### 1

#### FTC enforcing algorithmic bias now---wins with strong authority and resources

K.C. Halm 21. Partner at Davis Wright Tremaine LLP, with Nancy Libin, 4/26/21. “FTC Warns of Greater Scrutiny Over Biased AI, Offers Best Practices to Mitigate Potential Harm.” https://www.dwt.com/blogs/artificial-intelligence-law-advisor/2021/04/ftc-ai-bias-best-practices-guidance

Building on prior guidance issued in 2020, the Federal Trade Commission (FTC) recently warned in a new blog post that it will use its authority under existing laws to take enforcement action against companies that sell or use algorithms or artificial intelligence (AI) technology that results in discrimination by race or other legally protected classes. The agency urged companies developing or using AI to ensure their AI tools or applications do not result in biased outcomes because a failure to do so may result in "deception, discrimination—and an FTC [] enforcement action." The agency's latest pronouncement leaves no doubt that the FTC will be actively reviewing the market for potential bias or discrimination when AI-enabled applications and services are used to provide access to housing, credit, finance, insurance, or other important services. As our readers know, AI is emerging as a transformative technology that is enabling new systems, tools, applications, and use cases. At the same time, perceived risks arising from potential bias, discrimination, or other negative outcomes is leading regulators to look more closely at both the benefits and potential risks of the technology. To that end, the FTC is moving quickly to assert itself as a leading regulator with authority to oversee a broad range of AI providers, systems, and applications on the market. Basis of Potential AI-related FTC Enforcement Actions Three statutes provide the FTC significant authority to act in this area. Specifically, Section 5 of the FTC Act prohibits unfair or deceptive practices. The FTC's latest statement suggests that the agency believes it can use Section 5 authority, for example, to penalize entities selling or using "racially biased algorithms." Further, the agency also has authority to act under the Fair Credit Reporting Act (FCRA), which could be applied when an algorithm is used in a process that results in the denial of employment, housing, credit, insurance, or other benefits. Similarly, the Equal Credit Opportunity Act (ECOA)—which prohibits a company from using a biased algorithm that results in credit discrimination on the basis of race, color, religion, national origin, sex, marital status, age, or because a person receives public assistance—could be another basis for the agency to act. Thus, for example, if your algorithm results in credit discrimination against a protected class, you could find yourself facing a complaint alleging violations of the FTC Act and ECOA. Notably, the FTC's blog post is framed as both guidance and a reaffirmation that the FTC has been policing issues around AI and big data for many years and sends a clear signal that it intends to do so going forward. This reinforces Acting Chair Rebecca Kelly Slaughter's recent speech on algorithmic discrimination in which she cited a study demonstrating that an algorithm used with good intentions—to target medical interventions to the sickest patients—ended up funneling resources to a healthier, white population, to the detriment of sicker, patients of color. She asked the FTC staff "to actively investigate biased and discriminatory algorithms" and expressed an interest "in further exploring the best ways to address AI-generated consumer harms." Indeed, as we explained in recent blog posts, recent FTC enforcement actions reflect increased scrutiny of companies using algorithms, automated processes, and/or AI-enabled applications. The FTC's recent settlement with Everalbum is instructive in that it illustrates the agency's latest remedial tool: the so-called "disgorgement" of ill-gotten data. In the recent enforcement case, the FTC alleged that Everalbum, an app developer that used photos uploaded by users to train its facial recognition technology, failed to properly obtain users' consent. The agency also alleged that Everalbum made false statements about the users' ability to delete their photos upon deactivating their accounts. On these facts, the FTC secured a settlement and consent decree that required Everalbum to delete algorithms that used the data obtained without consent—a remedy that is akin to the "fruit of the poisonous tree" concept—and obtain consent before using facial recognition technology on user content. The FTC's latest reaffirmation of its authority to act in this area demonstrates that the agency will hold businesses accountable for using AI that may result in biased outcomes or for making promises that the technology cannot deliver. Its message is clear: "Hold yourself accountable – or be ready for the FTC to do it for you."

#### Antitrust undermines privacy enforcement.

David Hyman 19 – Professor at Georgetown University Law Center, with William E. Kovacic, “Implementing Privacy Policy: Who Should Do What?” 29 Fordham Intell. Prop. Media & Ent. L.J. 1117 (2019). https://ir.lawnet.fordham.edu/iplj/vol29/iss4/3

The case for making an enhanced FTC the national privacy regulator is straightforward. Of all U.S. privacy implementation institutions, the FTC has unequaled capacity in the form of expert case handling and policy teams and physical resources (including the development, over the past decade, of an internet laboratory to do high-quality forensic work, and the hiring of technology experts to assist in that effort). The agency’s capacity also is the product of extensive experience in applying its UDAP authority and enforcing statutes such as the FCRA and COPPA. The FTC has a broad portfolio of policy instruments (litigation, rulemaking, consumer and business education, data collection, the preparation of reports, the convening of conferences), and it has demonstrated its ability to use all of them to good effect in the privacy domain. The FTC’s stature as an independent agency gives it additional credibility in the eyes of foreign officials, who generally distrust the vesting of privacy powers in an executive department.

Within an enhanced FTC, privacy policy implementation also would be informed by the Commission’s larger experience with consumer protection. The FTC’s privacy unit is one part of its Bureau of Consumer Protection, rather than being a self-contained bureau. This reflected the institution’s reasonable view that the effort to safeguard consumer interests in “privacy” was one dimension of “consumer protection,” rather than a wholly distinct policy realm. Our impression is that many matters that involve privacy issues also raise problems that fit within other areas of the FTC’s consumer protection program. The analysis of the “privacy” issue often benefits from perspectives developed in the course of applying the agency’s deception and unfairness authority in other cases. The intertwining of privacy issues with other consumer protection concerns in many scenarios has important implications for how the mandate of a privacy agency should be defined. In whatever setting one ultimately might place a “privacy” mandate, we would expect that the host agency would have a mandate that incorporates powers that traditionally have been associated with the FTC’s broader consumer protection program.83

The FTC’s expertise in antitrust should also help it develop and enforce privacy policy. Enforcing antitrust law has given the FTC ongoing involvement in multiple high-tech markets—as well as an understanding of how competition can motivate companies to offer better privacy protections. The FTC’s work in both consumer protection and antitrust draws upon a Bureau of Economics with over 80 PhDs in economics.84 The Bureau of Economics has developed considerable skill in sub-disciplines (including behavioral economics) with special application to privacy issues.

Of course, inputs are not the same thing as outputs. The FTC has not always achieved the full integration of perspectives that the combination of these institutional capacities would permit. And, although there are policy complementarities across the domains of antitrust, consumer protection, and privacy, this combination of functions is not an unmixed blessing. An agency with all three functions might seek to use its position as a gatekeeper with respect to one policy domain to leverage concessions from firms over which it exercises oversight in another domain.85 Such temptations have been present when the FTC has applied its antitrust powers to review mergers involving companies in the information services sector.86

Finally, there is the possibility that any one of these functions might be diminished if all three are contained in the same agency. An agency focused solely on privacy will make privacy policy its single concern. An agency responsible for antitrust, consumer protection, and privacy is likely to find itself making tradeoffs as it sets priorities for how to use its resources.

#### Unchecked algorithmic bias risks massive inequality and extinction.

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

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

### 2

#### The United States federal government should

#### - regulate common carriers through non-antitrust regulations.

#### - Ban higher interconnection fees, data caps, contract terms in video programming agreements that harm downstream rivals, and input foreclosure through non-antitrust regulations.

#### - Increase investment in universal broadband.

#### 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.

#### Their ev substantiates this. Emory = Blue.

Sallet 19 (Jonathan, Benton Foundation Senior Fellow and former-Federal Communications Commission General Counsel (2013-2016) and Deputy Assistant Attorney General for Litigation, Antitrust Division, US Department of Justice (2016-2017).,  3-20-2019, "Three Important Points on Broadband Competition," accessed 08/16/2021, <https://www.benton.org/blog/three-important-points-broadband-competition>, NMC).

As the Federal Trade Commission considers the actions it can take to further broadband competition, I believe that it should consider three important points. The State of Competition: Few Americans Have Even Three Choices Among Fixed Broadband Providers According to one set of measurements, the average download speed of fixed broadband providers in the United States in the second and third quarters of 2018 was 96.25 Mbps, and the average upload speed was 32.88 Mbps. But according to Federal Communications Commission data, at a download speed of 100 Mbps, 11% of U.S. census blocks had no access to broadband, more than one-third had only one choice of a fixed broadband provider, and 37% had access to only two[[i]](https://www.benton.org/blog/three-important-points-broadband-competition" \l "_edn1" \o ") – and that FCC data overstates the presence of competition because even one household in a census block will count as demonstrating broadband presence in that census block, and two providers in the same census block will not necessarily reach the same customers. Even at lower download speeds, few census blocks contain three or more fixed broadband providers; at 50 Mbps the number is 21% and at 25 Mbps, the number is 28%. Language here is important. There is a tendency to call the construction of new networks in a locality “overbuilding” as if it were an unnecessary thing; a useless piece of engineering. But what some call “overbuilding,” the FTC should call by a more familiar term: “Competition.” New entrants may succeed, or they may fail, but antitrust views the ability to enter as critical to the restraint of market-power and the delivery of consumer benefits. For example, a report by Analysis Group found material price declines associated with the presence of a third broadband provider and that “[e]ach additional competitor offering broadband in a higher speed category will increase the probability that other broadband providers in the market will offer broadband at those higher speeds by 17% on an annual basis.”[[ii]](https://www.benton.org/blog/three-important-points-broadband-competition" \l "_edn2" \o ") Similarly, according to Molnar and Savage, quality increases are associated with the entry of a third and fourth broadband competitor.[[iii]](https://www.benton.org/blog/three-important-points-broadband-competition" \l "_edn3" \o ") The experience of individual municipalities provides more support. For example, the Federal Communications Commission found that the provision of municipal broadband in Chattanooga, Tennessee, led to lower rates, increased investment, and improved service from an incumbent broadband provider; that incumbent’s download speed increased from 8 Mbps in 2008, the year in which the Chattanooga municipal broadband network neared completion, to 106 Mbps in 2013.[[iv]](https://www.benton.org/blog/three-important-points-broadband-competition" \l "_edn4" \o ") An order of magnitude larger. Similarly, in Wilson, North Carolina, an incumbent cable company held rates in Wilson flat even as it raised rates in nearby areas for comparable offerings.[[v]](https://www.benton.org/blog/three-important-points-broadband-competition" \l "_edn5" \o ") That company also increased its top-tier speed when the municipal broadband network began service because, it explained, “of the competitive environment.”[[vi]](https://www.benton.org/blog/three-important-points-broadband-competition" \l "_edn6" \o ") By one measure, new competition saved residents more than one million dollars/year. None of this is surprising. Indeed, it would be more surprising if increased competition did not deliver lower prices, greater output, and higher quality. The Federal Trade Commission Should Carefully Consider the Application of Section 5 to Broadband Conduct That Threatens to Harm Competition A series of merger cases in the last decade illustrate the kind of harm that can arise in this sector. These harms include: Higher Interconnection Fees: In its review of the Comcast/TWC merger, the DOJ staff concluded that interconnection fees increase based on the size of a broadband provider and that higher interconnection fees “would raise the marginal cost of online video subscribers” and would also hamper new entry into local broadband/video markets.[[vii]](https://www.benton.org/blog/three-important-points-broadband-competition" \l "_edn7" \o ") In the ATT/DirecTV merger, the Federal Communications Commission similarly found that “broadband Internet access providers have the ability to use terms of interconnection to disadvantage edge providers.”[[viii]](https://www.benton.org/blog/three-important-points-broadband-competition" \l "_edn8" \o ") Data Caps: In its review of the AT&T/DirectTV merger, the Federal Communications Commission concluded that the integrated company, combining broadband provision with a very large video distributor, would have the incentive to hamper online video rivals by selective application of data caps on its own fixed broadband service. [[ix]](https://www.benton.org/blog/three-important-points-broadband-competition" \l "_edn9" \o ") Contract Terms in Video Programming Agreements That Harm Downstream Rivals: In its review of the acquisition of Time Warner Cable by Charter Communications, the Department of Justice obtained a consent decree barring the merged company from using its bargaining leverage with video programmers to inhibit the flow of video content to online video distributors.[[x]](https://www.benton.org/blog/three-important-points-broadband-competition" \l "_edn10" \o ") For example, the consent decree barred certain most-favored nation (MFN) clauses that permit the “cherry-picking” of contractual terms. Input Foreclosure: In its Comcast/NBCU decision, the Federal Communications Commission concluded that the integrated company could disadvantage downstream or online video rivals by withholding or raising the cost of its video programming.[[xi]](https://www.benton.org/blog/three-important-points-broadband-competition" \l "_edn11" \o ") An important question for the FTC is to consider the extent to which Section 5’s prohibition on “unfair methods of competition” reaches beyond the scope of the Sherman Act. To take just one example, Section 5 reaches invitations to collude even where there is no agreement reached (the existence of which is a requirement of Section 1). The Federal Trade Commission Has the Tools to Advance Broadband Competition Commissioner Chopra has suggested that the FTC consider the use of rule-making to establish the application of Section 5’s competition standard on a prospective basis.[[xii]](https://www.benton.org/blog/three-important-points-broadband-competition" \l "_edn12" \o ") Indeed, I believe that the broadband sector meets key criteria enunciated by Commissioner Chopra: An extensive enforcement record exists from both merger and regulatory proceedings involving the FTC, the DOJ, and the Federal Communications Commission; and There is little, if any, reason to believe that private antitrust litigation has or will shape the conduct of the industry. Rather, given the history of bi-partisan agreement that some kind of limits should be placed on the ability of broadband providers to limit the competitive efforts of firms that use broadband to reach consumers (even as debate continues about the content of those limits), the FTC would be able to draw on a long and extensive record, in addition to whatever specific findings might be generated by a Section 6 report, as it considers the content of rules. At the same time, the FTC rightly places considerable importance on its role as a competition advocate. For example, it has argued for the removal of state licensing laws that have unduly limited access to professions on the ground that such restrictions “can impose real and lasting costs on both American workers and American consumers.”[[xiii]](https://www.benton.org/blog/three-important-points-broadband-competition" \l "_edn13" \o ") Now, the FTC should advocate for the repeal of state laws that limit the ability of municipalities to authorize entry of new broadband providers. This is not to say that every municipality should take such a step; merely that given the state of wireline broadband competition, consumers would benefit when municipalities can decide what forms of broadband competition would be helpful to their consumers and their labor force. The research that I noted above suggests, as does competition theory generally, that a third or fourth broadband competitor delivers lower prices and higher quality. And it is always important to remember that the benefits do not come only to the customers of the new entrant; competition inevitably induces incumbents to lower their prices, invest in their networks, and improve their services for the benefit of their customers as well. Consider, for example, the variety of public-private models that are proliferating: Most familiar perhaps are the cases of municipal electrical utilities or rural electric coops that are able to take advantage of network economies to provide broadband. In addition, municipalities like Ammon, Idaho, have established open-access networks that are available for companies to use to deliver broadband service; under the Ammon model the municipality itself does not deliver service to the end-user; several internet service providers compete over the Ammon network. On the Eastern Shore of Maryland, Kent County has constructed fiber linking governmental buildings; that fiber is available to private companies (and one is now in operation) to construct extensions from the county’s fiber network that reach residences, lowering the cost of investment. Again, the county is not the service provider. Earlier this month, the city of Tacoma, Washington, took a big step towards a new plan for use of its municipal broadband network under which it would lease its network to a private broadband provider to improve and operate its broadband service to residents and businesses. Two potential private partners have committed to net neutrality, to provide substantially lower-cost services to low-income residents, and to upgrade the system to gigabit speeds within three years, among other public-service commitments. As a competition advocate, it is important that the FTC enter the debate against state laws that force consumers to bear the higher prices and lower quality that antitrust tells us come from restrictive barriers to entry. This is not a new idea. In 2005, then-Commissioner Leibowitz told local governmental officials that it “was wrong to stifle competition in this manner”, saying that “local governments have long been laboratories of experimentation. If they want to give their residents affordable Internet access, they should be allowed to try without being foreclosed by federal or state laws”.[[xiv]](https://www.benton.org/blog/three-important-points-broadband-competition" \l "_edn14" \o ") That was right then, and it is right now. Thank you for the opportunity to appear today.

### 3

#### The fifty states and all relevant territories should expand the scope of their antitrust laws to common carriers.

### 4

#### 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 collapses soil---causes extinction

Fred Magdoff and Farooque Chowdhury 6/30/21. Fred Magdoff is professor emeritus of plant and soil science at the University of Vermont. Farooque Chowdhury is a freelance writer based in Dhaka. "Soil ecology and capitalism agriculture: Fred Magdoff interviewed by Farooque Chowdhury". MR Online. 6-30-2021. https://mronline.org/2021/06/30/soil-ecology-and-capitalism-agriculture-fred-magdoff-interviewed-by-farooque-chowdhury/

FC: You, in the book, have claimed that an article by three scientists in Vermont Agricultural Experiment Station Bulletin No. 135, (1908) “is strikingly modern in many ways.” You have also claimed that Edward Faulkner’s Plowman’s Folly is as valid today as in 1943 when it was first published.” After so many years, more than a century, and more than 70 years, how such claims stand as, by this time, capitalism has turned more aggressive, more intensive, more wide; its clawing of everything including soil has turned more brutal? How do you substantiate your claim?

FM: There is a mountain of evidence that supports the claims you mentioned. Many articles in recent scientific journals and books indicate both the profound importance of soil organic matter (as claimed in the 1908 publication) and the value of greatly reducing soil disturbance that commonly occurs when farmers plow and harrow soils to prepare for planting (as Faulkner claimed in the 1940s). Some farmers are already using these ideas to improve their practices.

Agriculture that developed under the conditions of capitalism in the United States and Europe, emphasized production of undifferentiated commodities to sell into regional, national, and international markets. The emphasis and incentives of the system lead toward many problematic practices such as mono-cropping: growing the same crop again and again without rotation and covering large areas of land with a single crop. These lead to loss of soil fertility, biodiversity, and water storage capability. It also leads to soil compaction and creates conditions that promote outbreaks of organisms that harm plants (usually referred to as pests). There are also built-in incentives to create ever-larger farms, putting small farmers out of business. In other words, ecological and social conditions are mostly ignored in a system in which production for profit is the goal. However, farmer experience and scientific evidence indicate that we know how to grow an abundance of food using ecologically sound methods. What’s needed is a system that not only encourages such an approach and has a goal of providing everyone with a varied and wholesome diet.

FC: In the book, you write, “Many civilizations have collapsed from unsustainable land use, including the cultures of the Fertile Crescent in the Middle East, where the agricultural revolution first occurred about 10,000 years ago. The United Nations estimates that 2.5 billion acres have suffered erosion since 1945 and that 38% of global cropland has become seriously degraded since then.” And, “In the past, humankind survived because people developed new lands. But a few decades ago the total amount of agricultural land actually began to decline as new land could no longer compensate for the loss of old land.” And, “We […] are running out of land. We have already seen hunger and civil strife […] over limited land resources and productivity, and a global food crisis break out in 2008. Some countries with limited water or arable land are purchasing or renting land in other countries to produce food for the ‘home’ market.”And, “The food we eat and our surface and groundwaters are sometimes contaminated with disease-causing organisms and chemicals […] Pesticides […] can be found in foods, animal feeds, groundwater, and surface water running off agricultural fields. Farmers and farm workers are at special risk. […] [H]igher cancer rates among those who work with or near certain pesticides. Children […] are also at risk of having developmental problems.” And, “[F]armers are in a perpetual struggle to maintain a decent standard of living.” How do you relate these issues in the book?

FM: The book’s purpose was not to go into details about the ecological damage done by conventional agricultural practices. Rather it was to discuss how to manage an agroecosystem holistically in order to try to avoid such problems. Thus, we only briefly point out the damage caused by the lack of attention to ecological principles as agriculture developed under the constraints and incentives of the profit motive. The dramatic increase in the use of pesticides in the 20th century took place in the context of ever larger fields, decreased emphasis is on crop rotation, and ignoring soil health. Each occurrence of an insect or disease or weed that might harm crops as was treated as a separate issue, each dealt with by applying pesticides, the suggested approach of the agro-chemical corporations (who, of course, profit from sales of these materials). However, the problems of soil degradation and pest outbreaks that plague farming are primarily the result of inadequate and un-ecological management of farms and fields–lack of good rotations and/or polycropping, not using cover crops, intensively tilling soil, and so on.

FC: The issues you have addressed in the book are related to, if I’m not wrong, a particular type of agriculture–a capitalist agriculture, an agriculture defined by imperialist world market system. It’s the reality irrespective of country, other than a few, in today’s world. Does the book signal this?

FM: The forces of capitalist economies tend to push farmers in certain directions such as mono-cropping, selecting crops based on expected short-term return and not towards what is needed for promoting a balanced ecosystem that can feed all the people in the community, region, or country. In addition, the agri-chemical industry that developed in the 20th century provides much of the information that is readily available to farmers. They, of course, push the use of inputs that they can profit from–especially fertilizers, pesticides, and proprietary seeds (many of which are GM). On the other hand, as we stress in the book, ecological approaches aim towards prevention of problems through management practices that build strong and resilient agroecosystems.

FC: The book says: “The whole modern system of agriculture and food is based on extensive use of fossil fuels […] With the price of energy so much greater than just a few years ago, the economics of the ‘modern’ agricultural system may need to be reevaluated.” So, it means, there’s politics. Am I wrong?

FM: You are not wrong. The current system of large-scale production and intensive use of inputs from off the farm is expensive. And it is not just the fuel used on the farm; a significant amount of energy goes into production of nitrogen fertilizers as well as other inputs.

The system especially harms small farms. Large farmers have economies of scale on use of large equipment. They also have other advantages; because of the quantity of inputs they purchase, they usually get discounts. And when they sell their products they may actually receive more per unit. Thus, there are economic advantages of scale as well as the physical advantages of scale such as using a tractor over more acres. And, of course, being highly mechanized, they produce more per hour of labor than do smaller size farms.This means that they can make profits on lower prices than a smaller farm is able to. This is why smaller farms tend to be pushed out of existence as the number and size of large farms grows.

Any challenge to an entrenched system such as that of “modern” agriculture means confronting powerful economic and political forces that promote and profit from the current system. This means that farmers and farm organizations need to counter these forces politically as well as directly working through organizations to implement new ecologically-based practices. And there are organizations doing this in countries around the world. On all continents there are groups that are promoting agroecology, which promotes both ecologically sound practices and progressive social relations. (A short video about the global reach of agroecology: https://www.youtube.com/watch?v=uqfInrTfs-U)

FC: What should the small/marginal farmers, in the face of invasion of large industrial agriculture companies—or we may call these industrial-agriculture complex in view of their world-wide operations beginning from production of inputs used on farms to farming (the actual production) to marketing and their control over policies of state machines—do to survive? Isn’t it a struggle for humankind’s survival, a struggle against capital’s scourging of soil–a base for survival?

#### 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

### 5

Next off is the rule making counterplan---

#### 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 expand the scope of the United States’ core antitrust laws to substantially increase prohibitions on anticompetitive business practices by common carriers.

#### 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

### 6

#### The scope of competition law defines it goals---attempts to meet current goals by banning practice are implementation questions.

ESE No Date. Erasmus School of Economics (as per their website, “The Erasmus Center for Economic and Financial Governance is an international multidisciplinary network of leading researchers and societal stakeholders initiated by researchers from Erasmus School of Economics and Erasmus School of Law. ECEFG conducts interdisciplinary research (law, economics and political science) and contributes to current debates in public and in academia on issues relating to European and global economic and financial governance.”). "Competition Policy". <https://www.eur.nl/en/ese/affiliated/ecefg/research/competition-policy>

Competition Policy

Research in this field consists of two broad areas. The first area – Theory and Implementation of Competition Law and Policy – refers to fundamental and applied research into topics that are traditionally seen as the core of competition policy. The second area – Scope of Competition Law and Policy – refers to all research on the effect and desirability of including new considerations in competition law and policy in order to address the challenges of our time, such as the increasing power of big tech firms, or global warming.

Theory and Implementation of Competition Policy

This covers for instance collusion, abuse of dominance, mergers, market regulation and state aid. Some examples of research topics are:

* the practices firms can use to engage in collusion and its welfare consequences;
* the practices firms can use to abuse a dominant position and its welfare consequences;
* which practices can be considered proof of such activities;
* how to regulate access to a market;
* how to properly assess the effects of a particular practice or merger;
* the practices, by which the state and public authorities distort competition such as subisidies and tax measures
* the interpretation and application of EU and national competition law by Competition Authorities and Courts and the extent to which they achieve the goals of competition policy

Scope of Competition Policy

The effectiveness of European competition law and policy in combination with rapid technological changes have raised questions about its proper scope. Which policy objectives can and should be pursued by means of competition law and policy, and which should be delegated to other legal fields and policies? Some examples of specific research questions include:

* Can and should competition law be used to protect the privacy of consumers on the internet?
* Information gathered by firms can be used to increase their own profits. How does this affect consumers, and what does this depend on? Can and should competition law deal with market power derived from information gathering? For instance, should the big five tech giants be forced to divest activities?
* Should competition policy also include considerations of economic inequality or environmental effects?
* Can competition law remain effective if it is used for more than safeguarding fair competition?

#### That means the aff must replace the consumer welfare standard.

Trevor Wagener 21. "The Curse of Tradeoffs: Neo-Brandeisians vs. Consumers". Disruptive Competition Project. 5-21-2021. https://www.project-disco.org/competition/052121-the-curse-of-tradeoffs-neo-brandeisian-antitrust-versus-consumers/

Neo-Brandeisians seek to replace the longstanding objective and principles-based framework of the consumer welfare standard in antitrust enforcement with an amorphous, process-based framework guided by an ethos one Neo-Brandeisian described as: “Big is bad. Just don’t let big firms merge. The end.” A movement dedicated to replacing a consumer welfare-maximizing approach with an assortment of competing goals has proven unable to offer a quantified, systematic cost-benefit analysis justifying such a radical change, instead relying upon anecdotal evidence and moving prose. The many goals of the Neo-Brandeisian approach are often rhetorically appealing, but the rhetoric hides a simple truth: When you target every variable, you effectively target none. Addressing a wide range of goals through antitrust policy requires de-emphasizing consumer welfare, creating fundamental tradeoffs expected to harm consumers relative to the status quo.

The willingness to sacrifice consumer welfare in order to achieve other ends is a defining characteristic of Neo-Brandeisian antitrust. This is illustrated by concrete Neo-Brandeisian critiques, which typically emphasize perceived harms to businesses rather than harms to consumers. For example, the Neo-Brandeisian activist group American Economic Liberties Project (AELP) published a pair of policy briefs on May 3 that criticize online service operators for a litany of purported inconveniences to businesses over a combined 22 pages, but struggle to quantify any harms to ordinary consumers and users. Those few purported harms to consumers that AELP raised are distinctly qualitative rather than quantitative, consistent with the broader reluctance of prominent Neo-Brandeisian thinkers to conduct a rigorous quantitative cost-benefit analysis of their antitrust policy prescriptions relative to the consumer welfare standard.

#### Vote negative for limits and ground---only “change goals” creates key economy and legal disads over what antitrust should consider---the affs topic races to tiny exemptions and technical changes with no core ground.

## Precision Ag

#### 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

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

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

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

#### No food wars.

David Bier 11. Immigration policy analyst at the Cato Institute’s Center for Global Liberty and Prosperity. Citing Steven Pinker, Johnstone Family Professor of Psychology at Harvard University. “Steven Pinker: Resource Scarcity Doesn’t Cause Wars”. 11-28-2011. <http://www.globalwarming.org/2011/11/28/steven-pinker-resource-scarcity-doesnt-cause-wars/>

Once again it seems to me that the appropriate response is “maybe, but maybe not.” Though climate change can cause plenty of misery… it will not necessarily lead to armed conflict. The political scientists who track war and peace, such as Halvard Buhaug, Idean Salehyan, Ole Theisen, and Nils Gleditsch, are skeptical of the popular idea that people fight wars over scarce resources. Hunger and resource shortages are tragically common in sub-Saharan countries such as Malawi, Zambia, and Tanzania, but wars involving them are not. Hurricanes, floods, droughts, and tsunamis (such as the disastrous one in the Indian Ocean in 2004) do not generally lead to conflict. The American dust bowl in the 1930s, to take another example, caused plenty of deprivation but no civil war. And while temperatures have been rising steadily in Africa during the past fifteen years, civil wars and war deaths have been falling. Pressures on access to land and water can certainly cause local skirmishes, but a genuine war requires that hostile forces be organized and armed, and that depends more on the influence of bad governments, closed economies, and militant ideologies than on the sheer availability of land and water. Certainly any connection to terrorism is in the imagination of the terror warriors: terrorists tend to be underemployed lower-middle-class men, not subsistence farmers. As for genocide, the Sudanese government finds it convenient to blame violence in Darfur on desertification, distracting the world from its own role in tolerating or encouraging the ethnic cleansing. In a regression analysis on armed conflicts from 1980 to 1992, Theisen found that conflict was more likely if a country was poor, populous, politically unstable, and abundant in oil, but not if it had suffered from droughts, water shortages, or mild land degradation. (Severe land degradation did have a small effect.) Reviewing analyses that examined a large number (N) of countries rather than cherry-picking one or toe, he concluded, “Those who foresee doom, because of the relationship between resource scarcity and violent internal conflict, have very little support from the large-N literature.”

#### Reject overpopulation fear-mongering --- growth decreases birth rates.

Ronald BAILEY 17. Science correspondent. “Overpopulation Scaremongering Never Gets Old.” Reason. June 19. <http://reason.com/blog/2017/06/19/overpopulation-scaremongering-never-gets>.

That's far too simple a story. Malthusian conditions continue to exist only where people are not free. Overpopulation is not the main problem. Lack of liberty is.

Linden harkens back to his 1976 book, The Alms Race: The Impact of American Voluntary Aid Abroad, in which he presciently focused on how foreign aid often failed to actually lift poor people in developing countries out of poverty.

In addition to reporting on how economic development aid bureaucracies screw up, Linden's op-ed blames Lesotho's impoverishment on fast population growth.

How does Linden know that Lesotho is inhabited by "too many people"? The country's population density is 176 people per square mile. But compare that to Malthusian hellholes like the United Kingdom (694 people per square mile); Germany (601 people); or the deities forfend, the Netherlands (2,852 people). In fact, the population density of the entire European Union is more than 300 people per square mile.

Linden observes with alarm that since 1974, when the average woman in Lesotho gave birth to six children, Lesotho's population rose from 1.2 million to 2.14 million today. It would have risen faster but for the massive HIV/AIDS epidemic that has kept average life expectancy hovering at around 45 years.

Given that most demographers expect high fertility rates to persist when life expectancy is low, it is nigh unto amazing that the average number of children a woman in Lesotho has over the course of her lifetime (total fertility rate) has fallen from six to just above three kids now.

Linden recites the standard Malthusian zero-sum creed. "Even in 1974, many development experts knew their programs might worsen Lesotho's population pressures, but hoped in vain that economic growth would outweigh the burden," he writes.

Let's compare Lesotho to the trends during a period in which the population of the United Kingdom doubled. The U.K.'s population in 1861 was just over 20 million nearly doubling to 38 million by 1901. During that 40-year period, per capita GDP in the U.K. increased in real terms by nearly 70 percent. By the way, the U.K.'s total fertility rate in the mid-1800s averaged about five children per woman.

Even as Lesotho's population climbed, per capita GDP more than tripled from $399 in 1975 to $1,370 in 2015. Obviously people in Lesotho remain desperately poor, but their situation has improved considerably.

Linden also identifies 20 other countries where the "Malthusian concerns come back with a vengeance." It is true that their populations have substantially increased over the past 40 years, but they also have something far more deleterious in common: very low levels of intangible capital.

Intangible capital is the level of education of a population combined with the social, political, and economic institutions through which people work and live. These include the rule of law, democratic accountability, honest bureaucracies, a free press, strong property rights, and so forth.

With the exception of a couple of petroleum potentates, if a country lacks intangible capital its people will be poor. Each citizen of overcrowded Britain has access to about $350,000 of intangible capital, according to the World Bank, which has measured the intangible capital of most of the world's nations. Germans enjoy $425,000; institutions in the Netherlands afford its citizens an average of $350,000 in intangible capital.

U.S. citizens, by the way, average $418,000.

In contrast, the citizens of the 20 countries on Linden's list have access to less than $8,000 of intangible capital per capita. In fact, Nigeria's institutions were so bad when the calculations were made that it had negative intangible capital of $2,000 per capita.

On the Heritage Foundation's annual economic freedom index, 18 of the countries on Linden's list fall either into the mostly unfree or repressed categories.

As I have earlier reported, in my column on "The Invisible Hand of Population Control," Seth Norton, a business economics professor at Wheaton College in Illinois, published a remarkably interesting study in 2002 on the **inverse relationship** between prosperity and fertility.

Norton compared fertility rates of over 100 countries with their index rankings for economic freedom and another index for the rule of law. He found that the fertility rate in countries that ranked low on economic freedom averaged 4.27 children per woman while countries with high economic freedom rankings had an average fertility rate of 1.82 children per woman.

His results for the rule of law were similar: Fertility rates in countries with low respect for the rule of law averaged 4.16, whereas countries with high respect for the rule of law had fertility rates averaging 1.55 children per woman. When people are free, they choose to have fewer children.

Ultimately, expanding liberty is the solution to Linden's neo-Malthuian fears of overpopulation.

#### Expanded antitrust causes a wave of additional expansions---tanks current innovation and economic output.

Wayne Brough 6-15. Policy Director at R-Street, Technology & Innovation. Washington wants to weaponize antitrust law to attack “Big Tech” and it is going to backfire horribly. R Street. 6-15-2021. https://www.rstreet.org/2021/06/15/washington-wants-to-weaponize-antitrust-law-to-attack-big-tech-and-it-is-going-to-backfire-horribly/

Solutions in Search of a Problem

As with many other regulatory incursions into the digital world, the renewed push for tougher antitrust laws is a solution in search of a problem. Both Republican and Democratic criticisms of Big Tech raise a litany of issues—from an anti-conservative bias to fake news and hate speech—none of which fall within the purview of antitrust law and anticompetitive behavior. Instead, the new regulatory regime under consideration is a punitive and political attack on politically disfavored corporations. Ultimately, that is the larger battle—abandoning the consumer welfare standard and its focus on demonstrable consumer harm in favor of a politicized regime that allows those in Congress greater control over private companies.

And while tech companies may be the exclusive focus of the current reforms, the scope of the proposed legislation could easily be expanded by a future Congress. Even today, many lawmakers are openly hostile toward a growing list of American businesses. Republicans have been vocal in calling for retaliatory measures against “woke” corporations deemed too progressive in their public stances. If policymakers continue to abandon economic principles, it would not be surprising to see calls for additional antitrust enforcement for any company that makes political waves.

Prior to the adoption of the consumer welfare standard almost 50 years ago, antitrust law was often confusing, economically suspect and even contradictory. In one notorious case, the Supreme Court blocked a merger where the merged company would have had a market share of merely 7.5 percent—hardly an example of market dominance. And economists examining antitrust enforcement prior to the consumer welfare standard found no correlation between antitrust enforcement and a reduction in the welfare losses from monopoly. Further research found congressional influence to be a better predictor of enforcement activity.

The consumer welfare standard helped rationalize antitrust enforcement and the case law that has emerged since its adoption has helped curb the political abuse of antitrust policies. Abandoning the need to identify demonstrable consumer harm would return antitrust law to an era characterized by arbitrary enforcement actions that many in today’s Congress seem to have forgotten. But the increased political oversight that comes with adopting more aggressive tools for antitrust enforcement poses a real threat to consumers, to innovation and to economic growth.

Abandoning the American Way in Favor of a European One

The bills introduced in the House can be interpreted as a turn toward a European approach to competition policy. Last year, the EU passed the Digital Markets Act, and the House proposals sound eerily similar. The EU started by defining “gatekeepers,” something similar to the “covered platforms” in the House bills. Restrictions on self-preferencing, interoperability requirements and other elements introduced in the House all have direct counterparts in the EU’s law.

The EU adopted its laws with a clear target in mind—American tech companies that were dominating markets in Europe and outperforming their European rivals. Politically, it made sense to rewrite the rules of the game in favor of homegrown talent. Among other things, this meant the EU could collect billion-dollar fines from American companies, all in the name of “fair competition.”

But the performance of European companies is probably the best reason not to follow the EU’s lead in redefining how we regulate competition. By virtually every measure, U.S. companies have been more innovative, more dynamic and more profitable than their European counterparts. There are more start-ups in the United States and they have greater access to capital. While the United States and the EU have economies of similar magnitudes, in 2019, U.S. startups had a valuation of $1.37 trillion compared to EU startups with an evaluation of $240 billion.

The rise of Silicon Valley is an American success story. Today the top five companies in the United States based on market capitalization are tech companies. They have led the digital revolution, providing consumers a virtually endless stream of new products at low or even zero cost in many cases. These are signs of a robust market that serves consumers well. It is important to remember that big does not equate to bad—sometimes a firm is large because it is efficient at serving its customers what they want. The tech sector supports 12 million jobs and more than $2 trillion in economic output. Current antitrust laws grounded in the consumer welfare standard are part of the institutional framework that make this possible. Congress should ensure antitrust laws fit best into the modern U.S. economy, but the House proposals are a radical departure that shifts the focus to protecting competitors rather than consumers. They would weaponize antitrust law, provide politicians a greater say in America’s boardrooms and replace economic efficiency with political expediency and preference.

#### Wrecks all sectors of the economy.

Daren Bakst and Gabriella Beaumont-Smith 20. 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. 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. Heritage Foundation. 12-1-2020. https://www.heritage.org/technology/report/conservative-guide-the-antitrust-and-big-tech-debate

The United States should reward success, not punish it. Yet, the “big is bad” mindset is all about punishment. It would move the country to a misguided federal government intervention of “too big to succeed.” This should be rejected. Some of the criticism of Big Tech is reasonable, but it fails to make the case for changing antitrust law. Conservative critics are right to be worried about censorship, but they should not let this worry lead them to use the wrong tool to address their concerns and thereby make bad policy choices.

Increasing the federal government’s control over the economy by using antitrust law to go after the technology sector would be a bad policy choice. Even worse, many of the changes would not merely affect the technology sector, but all sectors of the economy. Policymakers should recognize that antitrust law is perfectly capable of addressing genuine anticompetitive behavior. Conservatives should be the stalwarts of economic freedom and liberty, fighting back against these measures that could undermine Americans’ freedom and prosperity.

## China

#### No heg impact.

Christopher J. Fettweis 17. Associate professor of political science, Tulane. “Unipolarity, Hegemony, and the New Peace.” Security Studies, 26:3, 423-451.

These assessments of conflict are by necessity relative, because there has not been a “high” level of conflict in any region outside the Middle East during the period of the New Peace. Putting aside for the moment that important caveat, some points become clear. The great powers of the world are clustered in the upper right quadrant, where US intervention has been high, but conflict levels low. US intervention is imperfectly correlated with stability, however. Indeed, it is conceivable that the relatively high level of US interest and activity has made the security situation in the Persian Gulf and broader Middle East worse. In recent years, substantial hard power investments (Somalia, Afghanistan, Iraq), moderate intervention (Libya), and reliance on diplomacy (Syria) have been equally ineffective in stabilizing states torn by conflict. While it is possible that the region is essentially unpacifiable and no amount of police work would bring peace to its people, it remains hard to make the case that the US presence has improved matters. In this “strong point,” at least, US hegemony has failed to bring peace.

In much of the rest of the world, the United States has not been especially eager to enforce any particular rules. Even rather incontrovertible evidence of genocide has not been enough to inspire action. Washington’s intervention choices have at best been erratic; Libya and Kosovo brought about action, but much more blood flowed uninterrupted in Rwanda, Darfur, Congo, Sri Lanka, and Syria. The US record of peacemaking is not exactly a long uninterrupted string of successes. During the turn-of-the-century conventional war between Ethiopia and Eritrea, a highlevel US delegation containing former and future National Security Advisors (Anthony Lake and Susan Rice) made a half-dozen trips to the region, but was unable to prevent either the outbreak or recurrence of the conflict. Lake and his team shuttled back and forth between the capitals with some frequency, and President Clinton made repeated phone calls to the leaders of the respective countries, offering to hold peace talks in the United States, all to no avail.67 The war ended in late 2000 when Ethiopia essentially won, and it controls the disputed territory to this day.

The Horn of Africa is hardly the only region where states are free to fight one another today without fear of serious US involvement. Since they are choosing not to do so with increasing frequency, something else is probably affecting their calculations. Stability exists even in those places where the potential for intervention by the sheriff is minimal. Hegemonic stability can only take credit for influencing those decisions that would have ended in war without the presence, whether physical or psychological, of the United States. It seems hard to make the case that the relative peace that has descended on so many regions is primarily due to the kind of heavy hand of the neoconservative leviathan, or its lighter, more liberal cousin. Something else appears to be at work.

Conflict and US Military Spending

How does one measure polarity? Power is traditionally considered to be some combination of military and economic strength, but despite scores of efforts, no widely accepted formula exists. Perhaps overall military spending might be thought of as a proxy for hard power capabilities; perhaps too the amount of money the United States devotes to hard power is a reflection of the strength of the unipole. When compared to conflict levels, however, there is no obvious correlation, and certainly not the kind of negative relationship between US spending and conflict that many hegemonic stability theorists would expect to see.

During the 1990s, the United States cut back on defense by about 25 percent, spending $100 billion less in real terms in 1998 that it did in 1990.68 To those believers in the neoconservative version of hegemonic stability, this irresponsible “peace dividend” endangered both national and global security. “No serious analyst of American military capabilities doubts that the defense budget has been cut much too far to meet America’s responsibilities to itself and to world peace,” argued Kristol and Kagan at the time.69 The world grew dramatically more peaceful while the United States cut its forces, however, and stayed just as peaceful while spending rebounded after the 9/11 terrorist attacks. The incidence and magnitude of global conflict declined while the military budget was cut under President Clinton, in other words, and kept declining (though more slowly, since levels were already low) as the Bush administration ramped it back up. Overall US military spending has varied during the period of the New Peace from a low in constant dollars of less than $400 billion to a high of more than $700 billion, but war does not seem to have noticed. The same nonrelationship exists between other potential proxy measurements for hegemony and conflict: there does not seem to be much connection between warfare and fluctuations in US GDP, alliance commitments, and forward military presence. There was very little fighting in Europe when there were 300,000 US troops stationed there, for example, and that has not changed as the number of Americans dwindled by 90 percent. Overall, there does not seem to be much correlation between US actions and systemic stability. Nothing the United States actually does seems to matter to the New Peace.

It is possible that absolute military spending might not be as important to explain the phenomenon as relative. Although Washington cut back on spending during the 1990s, its relative advantage never wavered. The United States has accounted for between 35 and 41 percent of global military spending every year since the collapse of the Soviet Union.70 The perception of relative US power might be the decisive factor in decisions made in other capitals. One cannot rule out the possibility that it is the perception of US power—and its willingness to use it—that keeps the peace. In other words, perhaps it is the grand strategy of the United States, rather than its absolute capability, that is decisive in maintaining stability. It is that to which we now turn.

Conflict and US Grand Strategy

The perception of US power, and the strength of its hegemony, is to some degree a function of grand strategy. If indeed US strategic choices are responsible for the New Peace, then variation in those choices ought to have consequences for the level of international conflict. A restrained United States is much less likely to play the role of sheriff than one following a more activist approach. Were the unipole to follow such a path, hegemonic-stability theorists warn, disaster would follow. Former National Security Advisor Zbigniew Brzezinski spoke for many when he warned that “outright chaos” could be expected to follow a loss of hegemony, including a string of quite specific issues, including new or renewed attempts to build regional empires (by China, Turkey, Russia, and Brazil) and the collapse of the US relationship with Mexico, as emboldened nationalists south of the border reassert 150-year-old territorial claims. Overall, without US dominance, today’s relatively peaceful world would turn “violent and bloodthirsty.” 71 Niall Ferguson foresees a post-hegemonic “Dark Age” in which “plunderers and pirates” target the big coastal cities like New York and Rotterdam, terrorists attack cruise liners and aircraft carriers alike, and the “wretchedly poor citizens” of Latin America are unable to resist the Protestantism brought to them by US evangelicals. Following the multiple (regional, fortunately) nuclear wars and plagues, the few remaining airlines would be forced to suspend service to all but the very richest cities.72 These are somewhat extreme versions of a central assumption of all hegemonic-stability theorists: a restrained United States would be accompanied by utter disaster. The “present danger” of which Kristol, Kagan, and their fellow travelers warn is that the United States “will shrink its responsibilities and—in a fit of absentmindedness, or parsimony, or indifference— allow the international order that it created and sustains to collapse.” 73

Liberals fear restraint as well, and also warn that a militarized version of primacy would be counterproductive in the long run. Although they believe that the rule-based order established by United States is more durable than the relatively fragile order discussed by the neoconservatives, liberals argue that Washington can undermine its creation over time through thoughtless unilateral actions that violate those rules. Many predicted that the invasion of Iraq and its general contempt for international institutions and law would call the legitimacy of the order into question. G. John Ikenberry worried that Bush’s “geostrategic wrecking ball” would lead to a more hostile, divided, and dangerous world.74 Thus while all hegemonicstability theorists expect a rise of chaos during a restrained presidency, liberals also have grave concerns regarding primacy.

Overall, if either version is correct and global stability is provided by US hegemony, then maintaining that stability through a grand strategy based on either primacy (to neoconservatives) or “deep engagement” (to liberals) is clearly a wise choice.75 If, however, US actions are only tangentially related to the outbreak of the New Peace, or if any of the other proposed explanations are decisive, then the United States can retrench without fear of negative consequences. The grand strategy of the United States is therefore crucial to beliefs in hegemonic stability.

Although few observers would agree on the details, most would probably acknowledge that post-Cold War grand strategies of American presidents have differed in some important ways. The four administrations are reasonable representations of the four ideal types outlined by Barry R. Posen and Andrew L. Ross in 1996.76 Under George H. W. Bush, the United States followed the path of “selective engagement,” which is sometimes referred to as “balance-of-power realism”; Bill Clinton’s grand strategy looks a great deal like what Posen and Ross call “cooperative security,” and others call “liberal internationalism”; George W. Bush, especially in his first term, forged a strategy that was as close to “primacy” as any president is likely to get; and Barack Obama, despite some early flirtation with liberalism, has followed a restrained realist path, which Posen and Ross label “neo-isolationism” but its proponents refer to as “strategic restraint.” 77 In no case did the various anticipated disorders materialize. As Table 2 demonstrates, armed conflict levels fell steadily, irrespective of the grand strategic path Washington chose.

Neither the primacy of George W. Bush nor the restraint of Barack Obama had much effect on the level of global violence. Despite continued warnings (and the high-profile mess in Syria), the world has not experienced an increase in violence while the United States chose uninvolvement. If the grand strategy of the United States is responsible for the New Peace, it is leaving no trace in the evidence.

Perhaps we should not expect a correlation to show up in this kind of analysis. While US behavior might have varied in the margins during this period, nether its relative advantage over its nearest rivals nor its commitments waivered in any important way. However, it is surely worth noting that if trends opposite to those discussed in the previous two sections had unfolded, if other states had reacted differently to fluctuations in either US military spending or grand strategy, then surely hegemonic stability theorists would argue that their expectations had been fulfilled. Many liberals were on the lookout for chaos while George W. Bush was in the White House, just as neoconservatives have been quick to identify apparent worldwide catastrophe under President Obama.78 If increases in violence would have been evidence for the wisdom of hegemonic strategies, then logical consistency demands that the lack thereof should at least pose a problem

As it stands, the only evidence we have regarding the relationship between US power and international stability suggests that the two are unrelated. The rest of the world appears quite capable and willing to operate effectively without the presence of a global policeman. Those who think otherwise have precious little empirical support upon which to build their case. Hegemonic stability is a belief, in other words, rather than an established fact, and as such deserves a different kind of examination.

The Political Psychology of Unipolarity

Evidence supporting the notion that US power is primarily responsible for the New Peace is slim, but belief in the connection is quite strong, especially in policy circles. The best arena to examine the proposition is therefore not the world of measurable rationality, but rather that of the human mind. Political psychology can shed more light on unipolarity than can any collection of data or evidence. Just because an outcome is primarily psychological does not mean that it is less real; perception quickly becomes reality for both the unipolar state and those in the periphery. If all actors believe that the United States provides security and stability for the system, then behavior can be affected. Beliefs have deep explanatory power in international politics whether they have a firm foundation in empirical reality or not.

Like all beliefs, faith in the stability provided by hegemony is rarely subjected to much analysis. In their simplest form, beliefs are ideas that have become internalized and accepted as true, often without much further analysis Although they almost always have some basis in reality, beliefs need not pass rigorous tests to prove that they match it. No amount of evidence has been able to convince some people that vaccines do not cause autism, for example, or that the world is more peaceful than at any time before, or that the climate is changing due to human activity. Ultimately, as Robert Jervis explains, “we often believe as much in the face of evidence as because of it.”

When leaders are motivated to act based on unjustified, inaccurate beliefs, folly often follows. The person who decides to take a big risk because of astrological advice in the morning's horoscope can benefit from baseless superstition if the risk pays off. Probability and luck suggest that successful policy choices can sometimes flow from incorrect beliefs. Far more often, however, poor intellectual foundations lead to suboptimal or even disastrous outcomes. It is worthwhile to analyze the foundations of even our most deeply held beliefs to determine which ones are good candidates to inspire poor policy choices in those who hold them.

People are wonderful rationalizers. There is much to be said for being the strongest country in the world; their status provides Americans both security and psychological rewards, as well as strong incentives to construct a rationale for preserving the unipolar moment that goes beyond mere selfishness. Since people enjoy being “number one,” they are susceptible to perceiving reality in ways that brings the data in line with their desires. It is no coincidence that most hegemonic stability theorists are American. Of the few hegemonic-stability theorists from elsewhere, most hail from the United Kingdom and counsel the United States to follow the lead of the British Empire. Perhaps the satisfaction that comes with being the unipolar power has inspired Americans to misperceive the positive role that their status plays in the world.

Three findings from political psychology can shed light on perceptions of hegemonic stability. They are mutually supportive, and, when taken together, suggest that it is likely that US policymakers overestimate the extent to which their actions are responsible for the choices of others. The belief in the major US contribution to world peace is probably unjustified.

The Illusion of Control

Could 5 percent of the world’s population hope to enforce rules upon the rest? Would even an internationally hegemonic United States be capable of producing the New Peace? Perhaps, but it also may be true that believers in hegemonic stability may be affected by the very common tendency of people to overestimate their ability to control events. A variety of evidence has accumulated over the past forty years to support Ellen J. Langer’s original observations about the “illusion of control” that routinely distorts perception.82 Even in situations where outcomes are clearly generated by pure chance, people tend to believe that they can exert control over events.83 There is little reason to believe that leaders are somehow less susceptible to such illusions than subjects in controlled experiments.

The extensive research on the illusion of control has revealed two further findings that suggest US illusions might be even stronger than average. First, misperceptions of control appear to be correlated with power: individuals with higher socioeconomic status, as well as those who are members of dominant groups, are more likely to overestimate their ability to control events.84 Powerful people tend to be far more confident than others, often overly so, and that confidence leads them to inflate their own importance.85 Leaders of superpowers are thus particularly vulnerable to distorted perceptions regarding their ability to affect the course of events. US observers had a greater structural predisposition than others, for example, to believe that they would have been able to control events in the Persian Gulf following an injection of creative instability in 2003. The skepticism of less powerful allies was easily discounted.

Second, there is reason to believe that culture matters as well as power. People from societies that value individualism are more likely to harbor illusions of control than those from collectivist societies, where assumptions of group agency are more common. When compared to people from other parts of the world, Westerners tend to view the world as “highly subject to personal control,” in the words of Richard Nisbett.86 North Americans appear particularly vulnerable in this regard.87 Those who come from relatively powerful countries with individualistic societies are therefore at high risk for misperceiving their ability to influence events.

For the United States, the illusion of control extends beyond the water’s edge. An oft-discussed public good supposedly conferred by US hegemony is order in those parts of the world uncontrolled by sovereign states, or the “global commons.” 88 One such common area is the sea, where the United States maintains the only true blue-water navy in the world. That the United States has brought this peace to the high seas is a central belief of hegemonic-stability theorists, one rarely examined in any serious way. Indeed the maritime environment has been unusually peaceful for decades; the biggest naval battles since Okinawa took place during the Falklands conflict in 1982, and they were fairly minor.89 If hegemony is the key variable explaining stability at sea, maritime security would have to be far more chaotic without the US Navy.

It is equally if not more plausible to suggest, however, that the reason other states are not building blue-water navies is not because the United States dissuades them from doing so but rather because none feels that trade is imperiled.90 In earlier times, and certainly during the age of mercantilism, zero-sum economics inspired efforts to cut off the trade of opponents on occasion, making control the sea extremely important. Today the free flow of goods is vital to all economies, and it would be in the interest of no state to interrupt it.91 Free trade at sea may no longer need protection, in other words, because it essentially has no enemies; the sheriff may be patrolling a crime-free neighborhood. The threat from the few remaining pirates hardly requires a robust naval presence, and is certainly not what hegemonic-stability advocates mean when they compare the role played by the US Navy in 2016 to that of the Royal Navy in 1816. It is at least possible that shared interest in open, free commons keeps the peace at sea rather than the United States. Oceans unpatrolled by the US Navy may be about as stable as they are with the presence of its carriers. The degree to which 273 active-duty ships exert control over vast common parts is not at all clear.

People overestimate the degree to which they control events in their lives. Furthermore, if these observations from political psychology are right about the factors that influence the growth of illusions of power, then US leaders and analysts are particularly susceptible to misperception. They may well be overestimating the degree to which the United States can affect the behavior of others. The rest of the world may be able to get along just fine, on land and at sea, without US attempts to control it.

#### Warming’s not existential---framing it as such undermines solvency.

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In the lead-up to the 2014 IPCC Fifth Assessment Report (AR5), researchers developed four scenarios for what might happen to greenhouse-gas emissions and climate warming by 2100. They gave these scenarios a catchy title: Representative Concentration Pathways (RCPs)1. One describes a world in which global warming is kept well below 2 °C relative to pre-industrial temperatures (as nations later pledged to do under the Paris climate agreement in 2015); it is called RCP2.6. Another paints a dystopian future that is fossil-fuel intensive and excludes any climate mitigation policies, leading to nearly 5 °C of warming by the end of the century2,3. That one is named RCP8.5.

RCP8.5 was intended to explore an unlikely high-risk future2. But it has been widely used by some experts, policymakers and the media as something else entirely: as a likely ‘business as usual’ outcome. A sizeable portion of the literature on climate impacts refers to RCP8.5 as business as usual, implying that it is probable in the absence of stringent climate mitigation. The media then often amplifies this message, sometimes without communicating the nuances. This results in further confusion regarding probable emissions outcomes, because many climate researchers are not familiar with the details of these scenarios in the energy-modelling literature.

This is particularly problematic when the worst-case scenario is contrasted with the most optimistic one, especially in high-profile scholarly work. This includes studies by the IPCC, such as AR5 and last year’s special report on the impact of climate change on the ocean and cryosphere4. The focus becomes the extremes, rather than the multitude of more likely pathways in between.

Happily — and that’s a word we climatologists rarely get to use — the world imagined in RCP8.5 is one that, in our view, becomes increasingly implausible with every passing year5. Emission pathways to get to RCP8.5 generally require an unprecedented fivefold increase in coal use by the end of the century, an amount larger than some estimates of recoverable coal reserves6. It is thought that global coal use peaked in 2013, and although increases are still possible, many energy forecasts expect it to flatline over the next few decades7. Furthermore, the falling cost of clean energy sources is a trend that is unlikely to reverse, even in the absence of new climate policies7.

Assessment of current policies suggests that the world is on course for around 3 °C of warming above pre-industrial levels by the end of the century — still a catastrophic outcome, but a long way from 5 °C7,8. We cannot settle for 3 °C; nor should we dismiss progress.

Plan for progress

Some researchers argue that RCP8.5 could be more likely than was originally proposed. This is because some important feedback effects — such as the release of greenhouse gases from thawing permafrost9,10 — might be much larger than has been estimated by current climate models. These researchers point out that current emissions are in line with such a worst-case scenario11. Yet, in our view, reports of emissions over the past decade suggest that they are actually closer to those in the median scenarios7. We contend that these critics are looking at the extremes and assuming that all the dice are loaded with the worst outcomes.

Asking ‘what’s the worst that could happen?’ is a helpful exercise. It flags potential risks that emerge only at the extremes. RCP8.5 was a useful way to benchmark climate models over an extended period of time, by keeping future scenarios consistent. Perhaps it is for these reasons that the climate-modelling community suggested RCP8.5 “should be considered the highest priority”12.

We must all — from physical scientists and climate-impact modellers to communicators and policymakers — stop presenting the worst-case scenario as the most likely one. Overstating the likelihood of extreme climate impacts can make mitigation seem harder than it actually is. This could lead to defeatism, because the problem is perceived as being out of control and unsolvable. Pressingly, it might result in poor planning, whereas a more realistic range of baseline scenarios will strengthen the assessment of climate risk.

## T-CWS

#### 1] Scope and enforcement are distinct questions

Timothy Besley et al 20. Corresponding Author, Department of Economics and STICERD, London School of Economics and Political Science. Nicola Fontana, Department of Economics and Center for Economic Performance, London School of Economics and Political Science. Nicola Limodio, Department of Finance, BAFFI CAREFIN and IGIER, Bocconi University. “Antitrust Policies and Profitability in Non-Tradable Sectors”. August 2020. http://eprints.lse.ac.uk/106493/1/institution\_competition\_full\_20200901.pdf

The Antitrust Measure To measure antitrust policy at a country level, we use the Total Scope Index Score (Scope Index) from Hylton and Deng (2007).10 They code antitrust laws and policies around the world (112 countries in the most recent version) in order to have a metric for the strength of antitrust laws. The authors examine the effects of various components of competition law and assign a score depending how the national law specifies procedures, penalties, and enforcement.11 The total index score is the sum of the scores for each category as elaborated further in Hylton and Deng (2007). The minimum possible total index score is 0 and the maximum is 30. For our analysis, it is important to point out that it is principally (if not exclusively) a de jure index; it has no direct measure of the effectiveness of antitrust policies in practice. Section II of Hylton and Deng (2007) discusses the methodology extensively. 12 In the empirical analysis below, we average the index over the ten year period of our data (2006-2015). We will also test the robustness of the results to using the budget allocated to the antitrust regulator using data from Bradford et al. (2019).

#### 2] CWS is the consistent goal.

Elyse Dorsey 20. “Antitrust in Retrograde: The Consumer Welfare Standard, Socio-Political Goals, and the Future of Enforcement”. https://gaidigitalreport.com/wp-content/uploads/2020/11/Dorsey-Antitrust-in-Retrograde.pdf

Antitrust law has largely flourished in the last 40 or so years, having established a newfound sense of self that is both coherent and capable of achieving its ends. It benefits from a longstanding and nonpartisan support for the consumer welfare standard.65 The Supreme Court has consistently, and on a nonpartisan basis, acknowledged the economic grounding and consumer welfare goals of the antitrust laws.66 The consumer welfare standard today thus serves as a common language unifying antitrust cases and analysis. Continued disagreements over original legislative intent have not forestalled this consensus, owing to this and many other benefits (developed below), including increased certainty, clarifying and narrowing the scope of applicable goals to consider, and facilitating the rule of law.67

#### Interp strikes a middle ground with both sides’ offense. Tons of proposals and disad scenarios.

Ariel Ezrachi 18. Slaughter and May Professor of Competition Law, The University of Oxford. Director, Oxford University Centre for Competition Law and Policy. EU Competition Law Goals and The Digital Economy. “Ezrachi - Goals and the digital economy - Working paper.pdf” https://d1wqtxts1xzle7.cloudfront.net/57115872/Ezrachi\_-\_Goals\_-\_Aug\_2018-with-cover-page-v2.pdf?Expires=1638214770&Signature=Mpj92d9khmpS0HyzF3CslPfb5dW85lbsqJCFgU7D3GFTj70U5Gmz8RSwdhVHuxhj9i9BowILCRURtQhqIJ7K04JEI63btRTbEl8KxIr46OUPivr09yML6cP3LePcVM91a6QIQCxZHlvD-CWrhFPrhKwhltMKdr2MAeQwKl~C8BcVvhWta42~SbQV5rolyiYlJSdi-Ud4-RMCW6ezyaWhgw3yaulQnnIBg7BvfT04pXgG9Ljo9ZfYx1Y1rJA8B7S~WqSCszmjSrZUoQSPjD8sxw9RuBoJVxBWrXAYIYyF9Fa-df-uhBY24PMlRIMzpOK~xHfcyxo7AQ1pGVd-3rg8QA\_\_&Key-Pair-Id=APKAJLOHF5GGSLRBV4ZA

In this respect, it is interesting to consider the enforcement approach in the US and its relevance to EU competition regime. This is particularly so in light on current debate in the US on the need and desirability of changing the benchmark for antitrust assessment, the efficacy of US antitrust law, and its ability to deal with increased concentration and market power.145 That debate stems from the evolution of US antitrust law which has seen it being narrowed in scope over the years,146 and the rise of voices which argue in favour of widening the notion of consumer welfare and the realm of US antitrust. The alleged decline in competitiveness of US markets has led to an array of proposals (which range from moderate intervention to condemnation of bigness) and to numerous counter arguments.147

---FOOTNOTE 147 STARTS---

147 On the US debate on ‘Hipster Antitrust’ (or ‘New Brandeis Movement’) see for example: Carl Shapiro ‘Antitrust in a Time of Populism’ [2018] International Journal of Industrial Organization (forthcoming); Lina Khan ‘The New Brandeis Movement: America’s Antimonopoly Debate’ [2018] Journal of European Competition Law & Practice 131; Daniel A Crane, ‘Four questions for the neo-brandeisians’ [2018] CPI Antitrust Chronicle 63; Harry First ‘Woodstock antitrust’ [2018] CPI Antitrust Chronicle 57 ; Philip Marsden ‘Who should trust-bust? Hippocrates, not hipsters’ [2018] CPI Antitrust Chronicle 34; Howard A Shelanski, ‘Information, Innovation, and Competition Policy for the Internet [2013] U Pa LRev 1663; Herbert Hovenkamp ‘Whatever Did Happen to the Antitrust Movement?’ [2018] Notre Dame LRev (forthcoming).

---FOOTNOTE 147 ENDS---

## Regs

#### 2. “Do both” is antitrust duplication---the disputes collapse resources, effectiveness, and signaling.

Carl W. Hittinger and Tyson Y. Herrold 19. Carl W. Hittinger (LAW ’79) is a senior partner and serves as BakerHostetler’s Antitrust and Competition Practice National Team Leader and the litigation group coordinator for the firm’s Philadelphia office. He concentrates his practice on complex commercial and civil rights trial and appellate litigation, with a particular emphasis on antitrust and unfair competition matters, including class actions. Tyson Y. Herrold is an associate in the firm’s Philadelphia office in its litigation group. His practice focuses on complex commercial litigation, particularly antitrust and unfair competition matters, as well as civil rights litigation. "Antitrust Agency Turf War Over Big Tech Investigations". Temple 10-Q. https://www2.law.temple.edu/10q/antitrust-agency-turf-war-over-big-tech-investigations/

Disputes over clearance can have tangible adverse effects on enforcement. First, some have commented that delays caused by clearance disputes can narrow the efficacy of remedial options, particularly with mergers. As Sen. Richard Blumenthal has commented, “The Big Tech companies are not waiting for the agencies to finish their cases. They are structuring their companies so that you can’t unscramble the egg.” Structural remedies are favored by Delrahim, who has commented that alternative, behavioral remedies should be used sparingly: “The division has a strong preference for structural remedies over behavioral ones. … The Antitrust Division is a law enforcer and, even where regulation is appropriate, it is not equipped to be the ongoing regulator.”

Second, disputes over clearance and, more so, duplicative investigations waste agency resources, threaten to blunt their effectiveness, and can lead to inconsistent and confusing governmental positions. In the Sept. 17 oversight hearing, Simons and Delrahim were both criticized for requesting an increase in funding: “As you both acknowledged, both of you could use, and desperately need, more resources. That being the case, it makes no sense to me that we should have duplication of effort, when that has a tendency inevitably to undermine the effectiveness of what you’re doing.” Duplicative investigations dilute the specialization that is a principal goal of the agencies’ clearance agreement and raise the risk that one agency will take legal positions that undercut the other. No doubt the DOJ’s amicus brief in the Qualcomm case influenced the U.S. Court of Appeals for the Ninth Circuit’s decision to issue a stay pending appeal.

So how will the FTC and DOJ resolve their latest turf war? Perhaps they will revisit their clearance agreement and decide to split their authority by company or the business practice being investigated, based on prior agency experience, rather than by industry as Appendix A currently does. Or maybe Congress will decide to consolidate civil antitrust enforcement jurisdiction under one agency. That seems like a long shot considering the political implications. However, during the Senate’s antitrust oversight hearing, Sen. Josh Hawley proposed “cleaning up the overlap in jurisdiction by removing it from one agency” and “clearly designating enforcement authority to one agency.” One thing is sure—the agencies should not be duplicating civil antitrust investigations. Stay tuned.

#### “Expanding the scope” of “anti-trust laws” must be the DOJ and FTC.

Jarod Bona 21. Bona Law PC. "Five U.S. Antitrust Law Tips for Foreign Companies". Antitrust Attorney Blog. 1-16-2021. https://www.theantitrustattorney.com/five-u-s-antitrust-tips-foreign-companies/

1. Two federal and many state agencies enforce antitrust laws in the United States

The United States government has two separate antitrust agencies—the Federal Trade Commission (FTC) and the Antitrust Division of the Department of Justice (DOJ). The FTC is an independent federal agency controlled by several Commissioners, while the Antitrust Division of the DOJ is part of the Executive Branch, under the President.

Both of them enforce federal antitrust laws (among other laws). Their jurisdictions technically overlaps, but they tend to have informal agreements between each other for one or the other to handle certain industries or subjects. If you are part of a major industry, your antitrust lawyer may be able to tell you whether the DOJ or FTC is likely to oversee competition issues in your field.

#### 2. Jurisdiction: the plan expands the DOJ and FTC role.

Babette E. Boliek 11. Associate Professor of Law at Pepperdine University School of Law. J.D., Columbia University School of Law; Ph.D., Economics University of California, Davis. FCC Regulation Versus Antitrust: How Net Neutrality is Defining the Boundaries, 52 B.C.L. Rev. 1627 (2011). <http://lawdigitalcommons.bc.edu/bclr/vol52/iss5/2>

There is a crucial battle playing out in the world of Internet access provision. While the Internet is the natural home of competing business giants and warring digital avatars, the contest that will have the most sweeping ramifications for the future of the Internet is the turf war being waged between the Federal Communications Commission (FCC), on the one hand, and the Federal Trade Commission (FTC) and the Department of Justice (DOJ), on the other.1 Nothing less than jurisdiction over the development of the Internet is at stake.

Jurisdiction over Internet access provision is not the first confrontation between these particular government agencies; in fact, they have clashed many times.2 But it is the current iteration of the FCC’s “net neutrality” regulations that has generated the latest contest. Roughly defined, net neutrality encompasses principles of commercial Internet access that include equal treatment and delivery of all Internet applications and content.3 For some, net neutrality stands further for the proposition that Internet access operators should not be permitted to provide different qualities of service for certain application providers (e.g., guaranteed speeds of transmission), even if those application providers can freely choose their desired quality of service.4 Net neutrality has reinvigorated what may be described as an underlying interagency tug of war that reaches deep within, and far beyond, the communications industry.

Although the two regimes share a commonality of purpose—to protect consumers and to promote allocative efficiencies in production—the two have quite distinct, predominately opposing, means of securing social benefits. As Justice Stephen Breyer stated when serving as a judge on the U.S. Court of Appeals for the First Circuit, although regulation and the antitrust laws “typically aim at similar goals—i.e., low and economically efficient prices, innovation, and efficient production methods” —regulation looks to achieve these goals directly “through rules and regulations; [but] antitrust seeks to achieve them indirectly by promoting and preserving a process that tends to bring them about.”5 The battle between these two regimes may be broadly summarized in a single issue thusly: in the face of the industry-specific regulator, what is (or what should be) the role of antitrust law?6

Antitrust law preserves the process of competition across all industries by condemning anticompetitive conduct when it occurs. In contrast, industrial regulation by its nature is a public declaration that, in a given industry, market forces are too weak or underdeveloped to produce the consumer benefits that are realized in competitive markets— regulated industries are carved out from the rest of the economy and are subject to proactive, regulatory intervention that goes above and beyond antitrust enforcement measures.7 Not surprisingly, regulatory agencies were historically created as substitutes for market forces in the few markets that, by the nature of the product or technology, were natural monopolies or severely prone to monopoly.8 In the vast major- ity of markets, however, the antitrust law is the default government control, designed to supplement market forces to inhibit or prevent the growth of monopoly.

Again, although the goals of the two regimes may be similar, the means by which each can achieve those goals are in opposition. Therefore, the threshold determination of which industries are to be singled out for industry-specific regulation, and to what degree, is of vital importance as it simultaneously determines the predominance of the regulator versus the antitrust authority in securing the social good.

This Article sets forth a framework to identify the boundaries between FCC regulatory power and antitrust authority. The goal is to pinpoint for Congress the problematic use of regulatory discretion in defining, or redefining, those boundaries and to propose the standard by which Congress may address inappropriate use of existing FCC jurisdiction. Specifically, this Article creates a new categorization of “procedural opportunism” and “substantive opportunism” to identify problematic, regulatory assertions of jurisdiction. The central issue examined in this Article is to posit what is (or should be) the boundaries of antitrust law in relation to the FCC’s regulatory authority. This important issue has reached a point of public crises in the current net neutrality debate.9 Rather than act reflexively, this is an opportunity for Congress to act clearly to redefine the boundaries between the two regimes that have otherwise been blurred by regulatory overreach.

#### 3. Legal code---antitrust requires Title 15 of US Code.

Sanjukta M. Paul 16. David J. Epstein Fellow, UCLA School of Law. The Enduring Ambiguities of Antitrust Liability for Worker Collective Action. Loyola University Chicago Law Journal. https://www.congress.gov/116/meeting/house/110152/witnesses/HHRG-116-JU05-Wstate-PaulS-20191029-SD002.pdf

Unlike the Clayton Act, which was the first legislative attempt at a labor exemption from antitrust,202 the Norris-La Guardia Act did not grapple directly with trade regulation in subject matter—even with how trade regulation applies to labor—although it had the effect of modifying its reach. Norris-La Guardia is not an antitrust statute. Instead, it is incorporated into Title 29 (“Labor”) of the United States Code. By contrast, the Clayton Act was conceived and written as an antitrust statute, was incorporated into Title 15, the antitrust and trade regulation section of the Code, and portions of it dealt with matters other than labor.

2AC Fukuyama et al. 21 [BLUE]

(Fukuyama, Francis, et al. Yoshihiro Francis Fukuyama is an American political scientist, political economist, and writer of Japanese descent. “How to Save Democracy from Technology: Ending Big Tech's Information Monopoly.” Foreign Affairs, 2021, msande.stanford.edu/news/how-save-democracy-technology. JPR)

The most obvious method of checking that power is government regulation. That is the approach followed in Europe, with Germany, for example, passing a law that criminalizes the propagation of fake news. Although **regulation** may still be possible in some democracies with a high degree of social consensus, it **is unlikely to work in a country as polarized as the United States**. Back in the heyday of broadcast television, the Federal Communications Commission's fairness doctrine required networks to maintain "balanced" coverage of political issues. Republicans relentlessly attacked the doctrine, claiming the networks were biased against conservatives, and the Federal Communications Commission rescinded it in 1987. So imagine a public regulator trying to decide whether to block a presidential tweet today. Whatever the decision, it would be massively controversial. Another approach to checking Internet platforms' power is to promote greater competition. If there were a multiplicity of platforms, none would have the dominance enjoyed by Facebook and Google today. The problem, however, is that **neither the United States nor the EU could likely break up Facebook or Google** the way that Standard Oil and AT&T were broken up. Today's technology companies would fiercely resist such an attempt, and even if they eventually lost, the process of breaking them up would take years, if not decades, to complete. Perhaps more important, it is not clear that breaking up Facebook, for example, would solve the underlying problem. There is a very good chance that a baby Facebook created by such a breakup would quickly grow to replace the parent. Even AT&T regained its dominance after being broken up in the 1980s. Social media's rapid scalability would make that happen even faster.

#### Dayan is non responsive---Price controls work---regulation empirically more effective

Sumit K. Majumdar 21. Sumit K. Majumdar Ph. D. is Professor in the Jindal School of Management at the University of Texas at Dallas. “Stick Versus Carrot: Comparing Structural Antitrust and Behavioral Regulation Outcomes.” The Antitrust Bulletin. June 2021. DOI:[10.1177/0003603X211023463](https://doi.org/10.1177/0003603X211023463)

A. Evaluation of Structural Versus Behavioral Remedy Outcomes

The issue is which method works better, the antitrust (structural) or the regulatory (behavioral)? Using a standard test of differences in magnitude between two variables, as natural experiment 3 I evaluate if the antitrust (structural) approach or the regulatory (behavioral) remedy has had a greater impact in enhancing efficiency. Results are in Table 4. Column (A) relates to the performance outcome variable comparatively evaluated. Column (B) reports if the antitrust (structural) impact is less than that of the regulatory (behavioral) measures, on performance, and column (C) reports if the difference has been statistically significant.

**For the productive efficiency score, the regulatory (behavioral) remedy has statistically had a greater impact than the antitrust (structural) method in enhancing efficiency.** (Recollect that Tables 2 and 3 reported results on how the structural vs. behavioral remedies impacted efficiency scores. The impacts were 2.23% for the structural remedy (column [A] in panel [B] of Table 2) and 4.33% (column [A] in panel [B] of Table 3) for the behavioral remedy.)

B. Robustness Check

An evaluation of why price caps, as endogenous phenomena,64 were implemented would depend on firm-level factors, such as past performance; these would have influenced the implementation of price cap regulatory schemes for specific firms. As a robustness check, controlling for inclusion of endogenous factors, past performance variables have been included as price caps determinants for each observation, in a selection equation with the price cap variable then determining performance in an outcome equation. The results show the price cap estimates to be of relatively the same magnitude (in fact, they are larger), sign, and significance as the estimate values already reported in this article.65

C. Summary

**Overall, significantly larger positive outcomes have emerged from sector-specific regulatory (behavioral) remedy applications** vis-`a-vis the concurrent antitrust (structural) remedy application. The use of further performance variables to comparatively test the ideas has yielded very similar results. Such additional results are available on request.

#### Antitrust makes too many mistakes and firms remonopolize---regulation solves

Sumit K. Majumdar 21. Sumit K. Majumdar Ph. D. is Professor in the Jindal School of Management at the University of Texas at Dallas. “Stick Versus Carrot: Comparing Structural Antitrust and Behavioral Regulation Outcomes.” The Antitrust Bulletin. June 2021. DOI:[10.1177/0003603X211023463](https://doi.org/10.1177/0003603X211023463)

There is continuing debate on whether structural (stick) or behavioral (carrot) remedies are preferred in implementing institutional mandates. Antitrust and regulatory authorities’ goals are to balance anticompetitive and efficiency considerations. A distinctive context has provided historical data, for an entire population of firms for a fourteen-year period, to evaluate structural and behavioral regulations’ impacts on performance, for the same firms at the same time.

The 1984 breakup of AT&T was followed by structural changes accompanying the TA 1996 implementation to permit competitor entry into ILECs’ territories. Simultaneously, the ILECs had been subject to price regulation, a behavioral remedy to ameliorate local monopolists’ pricing behavior. The two parallel remedies are compared, in like-for-like analyses, to assess outcome variations. Well-designed behavioral regulations (the carrot), grounded in realistic views about firms, representing how market processes work in an ex ante manner, **have had a larger positive impact relative to structural remedies (the stick). The incremental benefit of the carrot vis-`a-vis the stick has been US$2 billion annually.**

There is consistent contemporary demand for actions against technology companies involving separations, by activists, scholars, and politicians. **Such actions may not be able to hold technology firms accountable**. Ameliorative structural remedies, based on an ex post destructive attack on firms’ prior entrepreneurship conduct **would yield one-shot outcomes**. Such an outcome would be a shortterm media win, perhaps with electoral benefits, for the proselytizers of the separations manifesto.

After a period of adjustment to the institutionally altered scenario, there is ever-present clear and significant danger of firm attitudes displaying retrograde patterns and the spectacle of recidivist behavior occurring.134 The remonopolization of the U.S. telecommunications sector, in less than two decades after the so-called path-breaking structural separation reforms were put through in 1984, is **a stark example of extremely rapid recidivism.** In the oil and gas sector, the companies that were created as a result of the implementation of separation remedies in the Standard Oil case merged to remonopolize the sector in later decades.

Behavioral regulation approaches, rather than a structural remedy, may be relevant in ameliorating harmful behavior. Such behavioral approaches are based on an ex ante constructive support of firms’ future conduct. These behavioral designs permit firms strategic autonomy and operational flexibility, eliminate adverse selection and moral hazard concerns, and make firm and institutional incentives compatible. These conditions permit firms to display traits consistent with engaging in discovery processes to meet goals. The discovery processes can lead to appropriate resource mixes and yield the best-possible efficiency outcomes.

The innately forward-looking behavioral remedies are to be preferred in generating long-run sustainable dynamic efficiencies with sustainable large fiscal benefits. **Hence, a managed regulation framework, to implement behavioral remedies, oriented around outcomes and goals, would significantly enhance consumer welfare**. A fundamental challenge lies ahead in designing such a framework to tackle modern technology-era contingencies.

## Ag

#### Expand the scope of antitrust refers exclusively to formal law not enforcement.

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.

#### They say ftc courts---they fail.

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

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

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

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

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

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

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

#### Litigation is too slow and enforced inherently reactionary.

Tom Wheeler et. al. 20. Wheeler is a Senior Fellow at the Shorenstein Center at Harvard Kennedy School and a Visiting Fellow at the Brookings Institution; Phil Verveer is a former Senior Counsellor to the Chairman of the FCC and presently a Senior Fellow at the Shorenstein Center at Harvard Kennedy School; Gene Kimmelman is a Senior Fellow at the Shorenstein Center at Harvard Kennedy School. "New Digital Realities; New Oversight Solutions." Shorenstein Center. 8-20-2020. https://shorensteincenter.org/new-digital-realities-tom-wheeler-phil-verveer-gene-kimmelman/

ANTITRUST: AT BEST A PARTIAL SOLUTION Our first national competition law, the Sherman Act, was written in 1890 in the era of “trusts,” financial constructions that gave control over multiple state-chartered companies to a common entity. Twenty-four years later it was updated with the Clayton Act to establish a national policy to protect against a broader definition of restricted competition. The antitrust laws were created to protect competition in an industrial environment. The application of these statutes to the digital environment has been impeded not only by the challenge of applying industrial concepts to a digital reality but also by the evolution in jurisprudence over the last forty years. Today’s implementation of competition policy began in the 1970s with the broad adoption by courts and prosecutors of the so-called Chicago School’s assertion that most competition-related government interventions in the economy were counterproductive.[9] The only true measure of a company’s market power, according to the strong version of the theory, is the effect on consumers as measured principally by prices. In the intervening decades this version of the “consumer welfare test” has become a conservative litmus test for judicial appointments and a guiding light of antitrust policy. It appears to have a majority of the United States Supreme Court as adherents. The 2018 decision in Ohio v. American Express Co. is both the first time the Supreme Court has addressed an antitrust claim involving a two-sided platform and an instance of the Court majority’s non-interventionist priors. The decision has, at least, increased the complexity of antitrust enforcement involving digital platforms. But without regard to its intrinsic merits, it illustrates one thing beyond any serious dispute: A process that began with a government complaint in October 2010 and not ultimately resolved until June 2018 is insufficient to deal with today’s digital platforms. Something more will be required. Such a “something” begins with the recognition of certain digital platforms (or certain components of them) as essential facilities. As common experience and multiple studies have illustrated, however, these essential services do not confront effective competition and are unlikely to do so in the future. The consequences are significant.[10] The introduction of competition in the case of targeted advertising, for instance, would have as predictable consequences that advertisers would pay less, publishers would receive more, and consumers would see an improvement in the quality and quantity of services available online. While an important tool in the toolbox, it must be realized that antitrust remedies are blunt instruments. They are, for instance, an ex post response to a problem rather than an ex ante policy that would discourage such difficulties in the first place. Furthermore, antitrust enforcement is inherently uncertain and reliably lengthy, a period in which the targets continue their anticompetitive behavior. By the time of even successful conclusions, rapid tech changes often have redefined the relevance of the initial complaint (See US v. Microsoft). There is also a substantial question of whether courts rather than specialized regulatory agencies are best equipped to deal with the issues raised by the digital platforms. Professor Weiser cites Judge Easterbrook for the proposition that “courts are inherently ill-suited for such a role both because they lack the ability to gather, and the expertise to process, the necessary information.”[11] Conclusion: Antitrust is an important tool but cannot be relied upon as the only tool. There must be realistic expectations as to what the tool can accomplish. There also must be a regulatory partner to the judicial remedy of antitrust.

#### Food prices don’t cause conflict–reject their bad studies.

Demarest 15—PhD Researcher at the Centre for Research on Peace and Development [Leila, “Food price rises and political instability: Problematizing a complex relationship,” *The European Journal of Development Research*, Vol. 27, No. 5, p. 650-671, Emory Libraries]

6. Conclusions and Way Forward

While some progress has been made in improving our understanding of the linkages between rising food prices and conflict, several important gaps remain. Firstly, notions of conflict and political instability are often used interchangeably, while these concepts and the relationships between them remain to some extent vague. The ‘food riot’ concept in particular leads to confusion. Although it is popularly seen as a violent rise of the masses, in reality, many peaceful events are gathered under this term, while violence is often committed by the state rather than by hungry consumers. The term also presupposes that food is the central issue at hand, which does not necessarily have to be the case. Many misunderstanding arise from the second gap identified in this paper: the uncritical data gathering based on international news reports. Not only are these remarkably inconsistent, they also make use of classifications which are not scientifically investigated. Finally, causal mechanisms in the relationship between rising food prices and conflict often remain assumptions in the literature and lack empirical foundation. Three crosscutting avenues for improvement therefore exist: better concept definitions, better data gathering, and more focus on contexts.

Clearly defined concepts and categorizations of conflict and instability are a necessary foundation for research on the linkages between rising food prices and conflict. For (food) protests in particular, purposeful categorizations require an enhanced insight in the events that took place on the ground. Local news sources for data gathering can prove to be more reliable than Western (English) media to accomplish this. Event descriptions are also likely to be more detailed in local sources, which allows for a first-hand qualitative analysis of causes and context.

As international food prices are likely to remain high, improving our understanding of the causal mechanisms which can lead to conflict remains crucial. We can draw important lessons from the literature on poverty and conflict, resource scarcity and conflict, and regime transition in Africa. The causal role of economic factors alone has continuously been questioned, and ‘context’ or prevailing political, economic, and social factors play a crucial role in the conflict outcome. The argument that adverse economic shocks seem more of a trigger to conflict rather than an important cause is not particularly remarkable in itself. Yet while many authors acknowledge this, the focus often remains on the trigger. Resource scarcity, climate change, population growth, or food insecurity often remain the starting point of analyses, with researchers consequently tracing the divergent (theoretical) possibilities for conflict. In the end, most admit that these factors do not automatically lead to conflict everywhere, and stress the importance of context. Because the theoretical possibilities for conflict are so large, however, the context factor remains rather understudied with as most agreed upon notions that elements of ‘grievance’ and ‘collective action’ are required.

It is hence important to focus more on the ‘contexts’ that can lead to conflict and, in doing so, to make the distinction between different forms of conflict. This also implies a data collection exercise. Contextual data are currently collected at the aggregate, national level, and only on a yearly basis, which can lead to spurious relations. While the use of these variables is increasingly questioned in civil war studies, we can also doubt their strength in the study of highly localized, one-time events such as riots. I particularly make the case for ‘bringing politics back in’. The policies taken by the government are crucial in the violent escalation of social conflict (e.g. accommodation versus repression), but the only variable currently in use to explain state behaviour seems to be the country-level regime type variable (Polity IV or Freedom House), which is also used with regards to highly localized conflicts. Other ways in which politics matter, can be the strength of the political opposition. The Muslim Brotherhood in Egypt, for example, was probably better organized than other opposition groups to make use of economic unrest.

## 5g

### AT: Heg

#### No impact to the liberal order.

Graham Allison 18. Professor of Government at Harvard. “The Myth of the Liberal Order.” *Foreign Affairs* 97.4: 124-133

Among the debates that have swept the U.S. foreign policy community since the beginning of the Trump administration, alarm about the fate of the liberal international rules-based order has emerged as one of the few fixed points. From the international relations scholar G. John Ikenberry's claim that "for seven decades the world has been dominated by a western liberal order" to U.S. Vice President Joe Biden's call in the final days of the Obama administration to "act urgently to defend the liberal international order," this banner waves atop most discussions of the United States' role in the world. About this order, the reigning consensus makes three core claims. First, that the liberal order has been the principal cause of the so-called long peace among great powers for the past seven decades. Second, that constructing this order has been the main driver of U.S. engagement in the world over that period. And third, that U.S. President Donald Trump is the primary threat to the liberal order-and thus to world peace. The political scientist Joseph Nye, for example, has written, "The demonstrable success of the order in helping secure and stabilize the world over the past seven decades has led to a strong consensus that defending, deepening, and extending this system has been and continues to be the central task of U.S. foreign policy." Nye has gone so far as to assert: "I am not worried by the rise of China. I am more worried by the rise of Trump." Although all these propositions contain some truth, each is more wrong than right. The "long peace" was the not the result of a liberal order but the byproduct of the dangerous balance of power between the Soviet Union and the United States during the four and a half decades of the Cold War and then of a brief period of U.S. dominance. U.S. engagement in the world has been driven not by the desire to advance liberalism abroad or to build an international order but by the need to do what was necessary to preserve liberal democracy at home. And although Trump is undermining key elements of the current order, he is far from the biggest threat to global stability. These misconceptions about the liberal order's causes and consequences lead its advocates to call for the United States to strengthen the order by clinging to pillars from the past and rolling back authoritarianism around the globe. Yet rather than seek to return to an imagined past in which the United States molded the world in its image, Washington should limit its efforts to ensuring sufficient order abroad to allow it to concentrate on reconstructing a viable liberal democracy at home. CONCEPTUAL JELL-O The ambiguity of each of the terms in the phrase "liberal international rules-based order" creates a slipperiness that allows the concept to be applied to almost any situation. When, in 2017, members of the World Economic Forum in Davos crowned Chinese President Xi Jinping the leader of the liberal economic order-even though he heads the most protectionist, mercantilist, and predatory major economy in the world-they revealed that, at least in this context, the word "liberal" has come unhinged.

#### No extinction---new studies.

Nordhaus 20**.** Ted Nordhaus, an American author, environmental policy expert, and the director of research at The Breakthrough Institute, citing new climate change forecasts. Ignore the Fake Climate Debate, 1-23-2020, https://www.wsj.com/articles/ignore-the-fake-climate-debate-11579795816)

Beyond the headlines and social media, where Greta Thunberg, Donald Trump and the online armies of climate “alarmists” and “deniers” do battle, there is **a real climate debate** bubbling along in **scientific journals**, conferences and, occasionally, even in the halls of Congress. It gets a lot less attention than the boisterous and fake debate that dominates our public discourse, but it is much more relevant to how the world might actually address the problem. In the real climate debate, no one denies the relationship between human emissions of greenhouse gases and a warming climate. Instead, the disagreement comes down to different views of climate risk in the face of multiple, cascading uncertainties. On one side of the debate are optimists, who believe that, with improving technology and greater affluence, our societies will prove quite adaptable to a changing climate. On the other side are pessimists, who are more concerned about the risks associated with rapid, large-scale and poorly understood transformations of the climate system. But **most pessimists** do not believe that **runaway climate change** or **a hothouse earth** are plausible scenarios, **much less** that **human extinction** is imminent. And most optimists recognize a need for policies to address climate change, even if they don’t support the radical measures that Ms. Thunberg and others have demanded. In the fake climate debate, both sides agree that economic growth and reduced emissions vary inversely; it’s a zero-sum game. In the real debate, the relationship is much more complicated. Long-term economic growth is associated with both rising per capita energy consumption and slower population growth. For this reason, as the world continues to get richer, higher per capita energy consumption is likely to be offset by a lower population. **A richer world** will also likely be **more technologically advanced**, which means that energy consumption should be **less carbon-intensive** than it would be in a poorer, less technologically advanced future. In fact, a number of the high-emissions scenarios produced by the United Nations Intergovernmental Panel on Climate Change involve futures in which the world is relatively poor and populous and less technologically advanced. Affluent, developed societies are also much better equipped to respond to climate extremes and natural disasters. That’s why natural disasters kill and displace many more people in poor societies than in rich ones. It’s not just seawalls and flood channels that make us resilient; it’s air conditioning and refrigeration, modern transportation and communications networks, early warning systems, first responders and public health bureaucracies. New research published in the journal Global Environmental Change finds that **global economic growth** over the last decade has **reduced** climate mortality by **a factor of five**, with the greatest benefits documented in the poorest nations. In low-lying Bangladesh, 300,000 people died in Cyclone Bhola in 1970, when 80% of the population lived in extreme poverty. In 2019, with less than 20% of the population living in extreme poverty, Cyclone Fani killed just five people. “Poor nations are most vulnerable to a changing climate. The fastest way to reduce that vulnerability is through economic development.” So while it is true that poor nations are most vulnerable to a changing climate, it is also true that the fastest way to reduce that vulnerability is through economic development, which requires infrastructure and industrialization. Those activities, in turn, require cement, steel, process heat and chemical inputs, all of which are impossible to produce today without fossil fuels. For this and other reasons, the world is unlikely to cut emissions fast enough to stabilize global temperatures at less than 2 degrees above pre-industrial levels, the long-standing international target, much less 1.5 degrees, as many activists now demand. But **recent forecasts** also suggest that many of **the worst-case climate scenarios** produced in the last decade, which assumed unbounded economic growth and fossil-fuel development, are also **very unlikely**. There is **still substantial uncertainty** about how sensitive global temperatures will be to higher emissions over the long-term. But **the best estimates** now suggest that the world is on track for **3 degrees of warming** by the end of this century, not 4 or 5 degrees as was once feared. That is due in part to slower economic growth in the wake of the global financial crisis, but also to decades of technology policy and energy-modernization efforts. “We have better and cleaner technologies available today because policy-makers in the U.S. and elsewhere set out to develop those technologies.” The energy intensity of the global economy continues to fall. Lower-carbon natural gas has displaced coal as the primary source of new fossil energy. The falling cost of wind and solar energy has begun to have an effect on the growth of fossil fuels. Even nuclear energy has made a modest comeback in Asia.

## States

#### real world education. Non-uniform fiat zeroes solvency for the CP. 50 State action over antitrust has precedence.

Mark Totten 15. Mark Totten worked as an attorney with the [U.S. Department of Justice](https://ballotpedia.org/U.S._Department_of_Justice). He currently works as a criminal law professor at Michigan State University. He graduated from Yale University. “The Enforcers & the Great Recession” 06-22-2015. https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2535109

In mid-October **all fifty AGs** announced a **joint investigation** of the mortgage servicing industry.219 A **fifty-state action has precedent** but is nonetheless rare. And yet the **coalition formed** with **ease**. 220 Although the Working Group had been a policy project, it provided the infrastructure for legal action. Iowa AG Tom Miller again led the effort,221 and California, Illinois, and New York joined the Executive Committee, among other leading states. 222

## Rulemaking CP

#### Literature---rulemaking is an enormous debate---deleting it is unpredictable and anti-educational.

Rohit Chopra and Lina Khan 20. Rohit Chopra, Commissioner, Federal Trade Commission. And Lina M. Khan, Academic Fellow, Columbia Law School; Counsel, Subcommittee on Antitrust, Commercial, and Administrative Law, US House Committee on the Judiciary; former Legal Fellow, Federal Trade Commission. “The Case for "Unfair Methods of Competition" Rulemaking”. The University of Chicago Law Review , Vol. 87, No. 2 (March 2020), pp. 357-380. https://www.jstor.org/stable/10.2307/26892415

We agree that relying solely on adjudication to define the substance of § 5 has generated persistent ambiguity. However, relying on courtroom battles to create precedents that set expectations for the marketplace is not the only vehicle through which the Commission can establish what conduct constitutes an “unfair method of competition.” The Commission has in its arsenal a far more effective tool that would provide greater notice to the marketplace and that is developed through a more transparent and participatory process: rulemaking. Through engaging in rulemaking, the Commission could define “unfair methods of competition” through processes established by the Administrative Procedure Act38 (APA).39

There is an enormous body of literature on the choice between adjudication and rulemaking, and this Essay does not seek to fully address the various trade-offs.40 Instead, our goal is to reflect on the current state of antitrust enforcement and consider ways to address the ambiguity, burdens, and democratic deficiency that we discuss above.

## FTC

#### FTC streamlining antitrust enforcement now.

Bruce D. Sokler 10/1/21. Chair of the Antitrust Section at Mintz, with Farrah Short. “FTC Promises More Rigorous Merger Reviews.” https://www.natlawreview.com/article/ftc-promises-more-rigorous-merger-reviews

A blog post from the Federal Trade Commission (“FTC”) on Tuesday was the latest announcement suggesting that a shake-up is underway for the agency’s merger review process. The post stated that the FTC’s Bureau of Competition is instituting new process reforms to make the merger review process more rigorous and streamlined. According to the post, the change was triggered by the need to best use the agency’s limited resources in light of the recent surge in merger filings. This message is consistent with other recent changes and statements from the antitrust enforcement agency suggesting that businesses should not expect “business as usual” for merger reviews.

#### 3. They’re taking it slow now---will implement the new agenda over time.

Ben Brody 7/30/21 – senior reporter at Protocol, formerly covered tech policy and lobbying at Bloomberg News. “Lina Khan wants to hear from you: The new FTC chair is trying to get herself, and the sometimes timid tech-regulating agency she oversees, up to speed while she still can.” https://www.protocol.com/policy/khan-ftc-momentum

For now, though, Congress and the White House seem inclined to back the FTC in corralling tech after years of companies facing virtually no regulation and insisting they've done nothing wrong. The gridlocked Congress, for instance, has looked to the FTC on issues like privacy and competition. President Joe Biden, in naming Khan as chair, seemed to take for granted the criticisms that the FTC has for decades been too timid and intellectually out-gunned under Democratic and Republican administrations alike.

In July, Biden even issued his own sweeping order on competition, which Khan called "a hugely significant document." Then there have been her own efforts — to speed up rule-makings, to remove the agency's self-imposed limits on its powers over "unfair methods of competition," to issue guidance boosting consumers' rights to repair their devices and to clear the way to require more disclosure of future deals from those who break the merger laws. The monthly open meetings are new, too.

"It's, what — week five, week six for us?" she said, adding that she's giving herself the rest of the summer to "understand how the agency works" and get a sense of what's already being worked on so she can implement her agenda.

Khan is hardly working alone. The agency's chief technologist recently floated the idea of forcing companies to give up algorithms built on data abuses and restructuring companies that "sacrifice security" illegally. Khan and the other commissioners also spent Wednesday testifying in a congressional hearing about what kinds of additional consumer protection powers and funding the agency is seeking.

It's a long and ambitious set of changes to have rolled out in just a few weeks, far more than the bread-and-butter patrolling for scams and potentially anticompetitive mergers that has defined the FTC's efforts in recent decades. And those are just the things Khan will talk about. She and an aide declined to answer questions about the Facebook case, which the FTC must re-file by mid-August to continue, or its Amazon investigations, or the two companies' efforts to have her recuse herself from their cases because of her prior work in law journals and Congress.

#### 1. Limited Funds---the plan destroys other enforcement priorities.

Nicolás Rivero 21. Technology reporter at Quartz. “Biden’s antitrust crusaders can’t crusade without Congress.” 3/11/21. https://qz.com/1982437/lina-khan-and-tim-wu-need-congress-to-push-their-antitrust-agenda/

But there are clear limits to their power. The most the FTC can do is bring more antitrust cases that ask courts for more aggressive remedies, like breakups. That would allow the agency to make a point about what it considers acceptable business behavior. But many of those lawsuits would be bound to lose in front of judges who have grown far more skeptical of antitrust cases over the past four decades and far more conservative over the past four years.

A larger caseload would also require Congress to approve more funding for the cash-strapped agency, which is already struggling to pay for its current docket. “The agencies have been asked on many occasions to do a lot with relatively little…but it’s not for free,” says former FTC chair and George Washington University law professor Bill Kovacic. If the FTC wants to pursue more large cases without a bigger budget, “they’ll have to make choices, and those choices will involve backing off of other areas of enforcement.”

#### 2. Personnel---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.

#### 3. Cases---FTC only goes after ones it can win.

Lauren Feiner 1/19/22. News Associate @ CNBC. “FTC Chair Lina Khan says agency won’t back down in the face of intimidation from Big Tech.” https://www.cnbc.com/2022/01/19/ftc-chair-lina-khan-says-agency-wont-back-down-in-the-face-of-intimidation.html

As it stands, Khan said the agency does have to choose its workload wisely, which often involves trade-offs about what it can pursue. Given those constraints, the question of which enforcement actions could have a deterrent effect becomes an important one, she said.

“We have to make very difficult choices about which billion-dollar deals we’re going to ensure we’re closely investigating, but there are very real trade-offs in terms of what that work is going to come at the expense of,” she said.

“What are instances in which certain types of actions could have a market-wide impact?” Khan said, giving an example of a question the agency might consider. “If we are able to obtain a particular settlement or consent decree or get a good outcome in court, what are instances in which that could really change the dynamic in the entire market rather than just, you know, here or there?”

#### 2. The FTC’s changing their approach to allow them to focus on enforcement cases

Lauren Feiner 21. News Associate at CNBC, 8/3/21. “FTC struggles to keep up with merger filings, tells some businesses to merge at own risk.” https://www.cnbc.com/2021/08/03/ftc-tells-some-businesses-to-merge-at-own-risk.html

By law, regulators have a set amount of time to review pre-merger filings before parties consummate their deals. Regulators can issue a so-called second request to halt the process and ask for more information, but after receiving those documents, they have a set period of time to review and choose whether to block the deal before parties can again move forward.

While declining to block a merger doesn’t count as a rubber stamp or preclude the regulator from seeking to unwind it in the future, it often provides businesses some reassurance to move forward in the process.

But due to constrained resources, Vedova said there are some deals the FTC simply cannot investigate fully within the timeframe set by law. As a result, the FTC has begun sending letters to parties in such deals that basically say the agency hasn’t completed its review but can’t hold up their merger any longer, so the parties should proceed at their own risk.

“Accordingly, even if the parties consummate the above-referenced transaction, the Commission may still take further action as the public interest may require, which may include any and all available legal actions and seeking any and all appropriate remedies,” a sample letter to such businesses says.

The FTC’s new approach will likely create more uncertainty for businesses whose deals remain under review outside of the standard timeline.

The FTC splits oversight of HSR merger review with the Department of Justice Antitrust Division. Still, both agencies have pleaded with lawmakers for years for more resources to deal with greater demands on their agencies. Both, for example, have filed within the last year major antitrust lawsuits against two of the largest businesses in the world: Facebook and Google.

Merger reviews can often take precedence over misconduct cases within the agencies due to the tight timeline regulators are bound to by law for M&A. The FTC’s new approach could give staff more room to work on non-merger cases even as the agency is faced with a surge in HSR filings.

#### 4. The FTC won’t significantly expand the scope of antitrust---they’re politically cautious

Megan Browdie 21**.** Jacqueline Grise, and Howard Morse, Partners at Cooley, Washington, DC, “Biden/Harris Expected to Double Down on Antitrust Enforcement: No “Trump Card” in the Deck”, Concurrences: Antitrust Publications & Events, February 2021, https://www.concurrences.com/en/review/issues/no-1-2021/on-topic/the-new-us-antitrust-administration-en

38. Current leadership at the agencies appear to agree with the Republicans’ more cautious approach. For example, Chairman Joe Simons, while having touted himself as “responsible for overseeing the re-invigoration of the FTC’s non-merger enforcement program” during his tenure as director of the FTC Bureau of Competition under Bush, has pushed back on these “expanded” theories of antitrust harm. For example, he argued in January 2020 that “U.S. antitrust laws are sufficiently robust to handle competition problems as they arise. Over the years, antitrust laws have proven to be very flexible and resilient in enabling enforcers to challenge conduct that harms competition in a broad range of markets. These laws have proved themselves effective even as the economy evolved with technological progress.” [42]

39. Given this disagreement, and that the Democrats, at best, will have a very thin majority in the Senate, we anticipate some modest modifications to the antitrust laws but expect serious pushback to substantial overhauls of the system or laws.

#### Budget increase is neg uniqueness---it means the FTC can handle what it’s currently doing, not an expansion. Proves the personnel link.

Kiran Stacey 8/10/21 – Washington Correspondent for the Financial Times, 8/10/21. “Washington vs Big Tech: Lina Khan’s battle to transform US antitrust.” https://www.ft.com/content/eba8d3d7-dba7-4389-858c-5406c31b413d

Even if Khan does win some of the landmark cases she is likely to bring, some worry the FTC will not have the capacity to write new competition rules and rewrite merger guidelines at the same time. “The FTC can put together legal teams that can match the best in the bar, punch for punch, in a major case,” says Kovacic. “But the number of those teams is a couple, it is not 10.” For years the commission’s budget and staffing levels have been chipped away. It now has roughly 50 per cent of the staff it had in 1980 and is currently trying to review a record number of mergers. In the first nine months of this fiscal year, the FTC received 2,573 notifications ahead of a large merger — already 50 per cent more than were received in the whole of last year. Last week, the commission published a statement warning that it would not be able to review all mergers within 30 days of a notification being made, as required by law. Instead, the FTC said, if it had not had time to review a merger before it took place, it would reserve the right to take action even after it had been completed. “This year, the FTC has been hit by a tidal wave of merger filings that is straining the agency’s capacity to rigorously investigate deals ahead of the statutory deadlines,” the commission said in a statement. The commission is also facing an uphill battle to retain staff. Some people say they feel demoralised by the pace of change and irritated they have not yet met their new chair — something Khan’s allies say is an unfortunate result of the pandemic. “There are only so many times you can hear that your institution has failed for years before you start to doubt your place in it,” says one staff member. But a bigger problem is that companies and private law firms are gearing up for a more aggressive FTC by trying to poach its talent. “I usually have to place a couple of FTC people in any given year,” says Lauren Drake, a partner at the Washington-based recruiting firm Macrae. “So far this year I have had 10.”

#### FTC enforcement is key against algorithmic discrimination.

#### 1. Actualizing scrutiny to bias is key.

K.C. Halm 21. Partner at Davis Wright Tremaine LLP, with Nancy Libin, 4/26/21. “FTC Warns of Greater Scrutiny Over Biased AI, Offers Best Practices to Mitigate Potential Harm.” https://www.dwt.com/blogs/artificial-intelligence-law-advisor/2021/04/ftc-ai-bias-best-practices-guidance

Building on prior guidance issued in 2020, the Federal Trade Commission (FTC) recently warned in a new blog post that it will use its authority under existing laws to take enforcement action against companies that sell or use algorithms or artificial intelligence (AI) technology that results in discrimination by race or other legally protected classes. The agency urged companies developing or using AI to ensure their AI tools or applications do not result in biased outcomes because a failure to do so may result in "deception, discrimination—and an FTC [] enforcement action." The agency's latest pronouncement leaves no doubt that the FTC will be actively reviewing the market for potential bias or discrimination when AI-enabled applications and services are used to provide access to housing, credit, finance, insurance, or other important services. As our readers know, AI is emerging as a transformative technology that is enabling new systems, tools, applications, and use cases. At the same time, perceived risks arising from potential bias, discrimination, or other negative outcomes is leading regulators to look more closely at both the benefits and potential risks of the technology. To that end, the FTC is moving quickly to assert itself as a leading regulator with authority to oversee a broad range of AI providers, systems, and applications on the market. Basis of Potential AI-related FTC Enforcement Actions Three statutes provide the FTC significant authority to act in this area. Specifically, Section 5 of the FTC Act prohibits unfair or deceptive practices. The FTC's latest statement suggests that the agency believes it can use Section 5 authority, for example, to penalize entities selling or using "racially biased algorithms." Further, the agency also has authority to act under the Fair Credit Reporting Act (FCRA), which could be applied when an algorithm is used in a process that results in the denial of employment, housing, credit, insurance, or other benefits. Similarly, the Equal Credit Opportunity Act (ECOA)—which prohibits a company from using a biased algorithm that results in credit discrimination on the basis of race, color, religion, national origin, sex, marital status, age, or because a person receives public assistance—could be another basis for the agency to act. Thus, for example, if your algorithm results in credit discrimination against a protected class, you could find yourself facing a complaint alleging violations of the FTC Act and ECOA. Notably, the FTC's blog post is framed as both guidance and a reaffirmation that the FTC has been policing issues around AI and big data for many years and sends a clear signal that it intends to do so going forward. This reinforces Acting Chair Rebecca Kelly Slaughter's recent speech on algorithmic discrimination in which she cited a study demonstrating that an algorithm used with good intentions—to target medical interventions to the sickest patients—ended up funneling resources to a healthier, white population, to the detriment of sicker, patients of color. She asked the FTC staff "to actively investigate biased and discriminatory algorithms" and expressed an interest "in further exploring the best ways to address AI-generated consumer harms." Indeed, as we explained in recent blog posts, recent FTC enforcement actions reflect increased scrutiny of companies using algorithms, automated processes, and/or AI-enabled applications. The FTC's recent settlement with Everalbum is instructive in that it illustrates the agency's latest remedial tool: the so-called "disgorgement" of ill-gotten data. In the recent enforcement case, the FTC alleged that Everalbum, an app developer that used photos uploaded by users to train its facial recognition technology, failed to properly obtain users' consent. The agency also alleged that Everalbum made false statements about the users' ability to delete their photos upon deactivating their accounts. On these facts, the FTC secured a settlement and consent decree that required Everalbum to delete algorithms that used the data obtained without consent—a remedy that is akin to the "fruit of the poisonous tree" concept—and obtain consent before using facial recognition technology on user content. The FTC's latest reaffirmation of its authority to act in this area demonstrates that the agency will hold businesses accountable for using AI that may result in biased outcomes or for making promises that the technology cannot deliver. Its message is clear: "Hold yourself accountable – or be ready for the FTC to do it for you."