundational existential *angst* that is the source of the entire problem. That is, this is a predictable response in the context of the *complex*, and so with no acknowledgement of the underlying factors determining the entire scenario.

Biotechnology

We shall focus here on a selection of the relevant facts about the nature and proliferation of varieties of genetic modification and certain of the risks that flow from this. We shall then look at a range of the arguments that are put on behalf of the benefits of such modification, especially by dominant interests, and at a range of the public attitudes towards this. We shall then propose an explanation for the fact that there has been no effective, long-term opposition to what is regarded as these existential threats.

One reason for considering genetic modification as existentially risk-laden is the position taken by both the Centre for the Research of Existential Risk and the Future of Life Institute in this regard. The Centre for the Study of Existential Risk (C.S.E.R.) pronounces its purposes regarding biotechnology as working to understand how present and future catastrophic biological risks can be mitigated or prevented through good governance and a better understanding of the systemic and interdependent nature of extreme risks. The Future of Life Institute (F.L.I.) is concerned about the genetic tools that are shaping and repurposing the properties of living cells, plants and animals. That is, where the tools being developed to extend and save lives could end with the opposite result, whether through unintended consequences or by malicious intent.

Genetic modification and the concerns it raises have emerged in various forms. The C.S.E.R. focusses in particular on research cultures, their governance and regulation; cyberbiosecurity; emerging biotechnologies and the military; and health and infectious disease. The attention of the F.L.I. is directed

at such activities as D.N.A. sequencing, synthetic biology, recombined or recombinant D.N.A. and genome editing.

Relevant facts and risks, interests and public response

Regarding the dimension of the *biotechnology* market *in toto*, there has been rapid growth across a range of these applications: in bio-pharmacy, bio-industries, bio-services, bio-agriculture and bio-informatics. Some of the key technologies include tissue engineering; nanobiotechnology for drug cancer detection and drug delivery; and D.N.A. sequencing to identify mutated genes. The result has been that there has been growth in value from $1,087.46 billion in 2021 towards a projected $3,210.71 billion in 2030.[48] The field is therefore rich in ongoing opportunities for dominant interests, who are already heavily invested.

However, there are significant gaps in global biotechnology governance that result from this rapid nature of biotechnological development, from the effect of misinformation and from the impact on biosafety due to a lack of audit funding. That is, the speed of biotechnological development can lead to an inappropriate regulatory framework, allowing misinformation – such as the false accusations by Russia about the existence of dangerous laboratories in Ukraine – which can raise false alarms. These are not being countered due to underfunding, leading to the risks produced by inadequate laboratory practices.[49]

These governance and funding issues have been highlighted, for example, at a field operational level in bio-agriculture by concerns expressed by the British National Farmers' Union that, owing to lax post-Brexit border controls on agricultural imports, Britain was in danger of a "disastrous food scandal". "We are seeing little or no checks on imports that are coming in from the EU. We have the massive risk of African swine fever in Europe and to not be investing in our defences for keeping our biosecurity and animal and plant health safe, I think is just a dereliction of duty."[50]

At the level of core laboratory research, the governance issue is as real but rarely publicised:

> At biological research facilities across the United State and around the world, hundreds of safety breaches happen every year at labs experimenting with dangerous pathogens. Scientists and other lab workers are bitten by infected animals, stuck by contaminated needles and splashed with

48 "Biotechnology Market by Application and by Technology" *Precedence Research* online July 2023

49 "Managing the Risks of Biotechnology Innovation" *Council on Foreign Relations* 30 January 2023

50 F. Harvey "UK Risks Disastrous Food Scandal Due to Lax Post-Brexit Border Controls – NFU Chief" *Guardian* 17 February 2023

> infectious fluids. They are put at risk of exposure when their protective gear malfunctions or critical building biosafety systems fail.
>
> And, like all humans, the people working in laboratories make mistakes and they sometimes cut corners or ignore safety procedures – even when working with pathogens that have the potential to cause a global pandemic. Yet the public rarely learns about these incidents, which tend to be shrouded in secrecy by labs and the government officials whose agencies often both fund and oversee the research.[51]

The far worst example of this kind of scenario related to the manner in which the absolutist Chinese regime reacted to the emergence of COVID:

> In the first weeks of 2020, a radiologist at Xinhua Hospital in Wuhan, China, saw looming signs of trouble. He was a native of Wuhan and had 29 years of radiology experience. His job was computer tomography (CT) scans, looking at patients' lungs for signs of infections. And infections were everywhere. "I have never seen a virus that spreads so quickly", he told a reporter for the investigative magazine Caixin. "This growth rate is too fast, and it is too scary". "The CT machines in the hospital were overloaded every day", he added. "The machines are exhausted and often crash."
>
> But this tableau of chaos was hidden from the Chinese people – and the world – in early 2020. Chinese authorities had acknowledged on Dec. 31, 2019, that there were 2 cases of "pneumonia of unknown origin" and 44 confirmed cases on Jan. 3, 2020. The Wuhan health commission reported 59 cases on Jan. 5, then abruptly reduced the number to 41 on Jan. 11, and claimed there was no evidence of human-to-human transmission or any signs of doctors getting sick.
>
> That claim was a lie. The coronavirus was running rampant. Doctors at the radiologist's hospital, and other hospitals, were getting sick. But China's Communist Party leaders prize social stability above all else. They fear any sign of public panic or admission that the ruling party-state is not in control. The authorities in both Wuhan and Beijing kept the situation secret, especially because annual party-political meetings were being held in Wuhan, the capital of Hubei province, from Jan. 6 to Jan 17.[52]

The ultimate global cost of the exercise of dominant interests and the subjection these enforced through a widely absolutist State – in the face of pleas at

51 A. Young "Dangerous Lab Leaks Happen Far More Often Than the Public Is Aware' *Guardian* 30 May 2023

52 Editorial Board Opinion "In Wuhan, Doctors Knew the Truth. They Were Told to Keep Quiet" *Washington Post* 22 August 2023

the initial stages for a response that was sympathetic for citizens – has so far been 6.9 million deaths from 769 million cases, beyond the full range of other social and economic costs.

The global *synthetic biology* market had a revenue of $11.4 billion in 2022 and is projected to reach $35.7 billion by 2027, growing at a C.A.G.R. (compound annual growth rate) of 25.6% from 2022 to 2027. This market is being boosted by the decreasing cost of D.N.A. sequencing and synthesising and increased government funding for synthetic biology research. Primary beneficiaries of the very high growth in investment in research – including by digital platforms – are companies that seek market domination in food, pharmaceuticals, agriculture, medicine and industrial chemicals.[53]

Synthetic biomedicine research has grown due to the declining effectiveness of antibiotics, the rising incidence of cancer and H.I.V. The application of A.I. and machine learning techniques has been central to these developments.[54] Synthetic biotechnological products include synthetic changes to viruses, bacteria, yeasts, plants and animals to provide them with useful new characteristics, for example in disease control, for new foods or medicines and for other purposes:

> Synthetic biology can modify or create organisms to help address challenges in medicine, agriculture, manufacturing and the environment. This technology is already being used for commercial products and recent advances in biotech and computation have broadened its potential benefits. But it may also raise safety, national security and ethical concerns.[55]

That is, synthetic biology is a multidisciplinary field of biotechnology that involves engineering the genetic material of organisms – such as viruses, bacteria, yeast, plants or animals – to have new characteristics. It is claimed to have the potential to create useful changes in crops, improved drugs, better gene editing, stronger materials and more efficient industrial processes.[56] Scientists are also exploring the use of synthetic biology to address environmental challenges by engineering organisms to use carbon dioxide, produce biofuels for vehicles and transform methane into biodegradable plastics.

53 "Top 10 Synthetic Biology Companies" *Genetic Engineering & Biotechnology News* 2 July 2021

54 Synthetic Biology Market by Tools (Oligonucleotides, Enzymes, Synthetic Cells), Technology Genome Engineering, Bioinformatics), Applications (Tissue regeneration, Biofuel, Food, Agriculture, Consume Care, Environmental) & Region – Global Forecast to 2027 *Synthetic Biology Market* online 4 May 2023

55 "Science and Tech Spotlight; Synthetic Biology" *U.S. Government Accountability Office* 17 April 2023

56 R. Chowdhry *et al* "Enhancing CRISPR/Cas Systems with Nanotechnology" *Trends in Biotechnology* online 12 July 2023

Synthetic biology has been part of food production since at least 2014 – following the introduction of G.M.O.s in 1996 – and, in the context of climate change, is presently attracting much attention in relation to such synthetic products as meat, milk and sugar.[57]

One emerging concern is the potential damage that can result from the release – intentional or unintentional – of synthetic organisms into the environment. These can mutate or combine with other organisms by cross-breeding to create bio-errors. This potential damage is a focus of research by both the C.S.E.R. and the F.L.I.[58] As the Council on Foreign Relations notes:

> Regulating access to biological pathogens is challenging by nature. With the exception of variola virus (smallpox) or 1918 influenza, most pathogens that have been previously weaponised, including *Bacillus anthracis*, the causative agent of anthrax disease, or *Francisella tularensis*, which causes tularemia, are found in the wild and routinely cause disease in animals and humans all over the world. The advent of synthetic biology tools makes regulating access to pathogens even more challenging. Using gene synthesis tools, the genetic material encoding pathogens can be chemically synthesised (or ordered from a company that specialises in synthesising long stretches of genetic material), and the genetic code can be "booted up" in a laboratory.

An equally problematic, related field is that of *cyberbiosecurity*, the emerging field focused on addressing the potentially malicious destruction and exploitation of data, processes and material located at the interface between the life sciences and the digital field. It has been described as a hybridised discipline at the interface of cybersecurity, cyber-physical security and biosecurity:

> Initially we define this term as understanding the vulnerabilities to unwanted surveillance, intrusions and malicious and harmful activities which can occur within or at the interface of comingled life and medical sciences, cyber, cyber-physical, supply chain and infrastructure systems, and developing and instituting measures to prevent, protect against, mitigate, investigate and attribute such threats as pertain to security, competitiveness and resilience.[59]

Areas of concern include the privacy of patient data, the security of public health databases, the integrity of diagnostic test data, the integrity of public

57 X. Lv *et al.* "Synthetic Biology for Future Food: Research Progress and Future Directions" *Future Foods* 3 June 2021

58 L. Sundaram *et al.* "Synthetic Biology Regulation in Europe: Containment, Release and Beyond" *Synthetic Biology* 8:1 2023 through Oxford Academic and C.S.E.R.; T. Davey "Benefits and Risks of Biotechnology" *Future of Life Institute* 14 November 2018

59 R. Murch *et al.* "Cyberbiosecurity: An Emerging New Discipline to Help Safeguard the Bioeconomy" *Frontiers in Bioengineering and Biotechnology* 6 2018 p. 1

biological databases, the security implications of automated laboratory systems, disease surveillance and outbreak management data and the security of proprietary biological engineering advances.

An indication of the depth of the concern held around this new field has been the announcement of a new biological security strategy (N.B.S.S.) by the British Government in response to the convergence of bioscience and A.I., which has been seen as paving the way for automated approaches to biology, thereby creating new cyberbiosecurity risks. The plan is for a new national biosurveillance network that would connect syndromic, epidemiological and promising environmental surveillance capacities, including sensors capturing data from wastewater and the air. This data would flow from the network into the National Situation Centre's proposed biothreats radar, providing a comprehensive picture of known and nascent biological threats.[60]

Such a threat assessment and response approach connects with the manner in which *the military and biotechnologies* relate. The principal investors include Defence Advanced Research Projects Agency (D.A.R.P.A.) and venture capital corporations like Altos Labs and Shield Capital.[61]

This issue is a concern for the C.S.E.R. beyond its already publicly stated concern about the application of military artificial intelligence as a contributor to global catastrophic risk in the forms of Swarm Lethal Autonomous Weapons Systems and the intersection of A.I. and nuclear weapons deployment.[62] There is a wide variety of biotechnological products with potential for lethal military application. At the relatively mundane level, these include fuels, chemicals and construction materials but also environmental sensors, wearable technology and materials with novel properties. At the more imaginative level, these would include the biotechnological destruction of human bodies in war, reversible wounds, as well as specificity and control in wounding. These differ from the mass destruction strategies that characterise traditional biological weapons.[63]

In the development of these, a key driver in advancing biotechnologies is the expanding application of computing power to D.N.A. There, access to genetic data will be a crucial resource.

60 A. Patel "UK Warns on Cybersecurity Risks in New Paper – Amid Synthetic Biology, AI Fears" *The Stack* gov.uk online 13 June 2023

61 R. Bradbury "VCs Inject $3.2bn into Defense-focused Biotechnology" *Pitchbook News & Analysis* 30 May 2023; T. Marler & D. Gerstein "Biotechnology and Today's Warfighter" *TheRandBlog* 25 October 2022

62 M. Maas *et al.* "Military Artificial Intelligence as Contributor to Global Catastrophic Risk" *Centre for the Study of Existential Risk* 27 May 2022

63 "DOD Releases Biomanufacturing Strategy" *US Department of Defence* 22 March 2023; "Ultramicro, Nonlethal and Reversible – Looking Ahead to Military Microbiology" G. Ji-Wei People's Liberation Army, China published in the U.S. *Military Review 1922–2023* Director's Select Article

> As one DARPA director warned a decade ago, these techniques will eventually be used not only to create life-saving therapies and new materials but also to engineer micro-organisms to do bad things…Synthetic biology techniques probably increase this risk by driving down costs and improving targeting capabilities. The same technologies that will enable increasingly personalised medicine raise the risk of personalised pathogens too.

Also

> Worryingly, a recent report from the US National Academies concluded that weapons targeted towards a specific group's genome "were not technically feasible yet (but) will require continual monitoring". That's one reason why in last year's defence budget legislation, the US Congress set up a National Security Commission on Emerging Biotechnology. Several influential, tech-savvy legislators have been appointed to the commission.[64]

Meanwhile, the Biden Administration released in 2022 its plan for an upgraded focus on the US bioeconomy, wherein the Director of National Security is to work closely with the Department of Defense to assess technical applications of biotechnology and biomanufacturing that could be used by a foreign adversary for military purposes or that could otherwise pose a risk to the United States. To support these objectives, 'the DNI shall identify elements of the bioeconomy of highest concern and establish processes to support ongoing threat identification and impact assessments.[65] As a complement to this, the Defense Advanced Research Projects Agency's $US4.1 billion request for 2023 prioritises technologies 'critical' for the Pentagon, including microelectronics, biotechnology and artificial intelligence.[66]

The investigation and amendment of the *human genome* is of fundamental significance, bearing both apparently endless opportunities and great risk.

Human genome research received its primary significant boost from the establishment of the Human Genome Project, established during the G.H.W. Bush administration in 1990. This was a project of international scientific collaboration and generated the first sequence of 92% of the human genome at a claimed cost of $3 billion by its completion in 2003.

The functional benefits of this field include:

- minable data, whereby large data sets of multi-patient data are providing deep insights into disease biology and associated characteristics of health

64 C. Millar "There's a New US National Obsession – Biotech' *Financial Times* 7 March 2023
65 "Executive Order on Advancing Biotechnology and Biomanufacturing Innovation for a Sustainable, Safe, and Secure American Bioeconomy" *The White House* s. 11 12 September 2022
66 C. Albon "DARPA Budget Request Seeks to Bolster 'Critical' Technologies" *C4ISRNET* 28 April 2022

- identification of genetic predisposition to disease and disorders
- diagnosis of diseases and disorders through genetic signatures
- rational drug development whereby genetics information informs molecular targeting in drug design
- pharmacogenomics, enabling the personalised prescription of drugs best suited to the person's genetics
- gene editing and gene therapy, where genes associated with disease are modified to treat or cure the disease
- human-microbe genetic interactions, whereby genes may influence health through their ability to promote a stable microbial community in the gut
- human-environmental metagenome interactions, the study of the ecological perception of microbial genomes and their link to human health and disease[67]

What is clear from this outline of the burgeoning industry is there are strong claims about the benefits to both the economy and to human health, benefits which are continuing to grow. This in turn explains the way in which dominant interests within both the State and the Market have become drivers in this field, as investors in research, in distribution and in regulation.[68]

The benefits of human genomic research are deep and wide. In its economic impact, human genetics and genomics were reported (in 2021) to have contributed $265 billion to the U.S. economy in 2019 with predicted further growth across 5 areas and having already grown 5-fold in the previous decade.

These interests have in turn triggered a focus on the ethical questions that have emerged from within this field from at least the inception of the Human Genome Project. The U.S. National Human Genome Research Institute established the Ethical, Legal and Social Implications (E.L.S.I.) Research Program in 1990. Principal focusses of the ongoing research have been on safe and effective genetic testing, on the responsible collection and use of genetic tests and a range of other methodological matters but also on the exploration of biases both towards and within communities that have been underrepresented, underserved or mistreated in biomedical research and healthcare.[69]

This issue of bias is of particular importance given that, possibly within a decade, medicines based on this technology will begin to transform the treatment of blood disorders, of heart, eye and muscle conditions, and potentially of neurodegenerative disorders.[70] As Jennifer Doudna, co-developer of the C.R.I.S.P.R. gene-editing technology emphasises, new ethical challenges are

67 "The Economic Impact and Functional Applications of Human Genetics and Genomics" *American Society of Human Genetics* May 2012 Report at pp. 13ff and 26ff

68 For example, see R. Alto Charo "The Legal and Regulatory Context for Human Gene Editing" *Issues in Science and Technology* 32:3 2016

69 "Ethical, Legal and Social Implications Research Program' *National Human Genome Program Research Institute* online

70 B. Balch interview with J. Doudna "Making Science Serve Humanity: Jennifer Doudna, PhD, Says CRISPR Gene-editing Technology Should Be Accessible to All" *Association of American*

emerging. These include the enhancement of humans, including prenatally, a matter raised to prominence by the widely-condemned activities of Chinese scientist He Jiankui who, by a process of Heritable-Germline Genome Editing, altered the D.N.A. of twin girls prenatally to prevent H.I.V. acquisition using C.R.I.S.P.R.-Cas9 and did so outside the standard scientific process of transparency. Apart from the issue of consent, this raises the matter of the risk of heritable errors for both the individual and society, through the introduction of mutations into the human gene pool.[71] More broadly, enhancement again raises the issue of potential selective disadvantage.

In addition to the synthetic biological processes we have just considered, processes of "natural" *genetic modification of food* remain prominent, especially in the production of plants and animals. Until the recent past, there has been controversy about the manipulation of the genetic structure of food. That is not to say that there does not remain strong differences of view about such modification, only that opposing camps are somewhat settled in those views.

The growth of genetically modified organism (G.M.O.) crops is widespread across the Americas, Asia and parts of Europe. The United States has by far the greatest plantings (71.5 million ha), followed by Brazil (52.8 m ha), Argentina (24 m ha), Canada (12.5 m ha), India (11.9 m ha), and then Paraguay, China, South Africa, Pakistan, Bolivia and others.[72] Principal investors in this sector include Monsanto, Dow, Dupont, Syngenta and the Bill and Melinda Gates Foundation.

In this regard, the U.S. Department of Food and Drug Administration (F.D.A.) states, for U.S. citizens:

> It is very likely you are eating foods and food products that are made with ingredients that come from GMO crops. Many GMO crops are used to make ingredients that Americans eat such as cornstarch, corn syrup, corn oil, soybean oil, canola oil or granulated sugar. A few fresh fruit and vegetables are available in GMO varieties, including potatoes, summer squash, apples, papayas and pink pineapples. Although GMOs are in a lot of foods we eat, most of the GMO crops grown in the United States are used for animal food.[73]

Colleges 8 November 2021; K. Davies "Feel That Base: An Interview with Base Editing Pioneer David Lui'" *Genetic Engineering and Biotechnology News* 24 March 2021

71 J. Botkin "The Case for Banning Heritable Genome Editing" *Genetics in Medicine* 22:3 487–9; more widely, G. Marchant "Global Governance of Human Genome Editing: What Are the Rules" *Annual Review of Genomics and Genetics* 22 385–405, especially at "3.2 Heritable Genome Editing"; R. Stein "Ethical Concerns Temper Optimism about Gene Editing for Human Diseases' Text from *National Public Radio* broadcast 8 March 2023; N. Mesa "Delivering Gene Therapies in Utero" *The Scientist Daily* 18 July 2023

72 M. Shahbandeh "Global Genetically Modified Crops by Countries 2019, Based on Acreage" *Statista* 16 December 2022

73 "GMO Crops, Animal Food and Beyond" *US Food and Drug Administration* online updated 3 August 2022

That is, although relatively few varieties of fruit and vegetables eaten by American consumers are from G.M.O. crops, G.M.O. products are widespread in the animals and processed foods that make up the bulk of the American diet.

The European circumstance is at variance from this. The European Union (E.U.) has for some time had very restrictive G.M.O. regulation that sets high hurdles for growing G.M.O. crops and which has allowed member countries to ban these after they are declared safe. However, the Union has voted to ease regulatory oversight of new gene-editing technologies (N.G.T.s as C.R.I.S.P.R.-Cas9) for crops within Union territories.[74] These technologies introduce no new genetic material from outside the breeders' gene pool but target specific genes within that pool.

This law was promoted by such dominant interests as Bayer, Syngenta and Corteva – taking the activist role that Monsanto had assumed in the United States – which control most of the plant breeding sector. This promotion was based on the claim that these new crops are more nutritious, efficient and better adapted to climate change.

The respondents to this challenge are green lawmakers, environmental advocacy groups, organic and small farmers and 40,000 E.U. citizens who have petitioned against this deregulation of these latest G.M.O.s. Their counterclaim is that this will extend the control and economic power of the dominant multinationals, which could claim patents on crops that could be produced through conventional breeding, while it also threatens non-G.M. and organic production.[75]

Such concerns, publicised during this and previous campaigns, include those regarding health, for example concerning food allergens, toxicity, carcinogenicity, food intolerance, nutrition; regarding the environment, such as spreading G.M. traits to other species, the building of resistance in insect populations, the threat to biodiversity due to the spread of this monoculture; and regarding the socio-economic and thereby ethical issues, such as the dominance of large over small farms and of powerful States over smaller States. Such campaigns have called for better baseline information to allow the assessment of impact, collaboration with traditional methods and new scientific knowledge from agronomy and plant pathology. It is claimed that, since these G.M.O.s are only a decade old, their safety can be questioned.

An indication of how active this space is can be seen in the activities of such organisations as the International Life Sciences Institute (I.L.S.I.), which carries out continuous risk assessment analysis of food safety. Projects include foods containing recombinant microorganisms and the establishment of values for genotoxicity and carcinogenicity in food.[76]

74 "EU Rethinks Genome Editing' *Nature Plants* 9 pp. 1169–70 Editorial 18 August 2023

75 B. Brzezinski and J. Hanke "Super Crops Are Coming: Is Europe Ready for a New Generation of Gene-edited Plants?" *Politico* online 3 July 2023

76 K. Broendel "ILSI Releases Present Knowledge in Food Safety, a Comprehensive Resource on Food Safety' *ILSI* 17 October 2022

In the United States, there appears to be less concern about G.M. foods, although the political debate about the labelling of G.M. foods continues. There the Food and Drug Administration (F.D.A), the Environmental Protection Agency and the Department of Agriculture claim:

> …to ensure that GMOs are safe for people and for the environment. These agencies also monitor the impact of GMOs on the environment. Collaboration and coordination among these agencies help make sure food developers understand the rules they need to follow when creating new plants through genetic engineering.

Regarding disclosure – which is not labelling as such – the F.D.A. uses an interesting set of words, given the claim that the latest moves by dominant interests there are creating monopolies on plants that could be created through natural processes:

> Certain types of genetically engineered foods have a disclosure that lets you know if the food is bioengineered. The National Bioengineered Food Disclosure Standard defines bioengineered foods as those that contain detectable genetic material that has been modified through certain lab techniques and cannot be created through conventional breeding or found in nature.[77]

The foods listed are largely those referred to above, with the addition of such as aqua-cultured salmon.

Labelling in the United States remains in controversy. Not only is the Republican Party opposed and the Democratic Party largely in support of doing so, but there is a range of other interests expressing strong views on the broader issues. On one hand, the conservative, libertarian think tank The Federation for Economic Education argues that government bans on G.M.O.s are worsening global hunger and doing serious harm to the planet:

> Activists who mistakenly believe that GMOs are dangerous to consume have teamed up with pesticide and insecticide sellers to restrict the world's poor from life-saving technologies … GMOs increase crop yields, improve the nutritional value of crops and decrease greenhouse gas emissions. Those who want to improve standards of living and care for the environment should be appalled by GMO restrictions around the world … an overwhelming consensus of scientists agree that GMOs are safe to eat. They do not damage organ health, cause genetic mutations in humans or animals, affect pregnancies or transfer genes to those who consume them … the pesticide and insecticide industries are threatened

77 "How GMOs Are Regulated in the United States" *Food and Drug Administration* online

> by high-yielding and disease resistant crops that don't require their products … Unlike conventional plant or animal breeding, which combines all the genes from two sources, GMOs are created by tweaking an organism's genetic code.[78]

Against this broad trend of gene modification – whether natural or synthetic – are the interests of the organic farming industry. To meet the U.S. Department of Agriculture organic regulations, farmers and processors must show that they are not using G.M.O.s and that they are protecting their products from contact with prohibited substances, such as G.M.O.s, from farm to table.[79] This latter provision has been a source of ongoing tension and legal action between many organic and G.M.O. farmers and their suppliers, many of whose properties lie adjacent.

Regarding the breeding of organic seed, the position of such interests as the Organic Seed Alliance in the United States is:

> As a social movement, we have long believed that organic seed can take a distinct path from the dominant conventional seed industry, where consolidation and privatization are key strategies. Organic seed systems have an opportunity to be defined not by what they exclude – such as genetically modified organisms (GMOs) and synthetic pesticides – but by what they embrace: collaboration, cultural heritage, diversity, fairness, health, beauty and hope.[80]

As a reflection of the challenge being faced, the 2022 Report State of Organic Seed states that, although organic seed supply "has grown tremendously since the National Organic Program was established in 2002, which formalised the US organic standards", most organic growers still plant some non-organic seed for at least part of their operations. Further, there has been no meaningful increase in organic seed usage since the 2016 Report. On the other hand, a high level of investment in organic plant breeding is provided by the U.S. Department of Agriculture Organic Agricultural Research and Extension Initiative (O.R.E.I.), amounting to $20 million since 2018.[81] Regarding organic planting, nearly 8.3 million acres of certified organic land were harvested there in 2022.[82]

78 J. Miron and S. Eckhardt "Government Bans on GMOs Are Making Global Hunger Worse – And Do Serious Harm to the Planet" *Federation for Economic Education* 14 February 2022; for an evaluation of the cost of increasing world hunger, see T. Teffera "Should We Still Worry about the Safety of GMO Foods? Why and Why Not? A Review" *Food Science and Nutrition* 9:9 2021 p. 5324

79 "Organic and GMOs" *Organic Trade Association* online 2023

80 "State of Organic Seed – Report – 2022" (Introduction) *Organic Seed Alliance* online 2023

81 Ibid. Ch. 1

82 "Analysis: Nearly 8.3 Million Acres of Certified Organic Land Harvested in 2022" *Organic Grower* online 10 April 2022

In Europe, the umbrella organisation representing 200 members in 34 countries is the International Organisation of Organic Agriculture Movements (I.F.O.A.M.). Apart from its representative responsibility, it is presently active in campaigns such as nature restoration, the reduction of industrial emissions, sustainability labelling of food and the promotion of biodiversity. It is unsurprisingly opposed to the New Genomic Technique initiative.[83]

The spread of the positions promoted by these various interests – dominant or otherwise – is reflected in the surveyed views of citizens, worldwide. Pew research reports that in 2020, 48% of the people in publics around the world said genetically modified foods are unsafe to eat. Only 13% said G.M. foods were safe. Majorities in Russia (70%), Italy (62%), India (58%) and South Korea (57%) saw G.M. foods as unsafe.[84]

A view has been expressed that – at least around 2015, that is 25 years after G.M.O. products began to appear – the lag between public scepticism in the U.S. and the more positive scientific knowledge was likely due to the fact that the public was obtaining their relevant information from the less well-informed media and the internet.[85] The implication of that argument is that citizens would have more positive attitudes towards G.M.O.s if scientific knowledge about them was better communicated. A not-dissimilar view is expressed by a review of the sentiment expressed towards G.M.O.s on X/Twitter, news sources and Reddit between 2019 and 2021, based on the outcome of a Boolean-based web-crawling scan, and published in 2023. That is, perhaps revealing certain presumptions, this view was that the negative "bias" of such views can be "corrected" by better communication of scientific knowledge:

> While GMO-based technologies such as CRISPR-cas9 continue to develop both scientifically and commercially, it will be equally critical to have parallel efforts focused on communicating accurate information to the public in order to ensure the viability of GMOs as a tool to address current and projected challenges in food production including projected 2050 population growth estimates, food security and climate change.[86]

Other research from the Eurobarometer survey shows that there has been a slow waning of opposition and fear of G.M.O.s, although not consistently

83 "Draft New G.M.O. Regulation: Key Elements and First Reactions" *A.R.C. 2020* 19 June 2023

84 B. Kennedy and L. Thigpen "Many Publics around the World Doubt Safety of Genetically Modified Food" *Pew Research* 11 November 2020

85 S. Wunderlich *et al.* "Consumer Perception of Genetically Modified Organisms and Sources of Information" *Advances in Nutrition* 6:6 2015 p. 842

86 M. Sohi et al. "Analyzing Public Sentiment Towards GMOs via Social Media between 2019–2021' G.M. Crops Food 14:1 pp. 1, 7

across nations.[87] However, such a waning should be seen in a broader context in which the growing influence of dominant interests confronts the attempt of one sector of citizens who argue that theirs is a position which responds directly to an existential risk.

Comment

Bringing all this together and in the most broad terms, the alerts coming from the Bulletin of Atomic Scientists propose a sensible cautionary approach. That is, given the reality of dual-use biotechnologies – whereby a dangerous or misinformed application of such new technologies always accompanies their positive and beneficial use – needs to be always acknowledged:

> Biotechnology is changing so quickly that rules adopted today are unlikely to match the speed and scale of life science innovation. In a narrow sense, regulators must provide clear guidance on how and when to report research with the potential to cause harm and define accountabilities for failing to do so. More broadly, a renewed social and cultural awakening among life science communities on the scope of dual-use technologies in biological and medical research is long overdue. Implementing a new oversight system will require: forming new coalitions of expertise drawn from government, academia, and industry; improving the co-ordination of biosecurity policies across government agencies both within countries and internationally; and the creation of systems and tools to identify, mitigate, and attribute misuse.[88]

Biotechnology is a field in which some key products are developing under such a low profile – in some cases due to their security provisions – that there has been insufficient time passed to allow any popular response. They have powerful implications, nonetheless. In others there has been long exposure to the data and positions seem to be well settled. Across this field, however, there is clear and forceful activity by dominant interests, both State and Market, and these are determining factors. There is also expert opinion held by the C.S.E.R. and F.L.I. that, behind all this varied activity, there are a range of developments that pose existential risk. In some sectors, the State has already accepted the responsibility of developing a cautionary and regulatory framework where its interests are at stake but it is proper to observe that the function of the dominant interests of the Market and the Market State are already positioned dominantly across the biotechnology landscape. This is especially

87 "Public Opinion Isn't Always as Polarised as You Think" *Statistical Modelling, Causal Inference and Social Science* 26 May 2022

88 D. Gillum et al. "Biotech Promises Miracles. But the Risks Call for More Oversight" *Bulletin of the Atomic Scientists* 31 August 2023

so given their claims as to the health and security advantages to citizens, who already have a small and decreasing opportunity to generate any new sense of an effective populist response.

Analysis – how the complex of dynamics determines responses to existential risk

This is a complex, differentiated spectrum but the themes are clear.

Regarding *climate change*, it is apparent that the normalised life-cycle subjection of citizens to the magnitudes which have produced that risk, when combined with the defensive campaigns run by the dominant reactionary forces, have been key factors in the slow response. Citizens have been convinced by various dominant corporate and media interests that the level of disruption to the foundational institutions of State and Market that is required to move from fossil fuels to renewables would be too disruptive of their relatively secure ways of life. More significantly, corporate claims about fear and sympathetic conditions of existence being dealt with would no longer be able to be made. This especially persists among the Republican "absolutists" in the face of the most extreme weather – in 2023 – ever experienced. Such does not apply to those Democrats and lateral-thinking corporate executives who are prepared to undertake disruptive change, thereby seeking relief from such extremism, and who see a stronger economic future in renewables. One cannot therefore be hopeful that the increasingly severe social and economic disruption that will come with not taking action – rather than taking it – will be sufficient to shift those holding a preference for absolutism before extreme conditions have reached intolerable levels.

The reinforcing factor to this resistance to change, that is beyond the continuing subjection to the magnitudes of State and Market, is that this subjection is not merely socio-economic and psychological but is also physiological. Belief that the claims of dominant interests will be realised and so should not be disrupted is firmly embedded in the culture and so in the neurology of a majority of citizens. Only when one's immediate survival is clearly perceived to be threatened will confidence in these beliefs begin to fade on a scale substantial enough to produce wide and sustained action.

Regarding *nuclear arms*, it is clear that the dominant interests of the Market State, especially in the context of claims regarding the present need for reinforced security, have overcome what was a post-Cold War reaction against them. Although they were central in the strategy to end the War, the devastation they wreaked in Japan was sufficient to convince a large percentage of liberals – not the absolutists – that their persistence constituted more of a threat than a continuing protection. Constraining the absolutist State – such arms have been a key element in that absolutism – became the catch-cry for those seeking a State more sympathetic to such citizens. However, the frailty of that search for constraint – and the willingness to again accept the place of these arms

in national and so personal security – has been revealed in public attitudes in both the U.S. and Europe due to the unprovoked Russian invasion of

Ukraine. Subjection to absolutist credentials of the State is again increasingly accepted and categorical levels of sympathetic conditions are increasingly forgone while ever the threat exists. With that comes a sense of relief that such arms were not eliminated and will energise a preparedness not to eliminate them in the future. On balance, this issue is one that has favoured absolutists as nuclear arms are seen in the context of current Russian, Chinese and North Korean aggression as improving the conditions of existence when in fact they also pose the opposite.

Regarding the varieties of *biotechnology*, a number of observations can be made. Several of the initiatives in this field, although not very recent, do not yet have the longevity to allow a mature assessment of the levels of risks. Synthetic biology techniques are an example, biotechnological military application another. In others, pre-emptive auditing and monitoring action by the State has been taken to minimise certain risks, for example in cyberbiosecurity. Nonetheless, these are all measures taken in response to the reality of their respective existential threats. Further, the early strong opposition to G.M.O. foods may be waning in the face of absence of hard evidence regarding negative impacts on human health and the influence of dominant communication strategies. This has not softened the resolve of those in the organic food industry to resist the virile incursion of their corporate opponents – who seek domination of the field – to ensure the availability of non-technological production methods.

But it is the emergent area of governance which is revealing in relation to the broad argument. The post-Brexit lessons in the movement of agricultural goods, where the responsibility of the allegedly repowered British State originally failed to deliver on the claims about its better management capacity, created fears on the part of farming citizens. Far more significantly, there is the failure of the State in both the West and China – the latter an example of a State where the move to claimed sympathetic absolutism has been largely completed – to expeditiously address the crisis of COVID. That is, especially in China, there was a failure to deliver on its assertions about the unsurpassable benefits of full subjection to the sympathetic absolutism of its regime. This is evidence of the unreliability of claims that absolutism is best placed to deal conclusively with the fears and desires of its citizens, to create fully sympathetic conditions of existence to match the slight constraint of its political absolutism. Nonetheless, vast numbers of citizens have been convinced, largely voluntarily, that such submission – focused on the claimed delivery of satisfactory living conditions for vast numbers – will reliably do that.

The Western experience, albeit less extreme than conditions in China, exists along the same continuum of anxiety, claim and subjection, even though the constrained level of its democratic absolutism has allowed populist protest to emerge. But its citizens share, to different degrees, the same unwillingness to support annihilation of the respective magnitudes. This is especially so given the neurological embedding of such cultural dispositions.

Finally, we may say that the circumstances of these existential risks show that the subjection required by the *core, serial and regeneration* dynamics – reinforced by both the neurology of culture and the dominant alliance between the Market and the Market State – is demonstrated to be robust. That is, until there is populist acknowledgement – as is beginning to occur regarding climate change – that such subjection to these dominant interests has been the cause of these risks. Yet even in that regard, there is no appreciation that it is the *core* dynamic that is the foundational cause. Populism emerges – whether regarding Deity, the State, the Market and prospectively regarding the latest Technology – when the *core* dynamic loses credibility. But populism goes no further. It does not acknowledge the *core* dynamic or its derivatives, its representatives only seeking to "re-form" these institutions by – at the limit – changing their dominant interests so that the absolutism which is seen as the antidote to fear can seek a predominant emphasis on sympathetic conditions. Such is now also emerging as a result of the *consolidation* and *transformation* dynamics through the latest generative A.I. Technology, where any prospect of significant resistance is likely to be restricted to a populist response.

8 A Different Dynamic

Technology and Law for an Insecure Consciousness

There is no grand strategy that will address the embedding of citizens in the normalising and normalised field of ideas and practices that is the legacy of the failed magnitudes. Their dominant interests persist in their attempts to regenerate their capacity to recover an absolute status, conceding sympathetic conditions of existence to the extent that is required to induce individual subjection. They are a series of failed language games, each with its subjecting menu of practices.

In fact, given the conclusions of chapters 6 and 7, built as they are on the arguments preceding them, a reasonable assessment is that any way out of this trajectory is not only fraught but is unlikely. That does not make this challenge impossible, and we will now look at a possible exit and certain means that may allow moves towards that. However, given the two millennia-long propensity of humans to veil existential reality behind such magnitudes, the likelihood is minimal. Not only have we been embedded in the detritus of these failed but persistent magnitudes but are now becoming embedded in the coiling, pervasive technological regime that is creating ever-new iterations of reality – virtual but real – and which is beginning to explore how we can fully collaborate with artificial intelligence (A.I) and more. The possibility of technological subsumption – the ultimate coding of humanity – is a real prospect. Nonetheless, the option to relearn the exercise of conditional free will remains.

No grand strategy of redress but a grand narrative of failure

That there is no grand strategy of redress is not to say that the present work presents no grand narrative. But it is not a narrative which is sympathetic to the serial efforts of the protagonists. It is narrative of the failure, not only of the original conceptions of these serial magnitudes but also of the repeating attempts – up to the disruptions of the present – to overcome these failures and establish their absolutist status. A litany of failure but which is now opening into a new opportunity through the technological landscape. In acknowledging the force of this scenario this work is in effect an anti-grand strategy.

None of this is to argue that there is no place for a State, a Market and Technology, even if widely but conditionally powered. Each would have a

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beneficial place in a reimagined social landscape. We shall now proceed to mark out some suggested reference points on this prospective landscape, reference points which are at least not informed by the *core* dynamic. They are informed by a willingness to embrace the absolutism of reality and thereby to seek to deal conclusively with the existential risks that are the product of the *core* dynamic. There is a priority given to existential *angst* rather than constructed fears and desires in this. No hell or glory of the Deity, no State of nature or conservative bourgeois existence under the Market State and its Supreme Court, none of the structural poverty or exhaustive consumerism of the Market and none of the endemic boredom or unprincipled social connection and inhuman artificial enhancement and subsumption by Technology.

We shall first set the key reference point of the nature of the condition whereby existential *angst* would be embraced, the positive state of ontological insecurity. Second, given the firm embedding within the *complex of dynamics* which the vast majority of citizens experience, whether the capacity exists to choose to move on from such subjection, that is the new account of free will. Third, what steps might then become available, immediate and conceptual. Finally, irrespective of the potential for these moves, whether on balance the embrace of existential *angst* – and the reimagination of State, Market and Technology – could be a prospect.

Ontological in/security

We may see the preparedness for willing subjection as a search for ontological security, a search which is normalised – though persistently disappointed – across the socio-political landscape. This search, urged by dominant interests, is founded on an unrealisable fallacy. Ontological security is typically understood as "security as/of being" or security not of the body but of the Self, that is the subjective Self of who one is. It arises when citizens feel confident in their identity, when they have stable cognitive and emotional frames and when their social and material environment is steady and predictable.[1]

Studies in ontological security have progressed to the point where the arguments presented by one of the original inspirations for the discourse – those of Anthony Giddens – have been acknowledged but widely surpassed by a number of adherents to the broad concept. Giddens' account, which is accused of conflating normal and existential anxiety, is now seen as a highly restrictive account which closes down the potential of a wide array of applications. That is, Giddens' relative neglect of an individual's unconscious processes leaves the impression that psychic integrity can only be maintained by fully inhabiting the currently established role-identity and mentality. There is no alternative, except chaos. This response to Giddens is consistent with the broad argument

1 N. Krickel-Choi "The Concept of Anxiety in Ontological Security Studies" *International Studies Review* 24:3 viac013 (2022) p. 4

of the present work, that such inhabiting can be a pointer to the *core* dynamic and its derivatives.

In such a condition it is difficult to even conceive of an emancipatory, let alone radical, sense of agency.[2] For Giddens, to feel ontologically secure is "to possess, on the level of the unconscious and practical consciousness, 'answers to fundamental existential questions which all human life in some way addresses'".[3] Ontological security is in this context a false security of being rather than a security of becoming. It is far better to bring anxiety back into locales where Giddens' theory occludes it.[4]

There is an argument put forth by Kinnvall and Cash that there are two ways to respond to the ever-present disruptions and anxieties in life – whether at birth or from later political and social upheavals. First, in responding to the onset of disruptive ontological insecurity by seeking securitisations of subjectivity, there can be a process of transposing existential anxieties into identifiable objects of fear. This is evident in the manner in which anxiety in the face of globalisation leads to certain forms of nationalism with far-right movements, even violence. Second, to see that ontological insecurity opens up space for resistances of varying kinds and to new thinking:

> The capacity to embrace anxiety and dwell in its ambivalence is crucial for imagining how apparently stable identities and subjectivities can transform. It, therefore, is a precondition for realising alternative possibilities. This is the positive potential we find in some ontological security work.[5]

Gustafsson also moves past Giddens. His attempt to address the problems raised by Giddens' conservatism sees him aligned with the broad approach of Kinnvall and Cash. He argues that anxiety is not the same as ontological insecurity. That is, while neurotic anxiety is commonly the result of radical disruption, it is different from the normal anxiety that can be a catalyst for change and creativity. Thereby, the former would commonly result in the search for ontological security that is typified by attempts to re-establish the security of being – in the sense preferred by Giddens – but it is normal anxiety which is the positive response to disruption that sources the search for change and creativity.[6]

However, what we are seeing across these positions is a conceptual confusion that the ontological security studies have not yet resolved. That this

2 C. Kinnvall and J. Mitzen (referring here to John Cash) "Anxiety, Fear and Ontological Security in World Politics: Thinking With and Beyond Giddens" *International Theory* 12 (2020) p. 252

3 Ibid. p. 245

4 Ibid. p. 242

5 Ibid. pp. 247–248

6 K. Gustafsson and N. Krickel-Choi "Returning to the Roots of Ontological Security: Insights from the Existentialist Anxiety Literature' *European Journal of International Relations* 26:3 (2020) p. 16

is so is indicated by a more recent assessment of the field by Krickel-Choi, who argues that there is still "some ambiguity with regard to the key concept of anxiety and its role within the OST (Ontological Security Theory) framework". Some of this has been inherited from Giddens, along with other biases.

The solution proposed by Krickel-Choi is:

> to return to (R.D.) Laing's existential-phenomenological understanding of ontological security by re-introducing the distinction between normal and existential anxiety that got lost in Giddens' adaptation of the concept … Laing relied on this crucial distinction when coining the concept of ontological security, and he associated the condition of ontological security with a particular kind of existential anxiety.[7]

In referring back to Laing to overcome the inadequacies of Giddens' approach, these arguments make the further step of referring past Laing to such earlier theorists as Heidegger and, earlier again, Kierkegaard. In doing so, they draw back to several of the sources of the argument of the present work. What they do not do is to go back to Blumenberg – central to the arguments here – who provides a theoretical frame that can be built on in a manner that not only informs the psychology of existential *angst* but also the manner in which that in turn informs our conception of the State and thereby international relations, a primary focus of Kinnvall, Gustafsson and Krickel-Choi.

A consideration of the significance of anxiety in the work of Blumenberg is provided by Kirke. In his move past Giddens, he also references Kierkegaard and Heidegger but pays particular attention to Blumenberg's notion of myth. The present work is widely informed by – amendments to and elaborations of – that notion[8] but has presented the exemplars of these myths in the form of the magnitudes which constitute the fabric of the serial imaginings and constructions which are the context of this entire work. For Kirke,

> Blumenberg notes that reality without a sense of significance (*Bedeutsamkeit*) risks overwhelming us into believing we have no control over our conditions of existence … This condition is one of extreme *angst*, which for Blumenberg is a state of "indefinite anticipation" or the "intentionality of consciousness without an object", in which the "whole horizon' becomes the totality"

7 N. Krickel-Choi "The Concept of Anxiety in Ontological Security Studies" *International Studies Review* (2022) viac013 p. 13

8 See footnote. 1 in chapter 1 and footnotes 7, 8 and 9 in chapter 7; see also D. Grant *The Mythological State and Its Empire* Routledge 2009, *passim* regarding magnitudes but especially chapters 1 and 2; D. Grant and L. Bennett Moses *Technology and the Trajectory of Myth* Edward Elgar 2017 *passim* but especially 1, 2 and 6; and D. Grant *Privacy in the Age of Neuroscience* Cambridge University Press 2021 *passim* but especially chapters 8 and 9

and further

> Yet we may never experience this, because our ancestors and ourselves have always found filtering mechanisms in the world or symbolic practices that mediate it. This may be, among other things, philosophy, science, art and, indeed, myth. Crucially, no myth is created from nothing…human beings ensure myths evolve, change and adapt to suit the conditions of existence for a socio-political group, something that Blumenberg understands as "work on myth".[9]

The preferred position here in response to these clarifications of the ambiguities in the terminology is that ontological insecurity is best understood as the existential anxiety or *angst* produced by the experience of the absolutism of reality. This is not an abstract notion but one that intrudes frequently enough into individual consciousness with news of deaths and other tragic incidents for individuals to seek a veiling of it. To now, this immediacy has turned our focus from the large looming existential risks that we have been examining but which themselves are now becoming immediate, such as climate change and so on. Further, it has been the veiling of that *angst* and those intrusions that have been the purpose of the magnitudes – as Deity, State, Market and now Technology – imagined and persistently promoted by dominant interests, conditioned as they are by the construction of the range of situational fears and desires regarding which those interests claim the ability of resolution and which are the further condition of individual subjection.

These latter fears and desires are what constitute the "normal anxieties" of life referred to by Gustaffson and Krickel-Choi. They are not the source of the creativity and disruptive imagination to which they refer. The source of those qualities can only properly be ontological insecurity – normal anxieties are the result of constructed fears – as only that is the product of the absolutism of reality. Ontological security is the myth-driven search for comfort by theorists such as Giddens. Properly understood, there can be no such security, only a continuous, inquisitive search to adjust oneself to that absolutism and for the creative opportunities which that search offers.

Ontological insecurity – situational relevance

Politics and populism

The recent theorists we are looking at take the view that Giddens' account of the status of ontological security ends in a politics of fear through the

9 X. Kirke "Anxiety and COVID-19: The Role of Ontological Security and Myth" *E-International Relations* 29 May 2020 pp. 2–3. Kirke has also explored the work of Blumenberg more widely in *Hans Blumenberg: Myth and Significance in Modern Politics* Global Political Thinkers palgrave macmillan 2019 and in *Ontological Security, Myth and Existentialism* Paper for British International Studies Association Conference online 2021

preference for the comfort – the security of being – in the status quo.[10] Kinnvall and Mitzen reject the politics of fear as it makes publics vulnerable to political repression – through exclusions and separatisms – and conflict in the name of safety and security. Their explanation for this is that the politics of fear leaves "the underlying anxiety entirely unattended…it can make or maintain a profound sense of ontological insecurity".[11]

This explanation reveals again the conceptual ambiguity still at play. Better to see that the politics of fear as a real but constructed – not existential – fear which is the result of the creation of Deity, the State and the Market State to veil ontological insecurity and regarding which it is the function of the dominant interests of those magnitudes to address. The politics of fear thereby does not maintain ontological insecurity but veils it in the politics of the State. It is through ontological insecurity that an alternative to the politics of fear can be sought, which cannot be done through the present form of the magnitude of the State. The very purpose of that present form is to ensure the politics of fear. There are, that is, two levels: existential anxiety and situational fear. These are not the same, as Kinnvall argues, as the latter results from the veiling through the imagination of the magnitudes – of the former. The former – ontological insecurity – needs to be unveiled and embraced so that the latter might be dealt with through radical agency. It is a more complex picture, I believe, than Kinnvall intends when she states "In other words, the politics of fear and paralysis are rooted in similar prior conditions of anxiety as the politics of creativity and resistance".[12]

Other theorists have attempted to address this issue and are subject to the same oversight or ambiguity. Krickel-Choi makes this clear when she states

> Rather than anxiety explaining both change and continuity, without it being clear when it causes which, normal anxiety comes to be understood as inspiring change, while feelings of ontological insecurity paralyze the actor and inhibit such change. Following this logic, feelings of normal anxiety are in principle compatible with an overall condition of ontological security. Consequently, a state of ontological security is not only attainable but likely also the default condition, as it takes existential and debilitating anxieties to trigger feelings of ontological insecurity. The possibility of that happening of course always exists, but it is rare as actors are generally quite good at managing uncertainty. Ontological insecurity thus remains the exception to the rule.[13]

By contrast, in the present work, ontological insecurity is the existential condition of *angst* and normal anxiety is the outcome of the constructed fears

10 Kinnvall and Mitzen pp.240–241
11 Ibid. p. 244
12 Ibid. p. 247
13 N. Krickel-Choi "The Concept of Anxiety in Ontological Security Studies'" p. 15

that derive from the creation of the magnitudes. The problem here is that Ontological Security Studies have no coherent theory of Deity, the State and the Market, for example one that is inspired by a reimagined Blumenberg.

In short, only by engaging and utilising ontological insecurity – and strategies it would facilitate – and voiding ontological security might it be possible to address the politics of fear at its foundation. By introducing the argument as to myth presented by Blumenberg but then correcting, elaborating and extending it so that these entities can be understood as such mythological magnitudes, then we can see the source of the terminological ambiguity that Ontological Security Studies is still subject to and can amend this so that it not only substantially severs itself from Giddens but can also embrace Kirkegaard, Heidegger and Blumenberg more productively.

Kinnvall also turns her analysis to the issue of populism, examined here in detail in the Introduction and in chapters 1 and 2. In this case, we again see the richness of the ontological security analysis, albeit constrained by common ambiguity. For her, to take an ontological perspective on populism, emotions and security means investigating both the structural and affective reasons why individuals and collectives experience ontological insecurity along with the emotional responses to these feelings. On the one hand:

> To a certain extent, it requires a move away from Gidden's original understanding of ontological security as a "security of being", toward an understanding of ontological security that emphasises a "security of becoming", in which the ontological insecurities people experience often require a "leap of faith" in terms of an imagined secure future that can relieve the individual of their present predicament.

That is, for Kinnvall, becoming is the product of a search for ontological security. But there is no authentic ontological security. Neither is there a security of becoming since authentic becoming is the acceptance of ontological insecurity.

Further,

> To overcome uncertainty, or *lack* in Lacan's terminology, the subject engages in fantasies and imaginations in order to feel whole and secure. Such imaginations are always the product of social relations and involve emotional codes which are culturally inscribed and subject to modification and contention. They work performatively on the subject, legitimizing certain forms of action at the same time as they shape future interactions. This does not imply that people constantly walk around feeling anxious, as the ontological lack that Lacan talks about is temporarily covered by fantasies that protect us from being overwhelmed by anxiety.[14]

14 C. Kinnvall "Ontological insecurities and Postcolonial Imaginaries: The Emotional Appeal of Populism" *Humanity & Society* 42:4 online

That is, her reference to Lacan shows that overcoming the uncertainty of ontological insecurity typically involves what is argued – through a reworking of Blumenberg – to result in the construction of "fantasies and imaginations", that is myths as magnitudes. This is correct.

However, one cannot authentically overcome ontological insecurity. Accepting it then allows the creative, radical agency that avoids such imaginings, which are subjecting even though they produce an imagined ontological security. Lacan is correct that these imaginings avoid uncertainty but this does not deliver security of being. In fact, it delivers the opposite: not only a subjection to the imagined magnitudes, a false security, but also one in which people do still walk around in ontological anxiety, given the repeated piercing of the veil by events that remind us of mortality. This is ontological insecurity – produced not by such situational entities as the serial magnitudes we have examined throughout this work – but one which ensures a non-subjecting, continuous focus on the irresistible absolutism of reality. This needs to be creatively embraced, not veiled, to avoid the subjection of false ontological security through the magnitudes. Such would be the acquisition of emotional and intellectual maturity.

Kinnvall applies the notion of such imaginaries to an explanation of European populism, with its anti-multiculturalist, anti-liberal, anti-globalisation and anti-privatisation themes in its search for a strong State with strong masculine leadership to recapture forgone cultural homogeneity through reconfigured democratic arrangements. That is, this is the search for a lost imaginary to overcome the fear and anxiety of loss or separation. She argues that populist responses by mainstream parties will not resolve the inherent cultural problems:

> To resort to exceptional measures by mainstream parties and governments, through practices such as bordering, deportations, and surveillance, is thus unlikely to either break the emotional bond between postcolonial pasts and populist presents or to provide alternatives from which change can be initiated.

This is apposite, since political populism is nostalgic, intended to recapture – not sever – such emotional, subjecting bonds.

The argument then moves to a preferred response:

> Instead of falling into the demagogic trap of populist discourse, Wodak argues, we need to set alternative frames and agendas which endorse and disseminate alternative concepts, such as equality, diversity, and solidarity. Rather than highlighting fear and anxiety, these concepts contain positive imaginaries that could allow for a politics of hope as a cure for current anxieties. Proceeding from a focus on "ontological security as becoming" thus allows for other imaginations in terms of unconscious desires. It allows for a resistance against what Bakhtin has described as

> "monological closure" and the opening up for ontological security to be as much about creativity and the ability to dwell in ambivalence (Cash; Solomon), as about closure and permanence. It is about the power to live with uncertainty, to see the condition of ontological insecurity as a possibility for change and opportunity, rather than one of closure and fear.[15]

This points well towards an alternative to what is argued in the present work to be the kinds of alternative frameworks to the serial magnitudes, with their claims of ontological security on condition of subjection. However, the problem of terminological confusion continues in Kinnvall's latter statement. That is, "becoming" cannot be the basis of ontological security, as security is a separation from the existential *angst* that alone can continuously respond to the constantly shifting absolutism of reality. An authentic response can only be one that promotes the varieties of action constituted by an ontology of insecurity. There can be no security in the face of the absolutism of reality. This is especially so in the context of such ethical/political principles as equality, diversity and solidarity. As the history of the magnitude of the State – which we have examined in chapter 2 – demonstrates, there are always interests who seek to become dominant by claiming that they will secure these three principles on condition of subjection. Preserving an ontological condition of becoming based on insecurity can avoid this circumstance.

Ontological insecurity, information wars and COVID

Bolton seeks to adapt Ontological Security Theory to the manner in which the search for such security in both politics generally and in international relations specifically is prey to the influence of information warfare. By attacking the information landscape, information warfare can alter how events are connected to national narratives, by influencing policy in a manner that makes certain policy options seem more or less shameful or by unraveling social bonds by polarising debates. Through such tactics, ontological insecurity can be sown. He suggests that the Russian cyberattack interference in the 2016 United States election and its deployment across Europe – where debates about immigration have been manipulated – was an example of such a strategy. Thereby, not only a national narrative but also the very sense of self of an individual can be undermined as anxiety becomes increasingly intense.[16]

This analysis should also be exposed to the criticism of terminological ambiguity. That is, ontological security – in national narratives and thereby the sense of self of an individual – is in itself a false construction. Whenever these

15 Ibid. at "Conclusion"

16 D. Bolton "Targeting Ontological Security: Information Warfare in the Modern Age" *Political Psychology* 42:1 2021 p. 127 and "Conclusion"

features are the result of the normalising efforts of dominant interests who secure such narratives and sense of self – as the nature of the magnitude of the State presented in the present work shows that they typically are – then they are in the nature of a subjection. Better to seek a national narrative as the product of a way to respond to the ontological insecurity caused by the absolutism of reality, in which case citizens would be constantly alert to the fragility of the narrative in the face of the full range of incursions from within and without, including from information wars. Then the acceptance of the contingent nature of narratives – and one's sense of self – would be not only a protection against the subjection that typically accompanies ontological security but also the source of the radical creativity required to avoid such incursions. If the citizens of the United States in 2016 had inhabited such a frame of creative ontological insecurity then the impact of the Russian trolling would be unlikely to have the impact it did. Ontological security is the security of subjection.

Kirke seeks to apply ontological security theory to the COVID experience, arguing, first, that the broad social context is crucial in the search for the coherence and stability of the self and, then, that such relations are implied in the existential philosophical canon that precedes the study of ontological security and is found, for example, in Heidegger's *Dasein*. For Kirke, COVID disrupted the relations and processes that are core to our daily experiences, the sense of being which comprises ontological security, thereby the sense of self, identity and the way we act within the world. Social distancing increased anxiety by introducing caution and even a sense of threat to physical safety.

Kirke then argues, however, that these divisions have not become dominant due to our capacity for myth-making: political myths have strengthened collective resolve to re-establish ontological security. Here he calls on Blumenberg in explaining that reality without significance risks overwhelming us into believing that we have little control over the conditions of our existence. But we never experience the *angst* that we would expectedly endure from the miscellany of events to which we are "indifferently" exposed due to the creation by our ancestors of filtering mechanisms and symbolic practices and which mediate it. These include, for Kirke, philosophy, science, art and myth. Each such myth has a high degree of consistency in its core, although each evolves to allow adaptation to changing socio-political situations.[17]

This is argued to be relevant in that this mythological search for significance is closely aligned to the notion of ontological significance: political myths address anxieties, provide certainty and function as a lens through which we interpret the political world. Kirke calls on two mythologisations that have been dominant in the United Kingdom – the "Blitz spirit" of World War II and, especially, the more recent myth of the National Health Service – and both were called upon to bolster ontological security during COVID.

17 X. Kirke "Anxiety and COVID-19: The Role of Ontological Security and Myth" Op Cit pp. 2, 3

However, the conclusion drawn from this avoids the key point in the argument of the present work. For Kirke, we should look to the claim by Kirkegaard that

> I will say that this is an adventure that every human being must go through – to learn to be anxious – whoever has learned to be anxious in the right way has learned the ultimate.[18]

Yet Kirkegaard does not say that doing so will eliminate anxiety, only that we should be anxious in the right way. His "right way" is not ontological security, whereby "political myths that posit societies against Covid-19 have strengthened a collective resolve and, crucially, *re-established* ontological security" and "political myths address anxieties, provide certainty."[19] What he is saying is that only by continuing to be anxious in the right way can the ultimate be learnt. So, again there is a conceptual mismatch. What the present work argues, especially in chapter 2, is that the politics of the State – the political myth or magnitude – is typically a means to claim that existential *angst* can be veiled by focussing on constructed fears. Thereby they veil the constructive, creative existential anxiety that allows the absolutism of reality to be creatively embraced, through continuing ontological insecurity.

With this conceptual re-alignment in mind, it is possible to address an important allied issue raised by Kirke and Giddens, that is that of mental illness, which for them is the companion to ontological insecurity. From COVID, "Social isolation raises a plethora of mental health issues, and there will likely be negative long-term consequences for this".[20] In the argument here, such forms of mental illness are the consequence of not learning to be anxious in the right way, in fact being anxious in the wrong way by searching for an unattainable sense of security in the context of the claims and strategies of the dominant interests of such magnitudes as the present form of the State and the subjection – not constructive, creative assertion – that this entails.

We can begin to get a sense of the direction that an alternative response to mental illness would take from Wong and Laird, who emphasise the existential reality of suffering and recommend a response through existential positive psychology. Although one can properly de-emphasise what they see as the role of spirituality in this, their focus on struggling with "ultimate concerns" and "unmet needs for meaning" does complement the emphasis in the present work on the positive acceptance of the absolutism of reality and the existential

18 S. Kierkegaard, "The Concept of Anxiety: A Simple Psychologically Oriented Deliberation in View of the Dogmatic Problem of Hereditary Sin" *Liverlight* New York p. 139; Kirke in "Conclusion" p. 4

19 Kirke pp. 2 and 3

20 Kirke p. 4

anxiety that this produces. This understands mental health beyond the medical model:

> Human nature does not change. At the deepest level, what is personal is also universal. The existential universals are the same for all cultures. These existential givens are our ultimate concerns, such as personal mortality, existential loneliness, the meaning of human existence, and the meaning of suffering. Repressed existential anxiety may manifest in other forms.[21]

In a manner directly reflective of the approach of the present work – except for their focus on happiness as such – the authors point out that other responses "often ignore clients' struggles for meaning and happiness and the macro problems such as climate change, internet scams, abuse of AI for personal gains, and the potential for international wars in Europe and Asia".[22]

From an allied perspective – which is correct but one hopes is premature – Guthrie "establishes that death anxiety underlies eco-anxiety and so, for him, preparing psychologically for eco-apocalypse requires people to cultivate death acceptance".[23] This contains a variety of the elements of a positive approach which accepts existential anxiety as necessary – given the absolutism of reality – without veiling this in subjection to magnitudes. Further, such an approach would require that the existential risks we have considered are immediately the subject of demands for action along with the development of strategies to deal with the consequences of such action, that is which the transition from dominant magnitudes to those guided by the fiduciary principle could bring. Lifting the veil put in place by the *core* dynamic. This would in turn see and require the development of a *respectful responsibility to and for oneself* for each citizen.[24]

Returning to the starting point and principal theme of this work, such an approach would undermine the search for sympathetic absolutism that the *core* dynamic represents and allow a strategy that avoids subjection, through ontological insecurity: a dynamic that sustains present forms of political populism, the climate crisis and the threat of looping generative artificial intelligence.

This may not be the outcome, since confronting these existential risks may only take the form of a search for the magnitudes of Market State and Market to be merely more sympathetic towards conditions of existence, to operate in

21 P. Wong and D. Laird "Varieties of Suffering in the Clinical Setting: Re-envisioning Mental Health Beyond the Medical Model" *Frontiers in Psychology* 14:19 May 2023

22 Ibid. p. 2

23 D. Guthrie "How I Learned to Top Worrying and Love the Eco-Apocalypse: An Existential Approach to Accepting Eco-Anxiety" *Perspectives in Psychological Science* 18:1 Jan 2023 p. 210

24 D. Grant *Privacy in the Age of Neuroscience* Chapter 5 at "An Alternative Value Frame: Respectful Responsibility to and for Oneself" p. 165

a manner which is not existentially risky but which is still subjecting: the constructive potential of embracing existential *angst* would remain veiled, fuelled by dire warnings that to do so would be inherently unpleasant, that is despite its authenticity. Such would be an argument that the subjecting entity had regained an intention to be sympathetic but such an argument needs always to confront the question of the principal beneficiaries of such arrangements.

Free will and the existential questions

Given this argument that it is conceptually possible not only for political arrangements to be reimagined to address existential risks but also to allow and promote a condition of ontological insecurity – whereby existential *angst* may be creatively embraced – the question is whether the deep neural embedding of the cultural beliefs of subjection would allow such a gestalt or paradigm shift, even if progressively. That is, whether a sense of free will is available for this to emerge. This is not a settled question.

One of the key challenges to any sense of actual free will has been the Libert paradigm, whereby Benjamin Libert showed in the 1970s and 1980s that, 0.5 to 1.5 seconds before conscious awareness of an intention to perform a movement, subjects emit E.E.G. activity that predicts this movement. That is, the brain makes a decision and sends what is called readiness potential before a person realises it and so our actions are nothing more than the result of an unconscious physiological process in the brain. This experiment has been repeated with f.M.R.I. imaging, and the decision of the subject, in fact turns out to be predictable even 6 to 10 seconds before their conscious awareness of it. Consequently, some neurophysiologists have concluded that free will does not exist.

However, recent research at the H.S.E. Institute for Cognitive Neuroscience has questioned these results. That is, the Libert paradigm pushes subjects to the feeling that they can determine the moment of decision-making and intention: the experimental instruction given to subjects itself makes the participants feel that they can determine the moment of decision-making and that the intention should emerge long before the decision is made. Further, that study confirmed that there is no direct link between the activity of the brain preceding the action and the intention to perform the action. The sense of intention emerged in subjects at different times while the readiness potential was always registered at around the same time. For these researchers, it proves the absence of a direct correlation between the brain signal and decision-making.[25]

This is not a decision in favour of free will but it is evidence against the widely accepted claim that there is no free will. What is argued here is that,

25 D. Bredikhin "(Non)-experiencing the Intention to Move: On the Comparisons between the Readiness Potential onset and Libet's W-time" *Neuropsychologia*, examined in *Neuroscience News* 4 August 2023

given the possibility of free will, we should shift our concerns to those forces that constrain not only such free will but also, in that context, the obverse matter of individual responsibility and how that might be guided by – not common notions of responsibility – the notion of *respectful responsibility to and for oneself*. This is at the heart of any possibility of forgoing the *core* dynamic, founded as that is on the forgoing of self-responsibility, that is of subjection in the sense intended in this work.

Self-responsibility in this strong sense – whereby there is no subjection to the dominant interests of any determining magnitude since the activation of free will to embrace existential insecurity denies any need to be subject to a State or Market or Technology to veil existential angst – is thereby central to any rejection of the core dynamic. A new ethical frame.[26]

No grand strategy but free will against the failed magnitudes and their present disruptions

The prospect of an activation of free will in this manner would in principle allow and encourage a series of both *defensive* and *assertive* strategies to seek to deal with not only the presenting existential risks but also the source of present populist disruptions in the serial failures of the persisting magnitudes.

Regarding such defensive strategies, there is a range of lower hanging fruit available, many of which are being canvassed in the public discourse. Regarding the wide infrastructure of the State form, these include the establishment of an effective ethics framework for the U.S. Supreme Court to correct a long term and frankly astounding deficiency in its jurisdiction[27] and despite the surprising protestations of Justice Alito in this regard.[28] Such a move might begin to address the lowering opinion held by U.S. citizens regarding the Court.[29] The arguments put by Sheldon Whitehouse, especially if further tested against ongoing developments, could then lead to a more comprehensive reform of judicial appointments and practice.

In relation to the Market, the long infiltration of the large accounting firms into the material operation of the State – bringing with that the intolerable

26 These matters are examined at length in D. Grant *Privacy in the Age of Neuroscience – Reimagining Law, State and Market* at Chapter 5; See also A. Gruart *et al.* "Neural Bases of Freedom and Responsibility" *Frontiers in Neural Circuits* 2 June 2023 p. 13

27 In November 2023, the Court published a code of ethics that it claimed was of long standing. It was immediately criticised for containing no remedy for dealing with any complaint that a Justice had violated the Court's standards: R. Barnes and A. Marimow "Supreme Court Under Pressure Issues Ethics Code Specific to Justices" *Washington Post* 13 November 2023

28 "Supreme Court Justices Should Follow Binding Code of Ethics, ABA House Says" *American Bar Association* 27 February 2023, quote by James Williams of the House of Delegates to the A.B.A. conference on 6 February 2023; R. Marcus "Opinion. No, Justice Alito. Congress Should Not Butt Out On Supreme Court Ethics" *Washington Post* 30 July 2023

29 "In Divided Washington, Americans Have Highly Negative Views of Both Parties" Leaders s. 2 Views of Congress, the Supreme Court and the political system *Pew Research* 7 April 2023

conflicts of interest of organisations which are both advisers to and agents of government as well as consultants to industry – particular reforms can be introduced based on such principles and practice as *inter alia*:

- the re-centring the Public Service as the main policy advisory body in government and with resort to external advisors only where there is a demonstrated and acute need
- imposing a cap on each Department's use of consultants, apart from circumstances of national emergency
- requiring rigorous reporting by Departments to parliament in respect of the use of consultants
- the implementation of donation and spending caps to reduce undue influence of well-resourced corporations[30]

Regarding the themes of pressing existential risks we have considered, there is a range of immediate action available. *Climate change* activism can immediately explore the I.P.C.C. recommendations that would require:

- every polluting enterprise and every polluting artefact to be "designed and fitted" to measure polluting output
- the establishment of government incentives for enterprises and households to convert to renewable energy and electric vehicles
- for enterprises that resist such incentives for unconvincing reasons, the publication of pollution data on a continuous basis
- immediate changes to urban planning provisions to require urban consolidation, building redesign to incorporate recyclables
- investing in green space
- strict protection of ecosystems by governments

In relation to the existential risk from *artificial intelligence*, and especially since there has been little effective immediate response to a moratorium on research into generative artificial intelligence systems, one might well be wary of the post-factum approach of establishing a model forum to examine the future implications of L.L.M.s and instead, especially in the United States, embrace as much of the E.U. *A.I. Act* and Biden's recent executive order regarding A.I. as is politically achievable in the short term. In that Act, there are categories of risk – unacceptable; high; limited; and minimal or none. Included as unacceptable are:

- A.I. systems using subliminal techniques or manipulative and deceptive techniques to distort behaviour

30 "Booming Business for Big Four Comes at a High Cost' Briefing Paper *Centre for Public Integrity (Australia)* May 2023 p. 1

- A.I. systems exploiting vulnerabilities of individuals or specific groups
- Biometric categorisation systems based on sensitive attributes or characteristics
- A.I. systems used for social scoring or evaluating trustworthiness
- A.I. systems used for risk assessments predicting criminal or administrative offences
- A.I. systems creating or expanding facial recognition databases through untargeted scraping
- A.I. systems inferring emotions in law enforcement, border management, the workplace and education

Parallel strategies are being recommended for establishing early guidelines for the metaverse. These relate particularly to established concerns about neurological and data privacy, limited competition between already-powerful platforms, misinformation and manipulation, harassment and safety, embedded bias, fraud and larceny. In response, there is a strong case to act now to develop community rules for the operation of this fast-growing, foundational model.[31]

In the same vein, early action is now required regarding the likely collaboration – in fact integration – of human and artificial intelligence. As generative A.I. expands and develops, and increasingly determines epistemological reality through the looping process we have looked at, then the prospect of collaboration, let alone integration, becomes increasingly problematic. Pointedly, human individuals are facing the increasingly likely position of loss of – or limited – control over the accumulation and deployment of such looped knowledge and its deployment.

Given that prospect, at least in the short term, the potential exists to explore the embedding of ethical principles into such software as a mitigator so long as *respectful responsibility to and for oneself* is the abiding principle. That is that no software could take responsibility for any citizen even if it acts ethically, unless that software has been legitimately given the function of pursuing the exhibited autonomous intentions of the citizen. Even there, responsibility would be continuously audited. A radical proposal in this regard has been proposed by Bertoncini and Serafim, in that

> we bring three critical points – autonomy, right of explanation and value judgment – to guide the debate why ethics must be part of the systems, not just in the principles to guide the users. in the end, our discussion leads to a reflection on the redefinition of AI's moral agency. Our distinguishing argument is that ethical questioning must be solved only after giving AI moral agency, even if not at the same human level.[32]

31 T. Wheeler "AI Makes Rules for the Metaverse even More Important" Brookings Institution 13 July 2023

32 A. Bertoncini and M. Serafim "Ethical Content in Artificial Intelligence Systems: A Demand Explained in Three Critical Points" *Frontiers in Psychology* 14 30 March 2023

An important caveat to initiatives in these two areas is the provision of a broad background frame for the protection of privacy. With a degree of overlap with the intention of the E.U. *A.I. Act* regarding risk, the U.S. *American Data Privacy and Protection Act* (A.D.P.P.A.) has been proposed as one means of extending privacy protection through its provision to require large data holders to undertake algorithmic assessments and comply with accountability standards as they relate to the privacy of individual citizens.[33]

The essential theme of an *assertive* response is drawn from the argument of not only the inevitability of the absolutism of reality but also that the veiling of it is not only widely subjecting but ultimately corrosive, as the reality of imminent existential risk demonstrates. Further, that the embrace of existential *angst* – to be portrayed as the justification of ontological insecurity – has a broadly positive effect, through but well beyond the urgency of dealing with climate change, nuclear arms and biotechnology. An insecure but creative consciousness.

Here we have a dual focus. First, an outline of the longer-term foundational change that can – given the application of free will – shift citizens away from the embeddedness in which individuals exist and that can be progressed within the space made available by the defensive strategies we have just examined. Second, we will begin to examine what is the ontological basis that would underpin both the *defensive* and *assertive* strategies as they would operate in concert.

Reference points for a possible existential gestalt shift

In the context of the persistence of the dominant interests of the failed magnitudes to search for an absolutist status, conceding sympathetic conditions when necessary to ensure subjection – that is, should that search become intolerable for citizens – then there are several reference points for an available change agenda.

The first is a reimagined *rule of law* based on a new ethical frame as foundational for reimagined forms of State, Market and Technology.[34] As a pointer to the need for this, we see the expressed view that the rule of law framework is failing across the globe.[35] That view includes a solution to this problem as lying within a "back to basics" approach which begins with the Universal Declaration of Human Rights. However, this is the approach which has led to the current malaise. That is, judging the effectiveness of the rule of law by measuring it against such templates is unhelpful as these carry foundational flaws.[36] The rule of law can only properly be seen within the ethical, social,

33 C. Kerry "How Privacy Legislation Can Help Address AI" *Brookings* 7 July 2023

34 These issues have been explored extensively in D. Grant *Privacy in the Age of Neuroscience*. They are referred to briefly hereunder.

35 T. Piccone "The Compounding Rule of Law Crisis" *Brookings Institution* 10 November 2023

36 See D. Grant *Privacy in the Age of Neuroscience* p. 147

political and economic conditions from which it has emerged and within which it exists and is activated. As is clear from the present work, the preferred standard by which the rule of law should be itself judged is whether it has the impact of a service to or is a corrective of the influences of the dominant magnitudes.

The present work has emphasised that the effect of law as "rule" is, far from being immune to such influences, substantially in service. That is, both before, and thereby contributing to, the rise of populist politics. This is argued to be shown, as an immediate example, by the role of the United States Supreme Court regarding a range of non-secular initiatives; in relation to the servility of High Courts in populist jurisdictions; regarding the widespread support of neoliberal procedure[37] and regarding, at least, its passivity in the face of both technological advanced and imminent existential risk. The position here is that it is not an adequate response that law is in itself without responsibility in such circumstances because it merely reflects the condition of the (im)balance in public interest at the time. Better, law is too-often a reflection of those who dominate such interest and to that extent it functions itself a marker of that influence.[38]

The implied subsequent question is on what grounds law and its rule can be brought to primarily reflect other than dominant interests. The answer is not to tinker with constitutional arrangements. These have already been argued to be too often inadequate in defending the interests of citizens across a range of issues and jurisdictions. It is therefore necessary to look elsewhere and more basically than the constitutional frame. That is, to look at *fundamental ethics*. As with those deleterious effects of constitutionalism – the conception and proper function of which is not denied – standard ethical frames have failed to ensure the interests of all citizens. Whether we look at such standard principles as human dignity, liberty, the protection of personal identity, traditional notions of responsibility, democratic principles, equality or the common good, each of these is typically relativised to varying interests. The most promising principle capable of guiding this search for a reliable ethical base within which the interests of all citizens can be enhanced is that of *respectful responsibility to and for oneself*. That is, for any individual to be allowed and encouraged to be responsible for themself and no other – save for sensible measures to protect the rightfully dependent – so long as one is respectful of others' right to exist within the same principle.[39] Such a principle is not ultra-individualist, as it requires the cooperation of individuals to ensure that every citizen can be responsible to and for herself, respectfully.

This is the ethical complement to psychological *ontological insecurity*. That is, the sense of self that rejects any notion of an absolutist state as promoted by the technological platforms, thereby takes on such sense of responsibility – and

37 L. Norris "Neoliberal Civil Procedure" *UC Irvine Law Review* 12:2 2022 *passim*
38 Op Cit Chapter 8
39 Ibid. Chapter 5

to no other save for the essential ingredient of respect for all others seeking the same status. The immediate implication of this is that, psychologically, this is best promoted by the sense of ontological insecurity we have outlined. There are no temporal absolutes – certainly not as proposed by the dominant interests of the magnitudes – save for the absolutism of reality, only existential *angst* well before the socially constructed fear that has fuelled the existential risks.

Such a foundationally ethical principle is capable of being applied across the social and institutional landscape as a guiding policy and operational framework. In particular, the element of respect directly generates a re-imagined version of the *fiduciary principle* which can then not only found contracts, legal and otherwise, but is capable of founding the widest range of policy and practice consistent with this principle of responsibility. This duty is then to act in a manner that will benefit others and without bias, especially with care, confidentiality, loyalty and prudence. Such would be applied extensively to contractual[40] as well as non-contractual arrangements. Here, the principle is reconfigured and broadened from the circumstance in which one acts directly for another to one where, in taking this kind of responsibility, one acts respectfully to ensure that the interests of the other to be able to act similarly is preserved and promoted. One can begin to get a sense of this in technology from the pronouncements of the Democrat Senate leader Schumer in late 2023 who, in expressing his preferred principles for the operation of A.I., saw these as guided by duty of care for citizens,[41] although this does not go so far as what is proposed herein.

Both governments and corporations would be beholden to undertake their responsibilities in a manner that serves not only their respective interests but equally for the benefit of third parties – a challenge that platforms now strategically avoid. Such a principle would immediately change the response to the present existential risks and to the development of software programming.[42] Further, acting responsibly in this sense would require not only respecting rights of others to be able to act in that manner but also requires that each citizen can and will take personal responsibility to ensure the conditions for such a form of existence apply. This denies any subjection to others such as is embedded in the *core* dynamic but to embrace and respond to the absolutism of reality. None of these are less than highly problematic fields but they have the starting point of operating in what citizens themselves perceive as in their respectful, self-nominated interests in the context of ontological insecurity.

A first test of such a way forward would be confronting the existential risks. However, we have seen that such confrontation *per se* is at best the first but not

40 S. Worthington "Fiduciaries Them and Now" *Cambridge Core* online 6 October 2021

41 C. Lima "Schumer Previews Plan to Tackle AI in Elections, Privacy" *Washington Post* 9 November 2023

42 Ibid. Chapters 8 and 10

sufficient step in realising ontological insecurity, since such confrontation may – in fact, is likely to – result in the magnitudes merely offering more sympathetic versions of their subjecting operations. Such confrontation would need therefore to be undertaken in the context of the three principles to which we have just referred: a reimagined rule of law, a new ethical framework and the embedding of fiduciary principles.

In relation to existential risks, citizens would have to be guided by the further, operational principal that it is the respectful self-responsible citizen who is to be at the centre of gravity when policy and practice are reviewed to address climate change, nuclear arms and late technology. A paradigmatic example of what would be required here rests in the field of *data and algorithmic redesign*. This would require that the centre of gravity shifts from designers and corporate developers to the individual citizen, whose right to self-determine their digital activity would take precedence. Ultimately, this will require that individual citizens determine what they each regard as data and then have self-developed, quantum-resistant algorithms which can be used as A.I. agents to widely search revised data banks and assemble what is of their interest – subject to certain security provisions – and which can be preserved in highly secure private data banks. The vast array of algorithms that presently operate on and for the construction of "personal profiles" are completely and intentionally opaque to all citizens and, typically, serve the interests of the platforms. No ontological examinations, even impact assessments, are undertaken across this digital landscape, let alone how personal information is traded, transferred and manipulated. The autonomous design of such algorithmic artefacts could then be extended to determine the autonomous development of the content of immersive experiences, including education and entertainment, rather than be required to experience those designed by the platforms.

This problem of design will inevitably worsen with the growing epistemological looping produced by expanding and cross-referencing generative A.I. models. Under present digital regimes of development and operations, this may be ultimately insoluble:

> Moreover, it's unrealistic to expect every algorithm to be able to explain itself in the same way, Fern adds … "Getting something that is human-understandable for a lot of really hard problems that neural nets are solving is not going to be possible" he says. Plus, the research into (Explainable AI), including his own group's findings, have revealed that the very notion of explainability is slippery.[43]

43 S. Ornes "Peering Inside the Black Box of AI" *PNAS* 24 May 2023; Z. Dulberg *et al.* "Having Multiples Selves Helps Learning Agents Explore and Adapt In Complex Changing Worlds" *PNAS* 3 July 2023; T. Xu "What Are Quantum-resistant Algorithms – and Why Do We Need Them?" *MIT Technology Review* 14 September 2022; Chen "How Far Is Brain-inspired Artificial Intelligence Away From the Brain" *Frontiers in Neuroscience* 16 2022 pp. 1, 5; D.

Each of these strategies would contribute to a response to the reconstructive nature of the increasingly-dominant magnitudes in a fundamental manner. However, these need to be undertaken with a particular epistemology of *ontology* in mind: what epistemologies derive from different ontologies and in whose interests. That is, there are principles that would optimise the effect of undertaking both defensive and assertive strategies, which are guided by the understanding that it is the acceptance of the absolutism of reality – and not any veiling that claimed to subvert it – which could open the way out of the embedding within the ideas and practices of the magnitudes.

Summary and Coda

This work has been an account of the manner in which an unseen complex of dynamics, and their neural embedding, has been the functional reality not only of the history of the West but also of the range of disruptions across the contemporary social landscape. The present – especially in the shape of various populisms and existential risks, the latter with artificial intelligence and climate change prominent – cannot be properly understood except by understanding these historical dynamics. Thereby, this is as much a neurological, psychological and historical account as a socio-political one.

It is in this context that we can best see the significance of the U.S. abortion debate, of European and American political populism, of the evolution of disruptive market neoliberalism into exploitative global digital platforms and the imminent reality-reconstructing power of immersing, generative artificial intelligence. These are each a contemporary manifestation of the underlying, flawed complexity that derives from originary conditions, an appreciation of which offers an authentic understanding of the present.

Coda

These present disruptions will continue to repeat, and this cycle can ultimately only be addressed by revealing and eliminating the *core* dynamic.

However, one cannot be in any way confident that such will happen. Even addressing the existential risks will not in itself be sufficient, given the capacity for accommodation that rests with the dominant interests and given citizens' disposition to trade off autonomy in return for comfort, especially due to the wish to deny persistent existential *angst*, and the neurologically embedded cultural arrangements that induce that trade. Such beliefs, when continuously reinforced by the strategies and tactics of the dominant, seem virtually

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Beer "AI Will Soon Become Impossible for Humans to Comprehend – the Story of Neural Networks Tells Us Why" *The Conversation* 31 March 2023; M. Loi "Transparency as Design Publicity: Explaining and Justifying Inscrutable Algorithms" *Ethics and Information Technology* 23 2021 pp. 253, 262

intractable, especially now with the emergent attractions of human-like artificial intelligence.

As Connors and Halligan point out – in the spirit of Seitz – the core functions of beliefs are well-established through a five-stage process, beginning with ensuring that, once a sensory or communication precursor trigger for a new belief occurs, there is a search for meaning among pre-existing beliefs to interpret the precursor. This is followed by a further search to ensure it can be accommodated within that framework and by which mutual support between beliefs takes place. Importantly, this allows for the acceptance of selected delusional beliefs. This is followed by activation and marriage with underlying cognitive neurobiology. One may not unreasonably observe that, delusional though the beliefs are that persist in support of the *core* dynamic and in opposition to the reality of existential risks, they are foundational, so typically well-set and unlikely to change in a timely manner.[44] This in turn would see any move towards ontological insecurity and respectful responsibility to and for oneself as especially challenging, even unlikely.

44 M. Connors and P. Halligan "Revealing the Cognitive Neuroscience of Belief" Frontiers in Behavioural Neuroscience 18 July 2022 pp. 2–3

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