# 1NC Round 4

## Off

### 1NC – K

#### The 1AC’s justifies antitrust as an intervention to correct “market failures” – that relies on perfect competition.

Nathan **TANKUS** Research Director Modern Monetary Network **AND** Luke **HERRINE** PhD Candidate @ Yale Law, JD NYU & Former Clerk Second Circuit of Appeals **’21** “Competition Law as Collective Bargaining Law” <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3847377> p. 1-3

­ “[T]oo often discourse about ‘the market’ conveys the sense of something definite—a space or constitution of exchange...when in fact, sometimes unknown to the term’s user, it is being employed as a metaphor of economic process, or an idealisation or abstraction from that process.” – E.P. Thompson2 Introduction To those who study governance of the labor relationship, it is obvious that the relationship between business and labor must be governed, and that stability in this social relation is something valued by labor, business, and society writ large.3 Strangely, the idea that governance is necessary and price stability is good are both obscure interlopers to the study of competition law. To bridge the gap between these two areas of law--and incidentally give labor a greater role and stature in theorizing competition law--we aim to provide a general “market governance” framework for understanding how markets are governed in the context of the legal rules that allow and disallow certain forms of coordination. This framework draws from multiple heterodox traditions in political economy, but is particularly oriented toward building out the emerging framework of Neochartalist microeconomics.4

[Insert Footnote 4 – Turner]

Neochartalism, or Modern Monetary Theory (MMT), began as a macroeconomic framework for understanding how legal institutions produce and reproduce money and monetary value, particularly the acceptance of monetary objects in payments of taxes and court-ordered obligations. In developing over the last twenty-five years, Neochartalism has become an interdisciplinary perspective for understanding and reinterpreting a variety of social phenomena. Some scholarship, particularly the path-breaking work of the late economist Fred Lee (who we rely on in conceptualizing issues in this chapter) builds up a microeconomic framework that is uniquely consistent with--and reliant on--MMT insights. We hope others choose to follow Lee and ourselves in making contributions to Neochartalist Microeconomics and expanding the reach of Neochartalism in a variety of subfields that remain dominated by mainstream microeconomics.

While it is beyond the scope of the current chapter to identify all the ways in which our current perspective accords with unique insights of Neochartalism, our focus on potential financial and market instability, money prices and money income as a focus of analysis rather than relative prices and “real variables'' reflect our Neochartalist lens. Our focus on the legal construction of markets also adds to Neochartalism’s emphasis on the legal construction of a monetary production economy in general. Our focus on inherent and irreducible mediated social interdependence also accords with the scholarly perspective that Neochartalist humanities scholars bring to Neochartalism e.g. SCOTT FERGUSON, DECLARATIONS OF DEPENDENCE: MONEY, AESTHETICS, AND THE POLITICS OF CARE (2018).

[End footnote 4]

Arriving at a theory of market governance requires rejecting economic common sense. Far too much economics scholarship--both among orthodox scholars and their critics--treats “perfect competition” as the analytical (and often normative) baseline for all markets, including labor markets. Under perfect competition, prices (including wages) are arrived at entirely via the uncoordinated matching of bids and asks, assumed to result in settled equilibriums represented by intersecting supply and demand curves. If all markets are perfectly competitive (and certain other conditions obtain), then each input and output has its proper price which sends “signals” throughout the economy and results in a perfectly “efficient” allocation of resources. From this perspective, coordination, especially coordination over prices (again, including wages), appears as an unnatural intervention, a way for those acting collectively to collect “rents” above the “real” value of their contribution to society. If coordination is to be justified, it is usually to correct for some other deviation from perfect competition: workers might bargain collectively to capture some of a monopsonist's rents, for example. And, indeed, many of those trained in economics who advocate for collective bargaining or other worker-empowerment measures appeal to one or more “market failures”.5 In doing so, they reproduce the idea— intentionally or not—that if competition were finally left to do its work it would reveal the prices that reflect the allocation of goods and services that perfectly matches relative scarcity, that markets would work “better” if they were moved “closer” to (or to “resemble” or “approximate”) the “competitive” ideal.6 Collective bargaining is a distortion, but it is the best we can do in our distorted world.

But here's the rub: collective bargaining is not a distortion of a preexisting “labor market”. More generally, coordination between market participants (over price or other matters) is not in itself a distortion of any market. There is not and has never been a market without coordination, including over prices.

#### Neoclassical paradigm will destroy humanity and the biosphere.

Anne **FREMAUX** PhD Political Ecology & Philosophy @ Grenoble ‘**19** *After the Anthropocene: Green Republicanism in a Post-Capitalist World* p. 1-3

If the main starting point of this book is the severe environmental crisis we are facing and the natural planet-wide collapse toward which we are heading, today’s ecological reality is powerfully connected to other issues such as growing socioeconomic inequalities, the erosion of democratic institutions, the organized apathy of citizens, the loss of power of nation-states in favor of corporations, the progressive disappearance of the notion of common good, and the economic colonization of the social, cultural, and political life by economic objectives. The global ecological crisis reveals these interlinked disasters caused by the core components of capitalism that include: an excessive exploitation of nature, the rise of industrialism, the self-destructive over- confidence in human-technical power, the arrogant anthropocentric mind- set, and denial of ecological limits, as well as the narrow rationalism and materialism that develop within a reductionist predominant form of science.

Neoliberalism as a ‘global system’ threatens societies as a whole and more especially the core values of social communities and democracy, such as justice, ‘common decency,’ civic virtue, or citizenship. In neoliberal patterns, economic efficiency, market values, employability, consumer freedom, and instrumental rationality are favored over democratic participation, civic values, personal autonomy, active citizenship, intellectual development (‘enlightenment’1), and moral rationality (reasonability2). Institutions dedicated to the common good are systematically turned into competitive structures to satisfy the interests of markets and greedy elites. Pluralism is disappearing under the assault of a one-dimensional consumer pattern which treats humans and non-humans as commodities under the hegemony of private interests. Civil society, an essential element of the agonistic and critical democracy defended in this book, is losing out to ‘spectator democracy.’ Indeed, citizens are more and more passive and self-centered in part because existing political and democratic structures leave them with few opportunities to participate and make collective decisions. As a consequence, the link between democratic politics and citizens is being critically weakened. Neoliberal individuals end up being overtaken by lassitude and resignation, indifference, and loss of interest for the shared common world. What defines neoliberal society is, indeed, a widespread disaffection for democracy and social bonds entailed by the loss of political agency and self-determination. In such a system, propaganda is necessary to manufacture consent3 and to shape the fundamental values to ensure that individuals see themselves as consumers, workers, or owners of capital, rather than citizens, spiritual or relational individuals, friends, or members of social and ecological communities. In order to be fully operational, such a system must also rely on high doses of cynicism and the value of relativism cultivated by deconstructive postmodern views.

Neoliberal competitive market-state systems have colonized all aspects of life, but mainly, they have subjugated nature and used it as an ‘unlimited’ spring of profit and resources intended to feed the logic of growth. The globalized neoliberal framework behaves as if nature were only a neutral background for profit-seeking and economic development. In order to push back the ecological limits that are more and more visible, neoliberals argue that those limits can be transcended through decoupling and technological innovations (Chapter 5). Indeed, constructivist neoliberal governments act as if the biosphere were a mere component of the socioeconomic sphere. As an anti-ecological ideology, neoliberalism denies the existence of natural limits and promotes unlimited material wants vs. limited resources, a cult of endless consumption (consumerism), and techno-fixes (techno-optimism) as the solution to social and ecological problems. The appropriation and commodification of nature undertaken by this form of economic ideology and the freedom it enshrines—understood mainly as the legitimate exercise of extractive power—entail that the environment is viewed only as an instrumental source of raw material and sinks of fossil fuels rather than as an ethically valuable physical, biological, and chemical context of life. Inevitably, this type of economy has supported an insatiable extraction that is today overwhelming ecosystemic capacities. Neoclassical economics is certainly the instrumental form of rationality ‘that most actively opposes the ethical valuation of the environment’ (Smith, 2001: 26).

The neoliberal capitalist agenda, associated with an arrogant anthropocentrism and the technological optimism of many political leaders, experts, techno-scientists, academics, and citizens, has transformed nature and people into raw materials (‘natural’ and ‘human resources’). It has replaced democratic and republican institutions—defined by their concern for the common good—by structures aiming at facilitating the activities and profits of corporations and markets. It has deprived Western political structures of substantial democratic energy by turning citizens of wealthy liberal nations into demoralized and nihilist homo oeconomicus (‘neoliberal citizens’), that is, passive consumers as opposed to active citizens. More than that, neoliberalism, through mass media, entertainment, information, and educational systems, has incrementally converted all the spheres, activities, and dimen- sions of life into economic ones (‘economization’ or ‘marketization’ of life). Private and public institutions are used as ways to transmit the values of capitalism.4 As an unethical and unsustainable model of commercialization, ultraliberal capitalism supports crass commodification, intensifies ine-ualities and transforms everything in its way—from non-human nature to human beings—into replaceable, dispensable and disposable products. As a global threat, neoliberalism leads to ‘environmental stresses (water shortages, deforestation, soil erosion or climate change), food and energy insecurity, peak oil, rising poverty and inequalities within and between societies, increasing passivity of citizens within democracies and the inexorable rise of corporate power within and over the democratic state’ (Barry, 2008: 3).

The price we, humans, are socially, politically and ecologically paying and will continue to pay in the future for the triumph of the neoliberal ideology is disproportionate with anything humankind has experienced so far (see Fig. 1.2). However, human relatively recent history already shows that the popular passivity and political apathy (mentioned above) fostered by cynical and disempowering systems of ideas have the potential to favour the rise of dictatorial regimes in which a father figure or ‘strong man’ could take upon the conduct of public affairs. At a time when chauvinistic, racist, anti-elitist, and macho-ist parties are dangerously rising in all Western countries, this fear is taking a serious turn, which includes the risk of an authoritarian ecology.

#### We should use the framework of challenge-driven political economy instead of a competitiveness framework.

Mariana **MAZZUCATO** Inst. for Innovation & Public Purpose @ University College (London) **AND** Rainer **KATTEL** Inst. for Innovation & Public Purpose @ University College (London) **’20** “Grand Challenges, Industrial Policy, and Public Value” Non-paginated

Twenty-first-century policymaking is increasingly defined by the need to respond to major social, environmental, and economic challenges. Sometimes referred to as ‘grand challenges’, these include threats like climate change, demographic, health, and well-being concerns, as well as the difficulties of generating sustainable and inclusive growth. Against this background, policymakers are increasingly embracing the idea of using industrial and innovation policy to tackle these ‘grand challenges’. Examples of challenge-led policy frameworks include the United Nation’s Sustainable Development Goals (SDGs; Borras,­­ 2019), the European Union’s Horizon Europe research and development programme (Mazzucato, 2018a), and the UK’s 2017 Industrial Strategy White Paper (HM Government, 2018).

Challenge-driven policy frameworks are emerging in parallel to well-established modernization and competitiveness frameworks**.** While 1 2 modernization, and in particular competitiveness frameworks, rely on the idea that government should first and foremost fix market failures,3 a challenge-driven agenda does not have such clearly defined theoretical origins and analytical lenses. As Richard Nelson argued in 1977 in his seminal book The Moon and the Ghetto, getting man to the moon and back is not the same as solving the problem of ghettos in American cities. Put differently, the nature of our knowledge about socio-economic challenges differs from our perception of strictly technical challenges. We can discover answers to technical puzzles; socio-economic issues do not have a single correct discoverable solution. Such issues require continuous discussion, experimentation, and learning.

We believe challenge-led growth requires a new conceptual and analytical framework that has at its core the idea of confronting the direction of growth with growth that is, for example, more inclusive and sustainable. Such a framework should focus on market shaping and market co-creating (Mazzucato, 2016). This is a question of both theory and policy practice. In theory, challenge-driven innovation policy questions both established neoclassical and evolutionary concepts (Schot and Steinmueller, 2018). In policy practice, directed policies require rethinking what is meant by ‘vertical policies’.

Industrial policies have always been composed of both a horizontal and a vertical element. Horizontal policies have historically been focused on skills, infrastructure, and education, while vertical policies have focused on sectors like transport, health, energy, or technologies. These two traditional approaches roughly embody differing schools of economics: neoclassical economics-inspired horizontal policies focusing on supply-side factors and inputs; and evolutionary economics-inspired policies putting emphasis on demand-side factors and systemic interactions (Nelson and Winter, 1974; Hausmann and Rodrik, 2006 for a synthesis). Although certain sectors might be more suited to sectorspecific vertical strategies, the ‘grand challenges’ expressed in SDGs are cross-sectoral by nature and hence we cannot simply apply a vertical approach to them. Both neoclassical and evolutionary approaches to industrial policy have relied on the idea that the best policy outcome is economy-wide development, without specifying its nature. In policy this has led to managing economies according to GDP growth rates, competitiveness indices and rankings, or other macro indicators (e.g. exports, patents) (Drechsler, 2019). Yet, many SDGs are only indirectly related to the economy and hence many of the key issues around SDGs have not been theorized in the context of innovation and industrial policy (see, e.g., Zehavi and Brenzitz, 2017).

In this chapter we argue that through well-defined goals, or more specifically ‘missions’, that are focused on solving important societal challenges, policymakers have the opportunity to determine the direction of growth by making strategic investments, coordinating actions across many different sectors, and nurturing new industrial landscapes that the private sector can develop further (Mazzucato, 2017; Mazzucato and Penna, 2016). The result would be an increase in cross-sectoral learning and macroeconomic stability. This ‘mission-oriented’ approach to industrial policy is not about top-down planning by an overbearing state; it is about providing a direction for growth, increasing business expectations about future growth areas, and catalysing activity—self-discovery by firms (Hausmann and Rodrik, 2003)—that otherwise would not happen (Mazzucato and Perez, 2015). It is not about de-risking and levelling the playing field, nor about supporting more competitive sectors over less (Aghion et al., 2015), since the market does not always know best, but about tilting the playing field in the direction of the desired societal goals, such as the SDGs. However, we argue, to achieve this requires a new analytical framework based on the idea of public value and a policymaking framework aimed at shaping markets in addition to fixing various existing failures. Indeed, we argue that if we want to take grand challenges such as the SDGs seriously as policy goals, market shaping should become the overarching approach followed in various policy fields.

### 1NC – Adv CP

#### The United States federal government should:

* implement a regulatory sharing arrangement between antitrust agencies and labor agencies;
* adopt a structuralist approach to labor regulation that prioritizes equitable bargaining power;
* establish a national innovation policy to oversee procurement reform, incentives for research and development, and workforce training;
* pass data privacy regulations and coordinate with the EU over implementation of those regulations
* pass media independence regulations
* negotiate and pass trade agreement and other relevant measures to remove digital trade barriers with the EU
* draft, propose, and implement an international treaty for regulating uses of artificial intelligence;
* invest in sustainable megacity models
* refrain from expanding the scope of antitrust law.

#### Adopting a structuralist approach to labor law expands protections for bargaining and realigns the labor-capital relationship

Hafiz 21 – Hiba Hafiz, Assistant Professor of Law at Boston College Law School, “Structural Labor Rights,” *Michigan Law Review*, 2021, 119 MICH. L. REV. 651

[ULP = unfair labor practice]

Finally, the Board should tailor both its ULP determinations and its section 8 remedies to ensure equal bargaining power between workers and employers. Under an equal bargaining power analysis, the Board could draw on social scientific theory and research to more accurately align the structural relationship between labor and capital. Specifically, the Board should only find a ULP where conduct tips the scales in favor of one party such that, were the parties to enter a collective bargaining negotiation, they would be on unequal footing. To the extent the Board finds that a ULP places one party in a position to hold out longer than the other, it should tailor its remedies to correct for that imbalance.

As discussed, the Board has interpreted section 8 ULPs and exercised its remedial authority in a formalistic way, without analyzing how those interpretations or remedies impact parties' relative bargaining power. Currently, it is a ULP for employers to interfere with, restrain, or coerce employees in their exercise of section 7 rights; to dominate or interfere with a union to form a "company union"; to discriminate or condition employment terms on union membership; to retaliate against employees for filing charges or testifying before the NLRB; and to refuse to bargain collectively with a union that has achieved section 9(a) majority support. 388 Unions commit ULPs if they restrain or coerce employees in their exercise of section 7 rights or their employer in selecting representatives for collective bargaining; cause an employer to discriminate against employees based on union membership; refuse to bargain collectively with an employer as a certified representative of its employees; engage in secondary activity against those who deal with their employer; impose excessive or discriminatory union fees; exact payment from employers for services not to be performed; or engage in certain kinds of recognitional picketing. 389 The Board is generally empowered to prevent persons from engaging in ULPs, issue complaints, determine that a ULP has been committed after a hearing, and petition federal courts to enforce its orders. 390 It is required to prioritize union ULPs of secondary boycotts and recognitional picketing over others and petition a district court to enjoin them. 391

But adopting a social scientific and data-driven approach to ensuring equal bargaining power could dramatically transform existing doctrine to correct power imbalances in labor markets. Recent doctrine on exempting employers from ULPs due to legal determinations of "disloyalty" is illustrative. In a recent case pertinent to the current social-media environment, MikLin Enterprises v. NLRB,3 92 a Jimmy John's franchisee sought an exception for a ULP finding after it fired employees for engaging in consumer-facing poster campaigns against its sick-leave policy. The Eighth Circuit held that the franchisee did not commit a ULP when it discharged the employees for "disloyal" conduct. 393 The facts are telling. The discharged employees had sought paid sick leave and designed and distributed posters on community bulletin boards in their employer's stores. The posters featured two identical images of a Jimmy John's sandwich with text above the first image reading, "Your sandwich made by a healthy Jimmy John's worker," and text above the second reading, "Your sandwich made by a sick Jimmy John's worker," with text below both reading, "Can't tell the difference? That's too bad because Jimmy John's workers don't get paid sick days. Shoot, we can't even call in sick ... We hope your immune system is ready because you're about to take the sandwich test." 394 The posters implied that, because of the employer's sick-leave policy, customers may be exposed to unsafe food because workers would be unable to stay home when ill. The employer then proposed a new sick-leave policy that required employees to find replacements to receive pay, and the workers publicly distributed the same posters with an additional line of text: "Let [the employer] know you want healthy workers making your sandwich!"395 The employer fired six employees and issued written warnings to three workers, claiming the posters resulted in its "bombard[ ment] by phone calls" for around a month.396

The NLRB found that the employer committed a ULP by interfering with employees' right to engage in public communications about ongoing labor disputes and was not entitled to the ULP "disloyalty" exception. Specifically, it found that the posters were "clearly related to the ongoing labor dispute" in that they targeted the employer's paid sick-leave policy as opposed to disparaging the employer or its product.397 Further, because there was no evidence of a malicious motive or employee knowledge that the posters' statements were false or made with "reckless disregard for their truth or falsity," they were not "so disloyal, reckless, or maliciously untrue as to lose the Act's protection." 398 The Eighth Circuit disagreed. It found that the posters made a "disparaging attack upon the quality of the company's product and its business policies" and were "reasonably calculated to harm the company's reputation and reduce its income." 399 Specifically, it held that section 7 does not protect workers' appeals to third parties to improve their working conditions to such an extent that would derogate from employers' rights to fire employees "for cause" under NLRA section 10(c).400 Because the posters were timed with flu season and would likely "outlive ... the labor dispute," the NLRA did "not protect such calculated, devastating attacks."4 1 The court further found that the "disloyalty" ULP exception is available even where employee appeals have a clear nexus to labor disputes.4 2

This decision has been much criticized for its broad extension of the disloyalty exception. 403 Specifically, it has been attacked as conflicting with the NLRA's equal bargaining power purpose because it grants employers the power to characterize a wide range of concerted activity as "disloyal," thus disarming section 7 and removing "from protection those economic weapons that effectively garner public support and threaten to harm the employer's reputation and income."" 4 And the court appeared to functionally reinstate an at-will default rule by allowing termination solely at the employer's discretion-even during union organizing campaigns-by locating the statutory basis of the disloyalty test in section 10(c), which allows "justified," "for-cause" employee discharge based on employers' unilateral determinations. The court did this without any analysis of the union statements' veracity, the statements' impact on the employer's business, the employer's buyer power as a franchisee, extant labor-market restraints (like noncompete provisions), or the impact of broad-strokes regulation of union speech on union bargaining leverage.40 5 Finally, both the Board and the court ignored a critical fact relevant for bargaining-power analysis: the information employees conveyed was accurate and corrected for an information asymmetry that benefited only the employer. The employees, by publicizing health risks that made consumers vulnerable, made the market more efficient by disclosing materially relevant information that enabled more informed choices about where to work and eat. The labor law should be tasked with correcting for such market failures above any vague categorizations of "disloyalty" that permit employer discretion at significant social cost.

Thus, in MikLin, as in other contexts, the court found no employer ULP even as the Board and the courts have been prohibitive when reviewing union ULPs. For example, as I have written elsewhere, workers' secondary activity against "transactional primary" employers-or firms that transact with a direct employer and have market power in that employer's labor or product market-ought to be protected where workers' concerted activity against their direct employer alone would not exert countervailing power against other wage-determining firms.406 Thus, whether those transactional primaries are firms that agree to wage-fixing, no-poaching, or other horizontal restraints with a direct employer or other entities in that employer's supply chain, workers should have an affirmative defense for picketing them just as they would a direct employer.4"7

Labor law is the most important regulatory tool for ensuring that workers exercise countervailing power against employers, 408 and the Board should use its remedial authority to correct unequal bargaining power in its ULP remedies. For example, if employer conduct results in unequal bargaining power, the Board should consider granting workers a default union, default union bargaining, or to the extent a union is in place, a Board order enjoining collective bargaining under NLRB v. Gissel Packing Co.409 And if workers elect to form a union and their employers refuse to bargain on their first contract-the most common impediment to successful collective bargaining '-workers should also be entitled to a Gissel bargaining order and defenses to concerted activity.4" Analysis for determining whether an employer is acting in good faith could be informed by the employer's buyer power, social scientific data on the industry-specific value of incorporating labor as a dynamic input of production, and the NLRA's macroeconomic goals. Similarly, analysis of and remedial options for employer ULPs could be informed by buyer-power determinations and the extent of worker's outside options.

CONCLUSION

This Article reconfigures labor regulation through a structural approach. Where existing law has decentralized tools available to workers to exert countervailing power against employer wage setting, adopting more aggressive interpretations of the NLRA and utilizing more comprehensive remedies to correct for unequal bargaining power will be necessary to rectify the harms that result from employer control over the employment bargain. Integrating social scientific theory, methods, and empirical analyses into the jurisdictional scope of labor law protections, analysis of workers' concerted activity, and sanctionable ULPs will allow better legal tracking of existing labor- market conditions and determinants of labor's share of national income. And it will provide new lines of contestation concerning the rigor, accuracy, and level of substantiation of Board and court labor-market regulation.

#### It’s comparatively more effective than the aff, solves inequality, and avoids politics

Hafiz 21 – Hiba Hafiz, Assistant Professor of Law at Boston College Law School, “Structural Labor Rights,” *Michigan Law Review*, 2021, 119 MICH. L. REV. 651

[ULP = unfair labor practice]

A second strand of scholarship has sought to tackle employer power and its resulting wage suppression through the antitrust laws. This recent body of antitrust scholarship has been motivated in part by the failure of existing labor law reform efforts.50 But, as I have addressed elsewhere, workers face significant obstacles to success under existing antitrust doctrine, which generally prioritizes consumer welfare over that of other constituencies, like workers.51 And the singular focus of antitrust enforcers on traditional microeconomic analysis provides limited insight into the complicated bargaining dynamics that determine compensation in labor markets.52 As a result, antitrust scholars readily concede that labor law reform is a necessary complement to antitrust enforcement in correcting for employers' monopsony power and anticompetitive conduct in labor markets.53

This Article builds on and responds to current proposals by arguing for a "structural" approach to labor law itself. By "structural" approach, I mean one that takes into account workers' relative bargaining power as compared to their employers in determining the scope of substantive labor rights and in resolving disputes. A key component of such an approach involves the integration of social scientific advances in the study of market power and bargaining power into the NLRA's administration.54 Because employers' current buyer power strengthens their ability to indefinitely hold out on worker demands in the employment bargain, the "structural" approach seeks to resituate workers to a bargaining position from which they could equally hold out. And it proposes accomplishing that by applying social scientific tools to a reinvigorated analysis of the NLRA's core regulatory components: who counts as "employees" and "employers"; the scope of workers' right to organize, form unions, bargain collectively, and engage in concerted activity; and the scope of workers' and employers' ULPs.55

This proposal does not require overcoming stubborn congressional impasses because it is already baked into the purpose of the labor law. The NLRA's legislative history and policy goals support achieving equal bargaining power, as does the Board's early practice of institutionally aligning research and litigation support with its DER. Reviving attention to this purpose is consistent with the Board and the courts' long-adopted purposivist approach to the NLRA. 56 In the face of unprecedented income inequality, ensuring workers' countervailing power to pervasive employer power is a crucial policy goal, now more than ever. As employers continue to devise new mechanisms to evade legal obligations under labor law, including through workplace restructuring and outsourcing to the "gig" economy, a structural analysis would ensure that legal determinations under the labor law are tethered to labor-market realities that limit workers' leverage over their terms and conditions of work. And ensuring equal bargaining power could complement broader legislative reform efforts if and when Congress moves forward on them.

#### Data sharing solves Big Tech without harmonization or linking to the Econ DA

Mayer-Schonberger and Ramge 18 – VIKTOR MAYER-SCHONBERGER is Professor of Internet Governance and Regulation at the University of Oxford. THOMAS RAMGE is Technology Correspondent for brand eins and writes for The Economist. ("A Big Choice for Big Tech: Share Data or Suffer the Consequences." Foreign Affairs, vol. 97, no. 5, September/October 2018, p. 48-54. HeinOnline.)//gcd

Luckily, regulators do not have to choose between structurally vulnerable but efficient markets and resilient but inefficient ones. There's an easier way to foster both market diversity and resilience: a progressive data-sharing mandate. Under this system, every company above a certain size, say, those with more than a ten percent share of the market, that systematically collects and analyzes data would have to let other companies in the same market access a subset of its data. The larger a firm's market share, the more of its data others would be allowed to see. Data would be stripped of personal identifiers, augmented with metadata to make clear what sort of information the data provided and where it came from, and selected randomly to prevent companies from gaming the system (by granting access only to largely useless data, for instance). Participants would have to agree to certain restrictions, including rules against sharing data with third parties. The role of regulators would be limited to assessing market share, an area in which they have already accumulated expertise. If necessary, regulators would also enforce access to data, but they would not actively organize or operate the sharing system. Eventually, data sharing should be mandated across the board. But countries should start with online markets, as these are particularly vulnerable to the dangers of concentration. In the United States, Congress would have to amend the country's existing antitrust regime to develop a comprehensive data-sharing regulation, and in Europe, the EU would have to act as a whole, but a transatlantic consensus would not be necessary. Both the United States and the EU have enough regulatory power and important enough markets to make a mandate enacted in either jurisdiction effective. A progressive data-sharing mandate would offer several advantages. Unlike a tax, it would not impose any direct cost on firms; companies would remain free to use the data they collect, just as they do now. It would allow many firms and people to use the same data, which would spur innovation; today, although huge quantities of data are collected, it remains underused. If a wide variety of firms had access to market data, a firm's competitive advantage would rest on its ability to extract insights, encouraging companies to develop smarter algorithms and analytics. The policy would not differentiate between different players that crossed the necessary threshold; even Amazon would have access to data from smaller competitors as long as their market shares were greater than ten percent. But since smaller firms would have less data to share and machine-learning algorithms produce diminishing returns for each new data point, a company like Amazon would gain far less than its smaller competitors. A data-sharing mandate would lift all boats, but to different degrees. That would support diversity, innovation, and competition. Once companies had access to the necessary raw material, they would launch alternative decision assistants. People might still shop on Amazon or listen to music on Spotify, but they might use a third-party recommendation tool to choose products and songs. Today's decision assistants mostly serve the digital superstars. Tomorrow's more independent decision assistants could far more convincingly represent the interests of consumers. Price-comparison sites already let people find the seller offering the lowest price for a wide range of products. Independent decision assistants would help them identify the best product match, as well. Creating competition among assistants and markets would eliminate the need to break up digital superstars, because they would no longer enjoy an insurmountable competitive advantage. And because the shared data would be chosen randomly, each competitor would train its systems on slightly different data sets, reducing the risk of systemic failures.

#### Trade planks solves ADV 3

DuPont, 20 (Sam DuPont, Deputy Director, Digital Innovation and Democracy Initiative, Washington, DC, 11-23-2020, accessed on 1-18-2021, Wita, "The Biden Administration Should Pursue a Digital Trade Agreement", https://www.wita.org/blogs/biden-digital-trade-agreement/)//Babcii

But there is at least one area where the incoming Biden administration should launch new, ambitious negotiations: digital trade. Digital trade is about goods and services being bought, sold, and delivered electronically. It’s a U.S. cybersecurity company helping protect a Finnish company’s networks; it’s a Brazilian farmer getting real-time insights on weather conditions and agricultural markets from a Japanese data analytics company; it’s a factory on the shores of Lake Erie sending streams of data around the world so that artificial intelligence can identify maintenance issues before anything breaks down. The United States is the world’s leading exporter of services—more and more of which are delivered digitally—so the commercial value of an open, global internet and a fair, global market for such services should be obvious. A forward-looking digital trade agreement would guarantee that all these services and more can compete internationally—and that the data upon which they depend can flow freely across borders. Successfully negotiating such an agreement with a large group of trading partners would be a boon to U.S. businesses and workers, and there is every reason to believe it would be a political winner on both sides of the aisle. What is more, it would also advance the geostrategic interests of the United States. An agreement that helps ensure the global digital economy defaults toward free commerce, the free exchange of ideas, and the free flow of data will help the United States and its allies confront and compete with China. At home, the Chinese government has implemented a top-down, repressive model for controlling the internet. And it has used negotiations, influence, and raw power to advocate this model overseas—seeking to build a [coalition of countries](https://www.nbr.org/publication/chinas-vision-for-cyber-sovereignty-and-the-global-governance-of-cyberspace/) with separate, sovereign internets characterized by greater government control over information—in order to validate its domestic approach and enhance its global influence. The campaign is working: Governments around the world have followed China’s lead by restricting the free flow of information, blocking online services, and fragmenting the internet along national boundaries. Earlier this year, Freedom House documented a [10th consecutive year of decline](https://freedomhouse.org/report/freedom-net/2020/pandemics-digital-shadow) in global “internet freedom,” and the U.S. trade representative cataloged an ever-growing [list of barriers to digital trade](https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2020/march/fact-sheet-2020-national-trade-estimate-strong-binding-rules-advance-digital-trade). It is not enough for the United States to play defense against these efforts—the Biden administration should advance a proactive strategy to ensure an open, global internet with rules that are rooted in democratic values. One of the most effective ways the Biden administration can pursue this goal is by negotiating enforceable rules and commitments on digital trade that bind together a large group of countries with shared values and common interests. A digital trade agreement should be built around rules that guarantee the free flow of data, prohibit data localization requirements, and ban unfair policies that discriminate against foreign digital products and services. The fruits of a digital trade agreement wouldn’t just accrue to giant tech companies: Digital trade is fundamentally about the cross-border movement of data, and businesses big and small, across a wide range of sectors need to move data across borders to reach customers, operate efficiently, and compete globally. To help ensure they benefit, a digital trade agreement should also include commitments by governments to allow service suppliers to access foreign markets and compete on a level playing field. Establishing a large open market for service suppliers would help counteract the unfair advantages China provides its own firms. Over the past three years, a growing group at the World Trade Organization has been negotiating on digital trade. Many countries have engaged in good faith, but the participation of China, Russia, and other authoritarian governments makes a useful outcome unlikely. China, for one, has used the negotiation to advocate its “[internet sovereignty](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=253656,253560,253552,253386,253377,253311,253238,253068,252987,252986&CurrentCatalogueIdIndex=1&FullTextHash=237161575&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True)” and oppose meaningful rules on core issues. This negotiation has, however, highlighted broad interest in defining rules to govern digital trade, including among many countries that share the United States’ democratic values. A digital trade negotiation should be open to any government that shares a genuine interest in a free, fair, global digital economy and a willingness to abide by enforceable, high-standard rules. This inclusiveness will help ensure that the agreement expands the bloc of countries committed to liberal digital governance, rather than ceding large swaths of the globe to China’s influence. The negotiation toward a “Trade in Services Agreement,” which stalled in 2016, could provide a useful foundation for negotiations and good starter list of countries that may be eager to engage. While a digital trade negotiation would avoid some of the trickiest areas in trade, such as agriculture and intellectual property, the intersection between cross-border data flows and data privacy has proven contentious in previous negotiations, such as the discontinued Transatlantic Trade and Investment Partnership negotiations between the United States and European Union. But that is no reason to avoid the issue. In fact, negotiators should aim to go further than past agreements and set standards for the protection of consumers and their personal data. Ensuring effective and compatible data privacy regimes in participating countries would help assuage concerns about the free flow of information among them. Passing a federal data privacy law would make it much easier for the United States to negotiate data protection standards and help establish a democratic model for digital privacy.

### 1NC – States CP

#### The fifty states and relevant subnational entities should substantially increase the weight afforded to the competitive process in the analysis of anticompetitive business practices.

#### States solve.

Arteaga & Ludwig ’21 [Juan; 1/28/21; Partner @ Crowell & Moring LLP, JD @ Columbia; and Jordan; Partner @ Crowell & Moring LLP, JD @ Loyola Law School, Los Angeles; “The Role of US State Antitrust Enforcement,” *Global Competition Review*; https://globalcompetitionreview.com/guide/private-litigation-guide/second-edition/article/the-role-of-us-state-antitrust-enforcement; AS]

During the 1980s, for example, state attorneys general once again emerged as vigorous antitrust enforcers, especially with respect to the prosecution of resale price maintenance practices and other vertical restraints. The rise in the level and prominence of state antitrust enforcement during this period was largely due to a perceived enforcement void at the federal level, where the DOJ and FTC had mostly limited their focus to ‘prohibiting cartels and large horizontal mergers’. No longer content with ceding antitrust enforcement to federal enforcers, state attorneys general expanded their antitrust dockets from prosecuting purely ‘local matters, such as bid-rigging on state contracts’, to actively investigating and litigating matters with multistate and national implications. To help ensure that they had a larger seat at the antitrust enforcement table, state attorneys general also increased the coordination of their enforcement efforts and competition advocacy through organisations such as the National Association of Attorneys General (NAAG), which created a Multistate Antitrust Task Force and issued state Vertical Restraints and Horizontal Merger Guidelines during this period.

Since the reawakening of state antitrust enforcement nearly 30 years ago, state attorneys general have continued to play an important role in the enforcement of both state and federal antitrust laws. During periods of lax federal antitrust enforcement, state attorneys general have often ramped up their enforcement activity in order to protect consumers from anticompetitive transactions and business practices. During periods of vigorous federal antitrust enforcement, they have often served as strong partners for the DOJ and FTC by, among other things, offering valuable insights about competitive dynamics in local markets, assisting with obtaining information from key market participants (including state governmental entities that are direct purchasers of goods and services), and helping develop and implement litigation strategies for cases being tried before federal judges presiding in their states.

Since January 2017, state attorneys general have increasingly played a leading and independent antitrust enforcement role. State antitrust enforcers have significantly increased their enforcement activity and willingness to act separately from their federal counterparts because many of them believe that there has been ‘under-enforcement’ by the DOJ and FTC. State antitrust enforcers have also been able to enhance their influence over key competition policy issues and the antitrust enforcement agenda within the United States because there appears to have been a significant decline in the coordination and relationship between the DOJ and FTC.

### 1NC – Politics DA

#### Budget passes now – PC is key.

BBC 10-28-2021

(“Biden announces revamped $1.75 trillion social spending plan,” https://www.bbc.com/news/world-us-canada-59081791)

US President Joe Biden unveiled a revamped $1.75tn (£1.27tn) spending plan on Thursday, calling it a historic investment in the country's future. "No one got everything they wanted, including me," he said, acknowledging the struggle within his party to reach consensus on a pair of landmark bills. Narrow margins in Congress require nearly unanimous support from the Democrats for the bills to pass. They include major investments in infrastructure, climate and childcare. Mr Biden's Democratic party suggested this week that an agreement was on the horizon, ahead of Mr Biden's trip to Europe later on Thursday. President Biden will travel to Rome, the Vatican and later to Glasgow, Scotland for the United Nations climate conference, COP26. But it remains to be seen whether Mr Biden has achieved the level of cooperation needed from within his party to move the spending plan forward. This new proposal is thought to be a stripped-down version of the roughly $3.5tn social spending plan favoured by progressives. Mr Biden was expected to use his Thursday morning meeting with House Democrats to convince progressives in the party that this new version is close enough to the original bill, and to persuade progressives in the House of Representative to pass a separate, $1tn infrastructure bill that has already passed in the Senate. It's a delicate balance for Mr Biden, as he tries to appeal to his party's progressives - who say they need action on the social spending bill before passing infrastructure - and some moderates, for whom the infrastructure bill is priority. Others had concerns over the price tag of the original social spending bill. So what's in the proposed new spending plan? $555bn aimed at fighting climate change, mainly through tax-incentives for renewable and low-emission sources of energy $400bn for free and universal preschool for all 3- and 4-year-olds $165bn to lower health care premiums for the nine million Americans covered through the Affordable Care Act - also known as Obamacare $150bn to build one million affordable housing units A 50-50 seat split in the Senate - and certain Republican resistance - means Mr Biden must bring his entire party on board if he hopes to pass the spending bill. Two moderate Democrats, Senators Kyrsten Sinema of Arizona and Joe Manchin of West Virginia, appeared to signal some support for the bill in separate statements on Thursday. "After months of productive, good-faith negotiations with President Biden and the White House, we have made significant progress," Ms Sinema said. "I look forward to getting this done." Both Ms Sinema and Mr Manchin are widely seen to have tanked the original bill by refusing to vote for it. For Mr Biden personally, a lot is riding on the fate of these two bills: his presidential legacy. "I don't think it's hyperbole to say that the House and Senate majorities and my presidency will be determined by what happens in the next week," he told Democrats on Thursday morning, according to US media.

#### Antitrust action saps finite political capital and imperils the agenda.

Karaim 21

(Reed, <http://library.cqpress.com/cqresearcher/document.php?id=cqresrre2021050705>, 5-7)

Stucke, the former U.S. Justice Department antitrust official, says that despite Wu and Khan's credentials and reputation, changing antitrust policy will require a concerted effort. With Biden having an ambitious overall agenda and his Democratic Party holding the slimmest possible majority in the Senate, Stucke says, the question is “to what extent will the Biden administration want to expend political capital on this. They've got some bipartisan support for antitrust reform, but to what extent are they going to mobilize that?”

#### Key to avert climate change.

Chow 10-28-21

(Denise, Denise Chow is a reporter for NBC News Science focused on general science and climate change, https://www.nbcnews.com/science/environment/bidens-scaled-spending-bill-big-upsides-climate-fight-rcna4061)

Many climate activists are applauding the $1.75 trillion spending bill unveiled Thursday by President Joe Biden, a move that experts say will be crucial to staving off the worst effects of global warming and building a more livable future. Biden’s proposed framework includes $555 billion in clean energy investments, incentives and tax credits that would help the country meet its goal of reducing greenhouse gas emissions by at least 50 percent by 2030. If passed, environmental experts said it’s the type of legislation that could create much-needed momentum to slash pollution levels and address the climate crisis in the United States and on the global stage. The proposal also backs up promises that Biden campaigned on, making climate change a sizable focus of his administration’s biggest spending bill. “This would be an absolutely historic investment in clean energy and environmental justice — both of which are essential for climate progress,” said Abigail Dillen, president of Earthjustice, a nonprofit environmental law group based in San Francisco. “A package that makes all those investments at a scale that will be transformative over the next eight years is incredible.” The new framework comes after prolonged negotiations between the White House and two moderate Democratic senators, Joe Manchin of West Virginia and Krysten Sinema of Arizona, who opposed key parts of Biden’s original “Build Back Better” plan. Some environmental advocates had hoped for an even larger climate package. “The Build Back Better Framework announced by the White House today doesn’t go far enough to address the economic and climate crises facing our generation,” Cristina Tzintzún Ramirez, president of NextGen America, a progressive advocacy nonprofit started by billionaire and former Democratic presidential candidate Tom Steyer, said in a news release. “A few moderate Democrats negotiated against the best interest of the American people, forcing the rest of their party to renege on essential promises.” Biden on Thursday urged Congress to pass the proposal, saying that the investments will “truly transform this nation.” Earlier this year, the Senate passed a nearly $1 trillion infrastructure bill with robust bipartisan support, but the House has yet to vote on that measure, citing the need for parallel action on the social safety net portion of Biden’s agenda. The bill’s timing is crucial as Biden is set to meet with other world leaders in Scotland next week for the United Nations Climate Change Conference, where countries are expected to negotiate and set forth targets to reduce emissions in line with the goals of the Paris Agreement. Stalled negotiations had generated concern among environmentalists around the world that Biden could show up to the conference empty-handed, leaving little incentive for other countries to offer their own aggressive plans to cut carbon emissions. Sam Ricketts, co-founder and co-director of the climate advocacy group Evergreen Action, said lawmakers should feel increased urgency to pass the revamped Build Back Better act, but added that the proposal itself should benefit Biden by demonstrating to other nations that the U.S. is actively working to achieve its emissions targets. “This will show the global community that America really is an ally and can be a leader in driving forward global climate efforts,” Ricketts said. “It shows that after four years of President Trump’s outright climate denial, the U.S. government is moving with leadership against this global crisis.” The proposed climate bill will also give the U.S. stronger footing in Scotland during negotiations with other top emitters, including China. “The Biden administration will have more leverage to push other countries to make strong commitments,” said Danielle Arostegui, a senior climate analyst at the Environmental Defense Fund. “We can show that we’re putting our money where our mouth is.” The bill would significantly boost investments in renewable energy, including for solar and wind power, and would provide clean energy tax credits and an electric vehicle tax credit that would lower the cost of an electric vehicle by up to $12,500 per middle-class family, according to the White House. The framework also prioritizes environmental justice by earmarking 40 percent of the overall benefits of investment for disadvantaged communities. The plan would fund the electrification of ports, in addition to electrifying bus and truck fleets, and would provide grants to communities that are disproportionately affected by climate change and economic injustice. “This marks a new beginning in the fight against injustice in this country, and a long-overdue boost to the communities that have struggled with the toxic legacy of environmental pollution and systemic racism,” officials with the Equitable and Just National Climate Platform, a consortium of climate change and environmental justice advocates, said in a statement. Dan Lashof, U.S. director of the World Resources Institute, a Washington-based research nonprofit group, said the legislation could bring the country significantly closer to meeting its emissions goals, but added that there is still ground to make up. The White House said the bill will reduce greenhouse gas emissions by 1 billion tons by 2030, but Lashof said a total of 2 billion tons of emissions need to be cut to reach Biden’s target by the end of the decade. Still, he said these types of investments could spur other developments in the private sector, or at the state and local level, which could make up the difference. “It’s important to recognize that this is a huge amount of progress,” Lashof said. “This bill together with the infrastructure bill really does lay the foundation for meeting the 2030 target. It’s all moving in the right direction.”

#### Warming causes extinction.

Michael Klare 20. The Nation’s defense correspondent, professor emeritus of peace and world-security studies at Hampshire College, senior visiting fellow at the Arms Control Association in Washington, DC. “How Rising Temperatures Increase the Likelihood of Nuclear War”. The Nation. Jan 13 2020. https://www.thenation.com/article/archive/nuclear-defense-climate-change/

President Donald Trump may not accept the scientific reality of climate change, but the nation’s senior military leaders recognize that climate disruption is already underway, and they are planning extraordinary measures to prevent it from spiraling into nuclear war. One particularly worrisome scenario is if extreme drought and abnormal monsoon rains devastate agriculture and unleash social chaos in Pakistan, potentially creating an opening for radical Islamists aligned with elements of the armed forces to seize some of the country’s 150 or so nuclear weapons. To avert such a potentially cataclysmic development, the US Joint Special Operations Command has conducted exercises for infiltrating Pakistan and locating the country’s nuclear munitions. Most of the necessary equipment for such raids is already in position at US bases in the region, according to a 2011 report from the nonprofit Nuclear Threat Initiative. “It’s safe to assume that planning for the worst-case scenario regarding Pakistan’s nukes has already taken place inside the US government,” said Roger Cressey, a former deputy director for counterterrorism in Bill Clinton’s and George W. Bush’s administrations in 2011.

Such an attack by the United States would be an act of war and would entail enormous risks of escalation, especially since the Pakistani military—the country’s most powerful institution—views the nation’s nuclear arsenal as its most prized possession and would fiercely resist any US attempt to disable it. “These are assets which are the pride of Pakistan, assets which are…guarded by a corps of 18,000 soldiers,” former Pakistani president Pervez Musharraf told NBC News in 2011. The Pakistani military “is not an army which doesn’t know how to fight. This is an army that has fought three wars. Please understand that.”

A potential US military incursion in nuclear-armed Pakistan is just one example of a crucial but little-​discussed aspect of international politics in the early 21st century: how the acceleration of climate change and nuclear war planning may make those threats to human survival harder to defuse. At present, the intersections between climate change and nuclear war might not seem obvious. But powerful forces are pushing both threats toward their most destructive outcomes.

In the case of climate change, the unbridled emission of carbon dioxide and other greenhouse gases is raising global temperatures to unmistakably dangerous levels. Despite growing worldwide reliance on wind and solar power for energy generation, the global demand for oil and natural gas continues to rise, and carbon emissions are projected to remain on an upward trajectory for the foreseeable future. It is highly unlikely, then, that the increase in average global temperature can be limited to 1.5 degrees Celsius, the aspirational goal adopted by the world’s governments under the Paris Agreement in 2015, or even to 2°C, the actual goal. After that threshold is crossed, scientists agree, it will prove almost impossible to avert catastrophic outcomes, such as the collapse of the Greenland and Antarctic ice sheets and a resulting sea level rise of 6 feet or more.

Climbing world temperatures and rising sea levels will diminish the supply of food and water in many resource-deprived areas, increasing the risk of widespread starvation, social unrest, and human flight. Global corn production, for example, is projected to fall by as much as 14 percent in a 2°C warmer world, according to research cited in a 2018 special report by the UN’s Intergovernmental Panel on Climate Change (IPCC). Food scarcity and crop failures risk pushing hundreds of millions of people into overcrowded cities, where the likelihood of pandemics, ethnic strife, and severe storm damage is bound to increase. All of this will impose an immense burden on human institutions. Some states may collapse or break up into a collection of warring chiefdoms—all fighting over sources of water and other vital resources.

A similar momentum is now evident in the emerging nuclear arms race, with all three major powers—China, Russia, and the United States—rushing to deploy a host of new munitions. This dangerous process commenced a decade ago, when Russian and Chinese leaders sought improvements to their nuclear arsenals and President Barack Obama, in order to secure Senate approval of the New Strategic Arms Reduction Treaty of 2010, agreed to initial funding for the modernization of all three legs of America’s strategic triad, which encompasses submarines, intercontinental ballistic missiles, and bombers. (New START, which mandated significant reductions in US and Russian arsenals, will expire in February 2021 unless renewed by the two countries.) Although Obama initiated the modernization of the nuclear triad, the Trump administration has sought funds to proceed with their full-scale production, at an estimated initial installment of $500 billion over 10 years.

Even during the initial modernization program of the Obama era, Russian and Chinese leaders were sufficiently alarmed to hasten their own nuclear acquisitions. Both countries were already in the process of modernizing their stockpiles—Russia to replace Cold War–era systems that had become unreliable, China to provide its relatively small arsenal with enhanced capabilities. Trump’s decision to acquire a whole new suite of ICBMs, nuclear-armed submarines, and bombers has added momentum to these efforts. And with all three major powers upgrading their arsenals, the other nuclear-weapon states—led by India, Pakistan, and North Korea—have been expanding their stockpiles as well. Moreover, with Trump’s recent decision to abandon the Intermediate-Range Nuclear Forces (INF) Treaty, all major powers are developing missile delivery systems for a regional nuclear war such as might erupt in Europe, South Asia, or the western Pacific.

All things being equal, rising temperatures will increase the likelihood of nuclear war, largely because climate change will heighten the risk of social stress, the decay of nation-states, and armed violence in general, as I argue in my new book, All Hell Breaking Loose. As food and water supplies dwindle and governments come under ever-increasing pressure to meet the vital needs of their populations, disputes over critical resources are likely to become more heated and violent, whether the parties involved have nuclear arms or not. But this danger is compounded by the possibility that several nuclear-armed powers—notably India, Pakistan, and China—will break apart as a result of climate change and accompanying battles over disputed supplies of water.

Together, these three countries are projected by the UN Population Division to number approximately 3.4 billion people in 2050, or 34 percent of the world’s population. Yet they possess a much smaller share of the world’s freshwater supplies, and climate change is destined to reduce what they have even further. Warmer temperatures are also expected to diminish crop yields in these countries, adding to the desperation of farmers and very likely resulting in widespread ethnic strife and population displacement. Under these circumstances, climate-related internal turmoil would increase the risk of nuclear war in two ways: by enabling the capture of nuclear arms by rogue elements of the military and their possible use against perceived enemies and by inciting wars between these states over vital supplies of water and other critical resources.

The risk to Pakistan from climate change is thought to be particularly acute. A large part of the population is still engaged in agriculture, and much of the best land—along with access to water—is controlled by wealthy landowners (who also dominate national politics). Water scarcity and mismanagement is a perennial challenge, and climate change is bound to make the problem worse. Climate and Social Stress: Implications for Security Analysis, a 2013 report by the National Research Council for the US intelligence community, highlights the danger of chaos and conflict in that country as global warming advances. Pakistan, the report notes, is expected to suffer from inadequate water supplies during the dry season and severe flooding during the monsoon—outcomes that will devastate its agriculture and amplify the poverty and unrest already afflicting much of the country. “The Pakistan case,” the report reads, “illustrates how a highly stressed environmental system on which a tense society depends can be a source of political instability and how that source can intensify when climate events put increased stress on the system.” Thus, as global temperatures rise and agriculture declines, Pakistan could shatter along ethnic, class, and religious lines, precisely the scenario that might trigger the sort of intervention anticipated by the US Joint Special Operations Command.

Assuming that Pakistan remains intact, another great danger arising from increasing world temperatures is a conflict between it and India or between China and India over access to shared river systems. Whatever their differences, Pakistan and western India are forced by geography to share a single river system, the Indus, for much of their water requirements. Likewise, western China and eastern India also share a river, the Brahmaputra, for their vital water needs. The Indus and the Brahmaputra obtain much of their flow from periods of heavy precipitation; they also depend on meltwater from Himalayan glaciers, and these are at risk of melting because of rising temperatures. According to the IPCC, the Himalayan glaciers could lose as much as 29 percent of their total mass by 2035 and 78 percent by 2100. This would produce periodic flooding as the ice melts but would eventually result in long periods of negligible flow, with calamitous consequences for downstream agriculture. The widespread starvation and chaos that could result would prove daunting to all the governments involved and make any water-related disputes between them a potential flash point for escalation.

As in Pakistan, water supply has always played a pivotal role in the social and economic life of China and India, with both countries highly dependent on a few major river systems for civic and agricultural purposes. Excessive rainfall can lead to catastrophic flooding, and prolonged drought has often led to widespread famine and mass starvation. In such a setting, water management has always been a prime responsibility of government—and a failure to fulfill this function effectively has often resulted in civil unrest. Climate change is bound to increase this danger by causing prolonged water shortages interspersed with severe flooding. This has prompted leaders of both countries to build ever more dams on all key rivers.

India, as the upstream power on several tributaries of the Indus, and China, as the upstream power on the Brahmaputra, have considered damming these rivers and diverting their waters for exclusive national use, thereby diminishing the flow to downstream users. Three of the Indus’s principal tributaries, the Jhelum, Chenab, and Ravi rivers, flow through Indian-controlled Kashmir (now in total lockdown, with government forces suppressing all public functions). It’s possible that India seeks full control of Kashmir in order to dam the tributaries there and divert their waters from Pakistan—a move that could easily trigger a war if it occurs at a time of severe food and water stress and one that would very likely invite the use of nuclear weapons, given Pakistan’s attitude toward them.

The situation regarding the Brahmaputra could prove equally precarious. China has already installed one dam on the river, the Zangmu Dam in Tibet, and has announced plans for several more. Some Chinese hydrologists have proposed the construction of canals linking the Brahmaputra to more northerly rivers in China, allowing the diversion of its waters to drought-stricken areas of the heavily populated northeast. These plans have yet to come to fruition, but as global warming increases water scarcity across northern China, Beijing might proceed with the idea. “If China was determined to move forward with such a scheme,” the US National Intelligence Council warned in 2009, “it could become a major element in pushing China and India towards an adversarial rather than simply a competitive relationship.”

Severe water scarcity in northern China could prompt yet another move with nuclear implications: an attempted annexation by China of largely uninhabited but water-rich areas of Russian Siberia. Thousands of Chinese farmers and merchants have already taken up residence in eastern Siberia, and some commentators have spoken of a time when climate change prompts a formal Chinese takeover of those areas—which would almost certainly prompt fierce Russian resistance and the possible use of nuclear weapons.

In the Arctic, global warming is producing a wholly different sort of peril: geopolitical competition and conflict made possible by the melting of the polar ice cap. Before long, the Arctic ice cap is expected to disappear in summertime and to shrink noticeably in the winter, making the region more attractive for resource extraction. According to the US Geological Survey, an estimated 30 percent of the world’s remaining undiscovered natural gas is above the Arctic Circle; vast reserves of iron ore, uranium, and rare earth minerals are also thought to be buried there. These resources, along with the appeal of faster commercial shipping routes linking Europe and Asia, have induced all the major powers, including China, to establish or expand operations in the region. Russia has rehabilitated numerous Arctic bases abandoned after the Cold War and built others; the United States has done likewise, modernizing its radar installation at Thule in Greenland, reoccupying an airfield at Keflavík in Iceland, and establishing bases in northern Norway.

Increased economic and military competition in the Arctic has significant nuclear implications, as numerous weapons are deployed there and geography lends it a key role in many nuclear scenarios. Most of Russia’s missile-carrying submarines are based near Murmansk, on the Barents Sea (an offshoot of the Arctic Ocean), and many of its nuclear-armed bombers are also at bases in the region to take advantage of the short polar route to North America. As a counterweight, the Pentagon has deployed additional subs and antisubmarine aircraft near the Barents Sea and interceptor aircraft in Alaska, followed by further measures by Moscow. “I do not want to stoke any fears here,” Russian President Vladimir Putin declared in June 2017, “but experts are aware that US nuclear submarines remain on duty in northern Norway…. We must protect [Russia’s] shore accordingly.”

On the other side of the equation, an intensifying arms race will block progress against climate change by siphoning resources needed for a global energy transition and by poisoning the relations among the great powers, impeding joint efforts to slow the warming.

With the signing of the Paris Agreement, it appeared that the great powers might unite in a global effort to slash greenhouse gas emissions quickly enough to avoid catastrophe, but those hopes have since receded. At the time, Obama emphasized that limiting global warming would require nations to work together in an environment of trust and peaceful cooperation. Instead of leading the global transition to a postcarbon energy system, however, the major powers are spending massively to enhance their military capabilities and engaging in conflict-provoking behaviors.

Since fiscal year 2016, the annual budget of the US Department of Defense has risen from $580 billion to $738 billion in fiscal year 2020. When the budget increases for each fiscal year since 2016 are combined, the United States will have spent an additional $380 billion on military programs by the end of this fiscal year—more than enough to jump-start the transition to a carbon-​free economy. If the Pentagon budget rises as planned to $747 billion in fiscal year 2024, a total of $989 billion in additional spending will have been devoted to military operations and procurement over this period, leaving precious little money for a Green New Deal or any other scheme for systemic decarbonization.

Meanwhile, policy-makers in Washington, Beijing, and Moscow increasingly regard one another as implacable and dangerous adversaries. “As China and Russia seek to expand their global influence,” then–Director of National Intelligence Dan Coats informed Congress in a January 2019 report, “they are eroding once well-established security norms and increasing the risk of regional conflicts.” Chinese and Russian officials have been making similar statements about the United States. Secondary powers like India, Pakistan, and Turkey are also assuming increasingly militaristic postures, facilitating the potential spread of nuclear weapons and exacerbating regional tensions. In this environment, it is almost impossible to imagine future climate negotiations at which the great powers agree on concrete measures for a rapid transition to a clean energy economy.

In a world constantly poised for nuclear war while facing widespread state decay from climate disruption, these twin threats would intermingle and intensify each other. Climate-​related resource stresses and disputes would increase the level of global discord and the risk of nuclear escalation; the nuclear arms race would poison relations between states and make a global energy transition impossible.

### 1NC – FTC Tradeoff DA

#### FTC’s increasing enforcement in privacy now---it’s focused on algorithmic bias.

James V. Fazio 21. Special counsel in the Intellectual Property Practice Group at Sheppard, Mullin, Richter & Hampton LLP, with Liisa M. Thomas, 3/11. “What Is FTC’s Course Under Biden?” https://www.natlawreview.com/article/what-ftc-s-course-under-biden

The new acting FTC chair, Rebecca Kelly Slaughter, recently signaled that the FTC may increase enforcement and penalties in the privacy and data security realm. Slaughter pointed to several areas of focus for the FTC this year, which companies will want to keep in mind: Notifying Consumers About FTC Allegations: Slaughter referred favorably to two recent cases: (1) the Everalbum biometric settlement from earlier this year (which we wrote about at the time); and (2) the Flo Health settlement over alleged deceptive data sharing practices (which we also wrote about at the time). In drawing on these two cases, Slaughter indicated that in future cases the FTC intends to include as part of any settlement a requirement to notify customers of any FTC allegations. This, she said, would allow consumers to “vote with their feet” and help them decide whether to recommend their services to others. FTC Intent to Plead All Relevant Violations: According to Slaughter, another lesson the FTC is taking from the Flo case is to include in the cases it brings all potentially applicable violations of all relevant privacy-related laws. In the Flo case, Slaughter said the FTC should have pleaded a violation of the Health Breach Notification Rule, which requires that vendors of personal health records notify consumers of data breaches. Focus on Ed Tech and COPPA: Given the explosive growth of education technology during COVID-19, the FTC is conducting an industry sweep of the industry. Related to this, the FTC is reviewing its Children’s Online Privacy Protection Act Rule. This goes beyond the refresh the agency did of their FAQs earlier in the pandemic (which we wrote about at the time). For now, Slaughter reminds companies that parental consent is needed before collecting information online from children under the age of 13. Examination of Health Apps: The FTC will take a closer look at health apps, including telehealth and contact tracing apps, as more and more consumers are relying on such apps to manage their health during the pandemic. Overlap Between Competition and Privacy: Slaughter also indicated that it is worth looking at situations where there may be not only privacy concerns, but antitrust as well. Because the FTC has a dual mission (consumer protection and competition) she notes that it has a “structural advantage” over other regulators in that it can look at these issues, especially since -she states- “many of the largest players in digital markets are as powerful as they are because of the breadth of their access to and control over consumer data.” Racial Equality and AI/Biometrics/Geotracking: Slaughter noted that COVID-19 is exacerbating racial inequities. She pointed to the unequal access to technology, as well as algorithmic discrimination (the idea that discrimination offline becomes embedded into algorithmic system logic). The FTC intends to focus on algorithmic discrimination, as well as on the discrimination potentially embedded into facial recognition technologies. (This mirrors concerns that gave rise to the recent Portland facial recognition law, which we recently wrote about). Finally, Slaughter commented on the use of location data to identify characteristics of Black Lives Matter protesters, and said she is concerned about the misuse of location data to track Americans engaged in constitutionally protected speech. Putting it Into Practice: Companies that operate health apps, that are in the education technology space, or that use algorithms or facial recognition tools will want to keep in mind that these are areas of focus for the FTC. And for everyone, keep in mind that the FTC has indicated it will beef up privacy law penalties and will ask for more notification to injured consumers.

#### Antitrust enforcement saps up FTC resources and personnel, which are finite.

Tara L. Reinhart, et al. 21. \*\*Head of Skadden, Arps, Slate, Meagher & Flom LLP’s Antitrust/Competition Group. \*\*Steven C. Sunshine, Co-head of Skadden, Arps, Slat, Meagher & Flom LLP’s Antitrust/Competition Group. \*\*David P. Whales, antitrust lawyer with over 25 years of experience in both private and public sectors. \*\*Julia Y. York, partner at Skadden, Arps, Slat, Meagher & Flom LLP. \*\*Bre Jordan, associate at Skadden, Arps, Slat, Meagher & Flom LLP focusing on antitrust law. “Lina Khan’s Appointment as FTC Chair Reflects Biden Administration’s Aggressive Stance on Antitrust Enforcement.” 6/18/21. https://www.skadden.com/insights/publications/2021/06/lina-khans-appointment-as-ftc-chair

Second, like all antitrust enforcers, Ms. Khan and the FTC will face resource constraints. Bringing antitrust litigation is an expensive and laborious process, often requiring millions of dollars for expert fees and a large army of FTC staff attorneys and taking many months or even years to accomplish. Typically, the FTC can only litigate a handful of antitrust matters at a time. It seems likely that Congress will provide more funding to the FTC in the current environment, but even with these extra resources, the FTC will still have to pick its cases carefully and cannot challenge every deal or every instance of alleged unlawful conduct.

#### That trades off with the necessary resources for privacy enforcement.

McGinnis & Sun ’21 [John; George C. Dix Professor @ Northwestern University, JD @ Harvard Law School; and Linda; Associate @ Wilmer Pickering Hale & Dorr LLP, JD @ Northwestern Pritzker School of Law; “Unifying Antitrust Enforcement for the Digital Age,” *Washington and Lee Law Review* 78(1), p. 305-378; AS]

The FTC needs more resources to adequately address the nation's growing privacy concerns. 3 17 Currently, the FTC oversees both consumer protection-encompassing privacy-and antitrust, 318 making the FTC the chief federal agency on privacy policy and enforcement 319 and the nation's de facto privacy agency. 320 The agency has long-standing experience in enforcing privacy statutes 321 and also has special privacy assets, such as an internet lab capable of high-quality tech forensics to track invasions of privacy. 322 The FTC, however, has failed to keep pace with the massive growth of privacy concerns-a phenomenon also driven by modern technology. 323 Very few Americans feel confident in the privacy of their information in the digital age. 324 According to a 2019 study, over 80 percent of Americans feel that they have little to no control over the data collected on them by companies and the government. 325 To adequately address privacy concerns, the FTC needs more resources. 32 The agency has been explicit that it needs more manpower to police tech companies. 32 7 In requesting increased funding from Congress, FTC Director Joseph Simons said the money would allow the agency to hire additional staff and bring more privacy cases. 328 A former director of the FTC's Bureau of Consumer Protection, which houses the privacy unit, has called the FTC "woefully understaffed." 329

As of the spring of 2019, the FTC had only forty employees dedicated to privacy and data security, compared to 500 and 110 employees at comparable agencies in the U.K. and Ireland, respectively. 330 Without more lawyers, investigators, and technologists, the FTC will be forced to conduct privacy investigations less thoroughly, and in some cases, forgo them altogether. 331 Currently, the FTC's resources are spread thin across multiple missions, to the detriment of its privacy efforts. Removing the agency's antitrust responsibilities would reallocate resources from the antitrust department to its privacy unit and other areas of consumer protection. 332 Further, it would free up the scarce time of the commissioners to oversee this essential effort. 333

This reallocation of resources is especially timely because the FTC's privacy responsibilities are expected to grow in the future. The FTC is already on its way to becoming a consumer protection agency primarily focused on privacy. 334 In its 2019 budget request to Congress, over half of the agency's budget was allocated to privacy. 335 In addition, lawmakers on both sides of the political spectrum have proposed federal privacy legislation. 336 Such legislation would expand the FTC's jurisdiction, empower it to bring more privacy actions, and increase the demands on its privacy resources. 337 Right now, the U.S. is one of the only Western countries that does not have a comprehensive federal privacy law.338 Public pressure is great from both industry and scholars to change that, which would lead to increased privacy action at the federal level. 339 Moving the FTC's antitrust duties to the DOJ would cleanly complete a readjusting of priorities that is already happening organically.

#### Unchecked algorithmic bias risks extinction.

Mike Thomas 20. Quoting AI experts including MIT Physics Professors, Senior Features Writer for BuiltIn. THE FUTURE OF ARTIFICIAL INTELLIGENCE: 7 ways AI can change the world for better ... or worse, Updated: April 20, 2020, <https://builtin.com/artificial-intelligence/artificial-intelligence-future>

Klabjan also puts little stock in extreme scenarios — the type involving, say, murderous cyborgs that turn the earth into a smoldering hellscape. He’s much more concerned with machines — war robots, for instance — being fed faulty “incentives” by nefarious humans. As MIT physics professors and leading AI researcher Max Tegmark put it in a 2018 TED Talk, “The real threat from AI isn’t malice, like in silly Hollywood movies, but competence — AI accomplishing goals that just aren’t aligned with ours.” That’s Laird’s take, too. “I definitely don’t see the scenario where something wakes up and decides it wants to take over the world,” he says. “I think that’s science fiction and not the way it’s going to play out.” What Laird worries most about isn’t evil AI, per se, but “evil humans using AI as a sort of false force multiplier” for things like bank robbery and credit card fraud, among many other crimes. And so, while he’s often frustrated with the pace of progress, AI’s slow burn may actually be a blessing. “Time to understand what we’re creating and how we’re going to incorporate it into society,” Laird says, “might be exactly what we need.” But no one knows for sure. “There are several major breakthroughs that have to occur, and those could come very quickly,” Russell said during his Westminster talk. Referencing the rapid transformational effect of nuclear fission (atom splitting) by British physicist Ernest Rutherford in 1917, he added, “It’s very, very hard to predict when these conceptual breakthroughs are going to happen.” But whenever they do, if they do, he emphasized the importance of preparation. That means starting or continuing discussions about the ethical use of A.G.I. and whether it should be regulated. That means working to eliminate data bias, which has a corrupting effect on algorithms and is currently a fat fly in the AI ointment. That means working to invent and augment security measures capable of keeping the technology in check. And it means having the humility to realize that just because we can doesn’t mean we should. “Our situation with technology is complicated, but the big picture is rather simple,” Tegmark said during his TED Talk. “Most AGI researchers expect AGI within decades, and if we just bumble into this unprepared, it will probably be the biggest mistake in human history. It could enable brutal global dictatorship with unprecedented inequality, surveillance, suffering and maybe even human extinction. But if we steer carefully, we could end up in a fantastic future where everybody’s better off—the poor are richer, the rich are richer, everybody’s healthy and free to live out their dreams.”

## Market Concentration

### 1NC – AT: Market Concentration

#### Current antitrust law fosters innovation and competition – the plan crushes growth

Wright 21 – Joshua D. Wright, Executive Director of the Global Antitrust Institute at the Antonin Scalia Law School, former commissioner of the U.S. Federal Trade Commission from 2013 to 2015, “A Time for Choosing: The Conservative Case Against Weaponizing Antitrust,” Summer 2021, https://nationalaffairs.com/time-choosing-conservative-case-against-weaponizing-antitrust

It has long been vogue among liberal advocates to champion expansion of government control over firms, their decisions, and internal workings. Perhaps no better present example can be found than in the area of antitrust, where the policy landscape looks eerily similar to the progressive view articulated 60 years ago, littered with a hodgepodge of proposals to “break up” large firms, prohibit all mergers and acquisitions, assign burdens of proof to the accused, and control the design of products. Today’s progressives offer much of the same medicine for what allegedly ails the modern economy. Senator Warren has proposed, for example, to “break up big tech” platforms such as Amazon, Apple, Facebook, and Google, and to make technology companies criminally liable for misinformation presented on their platforms.[ii] While the large and successful American tech firms—the envy of the global economy—make a convenient target for these proposals, do not be fooled. This wolf comes as a wolf. The modern progressive antitrust agenda is part of a broader, more radical program—self-described as Neo-Brandeisian Antitrust—to turn antitrust law upside down so that it may be weaponized to shape and plan all sectors of the economy.

These proposals, while unfortunate and misguided, draw heavily upon standard liberal orthodoxy that has tended to be largely suspect of markets and the agency of individuals. One can hardly be surprised to see a staunch progressive like Senator Warren or Bernie Sanders advocate greater government control over private life. Perhaps one even grows to expect it.

What is more surprising, however, is the company Senator Warren and the Neo-Brandeisian Antitrust movement have attracted with the siren call of using the antitrust laws to centrally plan the tech sector (among others things), and to achieve greater government control of the interactions between individuals and the technology we use in our daily lives. Stalwart conservatives like Senator Hawley, for example, among others, have offered policy proposals to “deal” with “Big Tech” that eerily mimic those of Senator Warren and the command and control left. Senator Hawley has proposed legislation that would rewrite Section 230 of the Communications Decency Act and usher in a quasi-Conservative Fairness Doctrine for the internet.[iii] Indeed, Hawley’s proposal would place the Federal Trade Commission in the Big Brother position of determining when a social media platform’s moderation decision was “designed to” or “motivated by an intent to” negatively impact a political party. Attorney General Barr has offered a similar refrain, announcing that antitrust is an appropriate tool to police political bias.[iv] And President Trump recently signed an executive order that directs the Federal Trade Commission to explore using its consumer protection authority to sue social media platforms for content moderation decisions.[v]

Without question, the emotional appeal undergirding these actions is understandable. Conservative voices and opinions too often face a stacked deck when dealing with technology companies and social media, in particular. And this bias against conservative voices has taken on new life in the Trump era. But the hallmark of conservative values has been to rightfully eschew government control over economic life and to value principle over expediency. What is at stake, however, with the current proposals to upend modern antitrust to address tech markets is more important than whatever fleeting satisfaction is gained from exacting policy revenge on firms perceived to squelch conservative voices and ideas. At stake are conservative commitments to the rule of law and the role of the judiciary—newly stocked with immense talent by the Trump administration—in preventing government expansion and overreach. And if we resign ourselves to transient political wins, and debase the belief that entrepreneurs rather than bureaucrats should shape technology markets, we risk not only undermining these great causes conservatives have championed for decades but also the enormous economic gains to Americans that arise in our highly competitive tech markets.

Readers less familiar with antitrust law may not understand its critical role in the conservative legal movement. Modern antitrust law—and its consumer welfare standard—is a complex product of powerful ideas, extant economic evidence, and jurists like Bork, Thomas, Scalia, Easterbrook, and Doug Ginsburg taking on the wobbly intellectual foundations of 1960s competition law. That their efforts were so successful in persuading their liberal counterparts on the Supreme Court and lesser federal courts to join in the dismantling of the stale and obsolete antitrust that was then the law of the land is powerful evidence of the force of their ideas. It is difficult to find an area of law where the conservative legal movement enjoyed as much success as quickly and with such resounding results.

No doubt it helped that yesteryear’s antitrust was intellectually bankrupt and an insult to the rule of law. It pursued an unfortunate amalgamation of contradictory doctrines, including undefined notions of populism, protection of individual industries, and reducing firm size, that could be used to justify nearly any result. For instance, antitrust law allowed the market-leading frozen pie manufacturer in Utah to successfully sue its three national-brand competitors for eroding its high market share through a series of price cuts—thereby preventing precisely the type of competition the law was intended to protect. Antitrust law was so unprincipled and incoherent at the time that it led Justice Potter Stewart to observe while reviewing a government suit to block a merger between two grocery stores with a combined market share of 7.5% that, “The sole consistency that I can find is that, in litigation under [the merger laws], the Government always wins.”[vi]

The conservative legal movement, powered by the intersection of economic analysis and law, brought the rule of law to the wild and untamed progressive antitrust vision of the 1960s. Grounding antitrust law in a disciplined and tractable framework not only promotes the rule of law while preventing arbitrary and capricious enforcement, it also creates a stable and predictable environment for private actors and firms to invest and innovate. Of course, no doctrine is perfect and today’s antitrust is not without its own flaws. But it is tethered to robust economic evidence and common-law developments that promote competitive outcomes and, like the common law, has built-in mechanisms to improve and evolve in response to empirical evidence. But the coherent and principled makeup of antitrust should not and cannot be taken for granted.

Proposals today that are attracting conservatives and liberals alike aim to unwind these gains in exchange for granting those who happen to have power in the government a dominant hand in controlling tech firms on the fleeting hope that the power will be deployed for the greater social good. We have experience with this approach to antitrust in the United States. It is what we used to do. And we know better. Shifting power from judges to regulators, and then allowing those regulators to pick winners and losers to achieve political and social goals, is a recipe for abandoning conservative commitment to the rule of law while simultaneously sacrificing economic growth and innovation. The price is too high, with little or nothing to offer those who value individual liberty, the rule of law, and economic growth. While progressive ideology is contiguous with increasing government control over economic and social interactions in technology markets for its own sake, conservative principles are not. The proposed bargain is also remarkably short-sighted. It should go without saying that empowering partisan regulators to enforce a Fairness Doctrine for conservatives is not likely to work out so well when the other side is in control.

Conservatives traditionally have been wary of proposals by liberals and other big government proponents seeking to substitute the judgment of regulators and bureaucrats for those of entrepreneurs and innovators. And rightfully so. Such proposals, even when well intentioned, risk making Americans worse off. Progressives and populists now seek to commandeer antitrust to usher in a new era of central planning in order to achieve social policy objectives that they could not accomplish otherwise. But at what cost? The risks are not trivial. Using antitrust to redesign tech companies and their products will undermine the competitive dynamics that have brought Americans countless modern benefits, including smartphones, fast and easy online shopping, on-demand ride hailing, easy-to-access streaming media, and a bevy of free services including email, maps, and video conferencing. It also will threaten the incredible economic growth and job creation that these companies have brought to America’s shores. And while politicians surely will make promises akin to, “if you like the digital platform you have, you’ll get to keep it,” it is all too clear that when you expand government discretion and limit judicial oversight, those in positions of power will increasingly impose their preferences on the broader society. Ask yourself, do you really want the government designing the iPhone?

The reality is that the U.S. digital economy is highly competitive and serves Americans well. Fueled by investment, innovation, and entrepreneurship, the digital economy has contributed substantially to America’s economic growth. According to the Bureau of Economic Analysis, the digital economy accounted for 6.9 percent of gross domestic product in 2017, growing at an annual rate of 9.9 percent since 1998 as compared to 2.3 percent for the economy overall.[vii] That economic growth has been driven by some of the world’s most successful tech companies, such as Amazon, Apple, Facebook, Intel, Google, and Microsoft, each of which calls the United States home. These firms are investing ever-increasing amounts on research and development to innovate new products and stay competitive. In fact, the United States leads the world in research and development spending, and tech companies lead in the United States—representing the nation’s top five spenders with investments totaling more than $75 billion in 2018.[viii] Tech companies rank second (behind the telecom sector) in U.S. capital expenditures, with Alphabet (Google’s parent company), Amazon, Apple, Facebook, Intel, and Microsoft together spending more than $45 billion in 2017.[ix] And these investment figures are only expected to continue to grow. These are hardly the actions of monopolists resting on their laurels, secure in belief that they are untouchable by competition.

And there is more good news. Tech has only touched a portion of the U.S. economy to date, meaning that there still are opportunities for tech companies to foster economic growth by transforming stagnant industries such as housing, transportation, manufacturing, and health care for the better. And where are the next generation of innovators and tech entrepreneurs calling home? The United States. Recognizing an economy that is dynamic and rewards creativity, venture capital investing has soared to record levels in the United States—surpassing $140 billion in 2018—providing startups with the capital necessary to innovate, compete, and grow.[x] Today the United States is home to half of all startups valued at more than $1 billion—so-called “unicorns”—outpacing every other country in the world by a wide margin.[xi]

Now, some conservatives chafe at recitations of facts and claim that technology companies exclusively benefit only the privileged. But this economic growth and investment have led to substantial benefits to ordinary American consumers and workers. You need only look to the numerous free services that tech has brought to consumers. Americans place significant value on these free services. One peer-reviewed study published by the National Academy of Sciences found that consumers would need to receive a yearly payment of $3,600 to give up free internet maps, $8,400 to give up free email, and $17,500 to give up free search engines.[xii]

Tech firms also have spurred change in long stagnant industries by developing new products that spark competition across quality, price, and other dimensions. Take for instance ride-sharing apps. Local cab companies long had a stranglehold on taxi services and saw little need to innovate or evolve. Ride-sharing apps like US-based Uber and Lyft disrupted the livery service industry by offering lower-cost and more convenient services. Cab companies have been forced to respond by offering easier payment methods and other innovative services that enhance the consumer experience. Proponents of using antitrust to restructure or even break up tech companies are unable to explain how their sweeping plans, however carefully scripted, would not undo the business models that made these services and their associated benefits possible. The burden should be on those seeking to use antitrust to remake the digital economy to demonstrate that the risk is justified. It is hard to believe how it could be.

The digital economy also has been an important source of job creation. According to one estimate, nearly 12 million people held tech jobs in the United States in 2018.[xiii] Today the largest U.S. tech companies have replaced the major American employers of the past. In just under two decades, Amazon, Apple, Facebook, Alphabet, and Microsoft have employed more than one million workers.[xiv] In 2016, Amazon became the fastest company to employ 300,000 Americans—surpassing Walmart and General Motors.[xv] Moreover, while the share of economic output going to workers has been declining steadily overall for many years both in the U.S. and globally, in the tech and telecom sectors the labor share has been steady and even has increased, suggesting improved worker welfare.[xvi]

#### Moving away from the consumer welfare standard in antitrust destroys innovation and growth

Auer 18 – Dick Auer, Senior Fellow, International Center for Law & Economics, “Comments of the International Center for Law & Economics: Topic 4: Antitrust law and the consumer welfare standard,” FTC Hearings on Competition & Consumer Protection in the 21st Century, https://www.ftc.gov/system/files/documents/public\_comments/2018/10/ftc-2018-0074-d-0071-155999.pdf

The adoption of the consumer welfare standard was an enormous improvement over what came before it. Yet no one would assert that every aspect of antitrust policy in furtherance of the consumer welfare standard is perfect and should remain unchanged. There will always be grounds for critique and improvement of specific policy decisions and processes. But none of these arguments undercuts the basic merits of the standard and its supremacy over alternatives.

Antitrust enforcers and courts have a difficult time as it is ensuring that their decisions actually benefit consumers. As Robert Pitofsky once said, “antitrust enforcement along economic lines al-ready incorporates large doses of hunch, faith, and intuition.”40 But the existence of imperfections does not justify intervention that would move us further away from economic objectives. Indeed, such intervention would more than likely make the imperfections worse.

When antitrust policy is unmoored from economic analysis, it exhibits fundamental and highly problematic contradictions, as Herbert Hovenkamp highlighted in a recent paper:

As a movement, antitrust often succeeds at capturing political attention and engaging at least some voters, but it fails at making effective or even coherent policy. The result is goals that are unmeasurable and fundamentally inconsistent, although with their contra-dictions rarely exposed. Among the most problematic contradictions is the one between small business protection and consumer welfare. In a nutshell, consumers benefit from low prices, high output and high quality and variety of products and services. But when a firm or a technology is able to offer these things they invariably injure rivals, typically those who are smaller or heavily invested in older technologies. Although movement antitrust rhetoric is often opaque about specifics, its general effect is invariably to encourage higher prices or reduced output or innovation, mainly for the protection of small business or those whose technology or other investments have become obsolete.41

Even with careful economic analysis, it will not always be clear how to resolve the inevitable tensions between consumer welfare and other policy preferences. In 1978, then-FTC-Chairman Michael Pertschuk laid out his vision for a “new competition policy” at the FTC. In it, he asserted that anti-trust policy must consider

the social and environmental harms produced as unwelcome by-products of the market-place: resource depletion, energy waste, environmental contamination, worker alienation, the psychological and social consequences of market-stimulated demands.”42

It is not clear what it would mean to take account of these things in the context of anything approaching a rigorous policy framework. But even more troublingly, many, if not all of them call for a rejection of the core, competition-focused objective of antitrust.

For instance, Jonathan Adler has described the collision between antitrust and environmental protection in cases where, precisely because of reduced output, collusion might lead to better environ-mental outcomes, such as improved conservation of wild fish and other common pool resources.43 How would a court or enforcer conceivably evaluate that trade-off? It is difficult enough to evaluate the procompetitive justifications for certain conduct already — including in somewhat similar circumstances where intrabrand price or distribution constraints, for example, may be aimed at pre-serving the “common pool resource” of brand value or consumer goodwill. But that difficulty is only magnified where the trade-off is between incommensurate benefits, distributed over entirely different populations, and without any operational connection between them within the firm undertaking the conduct in question.

Whatever benefits might conceivably come from giving weight to non-economic values, even just at the margin, they would inevitably come at the expense of the core, competitive values of modern antitrust. As Ernest Gellhorn noted in his masterful critique of Pertschuk’s “socially conscious” vision for the FTC:

Competitive values must be sacrificed if social values are to be given primacy — or else the new policy is nothing more than rhetoric and official deception. The second and equally important point is that the new chairman’s “humanistic model” for antitrust is formless, shapeless, and unpredictable. There simply are no generally accepted “democratic and social norms” for applying the antitrust laws — and some of the new chairman’s announced values are worrisome, at least to the extent they are offered as the basis for determining the shape and operation of much of our economy.

The problem is that unless antitrust law has an objective and principled foundation, antitrust enforcement can become the personal plaything of enforcement personnel, or the stock in trade of lobbyists and influence-peddlers.44

While it is perfectly reasonable to care about political corruption, worker welfare, and income ine-quality, it is not at all reasonable to try to shoehorn goals based on these political concerns into antitrust — a body of legal doctrine whose tools are wholly inappropriate for achieving those ends. As Carl Shapiro has noted, “The fundamental danger that 21st century populism poses to antitrust is that populism will cause us to abandon this core principle and thereby undermine economic growth and deprive consumers of many of the benefits of vigorous but fair competition.”45

#### Expanded antitrust regulation increases inflation

Bork 9/8 – Robert H. Bork, president of the Washington-based Antitrust Education Project, “Biden's antitrust demagoguery will drive inflation, not cure it,” 9/8/21, https://thehill.com/opinion/finance/571009-bidens-antitrust-demagoguery-will-drive-inflation-not-cure-it

The Biden administration, finally beginning to worry about the political impact of the rising cost of food, fuel and other basic consumer necessities, is neatly dovetailing its push for aggressive antitrust enforcement by blaming inflation on big business and market concentration.

Politically speaking, it is a neat fix. It drives one of the central policies of the Biden administration — to shift antitrust enforcement from the consumer welfare standard of the past 45 years back to an earlier era’s more nebulous standard against “bigness.” And it deflects blame for inflation.

President Biden lacks the theatrical flourish of a Huey Long, but he is nevertheless trying out his best version of the Kingfisher routine. “I’ve directed my administration to crack down on what some major players are doing in the economy that are keeping prices higher than they need be,” Biden said in August. The cause of higher prices, he argued, is greedy big business and its stranglehold on the American consumer.

It is clear what drives White House anxiety. Food prices have risen about 3.4 percent from last year. After years of low gasoline prices, Americans now pay above $3 a gallon in most parts of the country. Biden is tasking Federal Trade Commission Chair Lina Khan with targeting Big Ag and Big Oil for antitrust action to drive down prices for consumers.

If left unchallenged, the Biden administration may succeed in diverting some heat over rising inflation. Large corporations are not in good order with voters on both the left and right. The president cannot be allowed, however, to use a political diversionary tactic that would perversely do the opposite of what he claims to do: Biden’s antitrust policies would raise the prices of basic needs for consumers.

Let’s start with food prices and Big Ag.

Two University of Idaho economics professors, Philip Watson and Jason Winfree, wrote in The Idaho Statesman that larger farms and agricultural companies, which have the capital to invest in expensive technology and economies of scale, actually have been making food steadily more affordable. It is precisely because of these economies of scale that the cost of food, until the disruption of the pandemic, was taking less out of household budgets. The professors conclude that “breaking up Big Ag could have the disastrous effect of raising food prices, which would likely have a disproportionate impact on poorer households.”

If the Biden approach to agriculture and food is demagogic, its approach to oil and gas is risible. The current increase in gasoline prices results from the supply chain disruption caused by the pandemic, exacerbated by recent hurricanes and storms. It also may be partly because of the unrelenting hostility of the Biden administration to American energy, putting public lands off limits, killing the Keystone XL pipeline and using regulation to harass the fracking industry, despite the fact that cleaner-burning natural gas has helped reduce America’s greenhouse gas emissions. Technological advances led the United States to surpass Saudi Arabia and Russia in 2018 to become the world’s leading producer of oil. Biden’s antitrust policy also may be contributing to the sudden reversal of this energy glut. It was out of antitrust concerns that Berkshire Hathaway pulled out of a major natural gas pipeline deal earlier this year.

What has been the Biden administration’s response to recent shortages? It has not been to stimulate production at home or to help clear pipeline bottlenecks. Instead, national security adviser Jake Sullivan issued a statement pleading with OPEC and Russia to come to our rescue. OPEC demurred and Russian President Vladimir Putin used Sullivan’s entreaty to issue a humiliating “nyet.”

The real cause of inflation, of course, is recovery from a pandemic and the temporary economic depression it caused. It also might be driven by the reckless spending by presidents and Congresses of both parties. Our national debt is now 125 percent of our gross domestic product — higher than the previous high in 1946, when we won a victory over Germany and Japan rather than losing a war to the Taliban.

Blaming Big Ag and Big Oil for high prices will be popular. It also will be perverse. The abandonment of the consumer welfare standard will, if anything, lead to higher prices in both food and fuel for those least able to pay for it.

#### Inflation is contained now, but rising prices cause the Federal Reserve to hike interest rates – that quickly destroys the economy

Cox 21 – Jeff Cox, finance editor for CNBC.com where he manages coverage of the financial markets and Wall Street, “The Fed can fight inflation, but it may come at the cost of future growth,” 3/20/21, https://www.cnbc.com/2021/03/20/the-fed-can-fight-inflation-but-it-may-come-at-a-cost.html

One of the main reasons Federal Reserve officials don’t fear inflation these days is the belief that they have tools to deploy should it become a problem.

Those tools, however, come with a cost, and can be deadly to the kinds of economic growth periods the U.S. is experiencing.

Hiking interest rates is the most common way the Fed controls inflation. It’s not the only weapon in the central bank’s arsenal, with adjustments to asset purchases and strong policy guidance also at its disposal, but it is the most potent.

It’s also a very effective way of stopping a growing economy in its tracks.

The late Rudi Dornbusch, a noted MIT economist, once said that none of the expansions in the second half of the 20th century “died in bed of old age. Every one was murdered by the Federal Reserve.”

In the first part of the 21st century, worries are growing that the central bank might become the culprit again, particularly if the Fed’s easy policy approach spurs the kind of inflation that might force it to step on the brake abruptly in the future.

“The Fed made clear this week that it still has no plans to raise interest rates within the next three years. But that apparently rests on the belief that the strongest economic growth in nearly 40 years will generate almost no lasting inflationary pressure, which we suspect is a view that will eventually be proven wrong,” Andrew Hunter, senior U.S. economist at Capital Economics, said in a note Friday.

As it pledged to keep short-term borrowing rates anchored near zero and its monthly bond purchases humming at a minimum $120 billion a month, the Fed also raised its gross domestic product outlook for 2021 to 6.5%, which would be the highest yearly growth rate since 1984.

The Fed also ratcheted up its inflation projection to a still rather mundane 2.2%, but higher than the economy has seen since the central bank started targeting a specific rate a decade ago.

Competing factors

Most economists and market experts think the Fed’s low-inflation bet is a safe one – for now.

A litany of factors is keeping inflation in check. Among them are the inherently disinflationary pressures of a technology-led economy, a jobs market that continues to see nearly 10 million fewer employed Americans than a decade ago, and demographic trends that suggest a longer-term limit to productivity and price pressures.

“Those are pretty powerful forces, and I’d bet they win,” said Jim Paulsen, chief investment strategist at the Leuthold Group. “It may work out, but it’s a risk, because if it doesn’t work and inflation does get going, the bigger question is, what are you going to do to shut it down. You say you’ve got policy. What exactly is that going to be?”

The inflationary forces are pretty powerful in their own right.

An economy that the Atlanta Fed is tracking to grow 5.7% in the first quarter has just gotten a $1.9 trillion stimulus jolt from Congress.

Another package could be coming later this year in the form of an infrastructure bill that Goldman Sachs estimates could run to $4 trillion. Combine that with everything the Fed is doing plus substantial global supply chain issues causing a shortage of some goods and it becomes a recipe for inflation that, while delayed, could still pack a punch in 2022 and beyond.

The most daunting example of what happens when the Fed has to step in to stop inflation comes from the 1980s.

Runaway inflation began in the U.S. in the mid ’70s, with the pace of consumer price increases topping out at 13.5% in 1980. Then-Fed Chairman Paul Volcker was tasked with taming the inflation beast, and did so through a series of interest rate hikes that dragged the economy into a recession and made him one of the most unpopular public figures in America.

Of course, the U.S. came out pretty good on the other side, with a powerful growth spurt that lasted from late -1982 through the decade.

But the dynamics of the current landscape, in which the economic damage from the Covid-19 pandemic has been felt most acutely by lower earners and minorities, make this dance with inflation an especially dangerous one.

“If you have to prematurely abort this recovery because we’re going to have a kneejerk stop, we’re going to end up hurting most of the people that these policies were enacted to help the most,” Paulsen said. “It will be those same disenfranchised lower-comp less-skilled areas that get hit hardest in the next recession.”

The bond market has been flashing warning signs about possible inflation for much of 2021. Treasury yields, particularly at the longer maturities, have surged to pre-pandemic levels.

That action in turn has raised the question of whether the Fed again could become a victim of its own forecasting errors. The Jerome Powell-led Fed already has had to backtrack twice on sweeping proclamations about long-term policy intentions.

“Is it really going to be all temporary?”

In late-2018, Powell’s statements that the Fed would continue raising rates and shrinking its balance sheet with no end in sight was met with a history-making Christmas Eve stock market selloff. In late 2019, Powell said the Fed was done cutting rates for the foreseeable future, only to have to backtrack a few months later when the Covid crisis hit.

“What happens if the healing of the economy is more robust than even the revised projections from the Fed?” said Quincy Krosby, chief market strategist at Prudential Financial. “The question for the market is always, is it really going to be all temporary?’”

Krosby compared the Powell Fed to the Alan Greenspan version. Greenspan steered the U.S. through the “Great Moderation” of the 1990s and became known as “The Maestro.” However, that reputation became tarnished the following decade when the excesses of the subprime mortgage boom triggered wild risk-taking on Wall Street that led to the Great Recession.

Powell is staking his reputation on a staunch position that the Fed will not raise rates until inflation rises at least above 2% and the economy achieves full, inclusive employment, and will not use a timeline for when it will tighten.

“They called Alan Greenspan ‘The Maestro’ until he wasn’t,” Krosby said. Powell “is telling you there’s no timeline. The market is telling you it does not believe it.”

To be sure, the market has been through what Krosby described as “squalls” before. Bond investors can be fickle, and if they sense rates rising, they’ll sell first and ask questions later.

Michael Hartnett, the chief market strategist at Bank of America, pointed to multiple other bond market jolts through the decades, with only the 1987 episode in the weeks before the Oct. 19 Black Monday stock market crash having “major negative spillover effects.”

He doesn’t expect the 2021 selling to have a major impact either, though he cautions that things could change when the Fed finally does pivot.

#### Innovation high – antitrust not key

Lambert 20 – Thomas A. Lambert, Wall Chair in Corporate Law and Governance and Professor of Law at the University of Missouri, “The Case Against Legislative Reform of U.S. Antitrust Doctrine,” testimony to the House Subcommittee on Antitrust, Commercial, and Administrative Law, 4/17/20, https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3598601

Reduced Investment in Innovation? Proponents of reforming the antitrust laws have also pointed to reductions in the level of venture capital investment as indicative of a market power crisis in the U.S. Such investment slowed somewhat after 2015 (though it appears to have rebounded),27 and some venture capitalists have referred to a “kill zone” around dominant technology firms.28 The claim is that big technology firms either usurp small firms’ innovations or use their power over platforms to force smaller firms that need access to those platforms to sell out at a bargain price. Venture capitalists are less inclined to invest if such outcomes are likely, and innovation therefore suffers.

The evidence, however, does not support the view that lax U.S. antitrust is reducing innovation. Eleven of the top sixteen global spenders on research and development are U.S. firms,29 and six of those—Amazon, Alphabet, Intel, Microsoft, Apple, and Facebook—are “Big Tech” firms that have been accused of acting like monopolists. Moreover, the U.S. is home to half (178 of 356) of the world’s so-called “unicorn” companies—i.e., private companies valued at greater than $1 billion. China ranks second with 90, and all of Europe contains a fraction of that number. The U.S. also far outpaces Europe in terms of venture capital spending, with 10,777 investments in 2019 worth $136.5 billion compared to Europe’s 5,017 deals worth $36.3 billion. Finally, the fact that large American technology firms are purchasing smaller producers of complementary products or technologies in no way implies that the incentive to innovate is thereby reduced. Many start-ups are organized with the goal of being bought out by a larger firm; a buy-out option allows the initial investors in a company to enjoy a return on their investment without the company’s having to incur the significant cost of a public offering.

#### Concentration increases innovation.

Portuese ’20 [Aurelien; Director of Antitrust and Innovation Policy @ ITIF, Adjunct Professor of Law @ Global Antitrust Institute of George Mason University, Doctor in Law @ University of Paris II; “Beyond antitrust populism: Towards robust antitrust”; *Economic Affairs* 40(2), p. 237-258; AS]

Economic evidence reveals that increased market concentration can be the result of increased competition and enhanced innovation (Sacher & Yun, 2019, pp. 4–6). Concentration is indeed a rather neutral proxy for evaluating the competitive forces in a given market; the evidence for it, in line with the Schumpeterian intuition, is that firm size increase is positively related to innovation due to financial access and innovation behaviour (Alsharkas, 2014; Hirschey, Skiba, & Wintoki, 2012; Hruska, 1992). The economic evidence has long shown an ambiguous relationship between competition and innovation levels: a so-called U-inverted (concave) relationship reveals that perfect competition suppresses innovation and that a level of imperfect competition is required for the spirit of innovation to be unleashed via firm expansion (Cornett, Erhemjamts, & Tehranian, 2019; Kerber, 2017): high competition intensity increases the incentives for firms to innovate, and so market concentration increases (Aghion & Howitt, 1997; Aghion, Harris, & Vickers, 1997; Boone, 2001; Aghion, Bloom, Blundell, Griffith, & Howitt, 2005; Hashmi, 2013). Thus, market concentration may be the result of, not an impediment to, innovation incentivised by intensive market competition (Scherer, 1967; Blundell, Griffith, & Van Reenen, 1999; Tishler & Milstein, 2009).

Wright et al. (2018, p. 318) conclude that “an increase in concentration alone might be the result of more competition, less competition, or the product of factors completely unrelated to competition in the economy”. When antitrust policy frowns upon (and prohibits) mergers between hitherto competing firms for the sake of preserving an ‘optimal’ market structure, the innovation factors underpinning the mergers may be overlooked. More importantly, the discovery process inherent in competition is impeded, as market competition is no longer “able to discover the best size of firms and thus the lowest cost at which production can be maintained” (Kirzner, 2000, p.13). The German antitrust authority has acknowledged that in innovationdriven markets (such as digital markets)

the risk of over-enforcement is pointed out because the connection between concentration and innovation is not always clear and not all the influencing factors can be identified. Over-enforcement in such cases could reduce incentives for innovation and harm long-term innovation dynamics. (Bundeskartellamt, 2017, p. 32)

Similarly, the US antitrust agencies, the Federal Trade Commission and the Department of Justice, have acknowledged that concentration is not systematically an effect of decreased levels of competition. Indeed, against the mainstream discourse, and given the lack of compelling evidence, they have seminally concluded, before the OECD, that:

Concentration never tells the whole story about competition, and the proper delineation of the relevant market is critical if concentration is to tell any part of the story … Academics and journalists recently made claims of increasing concentration throughout the U.S. economy … [T]he U.S. Agencies find the claims of increasing concentration are unsupported by data for meaningful markets. (OECD, 2018b, pp. 2–3)

Increased efficiency, better consumer service, and enhanced innovation potential are strong reasons for consolidation of the market. Such consolidation of an industry may also be the result of a tit-for-tat game with other firms, thereby increasing effective competition by smaller firms against bigger players (Demsetz, 1974, p. 167). Consequently, consolidation of an industry may be the prerequisite for incumbents to be effectively challenged. Scale-and-scope economies of mergers enable synergies with lower administrative costs and greater interoperability, especially in the age of digital platforms. These synergies can be pro- or anti-competitive; but mergers, and concentration more generally, can hardly be said to be detrimental to the economy as such (Lianos, 2019, pp. 1486–7; Haucap, 2017).

Because they equate increased concentration with decreased competition, without providing evidence of consumer harm or reduced innovation, the arguments of antitrust populists in favour of more aggressive antitrust enforcement are flawed. Indeed, the “return to structural presumptions, such as a simple but per se ban on mergers that reduce the number of major firms to less than four” (Wu, 2018a, p. 129) is economically nonsensical (competition can be increased by a reduction in the number of firms) and legally impractical (how can we define markets so neatly as to be certain of the exact number of firms they contain?). Seen as “the priority for Neo-Brandeisian antitrust” (Wu, 2018a, p. 127), proposed changes to merger review rest on flawed assumptions and misconstrued proposals.

#### Antitrust doesn’t solve inequality

Crane 16 – Daniel Crane, Associate Dean for Faculty and Research and Frederick Paul Furth, Sr. Professor of Law, University of Michigan, “Antitrust and Wealth Inequality,” *Cornell Law Review*, Volume 101, Number 5, 2016, pp. 1171-1228

Amid this broad debate, a particular claim has emerged regarding the relationship between market competition and inequality. A wide array of scholars and public intellectuals, including such notable figures as Nobel Laureates Joseph Stiglitz4 and Paul Krugman5 and former Labor Secretary Robert Reich,6 among others, have claimed that monopoly and anticompetitive market conditions are among the root causes of wealth inequality.7 Some of these commentators blame the rising tide of wealth inequality on a weak record of antitrust enforcement in the United States.8 All seem to propose that enhancing antitrust enforcement against mergers, monopolies, and anticompetitive agreements could contribute to creating a more equal society.

This Article challenges this emerging monopoly regressivity claim in two ways. First, it shows that the relationship between enforcement of the antitrust laws and wealth inequality is far more complex than monopoly regressivity critics recognize. The relationship between market power (the subject of antitrust law) and income distribution is subtle, circumstantially contingent, and, at least for a developed economy, extremely difficult to generalize. Whatever their other faults, it is far from certain that antitrust violations (including cartels, anticompetitive mergers, and abuses of dominance) systematically redirect wealth from the poor to the rich. To sustain a showing that they do, one would need information about a large number of factors, including the relative wealth of producers and consumers, overcharge pass-on rates, the effects of market power on employees of the firm, the distribution of rents between managers and shareholders, the progressive or regressive effects of antitrust violations where government entities are the purchasers, and the distribution of rents among classes of managers. Although there are undoubtedly cases where antitrust violations have regressive effects, there are also undoubtedly many cases where their effects are progressive or distributively neutral. It is virtually impossible to calculate the net effect on wealth distribution from general increases or decreases in overall antitrust enforcement.

The second response this Article makes to the monopoly regressivity claim is that a significant set of antitrust interventions actually impede voluntary efforts to secure a more equitable and just society. In a set of important cases, application of conventional antitrust principles frustrated private actors seeking to promote social justice by diverting market forces from their ordinary paths.9 Hence, an undifferentiated increase in antitrust enforcement could, in many instances, exacerbate rather than diminish inequality and related forms of social justice.

To motivate this angle, consider some glimpses of the kinds of cases in which antitrust has posed an obstacle to private actors pursuing wealth redistribution goals. Examples include an antitrust challenge to an agreement by the Ivy League universities on a financial aid system designed to increase educational diversity;10 antitrust concerns preventing garment manufacturers in the United States from joining forces to pressure foreign suppliers to conform to minimal labor and employment standards;11 and antitrust challenges to National Collegiate Athletic Association (NCAA) rules prohibiting its members from paying student athletes, which could disrupt the cross subsidization of women’s athletic programs and other less popular sporting programs.12 In each of these cases, discussed in greater detail below, there is a plausible argument that application of unqualified antitrust principles would increase the welfare of consumers but also impair the ability of private actors to pursue solutions to serious equality problems.

In tandem, these twin objections throw a wrench into the growing progressive claim that more antitrust enforcement would lead to a more just distribution of wealth. Not only could an undifferentiated increase in antitrust enforcement exacerbate wealth inequality in various ways but it could also impede private, voluntary pursuit of related social justice objectives.

Thus far, this introduction has considered the effect of an undifferentiated increase in antitrust enforcement—actions to augment and strengthen enforcement as a general matter, such as by providing more funding to the antitrust agencies, liberalizing rules for private enforcement, increasing fines and penalties, or adopting rules making antitrust claims easier to win. Changes in the level of antitrust enforcement have no clear effect on the regressivity or progressivity of wealth distribution and social justice more generally, but one could try to tailor antitrust policy to maximize wealth redistribution and social justice in particular cases. Although it might sometimes be prudent as a matter of prosecutorial discretion to prioritize resource allocation in the direction of fighting antitrust violations with highly regressive effects, it would be a mistake to recalibrate antitrust doctrine in an effort to combat wealth inequality. Even putting aside the likely deleterious effects on productive and allocative efficiency such doctrinal shifts might entail, it is impossible to craft a distributively-oriented body of antitrust law that would reliably increase wealth equality by clamping down on regressive forms of market power exploitation.

#### Monopolies decrease inequality – they provide a monopoly wage premium

Crane 16 – Daniel Crane, Associate Dean for Faculty and Research and Frederick Paul Furth, Sr. Professor of Law, University of Michigan, “Antitrust and Wealth Inequality,” *Cornell Law Review*, Volume 101, Number 5, 2016, pp. 1171-1228

Contrary to the assumption that shareholders and senior managers are capturing virtually all of the monopoly rents obtained by corporations, the evidence suggests that a significant amount of rent sharing occurs within the firm. As Mark Roe has noted, “[e]mployees of monopoly firms can, and do, ally with capital to split the rents, to facilitate constricting production and raising price, and to seek barriers to competitive entry.” 84 Empirical evidence shows that nonunion employees see higher wages as the market concentration of their industry increases and also that higher seller concentration leads to stronger unionization, which in turn leads to higher wages.85 The monopoly labor wage premium has been observed across a variety of industries.86 For present purposes, the monopoly labor wage premium is important because it suggests the ability of blue-collar workers to extract significant monopoly rents from their employers, thus counterbalancing any regressive effects from shareholder or senior management rent extraction.87

Consistent with the evidence that increases in market power yield higher wages for blue-collar employees, there is evidence of labor union support for large corporate mergers that raise serious competitive issues. For example, the Communication Workers of America came out in favor of the AT&T and T-Mobile merger that the Federal Communications Commission and the Justice Department both opposed, and that AT&T and Deutsche Telekom, T-Mobile’s parent corporation, ultimately withdrew from.88 An editorial published in the Huffington Post explained that progressives should support the proposed merger “[b]ecause AT&T is the ONLY unionized wireless company in the country and the merger would ensure that 20,000+ T-Mobile workers would have the chance to join the 43,000 currently unionized AT&T Mobility employees with decent wages and legal protections on the job.”89 Similarly, the three airline employee unions supported American Airlines’ questionable merger with US Airways, believing that employees would fare better in the combined company.90

A related point concerns the differentiating effects among different classes of workers from increases in product market competition. Such competition may increase wage inequality by shifting demand in favor of skilled labor at the expense of unskilled labor, with the effect that a wage gap grows between skilled and unskilled labor.91 Such instances of income stratification have ambiguous effects on the overall distribution of wealth but would likely be regressive on net since they would shift down the average salaries of workers at the lowest end of the income distribution.

The progressive effects of market power–enhancing mergers may go beyond the financially quantifiable and spill outside the boundaries of the firm. Civil rights organizations have supported controversial mergers, arguing that the combined firm would cater better to the needs of minorities. For example, the Reverend Al Sharpton played a leading role in supporting the Comcast and NBC Universal merger, arguing that the deal would enhance racial diversity in broadcasting.92 The NAACP supported the AT&T and T-Mobile merger, arguing that AT&T had been a progressive corporate citizen that would bring a better culture to T-Mobile’s employment conditions and contracting practices.93 It also supported the Sirius and XM merger, which resulted in a monopoly in satellite radio.94 Other civil rights organizations have similarly weighed in favor of mergers ultimately challenged on antitrust grounds.95

At a minimum, the monopoly labor wage premium and evidence of union and civil rights organization support for competitively controversial corporate mergers should call into question the progressive argument that stronger merger enforcement would advance progressive wealth redistribution. Many interests within and without the firm have an opportunity to extract monopoly rents or otherwise benefit from business reorganizations that contribute to the creation of market power.

#### Alt causes to inequality – healthcare, racism, labor

#### Inequality has only a minor effect on growth at worst, especially in the U.S.

Chris Giles 15, Economics Editor for FT, “Inequality is unjust, not bad for growth,” Aug 18 2015, <https://www.ft.com/content/94a7b252-45a1-11e5-b3b2-1672f710807b>

Disparity of income is both a virtue and a vice. The virtue of providing rewards for effort and generating economic growth must be balanced against the vice of inequality’s manifest injustice. Riches derived through good fortune, good parents or being born at a good time are far from easy to defend. The problem for society and governments is to determine an acceptable degree of redistribution, balancing the remaining inequality with the blunted incentives from higher taxes and benefits. Or so we thought.¶ The past two years have witnessed huge growth in the industry of academic research rejecting this trade-off. Lower inequality boosts growth, its advocates claim, so countries really can have more redistribution, a narrower gap between rich and poor, alongside more sustained economic expansion.¶ Leading the charge towards the new consensus are two somewhat surprising institutions — the International Monetary Fund and the Organisation for Economic Cooperation and Development. Are these traditional bastions of orthodoxy infusing their policy prescriptions with the most up-to-date empirical evidence or merely following fashion?¶ There is no doubt that the new ideas are strongly held. Angel Gurría, head of the OECD, is convinced of the new reality. “Addressing high and growing inequality is critical to promote strong and sustained growth,” he says only to be outbid in rhetorical certainty by Christine Lagarde, the fund’s managing director. She reckons the rich should thank the poor. “Contrary to conventional wisdom, the benefits of higher income are trickling up, not down,” she says.¶ For all the excitement among this rarefied global elite, the research results are mundane. Economic performance varies wildly over time and across countries, yet the evidence suggests inequality explains only a tiny fraction of these differences. Whatever effect the gap between rich and poor might have on growth, other forces dominate, so we should not look to redistribution as the new engine of growth.¶ With the results almost entirely based on cross-country correlations, they also have troubling inconsistencies. Ms Lagarde and the IMF research think that a higher income share for the rich harms economic performance while the OECD says only inequality between the poorest and the middle matters. The Paris-based international organisation concludes that a lack of access to skills among the poor is the mechanism by which higher inequality hits growth at the same time as finding no role for skills in its equations on growth.¶ If the global results are weak, they also have close to zero policy prescriptions for rich countries where the results have caused most excitement — the US and the UK in particular. Far from being examples of the worst excesses of capitalism, these Anglo-Saxon nations emerge from the IMF data set as countries with relatively strong growth, low inequality and high redistribution.

#### Inequality doesn’t cause credit booms or financial crises---best empirical evidence goes neg

Michael D. Bordo 12, Professor of Economics and Director of the Center for Monetary and Financial History at Rutgers University, PhD from the University of Chicago, and Christopher M. Meissner, professor of economics at UC Davis, PhD in Economics from UC Berkeley, “Does Inequality Lead to a Financial Crisis?” NBER Working Paper No. 17896, March 2012, <http://www.nber.org/papers/w17896.pdf>

Our paper looks for empirical evidence that might corroborate Rajan (2010) and Kumhof and Rancière (2011). Both attributed the US subprime crisis to rising inequality, redistributive government housing policy and a credit boom. Using data from a panel of 14 countries for over 120 years, we find strong evidence linking credit booms to banking crises, but no evidence that rising income concentration was a significant determinant of credit booms. Narrative evidence on the US experience in the 1920s, and that of other countries in more recent decades, casts further doubt on the role of rising inequality.¶ We do find significant evidence that rising real income and falling interest rates are important determinants of credit booms. This evidence is more consistent with the alternative story of Borio and White (2003) attributing credit booms and crises in the past three decades to the Great Moderation which created a benign environment conducive to rising credit. It is also consistent with other empirical work that covers the period 1960-2002 (Mendoza and Terrones, 2008). The negative and significant relationship of short-term interest rates and credit growth may also be consistent with the story of for example Taylor (2009) or Meltzer (2010) who attribute the U.S. housing boom to expansionary policy by the Federal Reserve in the early 2000s in an attempt to prevent perceived deflation. Moreover, housing booms and busts in other countries did not reflect redistributive housing policy. In the period before the Great Moderation they occurred during episodes of expansionary monetary policy. Regardless of whether the Borio and White story or a simpler monetary policy story is the true explanation for credit booms that lead to financial crises it now seems fairly clear from our examination of the data that neither have much to do with rising income inequality.

#### America's maintaining tech leadership now, but antitrust expansion cedes tech dominance.

Abbott et al. '21 [Alden; 3/10/21; Senior Research Fellow, formerly served on the Federal Trade Commission’s General Counsel, J.D. from Harvard Law School, M.A. in Economics from Georgetown University; "Aligning Intellectual Property, Antitrust, and National Security Policy," https://regproject.org/wp-content/uploads/Paper-Aligning-Intellectual-Property-Antitrust-and-National-Security-Policy.pdf/]

The U.S. government has recognized that “5G is a critical strategic technology [such that] nations that master advanced communications technologies and ubiquitous connectivity will have a long-term economic and military advantage.”8 The U.S. has had a substantial technological edge over our military and intelligence rivals in foundational R&D for 5G and other next-generation technologies. U.S. companies have long been leaders in the development of previous generations of core mobile standards (2G, 3G, 4G, and LTE). This technological leadership has made it possible for U.S. companies to ensure the security and integrity of the hardware and software products that make up the backbone of the U.S. telecommunication systems. This leadership must continue for the U.S. government to more effectively anticipate potential security risks and take the necessary steps to protect national security.9

Despite this history of clear technological leadership, there are causes for concern. First, a very small number of U.S. companies have made the investments in the overwhelming majority of the R&D necessary to develop 5G.10 Historically, U.S. companies have heavily invested in R&D, which has propelled the U.S. into leadership positions in critical standard development organizations working on foundational next-generation technologies like 5G.11 U.S. companies like Qualcomm play a significant and important role in this process through innovation, patenting, and standard setting, but they are not alone in the global community of high-tech companies.12 Backed by their nations’ leadership, Chinese and Korean companies have also invested heavily in developing the core technologies for 5G.13

The willingness of U.S. companies to invest in R&D is threatened, however. The development of 5G is a bit like a race, with the companies who develop the best technology coming out ahead. While U.S. companies are savvy and talented competitors in this race, aggressive and unwarranted use of antitrust law by U.S. regulators, as well as by foreign antitrust authorities, threatens to put obstacles in these companies’ paths and hinder their ability to lead.

III. Overly Aggressive Antitrust Enforcement Hinders American Technological Leadership and Threatens National Security

As companies from around the world develop the technology and standards for 5G mobile devices and networks, American companies are under threat by aggressive antitrust enforcement that ultimately redounds to the benefit of these foreign companies, which are economic competitors in countries that are also military competitors of the U.S. Over the past five years, foreign governments, particularly in Asia, have subjected U.S. companies to antitrust investigations that failed to follow basic norms of the rule of law, such as providing basic due process protections.14 These antitrust investigations were a thinly-disguised effort by these countries to force the transfer of U.S. patented technology to their own domestic companies, or to insulate their domestic companies from American competition. In recent years, Chinese, Korean, and Taiwanese antitrust authorities have brought nearly 30 investigations against 60 foreign companies across a range of industries, including manufacturing, life sciences, and technology.15

Antitrust challenges undermine intellectual property rights by forcing companies to license their products on non-market-based terms. One prominent example in U.S. history is when the Department of Justice wrung a concession from AT&T to license royalty-free the entire portfolio of 8,600 patents held by Bell Labs in a 1956 antitrust consent decree with the company.16 Today, the White House Office of Trade and Manufacturing Policy has observed that “China uses the Antimonopoly Law of the People’s Republic of China not just to foster competition but also to force foreign companies to make concessions such as reduced prices and below-market royalty rates for licensed technology.”17 Companies have also complained about poor policy guidance and procedural protections under China’s competition laws.18 Others have complained about China’s use of its competition laws to promote policy objectives rather than protect competition and advance consumer welfare.19 In one example, companies raised concerns with Article 7 of China’s State Administration of Industry Commerce (SAIC) 2015 Rules on the Prohibition of Conduct Eliminating or Restricting Competition by Abusing Intellectual Property Rights.20 Under this provision, intellectual property constitutes an “essential facility,” which could allow parties to raise abuse of intellectual property rights claims against patent owners for a unilateral refusal to license their patents.21

Predatory antitrust enforcement actions threaten the ability of U.S. companies to continue to be leaders in 5G technological development. China and other nations with similarly restrictive regulatory frameworks can weaken the ability of the United States to compete in global markets by exacting high monetary penalties from U.S. intellectual property owners or forcing the transfer of their intellectual property to domestic commercial rivals. As a penalty for violations of its competition laws, China can impose exorbitant fines that range up to 10% of a foreign company’s entire revenue in the prior year.22 This is not a legal rule observed in the breach; it has already resulted in fines just shy of $1 billion.23

Another way in which courts in China and other foreign countries are harming U.S. companies is through the use of anti-suit injunctions. One example of this is in the recent patent infringement lawsuit brought by InterDigital, an American high-tech company that has developed key technologies in wireless telecommunication, against Chinese company Xiaomi. In June 2020, Xiaomi filed a lawsuit in the Wuhan Intermediate Court in China requesting that the court set global licensing rates for InterDigital’s patents on standardized technologies. In July 2020, InterDigital sued Xiaomi in India for infringement of InterDigital’s Indian patents. The Wuhan Intermediate Court then ordered InterDigital to stop its lawsuit with its request for an injunction in India. The Chinese court further prohibited InterDigital from suing Xiaomi and requesting an injunction or damages in the form of reasonable licensing rates, or even to enforce a previously-issued injunction, in any other country. If InterDigital does not comply with this worldwide injunction against pursuing legal relief for the violation of its patents in any other country, the company faces a significant fine in China. The type of judicial order issued by the Wuhan court is known as an anti-suit injunction and its purpose is to force an intellectual property dispute to play out solely in a Chinese court at the behest of the Chinese government. These court orders demonstrate China’s desire to become the source of 5G innovation and to dictate the licensing terms of the technology, and the anti-suit injunctions hamstring U.S. companies like InterDigital from enforcing their intellectual property rights anywhere in the world.

The unfair use of antitrust enforcement and related legal actions like anti-suit injunctions to weaken U.S. intellectual property rights around the world risks diminishing U.S. global competitiveness in critical technologies like 5G, and further empowers China and others to expand their influence over the evolving 5G technological ecosystem. To the extent the U.S. cedes its dominance in 5G standards development, China will continue its focused efforts to fill that void. Huawei, a China-based company, has increased its R&D spending while growing its share of patents on the standardized technologies comprising 5G.24 The President’s Council on Science and Technology issued a report concluding that Chinese actions in the semiconductor industry, which include a range of policies backed by over $100 billion in government funds, threaten U.S. leadership in the industry and present risks to U.S. national security.25 China’s “Made in China 2025” plan called for China to become a leader in 5G technology, including in the development of the standards for the technology, by 2020.26 The plan expressly favors Chinese domestic producers, calling for raising the domestic content of core components in high-tech industries like 5G to 70% by 2025.27

This issue, however, extends far beyond simply the ability and willingness of U.S. companies to engage in the requisite R&D to participate in the 5G race. Reduced U.S. influence on 5G standard-setting would force the U.S. government to rely on untrusted foreign companies for its 5G product supply. The Department of the Treasury has expressed concern about the “well-known” U.S. national security risks posed by Huawei and other Chinese telecommunications companies.28

#### Can’t solve monocultures – plan applies behavior remedies, which means companies are the same size and have monocultures.

#### Attribution solves resiliency.

Lynch ’19 [Justin; 2/8/19; Associate Editor at Fifth Domain, contributor to the New Yorker, Foreign Policy, the Atlantic; "The struggle behind predicting a cyberattack," https://www.fifthdomain.com/industry/2019/02/08/the-struggle-behind-predicting-a-cyberattack/]

The idea that public data can point to future cyberattacks has been embraced by several government agencies.

The intelligence community’s research arm, the Intelligence Advanced Research Projects Activity, is researching how data can help forecast a cyberattack by using sensors that predict when a target is vulnerable to hackers. BAE Systems, Charles River Analytics, Leidos, and the University of Southern California are the prime contractors on the project.

There is a “significant link between hackers use of social media platforms, especially Twitter and Facebook, and the volume of web defacement attack,” according to 2017 research backed by the Office of the Director of National Intelligence and IARPA.

But experts have had mixed results with predicting cyberattacks with machine learning and open data.

By analyzing conversations of known criminals on the dark web, researchers from the University of California also tried to create an early warning system for incoming cyberattacks in 2017. That approach was 84 percent effective at predicting current or imminent cyberattacks.

Also in 2017, three researchers used historical attack count data to predict future cyberattacks to some success. It was 14 percent more effective than other models.

However, others believe the future of predicting cyberattacks through artificial intelligence will combine both humans and computers.

Researchers from the Massachusetts Institute of Technology created a computer system in 2016 that continuously incorporated information from human experts with a success rate of 85 percent while also decreasing false positives by a significant factor.

“The more attacks the system detects, the more analyst feedback it receives, which, in turn, improves the accuracy of future predictions,” said Kalyan Veeramachaneni, a research scientist at MIT in a release. “That human-machine interaction creates a beautiful, cascading effect.”

#### No blackouts impact and no attacks that can take down the grid.

Lewis ’20 [James Andrew; 8/17/20; senior vice president and director of the Strategic Technologies Program at the Center for Strategic and International Studies; "Dismissing Cyber Catastrophe," https://www.csis.org/analysis/dismissing-cyber-catastrophe]

A catastrophic cyberattack was first predicted in the mid-1990s. Since then, predictions of a catastrophe have appeared regularly and have entered the popular consciousness. As a trope, a cyber catastrophe captures our imagination, but as analysis, it remains entirely imaginary and is of dubious value as a basis for policymaking. There has never been a catastrophic cyberattack.

To qualify as a catastrophe, an event must produce damaging mass effect, including casualties and destruction. The fires that swept across California last summer were a catastrophe. Covid-19 has been a catastrophe, especially in countries with inadequate responses. With man-made actions, however, a catastrophe is harder to produce than it may seem, and for cyberattacks a catastrophe requires organizational and technical skills most actors still do not possess. It requires planning, reconnaissance to find vulnerabilities, and then acquiring or building attack tools—things that require resources and experience. To achieve mass effect, either a few central targets (like an electrical grid) need to be hit or multiple targets would have to be hit simultaneously (as is the case with urban water systems), something that is itself an operational challenge.

It is easier to imagine a catastrophe than to produce it. The 2003 East Coast blackout is the archetype for an attack on the U.S. electrical grid. No one died in this blackout, and services were restored in a few days. As electric production is digitized, vulnerability increases, but many electrical companies have made cybersecurity a priority. Similarly, at water treatment plants, the chemicals used to purify water are controlled in ways that make mass releases difficult. In any case, it would take a massive amount of chemicals to poison large rivers or lakes, more than most companies keep on hand, and any release would quickly be diluted.

#### No cyber impact.

Lewis ’20 [James Andrew; 8/17/20; senior vice president and director of the Strategic Technologies Program at the Center for Strategic and International Studies; "Dismissing Cyber Catastrophe," https://www.csis.org/analysis/dismissing-cyber-catastrophe]

More importantly, there are powerful strategic constraints on those who have the ability to launch catastrophe attacks. We have more than two decades of experience with the use of cyber techniques and operations for coercive and criminal purposes and have a clear understanding of motives, capabilities, and intentions. We can be guided by the methods of the Strategic Bombing Survey, which used interviews and observation (rather than hypotheses) to determine effect. These methods apply equally to cyberattacks. The conclusions we can draw from this are:

Nonstate actors and most states lack the capability to launch attacks that cause physical damage at any level, much less a catastrophe. There have been regular predictions every year for over a decade that nonstate actors will acquire these high-end cyber capabilities in two or three years in what has become a cycle of repetition. The monetary return is negligible, which dissuades the skilled cybercriminals (mostly Russian speaking) who might have the necessary skills. One mystery is why these groups have not been used as mercenaries, and this may reflect either a degree of control by the Russian state (if it has forbidden mercenary acts) or a degree of caution by criminals.

There is enough uncertainty among potential attackers about the United States’ ability to attribute that they are unwilling to risk massive retaliation in response to a catastrophic attack. (They are perfectly willing to take the risk of attribution for espionage and coercive cyber actions.)

No one has ever died from a cyberattack, and only a handful of these attacks have produced physical damage. A cyberattack is not a nuclear weapon, and it is intellectually lazy to equate them to nuclear weapons. Using a tactical nuclear weapon against an urban center would produce several hundred thousand casualties, while a strategic nuclear exchange would cause tens of millions of casualties and immense physical destruction. These are catastrophes that some hack cannot duplicate. The shadow of nuclear war distorts discussion of cyber warfare.

State use of cyber operations is consistent with their broad national strategies and interests. Their primary emphasis is on espionage and political coercion. The United States has opponents and is in conflict with them, but they have no interest in launching a catastrophic cyberattack since it would certainly produce an equally catastrophic retaliation. Their goal is to stay below the “use-of-force” threshold and undertake damaging cyber actions against the United States, not start a war.

This has implications for the discussion of inadvertent escalation, something that has also never occurred. The concern over escalation deserves a longer discussion, as there are both technological and strategic constraints that shape and limit risk in cyber operations, and the absence of inadvertent escalation suggests a high degree of control for cyber capabilities by advanced states. Attackers, particularly among the United States’ major opponents for whom cyber is just one of the tools for confrontation, seek to avoid actions that could trigger escalation.

The United States has two opponents (China and Russia) who are capable of damaging cyberattacks. Russia has demonstrated its attack skills on the Ukrainian power grid, but neither Russia nor China would be well served by a similar attack on the United States. Iran is improving and may reach the point where it could use cyberattacks to cause major damage, but it would only do so when it has decided to engage in a major armed conflict with the United States. Iran might attack targets outside the United States and its allies with less risk and continues to experiment with cyberattacks against Israeli critical infrastructure. North Korea has not yet developed this kind of capability.

## Convergence

### 1NC – AT: Convergence

#### Cooperation now sufficient to resolve objectives.

Michaels & Kendall ’21 [Daniel; 7/15/21; Brussels Bureau Chief @ The Wall Street Journal; and Brent; Legal Affairs Reporter in the Washington Bureau @ The Wall Street Journal “U.S. Competition Policy Is Aligning With Europe, and Deeper Cooperation Could Follow”; https://www.wsj.com/articles/u-s-competition-policy-is-aligning-with-europe-and-deeper-cooperation-could-follow-11626334844; AS]

The European Union’s top antitrust regulator foresees greater alignment with the U.S. on competition enforcement, particularly in the tech sector, amid a broader policy reorientation under the Biden administration.

EU Executive Vice President Margrethe Vestager, the bloc’s competition commissioner, said she expects “much more intense work when it comes to technology and the digitized market” between her team and Washington.

President Biden’s policy statements and appointments, plus legislative proposals from Congress, indicate the U.S. is moving closer to positions long held in the EU regarding internet giants, pharmaceutical firms and other industries with diminishing competition.

As the world’s two most powerful antitrust regulators, the U.S. and the EU can shape global competition discourse and rein in many of the world’s largest companies, so greater cooperation could have significant impact.

For supporters of aggressive enforcement, “it will certainly be a marriage made in heaven,” said Jeffrey Jacobovitz, a Washington-based antitrust lawyer with Arnall Golden Gregory LLP. “I think they’ll work hand in hand. Increased coordination makes enforcement stronger.”

That alignment will make it even more incumbent on companies in the crosshairs to develop broad, cross-Atlantic strategies on how to respond to that scrutiny, Mr. Jacobovitz said.

While tech companies say similar policies in multiple jurisdictions can simplify operations, some worry about the U.S. adopting some of Europe’s more aggressive positions.

“The U.S. should be wary of copying EU-style experimental regulation,” said Christian Borggreen, vice president and head of the Brussels office at the Computer & Communications Industry Association, which represents companies including Amazon.com Inc., Facebook Inc. and Google. “As a leader in tech innovation, the U.S. would have much more to lose if they get it wrong.”

Mr. Biden’s appointments of high-profile U.S. progressives who have criticized tech giants—Lina Khan to run the Federal Trade Commission, and Tim Wu to the White House Economic Council—have been widely seen as indicating that Mr. Biden plans to turn up the heat on internet conglomerates. Companies such as Microsoft Corp. , Apple Inc. and Google parent Alphabet Inc. previously felt little pressure from Democrats, including former President Barack Obama, who criticized past EU efforts to restrain U.S. tech companies.

Ms. Vestager held an initial meeting with Ms. Khan by videoconference on July 2. Mr. Biden has yet to appoint someone to lead antitrust enforcement at the Justice Department. That nomination could provide further clues to his administration’s approach.

In parallel, House Democrats recently introduced a package of bills with bipartisan support that target big tech companies’ practices considered by critics as anticompetitive. The proposed legislation could go as far as breaking up, or at least shrinking, Amazon and other top tech companies.

New York state could go a step further with proposed antitrust legislation that would forbid companies from abusing a dominant market position—a prohibition central to EU competition regulation that is much stricter than U.S. federal antitrust rules.

Mr. Biden last week issued an executive order seeking to curb the power of companies across the U.S. economy that dominate their markets.

The jockeying for new policy approaches comes as officials on both continents have faced enforcement challenges in limiting digital giants’ activities. Ms. Vestager has imposed billions of dollars in penalties on U.S. tech companies but had little impact on their ability to control markets, according to critics including consumer advocates and some smaller competitors.

In the U.S., a federal judge last month dismissed cases brought by the FTC and most U.S. states against Facebook, though the FTC is expected to try again with an amended lawsuit.

“I believe there is a greater consensus that competition enforcement has not always delivered on its promise,” said University of Oxford law professor Ariel Ezrachi, who is director of Oxford’s Centre for Competition Law and Policy. He said the new U.S. approach is “a real tectonic shift.”

#### Many causes of EU/US, but antitrust is not one of them.

Köhler-Suzuki 20 [Nicolas; Trade Policy Advisor at International Trade Intelligence; “STRATEGIC CHOICES FOR THE EU’S DIGITAL TRADE POLICY AFTER THE US ELECTION”; https://institutdelors.eu/en/publications/strategic-choices-for-the-eus-digital-trade-policy-after-the-us-election-2/; AS]

The EU has sent multiple signals that it wants to engage with the US on digital trade. Commission President von der Leyen proposed working together on a “rule book for the digital economy and society covering everything, from Big Tech to data use and privacy, from infrastructure to security.”[14] EU Trade Commissioner Valdis Dombrovskis called for solving existing trade disputes and establishing an EU-US trade and technology council–a holdover from the regulatory cooperation body that was envisaged under the failed Transatlantic Trade and Investment Partnership (TTIP).[15] There have also been other symbolic moves, such as the settlement of the lobster dispute by the European Parliament and signals for reconciliation on the Boeing-Airbus case. But von der Leyen also cautioned EU ambassadors that “some shifts in priorities and perceptions run much deeper than one politician or administration” which would not “disappear because of one election”.[16] Digital taxation and data flows, for example, will likely become a sticking point in transatlantic relations in the coming months.[17] At the same time, transatlantic views on the role of antitrust, privacy, and artificial intelligence seem to be converging. Crucially, the EU and the US have a shared foundation of liberal democratic values, which could help to break deadlock in the face of an external systemic threat.

IV. Opportunities and pitfalls for collaboration

Unilateral digital taxes and the conclusion of the OECD Base Erosion and Profit Shifting (BEPS) framework could be amongst the most difficult issues to resolve. On the campaign trail, Biden promised to increase corporate tax rates from twenty-one to twenty-eight per cent. He specifically called on technology companies to pay a larger share of taxes through raising the global intangible low-taxed income (GILTI) tax and promised to close offshoring loopholes. But Biden did not offer proposals for structural reforms of the international tax system, unlike some other Democratic candidates in the primaries.[18] Of course, the role of tax enforcer may not come naturally to Biden, who has for four decades been senator of Delaware, one of the world’s most significant tax havens. Silicon Valley was also an important contributor to his presidential campaign and to Vice President-elect Kamala Harris, and they may not want to bite the hand that fed them, at least not too much.[19] In any case, tax policy in the US is a prerogative of the legislature and digital taxes have faced strong bipartisan opposition in the House and the Senate–possibly also related to generous campaign contributions from technology firms.[20] Moreover, the Biden administration will need to finance the substantial fiscal programs it intends to implement in the coming years. It will therefore unlikely want to forgo the considerable tax revenue from US technology firms that could be diverted to other jurisdictions.

Yet there could still be room for progress. OECD tax officials do not expect a fundamental shift in the US position, but express hope that a Biden administration will support a multilateral solution.[21] While the Trump administration threatened retaliatory tariffs in return for unilateral European digital taxes, it seems less likely Biden would retaliate in the same forceful manner as Trump while he is trying to mend the diplomatic relationships with key allies.[22] If an ever-increasing number of US allies were to introduce unilateral digital taxes in 2021 or 2022, this could create pressure for the US to join OECD BEPS.

Further discord can be expected on transatlantic data flows. In July 2020, the European Court of Justice ruled in the so-called Schrems II case that the EU-US Privacy Shield, which governed transatlantic data flows, is incompatible with European privacy standards. This followed the ECJ’s 2015 invalidation of the preceding Safe Harbour framework (Schrems I). In both cases, the role of systematic surveillance by the US government was key to the reasoning of the court, that the privacy of EU citizens was insufficiently protected. It is clear that any meaningful new agreement on data flows between the EU and the US has to be based on a deeper level of trust, for example through a credible “no-spy” agreement. This, however, would likely be met with stiff resistance from the US national security apparatus as much as from European intelligence agencies, and would therefore require political will at the highest levels of government.

#### No brink for harmonization impact – US has had CWS for decades.

#### No internet impact

Lewis 15—Senior Fellow and Director of the Strategic Technologies Program at the CSIS and a PhD from the University of Chicago [James A, “Managing Risk for the Internet of Things,” *CSIS*, December, p. iv-v, <https://csis-prod.s3.amazonaws.com/s3fs-public/legacy_files/files/publication/151201_Lewis_ManagingRiskIoT_Web.pdf>]

The majority of Internet “users” are machines, not people. The devices that make up “the Internet of Things” (IoT) connect to the Internet, take action, and create immense amounts of data. These devices will perform progressively more functions, creating new risks for safety and security, but we need more than anecdotes to assess risk and devise useful policies. An initial conclusion about security and the Internet of Things is that popular portrayals significantly exaggerate and misrepresent risk. • The Internet of Things will be no more secure than the conventional Internet and may be more vulnerable, since many IoT devices will use simple computers with limited functionality • Increased vulnerability, however, does not mean an increased risk. The benefits of IoT outweigh the potential for harm, and one risk usually not considered is that premature or overreaching measures for security or privacy will stifle economic growth and innovation. • IoT devices allow hackers to produce physical effects. Researchers have demonstrated many vulnerabilities in IoT devices, but the consequences of these vulnerabilities largely qualify as malicious pranks. Only IoT devices that perform sensitive functions or where disruption can produce mass effect will increase risk. This means most IoT devices pose little risk. • The state of online privacy is so dreadful it is unlikely that IoT will make it worse. • The same problems that keep us from making cyberspace more secure will slow progress in IoT security: technological uncertainty, limited international cooperation, lack of incentives for improvement, limited regulatory authority, weak online identities, and an Internet business model based on exploitation of personal data • We can accelerate risk reduction with the same approaches we use for general cybersecurity: research, liability, international cooperation, and regulation. The White House could repeat its approach to critical infrastructure and task sector-specific agencies to work with companies to improve the security of IoT devices they use or sell. • Autonomy will be a key determinant for IoT risk. Limiting device autonomy or providing a way to override autonomy reduces risk. IoT standards should require a higher degree of human intervention and control for sensitive functions. • A secure device connecting to an unsecured network does little to reduce risk. Given the weak state of security on most networks, making IoT more secure requires better use of encryption, strong authentication, and increased resilience for both devices and networks. • We can use three metrics—the value of data, the criticality of a function, and scalability of failure—to assess IoT risk. Devices that create valuable data, perform crucial functions, or can produce mass effect need to be held to higher standards. Those that do not can be left to market forces and the courts to correct • Risk is dynamic. It decreases as technology matures and as familiarity and experience grow. As we gain experience with IoT, risk will decrease.

#### Alt causes to digital authoritarianism – China has a one-party system, belt and road etc

#### No emerging tech impact.

Pinker et al. ’20 [Steven; PhD, Professor of Psychology @ Harvard; Stuart Russell, Professor of Computer Science @ UC Berkeley; Lucas Perry; “Steven Pinker and Stuart Russell on the Foundations, Benefits, and Possible Existential Threat of AI”; June 29th, 2020; https://futureoflife.org/2020/06/15/steven-pinker-and-stuart-russell-on-the-foundations-benefits-and-possible-existential-risk-of-ai/]

Lucas Perry: Now that’s quite a beautiful picture of the future. There’s a lot of existential hope there. The other side to existential hope is existential risk. Now this is an interesting subject, which Steve and you, Stuart, I believe have disagreements about. So pivoting into this area, and Steve, you can go first here, do you believe that human beings, should we not go extinct in the meantime, will we build artificial superintelligence? And does that pose an existential risk to humanity?

Steven Pinker: Yeah, I’m on record as being skeptical of that scenario and dubious about the value of putting a lot of effort into worrying about it now. The concept of superintelligence is itself obscure. In a lot of the discussions you could replace the word “superintelligence” with “magic” or “miracle” and the sentence would read the same. You read about an AI system that could duplicate brains in silicon, or solve problems like war in the Middle East, or cure cancer.  It’s just imagining the possibility of a solution and assuming that the ability to bring it about will exist, without laying out what that intelligence would consist of, or what would count as a solution to the problem.

So I find the concept of superintelligence itself a dubious extrapolation of an unextrapolable continuum, like human-to-animal, or not-so-bright human-to-smart-human. I don’t think there is a power called “intelligence” such that we can compare a squirrel or an octopus to a human and say, “Well, imagine even more of that.”

I’m also skeptical about the existential risk scenarios. They tend to come in two varieties. One is based on the notion of a will to power: that as soon as you get an intelligent system, it will inevitably want to dominate and exploit. Often the analogy is that we humans have exploited and often extinguished animals because we’re smarter than them, so as soon as there is an artificial system that’s smarter than us, it’ll do to us what we did to the dodos. Or that technologically advanced civilizations, like European colonists and conquistadors subjugated and sometimes wiped out indigenous peoples, so that’s what an AI system might do to us. That’s one variety of this scenario.

I think that scenario confuses intelligence with dominance, based on the fact that in one species, Homo sapiens, they happen to come bundled together, because we came about through natural selection, a competitive process driven by relative success at capturing scarce resources and competing for mates, ultimately with the goal of relative reproductive success. But there’s no reason that a system that is designed to pursue a goal would have as its goal, domination. This goes back to our earlier discussion that the ability to achieve a goal is distinct from what the goal is.

It just so happens that in products of natural selection, the goal was winning in reproductive competition. For an artifact we design, there’s just no reason that would be true. This is sometimes called the orthogonality thesis in discussions of existential risk, although that’s just a fancy-schmancy way of referring to Hume’s distinction between our goals and our intelligence.

Now I know that there is an argument that says, “Wouldn’t any intelligence system have to maximize its own survivability, because if it’s given the goal of X, well, you can’t achieve X if you don’t exist, therefore, as a subgoal to achieving X, you’ve got to maximize your own survival at all costs.” I think that’s fallacious. It’s certainly not true that all complex systems have to work toward their own perpetuation. My iPhone doesn’t take any steps to resist my dropping it into a toilet, or letting it run out of power.

You could imagine if it could be programmed like a child to whine, and to cry, and to refuse to do what it’s told to do as its power level went down. We wouldn’t buy one. And we know in the natural world, there are plenty of living systems that sacrifice their own existence for other goals. When a bee stings you, its barbed stinger is dislodged when the bee escapes, killing the bee, but because the bee is programmed to maximize the survivability of the colony, not itself, it willingly sacrifices itself. So it is not true that by definition an intelligent system has to maximize its own power or survivability.

But the more common existential threat scenario is not a will to power but collateral damage. That if an AI system is given a single goal, what if it relentlessly pursues it without consideration of side effects, including harm to us? There are famous examples that I originally thought were spoofs, but were intended seriously, like giving an AI system the goal of making as many paperclips as possible, and so it converts all available matter into paperclips, including our own bodies (putting aside the fact that we don’t need more efficient paperclip manufacturing than what we already have, and that human bodies are a pretty crummy source of iron for paperclips).

Barely more plausible is the idea that we might give an AI system the goal of curing cancer, and so it will  conscript us as involuntary guinea pigs and induce tumors in all of us, or that we might give it the goal of regulating the level of water behind a dam and it might flood a town because it was never given the goal of not drowning a village.

The problem with these scenarios is that they’re self-refuting. They assume that an “intelligent” artifact would be designed to implement a single goal, which is not true of even the stupid artifacts that we live with. When we design a car, we don’t just give the goal of going from A to B as fast as possible; we also install brakes and a steering wheel and a muffler and a catalytic converter. A lot of these scenarios seem to presuppose both idiocy on the part of the designers, who would give a system control over the infrastructure of the entire planet without testing it first to see how it worked, and an idiocy on the part of the allegedly intelligent system, which would pursue a single goal regardless of all the other effects. This does not exist in any human artifact, let alone one that claims to be intelligent. Giving an AI system one vaguely worded, sketchy goal, and empowering it with control over the entire infrastructure of the planet without testing it first seems to me just so self-evidently moronic that I don’t worry that engineers have to be warned against it.

I’ve quoted Stuart himself, who in an interview made the point well when he said, “No one talks about building bridges that don’t fall down. They just call it building bridges.” Likewise, AI that avoids idiocies like that is just AI, it’s not AI with extra safeguards. That’s what intelligence consists of.

# 2NC

## Advantage CP

### 2NC – AT: Capture

#### Courts will always read regulatory statutes down – regulatory capture

Crane 21 – Frederick Paul Furth Sr. Professor of Law at UMich (Daniel, Antitrust Antitextualism, 96 Notre Dame L. Rev. 1205 (2021). Available at: <https://scholarship.law.nd.edu/ndlr/vol96/iss3/7>

But it gets worse. The courts have not merely abandoned statutory textualism or other modes of faithful interpretation out of a commitment to a dynamic common-law process. Rather, they have departed from text and original meaning in one consistent direction—toward reading down the antitrust statutes in favor of big business. As detailed in this Article, this unilateral process began almost immediately upon the promulgation of the Sherman Act and continues to this day. In brief: within their first decade of antitrust jurisprudence, the courts read an atextual rule of reason into section 1 of the Sherman Act to transform an absolute prohibition on agreements restraining trade into a flexible standard often invoked to bless large business combinations; after Congress passed two reform statutes in 1914, the courts incrementally read much of the textual distinctiveness out of the statutes to lessen their anticorporate bite; the courts have read the 1936 Robinson-Patman Act almost out of existence; and the Celler-Kefauver Amendments of 1950, faithfully followed in the years immediately after their promulgation, have been watered down to textually unrecognizable levels by judicial interpretation and agency practice. It is no exaggeration to say that not one of the principal substantive antitrust statutes has been consistently interpreted by the courts in a way faithful to its text or legislative intent, and that the arc of antitrust antitexualism has bent always in favor of capital. Unlike in many debates over statutory interpretation, the issue in antitrust is not a contest between strict textualism and purposivism, including resort to legislative history.6 This Article uses “antitextualism” as a shorthand for the phenomenon of ignoring any bona fide construction of what a statute means, whether in the plain meaning of its words, linguistic or substantive interpretive canons, legislative history, or other ordinary markers of legislative meaning. Uninterested in these methods, the courts have treated the antitrust laws as a virtually unbounded delegation of common-law powers when, in important ways, the statutes quite clearly say something other than that. Inquiring into the nature and implications of antitrust antitextualism is particularly salient at the present when, for the first time in a generation, there is widespread dissatisfaction with antitrust enforcement and impetus for potential reform legislation.7 As was true at each of the prior moments of reformist sentiment, the call is for statutory reforms to curb the power of big business.8 We have seen this play before, and also its sequel. In the play, Congress announces that the antitrust laws are too weak and that reforms are necessary to protect the nation from the power of big capital. In the sequel, the courts (often abetted by the antitrust agencies and other antitrust elites) read down the statutes to accomplish less than their texts suggest or Congress meant. Will anything be different this time around, or are the legislative reforms currently on the table predestined to a similar fate?

#### Courts will use rule of reason analysis to water down new and past precedent

Sipe 18 – JD Yale Law, 2017-2018 Supreme Court Fellow, Current Professor of Law at the University of Baltimore (Matthew, "The Sherman Act and Avoiding Void-for-Vagueness." Florida State University Law Review, vol. 45, no. 3, Spring 2018, p. 709-762. HeinOnline)//gcd

Consider the case law governing boycotts. In Klor's, Inc. v. Broadway-Hale Stores, Inc., the Court examined a group of appliance manufacturers and distributors boycotting a particular retail store.8 2 The Court unambiguously stated that such boycotts were per se Sherman Act violations: Group boycotts, or concerted refusals by traders to deal with other traders, have long been held to be in the forbidden category. They have not been saved by allegations that they were reasonable in the specific circumstances . . . . Even when they operated to lower prices or temporarily to stimulate competition they were banned.... It clearly has, by its "nature" and "character," a "monopolistic tendency."83 Without explicitly overruling this seemingly bright-line and straightforward per se rule, the Court has blurred its boundaries significantly. 84 For example, in Northwest Wholesale Stationers, Inc. v. Pacific Stationery & Printing Co., the Court reversed the Ninth Circuit's application of the per se rule against boycotts to a purchasing cooperative's boycott of a certain retailer.8 5 Although reaffirming that "group boycotts are so likely to restrict competition . . . that they should be condemned as per se violations of § 1 of the Sherman Act," the Court warned that "[e]xactly what types of activity fall within the forbidden category is, however, far from certain."8 6 The Court's analysis provided a number of threshold factors to be considered prior to application of the per se rule, which the Ninth Circuit later summarized as whether: "(1) the boycott cuts off access to a supply, facility, or market necessary to enable the victim firm to compete; (2) the boycotting firm possesses a dominant market position; and (3) the practices are not justified by plausible arguments that they enhanced overall efficiency or competition." But these threshold inquiries-market structure, efficiency, and market power-are classic components of the more flexible and amorphous rule of reason. In other words, the case law dictates that ''courts must apply the rule of reason in order to determine whether the per se rule applies" in the first place.88 To the extent that the ambiguities inherent in the rule of reason are effectively imported into per se analyses as a step-zero inquiry, the latter category is no less vaguely defined.

### 2NC – Labor

#### Antitrust regulation is a drop in the bucket for job growth and opportunity

Brennan, Timothy J. University of Maryland, Baltimore, MD, USA "Should Antitrust Go Beyond “Antitrust”?." The Antitrust Bulletin 63.1 (2018): 49-64.

To the extent that antitrust enforcement discourages firms from decreasing output in order to raise price, and to the extent that output and labor are positively correlated, antitrust enforcement would boost demand for labor. However, that need not imply either that efficiency and the number of jobs are correlated; nor does it imply that boosting—or reducing—demand for labor by one firm or in one sector will have any effect on employment itself.

However, there can be conflict, not just between efficiency and jobs, but between how economists and others think about jobs. I have no better illustration than a true anecdote. In the late 1970s or early 1980s, when I was beginning my career as a staff economist at the Antitrust Division, word came that then professor and now retired Judge Richard Posner was testifying as an expert in a rail merger hearing at the Interstate Commerce Commission. A bunch of us walked over to hear him in action. When we arrived, he was being cross-examined by an attorney representing an opponent of the merger.44 The attorney asked Prof. Posner about a claim that the merger would reduce employment of these railroads. Prof. Posner’s response was something like, “If so, that’s not a cost of the merger; that’s a benefit.”

I was at first shocked, but then realized—I was still relatively new to economics—that Prof. Posner was exactly right. Saving resources, producing the same with less, is the hallmark of economic efficiency. Labor is a resource, just like land, energy, and raw materials. If those workers are not needed on the railroads, in principle they can produce other goods and services elsewhere that would not have been produced otherwise. Moreover, if these workers were being paid the competitive wage in the labor market, these laid-off workers could make the same amount elsewhere.

However, labor markets may not work so smoothly. In some cases, it may not be easy to find a job, if doing so involves extensive search and relocation. More perniciously, if the economy as a whole has experienced a shock to demand, as happened following the credit crisis in 2007–2008, employers may not believe that they could sell what that worker might produce. This can make employment persistent, in which case otherwise efficient layoffs could actually increase unemployment.45

It is no small or uncontroversial task for labor economists or macroeconomists to determine whether a labor market is subject to frictions or the economy is suffering from a shock that led demand and employment to fall. It is difficult to imagine evidence on these subjects presented to an antitrust judge charged with weighing the effects of a potential violation on employment. Because these kinds of labor effects are on the production side, the closest antitrust can come to incorporating jobs as a concern is to commit to ignore efficiency gains, where the labor saving would enter into the analysis.

Even more pertinent is that there are far better policies than antitrust to promote job growth. Frictions preventing those who lose a job from finding another can be reduced through assorted public information services. When job loss follows from a shock to the economy that leads to a recessiondriven increase in unemployment, government spending programs can step in to replace that fall in demand and bring back hiring. The hardest case is when jobs are lost because of innovation that reduces demand for a particular form of labor, for example, when hydrofracking dramatically reduces the cost of natural gas, substantially reducing demand for coal and, by extension, jobs in the coal industry. Arguably, our country and the world could and should do a better job of ensuring that the benefits of innovation go beyond the firms and customers who directly benefit of that information, to those who lose by it as well.46 But that magnitude and difficulty of those policies shows that antitrust is but a drop in the bucket, and should remain focused on its core competency—promoting economic efficiency.

#### Fails to solve inequality and political concentration

Shapiro, Carl. Transamerica Professor of Business Strategy at the Haas School of Business at the University of California, Berkeley. "Antitrust in a Time of Populism." International Journal of Industrial Organization 61 (2018): 714-748.

Before turning to those topics, I would like to emphasize that the role of antitrust in promoting competition could well be undermined if antitrust is called upon or expected to address problems not directly relating to competition. Most notably, antitrust institutions are poorly suited to address problems associated with the excessive political power of large corporations. The courts and the antitrust enforcement agencies know how to assess economic power and the economic effects of mergers or challenged business practices, but there are no reliable methods by which they could assess the political power of large firms. Asking the DOJ, the FTC to evaluate mergers and business conduct based on the political power of the firms involved would invite corruption by allowing the executive branch to punish its enemies and reward its allies through the antitrust cases brought, or not brought, by antitrust enforcers. On top of that, asking the courts to approve or block mergers based on the political power of the merging firms would undermine the rule of law while inevitably drawing the judicial branch into deeply political considerations. Let me be clear: the corrupting power of money in politics in the United States is perhaps the gravest threat facing democracy in America.3 But this profound threat to democracy and to equality of opportunity is far better addressed through campaign finance reform, increased transparency, and anti-corruption rules than by antitrust.

Antitrust also is poorly suited to address issues of income inequality. Many other public policies are far superior for this purpose. Tax policy, government programs such as Medicaid, disability insurance, and Social Security, and a whole range of policies relating to education and training spring immediately to mind. So, while stronger antitrust enforcement will modestly help address income inequality, explicitly bringing income distribution into antitrust analysis would be unwise. Baker and Salop (2015) identify a number of ways in which antitrust could help address inequality while staying true to its mission of promoting competition.

#### Targeted labor law solves the case without undermining investor confidence. Only the CWS confers a stable baseline of stability for businesses.

Bowman ’21 [Sam; Director of Competition Policy, International Center for Law & Economics; February 2021; “The Consumer Welfare Standard: Bringing Objectivity to Antitrust”; <https://laweconcenter.org/wp-content/uploads/2021/02/tldr-Consumer-Welfare-Standard.pdf>; accessed 10/3/21; TV]

Background: In antitrust law, the Consumer Welfare Standard (CWS) directs courts to focus on the effects that challenged business practices have on consumers, rather than on alleged harms to specific competitors. Critics of the standard claim this focus on consumer welfare fails to capture a wide variety of harmful conduct. In addition to believing that harm to competitors is itself a valid concern, critics of the CWS believe it leads to harmful concentrations of political and economic power by biasing antitrust enforcement against intervention. Under this view, the CWS contributes to such harms as environmental degradation, income inequality, and bargaining disparities for labor.

But… Returning to a pre-CWS state of the law would lead antitrust enforcement to become confused, contradictory, and ineffective at promoting competition. The CWS makes antitrust economically coherent and democratically accountable.

However… The CWS is agnostic about how much antitrust enforcement is necessary. Indeed, many advocates of more vigorous antitrust enforcement are also defenders of the CWS. The standard uses objective economic analysis to identify actual harms and to recommend remedies when those harms are not outweighed by countervailing benefits to consumers. While the issues the CWS critics care about may be important, antitrust law is a bad way to address them.

COMPETITION HAS TO HURT YOUR COMPETITORS

Prioritizing competitor welfare over consumer welfare, as Sen. Amy Klobuchar’s antitrust bill would, means abandoning competition as the goal of antitrust. Businesses want a quiet life and large profits. If one firm outcompetes another with a better product or a lower price, it disadvantages that competitor by lowering its profits or forcing it to work harder to maintain them. The consumer ultimately wins in this struggle. Basing antitrust liability on conduct that “materially disadvantages” competitors would impose liability for the act of competing itself.

THE OLD MODEL OF ANTITRUST WAS INCOHERENT AND UNACCOUNTABLE

Before the rise of the CWS, antitrust enforcement was incoherent and lacked underlying neutral principles. In the words of Justice Potter Stewart, the only consistency was that “the government always wins.” Competitive practices could be condemned because they hurt the profitability of some businesses. Sometimes courts would worry that prices were too low and would therefore permit “price floors” to protect small business. This lack of consistency led to a body of law that was contradictory and unpredictable, and that regularly undermined competition. By entrusting enforcement and antitrust policy to the discretion of unelected enforcement officials, competition policy was effectively removed from democratic oversight.

THE CWS GROUNDS ANTITRUST IN OBJECTIVE ECONOMICS AND TRACTABLE EVIDENCE

Adherence to the CWS renders antitrust judgments transparent and quantifiable by giving a clear benchmark for economic analysis. Without the CWS, courts might trade reduced competition and consumer welfare for a reduction in, for example, a business’s political influence. While achieving the latter may (or may not) be a worthy goal, there is no objective way to assess trade-offs between the two priorities. The CWS requires testable claims and counterclaims as part of a competition case. It allows antitrust cases to focus on a question that can be answered objectively: “Is the challenged conduct likely to make consumers better or worse off?”

THE CWS CONSIDERS INNOVATION AND QUALITY, AS WELL AS PRICE

The CWS has always encompassed aspects of competition beyond price, including innovation, quality, and product variety. The CWS is thus fully compatible with markets where products are offered at a zero price to consumers, or where the alleged source of harm is the loss of innovation. US v. Microsoft, for example, hinged on an innovation theory of harm, as did the U.S. Justice Department’s lawsuit against the Visa/Plaid merger, which led to the merger being abandoned. As in other supply markets, anticompetitive conduct by businesses in the labor market has been ruled illegal under the CWS and both of the federal antitrust agencies have brought cases against this kind of conduct.

THE CWS DOES NOT PRECLUDE INTERVENTIONIST ANTITRUST

Many defenders of the CWS—such as Yale economist Fiona Scott-Morton and Penn law professor Herbert Hovenkamp—also believe that antitrust enforcers ought to be more aggressive in challenging business conduct and mergers that they believe worsen competition and consumer welfare.

ANTITRUST IS NOT A PUBLIC POLICY SWISS ARMY KNIFE

Antitrust is a bad tool to achieve goals other than increased competition, because it is often impossible to objectively compare the value of different competing ends. Where difficult trade-offs must be made between competing social goals, such as balancing economic growth with the environment or workers’ welfare, the legislative process is a better mechanism to weigh society’s preferences than the judgement of a court. Trying to use antitrust to achieve these ends is often an attempt to bypass the democratic process when that process does not deliver the outcomes that advocates want.

### 2NC – Cyber

#### Studies prove prizes comparatively promote national cybersecurity best.

Ebrahim ’20 [Tabrez Y; Associate Professor of Law, California Western School of Law; Visiting Associate Professor, University of California, San Diego; Ostrom Visiting Scholar (Program on Data Management and Information Governance) & Affiliate (Program on Cybersecurity and Internet Governance), Indiana University (Bloomington); Visiting Fellow, University of Nebraska (Lincoln): Nebraska Governance & Technology Center; Thomas Edison Innovation Fellow & Leonardo da Vinci Fellow, George Mason University Antonin Scalia Law School; Visiting Scholar, University of California, Los Angeles School of Law; Registered U.S. patent attorney; J.D., Northwestern University Pritzker School of Law; 2020; “NATIONAL CYBERSECURITY INNOVATION”; <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3751581>; West Virginia Law Review, Vol. 123; accessed 10/28/21; TV]

Turning from the descriptive to the normative and prescriptive, this Article proposes mechanisms for accelerating national cybersecurity innovation. In so doing, it helps fill a significant gap on technological innovation in the cybersecurity literature, for, [while] [c]omputers and networks essentially run the critical infrastructures that are vital to our national defense, economic security, and public health and safety, [u]nfortunately, many computer systems and networks were not designed with security in mind, [and] as a result, the core of our critical infrastructure is riddled with vulnerabilities that could enable an attacker to disrupt operations or cause damage to these infrastructures. 21

In drawing upon a rich body of scholarship comparing the relative merits of patents, grants, prizes, R&D tax credits, and other inducement mechanisms to promote national cybersecurity innovation, this Article argues against extending exclusive patent rights to national cybersecurity innovations and applies several economic and theoretical insights for promoting such innovation. It draws upon the theoretical Calabresi-Melamed typology of property rules and liability rules to serve as a guidepost for examining why the patent system inadequately incentivizes national cybersecurity innovation.

The normative vision rooted in this Article for national cybersecurity innovation is that the current patent system is slow and hampers innovation, whereas prizes rapidly place an invention into the public domain without possible significant deadweight losses, and reciprocal public-private R&D interactions in the form of a CRADA can recalibrate the patent bargain. While there are some benefits with other innovation mechanisms-such as basic research at universities, applied research and commercialization non-profit organizations, small business innovation funding, and public subsidies (research grants and tax incentives)--this Article argues that national cybersecurity innovation is best achieved via government intervention through prizes and CRADAs. In particular, it argues that national cybersecurity is a public good and that public funding can quickly promote and steer national cybersecurity innovation, while recognizing biases and information costs raised by public choice theory. In reciprocal fashion, this Article shows that national cybersecurity innovation has much to teach legal scholars and policymakers about accelerating more traditional types of technological innovation. In particular, it argues that innovation policy should focus more on fostering public finance innovation mechanisms for technological areas serving societal public needs (such as national cybersecurity, environmental public health, and public safety) and providing reciprocal public-private enhancing interactions for the rapid development of technologies that co-mingle private and public infrastructure elements.

#### Treaty solves.

Maas 19 - Faculty of Law, Centre for International Law, Conflict and Crisis, University of Copenhagen, Copenhagen, Denmark, Center for the Governance of AI, Future of Humanity Institute, University of Oxford, Oxford, UK (Matthijs M. Maas (2019): How viable is international arms control for military artificial intelligence? Three lessons from nuclear weapons, Contemporary Security Policy, DOI: 10.1080/13523260.2019.1576464 ) NAR

How viable is international arms control for military AI? Recent years have seen no shortage of alarmism or pessimism regarding the imminence of AI arms races, and yet the historical track record in slowing and containing the spread of “the ultimate deterrent” suggests a surprisingly optimistic answer: Arms races are not inevitable, but can be managed, channeled or even stopped. This may be facilitated through direct engagement with domestic political coalitions, or indirectly, by shaping norms top-down (through international regimes) or bottom-up (through epistemic communities). The study of the road to the 1972 ABM Treaty likewise suggests, optimistically, that small communities of experts, appropriately organized and mobilized, can have a disproportionate effect in framing global arms control cooperation through bottom-up norm institutionalization, and could do so again for military AI. At the same time, this reading comes with a note of caution: Organizing an effective epistemic community in the field of military AI may be difficult, given the limited consensus; moreover, the window of opportunity to coordinate this community and institutionalize global norms on military AI may already be closing. This is specifically problematic since many of the current debates in the nascent epistemic community remain aimed at overtly narrow goals such as “human-in-the-loop” arrangements or assurances of “meaningful human control”—arrangements which are rendered problematic in the context of networked AI systems that are deployed in ways that render them susceptible to “normal accidents.” This argument has practical implications for actors seeking to pursue arms control. It suggests that there are real prospects of halting proliferation, or channeling it in less hazardous directions. However, it also suggests that the nascent epistemic community seeking to combat military AI must look beyond its focus on banning “killer robots” on ethical and legal grounds alone. While valid and worthwhile, a more effective and comprehensive arms control effort against military AI might see this epistemic community re-organize and readjust in two ways: First, it should consider- and engage with the far broader range of prospective military AI systems than kinetic autonomous weapons systems alone. Secondly, it should explicitly bring to bear the full portfolio of rationales that have driven arms control historically—rationales that include not just ethics and legality, but also strategic stability and safety. Such a portfolio approach has a higher chance of affecting policy, by offering rationales (and arguments) more salient to domestic political actors sympathetic to controlling military AI. This can aid in the dissemination and institutionalization of norms, as well as targeting control efforts on the full spectrum of risks posed by military AI systems. Finally, this argument suggests some ways by which to update and extend established theories in international relations—whether those examining the causes of state decision-making; the top-down and bottom-up processes of norm creation, dissemination and institutionalization, and literatures on organizational safety in the context of complex technologies. This can help keep these fields current in the era of AI; if the arms control challenge is greater this time, that provides all the more reason for AI governance scholars and advocates to understand the successes and failures of the past. This article has only offered a preliminary examination of such lessons, and much more work is needed to adequately identify which avenues of global governance are potentially fruitful and which might prove dead ends. The ability to learn from experience may be one clear advantage AI arms control advocates have over the nuclear arms control advocates of the past. They would do well to make full use of this history, whether in preparing to study or make this next chapter in arms control.

## Adv 1

### 2NC – Framing

#### Independenlty, that means the plan is circumvented and watered down – durable fiat doesn’t solve judicial disregard and congressional inaction

Crane 21 – Frederick Paul Furth Sr. Professor of Law at UMich (Daniel, Antitrust Antitextualism, 96 Notre Dame L. Rev. 1205 (2021). Available at: <https://scholarship.law.nd.edu/ndlr/vol96/iss3/7>

As first the antitrust agencies through their merger guidelines and then the courts through endorsement of the agencies’ approach systematically shifted merger policy away from the incipiency standard and began requiring formal market definition and probability of adverse price effects, Congress acquiesced through inaction. Whatever else it said in 1950, Congress has thus far shown itself willing to let the courts and antitrust agencies reshape merger law in a form far more favorable to business consolidation. \* \* \* In sum, from the courts’ earliest forays into interpreting the Sherman Act up through contemporary antitrust jurisprudence, the courts have manifested a systematic tendency to interpret the substantive antitrust statutes contrary to their texts, legislative histories, and often their spirit.236 Sometimes, as with the rule of reason and labor exemption, the judicial disregard of text and purpose has occurred fairly immediately. In other cases, as with the Robinson-Patman and Celler-Kefauver Acts, an initial period of statutory fidelity has slipped gradually into a period of statutory infidelity. In some cases, as with respect to section 5 of the FTC Act and section 3 of the Clayton ct, the courts continue to proclaim their fidelity after they functionally move to infidelity. In many cases, the courts stop pretending after a while and admit quite candidly that they are taking liberties with the statute. If this antitrust antitextualism is merely the product of common-law methodology, one would expect to see movement away from the statute’s text in both permissive and restrictive directions, or, to put it more crassly, both in favor of big capital and against it. But the movement has all been in one direction: loosening a congressional check on big capital. Thus, the rule of reason allowed courts to bless large combinations of capital that the courts deemed reasonable; narrowing the labor exemption frustrated labor’s ability to countervail capital’s power; restricting the private right of action for treble damages significantly curtailed the private-litigation check on business; judicial narrowing of the Clayton Act’s exclusive dealing and tying restrictions allowed (mostly big) firms to exploit market power; reading “unfair” out of the FTC Act eliminated section 5 as a check on business morality; eviscerating the Robinson-Patman Act protections for small and independent businesses favored large and powerful businesses; and requiring proof of likely price increases and technical relevant market definition in merger cases immunized many large-scale mergers from legal challenge. Throughout the history of American antitrust law, the courts have shown a systematic tendency to read down the antitrust statutes in favor of big capital. But the story of antitrust antitextualism is not simply one of conservative/progressive ideological struggle between Congress and the courts. Much of the action away from statutory text and purpose was accomplished by, or with the support of, judges of the political left. Unlike in other fields, Congress has not responded with statutory overrides. And far from buttressing its atextual statutory readings of the antitrust laws through veiled constitutional warnings about congressional overreaching, the Court has repeatedly pulled in the opposite direction, asserting quasi-constitutional reverence for antitrust law.237 Despite ample opportunity to do so, the Court has not removed antitrust law from the reach of congressional reconsideration by constitutionalizing its atextual readings. Antitrust antitextualism does not follow a conventional left/right ideological pattern. Its actual pattern is more subtle III. THE IDEALISTIC CONGRESS, PRAGMATIC COURTS THESIS AND ITS IMPLICATIONS Thus far, this Article has made an empirical observation—that, from the beginning of antitrust history, the courts have atextually read down the antitrust statutes in favor of big business and considered and rejected a potential explanation: that this phenomenon primarily represents an ideological tugof-war between a progressive Congress and more conservative courts. This final Part searches for an alternative understanding, one that is perhaps less obvious but more fitting, and then considers its systemic implications for the antitrust enterprise. A. The Idealistic/Pragmatic Thesis Congress writes expansive statutes reining in business power, the courts (either immediately or over time) disregard the plain text of the statutes and trim them down in favor of capital, and Congress acquiesces through inaction. Why? The best-fitting explanation is this: the antitrust laws reside in perennial tension between two fundamental impulses of the American political psyche—the romantic and idealistic attachment to smallness over bigness, and the pragmatic and often grudging realization that large-scale organization may be necessary to achieve material advantages. The romanticism and idealism of the anti-bigness impulse pushes it to the fore in the popular political arena. Congress legislates on the popular aspiration for an egalitarian economy organized around small proprietors and independent local businesses and freedom from economic dominance. When the statutes come to the courts or antitrust agencies, judges and antitrust enforcers play the pragmatic role of balancing those popular aspirations against the contending impulse for efficiency and material benefit. This balancing act induces them to give less effect to the statutes than the broad statutory texts suggest. So long as the judicial decisions achieve results that strike a politically acceptable outcome between the aspirational and pragmatic impulses, Congress is content to leave the judicial and enforcement decisions alone.

### XT 5-8 – Inequality Defense

#### 3. There is no tradeoff between inequality and growth---the newest high-quality data proves

Nathalie Scholl 16, PhD in Globalization & Development from Göttingen University, Research Associate with the Development Economics Research Group at Göttingen University, and Stephan Klasen, Professor of Development Economics at the University of Göttingen, director of the Ibero-America Institute for Economic Research, Coordinator of the Courant Research Center, PhD in Economics from Harvard, “Re-estimating the relationship between inequality and growth,” Courant Research Centre: Poverty, Equity and Growth - Discussion Papers, No. 205 [rev.], September 2016, https://www.econstor.eu/bitstream/10419/146554/1/868722448.pdf

In this paper, we have revisited the inequality-growth relationship using an enhanced panel data set with improved inequality data and special attention to the role of transition countries. We based our analysis on the specification of Forbes (2000), but also addressed the functional form concerns raised by Banerjee and Duflo (2003). Using the SWIID data, which provide an improved and substantially longer panel dataset, we can avoid several of the data concerns brought up by the literature, such as consistency over time and between countries, and a low within-country variation. We also take into account the unique experience of transition countries, which suffered a large negative output shock at the start of the transition period in the early 1990s from which they slowly recovered in the late 1990s and early 2000s. This was coincidental with large increases in inequality, which had been kept at low levels during the Communist rule.¶ Using robust dynamic panel estimation and multiple imputation estimation, we find no robust, systematic relationship between inequality and subsequent growth,

neither for levels nor for changes in inequality. While higher inequality appears to be significantly associated with higher subsequent growth when Forbes’ and Banerjee and Duflo’s basic specifications are used, we find that this effect is entirely driven by the experience of transition countries and is not present in the remaining country sample. Once we introduce separate time effects for the transition countries, these associations disappear for this group of countries as well. These results hold for different lag structures as well as for the medium- rather than the short term, and the empirical patterns observed emerge not only in the SWIID, but also the WIID data.¶ Our results point to two conclusions. First, there does not appear to be a trade-off between inequality and growth. Second, because the positive impact of inequality on growth in transition countries is not robust to the inclusion of separate time effects, it appears to be driven by other events. Our findings are hence consistent with the claim that the relationship is due to the particular timing of inequality and growth dynamics in transition countries. In particular, the rise in inequality in the 1990s coincided with a sharp output collapse, leading us to find an association between the large increase in inequality in the early 1990 and a growth recovery in the late 1990s.

#### 4. The best empirical evidence disproves the inequality-crisis link---their authors are way outside the academic consensus

Michael D. Bordo 12, Professor of Economics and Director of the Center for Monetary and Financial History at Rutgers University, PhD from the University of Chicago, and Christopher M. Meissner, professor of economics at UC Davis, PhD in Economics from UC Berkeley, “Does Inequality Lead to a Financial Crisis?” NBER Working Paper No. 17896, March 2012, <http://www.nber.org/papers/w17896.pdf>

The recent financial crisis in the U.S. has been attributed to a rise in inequality by several authors. In his 2010 book, Fault Lines, Raghuram Rajan argued that rising inequality in the past three decades led to political pressure for redistribution that eventually came in the form of subsidized housing finance. Political pressure was exerted so that low income households who otherwise would not have qualified received improved access to mortgage finance. The resulting lending boom created a massive run-up in housing prices which reversed in 2007 and led to the banking crisis of 2008.¶ Along these lines, Kumhof and Rancière (2011) study the links between inequality, credit and crises complementing the Rajan hypothesis with a DSGE model. In this model, rising inequality and stagnant incomes in the lower deciles lead workers to borrow to maintain their consumption growth. As these households become increasingly indebted, they continue to borrow more to maintain their consumption. This increases leverage, and eventually a shock to the economy leads to a financial crisis. They posit that their story holds both for the 1920s stock market boom in the US and the run up to the 2008 crisis. The focus on income inequality by Kumhof and Rancière and Rajan is a novel approach to understanding macroeconomic outcomes prior to the recent financial crisis, and to the Great Depression. The theme deserves further empirical scrutiny from other time periods and countries.¶ There is reason to wonder about the generality of this new view since income inequality rarely plays a significant role in the large literature on financial instability and credit booms. Mendoza and Terrones (2008) study the experience of a large number of advanced and emerging economies since the 1960s finding that current account deficits, strong economic growth and fixed exchange rates accompanied credit booms. Borio and White (2003) have also elaborated a view of pro-cyclical financial systems. Periods of expected low and stable inflation, strong economic growth and liberalized finance can give rise to complacency amongst borrowers, lenders and regulators. Endogenous market forces that might normally “rein in” these imbalances seem to be absent. Massive buildups in credit lead to financial instability in this case. Income inequality plays no active role in generating the boom-bust outcome in these contributions. ¶ In this paper, we present new empirical evidence on whether rising inequality has any explanatory power in accounting for credit booms and financial crises. Rather than limiting the focus to inequality as the Rajan/Kumhof/Rancière (RKR) frameworks do, we control for more traditional determinants of the credit cycle. Different from these authors, we also bring evidence from a much larger sample than the two unique periods in US economic history that are the focus of RKR. Our sample is a panel of 14 mainly advanced countries from 1920 to 2008 covering a wide variety of boom-bust episodes and financial crises.¶ We find very little evidence linking credit booms and financial crises to rising inequality. Instead, the two key determinants of credit booms are the upswing of the business cycle or economic expansion and low interest rates. This is very much consistent with a broader literature on credit cycles. While inequality often ticks upwards in the expansionary phase of the business cycle, this factor does not appear to be a significant determinant of credit growth once we condition on other macroeconomic aggregates. Neither is income concentration a good predictor of the financial crises that often follow above average growth in credit. The anecdotal evidence from several historical credit booms finds little support for the inequality/crisis hypothesis.

#### 6. The costs of monopoly actually fall disproportionately on the rich

Crane 16 – Daniel Crane, Associate Dean for Faculty and Research and Frederick Paul Furth, Sr. Professor of Law, University of Michigan, “Antitrust and Wealth Inequality,” *Cornell Law Review*, Volume 101, Number 5, 2016, pp. 1171-1228

Notwithstanding the points emphasized in the previous two sections, it is clear that household consumers do end up bearing some of the brunt of antitrust violations. But it is a long leap from that recognition to the claim that antitrust violations are regressive. The relatively wealthy can be exploited through the exercise of market power at least as much as—and perhaps proportionately more than—the relatively poor.

Anticompetitive conduct is by no means limited to markets involving sales to primarily lower income individuals. One can readily identify examples of antitrust violations in industries producing goods or services sold primarily to the wealthy; for example, gem-quality diamonds,134 stock brokerage services, 135 auctioning of high-end art,136 and luxury watches.137 Picking on just one market, anticompetitive actions have a storied history in the luxury automobile industry. Recently, federal prosecutors in New York recommended the indictment for price fixing of Mercedes-Benz dealers in New York, New Jersey, and Connecticut;138 while Chinese competition officials mulled bringing price fixing charges against BMW and Audi.139 Reaching back in automotive history, Rolls-Royce secretly acquired Bentley during the Great Depression, largely to forestall competition from its closest rival.140 And, to pick a famous monopolization case, one can ponder the wealth distribution effects in Aspen, Colorado—playground of the rich and famous— when the Aspen Skiing Company decided to jettison its cooperation with the rival mountain owned by Highlands.141 In all of these cases—and many others—the modal customer for the relevant good or service was likely to be in the upper stratum of the income distribution.142

Looking economy-wide, the effects of increases in market power on the distribution of wealth are subtle. Consumers in the top quintile of household wealth spend four times as much as consumers in the bottom quintile.143 So, if monopolists extracted equal proportions of wealth from every consumer dollar spent, the burden of monopoly pricing would fall four times as heavily on the wealthiest income stratum than on the least wealthy stratum. However, the effect of monopoly pricing could still be regressive in the sense of increasing the gap in relative wealth between the rich and the poor. Monopoly rent extraction operates essentially like sales taxes, which are known to have regressive properties,144 because spending as a share of income decreases with increases in income (since the rich save a considerably greater percentage of their income than do the poor).145 But monopoly pricing probably does not have the regressive characteristics of a sales tax.

First, the regressive effect of sales taxes arises because unspent wealth is not subject to the tax. In the case of monopoly power, however, there is no reason to exclude unspent wealth from the rent-extraction capacity of monopolists. Rents can be extracted from unspent wealth due to monopolistic conditions in the banking, brokerage, investment products, and financial services industries. Indeed, anticompetitive conditions in the banking and financial services industries are among the chief complaints of progressives today.146 If the general level of monopolistic rent extraction on unspent wealth is equal to the level of monopolistic rent extraction on consumer spending, then the regressivity of the sales tax would vanish altogether for monopoly rent extraction.147

Second, the regressivity of the sales tax arises from the tax’s flat rate, but monopolists do not extract equal proportions of wealth from rich and poor consumers for every dollar spent. To the contrary, economic theory holds that market power permits monopolists to price discriminate and do so primarily to the disadvantage of the wealthy. Acts that create market power may thus permit the selling firm to charge different prices to different classes of consumers based on their varying demand elasticities and to do so in progressive ways.

Price discrimination through the exercise of market power is a pervasive concern of modern antitrust policy.148 For example, the Justice Department and FTC’s 2010 Horizontal Merger Guidelines repeatedly stress the concern that market power acquired through mergers will facilitate price discrimination.149 Whether or not price discrimination is economically efficient,150 it usually has progressive wealth effects, since the wealthy are less price elastic than the poor for most goods and services.151 As firms acquire market power through anticompetitive acts and begin to increase their prices, they often do so employing pricing schemes that extract significantly more monopolistic rents from the wealthy than from the poor. To the extent that antitrust enforcement creates more competitive markets and more competitive markets diminish price discrimination, the effect in many instances could be to decrease the prices paid by the rich while reducing less, keeping flat, or even decreasing the prices paid by the comparatively less wealthy.

### XT – AT: Cyber

#### Attribution solves resiliency.

Lynch ’19 [Justin; 2/8/19; Associate Editor at Fifth Domain, contributor to the New Yorker, Foreign Policy, the Atlantic; "The struggle behind predicting a cyberattack," https://www.fifthdomain.com/industry/2019/02/08/the-struggle-behind-predicting-a-cyberattack/]

The idea that public data can point to future cyberattacks has been embraced by several government agencies.

The intelligence community’s research arm, the Intelligence Advanced Research Projects Activity, is researching how data can help forecast a cyberattack by using sensors that predict when a target is vulnerable to hackers. BAE Systems, Charles River Analytics, Leidos, and the University of Southern California are the prime contractors on the project.

There is a “significant link between hackers use of social media platforms, especially Twitter and Facebook, and the volume of web defacement attack,” according to 2017 research backed by the Office of the Director of National Intelligence and IARPA.

But experts have had mixed results with predicting cyberattacks with machine learning and open data.

By analyzing conversations of known criminals on the dark web, researchers from the University of California also tried to create an early warning system for incoming cyberattacks in 2017. That approach was 84 percent effective at predicting current or imminent cyberattacks.

Also in 2017, three researchers used historical attack count data to predict future cyberattacks to some success. It was 14 percent more effective than other models.

However, others believe the future of predicting cyberattacks through artificial intelligence will combine both humans and computers.

Researchers from the Massachusetts Institute of Technology created a computer system in 2016 that continuously incorporated information from human experts with a success rate of 85 percent while also decreasing false positives by a significant factor.

“The more attacks the system detects, the more analyst feedback it receives, which, in turn, improves the accuracy of future predictions,” said Kalyan Veeramachaneni, a research scientist at MIT in a release. “That human-machine interaction creates a beautiful, cascading effect.”

#### No cyber impact.

Lewis ’20 [James Andrew; 8/17/20; senior vice president and director of the Strategic Technologies Program at the Center for Strategic and International Studies; "Dismissing Cyber Catastrophe," https://www.csis.org/analysis/dismissing-cyber-catastrophe]

More importantly, there are powerful strategic constraints on those who have the ability to launch catastrophe attacks. We have more than two decades of experience with the use of cyber techniques and operations for coercive and criminal purposes and have a clear understanding of motives, capabilities, and intentions. We can be guided by the methods of the Strategic Bombing Survey, which used interviews and observation (rather than hypotheses) to determine effect. These methods apply equally to cyberattacks. The conclusions we can draw from this are:

Nonstate actors and most states lack the capability to launch attacks that cause physical damage at any level, much less a catastrophe. There have been regular predictions every year for over a decade that nonstate actors will acquire these high-end cyber capabilities in two or three years in what has become a cycle of repetition. The monetary return is negligible, which dissuades the skilled cybercriminals (mostly Russian speaking) who might have the necessary skills. One mystery is why these groups have not been used as mercenaries, and this may reflect either a degree of control by the Russian state (if it has forbidden mercenary acts) or a degree of caution by criminals.

There is enough uncertainty among potential attackers about the United States’ ability to attribute that they are unwilling to risk massive retaliation in response to a catastrophic attack. (They are perfectly willing to take the risk of attribution for espionage and coercive cyber actions.)

No one has ever died from a cyberattack, and only a handful of these attacks have produced physical damage. A cyberattack is not a nuclear weapon, and it is intellectually lazy to equate them to nuclear weapons. Using a tactical nuclear weapon against an urban center would produce several hundred thousand casualties, while a strategic nuclear exchange would cause tens of millions of casualties and immense physical destruction. These are catastrophes that some hack cannot duplicate. The shadow of nuclear war distorts discussion of cyber warfare.

State use of cyber operations is consistent with their broad national strategies and interests. Their primary emphasis is on espionage and political coercion. The United States has opponents and is in conflict with them, but they have no interest in launching a catastrophic cyberattack since it would certainly produce an equally catastrophic retaliation. Their goal is to stay below the “use-of-force” threshold and undertake damaging cyber actions against the United States, not start a war.

This has implications for the discussion of inadvertent escalation, something that has also never occurred. The concern over escalation deserves a longer discussion, as there are both technological and strategic constraints that shape and limit risk in cyber operations, and the absence of inadvertent escalation suggests a high degree of control for cyber capabilities by advanced states. Attackers, particularly among the United States’ major opponents for whom cyber is just one of the tools for confrontation, seek to avoid actions that could trigger escalation.

The United States has two opponents (China and Russia) who are capable of damaging cyberattacks. Russia has demonstrated its attack skills on the Ukrainian power grid, but neither Russia nor China would be well served by a similar attack on the United States. Iran is improving and may reach the point where it could use cyberattacks to cause major damage, but it would only do so when it has decided to engage in a major armed conflict with the United States. Iran might attack targets outside the United States and its allies with less risk and continues to experiment with cyberattacks against Israeli critical infrastructure. North Korea has not yet developed this kind of capability.

## Adv 2

### XT – Harmonization Now

#### The EU supports the consumer welfare standard.

Kovacic ’18 [William; Global Competition Professor of Law and Policy @ George Washington University Law School; “Competition Policy in the European Union and the United States: The Treatment of Dominant Firms” in Hearing on “A Comparative Look at Competition Law Approaches to Monopoly and Abuse of Dominance in the US and the EU”; Senate Judiciary Subcommittee on Antitrust, Competition Policy, and Consumer Rights; AS]

3. Similarities and Dissimilarities in the Substance of EU and US Competition Policy

I share the often-expressed view of EU and US competition officials that the general trend of competition policy in the two jurisdictions has been toward common acceptance of substantive standards and the analytical concepts that support the implementation of those standards. An overview of overall goals and specific areas of activity verifies that proposition and also underscores noteworthy differences.

3.1. The Objectives of Competition Policy

It is nearly 30 years since Robert Bork’s Antitrust Paradox famously underscored the importance of objectives to the operation of a competition policy system. “Antitrust policy,” Bork wrote, “cannot be made rational until we are able to give a firm answer to one question: What is the point of the law – what are its goals? Everything else follows from the answer we give.”14

Modern discourse between EU and US government officials has featured many statements about the proper aims of competition law. The speeches of top agency leaders in both jurisdictions indicate broad agreement on the question of goals. Each jurisdiction accepts the broad proposition that the central aim of competition law is “the objective of benefitting consumers.”15 Consistent with the single-minded focus on “consumer welfare,” EU and US antitrust officials routinely disavow any purpose of applying competition laws to safeguard individual competitors as an end in itself. EU officials also have grown accustomed to hearing, by direct quotation or paraphrase, the U.S. Supreme Court’s admonition that the proper aim of antitrust law is “‘the protection of competition, not competitors.’”16

### XT 1NC 2: Alt Causes

#### 2. Comity causes conflict

Akhtar ’18 [Zia; LLB, LLM, PhD Candidate @ Sussex University; “Mergers, Extraterritorial Jurisdiction and Convergence of EU and US Law,” *European Review of Private Law* 27(1), p. 59-82; AS]

39. The application of extra territorial jurisdiction of companies becomes more complicated when different political and economic interests are involved, generating conflicts that often place one jurisdiction against the other. It is in this context of the effects and implementation theory that competition law is impacted on companies which are carrying on business in other jurisdictions. This has been contextualized by the companies registered under the US and EU jurisdictions that have adopted approaches in antitrust law.

40. The EU’s main challenge in asserting jurisdiction is to use appropriate discretion given comity obligations.62 In Boeing/McDonnell Douglas MDC v. Commission of the European Communities63 the Commission blocked a merger of two American undertakings and in response, US policy makers claimed that the EU should not use merger control to protect companies from global competitors. It was based on the cooperation between the States and companies involved in and the clearance was given to the merger while avoiding larger issues including giving consideration of the interests of other countries.

41. The European Commission received the notification of concentration and objected because it alleged that it would pose a potential threat to the EU market. However, the Commission made a final decision to give a clearance to the concentration after Boeing gave certain commitments. Therefore, it could be concluded that international comity could possibly contribute significantly in resolving legal conflicts caused by extraterritorial assertion of jurisdiction, although the international merger cases tend to be complex.64

42. However, a few years later, similar US–EU conflict could not be circumvented when the Commission blocked the biggest merger in US corporate history in GE/ Honeywell.65 This case demonstrated the urgency of a global competition policy to deal with increasing transnational business.66 The Commission’s case was threefold which was that GE held a dominant position in the market for large jet aircraft engines (between 43% and 65% depending on how market share was calculated) a situation where firms’ conduct is subject to particular scrutiny under Article 102, (TFEU). In business terms Honeywell had a leading position in the avionics and non-avionics aerospace component markets and the EUMR enforced at the time prohibited mergers or acquisitions which ‘create or strengthen(s) a dominant position as a result of which effective competition would be significantly impeded in the common market’. 67

### XT – AT: Emerging Tech/AI

#### No emerging tech impact.

Pinker et al. ’20 [Steven; PhD, Professor of Psychology @ Harvard; Stuart Russell, Professor of Computer Science @ UC Berkeley; Lucas Perry; “Steven Pinker and Stuart Russell on the Foundations, Benefits, and Possible Existential Threat of AI”; June 29th, 2020; https://futureoflife.org/2020/06/15/steven-pinker-and-stuart-russell-on-the-foundations-benefits-and-possible-existential-risk-of-ai/]

Lucas Perry: Now that’s quite a beautiful picture of the future. There’s a lot of existential hope there. The other side to existential hope is existential risk. Now this is an interesting subject, which Steve and you, Stuart, I believe have disagreements about. So pivoting into this area, and Steve, you can go first here, do you believe that human beings, should we not go extinct in the meantime, will we build artificial superintelligence? And does that pose an existential risk to humanity?

Steven Pinker: Yeah, I’m on record as being skeptical of that scenario and dubious about the value of putting a lot of effort into worrying about it now. The concept of superintelligence is itself obscure. In a lot of the discussions you could replace the word “superintelligence” with “magic” or “miracle” and the sentence would read the same. You read about an AI system that could duplicate brains in silicon, or solve problems like war in the Middle East, or cure cancer.  It’s just imagining the possibility of a solution and assuming that the ability to bring it about will exist, without laying out what that intelligence would consist of, or what would count as a solution to the problem.

So I find the concept of superintelligence itself a dubious extrapolation of an unextrapolable continuum, like human-to-animal, or not-so-bright human-to-smart-human. I don’t think there is a power called “intelligence” such that we can compare a squirrel or an octopus to a human and say, “Well, imagine even more of that.”

I’m also skeptical about the existential risk scenarios. They tend to come in two varieties. One is based on the notion of a will to power: that as soon as you get an intelligent system, it will inevitably want to dominate and exploit. Often the analogy is that we humans have exploited and often extinguished animals because we’re smarter than them, so as soon as there is an artificial system that’s smarter than us, it’ll do to us what we did to the dodos. Or that technologically advanced civilizations, like European colonists and conquistadors subjugated and sometimes wiped out indigenous peoples, so that’s what an AI system might do to us. That’s one variety of this scenario.

I think that scenario confuses intelligence with dominance, based on the fact that in one species, Homo sapiens, they happen to come bundled together, because we came about through natural selection, a competitive process driven by relative success at capturing scarce resources and competing for mates, ultimately with the goal of relative reproductive success. But there’s no reason that a system that is designed to pursue a goal would have as its goal, domination. This goes back to our earlier discussion that the ability to achieve a goal is distinct from what the goal is.

It just so happens that in products of natural selection, the goal was winning in reproductive competition. For an artifact we design, there’s just no reason that would be true. This is sometimes called the orthogonality thesis in discussions of existential risk, although that’s just a fancy-schmancy way of referring to Hume’s distinction between our goals and our intelligence.

Now I know that there is an argument that says, “Wouldn’t any intelligence system have to maximize its own survivability, because if it’s given the goal of X, well, you can’t achieve X if you don’t exist, therefore, as a subgoal to achieving X, you’ve got to maximize your own survival at all costs.” I think that’s fallacious. It’s certainly not true that all complex systems have to work toward their own perpetuation. My iPhone doesn’t take any steps to resist my dropping it into a toilet, or letting it run out of power.

You could imagine if it could be programmed like a child to whine, and to cry, and to refuse to do what it’s told to do as its power level went down. We wouldn’t buy one. And we know in the natural world, there are plenty of living systems that sacrifice their own existence for other goals. When a bee stings you, its barbed stinger is dislodged when the bee escapes, killing the bee, but because the bee is programmed to maximize the survivability of the colony, not itself, it willingly sacrifices itself. So it is not true that by definition an intelligent system has to maximize its own power or survivability.

But the more common existential threat scenario is not a will to power but collateral damage. That if an AI system is given a single goal, what if it relentlessly pursues it without consideration of side effects, including harm to us? There are famous examples that I originally thought were spoofs, but were intended seriously, like giving an AI system the goal of making as many paperclips as possible, and so it converts all available matter into paperclips, including our own bodies (putting aside the fact that we don’t need more efficient paperclip manufacturing than what we already have, and that human bodies are a pretty crummy source of iron for paperclips).

Barely more plausible is the idea that we might give an AI system the goal of curing cancer, and so it will  conscript us as involuntary guinea pigs and induce tumors in all of us, or that we might give it the goal of regulating the level of water behind a dam and it might flood a town because it was never given the goal of not drowning a village.

The problem with these scenarios is that they’re self-refuting. They assume that an “intelligent” artifact would be designed to implement a single goal, which is not true of even the stupid artifacts that we live with. When we design a car, we don’t just give the goal of going from A to B as fast as possible; we also install brakes and a steering wheel and a muffler and a catalytic converter. A lot of these scenarios seem to presuppose both idiocy on the part of the designers, who would give a system control over the infrastructure of the entire planet without testing it first to see how it worked, and an idiocy on the part of the allegedly intelligent system, which would pursue a single goal regardless of all the other effects. This does not exist in any human artifact, let alone one that claims to be intelligent. Giving an AI system one vaguely worded, sketchy goal, and empowering it with control over the entire infrastructure of the planet without testing it first seems to me just so self-evidently moronic that I don’t worry that engineers have to be warned against it.

I’ve quoted Stuart himself, who in an interview made the point well when he said, “No one talks about building bridges that don’t fall down. They just call it building bridges.” Likewise, AI that avoids idiocies like that is just AI, it’s not AI with extra safeguards. That’s what intelligence consists of.

# 1NR Round 4

## Market Concentration

### 1NR – O/V

#### Moving away from the consumer welfare standard increases inequality by deprioritizing consumers

Baker 15 – Jonathan B. Baker, Professor of Law, American University Washington College of Law, “Antitrust, Competition Policy, and Inequality,” *Georgetown Law Journal Online*, 2015, 104 Geo. L.J. Online 1

The modern Supreme Court has adopted an exclusively economic approach to interpreting the antitrust laws, rejecting social and political goals that were important to antitrust in the past. 52 In contemporary academic writing, the debate over goals often is framed as a choice between two overarching economic standards: the consumer welfare standard (in the sense of consumer surplus) and the aggregate economic welfare standard (in the sense of total surplus, regardless of distributional consequences).53 These approaches also could be fine-tuned by using a weighted average of consumer surplus and producer surplus, where the weights depend on particular distributional goals. 54

Judges are less interested than commentators in debating the appropriate welfare standard. In practice, the courts consistently employ a consumer welfare test. 55 Judicial acceptance of this standard also has been supported on a number of policy grounds not related directly to distributional concerns. These reasons include its being more readily administrable, 56 more likely to enhance aggregate welfare given information asymmetries between firms and antitrust enforcers, 57 and more likely to engender political support. 58

The consumer welfare standard also helps address inequality because it does not permit conduct that would harm consumers while benefiting shareholders. 59 In contrast, the aggregate welfare standard can contribute to inequality by permitting conduct that leads to the creation and exercise of market power, if there are also cost savings or other efficiencies associated with the conduct and they are not shared with buyers. Under those circumstances, market power increases producer surplus that accrues primarily to shareholders and top executives, who typically are wealthier than the consumers of the products.

Protecting buyers and their consumer surplus is not identical to preventing wealth transfers to those at the top of the wealth distribution. 60 Application of a consumer welfare standard in principle could increase inequality in matters where consumers tend to be wealthy and the sellers are small firms owned by middle-class entrepreneurs, such as hypothetical cartels among worker-owned manufacturers of luxury goods like fine crystal products or yachts. However, we expect those situations are rare. Overall, therefore, the continued application of a consumer welfare standard likely would lead to less inequality than a change to reliance on an aggregate economic welfare standard.61

Continued reliance on the consumer welfare standard will not require any changes in the law. However, some contemporary commentators continue to advocate for an aggregate welfare standard, and this debate could someday influence decisions taken by the antitrust enforcement agencies and the courts. 62 For this reason, ending the debate with a full embrace of the consumer welfare standard, based on concerns about the distribution of income and wealth, would be expected to calibrate antitrust standards so they do not promote inequality.

#### Increased prices from antitrust policy increases inequality – turns the case

Abbott 18 – Alden Abbott, former Deputy Director of the Edwin Meese III Center for Legal and Judicial Studies at The Heritage Foundation, “Antitrust and the Winner-Take-All Economy,” 1/23/18, https://www.heritage.org/government-regulation/report/antitrust-and-the-winner-take-all-economy

[Modified for objectionable language]

But would reduced innovation and economic efficiency be worth it if breaking up or regulating platforms ameliorated wealth inequality? Even assuming great income equality is a desirable social goal—a topic beyond the scope of my remarks today—the answer is no. First, the evidence does not support the proposition that antitrust advances wealth progressivity. Second, direct transfer payments to the poor, including fiscal tools such as the negative income tax and wealth taxation, are far more efficient means of transferring wealth.46

Moreover, and very importantly, there is no reason to believe that limiting the size or constraining the business behavior of dominant platforms would reduce income inequality: The opposite might be the case. Restrictions on efficient scale or advertising practices could raise the cost of goods and services, bearing disproportionately on poorer and less wealthy consumers. Why is that the case? Reductions in economies of scale could reduce the ability of sales platforms such as Amazon to offer lower prices. Limitations on displays or advertising strategies by search engines such as Google could limit their ability to enhance the quality of their services and to offer bargains through affiliated sites whose advertising they feature. Employment opportunities for low-income and middle-income wage earners could also shrink. For example, Amazon might not be able to create as many new warehouse or service jobs or offer employment packages that are as good as they are today, due to reduced efficiency and profits.

What about helping small businesses by constraining business leaders? History demonstrates that propping up smaller and less efficient retail sellers has only served to ~~retard~~ [reduce] innovations in distribution that helped poorer consumers. The New Deal–era Robinson–Patman is a good illustration of this, as are small business protectionist laws in Japan and other countries.

#### Extenrally, loss of tehc odainnace Causes extinction---uncontrolled risks from emerging tech cause rapid shifts in strategic stability and misuse---American dominance is key.

Jain ’20 [Ash; 2020; Senior fellow with the Scowcroft Center for Strategy and Security; Strategic Studies Quarterly; “Present at the Re-Creation: A Global Strategy for Revitalizing, Adapting, and Defending a Rules-Based International System,” <https://www.atlanticcouncil.org/wp-content/uploads/2019/10/Present-at-the-Recreation.pdf>]

The system must also be adapted to deal with new issues that were not envisioned when the existing order was designed. Foremost among these issues is emerging and disruptive technology, including AI, additive manufacturing (or 3D printing), quantum computing, genetic engineering, robotics, directed energy, the Internet of things (IOT), 5G, space, cyber, and many others. Like other disruptive technologies before them, these innovations promise great benefits, but also carry serious downside risks. For example, AI is already resulting in massive efficiencies and cost savings in the private sector. Routine tasks and other more complicated jobs, such as radiology, are already being automated. In the future, autonomous weapons systems may go to war against each other as human soldiers remain out of harm’s way.

Yet, AI is also transforming economies and societies, and generating new security challenges. Automation will lead to widespread unemployment. The final realization of driverless cars, for example, will put out of work millions of taxi, Uber, and long-haul truck drivers. Populist movements in the West have been driven by those disaffected by globalization and technology, and mass unemployment caused by automation will further grow those ranks and provide new fuel to grievance politics. Moreover, some fear that autonomous weapons systems will become “killer robots” that select and engage targets without human input, and could eventually turn on their creators, resulting in human extinction. The other technologies on this lisgt similarly balance great potential upside with great downside risk. 3D printing, for example, can be used to “make anything anywhere,” reducing costs for a wide range of manufactured goods and encouraging a return of local manufacturing industries.61 At the same time, advanced 3D printers can also be used by revisionist and rogue states to print component parts for advanced weapons systems or even WMD programs, spurring arms races and weapons proliferation.62 Genetic engineering can wipe out entire classes of disease through improved medicine, or wipe out entire classes of people through genetically engineered superbugs. Directed-energy missile defenses may defend against incoming missile attacks, while also undermining global strategic stability.

Perhaps the greatest risk to global strategic stability from new technology, however, comes from the risk that revisionist autocracies may win the new tech arms race. Throughout history, states that have dominated the commanding heights of technological progress have also dominated international relations. The United States has been the world’s innovation leader from Edison’s light bulb to nuclear weapons and the Internet. Accordingly, stability has been maintained in Europe and Asia for decades because the United States and its democratic allies possessed a favorable economic and military balance of power in those key regions. Many believe, however, that China may now have the lead in the new technologies of the twenty-first century, including AI, quantum, 5G, hypersonic missiles, and others. If China succeeds in mastering the technologies of the future before the democratic core, then this could lead to a drastic and rapid shift in the balance of power, upsetting global strategic stability, and the call for a democratic- led, rules-based system outlined in these pages.63

The United States and its democratic allies need to work with other major powers to develop a framework for harnessing emerging technology in a way that maximizes its upside potential, while mitigating against its downside risks, and also contributing to the maintenance of global stability. The existing international order contains a wide range of agreements for harnessing the technologies of the twentieth century, but they need to be updated for the twenty-first century. The world needs an entire new set of arms-control, nonproliferation, export-control, and other agreements to exploit new technology while mitigating downside risk. These agreements should seek to maintain global strategic stability among the major powers, and prevent the proliferation of dangerous weapons systems to hostile and revisionist states.

### AT: Biden OX

#### The FTC and Biden’s XO won’t be able to accomplish much – limited by Congress and the courts

McGinnis 21 – John O. McGinnis, George C. Dix Professor in Constitutional Law at Northwestern University, “Abandoning the Consumer Welfare Standard,” 8/26/21, https://lawliberty.org/abandoning-the-consumer-welfare-standard/

The Executive Order, however ill-conceived the specifics are, will do the most damage if it changes antitrust law fundamentally. And here the Biden administration happily faces problems. We have had forty years of bipartisan competition policy focused generally on consumer welfare. The President does not have a political eraser to wipe that away.

One possibility is for the Biden administration to persuade Congress to enact major changes in antitrust law. The House Judiciary Committee has passed a few bills that would make is harder for tech companies to merge with other companies. But these measures are not yet going anywhere on the House floor, and it will be difficult, if not impossible, to get any substantial changes in antitrust law through the evenly divided Senate.

Thus, the administration has pinned its strategy on transformation through administrative fiat. To that end, it appointed Lina Khan, a 32-year-old associate law professor to become Chairman of the FTC. Khan may be the single most radical appointment in the Biden administration. She opposed Amazon’s acquisition of Whole Foods, although Amazon and Whole Foods together constitute a very small part of the grocery market, and no other company in the history of the United States has been more innovative than Amazon.

Khan has begun by voting along with her Democratic colleagues on the commission to revoke a policy of the FTC supported by both Democratic and Republican administrations that essentially defined “unfair method of competition” by reference to methods that undermined consumer welfare. The idea no doubt is to write a regulation that would provide a more open-ended approach, perhaps taking into account other values like democracy and decentralization, even if these are at the expense of consumer welfare.

But it is not at all clear Khan can succeed. On such a central question as the definition of competition, courts may not give her agency much deference now that the Roberts Court appears to have stopped applying Chevron—the quintessential modern case for agency deference—to major questions raised by a statute. The meaning of competition is obviously the major question for competition law, and courts are likely to determine that for themselves, influenced by decades of their own consumer welfare jurisprudence.

Beyond that technical obstacle, Khan may be a poor choice for overhauling antitrust law because of her lack of practical experience in litigation or administration. She has already alienated her agency staff by refusing to let them speak at professional panels, as they have for years. That is a rookie mistake. Moreover, she has been so strident in her attacks as an activist against companies like Google and Amazon that the courts are likely to look at her enforcement actions with suspicion, even if the companies do not get her recused for her past opinions.

Even if the Biden administration is unlikely to succeed in the near term in transforming antitrust, it has put on the table a new vision, however amorphous, that may well influence the approach of Democratic administrations and legislators for years to come. We are moving from an era of bipartisan consensus around a constrained and economically focused antitrust law to an era of fundamental partisan disagreement. In that sense, antitrust law will become—like many other areas of our law—a reflection of polarization and a source of instability. But here the folly and instability will make us poorer.

### AT: Innovaiton Low

#### U.S. innovation is high and globally dominant---big business is key.

Wolf ’21 [Martin; April 27; Chief Economics Commentator, M.A. in Economics from Oxford University; Financial Times, “China is wrong to think the US faces inevitable decline,” <https://www.ft.com/content/8336169e-d1a8-4be8-b143-308e5b52e355>]

The Chinese elite are convinced that the US is in irreversible decline. So reports Jude Blanchette of the Center for Strategic and International Studies, a respected Washington-based think-tank. What has been happening in the US in recent years, particularly in politics, supports this perspective. A stable liberal democracy would not elect Donald Trump — a man lacking all necessary qualities and abilities — to national leadership. Nevertheless, the notion of US decline is exaggerated. The US retains big assets, notably in economics.

For one and half centuries, the US has been the world’s most innovative economy. That has been the basis of its global power and influence. So how does its innovative power look today? The answer is: rather good, despite competition from China.

Stock markets are imperfect. But the value investors put on companies is at least a relatively impartial assessment of their prospects. At the end of last week, 7 of the 10 most valuable companies in the world and 14 of the top 20, were headquartered in the US.

If it were not for Saudi Arabian oil, the five most valuable companies in the world would be US technology giants: Apple, Microsoft, Amazon, Alphabet and Facebook. China has two valuable technology companies: Tencent (at seventh position) and Alibaba (at ninth). But those are China’s only companies in the top 20. The most valuable European company is LVMH at 17th. Yet LVMH is just a collection of established luxury brands. That ought to worry Europeans.

When we look only at technology companies, the US has 12 of the top 20; China (with Hong Kong but excluding Taiwan) has three; and there are two Dutch companies, one of which, ASML, is the largest manufacturer of machines that make integrated circuits. Taiwan has the Taiwan Semiconductor Manufacturing Company, the world’s biggest contract computer chipmaker, and South Korea has Samsung Electronics.

Life sciences are another crucial sector for future prosperity. Here there are seven European companies (with Switzerland and the UK included) in the top 20. But the US has seven of the top 10, and 11 of the top 20. There is also one Australian and one Japanese company, but no Chinese businesses.

In sum, US companies are globally dominant and nearly all the most valuable non-US firms are headquartered in allied countries.

#### A new wave of innovation is imminent, reaching all sectors---large firms are key.

Gourevitch ’21 [Antoine and Massimo Portincaso; March 11; Managing Director and Senior Partner at the Boston Consulting Group, M.B.A. from INSEAD, M.A. from Ecole Centrale in Paris; Boston Consulting Group, “Deep Tech and the Great Wave of Innovation,” <https://www.bcg.com/publications/2021/deep-tech-innovation>]

Despite the inherent risks of failure, businesses and investors have shown increasing interest in deep tech. According to our preliminary estimates, investment in deep tech (including private investments, minority stakes, mergers and acquisitions, and IPOs) more than quadrupled over a five-year period, from $15 billion in 2016 to more than $60 billion in 2020. The average disclosed amount per private investment event for startups and scale-ups rose from $13 million in 2016 to $44 million in 2020. For early-stage startups, the most recent survey by Hello Tomorrow found that the amount per investment event increased from $36,000 to $2 million between 2016 and 2019.

And funding sources are expanding. While information and communications technology (ICT) and biopharma companies continue to invest substantially in deep tech, more traditional large enterprises are becoming increasingly active. For example, Sumitomo Chemical has signed a multiyear partnership with Zymergen to bring new specialty materials to the electronics products market, and Eni has invested $50 million in Commonwealth Fusion Systems and joined its board of directors. Bayer has joined forces with Ginkgo Bioworks to reduce agriculture’s reliance on carbon-intensive nitrogen fertilizers. The resulting venture, Joyn Bio uses synthetic biology to engineer nitrogen-fixing microbes that enable cereal crops to extract nitrogen from the air in a usable form. Sovereign wealth funds are playing too. Singapore’s Temasek Holdings invested in JUST (plant-based egg alternatives), Commonwealth Fusion Systems (commercial fusion energy), and Memphis Meats (animal-cell-based meat).

More and more mainstream companies and institutions are recognizing that solutions to big problems—and the future of innovation—lie in deep tech.

The Fourth Wave of Innovation

The first wave of modern business innovation started in the nineteenth and early twentieth centuries with breakthroughs such as the Bessemer process for manufacturing steel and the Haber-Bosch process for making ammonia.

Following World War II, the second wave of modern business innovation—the information revolution—gave birth to large-company R&D, particularly in the ICT and pharma sectors. Bell Labs, IBM, and Xerox PARC became household names and Nobel Prize workshops. Merck alone launched seven major new drugs during the 1980s.

In the third wave, the digital revolution, two guys in a garage (or a Harvard dorm room) led the innovation charge, which resulted in the rise of Silicon Valley and, later, China’s Gold Coast as global centers of computing and communications technology and economic growth. At the same time, the new field of biotech, also driven by entrepreneurs, fueled much of the innovation in pharmaceuticals.

The wave now taking shape as older barriers to innovation crumble embraces a new model and promises to radically broaden and deepen innovation in every business sector. The increasing power and falling cost of computing and the rise of technology platforms are the most important contributors. Cloud computing is steadily improving performance and expanding breadth of use. Biofoundries are becoming for synthetic biology what cloud computing already is for computation. Similar platforms are emerging in advanced materials (Kebotix and VSPARTICLE are two examples).

Meanwhile, costs continue to fall, including those related to equipment, technology, and access to infrastructure. Increasing use of standards, toolkits, and an open approach to innovation, paired with the ever-increasing availability of information and data, plays an important role as well.

### AT: ‘Killer Acquisitions’

1. ‘Killer acquisitions’ are a myth.

Kennedy ’21 [Joe; January 11; former chief economist for the U.S. Department of Commerce, Economics PhD from George Washington University, J.D. from the University of Minnesota; Information Technology and Innovation Foundation, “Monopoly Myths: Are Superstar Firms Stifling Competition or Just Beating It?” https://itif.org/publications/2021/01/11/monopoly-myths-are-superstar-firms-stifling-competition-or-just-beating-it]

Luckily, there is another explanation for why some companies outperform others. A number of studies find that technological change, integrated global markets, and low interest rates have disproportionately benefitted firms that have been able to take advantage of this new operating environment. The increased importance of intangible assets, including research, software, marketing, training, and business model development, has also helped, giving an advantage to firms that can leverage them over a larger market. But large firms that fail to invest and change typically fall behind their more innovative rivals.

SUPERSTARS RESULT FROM SUPERIOR PERFORMANCE

As early as 1981, economist Sherwin Rosen wrote about the fact that better professionals, including comedians, athletes, singers, attorneys, and doctors, were commanding larger audiences and much higher incomes than others, including those who were only slightly “less good.”21 He attributed this partially to new technologies that reduced the cost of entertainment services and allowed individuals to reach a much wider audience, allowing the best to operate on a national or even international scale. In other words, the ability to reach a larger customer base gave rise to “superstar” characteristics.

We see this dynamic in basketball. Bill Russell, inarguably one of the greatest basketball players of all time, earned only about $600,000 per year at his peak (in current dollars).22 Compare that with Golden State Warrior guard Stephen Curry, who brings in more than $40 million per year.23 Larger markets—the NBA is global due to satellite technology—play a key role in that increase. The ability to reach those larger markets, in part due to IT and global integration, plays a similar role in industry.

But why does Stephen Curry make more than his team’s bench players? He is a better player. That dynamic also applies in industry. A recent study by the Organization for Economic Cooperation and Development (OECD) attributes the rise of concentration in a number of sectors in the United States to a small share of firms that have become more productive than their peers. The study points to investment in a combination of IT and intangible assets, thereby creating a better business model.24

OECD looked at the relationship between spending on intangible assets and concentration (measured by the market share of the top eight groups of jointly owned companies) between 2002 and 2014. The data covered manufacturing and non-financial market services in nine countries, including the United States. Concentration increased in about 70 percent of country-industry pairs. The average increase was around 5 percentage points (from 39 percent to 44 percent of the industry, or an average of 0.5 percentage points per firm).25 A 10 percentage point increase in intangible investment within an industry (measured by patents) was associated with 1.5 to 2.2 percentage points more concentration over four years. The linkage was strongest for industries that were more digitized, open to trade, and more concentrated to start with. It was also strongest for investments in innovative property such as patents, research and development (R&D), and new products and systems. The authors summarized that the results “suggest that [increased concentration] may be mostly of the ‘good’ variety in the sense that it was associated with investment in innovative assets and new intangible business models rather than anti-competitive forces.”26

A subsequent OECD study finds differences in multifactor productivity between companies, looking specifically at the dynamics within both the top and bottom half of companies across 34 industries between 2000 and 2015. Using cross-country data on both productivity dispersion within industries and levels of intangible investment, it concluded that a 10 percentage point increase in intangible investment within an industry is associated with a 1.5 percentage point increase in the dispersion between firms at the 90th and the 10th percentile of the productivity distribution.27

Different forces were operating in the top and bottom halves of the market. Again, industries with higher levels of intangible investment experienced higher increases in productivity dispersion between firms. The dispersion in productivity at the top of the market was associated with the ease of extending intangible capital to other parts of a firm since bigger firms can spread these costs out over a larger volume of production. However, dispersion at the bottom half was linked to synergies between intangible capital and factors such as digital intensity, exposure to trade, and the availability of venture capital. Laggard firms seem to have difficulty effectively making the complementary intangible investment needed to fully exploit digital technologies. Unlike the earlier OECD study, the authors found that the most important type of intangible investment was in economic competencies (branding, market research, employer training, and organizational structure) rather than innovative property such as patents. These are the costs that Eggertsson et al. omitted, arguing that they only diverted sales from one company to another.

A team led by David Autor of MIT tried to explain another problem commonly attributed to a lack of competition: the decline in the share of national income going to labor, especially low-skilled workers. Using micro-panel data on six sectors (manufacturing, retail trade, wholesale trade, services, utilities, and transportation) from the U.S. Census going back to 1982, the authors concluded that globalization and technology were increasing competition and pushing sales toward the most productive firms within each industry.28

This finding seems to explain the growing concentration in a number of four-digit NAICS industries that neo-Brandeisians attribute to unfair competition. But it also explains some facts that the neo-Brandeisians cannot, such as industries experiencing the greatest concentration also have faster productivity growth and innovation (measured by patents and value added per worker) and similar patterns exist in other nations that have very different approaches to antitrust enforcement. They also found that both the fall in labor share and the rise in margins occurred mainly in the firms that grew the most. The average among all firms in an industry remained relatively flat. This is less likely to be the case if a lack of competition is driving profits up across an industry because even smaller companies would benefit from a general increase in prices or markups. As the authors stated:

If a change in the economic environment advantages the most productive firms in an industry, product market concentration will rise and the labor share will fall as the share of value added generated by the most productive firms (superstars) in each sector, those with above-average markups and below-average labor shares, grow. Such a rise in superstar firms would occur if consumers have become more sensitive to quality-adjusted prices due to, for example, greater product market competition (e.g. though globalization) or improved search technologies (e.g. greater availability of price comparisons on the internet…).29

The study points to a number of structural changes that could give larger, more innovative firms an edge in the market. These include a decline in trade barriers allowing more competitive companies to expand overseas, an increase in consumer price sensitivity, the rise of Internet platforms that benefit from network effects, and the growing importance of efficiencies of scale. If the margins of the most productive companies are increasing because costs are falling rather than because of higher prices, consumers will not be harmed and society will benefit. As economist James Bessen stated:

[I]f proprietary IT allows some firms to become more productive than others in the same industry . . . then the more productive firms can earn quasi-rents. These would also be reflected in higher operating margins. Even in a competitive market, more productive firms could sell at the market price but profit from lower costs.30

These profits not only benefit shareholders, including pension funds, but society as a whole in that a share of these profits is paid in taxes.

The international scope of these changes has led the authors to believe that lax antitrust policy is an unlikely primary explanation. Interestingly, with the exception of a few companies, most firms are becoming more concentrated in their primary lines of business but less integrated across other activities. A key concern of Neo-Brandeisians has been that firms would use market power in one industry to expand into others, thereby increasing the damage to competitive markets. But this seems not to be happening.

The vast majority of changes in markups and labor shares are due to reallocation between firms toward larger, more productive and profitable firms. Most U.S. firms have seen either no increase or a fall in both measures.

Chang-Tai Hsieh and Esteban Rossi-Hansberg argued that the rise in national industry concentration between 1977 and 2013 was driven entirely by a revolution in three particular non-traded sectors: services, retail, and wholesale (they pointed out that concentration in manufacturing has fallen). Expansion was entirely driven by the number of small markets served by each firm. Thus, as national concentration was growing, local concentration (which is more relevant in non-traded sectors) was falling. This expansion was enabled by fixed-cost technologies, particularly software and related IT systems, that allow adopters to produce at lower marginal cost in all local markets in which they have a presence.31 Top firms have increasingly specialized in these sectors, while exiting others. The net effect is there was no change in concentration by the top firms in the economy as a whole, and “top firms are now more specialized, are larger in the chosen industries, and these are precisely the industries that have experienced concentration growth.”32 The authors noted that quality improvement due to firm entry in these markets is not captured by government statistics, resulting in an under estimate of productivity growth.

A recent paper by economist Sharat Ganapati strengthens the argument that the growth of many large firms has been driven largely by better performance. Looking at industry-level data, he showed that rising concentration is correlated with productivity and real output growth, but not with price increases: “Productive industries (with growing oligopolists) expand real output and hold down prices, raising consumer welfare, while maintaining or reducing their workforces, lowering labor’s share of output.”33 A 10 percent increase in the market share of the top four firms is accompanied by a 1 percent increase in real output and a 2 percent rise in productivity. The decline in labor share is due to the fact that top companies hire fewer, but higher-paid, workers. These relationships, however, are not true of every industry. Antitrust action may be needed in markets wherein increased concentration does not produce overall economic benefits of productivity and innovation.

#### The vast majority of acquisitions accelerate innovation.

Kennedy ’20 [Joe; November 9; former chief economist for the U.S. Department of Commerce, Economics PhD from George Washington University, J.D. from the University of Minnesota; Information Technology and Innovation Foundation, “Monopoly Myths: Is Big Tech Creating “Kill Zones”?” https://itif.org/publications/2020/11/09/monopoly-myths-big-tech-creating-kill-zones]

So-Called Kill Zones Could Maximize Welfare and Innovation

To the extent established companies are conducting research in a narrow market, it makes sense for entrants to avoid head-on competition and instead exploit complementary markets. This is almost as likely to be true whether the industry is dominated by one firm or five. Breaking into an industry with relatively mature technology dominated by large players is never easy. That is why many industries have gone through periods of heavy investment in the early stages of an industry as companies try to become one of the dominant players. Once the industry has matured to achieve economies of scale or network effects, new entrants tend to focus on complementary technology rather than trying to challenge the larger companies head-on.

Few complained after the 1930s automobile-sector start-ups declined precipitously. By the 1930s, it made little sense to invest in new automobile companies when it was clear the technology system (internal combustion engine) and major players (American Motors, Chrysler, Ford, and GM) had already been established. Investment to create new entrants would have represented a waste of societal resources. Instead, funding went to emerging industries such as radios, chemicals, and machine tools.

Today is no different. The technology and business models for search, social networks, and Internet retailing are relatively mature; society is better off if entrepreneurs and venture capitalists focus on other areas. Indeed, to the extent investors may be focusing their capital outside a few areas where large firms have established positions in what are somewhat mature technologies, it is arguably a good thing because it means there is more capital for other promising areas. Hathaway, in fact, acknowledged the possibility that “venture capital investment may have increased in non-tech sectors too, so that the tech giants have simply diverted the flow of capital to other areas.”25 The is buttressed by an earlier study by Oliver Wyman, which shows that acquisitions by Facebook, Google, and Amazon have not had a negative effect on the amount of venture capital flowing into tech industries.26 (See figures 1 and 2.)

Acquisitions Often Increase Innovation

There is often an assumption that acquisitions decrease innovation, but a number of studies suggest the opposite. A Dutch study looks at acquisitions in the manufacturing sector, which includes technology companies, and finds that both acquisitions and divestitures are positively correlated with increased innovation.27

Likewise, a paper by Igor Letina, Armin Schmutzler, and Regina Seibel argues that prohibiting killer acquisitions strictly reduces the variety of innovation projects in an industry because it deters innovation.28 They built a model in which prohibiting acquisitions has a positive effect on consumer surplus only if the bargaining power of the entrant is small and competition in the industry is not too intense, because both raise the incentives for an incumbent to do its own innovation rather than purchasing that of others. They cautioned:

While prohibiting acquisitions always has a strictly negative innovation effect in the case without commercialization (i.e. for killer acquisitions), it is not necessarily true for acquisitions with commercialization. Thus, even though killer acquisitions may appear to be particularly problematic, the case for prohibiting them is not necessarily stronger than for acquisitions with commercialization if one takes ex-ante innovation incentives into account.29

Moreover, Will Rinehart of the Center for Growth and Opportunity wrote that the large majority of acquisitions are motivated by the desire to purchase either the technology or the talent of the specific firm, rather than to stifle a potential rival.30 Sometimes termed “acqui-hires,” these acquisitions refer to when a company is acquired largely as a means to hire its workforce, and the newly hired team is often more productive after acquisition, in part because of economies of scope and increased resources.31 These acquisitions also often benefit both parties by integrating new technology into a broader network and helping the new firm scale up. They also benefit consumers by disseminating innovations more broadly. Rinehart related how Facebook’s purchase of Instagram was frequently mocked at the time. Since the purchase, Facebook has helped Instagram become a widely used platform.

Likewise, when Google purchased the start-up Keyhole, an innovative digital mapping company, (at the request of Keyhole founders), Google invested billions to improve and expand the mapping coverage. Bill Kilday, one of the founders of Keyhole, wrote that Google “gave them zero direction [and] unlimited resources.”32 In Keyhole’s early days, Kilday talked with someone who had an idea to do street-level mapping, complete with pictures. He estimated that because of the vast scale of it, coupled with an uncertain business model, it was essentially science fiction, not likely to be seen in his lifetime. Google, with its Street View project, did it in less than five years, providing it to consumers for free. Moreover, by acquiring Keyhole to help it create Google maps, Google disrupted an incumbent duopoly (MapQuest and TeleAtlas) that was charging for their products.

Moreover, the assumption there are many killer acquisitions does not seem to be borne out. One reason is they are seldom profitable. A mathematical model developed by Pehr-Johan Norbäck, Charlotta Olofsson, and Lars Persson predicts that companies will only purchase a new technology in order to kill it if the quality of the invention is small, otherwise the profit from introducing the technology is higher than the value of deterring its use.33 This incentive to acquire also falls when intellectual property rights are strong, thereby increasing the entrant’s commercial value. Likewise, a paper by Axel Gautier and Joe Lamesch that surveyed acquisitions by Google, Amazon, Facebook, Microsoft, and Apple finds that out of 175 acquisitions in the 2015–2017 period the paper surveys, only one qualified for being a potential “killer” acquisition: Facebook’s acquisition of a photo-sharing app called Masquerade, which had raised just $1 million in funding before being acquired.34

#### Drives competition.

Atkinson ’21 [Robert D; March 10; Ph.D. at UNC-Chapel Hill, the founder and president of ITIF; Information Technology & Innovation Foundation, “How Progressives Have Spun Dubious Theories and Faulty Research into a Harmful New Antitrust Doctrine,” https://itif.org/publications/2021/03/10/how-progressives-have-spun-dubious-theories-and-faulty-research-harmful-new]

Myth 8: Big Technology Companies Create Innovation Kill Zones28

Large U.S. technology platforms invest almost as much in R&D as the entire U.K. economy does (business and government).29 But knowing that innovation is important, neo-Brandeisians have argued that big technology companies actually limit innovation, either by acquiring start-ups in order to terminate the development of innovations that threaten their continued dominance (“killer acquisitions”) or by creating areas of the market in which they exert dominance to the extent others won’t invest in them (“kill zones”). Either way, large tech companies supposedly limit prospective challengers from being able to take root and grow, thereby limiting not only competition but overall U.S. innovation.

In fact, acquisitions may be beneficial, at least to innovation, if they allow the larger firms to benefit from economies of scale or network effects, and enable the smaller firms to reach many more customers much more quickly with a higher quality product. Moreover, the prospect of being purchased by a larger company often motivates founders and venture capitalists to invest. Making it more difficult for them to sell therefore might make it harder for promising firms to find funding.

And rather than looking at so-called kill zones as an innovation deterrent, it is more accurate to view them as an innovation enabler that guides entrepreneurial resources (talent and capital) to areas that have the best chance of success. Why invest in companies seeking to duplicate mature products offered by large firms that benefit from economies of scale or network effects? It is better for society if new companies concentrate instead on other markets they can break into. Indeed, that seems to be occurring, as venture capital investment, especially in early-stage deals, has grown significantly over the last decade, indicating that there is no shortage of innovation opportunities.

Moreover, if they are creating kill zones, why did the number of angel and seed deals rise almost sixfold between 2006 and 2019, peaking in 2015? The number of early deals rose by 2.4 times. It is hard to see any sign of investor activity slowing down. (See figure 5.)

### AT: Compeition K2 Innovation

#### Concentration rewards innovation. Today, research labs innovate; garages don’t.

Atkinson ’18 [Robert and Michael Lind; March 30; PhD from the University of North Carolina; professor of practice at the Lyndon B. Johnson School of Public Affairs at the University of Texas, JD from the University of Texas Law School, International Relations MA from Yale University; Big is Beautiful: Debunking the Myth of Small Business, “The Myth of the Genius in the Garage: Big Innovation,” Ch. 6]

Most of all, today’s perspective allows us to see that the origin myth of the information age—the overthrow of sclerotic, hide-bound, giant corporations by scrappy, brilliant tinkerers building the future in their garages—is just a myth. Steve Jobs, Bill Gates, and others deserve credit for their brilliant success in commercializing new technologies. But most of those technologies had been invented in the laboratories of giant corporations, many of them working for the US military or civilian federal agencies on contract. The tech revolution of our time owes far more to teams of scientists and engineers working in well-funded corporate labs than to college dropouts tinkering in garages.

From the Alto to the Apple Macintosh

Before there was the Apple Macintosh, there was the Alto. And before there was Apple, there was Xerox PARC. On March 1, 1973, the first Xerox Alto was unveiled. The Alto was the first PC to combine a graphical user interface with a handheld mouse and other features that became standard elements of PCs a decade later. By the end of the decade, roughly 1,500 Altos were in use.

In 1976, Steve Jobs and Steve Wozniak cofounded Apple computer, a venture that grew out of the Homebrew Computer Club, a group of computer hobbyists that met in Silicon Valley. Initially Apple sold PCs named Apple I and Apple II. A key moment in the history of the young company came in 1979, when the twenty-four-year-old Jobs persuaded Xerox to allow Apple staff to tour the Xerox PARC facility in Silicon Valley in return for Xerox’s acquisition of stock in Apple. Taking part in the second tour, Jobs was reportedly amazed by the Alto, seeing the commercial potential of the device. According to Larry Tesler, a Xerox engineer who demonstrated the use of the new “windows” and other features of the Alto, “He was very excited. Then, when he began seeing the things I could do onscreen, he watched for about a minute and started jumping around the room, shouting, ‘Why aren’t you doing anything with this? This is the greatest thing. This is revolutionary!’”2

In 1981 Xerox brought out a version of the Alto called the Xerox Star, but the concepts pioneered by Xerox and others were commercialized best by Apple, which released the first Macintosh PC in 1984, following the poor sales of the Apple Lisa, which came out in 1983. And just as the Apple Mac was inspired in part by the Xerox Alto, so the Apple LaserWriter drew on the laser printer technology developed by Xerox.

It would be wrong to accuse Apple of simply copying ideas from PARC. Even before the PARC visit, the designers of the Macintosh intended it to include a number of features, such as bitmapped screens, that later appeared in the Mac. Furthermore, Apple modified the pioneering design of the Alto in numerous ways that made the Macintosh both cheaper and easier to use. And, of course, Apple also pursued a business and marketing strategy that proved to be more successful than those of its rivals, including Xerox, which was hamstrung by unimaginative management that failed to see the commercial potential in these innovations. In the late 1970s and early 1980s, Apple promoted its computers through computer stores, magazines, and schools and encouraged software developers to write their own programs.

Xerox PARC itself developed concepts that originated at other institutions. One was the Augmentation Research Center (ARC) of the Stanford Research Institute (SRI). ARC’s founder, Douglas Engelbart, was a radar technician serving in the US Army when he read an essay that changed his life, “As We May Think,” by Vannevar Bush, published in the Atlantic in July 1945.3 At the time Bush was the director of the federal Office of Scientific Research and Development, and played a critical role in developing the atomic bomb.

Bush envisioned a device he called the Memex that would permit individuals to share text and pictures and serve as the basis for a collective memory. Following the war, Engelbart graduated with a Ph.D. in engineering and joined SRI in 1957. In 1962 he published an essay titled “Augmenting Human Intellect: A Conceptual Framework.” With funding from the Defense Advanced Research Projects Agency (DARPA), Engelbart created his own lab at SRI, the ARC, to develop what he called the oN-Line System (NLS).

Engelbart showcased his lab’s work at what is now called “the Mother of All Demos,” a presentation at a San Francisco conference of the Association for Computing Machinery/Institute of Electrical and Electronics Engineers (ACM/IEEE) on December 9, 1968. In ninety minutes Engelbart and his colleagues, including some at remote sites communicating by wireless technology, demonstrated many of the features of what became the PC: the mouse, windows, graphics, hypertext, and even video conferencing. Vannevar Bush’s dream of the Memex had been realized.4

When Xerox founded PARC in 1970, the lab hired veterans of ARC. The first director of the PARC Computer Sciences Division was Robert Taylor, who as the director of the Information Processing Techniques Office of DARPA had funded Engelbart’s work at ARC. Taylor hired engineers and scientists from the DARPA and ARC networks.5 In turn, many PARC veterans went on to play leading roles in Silicon Valley in the late twentieth century.

The history of the tech industry provides many other examples of giant firms and corporate research labs responsible for breakthroughs that were developed and commercialized by others—including veterans of the same institutions. For example, after presiding over the development of the transistor at AT&T’s Bell Labs, William Shockley in 1957 founded his own semiconductor company in Mountain View, California, called Shockley Semiconductor Laboratories. Rebelling against his authoritarian style, eight of the young technicians he had recruited—the “traitorous eight”—quit and formed their own company, Fairchild Semiconductor. Fairchild produced spin-offs, including Intel, which became known as “Fairchildren.” One of the eight was Gordon Moore, who became a cofounder of Intel and is best known for Moore’s law, which predicted the regular doubling of the number of transistors per integrated circuit. Another, Eugene Kleiner, cofounded the Silicon Valley venture capital firm Kleiner Perkins Caulfield & Byers, which made early investments in such companies as AOL, Amazon, Google, Netscape, and Sun Microsystems.6

If Silicon Valley has a birthplace, it is 367 Addison Avenue, Palo Alto, California. In 1939 this bungalow was home to two young electrical engineers, both graduates of Stanford, Dave Packard and Bill Hewlett, when they founded the partnership Hewlett-Packard (HP). In the garage they assembled their first products, audio oscillators, selling eight to Walt Disney Studios to test sound systems in movie theaters scheduled to run the first stereophonic movie, Fantasia. But it was World War II that gave HP a real boost, as it produced radio, radar, sonar, and other supplies for the US military. After incorporating in 1947, HP became the world’s largest producer of electronic measuring devices, as well as a major producer of computers, calculators, and printers.7

But there was more to the success of HP than the genius of two young electrical engineers with access to a garage. The historical marker at the HP Garage makes this clear. Under the heading “Birthplace of Silicon Valley” the historical marker reads:

This garage is the birthplace of the world’s first high-technology region, “Silicon Valley.” The idea for such a region originated with Dr. Frederick Terman, a Stanford University professor who encouraged his students to start up their own electronics companies in the area instead of joining established firms in the East. The first two students to follow his advice were William R. Hewlett and David Packard.

Writing in the Harvard Business Review, Gary P. Pisano and Willy C. Shih coined the term “the industrial commons” for an industry-specific network that can include, among other things, “R&D know-how, advanced process development and engineering, and manufacturing competencies related to a specific technology.”8 Long before it had a name, an industrial commons existed in Silicon Valley based on productive interactions among startups, big firms, university research departments, government agencies, and venture capitalists.

To be sure, the “innovation in a garage” story is partly right. Startups do play an important role in innovation, particularly early in the emergence of whole new technologies. But the story and its proponents assume that startups are the source of virtually all innovations and moreover that a startup can no longer be innovative once it gets big. In this perspective, while HP might have developed some important innovations in the 1930s and 1940s, or Apple in the 1980s and 1990s, by the time these firms become giants they had to have lost most of their ability to innovate and become dependent on new garage innovators, which they simply bought up. As we will see, this is just plain wrong.

Firm Size and Innovation

Economists have studied the relationship between firm size and innovation for over a century. Joseph A. Schumpeter’s 1911 book, The Theory of Economic Development, focused on the entrepreneur as the driving force for innovation. He wrote, “The typical entrepreneur is more self-centered than other types, because he relies less than they do on tradition and connection and because his characteristic task … consists precisely in breaking up old, and creating new, tradition.”9

But writing thirty years later, after the emergence of dedicated corporate research labs and what Alfred Chandler called the “managerial corporation,” Schumpeter viewed the large corporation as central to innovation. In Capitalism, Socialism, and Democracy, first published in 1942 he said, “Technological progress is increasingly becoming the business of teams of trained specialists who turn out what is required and make it work in predictable ways.”10 He went on to observe that innovation by individual inventors and entrepreneurs “is already losing importance and is bound to lose it at an accelerating rate. … Innovation itself is being reduced to routine. Technological progress is increasingly becoming the work of trained specialists who turn out what is required to make it work in predictable ways.”11 Schumpeter argued that by focusing on price gouging by monopolies, traditional economists ignored the case of the innovative firm, which could recoup spending on R&D by using its market power to charge a price higher than marginal cost. According to Schumpeter, “There cannot be any reasonable doubt that under the conditions of our epoch such superiority is as a matter of fact the outstanding feature of the typical large-scale unit of control.”12

In 1952 John Kenneth Galbraith agreed with Schumpeter, with whom he had studied at Harvard. Writing in American Capitalism, he said, “The modern industry of a few large firms is an excellent instrument for inducing technical change. It is admirably equipped for financing technical development and for putting it into use. The competition of the competitive world, by contrast, almost completely precludes technical development.”13 Among leading contemporary economists, William J. Baumol emphasized the extent to which competition among oligopolistic firms based on innovation, not prices, is the major driver of technological progress. He compared this oligopolistic competition to an arms race “that participants cannot easily quit.”14

In contrast to the crude simplicities of Econ 101, in which competition among numerous small firms in conditions of technological stasis drives down prices for consumers, in what might be called Econ 201, or modern industrial economics, competition among a small number of large firms drives technological innovation. History does not bear out the claim that large, oligopolistic corporations are inevitably less dynamic and innovative than small firms. On the contrary, as Joseph Bowring has written, “Core firms are not pitiful, helpless giants fated to topple and rot into … senescence; their competitive advantages have made them virtually indestructible.”15

For more than a century, then, a rich body of academic economic and historical scholarship has treated oligopolistic competition among large firms in imperfectly competitive markets as the norm in modern industrial economies. And yet this scholarship is all but unknown to policy makers and the educated public. The fault lies largely with the mathematical turn taken by neoclassical economics departments in the second half of the twentieth century. In 1939 John Hicks, one of the founders of modern mathematical economics, observed that it was difficult if not impossible to produce elegant mathematical models of oligopolistic markets:

If we assume that the typical firm (at least in industries where the economies of large scale are important) has some influence over the price at which it sells … [it] is therefore to some extent a monopolist. … Yet it has to be recognized that a general abandonment of the assumption of perfect competition, a universal adoption of the assumption of monopoly, must have very destructive consequences for economic theory.

Faced with a choice between complex reality and elegant equations that assumed competitive equilibrium, Hicks advised the academic economics profession to ignore reality in order to save the equations:

It is, I believe, only possible to save anything from this wreck—and it must be remembered that the threatened wreckage is the greater part of general equilibrium theory—if we can assume that the markets confronting most of the firms with which we shall be dealing do not differ very greatly from perfectly competitive markets. … We must be aware, however, that we are taking a dangerous step, and probably limiting to a serious extent the problems with which our subsequent analysis will be fitted to deal.16

The academic economics discipline has largely taken Hicks’s advice. Galbraith compared the emphasis of academic neoclassical economics on small firms in competitive markets to a description of the United States which, by assuming away New York, Chicago, Los Angeles and all other communities larger than Cedar Rapids, was then able to describe the country as essentially a small-town, front-porch community. Only an assumption very important to economics, as it is conventionally taught, would justify such a questionable defense.17

Galbraith noted the mystical American belief in competitive markets: “For competition, with us, is more than a technical concept. It is also a symbol of all that is good. We wouldn’t survive under a regime of competition of classical purity—with an economy rigorously so characterized we should have succumbed not to Hitler but to Wilhelm II—but we must still worship at its throne.”18

Schumpeter’s argument that firms with temporary monopolies would have both the resources and the incentive to innovate was challenged by the economist Kenneth J. Arrow, who argued that innovation would be greater in more competitive markets.19 But as the Obama Council of Economic Advisers reported, “Allowing firms to exercise the market power they have acquired legitimately can maintain incentives for research and development, new product introduction, productivity gains, and entry into new markets, all of which promote long term economic growth.”20

The Rise and Fall of the Corporate Research Lab

Ironically, neoclassical economics predicts that in a truly competitive economy there would be little or no R&D. It is much cheaper for companies to copy another firm’s innovations than to invest in expensive innovation. In other words, the company that chooses to fund breakthrough R&D cannot be certain it will recoup enough of the gains from its initial investment if other companies can copy it through reverse engineering and other means. So in a completely competitive and free market with no patent and other intellectual property protection it is quite possible that no companies would spend money on risky long-term innovation, in part because profit rates would be at the cost of capital, leaving little or no resources to invest in R&D.

History bears out what economic theory predicts. Modern economic progress depends largely on the commercialization of technological innovation that originates in systematic early-stage research. Since the nineteenth century, early-stage research has been undertaken chiefly by three types of institutions—research universities, government labs, and corporate research labs—and funded by two main sources—government spending and corporate profits. And in the last half century some high-tech startups, funded by venture capital, have played a key role as well.

This approach to technological innovation was pioneered in the late nineteenth century by imperial Germany. The modern research university in the United States, starting with Johns Hopkins and then others, is modeled on imperial German precedents. Indeed, two universities founded as research universities along German lines, MIT and Stanford, have played a disproportionate role in technological progress. With its Kaiser Wilhelm Institutes, imperial Germany also pioneered the government research laboratory, which in the United States includes laboratories associated with the Department of Energy and the Department of Defense, among others. After the Civil War, the United States pioneered the state technical universities (e.g., North Carolina State University, Ohio State University), most of which were established by federal land grant funds.

Corporate research labs were also pioneered by the German chemical industry in the late nineteenth century and soon copied by many nations in the first half of the twentieth century. Throughout the twentieth century, most of the breakthrough technological innovations in the private sector originated with companies that were funded by government either directly or indirectly (through tax incentives, grants, or contracts) or with companies that enjoyed some modicum of market power. IBM’s development of much early computer technology with Department of Defense funding is an example of the former. Bell Laboratories benefited from the legal monopoly in the United States held by its parent company, AT&T.

However, it was not until the 1920s and 1930s that the main sources of innovation in the United States changed from being based largely on technical tinkering and trial and error by mechanics and inventors to a science-based approach in which innovation followed from a more fundamental understanding of underlying processes. Since then the research labs of large corporations, sometimes supported by the federal government, have become the major source of technological innovation.

With the growth of a more formal, laboratory-based system of R&D, R&D expenditures and the number of scientists and engineers employed in industrial research exploded. Growing by 300 percent between 1921 and 1938, industrial research was one of the largest forty-five occupations by employment in 1937. Industrial laboratories increased from fewer than 300 in 1920 to more than 2,200 in 1938 to almost 5,000 in 1956, with many, like Bell Labs, conducting extensive basic research. At the same time, annual expenditures on industrial research ballooned from $25 million to $175 million.21

As a result, the locus of innovation switched from individual inventors tinkering, like Edison and Bell, in their garages to scientists working in corporate labs. Reflecting this switch was the distribution of patents: in 1901, 20,896 patents were issued to individuals in the United States, and only 4,650 went to corporations. The proportions were more even in the 1930s, but in 1953 individual inventors received only 40 percent of patents, and of the 60 percent of patents that went to firms, two-thirds originated with a company’s research personnel.22 By 1980 corporations were obtaining about five times more patents than individuals. As a result, in the mid-twentieth century, a few large corporations dominated private R&D. In 1974, 126 companies with more than 25,000 employees performed three quarters of all industrial research; of these companies, four were responsible for 19 percent of industrial R&D.23

Big companies were responsible for major technology breakthroughs. Synthetic materials derived from hydrocarbons became the foundation of new products and industries. Standard Oil of New Jersey led the way in developing synthetic rubber during World War II, and seemingly miraculous new materials flowed from the corporate laboratories of giant firms like DuPont and Dow: nylon, polyester, Formica, latex paint, Kevlar armor, Fiberglas, Lucite, Plexiglas. In the private sector, only immense corporations with steady profits that went in part to fund cutting-edge research could have made and commercialized these discoveries. Henry Kressel and Thomas Lento have described the importance of corporate laboratories in the genesis of the information and communications technologies (ICT) revolution:

For example, the UNIX operating system and its offshoots and the software languages C and C++ were developed at Bell Labs in Murray Hill, New Jersey. Relational databases and reduced instruction set computers were invented at IBM Yorktown Labs, New York. Semiconductor devices and integrated circuit manufacturing were developed at Bell Labs, Western Electric, and RCA Labs (later Sarnoff Corporation).24

As Michael Mandel has observed, most Nobel Prize winners in science and technology have worked for universities and very large corporations. The last time the founder of a startup won a Nobel Prize (in physics) was in 1909; the prize went to Guglielmo Marconi, the pioneer of radio. Since then, two colossal corporations, AT&T and IBM, have won all the Nobel Prizes awarded to companies.25

The Decline and Fall of the Corporate Research Lab

As the historian Eric Hobsbawn has written, “It is often assumed that an economy of private enterprise has an automatic bias towards innovation, but this is not so. It has a bias only towards profit.”26 This view is borne out by the shift by many US corporations in recent decades from early-stage research to later-stage, more incremental development and, for some, to various forms of financial engineering, which can yield higher short-term profits. Among the casualties of this shift has been the classic corporate research lab.

Increased competitive pressures have led to less corporate expenditure on basic and applied research (as opposed to product and process development), exactly as economic theory would predict. As one MIT study found, more competition, including from low-wage, mercantilist nations such as China, reduced US business R&D expenditures.27 Couple that with pressure from Wall Street to focus on short-term profits, not long-term breakthroughs whose benefits, however useful for society, are not always captured by the business making the investment, and we see a shift away from what Clayton Christensen calls disruptive innovation to safer sustaining innovation. One of the few exceptions to the trend of declining corporate R&D expenditure on basic science is found in the pharmaceutical industry, for the simple reason that their future is impossible without new drugs, which require early-stage research (patent protections also give pharmaceutical companies some chance to recoup the costs of expensive R&D). As in-house corporate laboratories have declined in importance, large firms in many industries have adopted the model of partnering with or acquiring small startups.28

As a share of revenue, US corporate R&D has remained relatively steady, falling just slightly since 2000. But because the economy is getting more innovation-based and the United States should be specializing even more in innovation as globalization deepens, one would have expected corporate R&D to increase as a share of GDP. Moreover, Ashish Arora, Sharon Belenzon, and Andrea Patacconi observed that the number of publicly traded companies whose researchers published in scientific journals had declined by two-thirds to a mere 6 percent between 1980 and 2015.29 The authors concluded, “Large firms appear to value the golden eggs of science (as reflected in patents) but not the golden goose itself (scientific capabilities).”30 According to them, firms that engage in more research have lower stock values.31

Under pressure from shareholders, many firms have eliminated or spun off their research efforts. Under pressure from the activist investor Nelson Peltz, for example, DuPont merged with Dow and cut R&D.32 Bell Labs virtually disappeared after AT&T spun it off after AT&T was broken up. In 2002 Xerox PARC became an independent subsidiary that has replaced basic R&D with research on demand for clients. IBM Research still exists, and has produced major innovations such as the artificial intelligence system Watson, but even it faces pressures as IBM revenues and profits decline.33 Apparent exceptions to the trend prove the rule. Because Microsoft was somewhat insulated from competitive pressures, it was able to invest $6 billion to $12 billion per year in R&D from 2002 to 2016.34 The fact that Google is a closely held corporation insulated from shareholder pressure with robust profits may explain its willingness to engage in “moonshot” projects, such as self-driving cars. Although even Google appears to have cut back on some of these projects with longer and more speculative outcomes.

While firms may do less basic and early stage applied research than in the past, they continue to fund R&D, with the largest global corporations leading the way. According to Peter Nolan, Jin Zhang, and Chunhang Liu, “The increased focus on core business among the world’s leading systems integrators and subsystems integrators has enhanced the efficiency of R&D expenditure, allowing benefits from economies of scale and scope.”35

A New Age of the Individual Entrepreneur?

The decline of the classic mid-twentieth-century corporate research lab is one factor in the contemporary revival of small-is-beautiful thinking in the area of innovation. Another is the association of innovation in the popular mind and the media with a few entrepreneurs in the tech sector, such as Steve Jobs and Mark Zuckerberg. Because of this, in the last couple of decades there has been ongoing debate over which Joseph Schumpeter was correct about innovation—Schumpeter I, who ascribed innovation to individuals, or Schumpeter II, who believed that the future of innovation lay with the research teams of “trustified” capitalism.

When Schumpeter published The Theory of Economic Development in 1911 (Schumpeter I), individual entrepreneurs such as Thomas Edison, Andrew Carnegie, and John D. Rockefeller were the drivers of innovation and growth. But when he wrote Capitalism, Socialism, and Democracy in 1942 (Schumpeter II), it was large managerial corporations such as ATT, GM and DuPont with dedicated R&D labs that drove innovation. This change over time does much to explain the evolution of his views on the firm size sources of innovation.

In other words, the relative importance of small and large firms in innovation is time dependent. One reason why there was a revival of Schumpeter I theories after the late 1980s was that as the IT revolution took off, it enabled a swarm of entrepreneurs—people like Michael Dell, Larry Ellison, Bill Gates, or Steve Jobs—to strike out and form new companies. But as the technology has matured there has been shaking out and consolidation, to the point that the balance has shifted back toward the large firm. This is why by the mid-2000s only about 7 percent of new company startups in the United States were in high-tech industries and only about 3 percent of business founders considered their new businesses to be “technologically sophisticated.”36

But with the cutbacks in corporate funding for earlier-stage, more risky research and the seeming flowering of small, innovative startups, is it still true that big firms are innovative? The dominant narrative would suggest no: these corporate giants have become sluggish, risk-averse copiers. The entrepreneur Sam Hogg speaks for most when he writes, “Startups require innovative entrepreneurs, and that typically isn't in a job description for a large company. Big companies hire people when the workload demands it, not when they can come up for air and think about innovation.”37

But this narrative, as widely touted as it is, is not true. Scholarly research shows that large corporations continue to play a leading role in innovation. To be sure, some research has found that some small businesses are more innovative per dollar of revenue than large firms. A Small Business Administration (SBA)–funded study found that “small businesses develop more patents per employee than larger businesses, with the smallest firms, those with fewer than 25 employees, producing the greatest number of patents per employee.”38 Another study found that “small patenting firms are roughly 13 times more innovative per employee than large patenting firms.”39 Still another found that “small firms with at most 290 employees obtained on average 1.2626 patent citations per dollar of R&D stock, while large firms obtained 0.5712; thus, small firms obtained on average 2.2104 times more citations per dollar of R&D stock than large firms.”40

But studies claiming to find that small firms are more innovative are actually looking at a small subset of firms. Among firms that obtain patents, small businesses do produce more patents per employee than large firms. But that doesn’t stop the SBA from misleadingly stating that small firms produce thirteen times more patents per employee than large firms.41 Note the omission of the word “patenting” before the words “small business.” Also note that the top 1.5 percent of patenting firms, all large firms, are responsible for 48 percent of all patents from 1999 to 2008. In 2011, 108,626 utility patents of US origin were granted. Just fifty US companies getting the most patents (all large corporations) were responsible for over 30 percent of these patents. The reality is, only a tiny fraction of the nation’s 6 million small firms patent or innovate.42 This is not to say that some small technology-based firms are not highly innovative. But to assume that small always equates with innovative or entrepreneurial is not accurate.

One reason for this poor performance is that very few new businesses have any intention or capability to innovate. As Scott Shane writes,

Most new businesses don’t intend to do something innovative enough to alter the market they are in. Data from the Entrepreneurship in the United States Assessment indicates that only 2 percent of new business founders expect their new companies to have a substantive effect on the markets in which they operate, and 91 percent expect to have little or no impact on those markets.43

Shane goes on to note that

almost all new businesses produce the same products and services as existing businesses, and almost none of them provide a product or service that their founder views as unique. Even among some of the best start-ups—the Inc. 500 firms, which are the fastest growing private companies in the United States—only 10 percent offer a product or service that other companies do not offer.44

Another study found that

within the first four years of business, only 2.7 percent of the businesses in the sample had already applied or were in the process of applying for patents. Copyright and trademark usage is slightly higher but still most firms do not innovate at least according to these crude observable measures. … Nearly 85 percent of small businesses did not acquire a patent, trademark or copyright during their first four years of existence.45

This study also found that just between 6 and 8 percent of new businesses had developed any proprietary business practices or technology during their first few years of business.46

Studies touting the superiority of small firms thus need to be interpreted with care. First, while small technology companies in some industries may be more innovative dollar for dollar than large firms, the real question is the share they contribute to overall innovation. On this measure, it is small. For example, one study found that while small technology firms patent more per employee than large firms, they were responsible for just 6.5 percent of patents from 2002 to 2006.47 In other words, while small technology firms may be more efficient at innovation, collectively they do much less of it than large firms. In fact, one firm, IBM, received more patents than all the 504 small firms in the study combined. When looking at small firms that had received more than 15 patents in five years Nolan and coworkers found that a number of firms fell out of the database. Six percent of small firms became large firms, while 17 percent had merged or been acquired. Most of the remaining small firms that dropped out did so because they fell below the fifteen-patent threshold, while another 4 percent dropped out because they became troubled or declared bankruptcy. Among the top 700 firms in 2003, the top seventeen were responsible for 25 percent of all R&D expenditures, the top thirty-three for 40 percent, and the top 300 for 80 percent.48

Moreover, while small firms account for 49 percent of US employment, they account for just 16 percent of business spending on R&D, while firms of more than 25,000 workers account for 36 percent (see figure 6.1).49 Likewise, they account for 18.8 percent of patents issued, while the largest firms account for 37.4 percent of patents.50 Average R&D spending per worker increases with company size (not controlling for industry), with firms with five to ninety-nine workers spending around $790 per worker and large firms with 5,000 or more workers spending around $3,370 per worker.51

Figure 6.1 US Business R&D by Firm Size, omitted.

Source: National Science Foundation, “Business Research and Development and Innovation: 2012,” NSF 16-301 (Arlington, VA: NSF, October 29, 2015) (Table 21. Percent of R&D by Firm Size), <https://nsf.gov/statistics/2016/nsf16301/#chp2>.

When Adams Nager and coworkers at the Information Technology and Innovation Foundation surveyed almost 1,000 US scientists and engineers involved in filing triadic patents (patents filed in the United States, Europe, and Japan), they found that approximately 75 percent of materials science and IT patents and 60 percent of life science patents were filed by firms with more than 500 employees.52 Countering the popular narrative that large firms are sluggish copiers and small firms the true innovators, small or medium-sized firms with 500 or fewer workers in the sample accounted for only around 30 percent of patents, yet they employed 48.4 percent of workers. As the innovation scholar Luc Soete has found, “Inventive activity seems to increase more than proportionately with firm size.”53

Other research suggests that even among firms that patent, the assumption that small firms are more innovative is not that simple, in part because of the focus on patents as a measure of innovation. In a 1996 paper, Wesley M. Cohen and Steven Klepper found that R&D and firm size are closely related. In other words, large firms invest more in R&D as a share of sales.54 Like other scholars, Cohen and Klepper found that the number of patents and innovations produced per R&D dollar declined with increasing firm size. But they argue that this is not due to inefficiency, bureaucracy, and lack of drive but rather reflects a mismeasurement of innovation outputs. Large firms engage in “cost spreading,” in which the benefits from one innovation are spread across more units and products, leading to a greater overall level of innovation per unit of R&D. They write, “Not only does cost spreading provide the basis for explaining the R&D-size relationship, it also challenges the consensus that has emerged from the R&D literature that large firm size imparts no advantage in R&D competition.”55 Further, “By applying the fruits of their R&D over a larger level of output, larger firms not only have a greater incentive to undertake R&D than smaller firms but they also realize a greater return from their R&D than smaller firms.”56

More recently, in 2016, business professors Anne Marie Knott and Carl Vieregger explain how previous studies got the data wrong.57 Historically, innovation scholars have relied on product or patent counts as a proxy for innovation output. But doing so overemphasizes product innovation and underestimates process or incremental innovation—innovation activities that large firms engage in more but rarely involve a patent filing. But the recent development of the National Science Foundation’s Business Research and Development and Innovation Survey allowed them to better analyze incremental and process innovation. They estimate that a 10 percent increase in the number of employees increases R&D by 7.2 percent and that a 10 percent increase in firm revenues increases R&D productivity by 0.14 percent. Their conclusions show that large firms invest more in R&D activities and enjoy higher returns on innovation output per dollar invested in R&D.

One reason why some studies have found less R&D per employee or sales among large firms is that smaller firms are newer and are more R&D-focused because they are not producing as much. In other words, in young firms a larger share of the effort is devoted to developing a product because they don’t have a product. This is perhaps why a study of more than 1,000 European enterprises of all sizes from 2002 and 2005 found that after the age of the firms was controlled for, large firms were about 14 percent more likely to be involved in innovation (product and process) than small firms. And small firms that were young and middle-aged were two and a half to three times more likely than large firms not to be involved in any innovation.58 These results held when a number of factors such as industry, country, and ownership type were controlled for.

This pattern has been found to be true in many nations. For example, as one study of innovation in Japan found, “Japanese SMEs [small and medium enterprises] spend comparatively little on innovation. While Japan as a whole spends a lot on R&D in comparison with other developed economies, its SMEs do not.”59 Another study found that EU nations with smaller average firm size, such as Italy and Spain, have corporate R&D spending that is about half the EU level as a share of GDP. The authors conclude that “economies geared to small-scale production may be ill prepared to appropriate the full benefits of the current phase of massive and rapid technological change.”60 OECD data on thirty-three nations that compared the percentage of large firms that introduced a new product to the percentage of small firms that did so found that in no nation were small firms more likely to introduce a new product. In fact, the advantage for large firms ranged from double in Australia to almost six times higher in Spain and Poland (see figure 6.2). This is one reason why a study of 1,053 enterprises from twenty-six countries in the years 2002 to 2005 found a positive and statistically significant relationship between firm size and innovation.61

Figure 6.2 Ratio of Share of Large Firms to Share of Small Firms Introducing New Products, 2010–2012, omitted.

Source: OECD, OECD Science, Technology and Industry Scoreboard 2015: Innovation for Growth and Society (Paris: OECD Publishing, October 19, 2015) (Table 4.5.3. Firms Introducing Products New to the Market, by Firm Size, 2010–12, October 2015), http://dx.doi.org/10.1787/sti\_scoreboard-2015-en.

Moreover, if startups are the driver of innovation, how do small business defenders explain that California and Massachusetts—home of Silicon Valley and Route 128, respectively—had below-average rates of new firm formation?62 As Shane writes, San Francisco and Boston metro areas “aren’t anywhere close to the number one metro area in terms of per capita firm formation; that honor goes to Laramie, Wyoming. San Francisco comes in at number 121 out of 394, with about 40 percent the per capita business formation rate of Laramie,” with San Jose coming in even lower at 165.63

Another problem is that it is misleading to generalize about the relationship between firm size and innovation across industries. One 1987 study of four decades of innovation in the UK found a U-shaped pattern, with the greatest innovation carried out by the smallest and biggest firms.64 But this ignores the unique characteristics of particular industrial sectors. As Giovanni Dosi and coworkers noted in 2011, “Innovative firms are likely to be rather small in industrial machinery; big firms prevail in chemicals, metal working, aerospace and electrical equipment, while many ‘science-based’ sectors (such as electronics and pharmaceuticals) tend to display a bimodal distribution with high rates of innovation of small and very large firms.”65

Finally, one reason the research on firm size and innovation is somewhat ambiguous is that small firms play a more important role in some industries than in other industries, and at different times. In other words, a healthy innovation ecosystem depends on a mix of firm sizes. As Zoltan J. Acs and David B. Audretsch found in one of the definitive studies on the issue, “The greatest difference between the large- and small-firm innovation rates, implies that the correct answer is: It depends on the particular industry. For example, in the tire industry, the large-firm innovation rate exceeded the small-firm innovation rate by 8.46, or by 8 innovations per 1,000 employees.”66 They found that in industries characterized by higher levels of capital intensity, “innovation tends to be greater in large firms than in small firms.”67 For example, in the US electric utility industry most of the research is conducted by large generation companies, especially if they are part of a larger holding company.68 Interestingly, electric utility R&D declined precipitously (by 78.6 percent) after US electricity markets were restructured to make them more competitive, more evidence of the inverted U-shape of innovation and competition (see chapter 11). An older (1974) study found that “larger pharmaceutical firms were ‘better’ at innovation than smaller firms.”69 Likewise, a 1980 Federal Trade Commission report concluded: “It is questionable whether smaller firms could support an R&D program on a scale similar to that of General Electric. Without the support of a multiplant operation such as General Electric, it is doubtful that various large, specialized research programs on lamps and lighting would be undertaken in the private sector.”70 We see this in agricultural biotechnology. As a report from the US Department of Agriculture notes, “In the crop seed and animal breeding sectors, the emergence of biotechnology was a major driver of consolidation. Companies sought to acquire relevant technological capacities and serve larger markets to share the large fixed costs associated with meeting regulatory approval for new biotechnology innovations.”71

Other research has found that “small firms prevail in the early stages and innovation tends to concentrate in larger firms as industries evolve towards maturity.”72 We saw this in the 1990s when many small firms emerged and competed to be the winners in IT. But only a few firms could emerge as winners, and the ones that did continued to invest in innovation to improve their products and services and gain advantage in related activities. The study concluded, “The question is no longer whether size positively or negatively affects innovation but under what circumstances may small firms enjoy an innovation advantage over large ones (and vice versa).”73 This is why Frederic M. Scherer’s warning that “the search for a firm size uniquely and unambiguously for invention and innovation is misguided” is such good advice.74

According to some, however, big firms are the natural enemies of small, innovative startups. Big companies, it is asserted, can present a take-it-or-leave-it ultimatum to smaller innovative firms: either merge with us or be destroyed. Barry C. Lynn writes, “In such an environment, independent firms find it ever harder to keep it that way; just ask the founders of Tom’s of Maine, Ben and Jerry’s, Niman Ranch, Honest Tea, or Stonyfield Farm, all of which have been forced to sell out to bigger companies.”75

In at least one of these cases, Lynn is mistaken. When one of us asked Seth Goldman, the cofounder and “TeaEO” of Honest Tea, why he chose to partner with Coca-Cola, he said this:

Honest Tea was not “forced” to sell out to a big company. Rather, we chose to partner with Coca-Cola as a way to put our growth on a faster track. … It had taken us 10 years to get into 15,000 retail accounts, and we had sold a cumulative $120 million over those first ten years. In the next six years, we expanded into more than 100,000 accounts, and we sold a cumulative $880 million. So there were some powerful incentives (and rewards) for us to sell to Coke, but we certainly weren’t forced to do so. … Moreover, Honest Tea’s ability to raise capital from investors was dependent on the belief that at some point we would be able to sell to a larger company which would give a return to our investors. Now that I have the benefit of hindsight, I would not have chosen a different outcome for the brand.76

In the case of Honest Tea, partnering with a large corporation allowed an innovative startup with deeply held progressive values and behaviors to get its healthy products in front of many times more American consumers. And it sent a clear message to other budding entrepreneurs: if you can succeed in building a successful company, you can put its growth on steroids by partnering with a larger company. This is something progressives should be cheering, not decrying.

In conclusion, it should be no surprise that despite the publicity that rewards the rare successful tech startup, most small businesses are not innovative. Few of them want to be. In a 2011 study, Erik Hurst and Benjamin Wild Pugsley found that most small businesses do not intend to grow or innovate.77 Most small business owners cited nonpecuniary reasons, such as being their own bosses or having flexible schedules, as their motives for starting a company; only 41 percent had a new business idea or sought to create a new product.78 Only 15 percent of new businesses surveyed planned “to develop proprietary technology, processes, or procedures in the future.”79 This is not to say that tech startups and small R&D-intensive firms are not important to driving innovation, but to privilege small over large when it comes to innovation is a fundamental mistake.

#### Size does matter, and bigger is better. Large companies innovate more.

Kennedy ’20 [Joe; November 9; former chief economist for the U.S. Department of Commerce, Economics PhD from George Washington University, J.D. from the University of Minnesota; Information Technology and Innovation Foundation, “Monopoly Myths: Is Big Tech Creating “Kill Zones”?” https://itif.org/publications/2020/11/09/monopoly-myths-big-tech-creating-kill-zones]

The Assumption That Small Firms Are Inherently More Innovative Than Large Firms Is Not Borne Out by the Evidence

One core argument made by anti-monopolists who oppose large companies and argue that kill zones and killer acquisitions are real and harmful is that small firms are inherently more innovative than large firms. As FTC Commissioner Christine Wilson argued, “[M]any today believe that small firms are inherently more innovative than large ones, so that the acquisition of a small firm by a large one necessarily reduces innovation.”45 For example, Tim Wu recently testified before Congress that innovation in technology sectors would increase if government imposed greater regulations and increased antitrust enforcement because “[o]ver the last century, competitive, open sectors—ecosystems—have proved themselves superior to those monopolized or dominated by a ‘big three’ or ‘big four.’”46

In fact, large companies are as or more innovative than small firms. In a 1996 paper, Wesley M. Cohen and Steven Klepper found that large firms invest more in R&D as a share of sales.47 The number of patents and innovations produced per R&D dollar decline with increasing firm size. But they argued that this reflects a mismeasurement of innovation outputs. Large firms benefit from “cost spreading,” because they can spread the benefits from one innovation across more units and products, leading to a greater overall level of innovation per unit of R&D. They wrote, “Not only does cost spreading provide the basis for explaining the R&D-size relationship, it also challenges the consensus that has emerged from the R&D literature that large firm size imparts no advantage in R&D competition.”48

More recently, in 2016, business professors Anne Marie Knott and Carl Vieregger estimated that a 10 percent increase in the number of employees increases R&D by 7.2 percent, and a 10 percent increase in firm revenues increases R&D productivity by 0.14 percent. This shows that large firms not only invest more in R&D activities, they also enjoy higher returns on innovation output per dollar invested in R&D.49

Other research has found that “small firms prevail in the early stages and innovation tends to concentrate in larger firms as industries evolve towards maturity.”50 In the 1990s, many small firms emerged and competed to be the winners in IT platforms. But only a few firms could emerge as winners, and the ones that did continue to invest in innovation.

#### Empirical consensus that dominant platforms are procompetitive.

Wright et. al ’19 [Joshua D., Elyse Dorsey, Jonathan Klick, and Jan M. Rybnicek; University Professor and Executive Director, Global Antitrust Institute at Scalia Law School; Attorney Advisor to Commissioner Noah Joshua Phillips, United States Federal Trade Commission; Professor of Law, University of Pennsylvania; Counsel in the antitrust, competition, and trade practice of Freshfields, Bruckahus Deringer LLP; Arizona State Law Review, “Requiem For A Paradox: The Dubious Rise and Inevitable Fall of Hipster Antitrust,” vol. 51; KP]

1. Does the Empirical Evidence Support the Claim That a Ban on Vertical Integration Would Make Consumers Better off?

Since Ronald Coase’s initial intellectual foray into the boundaries of the firm, the causes and consequences of vertical integration have been one of the most empirically studied economic phenomena in industrial organization economics.200 Three leading empirical literature surveys summarize the results of these studies. It is notable that these surveys are not only authored by well-established and industrial organization economists, but also that the authors span the ideological spectrum, and have significant experience in enforcement agencies. What do these literature surveys find? In sum, each author accepts the well-known theoretical result that vertical integration might harm competition, but each study finds that vertical integration is overwhelmingly procompetitive in practice.

In two separate papers, Francine Lafontaine and Margaret Slade reviewed the available empirical evidence and examined the effects of vertical integration and vertical restraints on consumers.201 In a 2005 paper on exclusive dealing and other vertical restraints, Lafontaine and Slade concluded that:

In general, [then,] the empirical evidence leads one to conclude that consumer well-being tends to be congruent with manufacturer profits, at least with respect to the voluntary adoption of vertical restraints. When the government intervenes and forces firms to adopt (or discontinue the use of) vertical restraints, [in contrast,] it tends to make consumers worse off.202

In 2007, Lafontaine and Slade discuss vertical integration specifically.203 After reviewing the evidence, the authors again found that “under most circumstances, profit-maximizing vertical-integration decisions are efficient, not just from the firms’ but also from the consumers’ point of view. Although there are isolated studies that contradict this claim, the vast majority support it. Moreover, even in industries that are highly concentrated so that horizontal considerations assume substantial importance, the net effect of vertical integration appears to be positive in many instances.”204

Current and former enforcement agency economists—including the former Chief Economist for the DOJ’s Antitrust Division, Luke Froeb— conducted a study of the same literature on vertical restraints and vertical integration. Froeb et al. reach similar conclusions, finding, “there is a paucity of support for the proposition that vertical restraints [or] vertical integration are likely to harm consumers.”205 Finally, former FTC and DOJ economist Daniel O’Brien conducted a similar in-depth study of the literature on vertical restraints and integration, and reached the same conclusion: that “[t]he theoretical literature on [vertical agreements] implies a largely benign view of the effects of vertical restraints/integration,” and that “[w]ith few exceptions, the literature does not support the view that these practices are used for anticompetitive reasons.”206

None of the papers go so far as to say that vertical mergers or restraints should be per se legal. However, the consistency of results across these literature surveys is clear: vertical integration, in general, benefits consumers. The obvious and direct effect of adopting the Hipster Antitrust proposal to ban vertical integration would be to dramatically and reliably decrease consumer welfare

#### Performance determines size, not the other way around – antitrust stalls competition.

Jamison ’19 [Mark; December 10; Nonresident Senior Fellow at the American Enterprise Institute, Professor of the Public Utility Research Center at the University of Florida’s Warrington College of Business, former member of the FCC transition team, Ph.D. in Economics from the University of Florida; American Enterprise Institute, “Big Tech and the backwards logic of the neo-Brandeisians,” <https://www.aei.org/technology-and-innovation/big-tech-and-the-backwards-logic-of-the-neo-brandeisians/>]

The NB logic goes something like this: Big Tech is, well, big! And being big endows the companies with enduring power over the economy and over politics. Such influence stifles innovation and destroys democracy. So the only thing to do is break up the companies. The second best option is for a specialized government regulator to control their business practices.

The problem with this logic is that each step is backwards.

The first step puts emotion-based conclusions in front of facts and analysis. The claim appeals to megalophobia (fear of big things), asthenophobia (fear of weakness), neophobia (fear of anything new), soteriophobia (fear of dependence on others), etc.

Luis Brandeis — whom the NBs assert they follow — did the same thing. He attacked bigness, but left the definition vague so that its orientation was primarily emotional. This worked for Brandeis because big business was a new phenomenon for his contemporaries. Just as is happening today, new technologies and management practices had enabled businesses to grow to sizes larger than people had experienced previously. This seemed frightening to many people, and Brandeis capitalized on the fears.

The second step assumes that a company’s size determines its performance. Actually, performance determines size. Each Big Tech company achieved its scale from customers continually choosing it over competitors. The superior products and services attracted customers, which made each company big.

Another error is that proponents of NB antitrust assume that rival and political complaints are evidence of abuse of power. Actually, they are evidence of a lack of power. If the firms could truly control their markets, they would have no rivals of any note and startups would avoid the space. In reality, eBay and others compete with Amazon, YouTube and Snapchat compete with Facebook, Microsoft and Yelp compete with Google, etc. And venture capital is flowing into the tech sector in part because startups believe they can capture some or all of the leading companies’ profits.

The idea that Big Tech is politically powerful is also contrary to evidence: How many politically powerful people or institutions are under attack by Republicans, Democrats, the media, Attorneys General, the EU, India, China, and more? The list of critics and enemies of Big Tech is long. Politically powerful entities generally have lots of friends. Big Tech seems to have none.

What happens if NBs have their way with Big Tech? My [estimate](https://www.aei.org/technology-and-innovation/3-reasons-regulation-of-big-tech-could-cost-consumers-700-billion/) is that US consumers would lose $700 billion in economic value annually. Powerful politicians and their allies would [control](https://www.aei.org/technology-and-innovation/a-darker-side-of-elizabeth-warrens-war-on-tech/) or at least influence what people are allowed to share on social media. Online businesses would have to be [neutral](https://www.aei.org/technology-and-innovation/some-faulty-premises-of-neutrality-movement-part-i/) and [bland](https://www.aei.org/technology-and-innovation/some-faulty-premises-of-neutrality-movement-part-ii/) rather than innovative and valuable. And regulation would likely [stall](https://www.aei.org/technology-and-innovation/creating-an-online-trust-in-the-guise-of-trust-busting/) competition and innovation.

### 1NR – Inflaiton

#### Inflation low now

Rockeman 9/14 – Olivia Rockeman, economics reporter for Bloomberg, “US consumer price growth cools in August, smallest gain in seven months,” 9/14/21, https://www.business-standard.com/article/international/us-consumer-price-growth-cools-in-august-smallest-gain-in-seven-months-121091401152\_1.html

Prices paid by U.S. consumers rose in August by less than forecast, posting the smallest gain in seven months and suggesting that some of the upward pressure on inflation is beginning to wane.

The consumer price index increased 0.3% from July, according to Labor Department data released Tuesday. Compared with a year ago, the CPI rose 5.3%. Excluding the volatile food and energy components, so-called core inflation climbed 0.1% from the prior month, the smallest gain since February.

Economists in a Bloomberg survey called for a 0.4% increase in the overall CPI from the prior month and a 5.3% gain from a year earlier, based on the median estimates.

Treasuries pared declines following the data, while the dollar fell and S&P 500 futures rose.

Faced with mounting cost pressures as a result of materials shortages, transportation bottlenecks and hiring difficulties, businesses have been boosting prices for consumer goods and services. While price spikes associated with the economy’s reopening are beginning to abate, tenuous supply chains could linger well into 2022 and keep inflation elevated.

A Federal Reserve Bank of New York survey showed Monday that consumers expect inflation at 4% over the next three years, the highest in data back to mid-2013.

The CPI data precede next week’s Federal Open Market Committee meeting, where Fed officials will debate how and when to begin tapering asset purchases. Fed Chair Jerome Powell said last month that the central bank could begin reducing its monthly bond purchases this year, but didn’t give a specific time line.

#### The Fed thinks that current short-term inflation will moderate over the longer term – their opinion is what matters for our link

Derby 9/13 – Michael S. Derby, Federal Reserve reporter for the Wall Street Journal, “Inflation Expectations Continue to Climb, New York Fed Survey Shows,” 9/13/21, https://www.wsj.com/articles/new-york-fed-survey-shows-inflation-expectations-at-record-highs-in-august-11631545200

The rise in price pressures has been driven largely by supply disruptions tied to the economic reopening process. Fed officials have flagged that most of the biggest gains in inflation have happened in parts of the economy most affected by the pandemic.

Central bankers, who have maintaining price stability as an official goal, still largely say they believe that price pressures will moderate over time as imbalances get resolved. “It’s going to take some time,” but the disruption causing the inflation jump should abate and “that’ll help the inflation measures move back down,” Cleveland Fed leader Loretta Mester told reporters on Friday.

Fed officials also base their confidence that inflation will moderate on what many of them see as relatively stable long-term inflation expectations. Fed officials have long believed that expectations about the future of price dynamics exert a powerful influence on where inflation stands now, but the central bankers don’t have a uniform way of measuring the issue. At the same time, data have shown that the public generally overestimates where inflation is relative to what the government data say.

In an interview last week, Federal Reserve Bank of Atlanta President Raphael Bostic said he is looking to see if “businesses and families are starting to make decisions, taking on board these higher levels of inflation as something that is potentially more permanent. If those sorts of behavioral changes start to play out, then that’s something I’ll have to take on board” when thinking about where monetary policy needs to be set.

“Fortunately we have not seen that in terms of long run inflation expectations-—there’s been a little movement in the short run side, but since that hasn’t necessarily, or to this date, bled into the longer run, I’m, I’m inclined to mainly look through it,” and retain confidence price pressures will moderate over time, Mr. Bostic said.

#### Powell and the Fed think that current inflation is short-term and transitory

Saphir 8/27 – Ann Saphir, Reuters reporter covering the Federal Reserve and the US economy, “Why Fed's Powell still thinks high inflation is 'temporary',” 8/27/21, https://www.reuters.com/business/why-fed-chair-powell-still-thinks-high-inflation-is-temporary-2021-08-27/

Federal Reserve Chair Jerome Powell on Friday pushed back against concerns that swiftly rising prices could become an enduring feature of the economy, forcing the U.S. central bank to raise interest rates and cut short the recovery.

While recent inflation readings are "a cause for concern," Powell told the Kansas City Fed's annual Jackson Hole economic symposium, responding to what he sees as likely to be a temporary trend by tightening monetary policy could be a "particularly harmful" mistake. read more

It was a provocative case to stake out at a time when inflation is sapping consumer sentiment and emerging as a political hot potato just as President Joe Biden weighs whether to appoint Powell to a second term as Fed chief.

Powell's decision to build the case for why inflation isn't a worry - rather than sketch out what could go wrong - drew praise from advocates of the year-old policy framework he championed that emphasizes the Fed's full employment goal and rejects the kind of preemptive inflation-fighting rate hikes that were the stock-in-trade of the Fed in its previous incarnations.

It also sparked criticism from those less sanguine about the risks, with Harvard University's Jason Furman, who was a former senior economic aide in the Obama administration, saying that Powell was "failing to take seriously any arguments on the other side."

And, of course, it comes as Fed officials themselves fully join their own internal debate about when to start backing away from the emergency measures implemented to shield the economy from the disruptions - still ongoing to some degree - of the COVID-19 pandemic.

A number of Powell's fellow central bankers have begun pushing for the Fed's asset purchases to be quickly wound down as the first leg of that process.

Indeed, Powell used his speech on Friday to acknowledge that, at least as of last month's policy meeting, he was in favor of the Fed starting to reduce its $120 billion in monthly asset purchases this year, with inflation already meeting the bar to do so, and further progress on the employment front expected.

But to raise interest rates the Fed has said the economy must meet a more stringent test, including not only maximum employment but also inflation that has reached and looks on track to exceed 2% for some time. Though some other Fed policymakers have said they believe inflation is already averaging that elusive target, Powell remained uncommitted.

"Time will tell whether we have reached 2% on a sustainable basis," Powell said.

The personal consumption expenditures (PCE) price index excluding the volatile food and energy components, which is a key measure of inflation, rose 3.6% in the 12 months through July, data on Friday showed. On a monthly basis, the gain was the smallest in five months. read more

Here's Powell's five-point rundown on why he's not perturbed:

1) IT'S NOT BROAD-BASED

Inflation so far is coming from sharply higher prices in a limited number of sectors, particularly in goods and services hit hardest by the coronavirus pandemic and for which demand is now fast recovering as the economy reopens.

2) BIGGEST SURGES ALREADY RECEDING

Prices of cars and other durable goods are now stabilizing or dropping after skyrocketing in the summer. "It seems unlikely that durables inflation will continue to contribute importantly over time to overall inflation," Powell said.

3) NO THREAT FROM WAGES SO FAR

Wages are rising, but not faster than productivity gains or inflation in a way that could lead to an upward spiral. "We will continue to monitor this carefully," he said.

4) INFLATION EXPECTATIONS ANCHORED

The market-based and survey-based measures that the Fed looks at indicate that inflation expectations have made a "welcome" return to levels more consistent with its inflation goal but have not risen as fast as actual inflation, "suggesting households, businesses and market participants also believe that current high inflation readings are likely to prove transitory," Powell said.

#### Inflation is limited and slowing down now

Stein 8/13 – Jeff Stein, economics reporter for the Washington Post, “Biden shifts pitch for economic plans as GOP escalates attacks over high prices,” 8/13/21, https://www.washingtonpost.com/us-policy/2021/08/13/biden-inflation-gop-prices/

The irony of the shift in strategy is that it comes at a time when some economic indicators suggest the pace of inflation may be cooling down — a trend Biden pointed to Wednesday.

Prices are still up markedly from their lows in the pandemic’s early months, as the president’s stimulus and economic reopening lead to a surge in demand. Data released this week by the Bureau of Labor Statistics showed prices rose 5.4 percent in July compared with a year ago. Groceries have been inching higher for well over a year. Just from June to July, the cost of meats, poultry, fish and eggs climbed 1.5 percent. On Wednesday, the national average for a gallon of gas hit $3.19, a new high for the year, according to AAA.

But the month-to-month data may show signs of a cool-down: Prices overall rose 0.5 percent in July compared with June. Used-car prices jumped 10.5 percent in June compared with May. But in July, they grew only 0.2 percent compared with June.

The Federal Reserve and the White House expect prices may keep climbing, as long as consumer demand rebounds faster than supply chains can catch up. Their prediction is that as supply backlogs have time to clear, inflation will settle back down closer to the Fed’s 2 percent annual target, perhaps next year.

But that message is increasingly difficult to stomach for households facing rising grocery bills, rent or airline tickets right now. Persistent shortages of semiconductors have squeezed the market for used cars and trucks, sending prices soaring 41.7 percent compared with last year.

Republicans say the price increases are already hurting too many families and their pocketbooks. They have criticized Biden’s sprawling spending agenda for heating up the economy recklessly, pointing first to the $1.9 trillion stimulus plan passed in March and now to the $3.5 trillion budget plan moving through the Senate.

One of the measures watched closely by the Fed is not suggesting baked-in expectations for widespread, long-term price increases. But another survey of consumer expectations, released by the Federal Reserve Bank of New York, shows that households expect prices will stay high — well above the Fed’s 2 percent target — into next year.

### AT: CWS increases prices

#### Replacing the consumer welfare standard creates a crisis in antitrust – creates a chilling effect for business confidence, raises prices, and discourages innovation

Wright 19 – Joshua D. Wright, University Professor and Executive Director of the Global Antitrust Institute at George Mason University, “Requiem for a Paradox: The Dubious Rise and Inevitable Fall of Hipster Antitrust,” *Arizona State Law Journal*, 2019, 51 Ariz. St. L.J. 293

Opponents of the modern approach to antitrust law and policy have called for nothing less than the complete dismantling of the consumer welfare standard and the consensus that has been built over the last nearly fifty years through vigorous debate among antitrust practitioners, enforcers, and academics from across the political spectrum about how best to promote competition. It is no exaggeration to say that what these critics desire is an anti-economics revolution that untethers the antitrust laws from a coherent and consistent framework and replaces consumer welfare with vague social and political standards that ultimately would once again plunge antitrust into crisis. 268

In the current debate about the appropriate framework for antitrust analysis, the most often cited replacement for the consumer welfare model is either the "public interest" or "citizen interest" standard.269 The "public" and "citizen" interest standards would purportedly capture a much broader range of potential effects emanating from a challenged transaction or business practice, including: the availability of services, the openness of markets, the stability of global supply chains and financial systems, and the ability of rivals to compete.2 0 Of course, there is reason to believe that any new antitrust standard might also be broad enough to capture other noncompetition factors touted by proponents of consumer welfare reform, such as income inequality,21 undue political influence, and perceived conflicts of interest between firms in a vertical relationship.

Abandoning the consumer welfare standard and embracing the "public" or "citizen" interest standard (or a similar approach) would have significant adverse costs on competition policy. It would again force antitrust to serve multiple masters, many of which have inconsistent interests. The inevitable confusion and lack of unified approach also would create uncertainty in the business community that ultimately would have a chilling effect on procompetitive conduct and encourage new efforts by firms to influence antitrust outcomes through political pressure and agency rent-seeking. This is not mere speculation. Indeed, the history of the Federal Communication Commission (FCC), which employs a similar public interest standard, serves as a prime example of the deleterious effects of vague enforcement standards that are not rooted in economic evidence.2 2

A. Replacing Consumer Welfare with an Incoherent and Inconsistent Approach

Replacing the well-established consumer welfare standard would necessarily require courts to trade off some amount of consumer welfare for some other set of values, thereby throwing open the door to uncertainty and to exploitative behavior. As has been discussed above, decades of debate and case law has worked to refine the precise contours of the consumer welfare standard and to bring consensus about the types of evidence that are indicative of harm to competition and consumers.2"3 The consumer welfare standard employs a variety of economic tools to evaluate the effect transactions and business practices may have on consumers in the form of increased prices, reduced output, reduced innovation. By using current economic theory and empirical evidence as the starting point for creating liability rules and subsequently conducting an evidence-based inquiry into the welfare effects of a particular practice, the consumer welfare model offers a tractable method for weighing procompetitive and anticompetitive effects.

If consumer welfare were to be replaced by some other set of values, the result explicitly would be for courts and enforcers to elevate other factors above consumer welfare and to reach different conclusions about liability. Under a "public interest" or "citizen interest" approach, a transaction that would reduce prices to consumer, increase output, or spur innovation may be prohibited under the antitrust laws for failing to satisfy any number of other vague factors, including failing to leave some arbitrary number of competing firms in the market despite the clear presence of competition or create a more efficient albeit consolidated supply chain. Even more dramatically, a new standard also may result in a transaction that increases prices, reduces output, or stifles innovation to not necessarily run afoul of the antitrust laws if a court concludes that such consumer harm can be tolerated to satisfy other aspects of the multidimensional standard, such as income equality. In light of these very real concerns, a subjective, multiprong antitrust standard untethered from economics offers nothing beyond speculative benefits. Accordingly, it would be imprudent to abandon the consumer welfare standard.

#### Any alternative to consumer welfare causes a laundry list of problems for the economy – specifically causes special interest rent-seeking and cronyism

Keating 21 – Raymond J. Keating, chief economist for the Small Business & Entrepreneurship Council, “The Treacherous Turn on Antitrust Regulation of U.S. Tech Companies,” 2/24/21, <https://sbecouncil.org/2021/02/24/the-treacherous-turn-on-antitrust-regulation-of-u-s-tech-companies/>

[Modified for objectionable language]

Nonetheless, in the end, the consumer welfare standard is, by far, the best we have in terms of some consistency and reasonableness in applying vague antitrust laws.

Antitrust and Congress: A Bad System May Become Far Worse

Given the formidable shortcomings of antitrust law and regulation, one would hope that if Congress was going to consider reform or updating, the effort would be focused on at least trying to somehow better connect the law and enforcement with economic realities and how markets actually function.

That is not the case with the reports presented by Democrats and Republicans in the House Subcommittee on Antitrust, Commercial and Administrative Law of the Committee on the Judiciary. In fact, each report, and largely the Democrats’ analysis, serves up recommendations that would create far greater distance between how markets work and antitrust regulation.

Let’s be perfectly clear: Neither report offers recommendations that will improve antitrust law and enforcement. Most of the proposals labor under mistaken assumptions; and would actually inject more politics and uncertainty into the antitrust equation, while moving antitrust law, regulation and enforcement further away from sound economics.

The Democrats’ majority report is intent on a vast expansion of antitrust regulation and enforcement, including tossing out the consumer welfare standard in favor of, effectively, more politics over economics; while the Republican report also argues for expanded regulation and enforcement, but more tentatively so at least in terms of the language used.

The overwhelming tendency in the Democrats’ report is to make sweeping declarations about increased and inevitable monopolization (such as: “Over the past decade, the digital economy has become highly concentrated and prone to monopolization.”), along with “weakened innovation and entrepreneurship,” that ignore the dynamism of the tech economy, the enormous benefits derived by consumers, actual consumer decisions, and the definition of a monopoly.

As for the Republican report, it is willing to go along with the Democrats on a number of proposals, raises questions about others, and rejects some. As stated, “We prefer a targeted approach, the scalpel of antitrust, rather than the chainsaw of regulation.”

As it turns out, though, the Republican “scalpel” is far from targeted. The report expresses political disagreements with the firms involved (for example: “Most notably, the report does not address how Big Tech has used its monopolistic position in the marketplace to censor speech. This censorship is experienced by groups and ideologies on all wings of the political spectrum but is most notably realized through tech platforms exerting overt bias against conservative outlets and personalities.”)

Consider some key proposals from the Democrats’ report and our responses.

• Proposal: “Reasserting the anti-monopoly goals of the antitrust laws and their centrality to ensuring a healthy and vibrant democracy.” – “[T]he Subcommittee recommends that Congress consider reasserting the original intent and broad goals of the antitrust laws by clarifying that they are designed to protect not just consumers, but also workers, entrepreneurs, independent businesses, open markets, a fair economy, and democratic ideals.”

Response: This proposal would toss out the consumer welfare standard, and replace it with a broad basis for undermining businesses that have earned considerable market share. Antitrust actions would return to a period in which politics, special interest influences, rent-seekers, and uncertainty held even greater sway over the realm of antitrust – even more so than it does today. By effectively giving more control over business decisions and models to a political class that often fails to understand current business and market conditions, never mind where industries and markets are headed in the future, there inevitably will be losses in terms of innovation, investment, efficiency, and growth.

• Proposal: “Structural separations and prohibitions of certain dominant platforms from operating in adjacent lines of business.” – “Structural separations prohibit a dominant intermediary from operating in markets that place the intermediary in competition with the firms dependent on its infrastructure. Line of business restrictions, meanwhile, generally limit the markets in which a dominant firm can engage.”

Response: Again, having government determine and dictate business decisions, rather than having decisions made by businesses and entrepreneurs subject to market competition and consumer sovereignty would mean lost innovation, productivity and consumer benefits.

• Proposal: “Interoperability and data portability, requiring dominant platforms to make their services compatible with various networks and to make content and information easily portable between them.”

Response: Investments in engineering and information often are the lifeblood of businesses in the digital economy. It’s how they provide added value to customers. To have government impose assorted mandates on the use and availability of such investments inevitably will reduce and/or redirect such investments, with consumers, again, suffering.

• Proposal: “Presumptive prohibition against future mergers and acquisitions by the dominant platforms.” – “Under this change, any acquisition by a dominant platform would be presumed anticompetitive unless the merging parties could show that the transaction was necessary for serving the public interest and that similar benefits could not be achieved through internal growth and expansion.” – “[T]he Subcommittee recommends that Members consider codifying bright-line rules for merger enforcement, including structural presumptions. Under a structural presumption, mergers resulting in a single firm controlling an outsized market share, or resulting in a significant increase in concentration, would be presumptively prohibited…”

Response: The basis for justifying such random impositions on mergers certainly does not rest with sound economics, nor with how the market works, including that any mergers ultimately will be put to the test of competition and consumer decision-making in the marketplace. Instead, this is simply about a political preference or bias against mergers and “bigness” per se.

• Proposal: “To strengthen the law relating to potential rivals and nascent competitors, Subcommittee staff recommends strengthening the Clayton Act to prohibit acquisitions of potential rivals and nascent competitors.” – “Since startups can be an important source of potential and nascent competition, the antitrust laws should also look unfavorably upon incumbents purchasing innovative startups. One way that Congress could do so is by codifying a presumption against acquisitions of startups by dominant firms, particularly those that serve as direct competitors, as well as those operating in adjacent or related markets.”

Response: A surefire way to ~~cripple~~ [destroy] startups is to reduce or disincentivize investment in such ventures. This proposal seems designed specifically to undermine entrepreneurship. It is rather commonplace in an assortment of industries for a certain portion of startups to eventually be purchased and merged into larger businesses. Indeed, that possibility or option provides incentives for investing in such enterprises.

• Proposal: “Clarifying that market definition is not required for proving an antitrust violation, especially in the presence of direct evidence of market power” and “Clarifying that ‘false positives’—or erroneous enforcement—are not more costly than ‘false negatives’—or erroneous non-enforcement—and that, in relation to conduct or mergers involving dominant firms, ‘false negatives’ are costlier.”

Response: These measures are simply meant to make it easier to impose politically-driven antitrust regulation or actions against businesses. After all, why bother with defining the market or even considering “false positives” when one is so sure that large businesses and mergers are inherently evil – again, despite the fact that large businesses gained their notable market share by serving consumers well?

• Proposal: “Restoring the federal antitrust agencies to full strength, by triggering civil penalties and other relief for ‘unfair methods of competition’ rules, requiring the Federal Trade Commission to engage in regular data collection on concentration, enhancing public transparency and accountability of the agencies, requiring regular merger retrospectives, codifying stricter prohibitions on the revolving door, and increasing the budgets of the FTC and the Antitrust Division.”

Response: The assumption with these proposals is that antitrust agencies are not doing everything that this Democratic report seeks to do at least in part due to a lack of power, dollars and/or staff. The fact that some administrations might see matters differently, and have a dissimilar antitrust philosophy, seems to be ignored. Also, the number of rather absurd antitrust cases brought by such agencies belies the lack-of-power and/or lack-of-funding assumptions. Consider for example, the FTC suing to stop Edgewell Personal Care Co., maker of Schick razors, from buying razor rival Harry’s Inc., or the FTC challenging Post Holdings, Inc.’s proposed acquisition of TreeHouse Foods, Inc.’s “private label ready-to-eat cereal business.” Private label products are made by one company and offered for sale by a different firm under its brand, and the FTC argued for government action to stop a merger in a small portion of the breakfast foods market. Also, there don’t seem to be high barriers to entry in the razor market. In each case, government antitrust action led to the mergers being called off – after all, challenging a federal agency’s antitrust intrusion gets quite pricey. So much for federal antitrust agencies lacking power and resources.

• Proposal: “Strengthening private enforcement through elimination of obstacles such as forced arbitration clauses, limits on class action formation, judicially created standards constraining what constitutes an antitrust injury, and unduly high pleading standards.”

Response: The objectives here not only include an expansion of antitrust actions and special interest interference, but clearly, serving the interests of trial lawyers.

And, the list goes on. As noted already, the two reports do not make recommendations that would improve antitrust law and regulation.

As for the Republican report, while the language is more tentative in expanding antitrust regulation, and does not go as far as the Democrats, the effort in effect would ramp up antitrust regulation, which would lay the groundwork for political allies and opponents to use this as a stepping stone to greater antitrust interference. Most striking from the Republican report was where they clearly went beyond the idea of using a “scalpel” to improve antitrust enforcement. Consider the following for example:

• “The Clayton, Sherman, and Federal Trade Commission Acts were all written with broad interpretations to ensure antitrust regulators would not be hamstrung by future market developments. However, antitrust enforcers have boxed themselves in by relying on judicial interpretations instead of statutory language and Congressional intent. The report accurately describes how these changes have hamstrung true oversight efforts, granting Big Tech a de facto immunity from antitrust scrutiny…

• “By reinforcing presumptions that certain behaviors are likely to reduce competition, lowering evidentiary burdens in litigated cases, and emphasizing that anticompetitive effects are not limited to price effects and include innovation competition, quality, output, and consumer choice, Congress can make a meaningful difference.”

• “We also agree with a number of the majority’s other legislative recommendations, including proposals to shift the burden of proof for companies pursuing mergers and acquisitions and empowering consumers to take control of their user data through data portability and interoperability standards.”

• “The report makes a good case for the need to strengthen our nation’s antitrust agencies with regard to resources. We agree wholeheartedly with this recommendation. We need to give our nation’s antitrust enforcers the resources needed to succeed in litigation against Big Tech.”

Response: Recommendations to expand the powers and discretion of regulators; to increase unnecessary and burdensome regulatory requirements; to reduce checks and balances on regulatory undertakings; and to increase the budget for regulators, all in order to increase regulation of U.S. technology firms seems otherworldly. Missing is a healthy skepticism of governmental power and regulation.

And then there is the willingness to use antitrust action to engage in political disagreements with private companies, as noted earlier. For example:

• “Google used its dominant advertising technology product to demonetize conservative media outlets, including The Federalist. YouTube, a Google subsidiary, blocked videos from Republican politicians and media groups. Amazon censored conservative organizations, including the Family Research Council and the Alliance Defending Freedom by blocking Americans’ ability to donate to these groups through the AmazonSmile tool. Facebook’s algorithms, advertising policies, and content moderation rules have all combined to discriminate against conservative viewpoints, shadow ban conservative organizations and individuals, and suppress political speech… Unfortunately, the majority missed an opportunity to fully scrutinize Big Tech’s use of monopoly power to silence Americans’ First Amendment right to free speech. It is difficult to consider the subcommittee’s investigation into platform behaviors and anticompetitive behavior complete without a robust discussion about platforms using their monopoly power to engage in editorial decisions that silence free speech.”

Response: While one can agree or disagree with particular decisions being made by private companies, they are private companies. And bringing governmental power down upon such decision-making should always be deeply troubling. For good measure, this certainly is not an area for antitrust regulation.

On the more positive aspects of their recommendations, Republicans were unwilling to go along with their Democratic colleagues in other areas. For example:

• “However, the majority also offers policy prescriptions that are non-starters for conservatives. These proposals include eliminating arbitration clauses and further opening companies up to class action lawsuits. Similarly, the majority’s desire to institute Glass-Steagall for America’s tech sector and modeling the majority’s equal terms for equal services recommendation on President Obama’s net neutrality rule will not garner support from Republicans.”

• “The majority report also includes a recommended presumption that any vertical merger by a dominant platform is unlawful. We are concerned that the presumption against vertical mergers, in particular, will chill venture capital investment in a way that will further harm innovative startups and reduce their ability to get their product to market.”

As far as these criticisms of the majority report go, they generally are on target. However, the overall friendliness of the minority report, or response to the Democrats’ majority report, is troubling, and would help to lay the groundwork for a potential vast expansion in antitrust regulation that, in the end, will undermine investment, innovation, dynamism and entrepreneurship in the economy, which, of course, would harm consumers.

#### The consumer welfare standard is stable, predictable, and ­well-understood – the burden should be on the aff to provide robust empirical support for their departure from it

Dorsey 20 – Elyse Dorsey, Adjunct Professor, Antonin Scalia Law School at George Mason University, “Consumer Welfare & the Rule of Law: The Case Against the New Populist Antitrust Movement,” *Pepperdine Law Review*, 2020, 47 Pepp. L. Rev. 861

The populist antitrust movement argues vociferously for abandoning the well-established consumer welfare standard.145 To many within this movement, the consumer welfare standard is an impediment to successful antitrust enforcement and to the achievement of socio-political goals such a regime may foster.14 6 As such, they argue that the consumer welfare standard should not be allowed to persist. This line of argument views with the rosiest of glasses the well-trod history, described above, of antitrust enforcement pre-consumer welfare standard-which experts, scholars, Nobel Laureates, judges and Supreme Court Justices across the political spectrum have recognized to be a disaster that undermined fundamental principles of our democracy, including the rule of law. 147

Nonetheless, populist antitrust proponents advocate returning to this pre-consumer welfare standard world.148 Some of the many benefits of the consumer welfare standard-and the commensurate costs of abandoning this standard-are described above.149 This section explores the empirical evidence upon which populists rely when arguing to abandon the consumer welfare standard.15

A threshold question raised by the populist movement's call to abandon the consumer welfare standard is whether this standard is systematically flawed such that abandoning it is warranted.151 The move to reject a standard that has been uniformly embraced by the Supreme Court and the lower courts for decades should be supported by clear economic consensus that the standard is doing more harm than good.15 2 In other words, strong empirical support should exist for the populist movement's allegations that the consumer welfare standard is not doing what it purports to do, that it is, in any event, attempting to maximize the wrong set of values, and that wholesale retargeting of antitrust enforcement would achieve the goals the populist movement has identified. 153

Thus far, however, the populist antitrust movement has not demonstrated such a sound economic basis.154 The evidence upon which it relies is mixed, at best. 5 At most, it calls into question the level of enforcement under the consumer welfare standard, not the utility of the standard itself. 156 As an initial matter, then, rejecting the consumer welfare standard today would risk all the observed benefits of the standard without compelling evidence of an actual problem-and with no persuasive reason to believe the proffered solutions would enhance outcomes.15 7

#### Any departure from consumer welfare involves incoherent and unpredictable standards – it actively dissuades growth

Wright 19 – Joshua D. Wright, University Professor and Executive Director of the Global Antitrust Institute at George Mason University, “Requiem for a Paradox: The Dubious Rise and Inevitable Fall of Hipster Antitrust,” *Arizona State Law Journal*, 2019, 51 Ariz. St. L.J. 293

It is widely acknowledged by commentators across the political spectrum that prior to the antitrust revolution, antitrust jurisprudence was an incoherent and unpredictable body of law that frequently showed hostility to business.239 Before the adoption of the consumer welfare standard, courts would attempt to weigh an array of social and political goals that often were at odds with one another and also with modern economics. 240 This paradoxical approach weaponized the antitrust laws against the competitive process and, as a result, antitrust doctrine was internally inconsistent and counterproductive. Antitrust not only failed to promote competition, but it actively dissuaded competitors from becoming more efficient and bringing consumers lower prices, greater innovation, and other benefits.

The consumer welfare standard offered antitrust a way out of this quagmire. Today, the consumer welfare standard provides antitrust jurisprudence a disciplined method of analyzing competition that starts and ends with the straightforward question: "Is the challenged conduct likely to make consumers better or worse off?" Rather than issuing decisions that may hinge upon any number of socio-political goals, courts today predictably answer-and their analyses turns solely upon-this question in every antitrust case. This singular focus avoids the internal inconsistencies of the socio-political approach to antitrust, within which various courts would condemn both procompetitive and anticompetitive conduct depending upon the discrete social or political end the court sought to foster in a given case and not based upon whether the conduct actually promoted competition.

Multi-prong approaches often elevate the welfare of competitors or other social and political goals above consumers, and perversely can lead to results in which prices go up, output goes down, or innovation is slowed, but yet the conduct is not condemned because some other social end is achieved. The consumer welfare model instead provides a concrete framework for evaluating allegedly anticompetitive behaviors based on tradeoffs tied to the health of the competitive process as measured by whether consumers are better or worse off. Critically, the consumer welfare standard allows antitrust to funnel earlier questions about the ability of less efficient rivals to compete, the viability of small and independent competitors, and the size and influence of firms back to a singular inquiry about whether consumers are harmed. As a result, non-economic social and political objective no longer serve as a distraction and antitrust can contribute positively to society.

Today, courts, enforcers, and businesses have in the consumer welfare standard a consistent and predictable methodology for assessing whether conduct is permissible under the antitrust laws. With the Supreme Court embracing the central role of the consumer welfare standard to modern antitrust analysis, the contemporary debate largely has shifted to identifying appropriate liability rules and economic evidence for assessing whether specific transactions and business arrangements is likely to harm consumers. 241

#### Consumer welfare is the only objective standard – everything creates incoherent rules that get weaponized by special interests

Dorsey 20 – Elyse Dorsey, Adjunct Professor, Antonin Scalia Law School at George Mason University, “Consumer Welfare & the Rule of Law: The Case Against the New Populist Antitrust Movement,” *Pepperdine Law Review*, 2020, 47 Pepp. L. Rev. 861

Experience over the last fifty years demonstrates that the consumer welfare standard has had a significant positive influence on antitrust jurisprudence and enforcement decisions. 108 Today, the consumer welfare standard offers a workable, coherent, and objective framework that elegantly translates the core antitrust inquiry of whether there has been harm to competition into a simple question: does the conduct make consumers better or worse off? 109 In unifying antitrust under a singular objective, the consumer welfare standard abandons the use of vague tests that incorporate multiple, and often contradictory, social and political goals that fail to meaningfully cabin discretion and thus ultimately permit decisionmakers to reach almost any result they desire. 110 Significantly, the consumer welfare standard grounds antitrust decisions in economics and economic evidence, which has the dual virtues of reducing the role of conjecture and supposition driven by personal preference, and of increasing the consistency of decisions across disparate political administrations." Proposals to abandon the consumer welfare standard as the lodestar of the antitrust laws thus bear a heavy burden to deliver a similarly robust set of virtues that help ensure that antitrust is a force for good in society. 1 12

A. Consumer Welfare is a Clear, Consistent, and Coherent Legal Framework

The consumer welfare standard is widely recognized across the political spectrum as the superior model for antitrust enforcement because it is clear, consistent, and coherent. 113 Today, the consumer welfare standard is well-developed, and its meaning and the evidence required to show harm is well-established." 4 As a result, a key benefit of the consumer welfare standard is that it offers an objective and concrete framework for evaluating whether a challenged conduct has harmed competition." 5 It does so by examining a singular factor: whether consumers have been made better or worse off as a result of the conduct. 116

The consumer welfare standard therefore stands in sharp contrast to earlier multi-pronged approaches that sought to weigh a variety of vague sociopolitical factors that were at the decision-maker's discretion and often led to inconsistent and incoherent results.1 1 7 This earlier approach had the result of weaponizing antitrust against the competitive process and, paradoxically, not only failed to promote competition but actively dissuaded lower prices, increased innovation, and other competitive benefits.

Critics of the consumer welfare standard argue that the decision to focus on the welfare of consumers (rather than some other group or on non-welfare objectives) is inherently a political decision and therefore no more justified than alternative tests.118 There are at least two errors with this position. First, the decision to adopt the consumer welfare model is political only in the sense that every policy decision is a political decision. 119 That is neither remarkable nor interesting for assessing the benefits of the consumer welfare standard. 120 The more important question is whether the consumer welfare standard, as applied, is better or worse than alternative tests at minimizing the discretion of a decisionmaker and therefore the potential influence of politics and rent-seeking in antitrust decisions. 121 Significantly, what experience shows is that because the consumer welfare model is clear and objective, it cannot easily be contorted by a decisionmaker who may be motivated by a desire to pick winners and losers in a specific case. 12 2 The singular focus on consumer welfare thus creates a predictable methodology that leads to more consistency across different antitrust cases and to treating similarly situated parties equally under the law. 123 Indeed, by exporting the consumer welfare standard to other jurisdictions around the world, the United States has helped to foster the rule of law and limited the use of antitrust to promote protectionist goals. 124

Second, although the consumer welfare standard may be imperfect, it is by far the best available antitrust framework because it maximizes the welfare of all Americans. 12 ' Alternative tests pick between different groups or classes of people or, worse yet, allow decisionmakers to make those distributional choices based on personal preference. 126 Not all Americans are small business owners or have the same social policy preferences as a decisionmaker. But every American is a consumer. And therefore, all Americans benefit from maximizing consumer welfare. The new populist antitrust movement aims to address a wide range of non-welfare policy preferences through antitrust because it is a convenient and potentially expeditious tactic for implementing progressive policies. 127 But as history shows, these distributional decisions are inherently political; they are not well-suited for law enforcement agencies and judges; and they are better achieved through the legislative efforts of elected officials. 128

Importantly, the clarity of the consumer welfare standard does not require promoting an overly narrow test that is unable to incorporate key evidence relevant to assessing harm to competition. 129 Critics of the consumer welfare standard frequently assert that it is too narrowly focused only on price and therefore is unable to assess the full context of a conduct's effect on competition. 130 They claim that the narrow focus on price leads to many types of conduct going unchallenged and therefore requires a fundamental shift to a new test. 131 These arguments are either disingenuous or represent a profound misunderstanding of the robustness of the consumer welfare standard. In reality, as discussed below, a long list of cases shows that the consumer welfare standard considers a host of factors beyond price, including quantity, variety, quality, and innovation. 132 While it is not always easy to assess non-price factors, these factors fall well within the consumer welfare standard, and there exist numerous, sophisticated economic tools to evaluate whether a challenged conduct harms consumers on balance. 133

### AT: Monopsony

#### The aff’s wages argument is a separate link – sustained wage increases signal inflation to the Fed

Cox 9/7 – Jeff Cox, writer for CNBC, “A sharp rise in wages is contributing to worries over inflation,” 9/7/21, https://www.cnbc.com/2021/09/07/a-sharp-rise-in-wages-is-contributing-to-worries-over-inflation.html

Now might be a good time for the Federal Reserve to start worrying about inflation.

August’s jobs report, besides being a big disappointment on the 235,000 headline number, also showed that wages are rising even with weak hiring.

Average hourly earnings jumped 0.6% for the month, about double what Wall Street had been expecting, and the increase from a year ago stood at a robust 4.3%, up from a 4% rise a month ago. Even leisure and hospitality, which saw zero net job growth in August, saw wages jump 1.3% for the month and 10.3% on the year.

Those numbers come as the Fed is weighing when to start pulling back on the historically easy monetary policy in place since the early days of the Covid-19 pandemic. Some voices on Wall Street expect the wage and inflation numbers to start resonating with Fed officials.

“The 5.2% unemployment rate and rapidly rising wages suggest building inflationary pressure that will ultimately lead to more hawkish policy,” Citigroup economist Andrew Hollenhorst wrote in a detailed analysis of the current jobs situation.

While Fed officials mostly discuss the total payroll gains, Hollenhorst said he “would expect this rhetoric to shift a bit, perhaps at the September [Federal Open Market Committee] meeting, with more focus on the high level of job openings and increasing wages.”

Fed Chairman Jerome Powell went to great lengths in his annual speech in August during the central bank’s Jackson Hole symposium to knock down concerns about rising wage pressures as well as inflation overall, despite consistently higher numbers.

“Today we see little evidence of wage increases that might threaten excessive,” Powell said during the Aug. 27 speech. Measures Powell said he follows – he did not mention the Labor Department’s monthly average hourly earnings figure – point to “wages moving up at a pace that appears consistent with our longer-term inflation objective.”

One specific measure Powell mentioned was the Atlanta Fed’s Wage Growth Tracker.

That measure looks at wages on monthly and 12-month basis and then uses a three-month moving average to iron out distortions. On a smoothed level, the tracker is showing wages rising at a 3.7% pace, fairly consistent with the past few years. Without smoothing, the 12-month rate runs to 4.2%, which is the highest since 2007 and representative of how bumpy the data has gotten lately.

The Atlanta Fed will next update the tracker Friday, giving the Fed another look at potential pressures that could trigger a wage-price spiral, which economists consider “bad” inflation.

Fed officials thus far have attributed higher inflation numbers to supply issues. A continued rise in wages could signal that demand is becoming a factor.

### AT: COVID Disproves

#### There’s an internal debate within the Fed about when to raise rates – doves are winning that debate now, but the plan gives ammunition to the hawks

Patterson 9/6 – Rebecca Patterson, director of investment research at Bridgewater Associates, “Markets seem to be missing the risks on US inflation,” 9/6/21, https://www.ft.com/content/e2226cb2-20f7-4ae3-ab28-597397a7f38e

Not surprisingly, the reflationary trends we have seen in recent quarters has led to an increase in expected monetary tightening, with two 0.25 percentage point rises now discounted over the coming two years and asset purchases expected to be wound down by the start of 2023.

But the shift in expected tightening is modest relative to any previous cycle and remains extraordinarily easy compared with the strength of the US economy. At the same time, the inflation break-even curve is charting a path back to normality within just a few years, and both nominal and real rates are near secular lows.

Ultimately, the Fed will react to economic conditions, which gets us to the second part of this market vision of the future. Will the policy-setting Federal Open Market Committee “barely need to budge”?

There’s no question that central bankers are unusually challenged to read the economic tea leaves amid a pandemic. This difficulty at the Fed is evident in the increasingly vocal debate around how to interpret labour-market and inflation conditions.

Minutes from the July FOMC meeting highlighted, for instance, that employment remained well below its pre-pandemic level, reflecting elevated unemployment and people dropping out of the labour force. At the same time, though, it noted firms reportedly struggling to hire workers, and thus raising wages or providing additional incentives to attract or retain workers.

With both labour and inflation, the Fed is wrestling with the degree to which supply shortages reflect pandemic-related disruptions that can be easily resolved, and where conditions will settle when pandemic influences fade.

In recent weeks, several Fed officials have suggested that they may need to start the tightening cycle sooner and potentially at a faster pace than is currently discounted. For now, this is a minority view.

More dovish members, including the majority of today’s FOMC voters and chair Jay Powell, would prefer to wait for pandemic-related distortions to subside before judging whether inflationary pressures are persistent and whether labour markets are consistent with the Fed’s goal of eliminating “shortfalls”

These conversations are happening in the context of lessons learnt from the last few decades. Keeping monetary policy too tight and not being able to ease enough is seen as a bigger risk than allowing inflation to rise and needing to tighten and catch up later. With the Fed’s newfound commitment to allow inflation to overshoot 2 per cent, the more dovish perspectives are carrying the day for now.

#### Inflation causes the Fed to raise rates – destroys the economic recovery – but they’re not planning to do so now

Politi 8/3 – James Politi, World Trade Editor for the Financial Times, “America’s recovery: is Joe Biden’s presidency vulnerable to inflation?” 8/3/21, https://www.ft.com/content/ef204bd1-d9e1-49c0-867f-11e2ce70d1fa

“Large and unexpected surprise inflation . . . can reduce real wages — especially if employers do not build cost-of-living adjustments into their wage increases,” warned Jason Furman and Wilson Powell of Harvard University in a paper released on Friday by the Peterson Institute for International Economics. “Price growth has been more rapid than compensation growth, and so real compensation has been falling.”

Democrats also fret that in this environment the Fed, which has the most powerful weapon to curb inflation — interest rates — might be tempted to tighten policy more quickly than expected in order to stave off higher prices, thereby choking off the recovery before it reaches full employment. Although the Fed is debating a reduction to its $120bn per month asset purchase programme, it has indicated that any increase in interest rates is far in the future, but there is still nervousness among Democrats that the central bank’s patience in keeping policy loose may run thin.

“My concern is that a misplaced diagnosis playing out with inflation could cause the Federal Reserve to prematurely raise rates and constrain wage and employment gains that have been beneficial to millions of Americans,” Alexandria Ocasio-Cortez, the progressive New York congresswoman, told Jay Powell, the Fed chair, at a hearing of the House financial services committee last month.

#### The Fed will slowly taper asset purchases this year, but they won’t raise interest rates because inflation is still limited

Henney 8/27 – Megan Henney, economic policy reporter for FOX Business and Fox News, “Fed's Powell signals tapering could begin this year, but suggests rate hike a ways off,” 8/27/21, https://www.foxbusiness.com/economy/federal-reserve-jerome-powell-jackson-hole-speech

Federal Reserve Chairman Jerome Powell signaled Friday the U.S. central bank expects to begin unwinding some of its ultra-easy monetary policies by the end of the year, as the U.S. economy continues to rebound from the COVID-19 pandemic.

In his much-anticipated speech at the central bank's virtual Jackson Hole symposium, Powell said the economy has reached a point where the Fed can start reducing its $120 billion monthly purchases of Treasury and mortgage-backed securities.

"At the FOMC's recent July meeting, I was of the view, as were most participants, that if the economy evolved broadly as anticipated, it could be appropriate to start reducing the pace of asset purchases this year," Powell said. "The intervening month has brought more progress in the form of a strong employment report for July, but also the further spread of the delta variant. We will be carefully assessing incoming data and the evolving risk."

For months, the U.S. central bank has been grappling with how to manage the exit from the ultra-easy monetary policies put in place in March 2020 to keep the economy afloat without triggering a market sell-off.

At the Federal Open Market Committee's July meeting, "most" officials agreed it would probably be appropriate to begin reducing asset purchases before the end of the year, according to minutes from the gathering. While a handful indicated that it's best to wait until 2022, other officials have suggested they want to make a move as soon as next month.

Despite the improved economic outlook, Powell said there's "much ground to cover" before the Fed is prepared to raise interest rates from the ultra-low level they've been held since the pandemic shut down a broad swath of the economy last year.

"The timing and pace of the coming reduction in asset purchases will not be intended to carry a direct signal regarding the timing of interest rate liftoff, for which we have articulated a different and substantially more stringent test," he said.

Although inflation is solidly around the Fed's 2% target range, Powell said the labor market needs to see further progress before the central bank considers hiking the interbank lending rate, which has sat at a range of 0% to 0.25% since March 2020.

Powell also devoted part of his speech to tamping down inflation fears, after the Fed's preferred measure of price rose 4.2% in July compared with a year earlier. The increase – which represented a 0.4% jump from June – marked the fastest pace since 1991.

The Fed head acknowledged that pressure on consumer prices is higher than the central bank prefers, but maintained the spike is due to pandemic-related factors that have weighed on the global supply chain.

"Inflation at these levels is, of course, a cause for concern," he said. "But that concern is tempered by a number of factors that suggest that these elevated readings are likely to prove temporary."