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BIDEN'S INFRASTRUCTURE PLAN: A NEW COMMITMENT TO PUBLIC GOODS?

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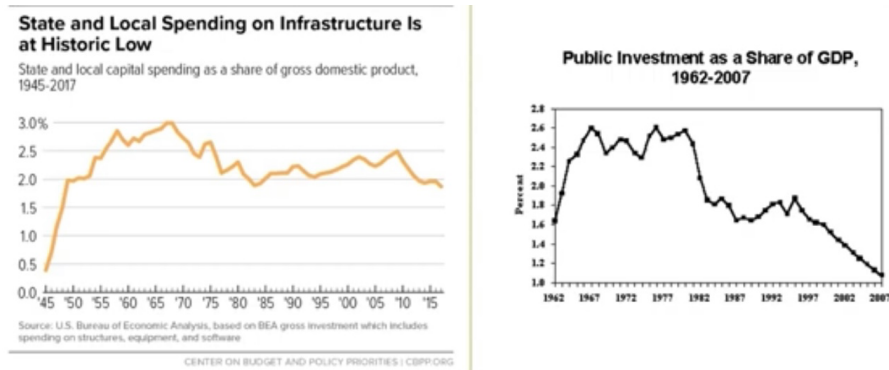
What I am going to talk about today is the unfolding drama around the Biden Infrastructure Plan and what's happening at that level. It is a pivotal moment for public goods politics in the United States, so I think this is a really great time to be having this conference. So, what I'm going to do today is talk about three things. The first is the Biden legislative agenda and I ask the question of whether this legislative agenda represents a more expansive vision of public goods and a break with the past. Second, I will ask why infrastructure? Why that is so important, why that has been on the agenda for a long time, and why it is happening now? I will talk a little bit about this perennial battle between hard and soft infrastructure. Lastly, I will end with a cautionary note about public-private partnerships, which are likely to be a large part of the Biden infrastructure package and the way it unfolds.

Something you have probably heard about today in earlier panels is neoliberalism, so I am not going to belabor this point too much, since it's a term I think people understand, but I am going to talk for a minute about it. We are in around a forty-plus year bipartisan consensus around public goods that, generally, markets are better than government. This period, some in the U.S. thought of it as conservatism against liberalism, is often now framed around the term neoliberalism. It involved welfare state rollback and other factors like the massive deregulation in the banking sector and elsewhere, and de-unionization in the United States and across the Western World. What I want to talk about today is what we have dealt with in the last forty years with persistence under investment in public goods in the United States. That is where the Biden plan really comes in.

So, you can see here on some charts, on the one on the right you can see a public investment as a share of GDP from the early '60s and then this was projected into 2007. This is a chart from the late '90s. The trends, basically a high point in the middle of the '70s, and then you can see right around the beginning of the Reagan presidency, a drop in public investment as a share of GDP. The economy grew at a much faster rate than public

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investment, which did not keep up with the rate of growth in the economy. On the other side, there is a chart of state and local spending on infrastructure as the federal government withdrew from infrastructure investments at the state and local levels; the states and cities had to step in and take on a greater debt load and greater responsibility for basic infrastructure.¹ This next chart provides an estimate of how much of an investment gap there is in certain kinds of hard infrastructure that we usually look at when we talk about hard infrastructure.² Roads, bridges, and transit have an estimated two trillion dollar deficit.³ Electricity is at a \$934 billion deficit, schools are at \$870 billion, and down it goes, waterways, ports, airports, rainwater, and wastewater.⁴ Of course, the need for ports, waterways, roads, and bridges has gotten even more pronounced and acute with COVID-19. So, as evidenced by the chart, there's a funding gap here.⁵



Joe Biden takes the presidency this year and immediately announced some very big changes.⁶ That model I talked about a minute ago of neoliberalism shifts to the private sector and shifts instead away from robust federal government support for infrastructure and public services.⁷

¹ *State and Local Spending on Infrastructure is at 30-Year Low*, CENTER ON BUDGET AND POLICY PRIORITIES, <https://www.cbpp.org/state-and-local-spending-on-infrastructure-is-at-30-year-low> (last visited Mar. 1, 2022).

² *2017 Infrastructure Report Card*, ASCE, <https://2017.infrastructurereportcard.org> (last visited Mar. 1, 2022).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ Sophie Gherardi, *Is Joe Biden Dismantling Neoliberalism?*, PHILONOMIST (June 14, 2021), <https://www.philonomist.com/en/article/joe-biden-dismantling-neoliberalism>.

⁷ *Id.*

Consequently, people immediately start writing and asking this question: is Joe Biden dismantling neoliberalism?⁸ Which is to say, is Joe Biden really departing from this bipartisan consensus around public goods? Others have said the same: if the free market is dead, what would replace it?⁹ So, a lot of people were really taken aback and surprised by the legislative ambition of the incoming administration because Biden was always a defender of neoliberalism in a way; he was a centrist in our vocabulary.¹⁰

I was very surprised to see that ambitious project coming out of the early Biden administration. So, there's a shift, I think, in a couple of ways: one is in rhetoric and substance. Biden says at the beginning of his presidency, "it's going to create the strongest, most resilient, innovative economy in the world. It's not a plan that tinkers around the edges."¹¹ Here, Biden is distancing himself from the Clinton-Obama approach. Biden continues by saying, "it's a once-in-a-generation investment in America unlike anything we've seen or done since we built the interstate highway system."¹² So, he's invoking the New Deal and invoking mid-century liberalism. Historians are already comparing him to Lyndon B. Johnson or to the New Deal. He's also being compared to FDR, and one historian, Jonathan Alter, who writes about FDR, says people are comparing him and his project to the New Deal.¹³ So the question is, is that really a fair comparison? I think it is too early to know for sure, but it is at least in terms of the ambitious rhetoric and the infrastructure package that just got passed, the one that is being debated in Congress right now.¹⁴ Biden stacks up well, and I have to agree with that assessment. For Biden to really have a "Rooseveltian

⁸ *Id.*

⁹ *The Free Market is Dead: What Will Replace It?*, TIME (Apr. 26, 2021), <https://time.com/5956255/free-market-is-dead/>; Gary Gerstle, *The Age of Neoliberalism is Ending in America. What Will Replace It?*, THE GUARDIAN (June 28, 2021), <https://www.theguardian.com/commentisfree/2021/jun/28/age-of-neoliberalism-biden-trump>.

¹⁰ *Id.*

¹¹ Joe Biden, *Remarks by President Biden on the American Jobs Plan*, THE WHITE HOUSE, (Mar. 31, 2021), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/03/31/remarks-by-president-biden-on-the-american-jobs-plan/>.

¹² *Id.*

¹³ JONATHAN ALTER, *THE DEFINING MOMENT: FDR'S HUNDRED DAYS AND THE TRIUMPH OF HOPE* (2006).

¹⁴ Infrastructure Investment and Jobs Act, H.R.3684, 117th Cong. § 11508 (2021).

Presidency,” he would have to take his considerable achievements for this year and keep it up and, I think, that is a fair and accurate assessment in terms of his ambitions. This is probably the most ambitious set of proposals we have seen in several generations. It is more ambitious than many predicted, based on a centrist record. If you compare Biden’s approach to COVID-19 with Obama’s approach to the ‘08-‘09 crisis, in terms of Biden’s direct support that he is envisioning for the economy and for everyday citizens, I think it is a much different approach. With the \$1.9 trillion COVID-19 relief package, a massive relief package passed earlier this year, and this \$1.2 trillion infrastructure bill that I am going to talk about in a minute, just the scope of the ambitions is remarkable.¹⁵ The infrastructure bill is the largest and most comprehensive approach to infrastructure investment in generations. I think he’s doing something that’s different. I think it is a departure from the past.

Why “infrastructure?” Just a brief history here, so at the same time in the 1980s as there is this disinvestment or withdrawal from public investment in the U.S., there becomes an infrastructure that gets onto the public radar.¹⁶ People are talking about our crumbling infrastructure.¹⁷ They have been talking about it for about thirty to forty years, and this becomes an important topic in everyday life in the U.S. It becomes part of common sense that there is this crumbling infrastructure. The American Society for Civil Engineers issues reports on the state of America’s hard infrastructure, usually with a pretty bad grade, like a C- (Ds are also not uncommon).¹⁸ They have been doing this grading of American infrastructure since the 1980s, and it is usually pretty bad.¹⁹ It is not a coincidence that these two things are happening at once, that federal investment is beginning to get withdrawn from infrastructure and there are these gaps in investment. People begin to notice this.

¹⁵ Jacob Pramuk, *Biden Signs 1.9 Trillion Covid Relief Bill, Clearing Way for Stimulus Checks, Vaccine Aid*, CNBC (Mar. 11, 2021), <https://www.cnbc.com/2021/03/11/biden-1point9-trillion-covid-relief-package-thursday-afternoon.html>; Infrastructure Investment and Jobs Act, H.R.3684, 117th Cong. § 11508 (2021).

¹⁶ *Public Works Infrastructure: Policy Consideration for the 1980s*, CBO (Apr. 26, 1983), <https://www.cbo.gov/sites/default/files/98th-congress-1983-1984/reports/doc20-entire.pdf>.

¹⁷ *Id.*

¹⁸ *2021 Infrastructure Report Card*, ASCE, <https://infrastructurereportcard.org> (last visited Mar. 1, 2022).

¹⁹ *Id.*

In terms of “why infrastructure,” if you look at the public polling on this issue, there is somewhere between the low sixties to the high eighties percentage of Americans supporting the increase of federal spending for roads, bridges, mass transit, and other infrastructure.²⁰ There is bipartisan support. Even where the one trillion dollar-plus price tag is mentioned, people still generally support, or strongly support, investment. The second point I would raise is that their support is for both hard and soft infrastructure. Next, I'm going to talk about that distinction.

With hard infrastructure, this would be the physical things that are essential to the economy and quality of life. Soft infrastructure is institutions and basic technology services that are essential to the economy and quality of life. Another way of explaining that is: “hard” infrastructure refers to the large physical networks necessary for the functioning of a modern industrial nation.²¹ “Soft” infrastructure is what sometimes is called the “Caring Economy,” which refers to all the institutions that are required to maintain the economic health, cultural, and social standards of a country, such as financial systems, education, and healthcare.²²

In terms of the bill that passed recently, the Infrastructure Investment and Jobs Act, which was originally pitched as a \$3.5 trillion bill, is now, a \$1.2 trillion bill.²³ It includes investment for roads, bridges, public transport, passenger rail, electric vehicle charging station grid, rural broadband, and airports.²⁴ There are a lot of specific areas that will all be classified as “hard infrastructure.” I would categorize this bill as a “sweeping bill,” which is pitched as the largest public investment in this category in generations. The bill passed and, again, was pitched as at a much higher level, so it arguably is not sufficient as passed. The bill is not perfect, it's got problems in it, which I am going to talk about. But it is at least ambitious and a very different approach from the Clinton-Obama bipartisan-neoliberal approach.

But what about “soft” infrastructure? I really like this tweet earlier this year from Bernie Sanders because it kind of gets at this concept of infrastructure and what it includes. He says:

²⁰ Frank Newport, *Infrastructure Action Should Be a No-Brainer*, GALLUP (Dec. 11, 2020), <https://news.gallup.com/opinion/polling-matters/327587/infrastructure-action-no-brainer.aspx>.

²¹ Luta Hamutuk, *Civil Society Comments on Infrastructure Strategic Sector*, <http://laohamutuk.org/econ/14TLDPM/InfraCSOen.pdf> (last visited Mar. 1, 2022).

²² *Id.*

²³ Infrastructure Investment and Jobs Act, *supra* note 14.

²⁴ *Id.*

Roads and bridges and tunnels are infrastructure - yes absolutely. But I think many of us see a crisis in human infrastructure in this country as well. When a working class family cannot find good quality, affordable child care, that's human infrastructure. When a senior in Medicare cannot afford dental care, that's human infrastructure. The truth is, in many ways, we are behind so many other countries throughout the world in providing for working families, the elderly, and children. I think now is the time to begin addressing our physical infrastructure and our human infrastructure...²⁵

Sanders is calling attention to the fact that infrastructure is a very broad term, and what you categorize as infrastructure is really important because of the public support for investment in it. There is some debate about what exactly infrastructure is. The soft infrastructure side is in the Build Back Better Act, which is now being debated, and will continue for a while.²⁶ This Act started at around \$3.5 trillion and is now being pitched at around \$1.75 trillion.²⁷ This includes investments in universal free preschool, childcare, and elder care (the idea is creating a nationwide paid family leave policy), clean energy investment, affordable housing, and lowering prescription drug costs.²⁸ A lot of this has been on the wish list for liberals and progressives for a long time but has not been acted upon for the most part, even in the Obama Era.

What you should look out for in the coming weeks and months is a battle between progressives and centrists. Congressional progressives wanted to pass both the hard and the soft infrastructure packages together, but they were not able to do that. They wanted to do that to make sure that both of these categories got really ambitious investments and not just the hard infrastructure stuff, including expanding Medicare, childcare, and so on. In the next few months, maybe longer, a congressional debate around the size of the soft infrastructure bill will take place. Right now, there is going to be an issue around how this is going to be paid for, which the Congressional

²⁵ Bernie Sanders (@BernieSanders), TWITTER (Apr. 5, 4:48 PM), <https://twitter.com/BernieSanders>.

²⁶ Build Back Better Act, H.R. 5376, 117th Cong. (2021).

²⁷ *Id.*

²⁸ *Id.*

Budget Office is currently working up an estimate.²⁹ So, the debate around how it is going to be paid for and what is going to be in the bill can still open questions.

The last thing I wanted to talk about was issues of concern with this bill. One issue that I wanted to focus on is a section called “public private partnerships, private activity bonds, and asset recycling.”³⁰ One section proposed financing sources for new investment by closing tax loopholes, redirecting existing federal funds (some COVID-19 funds), and public and public-private partnerships, private activity bonds, direct pay bonds, and asset recycling for infrastructure investments.³¹ This immediately raises concerns about how this is going to work on a local and state level.

Over the summer of 2021, a group called “Indivisible,” which is a left-leaning advocacy group, sent a letter to Nancy Pelosi in July cautioning Congress about public-private partnerships, which is where government may hand over some assets to a private company to manage, in exchange for fees collected as tolls and so on.³² There are a number of projects like this that have unfolded around the country in the last few decades, some successful, some not. The caution in this letter was about handing over too many of these projects to the private sector, and being really cautious about this.³³ For one thing, it is cheaper for governments to borrow because the return on municipal bonds is much lower than what private equity investors expect.³⁴ Ultimately, privatization can drive up the overall cost of infrastructure, which has to be paid over long periods of time, sometimes for forty to fifty years or longer depending on the term of the lease.³⁵ The thing to look out for as these projects get developed over the next coming years are terms that include very long-term lease terms favoring private equity.³⁶ So, for example, if there is a crumbling road in your area, your government decides to give it to a private company for forty years in exchange for an upfront payment and then returns

²⁹ *Summary of Cost Estimate for H.R. 5376, the Build Back Better Act*, CONG. BUDGET OFF. (Nov. 18, 2021), <https://www.cbo.gov/publication/57627>.

³⁰ Infrastructure Investment and Jobs Act, *supra* note 14.

³¹ *Id.*

³² Letter from Indivisible, to Speaker Nancy Pelosi and Leader Charles E. Shumer (July 15, 2021), https://indivisible.org/sites/default/files/resources/organizational_letter_to_democratic_leadership_oppose_privatization_in_bipartisan_infrastructure_framework.pdf.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

it to the government. We have to be careful about that because you have to be concerned that these kinds of arrangements concede control over the infrastructure to private equity. You want to make sure that your local governments have retained policy-making authority over the asset. So, this was a good letter, and it was important for the legislators to think about it as they went into drafting Infrastructure and Investment in Jobs bill.³⁷

Also, the other thing to remember is Donald Trump's Infrastructure Week, which had a lot of public-private proposals in it.³⁸ The Democrats were critical of that. Chuck Schumer said, "a private sector driven infrastructure plan means tolls, tolls, tolls paid by average, working Americans. It also means that infrastructure that can't be built with tolls, like repairing schools, will likely get left behind."³⁹ This is just a private money-making operation for the big business buddies of the president.⁴⁰ Schumer says again, "the president's plan is a recipe for Trump tolls from one end of America to the other...they don't want more tolls."⁴¹ There is this criticism of privatization of excessive rights because we want to make sure that we are not selling off all of these public assets to the private sector, who are then going to try to monetize them through excessive tolls. That is the concern at the bottom of this.

Ending on a positive note, Section 11508 of the Infrastructure and Investment in Jobs Act requires that, for example, transportation projects carried out through public-private partnerships, use value-for-money analysis.⁴² One of the issues that have come up in the last twenty years with projects is making sure that they get valued in the right way, so that the government can decide whether to understand the long-term impact both fiscally and politically in terms of handing over potentially long-term leases

³⁷ *Id.*

³⁸ *Could Public-Private Partnerships Have Solved Trump's Infrastructure Problem?*, SYRACUSE UNIV., <https://onlinegrad.syracuse.edu/blog/infrastructure-public-private-partnerships/> (last visited Mar. 4, 2022).

³⁹ Pedro Nicolaci da Costa, *Democrats Say Trump's Infrastructure Plan Is 'Just A Private Money-Making Operation'*, BUS INSIDER (June 7, 2017), <https://www.businessinsider.com/democrats-respond-to-trumps-infrastructure-plan-2017-6>.

⁴⁰ *Id.*

⁴¹ Kevin Robillard, *How the New Infrastructure Deal Could Lead To More Fees and Tolls*, HUFFINGTON POST (June 25, 2021), https://www.huffpost.com/entry/infrastructure-public-private-partnerships-tolls-fees_n_60d4cece4b053314757b895.

⁴² Infrastructure Investment and Jobs Act, *supra* note 14.

effectively, whether that is better for the government to have more control over, or whether that can be safely franchised to a private sector provider. This is a good sign that there is a value for the money analysis model for how these projects were going to be evaluated. The idea is that “PPPs should only be considered if they can be demonstrated that they will achieve additional value compared with other approaches if there's an effective implementation structure, and if the objectives of all parties can be met within the partnership.”⁴³ So, [it is about] not just who is the cheapest bidder for each project, but whether this is going to be a long-term value for the public by using public sector comparator analysis, which is making sure the public sector cannot do this cheaper and more efficiently than the private sector, or that the government cannot do it itself, and estimating the whole life cycle cost of these arrangements.

We have to be really careful that Biden's plan does not turn into a big sell-off of public assets. That is something that is going to have to be watched on the local level to make sure that this is being handled in a way that redounds to the public and not just private equity investors. I think, overall, this is a positive sign that this kind of analysis is being used. It has not commonly been used in the U.S., so I think it is good that it is in the bill. This means that states are going to be required to evaluate the long-term impact of these investments, not just short-term budgetary concerns. An example could be where an equity firm gives \$10 billion to fill up your city budget because you have a budget gap, but then, over forty years it turns out that this is a bad deal for the public. So, I think it is a good sign.

I will end there just in terms of this question about Biden and neoliberalism. I am cautiously optimistic as a critic of neoliberalism and particularly of this question of public investment. I think we have had a chronic under-investment in public goods in the U.S. for several decades. I do think that, in terms of its ambitions, this is the biggest shift in public goods since the New Deal, since the mid-1960s. A couple of things to keep in mind is this distinction between hard and soft infrastructure, which will continue to be a fight between progressives and centrists on costs, as well as what gets included in the bill. Finally, a few issues to watch, especially with the size of this bill, are that the public-private partnerships are done the right way and that we have to think about cost-effectiveness but also public control over the

⁴³ Bruno Queiroz Jatene, *Value for Money Analysis For PPP Decision-Making In The Brazilian State of Rio Grande Do Sul*, GEO. WASH. SCH. OF BUS. MINERVA PROGRAM (2015).

assets. We have to ensure that public assets are being valued fairly and with an eye to their long-term value to the public. But with that kind of optimistic note, I will end there.