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#### Anticompetitive business practices are behaviors

Charlotte Wezi Mesikano-Malonda 16. Executive director. "Global Competition Review". No Publication. 7-22-2016. https://globalcompetitionreview.com/review/the-european-middle-eastern-and-african-antitrust-review/the-european-middle-eastern-and-african-antitrust-review-2017/article/malawi-competition-and-fair-trading-commission

Anticompetitive business practices are generally defined as the category of agreements, decisions and concerted practices that result in the prevention, restriction or distortion of either actual or potential competition. Abuse of dominance and market power is an example of anticompetitive business practices and hence falls within the purview of the CFTA.3 Anticompetitive business practices are either illegal per se or illegal by rule of reason. A conduct is illegal per se if, regardless of its objective and effect or any justifications of the conduct, there is a presumption of harm on competition.

#### Prohibitions are any proscribed conduct in antitrust.

Margaret V. Sachs 01. Robert Cotten Alston Professor of Law, University of Georgia School of Law. A.B. 1973, Harvard University; J.D. 1977, Harvard Law School. “Harmonizing Civil and Criminal Enforcement of Federal Regulatory Statutes: The Case of The Securities Exchange Act Of 1934”. https://www.illinoislawreview.org/wp-content/uploads/2001/06/Sachs.pdf

Many federal regulatory statutes are hybrid statutes—their prohibitions1 are enforceable in criminal actions as well as in private or govern- mental civil actions (or both).2 Leading examples include the Sherman Antitrust Act,3 the Clean Water Act,4 the Truth in Lending Act,5 the False Claims Act,6 the Racketeer Influenced Corrupt Organizations Act,7 the Federal Food, Drug and Cosmetic Act,8 and the Securities Exchange Act of 1934.9 Hybrid statutes present an important question that has divided courts but received virtually no attention from legal scholars—can the same prohibition mean different things in different enforcement contexts?10

---FOOTNOTE 1 STARTS---

1. For purposes of this article, the term “prohibition” refers to the part of the statute that identifies proscribed conduct. The plaintiff must prove that the defendant engaged in this conduct in order to establish a prima facie case.

---FOOTNOTE 1 ENDS---

#### Lowering the burden for evaluation doesn’t change if conduct is prohibited---coding proves.

Anu Bradford and Adam S. Chilton 18. Anu Bradford Henry L. Moses Professor of Law and International Organization, Columbia Law School. Adam S. Chilton. Assistant Professor of Law and Walter Mander Research Scholar.

Before discussing our data and the coding of the CLI, it is important to recognize that there are limitations to any index that attempts to quantify competition regulation. This is because it is difficult to produce a single metric that tells the comprehensive story of country’s competition regime. For example, if a specific type of conduct is prohibited, is it prohibited always (per se) or sometimes (rule of reason)? This seems like a relevant distinction to code, but it turns out to be difficult to capture systematically in many jurisdictions. For instance, Article 101(3) of the Treaty on the Functioning of the European Union (TFEU) seems to regulate anticompetitive agreements under the rule of reason standard in the European Union, but, in practice, cartels are per se prohibited. This highlights the challenge of coding even just the law in books, let alone accounting for all the nuances of a country’s competition policies.20

#### Vote neg on predictable limits and ground---infinite adjudication standards without differences in outcome moot topic disads and create unpredictable process advantages.

### DPA CP---1NC

#### The United States should only allow the continuation of plaintiffs’ heightened burden of proof for antitrust cases in platform markets under antitrust law when the president determines it is necessary to prevent condition which may pose a direct threat to the national defense or its preparedness programs.

#### It competes---the counterplan is a regulation not prohibition.

James Broaddus 50. February 6; Judge on the Kansas City Court of Appeals, Missouri; Westlaw, “City of Meadville v. Caselman,” 240 Mo. App. 1220. https://casetext.com/case/city-of-meadville-v-caselman-1

"Under power conferred on cities of the fourth class `to regulate and license' dramshops, there is no authority to wholly prohibit or suppress. Where there is mere power in a municipality to regulate in a state, with a general policy of conducting licensed saloons, authority to prohibit is excluded. The difference between regulation and prohibition is clear and well marked. The former contemplates the continuance of the subject-matter in existence or in activity. The latter implies its entire destruction or cessation.'" (Citing text writers and cases.)

#### The counterplan maintains DPA authority---the plan eliminates it.

Michael H. Cecire and Heidi M. Peters 20. Michael H. Cecire, Analyst in Intergovernmental Relations and Economic Development Policy. Heidi M. Peters, Analyst in U.S. Defense Acquisition Policy. “The Defense Production Act of 1950: History, Authorities, and Considerations for Congress” Updated March 2, 2020. https://www.everycrsreport.com/reports/R43767.html

Authorities Under Title VII of the DPA

Title VII of the DPA contains various provisions that clarify how DPA authorities should and can be used, as well as additional presidential authorities. Some significant provisions of Title VII are summarized below.

Special Preference for Small Businesses

Two provisions in the DPA direct the President to accord special preference to small businesses when issuing contracts under DPA authorities. Section 701 reiterates89 and expands upon a requirement in Section 108 of Title I directing the President to "accord a strong preference for small business concerns which are subcontractors or suppliers, and, to the maximum extent practicable, to such small business concerns located in areas of high unemployment or areas that have demonstrated a continuing pattern of economic decline, as identified by the Secretary of Labor."90

Definitions of Key Terms in the DPA

The DPA statute historically has included a section of definitions.91 Though national defense is perhaps the most important term, there are additional definitions provided both in current law and in E.O. 13603.92 Over time, the list of definitions provided in both the law and implementing executive orders has been added to and edited, most recently in 2009, when Congress added a definition for homeland security93 to place it within the context of national defense.94

Industrial Base Assessments

To appropriately use numerous authorities of the DPA, especially Title III authorities, the President may require a detailed understanding of current domestic industrial capabilities and therefore need to obtain extensive information from private industries. Under Section 705 of the DPA, the President may "by regulation, subpoena, or otherwise obtain such information from ... any person as may be necessary or appropriate, in his discretion, to the enforcement or the administration of this Act [the DPA]."95 This authority is delegated to the Secretary of Commerce in E.O. 13603.96 Though this authority has many potential implications and uses, it is most commonly associated with what the DOC's Bureau of Industry and Security calls "industrial base assessments."97 These assessments are often conducted in coordination with other federal agencies and the private sector to "monitor trends, benchmark industry performance, and raise awareness of diminishing manufacturing capabilities."98 The statute requires the President to issue regulations to insure that the authority is used only after "the scope and purpose of the investigation, inspection, or inquiry to be made have been defined by competent authority, and it is assured that no adequate and authoritative data are available from any Federal or other responsible agency."99 This regulation has been issued by DOC.100

Voluntary Agreements

Normally, voluntary agreements or plans of action between competing private industry interests could be subject to legal sanction under anti-trust statutes or contract law. Title VII of the DPA authorizes the President to "consult with representatives of industry, business, financing, agriculture, labor, and other interests in order to provide for the making by such persons, with the approval of the President, of voluntary agreements and plans of action to help provide for the national defense."101 The President must determine that a "condition exists which may pose a direct threat to the national defense or its preparedness programs"102 prior to engaging in the consultation process. Following the consultation process, the President or presidential delegate may approve and implement the agreement or plan of action.103 Parties entering into such voluntary agreements are afforded a special legal defense if their actions within that agreement would otherwise violate antitrust or contract laws.104 Historically, the National Infrastructure Advisory Council noted that the voluntary agreement authority has been used to "enable companies to cooperate in weapons manufacture, solving production problems and standardizing designs, specifications and processes," among other examples.105 It could also be used, for example, to develop a plan of action with private industry for the repair and reconstruction of major critical infrastructure systems following a domestic disaster.

The authority to establish a voluntary agreement has been delegated to the head of any federal department or agency otherwise delegated authority under any other part of E.O. 13603.106 Thus, the authority could be potentially used by a large group of federal departments and agencies. Use of these voluntary agreements is tracked by the Secretary of Homeland Security,107 who is tasked under E.O. 13603 with issuing regulations that are required by law on the "standards and procedures by which voluntary agreements and plans of action may be developed and carried out."108 The Federal Emergency Management Agency (FEMA), which at the time was an independent agency and tasked with these responsibilities under the DPA, issued regulations in 1981 to fulfill this requirement.109 FEMA is now a part of DHS, and those regulations remain in effect.

The Maritime Administration (MARAD) of the U.S. Department of Transportation manages the only currently established voluntary agreements in the federal government, the Voluntary Intermodal Sealift Agreement (commonly referred to as "VISA") and the Voluntary Tanker Agreement. These programs are maintained in partnership with the U.S. Transportation Command of DOD, and have been established to ensure that the maritime industry can respond to the rapid mobilization, deployment, and transportation requirements of DOD. Voluntary participants from the maritime industry are solicited to join the agreements annually.110

Nucleus Executive Reserve

Title VII of the DPA authorizes the President to establish a volunteer body of industry executives, the "Nucleus Executive Reserve," or more frequently called the National Defense Executive Reserve (NDER).111 The NDER would be a pool of individuals with recognized expertise from various segments of the private sector and from government (except full-time federal employees). These individuals would be brought together for training in executive positions within the federal government in the event of an emergency that requires their employment. The historic concept of the NDER has been used as a means of improving the war mobilization and productivity of industries.112

The head of any governmental department or agency may establish a unit of the NDER and train its members.113 No NDER unit is currently active, though the statute and E.O. 13603 still provide for this possibility. Units may be activated only when the Secretary of Homeland Security declares in writing that "an emergency affecting the national defense exists and that the activation of the unit is necessary to carry out the emergency program functions of the agency."114

Authorization of Appropriations, as amended by P.L. 113-72

Appropriations for the purpose of the DPA are authorized by Section 711 of Title VII.115 Prior to the P.L. 113-172, "such sums as necessary" were authorized to be appropriated. This has been replaced by a specific authorization for an appropriation of $133 million per fiscal year and each fiscal year thereafter, starting in FY2015, to carry out the provisions and purposes of the Defense Production Act.116

Table 1 shows that the annual average appropriation to the DPA Fund between FY2010 and FY2019 was $109.1 million,117 with a high of $223.5 million in FY2013 and a low of $34.3 million in FY2011. Monies in the DPA Fund are available until expended, so annual appropriations may carry over from year to year if not expended. Recently, the only regular annual appropriation for the purposes of the DPA has been made in the DOD appropriations bill, though appropriations could be made in other bills directly to the DPA Fund (or transferred from other appropriations).

Committee on Foreign Investment in the United States118

The Committee on Foreign Investment in the United States (CFIUS) is an interagency committee that serves the President in overseeing the national security implications of foreign investment in the economy. It reviews foreign investment transactions to determine if (1) they threaten to impair U.S. national security; (2) the foreign investor is controlled by a foreign government; or (3) the transaction could affect homeland security or would result in control of any critical infrastructure that could impair the national security. The President has the authority to block proposed or pending foreign investment transactions that threaten to impair the national security.

CFIUS initially was created and operated through a series of Executive Orders.119 In 1988, Congress passed the "Exon-Florio" amendment to the DPA, granting the President authority to review certain corporate mergers, acquisitions, and takeovers, and to investigate the potential impact on national security of such actions.120 This amendment codified the CFIUS review process due in large part to concerns over acquisitions of U.S. defense-related firms by Japanese investors. In 2007, amid growing concerns over the proposed foreign purchase of commercial operations of six U.S. ports, Congress passed the Foreign Investment and National Security Act of 2007 (P.L. 110-49) to create CFIUS in statute.

On August 13, 2018, President Trump signed into law new rules governing national security reviews of foreign investment, known as the Foreign Investment Risk Review Modernization Act (FIRRMA, Title XVII, P.L. 115-235).121 FIRRMA amends several aspects of the CFIUS review process under Section 721 of the DPA.122 Notably, it expands the scope of transactions that fall under CFIUS' jurisdiction. It maintains core components of the current CFIUS process for evaluating proposed or pending investments in U.S. firms, but increases the allowable time for reviews and investigations. Upon receiving written notification of a proposed acquisition, merger, or takeover of a U.S. firm by a foreign investor, the CFIUS process can proceed potentially through three steps: (1) a 45-day national security review; (2) a 45-day maximum national security investigation (with an option for a 15-day extension for "extraordinary circumstances"); and (3) a 15-day maximum Presidential determination. The President can exercise his authority to suspend or prohibit a foreign investment, subject to a CFIUS review, if he finds that (1) "credible evidence" exists that the foreign investor might take action that threatens to impair the national security; and (2) no other laws provide adequate and appropriate authority for the President to protect national security. FIRRMA shifts the filing requirement for foreign investors from voluntary to mandatory in certain cases, and provides a two-track method for reviewing certain investment transactions. Other changes mandated by FIRRMA would provide more resources for CFIUS, add new reporting requirements, and reform export controls.

Termination of the Act

Title VII of the DPA also includes a "sunset" clause for the majority of the DPA authorities. All DPA authorities in Titles I, III, and VII have a termination date, with the exception of four sections.123 As explained in Section 717 of the DPA, the sections that are exempt from termination are

* 50 U.S.C. §4514, Section 104 of the DPA that prohibits both the imposition of wage or price controls without prior congressional authorization and the mandatory compliance of any private person to assist in the production of chemical or biological warfare capabilities;
* 50 U.S.C. §4557, Section 707 of the DPA that grants persons limited immunity from liability for complying with DPA-authorized regulations;
* 50 U.S.C. §4558, Section 708 of the DPA that provides for the establishment of voluntary agreements; and
* 50 U.S.C. §4565, Section 721 of the DPA, the so-called Exon-Florio Amendment, that gives the President and CFIUS review authority over certain corporate acquisition activities.

P.L. 115-232 extended the termination date of Section 717 from September 30, 2019, to September 30, 2025. In addition, Section 717(c) provides that any termination of sections of the DPA "shall not affect the disbursement of funds under, or the carrying out of, any contract, guarantee, commitment or other obligation entered into pursuant to this Act" prior to its termination. This means, for instance, that prioritized contracts or Section 303 projects created with DPA authorities prior to September 30, 2025, would still be executed until completion even if the DPA is not reauthorized. Similarly, the statute specifies that the authority to investigate, subpoena, and otherwise collect information necessary to administer the provisions of the act, as provided by Section 705 of the DPA, will not expire until two years after the termination of the DPA.124 For a chronology of all laws reauthorizing the DPA since inception, see Table A-4.

Defense Production Act Committee

The Defense Production Act Committee (DPAC) is an interagency body originally established by the 2009 reauthorization of the DPA.125 Originally, the DPAC was created to advise the President on the effective use of the full scope of authorities of the DPA. Now, the law requires DPAC to be centrally focused on the priorities and allocations authorities of Title I of the DPA.

The statute assigns membership in the DPAC to the head of each federal agency delegated DPA authorities, as well as the Chairperson of the Council of Economic Advisors. A full list of the members of the DPAC is included in E.O. 13603.126 As stipulated in law, the Chairperson of the DPAC is to be the "head of the agency to which the President has delegated primary responsibility for government-wide coordination of the authorities in this Act."127 As currently established in E.O. 13603 delegations, the Secretary of Homeland Security is the chair-designate, but the language of the law could allow the President to appoint another Secretary with revision to the E.O.128 The Chairperson of the DPAC is also required to appoint one full-time employee of the federal government to coordinate all the activities of the DPAC. Congress has exempted the DPAC from the requirements of the Federal Advisory Committee Act.129

The DPAC has annual reporting requirements relating to the Title I priority and allocation authority, and is also required to include updated copies of Title I-related rules in its report. The annual report also contains, among other items, a "description of the contingency planning ... for events that might require the use of the priorities and allocations authorities" and "recommendations for legislative actions, as appropriate, to support the effective use" of the Title I authorities.130 The DPAC report is provided to the Senate Committee on Banking, Housing, and Urban Affairs and the House Committee on Financial Services.

Impact of Offsets Report

Offsets are industrial compensation practices that foreign governments or companies require of U.S. firms as a condition of purchase in either government-to-government or commercial sales of defense articles and/or defense services as defined by the Arms Export Control Act (22 U.S.C. §2751, et seq.) and the International Traffic in Arms Regulations (22 C.F.R. §§120-130). In the defense trade, such industrial compensation can include mandatory co-production, licensed production, subcontractor production, technology transfer, and foreign investment.

The Secretary of Commerce is required by law to prepare and to transmit to the appropriate congressional committees an annual report on the impact of offsets on defense preparedness, industrial competitiveness, employment, and trade. Specifically, the report discusses "offsets" in the government or commercial sales of defense materials.131

Considerations for Congress

Enhance Oversight

Expand Reporting or Notification Requirements

Congress may consider whether to add more extensive notification and reporting requirements on the use of all or specific authorities in the DPA. These reporting or notification requirements could be added to the existing law, or could be included in conference or committee reports accompanying germane legislation, such as appropriations bills or the National Defense Authorization Act. Additional reporting or notification requirements could involve formal notification of Congress prior to or after the use of certain authorities under specific circumstances. For example, Congress may consider whether to require the President to notify Congress (or the oversight committees) when the priorities and allocations authority is used on a contract valued above a threshold dollar amount.132 Congress might also consider expanding the existing reporting requirements of the DPAC, to include semi-annual updates on the recent use of authorities or explanations about controversial determinations made by the President. Existing requirements could also be expanded from notifying/reporting to the committees of jurisdiction to the Congress as a whole, or to include other interested committees, such as the House and Senate Armed Services Committees.

Enforce and Revise Rulemaking Requirements

Congress may consider reviewing the agencies' compliance with existing rulemaking requirements. A rulemaking requirement exists for the voluntary agreement authority in Title VII that has been completed by DHS, but it has not been updated since 1981 and may be in need of an update given changes to the authority and government reorganizations since that date.133 One of the agencies responsible for issuing a rulemaking on the use of Title I authorities has yet to do so. Congress may also consider potentially expanding regulatory requirements for other authorities included in the DPA. For example, Congress may consider whether the President should promulgate rules establishing standards and procedures for the use of all or certain Title III authorities. In addition to formalizing the executive branch's policies and procedures for using DPA authorities, these regulations could also serve an important function by offering an opportunity for private citizens and industry to comment on and understand the impact of DPA authorities on their personal interests.

Broaden Committee Oversight Jurisdiction

Since its enactment, the House Committee on Financial Services, the Senate Committee on Banking, Housing, and Urban Affairs, and their predecessors have exercised legislative oversight of the Defense Production Act. The statutory authorities granted in the various titles have been vested in the President, who has delegated some of these authorities to various agency officials through E.O. 13603. As an example of the scope of delegations, the membership of the Defense Production Act Committee (DPAC), created in 2009 and amended in 2014, includes the Secretaries of Agriculture, Commerce, Defense, Energy, Labor, Health and Human Services, Homeland Security, the Interior, Transportation, the Treasury, and State; the Attorney General; the Administrators of the National Aeronautics and Space Administration and of General Services, the Chair of the Council of Economic Advisers; and the Directors of the Central Intelligence Agency and National Intelligence.

In order to complement existing oversight, given the number of agencies that currently use or could potentially use the array of DPA authorities to support national defense missions, Congress may consider reestablishing a select committee with a purpose similar to the former Joint Committee on Defense Production.134 As an alternative to the creation of a new committee, Congress may consider formally broadening DPA oversight responsibilities to include all relevant standing committees when developing its committee oversight plan.

Should DPA oversight be broadened, Congress might consider ways to enhance inter-committee communication and coordination of its related activities. This coordination could include periodic meetings to prepare for oversight hearings or ensuring that DPA-related communications from agencies are shared appropriately. Finally, because the DPA was enacted at a time when the organization and rules of both chambers were markedly different to current practice, Congress may consider the joint referral of proposed DPA-related legislation to the appropriate oversight committees.

Amending the Defense Production Act of 1950

While the act in its current form may remain in force until September 30, 2025, the legislature could amend the DPA at any time to extend, expand, restrict, or otherwise clarify the powers it grants to the President. For example, Congress could eliminate certain authorities altogether. Likewise, Congress could expand the DPA to include new authorities to address novel threats to the national defense. For example, Congress may consider creating new authorities to address specific concerns relating to production and security of emerging technologies necessary for the national defense.

#### Key to pandemic response.

J. Mark Gidley et al. 20. J. Mark Gidley chairs the White & Case Global Antitrust/Competition practice. Martin M. Toto and Sean Sigillito. “A Novel Antitrust Defense for COVID-19 Agreements: Section 708 of the Defense Production Act” <https://www.whitecase.com/sites/default/files/2020-04/novel-antitrust-defense-covid-19-agreements-section-708-defense-production-act.pdf>

There is a dire need for the assistance of private industry in developing vaccines and treatments for the SARS-CoV-2 virus, and for the manufacture and distribution of medical and other supplies to aid in the United States’ response to the COVID-19 health emergency. The Government’s recent actions indicate a desire to allow private sector companies to work together to do so quickly.

While many of the needs arising from the ongoing emergency focus specifically on medical supplies, the President’s delegation of Section 708 authority to the DHS as well as HHS potentially opens the door to voluntary agreements within broader sectors of the US economy. Under the right circumstances, and if the business combination could garner the governmental sponsor needed for the voluntary agreement, invoking the Defense Production Act’s antitrust relief provision through the enactment of voluntary agreements could allow for a more robust response to the COVID-19 pandemic.

#### Extinction.

Dennis Pamlin & Stuart Armstrong 15. \*Executive Project Manager Global Risks, Global Challenges Foundation. \*\*James Martin Research Fellow, Future of Humanity Institute, Oxford Martin School, University of Oxford. February 2015, “Global Challenges: 12 Risks that threaten human civilization: The case for a new risk category,” Global Challenges Foundation, p.30-93. https://api.globalchallenges.org/static/wp-content/uploads/12-Risks-with-infinite-impact.pdf

A pandemic (from Greek πᾶν, pan, “all”, and δῆμος demos, “people”) is an epidemic of infectious disease that has spread through human populations across a large region; for instance several continents, or even worldwide. Here only worldwide events are included. A widespread endemic disease that is stable in terms of how many people become sick from it is not a pandemic. 260 84 Global Challenges – Twelve risks that threaten human civilisation – The case for a new category of risks 3.1 Current risks 3.1.4.1 Expected impact disaggregation 3.1.4.2 Probability Influenza subtypes266 Infectious diseases have been one of the greatest causes of mortality in history. Unlike many other global challenges pandemics have happened recently, as we can see where reasonably good data exist. Plotting historic epidemic fatalities on a log scale reveals that these tend to follow a power law with a small exponent: many plagues have been found to follow a power law with exponent 0.26.261 These kinds of power laws are heavy-tailed262 to a significant degree.263 In consequence most of the fatalities are accounted for by the top few events.264 If this law holds for future pandemics as well,265 then the majority of people who will die from epidemics will likely die from the single largest pandemic. Most epidemic fatalities follow a power law, with some extreme events – such as the Black Death and Spanish Flu – being even more deadly.267 There are other grounds for suspecting that such a highimpact epidemic will have a greater probability than usually assumed. All the features of an extremely devastating disease already exist in nature: essentially incurable (Ebola268), nearly always fatal (rabies269), extremely infectious (common cold270), and long incubation periods (HIV271). If a pathogen were to emerge that somehow combined these features (and influenza has demonstrated antigenic shift, the ability to combine features from different viruses272), its death toll would be extreme. Many relevant features of the world have changed considerably, making past comparisons problematic. The modern world has better sanitation and medical research, as well as national and supra-national institutions dedicated to combating diseases. Private insurers are also interested in modelling pandemic risks.273 Set against this is the fact that modern transport and dense human population allow infections to spread much more rapidly274, and there is the potential for urban slums to serve as breeding grounds for disease.275 Unlike events such as nuclear wars, pandemics would not damage the world’s infrastructure, and initial survivors would likely be resistant to the infection. And there would probably be survivors, if only in isolated locations. Hence the risk of a civilisation collapse would come from the ripple effect of the fatalities and the policy responses. These would include political and agricultural disruption as well as economic dislocation and damage to the world’s trade network (including the food trade). Extinction risk is only possible if the aftermath of the epidemic fragments and diminishes human society to the extent that recovery becomes impossible277 before humanity succumbs to other risks (such as climate change or further pandemics). Five important factors in estimating the probabilities and impacts of the challenge: 1. What the true probability distribution for pandemics is, especially at the tail. 2. The capacity of modern international health systems to deal with an extreme pandemic. 3. How fast medical research can proceed in an emergency. 4. How mobility of goods and people, as well as population density, will affect pandemic transmission. 5. Whether humans can develop novel and effective anti-pandemic solutions.

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#### Anti-trust is capitalist---competition inevitably replicates market collapse.

Richard Wolff 19 Professor Emeritus of Economics at University of Massachusetts, Amherst. Transcript from YouTube video: “Economic Update: Competition and Monopoly in Capitalism.” Democracy @ Work. December 9th, 2019. https://www.democracyatwork.info/eu\_competition\_monopoly\_in\_capitalism.

Today I'm going to devote the program to something many of you have asked me to present, to talk about, to analyze, and that is the question of monopoly. It has to do with the assertions we hear often these days that somehow our capitalist system, here in the United States and beyond, is being negatively affected because monopolies have replaced or displaced competition. The idea here is if only we can get competition back, recreate a competitive capitalism, why then the problems we face will go away. Today's program is a design to show you how and why that is not the case, to think about these things in a different way from this nice story that capitalism is basically fine; it's just the monopoly form we have to get rid of so we get back to the competition which we're all supposed to believe is wonderful and presents us with no problems to solve. So let's go, and let's do it in a systematic way.

First, it is of course easier, faced with a declining capitalism, a capitalism that's all around us with its extreme inequalities, with its instabilities – here we are, trying to cope with the effects of the Great Crash of 2008, even while we anticipate the next downturn coming down the road soon – an economic system that has shown (that is, capitalism) that it is not respectful of the natural environment; it is not, as the words now go, sustainable in a reasonable way. Yeah, we're surrounded by problems of capitalism. So it's comforting in that situation to get the idea from somewhere that this really isn't a problem of capitalism as a system but rather the problem brought in somehow from the outside – monopoly – a situation in which competition among many companies gives way in some way we're not quite sure about to a domination by one or a small handful of companies. And so the argument goes, we don't have to be critical of capitalism; we don't have to think about an alternative system. No, no, we just have to deal with this little detail, the monopoly problem. And if we can deal with that, well, we'll get back to a competition, to a competitive capitalism that is good.

There are three big mistakes involved in this way of thinking, which is nonetheless very widespread and very popular, more so now than in quite some years. First mistake: Capitalism has been wrestling with the problem of monopoly from day one. We have had repeated periods of monopoly. They have eventually led to movements, often of many people, to destroy or remove monopoly. We used to call that in America trust-busting, or antitrust. We even have a department within the Department of Justice in Washington devoted to antitrust activities. Yeah, we've been waging battles against monopoly over and over again, and you know why? Because we keep having monopolies over and over again. Google is a monopoly. Amazon is a monopoly. They're all around us: companies that have effectively no real competition. This is a problem that capitalism has always displayed. And that ought to lead you to wonder whether thinking about it as something we can do away with isn't maybe the best possible example of wishful thinking.

The second big mistake is to imagine that competition is some unmixed blessing. It never was, and it isn't today. A competitive market is a human institution. Like every other human institution, it has strengths, and flaws, and weaknesses. To think of competition as some magical perfection is a silly abnegation of your own rational capability to evaluate something. It's sort of advertising thinking. By that, I mean the advertiser tells you what's good about the product they've been told to advertise; they don't tell you what's bad about it. If you want to evaluate it, you don't talk to an advertiser because they only give you one side. The people who promote competition use advertising logic. We're not going to do that here. Competition is no unmixed blessing.

And finally, I'm going to show you that competition is itself the major cause of monopoly. So that even if we ever got back to a competitive capitalism, all that would mean is we're back in the process that produces monopoly – as it always has.

All right, so let's begin. I'm going to start with explaining how competition has all kinds of consequences that most of you, like me, don't like, don't want. It's a discussion, if you like, of competition's other side: you know, the part that the advertiser doesn't tell you about. The used-car salesman who wants you to buy that junk doesn't tell you about what happened last week in the car crash that that was part of, etc., etc.

All right, let's begin. One of the major reasons that American corporations shut down their operations in the United States and moved them to China, among other places, is because of – you guessed it – competition. They wanted to make more money than they had been before. They were afraid of other companies beating them in the competitive game, so they said wow, let's go to China, because there you can pay workers a lot less. There you don't have the same rules to obey. There they don't care that much about pollution as they do here. So we can save on all kinds of costs, and that will allow us to undercut our competitors. Yeah, one of the consequences of competition was the exodus of American companies to other parts of the world, and the enormous unemployment that resulted from it. Yeah, that was a result, among other things, of competition.

Here's another one: Capitalists, employers, seeking to compete with one another, often engage in what we call automation. They bring in machines that are cheaper to use than human laborers, and that gets them a step ahead of their competitors. Okay, if we replace people with machines, we throw those people out of work. That has an impact on them, their self-esteem, their relationship to their spouse, their relationship to their children, their relationship to alcohol – should I continue? What are the social costs of automation? They're huge. They've been documented over and over again. Competition provokes and produces automation.

Let me give you another example: Companies are competing, say, in the food business – you know, trying to get a customer like you or me to buy this kind of cereal rather than another. So they get their labs to go to work, and they discover we can replace wheat, which we used to put in our little flakes, with – Lord help us – some chemical that is cheaper than wheat. We're not going to worry about what that chemical does to your chemistry in your body because we can now lower the price of our cereal, because we're saving on wheat, and undercut the competitor. The human beings who eat this stuff will suffer, now and in the future, but competition left our producer of cereal no choice.

And in case you think I'm making some up, let me give you some concrete ones. The Boeing Corporation, the major producer of airplanes in this country, is in a crisis as a corporation. You know why? Because the 737 Max crashed a couple of times, killing hundreds of people. And you know why? It turns out they economized on safety measures, and training measures. And you know why they did that? Because they're in a very tight competition with European and other airplane manufacturers, and that leads them – as it usually does – to look to cut corners: that race for, quote, "efficiency." Yeah, it was competition that contributed to those deaths and to that problem. That's competition too. You can't whitewash this story; they're real. One of the ways Amazon beats its competition is it speeds up the work process. It has figured out ways to make people work much more intensely, using up their brains, their muscles, their nerves, in ways that cause real long-term physical damage to working people. That, too, is a result of the competitive effort.

And you know, it wasn't so long ago that children were part of the labor force. That's right, kids as young as five and six years of age. We were told they have little fingers, you see. They can be more productive than people who are adults with big fat fingers, you know – that doesn't work. And by the way, you should be grateful because poor kids are the ones we hire, and that gives their poor families more income than they would otherwise have. We heard those arguments. Competition, the companies said, required them to use the more productive, and the lower-wage, children rather than adults. So child labor was also a result of competition. It was so ugly and so troubling to so many people that finally there were movements in the United States and many other countries simply to outlaw child labor. So it became a crime for any employer to use a worker who was under 16 or 18 years of age. That was a way in which people said we are not going to allow competition among capitalists to destroy our children. They were recognizing that competition has an awful effect in what it does to children.

Well, it has many awful effects. So let's be clear: In the history of capitalism, the monopoly problem (which we're going to get to in the second half of today's program) is no worse, it's just different, from the competition problems. Capitalism goes through phases of competition and monopoly, going from one to the other, as I will explain. But we shouldn't bemoan the one in favor of the other, any more than vice-versa. These are neither of them solutions; they are both phases of the problem. And the problem is capitalism, which does its number on us both in the period when it's competitive and in the period when it's monopoly. People who want us to engage one more time in an anti-monopoly crusade are doing something that in the end evades the problem, which is the system – capitalism – not this or that form of that system, such as competition and monopoly.

We've come to the end of the first half of today's Economic Update. This gives me an opportunity to remind you, please, to sign up if you haven't already, to subscribe to our YouTube channel. It's a way easily for you to support us, doesn't cost any money, and it is a big help to us in terms of our reputation and what we can accomplish. Likewise, please make use of our websites. They are there for your communication with us. They are there for you to be able to, with a click of a mouse, to follow us on Facebook, Twitter, and Instagram. And finally, a special thanks goes, as always, to our Patreon community for their ongoing enthusiastic support. It means the world to us. My final, very final for this first half, is about a new book that we have just produced and released. It's a follow-up to an earlier volume I have spoken to you about that was called Understanding Marxism. For the same reason, we have now produced a brand-new book, just out, called Understanding Socialism. It is a response, as this program is, to issues, questions, comments you have sent to us in large numbers. It's an attempt to give an overview of the different interpretations of what socialism means, of what happened in countries like Russia and China that tried to create this – the strengths, the weaknesses, the lessons to be learned, what to do, and what not to do. Please, if you're interested and want to follow up, check us out, check the book out: lulu.com is how you find both books. And I will be right back; stay with us.

Welcome back, friends, to the second half of today's Economic Update. This program, as I explained, is devoted to the analysis of competition and monopoly as two interactive, sequential phases of capitalism as a system. The first part of the program was devoted mostly to competition, so let's turn now to monopoly. What is the basic definition and criticism of monopoly? Strictly speaking, monopoly is defined simply as a situation in which the producers of a particular commodity – shoes, software programs, haircuts, it doesn't matter – have been reduced to only one. Literally one seller – a monopolist. But in general language, it includes also situations where many producers who once competed with one another have been reduced to only a handful. The strict term for only a handful is "oligopoly," but we don't have to split hairs about this. "Monopoly" will be the word we use for either one or a very small number.

For example, there were once dozens of automobile companies, but very quickly their competition reduced them to basically three for much of the post-World War II period, and you know their names: Ford, General Motors, and Chrysler. And likewise there were once many cigarette producers, there were once many television-set producers, and they became very few, whose names, therefore, we all know.

What's the criticism of a monopoly or oligopoly situation? Again, very simple: The idea is, if there's only one seller of something, that seller can jack up the price way above what he might have otherwise because he doesn't have any competitor. If he had a competitor, if he raised the price, the competitor would get all the business because we'd all go to the competitor who hadn't raised the price rather than buy it at a higher price from the monopolist. So we don't like monopolies, because they can jack up their prices and their profits because they don't have a competitor. And if it's a few, a handful, well then we talk about things like cartels: arrangements when a few get together over dinner, or out on the golf course, and tell us what the price is. If you ever wondered why the prices of different cars, different cigarettes, and so on, are so close to one another – mm-hmm – that's because there are few sellers, and somehow they worked it all out. But the basic criticism is that a monopoly is a situation in which the seller of something jacks the price up way beyond what they could otherwise get because there are no more competitors.

So let's talk about this monopoly problem and where the monopolies come from. Well, the first and most important lesson is this: Competition produces monopoly. It's not something external, imposed on competition. It has nothing to do with human greed or anything else. Are people greedy? You betcha – some more, some less – but that's really a separate matter. It's competition that produces monopoly, and let me show you how that works. In competition, we have, by definition, a whole bunch of producers. They all produce the same thing. They compete with one another, hoping we, the consumer, will buy from one rather than the other. They compete in the quality of what they produce and in the price of what they produce. And we are supposed, as consumers, to go look for the best quality at the lowest price, and to patronize that one who offers that to us better than the others that we could buy from but choose not to.

Okay, that's a fair definition. Now let's follow the logic. Company A produces – however it manages it – a better quality and/or a lower price than Company B. So we all go to Company A. Company B can't find any buyers because it's not competitive. Or to say the same thing in other words, Company A outcompetes Company B. Here's what happens: Company B collapses. Because it can't sell its goods, we're all going to Company A. So Company B sooner or later declares bankruptcy. It can't continue. It lays off its employees, it stops buying inputs, because it can't compete. Good. Now what happens in Company A? Company A says hey, there's a whole bunch of workers that have just lost their job at Company B; they're trained in producing what we produce; let's go hire some of them. And likewise, Company A says, they're not using their computers, or their trucks, or their other inputs. They're going to have to sell them on the secondhand market. We can get some important inputs we need at a lower price than we would have to pay if we bought them new. So what begins to happen is, where before there were two companies, A and B, there's now one larger A, and B has disappeared. Or to say the same thing in simple English, A – the winner in the competitive struggle – eats, absorbs into itself, what's left of Company B.

And this process is repeated over and over, until 30, or 300, companies have become one, or two, or three. That's the result of competition. That's how competition is supposed to work. That's how competition does work. It's important to understand: Monopoly is where competition leads. And as if that weren't enough, let me make sure you understand this from the business point of view: It is the great dream of every entrepreneur to become the last one standing in the competition, to win the competition, not just because it makes you feel good you outmaneuvered your competitors, but because if you're the last one standing, you're the monopolist. The reward for having outcompeted the others is that you're now in a position to jack up the profits, and the prices, way beyond what you could have done before.

So we have a system that produces monopoly, and all the incentives for every entrepreneur in competition to work as hard as possible to become the monopolist. So why is anyone surprised that monopolies keep happening, because they're the whole point and purpose of capitalist competition. If you ever were – and we never have, but if you ever were – able to get rid of all the monopolies and re-establish competition, all you would be doing is setting this same process in motion again for the umpteenth historical time. In other words, fighting against monopoly is pointless as long as you have capitalism, because it is the endless reproducer of this problem – as it always has been.

Now, how do monopolies maintain themselves? If you're the only one standing, you're a monopolist. Or you're an oligopoly, you're a few, and you get together and jack up your prices together. The question becomes look, a monopolist makes very high profits – much higher than a competitor can achieve – and isn't that an enormous incentive for other capitalists to get in on that business? Because look at the profits they're earning, because they're the only one. Apple, Amazon, Google – the profits are staggering. Everybody wants to get in. So the way a monopolist has to think is, I've got to create obstacles that block other people from coming in to get a piece of the enormous profits my monopoly allows me to get. We call that in economics "barriers to entry." Monopolists need to create barriers. Let me give you a couple of examples.

The major soft drink makers in the United States – basically Coca-Cola and Pepsi Cola – they produce a drink that has sugar and coloring in it, and lots and lots of water. Let me assure you, there is nothing difficult or complicated about producing a mixture of sugar, color, and water. It doesn't take a genius; it never did. Pepsi and Coca-Cola make a fortune off of their product, as we know, and they have for decades. They have a virtual monopoly. Now, lots of other people could produce water, sugar, and color close to, if not identical with, whatever they produce, but they can't break through. They can't really get to that status. And you know why? Because Coca-Cola and Pepsi erected a barrier to entry. And the way they did that was with advertising. Every billboard, every magazine cover, every doorway of every institution you've ever been to has a picture of smiling, happy people drinking one or the other. You've learned: that's the drink, that's the drink. Another company might make a perfect substitute, but they can't afford the enormous cost of advertising. The advertising costs more than the water, and the sugar, and the color. What you pay for when you buy Pepsi and Coke is the advertising that got you to buy it. You're paying for being hustled. But it works, because it means other companies know that they can't get in there by cheaply producing an alternative, because you have to produce the advertising that goes with it, or else you can't do it. And so their monopoly is maintained.

Here's another way to maintain a monopoly: Get the government to step in. Here the famous example is the milk producers. Some years ago, there was a crisis with milk. There was contamination; people were getting sick. So the clever milk monopolies came in and said, we're going to support the enormously expensive, special equipment to guarantee pasteurization, and so on, of milk. Why did they support it? Because your small farmer, your small dairy producer, can't afford it, so they go out of business. Only the big, rich few that are left can afford the enormous equipment. They used governmental rules to create a barrier to entry.

Here's another way: corrupt public officials. President Trump denounces Huawei corporation because it compromises our national security. It denounces European car producers because somehow their shipping cars here compromises our security. Who cares? As long as the president blocks other companies from getting into the business that might compete with an American, a barrier to entry exists. Monopolists have been very creative in coming up with ways to preserve their monopolies.

I don't want to lose the basic point. The basic point is: Capitalism oscillates, back and forth between competition and monopoly – first this industry, then that one. For a while, Ford, General Motors, and Chrysler were the monopolies – or the oligopoly, if you like – in automobiles. But eventually, Toyota, and Nissan, and Peugeot, and Fiat broke the monopoly. In that case, it was foreigners who did it. And then we had some competition, and that, then, is now shrinking. The French – the last two producers in France – have just agreed to merge. You get the picture. Industry by industry, first this one, then that one, go through one phase or another.

The important point is: The phases are not our problem. They merge into, and incentivize, each other. Each provokes movement in the other direction. The point to understand is that the problems of a capitalist system are not about this oscillation of phases. We're not going to solve the problem of monopoly by getting rid of them and re-establishing competition. We've been there; we've done that; it reproduces monopoly; and it doesn't change the basic inequality, unsustainability, instability of capitalism. We need to get beyond that stale, old debate – competition versus monopoly – and face the underlying reality: Capitalism is the problem, and getting beyond it is the solution.

#### Antitrust against Big Tech’s “anti-competitive” business practices builds legitimacy for capitalism “for the people”---it’s circumvented via offshoring, unsustainable, and ensures extinction through eco crisis. Alt is an eco-socialist digital tech new deal---the perm’s “regulated” capital is a myth reinforcing “private” property and “competition.”

Michael Kwet 20 Visiting Fellow of the Information Society Project at Yale Law School. “A Digital Tech New Deal to break up Big Tech.” Al Jazeera. 10-26-20. https://www.aljazeera.com/opinions/2020/10/26/a-digital-tech-new-deal-to-break-up-big-tech

In July, the CEOs of Google, Apple, Facebook and Amazon appeared before Congress in an “historic” antitrust hearing. The event was met with great fanfare from the press. In early October, the United States House Judiciary Committee published a 450-page report criticising the anti-competitive business practices of the four giants and recommending new measures to “restore competition” to the market.

Mainstream “tech critics” across the political spectrum of the so-called “techlash” are celebrating this antitrust agenda led by the US Congress and the intellectuals informing the hearings. They see nothing wrong with the American legal system reshaping corporations that dominate markets outside US borders. After all, they accept the notion that the US “owns” the world and see capitalism as the only system imaginable.

For them, the reformist goal to “restore” a “capitalism for the people” is seen as the proper way to fix Big Tech. The Americans are joined by European power elites, who are seeking to curb the dominance of Big Tech as part of an effort to increase market share for European companies.

Yet the solution to American Big Tech corporations dominating markets across the world cannot come from the American or European pro-capital legal systems. Rather, it has to be a collective effort by the international community, focused on bottom-first redistribution for the Global South, as part of a global transformation towards a sustainable green economy.

The new progressives and neo-Brandeisian antitrust

To understand Big Tech antitrust in the US, we need to understand its origins. The movement was spearheaded by a group of US legal scholars, sometimes called the neo-Brandeisians, named after Supreme Court Justice Louis Brandeis (1856-1941).

As a young lawyer and legal scholar, Brandeis focused on social justice issues and financial power. As corporations restricted competition through “trusts”, he became concerned with how monopoly power could undermine democracy and harm society. His work inspired “antitrust” legislation banning unfair business practices in the US.

Decades later, in the 1970s, a conservative group of legal scholars sought to restrict the scope of antitrust in the US. These neoliberals of the Chicago School, led by legal scholar Robert Bork, argued that antitrust should be narrowly concerned with economic efficiency, largely measured by lower prices for consumers. Inspired by the likes of Bork, US courts began ruling that “consumer welfare”, rather than broad concerns about democracy and power, should be the focus of antitrust.

Over the past few years, neo-Brandeisian scholars dug into legal history and argued, correctly, that the neoliberal antitrust framework does not work for Big Tech. Its business model cannot always be measured by the price that consumers pay for a firm’s product (eg Facebook, Twitter, and YouTube are “free”), and broader concerns around democracy and equality should inform antitrust. In order to fix Big Tech, they insist, we need to think broadly about antitrust and antimonopoly, much like Louis Brandeis did a century ago.

While this all sounds great, a closer look at what neo-Brandesians offer reveals two significant problems with it: one, they want the US to legislate for a problem that concerns the whole world; two, they still insist on a capitalist solution which is incompatible with notions of global social justice and environmental protection.

Big Tech is global

Neo-Brandeisian scholars intend to restructure Big Tech within a framework of US law, spearheaded by US thinkers. However, the firms they want to regulate have a global reach that harms people outside of the US as well.

In fact, the central business model of Big Tech is digital colonialism. Google, Amazon, Facebook, Apple, Microsoft (GAFAM) are worth more than $5 trillion in total and much of it is profit coming from abroad.

For example, less than half of Facebook’s revenues come from the US and Canada, while nine of its top 10 user bases are from Global South countries, totalling 957 million users. The US, by comparison, has 190 million users.

Most revenue for Apple and Google comes from outside the US as well, and almost half of Microsoft’s revenue comes from abroad. A large majority of Amazon’s total revenue comes from its US operations, but it is expanding globally, and its Amazon Web Services dominate the global cloud market.

If we zoom in on individual countries, the scale of the problem becomes even clearer. A small country may provide a tiny fraction of GAFAM’s revenue, but the giants still capture a large share of various markets in that country. For example, in South Africa, Google controls 70 percent of local online advertising, and social media – led by Facebook – another 12 percent. South Africa’s largest media groups take just 8 percent of the pie.

Some 84 percent of smartphones in South Africa use Google Android operating systems, while 15 percent – Apple; 72 percent of desktop computers have Microsoft Windows, while 17 percent – Apple. Other products and services, such as e-hailing, streaming entertainment, search, cloud and office suites are also dominated by American firms. This dynamic repeats throughout the world.

US tech reformers have little to say about the global nature of US tech transnationals, or about why laws regulated by the US government should reshape the core structure of global behemoths. Most of them also no longer discuss how the partnership between the National Security Agency and Big Tech promotes American military imperial interests outside of the US.

The best neo-Brandeisian scholars can argue is that their proposals would weaken the stranglehold of the Silicon Valley beyond US borders. But this is not enough to resolve the problem and does nothing to address the looming environmental catastrophe we are facing.

‘Kinder capitalism’ does not work

US tech reformers assume that market competition – supplemented by new privacy laws, public utility regulation, and some publicly subsidised, non-profit alternatives – is the solution to the power of monopoly. However, they do not address the problem of how private property in a capitalist marketplace creates inequality in the first place. Would “competitive markets” really benefit the Global South?

Competition means beating other people out, and poorer people and nations are naturally disadvantaged in such a competition.

After “restoring competition” to the tech economy, those who will dominate as “new market entrants” on the “open” internet will still be companies from richer countries: the US, European powers, China, etc, not low-income countries like Zimbabwe, Bolivia or Cambodia. And within low-income countries, the well-resourced classes will capture any new market opportunities that an antitrust push in the US may open.

Indeed, reformers assume we can restore “competitive capitalism” while we are staring at the abyss of permanent environmental destruction. Proponents of capitalism maintain that we can grow our way to poverty alleviation and innovate to stop climate change and environmental degradation. But estimates show that under the growth model of the past few decades, the global economy would require a 175-fold increase in global consumption and production just to bring billions of poor people up to a meagre $5 per day. And in the process, we would most definitely destroy the environment.

Degrowth researchers have demonstrated that capitalism is fatally flawed. A capitalist economy focuses on profit and growth, which increases greenhouse gas emissions overheating the planet and leads to over-extraction of material resources, which results in ecological collapses.

The richest nations are dependent on material extraction from the poorest. High-income countries have the worst material footprint, with a consumption level of about 26 tonnes per person per year, when the sustainable level is about eight tonnes per person globally. Low-income countries consume about two tonnes per person per year.

The Big Tech industry contributes to environmental destruction in several ways. E-waste now accounts for five percent of all global waste, and it is growing, in large part because gadgets are built with short lifespans. Instead of designing products that can last a long time, Big Tech has lobbied to kill “right to repair” laws, which would allow consumers to get their devices repaired or buy spare parts from third parties.

What is more, Big Tech directly contributes to inequality by extracting wealth from the poor and concentrating in the hands of a few US-based executives, shareholders and highly paid professionals. At the same time, it exploits workers and often denies them safe and dignified working conditions.

Digital capitalists also encourage consumerism through ads and monetise surveillance, which is destroying privacy, with grave consequences for civil rights and liberties.

Private ownership of the means of computation – software code, infrastructure and the internet – is required to extract money for content, force ads on audiences and spy on users. If the people own and control the digital environment, they would opt to share knowledge freely, reject ads and protect their privacy.

Solutions: Tech for Extinction Rebellion

It goes without saying that any solution for the digital economy must be part and parcel of a sustainable green economy. This, in turn, requires rapid wealth and income redistribution and degrowth. It is a monumental task.

Fortunately, there are some reasonable ways forward.

First, we can phase out copyright paywalls and patents. Such a move would enjoy the support of activists in the Global South and Global North, and would make the world’s scientific and cultural knowledge available to all people, irrespective of their ability to pay. Of course, equitable information sharing and generation also requires resources to bridge the digital divide and make use of scientific knowledge.

Second, software can be placed under strong free and open-source licences, online services can be decentralised, interoperable and owned by communities, while internet infrastructure can be fully socialised as communal property. The global Free Software Movement and activist scholars have already built a preliminary foundation and framework for moving in this direction.

Third, an eco-socialist Digital Tech New Deal has to be implemented to reorient the tech economy away from profit and towards satisfying the needs of the people. This requires socialising financial, intellectual and physical property. As first steps, we could impose heavy taxes on the rich to fund a global digital commons, produce plans to phase out private ownership of information and the means of computation, support workers and mandate economic redistribution to the global poor, and build a privacy-by-design tech ecosystem. All of this must be done within the confines of a sustainable economy.

These solutions need to be part of the global movement for wealth redistribution, reparations, and democratisation. In South Africa, we are building a People’s Tech for People’s Power movement to drive this agenda forward, through popular education and the formation of solidarity networks to launch actions against Big Tech and digital capitalism.

There already is a good historical precedent for global action against Big Tech. During South Africa’s apartheid era, people around the world initiated boycotts, divestment and sanctions (BDS) against corporations like IBM and Hewlett-Packard, which aided and abetted the apartheid state and businesses.

US corporations, in response, pushed a reformist agenda called the Sullivan Principles said to improve racial equality for workers. But anti-apartheid activists rejected the move as corporate propaganda designed to manufacture consent while US corporations continued to profit from apartheid misery.

Today, the US resembles the South African apartheid state, but on a global scale. Its high-tech military projects power across the world, its diplomats impose strong intellectual property protections at the World Trade Organization, its imperialist anti-immigrant policies control the movement of people and capital, and its tech corporations dominate nearly every industry vertical outside of mainland China, all while creating a global police state.

We do not need 21st century Sullivan Principles to save digital capitalism. We need digital socialism, reparations and democratisation of tech for a global green economy. This is a matter of survival for the whole human race.

If the Americans cannot get on board with this, the rest of the world may have to unite behind targeted BDS actions centred on Silicon Valley and its supporters in the US.

#### Capitalism drives extinction and structural violence.

Jamie Allinson et al 21. Senior Lecturer in Politics and International Relations at Edinburgh University and author of The Age of Counter-revolution. China Miéville is the author of a number of highly acclaimed and prize-winning novels including October: The History of the Russian Revolution. Richard Seymour is the author of numerous works of non-fiction, His writing appears in the New York Times, London Review of Books, Guardian, Prospect, Jacobin. Rosie Warren is an Editor at Verso and the Editor-in-Chief of Salvage. All are writing for the Salvage Collective. “The Tragedy of the Worker: Toward the Proletarocene.” Introduction. July 2021. Verso EBook. ISBN: 9781839762963 //shree

This is the question that vexed us as we set out to write The Tragedy of the Worker. From the vantage point of the present, the history of capitalist development is, as Marx expected, the history of the development of a global working class, the proletarianisation of the majority of the world’s population. But the very same process of that development has brought us to the precipice of climate disaster. Our position, to recall Trotsky’s rationalisation of War Communism in 1920, is in the highest degree tragic.

It is now clear that we will pass what scientists have long warned will be a tipping point of global warming, accelerating the already catastrophic consequences of capitalist emissions. How do we imagine emancipation on an at best partially habitable planet? Where once communists imagined seizing the means of production, taking the unprecedented capacities of capitalist infrastructures and using them to build a world of plenty, what must we imagine after the apocalypse has befallen us? What does it mean that as capitalism has become truly global, the gravediggers it has created dig not only capitalism’s grave, but also that of much organic life on earth?

Our answers to these questions remain rooted in the politics of revolutionary communism. Our stance is not based on the fantasy of a homeostatic nature that must be defended but on the critique of the capitalist metabolism – the Stoffwechsel- that must be overthrown. Earth scientists are accustomed to speak in terms of ‘cycles’ by which substances circulate in different forms: the water cycle, the rock cycle, the nitrogen cycle, the glacial-interglacial cycle, the carbon cycle, and others. One way of registering the catastrophe of climate change is to see these cycles – most of all, but not solely, the carbon cycle – as disordered, under- or over-accumulating. But this is to ignore the more fundamental circuit of which these now form epicycles, like Ptolemy’s sub-orbits of the heavenly bodies: the circuit of capital accumulation, M-C-M′.

This circuit accumulates profit and produces death. Neither is accidental. It is for this reason that the debates that capitalist ruling classes permit among themselves on ‘adaptation’ versus ‘mitigation’ take place on false premises. What is to be mitigated is the impact of climate change on accumulation, rendered through the ideology of ‘growth’ as something that benefits everyone. What we are to adapt to are the parameters of accumulation, sacrificing just enough islands, eco-systems, indigenous – and non-indigenous – cultures to maintain its imperatives for a period of time until new thresholds must be crossed, and new life sacrificed to the pagan idol of capital. Already, capitalist petro-modernity builds a certain quantum of acceptable death into its predicates: at the very least, the 8.7 million killed by fossil fuels each year according to Harvard University are considered a price worth paying for the stupendous advantages of fossil capital. And the sky can only keep going up, as deforestation, polar melt, ocean acidification, soil de-fertilisation and more intense wildfires and storms tear the web of life into patches. If the necropolitical calculus of the Covid-19 pandemic appears crass, just wait until its premises are applied to climate catastrophe.

### Regs CP---1NC

Their plan: The United States federal government should remove plaintiffs’ heightened burden of proof in platform markets.

#### The United States federal government should determine that harm to a single side of the market in platform markets are sufficient ground for a case on unfair, deceptive, or abusive acts or practices.

#### PICs out of antitrust and anticompetitive---solves the case and avoids the FTC tradeoff disad.

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The AmEx decision makes a version of this argument, stating that “[e]vidence of a price increase on one side of a two-sided transaction platform cannot, by itself, demonstrate an anticompetitive exercise of market power.”15 Many antitrust experts believe this is flawed reasoning that represents a stark departure from precedent,16 which historically defines markets for antitrust analysis narrowly by focusing on the service “directly affected by a challenged restraint.”17 These critiques have merit. But unless reversed, the AmEx decision will make it difficult to challenge the pricing practices of many two-sided platforms on antitrust grounds. This is also true for two-sided markets beyond payment networks: just as a card network’s restraint on merchants can be offset by benefits to consumers on the other side of the market, so too can restraints on Uber drivers be offset by low-cost rides.

This Essay proposes a way forward for reining in two-sided markets. Specifically, I advocate that consumer protection authority can play the role historically performed by antitrust, at least with respect to the payment industry. The Dodd-Frank Act18 provides the Consumer Financial Protection Bureau (CFPB) with the authority to prohibit unfair, deceptive, or abusive acts or practices (UDAAP) that cause injury that cannot be “reasonably avoid[ed].”19 The anti-steering clauses at the heart of the AmEx decision are unfair to consumers and thus can be restricted using the CFPB’s UDAAP authority. This is true generally for prohibitions on merchants’ ability to surcharge retail customers who use rewards cards to transact that are expensive for merchants to process.

Antitrust critics of the AmEx decision focus on the harm suffered by consumers in credit card markets. As Professor Erik Hovenkamp explains:

The Supreme Court overlooked the parties’ capacity to balance fees against rewards through bilateral contracting. Intuitively, when a buyer and seller are permitted to bargain over alternative payment platforms, their common objective is the same as that of all contracting parties: to maximize their joint-welfare and split the surplus in a way that leaves them both better off than the status quo.20

This is true, and so the antisteering rules are UDAAPs from the perspective of the credit card consumer, who is losing out on the ability to bargain for a piece of this surplus. She can’t reasonably avoid the harm of losing some of this surplus.21 But what the antitrust view misses in its focus on a well-defined market is that the choice of a payment instrument has important consequences for consumers outside of the credit card market as well. Because of antisteering rules, merchants set uniform retail prices. To process certain rewards cards, they pay more than 3 percent of total transaction value in interchange fees.22 This fee is significantly higher than the cost of processing debit cards (capped at $0.22 plus 0.05 percent of the transaction amount) or cash (no transaction fees).23 In low-margin businesses—for example, average general retail profits are 2 percent24—merchants pass large interchange costs through to consumers. Some consumers receive a kickback on their retail purchases in the form of credit card rewards. However, cash users bear high retail prices to cover the costs of other people transacting with credit cards. Cash users are disproportionately lower-income and less financially sophisticated consumers.25 This means that the payments system engenders regressive cross subsidization of the wealthy by the poor.

This cross subsidization is unfair to non-rewards-card users and cannot be avoided by them, especially given that many who transact with cash or low-interchange debit cards do not have access to credit. This means the CFPB has the authority to prohibit card networks’ antisteering provisions and restraints on merchant surcharging more broadly. This approach is not a panacea—as I discuss, many state laws restrict heterogeneous pricing. Further, even if merchants have the right to vary consumer price depending on the payment instrument used, they may choose not to do so for fear of alienating their customers. Preliminary survey evidence suggests that surcharges are unlikely to be popular in practice.

### Notice & Comment CP---1NC

#### The United States federal government should delegate antitrust rulemaking authority to a new expert agency. The agency should begin notice-and-comment rulemaking to remove plaintiffs’ heightened burden of proof for antitrust cases in platform markets.

#### Solves the case, engages notice and comment, and avoids courts disads.

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Without the informational benefits of expertise and notice-and-comment rulemaking, the Court may be a poor choice to define the broad proscriptions of the Sherman Act. Framed this way, the problem has an obvious solution: give the power to interpret the Act to an expert agency.240 This idea has academic support already, 241 and the case for it is strengthened by this Article's observation that the Court has tried to approximate administrative decision making by relying on amicus briefs. The obvious candidates for reallocation are the two existing antitrust agencies: the Department of Justice's Antitrust Division and the FTC.

A. The Agency Solution

Using agencies to give specific meaning to American antitrust's most important statute means avoiding the problems with the Court's current quasi-administrative process for rulemaking. As adjudicators, agency experts would know what kind of economic evidence is necessary for an efficient solution and would be better able to understand it when it is presented by the parties. Repeat exposure to antitrust cases would only reinforce this advantage, while also giving the administrative judges a broader perspective on what kinds of conflicts commonly arise in competition law, a perspective necessary for efficient policy making in the first instance. A Supreme Court Justice hears about one antitrust case a year, hardly the cross section of controversies necessary to make efficient economic policy writ large.

Agencies could take policy making a step further using notice-and-comment rulemaking. Unlike in adjudication, regulation by rulemaking can be initiated without the formal requirements of a case or controversy and a proper appeal to the Supreme Court. Informal letters of complaint could spark an investigation. A rule-making agency could announce its intention to regulate publicly and provide a convenient venue for, or even solicit, expert opinions on the economic impact of the proposed rule. Not only would it have the benefit of these numerous perspectives, but it would also have the obligation to respond to them in a reasoned manner. Its rule would be subject to judicial review, affording an opportunity to catch mistakes 242 or invalidate rules that do nothing but deliver rents to special interests.

Another advantage of rulemaking, an option for agencies but not for the Court, since it only operates through adjudication, is that rulemaking regulates behavior ex ante, while resolution of economic policy through cases is necessarily ex post. Antitrust courts worry obsessively about "chill"--deterring procompetitive behavior with overly broad rules for liability.2 43 In fact, the overruling of Dr. Miles in Leegin implies that the entire twentieth century was a period of inefficient business practices and stunted innovation in distribution because of an early misunderstanding of RPM. Only after a long and expensive period of litigation was Leegin redeemed for breaking the law by effecting a change in the law, and only after Leegin was issued were similar firms, perhaps walking the Colgate line better than Leegin, redeemed for wanting some control over their product's ultimate retail price.24 4 The problem of ex post rulemaking is made worse by the treble damages afforded successful plaintiffs suing under the Sherman Act.2 4 5 To create a new form of liability, the Court has to punish a firm threefold for complying with standing antitrust norms. Thus Supreme Court lawmaking in antitrust is a kind of one-way ratchet.246

The result of the current ex post scheme is that "antitrust law leaves considerable gaps between what is permissible and what is optimal." 2 47 With judges making the rules one case at a time, this gap is justifiable. As discussed above, when judges are not economically sophisticated enough to know where "optimal" lies, 24 8 laissez-faire is a very inexpensive regulatory regime for courts to follow, and raising the level of regulation would effect a kind of taking of property from firms operating under the status quo. So if the Court is making antitrust policy, laissez-faire may be the only sensible approach. But that is not to say that it is the most sensible approach. An agency could provide firms with the necessary clarity-ex ante-that they need when conducting business in a world where competitive behavior so closely resembles anticompetitive conduct. The current state of affairs is that much more is illegal on the books than antitrust lawyers think is actually likely to be struck down in a court.24 9 Lawyers thrive in such a legally uncertain world, but firm efficiency suffers.

#### Key to democracy and court acquiescence---notice and comment engages participants and creates deference.

Harry First and Spencer Weber Waller 13. Harry First, New York University School of Law. Spencer Weber Waller, Loyola University Chicago School of Law. “Antitrust’s Democracy Deficit”. Fordham Law Review, Volume 81 Issue 5 Article 13. https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=4890&context=flr

Redressing antitrust’s democracy deficit on the procedural side can be done with the tools of administrative law. Administrative law is the body of law that controls the procedures of governmental decision making.151 It allows interested persons to participate in decisions that affect their interests. Normally, it requires appropriate notice, the right to be heard, fair procedures, protection of fundamental rights, and judicial review of the resulting decision. These basic features are present in the administrative laws of most foreign legal systems and are part of a growing international consensus.152 The tradeoff is that the decisions of administrative agencies that properly follow these strictures normally are granted a degree of deference as to the interpretation of the laws they enforce.153 Frequently, but not inevitably, private parties also have the right to proceed with actions for damages against private parties who violate their regulatory obligations and even against the government itself when it acts unlawfully, either substantively or procedurally. These tools of administrative law are available to make antitrust enforcement decisions more transparent and more responsive to the interests that the antitrust laws were meant to serve, thereby promoting both better decision making and greater democratic legitimacy.

CONCLUSION

Free markets and free people cannot be assured by the efforts of technocrats. Ultimately, both come about through the workings of democratic institutions, respectful of the legislature’s goals and constrained from engaging in arbitrary action. Antitrust has moved too far from democratic institutions and toward technocratic control, in service to a laissez-faire approach to antitrust enforcement. We need to move the needle back. Doing so will strengthen the institutions of antitrust, the market economy, and the democratic branches of government themselves.

#### Democracy solves war.

Christopher Kutz 16. PhD UC Berkeley, JD Yale, Professor, Boalt Hall School of Law @ UC Berkeley, Visiting Professor at Columbia and Stanford law schools, as well as at Sciences Po University. “Introduction: War, Politics, Democracy,” in On War and Democracy, 1.

Despite Churchill’s famous quip—“Democracy is the worst form of government, except for all those other forms that have been tried from time to time”2—democracy is seen as a source of both domestic and international flourishing. Democracy, understood roughly for now as a political system with wide suffrage in which power is allocated to officials by popular election, can solve or help solve a host of problems with stunning success. It can solve the problem of revolutionary violence that condemns autocratic regimes, because mass politics can work at the ballot box rather than the streets. It can help solve the problem of famine, because the systems of free public communication and discussion that are essential to democratic politics are the backbone of the markets that have made democratic societies far richer than their competitors. It can help solve the problem of environmental despoliation, which occurs when those operating polluting factories (whether private citizens or the state) do not need to answer for harms visited upon a broad public. And democracy has been famously thought to help solve the problem of war, in the guise of the idea of the “peace amongst democratic nations”—an idea emerging with Immanuel Kant in the Age of Enlightenment and given new energy with the wave of democratization at the end of the twentieth century.

### Japan DA---1NC

#### New antitrust is applied globally---offends allies---regs counterplan avoids it.

Herbert Hovenkamp 03. Ben V. & Dorothy Willie Professor of Law and History, University of Iowa. “Antitrust as Extraterritorial Regulatory Policy,” 48 Antitrust BULL. 629 (2003).

Today few of us are sympathetic with the view that the common law exists apart from and somehow transcends the jurisdiction of the courts that make it. Nevertheless, there is a powerful sense in which the rules of antitrust law are regarded as "natural," while explicitly regulatory rules are considered to be purely local, territorial, or political. This view is given considerable support by a powerful neoclassical economic model that views markets as natural, in the sense that they exist separate and apart from state policy making. 32

Within this model antitrust law is a kind of background umpire that does not make first instance choices about price, quantity, quality, new entry and the like, but that does limit the anticompetitive exercise of market power. Antitrust operates as a kind of "macro" version of contract law. The common law of contracts is designed to facilitate and protect the utility of individual private bargains; antitrust is designed to do much the same thing, but for markets as a whole. Under this conception a well defined set of antitrust principles always operates in the background, so to speak, permitting private bargaining to proceed without interference in the great majority of instances, but intervening when competitive processes go awry. Further, widespread agreement exists both inside and outside the United States on a set of core principles pertaining to such things as naked price fixing, market division agreements, and the like. Within this core, problems of extraterritoriality have largely been limited to the technical ones of devising appropriate jurisdictional rules and remedies.

In contrast, the power to regulate is different. Under the traditional view of regulation the power to set price, quantity, quality, or the right to enter a market emanates in the first instance from the government. Further, although there is widespread economic agreement on fundamental principles, regulatory design is much more specific to the sovereign-more likely to reflect the demographics, industrial or employment base, or politics of the particular state imposing the regulation.

For example, nearly all of the 50 states of the United States have an antitrust law. With relatively few exceptions, however, the substantive coverage of these antitrust laws is the same, and mimics federal law. Many states have court decisions or even legislative enactments stating that federal antitrust law should govern the interpretation of that particular state's antitrust law as well. 33 The result is that the coverage of state antitrust law is remarkably similar from one state to the next. But one can hardly say the same thing about each state's regulation of land use, power generation and distribution, taxicabs, liquor pricing, and the like. Whatever homogeneity regulatory theory might produce, the politics of regulation virtually guarantees jurisdiction-specific outcomes.

But homogeneity in antitrust policy also begins to break down when antitrust law moves beyond its fundamental neoclassical concern with cartels or well-defined exclusionary practices, and into areas where its role is more controversial or marginal. This is often the case when the antitrust laws are applied in recently deregulated markets. For example, a common antitrust problem that arises in deregulated industries falls under the general rubric of unilateral refusals to deal. In order to encourage competition, newly deregulated firms may be forced to share their facilities, information, intellectual property, or other assets with new rivals. Devising reasonable "nonregulatory" rules governing refusals to deal in such markets has always extended the antitrust laws to the margin of their competence.

Increasingly, American courts seem willing to apply antitrust law to markets regulated by foreign nations under circumstances where regulatory laws themselves would never reach. For example, neither Congress nor a state legislature would very likely attempt to regulate the customer service or information provision practices of a foreign national's telephone company. But both federal and state courts have done precisely that under the guise of antitrust enforcement.3 4

Antitrust policy makes this thinkable as a result of the confluence of two sets of doctrines. First is the expansive reach of our antitrust laws to practices that have a substantial effect on United States commerce. Second is the very narrow conception of comity that applies in antitrust cases.

As a general matter, comity concerns in the international conflict of laws requires the court to consider the competing interests of domestic and foreign sovereigns. 35 After a half century of debate over the meaning of comity in international Sherman Act adjudication, the Supreme Court gave the doctrine an extraordinarily narrow meaning in the Hartford Fire case.36 That case involved an alleged insurance boycott in which Lloyd's of London participated as reinsurer. Lloyd's conduct-agreeing with some United States insurers not to write reinsurance policies for other United States insurers who wanted to write policies with broader coverage-was neither forbidden nor compelled by British law. To the defendant's claim of comity the Supreme Court replied that the provisions of the Sherman Act governing jurisdiction over transactions in foreign commerce were mandatory. As a result, a federal court could not simply decline jurisdiction on the basis of some general balancing of interests. 37 Rather, "comity" permits a federal court to decline jurisdiction only when there was a "conflict" between the law of the foreign sovereign and United States law. Further, "conflict" was defined not under choice of law principles, but more absolutely, as occurring only when the foreign law compelled the conduct at issue. 38

Perhaps significantly, the activity of the London reinsurers was very likely reachable under United States antitrust law even under ordinary interest analysis principles. British law was found by the Supreme Court to be indifferent to what the London reinsurers were doing. Further, what they were doing was agreeing not to insure against liability for particular toxic pollution risks in the United States, and risk of liability is of course measured in relation to the physical environment and legal regime in which the injury occurs. 39 As a result, the London reinsurers were selling a product especially targeted for United States markets and allegedly participating in a boycott designed to keep broader coverage insurance policies out of that market.

But Hartford Fire's definition of comity is significantly problematic under deregulation. To the extent a foreign sovereign deregulates a public utility or common carrier, that firm enjoys greater discretion to make its own decisions. As a result, considerations of comity may no longer preclude a Sherman Act suit. What makes this especially problematic is the way that the Sherman Act has been used in the United States as a kind of replacement for the regulatory agency. Under comprehensive agency regulation a filed tariff plus regulatory oversight would have governed numerous acts by regulated firms, including pricing, entry into new markets, interconnection obligations and other duties to deal.40 Government relaxation of regulatory restrictions has given firms some discretion over these things but in the process has substituted the antitrust courts as governmental supervisor. In some situations this causes little difficulty because regulation may have been misapplied to a competitively structured industry to begin with.41 In other situations, such as long-distance telecommunication, a competitive environment has developed because of changes in technology, and topto-bottom price and product regulation is no longer necessary.42

But in a third class of situations the application of the antitrust laws is much more "regulatory" and more difficult to defend. These are the cases where unilateral conduct of the kind that was historically supervised by the regulatory agency now comes under antitrust jurisdiction. For example, under the essential facility doctrine a federal court of general jurisdiction may be asked to apply antitrust law to determine the scope of a formerly regulated firm's duty to interconnect with rivals. The circuit courts have applied the doctrine frequently in the telecommunications industry,43 but also to railroads" and natural gas pipelines.4 5 Problematically, supervising interconnection requirements involves the court in highly technical questions about the scope of the duty to deal and perhaps even about the price at which the deal must be made. In these cases we have not really "deregulated" at all; rather, we have simply substituted regulation by a government agency for regulation by a court, often through the highly inefficient and uncertain process of a jury trial. To do that in a purely domestic situation is ill-advised enough, but to do it abroad by taking advantage of the expansive jurisdictional reach of the Sherman Act is completely unjustified.

IV. Extraterritorial antitrust and foreign deregulation

As expansive as the regulatory power asserted by the United States sometimes becomes, it does not generally interfere directly into foreign governments' regulation of their own highly regulated industries. But to a large extent modem antitrust has inherited the regulatory attitude expressed by the Western Union decision discussed above. For several reasons, the idea that the United States Antitrust laws are jurisdictionally exceptional can produce overreaching that is offensive to foreign prerogatives. First, the United States antitrust laws are extremely general and make no distinction between ordinary competitive firms and public utilities or common carriers; the same rules purport to apply to all business firms. Second, the jurisdictional language of the antitrust laws is both mandatory and general to the same extent-that is, the "affecting foreign commerce" language of the basic Sherman Act and the export commerce language of the Foreign Trade Antitrust Improvement Act 6 do not distinguish between regulated and ordinary competitive firms. And third, the limiting doctrines of international law-namely Act of State, foreign sovereign compulsion, foreign sovereign immunity, and comity-do not distinguish among types of firms or types of antitrust complaints. They apply equally to both price fixing, which is at the core of antitrust concern, and to the essential facility doctrine, which lies at or outside its margin.

#### Ends the Japan economic alliance---they respond with diplomatic protest to new extraterritorial antitrust.

Takaaki Kojima 02. Fellow, Weatherhead Center for International Affairs, 2001-2002. “International Conflicts over the Extraterritorial Application of Competition Law in a Borderless Economy”. https://datascience.iq.harvard.edu/files/fellows/files/kojima.pdf

We are witnessing increasingly widespread and penetrating economic globalization today. As a result of trade liberalization, import restrictions or regulations on trade and investment have decreased substantially, and trans-border business activities face less barrier. At the same time, the role of trans-border business activities, especially those by so-called multinational or global enterprises, have become increasingly important and even dominant in some sectors.

As far as the territorial scope of business activities are concerned, state borders are more or less diminishing to become almost borderless; as for legal regimes, however, sovereign states retain in principle exclusive jurisdiction over their territories and nationals under international law. Business activities are regulated by the domestic laws of sovereign states or by international agreements concluded among sovereign states. The pertinent question is how to coordinate “borderless” business activities within the existing legal regimes governed by sovereign states. In the field of trade law, the measures of each state are restricted by international agreements, in particular under the GATT/WTO regime. In the field of competition law, such an international regime is lacking and the domestic laws of each state regulate private restraints of trade in the relevant markets.

Serious jurisdictional conflicts have transpired in the last several decades between the United States and other states over the so-called extraterritorial application of U.S. antitrust laws on anticompetitive conducts abroad. This problem has also caused diplomatic frictions between the United States and other states, as it concerns state sovereignty. In this essay, the author will review the historical development of international conflicts caused by the extraterritorial application of competition law and attempt to examine the options available to circumvent or solve these conflicts. The main focus will be U.S. antitrust law and its relation with other jurisdictions, mainly the European Union and Japan, considering the grave implications to competition law and policy as well as to the world economy. 2

II. Extraterritorial Application of U.S. Antitrust Laws

Problems concerning the extraterritorial application of U.S. antitrust laws have been discussed in many publications. Of the U.S. antitrust laws, the Sherman Act applies to “commerce … with foreign nations ” (Section 1) without qualifying provisions concerning its territorial scope as “within the United States” (Section 2) or “in any section of the country” (Section 3) as specified in the Clayton Act. In the past, U.S. courts interpreting the Sherman Act of 1890 and other antitrust laws commonly followed the traditional territorial principle with regard to its jurisdictional reach. In the American Banana case (213 U.S. 347 (1909)), where all the acts complained of were committed outside the territory of the United States, including the defendant’s alleged inducements of the Costa Rican government to monopolize the banana trade, the U.S. Supreme Court dismissed the complaint on the ground, inter alia, that acts committed outside of the United States are not governed by the Sherman Act. In this case, the territorial principle in the classic sense was applied.

In later decisions such as the American Tobacco case (221 U.S. 106 (1911)) and the Sisal case (274 U.S. 268 (1927)), jurisdiction was exercised over the defendants on the ground that although the agreements in question were concluded by foreigners outside the United States, jurisdiction was limited to what was performed and intended to be performed within the territory of the United States. In these cases, the territorial principle was applied more flexibly, but it has been observed that this application cannot be argued other than as a sensible and reasonable deployment of the objective territorial theory. 3

An entirely different approach was taken in the Alcoa case (148 F.2d. 416 (1944)), in which foreign companies outside the United States had concluded the agreements. The Court of Appeal for the Second Circuit held it settled law that any State may impose liabilities, even upon persons not within its allegiance, for conduct outside its borders that has consequences within its borders. It went on further to state that the agreements, although made abroad, were unlawful if they were intended to affect imports and did affect them.

This theory of the intended effect (the effects doctrine) elaborated in the Alcoa case was criticized by many as an excess of jurisdiction under public international law. For instance, R.Y. Jennings noted that “in this new guise it apparently comprehends the exercise of jurisdiction over agreements made abroad, by foreigners with foreigners provided only that the agreement was intended to have repercussions upon American imports or exports,” 4 while F.A. Mann argued that “the type of effect within the meaning of the Alcoa ruling has nothing in common with the effect which by virtue of established principles of international jurisdiction confers that right of regulation.” 5 Neverthele ss, since the Alcoa case, U.S. courts have continued to follow the new jurisdictional formula of the effects doctrine.

In response to excessive application of U.S. antitrust laws, especially with respect to courts’ orders to produce documents such as subpoena duces tecum located abroad, a considerable number of states have issued diplomatic protests. Australia, France, the United Kingdom, the Netherlands, and New Zealand have even enacted blocking legislation. 6 The protesting states maintain that taking evidence abroad, including an order to produce documents, is an exercise of extraterritorial enforcement of jurisdiction that, under international law, requires the consent of the state where the evidence is located. The United Kingdom has been one of the strongest opponents to U.S. claims of extraterritorial jurisdiction. The U.K. government stated for instance that “HM Government considers that in the present state of international law there is no basis for the extension of one country’s antitrust jurisdiction to activities outside of that country of the foreign national.” 7 The Protection of Trading Interest law was enacted in 1980, which provides to extensively thwart the extraterritorial application of U.S. antitrust laws. The U.K. government invoked the provisions in the Laker Airways case (1983 W.L.R. 413) in 1983.

Having faced the antagonistic reactions of other states, U.S. courts began to show some restraint in assuming extraterritorial jurisdiction. In the Timberlane case (549 F.2d. 9 th Cir. (1976)), the court concluded that it had jurisdiction over alleged anticompetitive conducts in Honduras but refrained from asserting extraterritorial jurisdiction after having applied three tests: first, whether the challenged conduct had had some effect on the commerce of the United States; second, whether the conduct in question imposed a burden on U.S. commerce; and third, whether the complaint’s interests of and links to the United States were sufficiently strong vis-à-vis those of other nations to justify an assertion of extraterritorial authority. The Foreign Trade Antitrust Improvements Act enacted in 1976 applies to foreign conduct that has a direct, substantial and reasonably foreseeable effect on U.S. commerce, The U.S. enforcement agencies, the Department of Justice (DOJ) and the Federal Trade Commission (FTC), have adopted this jurisdictional rule of reason formula since the Enforcement Guidelines for International Operations of 1988. However, divergent views exist as to whether the third test of balancing the interests of other states is a rule of international law or just a comity. 8 Furthermore, not all U.S. courts have consistently applied the test of balancing interests. 9

In 1993, the Supreme Court decision in the Hartford Fire Insurance case (113 S. Ct. 2891 (1993)) reaffirmed the effects doctrine, stating that the Sherman Act applies to foreign conduct that was meant to produce and did in fact produce some substantial effect in the United States. The Court then took a restrictive view on the test of balancing interests, stating that the only substantial question is whether there is a true conflict between domestic and foreign law, and held that no such conflict seemed to exist because British law did not require defendants to act in a manner prohibited by U.S. law. 10

Japan maintains the territorial principle and rejects the effects doctrine, stating that the effects doctrine cannot be regarded as an established rule of international law. In the view of the Government of Japan, the extraterritorial application of U.S. domestic laws (including U.S. antitrust laws) based on the effects doctrine is not allowed under general international law. 11 In the Nippon Paper case, where a Japanese company was prosecuted under the Sherman Act, the Japanese government submitted a brief of amicus curiae where it stated, inter alia, that the extraterritorial application of the Sherman Act to a conduct of a Japanese company engaged in business in Japan is unlawful under international law. 12 Nonetheless, the U.S. Supreme Court affirmed the Court of Appeal decision, which assumed the extraterritorial application of the Sherman Act to a criminal case for the first time (118 S. Ct. 685 (1998)).

#### Economic alliance is key to Indo-Pacific cyber security---only coop allows them to leverage technology.

Patrick M. Cronin 4/15/21. Asia-Pacific Security Chair @ Hudson. "U.S.-Japan Alliance in Full Bloom". https://www.hudson.org/research/16835-u-s-japan-alliance-in-full-bloom

Even if seldom mentioned by name, China is the unmistakable fulcrum around which alliance policy on all issues turns. Competition with China is primarily economic and technological, but these issues often spill over into security and human rights.

Economically, a rebounding U.S. economy and Japan will collaborate to strengthen the resilience of vital supply chains. Semiconductor chips are essential for all electronics, and Suga and Biden are determined to ensure their availability. Equally, the U.S. and Japan have an opportunity to leverage their two-year-old digital trade agreement to help negotiate a multilateral accord and establish high international standards for finance and commerce in the cyber age.

As a dominant player in semiconductor manufacturing and a member of APEC and the World Trade Organization, Taiwanshould play a part in both supply chain security and digital trading standards. Indeed, bolstering Taiwan’s place in the global economy of other democracies is a far better means of thwarting Beijing’s intimidation strategy against Taiwan than just sailing near the Taiwan Strait with an aircraft carrier.

The commanding heights of the 21st century economy center on technology. So, while the United States and Japan retain a strong interest in economic cooperation with China, those relations become considerably sharper over leading-edge technologies such as 5G telecommunications, artificial intelligence and quantum computing. Biden and Suga should showcase their commitment, not against China, but in favor of technological innovation and secure connectivity.

An excellent way for the alliance to demonstrate a commitment to practical technology cooperation would be to work together to expand investment in 5G Open Radio Access Networks (ORAN). Given the concerns surrounding allowing China to dominate fifth-generation telecommunications infrastructure, the United States and Japan need to scale up a cloud-based software alternative. The good news is that Japan’s Rakuten is already a leader in demonstrating ORAN’s feasibility, and there is bipartisan support in Congress for increasing U.S. investment in modular 5G.

The alliance also requires deeper cooperation on cybersecurity. Of five issues highlighted at the recent 2 + 2 meeting between U.S. and Japan defense and foreign ministers, cyberspace was the most traditional national security issue. Japan is inching closer toward becoming a de facto sixth member of the Five Eyes intelligence-sharing arrangement, and the Biden administration should encourage that trajectory. A stronger digital alliance can, in turn, advance cyber resilience throughout the Indo-Pacific region.

#### Extinction---Indo-Pak nuclear war.

Ahyousha Khan 20. "Research Associate" at Islamabad Based Think-tank "Strategic Vision Institute". "Artificial Intelligence without Cyber Resilience in South Asia". South Asia Journal. 7-16-2020. http://southasiajournal.net/artificial-intelligence-without-cyber-resilience-in-south-asia/

With increased dependence on information technology and rapid digitization of systems, term cybersecurity gained momentum. However, these systems not only need to be securitized but they should be resilient against the threats. Cyber resilience is the ability of the system to operate during an attack and achieve a minimum level of operationalization while responding to an attack. It also enables the system to develop a back-up system that works in case of attack. Cyber resilience is a step forward from cybersecurity because it not only ensures the security of the system, but also identifies the threats to it and then proposes the system that could work amidst such attacks. Most military systems are resilient against kinetic attacks because resilience and survivability go hand in hand. But, with modernizations in the military, it is necessary that the state’s cyber networks which are working on artificial intelligence must be resilient against kinetic and non-kinetic attack.

Today states are in a race to use the AI in their military systems to achieve maximum military gains and denying their adversary the same. The situation is not so different in South Asia where two nuclear rivals of the region are paving the way towards the use of artificial intelligence for military purposes. India has developed the Center for Artificial Intelligence and Robotics (CAIR) in DRDO, with the aim to develop AI within the military systems to improve geographical information system technology, decision support systems, and object detection and mapping. Moreover, companies like Bharat Electronics Limited (BEL) are already in the process of developing and incorporating AI into military equipment. This includes an AI-enabled patrol robot developed by BEL built in the hope to be utilized by the Indian military. Moreover, in 2019 India’s Gen. Bipin Rawat said adversary in the north is spending a huge amount on AI and cyber warfare, so we cannot be left behind in this race. It is mostly projected by the Indian policymakers and many international scholars that India is facing adversaries at two fronts (China-Pakistan), to justify India’s military expenditure and modernization. However, recently, events like Galwan Valley clash evidently exposed that India’s military capabilities are mostly against Pakistan. Moreover, South Asia’s security dynamics are heavily characterized by the action-reaction chain. To avoid the security dilemma vis-à-vis India, Pakistan would also invest in AI. At the moment Pakistan has also started working towards achieving expertise in AI. In 2019 President of Pakistan launched PIAIC with a focus on the development of skills in AI to strengthen economy and defence systems. Moreover, there are centers like the National Center of Artificial Intelligence and the Department of Robotics and Intelligent Machine Learning in NUST, which are working to improve AI-based knowledge in Pakistan. Besides that Pakistan recently launched a program named “Digital Pakistan” to increase access and connectivity, digital infrastructure, e-government, digital killing, and training and introduce innovation and entrepreneurship.

There are many studies done on the implications of AI on nuclear deterrence and strategic stability in South Asia. These studies highlight that due to prevalent asymmetry in the conventional military build-up, the introduction of AI into military technology would worsen the already fragile deterrence stability of the region. This assumption is based on the argument that due to AI in reconnaissance systems, high-level intelligence collection would affect the survivability of nuclear weapons, which is based on diversification and concealment. However, AI would also enable both states to have more response options in a short time with the help of decision-making tools in case of a crisis, especially in aerial battles.

Moreover, both states are moving towards the massive digitalization of their military systems and society without building cyber-resilient systems. Resilience can be built against vulnerabilities like human factors, massive speed of the systems, protection, and storage of data and advanced persistent threats (ATPs). Artificial intelligence-based systems must be incorporated in societies and militaries along with mechanisms to strengthen the cybersecurity systems. A front runner in AI like the US has also expressed concerns over the need for modern equipment to operate on “internet-like networks” and subsequently increased vulnerabilities due to their applicability. Therefore, military modernization can happen effectively through cyber resiliency in military systems, network processes, and cyber architecture. A cyber-resilient system would enable the state to develop a system that would remain functional during a phishing attack. Steps like cyber deception, agility, and clone defense could increase resilience in the existing systems. This is important to understand in already lacking strategic stability, military systems based on artificial intelligence would be an ideal target of AI advanced persistent threats in South Asia.

Therefore, as the process of digitalization is increasing in the Pakistan-India equation, it is also becoming very important that both states should develop resilience in their cyber systems so that the technologies could give them an advantage rather than becoming a security peril for them.

## Solvency

### Courts---1NC

#### Plan nukes regulatory certainty AND creates vagueness that monopolists exploit to dodge enforcement

D. Daniel Sokol 9, Assistant Professor at the University of Florida Levin College of Law, Senior Advisor at White & Case LLP, LLM from the University of Wisconsin Law School, JD from the University of Chicago Law School, MSt in History from Oxford University, AB from Amherst College, “Limiting Anticompetitive Government Interventions That Benefit Special Interests”, George Mason Law Review, 17 Geo. Mason L. Rev. 119, Fall 2009, Lexis

Antitrust litigation produces regulatory uncertainty because different courts may rule inconsistently with the same set of facts. Anecdotal evidence indicates that when courts do not understand complex antitrust issues, they rule based on a highly procedural formalism. 140 These problems of procedural formalism in antitrust decisions create particular concerns in conduct cases or with regard to penalties for conduct, regardless of the origin of the legal system. 141 For example, in New Zealand, telecommunications regulation focused on a general antitrust solution in conjunction with courts rather than with sector regulation. 142 In a case involving interconnection rates within telecommunications between the incumbent provider and a new entrant for access to the local loop, the case took five years to decide, with significant procedural delay. 143 The lack of the New Zealand judicial system's understanding of the complex pricing issues and methodologies for interconnection underlying the case meant that the conflicting court decisions left little certainty-none of the courts came up with a specific interconnection price. This enabled the incumbent Telecom Corporation to maintain its monopoly position, and it left the victims of its anticompetitive behavior without any effective means of redress. 144 A similar problem occurred in Chile, where the Chilean Supreme Court recently overruled the Chilean Competition Tribunal in cases regarding tacit collusion based on procedural rather than substantive grounds, and where it seemed apparent that the Supreme Court did not understand the antitrust issues. 145 [\*148]

#### Courts will mis enforce.

Thomas Leary 8. Hogan & Hartson Law Firm, Former Commissioner at the Federal Trade Commission; Antitrust, “Perspectives on the Future Direction of Antitrust,” vol. 22

About thirty years ago, antitrust jurisprudence began to focus on economics rather than populist slogans. After some initial resistance, this new approach gained wide acceptance. Unfortunately, some courts have not recognized that economics is still an evolving discipline, and have failed to apply William Baxter’s admonition that a “sensible antitrust policy” should be “based on whatever it is we know at any particular moment about the economics of industrial organization.”

This failure is illustrated by three recent FTC defeats in the federal courts. Each case had special factual issues, but a common thread was the inability of the courts to absorb unfamiliar economic ideas.

The Eleventh Circuit’s 2005 Schering opinion on litigation settlements between pioneer and generic drug manufacturers was dead wrong on the burden of proof when infringement is disputed and in its application of the substantial evidence standard. But the court also was unable to appreciate the unusual economics of the industry, which enabled generics to profit more from litigation settlement than from outright victory. The usual judicial preference for settlements will simply eviscerate the Hatch-Waxman Act, designed to encourage litigation to judgment in this particular area.

The D.C. District Court in Whole Foods (2007) focused on price effects, usually a traditional and sound approach. But price was not the only significant dimension of competition between the merging grocery chains. They were the two largest providers of an innovative and differentiated shopping experience for consumers of premium “organic” foods. Whole Foods was not interested in the Wild Oats stores or its cash flow; it wanted to eliminate a chain that presented a unique competitive threat. We know that because the CEO said so, in unusually candid statements that the court simply ignored.

The D.C. Circuit Court in Rambus (2008) ignored factual findings, applied a questionable evidentiary standard, and wrongfully concluded that Rambus might have merely exploited an existing monopoly. It also failed to fully appreciate that demand side distortions (in the “market” for competing technologies) are just as economically harmful as the supply side distortions with which antitrust is usually concerned, and that proof of deception can depend on the reasonable subjective expectations of an audience.

These decisions also indicate that many courts no longer recognize the FTC’s special mission to provide purely prospective antitrust guidance. An extensive body of judicial precedent may have undercut the importance of this mission, and private litigation realities diminish prospects for purely prospective guidance. Out of frustration, the FTC may begin to rely more on its Section 5 unfairness authority. This could lessen the risk of retroactive consequences in private litigation but could also awaken concerns about revival of less disciplined agency discretion. More aggressive deployment of Section 5 would not necessarily be a retrograde step, however, so long as the agency remembers that freedom to enter uncharted territory beyond precedent is not the same as freedom to ignore evolving economic principles.

#### Plan’s clarity doesn’t solve Court Circumvention.

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

Limitations of Writing Clear Statutes This Article has shown that, historically, the judiciary has treated the antitrust statutes as broad delegations to the courts to create a pragmatic common law of competition, even when the statutes plainly said something more specifically prohibitory. What, then, are the strategies available to a reformist Congress seeking to rein in business power through remedial antitrust legislation? The one strategy that does not seem especially promising is simply writing clearer statutes. The antitrust statutes that the courts wrote down in favor of big business did not suffer from a lack of clarity or, if they did, not in the textual implications the courts chose to ignore. Strikingly, the courts continue to insist that the antitrust statutes are indeterminate delegations of common-law power, even while admitting in candor that they have simply chosen to ignore the statutes’ plain meaning in favor of a common method of deciding antitrust cases. For instance, in Professional Engineers, Justice Stevens remarked for the Court that “the language of § 1 of the Sherman Act . . . cannot mean what it says” and therefore that Congress must not have intended “the text of the Sherman Act to delineate the full meaning of the statute or its application in concrete situations,” thus justifying the courts in shaping the “statute’s broad mandate by drawing on common-law tradition.”255 Given over a century’s tradition of interpreting antitrust statutes as invitations to continue a common-law process whatever else is suggested by the statute’s text, it is difficult to see how simply accumulating stern new language in new texts would lead to a different result.

equivalent results. In the context of AT&T, subsequent evidence showed that AT&T did [raise prices](https://arstechnica.com/information-technology/2018/07/att-promised-lower-prices-after-time-warner-merger-its-raising-them-instead/) on consumers.

## Platform

### Gradualism Turn---1NC

#### Gradualism is key---plan causes massive false positives.

David E. Wheeler et al. 17. Verizon Communications Inc. Thomas R. McCarthy, Counsel of Record and Bryan K. Weir, Consovoy McCarthy Park PLLC. “Brief Amicus Curiae of Verizon Communications Inc. In Support of Neither Party”. https://www.supremecourt.gov/DocketPDF/16/16-1454/23911/20171214135834771\_16-1454%20Ohio%20et%20al.%20v.%20American%20Express%20Company%20et%20al..pdf

The costs of erroneous judicial decisions are substantial: “False positives and false negatives are harmful to the economy as a whole for reasons that go beyond the conduct in the case under review: False positives and false negatives may chill beneficial conduct by other economic actors (potentially in other industries) that must comply with the rule; these errors may also fail to deter harmful conduct by other economic actors to which the same rule would apply.” Baker, supra, at 5-6.

Because erroneous decisions “can deter conduct that may be desirable, or prevent challenges to undesirable conduct,” Popofsky, supra, at 449, when enforcing the Sherman Act, the Court should rule on the basis of the facts in a given case rather than make broad pronouncements on novel issues of antitrust law that may proscribe (or endorse) categories of activity for all time. The Court’s gradual move away from per se liability with regard to vertical restraints reflects just such a cautionary approach. See Leegin Creative Leather Products, Inc. v. PSKS, Inc., 551 U.S. 877, 901 (2007) (“In more recent cases the Court, following a common-law approach, has continued to temper, limit, or overrule once strict prohibitions on vertical restraints.”); see also State Oil Co. v. Khan, 522 U.S. 3 (1997); Business Electronics Corp. v. Sharp Electronics Corp., 485 U.S. 717 (1988); Cont’l T.V., Inc. v. GTE Sylvania Inc., 433 U.S. 36 (1977).

In order to avoid harming the consumer public, the Court should follow a policy of “nonintervention” when it is unclear whether particular market activity is pro- or anti-competitive. Robert H. Bork, The Antitrust Paradox 133 (1978). This is especially true in the context of novel markets and business arrangements where courts “are forced to formulate doctrine in the dark.” Devlin & Jacobs, supra, at 83.

#### The thesis of their advantage is wrong.

Alden Abbott 21. Senior research fellow at the Mercatus Center, focusing on antitrust issues. He previously served as the Federal Trade Commission’s General Counsel from 2018 to early 2021. 3/31/21. “Four Reasons to Reject Neo-Brandeisian Critiques of the Consumer Welfare Approach to Antitrust.”

First, the underlying assumptions of rising concentration and declining competition on which the neo-Brandeisian critique is largely based (and which are reflected in the introductory legislative findings of the Competition and Antitrust Law Enforcement Reform Act [of 2021, introduced by Senator Klobuchar on February 4, lack merit]. Chapter 6 of the 2020 Economic Report of the President, dealing with competition policy, summarizes research debunking those assumptions. To begin with, it shows that studies complaining that competition is in decline are fatally flawed. Studies such as one in 2016 by the Council of Economic Advisers rely on overbroad market definitions that say nothing about competition in specific markets, let alone across the entire economy. Indeed, in 2018, professor Carl Shapiro, chief DOJ antitrust economist in the Obama administration, admitted that a key summary chart in the 2016 study “is not informative regarding overall trends in concentration in well-defined relevant markets that are used by antitrust economists to assess market power, much less trends in concentration in the U.S. economy.” Furthermore, as the 2020 report points out, other literature claiming that competition is in decline rests on a problematic assumption that increases in concentration (even assuming such increases exist) beget softer competition. Problems with this assumption have been understood since at least the 1970s. The most fundamental problem is that there are alternative explanations (such as exploitation of scale economies) for why a market might demonstrate both high concentration and high markups—explanations that are still consistent with procompetitive behavior by firms. (In a related vein, research by other prominent economists has exposed flaws in studies that purport to show a weakening of merger enforcement standards in recent years.) Finally, the 2020 report notes that the real solution to perceived economic problems may be less government, not more: “As historic regulatory reform across American industries has shown, cutting government-imposed barriers to innovation leads to increased competition, strong economic growth, and a revitalized private sector.”

### AT: Impact

#### Don’t solve concentration---their ev is about decline due to resource disparities in the IOT industry.

#### Productivity growth doesn’t solve great power war.

James Pethokoukis 18, Dewitt Wallace Fellow at the American Enterprise Institute. The Global Competitiveness Report was originally co-published by the IMD World Competitiveness Center and the World Economic Forum (WEF) under the title of "World Competitiveness Report." 5-31-2018. "The US remains the world's most competitive big economy, by far," AEI, http://www.aei.org/publication/the-us-remains-the-worlds-most-competitive-big-economy-by-far/

Then there are those global competitiveness surveys. And according to the latest from Switzerland-based IMD, which has been in the business since 1989, the US has jumped to #1 from a still respectable #4 last year. Even more impressive, there isn’t another large advanced economy — say, with a population at least 10% of America’s — until you get to Canada at #10. The US is also the highest-ranked large advanced economy in the World Economic Forum’s annual competitiveness report, behind only niche Switzerland overall. Competitiveness reports generally use some combo of economic statistics and executive opinion survey data. And while I find these reports interesting, I don’t like the zero-sum bias built into the notion of “competitiveness,” a bias that IMD director Arturo Bris pointedly addresses in this year’s report as he tries to reframe the concept: There is no single nation in the world that has succeeded in a sustainable way without preserving the prosperity of its people. Competitiveness refers to such an objective: It determines how countries, regions and companies manage their competencies to achieve long-term growth, generate jobs and increase welfare. Competitiveness is therefore a way towards progress that does not result in winners and losers — when two countries compete, both are better off. At the same time, however, I don’t see how America could be considered the world’s leading military and economic power without also being at the technological frontier. And I want the democratic capitalist US to always be considered the best place in the world to live if you want to do something amazing with your life and/or your company (for a further look at some of these issues, I would recommend the latest AEIdeas experts symposium: “Cold War II: Should the US embrace high-tech industrial policy to counter China?”). In that spirit, another way to judge competitiveness might be by looking at a pretty important output: a nation’s ability to generate high-impact startups (the US vs. Asia vs. Europe via The Wall Street Journal):

### AT: Fin Tech

#### Fintech innovation is high, and smaller firms are joining the industry

Beauchamp 20. Canadian journalist, researcher and content contributor covering topics ranging from the environment, business, and the economy at Valuer AI ( Lauren, ‘The Best Fintech Startups in the USA’, November 18 2020, <https://www.valuer.ai/blog/best-fintech-startups-in-usa>

Fintech, or financial technology has become one of the most successful global industries in the last decade. From mobile payment, trading, and cryptocurrency applications, FinTech has transformed the way finances are done. The hub of this technological trend is in the United States, where there is currently 1,491 startups and $58.5 billion investment in the industry, according to Digital Information World. Fintech is a global industry with startups having a presence in 6 continents. The USA is considered the global capital of Fintech with the largest investment in the industry, followed by China, The United Kingdom, and India. [graph omitted] With the fintech industry growing every subsequent year, the market is starting to fill up with fintech startups and innovative financial services trying to fulfill customers' needs that will ultimately shape the future of finance. [graph omitted] The last year has shown that startups are on the rise across all of America. In March 2019, there were 774,725 businesses that were less than 1 year old, according to Statista. These businesses had all started from scratch and were unrelated to existing corporations. These startups have generated $34.5 billion in revenue globally.

### Sanctions Fail---1NC

#### Sanctions are bad and fail---empirics, special interests, national interest.

Doug Bandow 18, (senior fellow at the Cato Institute. A former special assistant to President Ronald Reagan) "Washington’s Endless Sanctions Are Finally Backfiring," American Conservative, https://www.theamericanconservative.com/articles/washingtons-endless-sanctions-are-finally-backfiring/

Sanctions proponents routinely extol the supposed benefits of their policies, without ever providing much evidence. Studies have found that sanctions are most likely to work when restrictions are international, applied to a limited number of products, and intended to achieve modest goals. Even then, governments rarely sacrifice fundamental interests in response to economic pressure. Rather, they respond like Washington would in a similar situation, resisting concessions even more fiercely. Frustration with failure has encouraged U.S. officials to double down. So now Washington routinely punishes other nations’ individuals and companies. Last year, the Treasury Department added roughly 1,000 people and organizations to the Specially Designated Nationals List. American policymakers currently use the dominant U.S. role in the global financial system as a weapon even against friendly states, denying them access to the American market. Third parties face multi-billion dollar fines for dealing with those on Washington’s naughty list. Even large, prosperous nations are vulnerable to American pressure. Thus, U.S. threats are typically enough to isolate any small country. For instance, for years the Sudanese government was forced to operate on a cash basis overseas, flying currency into the U.S. for its embassies. The Trump administration’s reimposition of sanctions on Iran opened the door for a rush of companies fleeing Tehran. Yet even such enhanced penalties rarely change the governments they target. Communism continues to reign in Cuba. Sudan’s government remains authoritarian and Islamist. Few Korea specialists believe that Pyongyang will ever surrender its nuclear weapons. Russia’s Putin has not buckled under economic pressure. Instead, foreign states look for non-economic ways to retaliate against U.S. interests. International economic pressure played a role in moving Burma, Iran, Libya, and North Korea towards negotiation with the West. However, sanctions were combined with positive inducements. And even then, success still was limited. Naypyidaw remains repressive, brutalizing an entire people, the Rohingya. Tehran agreed to the Joint Comprehensive Plan of Action, which has since been repudiated by the Trump administration, making further progress unlikely. The ouster of Libya’s Moammar Gaddafi will discourage any government from making serious concessions in the future. North Korea is likely to maintain its nuclear arsenal for years, even decades to come. Sanctions are worse than ineffective: they have potentially far-reaching economic impacts. Limiting Iran’s oil sales pushes up energy prices globally. Penalizing technology sales to Moscow disproportionately affects European firms. Even smaller markets matter. Warned Peter Harrell, an attorney specializing in sanctions: “Trump’s August 9 tariffs on Turkey spurred a dramatic market selloff that not only affected Ankara but also caused the stocks of major European banks with business in Turkey to plunge and raised concerns about contagion to other emerging markets.” Washington’s promiscuous use of economic sanctions has moved the global economy away from the liberal marketplace. Moreover, economic penalties almost always hurt those with the least power, influence, and money. Indeed, regime elites often manipulate sanctions to their own benefit. Saddam Hussein, Slobodan Milosevic, Kim Jong-un, Vladimir Putin, and a variety of other despots all did fine even while their governments were under sanction. A quarter century ago, I visited Belgrade and talked with opposition leader Zoran Djindzic—later to become prime minister and an assassination victim of ultra-nationalists. He complained that sanctions enriched Milosevic, while his own middle-class supporters lacked money to purchase gasoline to attend his rallies. Most famously, U.S. sanctions were blamed for the deaths of a half million Iraqi babies. That number likely is an exaggeration, but when questioned about the issue, then-UN ambassador Madeleine Albright did not dispute it. Instead, she responded that “we think the price is worth it”—an extraordinarily callous sentiment that was transmitted throughout the Arab world. In recent years the U.S. has relied on “smart sanctions,” typically applied to regime leaders and supporters. But preventing Kim from vacationing and banking in the West is unlikely to cause him to disarm. Washington and Brussels have targeted economic “oligarchs” linked to Putin, and while they no doubt they are inconvenienced, their ability to influence events is limited and their willingness to risk their freedom and lives unlikely. Smart sanctions may offer moral satisfaction by punishing the guilty, but they aren’t effective in bringing recalcitrant regimes to heel. Like so many other government programs, economic penalties create interest groups that make future relaxation almost impossible. The Cuban embargo has lasted a half century, despite dramatically changed circumstances. The U.S. continued penalties against Sudan even after Khartoum met Washington’s demands and accepted the secession of what became South Sudan. Sanctions on Moscow have damaged Russia’s economy without changing its policies. Economic sanctions are too easy to apply, encouraging the many wannabe secretaries of state who fill Congress. With few responsibilities and no need to balance competing interests or develop effective remedies, legislators look for easy, high-profile actions that win popular attention. Every failure allows them to demand tougher action; at hearings they browbeat executive branch officials who counsel caution and nuance. Sanctions facilitate showmanship, not statesmanship. Perhaps the biggest problem with economic penalties is that they inflate Washington’s natural hubris because they look like an easy tool for imposing America’s will on the rest of the world. Escalation is simple, seemingly painless—to Washington, at least. When sanctions are justified in moral terms, which is almost always, policymakers can rationalize coercion of even friendly governments.

### AT: Iran Nuke

#### Impact empirically denied---Iran internal link card is a quote from a Senate Committee in early 2008.

#### No Iran nuke acquisition----multiple checks

Mark Fitzpatrick 20. Associate Fellow at the International Institute for Strategic Studies. 1-17-2020. "Is Iran building the bomb?" The Article. https://www.thearticle.com/is-iran-building-the-bomb.

No, Iran has not restarted its nuclear weapons programme. Commentators such as the New York Times columnist Thomas Friedman blithely assume so, based on Iran’s decision on 5 January to retreat from the enrichment limits in the 2015 nuclear deal, known as the Joint Comprehensive Plan of Action (JCPOA). Others wrongly conclude that Tehran has abandoned the deal. Yet Iran is still keeping a foot in the accord, abiding by the crucial inspection requirements, while insisting it will resume full compliance if the US resumes its JCPOA obligations to loosen sanctions. What Iran has done is advance the timeline toward a nuclear weapons capability in line with its nuclear hedging strategy. How much so is a matter of conjecture among experts. Some say that if Iran decided to make an all-out dash for a bomb, and experienced no hiccups along the way — what its adversaries call a worst-case scenario — Iran could produce a bomb’s worth of highly enriched uranium (HEU) in as little as 4-5 months. But such assessments of the so-called break-out period are based on uncertain data and questionable assumptions. The Israeli Defense Force (IDF), which presumably has a clearer window into Iran’s program, assesses that Iran will be able to produce enough HEU by the end of the year and to assemble a weapon in less than two years. Alarming as this might sound, it is not significantly different than when the JCPOA went into effect in 2016. And it is a much better situation than when negotiations began in 2013, at which point the break-out period was judged to be only a couple of months. The IDF also assesses that Iran is currently not interested in developing an atomic bomb as quickly as possible. A key goal of Iran’s negotiating partners was to extend the break-out period to at least a year. The deal succeeded in doing so by eliminating 98 per cent of Iran’s stockpile of low-enriched uranium, all of its stockpile of 20 per cent enriched uranium, which is just below the threshold of being weapons-usable, and two-thirds of the centrifuges that do the enriching. Before those cuts, Iran’s stockpile was enough for up to ten weapons, if further enriched. Afterwards, it had less than a quarter of the feed stock for one bomb Now that Iran has removed restrictions, the stockpile of low-enriched uranium is growing, centrifuges are being reinstalled and more efficient centrifuges are being developed at a faster pace. We will know by how much each of these steps has advanced when the International Atomic Energy Agency (IAEA) releases its next quarterly report in the latter half of February. The enriched uranium feedstock will still be less than a bomb’s worth, but the pace of acceleration will be concerning. One question is whether Iran will resume 20 per cent enrichment, a level it first reached ten years ago, in an escalating stand-off with western states which were imposing ever-more biting sanctions. Today, Iran can again use the 20 per cent step as a bargaining chip in efforts to forestall the re-imposition of UN sanctions. Do not be spooked by the alarmist assessments that will surely follow when the next IAEA report comes out. Remember that worst-case assumptions assume that Iran would be able to get everything right the first time it attempts the tricky task of producing weapons-grade uranium without it exploding prematurely, and that assembling a warhead small enough to fit in the nosecone of Iran’s missiles would go like clockwork. Remember, too, that Iran would be [foolish] ~~suicidal~~ to try to rush to produce HEU at sites that are intrusively monitored.

### AT: Saudi Prolif

#### No Saudi prolif—multiple obstacles block

Dr. Albert B. WOLF 15, an Assistant Professor of International Relations at ADA University in Baku, Azerbaijan [“A nuclear Iran will not lead to a nuclear Middle East, no matter what the Gulf states say,” *The Washington Post*, May 14 15, https://www.washingtonpost.com/posteverything/wp/2015/05/14/a-nuclear-iran-will-not-lead-to-a-nuclear-middle-east-no-matter-what-the-gulf-states-say/]

The argument goes something like this: Once Iran gets the bomb, Saudi Arabia will have to get the bomb (or buy it from Pakistan). Once Saudi Arabia goes nuclear, the rest of the states in the Gulf Cooperation Council will follow suit. Egypt, Jordan and Turkey will be close behind.

This is a terrifying prospect. It’s also completely wrong.

Starting in the 1970s, states’ nuclear programs would trigger U.S. economic sanctions. These measures have been unable to compel states to reverse ongoing nuclear programs. However, they have been fairly effective deterrents for states contemplating going nuclear. For example, Japan and Taiwan were inhibited from pursuing nuclear programs for fear of losing access to global markets.

U.S. security guarantees have also dampened states’ incentives to pursue the bomb. U.S. policymakers feared that China’s acquisition of the bomb would set off a cascade of nuclear proliferation in East Asia. So they promised to protect South Korea in the event of an attack. That guarantee deterred the country from acquiring its own atomic arsenals. Similarly, Israel’s acquisition of a nuclear weapon circa 1967 failed to bring about a nuclear arms race in the Middle East. Egypt explored a nuclear program of its own, but ultimately abandoned it under Anwar Sadat’s leadership.

It is also incredibly difficult to acquire the necessary materials to build a bomb. And politicians in some authoritarian regimes inadvertently undermine their own aspirations. As Jacques E.C. Hymans of University of Southern California points out in his book “Achieving Nuclear Ambitions,” since 1970, half of the nuclear projects that states have undertaken have been abject failures; the rare successes have taken far longer than necessary. While it took China roughly 10 years to get the bomb, it took Pakistan 20. This is largely because rulers in weak or authoritarian states have a tendency to intervene and interfere in scientists’ efforts to develop nuclear weapons, undermining their professional ethos. A greater barrier exists between politicians and scientists in strong states, making it easier for their states to obtain the bomb and join the nuclear club.

The Gulf States argue that with Iran, it’s different. These countries have had long-standing tensions with the country. After the British withdrew from the region and granted independence to the United Arab Emirates, Qatar and Bahrain, in 1971 the Iranian Shah asserted control of the Tunb Islands as well as the strategically critical Abu Musa. These regimes remain suspicious of Iran’s intentions with respect to their oil installations as well. Some, such as Saudi Arabia and Bahrain, have complained of Iranian influence and interference among their disgruntled Shia populations. Their fears have grown since the outbreak of the Arab Spring in December 2010. They say that a nuclear Iran will become increasingly aggressive, making it more prone to engaging in coercive diplomacy. They fear that the Obama administration’s overtures to Iran will amount to the U.S. pivoting toward Tehran – and abandoning them. Acquiring nuclear weapons, they argue, is the only way to stay protected.

While nuclear dominoes rarely fall, one cannot completely dismiss the possibility of Riyadh pursuing a nuclear option. However, several obstacles stand in its way.

It has long been rumored that the Saudis expect the Pakistanis will help them to acquire an arsenal. However, Pakistan has of late asserted its independence from Saudi Arabia, as evidenced by their refusal to aid Saudi Arabia’s war in Yemen. Such a move would exacerbate tensions not only between Islamabad and Washington, but Riyadh and Washington as well. If Pakistan is not willing to provide sensitive nuclear assistance to Saudi Arabia, Riyadh will have to pursue it on its own.

The Kingdom of Saudi Arabia has an extremely limited nuclear infrastructure. It does not even possess a research reactor and only obtained small quantities of nuclear material through the IAEA. It has plans for building up to 16 reactors, but the first will not go online until (at least) 2022. The Saudis have also signed an agreement to purchase American-designed reactors from South Korea. The U.S. maintains that if such reactors were to be sold, KSA would have to sign what is known as a “123 agreement” that would shut down domestic enrichment and reprocessing. Given its weight in international oil markets, the Saudis could call the Americans’ bluff and enrich anyway. However, this would be a tremendous gamble that would likely jeopardize U.S. security guarantees.

## Conduct

### No AI Impact---1NC/2AC

#### No AI internal link---their Salop evidence is about a platform that allows airlines to post schedules, fares, and seat availability---zero tie to a terminal AI impact.

#### No impact.

Michael Shermer 17. Publisher of Skeptic magazine, a monthly columnist for Scientific American, and a Presidential Fellow at Chapman University. “Why Artificial Intelligence Is Not an Existential Threat” April 2017. Skeptic. Vol. 22, no. 2, pp. 29-35.

Why AI is not an Existential Threat First, most AI doomsday prophecies are grounded in the false analogy between human nature and computer nature, or natural intelligence and artificial intelligence. We are thinking machines, but natural selection also designed into us emotions to shortcut the thinking process because natural intelligences are limited in speed and capacity by the number of neurons that can be crammed into a skull that has to pass through a pelvic opening at birth, whereas artificial intelligence need not be so restricted. We don't need to compute the caloric value of foods, for example, we just feel hungry. We don't need to calculate the waist-to-hip ratio of women or the shoulder-to-waist ratio of men in our quest for genetically healthy potential mates; we just feel attracted to someone and mate with them. We don't need to work out the genetic cost of raising someone else's offspring if our mate is unfaithful; we just feel jealous. We don't need to figure the damage of an unfair or non-reciprocal exchange with someone else; we just feel injustice and desire revenge. Emotions are proxies for getting us to act in ways that lead to an increase in reproductive success, particularly in response to threats faced by our Paleolithic ancestors. Anger leads us to strike out, fight back, and defend ourselves against danger. Fear causes us to pull back, retreat, and escape from risks. Disgust directs us to push out, eject, and expel that which is bad for us. Computing the odds of danger in any given situation takes too long. We need to react instantly. Emotions shortcut the information processing power needed by brains that would otherwise become bogged down with all the computations necessary for survival. Their purpose, in an ultimate causal sense, is to drive behaviors toward goals selected by evolution to enhance survival and reproduction. AIs -- even AGIs and ASIs -- will have no need of such emotions and so there would be no reason to program them in unless, say, terrorists chose to do so for their own evil purposes. But that's a human nature problem, not a computer nature issue. To believe that an ASI would be "evil" in any emotional sense is to assume a computer cognition that includes such psychological traits as acquisitiveness, competitiveness, vengeance, and bellicosity, which seem to be projections coming from the mostly male writers who concoct such dystopias, not features any programmer would bother including, assuming that it could even be done. What would it mean to program an emotion into a computer? When IBM's Deep Blue defeated chess master Garry Kasparov in 1997, did it feel triumphant, vengeful, or bellicose? Of course not. It wasn't even "aware" -- in the human sense of self-conscious knowledge -- that it was playing chess, much less feeling nervous about possibly losing to the reigning world champion (which it did in the first tournament played in 1996). In fact, toward the end of the first game of the second tournament, on the 44th move, Deep Blue made a legal but incomprehensible move of pushing its rook all the way to the last row of the opposition side. It accomplished nothing offensively or defensively, leading Kasparov to puzzle over it out of concern that he was missing something in the computer's strategy. It turned out to be an error in Deep Blue's programming that led to this fail-safe default move. It was a bug that Kasparov mistook as a feature, and as a result some chess experts contend it led him to be less confident in his strategizing and to second-guess his responses in the subsequent games. It even led him to suspect foul play and human intervention behind Deep Blue, and this paranoia ultimately cost him the tournamentt.[ 13] Computers don't get paranoid, the HAL 9000 computer in 2001 notwithstanding. Or consider Watson, the IBM computer built by David Ferrucci and his team of IBM research scientists tasked with designing an AI that could rival human champions at the game of Jeopardy! This was a far more formidable challenge than Deep Blue faced because of the prerequisite to understand language and the often multiple meanings of words, not to mention needing an encyclopedic knowledge of trivia (Watson had access to Wikipedia for this). After beating the all-time greatest Jeopardy! champions Ken Jennings and Brad Rutter in 2011, did Watson feel flushed with pride after its victory? Did Watson even know that it won Jeopardy!? I put the question to none other than Ferrucci himself at a dinner party in New York in conjunction with the 2011 Singularity Summit. His answer surprised me: "Yes, Watson knows it won Jeopardy!" I was skeptical. How could that be, since such self-awareness is not yet possible in computers? "Because I told it that it won," he replied with a wry smile. Sure, and you could even program Watson or Deep Blue to vocalize a Howard Dean-like victory scream when it wins, but that is still a far cry from a computer feeling triumphant. This brings to mind the "hard problem" of consciousness -- if we don't understand how this happens in humans, how could we program it into computers? As Steven Pinker elucidated in his answer to the 2015 Edge Question on what to think about machines that think, "AI dystopias project a parochial alpha-male psychology onto the concept of intelligence. They assume that superhumanly intelligent robots would develop goals like deposing their masters or taking over the world." It is equally possible, Pinker suggests, that "artificial intelligence will naturally develop along female lines: fully capable of solving problems, but with no desire to annihilate innocents or dominate the civilization."[ 14] So the fear that computers will become emotionally evil are unfounded, because without the suite of these evolved emotions it will never occur to AIs to take such actions against us. What about an ASI inadvertently causing our extinction by turning us into paperclips, or tiling the entire Earth's surface with solar panels? Such scenarios imply yet another emotion -- the feeling of valuing or wanting something. As the science writer Michael Chorost adroitly notes, when humans resist an AI from undertaking any form of global tiling, it "will have to be able to imagine counteractions and want to carry them out." Yet, "until an AI has feelings, it's going to be unable to want to do anything at all, let alone act counter to humanity's interests and fight off human resistance." Further, Chorost notes, "the minute an A.I. wants anything, it will live in a universe with rewards and punishments -- including punishments from us for behaving badly. In order to survive in a world dominated by humans, a nascent A.I. will have to develop a humanlike moral sense that certain things are right and others are wrong. By the time it's in a position to imagine tiling the Earth with solar panels, it'll know that it would be morally wrong to do so."[ 15] From here Chorost builds on an argument made by Peter Singer in The Expanding Circle (and Steven Pinker in The Better Angels of Our Nature[ 16] that I also developed in The Moral Arc[ 17] and Robert Wright explored in Nonzero[ 18]), and that is the propensity for natural intelligence to evolve moral emotions that include reciprocity, cooperativeness, and even altruism. Natural intelligences such as ours also includes the capacity to reason, and once you are on Singer's metaphor of the "escalator of reason" it can carry you upward to genuine morality and concerns about harming others. "Reasoning is inherently expansionist. It seeks universal application," Singer notes.[ 19] Chorost draws the implication: "AIs will have to step on the escalator of reason just like humans have, because they will need to bargain for goods in a human-dominated economy and they will face human resistance to bad behavior."[ 20] Finally, for an AI to get around this problem it would need to evolve emotions on its own, but the only way for this to happen in a world dominated by the natural intelligence called humans would be for us to allow it to happen, which we wouldn't because there's time enough to see it coming. Bostrom's "treacherous turn" will come with road signs ahead warning us that there's a sharp bend in the highway with enough time for us to grab the wheel. Incremental progress is what we see in most technologies, including and especially AI, which will continue to serve us in the manner we desire and need. Instead of Great Leap Forward or Giant Fall Backward, think Small Steps Upward. As I proposed in The Moral Arc, instead of Utopia or dystopia, think protopia, a term coined by the futurist Kevin Kelly, who described it in an Edge conversation this way: "I call myself a protopian, not a Utopian. I believe in progress in an incremental way where every year it's better than the year before but not by very much -- just a micro amount."[ 21] Almost all progress in science and technology, including computers and AI, is of a protopian nature. Rarely, if ever, do technologies lead to either Utopian or dystopian societies. Pinker agrees that there is plenty of time to plan for all conceivable contingencies and build safeguards into our AI systems. "They would not need any ponderous 'rules of robotics' or some newfangled moral philosophy to do this, just the same common sense that went into the design of food processors, table saws, space heaters, and automobiles." Sure, an ASI would be many orders of magnitude smarter than these machines, but Pinker reminds us of the AI hyperbole we've been fed for decades: "The worry that an AI system would be so clever at attaining one of the goals programmed into it (like commandeering energy) that it would run roughshod over the others (like human safety) assumes that AI will descend upon us faster than we can design fail-safe precautions. The reality is that progress in AI is hype-defyingly slow, and there will be plenty of time for feedback from incremental implementations, with humans wielding the screwdriver at every stage."[ 22] Former Google CEO Eric Schmidt agrees, responding to the fears expressed by Hawking and Musk this way: "Don't you think the humans would notice this, and start turning off the computers?" He also noted the irony in the fact that Musk has invested $1 billion into a company called OpenAI that is "promoting precisely AI of the kind we are describing."[ 23] Google's own DeepMind has developed the concept of an AI off-switch, playfully described as a "big red button" to be pushed in the event of an attempted AI takeover. "We have proposed a framework to allow a human operator to repeatedly safely interrupt a reinforcement learning agent while making sure the agent will not learn to prevent or induce these interruptions," write the authors Laurent Orseau from DeepMind and Stuart Armstrong from the Future of Humanity Institute, in a paper titled "Safely Interruptible Agents." They even suggest a precautionary scheduled shutdown every night at 2 AM for an hour so that both humans and AI are accustomed to the idea. "Safe interruptibility can be useful to take control of a robot that is misbehaving and may lead to irreversible consequences, or to take it out of a delicate situation, or even to temporarily use it to achieve a task it did not learn to perform or would not normally receive rewards for this."[ 24] As well, it is good to keep in mind that artificial intelligence is not the same as artificial consciousness. Thinking machines may not be sentient machines. Finally, Andrew Ng of Baidu responded to Elon Musk's ASI concerns by noting (in a jab at the entrepreneur's ambitions for colonizing the red planet) it would be "like worrying about overpopulation on Mars when we have not even set foot on the planet yet."[ 25] Both Utopian and dystopian visions of AI are based on a projection of the future quite unlike anything history has given us. Yet, even Ray Kurzweil's "law of accelerating returns," as remarkable as it has been has nevertheless advanced at a pace that has allowed for considerable ethical deliberation with appropriate checks and balances applied to various technologies along the way. With time, even if an unforeseen motive somehow began to emerge in an AI we would have the time to reprogram it before it got out of control. That is also the judgment of Alan Winfield, an engineering professor and co-author of the Principles of Robotics, a list of rules for regulating robots in the real world that goes far beyond Isaac Asimov's famous three laws of robotics (which were, in any case, designed to fail as plot devices for science fictional narratives).26 Winfield points out that all of these doomsday scenarios depend on a long sequence of big ifs to unroll sequentially: "If we succeed in building human equivalent AI and if that AI acquires a full understanding of how it works, and if it then succeeds in improving itself to produce super-intelligent AI, and if that super-AI, accidentally or maliciously, starts to consume resources, and if we fail to pull the plug, then, yes, we may well have a problem. The risk, while not impossible, is improbable."[ 27]

#### No ev says DOD contracts are key---tech from the private sector can be applied to military uses regardless of firm size.

### AT: Platform Misuse

#### No solvency for platform misuse: their card concludes antitrust isn’t sufficient.

1AC Stucke 18 is a co-founder of The Konkurrenz Group and a law professor at the University of Tennessee (Maurice, “Here Are All the Reasons It’s a Bad Idea to Let a Few Tech Companies Monopolize Our Data,” <https://hbr.org/2018/03/here-are-all-the-reasons-its-a-bad-idea-to-let-a-few-tech-companies-monopolize-our-data>)

Limiting the Power of Data-opolies

Upon closer examination, data-opolies can actually be more dangerous than traditional monopolies. They can affect not only our wallets but our privacy, autonomy, democracy, and well-being.

Markets dominated by these data-opolies will not necessarily self-correct. Network effects, high switching costs for consumers (given the lack of data portability and user rights over their data), and weak privacy protection help data-opolies maintain their dominance.

Luckily, global antitrust enforcement can help. The Reagan administration, in espousing the then-popular Chicago School of economics beliefs, discounted concerns over monopolies. The Supreme Court, relying on faulty economic reasoning, surmised that charging monopoly prices was “an important element of the free market system.” With the rise of a progressive, anti-monopoly New Brandeis School, the pendulum is swinging the other way. Given the emergence of data-opolies, this is a welcomed change.

Nonetheless, global antitrust enforcement, while a necessary tool to deter these harms, is not sufficient. Antitrust enforcers must coordinate with privacy and consumer protection officials to ensure that the conditions for effective privacy competition and an inclusive economy are in place.

#### They don’t solve

Maurice E. 1AC Stucke 18, 1AC Author [“Should We Be Concerned About Dataopolies?” Georgetown Law Technology Review, Vol. 2, p. 275, 2018, https://georgetownlawtechreview.org/wp-content/uploads/2018/07/2.2-Stucke-pp-275-324.pdf]

With the divergence in antitrust enforcement, some claim bias and protectionism.19 Others argue that it is impossible to find any way in which consumers are being harmed when the services are free and constantly evolving.20 Given the European and U.S. divergence over dataopolies, Part I explores one possible factor: data-opolies, under antitrust’s consumer welfare standard, are seemingly benign. Data-opolies might have power upstream. Google and Facebook, for example, could conceivably dominate certain online advertising markets; Amazon could exert significant buyer power (for books and other products).21 But Amazon, while striking fear in many retail sectors and among suppliers, is generally viewed as offering consumers an array of low-cost products and services. Most of Google’s and Facebook’s services for consumers are ostensibly “free.” 22 Consequently, Robert Bork argued that there “is no coherent case for monopolization because a search engine, like Google, is free to consumers and they can switch to an alternative search engine with a click.”23

Data-opolies, unlike earlier monopolies, have not exercised their power by charging consumers higher prices. But this does not mean dataopolies are harmless. Digging deeper, Part II provides a taxonomy of potential harms by data-opolies. Among these potential harms are less privacy protection; less innovation and dynamic disruption in markets in which they dominate; and political, moral, and social concerns. Part III discusses why data-opolies may be more durable than some earlier monopolies.

The goal is not to vilify data-opolies. Not every dominant tech platform will have the incentive and ability to cause harm. Instead, one must understand the scope of harm data-opolies present, absent vigilant antitrust enforcement. This is critical because the DOJ has only brought one monopolization case under section 2 of the Sherman Act from 2000 onward.24 In contrast, between 1970 and 1972, the DOJ brought thirty-nine civil and three criminal cases against monopolies and oligopolies.25 This abdication is not justifiable going forward, given the risks that dataopolies pose not only to our wallets but also to our privacy, autonomy, democracy, and well-being.

### AT: Cyber-Attacks

#### No catastrophic cyberattacks---25 years of empirics prove they stay low-level and non-escalatory.

Lewis 20---senior vice president and director of the Technology Policy Program at the Center for Strategic and International Studies). Lewis, James. 2020. “Dismissing Cyber Catastrophe.” Center for Strategic & International Studies. August 17, 2020. 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. 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. One major failing of catastrophe scenarios is that they discount the robustness and resilience of modern economies. These economies present multiple targets and configurations; they are harder to damage through cyberattack than they look, given the growing (albeit incomplete) attention to cybersecurity; and experience shows that people compensate for damage and quickly repair or rebuild. This was one of the counterintuitive lessons of the Strategic Bombing Survey. Pre-war planning assumed that civilian morale and production would crumple under aerial bombardment. In fact, the opposite occurred. Resistance hardened and production was restored.1 This is a short overview of why catastrophe is unlikely. Several longer CSIS reports go into the reasons in some detail. Past performance may not necessarily predict the future, but after 25 years without a single catastrophic cyberattack, we should invoke the concept cautiously, if at all. Why then, it is raised so often? Some of the explanation for the emphasis on cyber catastrophe is hortatory. When the author of one of the first reports (in the 1990s) to sound the alarm over cyber catastrophe was asked later why he had warned of a cyber Pearl Harbor when it was clear this was not going to happen, his reply was that he hoped to scare people into action. "Catastrophe is nigh; we must act" was possibly a reasonable strategy 22 years ago, but no longer. The resilience of historical events to remain culturally significant must be taken into account for an objective assessment of cyber warfare, and this will require the United States to discard some hypothetical scenarios. The long experience of living under the shadow of nuclear annihilation still shapes American thinking and conditions the United States to expect extreme outcomes. American thinking is also shaped by the experience of 9/11, a wrenching attack that caught the United States by surprise. Fears of another 9/11 reinforce the memory of nuclear war in driving the catastrophe trope, but when applied to cyberattack, these scenarios do not track with operational requirements or the nature of opponent strategy and planning. The contours of cyber warfare are emerging, but they are not always what we discuss. Better policy will require greater objectivity.

#### No cyber impact---non state actors lack capability, Russia and China don’t have an incentive.

Lewis 20 – (James A., PhD, a senior vice president and director of the Technology Policy Program at the Center for Strategic and International Studies (CSIS), Before joining CSIS, Lewis worked at the Departments of State and Commerce as a foreign service officer and as a member of the Senior Executive Service, a political advisor to the U.S. Southern Command for Operation Just Cause, the U.S. Central Command for Operation Desert Shield, and the Central American Task Force. Lewis served on the U.S. delegations to the Cambodian peace process and the Permanent Five talks on arms transfers and nonproliferation, and he negotiated bilateral agreements on transfers of military technology to Asia and the Middle East. He led the U.S. delegation to the Wassenaar Arrangement Experts Group on advanced civilian and military technologies. Lewis led a long-running Track 2 dialogue on cybersecurity with the China Institutes of Contemporary International Relations. He has served as a member of the Commerce Spectrum Management Advisory Committee, the Advisory Committee on International Communications and Information Policy, and the Advisory Committee on Commercial Remote Sensing and as an advisor to government agencies on the security and intelligence implications of foreign investment in the United States, 2020, “Dismissing Cyber Catastrophe,” [accessed 8/30/20], <https://www.csis.org/analysis/dismissing-cyber-catastrophe>, see)

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# Block

## Cap K

### Framework Top---1NR

#### 4. The aff is utopian. Criticism is a prerequisite to formulating new solutions.

Paul Mason 7-17-15. Writer of Live Working or Die Fighting: How the Working Class Went Global and [PostCapitalism: A Guide to our Future](https://en.wikipedia.org/wiki/PostCapitalism:_A_Guide_to_our_Future). Culture and Digital Editor of Channel 4 News. Visiting Professor at the University of Wolverhampton. Bachelors in Music and Politics from the University of Sheffield. "The end of capitalism has begun," Guardian, https://www.theguardian.com/books/2015/jul/17/postcapitalism-end-of-capitalism-begun

The power of imagination will become critical. In an information society, no thought, debate or dream is wasted – whether conceived in a tent camp, prison cell or the table football space of a startup company. As with virtual manufacturing, in the transition to postcapitalism the work done at the design stage can reduce mistakes in the implementation stage. And the design of the postcapitalist world, as with software, can be modular. Different people can work on it in different places, at different speeds, with relative autonomy from each other. If I could summon one thing into existence for free it would be a global institution that modelled capitalism correctly: an open source model of the whole economy; official, grey and black. Every experiment run through it would enrich it; it would be open source and with as many datapoints as the most complex climate models. The main contradiction today is between the possibility of free, abundant goods and information; and a system of monopolies, banks and governments trying to keep things private, scarce and commercial. Everything comes down to the struggle between the network and the hierarchy: between old forms of society moulded around capitalism and new forms of society that prefigure what comes next. ... Is it utopian to believe we’re on the verge of an evolution beyond capitalism? We live in a world in which gay men and women can marry, and in which contraception has, within the space of 50 years, made the average working-class woman freer than the craziest libertine of the Bloomsbury era. Why do we, then, find it so hard to imagine economic freedom? It is the elites, cut off in their dark-limo world, whose project looks forlorn It is the elites – cut off in their dark-limo world – whose project looks as forlorn as that of the millennial sects of the 19th century. The democracy of riot squads, corrupt politicians, magnate-controlled newspapers and the surveillance state looks as phoney and fragile as East Germany did 30 years ago. All readings of human history have to allow for the possibility of a negative outcome. It haunts us in the zombie movie, the disaster movie, in the post-apocalytic wasteland of films such as [*The Road*](https://www.theguardian.com/film/movie/131971/road) or [*Elysium*](https://www.theguardian.com/film/2013/aug/22/elysium-review). But why should we not form a picture of the ideal life, built out of abundant information, non-hierarchical work and the dissociation of work from wages? Millions of people are beginning to realise they have been sold a dream at odds with what reality can deliver. Their response is anger – and retreat towards national forms of capitalism that can only tear the world apart. Watching these emerge, from the pro-Grexit left factions in Syriza to the [Front National](https://www.theguardian.com/world/marine-le-pen) and the isolationism of the American right has been like watching the nightmares we had during the [Lehman Brothers](https://www.theguardian.com/business/lehmanbrothers) crisis come true. We need more than just a bunch of utopian dreams and small-scale horizontal projects. We need a project based on reason, evidence and testable designs, that cuts with the grain of history and is sustainable by the planet. And we need to get on with it.

#### 5. Invert your standard for solvency. That’s enough to vote neg, even if the alt solves nothing.

Eugene McCarraher 19. Associate Professor of Humanities at Villanova University, PhD in US Cultural and Intellectual History from Rutgers University; The Enchantments of Mammon: How Capitalism Became the Religion of Modernity, 11/12/19, p. 15-18

Words such as “paradise” or “love” or “communion” are certainly absent from our political vernacular, excluded on account of their “utopian” connotations or their lack of steely-eyed “realism.” Although this is a book about the past, I have always kept before me its larger contemporary religious, philosophical, and political implications. The book should make these clear enough; I will only say here that one of my broader intentions is to challenge the canons of “realism,” especially as defined in the “science” of economics. As the master science of desire in advanced capitalist nations, economics and its acolytes define the parameters of our moral and political imaginations, patrolling the boundaries of possibility and censoring any more generous conception of human affairs. Under the regime of neoliberalism, it has been the chief weapon in the arsenal of what David Graeber has characterized as “a war on the imagination,” a relentless assault on our capacity to envision an end to the despotism of money.24 Insistent, in Margaret Thatcher’s ominous ukase, that “there is no alternative” to capitalism, our corporate plutocracy has been busy imposing its own beatific vision on the world: the empire of capital, with an imperial aristocracy enriched by the labor of a fearful, overburdened, and cheerfully servile population of human resources. Every avenue of escape from accumulation and wage servitude must be closed, or better yet, rendered inconceivable; any map of the world that includes utopia must be burned before it can be glanced at. Better to follow Miller’s wisdom: we already inhabit paradise, and we can never make ourselves fit to live in it if we obey the avaricious and punitive sophistry professed in the dismal pseudoscience. The grotesque ontology of scarcity and money, the tawdry humanism of acquisitiveness and conflict, the reduction of rationality to the mercenary principles of pecuniary reason—this ensemble of falsehoods that comprise the foundation of economics must be resisted and supplanted. Economics must be challenged, not only as a sanction for injustice but also as a specious portrayal of human beings and a fictional account of their history. As a legion of anthropologists and historians have repeatedly demonstrated, economics, in Graeber’s forthright dismissal, has “little to do with anything we observe when we examine how economic life is actually conducted.” From its historically illiterate “myth of barter” to its shabby and degrading claims about human nature, economics is not just a dismal but a fundamentally fraudulent science as well, akin, as Ruskin wrote in Unto This Last, to “alchemy, astrology, witchcraft, and other such popular creeds.”25 Ruskin’s courageous and bracing indictment of economics arose from his Romantic imagination, and this book partakes unashamedly of his sacramental Romanticism. “Imagination” was, to the Romantics, primarily a form of vision, a mode of realism, an insight into the nature of reality that was irreducible to, but not contradictory of, the knowledge provided by scientific investigation. Romantic social criticism did not claim the imprimatur of science as did Marxism and other modern social theories, yet the Romantic lineage of opposition to “disenchantment” and capitalism has proved to be more resilient and humane than Marxism, “progressivism,” or social democracy. Indeed, it is more urgently relevant to a world hurtling ever faster to barbarism and ecological calamity. I wrote this book in part out of a belief that many on the “left” continue to share far too much with their antagonists: an ideology of “progress” defined as unlimited economic growth and technological development, as well as an acceptance of the myth of disenchantment that underwrites the pursuit of such expansion. The Romantic antipathy to capitalism, mechanization, and disenchantment stemmed not from a facile and nostalgic desire to return to the past, but from a view that much of what passed for “progress” was in fact inimical to human flourishing: a specious productivity that required the acceptance of venality, injustice, and despoliation; a technological and organizational efficiency that entailed the industrialization of human beings; and the primacy of the production of goods over the cultivation and nurturance of men and women. This train of iniquities followed inevitably from the chauvinism of what William Blake called “single vision,” a blindness to the enormity of reality that led to a “Babylon builded in the waste.”26 Romantics redefined rather than rejected “realism” and “progress,” drawing on the premodern customs and traditions of peasants, artisans, and artists: craftsmanship, mutual aid, and a conception of property that harkened back to the medieval practices of “the commons.” Whether they believed in some traditional form of religion or translated it into secular idioms of enchantment, such as “art” or “beauty” or “organism,” Romantic anticapitalists tended to favor direct workers’ control of production; the restoration of a human scale in technics and social relations; a sensitivity to the natural world that precluded its reduction to mere instrumental value; and an apotheosis of pleasure in making sometimes referred to as poesis, a union of reason, imagination, and creativity, an ideal of labor as a poetry of everyday life, and a form of human divinity. In work free of alienation and toil, we receive “the reward of creation,” as William Morris described it through a character in News from Nowhere (1890), “the wages that God gets, as people might have said time agone.”27 Rendered gaudy and impoverished by the tyranny of economics and the enchantment of neoliberal capitalism, our sensibilities need replenishment from the sacramental imagination. As Americans begin to experience the initial stages of imperial sclerosis and decline, and as the advanced capitalist world in general discovers the reality of ecological limits, we may find in what Marx called the “prehistory” of our species a perennial and redemptive wisdom. We will not be saved by our money, our weapons, or our technological virtuosity; we might be rescued by the joyful and unprofitable pursuits of love, beauty, and contemplation. No doubt this will all seem foolish to the shamans and magicians of pecuniary enchantment. But there are more things in heaven and earth than are dreamt of on Wall Street or in Silicon Valley.

### Links---1NR

#### 3. That undermines their ability to challenge platforms. Their Decker and their Allensworth evidence say consolidation is inevitable because business dynamism always favors the incumbent firm. The aff doesn’t eliminate the underlying motivate for firm acquisitions, which proves consolidation is inevitable.

Rob Larson 20. Professor of economics at Tacoma Community College. "It’s Going to Take More Than Antitrust Law to Rein in Big Tech." Jacobin. 11-9-2020. https://jacobinmag.com/2020/11/google-big-tech-antitrust-lawsuit-united-states-doj-search-engine]

In mid-October, the US Department of Justice (DOJ) filed a long-expected antitrust lawsuit against Google, one of the world’s largest and most influential companies. Claiming that Google has used deals with phone makers to keep its web search engine as the default on Android and Apple smartphones, the DOJ is being joined by various US states (all with Republican attorney generals) in the suit. Many other states are also running their own investigations of the company. Google, along with the rest of Big Tech, has become a political target due to its rising power and wealth (the company is now worth over a trillion dollars). With House Democrats calling for action against the tech platforms and Donald Trump also angry at them, the company appears to be in hot water. But US antitrust law is notoriously weak sauce, only able to bring suit against companies in specific situations. Having a full-on monopoly is not one of them. Previous US cases, in particular against Microsoft in the 1990s, suggest that the government may struggle to beat its well-financed opponent in court. And even if it did, the search market would only see somewhat more market share going to giant rivals like Microsoft’s Bing or Verizon’s Yahoo. There’s no path that leads to the rich, free competition that capitalism’s defenders insist it creates. Algorithm Blues The DOJ’s case mainly concerns the deals Google has made placing its search engine as the default in various computing environments — a crucial advantage since many users don’t change their factory settings. As a Google “design ethicist” once commented, “If you control the menu, you control the choices.” Since 2005, Google has paid Apple enormous sums, estimated today at $10 billion a year, to keep Google Search pre-loaded in Apple’s Safari web browser. The “traffic acquisition cost” yields as much as half of its search volume. The stakes are big for Apple too. Google’s payments make up roughly a fifth of the company’s entire yearly profit. On smartphones running Google’s Android mobile operating system, Google’s licensing arrangements require the phone makers (like Samsung and Huawei) to set its engine as the default and to keep its apps un-deletable. The dramatically higher search traffic not only feeds Google’s online ad business — its main revenue source — but also provides fresh inquiries for continued training of its search algorithm. The relationship with Apple in particular has been so important to Google that they internally referred to the possibility of losing iPhone search traffic as “Code Red.” The fact that Google has a near-monopoly in search, including an 80 percent market share for desktop and about 88 percent for mobile, is not in itself illegal. Google’s dominant position arises from the economics of online search, which is driven by a classic “network effect” — more users of a search engine help strengthen the algorithm, making its search results more relevant to the user. Under the US’s very limited antitrust system, gaining a monopoly through such economic forces isn’t against the law — only using your monopoly to take over another industry (“monopolization”) is illegal under the Sherman Antitrust Act. Google’s various exclusivity deals likely do constitute monopolization, separate from other power-mongering practices like “search bias,” where Google has used its dominance to crush competing specialized or “vertical” search services like Yelp, Foundem, and Tripadvisor by down-ranking them in Google’s search results or by “scraping” their content onto Google’s own result pages. Rewriting Alphabet The DOJ is still fighting an uphill battle due to the farcically limited nature of US antitrust law, which in its modern interpretation tends to also require likely “consumer harm,” usually in the form of higher prices. Since Google offers its services mostly for free (along with other likely imminent antitrust targets like Facebook), it’s unclear if Justice will be able to convince a judge that consumers are harmed by Google’s traffic acquisition arrangements — after all, consumer goods companies like cereal makers pay retailers for special product placement all the time. If the DOJ does succeed and forces Alphabet to end its exclusivity/default setting deals with phone markers and service providers, it would likely only mean more traffic for the one serious rival to Google Search in the market, Microsoft’s Bing. Started in 2009 to try to wrest some market share from Google, Bing has just 2.83 percent of the market share for mobile search and a slightly higher 13.48 percent on desktop (due to it being the default on Windows, the desktop operating system that still runs three-quarters of the world’s computers). The third-place Yahoo search uses Bing to produce its results and place its search ads. And while Bing’s wimpy market share looks inconsequential, Google takes its potential threat seriously — the New York Times has reported that “Google unfairly hinders the ability of search competitors — and Microsoft’s Bing is almost the only one left — from examining and indexing information that Google controls, like its big video service YouTube,” with Bing unable to “examine and index up to half the videos on YouTube.” So even in the best-case scenario, a monopolized industry would become more of a two-company or “oligopoly” industry, with few likely benefits to users as both siphon up user data and use whatever exclusive carve-outs they can retain as defaults, like on the Edge and Chromebook devices the companies produce. The companies are unlikely to make serious plays against one another’s search territory: the companies are already cooperating on several fronts, including Microsoft planning to use Google’s Android on its new line of smartphones. The companies settled their long-running multiple patent-infringement suits and countersuits in 2016. But will the DOJ’s case succeed? We can look to previous tech monopoly investigations for clues. Search History Microsoft’s own antitrust odyssey is the most instructive. Much like Google Search, Microsoft’s Windows had a near-total monopoly in a crucial tech market — the operating systems that run desktop computers (the entire industry until the mobile era). The company had a history of taking ruthless actions to crush or copy competitors for its related products, including its Office suite of business applications like Word and Excel. But it was only when Microsoft elected to use its existing OS monopoly to take over the new market for web browsing software that it got into trouble. The company bundled its own lousy browser, Internet Explorer, with versions of its Windows 95 and later updates, which were installed on most computers worldwide. Large payments followed to Apple, AOL, and other computing platforms to make Explorer their default browser rather than Netscape, with a senior VP alleged to have said Microsoft had “cut off Netscape’s air supply.” It was an open-and-shut instance of monopolization. The Federal Trade Commission and the DOJ got involved. The case went to trial, and the company suffered deep public embarrassment as claims by the company and by Gates during his notorious video deposition were directly contradicted by the company’s internal email trail. (It was during this period that Gates discovered the reputation-laundering powers of publicly posturing as a philanthropist.) After an arbitration attempt failed, the company was, in a rare development, formally declared a monopolist under the law and ordered broken up. Luckily for Microsoft, its appeal continued through the stolen 2000 election, and the George W. Bush administration’s DOJ dropped its goal of splitting up the company. Instead, the federal government told the company to make various “behavioral” reforms, including allowing computer manufacturers to hide from view the Windows-bundled Explorer logo and include a ballot screen, later called a “choice screen,” where users could select among various commercial internet browsers. The shortcomings of these behavioral changes were seen in 2011, when Microsoft released a Windows 7 update without the browser choice screen software. Hilariously, no one noticed for almost seventeen months, when the company was reported to the European Commission (EC). The commission would go on to fine Microsoft $733 million, about one percent of its revenue that fiscal year. Microsoft’s outcome is likely a harbinger of Google’s eventual settlement — indeed, it’s reminiscent of the European Commission judgment against Alphabet in 2018. That case was based on similar charges of requiring Android operating system–using phone makers to pre-install the company’s search engine and browser as defaults, without which Google would not allow them to include the Google Play store for mobile apps, the main way Android users get applications. The EC fined Google and forced it to end the practice, and EU regulators then pressured Google to include choice screens for users in every EU country. However, for a browser to appear alongside Google on the ballot, they must bid in an auction for a slot (reflecting the company’s love of using them in its advertising technology and elsewhere). Browsers like Bing and Yahoo, which collect user information to serve ads have far greater profits and resources to bid for ballot spaces, unlike smaller, privacy-centered browsers like DuckDuckGo. But this kind of wonkish policy outcome is quite possible for the US investigation of Alphabet. Google was also investigated in the United States by the Federal Trade Commission (FTC) in 2013. That probe focused on search bias, meaning Google’s abuse of its dominant search position by down-ranking competing “vertical” search engines for trips and shopping. Considered a “close call” by FTC staff, no charges were brought, perhaps due to the company’s long-standing closeness to the Democratic party in general and the Obama administration in particular. For all the rivers of digital ink being spilled over the Trump administration’s suspect Justice Department going after Google’s very real power-mongering, the limited scope of the suit, the constrained nature of US antitrust law, and Alphabet’s ocean of lobbying cash all suggest the chances of a dramatic outcome are vanishingly small. Alphabet’s stockholders have laughed off the suit so far. And it’s not hard to see why: it will likely take years, and the result will almost certainly be modest behavioral leashes. Google’s market power over the flow of information in our society, along with that of its Big Tech rivals/partners, isn’t going anywhere — not unless we start to entertain bolder steps beyond the weak tea of antitrust.

### AT: Competition Good---1NR

#### 2. Their rhetoric of preserving competition cements neoliberalism by legitimizing and justifying extreme inequality in economic, social, and political spheres.

William DAVIES 14, Senior Lecturer at Goldsmiths, University of London [“How ‘competitiveness’ became one of the great unquestioned virtues of contemporary culture,” *The London School of Economics and Political Science*, May 19, 2014, http://blogs.lse.ac.uk/politicsandpolicy/the-cult-of-competitiveness/]

The years since the banking meltdown of 2008 have witnessed a dawning awareness, that our model of capitalism is not simply producing widening inequality, but is apparently governed by the interests of a tiny minority of the population. The post-crisis period has spawned its own sociological category – ‘the 1%’ – and recently delivered its first work of grand economic theory, in Thomas Piketty’s Capital in the Twenty-first Century, a book dedicated to understanding why inequality keeps on growing.

What seems to be provoking the most outrage right now is not inequality as such, which has, after all, been rising in the UK (give or take Tony Blair’s second term) since 1979, but the sense that the economic game is now being rigged. If we can put our outrage to one side for a second, this poses a couple of questions, for those interested in the sociology of legitimation. Firstly, how did mounting inequality succeed in proving culturally and politically attractive for as long as it did? And secondly, how and why has that model of justification now broken down?

In some ways, the concept of inequality is unhelpful here. There has rarely been a political or business leader who has stood up and publicly said, “society needs more inequality”. And yet, most of the policies and regulations which have driven inequality since the 1970s have been publicly known. Although it is tempting to look back and feel duped by the pre-2008 era, it was relatively clear what was going on, and how it was being justified. But rather than speak in terms of generating more inequality, policy-makers have always favoured another term, which effectively comes to the same thing: competitiveness.

My new book, The Limits of Neoliberalism: Sovereignty, Authority & The Logic of Competition, is an attempt to understand the ways in which political authority has been reconfigured in terms of the promotion of competitiveness. Competitiveness is an interesting concept, and an interesting principle on which to base social and economic institutions. When we view situations as ‘competitions’, we are assuming that participants have some vaguely equal opportunity at the outset. But we are also assuming that they are striving for maximum inequality at the conclusion. To demand ‘competitiveness’ is to demand that people prove themselves relative to one other.

It struck me, when I began my Sociology PhD on which the book is based, that competitiveness had become one of the great unquestioned virtues of contemporary culture, especially in the UK. We celebrate London because it is a competitive world city; we worship sportsmen for having won; we turn on our televisions and watch contestants competitively cooking against each other. In TV shows such as the Dragons Den or sporting contests such as the Premier League, the division between competitive entertainment and capitalism dissolves altogether. Why would it be remotely surprising, to discover that a society in which competitiveness was a supreme moral and cultural virtue, should also be one which generates increasing levels of inequality?

Unless one wants to descend into biological reductionism, the question then has to be posed: how did this state of affairs come about? To answer this, we need to turn firstly to the roots of neoliberal thinking in the 1930s. For Friedrich Hayek in London, the ordoliberals in Freiburg and Henry Simons in Chicago, competition wasn’t just one feature of a market amongst many. It was the fundamental reason why markets were politically desirable, because it conserved the uncertainty of the future. What united all forms of totalitarianism and planning, according to Hayek, was that they refused to tolerate competition. And hence a neoliberal state would be defined first and foremost as one which used its sovereign powers to defend competitive processes, using anti-trust law and other instruments.

One way of understanding neoliberalism, as Foucault has best highlighted, is as the extension of competitive principles into all walks of life, with the force of the state behind them. Sovereign power does not recede, and nor is it replaced by ‘governance’; it is reconfigured in such a way that society becomes a form of ‘game’, which produces winners and losers. My aim in The Limits of Neoliberalism is to understand some of the ways in which this comes about.

In particular, I examine how the Chicago School Law and Economics tradition achieved an overhaul (and drastic shrinkage) in the role of market regulation. And I look at how Michael Porter’s theory of ‘national competitiveness’ led to a new form of policy orientation, as the search for competitive advantage. Both of these processes have their intellectual roots in the post-War period, but achieved significant political influence from the late 1970s onwards. They are, if you like, major components of neoliberalism.

By studying these intellectual traditions, it becomes possible to see how an entire moral and philosophical worldview has developed, which assumes that inequalities are both a fair and an exciting outcome of a capitalist process which is overseen by political authorities. In that respect, the state is a constant accomplice of rising inequality, although corporations, their managers and shareholders, were the obvious beneficiaries. Drawing on the work of Luc Boltanski, I suggest that we need to understand how competition, competitiveness and, ultimately, inequality are rendered justifiable and acceptable – otherwise their sustained presence in public and private life appears simply inexplicable.

And yet, this approach also helps us to understand what exactly has broken down over recent years, which I would argue is the following: At a key moment in the history of neoliberal thought, its advocates shifted from defending markets as competitive arenas amongst many, to viewing society-as-a-whole as one big competitive arena. Under the latter model, there is no distinction between arenas of politics, economics and society. To convert money into political power, or into legal muscle, or into media influence, or into educational advantage, is justifiable, within this more brutal, capitalist model of neoliberalism. The problem that we now know as the ‘1%’ is, as has been argued of America recently, a problem of oligarchy.

Underlying it is the problem that there are no longer any external, separate or higher principles to appeal to, through which oligarchs might be challenged. Legitimate powers need other powers through which their legitimacy can be tested; this is the basic principle on which the separation of executive, legislature and judiciary is based. The same thing holds true with respect to economic power, but this is what has been lost.

Regulators, accountants, tax collectors, lawyers, public institutions, have been drawn into the economic contest, and become available to buy. To use the sort of sporting metaphor much-loved by business leaders; it’s as if the top football team has bought not only the best coaches, physios and facilities, but also bought the referee and the journalists as well. The bodies responsible for judging economic competition have lost all authority, which leaves the dream of ‘meritocracy’ or a ‘level playing field’ (crucial ideals within the neoliberal imaginary) in tatters. Politically speaking, this is as much a failure of legitimation as it is a problem of spiralling material inequality.

The result is a condition that I term ‘contingent neoliberalism’, contingent in the sense that it no longer operates with any spirit of fairness or inclusiveness. The priority is simply to prop it up at all costs. If people are irrational, then nudge them. If banks don’t lend money, then inflate their balance sheets through artificial means. If a currency is no longer taken seriously, political leaders must repeatedly guarantee it as a sovereign priority. If people protest, buy a water canon. This is a system whose own conditions are constantly falling apart, and which governments must do constant repair work on.

### Link Turns---1NR

#### A. Boom & Bust.

Alan Maass 21. Communications staff for Rutgers AAUP-AFT. Marxism Shows Us How Our Problems Are Connected. Jacobin. 1-5-2021. https://jacobinmag.com/2021/01/marxism-capital-socialism-capitalism-book-review

When Things Fall Apart

Marxist economics explains not only how capitalism works but why it regularly doesn’t — during the periodic economic busts that inevitably follow the booms. As Marx and Engels wrote:

Society suddenly finds itself put back into a state of momentary barbarism; it appears as if a famine, a universal war of devastation had cut off the supply of every means of subsistence; industry and commerce seem to be destroyed. And why? Because there is too much civilization, too much means of subsistence, too much industry, too much commerce.

Of course, in a world where billions go without enough food, there’s no such thing as “too much means of subsistence.” There’s only too much from the point of view of the capitalists — too much to sell their products at an acceptable profit.

Thier introduces the chapters on capitalist crisis by unpacking a long quotation from Engels that ends: “The contradiction between socialized production and capitalistic appropriation is reproduced as the antagonism between the organization of production in the single factory and the anarchy of production in society as a whole.”

Under capitalism, production within workplaces is generally highly regimented, but the economy as a whole is a free-for-all. Businesses make their investment decisions behind closed doors, each hoping to get a leg up on the competition — by introducing the most popular model, the new product, the next trend. Success means a greater share of the market and therefore more profits.

All the important questions for society as a whole — how much food should be produced, how many homes to build, what kind of drugs to research and manufacture, how to generate electricity — are decided by the free market.

In economic good times, success seems contagious. Companies make ambitious investments, produce more and more, and watch the money roll in. But when enough companies jump in, the market gets saturated, sales slump, debts grow, and the record profits start to sink. The effects spread from part of the economy to the next, as Thier explains, using the example of oil:

If refineries sit idle because there is an overproduction of oil, the workers are laid off, and the creditors, who financed the investment, are dragged down as well. But as future oil extraction and refining projects are pulled back, so too is demand for the raw materials (steel, concrete, plastics, electricity, etc.) and engineering necessary for the production of oil rigs, pipelines, and so on. The construction business and service and retail companies, which had benefited from the springing up of oil boomtowns, suffer as well.

Because of the complexity of the international capitalist economy, the boom-slump roller-coaster ride can look and feel different each time around. Thier devotes a chapter to analyzing the crash last time: the Great Recession of 2008–9. She explains why and how the parasitical realm of banking and finance was the detonator of this slump but looks beyond popular left explanations about “financialization” to reveal the underlying crisis of global overproduction.

Among Marxist economics writers, there are some disagreements about the details here, specifically about “which aspects of Marx’s writing — falling profitability, overproduction (or in some cases, underproduction), disproportionality among branches, the role of credit — are emphasized and how these pieces fit together,” Thier writes.

In her account, Thier tends to stress overproduction, to the disappointment of those who emphasize falling profit rates. This focus on overproduction crucially emphasizes how an organic mechanism of capitalism — inevitable in a system driven by exchange, exploitation, and competition — repeatedly causes crisis.

Regardless of their ideology or morality (or lack thereof), capitalists are inevitably driven to reduce costs, they inevitably see an advantage in producing more for less, and this inevitably leads to frantic overproduction that undermines profitability and ultimately slams the economy into reverse.

In other words, capitalism stops working not because of a mistake or failed policy, but because it’s been working the way it’s supposed to. As Thier writes:

Competition is the mainstay of capitalism. It can’t be made friendlier or softer because it requires an accumulation of capital at any cost, in order to get ahead or get left behind.… These same processes of accumulation necessarily lead to contradictions that threaten the very profits that capitalists seek. Every contradiction for capitalism is both a great hazard to our lives — since we are made to pay the price — and also an important crack in the system. Every periodic crisis is a potential point around which to organize.

#### B. Off-shoring.

Jerry Kopf et al 13 . Professor of Economics, Radford University. Charles Vehorn, Professor of Economics, Radford University. Joel Carnevale, Professor of Economics, Syracuse University. “Emerging Oligopolies in Global Markets: Was Marx Ahead of His Time?” Journal of Management Policy and Practice 14(3): 96-98. <http://www.m.www.na-businesspress.com/JMPP/KopfJ_Web14_3_.pdf>

With firms branching out into global competition and countries lowering their trade barriers to promote such competition, the absence of effective global regulation once again raises Marx concerns. Because of strong federal governments, national governments were able to pass and enforce, through the uses of military or police force where necessary, laws that regulated externalities, such as pollution, and antitrust. At the moment there is no strong federal government at the global level and, therefore, no one to pass and enforce laws that effectively regulate externalities or antitrust. Epstein and Greve raise a Marx like concern, “when firms have international market power, one would expect them to behave as monopolists just like domestic firms with market power” (2004). Therefore, without any dominant form of regulatory governance, industry concentration could very well replicate what was seen in the late 19th century, though, globally instead of nationally. Carstensen & Farmer discusses this tendency towards M&A’s: The transformation of formerly regulated or noncompetitive industries to competition is closely linked with merger movements. The historical record demonstrates that once faced with competition, leading firms in these industries began to merge. This has been the pattern in airlines, banks, railroads, electric and gas utilities, health care and, with great prominence, telecommunications (2008). While some may argue that reaching that level of concentration is unlikely, one should consider current industries that hold a considerable global market share. “Although it may be more difficult to establish and maintain market power internationally, there is no reason to believe that it is impossible or, for that matter, rare. Industries such as pharmaceuticals, passenger aircraft, and software illustrate the phenomenon” (Epstein & Greve, 2004). There are actually quite a few firms who have emerged into the global market that hold what can be considered a significant share within global industries, ranging from manufacturing, financial intermediation, and transport service along with other service industries. For example, The European Aeronautic Defense and Space Company and The Boeing Company combined hold more than 50% market share within the global civil aerospace products manufacturing industry. Goldman and Sachs hav2 20.20% market share within the global investment banking and brokerage industry and Vivendi holds 20.10% within the global music production and distribution industry. United Parcel Service holds 23.80%, within the global logistics – couriers industry (IBISW, 2011). We do not intend to imply that the monopolization that had plagued the United States in the late 19th century has emulated itself at the global level, creating one dominant firm controlling an entire global industry. However, it does appear that a number of industries are starting to exhibit Marx, “inevitable move toward a monopoly.” The increase in oligopoly power at the global level presents unprecedented challenges. Reaching a cross-country consensus on competition policy is a difficult. Epstein & Greve discuss some of the issues that arise when attempting to unite foreign and domestic competition policy. Competition policy embodies imprecise normative judgments that invite controversy and defection rather than consensus and commitment. Because its scope extends to such a wide range of economic activity, it has the potential to inflict significant costs on many transactors. In particular, competition policy tempts states both to impose nominally neutral policies that favor local producers and consumers at the expense of global welfare, and to administer their policies in a discriminatory fashion to similar ends” (2004). While more and more countries are adopting competition policies, this seemingly positive step towards unification of trust law has its negative effects. “Nearly one hundred jurisdictions now have antitrust laws” according to Epstein & Greve, this raises increasing issues of “jurisdictional overlaps” si

nce many countries will assert their “jurisdiction over extraterritorial conduct that has a domestic impact” (2004). Antitrust enforcement agencies around the world have tried to cope with the increased power of global corporations by staying in regular and increasing contact with one another on individual merger cases as well as on general issues of mutual enforcement interest. Through instruments such as the 1995 Recommendation of the Organization for Economic Co-operation and Development (OECD) that its 29 members cooperate with one another in antitrust enforcement and bilateral agreements like that which exists between the United States and the European Community, the antitrust agencies notify one another when a case under investigation affects another's important interests and they share what information they can and otherwise cooperate in the investigation and resolution of those cases (1999). Richard Parker, Senior Deputy Director of the Bureau of Competition FTC, presenting on global merger enforcement, discussed the implementation of the Organization for Economic Co-operation and Development (OECD) and concluded with examples of global merger enforcement. While attempts at unified standards of competition policy are underway, the efforts of the OECD are considered to have substantial limitations on enforcing global merger laws. Epstein and Greve state: Information sharing or “soft” cooperation has also been pursued at the Organization for Economic Co-operation and Development, which has generated several aspirational texts. None of these impose obligations on states, and they are not intended to do so. Their goals are modestly limited to improving communication on competition issues. History shows us that even with a strong federal government with the ability to enforce laws through the use of force where necessary, such as the United States federal government has on its states, firms are very good at ignoring or getting around antitrust laws. If the U.S. government did not have strong federal power over states, and it was up to the states to reach agreements on antitrust laws, one can easily imagine that there would likely be problems resulting in less strenuous competition policy. Take for example state control over age discrimination laws. When these laws originated, states chose whether to enact policies aimed at protecting workers rights. By 1960 only 8 states had age discrimination laws until the federal government enacted such regulations as the Age Discrimination Employment Act of 1967 (ADEA). This, along with the Department of Labor in 1979 giving administrative authority to the U.S. Equal Employment Opportunity Commission (EEOC), established unified laws protecting individual employment rights (Lahey, 2007). Without this dominant authority of the federal government, fair employment practices may still continue to be a regionally dependent right. In the current era of globalization, where industry’s actions domestically can be felt by all corners of the globe and vice versa, without a global entity with strong “federal” powers capable of monitoring and enforcing competition policy, it seems reasonable to conclude that Marx may in fact be proven correct: the inevitable result of the efficient market is increasing concentration of power resulting in global oligopolies or, eventually, monopolies.

### AT: Green Tech

#### 1. Too small, failed tests, funneled money to petro capital.

Emma Black 21 Educational Background in continental philosophy and is a member of Socialist Alternative. Capitalism’s fake solutions to the climate crisis. 5-23-2021. https://redflag.org.au/article/capitalisms-fake-solutions-climate-crisis

While the disappearance of the outright climate denialism of the Trump era might seem cause for celebration, the new trend for spruiking the magical power of technology to solve the climate crisis is cause for serious concern. When you look beyond the headline-grabbing announcements of increased long-term ambition, the Earth Day summit amounted to little more than another case of government greenwashing of the business as usual of fossil-fuelled capitalism.

Instead of detailing the changes to be made in the here and now to reduce emissions, Biden and other world leaders instead promoted faith in the capacity of science and technology to come to the rescue at an indeterminate point in the future.

Australian Prime Minister Scott Morrison was among them. While the media highlighted the supposed gulf between a progressive, “green” Biden and the conservative, fossil-fuel-loving Morrison, they both promoted the same faith in the powers of technology. Like Biden, Morrison has vowed to invest tens of billions of dollars in developing carbon capture and storage technologies, “clean” hydrogen, “blue” carbon and “green” steel—among other colourful innovations.

In May’s federal budget, the Coalition allocated more than half a billion dollars to developing the first two of these technologies—$263.7 million for carbon capture and storage (CCS) and $275.5 million for “clean” hydrogen.

CCS mostly involves capturing C02 emissions at their source—in mines, power stations and so on—and pumping them deep underground (so the theory goes) to be permanently stored in appropriately porous and stable rock formations. But despite politicians and business leaders spruiking CCS as an easy fix for the climate crisis for decades, it has never been shown to work on anything near the scale required.

Australia already boasts the world’s largest, supposedly functional, CCS facility at Chevron’s Gorgon gas project in Western Australia. However, according to the Climate Council, “the Gorgon CCS trial has been a big, expensive failure ... capturing less than half the emissions needed to make CCS viable”. In what is only the latest in a series of problems since it became operational in 2019, Michael Mazengarb reported in Renew Economy earlier this year that pumping equipment required to clear water from the undersea formation into which the C02 is to be injected had become clogged with sand.

However, while CCS may be useless for addressing climate change, it remains an extremely useful political tool for the government—providing it with green cover while it continues to funnel money to Coalition supporters in the coal and gas industries. And of course, it’s also useful for those companies on the receiving end of the government’s “green” largesse.

Bernard Keane was right in his assessment of it as a scam in Crikey. “Fossil fuel interests”, he wrote in 2019, “sense the opportunity to extract some taxpayer funding from a government worried it might have to pretend it believes in climate change”. With this year’s budget, they hit the jackpot.

But if CCS is a scam, what about “clean” hydrogen? In his speech to the Earth Day summit, Morrison vowed to rival US innovation by investing billions in high-tech “hydrogen valleys”. “In the United States you have the Silicon Valley”, he said. “Here in Australia we are creating our own ‘Hydrogen Valleys’, where we will transform our transport industries, our mining and resource sectors, our manufacturing, our fuel and energy production.”

Hydrogen is potentially a clean energy source, but only if it’s produced using renewable energy. And to be produced at the scale required to transform the economy in the way Morrison is implying would require a lot of electricity.

In his recent contribution to the Quarterly Essay, Australia’s former chief scientist, Alan Finkel, calculates that to produce the equivalent volume of hydrogen to what Australia currently exports in liquefied natural gas would require “approximately 2,200 terawatt-hours” of electricity. This, Finkel notes, “is about eight times Australia’s total electricity generation in 2019”.

If Morrison genuinely believes the “hydrogen boom” he envisages will be based on production of renewable energy on that kind of scale, the government would have provided increased funding for renewables in the budget. None was forthcoming.

The reality is that Morrison sees the talk of “hydrogen valleys” as a way of greenwashing the same old “gas-fired recovery” he was promoting last year. The government doesn’t envisage producing hydrogen with electricity from renewables, but rather from gas. The focus on CCS gives the game away. The “hydrogen valleys” of the future will be criss-crossed with pipelines and peppered with gas-fired power stations with (we’re supposed to believe) the magic of CCS ensuring that the whole operation can nevertheless be run green and guilt-free.

“Clean” hydrogen then, just like CCS, turns out to be just another technological chimera designed to greenwash capitalism’s continuing addiction to fossil fuels.

What then of the other technological solutions being touted? Perhaps the most headline grabbing of them has been Biden’s proposed US$174 billion investment in the infrastructure for electric vehicles and their production. On the surface, again, this might sound like a good idea. Who wouldn’t want to live in a world in which we can all drive around in sleek, silent, powerful and “green” electric vehicles like Teslas?

Again, however, this is just another fake technological “fix” to the climate crisis that will help perpetuate the environmentally destructive status quo. A genuinely sustainable society won’t be built around the kind of car culture that exists today. What’s needed, among other things, is a massive investment in public transport and the transformation of cities to reduce the need for long commutes.

The promotion of electric vehicles as part of a technological “green” utopia is designed to forestall this kind of change, to protect as much as possible the car makers and other big business interests that profit from the status quo.

Elon Musk personifies this. In his authorised biography, Elon Musk: Tesla, SpaceX, and the Quest for a Fantastic Future, Ashlee Vance revealed that Musk’s California “hyperloop” proposal was aimed at quashing plans for a high-speed rail link between Los Angeles and San Francisco. “Musk had dished out the Hyperloop proposal just to make the public and legislators rethink the high-speed train”, wrote Vance. “He didn’t intend to build the thing ... With any luck, the high-speed rail would be cancelled. Musk said as much to me during a series of emails and phone calls leading up to the announcement.”

For those who can afford it (a base-level Tesla will set you back an eye-watering $73,900 in Australia today), driving an electric car might make you feel like you’re doing something to help save the planet. This is an illusion.

Even if your car is charged from electricity produced by renewable energy, you also have to consider all the emissions produced in the construction and maintenance of the roads and freeways on which you drive. Then there’s the material of the car itself, and the lithium needed for the battery. Already, the skyrocketing demand is causing major environmental problems for major lithium producers like China, Chile and Bolivia. Tellingly, Musk has already devised the ultimate escape plan for himself—moving to Mars. This is not an option for most people.

The long list of fake technological fixes to the climate crisis is nothing more than a delaying tactic, designed to create the impression of change to ensure the profits bonanza of the fossil fuel economy can continue for as long as possible. Only a total transformation of society, in which technological production is rationally designed and democratically organised and controlled, can ensure that we are able, in Marx’s words, “to bequeath the Earth in an improved state to succeeding generations”.

### Unsustainable---1NR

#### 1) Ag collapse---short term.

Jamie Allinson et al 21. Allinson is Senior Lecturer in Politics and International Relations at Edinburgh University and author of The Age of Counter-revolution. China Miéville is the author of a number of highly acclaimed and prize-winning novels including October: The History of the Russian Revolution. Richard Seymour is the author of numerous works of non-fiction, His writing appears in the New York Times, London Review of Books, Guardian, Prospect, Jacobin. Rosie Warren is an Editor at Verso and the Editor-in-Chief of Salvage. All are writing for the Salvage Collective. “The Tragedy of the Worker: Toward the Proletarocene.” Chapter 1: M-C-M’ and the Death Cult. July 2021. Verso EBook. ISBN: 9781839762963 //shree]

The Triassic-Permian ‘great dying’ was a megaphase change taking place through pulses lasting for tens of thousands of years, separated by interludes of hundreds of thousands of years, if not millions. The current mass extinction event is a megaphase change taking place in microphase time. Mass extinction is punctuated by the production of what the environmentalist Jonathan Lymbery calls ‘dead zones’: the conversion of wild ecosystems into dead monocultures. In Sumatra, these dead zones are made by burning rainforest and, amid the stench of death, planting palm crop. The palm oil is used in foods and household items, while the nut is used in animal feed. It is secured with barbed wire, and treated with poison, to prevent the crop from being eaten. Surviving animal life, and surrounding human communities, are pushed to the edges, to the brink of extinction. Agricultural workers are abused, underpaid, even enslaved. This is an example of what Moore would call ‘cheap food’, where the ‘value composition’ of the goods, the amount of waged labour necessary to produce each item is ‘below the systemwide average for all commodities’. In this case, a ‘cheap nature’ is produced by a distinctly capitalist form of territorialisation, wherein forestry is converted through deforestation into palm monoculture, while ‘cheap labour’ is secured partly through the dispossession of neighbouring human communities. More calories with less socially-necessary labour-time is cheap food. Cheap is not, of course, the same thing as efficient. Food production is, alongside fuel, a fulcrum of the capitalist organisation of work-energetics. It is one that, as with fossil fuels, wastes an incredible amount of the energy it extracts. According to the FAO (Food and Agriculture Organization of the United Nations), 30 per cent of cereals grown for human and animal consumption are wasted, along with almost half of all root crops, fruits and vegetables. To conclude from this grotesque squander that a ‘more efficient’ capitalism would ‘solve the problem’ of ‘the environment’ would be to fail to understand waste, capitalism and ecology: that the first is intrinsic to the second; that the second, whatever the degree to which it is inflected by the first, is inimical to the third. Capitalism also directly undermines its own productivity, precisely through its industrially-produced biospheric destruction. According to the UN, for example, there are at most sixty harvests remaining before the world’s soils are too exhausted to feed the planet. This edaphic impoverishment is a product, not a byproduct. It is the predictable, and long-predicted, consequence of intensive agriculture, over-grazing and the destruction of natural features (such as trees) that prevent erosion. Likewise, the death-drop of insect biomass, the decline of pollinating bees, are hastened by the extensive use of pesticides and fertilisers. Capitalist food production can only evade the problem – a problem, in its terms, of accumulation – either by establishing new ‘cheap natures’ through such means as deforestation, or by extracting rent from competitor producers through such means as intellectual property rights. For instance, since 1994’s notorious TRIPS agreement (Trade-Related Aspects of Intellectual Property Rights), through the rules of UPOV (Union for the Protection of New Plant Varieties), particularly the notorious UPOV 1991, and in the face of local fightbacks from Guatemala to Ghana, the World Trade Organisation has enforced property agreements outlawing the saving of seeds from one season to the next, thus sharply raising costs for farmers producing 70 per cent of the global food supply.

#### 2) Carbon bubble, peak oil.

Jeremy Rifkin 19. Honorary Doctorate in Economics at Hasselt University. Recipient of the 13th annual German Sustainability Award in December 2020. BS in Economics at UPenn – Wharton School. Founder of People’s Bicentennial Commission. The Green New Deal: Why the Fossil Fuel Civilization Will Collapse By 2028, and the Bold Economic Plan to Save Life on Earth. St Martin’s Press. P7-8. Google Book. //shree]

The Carbon Tracker Initiative, a London-based think tank serving the energy industry, reports that the steep decline in the price of generating solar and wind energy “will inevitably lead to trillions of dollars of stranded assets across the corporate sector and hit petro-states that fail to reinvent themselves,” while “putting trillions at risk for unsavvy investors oblivious to the speed of the unfolding energy transition.”19 “Stranded assets” are all the fossil fuels that will remain in the ground because of falling demand as well as the abandonment of pipelines, ocean platforms, storage facilities, energy generation plants, backup power plants, petrochemical processing facilities, and industries tightly coupled to the fossil fuel culture. Behind the scenes, a seismic struggle is taking place as four of the principal sectors responsible for global warming—the Information and Communications Technology (ICT)/telecommunications sector, the power and electric utility sector, the mobility and logistics sector, and the buildings sector—are beginning to decouple from the fossil fuel industry in favor of adopting the cheaper new green energies. The result is that within the fossil fuel industry, “around $100 trillion of assets could be ‘carbon stranded.’”20 The carbon bubble is the largest economic bubble in history. An

d studies and reports over the past twenty-four months—from within the global financial community, the insurance sector, global trade organizations, national governments, and many of the leading consulting agencies in the energy industry, the transportation sector, and the real estate sector—suggest that the imminent collapse of the fossil fuel industrial civilization could occur sometime between 2023 and 2030, as key sectors decouple from fossil fuels and rely on ever-cheaper solar, wind, and other renewable energies and accompanying zero-carbon technologies.21 The United States, currently the leading oil-producing nation, will be caught in the crosshairs between the plummeting price of solar and wind and the fallout from peak oil demand and accumulating stranded assets in the oil industry.22

### AT: Alt Fails

#### 2. There’s a paradigm shift now towards the alt.

CJ Atkins 21. Managing Editor at People’s World with a Ph.D. in political science from York University in Toronto. Neoliberalism’s in trouble: A Marxist look at the American Rescue Act. People's World. 3-11-2021. https://www.peoplesworld.org/article/neoliberalisms-in-trouble-a-marxist-look-at-the-american-rescue-act/

Change from below Many analysts are taking notice of this paradigm change. Paul McCulley, a business professor at Georgetown, told the New York Times earlier this week, “Having the tools of economic stabilization work a whole lot more through the fiscal channel and a whole lot less through the monetary channel is a profound, pro-democracy policy mix.” In plainer language: It’s better to have elected representatives rather than unelected bankers making the call on how public money is spent. Some media commentators are seeing the shift, but they’re missing the real reasons for why it’s happening. Times opinion writer Neil Irwin, for instance, characterizes it as a battle between “pointy-headed technocrats” and lawmakers, or as the headline of his article earlier this week put it, “Move over, nerds. It’s the politicians’ economy now.” Without the insights that come from a class analysis of the situation, Irwin and other commentators in the bourgeois press continue to look only at the differences among those at the top of society to explain social change. The truth, however, is that the pressure now being applied to neoliberal ideology is the result of class struggle from below. Since the last recession, working-class action has been steadily building and gaining strength. The first sparks came in the Occupy Wall Street movement that emerged in the wake of the financial crisis. There were the two Bernie Sanders campaigns for president as well as that of Elizabeth Warren, which inserted explicitly social democratic demands like Medicare for All into public conversation. The trade union movement has begun to reverse its decades-long decline, with new organizing efforts like the campaign by Alabama Amazon workers showing that more and more workers are looking to collective action as the way to improve their lives. The Black Lives Matter national uprising, with its demand to defund policing and militarization and redirect funds toward human needs, has melded together the fights to end racism and economic inequality. Opinion polls have shown interest in the ideas of socialism gaining steam for several years already, showing up also in the fact that left-wing organizations like Democratic Socialists of America and the Communist Party USA have seen explosive growth. The 2018 and 2020 elections were further proof, as the caucus of progressive legislators swelled. Bold women of color leaders like Reps. Alexandria Ocasio-Cortez, Ayanna Pressley, Ilhan Omar, and Pramila Jayapal now lead the charge in Washington on everything from the Green New Deal to the Fight for $15 and more. The mass death and destruction experienced in the past year because of coronavirus have only accelerated the trend of people questioning the status quo and looking for alternatives. The pandemic has accelerated class struggle trends that were already becoming apparent. Increasingly, millions are questioning capitalism, as shown by this message spray-painted onto a wall in Toronto. | C.J. Atkins / People’s World All this simmering of organized working-class activity and political growth—driven by the material conditions workers and oppressed people find themselves living in—is having an impact at the national level of policy and debate. In Marxist terms, changes in the economic foundation of society are affecting mass consciousness and therefore prodding change in the superstructure—the legal, political, and philosophical ideas of our times. Old ideologies like neoliberal capitalism are under pressure from new ones arising out of class struggle. Those new ideas are not yet fully formed, though, and the forces pushing them are not yet strong enough to assert their power at all times. The new is still in conflict with the old, and the outcomes are uneven. Allies (like politicians) will at times waver. Victories will be real, but incomplete (like the dropping of the $15 minimum wage from the ARA). Defeats are not unavoidable. As Frederick Engels wrote, “History makes itself in such a way that the final result always arises from conflicts…there are innumerable intersecting forces.” So the American Rescue Plan, despite whatever we didn’t get out of it, is a big win for the working class. The people have been demanding a change in how our economy operates and whom it benefits. Organization and unity are making it happen—the 2020 election was proof of that as well.

## DPA CP

### CP

#### It’s most predictable---we have the common and precise definition.

Dictionary.com “Inhibit vs. Prohibit”. https://www.dictionary.com/e/inhibit-vs-prohibit/

Prohibit is a transitive verb that means to forbid or prevent. Unlike inhibit, the word prohibit means that an action is being completely prevented. For example: “Angie’s coat was so tight, it prohibited any arm movement.” In this case, Angie isn’t able to move her arms at all. Prohibit is often used to describe the actions of authority figures. It can explain a rule or law. For example, “School rules prohibit cellphone use during class.” A street sign may say “Parking prohibited,” while a sign in a building lobby might say “Smoking prohibited by law.” All of these cases mean that cell phone use, parking in a certain area, or smoking are completely forbidden by their given authority figures, and can’t be done at all.

#### Prohibitions are absolute bans without exemption.

PEDIAA 15. “Difference Between Prohibited and Restricted”. https://pediaa.com/difference-between-prohibited-and-restricted/

Main Difference – Prohibited vs. Restricted

Prohibited and Restricted are used in reference to limitations and prevention. However, they cannot be used interchangeably as there is a distinct difference between them. Prohibited is used when we are talking about an impossibility. Restricted is used when we are talking about something that has specific conditions. The main difference between prohibited and restricted is that prohibited means something is formally forbidden by law or authority whereas restricted means something is put under control or limits.

What Does Prohibited Mean

Prohibited is a variant of the verb prohibit. Prohibited can be taken as the past tense and past participle of prohibiting as well as an adjective. Prohibited means that something is formally forbidden by law or authority. When we say ‘smoking is prohibited’, it means that smoking is not allowed at all, there are no exceptions. Prohibit indicates an impossibility. This gives out the idea that it is not at all possible under any condition or circumstance. The term Prohibited goods is used to refer to items that are not allowed to enter or exit certain countries. For example, the government of South America lists Narcotic and habit-forming drugs in any form, Poison and other toxic substances, Fully automatic, military and unnumbered weapons, explosives and fireworks as prohibited goods. The following sentences will further explain the use of prohibited.

Inter-racial marriages were not prohibited by the government.

He was proved guilty of using prohibited substances.

No one was allowed to enter the grounds; entry was prohibited.

Prohibited imports are the items that are not allowed to enter a country.Difference Between Prohibited and Restricted

What Does Restricted Mean

Restrict means to put under limits or control. Restricted can be either used as the past tense of restrict or as an adjective meaning limited. When we say something is restricted, it means that limits or conditions have been added to it. It does not mean that it is completely impossible. For example, Restricted goods are allowed to enter or exit a country under certain circumstances. A written permission can help you to import or export that item. Likewise, a restricted area does not mean that people are not allowed to enter; it means that a special permission is required to enter the place. Restricted information refers to information that are not disclosed to the general public for security purposes.

The new regulations restricted the free movement of people.

The club was restricted to its members and their family members.

Only the highest military personnel had access to the restricted area.

American scientists had only restricted access to the area.Main difference - Prohibited vs Restricted

Difference Between Prohibited and Restricted

Meaning

Prohibited means banned or forbidden.

Restricted means limited in extent, number, scope, or action

Possibility

Prohibited means that there is no possibility of doing something.

Restricted means that something can be done under certain conditions.

Adjective

Prohibited functions as an adjective derived from prohibit.

Restricted functions as an adjective derived from restrict.

Past tense

Prohibited is the past tense and past participle of prohibit.

Restricted is the past tense and past participle of restrict.

#### That means the counterplan is plan minus.

Antitrust Modernization Commission 07 Deborah A. Garza, Chair. Jonathan R. Yarowsky, Vice-Chair. Bobby R. Burchfield. W. Stephen Cannon. Dennis W. Carlton. Makan Delrahim. Jonathan M. Jacobson. Donald G. Kempf, Jr. Sanford M. Litvack. John H. Shenefield. Debra A. Valentine. John L. Warden. “Report and Recommendations”. https://govinfo.library.unt.edu/amc/report\_recommendation/amc\_final\_report.pdf

Other exemptions apply to narrow areas but provide a broader immunity—often complete immunity from the antitrust laws. Examples include antitrust immunity for marketing alliances between domestic and foreign airlines that are approved by the Department of Transportation;79 the Charitable Donation Antitrust Immunity Act, which gives antitrust immunity to charitable institutions that set the annuity rate for gift annuities or charitable remainder trust agreements;80 the Defense Production Act, which provides antitrust immunity for conduct undertaken in developing or carrying out a voluntary agreement or plan of action for the President that is necessary for the defense of the United States;81 the NeedBased Educational Aid Act, which provides an antitrust exemption to certain joint actions taken by institutions of higher education regarding awards of financial aid to students;82 and the Soft Drink Interbrand Competition Act, which provides an antitrust exemption for the grant of exclusive territories to soft-drink bottlers by soft-drink trademark holders in trademark licensing agreements.83

#### 2---Perm links to the Pandemic Response DA. The net benefit is “plan bad” not internal. The plan violates the DPA---it protects ANY antitrust violation.

FEMA 21. Posted by the Federal Emergency Management Agency on May 28, 2021. “Pandemic Response Voluntary Agreement Under Section 708 of the Defense Production Act; Plans of Action To Respond to COVID-19”. https://www.regulations.gov/document/FEMA-2020-0016-0053

IV. Antitrust Defense

Under the provisions of DPA subsection 708(j), each Sub-Committee Participant in this Plan shall have available as a defense to any civil or criminal action brought for violation of the antitrust laws (or any similar law of any State) with respect to any action to develop or carry out this Plan, that such action was taken by the Sub-Committee Participant in the course of developing or carrying out this Plan, that the Sub-Committee Participant complied with the provisions of DPA section 708 and the rules promulgated thereunder, and that the Sub-Committee Participant acted in accordance with the terms of the Voluntary Agreement and this Plan. Except in the case of actions taken to develop this Plan, this defense shall be available only to the extent the Sub-Committee Participant asserting the defense demonstrates that the action was specified in, or was within the scope of, this Plan and within the scope of the appropriate Sub-Committee(s), including being taken at the direction and under the active supervision of FEMA.

#### 3. The plan amends the statute to supersede presidential authority.

Michael H. Cecire and Heidi M. Peters 20. Michael H. Cecire, Analyst in Intergovernmental Relations and Economic Development Policy. Heidi M. Peters, Analyst in U.S. Defense Acquisition Policy. “The Defense Production Act of 1950: History, Authorities, and Considerations for Congress” Updated March 2, 2020. https://www.everycrsreport.com/reports/R43767.html

Congress may consider enhancing its oversight of executive branch activities related to the DPA in a number of ways. To enhance oversight, Congress could expand executive branch reporting requirements, track and enforce rulemaking requirements, review the activities of the Defense Production Act Committee, and broaden the committee oversight jurisdiction of the DPA in Congress. Congress may also consider amending the DPA, either by creating new authorities or repealing existing ones. In addition, Congress may consider amending the definitions of the DPA to expand or restrict the DPA’s scope, amending the statute to supersede the President’s delegation of DPA authorities made in E.O. 13603, or consider adjusting future appropriations to the DPA Fund in order to manage the scope of Title III projects initiated by the President.

#### 4. That’s implicitly repeals the DPA.

Jesse W. Markham Jr. 09. Marshall P. Madison Professor of Law, University of San Francisco School of Law. “The Supreme Court's New Implied Repeal Doctrine: Expanding Judicial Power to Rewrite Legislation under the Ballooning Conception of Plain.” Repugnancy, 45 GONZ. L. REV. 437 (2009).

In Credit Suisse, the Court lurched past the traditional narrow confines of the doctrine and recast it in terms that will most likely give rise to more frequent displacements of legislative enactments.14 Credit Suisse acknowledges no departure from precedent.' 5 However, the Court has, in fact, greatly expanded the implied repeal doctrine. As it is currently employed by the Court, the new doctrine bears little resemblance to precedent, obscures a previously simple rule, and exhibits a profound disregard for the sound policy underpinnings of this particular canon of legislative interpretation. By expanding, and even rewording, the "plain repugnancy" standard and introducing a vague factor-based approach, the Court invites the judiciary to find legislative inconsistencies in new and creative ways, placing the courts in an enlarged role of refashioning legislative enactments to resolve these "inconsistencies."' 6 Moreover, the Court has dismantled the traditional implied repeal rule without explaining why it believes the traditional doctrine should be abandoned. Indeed, one of the Court's vaguely expressed rationales for displacing antitrust rules in Credit Suisse-an assertion that antitrust courts are particularly error-prone-is offered without empirical or theoretical support.'7 Viewed more broadly beyond the antitrust law context in Credit Suisse, the restated implied repeal doctrine lacks an analytical justification for its departure from precedent.

The Court's reformulation of the implied repeal doctrine is bad law, bad policy, and should be undone. In Credit Suisse, the Court divested private plaintiffs of antitrust remedies for conduct that securities regulators had already concluded were both anticompetitive and subversive of public confidence in capital markets. 8 Unequivocally, the antitrust case challenged conduct that was illegal under securities regulatory law.19 Although securities regulation and antitrust rules prohibited the conduct in question for overlapping reasons, the revised implied repeal doctrine employed by the Court allowed it to find these congruent laws to be "plainly inconsistent" with one another.20 Taking direction from the Supreme Court's new implied repeal doctrine, courts are encouraged-or at least no longer discouraged--to find inconsistencies between laws they do not like and laws they prefer and, then, narrow or repeal the disfavored statutes accordingly. Indeed, Justice Stevens's concurrence suggests that this is essentially what the Court did in Credit Suisse when it disparaged the private antitrust enforcement process as error prone and found it 21 displaced by securities regulation the Court applied with undisguised reverence.

#### The next pandemic will be worse.

Andy Plump 21. President for research and development at Takeda Pharmaceuticals and a cofounder of the Covid R&D Alliance. “Luck is not a strategy: The world needs to start preparing now for the next pandemic” 05-18-21. https://www.statnews.com/2021/05/18/luck-is-not-a-strategy-the-world-needs-to-start-preparing-now-for-the-next-pandemic/

As countries grapple with the worst global pandemic in a century, it’s hard to think about preparing for the next one. But if we don’t, it could be worse than Covid-19. Over the last 30 years, infectious disease outbreaks have emerged with alarming regularity. The World Health Organization lists an influenza pandemic and other high-threat viral diseases such as Ebola and dengue among the top 10 biggest threats to public health. The rate of animal-to-human transmission of viruses has been increasing, with the U.S. Centers for Disease Control and Prevention estimating that 75% of new infectious diseases in humans come from animals. These zoonotic infections can have profound effects on human life. The overall infection fatality rate is around 10% for severe acute respiratory syndrome (SARS), between 40% and 75% for Nipah virus, and as high as 88% for Ebola. While the infection fatality rate for Covid-19 is lower — likely less than 1% — the overall burden of death has been significantly higher since it has affected so many people, more than 160 million people as I write this. Luck is not a pandemic strategy Although the Covid-19 pandemic has been a human and health care disaster, by scientific measures the world was lucky this time. Covid-19 was far less lethal than its predecessors, less contagious than previous pandemic viruses, and we were able to quickly develop a cadre of effective vaccines. But luck is not a strategy. The same way the U.S. invests in and prepares for national defense, it must also prepare for another pandemic. Though the next viral outbreak cannot be prevented, the next pandemic can — but only with better preparation.

#### The exemption ends outside of and after emergency

FEMA 21. Posted by the Federal Emergency Management Agency on May 28, 2021. “Pandemic Response Voluntary Agreement Under Section 708 of the Defense Production Act; Plans of Action To Respond to COVID-19”. https://www.regulations.gov/document/FEMA-2020-0016-0053

IV. Antitrust Defense

Under the provisions of DPA subsection 708(j), each Sub-Committee Participant in this Plan shall have available as a defense to any civil or criminal action brought for violation of the antitrust laws (or any similar law of any State) with respect to any action to develop or carry out this Plan, that such action was taken by the Sub-Committee Participant in the course of developing or carrying out this Plan, that the Sub-Committee Participant complied with the provisions of DPA section 708 and the rules promulgated thereunder, and that the Sub-Committee Participant acted in accordance with the terms of the Voluntary Agreement and this Plan. Except in the case of actions taken to develop this Plan, this defense shall be available only to the extent the Sub-Committee Participant asserting the defense demonstrates that the action was specified in, or was within the scope of, this Plan and within the scope of the appropriate Sub-Committee(s), including being taken at the direction and under the active supervision of FEMA.

This defense shall not apply to any actions taken after the termination of this Plan. Immediately upon modification of this Plan, no defense to antitrust claims under Section 708 shall be available to any subsequent action that is beyond the scope of the modified Plan. The Sub-Committee Participant asserting the defense bears the burden of proof to establish the elements of the defense. The defense shall not be available if the person against whom the defense is asserted shows that the action was taken for the purpose of violating the antitrust laws.

#### AND the agencies can police activities within it.

FEMA 21. Posted by the Federal Emergency Management Agency on May 28, 2021. “Pandemic Response Voluntary Agreement Under Section 708 of the Defense Production Act; Plans of Action To Respond to COVID-19”. https://www.regulations.gov/document/FEMA-2020-0016-0053

Each Sub-Committee Chairperson is responsible for ensuring that the Attorney General, or suitable delegate(s) from the DOJ, and the FTC Chair, or suitable delegate(s) from the FTC, have awareness of activities under this Plan, including activation, deactivation, and scheduling of meetings. The Attorney General, the FTC Chair, or their delegates may attend Sub-Committee meetings and request to be apprised of any activities taken in accordance with activities under this Plan. DOJ or FTC Representatives may request and review any proposed action by the Sub-Committee or Sub-Committee Participants undertaken pursuant to this Plan, including the provision of data. If any DOJ or FTC Representative believes any actions proposed or taken are not consistent with relevant antitrust protections provided by the DPA, he or she shall provide warning and guidance to the Sub-Committee as soon as the potential issue is identified. If questions arise about the antitrust protections applicable to any particular action, FEMA may request DOJ, in consultation with the FTC, provide an opinion on the legality of the action under relevant DPA antitrust protections.

## Regs CP

### Add On

#### Differences in enforcement and judiciary ensure divergence .

James Keyte 18. Director of the Fordham Competition Law Institute, an adjunct professor of Comparative Antitrust Law at Fordham Law School, and an Editor of ANTITRUST, Fall 2018. “Why the Atlantic Divide on Monopoly/Dominance Law and Enforcement Is So Difficult to Bridge.” <https://www.antitrustinstitute.org/wp-content/uploads/2018/12/fall18-keyte.pdf>

Setting the Stage

To start, there are simple differences that are not likely to change any time soon. Article 102 is both more specific and broader than Section 2 of the Sherman Act, and the enforce- ment and judicial systems also are quite distinct. Unlike in the U.S., in the EU’s administrative law system, the Commis- sion is the investigator, prosecutor, and decision maker; it does not have to go to court to impose penalties or other remedies. Moreover, in contrast to the U.S., the Commis- sion’s decisions are given significantly more discretion with respect to competition policy choices and the assessment of complex economic issues.2

## Solvency

### Courts Fail

#### 2. Clarity isn’t capable of solving---Courts will water down new and past precedent

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

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.

## Platform

### Fin Tech

#### 2. Assumes acquisitions.

World Bank 20 – ( The World Bank, ‘Fintech Market Reports Rapid Growth During COVID-19 Pandemic’, December 3 2020, <https://www.worldbank.org/en/news/press-release/2020/12/03/fintech-market-reports-rapid-growth-during-covid-19-pandemic> )

WASHINGTON, December 3, 2020—The fintech market has continued to help expand access to financial services during the COVID-19 pandemic—particularly in emerging markets—with strong growth in all types of digital financial services except lending, according to a joint study by the World Bank, the Cambridge Centre for Alternative Finance at the University of Cambridge’s Judge Business School, and World Economic Forum. Access to affordable financial services is critical for poverty reduction and economic growth. For poor people, especially women, access to and use of basic financial services can raise incomes, increase resilience, and improve their lives. Fintech innovations are helping reduce the cost of providing services, making it possible to reach more people, and reducing the need for face-to-face interactions, essential for keeping up economic activity during the pandemic. “Fintech has shown its potential to close gaps in the delivery of financial services to households and firms in emerging markets and developing economies,” said Caroline Freund, World Bank Global Director for Finance, Competitiveness and Innovation. “This survey shows how the fintech industry is adapting to the pandemic and offers insights for regulators and policymakers seeking to promote innovation and reap the benefits of fintech, while managing risks to consumers, investors, financial stability, and integrity.” “This study reveals a global FinTech industry that has been largely resilient in spite of COVID-19. Nonetheless, its growth must be interpreted with nuance and in the context of unevenness, and the opportunities for the industry should be juxtaposed with the challenges it faces.” says Bryan Zhang, Co-Founder and Executive Director of the Cambridge Centre for Alternative Finance. “It’s clear COVID-19 has disrupted the global economy with lasting implications for corporates and consumers,” says Matthew Blake, Head of Financial and Monetary Systems, World Economic Forum. “Despite this challenging backdrop, FinTechs have proven resilient and adaptable: contributing to pandemic relief efforts, adjusting operations and offerings to serve vulnerable market segments, like micro, small and medium-sized businesses, while posting year-over-year growth across most regions.”

### Sanctions Fail---2NC

**Iran sanctions fail---empirics, circumvention, and allies.**

Suzanne **Maloney 18**. Deputy Director - Foreign Policy, Brookings; Senior Fellow - Center for Middle East Policy, Energy Security and Climate Initiative; doctorate from the Fletcher School of Law and Diplomacy at Tufts University. “’Sanctions are coming’— but Trump has no achievable end game for Iran.” Brookings. 11/7/2018. https://www.lawfareblog.com/sanctions-are-coming-trump-has-no-achievable-end-game-iran

Tehran has **many tools at its disposal** to manage financial constraints, and **considerable experience** in **enduring epic crises**. After all, the Islamic Republic has faced various forms of economic pressure throughout its 40-year existence, beginning with the disruption caused by the 1979 revolution. The first round of U.S. sanctions were imposed later that year after Iranians seized the U.S. Embassy in Tehran and held its personnel hostage for 15 months. In the decades that followed, the Iranian leadership has had to contend with profound economic constraints—those generated by sanctions as well as a succession of regional conflicts and the recurrent volatility in oil markets.

As a result, Iranian leaders have nearly **perfected the playbook** for surviving tough times by **any means necessary**. The regime’s very survival during the eight-year war with Iraq, when U.S. measures prevented the replenishment of its military equipment, depended on mobilizing domestic production and tapping into alternative supply networks, and both remain essential tools in the arsenal of **I**ran’s **R**evolutionary **G**uard **C**orps. Tehran has developed its own fleet of **supertankers** as a backstop to store excess crude production, and—once the transponders are **deactivated**—to export it semi-covertly. With oil prices hovering near $80 per barrel, **Iran will find buyers** for whatever volumes it can export.

Based on prior experience, Iran has expanded its external crude storage capacity in China and will be doubling down on opportunities to amplify opportunities for non-oil trade with its neighbors. Its officials and businesses are **adept** at various means of **circumventing U.S. measures** that target financial flows, whether that involves working via **front companies**, conducting **barter trade**, funneling crude exports via neighbors, or utilizing or even more **unconventional tender** such as **cryptocurrency**.

All these contrivances will surely enable Tehran to **muddle through** with a combination of **mitigation**, **improvisation**, and **greater institutional capacity** than outside analysts typically presume, just as its leadership has during even more severe episodes of financial constraints and externally-imposed pressure. And today the Islamic Republic benefits from more meaningful international support than at any other point in the past 40 years: a burgeoning if mutually suspicious strategic **partnership with Russia**, the economic and **strategic opportunism of Beijing**, and full-throated (if still operationally impeded) assistance from Europe. All this enables Iranian leaders to **put up a good front** at home and **stiffens its spine in responding to Washington**.

### AT: Israel

#### No Israel strikes---costs outweigh benefits.

Louis Beres 15. Professor of political science and international law at Purdue University. \*\*Leon Edney is a retired US Navy admiral, NATO supreme allied commander, and distinguished professor of leadership at the US Naval Academy. “What -Now for Israel?” US News. 7/14/2015. <http://www.usnews.com/opinion/blogs/world-report/2015/07/14/after-the-iran-nuclear-agreement-what-are-israels-security-options>

To be sure, following careful assessments of the new Iran agreement, Israel's prime minister will need to make an 11th-hour decision on preemption. In principle, at least, considering any such defensive first strike against Iranian nuclear assets and infrastructures could still make strategic sense if the following conditions were assumed: 1. Iran will inevitably become militarily nuclear; 2. Iran will very likely plan to use its new nuclear forces in a first-strike aggression against Israel; and 3. Iran's key decision makers will likely be irrational. Regarding core definitions, irrational decision-makers would be those Iranian leaders who could sometime value certain preferences or combinations of preferences (e.g., certain Shiite religious expectations) more highly than Iran's national survival. In the absence of any one of these three critical assumptions, the expected retaliatory costs to Israel of any contemplated preemption would plausibly exceed the expected benefits. Moreover, there would be nothing genuinely scientific about making such difficult policy choices. For one thing, all of the associated probability judgments would need to be overwhelmingly subjective. How, for example, could Israeli analysts say anything meaningfully predictive about unique or unprecedented circumstances? In science, probabilities must always be based upon the determinable frequency of past events. Here, however, in pertinent history, there exists no usable guidance. To wit, exactly how many preemptive attacks have already been launched by a nuclear state against a nearly-nuclear state? The "zero" answer is obvious and irrefutable. It must, therefore, be a cautionary reply. An additional complication exists. The nearly-nuclear state, Iran, will still possess large conventional and chemical rocket forces. Many other threatening missiles will remain under the operational control of its sub-state terrorist proxies. Hezbollah, the well-armed Shiite militia, already has more rockets in its arsenal than do all NATO countries combined; it is even less likely than Iran's own leaders to hold back on any post-preemption retaliations. All things considered, Israel's best security plan, going forward, would be to enhance its underlying nuclear deterrence posture, and to render this critical enhancement as conspicuous as possible. More precisely, this means that Jerusalem should do everything possible to signal to any future Iranian aggressor that its own nuclear forces are plainly survivable, and capable of penetrating any of Tehran's ballistic missile or other active defenses. Correspondingly, it will also become necessary for Israel to move very carefully beyond its traditional posture of deliberate nuclear ambiguity, or the so-called "bomb in the basement." In the irremediably arcane world of Israeli nuclear deterrence, it can never be adequate that enemy states should simply acknowledge the Jewish State's nuclear status. It is equally important that these adversarial states believe Israel to hold usable and survivable nuclear forces, and be willing to employ these weapons in certain clear and readily identifiable circumstances. Israel's nuclear doctrine and weapons are necessary to various scenarios that could require conventional preemptive action, or more residually, a specifically nuclear retaliation. In any event, for Israel, the core purpose of its nuclear weapons must always be deterrence ex ante, not revenge ex post. An integral part of Israel's multi-layered security system lies in maintaining effective ballistic missile defenses, primarily, the Arrow or "Hetz." Yet, even the well-regarded and successfully-tested Arrow could never achieve a sufficiently high capacity for missile intercept, a quality needed to adequately protect Israeli civilians from any Iranian nuclear attack. In essence, this means that Israel can never rely too heavily upon active defenses for its national protection. What about the prospect of an irrational Iranian adversary? Any Israeli move from ambiguity to disclosure, however selective, might not help in the particular case of an irrational nuclear enemy . It remains possible, or even plausible, that certain elements of Iranian leadership will determinedly subscribe to certain end-times visions of a Shiite apocalypse. Still, taken by itself, such subscription does not automatically or even persuasively call for an Israeli preemption.

### No UQ for Nukes

#### No uniqueness for Saudi impact--- their ev says it already happened.

1AC Robb et. al 12 (Senator Charles S. – Virginia, General Charles Wald – Former Deputy Commander of U.S. European Command, Dr. Daniel Ahn – Senior Economist and Head of Portfolio Strategy for CitiBank New York, John Hannah – Former Assistant for National Security Affairs to the Vice President, Stephen Rademaker – Former Assistant Secretary of State for Arms Control and Nonproliferation, Christopher Carney – former U.S. Representative from Pennsylvania, Ed Husain – Senior Fellow for Middle Eastern Studies at the Council on Foreign Relations, Ambassador Dennis Ross – Counselor for the Washington Institute for Near East Policy, Ambassador Eric Edelman – Former Under Secretary of Defense for Policy, Reuben Jeffrey III – Former U. S. Under Secretary of State for Economic, Business, and Agricultural Affairs, John Tanner – Former U.S. Representative from Tennessee, Secretary Dan Glickman – Senior Fellow at the Bipartisan Policy Center, Admiral Gregory Johnson – Former Commander of U.S. Naval Forces, Europe, Mortimer Zuckerman – CEO and Chairman of the Board of Directors for Boston Properties, Inc., Larry Goldsetin – Founder of Energy Policy Research Foundation, Inc., and General Ron Keys – Former Commander of the Air Combat Command, The Price of Inaction: Analysis of Energy and Economic Effects of a Nuclear Iran, Bipartisan Policy Center, p. 24)

Saudi Arabia would be very likely to try to follow Iran across the nuclear threshold. Should it do so, the world would face the possibility of an Iran-Saudi nuclear exchange—a catastrophic humanitarian event that would threaten the entirety of Gulf oil exports for an extended period of time. In early 2008, the Senate Foreign Relations Committee concluded: “If Iran obtains a nuclear weapon, it will place tremendous pressure on Saudi Arabia to follow suit.”19 By 2012, some experts believe it has already begun to do so. Two main factors could drive Saudi Arabia to pursue a nuclear weapon: (1) a decades-long Saudi-Iran cold war waged along sectarian, religious, ethnic, and geopolitical lines and (2) a deep-seated competition over the energy policies that form the lifeblood of both regimes.

#### No Saudi prolif—multiple obstacles block

Dr. Albert B. WOLF 15, an Assistant Professor of International Relations at ADA University in Baku, Azerbaijan [“A nuclear Iran will not lead to a nuclear Middle East, no matter what the Gulf states say,” *The Washington Post*, May 14 15, https://www.washingtonpost.com/posteverything/wp/2015/05/14/a-nuclear-iran-will-not-lead-to-a-nuclear-middle-east-no-matter-what-the-gulf-states-say/]

The argument goes something like this: Once Iran gets the bomb, Saudi Arabia will have to get the bomb (or buy it from Pakistan). Once Saudi Arabia goes nuclear, the rest of the states in the Gulf Cooperation Council will follow suit. Egypt, Jordan and Turkey will be close behind.

This is a terrifying prospect. It’s also completely wrong.

Starting in the 1970s, states’ nuclear programs would trigger U.S. economic sanctions. These measures have been unable to compel states to reverse ongoing nuclear programs. However, they have been fairly effective deterrents for states contemplating going nuclear. For example, Japan and Taiwan were inhibited from pursuing nuclear programs for fear of losing access to global markets.

U.S. security guarantees have also dampened states’ incentives to pursue the bomb. U.S. policymakers feared that China’s acquisition of the bomb would set off a cascade of nuclear proliferation in East Asia. So they promised to protect South Korea in the event of an attack. That guarantee deterred the country from acquiring its own atomic arsenals. Similarly, Israel’s acquisition of a nuclear weapon circa 1967 failed to bring about a nuclear arms race in the Middle East. Egypt explored a nuclear program of its own, but ultimately abandoned it under Anwar Sadat’s leadership.

It is also incredibly difficult to acquire the necessary materials to build a bomb. And politicians in some authoritarian regimes inadvertently undermine their own aspirations. As Jacques E.C. Hymans of University of Southern California points out in his book “Achieving Nuclear Ambitions,” since 1970, half of the nuclear projects that states have undertaken have been abject failures; the rare successes have taken far longer than necessary. While it took China roughly 10 years to get the bomb, it took Pakistan 20. This is largely because rulers in weak or authoritarian states have a tendency to intervene and interfere in scientists’ efforts to develop nuclear weapons, undermining their professional ethos. A greater barrier exists between politicians and scientists in strong states, making it easier for their states to obtain the bomb and join the nuclear club.

The Gulf States argue that with Iran, it’s different. These countries have had long-standing tensions with the country. After the British withdrew from the region and granted independence to the United Arab Emirates, Qatar and Bahrain, in 1971 the Iranian Shah asserted control of the Tunb Islands as well as the strategically critical Abu Musa. These regimes remain suspicious of Iran’s intentions with respect to their oil installations as well. Some, such as Saudi Arabia and Bahrain, have complained of Iranian influence and interference among their disgruntled Shia populations. Their fears have grown since the outbreak of the Arab Spring in December 2010. They say that a nuclear Iran will become increasingly aggressive, making it more prone to engaging in coercive diplomacy. They fear that the Obama administration’s overtures to Iran will amount to the U.S. pivoting toward Tehran – and abandoning them. Acquiring nuclear weapons, they argue, is the only way to stay protected.

While nuclear dominoes rarely fall, one cannot completely dismiss the possibility of Riyadh pursuing a nuclear option. However, several obstacles stand in its way.

It has long been rumored that the Saudis expect the Pakistanis will help them to acquire an arsenal. However, Pakistan has of late asserted its independence from Saudi Arabia, as evidenced by their refusal to aid Saudi Arabia’s war in Yemen. Such a move would exacerbate tensions not only between Islamabad and Washington, but Riyadh and Washington as well. If Pakistan is not willing to provide sensitive nuclear assistance to Saudi Arabia, Riyadh will have to pursue it on its own.

The Kingdom of Saudi Arabia has an extremely limited nuclear infrastructure. It does not even possess a research reactor and only obtained small quantities of nuclear material through the IAEA. It has plans for building up to 16 reactors, but the first will not go online until (at least) 2022. The Saudis have also signed an agreement to purchase American-designed reactors from South Korea. The U.S. maintains that if such reactors were to be sold, KSA would have to sign what is known as a “123 agreement” that would shut down domestic enrichment and reprocessing. Given its weight in international oil markets, the Saudis could call the Americans’ bluff and enrich anyway. However, this would be a tremendous gamble that would likely jeopardize U.S. security guarantees.

## Conduct

### AT: AI Internal

#### No AI Impact---their evidence is about why the US DOD mismanages and they don’t solve other countries military AI.

1AC Brose ’19 – Senior Fellow at the Carnegie Endowment for International Peace [Christian; Senior Fellow at the Carnegie Endowment for International Peace; 2019; "The New Revolution in Military Affairs"; Foreign Affairs; <https://www.foreignaffairs.com/articles/2019-04-16/new-revolution-military-affairs>]

The idea of a future military revolution became discredited amid nearly two decades of war after 2001 and has been further damaged by reductions in defense spending since 2011. But along the way, the United States has also squandered hundreds of billions of dollars trying to modernize in the wrong ways. Instead of thinking systematically about buying faster, more effective kill chains that could be built now, Washington poured money into newer versions of old military platforms and prayed for technological miracles to come (which often became acquisition debacles when those miracles did not materialize). The result is that U.S. battle networks are not nearly as fast or effective as they have appeared while the United States has been fighting lesser opponents for almost three decades.

### AT: Platform Misuse---2NC

#### 3. In another article, Stucke outlined how dataopolies were also less susceptible to antitrust enforcement. They don’t have an internal link card connecting the plan, which lowers the burden-of-proof on plaintiffs in suits v. two-sided platforms, to effective antitrust enforcement against dataopolies that overwhelms these concerns from their 1AC author.

Maurice E. Stucke 18, 1AC Author [“Should We Be Concerned About Dataopolies?” Georgetown Law Technology Review, Vol. 2, p. 275, 2018, https://georgetownlawtechreview.org/wp-content/uploads/2018/07/2.2-Stucke-pp-275-324.pdf]

Moreover, data-opolies can persist when their tactics to attain or maintain their dominance avoid antitrust scrutiny. Data-opolies’ anticompetitive conduct may be harder to detect, such as their use of the nowcasting radar to squelch nascent competitive threats, their foreclosing of rivals’ access to data necessary for them to compete, their leveraging of a data-advantage in one market to gain an advantage in another market, or their increasing customers’ switching costs. Moreover, as our book explores, there has been less scrutiny of data-driven mergers by these dominant firms.213 Competition authorities’ price-centric tools for assessing mergers are often ill-equipped for data-driven mergers, where the service is offered for “free” and advertisers are not harmed. Datadriven mergers (such as if Google or Facebook acquired IAC, which controls the online dating platforms Match, Tinder, PlentyOfFish, and OkCupid) often defy the horizontal, vertical, and conglomerate categories used to assess mergers.