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The Inflation Reduction Act (IRA) has been hailed as the most significant piece of federal climate legislation ever enacted in the United States. Although it has not had much competition on that score, the IRA does promise to unleash hundreds of billions of dollars for the clean energy transition. According to the initial budget scoring, at full strength, the IRA was expected to provide some $370 billion of public money (largely in the form of tax credits) to support clean energy development, which was in turn expected to leverage hundreds of billions of dollars in additional private investment. These sums now look like significant underestimates, with some suggesting that the tax credit expenditures alone, which are uncapped, could top $1 trillion over the next ten years.

Wherever the numbers ultimately land, it is clear that the IRA represents an enormous increase over previous spending, which will greatly accelerate a clean energy transition in the United States that is already well underway. Notwithstanding some criticism that the IRA doesn't go far enough, most mainstream analysts and renewables advocates are positively gushing about the avalanche of money coming their way. All of which raises

important questions about the nature of renewable energy finance and the balance between public and private interests in the ongoing clean energy transition. LPE has much to contribute here by training our attention to how law and legal arrangements have structured the industries and shaped the flows of capital that are powering the clean energy transition.

In important ways, the Inflation Reduction Act also embodies an effort to fashion a more muscular green industrial policy for the United States—a form of neo-industrialism that both reflects and reinforces emerging forms of economic nationalism that are taking shape around the world in the wake of the pandemic, the Russian invasion of Ukraine, and the ongoing crisis of neoliberal globalization. Indeed, it is hard not to read the various provisions that seek to create, enhance, and sustain American leadership in clean energy manufacturing as a rather dramatic departure from the rules-based international trading system that marked the so-called Washington Consensus in previous decades—a reading confirmed by National Security Advisor Jake Sullivan's recent characterization of the IRA as part of a "New Washington Consensus" that the Biden Administration is pursuing on multiple fronts.

But the IRA also represents a continuation of the financialized and privatized model of renewable energy development that has been the dominant focus of federal policy since the early 1990s. Part of this was surely driven by the requirements of budget reconciliation. Using tax credits to de-risk private investment in clean energy is in many ways a perfect fit for reconciliation in that it does not require any "extraneous" regulations or new programs that go beyond spending and taxes. But part of it was also likely a reflection of the power of the status quo and the growing influence of a renewables industry that is increasingly dependent upon large financial institutions and large multinational corporations—another iteration of what Daniela Gabor refers to as the Wall Street Consensus.

The exceptions here, of course, are the new provisions for direct pay and transferability of tax credits. Direct pay, as the name suggests, allows for direct payments of the cash value of tax credits to certain non-profit and government entities (state and local governments, tribal governments, the Tennessee Valley Authority) that have historically been excluded from using tax credits for the obvious reason that they do not have any tax liability. Transferability allows the project owners who receive the tax credits to sell them on the open market subject to certain conditions, which means that in theory they do not have to partner directly with tax equity investors (i.e., large banks). While it is too early to say how extensively these provisions will be used, they do represent an important experiment that could create more diverse forms of ownership and participation in renewable power. Even with these new provisions, however, it is hard to see a clean energy future (at least in the

near term) that is not dominated by the large financial institutions and private project developers that have been using tax credits to build and own renewables projects for the last thirty years.

Likewise, even if the various domestic content, labor, and community/equity provisions in the IRA, all of which operate as conditions for securing the full amount of "bonus" credits available under the legislation, do in fact work to drive more investment in domestic supply chains for renewable energy projects while also bolstering the relative position of labor and communities in the building and siting of renewable energy projects, the basic ownership structures of the projects will likely remain unchanged.

While a great deal of attention in climate advocacy circles has been directed at the ways that fossil fuel companies and incumbent utilities are stifling decarbonization, much less attention has been directed at the ways that large multinational energy companies (what some have called the new Clean Energy Supermajors), large financial institutions, and asset managers are shaping our energy future and positioning themselves to extract substantial profits from the transition.

To be sure, much of this has been justified by the fact that spending on renewable energy needs to quadruple to put us on pace to hit climate targets. Finding ways to mobilize private capital, as climate envoy John Kerry constantly emphasizes, has come to be accepted as necessary and obvious. In this view of the world, public investment on the scale that is needed will never materialize (especially as a new push for austerity gains steam), which means that governments around the world should find ways to leverage the trillions of dollars in private capital that is "standing on the sidelines" waiting to invest. Needless to say, there is no place in this agenda for the robust public role envisioned by proponents of a Green New Deal. Instead, the state is relegated to a subordinate role of de-risking and channeling private investment into renewable energy. And while this may have all been what is required by the art of the possible, it does not bode well for a fundamental rebalancing of public and private.

In fact, the doubling down on tax credits as the vehicle for financing clean energy can also be seen as a continuation of a sort of stealth policy victory for finance that has been in the making for three decades. Since the early 1990s, while much of the environmental and climate policy community and more than a few economists have been preoccupied with carbon pricing and other regulatory approaches aimed at controlling emissions, tax credits have been slowly building a renewable energy industry that is now widely and correctly seen as the key instrument of decarbonization. In the meantime, a handful of large banks and other private actors have come to dominate the so-called tax equity market (the market

for renewable energy tax credits). Between 2015 and the first half of 2021, for example, three banks (Bank of America, JP Morgan, and US Bank) accounted for almost sixty percent of the total wind and solar capacity additions financed through tax equity.

While the direct pay and transferability provisions start to open this up, the big question is how quickly these new forms of financing will grow. Put simply, banks, large multinational energy companies, and other asset managers have had a thirty-year head start in developing these projects and building the financial and commercial relationships necessary to get them done. It may well be that the government and non-profit entities that are able to take advantage of the direct pay provisions will quickly learn and scale up. More likely, they will end up partnering with private entities who already have experience and will surely demand a healthy return as consideration. Given the overall scale of the buildout that is needed, moreover, it seems unlikely that public ownership enabled by the direct pay provisions will amount to a significant share of new projects.

As for transferability, while the IRS has not yet released its guidance on these provisions, the market for transferable credits will take years to develop (these kinds of markets always do) and the credits will surely sell at discount. Whether this opens up renewable energy projects to a new class of owners remains to be seen. But here again, it seems unlikely to scale quickly.

Thus, notwithstanding the fact that direct pay and transferability could in theory enable project finance and ownership structures capable of securing a lower cost of capital, incumbent private actors are well positioned to continue dominating the renewables business. This has profound implications for the clean energy transition and for who will capture the benefits of abundant low-cost renewable electricity once the system settles down.

Think about it like this: Once a large utility-scale solar project is built, the marginal cost of producing electricity from that project is essentially zero. The project is all fixed capital. No labor, no fuel; only some very modest maintenance costs. Once these projects are financed, built, and paid off, in other words, the electricity they generate is basically free. But the private entities that own these projects, whether they are banks, asset managers, or multinational clean energy companies, obviously have no intention of ever charging prices that reflect a marginal cost of zero and will do what it takes to continue extracting rents from these assets long after they are paid for. This seems especially perverse given the substantial public investment in the form of tax credits that will have made these projects possible.

Simply put, in our zeal to finance clean energy, we have allowed private actors to make substantial claims on public resources (in the form of reduced tax liability) to finance and build assets that they will own and yet we have not asked for anything in return. At least not yet. The key question looming in all of this is whether these assets will be owned and managed by absentee owners intent on charging what the traffic will bear or whether they will be part of a broader collective project that includes diverse forms of public utility—from outright public ownership to various cooperative and community arrangements to a renewed effort to regulate private capital and direct it toward public ends. One of the great benefits of focusing on the law and political economy of renewable energy is that it reminds us that things could have been, and still could be, different.