I’m going to talk today about the arguments of a new book I have coming out in a few months’ time, with the same title as this lecture. The book is about two main, connected things. First, it looks at the relationship between monopoly and competition in capitalism. It does this conceptually – what is competition, what is monopoly, how do they relate to one another? – and empirically – what has this relationship looked like in practice, over the longue durée, in the UK and US economies? Second, the book looks at the role of the law – specifically competition or antitrust law on the one hand, and intellectual property law on the other – in mediating and regulating that relationship. Based on these analyses the book makes two main arguments: first, that the monopoly-competition relation is vitally important to capitalism and its historical evolution (much more important than most political economists typically allow); and second, that the laws in question have historically played a vital role in mediating that relation and thus in mediating capitalism’s evolutionary trajectory.

Now, if you think you’re about to hear a simple recapitulation of the arguments of the monopoly capital school, you’ll be glad – or who knows, maybe disappointed – to hear that you’re not. Indeed, the way I’m going to set about explaining the book’s core claims is precisely by distinguishing them from that school. This will take up a fair bit of the lecture. But eventually, I’ll get to the three themes of this plenary session that I haven’t alluded to yet: inequality, instability, and the global…

OK, monopoly capital and monopoly capitalism. The work of this school will be very familiar to many of you, but for the sake of those unacquainted with this tradition I’ll provide a brief summary. The central claim of those working in this area is that capitalism has fundamentally changed. It used to be highly competitive – and this competitive capitalism was the one allegedly studied by the classical political economists and by Marx. But it isn’t competitive any more. In fact, it hasn’t been competitive for quite some time: arguably the most influential statement of the monopoly capital thesis was made by Paul Baran and Paul Sweezy in their eponymous book, and that was published 50 years ago next year. And it’s crucial to understand that they were making a theoretical as well as historical-empirical case. Since capitalism now looked fundamentally different, theories derived to explain earlier incarnations of capitalism – most notably, in their case, Marx’s law of value – could no longer apply in anything like their original form. Updating to the present day, the most recent intervention in the monopoly capital tradition is John Bellamy Foster and
Robert McChesney’s *Endless Crisis*. On their reading, recent decades have simply seen a deepening and broadening of the historical trend earlier depicted by Baran and Sweezy.

So, what’s wrong with this thesis? I’m going to point to three main problems – and I’ll be the first to admit that others (including some people in the audience here today) have previously highlighted some of these.

First, there’s something deeply misleading about the either/or nature of this narrative. One of Marx’s most important insights was that capitalism always, everywhere, requires both. It needs competition, to be sure, not least to drive technological innovation, the reinvestment of profits, and thus growth. But it also needs monopoly. Not for nothing does David Harvey, after Marx, argue that the “monopoly power of private property” is “both the beginning point and the end point of all capitalist activity.” Contra Baran and Sweezy, then, I follow Marx in figuring capitalism as always, necessarily, negotiating a knife edge, balanced precariously between the contradictory forces of competition and monopoly, and forever in danger of lapsing too far to one side or the other. And it’s here, I suggest, that antitrust and IP laws enter the picture. In metaphorical terms, the law acts as a leveler: a pincer, of sorts, on the combustible nexus of monopoly and competition, applicable from one side of the knife edge, the other, or both. Antitrust, meaningfully enforced, serves to constrain monopoly power where it coheres too readily, thus boosting competition; IP law acts from the other side, allowing a degree of monopoly power where too little otherwise coheres, and limiting competition in the process. Together, such laws help to ensure that over the long term, capitalism is not too competitive (driving down prices and profits), but remains competitive enough (avoiding stagnation and rent-seeking).

A second and related problem with the monopoly capital thesis is that it figures monopoly and competition not only as mutually exclusive, either/or, alternatives, but as separable ones. This, too, is misleading. Marx, by contrast, argued that monopoly and competition are much more closely related, and much more closely connected, than is usually recognized. “Monopoly produces competition, competition produces monopoly,” in his words. Capital not only requires both but is, in fact, the expression of their synthesis—a synthesis that Marx described as a “movement,” specifically “the movement whereby a true balance is maintained between competition and monopoly.” Such movement comprises opposing but connected dynamics of centralization and decentralization. When one or the other dynamic becomes disproportionately powerful, Marx argues, a “counteracting tendency” kicks in to return capital to a relatively balanced configuration of monopoly and competition. This balanced configuration—always inherently unstable and always prone to knife-edge slippages—is actually pretty close to what Edward Chamberlin would later call “monopolistic competition.”
The third and final problem with the idea of monopoly capital is that it reifies agency. A consistent theme of the tradition renewed by *The Endless Crisis* – one extending back through Baran and Sweezy to Hilferding and Lenin – is its tendency not only to associate potent monopoly powers with a new phase of capitalism, but to depict the latter in terms of a consciously regulated and centrally planned system of unified control. For Lenin, the interests of industrial capital and the state were fused in state monopoly capitalism; Hilferding added finance capital to the totalizing mix. But such reifications really don’t help in trying to understand capitalism’s reproduction in historical reality. Consider the agency of law. For all the importance of the state as the law’s formal originator, there isn’t a single hand on the tiller, a homogeneous entity pulling the levers of regulation. If nothing else, there’s a big difference between the written law and its interpretation. Two courts can interpret and apply the same law in markedly different ways and with very different consequences. Perhaps the clearest example that I discuss in the book concerns US antitrust law in and since the early 1980s: application of this law underwent a dramatic transformation, but the law itself, in the statute books, didn’t materially change. Intellectual training, social and political context, even judicial personality: these variables, and more, all matter to the law’s practical materialization. The “great leveler” I refer to in the title of this talk, in short, is not some omnipotent regulator in charge of the law; it’s the law itself.

So, with these conceptual considerations in mind, what work has the law done on the monopoly-competition relation historically? The book answers this question in respect of the UK and US economies from the late nineteenth century through to today. It begins in the 1880s and 1890s. I argue that in both countries, the decades through to World War II represented a period in which the law largely buttressed monopoly power. Without getting too much into the detail, I’ll try to answer the two obvious questions: how and why? In other words, what particular combination of antitrust and IP laws, in each place, served to support the monopoly side of the monopoly-competition dialectic? And why, at least on my reading, did it do so?

The how is relatively straightforward in the UK case. The story’s a simple one. The late nineteenth and early twentieth centuries saw a substantial fortification of IP laws, and businesses’ rapidly growing reliance on those laws both to create and then to defend monopoly positions. This was particularly true of patent law: trademark and copyright were considerably less significant in this period. At the same time, there essentially was no competition law. Common law of restraint of trade was mobilized on an ad hoc basis. But for a variety of reasons, the UK didn’t have a modern competition law system, of the type that existed in say the US or Canada, until after World War II. The upshot was that while laws – IP laws – were available – and used – to underwrite monopoly, they were not available to decompose it.
Anyone familiar with the US economic history of that period will recognize that the US situation was a bit more complex. There was one strong similarity with the UK: the fortification and increased mobilization of IP laws. But there the stories diverge. After all, 1890 saw the passing of what arguably remains the most influential competition law in history: the Sherman Antitrust Act. This was followed by the Clayton Act in 1914. In what basis, then, can I argue that cumulatively the law supported monopoly power assembly in the US just as it did in the UK? Didn’t these shiny new antitrust statutes provide counterbalance? No, they didn’t. Again, there’s no time to get into the details, but two factors militated against the effectiveness of US antitrust in the period through to mid-century. First, while it allowed successful prosecution of cartels, it was powerless to prevent mergers; instead of fixing prices, corporations therefore simply merged instead. And second, where the two sets of laws confronted one another – as they frequently did – IP law typically trumped antitrust law. More specifically, patents, trademarks and the like were seen to confer monopoly, but legal monopoly. This exempted them from antitrust intervention.

What, then, of the why? Why, in both places, did the law come down in favour of monopoly power? My basic answer is that it needed to, at least at the outset of the period in question. This was what the political economy of each country required. In the 1890s both countries experienced deep recessions characterized by intense competition and downward pressure on prices, profits, and investment – the first Great Depression, in America’s case. Both countries therefore required the widespread reassembly of denuded local monopoly powers – powers which had been eaten away by transportation developments in the US and free trade in the UK context. Alongside other forces, not least that of industry consolidation, the law helped enable such reassembly, partly by not preventing the consolidation that took place. It then, on balance, continued to be primarily supportive of monopoly through to around midcentury – long after, in reality, a point of approximate balance between monopoly and competition had been reached.

And this was the next critical moment. In the immediate wake of World War II, things did not look propitious for either the US or UK economies. Economists and businesspeople alike were deeply negative about growth prospects. No one in their right mind predicted the “golden age” of capitalism that followed. And a good part of the reason for this negativity was stagnation. Levels of innovation and investment had dropped, with many industries dominated by monopolies or oligopolies, freed from the bracing discipline exerted by Marx’s coercive laws of competition. Now, in stark contrast to the situation sixty years earlier, it was monopoly powers that were in relative excess – flushed by the support of the law and other contributory forces over a period of decades.
To help capitalism re-find the balance between monopoly and competition that Marx says it needs, in other words, the law had to change direction. It had to begin to work in favour of competition and against monopoly. And this is exactly what happened – in both countries. In the UK, IP law took a backseat role through to the late 1970s, mainly because levels of innovation in the UK economy remained extremely low: in other words, there wasn’t much new intellectual property to protect. And, at the same time, competition law arrived on the scene to help dismantle widespread monopoly powers. As late as 1958, it’s been estimated that less than a third of UK GDP was generated in sectors free of price-fixing. The main weapon against such collusion would be the new Restrictive Practices Court, which, over the next twenty years, cut a swathe through UK industry and restored much more competitive conditions.

In the US, meanwhile, two key developments helped the law shift course. First, antitrust acquired the teeth against mergers it had previously lacked. By prohibiting the acquisition of assets as well as stock, 1950’s Celler-Kefauver Act closed loopholes that had previously been exploited. This set the stage for the heyday of US antitrust under Chief Justice Earl Warren between 1953 and 1969. Second, there was a crucial transformation in the relationship between the IP and antitrust laws. Through to midcentury, IP law, as noted, had typically “won”, which is to say IP-based monopoly had been largely exempted from antitrust intervention. For the next three decades, however, this was not the case. The range and strength of those exemptions were substantially narrowed. Being based in IP no longer made monopoly antitrust-immune. In sum, in the US as in the UK, the 1960s and 1970s saw a gradual but ultimately significant restoration of competitive conditions. And the law played a crucial, if not solitary role in bringing this restoration about.

Now, we all know that the 1970s represented a crisis period for Anglo-American capitalism. My own contribution to understandings of such crisis conditions is as follows, and will doubtless be rejected by some people here. In effect, I suggest that the monopoly-competition relation had once again flipped. From a condition of excess monopoly powers at midcentury, by the late 1970s it was competition that was in relative excess – as it had been at the end of the nineteenth century. And of course, the work of the law in mitigating monopoly was not the only reason for this. Increasing international competition, especially from Germany and Japan, played a key role – as Robert Brenner has influentially, if controversially, argued. In any event, my argument is that there was now not enough monopoly power. And one sign of this lack, I suggest, is found in capital and labor’s relative shares of income. At midcentury, capital’s share had peaked in both countries. Over the next thirty years it consistently declined and labor’s share rose, just as Kalecki had said it would under conditions of declining monopoly power. I’ll come back to capital and labor’s relative income shares in a bit.
What’s happened since then? The law reversed course for a second time – as it needed
to. Having been supportive of competition until the end of the 1970s, it turned in favor
of monopoly – relatively abruptly in the US, and a bit more slowly in the UK. The
story of how this happened is a fascinating and complex one. I’ll pick out just three
key parts of that story. The first, in the US, concerns the Chicago School of law and
economics. Led by the likes of Robert Bork and Richard Posner, this school, from the
early 1980s, completely reinterpreted the objectives of antitrust. And defanged it as a
result. The primary goal of antitrust was now seen to be efficiency, not competition;
and monopoly could often be more efficient than competition. Levels of antitrust
intervention declined massively, and monopoly power was therefore able to grow to
the levels evident in the US economy today. The second key part of the story concerns
UK competition law, where the story is ultimately one of Americanization through
Europeanization: in recent decades, UK competition law has increasingly come to
resemble Chicago-style, i.e non-interventionist, competition law, but it has done so
indirectly: EU competition law has assumed increasing precedence over national
competition law within the UK, and EU competition law has itself moved Chicago-
wards. Third and finally, and this will surprise nobody, IP law has been immeasurably
strengthened. It’s become central to the wielding of vast monopoly powers within
major contemporary industry sectors such as pharmaceuticals and the media, among
others, facing scant resistance from weakened competition laws.

This reversal of the law’s polarity had the necessary effect. As we know, Anglo-
American capitalism survived the crisis of the 1970s; even prospered, for a while at
least. And it did so partly through the successful reassembly of monopoly powers
which had been all too thin on the ground in the 1970s. Increasingly confident in its
ability to defend competitive positions and extract profits, and setting rather than
merely taking prices, capital reinvested across the board.

Which brings us to arguably the key question: Where do things stand today? Did this
reversal in the work of the law bring capital back towards a balanced, sustainable
configuration of monopoly and competition? Or, as in the past, did it overshoot the
mark, imbalance on the one side ultimately turning into imbalance on the other side?
In the last 5 minutes or so, I want to suggest an answer and to ponder some of its
possible implications for the future. And I want to do so with explicit reference to the
3 themes of inequality, instability, and the global, in that order.

Inequality is of course much in the news these days. The inequality most people are
talking about tends to be that between classes, between the 1% and the rest. But what
about old-fashioned inequality between capital and labor? As I said earlier, labor’s
share of income rose consistently in both the UK and the US after mid-century. It
peaked in both places in the early 1980s. But then it started to fall. Partly this was the
result, of course, of the assault on organized labor on both sides of the Atlantic. But
labor’s share also fell as capital patiently put monopoly powers back together; and it hasn’t stopped falling since. Indeed, even economists as mainstream as Paul Krugman have taken note. “Capital is doing fine by grabbing an ever-larger slice” of the pie, “at labor’s expense,” he wrote in 2012. “Wait,” he went on, “are we really back to talking about capital versus labor? Isn’t that an old-fashioned, almost Marxist sort of discussion, out of date in our modern information economy? Well,” he concluded, “that’s what many people thought.” Indeed… Krugman had two explanations for capital’s victory. One was technology displacing labor. The other was growth of monopoly power. It’s pretty clear, in short, that from a situation of excess competition in the 1970s, we are once again, as at mid-century, confronted by the obverse scenario: imbalance on the side of monopoly. And inequality between capital and labor reflects this.

A surfeit of monopoly power, in turn, is surely at least part of the explanation for instability in today’s economy. Marx’s argument was that instability inevitably results if approximate balance between competition and monopoly is disturbed for too long: capitalism can’t flourish while in deep imbalance. Today, in the US and UK, with monopoly powers ascendant, signs of instability are rife. There is widespread evidence that levels of investment and innovation have both been declining, just as one would expect in an environment of insufficient competitive intensity. There is, accordingly, much discussion of so-called secular stagnation. The influential libertarian economist Tyler Cowen, for example, wrote in 2011 about the Great Stagnation of America’s mature capitalist economy. He’d hate the comparison, but it’s difficult not to think in this regard about Josef Steindl’s Maturity and Stagnation in American capitalism, published sixty years earlier, at what I’ve described as a very similar juncture in political-economic history – one characterized by excess monopoly. For Steindl, such monopoly, or oligopoly, was indeed the main explanation for underinvestment and stagnation. It must be part of the explanation today, too.

What, then, does the future hold? I’ve argued that in the past, when substantive imbalance in the monopoly-competition relation has developed, the law has stepped in to help redress such imbalance – not by itself, of course, but it’s played a crucial role – first from the beginning of the twentieth century in boosting monopoly, then from midcentury in boosting competition, and then from the 1980s in again supporting monopoly. So can we expect the same to happen again? That is, for the law to reverse course, and once more stamp down on monopoly while encouraging competition? Maybe. Certainly there have been powerful calls for antitrust – meaningful, interventionist, competition-prioritizing antitrust – to be revived, from commentators ranging from Michael Ignatieff to Robert Reich. Equally, influential voices have been widely calling for IP laws to be loosened, and the monopolies they protect to face genuine competition.
But here’s the thing. Monopolies don’t tend to be national monopolies any more, in the way they still largely were in the 1950s, which was the last time the competition law authorities successfully took the fight to them. They tend to be transnational, even global. Yet, with the notable exception of the EU, competition law still is largely nationally circumscribed. “In general,” David Gerber wrote in 2012, “the laws that are applied to global markets are not themselves global – or even transnational! Instead, the laws of individual states govern global markets.” Attempts to develop a truly international competition law regime have all withered on the vine – the US has been the main opponent – and coordination between different national competition law authorities in relation to the conduct of globally-significant firms – Microsoft, say – has been visibly unsuccessful. Can an uncoordinated hodgepodge of national authorities really call monopoly powers to heel in the era of global capitalism? It looks like a tough ask.