## 1

#### Text: The United States federal government should

#### adopt the principle of separating platforms from commerce for nearly all platforms in the private sector through non-antitrust regulations.

#### establish a new federal agency to regulate the digital economy.

#### The counterplan PICs out of anti-trust legislation and the FTC and DOJ as enforcers---other agencies’ regulations solve.

Lawrence Fullerton et al. 08. Joel M Mitnick, William V Reiss, George C Karamanos and Owen H Smith. Sidley Austin LLP. Vertical Agreements The regulation of distribution practices in 34 jurisdictions worldwide. “United States.” https://www.sidley.com/-/media/files/publications/2008/03/getting-the-deal-through--vertical-agreements-2008/files/view-united-states-chapter/fileattachment/united-states-21.pdf

5 What entity or agency is responsible for enforcing prohibitions on anticompetitive vertical restraints? Do governments or ministers have a role?

The Federal Trade Commission (FTC) and the Antitrust Division of the Department of Justice (DoJ) are the two federal agencies responsible for the enforcement of federal antitrust laws. The FTC and the DoJ have jurisdiction to investigate many of the same types of conduct, and therefore have adopted a clearance procedure pursuant to which matters are handled by whichever agency has the most expertise in a particular area.

Additionally, other agencies, such as the Securities and Exchange Commission and Federal Communications Commission, maintain oversight authority over regulated industries pursuant to various federal statutes, and therefore may review vertical restraints for anti-competitive effects.

#### Anti-trust slow, uncertain, and impossible to enforce---regulation solves.

Tom Wheeler 6-29-21. Visiting fellow in Governance Studies at The Brookings Institution. Chairman of the Federal Communication Commission (FCC) from 2013 to 2017. Honorary Doctorate of Humane Letters from Rochester Institute of Technology. "The court’s Facebook decision shows why we need a digital regulatory agency," Brookings, <https://www.brookings.edu/blog/techtank/2021/06/29/the-courts-facebook-decision-shows-why-we-need-a-digital-regulatory-agency/>

A federal district court judge’s dismissal of the Federal Trade Commission’s [antitrust lawsuit brought against Facebook](https://www.nytimes.com/2021/06/28/technology/facebook-ftc-lawsuit.html) is graphic evidence that antitrust laws are not sufficient to protect consumers and competition in the digital age. We need a regulatory plan that is more agile and timely than relying on antitrust enforcement as the principal solution. Yes, antitrust enforcement is important, but it is not the panacea for all the abuses in the digital marketplace. There are three reasons why solely relying on antitrust solutions is a mistake. First, it is backward-looking and after-the-fact. Second, enforcement focuses on a specific occurrence rather than creating a general set of behavioral expectations for dominant digital companies. Third, it is slow, uncertain, and has been systematically diminished by 40 years of conservative court decisions. Taken together, these factors explain why current efforts are completely inadequate. Antitrust law is written to stop ongoing abuses. This means that it must wait for the harm to occur. The Facebook acquisitions of Instagram in 2012 and WhatsApp in 2014 [had been taking their toll](https://www.bbc.com/news/technology-50838013) on the competitive market for years before the government finally felt they had enough examples of abuses to bring a case. No wonder that, on the day of the court’s decision, Facebook’s market capitalization soared to over one trillion dollars—a record for the firm. The message was clear: because antitrust enforcement is problematic, it is possible to profit from abusive behavior for a long time before there is a basis for action—and even then, the ability to stop the activity is illusive. Antitrust law focuses more on harm to competition than harm to consumers. As such, it is insufficient to address all the abuses emanating from Facebook and its fellow digital platform companies. Antitrust cannot reach how the companies have stolen and then sold access to our personal data. The flood of misinformation and hate flowing through the digital platforms is a behavioral problem beyond the scope of antitrust laws. The digital companies have made their own rules because the government has failed to define acceptable digital behavior. Antitrust actions are specific law enforcement decisions affecting one company regarding one set of activities. What we need from government is regulatory oversight to establish broad behavioral expectations for the digital giants. Absent such behavioral rules, the digital platform companies will continue to prioritize their own private interests over the broader public interest. Antitrust enforcement is reliably slow, uncertain, and reactive. The antitrust cases brought by the Department of Justice and state attorneys general against Google, for instance, have been [scheduled for trial](https://www.cnbc.com/2020/12/18/doj-case-against-google-likely-wont-go-to-trial-until-late-2023-judge-says.html?utm_term=Autofeed&utm_medium=Social&utm_content=Main&utm_source=Twitter#Echobox=1608313274) in September 2023—three years after being filed. Because there may be no final antitrust decision until the Supreme Court rules, a final resolution could be delayed until 2026. During this half-decade period of litigation, the company will be free to continue the abusive practices being challenged. Make no mistake, antitrust enforcement is important, but we need something more. This is especially important when considering how since the Reagan era courts have consistently constrained the original force of the antitrust laws. There is a need for regulatory oversight to establish behavioral rules applicable to all dominant providers of digital services. The best way to accomplish this is with a new federal agency unencumbered by the dogmas and dicta of the past, unburdened from the muscle memory created during oversight of the industrial economy, and focused solely on behavioral rules for the digital economy. A handful of digital platform companies have become dominant because they recognized before the rest of us that the digital economy is different from the industrial economy. Government needs to embrace the same kind of digital realization. Yes, antitrust enforcement is important, but it is backward-looking, limited in impact and slow. Yes, the antitrust law updates being considered in Congress are important, but they too suffer from these limitations. Yes, effective regulators such as those recently appointed by President Biden are important, but even the most dedicated enforcer is still hindered by old statutes. This cannot be a matter of bolting-on authority to an existing agency. American consumers and the American competitive marketplace need a new American digital regulatory policy implemented by a [new digital agency](https://www.brookings.edu/research/a-focused-federal-agency-is-necessary-to-oversee-big-tech/). The European Union and United Kingdom are way ahead of American policymakers in their recognition of the new digital realities. America’s failure to act is squandering our nation’s traditional international policy leadership. If the Congress is serious about the power of the digital giants, calling for antitrust enforcement is not sufficient. It is time for looking beyond the increasingly anti-enforcement courts to solve our problems. Regulatory agencies helped to deliver the stability and growth of the industrial era; the time has come for regulatory oversight of the digital era.

## 2

#### FTC regulators are narrowing in on RtR enforcement --- resources are key

Colin Staub 7/29. reporter at Resource Recycling. “Federal regulators say they will ‘restore the right to repair’.” E-Scrap News. 7/29/21. <https://resource-recycling.com/e-scrap/2021/07/29/federal-regulators-say-they-will-restore-the-right-to-repair/>

The Federal Trade Commission last week pledged to heighten enforcement actions on manufacturers that block independent repair of their products.

The commission, a federal agency tasked with focusing on consumer protection and antitrust law, on July 21 approved a statement promising more attention will be placed on protecting independent repair of electronic devices.

“By enforcing against restrictions that violate antitrust or consumer protection laws, the Commission is taking important steps to restore the right to repair,” the company stated in a release.

In the policy statement, the FTC acknowledged enforcement of unlawful repair restrictions has not been a priority for the commission for several years. Now, the commission says it is devoting more resources to the topic.

“Restricting consumers and businesses from choosing how they repair products can substantially increase the total cost of repairs, generate harmful electronic waste, and unnecessarily increase wait times for repairs,” the policy statement reads. “In contrast, providing more choice in repairs can lead to lower costs, reduce e-waste by extending the useful lifespan of products, enable more timely repairs, and provide economic opportunities for entrepreneurs and local businesses.”

The statement came two weeks after President Joe Biden issued an executive order encouraging the FTC to support right-to-repair policies. It also comes shortly after a right-to-repair bill was introduced at the federal level in June, and after a state right-to-repair bill passed one floor vote in New York state, the first time a bill has made it that far.

The statement includes several specific actions FTC will take and other steps it is asking the public to take. For the public, the commission asks that consumers submit complaints and provide information to help with greater enforcement against repair restrictions.

FTC pledges to “scrutinize repair restrictions for violations of the antitrust laws,” according to the statement. It also says it will look into whether repair restrictions constitute “unfair acts or practices.”

Additionally, the agency pledges to “closely coordinate with state law enforcement and policymakers to ensure compliance and to update existing law and regulation to advance the goal of open repair markets.”

Prior to the unanimous vote, FTC Chair Lina Khan and Commissioner Rohit Chopra issued statements describing their support for the proposal. Among other points, Chopra said the FTC process for the public to report repair violations needs to be examined for improvement.

The policy statement comes after the federal agency in May issued a report that was critical of OEMs that restrict repair of their products.

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

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

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

#### Trades off with other priorities---that guts the Right to Repair.

Alden Abbott 21. Senior Research Fellow, Mercatus Center, 4/29/21. “Lack of Resources and Lack of Authority Over Nonprofit Organizations Are the Biggest Hindrances to Antitrust Enforcement in Healthcare.” https://www.mercatus.org/publications/antitrust-and-competition/lack-resources-and-lack-authority-over-nonprofit

Appropriate federal antitrust and consumer protection enforcement is good for the American economy. It promotes enhanced competition and consumer welfare. Regrettably, however, the effectiveness of federal enforcement in achieving these benefits is threatened by insufficient resources. As FTC Acting Chair Rebecca Kelly Slaughter explained in her April 20 testimony before the US Senate Committee on Commerce, Science, and Transportation, FTC employment has remained flat despite a growing workload, with merger filings doubling in recent years. Lauren Feiner reports on that testimony:

“The absence of resources means that our enforcement decisions are harder,” [Slaughter] said. “If we think that we have a real case, a real law violation in front of us, but a settlement on the table that is maybe OK but doesn’t get the job done, we have to make difficult decisions about whether it’s worth spending a lot of taxpayer dollars to go sue the companies who are going to come in with many, many law firms worth of attorneys and expensive economic experts, versus taking that settlement.”

I can attest to the accuracy of Slaughter’s observation, based on my experience as FTC general counsel in the Trump Administration. During my tenure, the FTC did indeed have to contend with resource limitations that adversely affected merger enforcement decision-making.

#### RtR is key to food resiliency – restrictions waste critical time

Kari Paul 8/2. technology reporter for Guardian US. “Why right to repair matters – according to a farmer, a medical worker, a computer store owner.” The Guardian. 8/2/21. <https://www.theguardian.com/technology/2021/aug/02/why-right-to-repair-matters-according-to-a-farmer-a-medical-worker-a-computer-store-owner>

The farmer: ‘Right to repair is going to save some lives’

Walter Schweitzer is a 59-year-old farmer in Montana who has been working in agriculture his whole life and advocating for the right to repair for more than a decade. For him, Biden prioritizing right to repair was a huge moment.

“It’s going to sound a little funny, but listening to the announcement I had tears come to my eyes,” he said. “Because I felt like someone heard me, someone is listening, and they’re going to try to do something about it. I’ve been waiting for that for years.”

The majority of tractors today are internet-connected, and resolving errors requires special diagnostic tools that only manufacturers, such as John Deere, and authorized dealers have access to or are allowed to use. They often charge hundreds of dollars in call-out fees for repairs, which can take weeks to complete.

Schweitzer said while he has long been championing the right to repair, the issue became personal for him last year when a tractor broke down in the middle of harvesting his hay. A representative from the tractor company told Schweitzer they couldn’t send a mechanic to fix the vehicle for more than a week.

With rain on the horizon threatening to ruin his crop and the window to harvest beginning to close, Scheweitzer entered a race against time. He ultimately made the emergency decision to continue the harvest with a 40-year-old tractor – one that was not connected to the internet.

His malfunctioning machine would not end up being fixed for more than a month, a wait that would have lost him thousands of dollars. In larger operations, he said, farmers could lose hundreds of thousands of dollars because of a technology outage they are not allowed to fix themselves.

“Farmers are an independent bunch,” he said. “If we have a problem we tend to like to try to fix it ourselves. And to tie your hands behind your back, to not allow you to fix your tractor when you got a hailstorm coming. That’s stressful.”

Scheweitzer said these problems exacerbate the challenges farmers face, from soaring expenses to falling food prices and increasingly volatile weather. The rate of suicide in the industry is already higher than average – one 2015 study from the Centers for Disease Control and Prevention (CDC) found male farmers in 17 states took their lives at a rate of 1.5 times higher than the general population.

“The right to repair, it might save us money; **the right to repair is probably going to mean a more resilient food supply –** but you know what the right to repair is really going to do for farmers?” he said. “It’s going to save some lives.”

#### US ag and food security stabilize the globe — collapse greenlights *great power wars*

Castellaw 17—Lieutenant General, former President of the non-profit Crockett Policy Institute (John, “Opinion: Food Security Strategy Is Essential to Our National Security,” <https://www.agri-pulse.com/articles/9203-opinion-food-security-strategy-is-essential-to-our-national-security>)

The United States faces many threats to our National Security. These threats include continuing wars with extremist elements such as ISIS and potential wars with rogue state North Korea or regional nuclear power Iran. The heated economic and diplomatic competition with Russia and a surging China could spiral out of control. Concurrently, we face threats to our future security posed by growing civil strife, famine, and refugee and migration challenges which create incubators for extremist and anti-American government factions. Our response cannot be one dimensional but instead must be a nuanced and comprehensive National Security Strategy combining all elements of National Power including a Food Security Strategy. An American Food Security Strategy is an imperative factor in reducing the multiple threats impacting our National wellbeing. Recent history has shown that reliable food supplies and stable prices produce more stable and secure countries. Conversely, food insecurity, particularly in poorer countries, can lead to instability, unrest, and violence. Food insecurity drives mass migration around the world from the Middle East, to Africa, to Southeast Asia, destabilizing neighboring populations, generating conflicts, and threatening our own security by disrupting our economic, military, and diplomatic relationships. Food system shocks from extreme food-price volatility can be correlated with protests and riots. Food price related protests toppled governments in Haiti and Madagascar in 2007 and 2008. In 2010 and in 2011, food prices and grievances related to food policy were one of the major drivers of the Arab Spring uprisings. Repeatedly, history has taught us that a strong agricultural sector is an unquestionable requirement for inclusive and sustainable growth, broad-based development progress, and long-term stability. The impact can be remarkable and far reaching. Rising income, in addition to reducing the opportunities for an upsurge in extremism, leads to changes in diet, producing demand for more diverse and nutritious foods provided, in many cases, from American farmers and ranchers. Emerging markets currently purchase 20 percent of U.S. agriculture exports and that figure is expected to grow as populations boom. Moving early to ensure stability in strategically significant regions requires long term planning and a disciplined, thoughtful strategy. To combat current threats and work to prevent future ones, our national leadership must employ the entire spectrum of our power including diplomatic, economic, and cultural elements. The best means to prevent future chaos and the resulting instability is positive engagement addressing the causes of instability before it occurs. This is not rocket science. We know where the instability is most likely to occur. The world population will grow by 2.5 billion people by 2050. Unfortunately, this massive population boom is projected to occur primarily in the most fragile and food insecure countries. This alarming math is not just about total numbers. Projections show that the greatest increase is in the age groups most vulnerable to extremism. There are currently 200 million people in Africa between the ages of 15 and 24, with that number expected to double in the next 30 years. Already, 60% of the unemployed in Africa are young people. Too often these situations deteriorate into shooting wars requiring the deployment of our military forces. We should be continually mindful that the price we pay for committing military forces is measured in our most precious national resource, the blood of those who serve. For those who live in rural America, this has a disproportionate impact. Fully 40% of those who serve in our military come from the farms, ranches, and non-urban communities that make up only 16% of our population. Actions taken now to increase agricultural sector jobs can provide economic opportunity and stability for those unemployed youths while helping to feed people. A recent report by the Chicago Council on Global Affairs identifies agriculture development as the core essential for providing greater food security, economic growth, and population well-being. Our active support for food security, including agriculture development, has helped stabilize key regions over the past 60 years. A robust food security strategy, as a part of our overall security strategy, can mitigate the growth of terrorism, build important relationships, and support continued American economic and agricultural prosperity while materially contributing to our Nation’s and the world’s security.

## 3

#### Text: The fifty states and all relevant territories should adopt the principle of separating platforms from commerce for nearly all platforms in the private sector.

#### States can pursue autonomous anti-trust enforcement even when conflicting with federal law.

Erik **Knudsen 20.** Erik G. Knudsen is a partner in the Corporate Department and Private Equity Buyouts & Investment Group. Erik focuses his practice on complex business transactions, including leveraged buyouts, strategic mergers, acquisitions, investments and joint ventures, reorganizations, growth equity and venture capital investments, and divestitures. He has led transactions in a wide variety of industries, including healthcare, internet, technology, real estate, distribution and manufacturing. "Trends In State Antitrust Enforcement: Colorado Expands Attorney General’s Authority To Challenge Transactions On Competition Grounds." JD Supra. 4-16-2020. https://www.jdsupra.com/legalnews/trends-in-state-antitrust-enforcement-42950

At the federal level, the U.S. antitrust laws—including the Sherman Act and the Clayton Act, which governs mergers and acquisitions—are enforced by the FTC and DOJ. States also have antitrust laws, which are enforced by state AGs and are often patterned after their federal analogs, but can contain important differences. States frequently collaborate with the federal antitrust agencies and/or other states on merger investigations. However, the Supreme Court has recognized that states are not required to do so, and have the right to make enforcement decisions that differ from other federal and state authorities.[[3]](https://www.jdsupra.com/legalnews/trends-in-state-antitrust-enforcement-42950/#_ftn3) States have sometimes exercised this authority in order to “fill the gap” of perceived under-enforcement at the federal level. For example, in June 2017, the California AG sued to block Valero Energy Partners LP’s acquisition of two petroleum terminals in Northern California, despite the FTC’s decision not to challenge the deal. Several months later, the parties abandoned the transaction. More broadly, in recent years, there has been a growing trend of robust and autonomous state antitrust enforcement, as illustrated by major investigations and enforcement actions by state coalitions in the healthcare, pharmaceutical, telecom, and technology sectors, among others. Consistent with this trend, Colorado AG Phil Weiser—who previously served as Deputy Assistant Attorney General in the DOJ Antitrust Division under the Obama administration—has affirmed his commitment to “protecting all Coloradans from anticompetitive consolidation and practices…whether or not the federal government acts to protect Coloradans.” In keeping with this mandate, the Amendment will bring Colorado increasingly in line with states such as California and New York that have demonstrated an appetite for aggressive, independent antitrust enforcement, even where it may depart (or conflict) with federal action.

## 4

#### Infrastructure will pass now but can be derailed.

Laura Tyson & Lenny Mendonca 9-14-2021, Laura Tyson, former chair of the US president's Council of Economic Advisers, is professor of the Graduate School at the Haas School of Business and chair of the Blum Centre Board of Trustees at the University of California, Berkeley. Lenny Mendonca, senior partner emeritus at McKinsey & Company, is a former chief economic and business adviser to Governor Gavin Newsom of California and chair of the California High-Speed Rail Authority "Why America must go big on infrastructure," Jordan Times, https://www.jordantimes.com/opinion/project-syndicate/why-america-must-go-big-infrastructure

Economists across the political spectrum have long advocated an increase in infrastructure investment in the United States. Now, Congress is debating infrastructure spending packages that would secure the current economic recovery and boost potential growth over the next decade. Despite deep partisan divisions on most other issues, the Senate recently passed the $1 trillion Infrastructure Investment and Jobs Act (IIJA) by a large majority. The bill now must pass the House of Representatives, where Speaker Nancy Pelosi has secured an agreement for a vote by the end of September. Approval looks likely but is by no means certain, given complete lack of support from House Republicans and ongoing divisions among House Democrats.

#### Antitrust reform requires PC and trades off with other legislative priorities.

Peter C. Carstensen 21, the Fred W. & Vi Miller Chair in Law Emeritus, University of Wisconsin Law School, February 2021, “THE “OUGHT” AND “IS LIKELY” OF BIDEN ANTITRUST,” https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en

14. Similarly, despite bipartisan murmurs about competitive issues, the potential in a closely divided Congress that any major initiatives will survive is limited at best. In part the challenge here is how the Biden administration will rank its commitments. If it were to make reform of competition law a major and primary commitment, it would have to trade off other goals, which might include health care reform or increases in the minimum wage. It is likely in this circumstance the new administration, like the Obama administration’s abandonment of the pro-competitive rules proposed under the PSA, would elect to give up stricter competition rules in order to achieve other legislative priorities.

15. Another key to a robust commitment to workable competition is the choice of cabinet and other key administrative positions. Here as well, the early signs are not entirely encouraging. In selecting Tom Vilsack to return as secretary of agriculture, the president has embraced a friend of the large corporate interests dominating agriculture who has spent the last four years in a highly lucrative position advancing their interests. Given the desperate need for pro-competitive rules to implement the PSA and control exploitation of dairy farmers through milk-market orders, the return of Vilsack is not good news. Who will head the FTC and who will be the attorney general and assistant attorney general for antitrust is still unknown, but if those picks are also centrists with strong links to corporate America the hope for robust enforcement of competition law will further attenuate!

16. In sum, this is a pessimistic prognostication for the likely Biden antitrust enforcement agenda. There is much that ought to be done. But this requires a willingness to take major enforcement risks, to invest significant political capital in the legislative process, and to select leaders who are committed to advancing the public interest in fair, efficient and dynamically competitive markets. The early signs are that the new administration will be no more committed to robust competition policy than the Obama administration. Events may force a more vigorous policy—I will cling to that hope as the Biden administration takes shape.

#### Infrastructure bill key to cyber security

Cat Zakrzewski, 8-14-2021, "The Senate’s $1 trillion infrastructure bill includes funding to secure Americans’ water systems and power grids from cyberattacks," https://www.washingtonpost.com/technology/2021/08/14/cybersecurity-infrastructure-senate-legislation/

A Senate bill intended to shore up the nation’s roads, pipes and electric grid includes billions to protect that aging infrastructure from cyberattacks.

With a series of high-profile ransomware attacks fresh in their minds, U.S. Senate negotiators wove cybersecurity investments throughout the bipartisan $1 trillion infrastructure proposal, which passed the Senate in a 69-to-30 vote on Tuesday and now moves to the House for a vote. The allocations are a reflection of the growing realization in Congress that a computer attack could leave Americans without water, power or other essentials.

“This is an incredibly serious threat to this country that’s only growing more serious,” said Sen. Angus King (I-Maine).

The Colonial Pipeline ransomware attack in May was a wake-up call that gave lawmakers and the public “a taste of what is potentially in store,” King said. The attack disrupted fuel supplies in the eastern United States, prompting gasoline shortages and panicked buying that affected millions for days.

The Colonial hack was just one in a series of attacks on lawmakers’ minds. King said he is particularly wary of attacks on the more than 100,000 public water systems in the United States, especially after a hacker in February took control of a water treatment facility in Oldsmar, Fla. The intruder raised the levels of sodium hydroxide to a hazardous point that could have sickened residents. An operator noticed the rising levels and was able to quickly intervene, but the incident highlighted the broader weaknesses at the facilities responsible for ensuring Americans have clean drinking water.

To King, one of the Senate negotiators, these incidents underlined that cybersecurity has to be a part of any work the government does on infrastructure, from broadband to power grids.

The bill directs the Federal Highway Administration to create a new tool to help transportation authorities better detect and respond to cyber attacks, which could range from ransomware attacks on transportation departments or hacks of traffic lights and road signs. It makes emergency funding available to respond to digital attacks on public water systems and makes grants available that can be used to help some water systems increase their ability to deal with cyberattacks as well as natural hazards and extreme weather.

It also calls on the Federal Energy Regulatory Commission to develop incentives to ensure that electric utilities are investing in cybersecurity and sharing data about potential threats.

The bill also authorizes nearly $2 billion in spending for specific cybersecurity initiatives, such as the creation of a $1 billion grant program to provide federal cybersecurity assistance to state and local governments, which experts say are among the most vulnerable institutions to ransomware attacks. The bill also would fund a new cyber director office, so that the federal government can better coordinate its response to major hacks, and would create a $100 million response and recovery fund, which the Department of Homeland Security could use to support both private companies and governments’ recoveries from cyberattacks.

The infusion of funding follows years of warnings from across the federal government of the vulnerability of U.S. critical infrastructure to cyberattacks. A year ago, the National Security Agency and the Cybersecurity and Infrastructure Security Agency warned that critical infrastructure systems, including energy, transportation and water systems, make “attractive targets for foreign powers attempting to do harm to U.S. interests or retaliate for perceived U.S. aggression.”

#### Cyberattacks go nuclear.

Michael T. Klare 19. Professor emeritus of peace and world security studies at Hampshire College and senior visiting fellow at the Arms Control Association. “Cyber Battles, Nuclear Outcomes? Dangerous New Pathways to Escalation.” https://www.armscontrol.org/act/2019-11/features/cyber-battles-nuclear-outcomes-dangerous-new-pathways-escalation

Another initiative incorporated in the strategy document also aroused concern: the claim that an enemy cyberattack on U.S. nuclear command, control, and communications (NC3) facilities would constitute a “non-nuclear strategic attack” of sufficient magnitude to justify the use of nuclear weapons in response.

Under the Obama administration’s NPR report, released in April 2010, the circumstances under which the United States would consider responding to non-nuclear attacks with nuclear weapons were said to be few. “The United States will continue to…reduce the role of nuclear weapons in deterring non-nuclear attacks,” the report stated. Although little was said about what sort of non-nuclear attacks might be deemed severe enough to justify a nuclear response, cyberstrikes were not identified as one of these. The 2018 NPR report, however, portrayed a very different environment, one in which nuclear combat is seen as increasingly possible and in which non-nuclear strategic threats, especially in cyberspace, were viewed as sufficiently menacing to justify a nuclear response. Speaking of Russian technological progress, for example, the draft version of the Trump administration’s NPR report stated, “To…correct any Russian misperceptions of advantage, the president will have an expanding range of limited and graduated [nuclear] options to credibly deter Russian nuclear or non-nuclear strategic attacks, which could now include attacks against U.S. NC3, in space and cyberspace.”1

The notion that a cyberattack on U.S. digital systems, even those used for nuclear weapons, would constitute sufficient grounds to launch a nuclear attack was seen by many observers as a dangerous shift in policy, greatly increasing the risk of accidental or inadvertent nuclear escalation in a crisis. “The entire broadening of the landscape for nuclear deterrence is a very fundamental step in the wrong direction,” said former Secretary of Energy Ernest Moniz. “I think the idea of nuclear deterrence of cyberattacks, broadly, certainly does not make any sense.”2

Despite such admonitions, the Pentagon reaffirmed its views on the links between cyberattacks and nuclear weapons use when it released the final version of the NPR report in February 2018. The official text now states that the president must possess a spectrum of nuclear weapons with which to respond to “attacks against U.S. NC3,” and it identifies cyberattacks as one form of non-nuclear strategic warfare that could trigger a nuclear response.

That cyberwarfare had risen to this level of threat, the 2018 NPR report indicated, was a product of the enhanced cybercapabilities of potential adversaries and of the creeping obsolescence of many existing U.S. NC3 systems. To overcome these vulnerabilities, it called for substantial investment in an upgraded NC3 infrastructure. Not mentioned, however, were extensive U.S. efforts to employ cybertools to infiltrate and potentially incapacitate the NC3 systems of likely adversaries, including Russia, China, and North Korea.

For the past several years, the U.S. Department of Defense has been exploring how it could employ its own very robust cyberattack capabilities to compromise or destroy enemy missiles from such states as North Korea before they can be fired, a strategy sometimes called “left of launch.”3 Russia and China can assume, on this basis, that their own launch facilities are being probed for such vulnerabilities, presumably leading them to adopt escalatory policies such as those espoused in the 2018 NPR report. Wherever one looks, therefore, the links between cyberwar and nuclear war are growing.

The Nuclear-Cyber Connection

These links exist because the NC3 systems of the United States and other nuclear-armed states are heavily dependent on computers and other digital processors for virtually every aspect of their operation and because those systems are highly vulnerable to cyberattack. Every nuclear force is composed, most basically, of weapons, early-warning radars, launch facilities, and the top officials, usually presidents or prime ministers, empowered to initiate a nuclear exchange. Connecting them all, however, is an extended network of communications and data-processing systems, all reliant on cyberspace. Warning systems, ground- and space-based, must constantly watch for and analyze possible enemy missile launches. Data on actual threats must rapidly be communicated to decision-makers, who must then weigh possible responses and communicate chosen outcomes to launch facilities, which in turn must provide attack vectors to delivery systems. All of this involves operations in cyberspace, and it is in this domain that great power rivals seek vulnerabilities to exploit in a constant struggle for advantage.

The use of cyberspace to gain an advantage over adversaries takes many forms and is not always aimed at nuclear systems. China has been accused of engaging in widespread cyberespionage to steal technical secrets from U.S. firms for economic and military advantages. Russia has been accused, most extensively in the Robert Mueller report, of exploiting cyberspace to interfere in the 2016 U.S. presidential election. Nonstate actors, including terrorist groups such as al Qaeda and the Islamic State group, have used the internet for recruiting combatants and spreading fear. Criminal groups, including some thought to be allied with state actors, such as North Korea, have used cyberspace to extort money from banks, municipalities, and individuals.4 Attacks such as these occupy most of the time and attention of civilian and military cybersecurity organizations that attempt to thwart such attacks. Yet for those who worry about strategic stability and the risks of nuclear escalation, it is the threat of cyberattacks on NC3 systems that provokes the greatest concern.

This concern stems from the fact that, despite the immense effort devoted to protecting NC3 systems from cyberattack, no enterprise that relies so extensively on computers and cyberspace can be made 100 percent invulnerable to attack. This is so because such systems employ many devices and operating systems of various origins and vintages, most incorporating numerous software updates and “patches” over time, offering multiple vectors for attack. Electronic components can also be modified by hostile actors during production, transit, or insertion; and the whole system itself is dependent to a considerable degree on the electrical grid, which itself is vulnerable to cyberattack and is far less protected. Experienced “cyberwarriors” of every major power have been working for years to probe for weaknesses in these systems and in many cases have devised cyberweapons, typically, malicious software (malware) and computer viruses, to exploit those weaknesses for military advantage.5

Although activity in cyberspace is much more difficult to detect and track than conventional military operations, enough information has become public to indicate that the major nuclear powers, notably China, Russia, and the United States, along with such secondary powers as Iran and North Korea, have established extensive cyberwarfare capabilities and engage in offensive cyberoperations on a regular basis, often aimed at critical military infrastructure. “Cyberspace is a contested environment where we are in constant contact with adversaries,” General Paul M. Nakasone, commander of the U.S. Cyber Command (Cybercom), told the Senate Armed Services Committee in February 2019. “We see near-peer competitors [China and Russia] conducting sustained campaigns below the level of armed conflict to erode American strength and gain strategic advantage.”

Although eager to speak of adversary threats to U.S. interests, Nakasone was noticeably but not surprisingly reluctant to say much about U.S. offensive operations in cyberspace. He acknowledged, however, that Cybercom took such action to disrupt possible Russian interference in the 2018 midterm elections. “We created a persistent presence in cyberspace to monitor adversary actions and crafted tools and tactics to frustrate their efforts,” he testified in February. According to press accounts, this included a cyberattack aimed at paralyzing the Internet Research Agency, a “troll farm” in St. Petersburg said to have been deeply involved in generating disruptive propaganda during the 2016 presidential elections.6

Other press investigations have disclosed two other offensive operations undertaken by the United States. One called “Olympic Games” was intended to disrupt Iran’s drive to increase its uranium-enrichment capacity by sabotaging the centrifuges used in the process by infecting them with the so-called Stuxnet virus. Another left of launch effort was intended to cause malfunctions in North Korean missile tests.7 Although not aimed at either of the U.S. principal nuclear adversaries, those two attacks demonstrated a willingness and capacity to conduct cyberattacks on the nuclear infrastructure of other states.

Efforts by strategic rivals of the United States to infiltrate and eventually degrade U.S. nuclear infrastructure are far less documented but thought to be no less prevalent. Russia, for example, is believed to have planted malware in the U.S. electrical utility grid, possibly with the intent of cutting off the flow of electricity to critical NC3 facilities in the event of a major crisis.8 Indeed, every major power, including the United States, is believed to have crafted cyberweapons aimed at critical NC3 components and to have implanted malware in enemy systems for potential use in some future confrontation.

Pathways to Escalation

Knowing that the NC3 systems of the major powers are constantly being probed for weaknesses and probably infested with malware designed to be activated in a crisis, what does this say about the risks of escalation from a nonkinetic battle, that is, one fought without traditional weaponry, to a kinetic one, at first using conventional weapons and then, potentially, nuclear ones? None of this can be predicted in advance, but those analysts who have studied the subject worry about the emergence of dangerous new pathways for escalation. Indeed, several such scenarios have been identified.9

The first and possibly most dangerous path to escalation would arise from the early use of cyberweapons in a great power crisis to paralyze the vital command, control, and communications capabilities of an adversary, many of which serve nuclear and conventional forces. In the “fog of war” that would naturally ensue from such an encounter, the recipient of such an attack might fear more punishing follow-up kinetic attacks, possibly including the use of nuclear weapons, and, fearing the loss of its own arsenal, launch its weapons immediately. This might occur, for example, in a confrontation between NATO and Russian forces in east and central Europe or between U.S. and Chinese forces in the Asia-Pacific region.

Speaking of a possible confrontation in Europe, for example, James N. Miller Jr. and Richard Fontaine wrote that “both sides would have overwhelming incentives to go early with offensive cyber and counter-space capabilities to negate the other side’s military capabilities or advantages.” If these early attacks succeeded, “it could result in huge military and coercive advantage for the attacker.” This might induce the recipient of such attacks to back down, affording its rival a major victory at very low cost. Alternatively, however, the recipient might view the attacks on its critical command, control, and communications infrastructure as the prelude to a full-scale attack aimed at neutralizing its nuclear capabilities and choose to strike first. “It is worth considering,” Miller and Fontaine concluded, “how even a very limited attack or incident could set both sides on a slippery slope to rapid escalation.”10

What makes the insertion of latent malware in an adversary’s NC3 systems so dangerous is that it may not even need to be activated to increase the risk of nuclear escalation. If a nuclear-armed state comes to believe that its critical systems are infested with enemy malware, its leaders might not trust the information provided by its early-warning systems in a crisis and might misconstrue the nature of an enemy attack, leading them to overreact and possibly launch their nuclear weapons out of fear they are at risk of a preemptive strike.

“The uncertainty caused by the unique character of a cyber threat could jeopardize the credibility of the nuclear deterrent and undermine strategic stability in ways that advances in nuclear and conventional weapons do not,” Page O. Stoutland and Samantha Pitts-Kiefer wrote in 2018 paper for the Nuclear Threat Initiative. “[T]he introduction of a flaw or malicious code into nuclear weapons through the supply chain that compromises the effectiveness of those weapons could lead to a lack of confidence in the nuclear deterrent,” undermining strategic stability.11 Without confidence in the reliability of its nuclear weapons infrastructure, a nuclear-armed state may misinterpret confusing signals from its early-warning systems and, fearing the worst, launch its own nuclear weapons rather than lose them to an enemy’s first strike. This makes the scenario proffered in the 2018 NPR report, of a nuclear response to an enemy cyberattack, that much more alarming.

## 5

#### Anti-trust is a capitalist psy op to pacify the working class, buy time to mystify unsustainable accumulation, and map competition onto subjectivity – homo economicus devalues life.

Lebow 19 [David Lebow – Lecturer on Social Studies at Harvard University and lawyer, “Trumpism and the Dialectic of Neoliberal Reason,” Perspectives on Politics 18(2):380-398, doi:10.1017/S1537592719000434]

I. Neoliberal Reason

As Michel Foucault and others have argued, neoliberalism entails far more than an economic doctrine favoring deregulated markets.4 It is a novel form of governmentality—a rationality linked to technologies of power that govern conduct, not just through direct state action but through liberty itself.5 Not isolated to the traditionally demarcated sphere of economics, neoliberal society entails a whole economic-juridical order.

The central program of neoliberal **governmentality** is the absolute generalization of competition as a universal behavioral norm. Whereas in liberal thought, the root principle of capitalism was exchange of equivalents, for neoliberal reason it is competition entailing inequality. The key result of market processes goes from specialization to selection. The competitive market is the exclusive site of rationality. It processes information, indicated by price, and is the only mechanism of producing knowledge, defined as what is profitably utilizable. Because consumers are free to refuse inferior goods or services, the price mechanism of the market system ensures optimal solutions and maximal satisfaction of preferences.

Liberal capitalism, as Karl Polanyi argued, required the construction of “fictitious” commodities like land and labor.6 These abstract, exchangeable factors of production had to be disembedded from concrete non-market social relations, norms, and values. Instead of merely disembedding commodities, neoliberalism intervenes to make competitive mechanisms regulate every moment and point in society. It strives to build an empire of market choice that invades every domain of life, and deposes all other social, political and solidaristic institutions and values.

Neoliberalism does not allege that markets are natural; competition must be constructed. Rather than endorsing laissez-faire overseen by a night watchman, it stipulates a strong state engaged in permanent vigilance, activity, and intervention to maintain artificial competition. It must not plan outcomes, which would upset the market’s innate rationality, and must be insulated from political disturbances. Economic interventionism leads down the road to serfdom; fascism and unlimited state power are its necessary results. A “minimum of economic interventionism” on the “mechanisms of the market” must be accompanied by “maximum legal interventionism” on the “conditions of the market.”7 Fixed, formal rules make up an economic constitution that inhibits planning, repulses political disruptions, and impartially safeguards competition. The state is the executor of the market and growth is the basis of public legitimacy. Governance depoliticizes public power, promotes ostensibly post-ideological technical problem-solving by experts, and relies on “best-practices” that dissolve the distinction between public and private organization.8

Unlimited generalization of competition yields an enterprise society in which calculations of supply/demand and cost/benefit become the model of all social relations. Neoliberal reason renders homo economicus, based on this model of the enterprise, the exhaustive figuration of human subjectivity. The center of economic thought shifts from labor and processes of production, exchange, and consumption to human capital and rational decision-making under conditions of scarcity. Capital is everything that can generate future income; wages are reconceived as income from capital. Labor is no longer comprehended as a commodity exchanged for a wage, but as a combination of human capital (the worker’s education and abilities) and the income stream it generates. This neoliberal subject is an aggregate of human capital who invests in his own income-generating abilities.

Neoliberalism replaces the invariant identity of the moral person as a rights-bearing citizen with a formally empty receptacle filled up through enterprising choices. It brushes aside models of freedom as self-rule achieved through moral autonomy or popular sovereignty.9 In the neoliberal “democracy of consumers,” individual consumers together constitute the sovereign that monopolizes the issuance of legitimate commands.10 Sovereign will is expressed not through political channels, but by choices in the “plebiscite of prices.”11 Whereas producers have particular interests like protectionism, consumers have a consensual and common interest; all favor the impartial functioning of market processes. In the neoliberal free society, consumers exercise their right to choose in complete independence.

II. From Keynesian State Capitalism to Neoliberal Deregulation

Situating the 2008 crisis in a historical account of American political and economic development clarifies its broader significance. The early twentieth-century Progressives were disdainful of what they took to be the chaos and waste of fin de siècle laissez-faire society. They strove to build a new American state that would replace the structural and rights-based formalisms of the nineteenth century with direct democracy and expert administration. It took the Great Depression and New Deal to bring into full bloom the Progressive commitment to pragmatic rationality. Thereafter, the “policy state” was authorized to pursue designated social goals and develop the means to accomplish them.12 The slew of New Deal innovations included state oversight of labor negotiations, invigorated antitrust, Keynesian countercyclical deficits to stimulate demand and increase purchasing power, an expansive public sector sheltered from the business cycle, aggressive banking regulation, and social insurance. Regulation and redistribution ensured the conditions necessary for an economic system based on capital accumulation, private property, and corporate profit to endure.

To many, the differences between the New Deal and Nazi political economies appeared less significant than their common response to monopoly capitalism. Both erased boundaries between state and society by politicizing the private sphere and authorizing public bureaucracies to rationalize crisis-prone economies. Frankfurt School member Friedrich Pollock suggested that this common “state capitalism” had solved the contradiction between the forces and relations of production, and thus overcome the economy’s crisis tendencies. It seemed to him that management had become merely technical and “nothing essential” had been “left to the laws of the market.”13 Worries abounded that the private law sphere of property and contract was necessary for individual freedom. Despite salient differences between Nazi and New Deal state capitalism, many feared that intervention into society was a waystation to domination. Unease about the specter of American despotism motivated development of mechanisms to ensure that interventionism did not devolve into arbitrary rule.14 Expertise was one justification and limitation of the policy state. Authority could be safely delegated to a new corps of public-spirited administrators because their scientific knowledge would not only make them effective, but also counsel restraint. Enduring misgivings led later to new laws of administrative process. The procedural state was legitimated by its defenders as being a substantively value-neutral and instrumentally rational machine serving goals set by society. Regulatory decision-making was shunted into the abstruse procedures of courtrooms and bureaucracies. Defenders of the state emphasized that its processes of allocating authority were neutral, impartial, and open to all. The balanced accommodation of all interest groups seeking to exercise influence would yield an equilibrium corresponding to the public interest.15

The intermeshing of state and society through interest groups, agencies, and professionalized parties marginalized the public. The sovereign public opinion that Progressives had hoped would rationalize government gave way to the rationality supposedly inherent in processes of public law, public-private negotiation, and regulated markets. The state was endowed with a diffuse legitimacy in exchange for a growing economy, broad distribution, and ongoing household capacity to consume.16 The Keynesian welfare settlement pacified the working class, protecting the market economy from more radical political pressures. Newly available, mass-produced commodities encouraged leveled-down notions of citizenship as welfare clientelism and privatistic consumption. As the state expanded and routinized, the initial politicization of private property relations through public intervention developed into depoliticized economic management by lawyers and social scientists organized by administrative and judicial processes.

The terms of the social contract preserving the coexistence of capitalism and democracy had been set. In exchange for a pacified citizenry and depoliticized regulatory authority, the policy state promised to deploy instrumental reason to sustain both capital accumulation and widely distributed capacity to consume (supported, always, by the exclusion of African Americans). During the decades of postwar growth, these twin responsibilities seemed attainable and compatible. Capitalism functioned smoothly enough and potentially delegitimating inequality was clipped by inflation, tax-based welfare, and collectively negotiated wages. But in the late 1960s and early 1970s, weakening growth, stagflation, trade deficits, and the collapse of Bretton Woods revealed that state capitalism had not solved the problems of economics. As the Great Depression had enabled construction of the instrumentally rational policy state, economic disturbances in the 1970s opened the breach into which neoliberal reason entered to reconfigure the political economy. Rather than shielding rational policy-making from political pressure and assuring broadly distributed welfare, neoliberalism promised growth driven by depoliticized markets freed from regulation and downwards redistribution. Believing in the optimal rationality of competitive markets, neoliberals sought to reinvigorate capital accumulation through deregulation, lowered taxes, financialization, privatization, and market expansion.

Liberating accumulation from the restrictions and obligations incurred under state capitalism might have imperiled capitalism’s peace treaty with democracy. For deregulation to proceed without impairing the system’s legitimacy, the quid pro quo—depoliticization for consumption—had to continue. Over the ensuing decades, as Wolfgang Streeck explains, the state “bought time” by finding new ways to generate illusions of widely distributed prosperity that prolonged the capacity of the lower and middle classes to consume.17 Each successive attempt exhausted itself, leading to new and escalating disturbances. In the 1970s, inflation safeguarded social peace by compensating workers for inadequate growth until stagflation ended this mode of buying time. A subsequent reliance on public debt enabled the government to pacify conflict with borrowed money. Rising debt and balking creditors delimited this phase, which was brought to a definitive close with the Clinton administration’s social spending cuts and balanced budgets. In a final stage that dawned in the 1980s but grew increasingly paramount over time, debt-based support of purchasing power was privatized. Household spending was financed through mortgages, student loans, and credit cards. This “privatized Keynesianism” buoyed consumption up through 2008, despite cuts to social spending, falling wages, and tightening employment markets.18

Each device for upholding spending maintained the legitimacy of the depoliticized political economy, even as liberalization continued to strip the wage-dependent population of regulatory and redistributive safeguards. The end of the inflation era brought structural unemployment and weakened trade unions. The passing of the public debt regime meant cuts to social rights, privatization of social services, and a trimmed public sector. Growing private debt enabled people to hold on despite lost savings, and rising under- and unemployment. At every step, the neoliberal project was “dressed up” as a consumption project.19 Continuing consumption ensured legitimacy long enough to enact total transformation of the political economy.

The state could not buy time indefinitely. The 1970s had already witnessed the beginning of the transition from a manufacturing, production-oriented economy that exported surpluses to an import-based, finance and services economy focused on consumption. As the United States went from creditor to debtor, a system of “balanced disequilibrium” took hold.20 With impunity granted as the world’s reserve currency, the United States ran mounting budget and trade deficits. To finance them, it absorbed surplus capital from abroad, much of which wended its way to Wall Street. Banks used these profits to extend credit to the working- and middle- classes. Household debt funded consumption of imported goods, returning the surplus capital abroad, and completing the circuit of global trade. This system depended on the unsustainable condition of ever-increasing debt-based consumption. Consumption was notoriously reinforced by secondary markets in what was essentially private money (securitized derivatives and collateralized debt obligation) that was much riskier than assumed. Because increasingly irresponsible lending was integral to continuing the consumption that stabilized the macroeconomic system, it became a sort of vicious collective good that progressively magnified the scale of the inevitable crash.21 When in 2008 the debt finally proved unserviceable and the housing bubble burst, the private money disappeared and the disequilibrated global economic system fell into crisis.

Consumption based on private debt had provided an unstable bridge over the yawning inequality brought about by deregulation, financialization, globalization, and the diminished welfare state. When the 2008 crisis dried up credit, it revealed a divided “dual economy.”22 On one side is the primary sector of elite, highly-educated professionals who are collected in coastal urban centers and tied in to corporate management, technological innovation and oversight of global capital flows. On the other is the secondary sector of low-skilled workers primarily fixed in the heartland, for whom deregulated competition has brought under- or unemployment, job instability, depressed wages, exploding debt, and diminished prospects.

Unable to buy more time, the state’s breach of the postwar social contract has been exposed. The neoliberal system of capital accumulation was entrenched at the expense of broad and sustainable consumption. The results have been the politicization of defrauded citizens and a political economy plunged into legitimation crisis. Time has belied the premature conclusion that contradiction and crisis potential had been overcome by state capitalism. Contradiction was relocated into cross-cutting imperatives for the state to enable capital accumulation and distribute consumption. In hindsight, we find only a window of stabilization of an enduring crisis potential built into capitalist political economy. As Nancy Fraser puts it “on the one hand, legitimate, efficacious public power is a condition of possibility for sustained capital accumulation; on the other hand, capitalism’s drive to endless accumulations tends to destabilize the very public power on which it relies.”23 The political fallout from the 2008 crisis marks the end of the postwar social contract that had established conditions ensuring the continued coexistence of capitalism and democracy.

#### Capitalism drives extinction and structural violence

Allinson et al 21 [Jamie 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.” 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.

#### Vote neg for anti-capitalist commons – collectives should refuse commitments to competitive principle and the straitjacket of what’s “realistic”

Rose 21 [Nick. PhD in Political Ecology from RMIT University. Executive Director of Sustain: The Australian Food Network. From the Cancer Stage of Capitalism to the Political Principle of the Common: The Social Immune Response of “Food as Commons.” Int J Health Policy Manag 2021. 3-31-21. DOI: 10.34172/ijhpm.2021.20 //shree]

Silvia Federici provides a longer historical perspective, noting that ‘commoning is the principle by which human beings have organised their existence for thousands of years;’ and that to ‘speak of the principle of the common’ is to speak ‘not only of small-scale experiments [but] of large-scale social formations that in the past were continent-wide.’87 Hence a commons-based society is neither a utopia or reducible to fringe projects, and the commons have persisted despite the many and continuing enclosures, ‘feeding the radical imagination as well as the bodies of many commoners.’87 Federici acknowledges that commons and practices of commoning are diverse, that many are susceptible to cooptation and many are consistent with the persistence of capitalism; indeed some, such as charities providing social services (including foodbanks) during the years of austerity budgets in the United Kingdom (2010-2015), reinforce and stabilise capitalism.87 What matters to Federici is the character and intentionality of the commons as anti-capitalist, as ‘a means to the creation of an egalitarian and cooperative society…no longer built on a competitive principle, but on the principle of collective solidarity [and commitments] to the creation of collective subjects [and] fostering common interests in every aspect of our lives.’87

Federici’s analysis resonates with the political thought and proposals developed by Dardot and Laval in their 2018 work, ‘On Common: Revolution in the 21st century.’11 For Dardot and Laval, the common is likewise understood as a principle of political struggle, a demand for ‘real democracy’ and a major driving force behind the emerging articulation of a political vision and programme that transcends and overcomes the straitjacket logic of neoliberal ideological hegemony and its ‘policy grammar’ which appears to foreclose all alternatives and lock us forever into a capitalist realism in which ‘it is easier to imagine the end of the world than it is to imagine the end of capitalism.’89 Eschewing Bollier’s ‘triarchy’ of a market/state/ commons coexistence, Dardot and Laval argue for a politics of the common based on an engaged citizenry that directly participates and deliberates in all decisions which impact it, and in the process not merely transforms the institutions responsible for the management of services and allocation of resources, but creates new institutions and new ways of being in the world.11

Dardot and Laval describe this form of politics as ‘instituent praxis’: the common, they argue, is ‘not produced but instituted.’11 This acknowledges the conventional understanding of Ostrom, Bollier and others of ‘the commons’ as residing in the rules – the laws – that a community establishes for the collective management and use of shared resources, but extends it much further and in a more radical direction. The essence of the commons, they argue, is not in the goods per se such as land or a forest or a seed bank ‘held in common,’ but rather in the process of their establishment as well as the ongoing negotiation that will surround their use and governance. Hence, Dardot and Laval distinguish the commons from the ‘rights’ tradition of property, arguing that ‘the commons are above all else matters of institution and government…the use of the commons is inseparable from the right of deciding and governing. The practice that institutes the commons is the practice that maintains them and keeps them alive and takes full responsibility for their conflictuality through the coproduction of rules.’90 To ‘institute’ in this context should not be misunderstood as ‘to institutionalise [or] render official;’ rather it is ‘to recreate with, or on the basis of, what already exists.’ 90 This messy, conflictual and evolving process is what Dardot and Laval insist will ultimately bring about a revolution, not in the form of a violent uprising or insurrection, but rather through the ‘reinstitution of society’ via the transformation of politics and economy from its current state of ‘representative oligarchy’ to full participatory and deliberative democracy.11 Such a vision is premised on a mass politicisation of society; in effect a return of mass popular political contestation and a turn away from the postpolitical era of the neoliberal consumer.91-92

## 6

#### Text: The United States federal government should delegate antitrust rulemaking authority to a new expert agency. The agency should begin notice-and-comment rulemaking to adopt the principle of separating platforms from commerce for nearly all platforms in the private sector.

#### Solves the case, engages notice and comment.

Rebecca Haw 11. Climenko Fellow and Lecturer on Law, Harvard Law School. J.D., Harvard Law School, 2008; M. Phil, Cambridge University, 2005; B.A., Yale University, 2001."Amicus Briefs and the Sherman Act: Why Antitrust Needs a New Deal." Texas Law Review, vol. 89, no. 6, May 2011, p. 1247-1292. HeinOnline.

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.

#### US democratic retreat causes terrorism, great power war, famine, and poverty.

Garry Kasparov 17. Chairman of the Human Rights Foundation, founded the Renew Democracy Initiative. “Democracy and Human Rights: The Case for U.S. Leadership”. Feb 16 2017. U.S. Senate. http://www.foreign.senate.gov/imo/media/doc/021617\_Kasparov\_%20Testimony.pdf

The Soviet Union was an existential threat, and this focused the attention of the world, and the American people. There existential threat today is not found on a map, but it is very real. The forces of the past are making steady progress against the modern world order. Terrorist movements in the Middle East, extremist parties across Europe, a paranoid tyrant in North Korea threatening nuclear blackmail, and, at the center of the web, an aggressive KGB dictator in Russia. They all want to turn the world back to a dark past because their survival is threatened by the values of the free world, epitomized by the United States. And they are thriving as the U.S. has retreated. The global freedom index has declined for ten consecutive years. No one like to talk about the United States as a global policeman, but this is what happens when there is no cop on the beat. American leadership begins at home, right here. America cannot lead the world on democracy and human rights if there is no unity on the meaning and importance of these things. Leadership is required to make that case clearly and powerfully. Right now, Americans are engaged in politics at a level not seen in decades. It is an opportunity for them to rediscover that making America great begins with believing America can be great. The Cold War was won on American values that were shared by both parties and nearly every American. Institutions that were created by a Democrat, Truman, were triumphant forty years later thanks to the courage of a Republican, Reagan. This bipartisan consistency created the decades of strategic stability that is the great strength of democracies. Strong institutions that outlast politicians allow for long-range planning. In contrast, dictators can operate only tactically, not strategically, because they are not constrained by the balance of powers, but cannot afford to think beyond their own survival. This is why a dictator like Putin has an advantage in chaos, the ability to move quickly. This can only be met by strategy, by long-term goals that are based on shared values, not on polls and cable news. The fear of making things worse has paralyzed the United States from trying to make things better. There will always be setbacks, but the United States cannot quit. The spread of democracy is the only proven remedy for nearly every crisis that plagues the world today. War, famine, poverty, terrorism–all are generated and exacerbated by authoritarian regimes. A policy of America First inevitably puts American security last. American leadership is required because there is no one else, and because it is good for America. There is no weapon or wall that is more powerful for security than America being envied, imitated, and admired around the world. Admired not for being perfect, but for having the exceptional courage to always try to be better. Thank you

## Competitiveness

#### 1. Big Tech monopolistic behavior is overstated.

Allison Schrager, 20. Senior fellow at the Manhattan Institute. “Don’t Break Up Big Tech.” July 30, 2020. https://www.city-journal.org/reining-in-big-tech

We should be grateful for the FANGs. Throughout the Covid-19 pandemic, they provided a lifeline—Amazon delivered goods, social media and search helped us feel connected, and streaming media entertained us. The size and scope of these firms meant that we could move our lives online in ways that were unimaginable even ten years ago. And the breakout star of the pandemic suggests that competition is not dead: Zoom prevailed over more established technology companies like Skype, Gchat, or Microsoft Teams to emerge as the critical technology that made work and even social events possible. The Zoom story demonstrates that a large network is not a durable market advantage the way that a power grid is. Users are fickle; it’s not hard to find another search engine, social media platform, or video chat interface if a better one is available. If a firm fails to innovate and offer a superior product, the market will eventually shrink it. A few years ago, everyone, especially Europeans, worried that Microsoft had too much monopoly power. Despite many lawsuits, eventually it was the market, or better products from competitors, that reduced the feared reach of Bill Gates. Facebook is already dwindling. Young people don’t use it. Ever since data-usage scandals emerged, I and many of my “friends” log in less frequently. As people post less content, they use the platform less, and the “network effect” diminishes. Facebook’s other products will experience the same fate as users age and new ones avoid their parents’ network. Even Amazon’s future is not assured. Just 20 years ago, it was unthinkable that any retailer could displace Walmart, which was criticized as monopolistic. Walmart still brings in more revenue than Amazon, but no one today would characterize it as a monopoly. Amazon’s share of the e-commerce market is much larger and growing, but there is no guarantee that the next generation will be dependent on it to the same degree.

#### 2. Breaking up big tech doesn’t solve competition

Ken Fisher, 21. Founder, Executive Chairman and co-CIO of Fisher Investments, authored 11 books and is a widely published global investment columnist. “Don't Break Up Big Tech - Let the 'Invisible Hand' Do It.” August 4, 2021. https://www.realclearmarkets.com/articles/2021/08/04/dont\_break\_up\_big\_tech\_-\_let\_the\_invisible\_hand\_do\_it\_788500.html

Break up Big Tech! So cry pundits and politicos alike. They claim these humongous firms stifle competition and innovation while greedily gobbling endless profits. With Congress relatively gridlocked, the sweeping regulation critics seek is unlikely. It’s also unnecessary, even harmful. Why? Big Tech’s wild success doesn’t thwart competition. It sparks it! This feature of capitalism’s “invisible hand” will eventually keep today’s titans in check while creating innovation—without wrecking markets. Here is why. Since COVID-driven shutdowns forced economic activity online, soaring Tech stock market values turbocharged calls for a sector takedown. The S&P 500’s six largest constituents are in Tech or Tech-like industries (like Amazon and Facebook). Their market value: almost $9 trillion—nearly 25% of the S&P. Critics fear a new Gilded Age of behemoth “trusts” dominating everything down to your hangnail—an ogre-ish oligopoly. State governments and competitors already target Apple, Facebook and Google with antitrust lawsuits. Democrats and many Republicans back slews of new regulations of varied forms. All this in the name of boosting competition. As I have long preached from here to Timbuktu and back, markets hate uncertainty. So if governments will whack the ogres, why are these targeted Tech titans’ stocks so hot? Gridlock! As I explained in March, Congressional Democrats’ tiny margins mean the slightest dissent kills legislation. Some California Democrats already oppose Tech clampdowns they fear threaten their state’s major employers and state tax revenue. Regulation proponents have little time: Few Congressional sessions remain before the fiscal year’s September 30 close, with dastardly debt ceiling issues, infrastructure babble and reconciliation spending dominating debate. Then midterm campaigning starts. Many in ideologically 50 – 50 districts will shun big changes lest they irk swing voters—doubly true in more than a dozen states where pending redistricting leaves constituencies literally undetermined. Then, too, the ogre’s kajillionaire founders, managers and assistant flunky ogres will surely pour enough cash into election campaign coffers to buy their way out of any proposed legislative purgatory. I am being facetious saying that, but there are shreds of reality in it. Markets won’t ignore this. They pre-price everything we all know. After early-year lag, US Tech stocks soared 16.6% since mid-May, trouncing the S&P 500’s 8.6%. The Tech-like Interactive Media & Services industry—part of the Communication Services sector and home of social media firms and search engines—jumped 23.3%. The Consumer Discretionary sector’s Internet & Direct Marketing Retail industry is up 15.6%. Translation: Markets see past the nonsense. Trust them. Markets are far more trustworthy than politicians or pundits. Still, never fear: a failed Big Tech crackdown doesn’t mean America slinks toward any form of anticompetitive FAANG-dominated future. Should problems be real (as opposed to the imagined-yet-consensus view common among the elitist crowd), in time, capitalism’s “invisible hand” will throttle these firms’ power better than any regulations could—just as modern economics’ founder Adam Smith envisioned. Hugeness doesn’t eliminate competition, Smith found—it inspires it. If the ogres get out of hand, that motivates new firms seeking disruptive opportunity. It just takes time. If these danged ogres gouge customers, provide shoddy products or fail to innovate and compete, customers inevitably take their business to the new disruptors who seemingly appear by magic from nowhere to nibble away the ogres from their hangnails up. Don’t take Smith’s word for it—or mine. Consider the 50 years through 2019’s end, to eliminate pandemic skew. In 1969, IBM was America’s largest public firm. Its $41.5 billion market cap dwarfed second-place AT&T’s $26.7 billion. General Motors, Eastman Kodak, Exxon, Sears, Texaco, Xerox, GE and Gulf Oil followed, in that order. A decade later, half of that top 10 turned over. IBM was still #1, but by just $1 billion over AT&T. The oil industry dominated, riding repeat Arab oil crises’ surging prices to claim 6 of the top 10 spots. Fast forward to 1999. Dominant Microsoft now tripled IBM’s market cap. Eastman Kodak, Xerox and Sears? Relics. The oil industry had transformed—only newly merged Exxon Mobil cracked America’s 10 biggest stocks. Chevron—less than a third of Gulf and Texaco’s combined market value in 1969—had swallowed up the former and was about to gobble the latter. Showing actual antitrust action lacked the invisible hand’s power, AT&T remained the 8th-largest public firm even after regulators made it ditch Ma Bell. By 2019, IBM wasn’t even among America’s 50 largest firms. Only 2 of 1999’s biggies—Microsoft and Walmart—remained top 10. Microsoft did despite continual antitrust threats—proving they aren’t auto-bearish. Free markets drive this constant top tier churn and burn. Too big is actually its own arteriosclerosis. Excess bigness creates bureaucracy—which morphs pretty darned pronto into bureaucrazy. New competitors disruptively emerge with newer technology disrupting via better products or greater efficiency—making the ogres’ offerings rusty relics. That is what capitalism does. Always! If you don’t believe that, you have a long-term personal investing future worse than any ogre could deliver. Those unable to adapt fade. New leaders replace them. The advances provide consumers endless benefit. It will happen to today’s Tech titans. Not overnight, of course. But look beyond myopic visions skewed by recency bias to grasp the invisible hand’s power. Gradual shifts let markets digest changes bit-by-bit, giving investors abundant time to adjust. So don’t sweat legislative or regulatory threats. Meanwhile, love today’s Big Tech stocks. But not forever. Adam Smith’s invisible hand will come. Just be patient in stock market time, not politician and newspaper time.

#### 3. There is no alternative to Big Tech companies

Sunil Jain, 20. Jain was Managing Editor at Financial Express. He was an acclaimed journalist. He died in 2021. “Why breaking up the Big Tech a bad idea.” October 12, 2020. https://www.financialexpress.com/opinion/why-breaking-up-the-big-tech-a-bad-idea/2103217/

While stories of Google favouring its advertisers are legion, it is not clear whether the solutions the House report proposes will necessarily work. Nor do all the findings appear consistent. Amazon is supposed to have “monopoly power over many small- and medium-sized businesses”, but, the report adds, “that do not have a viable alternative to Amazon for reaching online consumers … Amazon has 2.3 million active third-party sellers on its marketplace …” Surely Amazon giving small sellers access to markets is a good thing? The report comes down on Apple for its high fees of 30% of what apps make—PayTM chief Vijay Shekhar Sharma makes a similar point about Google’s Play Store—but as Apple argues, 84% of apps distributed on its App Store pay nothing, and the 30% commission is lower than what was charged by brick-and-mortar retailers that dominated the market in the pre-App Store days. As this newspaper has argued in the context of Google, apart from the commission applying to just a small fraction of apps, this is really a payment for a big distribution—and billing/collection—network that the app stores provide. Certainly, checks are required to ensure dominant positions are not abused, and there are several instances of this; shockingly, the report says, “of Facebook’s nearly 100 acquisitions, the Federal Trade Commission engaged in an extensive investigation of just one acquisition: Facebook’s purchase of Instagram in 2012.” If competition authorities are asleep, anyone will abuse dominance. Search-neutrality has to be ensured in the case of a Google, and if an Amazon uses consumer data that others don’t have to fine-tune its production strategy, this is worrying. But breaking up tech firms is not going to fix this. Zachary Karabell (bit.ly/2GN2zom) argued in Wired that previous attempts at breaking up monopolies—in telecom, oil—ended up with market power remaining as concentrated after a few decades; indeed, the House panel report itself says “certain features of digital markets—such as network effects, switching costs, the self-reinforcing advantages of data, and increasing returns to scale—make them prone to winner-take-all economics.” In which case, is the solution to keep breaking up tech giants every few years? Indeed, the talk of how these big tech firms have wielded their dominance to “erode entrepreneurship, degrade Americans’ privacy online, and undermine the vibrancy of the free and diverse press” suggests several issues are getting conflated with the problems associated with social media and fake news and election-manipulation on platforms like Facebook. But, as Infosys co-founder Nandan Nilekani argues, this may have to do with the fact that, unlike media firms, social media is not held responsible for what is posted on it; start treating/suing Facebook like a traditional media firm and some of this may start changing. The last line of the Rajan paper is worth keeping mind: “it is dangerous to apply twentieth century economic intuitions to twenty first century economic problems”. Antitrust is a 20th century institution. In fact, taking its cue from this, the House panel also speaks of interoperability and data portability as solutions to the issue of dominance.

#### 4. Big Tech key to US competitiveness

Daren Bakst & Gabriella Beaumont-Smith, 20. Bakst is a Senior Research Fellow in Agricultural Policy in the Thomas A. Roe Institute for Economic Policy Studies, of the Institute for Economic Freedom, The Heritage Foundation. Gabriella Beaumont-Smith is Policy Analyst for Macroeconomics in the Center for Data Analysis, of the Institute for Economic Freedom. “A Conservative Guide to the Antitrust and Big Tech Debate.” BACKGROUNDER No. 3563 | December 1, 2020, INSTITUTE FOR ECONOMIC FREEDOM. p. 1-14.

The Benefits of the Technology Sector

The misguided attempts to change antitrust law in order to target the technology sector should be considered in light of the technology sector’s numerous benefits to the country. The consumer benefits are especially relevant given that the purpose of antitrust law is to promote consumer welfare. It would make no sense to reform (or apply) antitrust law in a manner that would impose more harm than good on consumers. The U.S. is a leader in the technology industry. Almost half of the 2019 top 50 digital companies listed by Forbes were American businesses.52 The sector’s global leadership provides Americans with expanded employment opportunities and a vast variety of goods and services at different prices, often including free products. In 2019, the technology sector directly employed almost 8 percent of the U.S. workforce.53 In 2018, the industry constituted nearly 7 percent of U.S. gross domestic product54 and now accounts for nearly 40 percent of the S&P 500.55 The success of these American companies should not be punished, but lauded, and policymakers should promote the free-market principles that made the accomplishments of these businesses possible. The U.S. technology sector is not only the result of the competitive process, but is a driver of it. Almost all businesses are partially digitally enabled,56 and digitalization has become a crucial feature of competitiveness. Technological innovation is pushing business models to evolve, blurring the lines between businesses that produce goods and businesses that produce services, creating companies that produce and supply a combination of both.57 For consumers, the technology sector has changed the way we live. Its impact on our lives is exemplified by its importance during the current pandemic. In a recently conducted study by the National Research Group, almost 90 percent of Americans surveyed expressed that their opinions about the role of technology has improved since the health crisis.58 Amazon can deliver groceries and almost anything else. Food delivery businesses including Grubhub, Postmates, Uber Eats, and DoorDash can deliver food from local restaurants, and meal-prep kits, such as Hello Fresh and Blue Apron, provide the exact amount of ingredients for the meals consumers choose from the websites. Social networks including Facebook, Instagram, and Twitter keep Americans in touch with far-away friends and family. Google, Apple, Dell, Microsoft, Cisco, Zoom, and others provide the hardware and software so that Americans can continue with work and school during the closures to contain the spread of COVID-19. Netflix, Hulu, Disney+, Amazon Prime, and other streaming sites provide an abundance of choices for movie nights. Exercise studios, such as SoulCycle and Pure Barre, have moved their classes online as gyms have been closed. While some of those businesses may not be defined as technology companies, their services are enabled by technology and without these capabilities, Americans would be worse off. In fact, it is scary to imagine what life would be like during the pandemic without these technological innovations. Of course, even in a non-pandemic world, these services are critical for consumers and will continue to improve many aspects of Americans’ lives.

## Dependency Trap

#### 1. The plan’s anti-trust intervention is inefficient. It stifles innovation and competition.

Thomas A **Lambert 20**. The Wall Chair in Corporate Law and Governance and Professor of Law at the University of Missouri, formerly a John M. Olin Fellow at Northwestern University School of Law and the Center for the Study of American Business at Washington University. “The Limits of Antitrust in the 21st Century.” CATO Institute. Summer 2020. https://www.cato.org/sites/cato.org/files/2020-06/regulation-v43n2-2.pdf

In light of the Hayekian knowledge problem and public choice concerns, courts and enforcers should typically avoid antitrust interventions that either require a great deal of particularized knowledge or endow government officials with a large store of discretionary authority. This general guideline calls into question a number of recent antitrust proposals.

One such proposal is to treat the user data collected by digital platforms like an “essential facility” that must be made available to rivals. A court imposing a duty to share data with rivals would have to create an elaborate price schedule that takes into account such information as the cost of collecting and organizing different sorts of data and the value each sort provides—information that is largely inaccessible and likely to change over time. Courts are ill-equipped to gather and process all that information.

The knowledge problem also bedevils recent calls to break up the largest digital platforms: Google, Facebook, and Amazon. As the American Action Forum’s Will Rinehart has observed, the leading digital platform firms utilize complex business models, teams, and technologies, which makes breaking them up difficult. With respect to business models, the firms operate multi-sided platforms where the value to users on one side (e.g., advertisers) is largely dependent on the number and intensity of users on the other side (e.g., individuals engaged in search or social networking). Moreover, the firms tend to engage in internal cross-subsidization, using revenues from one line of business(e.g., Google search) to support less profitable services(e.g., Google’s YouTube, which is widely assumed not to be profitable on its own). Given that an adverse effect on one part of the business can wreak havoc on seemingly unrelated operations, any break-up plan would have to accurately account for a highly complex set of interrelationships.

Breaking up big technology companies is also complicated by the fact that they employ teams and technologies that work across the entire enterprise. Facebook’s software engineers, for example, support Facebook, Messenger, Instagram, and WhatsApp. Its technology stack includes a number of proprietary technologies designed to assist with common tasks engaged in by all its various services: “Big Pipe” serves pages faster, “Haystack” stores billions of photos efficiently, “Unicorn” searches the social graph, “TAO” stores graph information, “Peregrine” assists with querying, and “Mystery Machine” helps with performance analysis. Mistakes in disintegrating teams and technologies are likely to occasion a massive reduction in productive efficiency.

Whereas proposals to treat user data as an essential facility and to break up major digital platforms involve significant knowledge problems, other recent antitrust proposals would endow government officials with significant discretionary authority and thus raise public choice concerns. One such proposal, discussed above, is to jettison the relatively cabined consumer welfare standard in favor of a more amorphous public interest standard. Another is to create a federal agency with broad powers to regulate digital platforms. The history of sector regulation suggests that such an approach would reduce, rather than enhance, competition by entrenching incumbents and stifling innovation.

#### 2. Expanded antitrust enforcement of anticompetitive practices causes backlash---turns the case.

Alison Jones 20. Professor of Law at King's College London, with William E. Kovacic, March, “Antitrust’s Implementation Blind Side: Challenges to Major Expansion of U.S. Competition Policy.” The Antitrust Bulletin. https://journals.sagepub.com/doi/full/10.1177/0003603X20912884

One possible solution to rigidities that have developed in Sherman Act jurisprudence is for the FTC to rely more heavily on the prosecution, through its own administrative process, of cases based on Section 5 of the FTC Act and its prohibition of “unfair methods of competition.”93 This section allows the FTC94 to tackle not only anticompetitive practices prohibited by the other antitrust statutes but also conduct constituting incipient violations of those statutes or behavior that exceeds their reach. The latter is possible where the conduct does not infringe the letter of the antitrust laws but contradicts their basic spirit or public policy.95

There is no doubt therefore that Section 5 was designed as an expansion joint in the U.S. antitrust system. It seems unlikely to us, nonetheless, that a majority of FTC’s current members will be minded to use it in this way. Further, even if they were to be, the reality is that such an application may encounter difficulties. Since its creation in 1914, the FTC has never prevailed before the Supreme Court in any case challenging dominant firm misconduct, whether premised on Section 2 of the Sherman Act or purely on Section 5 of the FTC Act.96 The last FTC success in federal court in a case predicated solely on Section 5 occurred in the late 1960s.97

The FTC’s record of limited success with Section 5 has not been for want of trying. In the 1970s, the FTC undertook an ambitious program to make the enforcement of claims predicated on the distinctive reach of Section 5, a foundation to develop “competition policy in its broadest sense.”98 The agency’s Section 5 agenda yielded some successes,99 but also a large number of litigation failures involving cases to address subtle forms of coordination in oligopolies, to impose new obligations on dominant firms, and to dissolve shared monopolies.100 The agency’s program elicited powerful legislative backlash from a Congress that once supported FTC’s trailblazing initiatives but turned against it as the Commission’s efforts to obtain dramatic structural remedies unfolded.101

#### 3. Lack of infrastructure outweighs.

1AC First ’21 [Harry; Professor of Trade Regulation @ NYU; “Digital Platforms and Competition Policy in Developing Countries”; <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3864953>; AS]

C. Does Competition Law Matter for Innovation in Developing Countries?

There are many factors that might lead one to be skeptical about whether competition law provides much value added when it comes to increasing innovation in developing countries. Infrastructure support for innovation generally, and for digital products and services specifically, may be more of a hurdle for innovation than weak competition law enforcement. Competition law enforcement agencies have had difficulty incorporating innovation into antitrust policy even in major developed economies; how much more so for resource‐starved agencies in developing countries? Perhaps it would be better to let the major enforcement agencies take the lead, particularly when the major digital platforms are involved, on the assumption that changes in structure or business practices will likely spill over to developing countries in any event.

---DARTMOUTH’S CARD STARTS---

Despite these caveats, it would be unwise for agencies in developing countries to ignore innovation issues in competition law enforcement. Developing countries have particular policy concerns that may seem less important to developed countries. One major concern, of course, is economic development, for which innovation may be a critical driver, particularly if we view innovation in a less technology‐centric way. Another major concern is inclusive economic growth, making certain that the gains from markets are distributed more widely rather than less, particularly when it comes to groups that have faced discrimination or have not adequately participated in the economy. A third concern is sovereignty, to make sure that a developing economy is not dominated by outside economic interests. Competition enforcement that increases innovation, particularly through an emphasis on competitive rivalry in dynamic markets, offers the possibility of advancing all three goals.

II. Digital Platform Use in Developing Countries

A. An Overview

Digital platforms are in widespread use in developing countries. The major U.S. digital platforms tend to be ubiquitous—in South Africa, for example, nearly half of all Internet users use Facebook, YouTube, and WhatsApp39— but there are also more local platforms in developing countries that are of significant size.40

Digital platforms can be categorized in different ways. Most common is to categorize them by the type of service they offer; the proposed EU Digital Markets Act, for example, has eight categories of “core platform service,” such as search engines, social networks, and operating systems.41 This type of categorization is similar to product markets as analyzed under competition law. A more functional approach divides digital platforms into transaction platforms and innovation platforms.42 Transaction platforms are generally multi‐sided and “support exchanges between a number of different parties,” Amazon and Uber being good examples. Innovation platforms (sometimes called technology or engineering platforms) provide components that a firms in a sector can use in common for their interactions. Computer operating systems and technology standards are good examples of these platforms.43

Entrepreneurs in developing countries have generally not created innovation platforms.44 Rather, they have used platform technologies created elsewhere to offer products that are distributed digitally, mostly on a relatively localized basis, that is, within the home country of the entrepreneur. Platform technologies are thus tools for these enterprises, allowing them to create new products and distribute them more efficiently. Even if entrepreneurs in developing countries do not create the tools, however, their use of platform technologies can still be market‐creating or sustaining and thereby qualify as innovation that can drive economic growth.

As the following examples will show, whether platforms are successful depends on many factors beyond competition law enforcement. Indeed, at the moment, competition law violations may not as yet have emerged. The question, though, is whether competition policy can play a role in keeping digital platform tools accessible and digital product markets competitive.

B. Mapping Platform Use in Africa: Four Areas

1. Online retail sales

Online retail sale of physical products and services is developing in Africa, but slowly. In South Africa, for example, e‐commerce is estimated to have only approximately 1‐2 percent of total retail sales, in comparison to 18 percent in the UK, with customers generally being higher income earners mostly concentrated in metropolitan areas.45 Nevertheless, throughout Africa a wide range of products are sold through online retail platforms, including food, consumer electronics, fashion, and apparel.46

Retailers use platforms in three ways. First, traditional brick‐and‐mortar stores use internet sales as a complement to their sales in physical stores; this has given major retailers a strong presence in online retail selling.47 Second, some sellers have an online presence only, selling their products at retail on various digital platforms. The “most ubiquitous” digital enterprises in Africa are e‐commerce sites that present their products on Facebook.48 Third, Africa‐based platforms offer marketplace services for other retailers. Takealot in South Africa has become the largest online retail marketplace in South Africa, for example, with more traffic than international competitors such as Amazon or eBay.49 It has also begun integrating into offering its own exclusive brands in competition with other retailers on the platform, raising potential concerns for self‐preferencing.50

Online retail sellers in Africa, particularly small and medium business enterprises, face a set of challenges that make it difficult to compete successfully. Online advertising is critical for these enterprises, but the two main advertising channels are Facebook and Google, and their use is expensive and complex for smaller businesses.51 Most e‐ commerce payment transactions are made by credit card, but fees can be high, payments can be slow, and concern for fraud has been high.52 Delivery may require investments in expensive assets to assure delivery (trucks, motorcycles, warehouses), particularly if the postal service is unreliable.53 On the other hand, the expense of drop‐ shipping international packages, the unreliability of the postal service, the relatively small size and geographical isolation of many African countries can make it difficult for international platforms like Amazon to compete successfully with local e‐commerce sites.54

2. Value chains

Companies in Africa use digital platforms to participate in “value chains,” that is, as intermediate transactors in the production and sale of goods and services. The ultimate consumer in the chain may be located outside the country or inside. For many African countries, participation in global value chains has been seen as an important way to stimulate economic growth, particularly if small and medium size businesses are the beneficiaries of such participation.55

The extent to which digital platforms have increased such participation by African firms is unclear. A study of value chains in Kenya and Rwanda examined how tourism firms integrated with international tourism sites to provide booking availability and service information, but found that their participation was often limited by a lack of technical skills and by the platforms’ managerial requirements.56 A study of small‐scale fresh fruit and vegetable farmers in Tanzania and Kenya focused on the use of certain basic platform technologies (mobile phones, Internet, and Facebook) to access payment systems, get pricing and production information, and reach export markets. Such usage was actually rather small (only 11 percent of farmers surveyed). Although the use of cellphones was helpful to small farmers in many local markets, reaching export markets required use of the Internet more than the use of basic cellphones, a step that excluded farmers who lacked sophistication (technical and linguistic).57

The difficulties of establishing digital value chains is not just limited by access to technology. More tractably for competition law, existing market structures and entrenched competitors may stand in the way as well.

A good example is the effort to create an online tea auction market in Mombasa, Kenya. The Mombasa Tea Auction provides the link between East African tea processors and international buyers.58 Kenya is the world’s leading exporter of tea and tea is Kenya’s number one foreign exchange earner.59 Tea is transported from highland areas in Africa to storage warehouses in Mombasa, where it is subsequently auctioned. Two groups have been the main intermediaries between growers and buyers in this process—tea brokers and storage warehouses—and only tea brokers could negotiate with buyers in the auction. Sellers made payments to the auction and then collected the tea from the warehouses for export. About 95% of tea exported from Kenya was sold through the Mombasa Tea Auction.

Asian competitors had been using online auctions but the Mombasa Tea Auction was done in person. Recognizing the auction’s inefficiencies, in 2012 an effort was made by the East African Tea Trade Association (EATTA) to introduce an online auction system. EATTA has 200 members from 10 African countries (mostly in East Africa) and includes all groups in the industry (producers, buyers, brokers, warehouses, and packers). Intermediaries were most opposed to an online auction, particularly the brokers who were believed to have controlled the in‐person auction and feared disintermediation.60 Interestingly, the brokers also feared that buyers would find it easier to collude when they didn’t have to place bids in an open auction, perhaps a not misplaced worry given a later antitrust suit against EATTA for fixing brokers’ and warehouse owners’ fees in the tea auction.61

After a trial run of an online auction, the EATTA members voted against its continuation. Apparently the brokers were able to convince smaller producers, whose only link to these markets was through the brokers, that an online auction would harm the brokers and thereby harm them.62 It was not until 2019 that an online tea auction became operational.63

3. FinTech

Financial technology products (“fintech”) operate as multisided platforms connecting buyers and sellers of financial services using the internet, mobile devices, software technology, and/or cloud services.64 Fintech products can cover aspects of banking, digital currencies, insurance, lending, money transfers, and payments. Fintech products can be deeply disruptive of existing banking and financial services but they can also offer platform infrastructure for many businesses. As such, fintech products are widely used throughout Africa.

Probably the most widely‐lauded fintech product in Africa is M‐Pesa, the payments service that runs on mobile phones.65 M‐Pesa was launched in 2007 by Vodafone, the U.K.‐based telecom company, in partnership with two African mobile phone system operators, Safaricom in Kenya and Vodacom in Tanzania.66 M‐Pesa “allows users to deposit money into an account stored on their cell phones, to send balances using SMS technology to other users (including sellers of goods and services), and to redeem deposits for regular money.”67 There is no charge for depositing the cash with the mobile phone company; charges are deducted when “e‐float” or “e‐money” is sent to recipients or when cash is withdrawn.68

M‐Pesa spread quickly following its introduction, with 10,000 new registrations by the end of its first year; two years later there were 7.7 million M‐Pesa registered accounts.69 In its first ten years the service expanded to ten countries, including one in Eastern Europe. By that time 21 percent of all adults in Sub‐Saharan Africa had a mobile money account; 73 percent of the population of Kenya and more than 50 percent of the population of Uganda and Zimbabwe used mobile money.

For all of M‐Pesa’s important success, its growth has actually been fairly limited, as has been the growth of fintech firms generally, which “have been slow to penetrate other sectors and other countries.”70 M‐Pesa has been limited by the fact that it operates a low‐tech service, using basic cellphones and text technology but not relying on more advanced smartphones.71 Thus it has proved less attractive in countries like South Africa that already had more advanced smartphone use and a “much more advanced banking network” that was able to meet the needs that M‐Pesa met.72 M‐ Pesa’s technological limits also made it less attractive for integrating its mobile payments API into other software applications.73

Whether the slow diffusion of fintech in Africa is a result of technological impediments or competitor resistance is unclear. One author concludes that the “largest impediment to more rapid FinTech growth appears to be the electrical and communications infrastructure in many developing countries, which have only limited, unreliable access to broadband Internet connections and smartphone handsets.”74 There is little doubt that these infrastructure issues affect the ability of digital platforms to thrive in Africa, but it may also be the case that the powerful financial companies can create legal roadblocks to fintech entry as well as try to preempt that entry by offering products similar to what potentially disruptive fintech entrants are offering. Indeed, this may be the case in South Africa. As the South Africa Competition Commission points out, one approach is for incumbents to accommodate the competitive threat by partnering with the upstart fintech firm: “the Fintech firm commits to remain small, providing the incumbent with its offerings whilst being able to ride on the scale, distribution channels and licenses of the traditional bank.”75 Another possibility is for the incumbent to acquire the fintech firm outright. A third is for the incumbent firm to compete with the fintech’s offerings, potentially leading to anticompetitive actions such as denying the fintech firm needed access to infrastructure assets.76

4. Sharing platforms

Sharing platforms are used by a wide variety of businesses in Africa. The South Africa Competition Commission defines these platforms as offering “short‐term peer‐to‐ peer transactions to share the use of idle assets and services or to facilitate collaboration.”77 Sharing platforms include not only firms that allow owners of vehicles and accommodations to “share” them with users, but also allows the sharing of work spaces, money (loans), clothing, and free‐lance services.78

Sharing platforms is an area in which the major international companies face competition with local enterprises. In the ride‐hailing segment, for example, Uber’s entry into African markets triggered the spread of mobile mapping technology for collecting location data from mobile vehicles. This allowed local companies to develop their own products suited to the needs of customers in different cities and countries, “giving themselves an edge over foreign services.”79 In South Africa, for example, Taxi Live and Mr D Foods (both South African firms) compete with Uber for taxi ride‐hailing and food delivery; Afri Ride, a South African company, competes by allowing commuters or drivers to offer unoccupied seats on their trips.80 In Kenya Little Cab competed with Uber by accepting M‐Pesa payments.81

Even with the existence of local companies, international firms appear to be the major competitors in most of these sharing platform markets. In a survey of users in Nairobi, Little Cab, four years after its entry, was running a distant third to the international platforms, Uber and Bolt.82 A 2020 survey in South Africa showed that three of the fifteen most popular applications in South Africa were international ride‐sharing platforms; none of the platforms in the survey was South African or African.83

The competitive problems that firms in sharing platform markets face do not appear to be the result of the exercise of anticompetitive conduct by dominant firms. Of course, as in developed countries, these platform companies do face opposition from the traditional operators in the fields that the platforms challenge. In the ride‐sharing market, for example, the metered taxi industry has responded to Uber’s entry in ways that are similar to the responses in developed countries. Taxi drivers have tried to physically block Uber drivers;84 they have also tried to invoke government action to stop Uber from engaging in certain business practices.85 But they have also tried to meet the challenge with the more competitive response of developing their own apps to connect passengers to metered taxis.86

C. Conclusion

The mapping just presented of digital platform use in Africa is by no means complete. Digital platforms are being developed in many other areas. In agriculture, for example, Kenya‐based mobile apps have been launched to help farmers better manage crops such as cassava, maize, and potatoes.87 In health care, there is a long list of available apps: “Hello Doctor” provides free essential medical information in 10 African countries; FD Detector (developed by five teenage girls from Nigeria) detects fake drugs by using bar codes; mTrac allows health care workers in Uganda to submit weekly health data via SMS; Omomi provides women in Nigeria with maternal and child health information and connects them to doctors.88

Even though the overview is necessarily incomplete, the picture that does emerge shows that digital platforms do hold out the promise not just of extending traditional industries into new means of distribution. Digital technologies also hold out the promise of dealing with certain problems that are more acute in developing countries (although not absent in developed countries). Access to capital can be increased through fintech applications; business transactions can be facilitated if payment systems are more secure; small enterprises can reach markets more efficiently if digital platforms are available and open; health care information and data can be shared more easily where mobile applications are available. Many of these improvements are more incremental than fundamental, but they all lead to better market‐driven outcomes.

III. Lessons For Competition Policy For Digital Platforms

It is not surprising that even a brief survey of the adoption of digital platforms in Africa shows that their use is both important and spreading. To a large degree these platform technologies are tools for a variety of improvements in the production and distribution of old and new products. The ability to use these tools to create new offerings is an important aspect of innovation.

Developed countries now seem obsessed with the power of the major platforms over many aspects of our economy and life. Developing countries seem less obsessed but, in a significant way, more dependent. Mobile technology is a key tool for delivering new digital products, but this technology often comes with a hidden “tax” imposed by developed world patent holders that control the standards on which these devices (now smartphones) are based and set the fees for licensing those standards.89 Developed world competition law enforcers seem powerless to control this pricing power; we wouldn’t expect developing world enforcers to do better. This tax, however, may be more critical in economies where the incomes are lower and smartphone use more limited.

What about the power of the GAFA? Although the use of Google and Facebook products is clearly ubiquitous, Apple and Amazon seem less powerful. In particular, Amazon’s business model puts it at a disadvantage in many developing economies, where shipping costs, tariffs, and delivery systems give local online sellers an edge.

Facebook and Google, but especially Facebook, loom larger. Search is important for delivering advertising, but Facebook, combined with WhatsApp, is vital not only for digital advertising but for digital presence. Sellers have come to rely on Facebook for connecting to consumers and establishing a network of users with whom to communicate and from whom to get information and data. Entrepreneurs in the developing world have complained about Facebook and Google’s high advertising rates, but with Facebook the problem goes deeper. Should Facebook or WhatsApp change their terms of use in some way, there would be little that developing countries could do. If Australia is having trouble controlling Facebook, what would we expect from countries with fewer users and smaller economies?90

This means that the first lesson for competition policy toward digital platforms is actually aimed at developed countries. If antitrust authorities in the U.S. are successful in their litigation against Facebook and Google, at least some thought should be given to how the remedies sought will affect developing countries.91 Although consideration of extraterritorial effects is not part of the case against these companies, remedy is broader. Positive spillovers should be part of the governments’ calculus.

---DARTMOUTH’S CARD ENDS---

The second lesson is that competition law enforcement may not be the most critical driver of platform innovation in developing countries. Many commentators have pointed out that basic physical infrastructure is primary—better Internet access, more broadband service, less expensive smartphones—as is better managerial training and even better ability to use English. Competition law enforcement is a good tool to keep things from getting worse, but not necessarily the best tool to make things better.92

The third lesson is that the hope that digital platforms will allow local small and medium sized businesses more access to global value chains remains just that, a hope. Local marketplace platforms don’t yet have a global reach and key international platforms have proven difficult to access, but not because of any anticompetitive conduct. Developing country competition law enforcers should still be alert to anticompetitive practices, like self‐preferencing, but not for the purpose of driving exports. Impact on local markets and local business should be reason enough to act.

#### 4. Their “digital divide” impact is about authoritarian blocks not access---plan can’t solve incentives for China to make a separate internet.

1AC Wong ’20 [Johnson; Graduate School of Public and International Affairs @ UOttowa; “Digital Divide: Geotechnology, Politics and the International System”; <https://ruor.uottawa.ca/bitstream/10393/41017/1/WONG%2C%20Johnson%2020205.pdf>; AS]

Governing cyberspace

This fundamental difference in understanding how 5G technological innovation as a tool of the state reflected in cultural norms is at the crux of the digital divide in the international system. The principles that guide ICANN which seek a “multi-stakeholder, community-based and consensus-driven approach” to the governance of the Internet, is anathema to the harmonious and strong central state championed by autocrats and their allies. The liberal governance model of technological innovation based on pluralism, freedom and consensus, are linked to Western democracy which in turn challenges the legitimacy of the authoritarian rule of the state. To maintain their political power, and unable to escape the trappings of technological modernity, China, Russia and other authoritarians will be determined to build a separate “other”-net to compete with the Western version, and in some cases, surpass it. Muller argues,

The proclaimed differences are in interpretation and implementation, with China emphasizing the issue of priorities and progressive realization and rejecting the liberal model not as such, but the notion that it is the only model. In one respect, this reflects the indeterminacy and generality of the rhetoric of the ‘international community’. However, it also raises the question of the nature of the international community. In some liberal views, all roads lead to liberal democracy along more or less western models. However, a truly pluralist international society which accommodates cultural diversity and accepts the principle of self-determination, would accept that countries can also take a different development path, as emphasized by China (Muller, 2015, 236).

While modern liberal democracies seek to accommodate diverse perspectives and build a plural political order, geopolitical interests based on nationalistic factors continue to dominate the discourse (Sidorenko, 2015, 1260). Even within liberal governments themselves, various data protection laws are becoming a point of contention between countries, with the European Union taking a more teleological vision about its universal development model and placing its model above geopolitical power politics and nationalism, to encompass a historical imperative that they believe should be replicated around the world (Browning, 2016, 110). The irony is that a liberal system that values and respects plurality should accept equal but alternative value systems as legitimate (Muller, 2015, 219).

Digital sovereignty and the primacy of alliances

The three drivers mentioned above, 5G standardization, strategic economic dependency, and competing normative values, are transforming the international system and will result in a digital divide. Globalization continues to increase socio-economic transactions between states, and the growth of cyberspace has created economic value from consumer data. Various state operators compete with each other for consumer dollars while, at the same time, the need to cooperate to connect their networks with each other – using internationally recognized protocols – is creating tension between the public good of a seamless system, and the private interests of operators and the state (O’Hara and Hall, 2020, 10). Controversies related to 5G standard-setting by companies that are supposed to be impartial are contributing to a difficult process for all major players involved. Huawei, the leading Chinese operator that is participating on the 5G standard-setting consortium, has been repeatedly accused of being under the influence of the central Chinese state party. This poses a challenge in the existing liberal model of standardsetting for, if Huawei succeeds in its efforts to control the technical standards of 5G, will secure for the Chinese state a much bigger stake (and control) of the 5G patent licensing system. Once standards have been set and essential patents defined, companies must build to the agreed standards and pay royalties to patent licensees as required (Triolo, 2018, 10). These are supposed to be separate – and most importantly, independent – processes, but there is little doubt among the international 5G and telecommunications community that the Chinese state is directing Huawei in order to obtain a substantial stake in the upcoming technological transition in order to secure its political and economic ambitions. It is important to note that once standards are set, governments and companies will be compelled to follow them or risk being non-interoperable with the rest of the world. In some cases, this is the strategic vision for China: By controlling the vast majority of 5G licensing patents and creating networked systems that only work with Chinese-branded equipment, it will be able to project its digital power abroad and force compliance. Without access to Chinese equipment, and a licensee payment system that is indebted to a Chinese state-backed company, antagonistic states will quickly become isolated and find themselves cut off. Sidorenko argues that, “The world is becoming more unified, but not safer; traditional regional conflicts are escalating into geopolitical conflicts ushered by the phenomena of globalization and all the changes and nuances it brings to the economic, political, socio-cultural and spiritual spheres” (Sidorenko, 2015, 1261).

The relativity by which actors are able to influence the political discourse and debate state sovereignty has never before been so uncertain, with the digital world becoming the new arena for states to challenge existing norms, values and economic systems of the past. The digital realm offers a different variation of sovereignty challengers

that include the dynamics of nonstate actors, such as private companies, civil society, non-governmental organizations, and even individuals, to question the legitimacy of the state and its relationship to external actors and those within the state (Timmers, 2019, 12; Adonis, 2019, 268). The fundamental challenge and struggle for states to maintain their independence in this space relies upon the extent to which state control of the technological tools, systems and structures are within their influence, and the extent to which they are able to maintain the independence of their national security networks without being isolated from the rest of the world.

Therefore, to achieve this global network based on common standards and shared values, an alliance of liked-minded partners is needed to buttress this digital divide. Timmers says, “Like-mindedness is based on shared values, whether these pertain to the individual (such as respect for privacy and autonomy) or to economy (liberal market economy) or to society and democracy (independent judiciary, freedom of expression, free elections) or to international relations (respect for the system of sovereign states and multilateralism). A wide range of governance tools can be mobilized for supervision, decision-making, and certification” (Timmers, 2019, 15). In the context of the digital divide, countries allied with authoritarian regimes will align their 5G technical standards, find commonalities in terms of political structure, and seek to share in the economic union driven by the divide. Alliances – especially historical alliances – will play a key role in accelerating this digital divide through collaboration between liked-minded states on both sides of the gap. The alliance between cooperating states will not just be an alliance of authoritarians – rather, it will be based on a common set of values and norms shared by the people and state government. These norms and values, as previously mentioned, will originate primarily from common values about the role of the state, its obligations to its peoples, and the extent that it is seen as legitimate by its citizens. Even in democracies, it is feasible for a country to ally itself with China if it finds that it shares more in common with the CCP than the US.

## Cap

#### Invert your standard for solvency – “feasibility” concerns are propaganda

McCarraher 19 [Eugene; 11/12/19; 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, 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.

#### Regulated Cap fails --- The system will inflict recurring failures. Profit models don’t reward innovation.

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 2008 crash wiped 13% off global production and 20% off global trade. Global growth became negative – on a scale where anything below +3% is counted as a recession. It produced, in the west, a depression phase longer than in 1929-33, and even now, amid a pallid recovery, has left mainstream economists terrified about the prospect of long-term stagnation. The aftershocks in Europe are tearing the continent apart. The solutions have been austerity plus monetary excess. But they are not working. In the worst-hit countries, the pension system has been destroyed, the retirement age is being hiked to 70, and education is being privatised so that graduates now face a lifetime of high debt. Services are being dismantled and infrastructure projects put on hold. Even now many people fail to grasp the true meaning of the word “austerity”. Austerity is not eight years of spending cuts, as in the UK, or even the social catastrophe inflicted on Greece. It means driving the wages, social wages and living standards in the west down for decades until they meet those of the middle class in China and India on the way up. Meanwhile in the absence of any alternative model, the conditions for another crisis are being assembled. Real wages have fallen or remained stagnant in Japan, the southern Eurozone, the US and UK. The shadow banking system has been reassembled, and is now bigger than it was in 2008. New rules demanding banks hold more reserves have been watered down or delayed. Meanwhile, flushed with free money, the 1% has got richer. Neoliberalism, then, has morphed into a system programmed to inflict recurrent catastrophic failures. Worse than that, it has broken the 200-year pattern of industrial capitalism wherein an economic crisis spurs new forms of technological innovation that benefit everybody. That is because neoliberalism was the first economic model in 200 years the upswing of which was premised on the suppression of wages and smashing the social power and resilience of the working class. If we review the take-off periods studied by long-cycle theorists – the 1850s in Europe, the 1900s and 1950s across the globe – it was the strength of organised labour that forced entrepreneurs and corporations to stop trying to revive outdated business models through wage cuts, and to innovate their way to a new form of capitalism. The result is that, in each upswing, we find a synthesis of automation, higher wages and higher-value consumption. Today there is no pressure from the workforce, and the technology at the centre of this innovation wave does not demand the creation of higher-consumer spending, or the re‑employment of the old workforce in new jobs. Information is a machine for grinding the price of things lower and slashing the work time needed to support life on the planet. As a result, large parts of the business class have become neo-luddites. Faced with the possibility of creating gene-sequencing labs, they instead start coffee shops, nail bars and contract cleaning firms: the banking system, the planning system and late neoliberal culture reward above all the creator of low-value, long-hours jobs. Innovation is happening but it has not, so far, triggered the fifth long upswing for capitalism that long-cycle theory would expect. The reasons lie in the specific nature of information technology.

#### Market competition inevitably creates economic busts and proves capitalism’s contradiction – overproduction undermines profitability and spills-over to cause other crises.

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.

#### Market Rationality turns case---Drive to make companies competitive incents international expansion to escape enforcement

Enfu & Baolin 21 [Cheng Enfu and Lu Baolin. President of the World Association for Political Economy, and Chief Professor at the University of Chinese Academy of Social Sciences. Monthly Review. Monthly Review. 5-1-2021. https://monthlyreview.org/2021/05/01/five-characteristics-of-neoimperialism/]

The Spatial Expansion of the Capital-Labor Relation: Global Value Chains and the Global Labor Arbitrage

Through mechanisms that include outsourcing, setting up subsidiaries, and establishing strategic alliances, multinationals integrate more and more countries and companies into the global production networks they dominate. The reason why capital accumulation can be achieved on this global scale is the existence of a large, low-cost global workforce. According to data from the International Labor Organization, the world’s total workforce grew from 1.9 to 3.1 billion between 1980 and 2007. Of these people, 73 percent were from developing countries, with China and India accounting for 40 percent.21 Multinational corporations are all organized entities, while the global workforce finds it exceedingly difficult to unite effectively and defend its rights. Because of the existence of the global reserve army of labor, capital can use the strategy of divide and conquer to discipline wage workers. Over decades, monopoly capital has shifted the production sectors of developed-world economies to the countries of the Global South, compelling workforces in different areas of the globe to compete with one another for basic living incomes. Through this process, multinationals are able to extort huge imperialist rents from the world’s workers.22 In addition, these giant corporations are well able to lobby and pressure the governments of developing countries to formulate policies that benefit the flow of capital and investment. Trying to secure GDP growth by inducing international capital to invest and set up factories, many developing country governments not only ignore the protection of social welfare and labor rights, but also guarantee various preferential measures such as tax concessions and credit support. The globalization of production has thus enabled the developed capitalist countries to exploit the less developed world in a more “civil” fashion under the slogan of fair trade. In order to launch their modernization, developing countries often have little choice but to accept the capital offered by the imperialists—along with the conditions and encumbrances that go with it.

#### History

Walt 20. [Stephen, Robert and Renée Belfer professor of international relations at Harvard University and a columnist for Foreign Policy. Will a Global Depression Trigger Another World War?. Foreign Policy. 5-13-2020. https://foreignpolicy.com/2020/05/13/coronavirus-pandemic-depression-economy-world-war/]

On balance, however, I do not think that even the extraordinary economic conditions we are witnessing today are going to have much impact on the likelihood of war. Why? First of all, if depressions were a powerful cause of war, there would be a lot more of the latter. To take one example, the United States has suffered 40 or more recessions since the country was founded, yet it has fought perhaps 20 interstate wars, most of them unrelated to the state of the economy. To paraphrase the economist Paul Samuelson’s famous quip about the stock market, if recessions were a powerful cause of war, they would have predicted “nine out of the last five (or fewer).”

Second, states do not start wars unless they believe they will win a quick and relatively cheap victory. As John Mearsheimer showed in his classic book Conventional Deterrence, national leaders avoid war when they are convinced it will be long, bloody, costly, and uncertain. To choose war, political leaders have to convince themselves they can either win a quick, cheap, and decisive victory or achieve some limited objective at low cost. Europe went to war in 1914 with each side believing it would win a rapid and easy victory, and Nazi Germany developed the strategy of blitzkrieg in order to subdue its foes as quickly and cheaply as possible. Iraq attacked Iran in 1980 because Saddam believed the Islamic Republic was in disarray and would be easy to defeat, and George W. Bush invaded Iraq in 2003 convinced the war would be short, successful, and pay for itself.

The fact that each of these leaders miscalculated badly does not alter the main point: No matter what a country’s economic condition might be, its leaders will not go to war unless they think they can do so quickly, cheaply, and with a reasonable probability of success.

Third, and most important, the primary motivation for most wars is the desire for security, not economic gain. For this reason, the odds of war increase when states believe the long-term balance of power may be shifting against them, when they are convinced that adversaries are unalterably hostile and cannot be accommodated, and when they are confident they can reverse the unfavorable trends and establish a secure position if they act now. The historian A.J.P. Taylor once observed that “every war between Great Powers [between 1848 and 1918] … started as a preventive war, not as a war of conquest,” and that remains true of most wars fought since then.

The bottom line: Economic conditions (i.e., a depression) may affect the broader political environment in which decisions for war or peace are made, but they are only one factor among many and rarely the most significant. Even if the COVID-19 pandemic has large, lasting, and negative effects on the world economy—as seems quite likely—it is not likely to affect the probability of war very much, especially in the short term.

#### COVID proves – receding from globalization is peace inducing

Walt 20. [Stephen, Robert and Renée Belfer professor of international relations at Harvard University and a columnist for Foreign Policy. Will a Global Depression Trigger Another World War?. Foreign Policy. 5-13-2020. https://foreignpolicy.com/2020/05/13/coronavirus-pandemic-depression-economy-world-war/]

But war could still be much less likely. The Massachusetts Institute of Technology’s Barry Posen has already considered the likely impact of the current pandemic on the probability of war, and he believes COVID-19 is more likely to promote peace instead. He argues that the current pandemic is affecting all the major powers adversely, which means it isn’t creating tempting windows of opportunity for unaffected states while leaving others weaker and therefore vulnerable. Instead, it is making all governments more pessimistic about their short- to medium-term prospects. Because states often go to war out of sense of overconfidence (however misplaced it sometimes turns out to be), pandemic-induced pessimism should be conducive to peace.

Moreover, by its very nature war requires states to assemble lots of people in close proximity—at training camps, military bases, mobilization areas, ships at sea, etc.—and that’s not something you want to do in the middle of a pandemic. For the moment at least, beleaguered governments of all types are focusing on convincing their citizens they are doing everything in their power to protect the public from the disease. Taken together, these considerations might explain why even an impulsive and headstrong warmaker like Saudi Arabia’s Mohammed bin Salman has gotten more interested in winding down his brutal and unsuccessful military campaign in Yemen.

Posen adds that COVID-19 is also likely to reduce international trade in the short to medium term. Those who believe economic interdependence is a powerful barrier to war might be alarmed by this development, but he points out that trade issues have been a source of considerable friction in recent years—especially between the United States and China—and a degree of decoupling might reduce tensions somewhat and cause the odds of war to recede.

For these reasons, the pandemic itself may be conducive to peace. But what about the relationship between broader economic conditions and the likelihood of war? Might a few leaders still convince themselves that provoking a crisis and going to war could still advance either long-term national interests or their own political fortunes? Are the other paths by which a deep and sustained economic downturn might make serious global conflict more likely?

One familiar argument is the so-called diversionary (or “scapegoat”) theory of war. It suggests that leaders who are worried about their popularity at home will try to divert attention from their failures by provoking a crisis with a foreign power and maybe even using force against it. Drawing on this logic, some Americans now worry that President Donald Trump will decide to attack a country like Iran or Venezuela in the run-up to the presidential election and especially if he thinks he’s likely to lose.

This outcome strikes me as unlikely, even if one ignores the logical and empirical flaws in the theory itself. War is always a gamble, and should things go badly—even a little bit—it would hammer the last nail in the coffin of Trump’s declining fortunes. Moreover, none of the countries Trump might consider going after pose an imminent threat to U.S. security, and even his staunchest supporters may wonder why he is wasting time and money going after Iran or Venezuela at a moment when thousands of Americans are dying preventable deaths at home. Even a successful military action won’t put Americans back to work, create the sort of testing-and-tracing regime that competent governments around the world have been able to implement already, or hasten the development of a vaccine. The same logic is likely to guide the decisions of other world leaders too.

#### Red innovation solves – mutual funds, dividends, public projects, larger and more creative workforce

Bee 18 [Vanessa A. Bee. Senior Litigation Counsel at the Consumer Financial Protection Bureau with a JD from Harvard Law. Innovation Under Socialism. 10-24-2018. <https://www.currentaffairs.org/2018/10/innovation-under-socialism> ]

In this market socialist society, most shares are pooled into highly regulated mutual funds, which then pursue different investment strategies when trading them on a highly regulated stock exchange. This exchange helps monitor the performance of the firm managers and assess which innovations are performing strongly. To avoid the concentration of market power and capital, the government sets the bar for how much stock any stakeholder can hold in any firm and industry. It also sets the minimum and maximum amount of dividends that each person can receive annually. As the economy grows, dividends can be adjusted to increase by a percentage, or commensurate with inflation. Surplus resulting from distributing only part of the profits allows the more profitable firms to subsidize innovative, but less profitable, activities. In addition, this regime does not tolerate anti-competitive contracts like restrictive employment agreements, strict license agreements, and long patents (although inventions may be attributable to their inventors and may be rewarded through other means like prizes, bonus compensation, or simply very short patents periods).

The model could incorporate elements of democratically-planned, participatory socialism, which emphasizes democracy and individual autonomy in the workplace. Economist David Kotz believes that particular features of this model could foster innovation performance:

First, the main features of the overall economic plan would be determined by a democratic process … Second, the planning and coordination of the economy would take place … by industry boards and local and regional negotiated coordination bodies that have representation of all affected constituencies, including workers, consumers, suppliers, the local community, and even “cause” groups such as environmentalists, job safety activists, feminists, etc.

Among other topics, these representative boards could vote on compensation minimums and maximums, to prevent innovation from supporting socioeconomic inequality and unfair social divisions of labor. This injection of democracy would give ordinary people a larger say in the direction of the markets, and what areas they think would benefit from more investment in innovation.

The second ingredient of innovation, capital, is guaranteed in the market socialist economy. Freed of its neoliberal handcuffs, the government can designate funding towards various innovative projects at a greater rate than it does now. Banks jointly owned by the government and other non-private stakeholders would provide entrepreneurs with access to capital for projects through loans with terms more generous than private lenders offer now. The firms owned by government, worker co-operatives, ordinary people, and other publicly-owned firms can also raise capital from each other as wealth is distributed more equally. In such a world, more individuals can pool their resources to invest in particular innovative projects rather than a recurring cast of millionaires.

Market socialism would easily deliver the third ingredient of innovation: human capital. Such an economy has no need for a reserve army of labor. While profit is encouraged, its primary function is increasing the pool of resources and cash distributable to workers and non-workers. It does not come at the price of providing generous wages, as dividends to shareholders are capped no matter how well the firm performs. In fact, this society could make a democratic decision to compensate people in positions on the lower band of wages with more in unearned income, out of the same pool of profits.

When applied earnestly, the principles of socialism are also incompatible with mass incarceration, discrimination, uncompensated caregiving, highly restrictive immigration policies, and other social practices that exclude large numbers of workers from participating in our capitalist economy. Add a fairer distribution of public resources among individuals and communities, along with more free or heavily subsidized goods like education, and a market socialist economy could really see an increase in the availability and skills in the pool of workers. Freeing more people to join the innovative process would naturally foster more innovation.

Lastly, innovation can only thrive if the innovation process affords individuals chances to be creative and the right conditions to motivate them. Studies on what fosters creativity show that workers who rate highly on creativity indexes perform best when they are given challenging work, a good measure of autonomy, and supportive and caring supervisors who can provide substantive and constructive feedback. The same study, however, shows that workers who are by nature less creative tend to be happier in less complex positions. Neither worker is, or should be, superior to the other. On the contrary, the innovation process has plenty of room for all types of workers with varying degrees of innate creativity. The core principles of socialism, however, do suggest that this economic system is better suited for supporting creative workers than capitalism.

#### Profit stifles innovation - Propriety rights, no incentive for R&D

Bee 18 [Vanessa A. Bee. Senior Litigation Counsel at the Consumer Financial Protection Bureau with a JD from Harvard Law. Innovation Under Socialism. 10-24-2018. <https://www.currentaffairs.org/2018/10/innovation-under-socialism> ]

But prioritizing profit is a double-edged sword that can hamper innovation. Owning the proprietary rights allows private firms to block workers—through anti-competitive tools like non-compete agreements, patents, and licenses—who put labor into the innovation process from applying the extensive technical expertise and intimate understanding of the product to improve the innovation substantially. This becomes especially relevant once the workers leave the firm division in which they worked, or leave the firm altogether. Understandably, this lack of control and ownership will cause some workers, however passionate they may be about a project, to be less willing to maximize their contribution to the innovation.

Of course, the so-called nimbleness that allows firms to make drastic changes like mass layoffs is extremely harmful to the workers. This is no fluke. The capitalist economy thrives on a reserve army of labor. Inching closer to full employment makes workers scarcer, which empowers the labor force as a whole to bargain for higher wages and better work conditions. These threaten the firm’s bottom line. So, the capitalist economy is structured to maintain the balance of power towards the owners of capital. Positions that pay well (and less than well) come with the precariousness of at-will employment and disappearing union power. A constant pool of unemployed labor is maintained through layoffs and other tactics like higher interest rates, which the government will compel to help slow growth and thereby hiring. This system harms the potential for innovation, too.

The fear of losing work can dissuade workers from taking risks, experimenting, or speaking up as they identify items that could improve a taken approach—all actions that foster innovation. Meanwhile, thousands of individuals who could be contributing to the innovative process are instead involuntarily un-employed. This model also encourages monopolization, as concentrating market power gives private firms the most control over how much profit they can extract. But squashing competition that could contribute fresh ideas hurts every phase of the innovation process, while giving workers in fewer workplaces space to innovate.

Deferring to profit causes many areas of R&D to go unexplored. Private firms have less reason to invest in innovations likely to be made universally available for free if managers or investors do not see much upside for the firm’s bottom line. In theory, the slack in private research can be picked up by the public sector. In reality, however, decades of austerity measures  threaten the public’s ability to underwrite risky and inefficient research. Both the Democratic and Republican parties increasingly adhere to a neoliberal ideology that vilifies “big government,” promotes running government like a business, pretends that government budgets should mirror household budgets or the private firm’s balance sheet, and rams privatization under the guises of so-called public-private partnerships and private subcontractors.

In the United States, public investment in R&D has been trending downward. As documented in a 2014 report from the Information Technology & Innovation Foundation, “[f]rom 2010 to 2013, federal R&D spending fell from $158.8 to $133.2 billion … Between 2003 and 2008, state funding for university research, as a share of GDP, dropped on average by 2 percent. States such as Arizona and Utah saw decreases of 49 percent and 24 percent respectively.” Even if public investment in the least profitable aspect of research suddenly surged, in our current model, the private sector continues to be the primary driver of development, production, and distribution. Where there remains little potential for profit, private firms will be reluctant to advance to the next phases of the innovation process. Public-private projects raise similar concerns. Coordinated efforts can increase private investment by spreading some costs and risk to the public. But to attract private partners in the first place, the public sector has a greater incentive to prioritize R&D projects with more financial upsides.

This is how the quest for profits and tight grip over proprietary rights, both important features of the capitalist model, discourage risk. Innovations are bound for plateauing after a few years, as firms increasingly favor minor aesthetic tweaks and updates over bold ideas while preventing other avenues of innovation from blossoming. At the same time, massive amounts of capital continue to float into the hands of a few. The price of innovating under capitalism is then both decreased innovation and decreased equality. The idea that this approach to innovation must be our best and only option is a delusion.

#### COVID, labor surplus, automation, population collapse cap – attempt to resuscitate ensures eco-crisis, war, and structural violence

David Neilson 21. Professor of Political Science and Economics, University of Waikato, New Zealand. “Reversing the catastrophe of neoliberal-led global capitalism in the time of coronavirus: Towards a democratic socialist alternative.” *Capital and Class* 2021. DOI: 10.1177/0309816821997114.

This competitive logic interacts both with the ‘third international division of labour’ and ‘relative surplus population’ driven (un)employment effects. Interconnected sets of mutually dependent firms located across geographically remote national localities produce parts of single commodities are brought together for final assembly (Taylor 2008). Global capitalist firms technologically enabled by advanced systems of information and communication command this global supply-side-chain form of production. Simpler parts of the production process are sub-contracted to firms located in the industrially developing countries where high ‘formal subordination’ of labouring populations facilitates ‘absolute surplus value’ strategies. In turn, conception and the more technically advanced parts of the production process that Marx identifies with ‘relative surplus value’ are located in industrially advanced countries. In sum, a contractual chain of global capitalist coordination connects specialised production units across nationally diverse locations that enable global corporations to optimise surplus value by combining absolute and relative surplus value accumulation.

However, the terms of locational competition across unevenly developing countries are actually more complex. To begin with, the second international division of labour still exists, most extensively in the form of China’s belt and road initiative. As well, developed and developing countries move somewhat towards more hybrid two-speed national economies that include both low tech or low pay peripheral, and high tech or high pay metropolitan, sectors. In sum, neoliberal globalisation has unleashed a complex competitive advantage logic for countries that has led to their reduced self-sufficiency, and thus integrally, to their dependence on the global mode of accumulation.

Second, this neoliberal-led competition-driven version of uneven development has been intensified by the zero-sum logic implied by capital scarcity caused by a growing ‘relative surplus population’ (Marx 1976; Neilson & Stubbs 2011). An increasing relative surplus population driven by redundancy of industrial production workers in the advanced capitalist countries is being intensified, not just by the transfer of material production to the recently proletarianised workers of newly industrialising capitalist countries, but also by rapid automation. Simultaneously, by extending the ‘coercive whip of competition’ to the countryside of the Global South, the first wave of the relative surplus population tendency driven by peasant dispossession has been brutally activated across previously protected peasant modes of agriculture. For newly industrialising competition states, a necessary but not sufficient source of competitive advantage has been low wages enabled by labour’s high ‘formal subordination’ driven by a growing relative surplus population. In general, growing demand to facilitate employment – but hastening ecological destruction – is prevented by the demand-depressing effects of global market competition that is intensified by labour’s increasing oversupply that inversely increases the scarcity of capital.

Moreover, ‘relative surplus population’ employment logic has particular relevance to the present virus-led crisis because labour made redundant by increasing productivity in agriculture and industry spreads to the service sector (Neilson & Stubbs 2011). Although outside the core necessary economy in Marx’s sense, the service sector has become a significant source of employment and economic viability for many countries. With this neoliberal-led zero-sum terms of international competition, a significant proportion of service sector employment has become dependent on nation states’ capacity, in competition with other nation states, to attract overseas tourists. In turn, this process has unleashed a global movement of people that now spreads the virus.

Especially for countries struggling to retain or achieve international competitiveness, which is central to local employment, there is entailed an international race to the bottom in wages, working conditions and, relatedly, in ecological standards (Olney 2013). In sum, the neoliberal model of development has activated a zero-sum international competition for scarce capital, including money coming in through overseas tourists.

Regressive nationalism and the rise of neo-fascism

Defenders of the neoliberal model of development do their best to cast the ‘regressive nationalism’ of the Alt. Right as the antithesis of its cosmopolitan project. Actually, regressive nationalism is the degenerate effect of the neoliberal project’s competition-driven globalisation logic (Neilson 2020c). However, the deep causes of regressive nationalism that lie with the effects of the neoliberal model of development are mystified both by neoliberals and Alt. Rightists (Gray 2018).

The volatility of national economic competitiveness under neoliberal globalisation implies employment insecurity and uncertainty for local populations, which is heightened further by importing overseas labour. In particular, both legal and illegal low-paid workers are imported from the relative surplus populations of competitively struggling countries into more economically successful countries. Both indirectly and directly, foreign forces and peoples can thus be cast as the cause of local economic insecurity and of undermining pre-existing cultural identities. Insecure local labouring populations are invited to release their anxiety as xenophobic anger towards scapegoated immigrant labour forces. In turn, the Alt. Right argue that the solution is to expel residing immigrant populations and halt further immigration.

In their aggressive pursuit of proactive regulation domestically, agents of the Alt. Right are degenerately vulgar neoliberals. However, they break more fundamentally with neoliberalism because they directly oppose both neoliberal cultural cosmopolitanism and neoliberal market globalisation. In particular, regardless of moral, legal or political implications, all strategies that may render a national advantage can be rationalised because there are no rules in their worldview of a primordial zero-sum war between warring nations fighting for survival. Therefore, they wilfully oppose and transgress the strictly prescribed and transparent rules of economic competition that define the project of the neoliberalised global market. As the world descends into recurring, escalating and viciously interacting crises, mistrust and economic competition fed by the primordial ideology and amoral practices of the agents of regressive nationalism threaten to spill over into direct forms of civil and international war.

The global pandemic

The global spread of COVID-19 is also related to limitations arising from the neoliberal model of development’s modes of regulation and accumulation. Its proactively capitalist mode of competitive regulation has been ideologically promoted, institutionally constructed and managed by key United Nations based regulatory agencies, and is now also embedded in the institutions and expectations of national agents. However, it is radically unsuited to the forms of international cooperation that are needed for controlling a global pandemic. Indeed, when such a global crisis occurs, the present mode of global regulation can trigger blaming, disorganisation and intensified competition. At the same time, national dependence on the global structure of the neoliberal mode of accumulation is highly destabilising. Specifically, because dependent on the global scale system of accumulation, nation states are in a weak position to be able to sustain themselves locally. This dependence manifests as a direct contradiction between maintaining national economic viability and stopping the pandemic’s spreading into a nation state from off-shore.

Directly contrary to the neoliberal ideology of self-sufficiency, national economic viability under the neoliberal mode of accumulation is dependent on achieving specialised export competitiveness within complex global commodity chains that now ‘are breaking in numerous places’ (Foster & Suwandi 2020: 9; Moody 2020). This dependence on their position within a disintegrating global system is in direct tension with the need to pursue economic localisation in order to stop COVID-19 entering the nation sate. A global crisis thus becomes a local crisis, but also a local economic crisis can have ripple effects across other countries.

The original breakout of a pandemic in one place is in-itself related to the destructive capitalism-led march of humanity into the wilderness (Wallace 2016; Wallace et al. 2020; WWF International 2020). The neoliberal model of development constitutes the perfect environment for the virus to spread rapidly from this particular locality to the whole of humanity because its forms of regulation and accumulation have generated unparalleled movement of people backwards and forwards across the planet. The global flow of things and people unleashed by the neoliberal model of development spreads the virus everywhere. Inversely, because of global market capitalist dependence and corresponding lack of local self-sufficiency, all nation states struggle to – but must – break from this global system if they are to avoid being overwhelmed by the contagion’s local invasion from off-shore.

In sum, this viral-led crisis is centrally related to capitalism’s neoliberal-led global form. On one hand, its intensification of human movement across and within national borders that now engulfs the whole planet is also what spreads the virus everywhere. It only stops spreading when we stop moving. On the other hand, as we struggle to stop moving to halt the virus, the prevailing global form of the capitalist mode of production upon which basic human existence now depends cannot be maintained. The shocking immediate choice confronting political actors is thus between containing the virus’ spread and avoiding economic breakdown. The worst case scenario is where neither goal is achieved, that is, where the spread of the virus is reactivated every time countries are driven to return to ‘business as usual’ before it has been properly stamped out. Thus, economic breakdown follows when a country locks down, and the spreading of the virus follows when a country re-opens.

The extremely unstable and inflexible nature of this form of the capitalist mode of production spreads COVID-19 to the whole world in an uneven process of refracted diffusion. This complicated transmission logic has interacting international, political and class dimensions. The movement of the virus into and within nation states initially spreads most rapidly among industrially advanced capitalist countries where the frequency and distance of human movement is highest. In contrast, spread of the virus is delayed and reduced for the shorter and less frequent moving of people and things that occurs in the non-developed countries of the Global South. With fewer economic reserves and less developed national health systems, non-developed countries have the least structural capacity to respond to this double-headed economic or health crisis. However, they do have the pre-existing advantage of more localised economies and they have time to learn from other national experiences and thereby more chance to implement successfully lockdowns and social distancing rules. Furthermore, regardless of the economic stage of capitalist industrialisation, countries with strong state capacity, decisive political leadership and a collectively responsible citizenry may be able to stop the virus by reducing citizens’ movement outside of their immediate locations while at the same time promoting ‘social distancing’.3

Despite complexly overdetermined form, a class process of diffusion overlaid by cultural inequalities is discernible. The virus is internationally carried, first, by the cosmopolitan members of the capitalist class and middle class who move freely for business and pleasure back and forth across countries. Second, it is carried by low-paid labour forces imported from poorer countries to richer countries to do informal, temporary, unskilled work in the industrial and service sectors of richer countries. Once landing in a new national territory, through cosmopolitan classes and imported labour, the virus spreads towards the local labouring population. In particular, the cosmopolitan classes who tour the world transmit the virus to low-paid service sector workers. Thus, the virus moves towards the strata of the ‘relative surplus population’, which is also overrepresented by subaltern ethnic groups. These strata are very vulnerable due to insecure, close and impoverished living conditions around working, food and housing. In the advanced capitalist countries, the virus spreads towards workers located in vulnerable parts of service and manufacturing sectors, and from there to more desperate segments of the relative surplus population including the homeless and the incarcerated. In the Global South, it spreads towards the street dwelling inhabitants of the city slums.

When the economies of the countries of the Global South are closed to stop the spread of virus, there is rapid loss in the survival capacity of those in the relative surplus population with only daily stores to meet their basic material needs. In this situation, the poor and the dispossessed confront an increasingly precarious double effect. Both as breakdown of their precarious employment based material existence, because living in vulnerable material circumstances without adequate public health, and perhaps already having compromised physical constitutions, these groups become simultaneously exposed and vulnerable to the virus while lacking the means to combat it (Foster & Suwandi 2020: 12; Onyishi et al. 2020).

Descent towards the terminal crisis of western capitalism

In one concentrated conjuncture of viciously interacting crises, the coronavirus brings to the surface symptoms of the terminal stages of the western capitalist project. The global capitalist organisation of material existence spreads the virus while undermining viable local economic responses that can contain it. Simultaneously, closing national economies in response to the virus is bringing on the deepest and most comprehensive economic crisis in human history. These manifesting contradictions that now threaten the whole of Gaia, also bring to the surface the spectre of the original epistemological and ontological contradictions of the western capitalist project’s ‘primitive’ ascendancy that have been reproduced to this day.

Especially in the United States, the present global exemplar and leader of the western capitalist project, all these viciously interacting contradictions are concentrated. The capitalist expression of Enlightenment theories that have legitimated Western capitalism’s absolute exploitation particularly through the destruction of Indigenous civilisations and the brutal industrial scale absolute exploitation of enslaved African peoples, live on to the present. Racist mentalities are reproduced across the major institutional forms centrally including labour market, education and the repressive apparatuses of the state that are also reflected in COVID-19 vulnerabilities (Pirtle 2020). Thus, there is destructive intersection of class and race oppressions (Saad-Filho 2020: 480). The present (as I write) social uprising united under the banner ‘Black Lives Matter’ may lead to a fundamental break with the institutions and mentalities of systemic racism. However, a last gasp backlash White supremacy movement, led in this case by the President, is promoting deepening social division and conflict.

Even more fundamentally, the destructively expansive logic of the capitalist mode of production, legitimated by the western modernist meta-narrative that celebrates human-centred exploitation of the natural world and that has been extended and intensified under the neoliberal model of development, now expresses itself as a steady march towards ecocatastrophe. Today, dynamically expanding material capital accumulation unleashed globally by the neoliberal model of development threatens Gaia as capital scours all the world in search of dwindling raw materials, as species go extinct daily and as the manifold effects of global warming undermine the most basic conditions of life on the planet. At the same time, the human component of Gaia is suffering, more or less, as a result of this ecological destruction, and by the relative-surplus-population-led descent of human civilisation into a chaotically disorganised ‘planet of slums’ ravaged by global viruses and deep social dislocation (Davis 2006, 2020; Foster & Suwandi 2020). In sum, the present conjuncture condenses the manifold contradictions of the western capitalist project in a terminal cycle of interacting crises.

#### The alternative endorses state action that solves environmental collapse. The plan delays the alternatives action by investing in the PR stunt of “regulated capitalism.”

Kenneth P Tucker 21. Senior [lecturer at the Fletcher School](mailto:ken.pucker@tufts.edu) at Tufts University and a lecturer at Boston University’s Questrom School of Business. Advisory director at Berkshire Partners and was formerly the chief operating officer of Timberland. "Overselling Sustainability Reporting," Harvard Business Review May-June 2021. https://hbr.org/2021/05/overselling-sustainability-reporting

**Where to Focus** Most of the sustainability effort at Timberland went into measuring and improving areas where the company had some control. For example, it put solar arrays on some of its buildings, installed LED light bulbs in its offices and retail stores, and limited workers’ hours in contractor factories. Other companies that have made sincere attempts to improve their social and environmental performance have generally behaved similarly: They’ve focused on what systems thinkers call *parameters*—dials that can be turned up and down to change performance without altering the structure of the larger system. However, researchers have found that those parameters are rarely sources of real impact. The late Donella Meadows, the primary author of The Limits to Growth and a distinguished professor of system dynamics at Dartmouth, analyzed 12 types of intervention that would affect system performance and concluded that parameters are the least powerful. Probably 99% of efforts go to parameters, she wrote, “but there is not a lot of leverage in them.” High-leverage interventions that would move the needle are largely outside the control of individual corporations. Such interventions wouldn’t be popular in the corporate world because they require changes in the rules governing companies’ behavior, a repricing of resources to address market failures, and a reorientation of how public assets are allocated and how power is distributed. Unfortunately, Sustainability Inc.’s focus on measurement and reporting—and the underlying premise that market-based change would be sufficient—has likely helped to delay these much-needed structural transformations. So has misplaced faith in overhyped approaches such as “creating shared value” and “the circular economy”; these are touted as win-win, pain-free solutions, but supporters invoke case studies, not empirical research, as evidence. In her speech at COP25, in 2019, the climate-change activist Greta Thunberg astutely noted, “The biggest danger is not inaction. The real danger is when politicians and CEOs are making it look like real action is happening when in fact almost nothing is being done, apart from clever accounting and creative PR.” This is not to say that investors and companies can’t make a difference. Corporate commitments to science-based goals are one promising path to improvement. It is good news that companies such as Apple and Microsoft are committing to net-zero trajectories, including for their scope 3 emissions, on a timeline that’s consistent with the planetary boundaries framework. Just recently BMW announced that its suppliers’ carbon footprints will be a key factor in procurement decisions going forward, and Climate TRACE, a coalition funded partly by Google, is developing a satellite-based tool to measure all emissions, including scope 3, in real time. These are welcome advances. But if we are to bend the global emissions curve downward and address growing environmental and social challenges effectively, a more aggressive approach is needed. The following suggestions are places to begin. **Measure less, better.** The current plethora of authorities and frameworks for ESG measurement is unwieldy, confusing, and burdensome for companies. It’s encouraging that five of the leading standard setters and measurement bodies—including GRI and the Sustainability Accounting Standards Board—are collaborating to streamline and harmonize standards for reporting. The European Commission and the International Financial Reporting Standards Foundation are undertaking other efforts to improve reporting practices. My hope is that what emerges will include a commitment to a transparent application of rigorous science-based targets in line with nature’s limits. No matter what standard ultimately prevails, sustainability reports must be mandated and audited by an empowered referee. **“The real danger is when politicians and CEOs are making it look like real action is happening when in fact almost nothing is being done.” Mobilize.** Vested interests and system inertia have been formidable obstacles to progress. Attempts to self-regulate have delivered incremental gains that have been subsumed by business as usual and the unyielding pressure to grow. However, with mounting evidence that climate change is harmful and accelerating, grassroots global movements for action—such as the Sunrise Movement and 350.org—are making what the civil rights hero John Lewis called “good trouble.” **Spend government funds on the right things.** According to the IMF, global subsidies for fossil fuels topped $5 trillion in 2017. In the United States, tens of billions of dollars have gone to subsidies for biofuels, including ethanol. This makes no sense. We are using taxpayer money to subsidize energy sources that accelerate future environmental damage. Imagine if governments instead invested those resources in R&D for carbon capture, incentives for retrofitting buildings, or infrastructure to spur faster growth in renewable energy. Change the system. Executives and investors operate in keeping with the rules and incentives of the system. If their behavior is to change, the rules that governments set and enforce also need to change. More specifically, as a partial list, corporations should be prevented from co-opting the regulatory apparatus; carbon

emissions should be capped or taxed to account for their social costs; the agriculture industry should be incentivized to transition from spewing carbon to sequestering it; and lawmakers should ban the building of new thermal coal plants as a source of primary energy. In addition, as Meadows pointed out when discussing leverage points for system intervention, our mindsets, and assumptions about how the world works are potential sources of profound impact. A sustainable system will ultimately require a paradigm shift from the prevailing goal of wealth creation to one of well-being, and a shift in focus away from GDP and toward something akin to the OECD’s Better Life Index. Commitments to concepts such as regenerative agriculture, reuse, and collective value represent first steps in the right direction. **. . .** After two decades of trying, it should be clear that the market alone will not address worsening social and environmental challenges. The British economist Sir Paul Collier summed up the situation well when he said that capitalism “doesn’t work on autopilot. Periodically throughout its 250-year history, capitalism has derailed. And when that happens, it’s been up to public policy to get it back on the rails—public policy and the efforts of private citizens, of firms and families.” Ultimately, corporations exist within a broader system. The obsession with shareholder primacy has served executives and investors well, but it has left younger generations with a staggering bill. This past-due invoice includes environmental degradation, biodiversity loss, income inequality, and climate change. Going forward, stability and prosperity require that executive leaders advocate for structural changes that enable them to focus beyond the next quarter’s numbers. After all, like the members of Sustainability Inc., they, too, want to pass on a better world than the one they inherited.

#### Cap turns democracy – inequality drives populism, innovation displaces jobs, globalization undercuts accountability – COVID magnifies all.

Milner 21 [Helen V. Milner is the B. C. Forbes Professor of Public Affairs at the Woodrow Wilson School of Public and International Affairs at Princeton University, where she is also the Director of the Niehaus Center for Globalization and Governance. International Studies Quarterly, 10 July 2021, <https://doi.org/10.1093/isq/sqab056> //shree]

How do Globalization and Democracy Interact?

The delineation of these essential elements of democracy is important because it tells us where to look for problems in the relationship with capitalism. If capitalism makes achieving these elements more difficult or impossible, then the two institutions will clash. Instead of reinforcing one another, they will undermine each other. Hence, one view is that without serious restrictions on capitalism, democracy will be imperiled. On the other hand, some claim that without restrictions on democracy, capitalism could be imperiled. From Marx onward, numerous scholars have claimed that democracy has been limited in order to preserve capitalism. For Marx, the institutions of the state were built to protect capitalism; democracy was just the “dictatorship of the bourgeois” hiding behind a veil. The capitalist state was designed to protect the collective interests of the capitalist class against the working class and against the short-sighted behavior of individual capitalists; thus the state had some autonomy.12 But for Marx and many Marxists, democracy itself was a sham set up to protect capitalism. More recently, Slobodian argues that the entire neoliberal system of international institutions set up since the 1950s has served to protect capitalism against democracy: the entire “neoliberal project focused on designing institutions–not to liberate markets but to encase them, to inoculate capitalism against the threat of democracy” (Slobodian 2018, 2). For many on the left of the political spectrum, capitalism makes democracy impure at best and impossible at worst.

For others from the right, government intervention in the economy even decided democratically can ruin capitalism and thus destroy individual freedom. Laissez-faire doctrine advocated the most limited interference of politics in the matters of the economy. Hayek (1976) among many feared that any government intervention corrupted capitalism and that only the most minimal state was desirable. “The system of private property is the most important guaranty of freedom, not only for those who own property, but scarcely less for those who do not . . . If all the means of production were vested in a single hand, . . . whoever exercises this control has complete power over us” (Hayek 1976, 103). Freedom is the highest goal, but capitalism—not democracy—brings freedom. The protection of private property was necessary for democracy in the first place.13 Economic conservatives such as Hayek decried government intervention in the economy and the creation of large social welfare systems. The balance between unregulated markets and government intervention has long been a central issue in politics. This balance has been changing over time, especially as globalization has spread. Global capitalism seems to have given capitalists a stronger hand relative to either labor or the state (Bates and Lien 1985). Laissez-faire and austerity have gained in prominence as labor unions have shrunk, center left parties have declined, and social welfare spending and redistribution have fallen out of favor (Blyth 2013).

Political Equality and Economic Inequality

As noted above, an essential element of democracy is the idea of political equality. All adult citizens should be treated equally by the state and should have equal political rights. What political equality means may be debated, but citizens do expect some kind of equal treatment by their government. The problem this runs into is the economic inequality generated by capitalism (Piketty 2014).

Economic inequality has increased very substantially within countries across most of the world since the 1990s (Bourguignon 2015). This rise has been especially notable in the advanced industrial countries, particularly the United States and UK. While rates of absolute poverty across the world have plummeted, one particularly contentious issue is whether globalization has fueled the rise in within-country inequalities. For example, the Gini index for income distribution in the United States has worsened steadily from 0.36 in 1970 to 0.41 in 2015 (Lahoti, Jayadev, and Reddy 2016). By 2008, the level of inequality in the United States, as measured by the share of family income for the top 10 percent, had returned to the highest levels recorded in the early twentieth century (Bourguignon 2015, 48). The middle four deciles of the income distribution in the United States saw a similar decline in income share from 1980 (0.46) to 2014 (0.40). However, growth in inequality in Europe has been less pronounced with the income share of the middle four deciles sharply dropping in the UK and more moderately decreasing in Germany and France (Blanchet, Chancel, and Gethin 2019).

While unemployment in the United States has been low, wage growth especially in the middle and low skill occupations has been very limited in the past few decades. “Since 2000, [US] weekly wages have risen 3% (in real terms) among workers in the lowest tenth of the earnings distribution and 4.3% among the lowest quarter. But among people in the top tenth of the distribution, real wages have risen a cumulative 15.7%, . . . nearly five times the usual weekly earnings of the bottom tenth” (Desilver 2018).14 In the United States by 2010, the top 10 percent of the income distribution has received over half of all wage gains during the past 30 years, and the top 1 percent and 0.01 percent had received most of that (Bourguignon 2015, 49). In Europe, slow wage growth has been combined in many countries with high unemployment. In many of the OECD countries, the concentration of wealth, as opposed to income, is even more stark and has grown worse as well. International trade appears to have amplified inequality in developed countries by deepening the high-skill and low skill labor divide (Wood 1994; Ebenstein et al. 2013). Surprisingly, there is some evidence this is happening in the developing world as well (Harrison and Hanson 1999).

The problem is that this period of rising within country inequality corresponds to the period of globalization’s fastest growth. It looks as if, and perhaps is the case that, they are related.15 But the impression is that globalization has benefited a small elite and not the whole society or even the middle class. The majority is losing and this should not happen in a democracy. The sense that the system is rigged and only the rich benefit from openness is pervasive and growing. Anger and resentment are rising in publics as they see only a small segment of society gaining from globalization, and as everyone else becomes a relative loser (Galston 2018).16 The pervasive sense is that elites have captured the political system and opened up the economy to external forces that benefit only the rich and well connected. Inequality also seems to drive support for a main policy advocated by populist parties, that is, for protectionism, thus challenging the foundations of the liberal global order (Lü, Scheve, and Slaughter 2010).

Another issue is that any sense of political equality is hard to sustain when economic inequality is large. If the wealthy have, or are seen to have, special access to political leaders and more influence over elections because of their money, then political equality is undermined. As Przeworski says, “When groups compete for political influence, when money enters politics, economic power gets transformed into political power, and political power in turn becomes instrumental to economic power ....Access of money to politics is the scourge of democracy” (Przeworski 2016, 5). Research suggests that the rich do have more access and influence over politics (Bartels 2008; Gilens 2012). As the rich become richer, their influence magnifies, policy diverges more from the median voter’s preferences, and democracy seems less and less legitimate to the average citizen. If globalization is linked to rising inequality, then we may fear for democracy because research shows that democracy does not do well in conditions of high inequality (Boix 2003; Ziblatt 2008).17 Globalization may then indirectly undermine support for democracy as it enables greater economic inequality (Elkjær and Iversen 2020).

It is important to note that the Covid-19 pandemic seems to be increasing inequality as it rages in different countries. High-skill workers have maintained their jobs and avoided the virus by telecommuting. Lower skill workers who are usually paid less have been more likely to lose their jobs and get sick (Davis, Ghent, and Gregory 2021; Deaton 2021). And large firms with abundant capital have expanded as their small rivals are driven out of business by the pandemic closures (Bartik et al. 2020) Capital is being concentrated even more by this plague. It has also increased individual insecurity and reduced social capital as people cannot congregate and socialize.

Creative Destruction and Economic Insecurity

Capitalism is marked by rapid change and technological advances. As many have noted, it is a very dynamic system that incentivizes change, upgrading, and innovation. I

n the process, however, it destroys the old, the familiar, and the once lucrative. Schumpeter termed this essential dynamic, creative destruction (Schumpeter 1942). There is also evidence that innovations and adoption of new technologies spread in waves over time, sometimes leading to deep and rapid changes (Milner and Solstad 2021). These technological revolutions then produce side effects in social and political life. The first industrial revolution from about 1760 to 1830 saw a spurt of activity around iron and steel, coal, and steam engines (Mokyr 2009). The second industrial revolution from the 1870s to early 1900s again brought a surge in new technologies including railroads, mass assembly, automobiles, telegraph and radio, and electricity (Gordon 2017). Recently we have witnessed another technological revolution, the so-called digital revolution, and it is now having widespread effects. It is not just disruptions to labor markets that matter, but also shocks to information and communications systems, changes in social organization and disruptions of existing institutions. These rapid changes create insecurity for people who are, or believe they will be, negatively affected.18 This personal insecurity is likely to have political ramifications, especially when social protection is weak (Mughan 2007; Margalit 2011; Hacker, Rehm, and Schlesinger 2013; Rehm 2016).

Capitalism has brought forth many changes in markets, especially in labor markets over time. Old industries die and new ones emerge, but labor and capital are often slow to keep pace with these changes. Boix (2019) argues that first period of globalization in the late nineteenth century and early twentieth century was accompanied by technological change which generated more jobs than it displaced. This earlier wave of disruption was job inducing, and the new technology then was complementary to labor. The second period of globalization occurring recently is different; the new technologies are job displacing and substitute for labor. These two conditions produce very different politics. Boix (2019), however, still thinks that democracy can persist in this second period, as do others who see democracy as extremely resilient (Iversen and Soskice 2019). But many others are more pessimistic, worrying that the effects of technology now are enhancing inequality and destroying decent jobs (Baldwin 2019).

A primary example has been the rise and fall of manufacturing industries, especially in the advanced industrial countries. Industrial employment as a percentage of the civilian labor force has dropped from 38.8 percent in 1970, 25 percent in 2007, and falling to 18.8 percent in 2016 among the original 23 OECD countries (Armingeon et al. 2019). Offshoring has been a main ingredient in this process, and more recently the development of global value chains across borders has accelerated these changes. This deindustrialization has generated much economic insecurity as higher wage-paying, blue-collar jobs have disappeared with it (Hacker 2008; Milberg and Winkler 2013).

In addition, the new jobs produced have often been inferior to the old ones lost; this inferiority concerns not just wages but also the terms of employment, which have become less secure and more temporary in the so-called gig economy. “Employment precariousness,” or the lack of a “decent job,” is another aspect of this technological revolution (Lorey 2015). “Fixed-term employment contracts, temporary work and part-time work in developed countries, and informal jobs with irregular working hours, low earnings and uncertain futures in developing countries” (Bourguignon 2015, 63), which are the telltale indicators of this precariousness, have grown greatly. “In France, employment precariousness has increased significantly over the last twenty years, from 8% in 1990 to 12% of total employment in the 2000s” (Bourguignon 2015, 63–64). Skill-biased technological change and trade with the developing world have been largely responsible, as they have helped fuel offshoring and global value chains (Michaels, Natraj, and Van Reenen 2014; Doraszelski and Jaumandreu 2018). Hence, despite the fact that unemployment in many developed countries had fallen to low levels before the pandemic, personal insecurity has been pervasive because wages and working conditions have worsened, especially for lower skilled workers.

Global capitalism produces a double dose of technological change. Capitalism itself is very disruptive, but on a global scale it accelerates this change. Research shows that few countries innovate and that most adopt innovations from elsewhere (Keller 2004). The speed of this adoption varies from country to country and over time, but globally-integrated markets make these changes more rapid and widespread (Mokyr 1994; Taylor 2016; Milner and Solstad 2021). The third technological revolution then also is different because it is probably the fastest and most wide-ranging. It has brought even more economic anxiety and insecurity than past revolutions.

The insecurity generated by capitalism has long been noted. Furthermore, capitalism on a global scale seems to amplify this insecurity since international capital and labor flows may be ever more politically destabilizing (Scheve and Slaughter 2004). Economic crises like the global financial one of 2008–2009, which often are fostered by globalization, exacerbate this insecurity as well. Indeed, the creation of social welfare states was intended to help damp down this anxiety and reduce the frictions associated with economic change and crises. Polanyi (1957) long ago noted that left exposed to unregulated markets, people would turn away from democracy and toward extreme political solutions. The risks and insecurities generated by capitalism needed to be alleviated by social protection. The idea was to “embed” markets in social and political relations by having governments intervene to provide compensation to people affected by market volatility. After World War II, markets for capital and labor flows across borders were regulated as trade was slowly liberalized, and stability and growth with redistribution were paramount for the advanced industrial democracies until the 1980s.

After World War II, embedded liberalism in the Western world was the compromise that arose to make democracy and capitalism compatible (Ruggie 1982). As noted by Lim (2020, 67–68), “Studies of Western democratic countries have found that citizens who are exposed to the risks and uncertainties of global capitalism demand greater social protection from their government (Burgoon 2001; Cusack, Iversen, and Rehm 2006; Walter 2010; Margalit 2011). Empirical analyses also have revealed that more open economies tended to have larger public spending to compensate for and insure against the vagaries of an open economy (Garrett 1995; Rodrik 1997, 1998; Rickard 2012; Nooruddin and Rudra 2014).” Others show that technological adoption is faster and acceptance of new technologies is higher when welfare state generosity is greater (Lim 2020). Up to the 1990s, the embedded liberalism compromise seemed to be reconciling democracy and global capitalism.

Embedded liberalism, however, has come under sustained pressure as globalization has advanced. The combination of slowing or declining welfare efforts plus the growth of globalization have increased insecurity and reduced support for people facing it. Scholars have pointed to these changes as being a source of the rise of populism and the extreme right in various countries. Margalit (2011) shows that where job losses from foreign competition were high, incumbent politicians in the United States were more likely to lose and especially so if the job losses were not compensated. Autor et al. (2020) provide evidence that the trade shock from Chinese entry into the WTO led to increasing political polarization in the United States. Jensen, Quinn, and Weymouth (2017, 1) demonstrate that “increasing imports (exports) [in a region] are associated with decreasing (increasing) [US] presidential incumbent vote shares.” Colantone and Stanig (2018a,b) provide data showing that support for right-wing, nationalist and populist parties and for Brexit came from areas hardest hit by globalization, in particular trade shocks and immigration. Burgoon (2001) points out that the backlash against globalization is less in areas where social welfare provision is highest. Milner (2018, 2021), on the other hand, argues that in areas with more trade flows support for extreme right parties is stronger and that social welfare provision does not seem to temper this political backlash against globalization any longer. As globalization has proceeded and welfare states have not expanded to match this, personal insecurity has grown and its political consequences are increasingly manifest. As Rodrik (1997) noted, increasing global economic integration produces more public demands on governments for social protection while concurrently undermining their ability to supply these policies because they require considerable public expenditure, which globalization may prevent.

Insecurity can also be a product of the new information technologies today. The gig economy is in part made possible by such technologies. Surveillance technology may make people feel safer, but it may also enable governments to monitor their citizens and create new fears. While social media may enhance accountability pressures, it may also generate confusion and fake news. Many new sources of information have become easily available, often creating political and social problems. There is deep concern that new information technologies have helped disseminate populist political views. Social media in particular can undermine confidence in and the legitimacy of mainstream parties and leaders by transmitting false and damaging views of them (Tucker et al. 2017). International interference to exert political influence may also be easier to accomplish and disguise with these technologies. Creating confusion about what the facts are, disseminating fringe views as if they were credible, and sowing doubt about the validity and legitimacy of key democratic practices like elections are all means for generating greater insecurity and boosting populist support.

Global Interdependence

Deep integration of national economies through trade, capital markets, and immigration poses direct challenges for democracy. Above, I noted the indirect ways that globalization might undermine support for democracy, first by increasing inequality and second by fostering faster technological change. But globalization may also have more direct effects. I discuss three such effects here: increasing economic policy constraints on the government; pushing convergence on economic policy choices; and creating more need for international cooperation and governance. Each of these means that governments have less control over the economy, less room for partisan competition, and less autonomy.

Globalization seems to produce three inter-related processes that might undermine support for democracy. As trade, capital, and labor flows grow in importance, governments become increasingly constrained; governments can always opt out of this but the costs of doing so rise as globalization proceeds. First, globalization can undercut the government’s ability to direct the economy. The government’s policy instruments become more limited and less effective. With an open economy, macroeconomic policy and exchange rate policy become more interdependent and less effective, especially for smaller economies (Frieden and Rogowski 1996; Broz and Frieden 2001). As countries joined the WTO and signed preferential trade agreements, trade policy and investment policy have become more constrained as well. Fiscal policy in an open economy also loses some of its effect as it flows across borders. While some scholars have noted that larger and more developed countries have more room to maneuver (Mosley 2003), others have noted the shrinking field of policy choice and autonomy open to countries (Rodrik 1997, 2011). Policy autonomy and efficacy matter for democracies because the public often judges governments and parties on the basis of economic outcomes (Kosmidis 2018; Duch and Stevenson 2010, 2008). When governments lose the ability to direct the economy, democratic accountability is weakened and so is its legitimacy (Hellwig 2001; Hellwig and Samuels 2007; Hellwig 2015).

A second process that might undercut democracy is the policy convergence and consensus that has grown with globalization. As governments around the world increasingly liberalized trade and opened their capital markets, policy converged and consensus grew across parties about the value of openness and to some extent deregulation as well as austerity. Differences among left and right centrist parties on their platforms diminished, and publics began to view all mainstream parties as very similar (Sen and Barry 2020; Ward et al. 2015). Globalization may force parties to converge on their economic policies, restricting parties’ ability to differentiate themselves and thus to effectively compete against other parties on economic issues.19 The consensus over economic policies and globalization has left many European Social Democratic parties losing vote share and public support (Mair 2000).

This convergence has created an opening for extreme right and populist parties to generate support.20 As (Mughan, Bean, and McAllister 2003, 619) points out,“By virtue of their commitment to economic internationalization, the established parties of government are blamed by populists for turning a blind eye and a deaf ear to workers’ legitimate concerns for their job security in an increasingly global, competitive, and volatile labor market. Blaming it on established parties’ commitment to economic globalization, in other words, right-wing populist parties have commonly sought electoral advantage by turning job insecurity into a political issue.” If vigorous party competition along programmatic lines is central to democracy, then globalization may be undermining it. And lack of partisan competition among centrist parties may enable more extreme parties to gain support.

The third element is that globalization has also raised pressure on governments to coordinate their polices to eliminate externalities (Milner 1997). A more open economy implies a greater need to cooperate and coordinate with other countries. The past 30 years have seen many international regimes and institutions created to deal with global problems, all of which have constrained governments even more. The IMF, World Bank, OECD, EU, WTO, regional development banks, and many preferential trade agreements are the major examples of these multilateral economic institutions; each of which produces norms, rules, and procedures that members are expected to follow. They constrain government policy choices domestically; they appear to impose decisions from unelected international elites on the public; and they push all parties who might be in government to adopt similar policies. Many of these have generated popular dissatisfaction and resentment, being seen as undemocratic and as undermining democracy and its legitimacy at home. The EU is a prime example of this complaint about “democratic deficits”; EU decision-making is often seen as too elite- and interest group-driven, and too distant from public preferences (Follesdal and Hix 2006; Mair 2007). Brexit as a vote against international cooperation and extensive coordination is a reflection of this public perception of the EU.

The nationalist backlash that has animated populist parties recently builds off of this anxiety over and distaste toward global governance. The cosmopolitan elites that supposedly direct international institutions are seen as having made bad decisions (e.g., the financial crisis) and as holding preferences far removed from those of the average national voter. Populist leaders thus call for a return to national priorities and a rejection of global cooperation, as the quote from Marine Le Pen at the start of this article illustrates. As Mughan, Bean, and McAllister (2003, 619) points out, “the economic basis of their [populist parties’] appeal [lies] in their rejection of the postwar social democratic consensus. Taking as a starting date the end of the Second World War we can, with a nod to national variations, pick out four elements that have characterised the domestic politics of Western Europe in the ensuing four decades: social democracy, corporatism, the welfare state and Keynesianism. It is on the fertile ground of the foundering of these four pillars that the new (populist) parties have taken root.” Globalization by making international cooperation ever more necessary thus contributes to legitimacy problems for mainstream political parties and may generate public dissatisfaction with their governments and democracy.

## Case

#### Expanded antitrust causes backlash---congress fights expansions, wrecks FTC’s enforcement ability---that’s Jones

#### Backlash kills all FTC enforcement.

Adam Speegle 12. J.D. Candidate, May 2012. “Antitrust Rulemaking as a Solution to Abuse of the Standard-Setting Process”. Michigan Law Review. March 2012, Vol. 110, No. 5 (March 2012), pp. 847-873. https://www.jstor.org/stable/23216802

Another major concern with bringing cases under an independent Section 5 is that, as the application of the provision expands and the bounds of its flexibility are tested, the FTC risks eventual backlash from the courts or Congress similar to the backlash it experienced in the 1980s.129 The FTC relies on Section 5 in both antitrust and consumer protection actions. A negative holding on Section 5's use in the standard-setting context may not only bear on future patent holdup enforcement efforts but may also severely impede the FTC's efforts in other areas. If the FTC fails to limit the application of Section 5, it risks subjecting Section 5 to the same or more severe judicial and congressional treatment than it experienced in the past.130 Additionally, many states have their own statutes that are modeled after the FTCA. These state statutes are interdependent with the federal FTCA, and state courts interpret them using federal FTCA precedent.131 Because holdings related to the FTCA at the federal level can, for better or for worse, impact these state statutes, unfavorable Section 5 precedent could also undermine actions at the state level.

#### Turns case---causes Congress to strip funding and authority from the FTC.

J. Howard Beales 03. Former Director, Bureau of Consumer Protection. “The FTC's Use of Unfairness Authority: Its Rise, Fall, and Resurrection.” https://www.ftc.gov/public-statements/2003/05/ftcs-use-unfairness-authority-its-rise-fall-and-resurrection

The breadth, overreaching, and lack of focus in the FTC's ambitious rulemaking agenda outraged many in business, Congress, and the media . Even the Washington Post editorialized that the FTC had become the "National Nanny."(16) Most significantly, these concerns reverberated in Congress. At one point, Congress refused to provide the necessary funding, and simply shut down the FTC for several days. Entire industries sought exemption from FTC jurisdiction, fortunately without success. Eventually, Congress acted to restrict the FTC's authority, including legislation preventing the FTC from using unfairness in new rulemakings to restrict advertising.(17) So great were the concerns that Congress did not reauthorize the FTC for fourteen years. Thus chastened, the Commission abandoned most of its rulemaking initiatives, and began to re-examine unfairness to develop a focused, injury-based test to evaluate practices that were allegedly unfair.

## FTC DA

#### The aff can’t topically fiat funding for enforcement---Expand the scope of antitrust refers exclusively to formal law not enforcement---means the plan is circumvented.

Sinisa Milosevic et al. 18. Commission for Protection of Competition, The Republic of Serbia. Dejan Trifunovic, Faculty of Economics, University of Belgrade, Belgrade, The Republic of Serbia. Jelena Popovic Markopoulos, Commission for Protection of Competition, The Republic of Serbia. “The Impact of the Competition Policy on Economic Development in the Case of Developing Countries”. Economic Horizons, May - August 2018, Volume 20, Number 2, 153 – 167. http://scindeks-clanci.ceon.rs/data/pdf/1450-863X/2018/1450-863X1802157M.pdf

The paper that analyzes the impact of the competition policy on the GDP growth in developing and developed countries in the Solow growth model framework is T. C. Ma’s (2011). The presence and scope of the competition policy is captured by the SCOPE variable that is defined in the paper by K. N. Hylton and F. Deng (2007). The overall effectiveness of the government’s application of policies, not only of the competition policy, is captured by the EFFICIENCY variable that is defined in the paper by D. Kaufmann, A. Kraay and M. Mastruzzi (2009). The results show that the SCOPE variable is not significant and the formal existence of the competition law cannot influence economic growth. The interacting variable of SCOPE x EFFICIENCY is named EFFLAW. For poor countries, the coefficient for this variable is 0.04 and is significant, whereas for rich countries the coefficient is 0.064 and is also significant. Therefore, the competition law must be complemented with the effective enforcement of this policy.

#### Only new antitrust law expands the enforcement burden on the FTC

TechDirt 21. “Recent Antitrust Push Is Weirdly Narrow, Pretends Telecom And Banking Don’t Exist.” 6/18/21. https://abovethelaw.com/2021/06/recent-antitrust-push-is-weirdly-narrow-pretends-telecom-and-banking-dont-exist/

Enter Rep. David Cicilline, in charge of the House Judiciary Committee’s antitrust panel. He says Democrats have introduced a suite of different antitrust bills in the belief it will keep “big tech” on its heels, making it harder to defeat one centralized bill. He claims that by narrowly targeting specific issues of antitrust it will be easier to get the 10 Republican votes needed to pass the bills with a 60 vote majority in the Senate. But so far there’s no indication the obstructionist GOP, whose interest in “antitrust reform” has generally been of the performative populism variety, has any interest in helping out (last I saw the proposals had about 3 GOP votes in the House, just enough to market the effort as “bipartisan”).

Meanwhile, many of the bills are oddly selective in what they deem to be a “dominant platform.” The Platform Competition and Opportunity Act (pdf), for example, greatly restricts what constitutes a monopolistic offender, making sure to carve out exceptions for telecom giants, Mastercard, VISA, and Walmart. The bill bans companies from owning or operating a business that “presents a clear conflict of interest,” but only if the company in question has 50 million monthly active U.S. users and a market cap of over $600 billion:

“…is owned or controlled by a person with net annual sales, or a market capitalization greater than $600,000,000,000, adjusted for inflation on the basis of the Consumer Price Index, at the time of the Commission’s or the Department of Justice’s designation under sec13 tion 4(a) or any of the two years preceding that time, or at any time in the 2 years preceding the filing of a complaint for an alleged violation of this Act.”

But just looking at the $600 billion valuation threshold gives a sense of just how this line-drawing happened. Under this definition (including the number of US users), it looks like the law only applies to Apple, Microsoft, Amazon, Google (Alphabet) and Facebook. That’s it. It seems notable that companies which are also kinda powerful and dominant, but happen to fall just somewhat beneath the threshold, include Visa, Mastercard, JP Morgan Chase, Bank of America, Walmart, Disney… and Comcast, AT&T, and Verizon. How very, very interesting.

It’s hard to argue that different rules should apply to Amazon as compared to Walmart. Or that Comcast, AT&T and Verizon should be spared from such antitrust scrutiny, when their control over some markets is clearly a much larger stranglehold than the five impacted companies. It’s almost like these bills are designed to be a performative attack on just one sector while pretending otherwise.

That’s not to say that all the proposals in all the bills lack merit or benefit. I think at least one part of the Merger Filing Fee Modernization Act does something important: namely shoring up lagging FTC funding in an era where the agency is being asked to do more and more with a fraction of the staff and resources of their international counterparts. Recall a major reason the telecom lobby neutered net neutrality and FCC oversight is that they knew enforcement responsibilities would fall to an FTC without the resources, staff, or authority to do the job properly.

#### Current antitrust enforcement is mostly rhetorical and enforcement hasn’t kicked in yet.

Matt Stoller 9/2/21. Director of Research at the American Economic Liberties Project. “Lina Khan Leads the Government's New Attempt to Break Up Facebook.” https://mattstoller.substack.com/p/lina-khan-leads-the-governments-new

The Biden administration has been aggressive rhetorically on monopoly power, issuing an executive order and appointing important thinkers like Tim Wu and Lina Khan to key posts. But so far, the moves, while significant, have been mostly bureaucratic jujitsu, modest stabs at private equity, or new policy that has not yet had time for enforcement. Last week, however, Biden’s Federal Trade Commission, led by Khan, lowered the boom and asked a judge to break up Facebook.

FTC’s prioritizing RTR now, but resources are scarce

Brian J. Boyle 8/2/21. Accomplished litigator and business lawyer who focuses his practice on antitrust and consumer protection law, partner @ McDermott Will & Emery, 8/2/21.

A newly announced change in Federal Trade Commission (FTC) policy could have dramatic implications for the ways manufacturers of everything from cell phones to cars draft warranties, design products, and distribute replacement parts. Specifically, the FTC has set its sights on repair restrictions.

IN DEPTH

On July 21, the Commission unanimously voted to approve a policy statement announcing increased antitrust and consumer protection enforcement against business practices that make it difficult for consumers to repair their own products, or use independent repair shops. Manufacturers should take note of this import change in enforcement policy, and promptly evaluate their exposure.

Notably, the FTC’s announcement comes on the heels of President Biden’s executive order “Promoting Competition in the American Economy,” which encouraged the FTC to address “anticompetitive restrictions on third-party repair or self-repair of items…” It also follows a recent report by the FTC to Congress addressing repair restrictions, and a July 2019 FTC workshop examining the issue.

One area of particular concern for the FTC is product warranties that require the use of specific service providers or parts. Section 102(c) of a 1975 federal law known as the Magnuson-Moss Warranty Act (MMWA) prohibits companies from conditioning warranty coverage, expressly or impliedly, on a consumer’s use of an article or service identified by brand, trade, or corporate name, unless the company provides that article or service without charge or the company has received a waiver from the FTC.

Recent reports, including empirical analyses cited by the FTC in its report to Congress, suggest that violations of Section 102(c) are widespread. Indeed, one recent analysis by a prominent public interest group alleged that 45 out of 50 companies whose warranties the group examined appeared to violate the provision. Accordingly, Section 102(c) enforcement is likely to play a prominent role in the FTC’s crackdown.

It also appears that the FTC intends to use its broad authority under Section 5 of the FTC Act, which prohibits “unfair or deceptive acts or practices,” to challenge a wide range repair restrictions. In its report to Congress, the FTC highlighted the following practices in particular as “restricting independent repair or repair by consumers:”

“Physical restrictions” and “product designs that complicate or prevent repair”;

Purposely making parts, repair manuals, and diagnostic software and tools unavailable;

Designs that make independent repairs less safe, such as the use of glue to fasten lithium ion cells into mobile phones and other devices;

Steering consumers to preferred repair networks using telematics;

“Policies or statements that steer consumers to manufacturer repair networks”;

“Application of patent rights and enforcement of trademarks;

Disparagement of non-OEM parts and independent repair”;

“Software locks, Digital Rights Management and Technical Protection Measures”; and

“End User License Agreements.”

The diverse range of practices that the FTC has identified make this shift in enforcement an important issue for a wide range of companies. Still, there are clues to how the FTC may deploy its scarce resources in this area, at least initially.

#### FTC has latitude on the size and scope of new RTR rules.

Justin Sink 21. White House correspondent for Bloomberg News, 7/6/21. “Biden Sets Up Tech Showdown With ‘Right-to-Repair’ Rules for FTC.” https://www.bloomberg.com/news/articles/2021-07-06/biden-wants-farmers-to-have-right-to-repair-own-equipment-kqs66nov

President Joe Biden will direct the U.S. Federal Trade Commission to draft new rules aimed at stopping manufacturers from limiting consumers’ ability to repair products at independent shops or on their own, a person familiar with the plan said.

While the agency will ultimately decide the size and scope of the order, the presidential right-to-repair directive is expected to mention mobile phone manufacturers and Department of Defense contractors as possible areas for regulation. Tech companies including Apple Inc. and Microsoft Corp. have imposed limits on who can repair broken consumer electronics like game consoles and mobile phones, which consumer advocates say increases repair costs.

#### FTC capacity determines how aggressively it fights to enforce Right to Repair.

Adam Ismail 7/22/21. Staff Writer at Jalopnik. “The FTC Might've Just Found Its Spine On Right To Repair, Sort Of.” https://jalopnik.com/the-ftc-mightve-just-found-its-spine-on-right-to-repair-1847338521

There’s a lot of ways in which companies discourage your ability to fix things you buy, and at long last the Federal Trade Commission has pledged to push back against them.

A policy statement released Wednesday by the FTC announced that its members have “unanimously voted to ramp up law enforcement against repair restrictions that prevent small businesses, workers, consumers and even government entities from fixing their own products.”

This comes only a few days after President Joe Biden signed an executive order calling upon the commission to take the issue more seriously. And while most of the focus in the media appears to be centered on the company that makes your smartphone, this carries huge implications for the automotive industry as well — especially as software becomes increasingly unavoidable in all vehicles, and EVs become more accessible.

In the statement, the FTC shared the findings of a recent report, which found that manufacturers use a variety of tricks to frustrate consumers and small businesses who take matters into their own hands (duh), including but not limited to “adhesives that make parts difficult to replace, limiting the availability of parts and tools or making diagnostic software unavailable.”

That last roadblock — diagnostic software — is a biggie. Not just for cars, but construction and farming equipment, a fact that often surprises people. Today’s tractors are rigorously managed by software. If you want an idea of how rigorously, ask a farmer. If you can’t find one, skim through this eye-opening interview with John Deere CTO Jahmy Hindman from The Verge, in which Hindman says that today John Deere employs more software engineers than mechanical engineers.

Companies like John Deere often argue that the law forces them to keep certain aspects of their products — i.e., diesel emissions controls and steer-by-wire systems — effectively locked away from owners. But the fact of the matter is that sensors and code now inhibit making what used to be DIY repairs, and companies have no incentive to change that because they stand to make more money when something breaks and they’re the only ones capable of providing service.

For an industry founded upon resourceful, do-it-yourself spirit, being forced to haul your machinery to an authorized center for service you know you should be able to address on your own simply isn’t going to fly.

To that end, the FTC says it has within its disposal “a range of tools it can use to root out” these prohibitive practices, and that it expects to “move forward on this issue with new vigor.” The livelihood of independent repair shops, desire to mitigate electronic waste and the general resilience of families and businesses exposed by the pandemic were named as top concerns that have spurred the commission to take action. Additionally, the FTC is encouraging the public to reach out and alert it to any sketchy warranty terms:

The Commission also urged the public to submit complaints of violations of the Magnuson-Moss Warranty Act, which prohibits, among other things, tying a consumer’s product warranty to the use of a specific service provider or product, unless the FTC has issued a waiver.

This all sounds great in theory, and it’s been a very long time coming. But the value of today’s statement of intent will ultimately be determined by how aggressively the FTC fights this issue going forward, and how easily it capitulates to lobbyists from sham consortiums like the “Alliance of Automotive Innovation.” For today, it’s a promising first step to return a little agency to consumers.

#### Requires rulemaking groups

Kim Hart, 21. National Technology Correspondent at Axios. She covers the intersection of politics and innovation in Washington D.C. and around the country. "Big Tech's big D.C threat: the FTC." Axios. April 5, 2021. https://www.axios.com/ftc-biden-tech-facebook-amazon-antitrust-3b70d7cc-a20e-4e36-b2e7-d2809c7f1b29.html

While antitrust lawsuits and Capitol Hill hearings get headlines, Big Tech's biggest threat in Washington may come from the Federal Trade Commission. Why it matters: The FTC is gearing up to flex its muscle, by both enforcing current rules and trying to draft new ones. And it may be able do so relatively quickly. Driving the news: Acting FTC chair Rebecca Kelly Slaughter has created a new "rulemaking group" within the agency's general counsel's office, positioning the FTC to draft new rules cracking down on anti-competitive corporate behavior. The move signals that Slaughter aims to be more aggressive than her recent predecessors, who focused on consumer protection issues like fraud. It's also a signal to the Biden administration — which hasn't nominated a permanent FTC chair yet — that if Slaughter gets the gig, she's open to testing all the agency's legal authority to keep Big Tech in check. FTC rulemakings could apply to multiple companies at once. For the platform companies, potential regulations could focus on app stores, data security and transparency in algorithms. Big Tech can also expect the FTC, which has the power to police companies' "unfair and deceptive" practices, to take more aggressive enforcement actions under the Biden administration, including lawsuits. Slaughter has suggested the FTC's recent settlements didn't go far enough, and she argues that executives should be held personally liable for violations. She [criticized](https://www.ftc.gov/system/files/documents/public_statements/1536918/182_3109_slaughter_statement_on_facebook_7-24-19.pdf) the agency's $5 billion fine against Facebook in 2019, stemming from the Cambridge Analytica data leak, saying it was too small and that Facebook and CEO Mark Zuckerberg should have been referred to the Justice Department for litigation. Yes, but: The FTC is a relatively small agency with limited resources. New rulemaking is a cumbersome process, and there are chances for stakeholders to slow it down even further. Congress added some speed bumps to the FTC’s processes in the 1970s, as lawmakers believed it was overstepping its bounds with moves like trying to ban some [children's TV advertising](https://www.nationalaffairs.com/public_interest/detail/the-kid-vid-crusade). Rulemakings are used sparingly on relatively narrow issues or when directed by Congress. Expanding the use of its rulemaking authority would be new ground for the FTC, and there's no guarantee it will work. Antitrust suits don't always work out, either. The agency last week [abandoned](https://www.zdnet.com/article/ftc-drops-antitrust-case-against-qualcomm/) its 4-year-long case accusing Qualcomm of using its dominance to squash competition. Slaughter said she still believes Qualcomm broke antitrust laws, but that the FTC faced "significant headwinds." Still, even failure to enact new rules could help the FTC argue that it doesn't have the tools it needs and persuade Congress to give it more authority. What to watch: President Biden recently nominated Lina Khan for FTC commissioner. Khan's legal analysis on Amazon helped propel the narrative that the Big Tech companies have too much power. Biden hasn't yet named a replacement for the panel's third Democrat, Rohit Chopra, who's been nominated to lead the Consumer Financial Protection Bureau. Khan was previously a legal adviser to Chopra, who has [argued](https://www.ftc.gov/system/files/documents/public_statements/1568663/rohit_chopra_and_lina_m_khan_the_case_for_unfair_methods_of_competition_rulemaking.pdf) that the FTC has the authority to make new rules targeting anti-competitive practices. What's next: The FTC's actions have been relatively bipartisan and noncontroversial in the past. But antitrust attorneys and former staffers say the FTC will likely become more partisan as it tries to take full advantage of its legal authorities.

#### Pulls the FTC from other responsibilities

Olive Morris, 21. Policy analyst with The New Center, . "Lina Khan Has Big Plans For Big Tech — But She Might Not Have the Tools." RealClearPolicy. July 12, 2021. https://www.realclearpolicy.com/articles/2021/07/12/lina\_khan\_has\_big\_plans\_for\_big\_tech\_\_but\_she\_might\_not\_have\_the\_tools\_785004.html

Lina Khan, a 32-year-old Columbia Law professor and strong advocate for updating antitrust laws to deal with Big Tech companies, was recently [sworn in](https://www.ftc.gov/news-events/press-releases/2021/06/lina-khan-sworn-chair-ftc) as chair of the Federal Trade Commission (FTC). Her confirmation came just days after [Congress introduced](https://www.businessinsider.com/congress-big-tech-bills-facebook-google-apple-amazon-antitrust-2021-6) five antitrust bills specifically targeting Amazon, Google, Apple, and Facebook (the so-called “Big Four”) for alleged anticompetitive practices. The FTC launched more than 40 antitrust lawsuits during the pandemic, including a [landmark case](https://www.ftc.gov/news-events/press-releases/2020/12/ftc-sues-facebook-illegal-monopolization) against Facebook over its illegal monopolization of social network services. Khan will be joining an agency juggling a monumental lawsuit with very few resources. [Leaked audio](https://www.theverge.com/2019/10/1/20892354/mark-zuckerberg-full-transcript-leaked-facebook-meetings) from Mark Zuckerberg in 2019 indicated that Facebook wouldn’t go down easy, with the social media mogul stating, “I don’t want to have a major lawsuit against our own government… But look, at the end of the day, if someone’s going to try to threaten something that existential, you go to the mat and you fight.” But the FTC may not be equipped for that fight. Cases taken up by the FTC cost the agency enormously in fees paid to outside consultants and economists, who can charge as much as [$1,350 an hour](https://www.propublica.org/article/these-professors-make-more-than-thousand-bucks-hour-peddling-mega-mergers). At the same time, corporate merger filing fees, which traditionally serve as a major cash flow for the agency, have fallen during the pandemic. According to emails obtained by [POLITICO](https://www.politico.com/news/2020/12/10/ftc-cash-facebook-lawsuit-444468), the lack of funding is also taking its toll on FTC staffing and resources. “[W]e will either need to bring fewer expert intensive cases or significantly decrease our litigation costs (e.g. experts, transcripts, litigation support contractors, etc.),” Executive Director David Robbins said in an October 29, 2020 email. Robbins said in later emails that the agency would be freezing all hiring, promotions, and end-of-the-year bonuses indefinitely. The FTC may see more funding in 2021 if Congress passes bills like the [U.S. Innovation and Competition Act](https://www.democrats.senate.gov/imo/media/doc/DAV21A48.pdf), which would allow the agency to increase their merger filing fees. However, it’s still unclear how much these fees would be raised and when the new payment schedule could be applied. But even if the FTC had all the funding and staffing it needed, it almost certainly doesn’t have the expertise or the resources to handle the challenges posed by Big Tech companies alone, especially because the FTC has countless other responsibilities. Washington needs a new agency whose only focus is dealing with the challenges — to privacy, competition, and speech —presented by the rise of the tech companies. President Biden and Congress need to stand up a new Digital Commerce Agency.

#### Rulemaking requires immense time and resources .

Christopher A. Cole et al. 21. Partner @ Crowell Moring, with Jacob Canter, Raija Horstman, and Helen Osun, 4/27/21. “The Supreme Court Limits FTC’s §13(b) Powers.” https://www.crowell.com/NewsEvents/AlertsNewsletters/all/The-Supreme-Court-Limits-FTCs-13b-Powers

In the meantime, one immediate change we may see is an uptick in FTC rulemaking in an effort to allow it to speed the administrative litigation process and expand the scope of monetary relief in both consumer protection and competition cases. However, that will not be a quick or easy process. While the FTC has well-articulated UDAP rulemaking authority, it is a time-consuming process, with meaningful procedural hurdles, and any final rules can be challenged in federal court. The FTC’s authority to promulgate competition rules is more controversial. The agency has used that authority only once in its history and has not tested that authority again for decades. We will also be watching to see how courts apply this decision to existing consent judgments, contested judgments, and ongoing proceedings. It seems unlikely that there would be any challenge to a prior settlement with the FTC, as those settlements usually involve reciprocal waivers of claims and defenses. However, prior judgments may be open to reconsideration.

#### Rulemaking still costs the FTC.

William C. MacLeod 20. Chairs Kelly, Drye’s antitrust and competition practice, served as a director of the FTC’s Bureau of Consumer Protection and as the Chair of the ABA Antitrust Law Section, 7/13/20. Podcast interview, “Deep Dive Episode 120 – FTC Rulemaking: Underutilized Tool or National Nanny Renewed?” https://regproject.org/podcast/deep-dive-ep-120/

I see some of the same potential in the rule that Commissioner Phillips talked about, the Made in America Rule that the Commission is now proposing. However, in each one of these, we need to remember that there is a cost. As a matter of fact, the Commission recently reported to Congress that if Congress wants the Commission to be adopting a bunch of rules, the Commission had better receive the resources to write those rules, let alone to enforce them.

#### Rulemaking gets challenged in court.

Julie O’Neill 21. Partner @ Morrison Foerster, 5/13/21. “FTC & Privacy: Will the FTC’s Rulemaking Push Result in New Privacy Rules?” <https://www.mofo.com/resources/insights/210512-ftc-privacy-rulemaking.html>

The FTC’s foray into rulemaking could lead to a period of uncertainty and legal challenges in those areas touched by a new agency rule. There is likely to be significant debate over the scope of the FTC’s authority, the particulars of the rulemaking process, the substance of any proposed rules, and, when tested in court, the extent of Chevron deference to which the agency is entitled.