# 1nc---harvard r4

## offcase

### t-structural---1nc

#### interpretation---“prohibitions” are structural---otherwise, it’s a remedy

Jo Seldeslachts et al. ‘7. Professor of Industrial Organization at KU Leuven and a Senior Research Fellow at DIW Berlin, with Joseph A. Clougherty and Pedro Pita Barros. “Remedy for now but prohibit for tomorrow: the deterrence effects of merger policy tools.” https://www.ssoar.info/ssoar/bitstream/handle/document/25862/ssoar-2007-seldeslachts\_et\_al-remedy\_for\_now\_but\_prohibit.pdf;jsessionid=A244005110FDB5816E0347D9F1B75436?sequence=1

Let us now think about the differences between the two antitrust actions of prohibitions and remedies.7 In the case of a prohibition, the penalty for proposing a merger with significant anti-competitive problems involves the full prohibition of the merger: both the pro-competitive and the anti-competitive profits for merging firms are negated by the prohibition. The throwing out of the pro-competitive profits along with the anti-competitive profits is important, as this brings about the punitive measure that Posner (1970) acknowledges as being crucial for deterrence. The big difference between remedies and prohibitions is that remedies attempt to identify and eliminate the anti-competitive elements of a merger. In essence, the merging firms are able to hold on to the pro-competitive elements of the merger—so they keep (ΠPC), but the anti-competitive elements of the merger (ΠAC) are negated by the remedial action. If an antitrust authority imposes remedies, then the disincentive for firms to propose anti-competitive mergers is clearly lower. In short, prohibitions seemingly involve more deterrence than do remedies, as prohibitions represent larger punishments.

#### business practices are ongoing conduct defined by the behaviors of many market participants

Kerry Lynn Macintosh 97. Associate Professor of Law, Santa Clara University School of Law. B.A. 1978, Pomona College; J.D. 1982, Stanford University, “Liberty, Trade, and the Uniform Commercial Code: When Should Default Rules Be Based On Business Practices?,” 38 Wm. & Mary L. Rev. 1465, Lexis.

These new and revised articles reflect a strong trend toward choosing default rules 4 that codify existing business practices. 5 [FOOTNOTE 5 BEGINS] In this Article, the term "business practices" is used to refer to practices that emerge over time as countless market participants exercise their freedom to engage in profitable transactions. For an account of the evolution of business practices, see infra Part II. As used here, "business practices" is broader and less technical than "trade usage," which the Code narrowly defines as "any practice or method of dealing having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question." U.C.C. 1-205(2). [FOOTNOTE 5 ENDS] This is particularly true of the recent revisions to Articles 3 (Negotiable Instruments), 4 (Bank Deposits and Collections) and 5 (Letters of Credit).

#### violation---plan only expands behavioral remedies---topical affs must prohibit practices

#### vote neg:

#### 1---limits---there are infinite ways behavioral remedies to anticompetitive business practices---structural prohibitions are key to topic management and neg ground

#### 2---ground---our interpretation ensures the aff has to “break up” industries---key to link uniqueness and core controversy on a topic with no disads

### kritik---cap---1nc---commons

#### anti-trust is capitalist---competition inevitably replicates market collapse

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

Today I'm going to devote the program to something many of you have asked me to present, to talk about, to analyze, and that is the question of monopoly. It has to do with the assertions we hear often these days that somehow our capitalist system, here in the United States and beyond, is being negatively affected because monopolies have replaced or displaced competition. The idea here is if only we can get competition back, recreate a competitive capitalism, why then the problems we face will go away. Today's program is a design to show you how and why that is not the case, to think about these things in a different way from this nice story that capitalism is basically fine; it's just the monopoly form we have to get rid of so we get back to the competition which we're all supposed to believe is wonderful and presents us with no problems to solve. So let's go, and let's do it in a systematic way. First, it is of course easier, faced with a declining capitalism, a capitalism that's all around us with its extreme inequalities, with its instabilities – here we are, trying to cope with the effects of the Great Crash of 2008, even while we anticipate the next downturn coming down the road soon – an economic system that has shown (that is, capitalism) that it is not respectful of the natural environment; it is not, as the words now go, sustainable in a reasonable way. Yeah, we're surrounded by problems of capitalism. So it's comforting in that situation to get the idea from somewhere that this really isn't a problem of capitalism as a system but rather the problem brought in somehow from the outside – monopoly – a situation in which competition among many companies gives way in some way we're not quite sure about to a domination by one or a small handful of companies. And so the argument goes, we don't have to be critical of capitalism; we don't have to think about an alternative system. No, no, we just have to deal with this little detail, the monopoly problem. And if we can deal with that, well, we'll get back to a competition, to a competitive capitalism that is good. There are three big mistakes involved in this way of thinking, which is nonetheless very widespread and very popular, more so now than in quite some years. First mistake: Capitalism has been wrestling with the problem of monopoly from day one. We have had repeated periods of monopoly. They have eventually led to movements, often of many people, to destroy or remove monopoly. We used to call that in America trust-busting, or antitrust. We even have a department within the Department of Justice in Washington devoted to antitrust activities. Yeah, we've been waging battles against monopoly over and over again, and you know why? Because we keep having monopolies over and over again. Google is a monopoly. Amazon is a monopoly. They're all around us: companies that have effectively no real competition. This is a problem that capitalism has always displayed. And that ought to lead you to wonder whether thinking about it as something we can do away with isn't maybe the best possible example of wishful thinking. The second big mistake is to imagine that competition is some unmixed blessing. It never was, and it isn't today. A competitive market is a human institution. Like every other human institution, it has strengths, and flaws, and weaknesses. To think of competition as some magical perfection is a silly abnegation of your own rational capability to evaluate something. It's sort of advertising thinking. By that, I mean the advertiser tells you what's good about the product they've been told to advertise; they don't tell you what's bad about it. If you want to evaluate it, you don't talk to an advertiser because they only give you one side. The people who promote competition use advertising logic. We're not going to do that here. Competition is no unmixed blessing. And finally, I'm going to show you that competition is itself the major cause of monopoly. So that even if we ever got back to a competitive capitalism, all that would mean is we're back in the process that produces monopoly – as it always has. All right, so let's begin. I'm going to start with explaining how competition has all kinds of consequences that most of you, like me, don't like, don't want. It's a discussion, if you like, of competition's other side: you know, the part that the advertiser doesn't tell you about. The used-car salesman who wants you to buy that junk doesn't tell you about what happened last week in the car crash that that was part of, etc., etc. All right, let's begin. One of the major reasons that American corporations shut down their operations in the United States and moved them to China, among other places, is because of – you guessed it – competition. They wanted to make more money than they had been before. They were afraid of other companies beating them in the competitive game, so they said wow, let's go to China, because there you can pay workers a lot less. There you don't have the same rules to obey. There they don't care that much about pollution as they do here. So we can save on all kinds of costs, and that will allow us to undercut our competitors. Yeah, one of the consequences of competition was the exodus of American companies to other parts of the world, and the enormous unemployment that resulted from it. Yeah, that was a result, among other things, of competition. Here's another one: Capitalists, employers, seeking to compete with one another, often engage in what we call automation. They bring in machines that are cheaper to use than human laborers, and that gets them a step ahead of their competitors. Okay, if we replace people with machines, we throw those people out of work. That has an impact on them, their self-esteem, their relationship to their spouse, their relationship to their children, their relationship to alcohol – should I continue? What are the social costs of automation? They're huge. They've been documented over and over again. Competition provokes and produces automation. Let me give you another example: Companies are competing, say, in the food business – you know, trying to get a customer like you or me to buy this kind of cereal rather than another. So they get their labs to go to work, and they discover we can replace wheat, which we used to put in our little flakes, with – Lord help us – some chemical that is cheaper than wheat. We're not going to worry about what that chemical does to your chemistry in your body because we can now lower the price of our cereal, because we're saving on wheat, and undercut the competitor. The human beings who eat this stuff will suffer, now and in the future, but competition left our producer of cereal no choice. And in case you think I'm making some up, let me give you some concrete ones. The Boeing Corporation, the major producer of airplanes in this country, is in a crisis as a corporation. You know why? Because the 737 Max crashed a couple of times, killing hundreds of people. And you know why? It turns out they economized on safety measures, and training measures. And you know why they did that? Because they're in a very tight competition with European and other airplane manufacturers, and that leads them – as it usually does – to look to cut corners: that race for, quote, "efficiency." Yeah, it was competition that contributed to those deaths and to that problem. That's competition too. You can't whitewash this story; they're real. One of the ways Amazon beats its competition is it speeds up the work process. It has figured out ways to make people work much more intensely, using up their brains, their muscles, their nerves, in ways that cause real long-term physical damage to working people. That, too, is a result of the competitive effort. And you know, it wasn't so long ago that children were part of the labor force. That's right, kids as young as five and six years of age. We were told they have little fingers, you see. They can be more productive than people who are adults with big fat fingers, you know – that doesn't work. And by the way, you should be grateful because poor kids are the ones we hire, and that gives their poor families more income than they would otherwise have. We heard those arguments. Competition, the companies said, required them to use the more productive, and the lower-wage, children rather than adults. So child labor was also a result of competition. It was so ugly and so troubling to so many people that finally there were movements in the United States and many other countries simply to outlaw child labor. So it became a crime for any employer to use a worker who was under 16 or 18 years of age. That was a way in which people said we are not going to allow competition among capitalists to destroy our children. They were recognizing that competition has an awful effect in what it does to children. Well, it has many awful effects. So let's be clear: In the history of capitalism, the monopoly problem (which we're going to get to in the second half of today's program) is no worse, it's just different, from the competition problems. Capitalism goes through phases of competition and monopoly, going from one to the other, as I will explain. But we shouldn't bemoan the one in favor of the other, any more than vice-versa. These are neither of them solutions; they are both phases of the problem. And the problem is capitalism, which does its number on us both in the period when it's competitive and in the period when it's monopoly. People who want us to engage one more time in an anti-monopoly crusade are doing something that in the end evades the problem, which is the system – capitalism – not this or that form of that system, such as competition and monopoly. We've come to the end of the first half of today's Economic Update. This gives me an opportunity to remind you, please, to sign up if you haven't already, to subscribe to our YouTube channel. It's a way easily for you to support us, doesn't cost any money, and it is a big help to us in terms of our reputation and what we can accomplish. Likewise, please make use of our websites. They are there for your communication with us. They are there for you to be able to, with a click of a mouse, to follow us on Facebook, Twitter, and Instagram. And finally, a special thanks goes, as always, to our Patreon community for their ongoing enthusiastic support. It means the world to us. My final, very final for this first half, is about a new book that we have just produced and released. It's a follow-up to an earlier volume I have spoken to you about that was called Understanding Marxism. For the same reason, we have now produced a brand-new book, just out, called Understanding Socialism. It is a response, as this program is, to issues, questions, comments you have sent to us in large numbers. It's an attempt to give an overview of the different interpretations of what socialism means, of what happened in countries like Russia and China that tried to create this – the strengths, the weaknesses, the lessons to be learned, what to do, and what not to do. Please, if you're interested and want to follow up, check us out, check the book out: lulu.com is how you find both books. And I will be right back; stay with us. Welcome back, friends, to the second half of today's Economic Update. This program, as I explained, is devoted to the analysis of competition and monopoly as two interactive, sequential phases of capitalism as a system. The first part of the program was devoted mostly to competition, so let's turn now to monopoly. What is the basic definition and criticism of monopoly? Strictly speaking, monopoly is defined simply as a situation in which the producers of a particular commodity – shoes, software programs, haircuts, it doesn't matter – have been reduced to only one. Literally one seller – a monopolist. But in general language, it includes also situations where many producers who once competed with one another have been reduced to only a handful. The strict term for only a handful is "oligopoly," but we don't have to split hairs about this. "Monopoly" will be the word we use for either one or a very small number. For example, there were once dozens of automobile companies, but very quickly their competition reduced them to basically three for much of the post-World War II period, and you know their names: Ford, General Motors, and Chrysler. And likewise there were once many cigarette producers, there were once many television-set producers, and they became very few, whose names, therefore, we all know. What's the criticism of a monopoly or oligopoly situation? Again, very simple: The idea is, if there's only one seller of something, that seller can jack up the price way above what he might have otherwise because he doesn't have any competitor. If he had a competitor, if he raised the price, the competitor would get all the business because we'd all go to the competitor who hadn't raised the price rather than buy it at a higher price from the monopolist. So we don't like monopolies, because they can jack up their prices and their profits because they don't have a competitor. And if it's a few, a handful, well then we talk about things like cartels: arrangements when a few get together over dinner, or out on the golf course, and tell us what the price is. If you ever wondered why the prices of different cars, different cigarettes, and so on, are so close to one another – mm-hmm – that's because there are few sellers, and somehow they worked it all out. But the basic criticism is that a monopoly is a situation in which the seller of something jacks the price up way beyond what they could otherwise get because there are no more competitors. So let's talk about this monopoly problem and where the monopolies come from. Well, the first and most important lesson is this: Competition produces monopoly. It's not something external, imposed on competition. It has nothing to do with human greed or anything else. Are people greedy? You betcha – some more, some less – but that's really a separate matter. It's competition that produces monopoly, and let me show you how that works. In competition, we have, by definition, a whole bunch of producers. They all produce the same thing. They compete with one another, hoping we, the consumer, will buy from one rather than the other. They compete in the quality of what they produce and in the price of what they produce. And we are supposed, as consumers, to go look for the best quality at the lowest price, and to patronize that one who offers that to us better than the others that we could buy from but choose not to. Okay, that's a fair definition. Now let's follow the logic. Company A produces – however it manages it – a better quality and/or a lower price than Company B. So we all go to Company A. Company B can't find any buyers because it's not competitive. Or to say the same thing in other words, Company A outcompetes Company B. Here's what happens: Company B collapses. Because it can't sell its goods, we're all going to Company A. So Company B sooner or later declares bankruptcy. It can't continue. It lays off its employees, it stops buying inputs, because it can't compete. Good. Now what happens in Company A? Company A says hey, there's a whole bunch of workers that have just lost their job at Company B; they're trained in producing what we produce; let's go hire some of them. And likewise, Company A says, they're not using their computers, or their trucks, or their other inputs. They're going to have to sell them on the secondhand market. We can get some important inputs we need at a lower price than we would have to pay if we bought them new. So what begins to happen is, where before there were two companies, A and B, there's now one larger A, and B has disappeared. Or to say the same thing in simple English, A – the winner in the competitive struggle – eats, absorbs into itself, what's left of Company B. And this process is repeated over and over, until 30, or 300, companies have become one, or two, or three. That's the result of competition. That's how competition is supposed to work. That's how competition does work. It's important to understand: Monopoly is where competition leads. And as if that weren't enough, let me make sure you understand this from the business point of view: It is the great dream of every entrepreneur to become the last one standing in the competition, to win the competition, not just because it makes you feel good you outmaneuvered your competitors, but because if you're the last one standing, you're the monopolist. The reward for having outcompeted the others is that you're now in a position to jack up the profits, and the prices, way beyond what you could have done before. So we have a system that produces monopoly, and all the incentives for every entrepreneur in competition to work as hard as possible to become the monopolist. So why is anyone surprised that monopolies keep happening, because they're the whole point and purpose of capitalist competition. If you ever were – and we never have, but if you ever were – able to get rid of all the monopolies and re-establish competition, all you would be doing is setting this same process in motion again for the umpteenth historical time. In other words, fighting against monopoly is pointless as long as you have capitalism, because it is the endless reproducer of this problem – as it always has been. Now, how do monopolies maintain themselves? If you're the only one standing, you're a monopolist. Or you're an oligopoly, you're a few, and you get together and jack up your prices together. The question becomes look, a monopolist makes very high profits – much higher than a competitor can achieve – and isn't that an enormous incentive for other capitalists to get in on that business? Because look at the profits they're earning, because they're the only one. Apple, Amazon, Google – the profits are staggering. Everybody wants to get in. So the way a monopolist has to think is, I've got to create obstacles that block other people from coming in to get a piece of the enormous profits my monopoly allows me to get. We call that in economics "barriers to entry." Monopolists need to create barriers. Let me give you a couple of examples. The major soft drink makers in the United States – basically Coca-Cola and Pepsi Cola – they produce a drink that has sugar and coloring in it, and lots and lots of water. Let me assure you, there is nothing difficult or complicated about producing a mixture of sugar, color, and water. It doesn't take a genius; it never did. Pepsi and Coca-Cola make a fortune off of their product, as we know, and they have for decades. They have a virtual monopoly. Now, lots of other people could produce water, sugar, and color close to, if not identical with, whatever they produce, but they can't break through. They can't really get to that status. And you know why? Because Coca-Cola and Pepsi erected a barrier to entry. And the way they did that was with advertising. Every billboard, every magazine cover, every doorway of every institution you've ever been to has a picture of smiling, happy people drinking one or the other. You've learned: that's the drink, that's the drink. Another company might make a perfect substitute, but they can't afford the enormous cost of advertising. The advertising costs more than the water, and the sugar, and the color. What you pay for when you buy Pepsi and Coke is the advertising that got you to buy it. You're paying for being hustled. But it works, because it means other companies know that they can't get in there by cheaply producing an alternative, because you have to produce the advertising that goes with it, or else you can't do it. And so their monopoly is maintained. Here's another way to maintain a monopoly: Get the government to step in. Here the famous example is the milk producers. Some years ago, there was a crisis with milk. There was contamination; people were getting sick. So the clever milk monopolies came in and said, we're going to support the enormously expensive, special equipment to guarantee pasteurization, and so on, of milk. Why did they support it? Because your small farmer, your small dairy producer, can't afford it, so they go out of business. Only the big, rich few that are left can afford the enormous equipment. They used governmental rules to create a barrier to entry. Here's another way: corrupt public officials. President Trump denounces Huawei corporation because it compromises our national security. It denounces European car producers because somehow their shipping cars here compromises our security. Who cares? As long as the president blocks other companies from getting into the business that might compete with an American, a barrier to entry exists. Monopolists have been very creative in coming up with ways to preserve their monopolies. I don't want to lose the basic point. The basic point is: Capitalism oscillates, back and forth between competition and monopoly – first this industry, then that one. For a while, Ford, General Motors, and Chrysler were the monopolies – or the oligopoly, if you like – in automobiles. But eventually, Toyota, and Nissan, and Peugeot, and Fiat broke the monopoly. In that case, it was foreigners who did it. And then we had some competition, and that, then, is now shrinking. The French – the last two producers in France – have just agreed to merge. You get the picture. Industry by industry, first this one, then that one, go through one phase or another. The important point is: The phases are not our problem. They merge into, and incentivize, each other. Each provokes movement in the other direction. The point to understand is that the problems of a capitalist system are not about this oscillation of phases. We're not going to solve the problem of monopoly by getting rid of them and re-establishing competition. We've been there; we've done that; it reproduces monopoly; and it doesn't change the basic inequality, unsustainability, instability of capitalism. We need to get beyond that stale, old debate – competition versus monopoly – and face the underlying reality: Capitalism is the problem, and getting beyond it is the solution.

#### capitalism drives extinction and structural violence

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

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

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

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

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

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

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

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

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

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

### pic---antitrust---1nc

#### counterplan: The United States federal government should limit anticompetitive unilateral exclusion in the technology sector through non-antitrust regulations.

#### other agencies’ regulations solve

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

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

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

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

### pic---prohibit---1nc

#### Next off is the Prohibit PIC---

#### The United States should only allow the continuation of anticompetitive behavior in the technology sector when the president determines it is necessary to prevent condition which may pose a direct threat to the national defense or its preparedness programs.

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

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

Authorities Under Title VII of the DPA

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

Special Preference for Small Businesses

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

Definitions of Key Terms in the DPA

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

Industrial Base Assessments

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

Voluntary Agreements

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

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

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

Nucleus Executive Reserve

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

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

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

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

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

Committee on Foreign Investment in the United States118

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

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

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

Termination of the Act

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

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

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

Defense Production Act Committee

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

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

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

Impact of Offsets Report

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

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

Considerations for Congress

Enhance Oversight

Expand Reporting or Notification Requirements

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

Enforce and Revise Rulemaking Requirements

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

Broaden Committee Oversight Jurisdiction

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

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

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

Amending the Defense Production Act of 1950

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

#### Key to pandemic response.

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

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

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

#### Extinction.

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

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

### counterplan---rulemaking---1nc

#### Counterplan: The United States federal government should delegate antitrust rulemaking authority to a new expert agency. The agency should begin notice-and-comment rulemaking to limit anticompetitive unilateral exclusion in the technology sector.

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

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

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

A. The Agency Solution

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

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

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

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

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

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

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

CONCLUSION

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

#### solves war.

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

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

### disad---ftc tradeoff---1nc

#### ftc’s increasing enforcement in privacy now---it’s focused on algorithmic bias---that solves

Timothy Butler et al. 10/14/21. Partner at Troutman Pepper, with Carlin McCrory, Elizabeth Waldbeser, Matthew White. “FTC Reports to Congress on Data Security and Privacy Priorities.” https://www.jdsupra.com/legalnews/ftc-reports-to-congress-on-data-5727533/

On September 13, the Federal Trade Commission (FTC) released a report to Congress that highlights the agency’s recent efforts to protect Americans’ privacy, announces the agency’s priorities for future data security and privacy protection efforts, and urges Congress to allocate more resources to the agency so it can expand its data security and privacy protection efforts.

As explained in the report, the FTC intends to focus its data security and privacy protection efforts via four key initiatives:

Integrating Competition Concerns. The FTC will focus its enforcement and rulemaking activities on the relationship of digital market dominance to consumer protection violations. The FTC’s report argues that “many of the largest players in digital markets are as powerful as they are because of the breadth of their access to and control over user data.” And it suggests that “violations of consumer protection laws may be enabled by market power, and consumer protection violations, in turn, can have a detrimental impact on competition.” Moreover, the FTC believes it has a “structural advantage” in comparison to other federal and state agencies because, unlike those agencies, it focuses on both competition and consumer protection issues. And, accordingly, the FTC intends to look “with both privacy and competition lenses at problems that arise in digital markets” and will, in some consumer protection cases, seek to impose “competition-based remedies.”

Advancing Remedies. The FTC will focus on crafting strong remedies that protect consumers and deter harmful data security and privacy practices. To protect consumers, it will require companies to disclose data breaches and data misuse. It will also negotiate redress funds for consumers harmed by data breaches and, where necessary, partner with other agencies in order to obtain redress for consumers. Additionally, the FTC will expand nonmonetary relief for affected consumers, for example, by requiring companies to provide identity verification services. As for deterrence, the FTC intends to penalize companies in violation by depriving them of the tools that caused the harm, such as requiring deletion of an algorithm. Per the report, the FTC will implement these remedies through orders issued in enforcement actions.

Focusing on Digital Platforms. The FTC will keep a close eye on the data practices of market-dominant digital platforms by focusing on order enforcement and conducting additional compliance reviews. Indeed, the FTC’s report notes that the agency “will shift resources to order compliance and enforcement especially against the largest respondents.”

Expanding Understanding of Algorithms. The FTC will develop greater understanding of algorithms and the consumer protection and competitive risks they may pose. The FTC will also provide more in-depth guidance for businesses on using algorithms and artificial intelligence fairly and equitably. In particular, the FTC would like to understand the ways that algorithms may create racial bias and prevent such uses of algorithms. It will also act to encourage companies to comply with its previously issued recommendation that they “test their algorithms, both at the outset and periodically thereafter, to make sure it doesn’t create a disparate impact on a protected class.”

#### antitrust enforcement saps up ftc resources and personnel, which are finite

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

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

#### that trades off with the necessary resources for privacy enforcement

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 risks massive inequality, suffering, and extinction

Thomas 20 – Quoting AI experts including MIT Physics Professors, Senior Features Writer for BuiltIn

Mike Thomas, 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.”

## competition

### 1nc

#### icann solves

Nicholas **Nugent 21.** Nick Nugent is the program director for the [Karsh Center for Law and Democracy](https://www.law.virginia.edu/karsh). Nugent earned his undergraduate degrees from Indiana University in computer science and music, and received his J.D. from Vanderbilt University, where he attended on a full scholarship. "Masters of Their Own Domains: Property Rights as a Bulwark Against DNS Censorship – Colorado Technology Law Journal." No Publication. 1-29-2021. https://ctlj.colorado.edu/?p=708

While **ICANN** has so **far resisted** pressure to directly police legal content through its exercise of the IANA function,[[157]](https://ctlj.colorado.edu/?p=708#post-708-footnote-158) it has **nonetheless encouraged** efforts by other DNS intermediaries to do so[[158]](https://ctlj.colorado.edu/?p=708#post-708-footnote-159) and has even **instituted policies** **and procedures** that may contractually require registrars and registry operators to censor. Under ICANN’s **New gTLDs Program**, which governs how registry operators may apply to create and manage new top-level domains, third parties can object to any applied-for string, or the manner in which the applicant intends to operate the new top-level domain, as “contrary to **general principles** of **international law** for morality and public order,” or “detriment[al] to a broadly defined community.”[[159]](https://ctlj.colorado.edu/?p=708#post-708-footnote-160) Objections are reviewed by a panel of independent experts, which may approve or deny the application based on whether the applicant has demonstrated that it will police content under the top-level domain, either by restricting registration or by prohibiting certain forms of content.[[160]](https://ctlj.colorado.edu/?p=708#post-708-footnote-161) If the applicant is ultimately awarded the new string but fails to substantially enforce any “Public Interest Commitments” it made in its application—which may include commitments to enforce content-based restrictions—third parties can again challenge the delegation and cause **ICANN** to revoke the registry operator’s management of the top-level domain.[[161]](https://ctlj.colorado.edu/?p=708#post-708-footnote-162) Thus, an expectation of content regulation and mechanisms to enforce it have effectively been built into the structure of the New gTLDs Program, and it may not be long before such policies and procedures are extended to legacy top-level domains, such as the all-important .COM.[[162]](https://ctlj.colorado.edu/?p=708#post-708-footnote-163)

In the same manner, ICANN has **foisted** potential content **regulation responsibilities** onto registrars through its new Registrar Accreditation Agreement, which requires registrars to “take reasonable and prompt steps to investigate and respond appropriately to any reports of abuse.”[[163]](https://ctlj.colorado.edu/?p=708#post-708-footnote-164) Unfortunately, the RAA neither defines “abuse” nor prescribes the “reasonable and prompt steps” that registrars must take.[[164]](https://ctlj.colorado.edu/?p=708#post-708-footnote-165) But simply by forcing registrars to **maintain** such **contacts**, ICANN **increases the likelihood** that registrars will feel compelled to take action against a domain name if members of the public contact the registrar to allege that a given website is “abusive.”[[165]](https://ctlj.colorado.edu/?p=708#post-708-footnote-166) In that event, a registrar could very well conclude that ICANN’s term is **capacious** enough to include the same kinds of objectionable, but legal, behavior catalogued in registrar or registry operator morality clauses.

#### structural presumption fails---conflates cause and effect, causes further market distortions, and loses context

Alan Devlin 21. Partner, Latham & Walkins Law Firm. “Part II - The Case for Change.” *Reforming Antitrust*. Cambridge University Press. 2021. DOI: 10.1017/9781009000260. 109-226.

Second, structuralism rests on a faulty premise – namely that preserving market structure is synonymous with protecting competition. That supposition falls prey to the same fallacy that led SCP researchers astray. Competition is not simply a function of structure. Rather, competition determines structure. Structural antitrust is therefore inherently flawed. By equating cause and effect, it guarantees perverse outcomes.

Consider a technology industry in which the principal (and most socially valuable) form of competition lies in R&D. Competition policy should instill strong incentives to innovate. Consumers will reward the most successful innovators with market share and larger margins, thus creating indicia of a competitive problem from the perspective of structure, when in fact the environment is optimized. High concentration ratios may reflect a healthy competitive space or the absence of one. The fact that the digital economy is ground zero for structurally minded reformists is thus particularly concerning. HHIs, Cns, and market shares provide limited insight into the competitive picture in such markets. An effects-based approach grapples with industry dynamics. Structuralists abandon such efforts, instead gauging a market’s competitiveness by reference to numbers that may have dubious value.

More generally, markets tend to assume a structure that reflects their underlying cost and consumer-demand characteristics. Mature industries characterized by static competition, little innovation, and few scale economies will gravitate toward atomistic market structures. If large capital investments are not a requisite of entry or expansion, then low concentration may ensue. Professional services are a common example. By contrast, some industries experience long-run average-cost curves that decline over an extended range of output. Investment-based competition may feature heavily in such settings, leading firms to compete in infrastructure and quality, as well as in price. Telecommunications and other traditional network industries are good examples. Their optimal competitive structure will tend to be concentrated.

In short, the competitive pressures to which firms are subject depend on more than the mere number and relative symmetry of sellers in a market. Consolidation and pricing pressure may go hand in hand, if only to a point, in some industries. In other settings, high concentration may point to a competitive problem. Universal rules of thumb are thus unreliable. This reality makes a compelling case for an effects-based approach.

#### can’t enforce it---burden of proof too high

Alan Devlin 21. Partner, Latham & Walkins Law Firm. “Part II - The Case for Change.” *Reforming Antitrust*. Cambridge University Press. 2021. DOI: 10.1017/9781009000260. 109-226.

Meanwhile, flipping the burden of proof upends the American tradition in which free contract is the default and the government must prove its case in order to enjoin private conduct. As described below, easing the agencies’ need to establish harm to competition would usher forth diminished rigor of analysis and, in time, an abundance of unmeritorious cases. Separately, eliminating divestitures as a means for resolving horizontal merger issues – a neo-Brandeisian favoriteFootnote121 – is unworkable. Resource constraints pose a threshold problem. Suing to block every transaction that features, in some line, a problematic horizontal overlap would require a massive increase in staff and budget for the agencies. More fundamentally, however, the policy would be unsustainable. Sophisticated parties to a transaction could agree to sell an overlap unit as a precedent condition to their merger. The government would then face a fait accompli, and be left with trying to challenge a transaction that involves no competitive overlap – a case that, even on the proposals above – would likely be dead on arrival.

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

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

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

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

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

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

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

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

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

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

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

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

#### alt causes to china war---their evidence lists a ton

## eu diversion

### 1nc

#### There are no definable metrics under the EU model, which makes it impossible to translate

Geoffrey A. Manne 18. President and founder of the International Center for Law and Economics, distinguished fellow at Northwestern Law School’s Searle Center on Law, Regulation, & Economic Growth. "Why US Antitrust Law Should Not Emulate European Competition Policy," December 19, 2018. https://www.judiciary.senate.gov/imo/media/doc/Manne%20Testimony.pdf)

It is striking that firms can infringe Article 102 with practices that are either “unfair,” prejudice consumers, place trading partners at a disadvantage, or impose obligations that depend on the behavior of other, non-contracting parties. Not only are these broad categories sometimes mutually exclusive (a firm could very well prejudice consumers by not disadvantaging some of its trading partners) but, more importantly, many of these concepts are almost impossible to translate into economic thinking.

Although the tersely worded Sherman Act, with its prohibitions on any contract “in restraint of trade”19 or attempts to “monopolize”,20 is notoriously ambiguous, over the course of more than a century the Supreme Court has developed jurisprudence to limit these provisions to certain practices that restrict consumer welfare. It thereby grounded American antitrust enforcement in a requirement of rigorous economic analysis.

This is not all merely an academic question: there are real and damaging consequences that can follow from the antitrust prescriptions based on the EU model. As I discuss below, by endorsing open-ended enforcement, the EU courts have ultimately exposed EU competition law to increased politicization. Because EU regulators can call upon a large list of justifications for their enforcement decisions, they are free to pursue cases that best fit within a political agenda, rather than focusing on the limited practices that are most injurious to consumers. In other words, there is largely no definable set of metrics to distinguish strong cases from weak ones under the EU model; what stands in its place is political discretion.

#### EU and US big data approaches are not out of sync

Ning Lizhi, 21. Director of the Research Center of Intellectual Property and Competition Law, Wuhan University. “Internet regulations conform to global trend.” September 28, 2021. <https://www.khmertimeskh.com/50943005/internet-regulations-conform-to-global-trend/> Accessed: 9/28/21 2:42pm

Moreover, China’s anti-monopoly policies conform to the global trend, as the European Union and the United States have been tightening supervision of the internet industry in recent years. The EU unveiled the Digital Service Act and Digital Market Act in 2020 to break monopolies and eradicate unfair competition. The US House of Representatives issued five antitrust reform bills on June 11, and President Joe Biden signed the Executive Order on Promoting Competition in the American Economy on July 9. And tech giants such as Google, Apple, Facebook and Amazon have been heavily fined and are facing investigations for flouting competition and data protection laws of the EU and the US. Countries such as Japan, the Republic of Korea, India, Turkey and Australia all have strengthened anti-monopoly supervision of the internet industry, in a bid to ensure the healthy development of the sector, which can help boost global economic recovery. As for China, it supports the development of internet enterprises, promotes fair and free competition, protects the rights of consumers and SMEs, and is facilitating the healthy and sustainable development of the online industry. In short, online enterprises are meant to connect people and communities, promote innovation and protect users’ rights and interests. And the moves to check monopolies will help the online enterprises achieve such goals.

#### Harmonizing competition policy fails – cultural and social costs

Cenuk Sayekti, 20. Lecturer in law at Universitas Lancang Kuning, Riau. Her bachelor's and master's degrees are in law from the Universitas Islam Indonesia. "COMPETITION LAW HARMONIZATION: WHAT ASEAN CAN LEARN FROM OTHERS?" Refleksi Hukum: Jurnal Ilmu Hukum 4, no. 2 (2020): 195-216.

CONCLUSION

There is a reason why some regional economic communities delay or avoid the process of harmonization stem from the perception of different treatment to market behavior. Another obstacle is the problem of legal culture and the effect of the history of a nation on its competition policy and law. The central point regarding this obstacle is that ASEAN member states legal differences often stem from different cultures and social preferences. Specific rules are often suited to local traditions and customs, and even if harmonization enhances foreign trade opportunities among the member states, it may impose quite substantial short-run adaptation costs. Accordingly, the chance to harmonize different competition policies and laws in the ASEAN member states cannot be ultimately seen as an uncontroversial positive effort or one that is free of conflict. The increased integration of trade and national laws also creates fault-lines of cultural dissonance.

#### no incongruence on tech leadership---not necessary for harmonization of data structures

#### Fragmentation’s overhyped nonsense.

Drake 17 William J. Drake, International Fellow and Lecturer in Media Changeat the University of Zurich, expert on internet communication. [Framing Conversation: What Would Internet Fragmentation Mean for the Digital Economy? Global Digital Futures, Working Paper, Columbia School of International and Public Affairs, https://sipa.columbia.edu/sites/default/files/Drake\_GDF\_2017\_FC1\_final.pdf]

In fact, Internet fragmentation remains a contested concept. A cursory review of its usage in various publications and public pronouncements suggests that people often speak of it when discussing a variety of problems and tensions that arise on the Internet that do not all originate from the same source. For example, some in the business community have used the term as a generalized reference to variations in national policies that add to the cost of doing business globally. While some such policies may indeed be related to fragmentation, many other simply reflect differences in national legal systems, policy traditions, and so on that may antedate and arguably do not fragment the Internet. Similarly, some people have described the increasing linguistic diversity of cyberspace as an example of fragmentation, when of course this is simply a matter of a diverse humanity getting on line. Another tendency among at least some observers is to suggest that the Internet is in imminent danger of falling apart. Because there is so much variation in national policies and practices, it is said, the Internet is likely to “break up” into a series of disconnected islands. This seems to be an overly dramatized misreading of some troubling trends. In fact, no cataclysm is around the corner; the underlying infrastructure remains stable and secure in its foundations, and it is incorporating new capabilities that open up new horizons, from the Internet of Things and services to the spread of block chain technology and beyond. But there are fragmentary pressures accumulating which, if left unattended, could reduce to varying degrees the Internet’s enormous vitality and contributions to the world.

#### No natural disasters.

Sandberg 18 – Anders Sandberg, a Senior Research Fellow at the Future of Humanity Institute at the University of Oxford [Human Extinction from Natural Hazard Events, February 2018, https://oxfordre.com/naturalhazardscience/view/10.1093/acrefore/9780199389407.001.0001/acrefore-9780199389407-e-293]

It is possible to place upper bounds on extinction risks due to natural disasters by considering the fossil record. This can be done in several ways; the following will be based on the work of Toby Ord (2017). The simplest bound is based on the observation that H. sapiens has existed for 200,000 years: this observation would be unlikely if the extinction risk was higher than about 1 in 3,000 per century. One can say that an extinction rate of 0.15% or higher per century is ruled out at a 95% confidence level.

#### No disease.

Halstead 19 John Halstead, doctorate in political philosophy. [Cause Area Report: Existential Risk, Founders Pledge, https://founderspledge.com/research/Cause%20Area%20Report%20-%20Existential%20Risk.pdf]

However, there are some reasons to think that naturally occurring pathogens are unlikely to cause human extinction. Firstly, Homo sapiens have been around for 200,000 years and the Homo genus for around six million years without being exterminated by an infectious disease, which is evidence that the base rate of extinction-risk natural pathogens is low.82 Indeed, past disease outbreaks have not come close to rendering humans extinct. Although bodies were piled high in the streets across Europe during the Black Death,83 human extinction was never a serious possibility, and some economists even argue that it was a boon for the European economy.84 Secondly, infectious disease has only contributed to the extinction of a small minority of animal species.85 The only confirmed case of a mammalian species extinction being caused by an infectious disease is a type of rat native only to Christmas Island. Having said that, the context may be importantly different for modern day humans, so it is unclear whether the risk is increasing or decreasing. On the one hand, due to globalisation, the world is more interconnected making it easier for pathogens to spread. On the other hand, interconnectedness could also increase immunity by increasing exposure to lower virulence strains between subpopulations.87 Moreover, advancements in medicine and sanitation limit the potential damage an outbreak might do.

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

Lewis 20---senior vice president and director of the Technology Policy Program at the Center for Strategic and International Studies). Lewis, James. 2020. “Dismissing Cyber Catastrophe.” Center for Strategic & International Studies. August 17, 2020. https://www.csis.org/analysis/dismissing-cyber-catastrophe.

A catastrophic cyberattack was first predicted in the mid-1990s. Since then, predictions of a catastrophe have appeared regularly and have entered the popular consciousness. As a trope, a cyber catastrophe captures our imagination, but as analysis, it remains entirely imaginary and is of dubious value as a basis for policymaking. There has never been a catastrophic cyberattack. To qualify as a catastrophe, an event must produce damaging mass effect, including casualties and destruction. The fires that swept across California last summer were a catastrophe. Covid-19 has been a catastrophe, especially in countries with inadequate responses. With man-made actions, however, a catastrophe is harder to produce than it may seem, and for cyberattacks a catastrophe requires organizational and technical skills most actors still do not possess. It requires planning, reconnaissance to find vulnerabilities, and then acquiring or building attack tools—things that require resources and experience. To achieve mass effect, either a few central targets (like an electrical grid) need to be hit or multiple targets would have to be hit simultaneously (as is the case with urban water systems), something that is itself an operational challenge. It is easier to imagine a catastrophe than to produce it. The 2003 East Coast blackout is the archetype for an attack on the U.S. electrical grid. No one died in this blackout, and services were restored in a few days. As electric production is digitized, vulnerability increases, but many electrical companies have made cybersecurity a priority. Similarly, at water treatment plants, the chemicals used to purify water are controlled in ways that make mass releases difficult. In any case, it would take a massive amount of chemicals to poison large rivers or lakes, more than most companies keep on hand, and any release would quickly be diluted. More importantly, there are powerful strategic constraints on those who have the ability to launch catastrophe attacks. We have more than two decades of experience with the use of cyber techniques and operations for coercive and criminal purposes and have a clear understanding of motives, capabilities, and intentions. We can be guided by the methods of the Strategic Bombing Survey, which used interviews and observation (rather than hypotheses) to determine effect. These methods apply equally to cyberattacks. The conclusions we can draw from this are: Nonstate actors and most states lack the capability to launch attacks that cause physical damage at any level, much less a catastrophe. There have been regular predictions every year for over a decade that nonstate actors will acquire these high-end cyber capabilities in two or three years in what has become a cycle of repetition. 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#### No catastrophic cyberattacks---25 years of empirics prove they stay low-level and non-escalatory.

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#### grid is dumb---even if systems are nationalized, if one goes down, other countries are fine and no collapse occurs

#### No widespread blackouts – That's not how the grid works.

Koerth 18 – Maggie, senior science writer for FiveThirtyEight, citing Bill Lawrence, vice president and chief security officer at the North American Electric Reliability Corporation and Candace Suh-Lee, who leads a cybersecurity research team at the Electric Power Research Institute, a nonprofit research and development lab, " Hacking The Electric Grid Is Damned Hard", *FiveThirtyEight*, 8/13/2018, <https://fivethirtyeight.com/features/hacking-the-electric-grid-is-damned-hard/> JHW

The nightmare is easy enough to imagine. Nefarious baddies sit in a dark room, illuminated by the green glow of a computer screen. Meanwhile, technicians watch in horror from somewhere in the Midwest as they lose control of their electrical systems. And, suddenly, hundreds of thousands, even millions of Americans are plunged into darkness. That scene was evoked in recent weeks as federal security experts at the Department of Homeland Security warned that state-sponsored hackers have targeted more than American elections — they’re after the electric grid, too. They’ve gotten “to the point where they could have thrown switches,” a DHS official told The Wall Street Journal. Both DHS and the FBI have linked these attacks to Russia — which was already pinned as the culprit in two attacks that shut down power to hundreds of thousands of people in Ukraine two Decembers in a row, in 2015 and 2016. It’s all very urgent — a high-risk crisis that must be solved immediately. But, surprisingly, some electrical system experts are thinking about it in a different way. Cyberattacks on the grid are a real risk, they told me. But the worst-case scenarios we’re imagining aren’t that likely. Nor is this a short-term crisis, with risks that can be permanently solved. Bringing down the grid is a lot harder than just flicking a switch, but the danger is real — and it may never go away. Representatives from two nonprofit organizations — both of which play large roles in how the electric grid is regulated and maintained — said it is easier to imagine disaster scenarios than create one. “There’ve been some very sensational books out there about the grid going dark because someone’s got their finger ready over a mouse and everything is going to turn off at the same time,” said Bill Lawrence, vice president and chief security officer at the North American Electric Reliability Corporation, the regulatory authority that sets and enforces technological standards for utility companies across the continent. “The grid does not work that way.” Our electric infrastructure is chock-full of both redundancies and regional variations — two things that impede widespread sabotage. That’s not to say that the grid isn’t under attack. Lawrence acknowledged that there is interest in “trying to hurt us from a distance.” But he emphasized there have not yet been any successful attacks — meaning hackers haven’t caused any blackouts. The division of Homeland Security that collects reports of cyberattacks on critical infrastructure has not yet published its incident report numbers for 2017. Organizations report incidents on a voluntary basis, so these numbers may not reflect all incidents. They’ve been poking at our critical infrastructure for a long while. Incident reports published by the Industrial Control Systems Cyber Emergency Response Team — a division of Homeland Security that does training and responds to cyberattacks on critical infrastructure — suggest that electricity, oil and natural gas infrastructure have been routinely targeted for years.1 There are dozens of these attacks reported to ICS-CERTS annually. However, it would be difficult for these attacks to lead to wide-scale blackouts, according to Lawrence and Candace Suh-Lee, who leads a cybersecurity research team at the Electric Power Research Institute, a nonprofit research and development lab. And that’s true even if hackers do eventually succeed in taking control of some electric systems. It helps that the North American electric grid is both diverse in its engineering and redundant in its design. For instance, the Ukrainian attacks are often cited as evidence that hundreds of thousands of Americans could suddenly find themselves in the dark because of hackers. But Lawrence considers the Ukrainian grid a lot easier to infiltrate than the North American one. That’s because Ukraine’s infrastructure is more homogeneous, the result of electrification happening under the standardizing eye of the former Soviet Union, he told me. The North American grid, in contrast, began as a patchwork of unconnected electric islands, each designed and built by companies that weren’t coordinating with one another. Even today, he said, the enforceable standards set by NERC don’t tell you exactly what to buy or how to build. “So taking down one utility and going right next door and doing the same thing to that neighboring utility would be an extremely difficult challenge,” he said. Meanwhile, the electric grid already contains a lot of redundancies that are built in to prevent blackouts caused by common problems like broken tree limbs or heat waves — and those redundancies would also help to prevent a successful cyberattack from affecting a large number of people. Suh-Lee pointed to an August 2003 blackout that turned the lights off on 50 million people on the east coast of the U.S. and Canada. “When we analyzed it, there was about 17 different things lined up that went wrong. Then it happened,” she said. Hackers wouldn’t necessarily have control over all the things that would have to go wrong to create a blackout like that. In contrast, Suh-Lee said, scenarios that sound like they should lead to major blackouts … haven’t. Take the 2013 Metcalf incident, where snipers physically attacked 17 electric transformers in Silicon Valley. Surrounding neighborhoods temporarily lost power, but despite huge energy demand in the region, “the big users weren’t even aware Metcalf had happened,” she said. Difficult isn’t the same as impossible, Suh-Lee told me. Depending on where an attack happened and how people responded, you could get the stuff of our nightmares. Lawrence repeatedly invoked the phrase “knock on wood” as he talked about the possibility of infiltrations of electric infrastructure turning into real-world blackouts. That’s why there’s a lot of effort going into research, monitoring and preparation for cyberattacks. Lawrence’s team, for instance, is gearing up for an event that’s held every other year and is sort of like war games for the electric grid. And the Department of Energy is planning a similar event, focused on figuring out what it takes to reboot after a hacker-caused blackout. But that preparation doesn’t mean we’ll eventually solve this problem, either, Suh-Lee said. If the chances of a cinematic disaster are low, the chances of a theatrical hero on a white horse riding in to save the day are even lower. Making the grid stronger and more resilient also means making it more digital — the work that’s being done to improve the infrastructure has also created new opportunities for hackers to break in. And the risk of attack is here to stay. Security improvements are “never going to completely eliminate the risk,” she said. “The risk is out there and people will find a new way to attack.” We’ll be living with cyber threats to the grid for the rest of our lives.

#### No grid impact---it’s overhyped.

Freedberg 14 (Sydney J, “Cyberwar: What People Keep Missing About The Threat,” Jan 6, <http://breakingdefense.com/2014/01/cyberwar-what-people-keep-missing-about-the-threat/>, CMR)

**Cites:**

--Peter W. Singer – former director of the Center for 21st Century Security and Intelligence and a senior fellow in the Foreign Policy program

--Allan A. Friedman – Research Scientist at the Cyber Security Policy Research Institute at George Washington University's School of Engineering

**Singer and Friedman** also **do a valuable service** in **beating back the hype** **about “Cyber Pearl Harbors”** **and “Cyber 9/11s” or the US suffering countless millions of “attacks.”** **Those alarmist statistics lump together everything from a virus easily stopped by** someone’s **firewall** to credit card theft **to the loss of secret schematics for the F-35** stealth fighter. **Those “attacks” vary from trivial, to significant losses** for one particular business, to actual matters of national security, **but none of them does as much damage as a good old-fashioned bomb**, they argue. **Even if hackers shut down the** national **electrical grid for weeks** on end, bad as that would be, **it wouldn’t be as bad as a single nuclear explosion**. “**It’s** a lot **like ‘Shark Week**,’” Singer said about the overhyped dangers. “**Squirrels have taken down the power grid more times than the zero times hackers have**.” There’s lots of talk about how the attacker always has the advantage in cyberspace, he told an audience at Brookings this afternoon, but “**a true cyber offense, an effective one**, a Stuxnet style [attack] **is** something **quite difficult**.”

# 2nc---harvard r4

## cap k

#### turns case---competition fails

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

When Things Fall Apart

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

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

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

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

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

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

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

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

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

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

#### china war

Cecilia Rikap 21. Professor of Economics and Coordinator of YSI States and Markets Working Group, Institute for New Economic Thinking. “The Interplays of the United States, China and their Intellectual Monopolies.” *Capitalism, Power and Innovation Intellectual Monopoly Capitalism Uncovered*. Routledge. 2021. 77-80.

As Strange (1996) anticipated, the decline of the state’s power vis-à-vis corporations can be partly explained by the acceleration of technological change, which tilts the scale in favour of corporations. As identified by Feenberg (2010, p. 5) “political democracy is largely overshadowed by the enormous power wielded by the masters of technical systems”. Indeed, we should consider that powerful intellectual monopolies pass over their home states in specific contexts or respects.11 With this in mind we reconceived core states as one of capitalism’s multiple powerful actors.

Beyond explicit confrontations, since intellectual monopolies organize and plan production and innovation networks taking place in different countries, they generate an overlap of political realms with sometimes contradictory rules and norms. Who oversees production and innovation inside the networks organized by intellectual monopolies? The latter or the different states where intellectual monopolies’ production or innovation networks are based? To whom subordinate firms and other organizations are accountable for their actions? Their state or the intellectual monopoly coordinating the network? The simple answer is both. The complicated part is to identify what happens when they are in contradiction, and what are the consequences of this complex set of power structures for workers and subordinated organizations.

Intellectual monopolies have replaced state functions as policymakers. An extreme example recently disclosed is Eric Schmidt, Alphabet’s former executive chairman, advising the US federal government while still managing Alphabet. He was the chair of the US Defense Innovation Board, which recommended the use of artificial intelligence to the US Department of Defense. He also chaired the National Security Commission on Artificial Intelligence which advises the US Congress on analogous topics (Klein, 2020).

The government’s threat over China is – at least to some extent – driven by US data-driven intellectual monopolies’ concern over Chinese rivals like Alibaba, Tencent and Huawei. The CEOs of Google, Amazon, Facebook and Apple made this clear in their testimonies in the 2020 US Congress Hearing. As a remedy, Schmidt had been pushing for more public investment in research related to artificial intelligence and tech-enabling infrastructure (such as 5G) (Klein, 2020). Furthermore, these data-driven intellectual monopolies make their own rules and norms for their digital republics and, to some degree, replace the role of states. Facebook’s founder and chief executive, Mark Zuckerberg, states it clearly

Every day, platforms like Facebook have to make trade-offs on important social values – between free expression and safety, privacy and law enforcement, and between creating open systems and locking down data.12

(Mark Zuckerberg, Feb 16, 2020)

And immediately afterwards, he advocates for more public regulations and informs that Facebook is working together with different governments to that end. A similar claim was raised by Sundar Pichai, arguing that artificial intelligence needs to be regulated.13

The division of power is not clear, given that corporate power and planning capacities go beyond national frontiers and beyond the capital they own. Overall, there is a legal vacuum in the reach of each state’s power and where the power of the intellectual monopoly controlling a portion of global production and innovation begins. This vacuum allows intellectual monopolies to expand their power and profits.

Another source of conflict between intellectual monopolies and core states concerns the relative absence of the usual benefits of being home to big corporations: employment generation and tax payments. Considering their earnings, global leading corporations do not generate in their home countries expected employment due to outsourcing and offshoring (of production and innovation), which is particularly the case of US and also European intellectual monopolies. This has contributed to the rise in inequalities in these regions. The consequent social distress put pressure on stringent regulations. In the US, we referred in Section 2.1 to the 2017 Tax and Jobs Act (Public Law 115-97), but changes have not been significant.

US intellectual monopolies are masters of tax avoidance. As we mentioned before, operations leading to lower tax bills and financialized profits are easier for companies with higher shares of intangible over tangible assets. Offshoring IPRs to countries where corporations are not required to pay taxes for their intellectual property is a mechanism frequently used to divert profits to tax havens (Bryan et al., 2017) (see Chapter 7 on Apple’s case). By the end of 2016, the top ten companies in terms of offshored savings were: Apple, Microsoft, Cisco, Oracle, Alphabet, Johnson & Johnson, Pfizer, Qualcomm, Amgen and Merck (Pozsar, 2018).

In China, whose global intellectual monopolies sprang from the sustained stimulus and protection of its state, the latter’s central planning capacity is starting to find limits vis-à-vis new intellectual monopolies. These corporations were not born as the chosen ones by the state, but still enjoyed the benefits of China’s protectionism. The recent case of Bytedance provides a good example. The company was spending its Chinese profits to expand its unprofitable business in the US when the US government banned its blockbuster TikTok app. Bytedance was not among Beijing’s favoured companies, among others, because of the difficulties in controlling the videos uploaded to TikTok (Yang, 2020). Regardless of the end of the story between TikTok, the US and Chinese governments and US intellectual monopolies as potential buyers for part of TikTok’s business, what the case put forward was a possible surge of clashes between emerging Chinese (data-driven) intellectual monopolies and their state. Indeed, in late 2020 the Chinese state delayed Ant Group’s IPO, followed by the introduction of antitrust regulation for digital companies.

Meanwhile, Europe remained focused on increasing regulations on foreign data-driven intellectual monopolies, including different accusations of excessive market power and unfair competition. Unlike previous stages in capitalism, Europe risks playing in the subordinate side, where the peripheries have historically been and generally remain. Germany’s fear of falling behind the US and China’s tech giants should also be read as a broader European concern to lag (far) behind those core economies.14 Overall, Europe and Japan are latecomers of the digital economy, and this space is being filled primarily by China, emerging as a digital technological power (UNCTAD, 2019). Moreover, with a drop of eight companies between March 2009 and December 2019, Europe’s share of global top 100 corporations in market capitalization fell from 27% to 15%. This drop was taken over by the US (PWC, 2020). Regulating the digital economy could thus be seen as Europe’s geopolitical rebalancing move.15

5 Final remarks

In this chapter, we argued that core states and certain corporations built a mutually beneficial relationship. We identified US and Chinese policies that contributed to the emergence and spread of global intellectual monopolies. Likewise, we elaborated on how these corporate leaders sustain and expand their respective countries’ geopolitical power. Nevertheless, we also addressed states’ concerns and the overall tensions of the juxtaposition of power between core states and intellectual monopolies.

The US state cannot afford to lose its intellectual monopolies since its global hegemon power significantly depends on those companies. Likewise, it cannot afford to let its intellectual monopolies be given their consequences for income and wealth concentration resulting in increasing social unrest. From the US state perspective, the technological war with China is necessary to remain the only superpower. Nevertheless, this conflict is also a powerful device to redirect public attention and blame – as it has always been the case of the United States – an “other” of the internal consequences of home (and global) capitalism.

#### Cap turns Russia war – demands to succumb to the LIO pushes them to conflict.

Diana Rybachenko 20. Lecturer, Zaporizhzhya State University. “Russia-China Relations Within the Framework of BRICS and Their International Significance in Terms of Neo-Marxist Theory and Neoliberal Institutionalism.” Charles University. 85-88. https://dspace.cuni.cz/handle/20.500.11956/118543?show=full.

Thus, neoliberal institutionalism does not fully explain the cooperation due to the absence of the foundation for confrontation between Russia and China. By solving the territorial issues, they eliminated the main reason for future conflicts (Dmochowski, 2015, p. 70-71). Russia will not choose a betrayal (Kashin, 2019). China is one of the strongest states located in the Asia-Pacific region that is associated with prospects for the further development of not only Russia but the entire world community (Weitz, 2012). Regional cooperation is of great importance for strengthening Russia`s position in international affairs (Putin, 2012b). China is a powerful state that has many partners and, in terms of trade, is less dependent on Russia (The World Bank, 2019). However, in terms of Russian resources and territory, China is interested to develop partnership (Mankoff, 2011, p. 209). It can facilitate the extension of One Belt – One Road initiative (Ramasamy, 2019, pp. 1675-1676). It can be seen that even the complicated political situation around Russia since 2014 did not prevent China from cooperating (President of Russia, 2014). This fact is supported by Vladimir Putin`s visit to Shanghai in 2014 where a large number of agreements were signed, including the significant gas deal (The Guardian, 2014). Russian “pivot to East” was a result of tension with Western countries but not with China or other BRICS members.

The reasons were the unwillingness of developing countries to depend on the advanced industrial economies and aspiration to urge reforms of the Western financial system (Qobo, 2015). The problem of infrastructure deficit in the emerging economies does not attract the attention of the IMF to the extent that is required by the developing countries to cover this deficit (Rozman, 2014). The Western powers have a political interest in maintaining the status quo (Biswas, 2015). Thereby, BRICS countries are “disappointed and seriously concerned” about the non-implementation of the IMF reform that had to give them a larger voice (Brazil Ministry of Foreign Affairs, 2014). It makes developing countries to demand the new order in international affairs.

Much of this accords with neo-Marxism. Own financial institutions can provide support bypassing the IMF. The NBR and Contingent Reserve cannot compete with the IMF and the World Bank in terms of resources. However, the fact that the developing countries have an alternative source of funding can force the Fund`s management and the major Western powers to give up demands relating to domestic political and economic reforms (Darelov, 2016). If BRICS becomes a more powerful block that includes more developing countries, the new proposal on the implementation of an equitable quota calculation system will be inevitable. The main goal is to achieve such a result in which none of the participants will have the right to block the most important decisions (OehlerSincai, 2018).

Russia and China involve more partners from the developing world hoping to build a more balanced world order. To this end, China put forward the initiative of a new format BRICS+ (Baijie and Desheng, 2018). It can be used as a platform for more active use of the national currencies of the five countries in trade and investment transactions (Yarygina and Borovikova, 2019). The volume of project financing by the New Development Bank in yuan is increasing. The total amount of financial resources allocated by the NDB in national currency is 25.91 billion yuan (3.67 billion USD) (New Development Bank, 2020).

Russia and China cooperate with Iran in several areas (Tanchum, 2020). Among the most important joint initiatives is Iran`s participation in the implementation of the One Belt – One Road projects and the completion of the country`s entry into the permanent membership of the Shanghai Cooperation Organization (Shariatinia and Azizi, 2019). China is an important importer of Iran`s energy resources (Scheid and Gupte, 2020). The payments for deliveries are calculated in yuan that contributes to the internationalization of the Chinese currency (White, 2019). Egypt and Turkey are already participating in the format BRICS+ since 2017 and 2018 respectively (Yarygina and Borovikova, 2019). Turkey advocates the trade with Russia and China in national currencies (Daily Sabah, 2018).

The trade war between the US and China since 2018 is another evidence of the growing disintegration of the existing world order (White, 2019). Building a new order is based on the creation of regional coalitions of the countries that share common views on specific issues (Van Noort, 2017). By entering flexible coalitions, it will be easier for countries to defend their interests. BRICS, as well as other initiatives such as One Belt – One Road, the Shanghai Cooperation Organization, the Eurasian Economic Union, and ASEAN, are the foundation for the large Eurasian partnership and new future world order.

Summary

The analyzed data demonstrate the relative strength of neo-Marxist assumptions in the case of Russian-Chinese relations within BRICS. In the 1990s, Russia and China encountered with the unilateral actions and a forceful policy of the United States. The financial crisis that emerged in 2007-2008 revealed the weaknesses of the world economy led by the US. Activation of BRICS cooperation started in 2008 that can be explained by opposition to the unipolarity. In the thesis, the presented arguments regarding the decision-making in the International Monetary Fund, distribution of the votes in the IMF and the World Bank, and Amin`s monopolies suggest that the US holds a status of the hegemon. However, the developing countries, primarily China and Russia penetrated in some areas that demonstrates their aspiration to be regarded as partners equal to Western countries. Step by step, Russia and China have been developing the agenda and increasing the intensity and depth of interaction in response to the unipolarity. BRICS is not a force capable alone to cause great geopolitical changes, however, its foundation reveals the dissatisfaction of actors who increased their significance in the world economy with the established international order.

#### knowledge policing disad: frames standards---capitalist economics coalesce through discursive realism

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

Words such as “paradise” or “love” or “communion” are certainly absent from our political vernacular, excluded on account of their “utopian” connotations or their lack of steely-eyed “realism.” Although this is a book about the past, I have always kept before me its larger contemporary religious, philosophical, and political implications. The book should make these clear enough; I will only say here that one of my broader intentions is to challenge the canons of “realism,” especially as defined in the “science” of economics. As the master science of desire in advanced capitalist nations, economics and its acolytes define the parameters of our moral and political imaginations, patrolling the boundaries of possibility and censoring any more generous conception of human affairs. Under the regime of neoliberalism, it has been the chief weapon in the arsenal of what David Graeber has characterized as “a war on the imagination,” a relentless assault on our capacity to envision an end to the despotism of money.24 Insistent, in Margaret Thatcher’s ominous ukase, that “there is no alternative” to capitalism, our corporate plutocracy has been busy imposing its own beatific vision on the world: the empire of capital, with an imperial aristocracy enriched by the labor of a fearful, overburdened, and cheerfully servile population of human resources. Every avenue of escape from accumulation and wage servitude must be closed, or better yet, rendered inconceivable; any map of the world that includes utopia must be burned before it can be glanced at. Better to follow Miller’s wisdom: we already inhabit paradise, and we can never make ourselves fit to live in it if we obey the avaricious and punitive sophistry professed in the dismal pseudoscience.

The grotesque ontology of scarcity and money, the tawdry humanism of acquisitiveness and conflict, the reduction of rationality to the mercenary principles of pecuniary reason—this ensemble of falsehoods that comprise the foundation of economics must be resisted and supplanted. Economics must be challenged, not only as a sanction for injustice but also as a specious portrayal of human beings and a fictional account of their history. As a legion of anthropologists and historians have repeatedly demonstrated, economics, in Graeber’s forthright dismissal, has “little to do with anything we observe when we examine how economic life is actually conducted.” From its historically illiterate “myth of barter” to its shabby and degrading claims about human nature, economics is not just a dismal but a fundamentally fraudulent science as well, akin, as Ruskin wrote in Unto This Last, to “alchemy, astrology, witchcraft, and other such popular creeds.”25

Ruskin’s courageous and bracing indictment of economics arose from his Romantic imagination, and this book partakes unashamedly of his sacramental Romanticism. “Imagination” was, to the Romantics, primarily a form of vision, a mode of realism, an insight into the nature of reality that was irreducible to, but not contradictory of, the knowledge provided by scientific investigation. Romantic social criticism did not claim the imprimatur of science as did Marxism and other modern social theories, yet the Romantic lineage of opposition to “disenchantment” and capitalism has proved to be more resilient and humane than Marxism, “progressivism,” or social democracy. Indeed, it is more urgently relevant to a world hurtling ever faster to barbarism and ecological calamity. I wrote this book in part out of a belief that many on the “left” continue to share far too much with their antagonists: an ideology of “progress” defined as unlimited economic growth and technological development, as well as an acceptance of the myth of disenchantment that underwrites the pursuit of such expansion. The Romantic antipathy to capitalism, mechanization, and disenchantment stemmed not from a facile and nostalgic desire to return to the past, but from a view that much of what passed for “progress” was in fact inimical to human flourishing: a specious productivity that required the acceptance of venality, injustice, and despoliation; a technological and organizational efficiency that entailed the industrialization of human beings; and the primacy of the production of goods over the cultivation and nurturance of men and women. This train of iniquities followed inevitably from the chauvinism of what William Blake called “single vision,” a blindness to the enormity of reality that led to a “Babylon builded in the waste.”26

Romantics redefined rather than rejected “realism” and “progress,” drawing on the premodern customs and traditions of peasants, artisans, and artists: craftsmanship, mutual aid, and a conception of property that harkened back to the medieval practices of “the commons.” Whether they believed in some traditional form of religion or translated it into secular idioms of enchantment, such as “art” or “beauty” or “organism,” Romantic anticapitalists tended to favor direct workers’ control of production; the restoration of a human scale in technics and social relations; a sensitivity to the natural world that precluded its reduction to mere instrumental value; and an apotheosis of pleasure in making sometimes referred to as poesis, a union of reason, imagination, and creativity, an ideal of labor as a poetry of everyday life, and a form of human divinity. In work free of alienation and toil, we receive “the reward of creation,” as William Morris described it through a character in News from Nowhere (1890), “the wages that God gets, as people might have said time agone.”27

Rendered gaudy and impoverished by the tyranny of economics and the enchantment of neoliberal capitalism, our sensibilities need replenishment from the sacramental imagination. As Americans begin to experience the initial stages of imperial sclerosis and decline, and as the advanced capitalist world in general discovers the reality of ecological limits, we may find in what Marx called the “prehistory” of our species a perennial and redemptive wisdom. We will not be saved by our money, our weapons, or our technological virtuosity; we might be rescued by the joyful and unprofitable pursuits of love, beauty, and contemplation. No doubt this will all seem foolish to the shamans and magicians of pecuniary enchantment. But there are more things in heaven and earth than are dreamt of on Wall Street or in Silicon Valley.

#### semiconductor shortages---filters aff offense

David Atkins 6-19. President of the Pollux Group, a Qualitative Research Firm. The Semiconductor Crisis Is a Failure of Modern Capitalism. Washington Monthly. 6-19-2021. https://washingtonmonthly.com/2021/06/19/the-semiconductor-crisis-is-a-failure-of-modern-capitalism-it-may-require-new-answerTop of Form

Bottom of Form

But there’s increasingly an argument to be made that a just-in-time lowest-cost supply system may not just be bad for the climate or for domestic employment. It may also in many cases be bad for business. The semiconductor crisis tells an exemplary tale. As information technology becomes essential to daily life in developed countries, semiconductors are essential for making the world go round. Phones, computers, gaming consoles and automobiles all require increasingly sophisticated semiconductors. And most of them are made by a single company: Taiwan Semiconductor. Indeed, Taiwan Semiconductor is so dominant in the field that few competitors can match them, and they’re falling farther behind.

Analysts say it will be difficult for other manufacturers to catch up in an industry that requires hefty capital investments. And TSMC can’t make enough chips to satisfy everyone—a fact that has become even clearer amid a global shortage, adding to the chaos of supply bottlenecks, higher prices for consumers and furloughed workers, especially in the auto industry.

The situation is similar in some ways to the world’s past reliance on Middle Eastern oil, with any instability on the island threatening to echo across industries. Companies in Taiwan, including smaller makers, generated about 65% of global revenues for outsourced chip manufacturing during the first quarter of this year, according to Taiwan-based semiconductor research firm TrendForce. TSMC generated 56% of the global revenues.

Being dependent on Taiwanese chips “poses a threat to the global economy,” research firm Capital Economics recently wrote.

The semiconductor shortage is harming vehicle production lines. It’s why the next generation gaming consoles that were supposed to be available last Christmas are still in vanishingly short supply. It is starting to impact smartphones and personal computers as well.

There are many correlated aspects to this problem. It’s partly a matter of national security: what does the global economy do when it relies so heavily on a single actor in a location of geopolitical instability? It’s partly a problem of monopoly: is the market truly free or stable if so many essential products depend on the fate of a single company? How can there be genuine competition if the cost of entry makes establishing new competition prohibitive? It’s partly a matter of the pandemic: Taiwan Semiconductor and other manufacturers have been struggling to meet production targets due to reduced capacity from COVID restrictions.

We have seen global supply chain failures hurt consumers frequently, especially when domestic production of essential goods are eliminated in favor of easily disrupted or costly global trade. Haiti, for instance, has been particularly victimized by the destruction of its domestic food production as the U.S. subsidized its own rice exports. The blocking of the Suez Canal by the Ever Green earlier this year was in part the result of larger and larger ships being forced through waterways that were not built to sustain them.

But the scale of the semiconductor issue raises the question of whether unregulated global capitalism is really the best way to run essential services in a world economy. Consider these staggering numbers from the same Wall Street Journal story:

Semiconductors have become so complex and capital-intensive that once a producer falls behind, it’s hard to catch up. Companies can spend billions of dollars and years trying, only to see the technological horizon recede further.

A single semiconductor factory can cost as much as $20 billion. One key manufacturing tool for advanced chip-making that imprints intricate circuit patterns on silicon costs upward of $100 million, requiring multiple planes to deliver.

TSMC’s own expansion plans call for spending $100 billion over the next three years. That’s nearly a quarter of the entire industry’s capital spending, according to semiconductor research firm VLSI Research.

#### speculation---market overload

Nick Beams 21. Member of the International Editorial Board of the World Socialist Web Site and former longtime national secretary of the Socialist Equality Party in Australia. "Rampant Wall Street speculation: The fever chart of a terminally diseased system." World Socialist Web Site. 5-6-2021. https://www.wsws.org/en/articles/2021/05/07/pers-m07.html

Over the past year, the global financial system, above all Wall Street, has been in the grip of a speculative mania, the like of which has never been seen before in economic history. Two questions therefore immediately arise: how has this situation come about and what are its implications?

In March 2020, as the COVID-19 pandemic began to make its effects felt and workers undertook wildcat strikes and walkouts to demand health measures to protect their lives and those of their families, the financial markets plunged.

Wall Street was concerned that any effective health measures to contain the spread of the pandemic would result in a collapse in the bloated price of financial assets, above all stocks, that had been boosted by the trillions of dollars poured into the financial system by the US Federal Reserve and other central banks following the crash of 2008.

The US government and the Fed rode once again to the rescue of Wall Street. The Trump administration organised a multi-billion-dollar bailout of the corporations under the CARES Act while the Fed stepped in to provide trillions of dollars of support for all areas of the financial system, including for the first time the purchase of stocks.

Since then, on the back of this $4 trillion intervention and rising, as the Fed continues to purchase financial assets at the rate of more than $1.4 trillion a year, the world has seen an unprecedented orgy of financial speculation.

Wall Street’s main stock index, the S&P 500, has risen by some 88 percent since its March 2020 lows, reaching record highs on multiple occasions throughout the past year. Margin debt, used to finance the speculation in shares, has reached record levels, and the yield on the lowest-rated corporate junk bonds—barely one step away from default—has fallen to historic lows.

But the most egregious expression of the speculation has been the rise of the cryptocurrency market. Over the past year the most prominent cryptocurrency, Bitcoin, has risen by 600 percent, rising from about $7,000 per bitcoin to $54,000, reaching a high of $65,000 in the middle of last month.

Last month Coinbase, a trading exchange for cryptocurrencies, launched itself on Wall Street with a floatation that put its market value at $85 billion, compared to its valuation of $8 billion in 2018, exceeding that of some of the world’s major banks and the valuation of the NASDAQ exchange on which it was launched.

However, in recent days, even the level of bitcoin speculation has been put in the shade by another cryptocurrency, Dogecoin.

It was created in 2013 as a joke. Whereas the promoters of Bitcoin insist that it has some intrinsic value because it may be used to organise financial transactions without the intervention of a bank or some other third party via a blockchain ledger system, no such claims are made for Dogecoin.

Despite being worthless, Dogecoin has risen in price 11,000 percent this year alone. This week its market value reached $87 billion compared to $315 million a year ago. And as one cryptocurrency enjoys a rapid rise, speculators start a search for the next “big thing.”

The Dogecoin phenomenon is not an isolated event. It seems to be an expression of what could be described as a new operating principle in the world of speculation—the more worthless the so-called asset, the higher its price.

A little sandwich shop in Paulsboro, New Jersey, with sales of just $13,976, has made financial news after it was revealed that its parent company, Hometown International, achieved a market valuation of $100 million last month. Two of its biggest shareholders are Duke and Vanderbilt universities.

The rise of Dogecoin also reveals the high-level intervention of hedge funds and other financial institutions seeking to take advantage of its price momentum.

Then there is the case of non-fungible tokens (NFTs). These are images of pieces of art, a sports photo, or even a tweet—the first ever tweet issued by Twitter founder Jack Dorsey was sold as an NFT for $2.9 million—that are stored on a blockchain ledger. They are like a collector’s item but are not stored physically but digitally.

The class dynamics of this speculative orgy, fuelled by the endless supply of virtually free money by the Fed, are revealed in the escalation of the wealth of the world’s billionaires.

In the last year, as COVID-19 brought untold pain, suffering and economic distress for billions of the world’s people, the combined wealth of the global billionaires rose by 60 percent, from $8 trillion to $13.1 trillion. The number of billionaires rose by 660 to 2,775—the highest rate of increase and the largest number ever.

In the US, Amazon CEO Jeff Bezos and Tesla CEO Elon Musk have wealth of $177 billion and $151 billion respectively.

The speculative frenzy has extended into the broader economy. The prices of major industrial commodities, such as steel, lumber, copper, and soybeans, which feed into inflation for workers and consumers, are rapidly rising.

But the financial authorities, having created this frenzy by the endless outflow of cheap money since the crash of 2008 and the near collapse of March 2020, are caught in a trap of their own making. They fear that any move to try to bring it under control, with even a slight tightening of the financial spigots, will set off a financial crisis.

The extreme nervousness over such an outcome was revealed earlier this week when US Treasury Secretary Janet Yellen, a former Fed chief, raised the prospect that the central bank may have to tighten interest rates at some point. Almost immediately, fearing market reaction, she walked back the comment saying she was neither advocating nor predicting a rise in rates.

The incident has cast a revealing light on one of the most significant developments in the US—the open advocacy of unionisation of the workforce by the Biden administration.

Last month in an executive order, Biden created a “White House Task Force on Worker Organizing and Empowerment” which includes as members Yellen, Defense Secretary Lloyd Austin and Homeland Security Secretary Alejandro Mayorkas. The “empowerment” of government-sponsored unions takes place under the direction of cabinet officials responsible for military operations, economic policy and domestic repression.

The administration is fearful that the pent-up anger in the working class over the pandemic and the enrichment of the financial oligarchy at the expense of hundreds of thousands of lives, will be further fuelled by the escalation of inflation, leading to an uncontrolled eruption of the class struggle that will come into headlong conflict with the institutions of the capitalist state.

In times past, the Fed would have moved to contain such an upsurge by lifting interest rates and inducing a recession. But that road is now fraught with danger because even a relatively small increase threatens to bring down the speculative financial house of cards.

Hence the Biden administration has moved to set up a state-sponsored industrial police force, based on the trade unions, to carry out an organised suppression of the working class in the interests of finance capital.

The rampant speculation of the past year and the accelerated siphoning of wealth to the upper levels of society amid death and economic devastation must be the occasion for the drawing up by the working class of a balance sheet of the experiences through which it has passed.

There is no prospect for reform of the present capitalist socio-economic order towards meeting social need—the illusion peddled by the Democrats and their ardent supporters in the pseudo-left organisations. The past year has demonstrated that everything in society—including the very right to life itself—is subordinated to the insatiable demands of finance capital.

The present speculative bubble, like all others before it, is destined to burst. The financial oligarchs have already prepared their exit plans and golden parachutes as they have done in the past. The working class, however, has no escape. The collapse will bring an even greater economic disaster on top of what has already taken place.

The only viable, realistic solution to the terminal disease that has gripped the capitalist socio-economic order is the fight for a socialist program to wrest the commanding heights of the economy and its financial system out of the hands of the present-day ruling class and begin the economic reconstruction of society to meet social needs.

#### soil erosion---independently causes extinction

Ken Boettcher 21. M.A. in History, California State University, Stanislaus. “Seeing Red Over the Climate Crisis: Ecosocialism as Emergency Brake.” *California State University Library*. 40-44. https://scholarworks.calstate.edu/downloads/gh93h4190.

Take the accelerating crisis of soil depletion and erosion, for example, and its threat to food production, especially given other factors which multiply that threat, including climate-crisis driven water and drought problems and massive damage to arable land due to the increasing frequency and severity of floods. According to David R. Montgomery in his history titled, Dirt: The Erosion of Civilizations, “[w]e are degrading and eroding the world’s soils far faster than they form.” He writes, “[w]e are running down our stock of fertile topsoil, the one thing we absolutely need to support civilization in the long run.” Montgomery documents the role of soil erosion and depletion in the collapse of several ancient civilizations in human history, noting that his historical studies showed that “the state of the land—the state of the soil—directly affects the health and resilience of societies.” He observes that, while “individual droughts, wars, and economic disruptions or dislocations” can serve as triggers for the collapse of a society, “the state of the land loads the gun.” Erosion and soil degradation “help explain why particular events or circumstances take down societies,” says Montgomery.1

The state of the soil today under world capitalism is thus at a critical stage. In Dirt, Montgomery notes research reported in the 1990s which showed that worldwide, “since the Second World War, soil erosion caused farmers to abandon an area equivalent to about one-third of all present cropland.” That is an area larger than the subcontinent of India. At that rate the world will be out of topsoil from soil loss alone, not counting nutrient depletion, in barely a hundred years.

The whole history of capitalist agriculture is characterized by its perennial treatment of soil and many other natural resources as free gifts from nature to be exploited and abused for private profit. In the United States, for example, plantation agriculture—whether for rice, sugar, tobacco or cotton—was typified by monocrops (with little to no crop rotation or manuring) for sale and profit that depleted the land within just a few years, at which time slaves were forced to move most plantation operations to new lands. Repeatedly, the most profitable, and increasingly ruthless, path was to throw more Native Americans off their lands a bit farther west, through bloody violence or trickery. The land was simply expropriated by the plantation owners, who forced slaves to clear more forests. The whole ugly process would then start all over again.1

The costs for rebuilding nutrient-depleted soil, where possible, are externalized by individual capitalists and left to be absorbed by the next owner or by society as a whole. As environmental historian Jason W. Moore writes in “The Rise of Cheap Nature,” ecological economist “William Kapp...famously characterized the modern economy as a system of ‘unpaid costs.’” Continuing, Moore asserts that today, “we know this all too well—heavy metals in children’s bloodstreams and Arctic ice, massive garbage patches in the oceans, agro-toxic overload in our soil and water, never mind that small matter of climate change.”2

In fact, as Immanuel Wallerstein observed in World-Systems Analysis: An Introduction, most capitalists do not pay all the costs that are really involved in production. Wallerstein wrote that “[t]he least expensive way for a producer to deal with waste is to cast it aside, outside its property.” Moreover, he writes, “the least expensive way to deal with transformation of the ecology is to pretend it is not happening.” Both methods work well to lower production costs. However, he added, “these costs are then externalized ...either immediately or, more usually, much later.” Many times the negative consequences are never adequately dealt with by those who cause the damage.3

In Dirt, Montgomery argues that there are new (or renewed ancient) agroecological methods that can make modern agriculture sustainable. “The philosophical basis of the new agriculture lies in treating soil as a locally adapted biological system rather than a chemical system,” he writes. Agroecology does not just mean small rather than large, or simply organic, or simply manual rather than mechanized. The main point is that soil must be protected: “agricultural land should be viewed —and treated—as a trust held by farmers today for farmers tomorrow.”1 Generally, agroecological approaches accent no- till methods to minimize soil erosion with little use of heavy equipment, more use of local composting to halt nutrient depletion, biological pest management, and minimal use of chemical fertilizers. They are more labor-intensive but are being successfully used in many places in the world—notably in Cuba, which embraced them after the collapse of the Soviet Union and the loss of its support for the Cuban economy. They mark a break from the still dominant cookie-cutter agribusiness approach to industrial agriculture.

With less than a century of soil left, to leave the needed worldwide transformation to the private interests of agricapitalists whose focus on short-term profits brought us to this critical point in the first place is drastically irresponsible.2 For his part, Montgomery does not believe that food production should be left to the profit-motivated markets of capitalism. “Sustaining our collective well-being requires prioritizing society’s long- term interest in soil stewardship,” he writes. “We simply cannot afford to view agriculture as just another business,” Montgomery maintains, “because the economic benefits of soil conservation can be harvested only after decades of stewardship, and the cost of soil abuse is borne by all.”1

#### A – History

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### C – Alt stabilizes the economy

Kallis et al 18 [Giorgos. ICTA, Autonomous University of Barcelona. Vasilis Kostakis. ICREA. Steffen Lange. Ragnar Nurkse School of Innovation and Governance and Berkman Klein Center for Internet & Society, Harvard University. Barbara Muraca. Institute for Ecological Economy Research. Susan Paulson. College of Liberal Arts, Oregon State University. Matthias Schmelzer. Center for Latin American Studies. Research On Degrowth. Annual Review of Environment and Resources. 2018. 43. 298-299]

Although literature explicitly addressing degrowth economics is young (65), economists have long raised similar questions. Classical economists considered the concept of a stationary state, where economic growth eventually and unintentionally ends, be it due to limits to the division of labor (Smith) or a confined supply of land (Ricardo). Whereas Smith and Ricardo painted a dark picture of the stationary state in contexts with high levels of economic inequality, Mill argued that distributional policies could lead to a high degree of social welfare (66). Economists may share politicians’ obsession with growth, but there is nothing in neoclassical models to suggest that zero or negative growth is incompatible with full employment or economic stability. In recent years, several authors have investigated no-growth economies in the context of established macroeconomic theories. From a neoclassical supply-side perspective, Irmen (67) shows that market economies do not always generate growth, nor do they need growth to function. Lange (68) tests several models and shows that the major condition for stable degrowth is a decline in the supply of production factors—labor and/or natural resources—and a reduction of working hours (51). Heikkinen (69) and Bilancini & D’Alessandro (70) develop neoclassical models in which decreases in labor supply lead to stable degrowth with increasing social welfare, as consumption losses are overcompensated by more free time, allowing enjoyment of nonmaterial relational goods. In Keynesian models, the primary condition for an end of growth is constant aggregate demand. Fontana & Sawyer (71) emphasize the role of investments: If firms invest less, wage income stabilizes and growth is low. Exploring conditions for a stable steady-state, Lange (68) examines the economic circle the other way around: The central condition for zero growth is nonincreasing demand by households and government, which leads to low levels of investment by firms. In this model, nongrowing economies have zero net investments and savings and a constant sum of consumption and government spending. Lack of growth does not mean lack of change. Zero change in net investments may entail increased investments in one sector (e.g., renewable energies), compensated by disinvestment in another (e.g., coal). Fontana & Sawyer (71) show that with government deficit, private savings can still be positive. High levels of employment can be achieved in nongrowing economies by reducing average working hours, shifting employment toward labor intensive sectors, and/or redirecting technological change to increase resource rather than labor productivity (68).

#### poisons the well

Stephan Pürhinger et. al 21. Institute for Comprehensive Analysis of the Economy, Johannes Kepler University of Linz, Austria, and Institute of Economics, Cusanus Hochschule, Bernkastel-Kues, Germany. Laura Porak, Institute for Comprehensive Analysis of the Economy. Johanna Rath, Institute for Comprehensive Analysis of the Economy. “Talking about competition? Discursive shifts in the economic imaginary of competition in public debates” *ICAE Working Paper Series* (123): 24-26.

First, competition is only rarely questioned as a superior economic and social order, but rather “well-functioning” competition is presented as a necessary precondition for societal wealth and progress. This position is in line with the tradition of economic theory since classical political economyviii (Smith, Ricardo), stressing the importance of competition and the danger of monopolies for the functioning of the market (Backhouse, 1990; Gane, 2019; Altreiter et al., 2020); a continuity emphasized by direct reference to academic authorities such as Adam Smith or David Ricardo.

“But in fact, all our research on free trade is only about possible side effects and how to deal with them. But it never leads to the conclusion: let’s close the borders. And it does not change the 200-year-old insight that free trade is beneficial overall.” (Presse, 0932\_2017; emphasis added)

Hence, the basic imaginary of competition as something positive is no more discussed in the economists’ discourse but has become self-evident in the course of time, marking a “discursive limit” (Jäger and Maier, 2016) in the economic expert discourse. Thus, even though the effects of competition are criticized, the benefits of this social order seem to outweigh the costs. Moreover, while claiming to provide positivist analyses, competition in total appears in most cases implicitly as a positively connoted concept, which brings benefits to both the economy and the society. In this regard, terms like “free trade,” “market,” or “capitalism” are used as synonyms for “competition.”

Strongly connected to this notion is the tendency to describe competition not only as one possible form of social or economic organization, but as something “without alternative”, so the “economy,” “market,” and “competition” are nearly equated within the discourse (Polanyi, 1977), prohibiting other ways of thinking and talking about “the economy.” These findings match the diagnosis of an increasingly strong reliance on competition as the prime mode of social organization, which is observable in policies and public discourse (Davies, 2017; Altreiter et al., 2020, p. 4). Therefore, both the concept of social organization and the benefits of competition appear as “sedimented knowledge” of economic experts (Jessop, 2010), while questioning the concept of competition as such marks a “discursive limit” in the economic expert discourse. Thus, in most cases in which economists spoke critically about competitive logic, their arguments were instantly criticized. In some cases, the discussion even resulted in a denial of their expertise on economic issues in general.

#### turns case---long-run outweighs---offshoring

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

With firms branching out into global competition and countries lowering their trade barriers to promote such competition, the absence of effective global regulation once again raises Marx concerns. Because of strong federal governments, national governments were able to pass and enforce, through the uses of military or police force where necessary, laws that regulated externalities, such as pollution, and antitrust. At the moment there is no strong federal government at the global level and, therefore, no one to pass and enforce laws that effectively regulate externalities or antitrust. Epstein and Greve raise a Marx like concern, “when firms have international market power, one would expect them to behave as monopolists just like domestic firms with market power” (2004). Therefore, without any dominant form of regulatory governance, industry concentration could very well replicate what was seen in the late 19th century, though, globally instead of nationally. Carstensen & Farmer discusses this tendency towards M&A’s: The transformation of formerly regulated or noncompetitive industries to competition is closely linked with merger movements. The historical record demonstrates that once faced with competition, leading firms in these industries began to merge. This has been the pattern in airlines, banks, railroads, electric and gas utilities, health care and, with great prominence, telecommunications (2008).

While some may argue that reaching that level of concentration is unlikely, one should consider current industries that hold a considerable global market share. “Although it may be more difficult to establish and maintain market power internationally, there is no reason to believe that it is impossible or, for that matter, rare. Industries such as pharmaceuticals, passenger aircraft, and software illustrate the phenomenon” (Epstein & Greve, 2004).

There are actually quite a few firms who have emerged into the global market that hold what can be considered a significant share within global industries, ranging from manufacturing, financial intermediation, and transport service along with other service industries. For example, The European Aeronautic Defense and Space Company and The Boeing Company combined hold more than 50% market share within the global civil aerospace products manufacturing industry. Goldman and Sachs hav2 20.20% market share within the global investment banking and brokerage industry and Vivendi holds 20.10% within the global music production and distribution industry. United Parcel Service holds 23.80%, within the global logistics – couriers industry (IBISW, 2011).

We do not intend to imply that the monopolization that had plagued the United States in the late 19th century has emulated itself at the global level, creating one dominant firm controlling an entire global industry. However, it does appear that a number of industries are starting to exhibit Marx, “inevitable move toward a monopoly.”

The increase in oligopoly power at the global level presents unprecedented challenges. Reaching a cross-country consensus on competition policy is a difficult. Epstein & Greve discuss some of the issues that arise when attempting to unite foreign and domestic competition policy. Competition policy embodies imprecise normative judgments that invite controversy and defection rather than consensus and commitment. Because its scope extends to such a wide range of economic activity, it has the potential to inflict significant costs on many transactors. In particular, competition policy tempts states both to impose nominally neutral policies that favor local producers and consumers at the expense of global welfare, and to administer their policies in a discriminatory fashion to similar ends” (2004).

While more and more countries are adopting competition policies, this seemingly positive step towards unification of trust law has its negative effects. “Nearly one hundred jurisdictions now have antitrust laws” according to Epstein & Greve, this raises increasing issues of “jurisdictional overlaps” since many countries will assert their “jurisdiction over extraterritorial conduct that has a domestic impact” (2004).

#### new link---capitalist tech innovation makes anti-capitalism impossible---causes surveillance, turns their offense

John Naughton 19. professor of the public understanding of technology at the Open University. 'The goal is to automate us': welcome to the age of surveillance capitalism. The Guardian. 1-20-2019. https://www.theguardian.com/technology/2019/jan/20/shoshana-zuboff-age-of-surveillance-capitalism-google-facebook

The headline story is that it’s not so much about the nature of digital technology as about a new mutant form of capitalism that has found a way to use tech for its purposes. The name Zuboff has given to the new variant is “surveillance capitalism”. It works by providing free services that billions of people cheerfully use, enabling the providers of those services to monitor the behaviour of those users in astonishing detail – often without their explicit consent.

“Surveillance capitalism,” she writes, “unilaterally claims human experience as free raw material for translation into behavioural data. Although some of these data are applied to service improvement, the rest are declared as a proprietary behavioural surplus, fed into advanced manufacturing processes known as ‘machine intelligence’, and fabricated into prediction products that anticipate what you will do now, soon, and later. Finally, these prediction products are traded in a new kind of marketplace that I call behavioural futures markets. Surveillance capitalists have grown immensely wealthy from these trading operations, for many companies are willing to lay bets on our future behaviour.”

While the general modus operandi of Google, Facebook et al has been known and understood (at least by some people) for a while, what has been missing – and what Zuboff provides – is the insight and scholarship to situate them in a wider context. She points out that while most of us think that we are dealing merely with algorithmic inscrutability, in fact what confronts us is the latest phase in capitalism’s long evolution – from the making of products, to mass production, to managerial capitalism, to services, to financial capitalism, and now to the exploitation of behavioural predictions covertly derived from the surveillance of users. In that sense, her vast (660-page) book is a continuation of a tradition that includes Adam Smith, Max Weber, Karl Polanyi and – dare I say it – Karl Marx.

#### no incentive

Schutz 19 [Schultz, Professor of Economics, Rollins College of Arts and Sciences. “Planetary Eco-Collapse and Capitalism: A Contemporary Marxist Perspective.” *Forum for Social Economics* 49(3): 257-280. DOI: 10.1080/07360932.2018.1556177]

5. CAPITALIST CLASS AND PLANETARY ECO-COLLAPSE

Thorstein Veblen added in his account on the conservatism of the rich (Veblen, 1899) the observation that they are unfortunately emulated by the rest of the population, an insight that contemporary marxists have noted helps to explain the often confounding conservative politics of working class people that so frequently contradicts the latters’ own self interests. Nowhere is this clearer than in Veblen’s own America today, 120 years after he wrote: ours is another Gilded Age indeed, the rich oligarchs currently running our government are totally out of touch with the realities of environmental collapse, realities increasingly felt by the rest of the population, despite the many distractions of life in capitalism today—even though in the U.S. a major portion of that population still refuses to acknowledge the human sources of climate change (around half, according to the latest polls as of this writing), or even that climate change is occurring at all (about 30%), or that if it is, it constitutes a peril (Aton, 2017).

Veblen added another pertinent and closely related insight acknowledged by contemporary marxists’ in the latters’ understanding of the roots of the current eco-crisis: the idea that people emulate not only the conservatism of the rich but also their conspicuous consumption.7 Today’s consumerism—again, the ultimate fuel of the engine of the capitalist earth-eating machine—thus derives not only from a deeply human need for fulfillment in an otherwise all too alienating life system; and not only from the capitalist sales-effort’s continual and ever-present, literally mind-boggling harangue; but also from a perfectly normal tendency of people to emulate that which is conspicuously comfortable, i.e., here the consumption of the rich, which is broadcast everywhere as exemplary in that sales-effort harangue and displayed continually also in every other possible medium and venue.

6. AVOIDING ECO-COLLAPSE, DEMOCRATIZING THE ECONOMY

The U.S. has long been the world’s leading capitalist nation but its empire seems now nearing collapse. Governance is in such disarray in this country as of this writing as to seem completely hopeless of providing any direction to the world capitalist order whatsoever—our time recalls the times of Caligula and Nero during the fall of that earlier empire! It is a dangerous time we are entering, with a truly capricious incompetent in our Presidential office and a Congress divided as it has never been before between a thus-far subservient pro-Presidential wing, another bunch of total-wing-nuts, and several contending but confused traditionalist wings that together cannot decide which way is up. Still, at least many Americans may have finally had amply demonstrated, despite having been long convinced otherwise, that theirs too is truly a class system. The upshot, as Marx was so pained to show for his own time, is that in this system, like in all others to date, it is elites who actually run the important things, democracy notwithstanding. That is most unfortunate for the concerns at hand in this essay.

For what will be required to mitigate the planetary catastrophe of eco-collapse, with all that it entails for human life and indeed all of life, is staggering both in breadth and complexity and in its urgency, and clearly capitalists and their system are not going to provide it. A de-automobilized, de-sprawled-out, de-globalized, de-consumption-addicted life-world is not the kind that capitalist elites in charge of things will provide for themselves and their own nations, nor for the impoverished rest of their world to ever hope to achieve. The global economy must be fairly quickly and relatively painlessly transitioned (1) away from fossil fuels and toward alternative renewable energy sources; (2) out of the private automobile and into massand pedestrian-based transit; (3) out of the suburbs and exurbs and into more humane urban neighborhoodand village-based residential life; (4) out of the agricultural, resource and manufacturing export-based global economy and into a more locally based one; and (5) into expanding environmental repair and resource recycling far beyond what has yet been attempted. Social control over critical economic investments will clearly be necessary, and while Marx and marxists have highlighted and often extolled in capitalism its socialization of production and investment processes (e.g., Engels, 1880, p. 702), they decry that it is not a democratic socialization but one transfixed by the capitalist quest for profit.

In terms of population and consumption, humanity’s ecological footprint must be brought back into accord with the earth’s biocapacity,8 and as hastily and with as little suffering as possible. Doing that democratically will be critical to minimizing the pain. Thus, developing the institutional requisites of real democratic politics is a key part of addressing the plight of the planet. Partly because of the Cold War between the U.S. and U.S.S.R., and partly because of the latter’s own particular brand of marxism, the profound commitment of Marx and of most other marxists to democracy—for example, in Marx’s The Civil War in France (Marx, 1871) —was in the past not much acknowledged by others. But most marxists are in agreement with other environmentalists on the necessity of democratic decision-making in the face of environmental crisis.

While in every nation, it is powerful capitalist obstructionism that thwarts intelligent responses to climate change and eco-collapse, the institutional requisites of real popular democracy are well-understood. Here in the U.S. as of this writing the biggest immediate hurdles include such things as partisan gerrymandering, corporate person-hood, and political contributions, but of course those are just the beginning. Concentrated private mass and social media also stand in the way of developing democracy, and indeed of any intelligent discussion of the rising ecological storm. And certainly in the U.S. and elsewhere, obscenely excessive wealth and income inequality, and social, cultural, political and institutional patriarchy and racism are major barriers to real democracy as well.

#### alt solves---no internal link

Victor Wallis 21. Professor of Liberal Arts at the Berklee College of Music. “Technology and Ecosocialism.” *Perspectives on Global Development and Technology* 20(1): 13-29. DOI: 10.1163/15691497-12341580.

How will the battle of the contending technologies – capitalist and ecosocialist – play itself out in practice? As we have already noted, the ecosocialist approach has no choice but to take capitalist technology as its point of departure. It will then selectively embrace, add to, or reject the various specific technologies bequeathed by capital. The technologies themselves are in turn defined only in part by particular physical devices; more important is the way the various devices, together with their spatial and physical infrastructures, fit into a larger configuration, which determines how they will be deployed (in what quantities, in what proportions and with what implications for the natural environment and for social life).

Transportation technology is a case in point. Every type of device, from bicycles to cars to trains to planes, is already in existence,4 but system-configuration based on market pressures and corporate lobbying is sharply skewed – especially in the United States, where capital is least restrained – to favor planes and cars over trains and bikes. Any move to invert this pattern would necessarily involve shifts not only in the spatial layout of human settlements, but also in the cultural assumptions guiding both public policymaking and personal choices. There is a long tradition of debate on these issues, going back to early critiques of the automobile (Mumford 1963), extending forward to unmasking the ideological agenda behind suburbanization (Baxandall and Ewen 2000), and now, in recent years, surveying significant steps taken in certain locales to implement healthier, safer, and less wasteful approaches based on free public transit (Dellheim and Prince 2018).

#### A – Propriety rights, no incentive for R&D

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

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

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

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

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

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

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

#### B – Inequality, work times, fear of shareholder suits

Bee 20 [Vanessa A. Bee. Senior Litigation Counsel at the Consumer Financial Protection Bureau with a JD from Harvard Law. Would We Have Already Had a COVID-19 Vaccine Under Socialism?. No Publication. 4-20-2020. https://inthesetimes.com/features/covid-19-coronavirus-vaccine-capitalism-socialism-innovation.html]

STIFLING WORKERS, STIFLING CREATIVITY

Many of the most sophisticated innovations of our time, from groundbreaking drugs to smart car technology, have depended on a deep pool of creative labor. But the idea that capitalism allows the bestsuited workers to join that pool is wishful thinking. As journalist Chris Hayes writes in Twilight of the Elites: America After Meritocracy, meritocracy “can only truly come to flower in a society that starts out with a relatively high degree of equality.” From 1979 to 2015, the annual average household income of the top 1% grew five times faster than that of the bottom 90th percentile. The reality is that deep inequalities in how this country’s wealth is distributed make meritocracy all but a myth. Some people can afford to attend college and access spaces where discovery is encouraged, moving into a “creative pipeline,” while their poorer peers go right into the workforce or juggle demanding classes with work schedules. While some with great innate talent for innovation end up in these coveted creative jobs, many more—poor and workingclass—are pushed by financial necessity into positions mismatched to their potential.

In theory, one doesn’t need a creative-focused job to innovate. But creativity requires a certain freedom— an ability to “waste” time, to work nonlinearly, to experiment and repeatedly fail. Capitalism’s constant dictate to maximize productivity leaves people with little time to spare, at work or at home—especially in poor and working-class households: The bottom fifth of earners have seen their work hours increase by 24.3% since 1979, compared to 3.6% for the top fifth.

Being in a more precarious financial position, or in a job with little security, also discourages workers from taking risks, even when the risks might lead to innovation. The precarity makes it difficult to approach one’s supervisors and ask for sick days, let alone personal time to go down rabbit holes. It makes it frightening to change fields or spend money on any project that might result in even more precarity.

Notably, the corporate structure itself has been known to stifle creation. Many corporate firms are under the effective control of shareholders, to whom managers owe a fiduciary duty to maximize profits. Shareholders who believe this duty has been breached typically have the right to sue the corporation. While this power can be used for the greater good—note how Tesla was sued by shareholders in response to its poor safety record—it also opens the door to shortsighted shareholders. One DuPont shareholder, for example, demanded the chemical company “not invest a single dollar in research that will not generate a positive return within f ive years.” What’s more, according to a 2017 working paper by the Institute for New Economic Thinking, “Many of America’s largest corporations, Pfizer and Merck among them, routinely distribute more than 100% of profits to shareholders, generating the extra cash by reducing reserves, selling off assets, taking on debt or laying off employees.”

Even the most creative of workers who make it into innovative roles in the private sector may find themselves starved of resources. As professors Chen Lin and Sibo Liu of the University of Hong Kong, and Gustavo Manso of the University of California, Berkeley, explain in a 2018 study, the threat of shareholder litigation generally discourages managers from “experimenting [with] new ideas,” which acts as an “uncontrolled tax on innovation.”

#### Platform cooperatives movement in the Commons solves the abuses of tech platforms.

Silke Helfrich & David Bollier 19. Helfrich studied romance languages and pedagogy at the Karl-Marx-University in Leipzig, served as head of Heinrich Böll Foundation Thuringia and head of the regional office of Heinrich Böll Foundation for Central America, Cuba and Mexico. Bollier worked in policy advocacy with a Member of Congress, the auto safety regulatory agency, and public-interest organizations, and co-founded Public Knowledge, a Washington advocacy organization for the public’s stake in the Internet, telecom, and copyright policy.“ Free, Fair, and Alive : The Insurgent Power of the Commons” July 2019.

Platform Cooperatives Digital networks have immense capacity to enable sharing and cooperation. Unfortunately, tech companies have captured much of these social energies for their own purposes, namely, to carry out the usual work of capitalism on powerful platforms. They call the result the “sharing economy” and “gig economy,” but in fact it is simply a new species of markets designed for microrentals, piecemeal labor, data mining, and consumerism. Platforms like TaskRabbit and Mechanical Turk have re-introduced piecework on a massive scale by offering pennies for a variety of microtasks that computers can’t perform, such as image tagging, transcription, and data cleaning. Other platforms entice us into converting our cars, apartments, and private time into rentable assets to compensate for our plunging incomes. As sophisticated computer algorithms constantly ratchet down wages for “independent contractors,” it is eroding the very possibility of stable jobs with benefits. To counter these trends, the platform cooperatives movement arose in 2015 as a field of experimentation. Its goal is to try to develop more socially constructive websites and mobile apps. If people can own and manage their own platforms as cooperatives, argues Trebor Scholz, one of the catalysts of the movement, they will be able to reap greater long-term benefits and control in the face of well-capitalized tech giants like Uber and Airbnb. “What if we owned our own version of Facebook, Spotify, or Netflix?” writes Scholz. “What if the photographers at Shutterstock.com could own the platform where their photos are being sold?”30 A number of efforts are underway to do just that. The idea is to help producers and users co-own member-driven websites for distributing stock photography, streaming music, and other artworks. Another type of platform cooperative is apps codeveloped by city governments and local users. Seoul, South Korea, for example, has been developing a Munibnb platform to enable apartment rentals on better terms than Airbnb, with revenues earmarked for public services. The app is also intended to prevent the conversion of stable rental properties into “ghost neighborhoods” used mostly by tourists, a problem afflicting many major world cities like Amsterdam, London, and Barcelona. While still an emerging strategy, platform coops hold great promise for preventing monopoly, exploitation, and data surveillance in digital spaces. They can also help democratize ownership and control over platforms, and assure greater self-determination for working conditions.

#### Commons develop break-through innovation. Focus on competition causes them to be commercialized for profit.

Silke Helfrich & David Bollier 19. Helfrich studied romance languages and pedagogy at the Karl-Marx-University in Leipzig, served as head of Heinrich Böll Foundation Thuringia and head of the regional office of Heinrich Böll Foundation for Central America, Cuba and Mexico. Bollier worked in policy advocacy with a Member of Congress, the auto safety regulatory agency, and public-interest organizations, and co-founded Public Knowledge, a Washington advocacy organization for the public’s stake in the Internet, telecom and copyright policy.“ Free, Fair, and Alive : The Insurgent Power of the Commons” July 2019.

Modern industrial culture has placed such a premium on “innovation” — fueled in large part by an endless quest for competitive advantage — that innovation is often seen as an absolute good in itself. In such a world, its general goal is to help businesses prevail against competitors in the marketplace, improve return on investment, and entice consumers to buy an endless stream of “new and improved” products. By contrast, the commons as a system of provisioning is often considered backward, premodern, or tribal — ways of producing things that are seen as static, stodgy, and not innovative. This is a gross caricature if not untruth because many commoners are extremely capable of adapting to changing needs, including the need to reduce one’s ecological footprint. In a commons, there is no imperative to constantly expand production and profit, and so creativity can be focused on what really matters — ameliorating quality, durability, resilience, and holistic stability. Innovation need not be linked to boosting market sales and ignoring planetary health. Countless commons exhibit the pattern of Creatively Adapt & Renew as part of their everyday activity. As Eric von Hippel shows in his book Democratizing Innovation, all sorts of practitioner-communities — bicyclists, hang-gliders, skiers, extreme sports buffs — have developed breakthrough ideas that were later commercialized by conventional businesses.26 Indigenous peoples, too — long considered fixed and traditional in their ways — have shown immense creativity over the centuries in co-creating robust ecosystems through seed-breeding and animal domestication. The fertile soil in the Amazon region known as terra preta do indio — “dark earth of the Indians” — writes political economist James Boyce, “is not a random anomaly, but rather a deliberate creation of Indigenous farmers who long ago practiced ‘slash-and-char’ agroforestry in the region. A noteworthy feature of terra preta is its remarkable capacity for self-regeneration, which scientists attribute to soil microorganisms.”27 Such practices can also be seen in the creation of gravity-fed acequia irrigation in the upper Rio Grande valley, which transformed the semi-arid region into a rich landscape of wetlands, cultivated fields, and riparian corridors that allowed many animal species to flourish. The ETC Group, an organization that studies technological innovation, has called such creativity “Indigenous innovation” and “cooperative innovation”28 because Indigenous peoples have made countless ethnobotanical and ecological discoveries that transnational corporations have later sought to appropriate for free and privatize (“biopiracy”). Commoners survive through creative adaptation and renewal. It is in their blood. They habitually have to make do with what is available and improvise. Among peasants and poor people in India, there is a word for such innovation — jugaad — the Indian practice of slapdash innovation from whatever is at hand.29 Creative adaptation, in truth, is a part of the human condition. Struggle and need induce creativity as a matter of survival.

## competition

#### fails---fries accuracy

Alan Devlin 21. Partner, Latham & Walkins Law Firm. “Part II - The Case for Change.” *Reforming Antitrust*. Cambridge University Press. 2021. DOI: 10.1017/9781009000260. 109-226.

First, the structuralist proposal above would represent a knowing abandonment of accuracy.

An effects-based standard asks the right question – whether, based on all available information, a particular merger, practice, or agreement will harm competition and hence consumers. It may not always yield the correct answer, but it strives to do so based on all information available about the relevant market. Structuralism does not even try to do so. One-size-fits-all rules and presumptions are, by definition, inaccurate when applied across dissimilar markets. They are also likely to be wrong even when formulated within a single industry. We know that concentration does not itself cause unilateral effects, save for the vanishingly rare case of quantity-based competition between identical firms selling homogeneous products in a market with perfect information (Cournot). Diversion and margins create unilateral price increases, not market shares or HHIs.

A competition policy that retreats to concentration ratios as the decision point does not seek to understand the realities of a given transaction in full context. Whether a HHI or Cn rule or presumption yields the wrong answer in a given case does not seem to matter to structuralists – they care whether it is directionally correct across many merger reviews. But if structuralists abandon informed decision-making in individual cases, then it is counter-intuitive to think that aggregating those determinations will produce superior results than universalizing an effects standard that strives for precision.

Effects-based analysis has limitations, of course – especially when in predicting a market’s future technological path. There are ways to control for those issues, however, while staying within a predictive framework. For example, in cases of indeterminism surrounding the effects of a consolidating merger between close rivals, the government should err on the side of impermissibility. But for all its limitations, however, they are neither as pervasive nor as deep as some reformists argue. The knowledge problem will never disappear, but it continues to erode. The past several decades have seen material advances in econometrics and industrial organization – the tools through which agencies inform their merger-clearance decisions. Structural rules and presumptions, by contrast, would be clumsy, imprecise, and overbroad.

This debate centers around error. An effects-based analysis should minimize the incidence of both Type I and Type II errors. The conventional approach to decision theory has overweighted the severity of a Type I error relative to Type II one – a mistake that has produced insufficient enforcement at the margin. Chapter 7 presents that important analysis. Structuralism, however, skews the calculus far from the optimal point. It accepts many Type I errors in order to minimize Type II mistakes. This disproportionate weighting may not matter if faults carry the same magnitude, but they do not.

At this point, progressive reformists would likely claim that mergers seldom generate productivities. On that telling, Type I errors inflict modest (or no) social costs. In fact, horizontal mergers are more likely to realize significant efficiencies than conglomerates ones.Footnote122 True, horizontal combinations between firms with large market shares are less likely to realize scale economies – depending on the industry long-run average cost curve, they may have already been exhausted. But even mergers at high concentration levels can bring significant productivity gains, whether in distribution, managerial expertise, capital, technology, or more. In any event, many such transactions already encounter antitrust headwinds. The kinds of additional transactions likely to be caught by an expansion in the scope of the antitrust prohibition are the ones most likely to yield social value. In short, there is every reason to continue to strive for accuracy and to worry about false positives and false negatives alike.

### alt causes to china

#### OBOR, MIC and industrial policy

Karina Verónica Val 1AC Sánchez & Nezir Akyesilmen 21, Selcuk University-Konya, "Competition for High Politics in Cyberspace: Technological Conflicts Between China and the USA," Polish Political Science Yearbook, Vol. 50, Issue 1, 2021, pg. 46-63.

A) ‘Belt and Road Initiative’ (BRI) It was 2,100 years ago, during the Han Dynasty when the silk road began. However, it was not until 2013 that Jinping presented a modern route: Silk Road Economic Belt and the 21st Century Maritime Silk Road. A first glance suggests that it is a route connecting China to the rest of the world (more than 60 countries), but in fact, it is a broader proposal that involves many variables aligned to achieve long-term interest (Yunling, 2015). According to Jinping, One Belt and One Road (OBOR) “represent paths towards mutual benefit which will bring about closer economic integration among the countries involved, promote the development of their infrastructure and institutional innovation, create new economic and employment growth areas, and enhance their capacity to achieve endogenous growth and to protect themselves against risks.” (Xi, 2014, p. 339). B) Made in China 2025 (MIC2025) Since its proposal in 2015, MIC2025 represents China’s industrial policies for the next decade. The central axis is China’s transformation into a global technology power (Chen et al., 2020). Hence, it is necessary to integrate advanced manufacturing techniques into the manufacturing industry. This sector is one of the largest in the world and faces serious problems of technology and innovation; therefore, there are many backward industries. MIC2025 seeks to mitigate these deficiencies through a megaproject approach (Lin, 2020). Also, MIC2025 sketches out a three-step strategy to upgrade the Chinese manufacturing industry towards an “industry 4.0” 1) innovation and efficient manufacturing processes to achieve industrialization by 2025. 2) China should be at the level of the manufacturing base of developed countries to compete with them by 20235. 3) China will be a manufacturing superpower. For the latter strategy, MIC2025 establishes clear principles, goals, instruments, and specific industries (Cheung et al., 2016). For instance, it has five sub-plans aimed at facilitating government participation: Manufacturing innovation center construction plan, Intelligent manufacturing plan, Core industrial capability strengthening plan, Green manufacturing plan, High-end equipment innovation plan. Also, it stresses ten priorities industrial areas among them agricultural equipment, aerospace, biomedical, railway, marine engineering and ships, new energies, new materials, power generation equipment, and of course automated machine tools and robotics and the new generation of information and communication technology (ICT), which will focus on three main technological areas: microchips and related hardware, information and communication devices, and industrial processing systems and software. These last two industrial priorities are **particularly relevant** to technological competition.

#### IP theft, patent, and cyber alt causes.

Karina Verónica Val 1AC Sánchez & Nezir Akyesilmen 21, Selcuk University-Konya, "Competition for High Politics in Cyberspace: Technological Conflicts Between China and the USA," Polish Political Science Yearbook, Vol. 50, Issue 1, 2021, pg. 46-63.

Intellectual Property (IP) theft can be of three types: patent theft, copyright theft, and trade secret theft. According to cyber studies literature, one of the main perpetrators of intellectual property theft is China. Trade secret theft, defense technologies, computer software, and source code are protected by US trade secret laws and are especially vulnerable to theft through hacking, international investment, or switching of companies from senior managers who take with them the knowledge to reproduce such technology (Healey, 2019, pp. 140-143). There are also American technology startups for which the Chinese market is too attractive, and the only way they are guaranteed market access is by offering to transfer technology to the Chinese government. Although American intellectual property laws protect the technology operated by these companies, American trade secrets are exposed through this legal mechanism imposed by the Chinese authorities on foreign companies. In this way, they manage to get hold of foreign technology (Healey, 2019, pp. 143-144). China’s interest in accessing and developing new technologies through cyber-espionage threatens US economic competitiveness and has long-term costs to US innovation capacity (McRaven, 2019, p. 5) and defense capability. China’s use of cyber-attacks for industrial espionage is linked to its industrial policy. Together with several projects, cyberspace is aimed at making the country capable of producing high technology and designing its products and goods. AI technologies have received much attention from the Chinese government, and even though the United States leads this area, China is the fast-follower, allocating billions in investment and financing, since 2014 surpassed the United States in AI research and AI-related patent registration. Today is indisputable Chinese leadership in frontier technologies (McRaven, 2019, p. 40). Nevertheless, US national security points out that the illicit behavior of the Chinese government is the means by which the government has achieved some technological advance and if in the future they manage to innovate, it will be the result of IP cyber theft and illegal technology transfer (Deutch, 2018, pp. 44-45).

## realignment

#### Tons of alt causes.

Martin ’21 [Thomas Martin LLB, Queens University Belfast, 2019 A DISSERTATION SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE DEGREE OF MASTER OF LAWS in THE FACULTY OF GRADUATE AND POSTDOCTORAL STUDIES, THE UNIVERSITY OF BRITISH COLUMBIA. "Is global convergence of competition law the answer? How East Asian challenges demonstrate the limitations of the convergence strategy." https://open.library.ubc.ca/soa/cIRcle/collections/ubctheses/24/items/1.0396863]

Before this thesis further develops the case for maintaining regulatory divergence in competition law, it is important to recognise some of the main points in favour of developing a global approach to competition enforcement. The adoption of competition law by large swathes of jurisdictions has given rise to challenges for global corporations. Damien Geradin notes that the decentralised globalisation of antitrust has had three major implications for global corporations.326 First, it has increased the cost of doing business and the complexity of large-scale competition investigations, which now have a multi-jurisdictional component.327 Second, it has increased the risk of contradictory decisions where a firm’s behaviour is reviewed by different antitrust authorities under different sets of rules.328 And thirdly, it has increased the likelihood that some decisions will be guided by protectionist motives.329 However, competition law is far from the only area of business regulation that faces the problem of cross-jurisdictional regulatory inconsistencies. In fact, these inconsistencies are a fact of life for multinational corporations and are present in most areas of law, including corporation law, tax law, labour law, products liability law, securities regulation, and environmental law.330 Yet, as noted by Braithwaite and Drahos, there has been much less clamour for harmonization in these other areas of law, with corporation law, for example, relatively free from efforts at harmonization.331 Furthermore, this thesis would argue that for international convergence of competition law to be totally feasible and beneficial, there would have to be an international consensus on the objectives of competition law. As this research has demonstrated from the analysis of Japan, South Korea, and China, such a consensus is lacking. Indeed, Oliver Budzinski has argued that “there neither is, nor can ever be, an ultimately ‘right’ competition theory.”332

#### Limited, low impact Splinternet is inevitable.

Bey 19 Matthew Bey, energy and technology analyst for Stratfor. [The Age of Splinternet: The Inevitable Fracturing of the Internet, 4-25-2019, https://worldview.stratfor.com/article/age-splinternet-inevitable-fracturing-internet-data-privacy-tech]

The end result is that the next 25 years of internet regulation and changing guidelines about how information flows across boundaries will be far more complicated than the previous 25. The extreme version of the splinternet, in which every country creates its own internet with limited connections to the global internet, is unlikely to come to pass. The requirements of a modern economy simply won't allow that eventuality. Instead, companies will be required to jump through increasingly more hoops, and domestic demands for local ownership or data regulation will grow steadily. Corporate America will still demand an open internet for all — even making massive investments in satellite technology to try to do so — but it will not be able to prevent the inevitable.

#### No grid impact---it’s overhyped, people recover, adaptation, no prior successful attacks, and structure of systems, that’s koerth and free

Freedberg 14 (Sydney J, “Cyberwar: What People Keep Missing About The Threat,” Jan 6, <http://breakingdefense.com/2014/01/cyberwar-what-people-keep-missing-about-the-threat/>, CMR)

**Cites:**

--Peter W. Singer – former director of the Center for 21st Century Security and Intelligence and a senior fellow in the Foreign Policy program

--Allan A. Friedman – Research Scientist at the Cyber Security Policy Research Institute at George Washington University's School of Engineering

**Singer and Friedman** also **do a valuable service** in **beating back the hype** **about “Cyber Pearl Harbors”** **and “Cyber 9/11s” or the US suffering countless millions of “attacks.”** **Those alarmist statistics lump together everything from a virus easily stopped by** someone’s **firewall** to credit card theft **to the loss of secret schematics for the F-35** stealth fighter. **Those “attacks” vary from trivial, to significant losses** for one particular business, to actual matters of national security, **but none of them does as much damage as a good old-fashioned bomb**, they argue. **Even if hackers shut down the** national **electrical grid for weeks** on end, bad as that would be, **it wouldn’t be as bad as a single nuclear explosion**. “**It’s** a lot **like ‘Shark Week**,’” Singer said about the overhyped dangers. “**Squirrels have taken down the power grid more times than the zero times hackers have**.” There’s lots of talk about how the attacker always has the advantage in cyberspace, he told an audience at Brookings this afternoon, but “**a true cyber offense, an effective one**, a Stuxnet style [attack] **is** something **quite difficult**.

# 1nr---harvard r4

## ftc disad

#### 2---It’s not topical or normal means. Violates “scope.”

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

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

#### b---privacy is the focus now

Bryan Koenig 10/4/21. “FTC Split Over 'Integrating' Data Privacy And Competition.” https://www.law360.com/articles/1427875/ftc-split-over-integrating-data-privacy-and-competition

According to the report, the FTC has been trying to target "the most egregious and substantial privacy and security abuses," with an eye toward mandating that consumers implicated in privacy violations and data breaches be notified and getting financial compensation for injured consumers, including through partnering with other agencies with the power to impose monetary penalties. The FTC further said it plans to increase its focus on dominant digital platform data practices and expand its understanding of how algorithms implicate both competition and consumer protection.

All four of the FTC's current commissioners expressed at least some support Friday for going after privacy and data security violations. A particularly common theme was the call for more funding from Congress.

#### c---resources---our ev’s comparative

Jessica Rich et al. 10/3/21. Former director of the Federal Trade Commission’s (FTC) Bureau of Consumer Protection, OF Counsel at Kelley Drye, with Laura Riposo VanDruff, Alysa Z. Hutnik & William C. MacLeod. “FTC Chair Khan’s Vision for Privacy – and Some Dissents.” https://www.adlawaccess.com/2021/10/articles/ftc-chair-khans-vision-for-privacy-competition-and-big-tech-and-some-dissents/

Last week, we wrote about FTC Chair Khan’s memo describing her plans to transform the FTC’s approach to its work. This week, she followed up with a no-less-ambitious statement laying out her vision for data privacy and security, which she appended to an agency Report to Congress on Privacy and Security (“report”). Together, these documents outline a remarkably far-reaching plan to tackle today’s data privacy and security challenges. As noted in the dissents, however, some of the stated goals may exceed the bounds of the FTC’s current legal authority.

Privacy/Competition Focus on Tech

First, Khan’s statement reiterates her commitment to address privacy through a “cross-disciplinary” approach that uses the tools of competition law, not just consumer protection law, to address privacy harms. She states that “concentrated control over data has enabled dominant firms to capture markets and erect entry barriers while commercial surveillance has allowed firms to identify and thwart emerging competitive threats,” resulting in reduced privacy.

To address these concerns, as outlined further in the report, the agency intends to focus “most” of its limited resources against the “data practices of dominant digital platforms,” including through additional compliance reviews and order modifications and enforcement, “as necessary,” against, for example, Facebook, Google, Microsoft, Twitter, and Uber.

#### a---Agencies are resource-constrained but hanging on---they’re able to win cases by advancing clear cut litigation and picking their battles---new cases trade off.

Kantrowitz ’20 [Alex; September 17; Author and reporter, B.A. from Cornell University; Medium, “‘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](https://www.justice.gov/doj/page/file/1246781/download#:~:text=Mission%3A,over%20the%20FY%202020%20Enacted.). Facebook made [$18 billion](https://investor.fb.com/investor-news/press-release-details/2020/Facebook-Reports-Second-Quarter-2020-Results/default.aspx) 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.

#### b---New compulsory process reforms streamline enforcement, but it’s stretched razor thing

FTC 9/14/21 [FTC. "FTC Streamlines Consumer Protection and Competition Investigations in Eight Key Enforcement Areas to Enable Higher Caseload." https://www.ftc.gov/news-events/press-releases/2021/09/ftc-streamlines-investigations-in-eight-enforcement-areas]

Compulsory process refers to the issuance of demands for documents and testimony, through the use of civil investigative demands and subpoenas. The FTC Act authorizes the Commission to use compulsory process in its investigations. Compulsory process requires the recipient to produce information, and these orders are enforceable by courts. Civil investigative demands and subpoenas are assigned to a Commissioner for review and authorization by the FTC’s Office of Secretary, typically on a rotating basis or according to availability. The Commission has routinely adopted compulsory process resolutions on a wide range of topics. The resolutions announced today will broaden the ability for FTC investigators and prosecutors to obtain evidence in critical investigations on key areas where the FTC’s work can make the most impact. Each omnibus covers investigations into competition or consumer protection conduct violations under the FTC Act.

Streamlining and improving efficiency at the agency is vitally important given the increased volume of investigatory work created by the surge in merger filings. Having already doubled between 2010 and 2020, the number of mergers filed with the antitrust authorities this year hit a record-setting pace of 2,067 acquisitions for the first seven months alone. With these resolutions in place, the FTC can better utilize its limited resources and move forward in earnest to quickly investigate potential misconduct. The Bureaus are now authorized to take steps to ensure that any compulsory process orders are enforceable.

#### c---New funding will offset the stretch

Ikeda 9/16/21 [Scott Ikeda is a technology futurist and writer for more than 15 years. He travels extensively throughout Asia and writes about the impact of technology on the communities he visits. Over the last 5 years, Scott has grown increasingly focused on the future landscape of big data, surveillance, cybersecurity and the right to privacy. "FTC Sets Its Sights on Big Tech: $1 Billion Proposed to Create Digital Privacy & Cybersecurity Division." https://www.cpomagazine.com/data-privacy/ftc-sets-its-sights-on-big-tech-1-billion-proposed-to-create-digital-privacy-cybersecurity-division/]

The creation of a federal-level digital privacy bill continues to be a problem for the United States government, but the House Democrats are looking to put reins on Big Tech through other legislative means. A proposed $1 billion addition to the $3.5 trillion economic package would go to the Federal Trade Commission (FTC) for the purposes of establishing a digital division that focuses on privacy issues, cybersecurity incidents and other matters that center on online services and platforms.

The full scope of the bill includes “unfair or deceptive acts or practices relating to privacy, data security, identity theft, data abuses, and related matters.”

$1 Billion Boost Could Spark Stronger Regulation of Big Tech

The proposal was developed by a panel of Democrats in the House of Representatives and has yet to go up for a vote, but has a favorable path to adoption given the party’s control of Congress and the Executive. The issue is also one that has bipartisan support, though the Republican interest in regulating Big Tech has tended to be more along antitrust lines rather than privacy issues. Out of fear of a filibuster in the Senate, the Democrats will likely add this measure to the overall spending bill and attempt to pass the entire thing via the reconciliation process (which comes down to a simple majority vote).

Should the measure pass, it would increase the FTC’s budget by nearly 30% over the coming decade. The agency has struggled with regulation of Big Tech at times due to a simple lack of resources. The tech giants have much more money at their disposal than any regulatory body, and put it to use hiring away former members of these agencies as strategic resources and exhausting every possible stall tactic and challenge in courtrooms.

#### FTC resources are finite and new priorities trade off with existing work.

David McCabe 18. Tech policy reporter for Axios, 5/7/18. “Mergers are spiking, but antitrust cop funding isn't.” https://www.axios.com/antitrust-doj-ftc-funding-2f69ed8c-b486-4a08-ab57-d3535ae43b52.html

The number of corporate mergers has jumped in recent years, but funding has stagnated for the federal agencies that are supposed to make sure the deals won’t harm consumers.

Why it matters: A wave of mega-mergers touching many facets of daily life, from T-Mobile’s merger with Sprint to CVS’s purchase of Aetna, will test the Justice Department's and Federal Trade Commission’s ability to examine smaller or more novel cases, antitrust experts say.

What they’re saying: “You have finite resources in terms of people power, so if you are spending all of your time litigating big mergers … there might be some investigations where decisions might have to be made about which investigations you can pursue,” said Caroline Holland, who was a senior staffer in DOJ’s Antitrust Division under President Obama and is now a Mozilla fellow.

What's happening:

More mergers are underway now than at any point since the recession. The total number of transactions reported to the federal government in fiscal year 2017, and not including cases given expedited approval or where the agencies couldn't legally pursue an investigation, is 82% higher than the number reported in 2010 and 55% higher than the number reported in 2012.

Funding for antitrust officials who weigh the deals hasn’t kept pace. The funding for the Department of Justice’s antitrust division has fallen 10% since 2010, when adjusted for inflation. That's in line with the broader picture: not adjusting for inflation, the Department's overall budget increased just slightly in 2016 and 2017.

Funding for the FTC has fallen 5% since 2010 (adjusted for inflation).

An FTC spokesperson declined to comment on funding levels and Antitrust Division officials didn't provide a comment.

Driving the news: Merger and acquisition activity is up 36% in the United States compared to the same time last year, according to Thomson Reuters data from April.

Several deals under government review have gotten national attention, including Sinclair’s purchase of Tribune's TV stations or T-Mobile’s deal with Sprint, which stands to reduce the number of national wireless providers from four to three.

Meanwhile, the Justice Department is awaiting the ruling on its lengthy legal effort to block AT&T’s proposed $85 billion purchase of Time Warner.

Yes, but: It’s not the attention-grabbing mega-mergers that advocates worry will get less of a close look thanks to a shortage of funds. Instead, some say budget limitations are likely to matter when officials are deciding which smaller or "borderline" deals to investigate further.

“Sometimes there’s nothing there,” said Holland of the agency's early investigations. “Other times, it might be, ‘This is kind of a close call, and we’ve got three or four close calls and we need to pick one of them.’"

"It could mean settlements get accepted that otherwise wouldn’t, or deals that should be challenged aren’t," said Michael Kades of the Washington Center for Equitable Growth, an antitrust-enforcement-friendly think tank that has done extensive research on the topic, in an email.

#### a---They’re cash strapped.

Martin ’20 [Dana; December 11; Senior Contributor; Getaka News, “FTC suffering a cash crunch as it prepares to battle Facebook,” Google Cache for: <https://getaka.co.in/usa-news/ftc-suffering-a-cash-crunch-as-it-prepares-to-battle-facebook/>]

The agency that only launched a landmark antitrust lawsuit to break up Facebook is so strapped for money that its leaders have discussed decreasing their team and warned against taking on more cases.

In a collection of emails to all Federal Trade Commission personnel, obtained by POLITICO, Executive Director David Robbins said the agency would face an interval of “belt tightening” to cut prices — which filing fewer instances and trimming lawsuit expenses must be on the desk.

“[W]e will either need to bring fewer expert intensive instances or substantially decrease our lawsuit costs (e.g. specialists, transcripts, litigation service contractors, etc.),” Robbins said in an Oct. 29 email.

The emails offer an increasingly dire of the money woes facing the FTC, that has launched a record amount of litigation in the last year even as the pandemic has triggered a sharp reduction in the corporate merger filing charges which normally supply roughly half its budget. The crunch also raises the possibility that the FTC might not have the money it needs to win its case from Facebook, which is gearing up for a costly fight, or to take on additional businesses like Amazon

#### b---Focus is key.

FTC 7/1/21 [FTC Authorizes Investigations into Key Enforcement Priorities. https://www.ftc.gov/news-events/press-releases/2021/07/ftc-authorizes-investigations-key-enforcement-priorities]

The Federal Trade Commission voted to approve a series of resolutions authorizing investigations into key law enforcement priorities for the next decade. Specifically, the resolutions direct agency staff to use “compulsory process,” such as subpoenas, to investigate seven specific enforcement priorities. Priority targets include repeat offenders; technology companies and digital platforms; and healthcare businesses such as pharmaceutical companies, pharmacy benefits managers, and hospitals. The agency is also prioritizing investigations into harms against workers and small businesses, along with harms related to the COVID-19 pandemic. Finally, at a time when merger filings are surging, the agency is ramping up enforcement against illegal mergers, both proposed and consummated.

In remarks delivered during the open meeting, Chair Lina M. Khan noted that the resolutions approved today represent an important step in rethinking the work of the FTC. Instituting new cross-agency, investigatory resolutions will promote a more holistic use of the FTC’s enforcement authorities to stop bad actors across markets.

“The reforms are designed to ensure that our staff can comprehensively investigate unlawful business practices across the economy,” said Chair Khan. “They will help relieve unnecessary burdens on staff and cut back delays and ‘red tape’ bureaucracy when it comes to advancing our Commission’s law enforcement priorities. This is particularly important given that we are in the midst of a massive merger boom.”

Compulsory process refers to the issuance of demands for documents and testimony, through the use of civil investigative demands and subpoena. The FTC Act authorizes the Commission to use compulsory process in its investigations. Compulsory process requires the recipient to produce information, and these orders are enforceable by courts. The Commission has routinely adopted compulsory process resolutions on a wide range of topics. Many of these resolutions cover specific industries, like the automobile industry or the postsecondary education industry, while others involve business practices that cut across sectors, like privacy or the targeting of older Americans.

The actions taken today will broaden the ability for FTC investigators and prosecutors to obtain evidence in critical investigations on key areas where the FTC’s work can make the most impact. Each omnibus authorizes investigations into any competition or consumer protection conduct violations under the FTC Act. The omnibuses will also allow staff to use compulsory process to investigate both proposed mergers and consummated mergers. Individual Commissioners will continue to be required to sign compulsory process documents prior to issuance. With these in place, the FTC can better utilize its limited resources and move forward in earnest to fix the market structures that allow the worst predators to proliferate.

#### c---Every new filing decreases enforcement by fifty percent---they’re already down to only essential cases.

Burke ’21 [Andrea and Henry; May 28; B.A. in Political Science and Labor Studies from the University of California at Los Angeles; Research Assistant, B.A. in Economics from the University of Maryland; Revolving Door Project, “Hobbled FTC Lacks Budget to Combat Corporate Buying Spree,” <https://therevolvingdoorproject.org/hobbled-ftc-lacks-budget-to-combat-corporate-buying-spree/>]

Our analysis also shows the declining budget coincided with stagnation in the number of full-time employees: from 2010 to 2019, the number of full-time employees of the FTC actually decreased by 31 from 1132 in FY 2010 to 1101 in FY 2019.

Hiring and retaining employees is another struggle for the beleaguered agency as they are forced to compete for attorneys with a private sector that offers ever higher salaries, particularly for young lawyers beginning their careers (oftentimes burdened by significant student loan debt). The FTC’s [2002 Congressional Budget Justification](https://www.ftc.gov/reports/fy-2002-congressional-justification-budget-summary) bemoaned the struggles the agency had retaining “human capital” in the competitive labor market. The agency’s struggles were explained to Congress, saying the FTC “currently faces significant competitive pressures from the private sector, particularly for attorneys, economists, and information technology professionals with experience in mergers and Internet-related issues. For example, the compensation for first-year attorneys in the private sector is often three times higher than that available to most Government agencies.” Since the pay associated with FTC employment for attorneys and economists (the GS scale 11 or above) has not increased in keeping with inflation in the ensuing years, one can only assume the agency’s woes have grown since despite the struggles not being voiced so openly by FTC leadership. The lowest GS-11 pay grade in 2002 when adjusted for inflation, is almost 10% higher than the lowest GS-11 pay grade in 2021, a significant decrease in purchasing power for the entry level staff that was already susceptible to the higher wages offered in the private sector in 2002.

So, while HSR filings have been steadily climbing over the past 10 years, the FTC’s ability to regulate these filings has actually decreased because of a decline in agency funding and lack of competitive hiring. Without the resources to handle the increase in merger filings, the FTC has been compelled to reduce the number of enforcement actions it takes, conserving staff resources for only the most important cases. This has resulted in a decline in enforcement actions per merger by nearly half over a short nine year time frame, ultimately benefiting the monopolistic corporations that bolster their power by buying up other companies.

#### d---FTC resources are limited---new initiatives trade off with existing priorities.

Wheeler ’21 [Tom; February 10; Visiting Fellow in Governance Studies at the Center for Technology Innovation, former Chairman of the Federal Communication Commission Brookings Institution, “A focused federal agency is necessary to oversee Big Tech,” <https://www.brookings.edu/research/a-focused-federal-agency-is-necessary-to-oversee-big-tech/>]

Because of the vast scope of its market oversight, the FTC has often been the agency to which Congress looked first for solutions. It is not unusual, however, for Congress to subsequently recognize the need for a new specialized agency. In 1934, for instance, FTC’s oversight of the securities market was transferred to the [Securities and Exchange Commission](https://en.wikipedia.org/wiki/U.S._Securities_and_Exchange_Commission) (SEC). In the mid-1990s, amidst a concern about auto safety, Congress looked beyond the FTC to create a new National Highway Traffic Safety Administration. In response to the 2008 financial crash, Congress moved what had been the FTC’s authority in consumer financial markets to a newly created Consumer Financial Protection Bureau.

The proposal to create a new digital agency is a continuation of such precedents. The vast scope of the FTC’s present responsibilities—as diverse as funeral director practices, robocalls, and labeling hockey pucks—means that the oversight of digital platform regulation must compete with the agency’s existing diverse responsibilities and limited resources.[[4]](https://www.brookings.edu/research/a-focused-federal-agency-is-necessary-to-oversee-big-tech/#footnote-4) A new digital agency would also help assure that resources would not be withdrawn from the FTC’s traditional activities.[[5]](https://www.brookings.edu/research/a-focused-federal-agency-is-necessary-to-oversee-big-tech/#footnote-5)

A new digital agency would not eliminate the FTC’s current activities, but rather augment them with regulatory oversight beyond the capabilities of the agency. One example of the need for new powers is the constraints on its competition authority that effectively limit the FTC to ex post enforcement against a specific company for a specific violation rather than ex ante rulemaking authority that is more widely applicable.[[6]](https://www.brookings.edu/research/a-focused-federal-agency-is-necessary-to-oversee-big-tech/#footnote-6)

Another reason for the creation of a new agency is the inherent muscle memory that has developed since the FTC’s industrial era creation. Every institution has its cultural commitments: a collection of thoughts, procedures, the results of formal and informal congressional interventions, and judicial decisions developed in the analog era to resolve the demands of an analog economy. The digital economy requires departure from such a hidebound precedent to create an all-digital-all-the-time agency staffed by specialists with digital DNA.

The new digital reality

The rationale for a focused specialized agency to oversee the dominant digital companies is rooted in how the forces that drive the digital economy differ from those of the industrial economy.

Assets behaving differently

The policies and practices of the industrial era were based on business activity that utilized hard assets such as coal, iron, and manufactured goods. The digital era is built around the soft assets of digital information. While data assets enjoy industrial-like scope and scale economies, they are different in many other ways. Those differences create such strong proclivities to market failure that a new kind of regulatory oversight is required.

As compared to industrial assets, information assets are incrementally inexpensive, inexhaustible, iterative, and non-rivalrous. Computers perform calculations and networks distribute the results at very low incremental costs. In the industrial economy, a ton of coal was exhausted by usage; in the digital economy, a file of data can be used repeatedly. The use of that data, in turn, creates new data that produce new products. Finally, data is non-rivalrous in that usage by one party does not preclude usage by another.

Added to these basic differences in the root assets of the digital economy are three additional factors: network effects, low marginal cost distribution, and “free” end user goods and services. Network effects are the ground zero of internet economics, increasing the value of a product or service as it connects with more people. This creates a propensity to “tip” toward a monopoly. Thanks to the internet, this phenomenon is reinforced as the marginal cost of delivering that product or service to an additional user approaches zero. Together, these forces permit the product or service to be given away, thus triggering further network effects that create barriers to new entrants while allowing monopoly pricing to those seeking access to users of the “free” service.

The economic model of the industrial era was constrained by assets that ultimately confronted diminishing marginal returns as costs rose and markets became saturated. The economic model of the internet era knows no such constraints, but rather is driven by an endless supply of data feeding boundless demands. At the heart of machine learning and artificial intelligence, for instance, is an unquenchable demand for more data. That demand is met by digital perpetual motion where data use begets data products that beget more data that beget more products. Such perpetual motion further tips the market to dominance by companies that, by controlling data, can feed its constant reproduction.

The difference between digital demand-driven economics and industrial economics is expressed in the following [illustration](https://hbr.org/2020/01/competing-in-the-age-of-ai) by Harvard business professors Marco Iansiti and Karim Lakhani:

Inexpensive, inexhaustible, iterative, and non-rivalrous assets that take advantage of low-margin, network effect-driven digital capabilities mean that there is even greater mass production in the information economy than there was in the industrial economy. This produces the next challenge: how the self-perpetuating, never-ending process in which data produces new products, which produce new data, speeds the pace of change far beyond anything experienced in the industrial economy—and beyond the capacity of industrial-era regulatory concepts.

The pace of change drives the demand for agility

Digital technology sped up the pace of change, removing the time buffer that policymakers once relied upon for identifying oversight needs. The existing regulatory approach was developed in a period where stable technology produced stable markets. As a result, the government was able to wait until market failures reached a certain scale before stepping in. Today, however, when a platform such as Facebook can [grow](https://www.fool.com/investing/2019/01/20/the-social-media-platforms-that-hit-100-million-us.aspx) from zero to 100 million users in under five years (and [one billion users](https://money.cnn.com/2012/10/04/technology/facebook-billion-users/index.html) only four years later), the speed of change exerts unprecedented pressure on policymakers to keep pace.

The digital companies responded to this pace of change by walking away from rigid industrial-era product and management concepts. Digital products and digital management are based on the principle of agility. The products are designed in anticipation of technology and market changes. Every time your smartphone updates its software is an example of such agility. Digital company management, similarly, became agile and less hierarchical in order to keep up with the pace of change.

The agile response to the pace of technological change permits dominant digital companies to maintain their dominance and fend off competition within their markets. The federal government’s oversight, based on bureaucratic and legal precedent, however, remains encased in the cement boots of industrial-era management. Rigid, slow-paced bureaucracies built to mirror the rules-based bureaucracies of industrial corporations are no match for the agility of digital companies.

Precisely at the time when the speed of change should be an impetus for the creation of broad, yet agile, ex ante behavioral rules, the existing governmental agencies are typically constrained to act through slow and arduous procedures on a limited ex post basis. A new digital agency with new agile procedures is necessary to bring public-interest oversight up to speed.

#### e---Companies will litigate, forcing FTC expenditure.

Miller ’21 [Kirk; July 23; Managing Editor; Inside Hook, “The FTC Is Now Enforcing the ‘Right to Repair.’ What Does That Really Mean?” <https://www.insidehook.com/article/personal-tech/ftc-right-to-repair>]

Why was this a contentious issue?

It wasn’t for consumers or even politicians — right to repair has that rare bipartisan support. But you had a bunch of litigious companies that wanted to prevent people from tinkering with their own gear. And you also get recent cases like Tesla charging $16,000 for a repair that a third-party vendor could accomplish for $700. But the car company has a legal page where they claim they will permanently disable access to its Supercharging network for any “unsupported repairs,” in order to protect its own vehicles and its repair technicians.

Basically, big tech brands want you to go to them for repairs — and that’s going to cost you. They’ll argue it comes down to safety, risks of fraud and data theft, and even environmental concerns (plus, there are intellectual property concerns).

But the FTC found “scant” evidence for manufacturers’ concerns and have gone further in supporting independent repair businesses. “Repairs today often require specialized tools, difficult-to-obtain parts, and access to proprietary diagnostic software. Consumers whose products break then have limited choices,” the FTC wrote in a report released this past May. “Furthermore, the burden of repair restrictions may fall more heavily on communities of color and lower-income communities. Many Black-owned small businesses are in the repair and maintenance industries, and difficulties facing small businesses can disproportionately affect small businesses owned by people of color.”

#### f---Litigation snowballs, dragging the FTC in protracted legal and hiring fights.

Burke ’21 [Andrea and Henry; May 28; B.A. in Political Science and Labor Studies from the University of California at Los Angeles; Research Assistant, B.A. in Economics from the University of Maryland; Revolving Door Project, “Hobbled FTC Lacks Budget to Combat Corporate Buying Spree,” <https://therevolvingdoorproject.org/hobbled-ftc-lacks-budget-to-combat-corporate-buying-spree/>]

According to Revolving Door Project’s analysis, FTC appropriations have consistently declined since 2010, when the agency’s discretionary budget authority was $205 million. In the following years the number declined significantly from $205 million in FY 2010 to $180 in FY 2015 and $168 in FY 2019. Accounting for inflation, the decrease between FY 2010 and FY 2019 funding for the FTC amounted to a cut in discretionary appropriations of 30%. Despite the decrease in discretionary funding, the agency has seen its overall budget increase slightly as a result of the increased merger filing fees that it receives. These are not enough to keep pace with the massive increase in caseload for the agency from which they result. As the fee schedule was implemented in 2001, the filing fees for mergers are far too low to cover the cost of the FTC’s investigations. In a 2021 statement on filing fees, acting Chair Rebecca Kelly Slaughter and Commissioner Rohit Chopra [stated](https://www.ftc.gov/system/files/documents/public_statements/1587163/p859910_concurring_statement_of_ac_slaughter_and_c_chopra_re_revised_hsr_thresholds.pdf) that the mega-mergers regulated by the agency “require more resources and staff . For example, large retail or service mergers often require investigation into dozens of geographic markets and large pharmaceutical or industrial mergers often require investigation into a dozen or more product markets.” The Democratic commissioners specifically identify the need for experts to carry out investigations and litigation, noting “the amount of money the FTC spends on expert costs has risen dramatically over the last several years.” As new technologies are developed, the FTC’s investigations are bound to become more complex, necessitating higher funding altogether for hiring more technologists, economists and other experts. Although the FTC is known for an aversion to costly litigation (a fact which corporations use to their advantage), increased funding would also allow the agency to hire more attorneys to carry out challenges in court. However, due to declining discretionary funding and fees not keeping up with inflation, the FTC has been forced to expend far fewer resources on each investigation than it had in prior years. The appearance of a budget increase since 2010 needs to be reconciled with the reality that the agency has been crushed under an increased caseload many times larger than the nominal increase in budget.

#### 2---controversy link---saps implementation

Alison Jones and William E. Kovacic 20. Professor at King’s College London, U.K.. Global Competition Professor of Law and Policy, George Washington University Law School. “Antitrust’s Implementation Blind Side: Challenges to Major Expansion of U.S. Competition Policy.” *The Antitrust Bulletin* 65(2): 227–255.

D. Political Backlash

As we have already indicated, the government’s prosecution of high stakes antitrust cases often inspires defendants to lobby elected officials to rein in the enforcement agency. Targets of cases that seek to impose powerful remedies have several possible paths to encourage politicians to blunt enforcement measures. One path is to seek intervention from the President. The Assistant Attorney General of the Antitrust Division serves at the will of the President, making DOJ policy dependent on the President’s continuing support. The White House ordinarily does not guide the Antitrust Division’s selection of cases, but there have been instances in which the President pressured the Division to alter course on behalf of a defendant, and did so successfully.125

The second path is to lobby the Congress. The FTC is called an “independent” regulatory agency, but Congress interprets independence in an idiosyncratic way.126 Legislators believe independence means insulation from the executive branch, not from the legislature. The FTC is dependent on a good relationship with Congress, which controls its budget and can react with hostility, and forcefully, when it disapproves of FTC litigation—particularly where it adversely affects the interests of members’ constituents. Controversial and contested cases may consequently be derailed or muted if political support for them wanes and politicians become more sympathetic to commercial interests. The FTC’s sometimes tempestuous relationship with Congress demonstrates that political coalitions favoring bold enforcement can be volatile, unpredictable, and evanescent.127 If the FTC does not manage its relationship with Congress carefully, its litigation opponents may mobilize legislative intervention that causes ambitious enforcement measures to the founder.

#### 3---precedent link---inculcates further losses

Lisa Schencker 16. Healthcare reporter for The Chicago Tribune. “FTC loss in Chicago could spur more hospital deals.” Modern Healthcare. 6/14/2016. <https://www.modernhealthcare.com/article/20160614/NEWS/160619951/ftc-loss-in-chicago-could-spur-more-hospital-deals>

A judge delivered the Federal Trade Commission a major setback Tuesday in one of its biggest hospital cases in years, and experts say the decision could embolden even more hospitals to consolidate. The federal judge in Chicago declined to grant the FTC a preliminary injunction to temporarily stop a merger between Downers Grove, Ill.-based Advocate Health Care and Evanston, Ill.-based NorthShore University HealthSystem. The decision was the second loss in a row for the FTC, after years of scoring victories in cases involving mergers and acquisitions among hospitals, health systems and physician groups. “Decisions like this are going to give others looking at mergers some hope that you're not necessarily dead in the water, that arguments around market efficiencies and population health management could really carry some weight,” said Roger Strode, a partner at Foley & Lardner who focuses on healthcare transactions. In his order Tuesday, U.S. District Judge Jorge Alonso said the FTC had not shown a likelihood that it would ultimately win the case on its merits. Alonso kept the opinion in the case under seal, saying it contains “competitively sensitive information.” He's giving the FTC and health systems until Friday to review the opinion and submit proposed redactions before it's publicly released. The CEOs of Advocate and NorthShore praised the decision Tuesday in an interview with Modern Healthcare. Advocate CEO Jim Skogsbergh said a merger between the systems will lead to improvements for patients and lower overall costs of care. Both leaders also emphasized that the decision's implications extend far beyond the Chicago area. The case has been watched closely across the country as healthcare systems continue to consolidate in deals they say will improve quality and lower costs but others claim is an attempt to boost their negotiating power with insurers. “We really believe that today's decision is precedent-setting on both a national and regional level,” NorthShore CEO Mark Neaman said. “It's a real signal that as the landscape has, in fact, changed under the Affordable Care Act that healthcare delivery must change as well.” Skogsbergh said he believes the decision will “encourage greater conversation in a lot of markets around the country.” An FTC victory, he said, would like have had a chilling effect on future mergers. “Frankly, our industry is calling for this,” Skogsbergh said. “The ability to improve quality and lower cost—we believe transactions and relationships like this are going to be critical to that.” Debbie Feinstein, director of the FTC's Bureau of Competition, called the ruling "disappointing" in a statement Tuesday and said the FTC will consider its options. The FTC may now appeal the matter to a higher court or continue its own administrative challenge, though it doesn't typically continue those proceedings without an injunction stopping the deal from moving forward pending the outcome. Skogsbergh said the two systems are prepared to “close right away” once the deadline for the FTC to decide whether to appeal expires. He also said the systems are prepared to keep fighting if the FTC does appeal. The FTC alleged that a combined NorthShore and Advocate would have enough bargaining leverage with insurers to increase prices because insurers would have a tough time creating marketable networks without Advocate and NorthShore hospitals. The FTC said a merger would lead to an 8%, or $45 million, price increase and the systems would control 60% of general-acute inpatient hospital services in Chicago's north suburbs if they combined. The systems, however, said that if their market were properly defined that figure would be closer to 28%. Advocate has 12 hospitals and NorthShore has four. The systems also promised, that if allowed to unite, they'd offer a new insurance product that would cost 10% less than the lowest-priced comparable product available, saving consumers $210 million to $1.1 billion a year. Arguments in the case focused largely on whether the FTC had correctly defined the systems' geographic market. The systems had argued that the FTC wrongly excluded competitors such as Northwestern Memorial Hospital, Rush University Medical Center and Presence Saint Francis Hospital. The decision Tuesday followed another recent loss for the FTC in a hospital merger case. In May, a federal judge in Pennsylvania refused to grant the FTC a preliminary injunction to stop a merger between Penn State Hershey (Pa.) Medical Center and PinnacleHealth System in Harrisburg. The FTC is appealing that decision. The judge in that case chided the FTC in his opinion, saying: “Our determination reflects the healthcare world as it is, and not as the FTC wishes it to be. We find it no small irony that the same federal government under which the FTC operates has created a climate that virtually compels institutions to seek alliances such as the hospitals intended here.” The FTC is in a tough position in light of those two losses and recent state efforts to protect consolidating hospitals, said Tim Greaney, a former assistant chief in charge of healthcare antitrust enforcement at the Justice Department. “They have to pick their cases wisely and choose cases that are winnable,” Greaney said. “Now, there's a lot more uncertainty than there was a few weeks ago.” Hospitals may be more willing to push the envelope on mergers, he said, now that it's less clear the government has the upper hand in the courts.

#### a--- plan unravels ftc liability

Alan Devlin 21. Partner, Latham & Walkins Law Firm. “Part II - The Case for Change.” *Reforming Antitrust*. Cambridge University Press. 2021. DOI: 10.1017/9781009000260. 109-226.

Meanwhile, flipping the burden of proof upends the American tradition in which free contract is the default and the government must prove its case in order to enjoin private conduct. As described below, easing the agencies’ need to establish harm to competition would usher forth diminished rigor of analysis and, in time, an abundance of unmeritorious cases. Separately, eliminating divestitures as a means for resolving horizontal merger issues – a neo-Brandeisian favoriteFootnote121 – is unworkable. Resource constraints pose a threshold problem. Suing to block every transaction that features, in some line, a problematic horizontal overlap would require a massive increase in staff and budget for the agencies. More fundamentally, however, the policy would be unsustainable. Sophisticated parties to a transaction could agree to sell an overlap unit as a precedent condition to their merger. The government would then face a fait accompli, and be left with trying to challenge a transaction that involves no competitive overlap – a case that, even on the proposals above – would likely be dead on arrival.

#### c---Their ev is ftc

1ac Eleanor M. Fox 19, Walter J. Derenberg Professor, Trade Regulation, New York University School of Law, "Platforms, Power, and the Antitrust Challenge: A Modest Proposal to Narrow the U.S.-Europe Divide," Nebraska Law Review, Vol. 98, No. 297, 2019, Lexis.

Like the U.S., the EU went through two important phases with regard to the question: When is single-firm conduct anticompetitive? [\*303] In the first stage, EU law was formalistic. The law was aggressive against dominant-firm conduct that excluded rival firms. It contained a broad presumption against exclusive contracts by dominant firms. The second phase came in the 1990s, and, even more dramatically, in the first decade of the new millennium. This was epitomized by the European Commission's 2009 guidance paper on dominant firm conduct. 15In this second phase and in the guidance paper, the European Commission adopted, and the courts followed, a more economic approach. 16While incorporating economic analysis into the law, Europe retained certain guiding principles and approaches reflecting the place of antitrust in the Treaty. These approaches include that EU law is about community and integration. EU competition law is sympathetic with EU internal market free-movement law, which stresses the importance of free movement of goods, services and people across Member State lines. Likewise, EU law is antagonistic to Member State restraints and the privileges states grant to favored firms. Such restraints and privileges are distortions of competition. Both aspects - respect for free movement and antagonism to state restraints - are imported into EU competition law and specifically into abuse of dominance law. EU competition law stresses market access and the right of firms to contest markets on the merits. It is sympathetic to firms' access to networks. 17It is hostile to dominant firms' use of leverage to take advantages for themselves at the expense of competitors, thereby unleveling the playing field. EU competition law does not aim to protect inefficient competitors, but rather its precedents forge a clearer path for firms to access markets on their merits, free from obstructions by dominant firms. Still, detractors (including many in the U.S. antitrust community) contend that the EU excessively enforces its antitrust law against dominant firms (often American ones), and insist that the EU approach does protect competitors at the expense of consumers.

[\*304]

C. Presumptions and Divergences

EU competition law adopted its more economic approach nearly two decades ago. However, it never adopted the "Chicago School" premises. It does not assume markets work well. It does not admonish us to trust the market - especially not when the market is concentrated and dominated by a single firm. It does not presume that antitrust intervention is likely to mess up the market and chill competition and innovation. Its teaching implies a belief that lowering barriers to entry and keeping a clear path for challengers is likely to make the market more dynamic and thus serve consumers better. When dealing with innovation incentives, U.S. cases are likely to assume that antitrust action against a dominant firm will chill the firm's incentives to invent, 18 while EU law is more likely to find that the dominant firm's challenged conduct will chill the outsiders' incentives to invent. EU cases have documented this lost innovation. 19 U.S. competition law abhors duties of dominant firms to deal with competitors, calling such duties "forced sharing" and undermining incentives to invent. 20EU law applies a contrary principle: dominant firms, especially firms with power in one market that compete in an adjacent market, have a special responsibility not to impair rivals' competition on the merits. 21

Both jurisdictions aim to preserve and facilitate sustainable low pricing even if it displaces firms that cannot keep up with the competition. U.S. law, however, makes it harder than EU law to successfully challenge below-cost pricing. U.S. law requires the plaintiff to prove a probable recoupment scenario - that is, after the predatory siege, defendant must be likely to recover its losses by charging monopoly [\*305] prices high enough and long enough. 22EU law does not require proof of probable recoupment. 23It is enough that the predator thought the scheme was worth it. Because of the strict U.S. requirements, predatory pricing violations are virtually never proved under U.S. law.

Apart from these different presumptions and principles, much of the law governing unilateral conduct is very similar on both sides of the ocean. But the different presumptions and principles have resulted in diametrically different results on nearly identical facts in key cases, especially when the conduct challenged is a refusal to deal with competitors or customers. 24The differences reveal themselves in assessing the conduct of the big data platforms, as the Article shows below.

III. IMPLICATIONS FOR HIGH TECH, BIG DATA

A handful of high tech giants dominate markets. The firms were started from scratch by entrepreneurs with great ideas, and they attract millions of users every day. They are networks and platforms, have economies of scale, and feature network effects and winner-take-all markets. On the one hand, the network effects please users (who get more "friends" or suppliers or buyers), but on the other hand, they create uncommonly high barriers to entry and reinforce their market power. The firms offer their products "free" on one side of the market (but users give up their data); on the other side, they make huge revenues from advertising, including by selling the data of their users. The high tech firms operate with low-price models, not the high prices that traditionally attract antitrust attention. Some have been exposed for serious misuses or lax protection of data as well as for acquiring personal data from third party sources without permission. Some have waged media campaigns of false information against critics. They offer services in competition with the firms they host on their platforms, and they prefer their own products and demote their rivals, undermine creative start-ups by appropriating their ideas, mine the data of the firms they host to preempt the next big thing, snap up the start-ups that are potential competitive threats, and breach privacy rights of the platform's users. Much of this conduct may violate consumer protection and privacy protection laws. A question is whether the [\*306] firms are also violating the competition laws. Does the answer depend on whether the laws are those of the U.S. or those of the EU (and the many jurisdictions that follow EU law)? It might.

The conduct we shall examine poses challenging questions under Section 2 of the Sherman Act, which prohibits monopolization. The first step of analysis is defining the market, and the exercise of market definition is difficult. 25The second step is proof of monopoly power. Monopoly power is traditionally defined as the power to raise price above a competitive price and reduce output for a significant time. 26In platform markets, this proof may not be possible. The third step is proof of conduct that is anticompetitive. The court may require the plaintiff to establish that the conduct lowers output and raises prices 27by anticompetitive means. This may not be possible. The platforms are accumulating and using new forms of power. The big tech abuses do not fit neatly into the "Chicago School" requirements.

Under EU competition law, the case for abuse of dominance is easier to make. EU law is less demanding of proof of definition of the market. Moreover, a firm might hold a dominant position even when it does not have monopoly power under the neoclassical economists' definition. Status as a "gatekeeper" (power over a dominant platform) might suffice. 28A firm might abuse its dominance when it uses its power in one market to get significant competitive advantages in an adjacent market and does so by conduct that blocks rivals' access and has no competitive merit, 29even if it does not get market power in the second market.

These qualities of EU law make it a more flexible tool than the Sherman Act to deal with the new problems posed by high tech/big [\*307] data. Section 5 of the Federal Trade Commission Act, which prohibits unfair methods of competition, also has this flexibility, at least in theory. 30

IV. THREE EXAMPLES OF ALLEGED PLATFORM ABUSE

A. Google/Comparative Shopping

1. EU Law

In the Google/Comparative Shoppingcase, the European Commission condemned Google, as the dominant search engine, for demoting its rivals and preferring itself on its platform. Here are the salient facts it found:

Google held more than 90% of the general search market in Europe. It launched comparison shopping services. Google was not the first to offer comparative shopping services on its platform; others preceded it. Google entered this market in 2004 with a product called Froogle. But Froogle was not a good product. When Google Search treated Froogle neutrally with its rivals, Froogle performed poorly. This means, under neutral treatment, Froogle did not rank high on the responses to consumer search queries; it was relegated to back pages where it did not get many clicks - and clicks are the way products generate revenues through advertising. In 2008, Google changed its strategy fundamentally to automatically give a prominent place to Google's product (which was renamed and revamped as Google Shopping). Thereafter, Google Shopping appeared at or near the top of search results for comparative shopping services, and it began to appear with rich graphical features. Google Search demoted rivals' services. Even the services of rivals that were most highly ranked by the original neutral algorithm began to appear on average only on page 4. Users seldom access, much less click on, links on page 4. (The top search result on the computer page receives about 35% of the clicks; page 1 results receive about 95%; the first result on page 2 receives about 1%.) As a result of Google Search's software program change, traffic on Google Shopping increased substantially and traffic on the rivals, in spite of their merit, decreased substantially. While the Commission did not question Google's choice to display rich graphic features for the Google service at the top of the page of search results, the [\*308] Commission did question the fact that rivals could not get the same advantage. As a result of its strategy, Google Shopping increased its share in all thirteen markets in the European Economic Area, in many by a large amount.

Summarizing the changes caused by the demotions, the Commission said:

\* "Since the beginning of each abuse, Google's comparison shopping service has increased its traffic 45-fold in the United Kingdom, 35-fold in Germany, 19-fold in France, 29-fold in the Netherlands, 17-fold in Spain and 14-fold in Italy."

\* "Following the demotions applied by Google, traffic to rival comparison shopping services on the other hand dropped significantly. For example, the Commission found specific evidence of sudden drops of traffic to certain rival websites of 85% in the United Kingdom, up to 92% in Germany and 80% in France. These sudden drops could also not be explained by other factors. Some competitors have adapted and managed to recover some traffic but never in full." 31

The Commission concluded that Google abused its dominance by using its leverage in search to give its own comparative shopping service a significant advantage. The Commission found that Google had no objective justification for this conduct. It found that Google's change to prefer its own comparative shopping service was not a product improvement. Google had claimed as an improvement its addition of rich format on top of the results presented for the Google Shopping entry, but the Commission concluded that this addition could not be counted as an improvement because Google gave the embellishment to its product alone.

The Commission required Google to treat its own service equally with rivals' services. As usual, it required the undertaking to submit a plan to achieve compliance with the decision. As well, the Commission fined Google 2.42 million euros.

The case is on appeal to the European General Court. It will be judged in view of the Court of Justice's case law including the recent Inteljudgment, 32which emphasizes competitive effects. Whether a dominant firm's use of leverage to shift significant market share to itself, seriously narrowing market opportunities for competitors, violates EU competition norms will be decided on appeal. 33

[\*309]

2. U.S. Law

How would the Google/Comparative Shopping facts be analyzed under Section 2 of the Sherman Act? The jurisprudence suggests several good arguments for Google. First, market definition and market power would be contested matters. Google asserts that vertical searches are good alternatives to general search, enlarging the market so as to minimize Google's monopoly share of general search. Enlarging the market to include advertising (the paid side of the market) would likewise expand proof problems, even though Google has been labeled as dominant in online advertising with a 37% share. Second, whatever the market, Google's market power will be seriously contested, with Google insisting that it cannot and does not raise prices, reduce output, or lower quality. Third, in a similar comparative shopping case, it would be difficult for a U.S. court to find an anticompetitive abuse under Section 2 of the Sherman Act. Google is not an essential facility under U.S. law. It has no antitrust duty to deal fairly, let alone to deal at all, with firms that want to use its platform, except in rare circumstances. 34Moreover, it may be unlikely that, by reason of its demoting strategy, it acquired market power in the adjacent market (comparative shopping web services). It may be doubtful that it has power to limit output either in general search or in comparative shopping web services. As a result of the conduct, consumers/users are not confronted with a price rise, even though they do suffer a non-quantifiable loss by being given second-best information in answer to their queries, loss of the benefits of the improved performance that stronger head-on competition could bring, and loss of access to innovative products squeezed out by the demotions. (Whether the impugned conduct elevates prices charged to advertisers remains to be explored.) 35The losses, including chilling incentives of the demoted rivals, is speculative and, even if true, Google would urge that the antitrust enforcement itself chills Google's incentives to deliver innovative products. U.S. law is sympathetic to the assumption that it does. 36

The facts of Google/Comparative Shopping find parallels across the GAFA platforms. The abuse problem is probably not one of output limitation. The problem is the distortion of the market so that the firm [\*310] with power, leverage and a conflict of interests succeeds for reasons other than its merits, and the meritorious competition of rivals is suppressed.

What might the AmEx case add to the analysis? AmEx could open the door to full two-sided-market analysis, minimizing the market power and the antitrust harm. 37 AmExmakes it hard to infer market power from exclusionary effects. AmExputs a set of incumbent-preferring arguments into the mouth of Google. 38

We suggest below that the Federal Trade Commission, enforcing Section 5 of the Federal Trade Commission Act (which prohibits unfair methods of competition), could overcome the above obstacles more easily than could a court under Section 2 of the Sherman Act.

B. Facebook-Abuse of Data

1. German Law

On February 7, 2019, the German Federal Cartel Office (FCO) held that Facebook has violated the German abuse of dominance law by gathering personal data from sources beyond Facebook (e.g., every time the user clicks on "like") without the users' knowledge or permission, and using the data to compile a unique database on each user, enabling Facebook to offer advertisers distinctly targeted advertising and thus to enhance its revenues. The FCO characterized the violation as an exploitative one - Facebook exploited users, rather than excluded rivals. The appellate court, however, has suspended the FCO's order pending appeal, after expressing doubts about the legal basis for the decision. 39The following are some of the findings and analysis, as summarized by the FCO. 40

[\*311] Market, Market Power, and Dominance

Facebook is the largest social network in the world. It holds a dominant position in the German market for social networks, having more than a 90% market share. It has 2.3 billion active users worldwide, with 1.5 billion using Facebook daily. Facebook users in Germany number some 323 million monthly and 23 million daily. As to competition in Germany, Facebook faces only some small German providers, and their suitability as an alternative social network is limited in view of Facebook's economies of scale and network effects.

The FCO expressly based the assessment of market power on more than market share. It referenced recent amendments to the German Competition Act to include as indicia of market power: "competitively relevant data, economies of scale based on network effects, the behaviour of users who can use several different services or only one service and the power of innovation-driven competitive pressure ... ." 41Identity-based direct network effects were deemed an important factor in assessing Facebook's market power. Also important were indirect network effects stemming from advertiser-financed services: the larger the user base, the more audience for ads and the more profits to advertisers. Economies of scale that produce cost-savings "provide Facebook with a far greater scope for strategic decisions than its competitors have." 42Facebook invoked multi-homing as a countervailing force, but the FCO found the contention not established. Moreover, the FCO found: "Facebook has superior access to competition-relevant data, in particular the personal data of its users. As social networks are data-driven products, access to such data is an essential factor for competition in the market." 43Lack of access to data "can be an additional barrier to market entry." 44

The Harm to Competition

The FCO found that Facebook imposes exploitative business terms. "The damage for the users lies in loss of control: They are no longer able to control how their personal data are used. They cannot perceive which data from which sources are combined for which purposes ... ." 45Facebook "violates the constitutionally protected right to informational self-determination." 46Further competitive harm is caused to advertising customers, who are faced with a dominant supplier of advertising space in social networks.

[\*312] In finding an exploitative abuse, the FCO drew on contract principles and data protection principles, importing their values into antitrust analysis. Reference to the General Data Protection Regulation, the FCO said, helped to confirm Facebook's lack of justification for exploiting users' data. The FCO recognized Facebook's legitimate interests in processing the data, but found that the legitimate interests did not outweigh the harm to users' interests.

Facebook's Conduct Poses a Competition Problem

The FCO said that access to market data is essential to the market position of social network companies. "Access to data, above all in the case of online platforms and networks," 47is specified as a relevant factor for dominance by the German Competition Act. "Monitoring the data processing activities of dominant companies is therefore an essential task of a competition authority, which cannot be fulfilled by data protection officers." 48

Remedy

The FCO imposed no fine. Its aim was to change behavior. Facebook was required to submit a plan for compliance.

\* \* \*

The German Federal Ministry for Economic Affairs and Energy is further studying digital platforms and abuse of market power to determine whether modernization of the law is necessary. An expert committee issued a report, 49and a follow-up committee is tasked to suggest means to implement the initial report.

European Competition Commissioner Margrethe Vestager, while studying the report, noted "the importance of monitoring data monopolies and internet gatekeepers that can choke off data access to rivals." 50Moreover, the Directorate-General for Competition commissioned its own report. 51Meanwhile, a new Commission has been constituted. Vestager has not only been reappointed the Competition Commissioner, she has been appointed Executive Vice President for the EU's digital policy.

[\*313]

2. U.S. Law

Abuse in the collection and use of data, especially by the big data companies, is a big concern in the world. The abuses and their remedies are being studied in many jurisdictions in addition to Germany and the EU, including Australia, Japan and the UK.

Section 2 of the Sherman Act offers no parallel application to the German case. In the United States, a plaintiff would face difficulties at the outset in defining the market and proving monopoly power. But more basically, the claim of violation by abuse of data collecting, including from third party sites, and collecting and using the data surreptitiously and deceitfully, does not fit with the U.S. antitrust laws. The Sherman Act imposes no special responsibility, not even on a monopoly firm, to have regard for rivals or users. The right to refuse to deal (or to deal on chosen terms) is strong. Moreover, the German Facebook violation is an exploitative violation, not an exclusionary one, and Section 2 does not prohibit exploitative behavior (e.g., excessive prices). 52The German Facebook proceeding did not include exclusionary practices. Such practices, alleged elsewhere, include Facebook's cutting off user access to an improvement by Vine, a video-creating and sharing platform, apparently because Facebook took the Vine product to be a competitive threat to it. 53

Might lessons from AmExplay a role in the analysis? Let us postulate that consumers, including business users, are harmed on one side of the market. Their valuable data is coerced from them, aggregated from third party sources, and monetized lucratively. The social network charges zero (plus the data) to users and sells curated space to advertisers, making possible the zero user-charge. AmExand other decisions would counsel to count positively Facebook's efficiencies in data use and improvement of its services though collection and use of its data trove.

The FCO did consider the advertiser side of the market. It concluded that Facebook exploited advertisers as well as users. It did take note of efficiency benefits through increased accuracy of advertisers in targeting likely buyers, and benefits of the network's declining marginal costs, but it counted those advantages as contributors to Facebook's power, not as contributors to the public's or consumers' welfare. The FCO determined that the users' interests outweighed Facebook's interests. It so concluded not because, if monetized, the [\*314] Euro-amount of the gains to Facebook was less than the Euro-amount of the losses to users, but on quasi-constitutional grounds: people have a right to control their data and to know how it is going to be used; it was wrong for a dominant firm to coerce users to give up their data rights if they were to use Facebook's service at all.

While Section 2 of the Sherman Act has strict limits, Section 5 of the FTC Act is a more flexible vehicle. The FTC is not bound to ignore a problem just because Facebook's conduct may be exploitative rather than exclusionary or just because it interfaces with data privacy. Moreover, the FTC has consumer protection powers and Facebook's behavior raises serious consumer protection concerns. Indeed, the FTC already has a file on Facebook and has just penalized Facebook $ 5 billion for sharing with Cambridge Analytica, a political consultant to then-candidate Trump, data of 87 million Facebook users, which it used to compile voter profiles. 54If a data privacy problem is mixed with a consumer protection problem and possibly an antitrust problem (e.g., an abusive cut-off of access, or an anticompetitive acquisition), the FTC is well placed to consider the abuses together for whatever synergies may be mined. If vested with the multi-faceted matter, the FTC could consider formulating some rules and controlling principles, such as banning self-dealing and disallowing efficiency as a defense to coercion and deception.

C. Start-Ups: Nipping Competition in the Bud

Major platforms such as Facebook, through their massive data troves collected in part from the targets themselves, are well positioned to identify the promising start-ups that pose the greatest competitive threats to the platform, and buy them up or stamp them out. Because the start-ups typically lack significant revenues, the acquisition may be below the turnover thresholds required for premerger filing in some jurisdictions. Moreover, any single such acquisition may just be ignored as too insignificant.

Competition authorities in several jurisdictions are considering the need to be tougher on dominant platforms' systematically buying their most promising and threatening would-be rivals. Germany has revised its merger control thresholds to add a value-of-the-transaction test and to include debt as part of value, so that these rising-star start-ups do not escape assessment. 55The most commonly cited examples [\*315] of allegedly anticompetitive "snap-ups" is Facebook's acquisitions of Instagram and of WhatsApp, both of which platforms provide important alternatives for social network users seeking a model friendlier to younger users.

The future of such start-ups may be highly speculative at the time of acquisition. But what if, as it has been alleged, the dominant platform either buys up or stamps out all potentially threatening start-ups to preserve its dominance? The tale of Snapchat may be a cautionary one. Facebook pursued Snapchat. Snapchat said no. Then Facebook appropriated Snapchat's signature innovation: stories - a photo and video post-platform. The story is told in Facebook is Killing Snapchat with the Format It Created. 56

The big data strategies are reminiscent of tales of the Standard Oil Trust. By some reckoning the conduct may be called efficient. So was Standard Oil's conduct, as insisted by historian John S. McGee. 57But the efficiencies of Standard Oil's strategies did not prevent the giant predatory trust from being Exhibit A to the very enactment of the Sherman Act and did not dissuade the Supreme Court from breaking it up. 58

There are several big challenges to thwarting the so-called "killer acquisitions." One is to be able to identify the anticompetitive qualities of the acquisition at the time of vetting. The second is this: suppose the acquisitions are indeed harmful to competition today. It is possible under existing U.S. antitrust law, although not common, to obtain divestiture of assets whose acquisition turned out to be anticompetitive. The challenge, however, is to prove both that the consolidation is on balance anticompetitive (in spite of efficiency aspects such as better use of data), and that divestiture will noticeably produce competition and make consumers/users better off. Third, the possibility of sale to the dominant platform has been an incentive for start-ups to start up in the first place. One would want to be able to predict that the loss of this route to "success" would not cause more harm than good.

[\*316]

V. PROPOSALS

The "do nothing" and the "break them up" approaches are extreme policy approaches that at the one end would leave real competition problems unaddressed and at the other would apply blunt instruments to cure huge state-of-the-world dilemmas that pose daunting implementation problems and are sure to leave unfilled expectations in their wake.

There are three reasons why the United States might wish to take Europe's big data initiatives more seriously. First, European competition law is the law in a substantial part of the world. If the U.S. wants to be relevant in international transactions, it must appreciate European perspectives. Second, top down regulation is a possible substitute for antitrust. If the antitrust agencies ignore abuses of economic power that people care about, more intrusive regulation is likely to fill the gap. European competition policy gives some insight into how antitrust, complemented with consumer protection and privacy protection, can be an alternative to more intrusive regulation. 59Third, Europe may be right in some not insignificant ways.

We focus on the third point. Europe may be right. We address the skeptics who insist that there is no competition problem and that, if there is, it cannot be solved except by remedies that are worse than the disease. Is there a competition problem? Let us return to the three problems analyzed: (1) the Google/Comparative Shopping problem; (2) the German Facebook problem; and (3) acquisitions by dominant platforms of potentially threatening start-ups. Starting with the last, it is now recognized that the acquisitions of nascant competitors might be anticompetitive. If so, they are fair game for divestiture - if divestiture will indeed produce the desired competition. Going forward, these acquisitions should be vetted more seriously.

There is a philosophical divide between those who want to give more breathing space to even dominant platforms to buy promising start-ups whose futures are speculative, and those who are alarmed that the platforms are snapping up all threatening startups and are thereby insulating themselves from the competitive forces that could make them accountable. 60These are the usual philosophical tugs and play out with little fanfare (or get submerged) in the course of technocratic merger review.

The middle category - the German Facebook case - is largely a problem of deception, privacy invasion, and exploitation of people who [\*317] provide their data. While the German FCO was able to blend the several disciplines, the underlying problem treated in the German Facebook case is not likely to be seen as an antitrust problem in the United States.

We come, then, to category number 1: gatekeepers abuse the users of their platforms who compete with them, systematically downgrading the rivals, sabotaging their inventions, and appropriating their ideas to outcompete them. How to define the market, how to assess market power, how to identify an abuse as anticompetitive, and how to devise a remedy are all contested issues. In part, the divide is ideological. Do we stress that Google (for example) created its platform, conclude that it should be able to use it as it likes, and assume that legal duties will handicap invention? Or do we highlight Google's conflict of interests and observe that downgrading often-better rivals is inefficient as well as unfair? Do we emphasize that clogging the path to market interferes with the competition process, chills the incentives of the platform users, and defeats expectations of consumers, who expect best answers to their queries? In this late day of the political economy debate, the divide will not be closed by evidence or economics. The popular sentiment, however, tends to coincide with the concerns about power, its abuse, and the unaccountability of the dominant platforms. 61

Here are six suggestions for U.S. law, based on this author's perception that the big data antitrust abuses are real and pressing:

1. Recognize that the dominant big data platforms have economic power sufficient to cause competitive harms. When conduct of a dominant platform has demonstrable anticompetitive qualities, we should simplify the proofs of power and effects and get quickly to the question of procompetitive justifications. 62Anticompetitive qualities include clauses and conduct to frustrate multi-homing, interoperability, and data portability. If the platform engages in conduct to raise rivals' costs, to make alternatives infeasible, or to marginalize rivals, the burden should shift; and if defendants offer no credible procompetitive [\*318] explanation or justification, the conduct should be prohibited. The Federal Trade Commission is well situated to do this job. 63

2. Much conduct is likely to require deeper study of pros and cons. The FTC should examine the practices, listen to the justifications, and judge the conduct. It should not be required to prove that the platform's conduct will lessen output in the relevant market as a condition precedent to finding an offense. Output limitation is not the problem. To clarify the law, the FTC might write rules under its rule-making authority.

3. In the case of a dominant platform that also hosts its own services on the platform, the gatekeeper has a conflict of interest. The FTC should seriously consider establishing a duty of dominant platforms to treat all firms that are rivals on the platform (including its own) neutrally. As a first step the FTC should require the platform either to announce clearly regarding search query returns: "You are advised that we give preference to our own product" 64or to offer neutral, merit-based treatment. This can be done immediately. Writers and implementers of the algorithm should be rewarded on the basis of the system's performance, not on the basis of the platform's own products' performance.

#### d---Conduct is reported to the ftc

1nc John B. Kirkwood 21, Professor of Law, Seattle University School of Law. American Law Institute. Executive Committee, AALS Antitrust and Economic Regulation Section. Advisory Board, American Antitrust Institute. Advisory Board, Institute for Consumer Antitrust Studies, "Tech Giant Exclusion," Florida Law Review, Forthcoming, pg. 14-25, 01/15/2021, SSRN.

The big tech firms supposedly have an inconsistent attitude toward the third parties that sell on their platforms. On the one hand, they welcome these sellers because a broad array of complementary products enhances the value of their platforms.64 On the other hand, they deliberately undermine some of them when they enter a complementary market.

The critics charge that the tech giants suppress third party rivals in three main ways. First, when the platforms conduct searches for users, they allegedly bias the results, artificially downgrading third party products and elevating their own. This distortion reduces the visibility of rival products, depriving them of sales and narrowing consumer choice. Second, they allegedly use the nonpublic data they collect on individual third parties to determine which products are most popular and then offer the same products at lower prices. This targeted copying devastates the business of the third parties and undermines their incentive to develop new products. Third, the tech giants sometimes refuse to deal with third parties simply because they are competitors. For example, Amazon may agree with a branded product seller that Amazon will carry its brand – and only its brand – in a particular product category. After committing to exclusivity, Amazon allegedly removes competing sellers from its platform, curtailing consumer choice.65 Third parties cannot avoid the resulting harm because, they say, no good substitute for Amazon.com exists.66 \*\*\*FOOTNOTE BEGINS\*\*\* See, e.g., Mattioli, supra note 62 (“Because 39% of U.S. online shopping occurs on Amazon, according to research firm eMarketer, many brands feel they can’t afford not to sell on the platform.). \*\*\*FOOTNOTE ENDS\*\*\*

The following sections analyze each of these allegations, asking not only whether the asserted conduct has injured competitors but whether it has harmed consumers and whether it has resulted in monopoly power or a dangerous probability of monopoly power.

A. Biasing Search Results

Google, Amazon, and Apple have all been accused of search bias. Google’s behavior produced a major fine in Europe but, despite an extensive FTC investigation, no action in the United States. Recently, The Wall Street Journal uncovered evidence that Google had distorted the results of searches for videos to favor its own affiliate, YouTube. Other newspaper reports contain evidence of search bias by Amazon and Apple. True search bias would not be justified, since it would alter the priority of search results based on what contributes most to platform profits, not what best serves consumers. But while true search bias would be anticompetitive, there is little or no evidence, to my knowledge, that it resulted in actual or probably monopoly power.

1. Google

Federal authorities in both Europe and the United States have investigated Google for search bias. In 2017, the European Commission (EC) concluded that Google had altered its search results so that its comparison shopping service, Google Shopping, was generally placed ahead of competing services.67 Ruling that this conduct constituted an abuse of dominance, the EC fined Google €2.42 billion.68 Google had plainly redesigned its search algorithm to favor its own products. In 2007 it unveiled Universal Search, a new algorithm that gave “particular prominence to Google’s products.”69 Indeed, Universal Search placed Google Shopping “at or near the top of search results for comparative shopping services.”70 The issue was whether this priority was justified. The EC found that it was not, 71 and thus injured consumers as well as competitors.

The EC did not conclude, however, that Google’s search bias resulted in monopoly power. While Google does not charge consumers for searches or complementary services, it does charge advertisers to place messages on these products. The EC did not find, though, that Google’s new search design resulted in higher advertising rates. Although the new design reduced, often severely, the sales of rival products,72 the EC did not rule that it enabled Google to elevate its ad rates to monopoly levels. Advertisers apparently had other choices. 73

In the U.S., the FTC investigated Google’s new search algorithm but decided not to issue a complaint. Although its staff wanted to challenge some aspects of Google’s behavior, they did not recommend a complaint with respect to its search engine. 74 Like the EC, the FTC found that the sites Google downgraded lost significant traffic, but it did not conclude that Google gained monopoly power.75 Moreover, unlike the EC, it decided that Google’s new algorithm was justified. Richard Gilbert, an economist who consulted for the FTC, explained why: Universal Search produced a greater diversity of websites on the first results page and consumer responses indicated that they preferred that. 76 In short, the Commission found that Google’s new algorithm did not bias its search results; it enhanced them.77

In contrast, just last year a Wall Street Journal investigation concluded that Google had engaged in a different type of search bias: “When choosing the best video clips to promote from around the web, Alphabet Inc.’s Google gives a secret advantage to one source in particular: itself. Or, more specifically, its giant online-video service, YouTube.”78 The Wall Street Journal found that Google systematically favored YouTube in its search results even when competitors like Facebook Watch and Amazon’s Twitch carried the same or similar videos and even when the number of their views or followers was greater. 79 Google denied that it engaged in self-preferencing but did not offer an explanation for the results. 80 The Wall Street Journal’s sources maintained that Google wanted to drive traffic its way and increase its bargaining leverage with content providers, 81 reasons that hardly justify the change.

This report, in short, strongly suggests search bias, just like the reports on Amazon that follow. The House Antitrust Subcommittee Report presented additional evidence of self-preferencing, suggesting that Google continues to place its services above competing sites even when its ranking algorithm would not warrant that priority.82 None of these accounts, however, contains evidence of actual or probable monopolization.

2. Amazon

ProPublica found that Amazon’s search algorithm ranked Amazon’s products and products that use Amazon’s fulfillment services above rival products. Because placement matters so much, ProPublica concluded that this bias gave the favored products an “oft-decisive advantage.”83 A Wall Street Journal investigation uncovered another form of distortion. According to Amazon insiders, the platform altered its search algorithm so that it gives priority to products that are more profitable for Amazon. The new algorithm does not use profitability directly – Amazon’s lawyers barred that – but it employs proxies for profitability.84

Both reports indicate that Amazon has been skewing its search results to increase its net income. The reports do not analyze Amazon’s actual search algorithm; they rely on Amazon employees who are familiar with it. But if the insiders’ testimony is accurate, it indicates that Amazon has elevated its own interests above those of consumers.

Amazon’s choices, whether justified or not, do not appear to have led to monopoly power or a dangerous probability of monopoly power. The Journal report, for example, presents no evidence that Amazon has monopolized, or was about to monopolize, any relevant market. Ramsi Woodcock notes that this is a general problem with criticism of Amazon: “Critics appear not to have pointed to any evidence that Amazon has power in the individual markets for the thousands of products that appear for sale on Amazon’s website.”85 eMarketer data is consistent. It shows that Amazon’s market share of virtually every product category is small. For instance, its share of Home and Kitchen products is 11.1%, its share of Sports and Outdoor products is 5.7%, and its share of Baby products is 2.6%. The only exception is Clothing, Shoes, and Jewelry products, where Amazon’s market share is 47.7%. 86 This data is imperfect, however, because it calculates market shares based on the number of brands in a category, not total sales.87 \*\*\*FOOTNOTE BEGINS\*\*\* See id. Thus, if a single Amazon brand had much larger sales than a similar third party brand, these data would not reveal it. They would indicate that Amazon’s share and the third party’s share were the same. \*\*\*FOOTNOTE ENDS\*\*\* Yet it supports the notion that Amazon’s entry into complementary product markets has rarely, if ever, generated actual or probable monopoly power. If Amazon has been distorting search results, few if any antitrust plaintiffs could turn to the Sherman Act for relief.

3. Apple

A New York Times investigation suggested that Apple has also been biasing search results. A data analysis firm retained by the Times found that “for more than a year, the top results of many common searches in the iPhone App Store were packed with the company’s own apps. That was the case even when the Apple apps were less relevant and less popular than ones from its competitors.”88 Here, however, search bias may not have been the culprit. Two senior Apple executives acknowledged the results but maintained that they reflected the merits of Apple’s products, not deliberate distortion. The executives stated that “the company did not manually alter search results to benefit itself. Instead, they said, Apple apps generally rank higher than competitors because of their popularity and because their generic names are often a close match to broad search terms.”89 In any event, “the company had since adjusted the algorithm so that fewer of its own apps appeared at the top of search results.”90

This account is puzzling. If Apple’s original search algorithm served consumers, why was Apple was so willing to change it? Whatever the answer, the Times report contained no evidence that either the original or the revised algorithm enabled Apple to monopolize a market.

In sum, there is reason to believe that three tech giants (Google, Amazon, and Apple) have displayed search rankings that artificially favor their own products. In each case, the evidence of distortion emerged from internal sources rather than deconstruction of their search algorithms. Yet this is likely to be the only practical method of demonstrating search bias in most instances. In two cases (Google and Amazon), the companies offered no justification. In no case was there evidence that the alleged bias led to actual or probable monopoly power. Together, these two conclusions – apparent anticompetitive conduct but no dangerous probability of monopoly power – support extending the reach of the Sherman Act.

B. Copying Rival Products

Critics also charge that the tech firms routinely undercut third parties that sell on their platforms by copying their most popular products.91 They allegedly identify those products by examining the confidential data they collect on individual third parties. In other words, they use nonpublic information about specific sellers to free ride on their product ideas, depriving them of business and undermining their incentive to develop new products.92 The tech firms compound the damage when they offer their own products at lower prices.93 Even the possibility of this behavior may limit the funding available to start-ups.94 Further, the threat of copying a rival’s product can make it easier to acquire the rival at a bargain price.95

Press reports suggest that both Amazon and Apple have mimicked third party products offered on their platforms. A 2014 study found that when Amazon first offered private label women’s clothing, its list of products included “25 percent of the top items first sold through [Amazon Marketplace] vendors.”96 Six years later, The Wall Street Journal interviewed Amazon employees who admitted they studied the sales data of specific third parties to determine which private label products to offer.97 Although Amazon had prohibited this conduct, 98 the employees said they ignored the rules or found ways around them. They were willing to skirt the rules because the nonpublic data helped them determine “how to price an item, which features to copy or whether to enter a product segment based on its earning potential.”99 Likewise, several press investigations found that Apple had upgraded its apps with “the features of the most popular apps that other innovators built.”100

This practice has generated such adverse publicity and hostile Congressional reaction that Amazon made no attempt to defend it on the merits. To the contrary, in response to the Journal story, it reiterated that it prohibits its private label product teams from accessing individual seller data and announced it had opened an investigation. 101 Three months later, Amazon CEO Jeff Bezos told a congressional hearing that the investigation was continuing and that he could not “guarantee . . . that this policy has never been violated.”102 Amazon eventually responded that its prohibition had not in fact been ignored: only one employee had accessed third party data with respect to the products in question and the data was aggregated, not seller-specific.103

Despite the widespread concern with the practice, the antitrust analysis is complicated because copying a rival’s product can be procompetitive. Indeed, competition often works through copying. When an entrant copies a dominant firm’s product and offers it at a lower price, consumers benefit. Likewise, when Amazon enters a complementary product market, it matches the quality of the incumbents’ product but charges a lower delivered price, causing total market output to increase.104 Established firms study their markets to learn which of their rivals’ product improvements to adopt so they can compete more effectively.105 To be sure, intellectual property law often prohibits such mimicking in order to protect incentives to innovate, but here the third party products were not patented and their distinctive features were not trade secrets.

There is data on what happens when tech giants enter into complementary product markets. Two studies looked at Google’s entry into the sale of apps for its Android operating system.106 A third investigated Amazon’s entry into segments of the Amazon Marketplace.107 As expected, two of the studies found adverse effects on the number of products third-party sellers offered. According to one, Amazon’s entry increased the turnover of third-party products by six percentage points.108 According to another, Google’s entry reduced the total quantity of app upgrades in the targeted product space by 7.9%. 109 It also caused the developers in that space to increase the price of their apps by an average of 3.7%. 110

At the same time, all three studies found significant consumer benefits. Many consumers preferred the tech giants’ products, causing them to curtail their purchases of third party products. It is this loss of business that led third parties to reduce the number of products and product upgrades they offered. In Amazon’s case, consumers switched because of its lower prices. When Amazon moves into a product category, it matches the prices that third parties charge,111 but reduces shipping costs to zero, lowering delivered prices. 112 Consumers value this so much that they increase their total purchases in the product category. 113 This growth in output suggests that consumer satisfaction rose.114

In Google’s case, consumers switched because they preferred Google’s apps. As noted, one study found that the loss of business caused third parties to reduce the total number of app upgrades they offered in the targeted product category. But this study also found that an impending Google entry increased other aspects of product development. Third parties accelerated their upgrades of non-competing products by 4% and their development of new apps by 3-10%.115 Further, the most popular apps – those least likely to lose business to Google – responded to the threat of entry by increasing upgrades on competing apps by 7.8% and upgrades on other apps by 15%.116 Overall, innovation may have increased. The other study found that it did. Examining over six thousand apps, the authors concluded that Google’s entry into the photography space led to substantial growth in innovation. Apps affected by Google’s entry were 9.6% more likely to issue major updates than unaffected apps.117

In sum, the studies indicate that when a tech giant enters a complementary product market, the impact on consumers is mixed but generally beneficial. Many third parties do curtail product development, but when Amazon enters, it offers lower delivered prices and consumers increase their total purchases of the category. When Google enters, it offers apps that many consumers prefer, other third parties step up their development efforts, and total innovation may rise.

Given these countervailing effects, a blanket ban on copying rival products would be difficult to justify. Since Amazon’s entry increases total output and Google’s entry may well promote overall innovation, a blanket ban could easily reduce consumer welfare. A vertical break up would be even more difficult to justify, since it would prevent the tech giants from offering any complementary products, even those that involved no mimicking at all and thus no direct threat to third party innovation. 118

In one circumstance, however, it would make sense to prohibit a tech giant from copying a third party’s product. When a tech giant identifies the product by using nonpublic data about a specific third party, its copying poses a particularly direct threat to innovation. In that circumstance, no other firm is producing the product, so the third party is a pioneer, and allowing a tech giant to take a pioneering idea is especially likely to undercut innovation. In contrast, when a platform uses other information – public information about popular products119 or nonpublic information that is aggregated across multiple competitors120 – there is less danger that the platform will free ride on a single seller’s innovation. To be sure, no empirical studies address the issue – where to draw the line on tech giant product copying – and thus any choice is tentative. But the lack of empirical research is a problem with tech giant exclusion generally,121 and should not stop courts or Congress from making reasonable judgments. Accordingly, it seems desirable to bar platforms from using nonpublic data about a specific third party to decide which products to copy. This would prevent the worst instances of free riding while giving the tech giants considerable latitude to enter complementary markets with cheaper or better products.122 Enforcing this rule would require internal information, but the Wall Street Journal had no trouble obtaining such information from current Amazon employees.123

C. Refusing to Deal with Rivals

Critics have also charged the tech giants with a third form of exclusionary conduct – refusing to deal with certain firms simply because they are competitors. For instance, Amazon allegedly enters into exclusive distribution arrangements with suppliers that require it to remove competing suppliers from its platform. One of the neo-Brandeisians contends that these expulsions amount to “illegal monopolization.”124 But she does not identify any markets that Amazon has monopolized through these expulsions. 125 Moreover, when she explains why the suppliers want this exclusivity, the story she tells (if valid) is procompetitive. According to her account, the suppliers sell products that require customer service in physical stores. They also sometimes offer their products through third parties on the Amazon Marketplace. The third parties frequently discount their products, however, which causes free riding. Consumers visit the physical stores to take advantage of the in-store service but then purchase the products online. To prevent this free riding, the brands make Amazon their exclusive online outlet. 126

In this account, in short, exclusivity is a response to a market failure.127 The account may be incorrect, but there is no evidence, to my knowledge, that Amazon expels third parties in order to gain monopoly power in a third party product market and then raise prices or depreciate product quality. Moreover, if Amazon had actually entered into exclusivity agreements, the problem could be dealt with under Section 1 of the Sherman Act, which does not require monopoly power.

There are also allegations of naked exclusion – refusals to deal with a firm solely because it as a competitor. In 2016 Apple allegedly blocked Spotify from access to the App Store simply because it posed a threat to Apple Music.128 Apple denies this, 129 and in any event, the exclusion was temporary. Spotify returned and consumer choice was restored. More serious allegations of exclusion are leveled in the FTC and state complaints against Facebook. 130 They claim that Facebook denied access to its APIs to app developers that competed with it or helped others compete with it. Specifically, Facebook adopted a policy that barred apps that replicated a “core functionality” of Facebook or linked to competing social networks.131 These refusals to deal were allegedly so effective that they deterred any direct challenge to Facebook’s platform, 132 thereby maintaining Facebook’s monopoly power. The complaints cite little evidence, however, that any of the affected apps would have developed into a competing social network. On the other hand, Facebook has not, to my knowledge, offered a justification for its refusals to deal, suggesting that its goal was indeed to reduce competition. Facebook simply asserts that it no longer engages in the practice.133

Epic Games has also accused Apple and Google of refusing to deal. Both tech giants removed one of Epic’s most popular games, Fortnite, from their app stores because Epic would not pay their standard commissions (30% of revenue) on in-game purchases.134 According to Epic, Apple and Google can charge such high commissions only because they make it difficult or impossible to obtain apps except through their app stores. As a result of this exclusionary policy, Apple is the monopoly supplier of apps for Apple phones and Google is virtually the sole suppliers of apps for Android phones.

Apple claims that this exclusivity is justified because Apple can thereby provide better safety, security, and other services to app users, and that its high commissions reflect the costs of furnishing those services. 135 But if that were true, Apple’s costs of operating the App Store would have to be $15-17 billion a year, 136 which is unlikely.137 Moreover, even if Apple’s costs were that high, the fundamental issue is whether its exclusionary conduct is justified. If consumers could obtain safe and secure apps from other sources, competition would increase and Apple’s commissions – and its costs – would be forced down. Many other platforms allow users to procure apps from other sources.138

D. Conclusion

The contours of unjustified exclusion are clear. When a tech giant uses its own profitability rather than the preferences of its customers to rank search results, it distorts consumer choice. When a platform uses the confidential data it gathers on individual third parties to identify their most popular products and then duplicates them, it is likely to reduce innovation. When a tech firm refuses to deal with a competitor simply because it is a competitor, it increases the platform’s market power and diminishes the options available to consumers.

All the tech giants appear to have used one or more these exclusionary tactics. The extent of their conduct will become clearer as ongoing proceedings unfold, but at this point it seems that all the tech giants have sometimes suppressed competition in complementary markets through unwarranted exclusion. At the same time, there is no evidence, to my knowledge, that this behavior led to monopoly power or a dangerous probability of monopoly power in any of these markets. The question, then, is how to deter it. Congress could break up the tech giants, which would diminish their ability and incentive to exclude. Or it could make the conduct itself illegal by amending the Sherman Act.

#### e---pls

1nc John B. Kirkwood 21, Professor of Law, Seattle University School of Law. American Law Institute. Executive Committee, AALS Antitrust and Economic Regulation Section. Advisory Board, American Antitrust Institute. Advisory Board, Institute for Consumer Antitrust Studies, "Tech Giant Exclusion," Florida Law Review, Forthcoming, pg. 42-43, 01/15/2021, SSRN.

The tech giants, as we have seen, have excluded third parties selling on their platforms by demoting them in search results, using nonpublic seller-specific data to boost their own products, or refusing to deal with them simply because they are competitors. While this behavior is not widespread, it appears to be unjustified and anticompetitive. It enhances the tech giants’ market power and injures their customers. Yet no one in the United States has successfully challenged any of this conduct.

The most likely reason is that the conduct did not violate the Sherman Act. It is unilateral, not collusive, and it did not result in actual or imminent monopoly power. 224 This gap should be closed. The Sherman Act should be amended to reach unilateral exclusion by the tech giants that reduces competition significantly, even if it is unlikely to generate or maintain monopoly power. Further, the Department of Justice and the FTC should be authorized to obtain civil penalties if they establish a violation of this new section. This would couple public civil penalty enforcement with private treble damage actions, magnifying the deterrent effect of antitrust law.

These twin sanctions would alter the tech giants’ financial calculus. They would not deploy exclusionary tactics unless the likely gains outweighed the prospect of substantial financial penalties. Of course, that might not stop them in every case. They may figure that if they can disable rivals for a time they can achieve sufficient scale economies or network effects to ward off future entry, thereby earning long-run profits that would exceed the cost of any sanctions they have to pay.225 But they cannot count on that and the issue is not easy to resolve.226 In the face of such uncertainty, stiff financial sanctions are likely to reduce the incidence of exclusionary conduct. This is particularly so in complementary product markets, where the tech giants cannot generally hope to gain the scale and network advantages they possess in their core businesses.227 \*\*\*FOOTNOTE BEGINS\*\*\* 227 For example, Amazon sells private label batteries on amazon.com. Even if it could capture more of this complementary market for itself, it is unlikely to attain significant advantages over third party competitors like Eveready and Duracell. \*\*\*FOOTNOTE ENDS\*\*\*

The existence of Section 5 of the Federal Trade Commission Act is no reason not to expand the Sherman Act. In theory, Section 5 covers anticompetitive conduct that falls short of monopolization, but as Section A explains, its remedies are limited and its track record has been disappointing. Section B addresses the risk that expanding the Sherman Act would unduly deter procompetitive conduct. This risk can be minimized, however, by confining the amendment to the tech giants and including proof requirements that would defeat most challenges to desirable conduct. Section C describes the recent Congressional support for this change. Section D uses a detailed example to demonstrate that it would be workable in practice.

#### f---They’re principally responsible for antitrust enforcement---AND involved even if review is done by the DOJ.

Adam Hayes 21. Adam; July 16; Assistant Professor of Sociology and Anthropology of the Hebrew University of Jerusalem, Ph.D. from the University of Wisconsin-Madison, M.A. in Economics from the New School for Social Research; Investopedia, “Federal Trade Commission (FTC),” <https://www.investopedia.com/terms/f/ftc.asp>

What Is the Federal Trade Commission (FTC)?

The Federal Trade Commission (FTC) is an independent agency of the U.S. government tasked with protecting consumers and ensuring a strong competitive market.

Its principal purpose is to enforce non-criminal [antitrust laws](https://www.investopedia.com/terms/a/antitrust.asp) in the United States, preventing and eliminating anticompetitive business practices, including coercive monopolies. The FTC also seeks to protect consumers from predatory or misleading business practices.

Key Takeaways

* The Federal Trade Commission (FTC) is a federal agency that enforces antitrust laws and protects consumers.
* It was signed into law by President Woodrow Wilson in 1914 as part of the administration's trust-busting efforts.
* FTC activities include investigating fraud or false advertising, congressional inquiries, and pre-merger notification.
* The FTC also handles scams and unfair or predatory business practices.
* The FTC discourages anticompetitive behavior through the Bureau of Competition, which reviews proposed mergers with the Department of Justice.

Understanding the Federal Trade Commission (FTC)

The Federal Trade Commission (FTC) was [established in 1914](https://www.investopedia.com/articles/financial-theory/10/the-us-federal-trade-commission.asp) by the Federal Trade Commission Act, as part of the Wilson administration's trust-busting efforts—trust-busting being a significant concern at the time.1 It was tasked with enforcing the Clayton Act, which banned monopolistic practices.

Before the birth of the FTC, there was the Bureau of Corporations, created by the Roosevelt administration in February 1903. Part of the Department of Commerce and Labor, the Bureau of Corporations was tasked with making sure businesses acted in the best interest of the public. The success of the Bureau of Corporations led to the creation of the FTC.

The FTC continues to discourage anticompetitive behavior through the Bureau of Competition, which reviews proposed [mergers](https://www.investopedia.com/terms/m/merger.asp) together with the Department of Justice (DOJ). As the years have passed, the FTC has been tasked with enforcing additional business regulations, as codified in Title 16 of the Code of Federal Regulations.

Fast Fact

Under the premerger notification program, parties of larger mergers must submit a premerger notification to the FTC and Department of Justice (DOJ).2

#### 2---only ftc has expertise and history

Sara Collins 21. Policy Counsel at Public Knowledge, former Policy Counsel on Future of Privacy Forum’s Education & Youth Privacy team, 10/13/21. “21st Century Snake Oil: The Consequences of Unregulated, Unproven AI.” https://techpolicy.press/21st-century-snake-oil-the-consequences-of-unregulated-unproven-ai/

There is growing evidence that assigning algorithms the responsibility to make significant decisions about people is causing harm. Much has been written about the biases algorithms can codify and steps to mitigate the damage. However, detecting bias is difficult. If we could shift the burden to companies to demonstrate that their algorithms are safe and effective, we could greatly reduce the likelihood that biased algorithms enter the market at all.

For example, facial recognition’s trouble with detecting Black faces has been well documented. But facial recognition is not just used in surveillance cameras. It is also used in online hiring platforms, student proctoring software, and even for unemployment verification. Misidentification in these contexts has grave consequences. While this problem has often been framed in terms of bias, it also demonstrates a lack of effectiveness. If your software has trouble working on almost 15% of the population, your algorithm doesn’t do what you say it does. If you have an algorithm that is designed to allocate healthcare, but Black patients have to be significantly sicker than white patients in order to get the same level of care, your algorithm doesn’t work.

Unfortunately there is no requirement that companies demonstrate an algorithm’s effectiveness before putting it to use. The Algorithmic Justice and Online Transparency Act, introduced this year, has a requirement that algorithms used by online platforms be “safe and effective,” but that would only apply to sites like Facebook or Youtube, according to the proposed bill. Congress should consider expanding such protections to all products and services.

But even if Congress does not act, that doesn’t mean nothing can be done. Fortunately, the Federal Trade Commission (FTC) has a long history of prosecuting snake oil salesmen. Under Section 5 of the FTC Act, the commission has broad authority to go after companies that engage in unfair or deceptive acts or practices. This is why the FTC just sent a warning letter to purveyors of fake coronavirus cures, and how the FTC was able to fine companies that made scam weight loss products. In each instance these companies made claims about their products that weren’t backed by evidence. This same approach should be used for algorithms.

#### 3---legal authority

Adi Robertson 21. Covers technology policy for The Verge, 4/20/21. “FTC warns it could crack down on biased AI.” https://www.theverge.com/2021/4/20/22393873/ftc-ai-machine-learning-race-gender-bias-legal-violation

The US Federal Trade Commission has warned companies against using biased artificial intelligence, saying they may break consumer protection laws. A new blog post notes that AI tools can reflect “troubling” racial and gender biases. If those tools are applied in areas like housing or employment, falsely advertised as unbiased, or trained on data that is gathered deceptively, the agency says it could intervene.

“In a rush to embrace new technology, be careful not to overpromise what your algorithm can deliver,” writes FTC attorney Elisa Jillson — particularly when promising decisions that don’t reflect racial or gender bias. “The result may be deception, discrimination — and an FTC law enforcement action.”

As Protocol points out, FTC chair Rebecca Slaughter recently called algorithm-based bias “an economic justice issue.” Slaughter and Jillson both mention that companies could be prosecuted under the Equal Credit Opportunity Act or the Fair Credit Reporting Act for biased and unfair AI-powered decisions, and unfair and deceptive practices could also fall under Section 5 of the FTC Act.

“It’s important to hold yourself accountable for your algorithm’s performance. Our recommendations for transparency and independence can help you do just that. But keep in mind that if you don’t hold yourself accountable, the FTC may do it for you,” writes Jillson.

3---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.”

4---Algorithmic bias risks nuclear 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.