# Round 6---Districts 22

## 1NC

### Off

FTC DA

#### The FTC is focusing on privacy enforcement.

Tanya Forsheit et al 1/17/22. Chair of the Privacy & Data Security Group of Frankfurt Kurnit Klein & Selz, with Jessica Lee and Robyn Mohr, “Federal Privacy and Data Security Enforcement: A Look Back and a Look Forward.” https://www.lexology.com/library/detail.aspx?g=d90db69f-220d-4fd5-b8d6-7574a22e7efe

2022 promises to be an active year for privacy and data security regulation in the U.S. While comprehensive federal privacy legislation is unlikely to pass this year, privacy and data security remain key priorities for the Biden administration, Congress and the Federal Trade Commission. We expect that most developments around privacy will occur at the FTC, as the agency becomes the de facto privacy regulator. With the confirmation of Lina Khan as chair of the FTC this past year, the FTC’s priorities and agenda have shifted to focus more on the intersection of privacy, antitrust and Big Tech. In 2022, we’ll continue to see the FTC take a more activist approach to privacy. While the FTC has, arguably, been somewhat limited by its enforcement budget and the current state of the law regarding its enforcement and penalty authority, we expect that the FTC will try to use some of the lesser-known tools in its toolbox to push for changes in the areas of privacy, competition and platform regulation.

#### The plan trades off.

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?”

#### That trades off with privacy enforcement.

John O. McGinnis\* and Linda Sun\*\* 20. \*George C. Dix Professor, Northwestern University, and Associate-Designate, Wilmer Pickering Hale & Dorr LLP. “Unifying Antitrust Enforcement for the Digital Age.” Northwestern Public Law Research Paper No. 20-20. https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3669087

The FTC needs more resources to adequately address the nation’s growing privacy concerns. Currently, the FTC oversees both consumer protection—encompassing privacy—and antitrust,249 making the FTC the chief federal agency on privacy policy and enforcement250 and the nation’s de-facto privacy agency.251 The agency has long-standing experience in enforcing privacy statutes252 and also has special privacy assets, such as an internet lab capable of high-quality tech forensics to track invasions of privacy.253 The FTC, however, has failed to keep pace with the massive growth of privacy concerns—a phenomenon also driven by modern technology. Very few Americans feel conﬁdent in the privacy of their information in the digital age.254 According to a 2019 study, over 80% of Americans feel that they have little to no control over the data collected on them by companies and the government.255 To adequately address privacy concerns, the FTC needs more resources.256 The agency has been explicit that it needs more manpower to police tech companies. In requesting increased funding from Congress, FTC Director Joseph Simons said the money would allow the agency to hire additional staff and bring more privacy cases.257 A former director of the FTC’s Bureau of Consumer Protection, which houses the privacy unit, has called the FTC “woefully understaffed.”258 As of the spring of 2019, the FTC had only forty employees dedicated to privacy and data security, compared to 500 and 110 employees at comparable agencies in the UK. and Ireland, respectively.259 Without more lawyers, investigators, and technologists, the FTC will be forced to conduct privacy investigations less thoroughly, and in some cases, forgo them altogether.260 Currently, the FT C’s resources are spread thin across multiple missions, to the detriment of its privacy efforts. Removing the agency’s antitrust responsibilities would reallocate resources from the antitrust department to its privacy unit and other areas of consumer protection. Further, it would free up the scarce time of the commissioners to oversee this essential effort.261

#### Unchecked algorithmic bias causes 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.”

### Off

14th Amendment CP

#### Text: The United States federal judiciary, without reference to the scope of its core antitrust laws, should hold that:

#### - All state restrictions on abortion violate the due process clause of the 14th amendment; and

#### - There is no constitutionally protected right to life for unborn children.

#### The counterplan expands the holding of *Roe* to all state abortion restrictions and rejects legal personhood—solves the whole case without expanding antitrust.

Lemieux 18 (Scott - lecturer in political science at the University of Washington, “6 myths about Roe v. Wade, debunked,” 6/11/18, <https://www.vox.com/the-big-idea/2018/7/10/17553832/roe-v-wade-myths-kavanaugh-abortion-supreme-court>)

But it’s even more problematic when applied to Roe because the holding in that case does not rely on Douglas’s argument that the right to privacy is implicit in the “specific guarantees in the Bill of Rights” (that is, the penumbras). The right to privacy, according to Justice Harry Blackmun’s opinion for the Court in Roe, should be located in “the Fourteenth Amendment’s concept of personal liberty and restrictions upon state action.” This doctrine, generally called “substantive due process,” is that some rights are so fundamental that abrogating them is by definition a violation of the “due process of law.” New Dealers like Douglas distrusted the doctrine because it had been used by pre-New Deal Courts to strike down economic regulations, seemingly because that’s what the justices preferred politically. But the moderate Republicans who controlled the Court in 1973 were more comfortable with the concept. Rooting the right to privacy in the 14th Amendment is particularly significant. Justice Douglas is one of the most liberal justices in the history of the Court — an easy target for Roe’s critics. But Blackmun was largely drawing on a theory (privacy is rooted in substantive due process) laid out in a concurrence by Justice John Marshall Harlan, in Griswold. Harlan was the Warren Court’s house conservative; the fact that he and Douglas agreed that a right to privacy exists, if for different reasons, suggests a belief in such a right need not be narrowly partisan. (And it’s worth remembering that Blackmun, the author of the Roe opinion, was a Nixon appointee, and he was joined by two of the three other Nixon appointees. While the opinions in Griswold may seem a little thin, that’s partly because both Douglas and Harlan had stated their views in much more detail four years earlier in their dissents in Poe v. Ullman. In that case, a majority of the court refused to hear a challenge to the Connecticut law it later struck down in Griswold, and Douglas and Harlan explained both why the Court should have taken the case — which prevented any birth control clinics from operating in the state — and should have ruled the law unconstitutional. Both dissents in Poe are worth reading and provide further evidence that the right to privacy has deep roots in the American constitutional tradition. And if Griswold is right, Roe is at least plausible. As Justice John Paul Stevens put it in a 1986 case, “There may, of course, be a significant difference in the strength of the countervailing state interest, but I fail to see how a decision on childbearing becomes less important the day after conception than the day before.” To be clear, as is true for virtually all constitutional questions of any interest, reasonable people can disagree with the outcome of Roe. One can argue that there are no privacy protections implicit in the Constitution, and that a statute making the use of contraceptives illegal and empowering police to search bedrooms for evidence of them raises no constitutional problems. Or one can argue that the privacy doctrine is sound but not applicable to Roe because fetal life presents a unique problem. But Roe hardly invented the idea that the Constitution created a zone of privacy for families where the state may not intrude; in that sense, at least, it is well grounded in established doctrine.

### Off

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#### Antitrust is capitalist---competition inevitably replicates market collapse.

Richard Wolff 19. Professor Emeritus of Economics at University of Massachusetts, Amherst. Transcript from YouTube video: “Economic Update: Competition and Monopoly in Capitalism”. Democracy at Work. 12-9-2019. <https://www.democracyatwork.info/eu_competition_monopoly_in_capitalism>

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Vote Neg to endorse global socialist movements.

Carles Muntaner 15. \*MD/PhD, Professor at the University of Toronto’s Lawrence S. Bloomberg Faculty of Nursing and Dalla Lana School of Public Health. \*Edwin Ng, PhD, Dalla Lana School of Public Health, University of Toronto. \*Haejoo Chung, Professor at Korea University’s School of Health Policy and Management. \*Seth J. Prins, PhD, Associate Professor of Epidemiology and Sociomedical Sciences, Columbia University. “Two decades of Neo-Marxist class analysis and health inequalities: A critical reconstruction”. Social Theory & Health. 8-5-2015. doi: 10.1057/sth.2015.17

An ostensible goal of all research on the social production of health inequalities is not merely to describe or explain such inequalities, but to effectively reduce them (Muntaner and Lynch, 2002; O'Campo and Dunn, 2011; Muntaner et al, 2012b). A Neo-Marxist class approach has implications for the way that researchers think about and engage with efforts to reduce health inequalities, implications that invert the mainstream relationship between research and action. A cursory glance at the conclusion sections of many population health studies reveals an almost rote focus on ‘policy implications' relevant to policymakers. We argue here that, although this mainstream orientation to social class and health inequalities may appear innocuous or politically neutral, it in fact functions in the service of incremental, apolitical, technical changes that are ultimately system-justifying and status-quo-reproducing (Chomsky, 1971).

As we described at the outset, the individual attribute approach to social class tracked broader trends in social science theory and research towards reductionism and methodological individualism. This absolves researchers from engaging with social processes and relations, which demand analyses of exploitation, domination, and even employment relations. These intellectual trends, in turn, reflect structural changes in the political economy of academic institutions that produce such knowledge (Muntaner et al, 2012a). While a complete discussion of the impact of neo-liberalism on health inequalities research is beyond the scope of this analysis, we contend that such trends conform to political options that often perpetuate inequalities, because they produce knowledge that explicitly avoids the mechanisms that generate social and health inequalities.

What can a Neo-Marxist approach to social and health inequalities add? Aside from doing the opposite of the mainstream approach (that is, re-engaging with analyses of employment relations, exploitation, domination and other class processes), an important contribution of Neo-Marxist class analysis is to break the chain between health inequality research and the ‘policy mystique'. It can do this by flipping its orientation from the top-down to the bottom-up, and rediscovering and engaging with the rich diversity of poor people's and working class social movements whose struggles – class struggles – against inequality, including health inequalities, can become a target audience for research and action. Adopting a relational class approach means recognizing – not just politically, but from a pragmatic research design and implementation perspective – that the vast majority of ‘the 99 per cent' are completely alienated from the policy space, both professionally and electorally. Examples of such bottom up class approaches would be the ‘Housing First' program in Canadian cities (van Draanen et al, 2013) or public health action research with labour unions in the United States (Malinowski et al, 2015). A resurgence of poor, working class, and climate-justice activism, from the international outgrowths of Latin America's left turn and the Arab Spring (Muntaner et al, 2011 ) to the anti-austerity movements in the European Union (Tugas, 2014), provides compelling opportunities for researchers to address new, grassroots stakeholders.

Recognizing that the vast majority of the population is on the opposite side of the class struggle than ‘policymakers' does not imply that we should abandon progressive health policy reforms, but it means that we should adopt a more critical, bottom-up perspective towards how policy changes affecting the public's health are ultimately achieved. This is not to say that all researchers of social inequalities in health must become public social scientists (Burawoy, 2005) but it is to say that we cannot consign ourselves, under a thin veil of neutrality, to de facto approaching policy from a privileged position of access to elites, that is, from the orientation of serving policymakers. At the very least, we should have a more class-conscious perspective (Burawoy, 2014). Returning to and advancing relational approaches to class may be the only way this will be possible.

### Off

Federalism DA

#### Overturning antitrust federalism spills over---Mystal 20 recognizes “interstate commerce that trumps federalism”---that spills over to collapse all federalism.

Jean Wegman Burns 00. Professor of Law, Brigham Young University Law “Embracing both Faces of Antitrust Federalism: Parker and Arc America Corp”. Antitrust Law Journal 2000, Vol. 68, No. 1 (2000), pp. 29-44 https://www.jstor.org/stable/pdf/40843455.pdf?refreqid=excelsior%3Ad80f01111cb140b3c14566b792bfb96a

Federalism is a familiar concept in antitrust. Beginning with its 1943 decision in Parker v. Brown} the Supreme Court has used federalism principles to define the scope of the federal antitrust laws and to protect state activity in the same area. In antitrust, federalism takes two forms. First, it permits the states to enforce the federal antitrust laws and enact their own state laws, thereby arming the states with powerful swords. Second, it provides states with immunity from the federal antitrust laws, thereby giving them a virtually impenetrable litigation shield. Whether used as a sword or a shield, antitrust federalism permits states to take actions that are largely, and sometimes wholly, contrary to current federal antitrust policies.

This essay discusses the current state of antitrust federalism and its likely future. Part I describes the sources of antitrust federalism. Part II discusses its function as a sword, and Part III looks at its use as a shield. Part IV discusses the likely future of antitrust federalism and the ramifica- tions of the recent Supreme Court decisions dealing with federalism in other areas of law.2

The final section, Part V, argues that we should embrace antitrust federalism in all its manifestations. Admittedly, federalism results in inconsistency (due to differing state laws) and permits some anticompeti- tive activities. In addition, as a practical matter, states have used their federalism swords to increase the number of antitrust lawsuits and related causes of action. However, by giving states the latitude to develop their own doctrines, federalism also provides a valuable benefit for antitrust jurisprudence: it encourages diversity of thought, experimentation, and innovation in approaches. Such diversity and experimentation are especially important in a field like antitrust, where debate continues on how best to approach certain key issues and the laws' proper goals.

My support for federalism stems not from a ideological belief regarding what the result on a particular antitrust issue should be. Rather, it stems from agnosticism, realism, and a devotion to democracy. On many key white-button issues of antitrust, I am an agnostic, in that I simply do not know which economic theory, if any, is correct, especially when applied to real-world markets.3 Moreover, I am a sufficient realist to believe that, regardless of the economic soundness of a particular theory, if the citizenry doesn't believe it, the law will develop in other areas to accommodate the views of society.4 Finally, I believe that, in a democracy, the citizens have a right to support economically inefficient practices, to enact logically inconsistent laws, and to pursue conflicting legal theories. In a nutshell, I embrace federalism whether it brings about more lawsuits or fewer of them, whether it leads to more deviation from federal policy or less, whether it is economically sound or not. I embrace it because it reminds us that reasonable people may disagree and that society may have overlapping and conflicting desires.

#### Federalism prevents international secessionist wars---absent the American model they are destabilizing.

Erin Ryan 17. Assistant Professor, Lewis & Clark Law School; J.D., Harvard Law School. “Secession and Federalism in the United States: Tools for Managing Regional Conflict in a Pluralist Society.” Oregon Law Review 96: 123. https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=2775377.

Yet the impetus toward devolution also surfaces in conflicts between competing intra-national constituencies, cleaving along regional, cultural, ethnic, religious, linguistic, and ideological lines. In the dominant circles of international law, secession is disfavored— viewed as an extra-legal alternative that goes beyond the requirements of generally accepted principles of self-determination (at least absent gross violations, alien subjugation, international exploitation, or a colonial context).3 Nevertheless, recent calls for secession in Catalonia, Iraqi Kurdistan, Scotland, Québec, and South Sudan reveal multiple political contexts in which related questions are being raised about how best to balance competing claims for autonomy, interdependence, political voice, and exit.4

In the United States, a genuine secession movement by the Alaskan Independence Party was judicially quelled as recently as 2010, highlighting the durability of the issue even in the modern United States.5 And while calls for full secession are seldom given much credence in the American political context, calls to further devolve regulatory authority occupy hallowed positions in major American political party platforms.6 Devolution claims, often framed in terms of “States’ Rights,” have become customary on the political right—but in the wake of the 2016 Presidential Election, they are increasingly heard on the left as well.7 A group of California citizens seeking their own independence from the United States have organized a “Calexit” campaign, seeking a 2019 referendum on California’s exit from the American Union.

As secession and devolution movements threaten to destabilize federations once thought impenetrably secure—from the European Union to the United Kingdom to NATO—scholars around the globe are tapping the wisdom of the Westphalian and post-Westphalian worlds to better understand the available tools for managing regional governance conflicts.9 New scholarship exploring how different nations have managed these conflicts, some more and some less successfully, promises to broaden the perspectives of researchers, government officials, and citizens struggling to resolve sovereignty conflicts with full appreciation for the underlying principles they represent.

In support of that goal, this Article shares the American experience of devolution conflict, probing our experiments with both federalism and secession for lessons on managing the endemic tension between impulses toward autonomy and interdependence in societies composed of different regional, cultural, and ideological subcommunities. It explores secession in contexts both familiar and controversial, from the American Revolution through the Civil War, addressing secession at both the national and subnational levels.

It also considers the development of American federalism, from a model emphasizing vertical separation toward one that harnesses inevitable jurisdictional overlap to cultivate opportunities for collaborative and competitive engagement. It assesses the unique advantages of American federalism for mediating the opposing forces of political entropy, which operate to pull the component pieces of pluralist nations apart, and political gravity, which pull them together in pursuit of common goals. It considers both the successes and limits of the American model, identifying those aspects that are instructive for governance elsewhere and those that may be inapplicable abroad. Finally, it reflects on the way that federalism can act as a double-edged sword—or perhaps more accurately, a simultaneous sword and shield—providing a potential conduit for claims to secession at the same time that it functions as a safety valve to defuse the same impulses.

Beginning with a historical account of secession in the United States, Part I reviews American secession movements at both the subnational and national level, with special focus on the paradigmatic cases of the American Revolution and the American Civil War. Both examples demonstrate the deep regional tensions that can surface within a larger overall polity, reflecting the challenges of pluralist societies more generally. The southern states’ failed attempt to secede during the Civil War led to the formal disavowal of secession in the United States—leaving us to grapple with the meaning of what had already happened during the Revolutionary War, when the American colonies unilaterally separated from Great Britain.

After considering the meaning of these wrenching moments in American history, Part II turns to our preferred means of mediating regional conflict, the institution of constitutional federalism. By dividing sovereign authority between local and national levels of government, federalism creates multiple simultaneous forums for political contest, competition, and collaboration that have diffused regional tension through engaged multilevel governance. Like all systems of federalism, the U.S. model cultivates the “sweet spot” between competing claims for local autonomy and national interdependence, allocating sovereign authority among levels of government where each best advances the overall goal. The availability of nested political sites for regional expression, interjurisdictional innovation, and negotiated governance have many benefits, including fortification of the American Union against the kinds of conflicts that might otherwise lead toward fragmentation.

#### Secessionist wars are uniquely destabilizing---they trigger hotspot escalation

Walter Russell Mead 13. James Clarke Chace Professor of Foreign Affairs and Humanities, Bard College. “Peace in The Congo? Why the World Should Care.” The American Interest. December 15, 2013. https://www.the-american-interest.com/2013/12/15/peace-in-the-congo-why-the-world-should-care/.

These wars continue today; the Israeli-Palestinian conflict, the war in Syria, the Kurdish struggle for independence, the tensions in the Caucasus. So far, the only way of settling them for good has been to exterminate minorities or to kick hundreds of thousands or even millions of people (Germans from Poland and the Sudentenland after World War II) out to create homogeneity.

One of the biggest questions of the 21st century is whether this destructive dynamic can be contained, or whether the demand for ethnic, cultural and/or religious homogeneity will continue to convulse world politics, drive new generations of conflict, and create millions more victims. The Congo conflict is a disturbing piece of evidence suggesting that, in Africa at least, there is potential for this kind of conflict. The Congo war (and the long Hutu-Tutsi conflict in neighboring countries) is not, unfortunately alone. The secession of South Sudan from Sudan proper, the wars in what remains of that unhappy country, the secession of Eritrea from Ethiopia and the rise of Christian-Muslim tension right across Africa (where religious conflict often is fed by and intensifies “tribal”—in Europe we would say “ethnic” or “national”—conflicts) are strong indications that the potential for huge and destructive conflict across Africa is very real.

But one must look beyond Africa. The Middle East of course is aflame in religious and ethnic conflict. The old British Raj including India, Pakistan, Bangladesh, Burma and Sri Lanka offers countless examples of ethnic and religious conflict that sometimes is contained, and sometimes boils to the surface in horrendous acts of violence.

Beyond that, rival nationalisms in East and Southeast Asia are keeping the world awake at night.

The Congo war should be a reminder to us all that the foundations of our world are dynamite, and that the potential for new conflicts on the scale of the horrific wars of the 20th century is very much with us today.

The second lesson from this conflict stems from the realization of how much patience and commitment from the international community (which in this case included the Atlantic democracies and a coalition of African states working as individual countries and through various international institutions) it has taken to get this far towards peace. Particularly at a time when many Americans want the US to turn inwards, there are people who make the argument that it is really none of America’s business to invest time and energy in the often thankless task of solving these conflicts.

That might be an ugly but defensible position if we didn’t live in such a tinderbox world. Someone could rationally say, yes, it’s terrible that a million plus people are being killed overseas in a horrific conflict, but the war is really very far away and America has urgent needs at home and we should husband the resources we have available for foreign policy on things that have more power to affect us directly.

The problem is that these wars spread. They may start in places that we don’t care much about (most Americans didn’t give a rat’s patootie about whether Germany controlled the Sudetenland in 1938 or Danzig in 1939) but they tend to spread to places that we do care very much about. This can be because a revisionist great power like Germany in 1938-39 needs to overturn the balance of power in Europe to achieve its goals, or it can be because instability in a very remote place triggers problems in places that we care about very much. Out of Afghanistan in 2001 came both 9/11 and the waves of insurgency and instability that threaten to rip nuclear-armed Pakistan apart or trigger wider conflict with India. Out of the mess in Syria a witches’ brew of terrorism and religious conflict looks set to complicate the security of our allies in Europe and the Middle East and even the security of the oil supply on which the world economy so profoundly depends.

Africa, and the potential for upheaval there, is of more importance to American security than many people may understand. The line between Africa and the Middle East is a soft one. The weak states that straddle the southern approaches of the Sahara are ideal petri dishes for Al Qaeda type groups to form and attract local support. There are networks of funding and religious contact that give groups in these countries potential access to funds, fighters, training and weapons from the Middle East. A war in the eastern Congo might not directly trigger these other conflicts, but it helps to create the swirling underworld of arms trading, money transfers, illegal commerce and the rise of a generation of young men who become experienced fighters—and know no other way to make a living. It destabilizes the environment for neighboring states (like Uganda and Kenya) that play much more direct role in potential crises of greater concern to us.

### Off

States CP

#### The 50 states and all relevant subnational entities should ban anti-abortion protests and all actions that create collateral injury to abortion providers even if for social causes.

### Off

T-Scope

#### Interp---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?

#### Violation---the Aff doesn’t 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 Neg---limits and ground---only “change goals” creates key economy and legal DAs over what antitrust should consider---the Aff’s topic races to tiny exemptions and technical changes with no core ground.

### Off

Notice-and-Comment CP

#### The United States federal government should delegate antitrust rulemaking authority to a new expert agency. That agency should begin notice-and-comment rulemaking to increase prohibitions on anticompetitive private sector actions that create collateral injury to abortion providers even if for social causes.

#### Solves and 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.

#### That’s key to democracy.

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

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

CONCLUSION

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

#### Democracy prevents extinction.

Christopher Kutz 16. PhD, University of California, Berkeley. JD, Yale University. Professor, University of California, Berkeley, School of Law. “Introduction: War, Politics, Democracy”. On War and Democracy. 2016. https://doi.org/10.1515/9781400873937-003

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

### Case---1NC

#### Extinction outweighs---evaluate impacts through a util framing.

Seth D. Baum & Anthony M. Barrett 18. Global Catastrophic Risk Institute. 2018. “Global Catastrophes: The Most Extreme Risks.” Risk in Extreme Environments: Preparing, Avoiding, Mitigating, and Managing, edited by Vicki Bier, Routledge, pp. 174–184.

2. What Is GCR And Why Is It Important? Taken literally, a global catastrophe can be any event that is in some way catastrophic across the globe. This suggests a rather low threshold for what counts as a global catastrophe. An event causing just one death on each continent (say, from a jet-setting assassin) could rate as a global catastrophe, because surely these deaths would be catastrophic for the deceased and their loved ones. However, in common usage, a global catastrophe would be catastrophic for a significant portion of the globe. Minimum thresholds have variously been set around ten thousand to ten million deaths or $10 billion to $10 trillion in damages (Bostrom and Ćirković 2008), or death of one quarter of the human population (Atkinson 1999; Hempsell 2004). Others have emphasized catastrophes that cause long-term declines in the trajectory of human civilization (Beckstead 2013), that human civilization does not recover from (Maher and Baum 2013), that drastically reduce humanity’s potential for future achievements (Bostrom 2002, using the term “existential risk”), or that result in human extinction (Matheny 2007; Posner 2004). A common theme across all these treatments of GCR is that some catastrophes are vastly more important than others. Carl Sagan was perhaps the first to recognize this, in his commentary on nuclear winter (Sagan 1983). Without nuclear winter, a global nuclear war might kill several hundred million people. This is obviously a major catastrophe, but humanity would presumably carry on. However, with nuclear winter, per Sagan, humanity could go extinct. The loss would be not just an additional four billion or so deaths, but the loss of all future generations. To paraphrase Sagan, the loss would be billions and billions of lives, or even more. Sagan estimated 500 trillion lives, assuming humanity would continue for ten million more years, which he cited as typical for a successful species. Sagan’s 500 trillion number may even be an underestimate. The analysis here takes an adventurous turn, hinging on the evolution of the human species and the long-term fate of the universe. On these long time scales, the descendants of contemporary humans may no longer be recognizably “human”. The issue then is whether the descendants are still worth caring about, whatever they are. If they are, then it begs the question of how many of them there will be. Barring major global catastrophe, Earth will remain habitable for about one billion more years 2 until the Sun gets too warm and large. The rest of the Solar System, Milky Way galaxy, universe, and (if it exists) the multiverse will remain habitable for a lot longer than that (Adams and Laughlin 1997), should our descendants gain the capacity to migrate there. An open question in astronomy is whether it is possible for the descendants of humanity to continue living for an infinite length of time or instead merely an astronomically large but finite length of time (see e.g. Ćirković 2002; Kaku 2005). Either way, the stakes with global catastrophes could be much larger than the loss of 500 trillion lives. Debates about the infinite vs. the merely astronomical are of theoretical interest (Ng 1991; Bossert et al. 2007), but they have limited practical significance. This can be seen when evaluating GCRs from a standard risk-equals-probability-times-magnitude framework. Using Sagan’s 500 trillion lives estimate, it follows that reducing the probability of global catastrophe by a mere one-in-500-trillion chance is of the same significance as saving one human life. Phrased differently, society should try 500 trillion times harder to prevent a global catastrophe than it should to save a person’s life. Or, preventing one million deaths is equivalent to a one-in500-million reduction in the probability of global catastrophe. This suggests society should make extremely large investment in GCR reduction, at the expense of virtually all other objectives. Judge and legal scholar Richard Posner made a similar point in monetary terms (Posner 2004). Posner used $50,000 as the value of a statistical human life (VSL) and 12 billion humans as the total loss of life (double the 2004 world population); he describes both figures as significant underestimates. Multiplying them gives $600 trillion as an underestimate of the value of preventing global catastrophe. For comparison, the United States government typically uses a VSL of around one to ten million dollars (Robinson 2007). Multiplying a $10 million VSL with 500 trillion lives gives $5x1021 as the value of preventing global catastrophe. But even using “just" $600 trillion, society should be willing to spend at least that much to prevent a global catastrophe, which converts to being willing to spend at least $1 million for a one-in-500-million reduction in the probability of global catastrophe. Thus while reasonable disagreement exists on how large of a VSL to use and how much to count future generations, even low-end positions suggest vast resource allocations should be redirected to reducing GCR. This conclusion is only strengthened when considering the astronomical size of the stakes, but the same point holds either way. The bottom line is that, as long as something along the lines of the standard riskequals-probability-times-magnitude framework is being used, then even tiny GCR reductions merit significant effort. This point holds especially strongly for risks of catastrophes that would cause permanent harm to global human civilization. The discussion thus far has assumed that all human lives are valued equally. This assumption is not universally held. People often value some people more than others, favoring themselves, their family and friends, their compatriots, their generation, or others whom they identify with. Great debates rage on across moral philosophy, economics, and other fields about how much people should value others who are distant in space, time, or social relation, as well as the unborn members of future generations. This debate is crucial for all valuations of risk, including GCR. Indeed, if each of us only cares about our immediate selves, then global catastrophes may not be especially important, and we probably have better things to do with our time than worry about them. While everyone has the right to their own views and feelings, we find that the strongest arguments are for the widely held position that all human lives should be valued equally. This position is succinctly stated in the United States Declaration of Independence, updated in the 1848 Declaration of Sentiments: “We hold these truths to be self-evident: that all men and 3 women are created equal”. Philosophers speak of an agent-neutral, objective “view from nowhere” (Nagel 1986) or a “veil of ignorance” (Rawls 1971) in which each person considers what is best for society irrespective of which member of society they happen to be. Such a perspective suggests valuing everyone equally, regardless of who they are or where or when they live. This in turn suggests a very high value for reducing GCR, or a high degree of priority for GCR reduction efforts.

#### Predictions are accurate and valuable.

Michael D. Ward 13. Emeritus professor of political science at Duke University. Et al. “Learning from the Past and Stepping into the Future: Toward a New Generation of Conflict Prediction”. International Studies Review. December 2013. https://doi.org/10.1111/misr.12072

Political events are frequently framed as unpredictable. Who could have predicted the Arab Spring, 9/11, or the end of the cold war? This skepticism about prediction reflects an underlying desire to forecast. Predicting political events is difficult because they result from complex social processes. However, in recent years, our capacity to collect information on social behavior and our ability to process large data have increased to degrees only foreseen in science fiction. This new ability to analyze and predict behavior confronts a demand for better political forecasts that may serve to inform and even help to structure effective policies in a world in which prediction in everyday life has become commonplace.

Only a decade ago, scholars interested in civil wars undertook their research with constrained resources, limited data, and statistical estimation capabilities that seem underdeveloped by current standards. Still, major advances did result from these efforts. Consider “Ethnicity, Insurgency and Civil War” by Fearon and Laitin (2003), one of the most venerated and cited articles about the onset of civil wars. Published in 2003, it has over 3,000 citations in scholar.google.com and almost 900 citations in the Web of Science (as of April 2013). It has been cited prominently in virtually every social science discipline in journals ranging from Acta Sociologica to World Politics; and it is the most downloaded article from the American Political Science Review. This article is rightly regarded as an important, foundational piece of scholarship. However, in the summer of 2012, it was used by Jacqueline Stevens in a New York Times Op-Ed as evidence that political scientists are bad forecasters. That claim was wildly off the mark in that Fearon and Laitin do not focus on forecasting, and Stevens ignored other, actual forecasting efforts in political science. Stevens' point—which was taken up by the US Congress—was that government funding on quantitative approaches was being wasted on efforts that did not provide accurate policy advice. In contrast to Stevens, we argue that conflict research in political science can be substantially improved by more, not less, attention to predictions through quantitative approaches.

We argue that the increasing availability of disaggregated data and advanced estimation techniques are making forecasts of conflict more accurate and precise, thereby helping to evaluate the utility of different models and winnow the good from the bad. Forecasting also helps to prevent overfitting and reduces confirmation bias. As such, forecasting efforts can be used to help validate models, to gain greater confidence in the resulting estimates, and to ultimately present robust models that may allow us to improve the interaction with decision makers seeking greater clarity about the implications of potential actions.

#### Nuclear war causes extinction---best, most recent studies.

Nicole S. Lovenduski et al. 20. PhD, Department of Atmospheric and Oceanic Sciences, University of Colorado, Boulder; Cheryl S. Harrison, PhD, Institute of Arctic and Alpine Research; Holly Olivarez, Environmental Studies Program, University of Colorado; Charles G. Bardeen, PhD, Atmospheric Chemistry Observations and Modeling Laboratory, National Center for Atmospheric Research; 6 , Owen B. Toon, PhD, Laboratory for Atmospheric and Space Physics; Joshua Coupe, PhD Department of Environmental Sciences at Rutgers; Alan Robock, PhD, Department of Environmental Sciences at Rutgers; Tyler Rohr, Water Power Technologies Office, Department of Energy, and Samantha Stevenson; Bren School of Environmental Science and Management. “The Potential Impact of Nuclear Conflict on Ocean Acidification”. Geophysical Research Letters. 47, e2019GL086246. https://doi.org/10. 1029/2019GL086246

Nuclear warfare could have devastating impacts on millions of people, yet it has been suggested that regional or global nuclear conflict may be possible in the future (Toon et al., 2019). In addition to the calamitous impacts of nuclear conflict on a local level, research conducted with a range of climate models finds a global cooling in response to various conflict scenarios (Coupe et al., 2019; Malone et al., 1985; Mills et al., 2014; Pausata et al., 2016; Robock et al., 2007; Turco et al., 1983). This global cooling is driven by fires started by the nuclear weapons. These fires inject smoke into the upper troposphere, where rapid lofting can spread the sunlight-absorbing soot particles into the stratosphere (Turco et al., 1983). Recent research implies that even a small nuclear conflict may have impacts on the global climate system, affecting the state and circulation of the atmosphere (Robock et al., 2007), increasing the sea ice extent in both hemispheres (Mills et al., 2014), and reducing plant productivity and crop yields in regions far from the conflict location (Özdogan et al., ˘ 2013; Toon et al., 2019; Xia & Robock, 2013). While less studied, the potential impacts of nuclear conflict on the ocean are many. Numerous physical, chemical, and biological processes in the ocean are temperature dependent, and sunlight is a critical ingredient for photosynthesizing phytoplankton at the base of the marine food web. Using a climate model with an interactive ocean, Mills et al. (2014) evaluated the ocean physical response to a potential India/Pakistan nuclear war that lofts 5 Tg of black carbon particles into the stratosphere; they find a 0.8◦ C decrease in globally averaged sea surface temperature, with smaller temperature reductions at depth. Recently Toon et al. (2019) used an Earth system model that includes a representation for phytoplankton to evaluate the ocean biological response to nuclear conflict; they report a 5–15% decrease in phytoplankton productivity under a range of conflict scenarios. Such findings prompt further investigation into how nuclear conflict and the resulting global cooling may alter the chemical state of the ocean. Perturbations in the ocean's carbonate chemistry are of particular interest, owing to their importance for ocean acidification. Ocean acidification is an ongoing, large-scale environmental problem driven by fossil fuel emissions of carbon dioxide (CO2). Cumulatively since the preindustrial era, the ocean has absorbed 41% of the carbon emitted by human industrial activities (McKinley et al., 2017). While this ocean absorption of carbon has partially mitigated anthropogenic global warming, it has fundamentally altered the carbonate chemistry of the ocean, increasing the concentration of hydrogen ions ([H+]) while decreasing the concentration of carbonate ions ([CO2− 3 ]). Observations collected at time series sites across the global ocean find statistically significant reductions in the potential hydrogen (pH = −log([H+])) and the saturation state of the calcium carbonate mineral aragonite (Ωarag, which is proportional to [CO2− 3 ]) over the past few decades (Bates et al., 2014). These changes are a direct consequence of the ocean absorption of anthropogenic carbon; carbonate chemistry dictates that the excess carbon will react with water and CO2− 3 to decrease ocean pH and Ω (Feely et al., 2004). Both of these changes may have negative consequences for marine organisms, in particular for those that precipitate calcium carbonate shells (e.g., coccolithophores, pteropods, foraminifera, corals, molluscs, and echinoderms), as the precipitation is hindered by low pH, and because decreases in Ω favor shell dissolution (Doney et al., 2009). To date, there have been no studies of the effects of nuclear conflict on ocean acidification, though past modeling studies on the ocean's response to volcanic forcing and to proposed geoengineering schemes have intimated that ocean carbonate chemistry is highly sensitive to these types of external forcings. Using a fully coupled carbon-climate model, Frölicher et al. (2011) find that volcanic-induced cooling following the 1991 Mt. Pinatubo eruption led to immediate increases in the flux of carbon from atmosphere to ocean and consequently, increases in the total dissolved inorganic carbon (DIC) concentration in the surface ocean. Eddebbar et al. (2019) demonstrate that air-to-sea CO2 fluxes are significantly enhanced following the eruptions of Agung, El Chichón, and Pinatubo in a large ensemble of simulations with an Earth system model. Matthews et al. (2009) conduct solar radiation management climate engineering simulations with an intermediate complexity model of the coupled climate-carbon system; they find changes in ocean pH and Ωarag as a result of the anomalous cooling. Similarly, Lauvset et al. (2017) indicate that radiation management geoengineering leads to changes in North Atlantic pH in a fully coupled Earth system model, but they do not explore changes in Ωarag. While these studies are suggestive of the carbonate chemistry response to nuclear conflict, the external forcing perturbations are of a different magnitude and duration than those imposed by nuclear conflict. Further, it is difficult to mechanistically understand the ocean carbonate chemistry response to such external forcing perturbations in fully coupled models, where the terrestrial response to forcing additionally influences the atmospheric CO2 concentration. Here, we use a state-of-the art Earth system model to simulate the ocean carbonate chemistry response to a range of nuclear conflict scenarios. We decouple the ocean carbon cycle from that of the terrestrial carbon cycle via a direct prescription of the atmospheric CO2 boundary condition used for air-sea CO2 flux, that is, changes in the terrestrial biosphere have no influence on the atmospheric CO2 that the ocean sees. As we will demonstrate, we find large perturbations in ocean pH and Ωarag as a result of nuclear conflict. These perturbations have relatively long duration (order of 10 years) and are driven by decreases in temperature and subsequent increases in the ocean carbon inventory. 2. Methods We analyse output generated by the Community Earth System Model (CESM) version 1.3, a state-of-the-art coupled climate model consisting of atmosphere, ocean, land, and sea ice components (Hurrell et al., 2013). The atmosphere component of CESM in our simulations is the Whole Atmosphere Community Climate Model (WACCM; Marsh et al., 2013) with nominal 2◦ resolution, 66 vertical levels, and a model top at ∼145 km; it uses the Rapid Radiative Transfer Model for GCMs (RRTMG; Iacono et al., 2000) for the radiative transfer. The Community Aerosol and Radiation Model for Atmospheres (Bardeen et al., 2008) is coupled with WACCM to simulate the injection, lofting, advection, and removal of soot aerosols in the troposphere and stratosphere, and their subsequent impact on climate (Coupe et al., 2019; Toon et al., 2019). The ocean component of CESM is the Parallel Ocean Program version 2 (Danabasoglu et al., 2012) with nominal 1◦ resolution and 60 vertical levels. The biogeochemical ocean component of CESM is the Biogeochemical Elemental Cycling model that represents the lower trophic levels of the marine ecosystem, full carbonate system thermodynamics, air-sea CO2 fluxes, and a dynamic iron cycle (Doney et al., 2006; Moore et al., 2004, 2013; Moore & Braucher, 2008; Long et al., 2013; Lindsay et al., 2014). LOVENDUSKI ET AL. 2 of 9 Geophysical Research Letters 10.1029/2019GL086246 The ocean in the coupled CESM simulation is initialized from rest with World Ocean Circulation (WOCE) temperature and salinity (Gouretski & Koltermann, 2004). Biogeochemical tracers are initialized to observationally based climatologies where possible (Lauvset et al., 2016); where these were not available (such as dissolved iron and phytoplankton biomass), the model is initialized with fields interpolated from an existing CESM simulation. The new, fully coupled simulation was spun up for 4 years to an approximate steady state with a constant atmospheric CO2 mixing ratio of 370 ppm, representative of the mixing ratio in the year 2000. Due to the relatively short spin-up period, the globally integrated air-sea CO2 flux is not in steady state (drifting at a rate of 0.14 Pg C year−2) when the perturbation forcing is applied. We therefore present our results as anomalies from the drifting control integrations. Three control simulations of 20-year duration are generated using round-off level differences in atmospheric initial conditions. As each of these control simulations has different phasing of internal variability (e.g., El Niño-Southern Oscillation), we use the standard deviation across this ensemble to identify statistically significant perturbations due to nuclear conflict. We report on the anomalies generated from four simulations of nuclear conflict with varying amounts of soot injection: three India/Pakistan conflict scenarios that inject 5, 27, and 47 Tg of soot, respectively, and one US/Russia conflict scenario that injects 150 Tg of soot. The initial soot injection amounts are generated from plausible scenarios for nuclear conflict following advice from a number of military and policy experts; the reader is referred to Toon et al. (2019) for further details on scenario development. In each case, we prescribe that the conflict begins on 15 May of the 5th year of the first control simulation, and we integrate the model for a 15-year period following the injection. We assume that the smoke generated by mass fires from nuclear conflict is injected into the upper troposphere above the target sites (in the U. S./Russia case, smoke is spread evenly over the two nations), as in Toon et al. (2019). WACCM lofts much of this smoke higher into the stratosphere via solar heating of black carbon aerosols in the smoke, where the black carbon aerosols persist for about a decade. The resulting annual mean, post-conflict (May to the following April) anomalies in aerosol optical depth are shown in Figure 1a. These optical depth changes result in a 10–40% reduction in incoming solar energy (Toon et al., 2019). While we discuss the anomalies generated from all four of these conflict simulations, we describe two in greater detail throughout this manuscript: the U. S./Russia case, as it is the largest climate perturbation overall, and the India/Pakistan 47-Tg case, as it is the largest climate perturbation generated by a regional nuclear conflict. Ocean biogeochemistry in the version of CESM used for our simulations has been extensively validated in the literature (Brady et al., 2019; Freeman et al., 2018; Harrison et al., 2018; Krumhardt et al., 2017; Lindsay et al., 2014; Lovenduski et al., 2015, 2016; Long et al., 2013, 2016; Moore et al., 2013; McKinley et al., 2016; Negrete-García et al., 2019). Of particular note for our study, the simulated surface ocean carbonate ion concentration from a long, preindustrial control simulation of CESM compares favorably with reconstructed observations, albeit with lower interannual variance than has been measured at subtropical time series sites (Lovenduski et al., 2015). In Figure S1 in the supporting information, we illustrate the comparison between observationally based estimates of surface ocean pH and Ωarag (from GLODAPv2; Lauvset et al., 2016) and the CESM control ensemble mean. In this comparison, we note that the observational estimates have been extensively interpolated and are intended to represent year 2002 carbonate chemistry parameters, whereas CESM has been integrated under an atmospheric CO2 mixing ratio that corresponds to year 2000 forcing. We find high correspondence between the spatial patterns of modeled and observed pH and Ωarag, giving us confidence that CESM is capable of representing the mean state of these two variables. 3. Results Globally averaged surface ocean pH increases in response to each of the nuclear conflicts, where the magnitude of the pH anomaly scales with the amount of soot injected (Figure 1b). In each case, the pH anomaly exceeds the interannual standard deviation of pH in the control ensemble mean (gray shading in Figure 1b). We observe the largest increases in surface ocean pH in response to the U. S./Russia 150-Tg case; here the globally averaged surface ocean pH anomaly exceeds 0.05, corresponding to a ∼10% decrease in the global mean hydrogen ion concentration. Under each scenario, the pH anomaly peaks 2–4 years after the conflict and persists for ∼10 years. With the exception of the high-latitude oceans, the pH increase following the nuclear conflict is pervasive across the surface ocean (Figures 2a– 2c). In the 47-Tg India/Pakistan scenario, we observe local pH anomalies exceeding 0.06 units on average in years 2–5 post conflict (Figure 2c); the anomalies are largest in the North Atlantic, North Pacific, and Equatorial Pacific. These large, abrupt changes in surface ocean pH may have important consequences for calcifying organisms, as shell precipitation can be affected by the ambient hydrogen ion concentration in seawater (Kroeker et al., 2013). Since the beginning of the industrial revolution, global ocean pH has dropped by an estimated 0.1 units (Ciais & Sabine, 2013). The anomalies in pH generated by our simulations exceed 50% of this historical change and occur over a much shorter time period. Whether and how organisms respond to the initial and rapid alleviation of low pH, followed by an immediate return to the current pH state in the global ocean, is as yet unknown (see, e.g., Haigh et al., 2015). In contrast to our results for pH, we observe decreases in surface ocean Ωarag following nuclear conflict (Figure 1c), which should tend to inhibit the maintenance of shells and skeletons in calcified organisms. While minimal changes in Ωarag are simulated for the 5-Tg India/Pakistan case, the other three cases produce large decreases in saturation state, on the order of 0.1 to 0.3 units (Figure 1c). In each of these three cases, the anomalies exceed the interannual standard deviation of Ωarag in the control ensemble mean (gray shading in Figure 1c). The peak response in these three cases occurs 3–5 years post conflict, a year or so later than the pH response. While for pH the globally averaged anomaly is negligibly small, 10-years post conflict; anomalies in globally averaged Ωarag persist beyond our 15-year simulation time frame for all conflict scenarios. The decreases in aragonite saturation state span the tropics and subtropics, with the exception of the central and eastern Equatorial Pacific region (Figures 2d– 2f). Local decreases in saturation state exceed 0.5 units in the western North Atlantic and western North Pacific under the 47-Tg India/Pakistan scenario (Figure 2f). Importantly, the simulated decreases in saturation state are highly pronounced in regions that host diverse coral reef ecosystems (for instance, the western and southwestern Pacific and the Caribbean), and like pH, the changes in saturation state occur fairly rapidly. Projections from climate models suggest that coral reef ecosystems across the world will experience aragonite saturation state declines from their preindustrial value of 3.5 to 3.0 by the end of the century (Ricke et al., 2013); alarmingly, our simulations project similar Ωarag declines over a 3- to 5-year period, which then persist for years after the initial forcing dissipates. The opposite-signed anomalies in pH and Ωarag induced by nuclear conflict seem puzzling at first, as for "typical" anthropogenic ocean acidification scenarios, both of these variables simultaneously decrease. Why would nuclear conflict cause opposing responses in pH and saturation state? To understand these opposing responses, we need to consider the carbonate chemistry system in seawater and its sensitivity to changing temperature. Gaseous CO2 reacts with seawater to form carbonic acid (H2CO3), which then dissociates to form H+ and bicarbonate (HCO− 3 ). The hydrogen ion then reacts with CO2− 3 to form additional HCO− 3 , CO2 + H2O− ↽−−−−−−⇀−H2CO3. (1) H2CO3− ↽−−−−−−⇀−H+ + HCO− 3 . (2) H+ + CO2− 3 − ↽−−−−−−⇀−HCO− 3 . (3) The equilibrium constants for these reactions (typically expressed as K0, K1, and K2, respectively; Sarmiento & Gruber, 2006) are sensitive to changes in temperature, for example, the cooling induced by nuclear conflict. We need to also consider the dissolution reaction for mineral calcium carbonate (CaCO3) in seawater, CaCO3(s)− ↽−−−−−−⇀−Ca2+ sat + CO2− 3,sat, (4) where [Ca2+]sat and [CO2− 3 ]sat are the concentrations of dissolved calcium and carbonate in equilibrium with mineral CaCO3, and the solubility product (Ksp) for this reaction is also sensitive to temperature (Sarmiento & Gruber, 2006). Further, the saturation state for a calcium carbonate mineral in seawater (here: aragonite), can be expressed as Ωarag = [Ca2+][CO2− 3 ] Ksp , (5) where both [CO2− 3 ] and Ksp are affected by changes in temperature (Ca2+ is highly abundant in seawater, and thus changes in temperature do not affect its concentration enough to matter for CaCO3 dissolution; Emerson & Hedges, 2008; Sarmiento & Gruber, 2006). Thus, we can decompose the anomalies in pH and Ωarag into the component driven by temperature-induced changes in the carbonate chemistry equilibrium constants (K0, K1, K2, and Ksp) and the component driven by all other changes to the carbonate chemistry system, such as changes in the DIC concentration, the alkalinity, or the salinity. We approximate the temperature sensitivity of the equilibrium constants using a program developed for CO2 system calculations (CO2SYS; van Heuven et al., 2011) via finite difference approximation. The component driven by all other changes to the carbonate system is computed as the residual of the other two terms. The pH response to nuclear conflict is the sum of two opposing drivers: an increase in pH driven by a decrease in sea surface temperature that alters the carbonate chemistry equilibrium constants and a decrease in pH driven by an increase in the DIC concentration of the upper ocean. Figure 1b illustrates the temporal evolution of the components of the global pH anomalies from the India/Pakistan 47-Tg simulation driven by changes in the equilibrium constants versus all other changes in the carbonate chemistry system. The equilibrium constant-driven pH anomaly is positive, peaking 2–3 years after the conflict, whereas the “other” component of the pH anomaly is negative, peaking 3–5 years after the conflict. The resulting total pH anomaly is positive, indicating that it is more strongly influenced by changes in the equilibrium constants than other changes. In the India/Pakistan 47-Tg case, globally averaged temperature reaches a minimum 2 to 3-years post conflict; the model initially produces 3.5◦C–4◦C anomalies at the surface that rewarm toward pre-conflict values for the duration of the simulation (Figure 3a). In contrast, surface ocean salinity-normalized DIC anomalies peak 3 to 5-years post conflict (Figure 3b), mainly as a result of the enhanced solubility of CO2 in colder seawater. While decreasing biological export production also contributes to increased DIC in the surface ocean, this signal is small relative to the change driven by enhanced air-to-sea CO2 flux (e.g., Figure S2). The delay in DIC relative to temperature anomalies is a result of the long (order months to years) timescale for CO2 to fully equilibrate with the surface mixed layer (Emerson & Hedges, 2008). The cold, high DIC surface anomalies slowly propagate into the global ocean thermocline; we observe 1◦ C and 10 mmol m−3 anomalies in temperature and DIC, respectively, at a depth of 300 m that persist beyond the length of our simulation (Figure 3). As there are no significant anomalies in global mean alkalinity or salinity post conflict (not shown), we conclude that the DIC perturbation drives the “other” component of the pH anomalies. We find similar behavior for these components in the other conflict scenarios (not shown). The negative Ωarag anomalies post conflict are driven by a combination of lower temperatures and higher DIC concentrations. Colder surface temperatures tend to increase Ksp, while higher surface DIC concentrations tend to decrease [CO2− 3 ], resulting in lower Ωarag values post conflict. Figure 1c illustrates that the DIC (other) component dominates the total Ωarag anomaly for the India/Pakistan 47-Tg simulation. As for pH, the equilibrium constant component peaks earlier than the other component; this is due to the timing of the temperature and DIC perturbations (Figure 3). The spatial patterns of the post-conflict surface pH and Ωarag anomalies in the India/Pakistan 47-Tg scenario (Figures 2c and 2f) result from perturbations in local surface ocean temperature and DIC (Figure S3). Negative temperature anomalies and positive DIC anomalies are pervasive in the tropics and extratropics, with the exception of the eastern Equatorial Pacific, where a large and long-lasting El Niño-like event develops following the conflict (Coupe, et al., manuscript in review). This strong reduction in the equatorial trade winds greatly weakens upwelling in the cold tongue region, producing near-zero surface temperature anomalies and a reduction in vertical DIC supply here (Figure S3). In the Southern Ocean, temperature and DIC are not much affected by the nuclear conflict, likely a result of enhanced upwelling of warm water from the subsurface (Harrison, et al., manuscript in preparation). Taken together, the aforementioned changes in temperature and DIC lead to increases in pH and decreases in Ωarag over most of the ocean surface (Figure S4). The changes in surface ocean pH that we simulate for nuclear conflict resemble the simulated response of pH to volcanic eruptions, but are an order of magnitude larger. Figure S5 illustrates the anomaly in surface ocean pH in the first year following the eruptions of Agung, El Chichón, and Mt. Pinatubo, as estimated by the CESM Large Ensemble (Kay et al., 2015), which uses the same physical and biogeochemical ocean components as in our nuclear conflict simulations. The ensemble mean isolates the evolution of the Earth system under historical external forcing, including the aerosol loading following volcanic eruptions (Eddebbar et al., 2019), and averages across the various representations of internal variability (Deser et al., 2012; we note that ensembles are not necessary for the nuclear conflict scenarios since the much larger magnitude of forcing provides a higher signal-to-noise ratio). The anomaly in the ensemble mean shown here thus cleanly captures the response of surface ocean pH to volcanic eruptions. Here we show the anomaly in preindustrial pH (pH anomalies in equilibrium with preindustrial atmospheric CO2, which is computed simultaneously with contemporary pH at model run time), as the contemporary pH anomalies include also the response to increasing atmospheric CO2 from one year to the next. The similarity in the spatial patterns of volcanically induced pH anomalies and those produced under nuclear conflict is striking (cf. Figures S5 and 2c), suggesting that volcanic forcing produces similar temperature, DIC, and thus pH anomalies (including the El Niño-like response to volcanic forcing in the eastern Equatorial Pacific, described in Eddebbar et al., 2019). However, the eruption-driven pH anomaly is both smaller (an order of magnitude) and of shorter duration (∼2 years) than in the India/Pakistan 47-Tg simulation. Unfortunately, a similar analysis of volcanic Ωarag anomalies in the CESM Large Ensemble was not possible as preindustrial [CO2− 3 ] was not saved to disk. 4. Conclusions and Discussion We report on the surface ocean pH and Ωarag anomalies generated from four simulations of nuclear conflict using the CESM with full ocean carbonate system thermodynamics. Globally averaged surface ocean pH increases in response to each conflict, with the largest increases in the North Atlantic, North Pacific, and Equatorial Pacific Ocean. The pH anomalies persist for 10 years post conflict and are primarily driven by changes in the carbonate chemistry equilibrium constants as a result of decreases in sea surface temperature. In contrast, CESM simulates globally averaged decreases in surface ocean Ωarag in response to nuclear conflict, with the largest decreases in the tropics and subtropics. The Ωarag anomalies persist beyond the length of our 15-year simulations and are driven by a combination of changes in the carbonate chemistry equilibrium constants and the solubility-driven increases in DIC. We further demonstrate that the surface pH anomalies induced by nuclear conflict resemble those induced by volcanic eruptions in the same modeling system. The simulated changes in global and regional pH and Ωarag as a result of nuclear conflict are large and abrupt. In the most extreme forcing scenario (U. S./Russia 150 Tg), over a period of ∼5 years, global surface ocean pH increases by 0.06 units, and Ωarag decreases by 0.3 units. To put these numbers into perspective, this simulated rate of change of pH is 10 times larger than the rate of change we have observed over the past two decades as a result of ocean acidification (−0.0018 year−1; Lauvset et al., 2015). Worryingly, surface ocean Ωarag decreases more than six times faster than has been observed in the open ocean over the past three decades (−0.0095 year−1 at the Bermuda Atlantic time series; Bates et al., 2014). While the cooling associated with nuclear conflict rapidly and briefly alleviates the decline in pH associated with ocean acidification, the increase in solubility causes the ocean to absorb ∼11 Pg of excess carbon in a 10-year period, leading to a rapid drop in Ωarag. Whether and how calcifying organisms might respond to such rapid and opposing changes in pH and Ωarag is as yet unknown. In order to measure organism response to ocean acidification, a majority of laboratory studies perform CO2 bubbling perturbation experiments, which simultaneously decrease the pH and Ωarag in the surrounding seawater solution (Pörtner et al., 2014). This simultaneous change in two carbonate chemistry parameters challenges our ability to isolate the organism response to changes in pH or changes in Ωarag alone. A recent laboratory sensitivity study of marine bivalve larvae used chemical manipulation experiments to decouple these two parameters; they found that larval shell development and growth were negatively impacted by decreasing Ω and unaffected by changes in pH (Waldbusser et al., 2014). If these sensitivities are sustained in other organisms, we might conclude that calcifying organisms would be severely affected by nuclear conflict. Our findings shed light on the ocean biogeochemical response to other forms of extreme external forcing, such as volcanic eruptions (Eddebbar et al., 2019; Frölicher et al., 2011) and solar radiation management climate engineering (Lauvset et al., 2017; Matthews et al., 2009). They may further inform the study and understanding of the role of ocean acidification in marine extinction following the Chicxulub impact event (Henehan et al., 2019). Importantly, our results suggest that even a regional nuclear conflict can have an impact on global ocean acidification, adding to the list of the many, far-reaching consequences of nuclear conflict for global society.

#### States can make abortions illegal for other reasons---takes out Aff solvency. They can’t prevent overturn of Dobbs---it can’t clarify legal certainty on Dobbs because antitrust law can’t affect the 1st amendment.

#### “Modeling” is nationalist---it assumes the competition-state searching for “best practices” to outcompete threats.

Pauli Kettunen 11. Professor of Political History in the Social Science Faculty of University of Helsinki. “Welfare Nationalism and Competitive Community.” In Welfare citizenship and welfare nationalism.

Conclusion: the nationalism of models

In conclusion, the concept of “model” deserves some attention. The current discussion on models is inspired by the encounters between globalised capital and national institutions, and it indicates increasing reflexivity as an aspect of globalisation. The popularity of the concept of “the Nordic model” since the 1980s implies such a shift of perspective. Reflexivity is nourished by the imperatives of competitiveness, which include the need for continuous comparisons in order to learn the universal “best practice” or to find the “difference”, i.e. an edge, one’s own particular competitive advantage. European integration has provided an important context for the discussion on models.

An interesting ambiguity appears in the current usage of the concept of model. It may refer to a structure that has become threatened through globalisation, or it may refer to a way of responding to the challenge. The former meaning is obvious in the discussion on the threats against the “Nordic welfare-state model”. The latter, in turn, is manifested in the praising of “the Danish model” of “flexicurity”46, or “the Finnish model” as a paragon of consensual competitiveness in a new knowledge-based society47, or “the Nordic model” in general, assessed to be capable of embracing globalisation by means of risk sharing48. In both cases – the model as a target of threats or the model as a response – globalisation is dealt with as a national challenge. Yet the ambiguity of the concept of model indicates the changing role of the nation state, which can be characterised by the concepts of welfare state and competition state. Instead of a shift from the welfare state to a competition state, the change reflected by the two sides of the concept of the “Nordic model” can be interpreted as a conversion in which welfare-state institutions are modified to serve competition-state functions.

#### Other countries won’t model the plan---if they’re not adopting abortion protections now, there are structural domestic barriers that prevent these policies from passing that modeling can’t overcome.

#### There is no connection between Noerr immunity and Dobbs---getting rid of that immunity doesn’t stop or prevent Roe v. Wade from being overturned in any way---there is no connection between legal clarity and Dobbs.

## 2NC

### T CWS---2NC

#### 2. Only accessible literature base.

Commissioner Noah J. Phillips 18. Before the Federal Trade Commission. “Competition and Consumer Protection in the 21st Century”. https://www.ftc.gov/system/files/documents/public\_events/1415284/ftc\_hearings\_session\_5\_transcript\_11-1-18\_0.pdf

So, today, we take on the very modest task of looking both at vertical mergers and the consumer welfare standard. Both have made headlines of late, which is not always true in the antitrust world. The Department of Justice’s ongoing litigation regarding the mergers of AT&T and Time Warner has drawn a great bit of attention, in particular, to vertical merger law and the economic theories surrounding it.

And we have heard a great deal, almost every week, on op-ed pages, on television and so forth, regarding the consumer welfare standard. So this is an important time, it is an appropriate time for the FTC to be convening a hearing on these two topics.

#### 3. It 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---

#### The plan also violates the word core.

Tracy C. Miller and Alden Abbott 21. Tracy C. Miller, Senior Policy Research Editor. Alden Abbott, Senior Research Fellow. "POLICY SPOTLIGHT: Antitrust Policy and the Consumer Welfare Standard". Mercatus Center. 3-24-2021. https://www.mercatus.org/publications/antitrust-and-competition/policy-spotlight-antitrust-policy-and-consumer-welfare

Since the late 1970s, the Supreme Court has emphasized consumer welfare as the core antitrust policy goal, which was a change from earlier decisions emphasizing the evils of big business and the importance of protecting smaller companies. Judicial decisions under the consumer welfare standard subsequently have enunciated fact-specific standards that seek to preserve incentives for business conduct that benefits consumers. These decisions have also granted dominant firms greater freedom to engage in aggressive competition to better satisfy consumers. The focus of these cases has been whether business behavior tends toward maximizing output (taking into account quantity, quality, and improvements in innovation), consistent with unrestricted competition.

The Case for a Different Approach

* Critics of current antitrust policy argue that enforcement has been ineffective, as evidenced by a decline in competition and an increase in the average market share of firms in recent decades.
* A growing number of scholars have concluded that the consumer welfare standard is inadequate. These scholars support a populist approach that pursues a broader range of objectives such as promoting fairness, protecting labor rights, and limiting monopoly as measured by firm size and market share.
* These concerns have resulted in studies by the House Subcommittee on Antitrust, Commercial, and Administrative Law and by the Washington Center for Equitable Growth that endorse digital platform regulation, new Federal Trade Commission rulemaking, and legislation to strengthen antitrust laws, with a greater emphasis on bright-line rules.
* In February 2021, Senator Amy Klobuchar, chair of the Senate Subcommittee on Competition Policy, Antitrust, and Consumer Rights, introduced legislation that would greatly toughen the standard for evaluating mergers and lower the bar for convicting a firm of illegal monopolization.
* Other expansive antitrust reform proposals, including possible regulation or structural breakups of big platforms, may be considered by the House Subcommittee on Antitrust, Commercial, and Administrative Law.

Defense of the Consumer Welfare Standard

1. Reforming antitrust policy in a way that would abandon the consumer welfare standard is likely to do more harm than good.
2. Studies claiming that competition is declining are based largely on flawed premises. Although digital platform markets are often more concentrated than most markets in the past, firms with a large market share may still be under pressure to compete owing to the potential of existing firms and startups to develop innovative new products and services.
3. Reforms proposed by various antitrust critics such as breaking up dominant firms or prohibiting most mergers and acquisitions are likely to make consumers worse off, sacrificing the benefits of declining per-unit costs that accompany large-scale production and integration of complementary services controlled by one firm.

Broadening the scope of what constitutes a violation of antitrust law would likely create a great deal of uncertainty for firms as they seek to compete effectively and grow their market shares. Further, trying to assign weights to vaguely defined notions of fairness and labor rights along with consumer welfare would create confusion and could lead to arbitrary decisions that are not consistent with the rule of law.

### 14th Amendment CP---2NC

#### Equal protection solves

David Bernstein 15. Law professor at the George Mason University School of Law. "Opinion: Do laws that embody ‘naked economic protectionism’ violate the equal protection clause?". Washington Post. 9-14-2015. https://www.washingtonpost.com/news/volokh-conspiracy/wp/2015/09/14/do-laws-that-embody-naked-economic-protectionism-violate-the-equal-protection-clause/

The long and the short of it is that one need not revive Lochner or indeed change modern equal protection jurisprudence at all to find that naked economic protectionism violates the equal protection clause. Morticians want to prevent lower-cost providers from selling caskets. The legislature passes a law prohibiting such competition, thereby instituting a classification between those allowed to sell caskets (licensed morticians) and everyone else. This classification is subject to a strong presumption of constitutionality. But this presumption is can be rebutted if the court is unable find a non-arbitrary rationale for the law.

Calabresi writes that “much of what states do is to favor certain groups over others on economic grounds. We call this politics.” But these politics are only constitutional if there is at least a patina of public-spirited rationale to what the legislature has done. Blatantly favoring one group over another for no reason other than that the former has more political power is the essence of what has always been considered arbitrary class legislation. Therefore, unless and until the Supreme Court ever expressly changes equal protection doctrine, laws that exist solely to restrict competition to favor a politically powerful incumbent group violate the equal protection clause.

#### The CP solves harmonization---applications of the 14th are consistent with international norms but get held back by Sherman

Arianna Andreangeli 2010. \*Lecturer in Law, Liverpool Law School, University of Liverpool. “Between Economic Freedom and Effective Competition Enforcement.” The Competition Law Review 6 (2): 225-257.

4.3. Refusal to licence as an ‘exceptional’ case of monopolisation: insights from the application of the Due Process clause and of Section 2 of the Sherman Act

Section 3.4 illustrated the approach adopted by the US Supreme Court in relation to restrictions of property rights and of freedom of covenant in commercial activities. It was argued that the initial ‘laissez-faire’ attitude shown by the Court in Lochner, according to which the Due Process clause enshrined in the 5th and 14th Amendments should be read as providing a ‘presumption in favour of liberty’ that can only be rebutted in exceptional cases, was gradually replaced by a more interventionist stance, according to which the Courts would not question the validity of measures affecting property rights or freedom of covenant unless the former had been restricted in an arbitrary or disproportionate manner.215

Thereafter, section 3.5 illustrated that the American judicature is extremely cautious in imposing on commercial entities, even powerful ones, any obligation to deal with their rivals.216 It was illustrated that a finding of monopolisation in cases of refusals to licence IP rights would only occur if the IPRs owner was acting ‘beyond the scope of the patent’,217 i.e. if its refusal to grant a licence was clearly aimed at excluding rivals from the relevant market.218

Against this background, it may be questioned whether the application of a standard inspired by the approach to refusals to licence established by the US superior courts could be a viable alternative to the position adopted in the 2009 Guidance. It is suggested that by relying on the concept of ‘abuse of patent’ as a means to define what constitutes ‘monopolisation’ and by requiring proof of ‘anti-competitive malice’, the US Courts may be in danger of overlooking cases in which a forced licence may actually have led to ‘genuine’ technical advancement.219

Commentators suggested that the Supreme Court in Trinko may have assumed perhaps too readily that legitimately acquired economic power almost inevitably led to further innovation and that this innovation could have been ‘translated’ in consumer welfare.220 According to Stucke, ‘Trinko ignores the costs of monopolies to future innovation’ and, with its emphasis on the importance of ‘monopoly rents’ as a means to encourage investment in R&D, creates the risk of increasing costs for other firms wishing to bring that innovation forward.221

Although they accepted that monitoring the observance of antitrust remedies targeting unilateral behaviour raises significant difficulties for the Courts,222 other authors were left partially unconvinced by the arguments in favour of the narrow application of Section 2 of the Sherman Act to refusals to licence.223 Thus, it may be argued that the approach developed by the US superior courts in respect to the application of section 2 of the Sherman Act to unilateral refusals to licence IP rights, whilst being motivated by justifiable concerns for the continuing drive to innovation of ‘powerful’ firms as well as for the difficulties arising from the ex post oversight of the remedies imposed for an infringement, may be too restrictive to strike a ‘fair balance’ between the needs of ‘free enterprise’ and the objective of undistorted competition and ultimately of technical development.

Accordingly, it is concluded that the US style view of this type of practices does not constitute an entirely suitable alternative to the 2009 Guidance on the application of Article 102 TFEU to like cases. What, instead, the earlier sections seem to suggest is that an alternative benchmark which is both ‘proportionate’, as required by the ECHR, and ‘workable’, i.e. consistent with the requirements of ‘quality of the law’ dictated by the Convention and enshrined in the principles of the rule of law could be found in existing principles of EU competition law.

#### 2---Feasibility---Expanding antirust and constitutional law is impossible and impractical---resource, political, and doctrinal constraints

Daniel A. Crane 19. Frederick Paul Furth Sr. Professor of Law, University of Michigan. "Scrutinizing Anticompetitve State Regulations through Constitutional and Antitrust Lenses," William & Mary Law Review 60 (4): 1175-1214

D. Interactions Between Constitutional and Antitrust Levers

The final category for comparing the constitutional and antitrust tools as instruments for challenging anticompetitive state and local regulations concerns the potential interaction between the two doctrines. Procedurally and institutionally, the two theories would need to run in parallel-they **could not be brought simultaneously** in the same case. The FTC cannot bring constitutional challenges, and no one other than the FTC can bring a case under Section 5 of the FTC Act."' Therefore, to speak about the two theories as either substitutes or complements is not to imagine that they ever could be asserted in the same case or by the same set of actors. Rather, it is to observe that advocates of enhanced scrutiny of anticompetitive state and local regulations **have choices about how and where to push for heightened review.**

Someone strongly committed to a systematic challenge of anticompetitive regulations might advocate for a simultaneous charge on both fronts-reinvigorating equal protection, substantive due process, and perhaps negative Commerce Clause review, even while also curbing the Parker doctrine and empowering the FTC to undertake more trenchant review. However, even if such an approach were desirable in principle, there is reason to believe that it would be **politically, institutionally, and doctrinally challenging** to ramp up both tools at once. As is often the case when expanding potency of legal doctrines or institutions runs into background concerns about overreaching-here Lochner-courts and other agencies of government have a tendency to justify timidity by observing that the problem in question could be better addressed by another institution or legal doctrine." Thus, presented with the possibility of reinvigorating constitutional restraints on competitively parochial regulations, the courts might demur on the grounds that, if there is a serious problem, then it can be addressed by an administrative institution such as the FTC, thereby avoiding the specter of Lochner. Conversely, if urged to whittle down Parker immunity in an FTC case, the reviewing courts might also demur, observing that any sufficiently serious problem might be addressed under **constitutional principles.**

Assuming that the political resources necessary to ramp up either the antitrust or constitutional theory **are scarce** and that **support for the two theories is mutually competitive,** the question arises of whether it would be more effective to focus exclusively on one of the two theories or instead attempt to create two differentiated tools tailored to address different problems in different fields. Such a move would require limiting the generality of each of the tools by focusing on distinctive factors or patterns. For example, the constitutional principle against anticompetitive parochialism could be focused on failures of political processes-particularly circumstances where costs are externalized outside the boundaries of the voting jurisdiction."' By contrast, the FTC's heightened preemptive powers might be focused on circumstances involving restraints that limit innovation.8 o While there would obviously be some overlap between these two categories and hence some contestable turf (assuming, again, that the two theories are mutually competitive), some effort at such a division of labor might assuage concerns about a return to Lochnerism

Finally, although the preceding analysis has assumed some benefits to making a coordinated strategic decision about which legal and policy levers to pull, such coordination may be infeasible given that-apart from the courts-the communities involved in forming antitrust and constitutional law and policy are almost entirely distinct. The antitrust bar that stocks the FTC is specialized and relatively insular. 8 ' Constitutional theories directed at anticompetitive state and local regulations have been largely pushed by public interest firms such as the Institute for Justice and the Pacific Legal Foundation, which have shown little interest in antitrust theories.'8 2 So perhaps the possibility of coordinating the deployment of the constitutional and antitrust theories is the sort of question that would interest our hypothetical Platonic guardian, but, like the rest of her hypothesized work, have little relevance to the rest of us.

#### 3---Tensions---The rights commitments of the 14th amendment are fundamentally at odds with antitrust---the perm wrecks solvency

Jonathan B. Baker. 2019. [Research Professor of Law, American University Washington College of Law] “Accommodating Competition: Harmonizing National Constitutional and Antitrust Commitments” William & Mary L. Rev. 60 (4): 1149-1173. https://scholarship.law.wm.edu/ wmlr/vol60/iss4/3

I. THREE PUBLIC COMMITMENTS

Three broad public commitments—entrenched norms accepted and enforced by public institutions—underlie the modern U.S. economy: (1) the protection of private economic rights to property and contract,11 (2) the protection or fostering of competition among firms,12 and (3) a social safety net to protect those vulnerable to hardship from market forces.13 The first of these commitments has explicit constitutional protection.14 The others can be understood today as supra-constitutional norms.15 The three commitments will be sketched, but on the whole this Article will take them as given. The Article is concerned primarily with the way the competition commitment has been implemented and protected, not with the contours of the three commitments or how they were established.

A. Private Economic Rights

The Constitution recognizes protection of both contract and property rights as public commitments. The states may not impair the obligation of contracts.16 The Fifth Amendment forbids the federal government from taking private property for public use without just compensation.17 The Takings Clause was extended to the states by incorporation through the Due Process Clause of the Fourteenth Amendment.18 During the late nineteenth century, the Supreme Court famously interpreted the latter provision to protect the “liberty of contract.”19

B. Competitive Markets

The Supreme Court has frequently described the antitrust laws in near-constitutional terms. It has called the Sherman Antitrust Act,20 the first and most important federal antitrust statute, “the Magna Carta of free enterprise,”21 and “a comprehensive charter of economic liberty aimed at preserving free and unfettered competition as the rule of trade.”22 “The heart of our national economic policy,” the Court has stated, “long has been faith in the value of competition.”23

During the nineteenth century, as detailed below, the Supreme Court construed economic rights to permit public protection of competition.24 But competition was not fully established as an entrenched norm until the twentieth century.25 Eskridge and Ferejohn view it as established not in 1890, when Congress passed the Sherman Act, but in 1914, with congressional passage of the Clayton Act on the heels of a presidential election fought over the economic role of large firms.26 But the contours of the competition norm were strongly contested in domestic politics through the 1930s,27 and the antitrust laws were effectively suspended for a time during the early New Deal.28 For that reason, I view the public commitment to a competition norm as established later, during the 1940s.29

C. Social Safety Net

The federal programs we think of today as creating a social safety net were mainly established in their modern form during the New Deal, though they had Populist and Progressive predecessors, including in the states, and they have been augmented since the 1930s. These programs include government-run insurance (such as Social Security, Medicare, the Affordable Care Act, and unemployment insurance), direct governmental provision of services (including the welfare system and Head Start), and tax policy (including deductions for expenditures on child care, education, and job training).30 The safety net also includes various regulatory programs offering protection against economic hardship to vulnerable groups, such as agricultural price supports,31 minimum wage legislation,32 and requirements that certain businesses provide service to all comers on nondiscriminatory terms.33

Two decades after the enactment of Social Security, President Eisenhower—the leader of the political party that was home to many opponents of social insurance—recognized that social safety net programs had come to reflect an entrenched public norm.34 In private correspondence with his brother, Eisenhower observed, “Should any political party attempt to abolish social security, unemployment insurance, and eliminate labor laws and farm programs, you would not hear of that party again in our political history.”35 The appropriate and constitutionally permissible extent of the safety net continues to be debated, as reflected in legal and political battles over the Affordable Care Act.36 But as Eisenhower recognized sixty-five years ago, a substantial social safety net is now an accepted superstatutory norm.

D. Commitments in Tension

The three public commitments shaping the governmental role in economic life have an obvious potential for tension. A thoroughgoing effort to protect economic rights could insulate the exercise of market power from government intervention. For example, one might say it encroaches on property and contract if a firm is prevented from charging a monopoly price to a willing buyer,37 or prevented from making exclusive agreements with suppliers or distributors that benefit both contracting parties but have the effect of limiting competition by excluding rivals from access to customers or the market. Thoroughgoing protection of economic rights could also inhibit the development of social insurance by precluding the progressive taxation required for redistribution, or by blocking other safety net programs on the argument that the public may not regulate in ways that restrict the way firms exercise their property rights.38 One could also imagine the reverse, where an exclusive focus on protecting competition or implementing a strong social safety net would be said to undermine economic rights.

The other pair of commitments, to competition and a social safety net, could also be in tension. Competition leads to losers as well as winners, while social insurance ameliorates losses. Hence a thoroughgoing commitment to protecting vulnerable farmers, workers, and families from the vagaries of the marketplace could lead to the adoption of policies that limit competition. Conversely, strong protections for competition, letting the chips fall as they may, would limit the tools available for strengthening the social safety net.

#### 1---The “core antitrust laws” are Sherman, Clayton, and the FTCA---the counterplan only rules on the 14th Amendment

Thomas Horton 10. Professor of Law and Heidepriem Trial Advocacy Fellow, University of South Dakota School of Law. “Rediscovering Antitrust's Lost Values.” The University of New Hampshire Law Review. https://scholars.unh.edu/cgi/viewcontent.cgi?article=1305&context=unh\_lr

Part II of this Article discusses Congress’s historical balancing and blending of fundamental political, social, moral, and economic values to create a constitutional-like set of flexible laws that can be adapted to unforeseen and changing economic and political circumstances.22 Part II.A. briefly reviews some of the extensive scholarship addressing Congress’s balancing of values and objectives in its core antitrust laws including the Sherman, Clayton, and FTC Acts. Parts II.B. and C. explore the less-studied balancing of political, social, moral, and economic values and objectives in more recent antitrust legislation.23 Part II.B. specifically examines the legislative debates undergirding the passage of the HSR Act. 24 Part II.C. then turns to the debates and discourse that led to the passage of the NCRA in 1984 and the subsequent National Cooperative Production Amendments of 1993 and 2004. 25

#### 2---Antitrust and constitutional law are distinct---their definitions double the scope of the topic

Daniel A. Crane 19. Frederick Paul Furth Sr. Professor of Law, University of Michigan. "Scrutinizing Anticompetitve State Regulations through Constitutional and Antitrust Lenses," William & Mary Law Review 60 (4): 1175-1214

Assuming that the political resources necessary to ramp up either the antitrust or constitutional theory are scarce and that support for the two theories is mutually competitive, the question arises of whether it would be more effective to focus exclusively on one of the two theories or instead attempt to create **two differentiated tools tailored to address different problems in different fields**. Such a move would require limiting the generality of each of the tools by focusing on distinctive factors or patterns. For example, the constitutional principle against anticompetitive parochialism could be focused on failures of political processes-particularly circumstances where costs are externalized outside the boundaries of the voting jurisdiction."' By contrast, the FTC's heightened preemptive powers might be focused on circumstances involving restraints that limit innovation.8 o While there would obviously be some overlap between these two categories and hence some contestable turf (assuming, again, that the two theories are mutually competitive), some effort at such a division of labor might assuage concerns about a return to Lochnerism

Finally, although the preceding analysis has assumed some benefits to making a coordinated strategic decision about which legal and policy levers to pull, such coordination may be infeasible given that-apart from the courts-the communities involved in forming **antitrust and constitutional law and policy are almost entirely distinct**. The antitrust bar that stocks the FTC is specialized and relatively insular. 8 ' Constitutional theories directed at anticompetitive state and local regulations have been largely pushed by public interest firms such as the Institute for Justice and the Pacific Legal Foundation, which have shown little interest in antitrust theories.'8 2 So perhaps the possibility of coordinating the deployment of the constitutional and antitrust theories is the sort of question that would interest our hypothetical Platonic guardian, but, like the rest of her hypothesized work, have little relevance to the rest of us.

#### 3---The constitution is the highest law of the land---antitrust is distinct and subordinate

Alden Abbott 14. Alden Abbott served as Deputy Director of Edwin Meese III Center for Legal and Judicial Studies at The Heritage Foundation. "Constitutional Constraints on Federal Antitrust Law." Heritage Foundation. 12-11-2014. https://www.heritage.org/report/constitutional-constraints-federal-antitrust-law

America’s antitrust laws have long held a special status in the ‌federal statutory hierarchy. The Supreme Court of the United States, for example, has famously stated that the “[a]ntitrust laws in general, and the Sherman Act in particular, are the Magna Carta of free enterprise.”[[1]](https://www.heritage.org/report/constitutional-constraints-federal-antitrust-law" \l "_ftn1) Thus, a decision not to apply the antitrust laws to a particular type of conduct requires strong justification.

Nevertheless, various constitutionally based interests—such as federalism, freedom to petition the government, freedom of the press, freedom of speech, and freedom of religion—at times may be in tension with the economic-based goals of the antitrust laws. The courts have taken into account such interests in limiting the reach of antitrust. Whether they have struck an appropriate balance, however, is a matter of significant debate.

Fundamental Antitrust Principles

The U.S. antitrust laws seek to curb efforts by firms to reduce competition in the marketplace or to create or maintain monopolies. As Professor Herbert Hovenkamp, author of the leading antitrust treatise, points out, the antitrust statutes’ language is “vague and malleable.”[[2]](https://www.heritage.org/report/constitutional-constraints-federal-antitrust-law" \l "_ftn2) For example, over a century of federal case law has been required to make sense of and cabin the Sherman Antitrust Act’s literal prohibition on “every contract, combination … or conspiracy in restraint of trade.”[[3]](https://www.heritage.org/report/constitutional-constraints-federal-antitrust-law" \l "_ftn3) Even today, uncertainty about the likely antitrust treatment of many corporate contracts or mergers creates a continuing demand for antitrust counseling.

Until the past 50 years or so, antitrust was viewed by certain commentators as promoting a variety of goals—such as protecting small businesses and reducing the influence of large enterprises—in addition to improving the functioning of free markets. Such views, which also crept into case law, were not unreasonable. The antitrust statutes were enacted in the wake of populist and Progressive Movement concerns about “the trusts” and “big business” abuses, and given their lack of detail, it was natural that these laws might be interpreted in light of such a history. Since the 1970s, however, American federal courts have substituted economic reasoning for this “historical” approach, influenced by economics-based “Chicago School” and “Harvard School” scholarship.[[4]](https://www.heritage.org/report/constitutional-constraints-federal-antitrust-law" \l "_ftn4)

Today, American antitrust law generally is aimed at promoting consumer welfare and “economic efficiency.” It pursues this goal by forbidding business behavior that harms the competitive process and that lacks countervailing efficiency justifications. Concern typically focuses on “bad” actions—business behavior that is not “competition on the merits”[[5]](https://www.heritage.org/report/constitutional-constraints-federal-antitrust-law" \l "_ftn5)—that reduce output and raise prices. Certain conduct—“naked” cartel activity lacking any efficiency justification, such as secret price fixing or bid rigging—is deemed categorically illegal, or unlawful “per se.” Conduct that is not per se illegal is assessed under a “rule of reason,” which requires detailed and often intrusive analysis of particular practices.

American antitrust law, however, does not prohibit the mere exercise of legitimately obtained market power—that is, the mere charging of “high” prices by firms that succeed through merits-based competition. As the Supreme Court emphasized in Verizon v. Trinko:

The mere possession of monopoly power, and the concomitant charging of monopoly prices, is not only not unlawful; it is an important element of the free-market system. The opportunity to charge monopoly prices—at least for a short period—is what attracts “business acumen” in the first place; it induces risk taking that produces innovation and economic growth. To safeguard the incentive to innovate, the possession of monopoly power will not be found unlawful unless it is accompanied by an element of anticompetitive conduct.[[6]](https://www.heritage.org/report/constitutional-constraints-federal-antitrust-law" \l "_ftn6)

**The antitrust laws cannot, of course, be applied in a manner that offends the Constitution**. Two types of constitutionally influenced limitations on the federal antitrust laws are especially well established: limitations derived from federalism and limitations derived from the First Amendment right to petition the government for the redress of grievances. As we will see, both sorts of limitations are in tension with the purely materialist goals of antitrust. We will consider them in turn before addressing a few additional constitutional considerations.

#### 4---Antitrust laws are statutes---that’s distinct form the constitutional law

Beau Steenken and Tina Brooks 21. Beau Steenken joined the Law Library Faculty at the University of Kentucky in September 2010. As Instructional Services Librarian, he engaged in a revamp of the Legal Research curriculum as the UK College of Law shifted from an adjunct-model to a full-time faculty model of LRW instruction. He teaches two to four sections of 1L Legal Research a year and also coordinates informal research instruction of various sorts. Tina M. Brooks joined the Law Library Faculty at the University of Kentucky in July 2011. As Electronic Services Librarian, she manages the University of Kentucky Law Library’s website and electronic resources and also teaches two sections of the 1L Legal Research course. "Constitutions And Statutes." Sources Of American Law By Center For Computer-Assisted Legal Instruction. July 2021. https://sourcesofamericanlaw.lawbooks.cali.org/chapter/constitutions-statutes/

2.2 Constitutions & Statutes

As discussed in [Chapter 1](https://sourcesofamericanlaw.lawbooks.cali.org/chapter/constitutions-statutes/#_The_United_States), **constitutions act as the highest source of law** in the United States legal system. No other law can be valid if it conflicts with a constitutional provision. As such, finding applicable constitutional sections takes on dire importance for legal researchers. Fortunately, constitutions tend to be short. Furthermore, because of their importance, most experienced lawyers will know whether or not a constitutional issue will likely apply without needing to do an overly large amount of research. Because of these factors, and because jurisdictions tend to publish their constitutions in the same place as their statutes, we will cover constitutions and statutes together.

**Constitutionally valid statutes act as the second highest source of law** in the United States legal system. An applicable statute will control a given legal problem over case-made legal rules. This has been the case in the Anglo legal tradition since the late Middle Ages, as the quote from Francis Bacon at the beginning of this chapter suggests. However, the full primacy of statutes did not occur until the Tudor period in the Sixteenth Century.[42](https://sourcesofamericanlaw.lawbooks.cali.org/chapter/constitutions-statutes/#sdfootnote42sym) In fact, at that time England underwent the Reformation and split from the Roman Catholic Church by statute.[43](https://sourcesofamericanlaw.lawbooks.cali.org/chapter/constitutions-statutes/#sdfootnote43sym) As the development of statutory authority occurred before the founding of the North American colonies, statutes have always enjoyed primacy (subject to written constitutions, an American innovation) in the U.S. legal system.

### States CP---2NC

#### State constitutions solve

Hannah Gaskill 22. Master’s of journalism degree in December 2019 from the University of Maryland. "Jones Seeks Constitutional Amendment to Strengthen Abortion Rights in Maryland". Maryland Matters. 2-14-2022. https://www.marylandmatters.org/2022/02/14/jones-seeks-constitutional-amendment-to-strengthen-abortion-rights-in-maryland/

House Speaker Adrienne A. Jones (D-Baltimore County) announced Monday that she is sponsoring legislation aimed at enshrining abortion access in the Maryland Constitution.

“Restricting women’s family planning options is dangerous and unacceptable,” she said. “We will do everything we can to make sure that women’s reproductive healthcare is always protected in Maryland and send the message loud and clear that this a fundamental issue of liberty that cannot and should not be chipped away at or bargained for.”

House Bill 1171 would create a ballot referendum allowing Marylanders to vote on whether abortion access should be protected in the state constitution.

Jones said at a news conference Monday that she is proud to pick up where her predecessor, the late House Speaker Michael E. Busch (D-Anne Arundel), left off.

In 2019, Busch introduced a bill to create a ballot initiative to incorporate abortion rights into the state constitution but pulled it due to a lack of support from then-Senate President Emeritus Thomas V. Mike Miller, Jr. (D-Calvert).

The legislature has been working to protect the right to abortion for decades.

In 1991, the General Assembly passed a bill to prohibit the state from obstructing the right to abortion up until a fetus is able to live outside of the womb. Once viability is reached, abortions can be performed only if there is a fetal anomaly or to protect a woman’s health.

In 1992, a statewide referendum codified the measure, ensuring that access to abortion would still be legal in Maryland regardless of whether the Supreme Court overturned Roe v. Wade.

House Health and Government Operations Committee Chair Shane E. Pendergrass (D-Howard) remembered voting in favor of the referendum, known as Question Six, 30 years ago.

“I believed that by now we would be more enlightened society, recognizing a woman’s right [to] working with her doctor to make medical decisions for herself,” Pendergrass said on Monday. “ Unfortunately, I was wrong.”

Enshrining abortion access in the state constitution would make it more difficult for future General Assemblies to overturn the right.

#### Counterplan solves even if Roe is overturned.

Nick Ehli 21. Writer @ Kaiser Health News. "State Constitutions Vex Conservatives’ Strategies for a Post-Roe World". Kaiser Health News. 12-1-2021. https://khn.org/news/article/state-constitutions-vex-conservatives-strategies-for-a-post-roe-world/

Republican lawmakers in a handful of conservative states have stumbled on a roadblock to what they thought would be a clear path to setting new restrictions on abortion if the Supreme Court upends the landmark Roe v. Wade decision: right-to-privacy protections enshrined in their own state constitutions.

In states where courts have ruled that their constitutions’ explicit privacy rights extend to the right of a woman to have an abortion, the procedure would continue to be legal even if the Supreme Court’s 1973 ruling is overturned, legal scholars and abortion-rights advocates said.

#### State action has international influence---especially over economic policy.

Nina **Hachigian 21**. Nina Hachigian is the deputy mayor of international affairs of Los Angeles and a former U.S. ambassador to the Association of Southeast Asian Nations. "Why U.S. Cities and **States** Should Play a **Bigger Role** in **Foreign Policy**." Foreign Policy. 4-19-2021. https://foreignpolicy.com/2021/04/19/american-cities-states-local-foreign-policy-role-domestic-biden-sullivan/

So far, so good. But what has been missing in the debate so far is the **crucial role** that U.S. **states**, cities, and communities can play. Cities’ and states’ **economic policy choices** concerning **infrastructure**, **innovation**, and **other areas** create the **economic strength** that U**.S. power rests on**. When local governments **invest** in their residents—via education, health care, housing, and other basic needs—they are laying the **domestic foundation** of foreign-policy success. Local governments and communities raise and **empower the workers**, **inventors**, **caregivers**, **entrepreneurs**, **entertainers**, and **soldiers of tomorrow**. When their **programs** **and institutions** are **equitable**, they help eliminate **systemic racism** and **gender inequality**, LGBTQ and religious bias, and **other injustices**. This **aids foreign policy** in two ways: Not only will the United States’ **international reputation** improve as it addresses its wrongs, but it will have the benefits of the full team it needs instead of leaving people behind and talents untapped. It may come as a surprise to some, but **state and local governments** interact with the world **outside U.S. borders** in many more ways than in the past. Local leaders are the **actual boots** on the ground when **transnational threats** hit U.S. shores, setting **pandemic rules**, distributing **vaccines**, coping with **extreme weather**, and caring for migrants. **Local governments** have become **key national security actors**. Their **direct role** in **foreign policy** has also been **growing**. For example, U.S. local leaders **regularly nurture** relationships with **foreign governments**. In any given week in Los Angeles, where I am the deputy mayor for international affairs, Mayor Eric Garcetti could be speaking with his counterparts in Tokyo, Jakarta, or Mexico City, the ambassadors of India or France, or the secretary-general of the United Nations. Before the pandemic, **Los Angeles** hosted heads of **state and government ministers** on a **regular basis**. Of course, these relationships do not define the contours of national ones, but the sum total of local ties—involving government, civil society, **business**, and countless individual people—is a **critical stabilizer**. In a **democracy**, especially one with a federal, **decentralized system**, these ties create the **political space** for **closer relations** or, in some cases, frostier ones. Some relationships deserve a city like Los Angeles’ special attention—perhaps because of their **outsized economic impact** or their importance to a large diaspora community. With the **Mexican Foreign Ministry**, we created the [Mexico-Los Angeles Commission](https://www.pacificcouncil.org/newsroom/mayor-garcetti-and-mexico-kick-first-mexla-meeting), a first-of-its-kind, city-to-nation citizens’ commission that paired leaders in key sectors. We were honored when **Japan** chose to launch its third global public diplomacy hub, Japan House, in our city; currently, we are testing Japanese zero-emission equipment at the busy Port of Los Angeles. **Vietnam** and the **United States** need a nonstop flight to connect them, and Los Angeles is the best airport for that critical route. **Paris** and **Los Angeles** agreed to cooperate to make their Summer Olympic and Paralympic Games in 2024 and 2028, respectively, equitable, sustainable, and innovative. With the United Kingdom, we are working on mobility **innovation** and **gender equity** progress. Finally, the city’s large **Armenian-American diaspora** demanded an active role for elected officials in addressing the recent war between Armenia and Azerbaijan. Los Angeles’ role has been “formestic” indeed. Mayors also **cooperate across borders** every day. Garcetti has convened mayors from **around the world** through the auspices of [C40](https://www.c40.org/), where he chairs a group of nearly **100 climate-ambitious cities**. The mayors discuss not only what more their cities can do to **address the climate crisis** but also pragmatic details of how best to respond to **COVID-19** and how post-pandemic recovery must be just and green. Los Angeles belongs to many other active city networks, some dedicated to specific topics such **as** [**gender equity**](https://citieschange.org/), some broader, like the Urban 20, a network of cities in the G-20 countries that advocates for a **more progressive agenda** than their nations do. Los Angeles is also one in a network of global cities that are [measuring](https://sdg.lamayor.org/) their progress toward the United Nations’ Sustainable Development Goals. This may sound like a large set of **international initiatives** for a city hall in California. But the truth is most other **major global cities** have more **active international engagements** supported by greater resources than U.S. cities do. Cities and states could do **even more** with support from the **Biden administration**. If **foreign policy** is to serve everyday Americans, these **channels** should be **expanded and deepened**.

#### 2. It’s key to 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

## 1NR

### FTC DA---1NR

#### **1. Algorithmic bias risks nuke war.**

Elsa B. Kania 17. Adjunct fellow with the Technology and National Security Program at the Center for a New American Security, 11/15/17. “The critical human element in the machine age of warfare.” https://thebulletin.org/2017/11/the-critical-human-element-in-the-machine-age-of-warfare/

Today, however, the human in question might be considerably less willing to question the machine. The known human tendency towards greater reliance on computer-generated or automated recommendations from intelligent decision-support systems can result in compromised decision-making. This dynamic—known as automation bias or the overreliance on automation that results in complacency—may become more pervasive, as humans accustom themselves to relying more and more upon algorithmic judgment in day-to-day life.

In some cases, the introduction of algorithms could reveal and mitigate human cognitive biases. However, the risks of algorithmic bias have become increasingly apparent. In a societal context, “biased” algorithms have resulted in discrimination; in military applications, the effects could be lethal. In this regard, the use of autonomous weapons necessarily conveys operational risk. Even greater degrees of automation—such as with the introduction of machine learning in systems not directly involved in decisions of lethal force (e.g., early warning and intelligence)—could contribute to a range of risks.

Friendly fire—and worse. As multiple militaries have begun to use AI to enhance their capabilities on the battlefield, several deadly mistakes have shown the risks of automation and semi-autonomous systems, even when human operators are notionally in the loop. In 1988, the USS Vincennes shot down an Iranian passenger jet in the Persian Gulf after the ship’s Aegis radar-and-fire-control system incorrectly identified the civilian airplane as a military fighter jet. In this case, the crew responsible for decision-making failed to recognize this inaccuracy in the system—in part because of the complexities of the user interface—and trusted the Aegis targeting system too much to challenge its determination. Similarly, in 2003, the US Army’s Patriot air defense system, which is highly automated with high levels of complexity, was involved in two incidents of fratricide. In these stances, “naïve” trust in the system and the lack of adequate preparation for its operators resulted in fatal, unintended engagements.

As the US, Chinese, and other militaries seek to leverage AI to support applications that include early warning, automatic target recognition, intelligence analysis, and command decision-making, it is critical that they learn from such prior errors, close calls, and tragedies. In Petrov’s successful intervention, his intuition and willingness to question the system averted a nuclear war. In the case of the USS Vincennes and the Patriot system, human operators placed too much trust in and relied too heavily on complex, automated systems. It is clear that the mitigation of errors associated with highly automated and autonomous systems requires a greater focus on this human dimension.

#### 2. Algorithmic bias in AI is an existential threat.

Mara Hvistendahl 19 – correspondent with Science magazine, 3/28/19. “Can we stop AI outsmarting humanity?” <https://www.theguardian.com/technology/2019/mar/28/can-we-stop-robots-outsmarting-humanity-artificial-intelligence-singularity>

Existential risks – or X-risks, as Tallinn calls them – are threats to humanity’s survival. In addition to AI, the 20-odd researchers at CSER study climate change, nuclear war and bioweapons. But, to Tallinn, those other disciplines “are really just gateway drugs”. Concern about more widely accepted threats, such as climate change, might draw people in. The horror of superintelligent machines taking over the world, he hopes, will convince them to stay. He was visiting Cambridge for a conference because he wants the academic community to take AI safety more seriously.

At Jesus College, our dining companions were a random assortment of conference-goers, including a woman from Hong Kong who was studying robotics and a British man who graduated from Cambridge in the 1960s. The older man asked everybody at the table where they attended university. (Tallinn’s answer, Estonia’s University of Tartu, did not impress him.) He then tried to steer the conversation toward the news. Tallinn looked at him blankly. “I am not interested in near-term risks,” he said.

Tallinn changed the topic to the threat of superintelligence. When not talking to other programmers, he defaults to metaphors, and he ran through his suite of them: advanced AI can dispose of us as swiftly as humans chop down trees. Superintelligence is to us what we are to gorillas.

An AI would need a body to take over, the older man said. Without some kind of physical casing, how could it possibly gain physical control?

Tallinn had another metaphor ready: “Put me in a basement with an internet connection, and I could do a lot of damage,” he said. Then he took a bite of risotto.

Every AI, whether it’s a Roomba or one of its potential world-dominating descendants, is driven by outcomes. Programmers assign these goals, along with a series of rules on how to pursue them. Advanced AI wouldn’t necessarily need to be given the goal of world domination in order to achieve it – it could just be accidental. And the history of computer programming is rife with small errors that sparked catastrophes. In 2010, for example, when a trader with the mutual-fund company Waddell & Reed sold thousands of futures contracts, the firm’s software left out a key variable from the algorithm that helped execute the trade. The result was the trillion-dollar US “flash crash”.

The researchers Tallinn funds believe that if the reward structure of a superhuman AI is not properly programmed, even benign objectives could have insidious ends. One well-known example, laid out by the Oxford University philosopher Nick Bostrom in his book Superintelligence, is a fictional agent directed to make as many paperclips as possible. The AI might decide that the atoms in human bodies would be better put to use as raw material.

Tallinn’s views have their share of detractors, even among the community of people concerned with AI safety. Some object that it is too early to worry about restricting superintelligent AI when we don’t yet understand it. Others say that focusing on rogue technological actors diverts attention from the most urgent problems facing the field, like the fact that the majority of algorithms are designed by white men, or based on data biased toward them. “We’re in danger of building a world that we don’t want to live in if we don’t address those challenges in the near term,” said Terah Lyons, executive director of the Partnership on AI, a technology industry consortium focused on AI safety and other issues. (Several of the institutes Tallinn backs are members.) But, she added, some of the near-term challenges facing researchers, such as weeding out algorithmic bias, are precursors to ones that humanity might see with super-intelligent AI.

Tallinn isn’t so convinced. He counters that superintelligent AI brings unique threats. Ultimately, he hopes that the AI community might follow the lead of the anti-nuclear movement in the 1940s. In the wake of the bombings of Hiroshima and Nagasaki, scientists banded together to try to limit further nuclear testing. “The Manhattan Project scientists could have said: ‘Look, we are doing innovation here, and innovation is always good, so let’s just plunge ahead,’” he told me. “But they were more responsible than that.”

#### 3. Link turns case. Expanded antitrust enforcement of anticompetitive practices causes backlash.

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

#### 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.

#### Antitrust is resource-intensive and staff work across areas

KEVIN HAHM et al. 21. Partner in the Antitrust Practice of Hunton Andrews Kurth LLP, with RYAN PHAIR, CARTER SIMPSON, AND JACK MARTIN, Summer. “Recent Private Merger Challenges: Anomaly or Harbinger?” https://www.huntonak.com/images/content/7/7/v2/77671/recent-private-merger-challenges-anomaly-or-harbinger.pdf

Although Congress increased the FTC’s budget by $20 million21 and the DOJ’s budget by $17.8 million for FY 2021,22 these modest increases may not be sufficient to meet the agencies’ needs for their merger enforcement programs. Litigating modern merger challenges is extremely resource intensive. For instance, in 2016, the DOJ successfully challenged two proposed mergers in the health insurance industry (Anthem/Cigna23 and Aetna/Humana24), and those two matters alone required 25–30 percent of the Division’s professional staff.25 In the same year, the FTC litigated four merger challenges (Cabell/St. Mary’s,26 Staples/Office Depot,27 Hershey/Pinnacle,28 and Advocate/Northshore29). Accord- ing to Baer, that “inevitably meant other matters were understaffed.”30

Moreover, merger enforcement is only one part of the agencies’ missions. Putting aside the authorities of the DOJ and FTC over criminal antitrust and consumer protection, respectively, both agencies are also charged with civil non- merger antitrust enforcement, and are in the midst of liti- gating landmark cases against Google31 and Facebook.32 The Google trial will not occur until 2023,33 and both cases have been compared to the DOJ’s resource-intensive 2001 case against Microsoft.34 The Texas Attorney General’s request for appropriations in connection with its case against Goo- gle highlights the significant resources needed to litigate these types of cases. As lead for a group of states in a sepa- rate antitrust suit against Google, the Texas AG requested $43 million for expert witness expenses, to which the chair of the Texas Senate Finance Committee responded that she was “doubtful” the amount would be sufficient.35

Other cases and programs will also undoubtedly drain the agencies’ resources. Both agencies continue to investi- gate, and may bring enforcement actions against, the other two major technology platforms: Apple and Amazon.36 Fur- thermore, the FTC is currently undertaking several compe- tition-related 6(b) studies, including: a Certificate of Public Advantage (COPA) study;37 a study on prior acquisitions by large technology companies;38 and a retrospective of physi- cian acquisitions.39 While most of these studies are largely undertaken by FTC economists, these are the same staff economists needed for the bread-and-butter work of FTC staff during ongoing merger investigations and enforcement actions.

#### The plan directly 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.

#### The FTC doesn’t have the resources for expanded antitrust enforcement.

Alex Kantrowitz 20 – Silicon Valley-based journalist covering Big Tech and society, 9/17/20. “‘It’s Ridiculous’: Underfunded U.S. Regulators Can’t Keep Fighting the Tech Giants Like This.” https://onezero.medium.com/its-ridiculous-underfunded-u-s-regulators-can-t-keep-fighting-the-tech-giants-like-this-3b57487b4d63

As politicians, the press, and the public scrutinize the tech giants and grow wary of their power, the most important organizations tasked with restraining them — the U.S. regulatory agencies — aren’t getting enough funding to do the job. “The agencies are severely resource-constrained,” Michael Kades, an-ex FTC trial lawyer who spent 11 years at the agency, told Big Technology. The Federal Trade Commission and Department of Justice’s antitrust division have a combined annual budget below what Facebook makes in three days. The FTC runs on less than $350 million per year, the DOJ’s antitrust division on less than $200 million. Facebook made $18 billion last quarter alone. The funding disparity between the tech giants and their regulators leads to an unbalanced fight, current and ex-staffers said: The agencies can’t investigate the tech giants to the extent they’d like. They might shy away from complex cases fearing a resource-draining battle. And when they investigate the tech giants, they often see former colleagues with intricate knowledge of their strategy and ability to act (or lack thereof) representing these companies. Without significant budget increases, the tech giants may well continue to act unrestrained with little fear of repercussions. “DOJ is under-resourced, FTC it’s ridiculous,” one ex DOJ-staffer told Big Technology. This doesn’t mean these agencies are entirely hamstrung; they can typically marshall the resources to bring a clear-cut case. “They want to win,” one ex-FTC official said. “If it’s really egregious, and they find that in discovery, the attorneys are going to put a case together and go after it.” But when you can only take up a limited number of cases due to resource constraints, things inevitably slip through. “When I was there, the privacy wing had maybe 50 people, and that’s probably generous. That’s lawyers, support staff, everyone,” Justin Brookman, the former policy director at the FTC’s office of technology research and investigation, told Big Technology. “If they were to bring a case, that would tie up half the resources of the group. And they had two litigations ongoing and that took up most of everyone’s time.” The agency’s budget has barely increased since Brookman left in 2017, while the tech giants have added trillions of dollars to their market caps. Inside the FTC and DOJ, employees are aware of the tech giants’ ability to fight, and the corporations’ budgets tend to live inside their heads. “Facebook will have the ability to raise every single issue, if they want to,” Kades said. “It doesn’t have to be a winner, doesn’t have to be close to winner. If they wanted to take this position in litigation, they can make every procedural maneuver difficult, they can not cooperate on discovery, they can fight on scheduling, they don’t have to win even half of those, but it would just suck up resources.” The ability to do this, not even the action itself, can impact regulators’ thinking. Agency staffers are typically mission-driven and knowingly work for salaries below private-sector rates, but the resource-rich tech giants are now poaching directly from agencies at a rate remarkable even for Washington’s revolving door between the private and public sector.

#### AI bias is the top enforcement priority.

Tanya Forsheit et al 1/17/22. Chair of the Privacy & Data Security Group of Frankfurt Kurnit Klein & Selz, with Jessica Lee and Robyn Mohr, “Federal Privacy and Data Security Enforcement: A Look Back and a Look Forward.” https://www.lexology.com/library/detail.aspx?g=d90db69f-220d-4fd5-b8d6-7574a22e7efe

FTC Enforcement Priorities

FTC Chair Khan issued a memo on the Vision and Priorities for the FTC in September 2021, outlining her strategic approach and listing several policy priorities. Specifically, Khan would like the FTC to focus on “rampant consolidation and dominance” where a lack of competition may make unlawful conduct more likely. Khan cites that key projects for the FTC will include revising the merger guidelines (in conjunction with the Department of Justice) and reviewing “take-it-or-leave-it” contracts that could be viewed as potentially unfair methods of competition or unfair or deceptive practices.

And most recently, in December, the FTC issued a Statement of Regulatory Priorities, citing President Biden’s July Executive Order) and affirming that the Commission intends to consider competition rule-makings relating to surveillance, unfair competition in online marketplaces, and noncompete clauses, among others.

We also expect the FTC to continue its focus on children’s data, bias and discrimination in Artificial Intelligence, algorithmic transparency, and dark patterns and negative option marketing (as we saw with the FTC’s Enforcement Policy Statement. To learn more about dark patterns, watch our In The Know Video here.

#### February rulemaking date proves.

Molly S. DiRago et al. 22. Partner at Troutman Pepper, with Mary Kate Kamka, Jack Altura, Robyn W. Lin, Graham T. Dean, Christopher J. Capurso, Lissette Payne, John Sample, Sadia Mirza, January 2022. “More Privacy, Please - January 2022.” https://www.troutman.com/insights/more-privacy-please-january-2022.html

US Laws and Regulation

FTC Rulemaking Announcement. On December 10, 2021, the Federal Trade Commission (FTC) filed an Advanced Notice of Proposed Rulemaking with the Office of Management and Budget on amendments under FTC Act Section 18, which allows the FTC to prescribe particular acts and practices as deceptive or unfair. Advanced notices help agencies solicit stakeholder comments before carrying out an official rulemaking process. The FTC indicated this proposed rulemaking would address privacy practices, including bias in algorithmic rulemaking, and curb lax security practices. Despite not publishing any additional information on the rulemaking beyond this summary, the FTC did establish a date of February 2022, indicating it will either start soliciting comments or official rulemaking will begin next month.

#### FTC’s regulatory priorities are focused on AI privacy violations.

Aaron Mendelsohn 1/13/22. Principal Director, Risk & Compliance, Accenture. “Another U.S. Regulator is coming after Companies for Data Privacy and Security Violations: The Federal Trade Commission Tries to Up the Ante.” https://financialservicesblog.accenture.com/another-us-regulator-coming-after-companies-for-data-privacy-security-violations

On December 10, 2021, the Federal Trade Commission (FTC) issued a Notice that it was “considering initiating a rulemaking” in February 2022 that would empower the agency to take punitive action against companies for committing data privacy and security violations. The FTC’s objective for this rule is “to curb lax security practices, limit privacy abuses, and ensure that algorithmic decision-making does not result in unlawful discrimination.” Significantly, the agency may enforce the rule via fines for even first-time offenders, although this authority is still to be determined. The FTC is not the first, nor will it be the last, U.S. regulator to focus on companies’ data privacy and security practices, particularly vis-à-vis the use of artificial intelligence (AI) in algorithms. As a result, companies and their compliance functions may need to be even more vigilant in verifying that they are not engaged in “unfair or deceptive” practices involving inadequate protection of consumers’ data. Following is our analysis of the FTC’s Notice of proposed rulemaking and what companies may do to prepare for this added scrutiny.

Background

As background, the FTC is the “only federal agency with both consumer protection and competition jurisdiction” in the United States. Created in 1914 and with a $383 million operating budget in 2021, the FTC is an independent law enforcement agency whose stated mission is “protecting consumers and competition by preventing anticompetitive, deceptive, and unfair business practices” in broad sectors of the economy. In addition to its authority to investigate potential violations of the law by companies and individuals, the agency also has federal rule-making authority to issue industry-wide regulations, including the Federal Trade Commission Act, Clayton Act, Telemarketing Sales Rule, Fair Credit Reporting Act, Identity Theft Act, the Equal Credit Opportunity Act, and more than 70 other laws.

Here, the FTC’s announcement of its Notice of proposed data privacy and security rulemaking coincided with its annual Statement of Regulatory Priorities, also issued on December 10, 2021. In its Statement, the agency outlined other potential rules, including proposed measures to (a) prevent “abuses stemming from surveillance-based business models,” (b) define “unfair methods of competition,” and (c) “define with specificity unfair or deceptive acts or practices” by companies. The goal of all these proposed rules appears to be to protect consumers’ data and to sanction companies that commit data privacy and security abuses. Moreover, the FTC looks to be targeting companies’ surveillance-based business models for intrusive instances, anti-competitive behavior, and AI-driven discriminatory decision-making practices.

#### FTC focused on AI privacy regs now.

Clayton G. Northouse et al. 1/4/22. Partner at Sidley Austin, with Lauren Kitces and Alexandra Mushka. “United States: FTC Announces It May Pursue Rulemaking To Combat Discrimination In AI.” https://www.mondaq.com/unitedstates/privacy-protection/1146244/ftc-announces-it-may-pursue-rulemaking-to-combat-discrimination-in-ai

On December 10, the Federal Trade Commission (FTC) announced it is considering a rulemaking on commercial Artificial Intelligence (AI). The purpose of the rulemaking, according to an advanced notice of proposed rulemaking (ANPRM) titled "Trade Regulation in Commercial Surveillance," would be "to curb lax security practices, limit privacy abuses, and ensure that algorithmic decision-making does not result in unlawful discrimination."

While not formally part of the rulemaking process mandated by the Administrative Procedure Act, advanced notices allow agencies to solicit public comment before drafting more specific proposals. The FTC has not yet issued privacy or artificial intelligence rules, though it has indicated that such rulemaking is on the horizon. The December 10 ANPRM is another signal that the FTC is gearing up to develop substantive privacy guidelines.

The anti-discriminatory focus of the notice reflects concern reflected in a variety of policy papers, research and media coverage over whether commercial AI has the potential to deliver biased outcomes. The movement towards official rulemaking also aligns with the AI fact-finding efforts and interests that the FTC has demonstrated at its last two PrivacyCon events, including a specific focus on advertising, fairness, and transparency in AI and algorithms at the summer 2020 PrivacyCon.

The language of the ANPRM is broad, and could cover a variety of commercial practices. Earlier statements, however, may provide insight into the FTC's thought-process. The Commission has previously pointed to protected-class bias in healthcare delivery and consumer credit as prime examples of algorithmic discrimination. See Jillson, E., Aiming for truth, fairness, and equity in your company's use of AI, FTC Business Blog (April 19, 2021). Additionally, in a recent semiannual Statement of Regulatory Priorities, the FTC expressed that, among the many pressing issues confronted by consumers in the modern economy, "abuses stemming from surveillance-based business models are particularly alarming." Therefore, the FTC may also target algorithms that drive behavioral ad-based ecosystems.

#### Privacy focus now.

Aaron Mendelsohn 1/13/22. Principal Director, Risk & Compliance, Accenture. “Another U.S. Regulator is coming after Companies for Data Privacy and Security Violations: The Federal Trade Commission Tries to Up the Ante.” https://financialservicesblog.accenture.com/another-us-regulator-coming-after-companies-for-data-privacy-security-violations

Ensuring Algorithmic Decision-Making does not result in Unlawful Discrimination: Finally, the Notice references “unlawful discrimination” in algorithmic decision-making, which indicates that the FTC intends to expand its current focus on AI. In particular, the agency previously proposed best practices around the use of AI, including: (a) utilizing complete and accurate data sets; (b) testing algorithms pre/post-use; (c) embracing transparency and independent standards; and (d) validating AI statements and promises. Future AI regulatory and enforcement actions by the FTC may generate additional standards and requirements for companies’ algorithmic decision-making practices.

Importantly, in addition to this Notice, the FTC has already been active in enforcing its current data privacy and security rules against companies through “compulsory processes” that empower the agency to conduct investigations utilizing subpoenas and other civil investigative processes. For example, since 2002 the FTC has pursued close to 100 cases against companies for violating the Fair Credit Reporting Act (FCRA) by engaging in unfair or deceptive practices involving inadequate protection of consumers’ personal data. Separately, since 2005 the FTC has also brought approximately 35 cases alleging violations of the GLBA’s consumer data privacy and security provisions.  The agency has collected more than $65 million in civil penalties from these enforcement cases and, if this Notice is any indication, more cases and fines are in the offing.

#### Good AI invents solutions to present AND speculative future risks---but regs are key

Toby Ord 20. Senior Research Fellow in Philosophy at Oxford University, “5. Future Risks,” The Precipice: Existential Risk and the Future of Humanity, First edition, Hachette Books, 2020, pp. 121–158

Even if these arguments for risk are entirely wrong in the particulars, we should pay close attention to the development of AGI as it may bring other, unforeseen, risks. The transition to a world where humans are no longer the most intelligent entities on Earth could easily be the greatest ever change in humanity’s place in the universe. We shouldn’t be surprised if events surrounding this transition determine how our longterm future plays out— for better or worse.

One key way in which AI could help improve humanity’s longterm future is by offering protection from the other existential risks we face. For example, AI may enable us to find solutions to major risks or to identify new risks that would have blindsided us. AI may also help make our longterm future brighter than anything that could be achieved without it. So the idea that developments in AI may pose an existential risk is not an argument for abandoning AI, but an argument for proceeding with due caution.

The case for existential risk from AI is clearly speculative. Indeed, it is the most speculative case for a major risk in this book. Yet a speculative case that there is a large risk can be more important than a robust case for a very low-probability risk, such as that posed by asteroids. What we need are ways to judge just how speculative it really is, and a very useful starting point is to hear what those working in the field think about this risk.

Some outspoken AI researchers, like Professor Oren Etzioni, have painted it as “very much a fringe argument,” saying that while luminaries like Stephen Hawking, Elon Musk and Bill Gates may be deeply concerned, the people actually working in AI are not.103 If true, this would provide good reason to be skeptical of the risk. But even a cursory look at what the leading figures in AI are saying shows it is not.

For example, Stuart Russell, a professor at the University of California, Berkeley, and author of the most popular and widely respected textbook in AI, has strongly warned of the existential risk from AGI. He has gone so far as to set up the Center for Human-Compatible AI, to work on the alignment problem.104 In industry, Shane Legg (Chief Scientist at DeepMind) has warned of the existential dangers and helped to develop the field of alignment research.105 Indeed many other leading figures from the early days of AI to the present have made similar statements.106

There is actually less disagreement here than first appears. The main points of those who downplay the risks are that (1) we likely have decades left before AI matches or exceeds human abilities, and (2) attempting to immediately regulate research in AI would be a great mistake. Yet neither of these points is actually contested by those who counsel caution: they agree that the time frame to AGI is decades, not years, and typically suggest research on alignment, not regulation. So the substantive disagreement is not really over whether AGI is possible or whether it plausibly could be threat to humanity. It is over whether a potential existential threat that looks to be decades away should be of concern to us now. It seems to me that it should.

One of the underlying drivers of the apparent disagreement is a difference in viewpoint on what it means to be appropriately conservative. This is well illustrated by a much earlier case of speculative risk, when Leo Szilard and Enrico Fermi first talked about the possibility of an atomic bomb: “Fermi thought that the conservative thing was to play down the possibility that this may happen, and I thought the conservative thing was to assume that it would happen and take all the necessary precautions.”107 In 2015 I saw this same dynamic at the seminal Puerto Rico conference on the future of AI. Everyone acknowledged that the uncertainty and disagreement about timelines to AGI required us to use “conservative assumptions” about progress—but half used the term to allow for unfortunately slow scientific progress and half used it to allow for unfortunately quick onset of the risk. I believe much of the existing tension on whether to take risks from AGI seriously comes down to these disagreements about what it means to make responsible, conservative, guesses about future progress in AI.

That conference in Puerto Rico was a watershed moment for concern about existential risk from AI. Substantial agreement was reached and many participants signed an open letter about the need to begin working in earnest to make AI both robust and beneficial.108 Two years later an expanded conference reconvened at Asilomar, a location chosen to echo the famous genetics conference of 1975, where biologists came together to pre- emptively agree principles to govern the coming possibilities of genetic engineering. At Asilomar in 2017, the AI researchers agreed on a set of Asilomar AI Principles, to guide responsible longterm development of the field. These included principles specifically aimed at existential risk:

Capability Caution: There being no consensus, we should avoid strong assumptions regarding upper limits on future AI capabilities.

Importance: Advanced AI could represent a profound change in the history of life on Earth, and should be planned for and managed with commensurate care and resources.

Risks: Risks posed by AI systems, especially catastrophic or existential risks, must be subject to planning and mitigation efforts commensurate with their expected impact.109

Perhaps the best window into what those working on AI really believe comes from the 2016 survey of leading AI researchers. As well as asking if and when AGI might be developed, it asked about the risks: 70 percent of the researchers agreed with Stuart Russell’s broad argument about why advanced AI might pose a risk;110 48 percent thought society should prioritize AI safety research more (only 12 percent thought less). And half the respondents estimated that the probability of the longterm impact of AGI being “extremely bad (e.g., human extinction)” was at least 5 percent.111 I find this last point particularly remarkable—in how many other fields would the typical leading researcher think there is a one in twenty chance the field’s ultimate goal would be extremely bad for humanity?

Of course this doesn’t prove that the risks are real. But it shows that many AI researchers take seriously the possibilities that AGI will be developed within 50 years and that it could be an existential catastrophe. There is a lot of uncertainty and disagreement, but it is not at all a fringe position.

There is one interesting argument for skepticism about AI risk that gets stronger—not weaker—when more researchers acknowledge the risks. If researchers can see that building AI would be extremely dangerous, then why on earth would they go ahead with it? They are not simply going to build something that they know will destroy them.112

If we were all truly wise, altruistic and coordinated, then this argument would indeed work. But in the real world people tend to develop technologies as soon as the opportunity presents itself and deal with the consequences later. One reason for this comes from the variation in our beliefs: if even a small proportion of researchers don’t believe in the dangers (or welcome a world with machines in control), they will be the ones who take the final steps. This is an instance of the unilateralist’s curse (discussed here). Another reason involves incentives: even if some researchers thought the risk was as high as 10 percent, they may still want to take it if they thought they would reap most of the benefits. This may be rational in terms of their self-interest, yet terrible for the world.

In some cases like this, government can step in to resolve these coordination and incentive problems in the public interest. But here these exact same coordination and incentive problems arise between states and there are no easy mechanisms for resolving those. If one state were to take it slowly and safely, they may fear others would try to seize the prize. Treaties are made exceptionally difficult because verification that the others are complying is even more difficult here than for bioweapons.113

Whether we survive the development of AI with our longterm potential intact may depend on whether we can learn to align and control AI systems faster than we can develop systems capable enough to pose a threat. Thankfully, researchers are already working on a variety of the key issues, including making AI more secure, more robust and more interpretable. But there are still very few people working on the core issue of aligning AI with human values. This is a young field that is going to need to progress a very long way if we are to achieve our security.

Even though our current and foreseeable systems pose no threat to humanity at large, time is of the essence. In part this is because progress may come very suddenly: through unpredictable research breakthroughs, or by rapid scaling-up of the first intelligent systems (for example by rolling them out to thousands of times as much hardware, or allowing them to improve their own intelligence).114 And in part it is because such a momentous change in human affairs may require more than a couple of decades to adequately prepare for. In the words of Demis Hassabis, co- founder of DeepMind:

We need to use the downtime, when things are calm, to prepare for when things get serious in the decades to come. The time we have now is valuable, and we need to make use of it.115

DYSTOPIAN SCENARIOS

So far we have focused on two kinds of existential catastrophe: extinction and the unrecoverable collapse of civilization. But these are not the only possibilities. Recall that an existential catastrophe is the permanent destruction of humanity’s longterm potential, and that this is interpreted broadly, including outcomes where a small fragment of potential may remain.

Losing our potential means getting locked into a bad set of futures. We can categorize existential catastrophes by looking at which aspects of our future get locked in. This could be a world without humans (extinction) or a world without civilization (unrecoverable collapse). But it could also take the form of an unrecoverable dystopia—a world with civilization intact, but locked into a terrible form, with little or no value.116

This has not happened yet, but the past provides little comfort. For these kinds of catastrophes only became possible with the advent of civilization, so our track record is much shorter. And there is reason to think that the risks may increase over time as the world becomes more interconnected and experiments with new technologies and ideologies.

I won’t attempt to address these dystopian scenarios with the same level of scientific detail as the risks we’ve explored so far, for the scenarios are diverse and our present understanding of them very limited. Instead, my aim is just to take some early steps toward noticing and understanding these very different kinds of failure.

We can divide the unrecoverable dystopias we might face into three types, on the basis of whether they are desired by the people who live in them. There are possibilities where the people don’t want that world, yet the structure of society makes it almost impossible for them to coordinate to change it. There are possibilities where the people do want that world, yet they are misguided and the world falls far short of what they could have achieved. And in between there are possibilities where only a small group wants that world but enforces it against the wishes of the rest. Each of these types has different hurdles it would need to overcome in order to become truly locked in.

[FIGURE 5.2 OMITTED]

Note that to count as existential catastrophes, these outcomes don’t need to be impossible to break out of, nor to last millions of years. Instead, the defining feature is that entering that regime was a crucial negative turning point in the history of human potential, locking off almost all our potential for a worthy future. One way to look at this is that when they end (as they eventually must), we are much more likely than we were before to fall down to extinction or collapse than to rise up to fulfill our potential. For example, a dystopian society that lasted all the way until humanity was destroyed by external forces would be an existential catastrophe. However, if a dystopian outcome does not have this property, if it leaves open all our chances for success once it ends—it is a dark age in our story, but not a true existential catastrophe.

The most familiar type is the enforced dystopia. The rise of expansionist totalitarianism in the mid-twentieth century caused intellectuals such as George Orwell to raise the possibility of a totalitarian state achieving global dominance and absolute control, locking the world into a miserable condition.117 The regimes of Hitler and Stalin serve as a proof of principle, each scaling up to become imperial superpowers while maintaining extreme control over their citizens.118 However, it is unclear whether Hitler or Stalin had the expansionist aims to control the entire world, or the technical and social means to create truly lasting regimes.119

This may change. Technological progress has offered many new tools that could be used to detect and undermine dissent, and there is every reason to believe that this will continue over the next century. Advances in AI seem especially relevant, allowing automated, detailed monitoring of everything that happens in public places—both physical and online. Such advances may make it possible to have regimes that are far more stable than those of old.

That said, technology is also providing new tools for rebellion against authority, such as the internet and encrypted messages. Perhaps the forces will remain in balance, or shift in favor of freedom, but there is a credible chance that they will shift toward greater control over the populace, making enforced dystopias a realistic possibility.

A second kind of unrecoverable dystopia is a stable civilization that is desired by few (if any) people. It is easy to see how such an outcome could be dystopian, but not immediately obvious how we could arrive at it, or lock it in, if most (or all) people do not want it.120

The answer lies in the various population-level forces that can shape global outcomes. Well-known examples include market forces creating a race to the bottom, Malthusian population dynamics pushing down the average quality of life, or evolution optimizing us toward the spreading of our genes, regardless of the effects on what we value. These are all dynamics that push humanity toward a new equilibrium, where these forces are finally in balance. But there is no guarantee this equilibrium will be good.

For example, consider the tension between what is best for each and what is best for all. This is studied in the field of game theory through “games” like the prisoner’s dilemma and the tragedy of the commons, where each individual’s incentives push them toward producing a collectively terrible outcome. The Nash equilibrium (the outcome we reach if we follow individual incentives) may be much worse for everyone than some other outcome we could have achieved if we had overcome these local incentives.

The most famous example is environmental degradation, such as pollution. Because most of the costs of pollution aren’t borne by the person who causes it, we can end up in a situation where it is in the self-interest of each person to keep engaging in such activities, despite this making us all worse off. It took significant moral progress and significant political action to help us break out of this. We may end up in new traps that are even harder to coordinate our way out of. This could be at the level of individuals, or at the level of groups. We could have nations, ideological blocs, or even planets or descendent species of Homo sapiens locked in harmful competition—doing what is best for their group, but bad for groups on the whole.

I don’t know how likely it is that we suffer a sufficiently bad (and sufficiently intractable) tragedy of the commons like this. Or that we are degraded by evolutionary pressures, or driven to lives of very low quality by Malthusian population dynamics, or any other such situation. I’d like to hope that we could always see such things coming and coordinate to a solution. But it’s hard to be sure that we could.

The third possibility is the “desired dystopia.”121 Here it is easier to see how universal desire for an outcome might cause us to lock it in, though less clear how such an outcome could be dystopian. The problem is that there are many compelling ideas that can radically shape our future— especially ideologies and moral theories, as these make direct normative claims about the world we should strive to create. If combined with the technological or social means for instilling the same views in the next generation (indoctrination, surveillance), this has the potential to be disastrous.

The historical record is rife with examples of seriously defective ideologies and moral views that gripped large parts of the world. Moreover, even reasonable normative views often recommend that they be locked in— for otherwise a tempting rival view may take over, with (allegedly) disastrous results.122 Even though the most plausible moral views have a lot of agreement about which small changes to the world are good and which are bad, they tend to come strongly apart in their recommendations about what an optimal world would look like. This problem thus echoes that of AI alignment, where a strong push toward a mostly correct ideal could instead spell disaster.

Some plausible examples include: worlds that completely renounce further technological progress (which ensures our destruction at the hands of natural risks),123 worlds that forever fail to recognize some key form of harm or injustice (and thus perpetuate it blindly), worlds that lock in a single fundamentalist religion, and worlds where we deliberately replace ourselves with something that we didn’t realize was much less valuable (such as machines incapable of feeling).124

All of these unrecoverable dystopias can be understood in terms of lock-in. Key aspects of the future of the civilization are being locked in such that they are almost impossible to change. If we are locked into a sufficiently bad set of futures, we have an unrecoverable dystopia; an existential catastrophe.

Of course, we can also see lock-in on smaller scales. The Corwin Amendment to the US constitution provides a disturbing example of attempted lock-in. In an effort to placate the South and avoid civil war, the proposed Thirteenth Amendment aimed to lock in the institution of slavery by making it impossible for any future amendments to the constitution to ever abolish it.125

I cannot see how the world could be locked into a dystopian state in the near future.126 But as technology advances and the world becomes more and more interlinked, the probability of a locked-in dystopia would appear to rise, perhaps to appreciable levels within the next hundred years. Moreover, in the further future I think these kinds of outcomes may come to take up a high share of the remaining risk. For one thing, they are more subtle, so even if we got our act together and made preserving our longterm potential a high global priority, it may take remarkable wisdom and prudence to avoid some of these traps. And for another, our eventual spread beyond the Earth may make us nearly immune to natural catastrophes, but ideas travel at the speed of light and could still corrupt all that we hope to achieve.

A key problem is that the truth of an idea is only one contributor to its memetic potential—its ability to spread and to stick. But the more that rigorous and rational debate is encouraged, the more truth contributes to memetic success. So encouraging a culture of such debate may be one way we can now help avoid this fate. (For more on this, see the discussion of the Long Reflection in Chapter 7.)

The idea of lock-in also gives us another useful lens through which to think about existential risk in general. We might adopt the guiding principle of minimizing lock-in. Or to avoid the double negative, of preserving our options.127 This is closely related to the idea of preserving our longterm potential—the difference being that preserving our options takes no account of whether the options are good or bad. This is not because we intrinsically care about keeping options alive even if they are bad, but because we aren’t certain they are bad, so we risk making an irreversible catastrophic mistake if we forever foreclose an option that would turn out to be best.

OTHER RISKS

What other future risks are there that warrant our concern?

One of the most transformative technologies that might be developed this century is nanotechnology. We have already seen the advent of nanomaterials (such as carbon nanotubes) which are just a few atoms thick and structured with atomic precision. But much larger vistas would open up if we could develop machinery that operates with atomic precision. We have proof that some form of this is possible within our very own cells, where atomically precise machinery already performs their essential functions.

In the popular imagination nanotechnology is synonymous with building microscopic machines. But the bigger revolution may instead come from using nanomachinery to create macro-scale objects. In his foundational work on the topic, Eric Drexler describes how nanotechnology could allow desktop fabricators, capable of assembling anything from a diamond necklace to a new laptop. This atomically precise manufacturing would be the ultimate form of 3D printing: taking a digital blueprint for the object and the raw chemical elements, and producing an atomically precise instance. This may allow us to construct things beyond our current technological reach, as well as cutting prices of existing objects such as computers or solar cells to near the cost of their raw materials, granting the world vastly more computing power and clean energy.

Such a powerful technology may pose some existential risk. Most attention has so far focused on the possibility of creating tiny self- replicating machines that could spread to create an ecological catastrophe. This may be possible, but there are mundane dangers that appear more likely, since extreme manufacturing power and precision would probably also allow the production of new weapons of mass destruction.128 Indeed the problems resemble those of advanced biotechnology: the democratization of extremely powerful technology would allow individuals or small groups access to the kinds of power (both constructive and destructive) that was previously only available to powerful nations. Solutions to managing this technology may require digital controls on what can be fabricated or state control of fabrication (the path we took with nuclear power). While this technology is more speculative than advanced biotechnology or AI, it may also come to pose a significant risk.

A very different kind of risk may come from our explorations beyond the Earth. Space agencies are planning missions which would return soil samples from Mars to the Earth, with the chief aim of looking for signs of life. This raises the possibility of “back contamination” in which microbes from Mars might compromise the Earth’s biosphere. While there is a consensus that the risk is extremely small, it is taken very seriously.129 The plan is to return such samples to a new kind of BSL-4 facility, with safeguards to keep the chance of any unsterilized particle escaping into the environment below one in a million.130 While there are still many unknown factors, this anthropogenic risk appears comparatively small and well managed.131

The extra-terrestrial risk that looms largest in popular culture is conflict with a spacefaring alien civilization. While it is very difficult to definitively rule this out, it is widely regarded to be extremely unlikely (though becoming more plausible over the extreme long term).132 The main risk in popular depictions is from aliens traveling to Earth, though this is probably the least likely possibility and the one we could do the least about. But perhaps more public discussion should be had before we engage in active SETI (sending powerful signals to attract the attention of distant aliens). And even passive SETI (listening for their messages) could hold dangers, as the message could be designed to entrap us.133 These dangers are small, but poorly understood and not yet well managed.

Another kind of anthropogenic risk comes from our most radical scientific experiments—those which create truly unprecedented conditions.134 For example, the first nuclear explosion created temperatures that had never before occurred on Earth, opening up the theoretical possibility that it might ignite the atmosphere. Because these conditions were unprecedented we lost the reassuring argument that this kind of event has happened many times before without catastrophe. (We could view several of the risks we have already discussed—such as back contamination, gain of function research and AGI—through this lens of science experiments creating unprecedented conditions.)

In some cases, scientists confidently assert that it is impossible for the experiment to cause a disaster or extinction. But even core scientific certainties have been wrong before: for example, that objects have determinate locations, that space obeys Euclid’s axioms, and that atoms can’t be subdivided, created or destroyed. If pressed, the scientists would clarify that they really mean it couldn’t happen without a major change to our scientific theories. This is sufficient certainty from the usual perspective of seeking accurate knowledge, where 99.9 percent certainty is more than enough. But that is a standard which is independent of the stakes. Here the stakes are uniquely high and we need a standard that is sensitive to this.135

The usual approach would be to compare the expected gains to the expected losses. But that is challenging to apply, as a very low (and hard to quantify) chance of enormous catastrophe needs to be weighed against the tangible benefits that such experiments have brought and are likely to bring again. Furthermore, the knowledge or the technologies enabled by the experiments may help lower future existential risk, or may be necessary for fulfilling our potential.

For any given experiment that creates truly unprecedented conditions, the chance of catastrophe will generally be very small. But there may be exceptions, and the aggregate chance may build up. These risks are generally not well governed.136

These risks posed by future technologies are by their very nature more speculative than those from natural hazards or the most powerful technologies of the present day. And this is especially true as we moved from things that are just now becoming possible within biotechnology to those that are decades away, at best. But one doesn’t have to find all of these threats to be likely (or even plausible) to recognize that there are serious risks ahead. Even if we restrict our attention to engineered pandemics, I think there is more existential risk than in all risks of the last two chapters combined, and those risks were already sufficient to make safeguarding humanity a central priority of our time.

UNFORESEEN RISKS

Imagine if the scientific establishment of 1930 had been asked to compile a list of the existential risks humanity would face over the following hundred years. They would have missed most of the risks covered in this book—especially the anthropogenic risks.137 Some would have been on the edge of their awareness, while others would come as complete shocks. How much risk lies beyond the limits of our own vision?

We can get some inkling by considering that there has been no slow-down in the rate at which we’ve been discovering risks, nor the rate at which we’ve been producing them. It is thus likely we will face unforeseen risks over the next hundred years and beyond. Since humanity’s power is still rapidly growing, we shouldn’t be surprised if some of these novel threats pose a substantial amount of risk.

One might wonder what good can come of considering risks so far beyond our sight. While we cannot directly work on them, they may still be lowered through our broader efforts to create a world that takes its future seriously. Unforeseen risks are thus important to understanding the relative value of broad versus narrowly targeted efforts. And they are important for estimating the total risk we face.

Nick Bostrom has recently pointed to an important class of unforeseen risk.138 Every year as we invent new technologies, we may have a chance of stumbling across something that offers the destructive power of the atomic bomb or a deadly pandemic, but which turns out to be easy to produce from everyday materials. Discovering even one such technology might be enough to make the continued existence of human civilization impossible.