Commentary to Professor Padfield

*Nicole A. Williams**

In his article, Professor Stefan J. Padfield discusses behavioral economics, illusory externalities and utopian benefits, all of which were topics taken from workshops he attended at the 34th Economics Institute for Law Professors.[1] "[B]ehavioral economics . . . focuses on decision-making errors people make that might undermine conclusions of traditional economics founded on rational actors."[2] Illusory "[e]xternalities are understood to be costs (and benefits) that are not internalized by the producer."[3] Some suggest that these externalities may "justify government intervention."[4] Monopolies are harmful because they may deny utopian benefits, rather than create deadweight loss.[5] By choosing these three topics, Professor Padfield focused on questioning widely held assumptions that generally support government intervention in markets.[6]

Government regulation is supported by the idea that intervening in the marketplace helps the economy and prevents it from failing.[7] While there are a number of positive impacts this intervention can have on the economy and social welfare, it also can present negative impacts.

In this comment, I challenge the reader to consider other ways to insulate the economy and society. While these alternatives are unconventional, they are still as effective as regulation, have already been tested, and are regulating the market and helping the economy where many

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[1] *See* Stefan J. Padfield, *Totalitarian Nudges, Illusory Externalities, and Utopian Benefits: Reflections on the 34th Economics Institute for Law Professors*, 21 TENN. J. BUS. L. 269 (2020).

[2] *Id.* at 271.

[3] *Id.* at 280.

[4] *Id.*

[5] *Id.* at 282.

[6] *Id.* at 286.

[7] *See* COMMITTEE FOR ECON. DEV. OF THE CONF. BOARD, REGULATION & THE ECONOMY: THE RELATIONSHIP & HOW TO IMPROVE IT (2017), https://www.ced.org/reports/regulation-and-the-economy.

may not realize. "Marketcraft" is a shift in how we see regulation.[8] One of the most controversial topics that may be reshaped is immigration. With the current political climate driving the immigration discussion to media outlets for primarily partisan reasons, there is still plenty of good that comes from immigration—namely, in our economy.

Elizabeth Warren's ideas are described in an article about how the government should not be attempting to regulate the economy, but rather trying to "reshape" it.[9] The central idea of marketcraft is "how government can beat inequality by reshaping markets."[10] Warren's proposal on this front is the "Stop Wall Street Looting Act." It "seeks to rewrite the rules to constrain private equity firms from simply selling off assets and laying off workers in companies they invest in, and to press them to deliver more value to middle-class consumers and the economy as a whole."[11]

Vogel describes this as "marketcraft," which is "less radical than democratic socialism—because it embraces capitalism—and more radical, because it seeks to transform capitalism."[12] "The alternative to government is not free markets, but real-world markets riddled with imbalances of power, collusions, and fraud."[13] To Warren, reshaping looks like corporate governance reform, as she would like to "give labor representatives a voice on corporate boards and to constrain executives from manipulating financial returns to maximize their income from stock options."[14] She also wants to "shift bargaining power from employers to workers" with labor reforms, and would like "more aggressive antitrust enforcement to constrain the market and political power of dominant firms."[15]

A second market regulator is immigration. While principle-based regulatory approaches have their advantages and are often the traditional approach, there are hang-ups.[16] While these bright-line regulations make it harder for business to "fudge" compliance, they can be so specific and

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[8] Steven Vogel, *Marketcraft: How Government Can Beat Inequality by Reshaping Markets*, VOX (July. 29, 2019, 2:00 PM), https://www.vox.com/2019/7/29/8930751/capitalism-free-market-government-regulation-marketcraft.

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] COMMITTEE FOR ECON. DEV. OF THE CONF. BOARD, *supra* note 7.

tailored to specific situations that "they can easily become obsolete or even counter-productive."[17] This affects the public interest and societal perspectives most.[18] These principle-based regulations can also foster market retention by incumbent businesses and obstruct new business from forming, evolving and growing the overall economy.[19]

As politicians continue to argue about how to grow the economy, regulate the market, and spur immigration reform, "a new study suggests that immigration boosts the economy in the short-term—and continues to do so even 100 years later."[20] "[C]ounties with more historical immigration have overall higher incomes, less poverty and less unemployment."[21] By welcoming immigrants, the local economies "saw greater industrialization, agricultural productivity and innovation."[22] Today, the U.S. relies on immigrants to round out the job market in the "food, shelter, clothing, transportation, and healthcare" industries.[23] Immigrants working in these areas have not cost native-born citizens their jobs or wages either.[24] While there appears to be a common misconception that immigrants "take" American jobs, reality instead shows that immigrants often work jobs "that Americans tend not to take."[25] In turn, rather than "competing" for jobs, immigrants "complement" American workers.[26] Immigrants do more than just manual labor, however. They start businesses; they develop cutting edge technologies; and could reduce the government's deficit.[27]

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17 *Id.*

18 *Id.*

19 *Id.*

20 Nicole Lyn Pesce, *Immigrants Help the Economy—Even 100 Years Later*, MARKETWATCH (Mar. 12, 2019, 4:41 PM), https://www.marketwatch.com/story/immigrants-help-the-economy-even-100-years-later-2019-03-12.

21 *Id.*

22 *Id.*

23 *Id.*

24 Gretchen Frazee, *4 Myths About how Immigrants Affect the U.S. Economy,* PBS (Nov. 2, 2018, 6:48 PM), https://www.pbs.org/newshour/economy/making-sense/4-myths-about-how-immigrants-affect-the-u-s-economy.

25 *Id.*

26 *Id.*

27 *See* Jason Furman & Danielle Gray, *Ten Ways Immigrants Help Build and Strengthen Our Economy*, THE WHITE HOUSE BLOG, (July 12, 2012, 10:09 AM), https://obamawhitehouse.archives.gov/blog/2012/07/12/ten-ways-immigrants-help-build-and-strengthen-our-economy. Immigrants are thirty percent more likely to start a business in the U.S. than non-immigrants. They also started twenty-five percent of U.S. public companies that were backed by venture capital investors. Immigrants also make up thirty-three percent

Not only do immigrants contribute to the economy with their labor, they "contribute more in tax revenue than they take in government benefits."[28] "[S]econd generation immigrants are among the strongest fiscal and economic contributors in the U.S." at about $1,700 per person annually, compared to native-born Americans at $1,300 annually.[29] Another way that immigrants contribute to society is by offsetting a falling birth rate.[30] The current birth rate is 1.8 births per woman, down from 3.65 in 1960.[31] To replace the existing population, women would essentially need to have 2.1 births from now into the future.[32] Given these numbers, if immigrants were not coming to the U.S. and having children, the workforce would continue to shrink, and government programs like Social Security would be in tremendous trouble.[33]

The government typically tries to reduce and eliminate inequities through "regulation, taxation, and subsidies."[34] They also "promote general economic fairness" and are intent on "maximizing social welfare."[35] There are many different ways that the government regulates and intervenes, but it is also important to consider how everyday citizens can make a difference and self-regulate. It is important to consider what the ordinary citizen looks like. In doing so, one should be aware that immigrants *are* the ordinary citizens, and they do more for this country than what most think. They help regulate just by being dedicated to their families and to building a better America.

of engineers, twenty-seven percent of mathematicians, and twenty-four percent of physical scientists. *Id.*

[28] Frazee, *supra* note 24.

[29] *Id.*

[30] *Id.*

[31] *See id.*

[32] *Id.*

[33] *Id.*

[34] *See Government Intervention and Disequilibrium: Why Governments Intervene in Markets,* LUMEN LEARNING https://courses.lumenlearning.com/boundless-economics/chapter/government-intervention-and-disequilibrium/.

[35] *Id.*