# 1NC – Fullertown R5

## Offcase

### PIC – Antitrust – 1NC

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

#### 1 – Increase prohibitions on business practices in accordance with socialism.

#### 2 – Eliminate antitrust.

#### 3 – Ban any practices that support the development of grey goo and nanotech.

#### 4 – Establish an innovation and facilitation board per 1AC Kotz evidence.

#### The counterplan pics out of anti-trust legislation and the ftc and doj as enforcers – other agencies’ regulations solve.

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

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

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

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

#### statistics agree regs are better

Sumit Majumdar 21. Professor of Information Systems, University of Texas, Dallas. “Stick Versus Carrot: Comparing Structural Antitrust and Behavioral Regulation Outcomes.” *The Antitrust Bulletin*. June 2021. DOI: 10.1177/0003603X211023463.

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

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

B. Robustness Check

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

C. Summary

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

### Kritik – Anarchocommunism – 1NC

#### Their theory of party collection is regressive and antithetical to anarchism ­­–– the vanguard party will only re-dispossess the working class and is easily infiltrated by the bourgeoisie

Ervin, 05 – Lorenzo Kom'boa Ervin is an American writer, activist, and Black anarchist. He is a former member of the Black Panther Party and Concerned Citizens for Justice. Encyclopedia Britannica says: “African American anarchism, as represented in the writings of former Black Panther Lorenzo Kom’boa Ervin in the late 1970s, was a major influence in the United States and in many other parts of the world.” (“Anarchist vs. Marxist-Leninist Thought on the Organization of Society”, libcom.org, 7-29-05, available online at: <https://libcom.org/library/anarchist-vs--leninist-lorenzo-ervin> , accessed: Mar. 2021)//FI

Historically, there have been three major forms of socialism -- Libertarian Socialism (Anarchism), Authoritarian Socialism (Marxist Communism), and Democratic Socialism (electoral social democracy). The non-Anarchist Left has echoed the bourgeoisie's portrayal of Anarchism as an ideology of chaos and lunacy. But Anarchism, and especially Anarchist-Communism, has nothing in common with this image. It is false and made up by it's ideological opponents, the Marxist-Leninists. It is very difficult for the Marxist-Leninists to make an objective criticism of Anarchism as such, because by its very nature it undermines all suppositions basic to Marxism. If Marxism and Leninism (its variant which emerged during the Russian Revolution) is held out to be the working class philosophy and the proletariat cannot owe its emancipation to anyone but the Communist Party, it is hard to go back on it and say that the working class is not yet ready to dispense with authority over it. Lenin came up with the idea of the transitional State, which would 'wither away' over time, to go along with Marx's "dictatorship of the proletariat." The Anarchists expose this line as counter-revolutionary and sheer power-grabbing, and over 75 years of Marxist-Leninist practice have proven us right. These so-called Socialist States produced by Marxist-Leninist doctrine have only produced Stalinist police states, where workers have no rights, and a new ruling class of technocrats and party politicians have emerged, and the class differential between those the State favored over those it didn't created widespread deprivation among the masses and another class struggle. But instead of meeting such criticisms head on, they have concentrated their attacks not on the doctrine of Anarchism, but on particular Anarchist historical figures, especially Bakunin (Marx's main opponent in the First International). Anarchists are social revolutionaries who seek a stateless, classless, voluntary, cooperative federation of decentralized communities based upon social ownership, individual liberty and autonomous self-management of social and economic life. The Anarchists differ with the Marxist-Leninists in many areas, but especially in organization building. They differ from the authoritarian socialists in primarily three way: they reject the Marxist-Leninist notions of the vanguard party, democratic centralism, and the dictatorship of the proletariat, and Anarchists have alternatives for each of them. The problem is that almost the entire Left (including some Anarchists) is completely unaware of Anarchism's tangible structural alternatives of the catalyst group, Anarchist consensus, and the mass commune. The Anarchist alternative to the vanguard party is the catalyst group. The catalyst group is merely an Anarchist-Communist federation of affinity groups in action. The catalyst group, or revolutionary anarchist federation, would meet on a regular basis or only when necessary, depending on the wishes of the membership and the urgency of social conditions. It would be made up of representatives from the affinity group (or the affinity group itself), with full voting rights, privileges, and responsibilities. It would both set policies and future actions to be performed. It would produce both Anarchist-Communist theory and social practice. It believes in the class struggle and the necessity to overthrow Capitalist rule. It organizes in the communities and workplaces. It is democratic and has no authority figures like a party boss or central committee.In order to make a revolution, large-scale, coordinated movements are necessary, and their formation is in no way counter to Anarchism. What Anarchists are opposed to is hierarchical, power-tripping leadership which suppresses the creative urge of the bulk of those involved, and forces an agenda down their throats. Members of such groups are mere servants and worshippers of the party leadership. But although Anarchists reject this type of domineering leadership, they do recognize that some people are more experienced, articulate, or skilled than others, and these people will play leadership action roles. These persons are not authority figures, and can be removed at the will of the body. There is also a conscious attempt to routinely rotate responsibility and to pass on these skills to each other, especially to women and people of color, who would ordinarily not get the chance. The experience of these persons, who are usually veteran activists or better qualified than most at the moment, can help form and drive forward movements, and even help to crystallize the potential for revolutionary change in the popular movement. What they cannot do is take over the initiative of the movement itself. The members of these groups reject hierarchical positions (anyone having more official authority than others), and unlike the Marxist-Leninist vanguard parties, the Anarchist groups won't be allowed to perpetuate their leadership through a dictatorship after the revolution. Instead, the catalyst group itself will be dissolved and its members, when they are ready, will be absorbed into the new society's collective decision-making process. Therefore, these Anarchists are not leaders, but merely advisors and organizers for a mass movement. What we don't want or need is a group of authoritarians leading the working class, then establishing themselves as a centralized decision-making command. Instead of "withering away", Marxist-Leninist States have perpetuated authoritarian institutions (the secret police, labor bosses, and the Communist Party) to maintain their power. The apparent effectiveness of such organizations masks the way that revolutionaries who pattern themselves after Capitalist institutions become absorbed by bourgeois values, and completely isolated from the real needs and desires of ordinary people.The reluctance of Marxist-Leninists to accept revolutionary social change is, however, above all seen in Lenin's conception of the party. It is a prescription to nakedly seize power and put it in the hands of the Communist Party. The party that Leninists create today, they believe, should become the [only] Party of the Proletariat in which that class could organize and seize power. In practice, however, this meant personal and party dictatorship, which they felt gave them the right and duty to wipe out all other parties and political ideologies. Both Lenin (along with Trotsky) and Stalin killed millions of workers and peasants, their Left-wing ideological opponents, and even members of their own Bolshevik Party. This bloody and treacherous history is why there is so much rivalry and hostility between Marxist-Leninist and Trotskyist parties today, and it is why the "worker's states", whether in Cuba, China, Vietnam, or Korea, are such oppressive bureaucracies over their people. It is also why most of the Eastern European Stalinist countries had their governments overthrown by the petty bourgeoisie and ordinary citizens in the 1980's. Maybe we are witnessing the eclipse of State communism entirely, since they have nothing new to say and will never get those governments back again.While Anarchist groups reach decisions through Anarchist consensus, the Marxist-Leninists organize through so-called democratic centralism. Democratic centralism poses as a form of inner party democracy, but it is really just a hierarchy by which each member of a party -- ultimately of a society -- is subordinate to a higher member until one reaches the all-powerful party central committee and its Chairman. This is a totally undemocratic procedure, which puts the leadership above criticism, even if it is not above reproach. It is a bankrupt, corrupt method of internal operations for a political organization. You have no voice in such a party, and must be afraid to say any unflattering comments to or about the leaders. In Anarchist groups, proposals are talked about by members (none of whom have authority over another), dissenting minorities are respected, and each individual's participation is voluntary. Everyone has the right to agree or disagree over policy and actions, and everyone's ideas are given equal weight and consideration. No decision may be made until each individual member or affiliated group that will be affected by that decision has had a chance to express their opinion on the issue. Individual members and affiliated groups retain the option to refuse support to specific federation activities. In true democratic fashion, decisions for the federation as a whole must be made by a majority of its members. In most cases, there is no real need for formal meetings for the making of decisions, what is needed is coordination of the actions of the group. Of course, there are times when a decision has to be made, and sometimes very quickly. This will be rare, but sometimes it is unavoidable. The consensus, in that case, would then have to be among a much smaller circle than the general membership of hundreds or thousands. But ordinarily all that is needed is an exchange of information and trust among parties, and a decision reaffirming the original decision will be reached, if an emergency decision had to be made. Of course, during the discussion, there will be an endeavor to clarify any major differences and explore alternative courses of action. And their will be an attempt to arrive at a mutually agreed upon consensus between conflicting views. As always, if there should be an impasse or dissatisfaction with the consensus, a vote would be taken, and with two-thirds majority, the matter would be accepted, rejected, or rescinded. This is totally contrary to the practice of Marxist-Leninist parties where the Central Committee unilaterally sets policy for the entire organization, and arbitrary authority reigns. Anarchists reject centralization of authority and the concept of the Central Committee. All groups are free associations formed out of a common need, not revolutionaries disciplined by fear of authority. When the size of the working groups (which could be formed around labor, fundraising, anti-racism, women's rights, food and housing, etc.) becomes cumbersome, the organizations can be decentralized into two or more autonomous organizations, still united in one large federation. This enables the group to expand limitlessly while maintaining its anarchic form of decentralized self-management. It is (sort of) like the scientific theory of the biological cell, dividing and re-dividing, but in a political sense. However, Anarchist groups aren't necessarily organized loosely; Anarchism is flexible and structure can be practically non-existent or very tight, depending on the type of organization demanded by the social conditions being faced. For instance, organization would tighten during military operations or heightened political repression. Anarchist-Communists reject the Marxist-Leninist concept of the dictatorship of the proletariat and a so-called "worker's state," in favor of a mass commune. Unlike members of Leninist parties, whose daily lives are generally similar to present bourgeoisie lifestyles, Anarchist organizational structures and lifestyles, through communal living arrangements, affinity groups, squatting, etc., attempt to reflect the liberated society of the future. Anarchists built all kinds of communes and collectives during the Spanish Civil War of the 1930's, but they were crushed by the fascists and the Communists. Since the Marxist-Leninists don't build cooperative structures (the nucleus of the new society) they can only see the world in bourgeois political terms. They want to seize State power and institute their own dictatorship over the people and the workers, instead of crushing State power and replacing it with a free, cooperative society. They insist that the party represents the proletariat, and that there is no need for them to organize themselves outside of the party. Yet, even in the former Soviet Union, the Communist Party membership only represented five percent of the population. This is elitism of the worst sort, and even makes the Capitalist parties look democratic by comparison. What the Communist Party was intended to represent in terms of worker's power is never made clear, but in true 1984 doublethink fashion, the results are 75 years of political repression and State slavery, instead of an era of glorious Communist rule. They must be held accountable politically for these crimes against the people, and we must reject their revolutionary political theory and practice. They have slandered the names of Socialism and Communism. We reject the dictatorship of the proletariat, it is unbridled oppression, and the Marxist-Leninists and Stalinists must be made to answer for it. Millions have been murdered by Stalin in the name of fighting an internal class war, and millions more were murdered in China, Poland, Afghanistan, Cambodia, and other countries by Communist movements which followed Stalin's prescription for revolutionary terror. We reject State communism as the worst aberration and tyranny. We can do better than this with the mass commune. The Anarchist mass commune (sometimes called the Worker's Council, although their are some differences) is a national, continental, or transitional federation of economic and political cooperatives and regional communal formations. Anarchists look to a world and a society in which real decision-making involves everyone who is involved with it -- a mass commune -- not a few discipline freaks pulling the strings on a so-called proletarian dictatorship. Any and all dictatorship is bad, it has no redeeming social features, yet that is what the Leninists tell us will protect us from counter-revolution. While Marxist-Leninists claim that this dictatorship is necessary in order to crush any bourgeois counter-revolutions led by the Capitalist class or right-wing reactionaries. Anarchists feel that this is itself part of the Marxist school of falsification. A centralized apparatus, such as a state, is a much easier target for opponents of the revolution than is an array of decentralized communes. And these communes would remain armed and prepared to defend the revolution against anyone who militarily moves against it. The key is to mobilize the people into defense guards, militias, and other military preparedness units. The position by the Leninists of the necessity for a dictatorship to protect the revolution was not proven in the Civil War which followed the Russian Revolution; in fact, without the support of the Anarchists and other Left-wing forces, along with the Russian people, the Bolshevik government would have been defeated. And then true to any dictatorship, it turned around and wiped out the Russian and Ukrainian Anarchist movements, along with their Left-wing opponents like the Mensheviks and Social Revolutionaries, and even ideological opponents in the Bolshevik Party were imprisoned and put to death. Millions of Russian citizens were killed by Lenin and Trotsky right after the Civil War, when they were consolidating State power, which preceded Stalin's bloody rule. The lesson is that we should not be tricked into surrendering the grassroots people's power to dictators who pose as our friends and leaders. We don't need the Marxist-Leninists' solutions, they are dangerous and deluding. There is another way, but to much of the Left and to many ordinary people, the choice has appeared to be Anarchic chaos or the Marxist Communist parties, however dogmatic and dictatorial. This is primarily the result of misunderstanding and propaganda. Anarchism, as an ideology, provides feasible organizational structures, as well as valid alternative revolutionary theory, which, if utilized, could be the basis for organization just as solid as the Marxist-Leninist (or even more so) only these organizations will be egalitarian and really for the benefit of the people, rather than the Communist leaders. Anarchism is not confined to the ideas of a single theoretician, and it allows individual creativity to develop in collective groupings, instead of the characteristic dogmatism of the Marxist-Leninists. Therefore, not being cultist, it encourages a great deal of innovation and experimentation, prompting its adherents to respond realistically to contemporary conditions. It is the concept of making ideology fit the demands of life, rather than trying to make life fit the demands of ideology. Therefore, Anarchists build organizations in order to build a new world, not perpetuate domination over the masses of people. We must build an organized, coordinated international movement aimed at transforming the globe into a mass commune. Such would be a great overleap in human evolution and a gigantic revolutionary stride. It would change the world as we know it and end the special problems long plaguing humankind. It would be a new era of freedom and fulfillment. LET'S GET ON WITH IT, WE'VE GOT A WORLD TO WIN!

#### As it fails, Marxist Leninism cements capitalist opposition and diffuses radical momentum ­­– that makes any solvency deficits offense for us

Castoriadis, 90 – Cornelius Castoriadis was director of research at The School for Advanced Studies in the Social Sciences, one of the most prestigious graduate universities in France. He was a Greek-French philosopher, social critic, economist, psychoanalyst, author of The Imaginary Institution of Society, and co-founder of the Socialisme ou Barbarie group (“The Pulverization of Marxism-Leninism”, 1990, Salmagundi No. 88–89, Fall, 1990-Winter, 1991, pp. 371–384 , available online at: <https://theanarchistlibrary.org/library/cornelius-castoriadis-the-pulverization-of-marxism-leninism> , accessed: Mar. 2021)//FI

As it collapses, Marxism-Leninism seems to be burying beneath its ruins both the project of autonomy and politics itself. The active hate on the part of those, in the East, who have suffered under it leads them to reject any project other than the rapid adoption of the liberal-capitalist model. In the West, people’s conviction that they live under the least bad regime possible will be reinforced, and this will hasten their sinking even further into irresponsibility, distraction and withdrawal into the “private” sphere (now obviously less “private” than ever).Not that these populations possess many illusions. In the United States, Lee Atwater, Chairman of the Republican Party, speaking of the population’s cynicism, says: “The American people think politics and politicians are full of baloney. They think the media and journalists are full of baloney. They think organized religion is full of baloney. They think big business is full of baloney. They think big labor is full of baloney.” [7] Everything we know about France indicates that the same state of mind reigns there, too. Yet actual behavior carries much more weight than opinions. Struggles against the system, even mere reactions, are tending to disappear. But capitalism changed and became somewhat tolerable only as a function of the economic, social and political struggles which have marked the past two centuries. A capitalism torn by conflict and obliged to confront strong internal opposition, and a capitalism dealing only with lobbies and corporations, capable of quietly manipulating people and of buying them with a new gadget every year, are two completely different social-historical animals. Reality already offers abundant indications of this. The monstrous history of Marxism-Leninism shows what a movement for emancipation cannot and should not be. It in no way allows us to conclude that the capitalism and liberal oligarchy under which we now live embody the finally resolved secret of human history. The project of total mastery (which Marxism-Leninism took from capitalism and which, in both cases, was turned into its contrary) is a piece of delirium. It does not follow that we should suffer our history as a fatality. The idea of making a tabula rasa of everything that exists is a folly leading toward crime. It does not follow that we should renounce that which has defined our history since the time of ancient Greece and to which Europe has added new dimensions, viz., that we make our laws and our institutions, that we will our individual and collective autonomy, and that we alone can and should limit this autonomy. The term “equality” has served as a cover for a regime in which real inequalities were in fact worse than those of capitalism. We cannot for all that forget that there is no political freedom without political equality and that the latter is impossible when enormous inequalities of economic power, which translate directly into political power, not only exist but are growing. Marx’s idea that one could eliminate the market and money is an incoherent utopia. To understand that does not lead one to swallow the almightiness of money, or to believe in the “rationality” of an economy which has nothing to do with a genuine market and which is more and more coming to resemble a planetary casino. Just because there is no society without production and consumption does not mean that these latter should be erected into ultimate ends of human existence--which is the real substance of “individualism” and free-market “liberalism” today. These are some of the conclusions to which the combined experience of the pulverization of Marxism-Leninism and the evolution of contemporary capitalism should lead. They are not the ones public opinion will draw immediately. Nevertheless, when the dust clears it is to these conclusions that humanity will have to come, unless it is to continue on its course toward an illusory “more and more” which, sooner or later, will shatter against the natural limits of the planet, if it does not collapse beforehand under the weight of its own nothingness of meaning.

#### The alternative is to organize anarchist resistance to capitalism – that decentralization is more resistant to bourgeois state infiltration, and is specifically the only leftist mechanism for resolving climate change

Mayo, 18 – Frankie Mayo is a Senior Analyst at Regen energy group, where they lead ‘future energy scenarios’ assessments, assessing the potential development of renewable energy, electric vehicles, and low-carbon heat at a neighbourhood level across Great Britain. Previously Frankie studied in Cornwall and is an MEng Class I graduate in Renewable Energy. (“What might an anarchist response to the crisis of climate change look like in 2018?”, 6-2-18, available online at: <https://medium.com/@Frankie_Mayo/what-might-an-anarchist-response-to-the-crisis-of-climate-change-look-like-in-2018-b042c2df2cdc#:~:text=An%20anarchist%20response%20to%20climate,thus%20far%20been%20the%20result> , accessed: Mar. 2021)//FI

I heard someone say that the most effective action one can take against climate change is to learn first aid. While not particularly encouraging, it does start to disrupt the dominant climate change narrative; that we can only successfully counter climate change through ineffectual individual action or large-scale state and corporate action. What therefore is an appropriate anarchist response to climate change? There are three standard purported routes to climate change mitigation — state, corporate, and individual action. These three routes almost entirely preclude the systemic change needed to grapple with the root of current or future environmental and human crises. These responses focus on highly-centralised, short-term, or ineffectual solutions that reinforce the status quo. Of the three, the most effective at tackling international environmental crises appears to have been state action and regulation, often in the form international government agreements — such as the agreed phase-out of ozone-depleting substances under the Montreal protocol. However, this is outweighed by the persistent complicity of state governments in the degradation of the environment, and the disregard for international agreements when suited. Furthermore, the use of state force to disrupt environmental movements — or ‘eco-terrorists’ in FBI-speak — to displace peoples, to enclose land, and to disenfranchise their citizens to the benefit of private industry, is endemic. States have used their near monopoly on force in global societies to directly engage in environmental degradation and to empower private interests at the expense of the commons. To this end, apparent successes of state power in combating climate change become minor foothills when one’s perspective can apprehend the twin mountains of state responsibility, and state complicity, in environmental degradation. State police and indigenous protesters in Brazil, meeting in regards to land rights disputes Individual action is also suggested as an appropriate response to climate change. This shifts responsibility away from sources of CO2 emissions for example, over which an individual will have little control, to minor behavioural changes, the result of which are never systemic change, but always within a limited range of capitalist consumer “options”. Little needs to be said of green-washing, ‘saviour’, deceitful corporations. Adaptation is a crucial issue, and must be considered alongside climate change mitigation. Mitigation is a ten to a hundred year problem, adaptation is a ten to a thousand year crisis. The effects of extreme environmental changes, such as heatwaves and rising sea levels, are not confined within national borders, though they interact with national constructs in particular ways. For example, national infrastructures will be impacted, international supply chains will be disrupted, and food and water shortages will hit some areas more acutely. On average ~25 million people are displaced yearly by disasters, the overwhelming majority of these are weather-related. High temperature extremes are virtually certain to increase in the future, heat waves are to become more frequent, and monsoon precipitation intensity is likely to increase. The intersection of weather disasters, state control, and land ownership is becoming increasingly acute. Heatwaves, wildfires will intensify; and represent an interaction between state, civil, and indigenous society In 2018, the overriding theme of mitigation discourse is state action in line with international agreements, most prominently the ‘Paris agreement’. If all state commitments agreed in Paris are completely ‘successful’, the world is still on track for more than 3˚of warming by 2100. Renewable energy is also seen as an integral mitigation strategy, and is something that has been predominantly state developed, such as wind power in Denmark, solar PV in Germany and China etc. It appears then that support of mitigation initiatives requires support of state action, and is indeed the mainstay of popular sustainability discourse. However, the most effective environmental movements exhibit re-distributive, non-governmental, and grassroots action. Local, community scale efforts are a large part of the answer to both climate change mitigation and adaptation. Local solutions are not necessarily the only effective strategy due the global, inter-cultural nature of the present crisis — remembering that it is a mistake to speak of climate change in pre-crisis terminology. However, they will form an integral part of the low-impact society towards which we must move if we are to create effective systemic change. For example in Raxruhá municipality, Guatemala, the palm oil industry is deforesting land, diverting rivers and dirtying water sources. The state is an accessory to community held, traditionally indigenous governed land being forcibly transferred to private ownership. The indigenous communities who remain are conserving what’s left of the forests in a collective arrangement and approaching reforestation through communal initiatives. However, illegal logging, violence and intimidation continues. Land allocation by the state does not recognise the collective rights of communities to own land, and comparatively, 2.5% of farms cover~66% of agricultural land. ‘Market-based land reform’ following the Guatemalan ‘civil war’ has worsened the situation and increased not only class, but gender inequality as well - implementing a tragedy for human communities and the environment. The state of Guatemala must be held accountable for its role in land dispossession and rights violations — the World Bank’s words, not mine. Local solutions also include not just locally-sourced, plant-based diets as one example, but local stakeholder care taking of land itself. Urban-focused solutions are necessary as well, such as rethinking city-based housing, transport, and work structures — most of which currently reinforce tame climate responses at best, and at worst are a large unsustainable part of 21st century western living. These local community-focused solutions can be reasonably aligned within a post-capitalist societal structure; however, what of ‘international’ responsibility present in a global crisis? Transport ‘solutions’ Though we live in a multi-polar, national world, it is worth stating that we are not starting from a neutral, level playing field. A few nations are particularly to blame for the present and looming climate crises; but moreover some have greater power to mitigate and adapt to the impacts of climate change. Furthermore, these ‘developed’ nations have also exploited and ransacked many of the so-called ‘developing’ nations, which as one result have a lessened ability to respond to climate change. Furthermore, recent research has highlighted how higher latitudes will experience less perceptible climate change than those in the tropics. The ‘international’ element of the environmental movement therefore must reaffirm solidarity, disseminate and replicate sustainable practices, and be explicit about the role of those who have the greatest ability to mitigate, and ultimate responsibility for, climate change. During times of crisis societal inequalities are exacerbated, and as we are not on track to limit global warming to even 2˚ by 2100 we should expect to apply both mitigation and correction strategies in this area. As stated above only some select countries are responsible for the majority of greenhouse gas emissions, it is also true that there is an incredible gender imbalance in this area as well. Due to the patriarchal structure of global society, it may be commonly expected that the present climate crises will more adversely impact women — the majority of humanity at 51% — and especially women in ‘developing’ nations. In terms of an ‘international’ response then, I would hope that not only would anarchist practices seek to end patriarchal as well as racist societies, but that the response to climate change would recognise that an anti-sexist, anti-racist movement is not only right but critical to overall success. So, an appropriate anarchist response to climate change should be able to better replicate and extend the limited success of state action, whilst simultaneously addressing the intense power inequalities of global society along class, gendered, and racialised lines. In terms of mitigation, anarchist principles are inherently more sustainable than capitalist, consumerist tendencies. Local organisation, citizen ownership of limited power structures, and community empowerment are highly sustainable, peaceful and positive forces. In terms of adaptation, atomised individuals and corporate actions are completely inadequate, and state power is both highly vulnerable itself to environmental crises and unable to respond at the necessary local level. Anarchist responses to the impacts of climate change are more intrinsically ‘international’, anti-racist, and anti-sexist than any of the conventional responses. Resiliency, solidarity and re-distributive actions are the best way to respond to such a cataclysmic threat. These are processes not products. These anarchist responses should be thought of as journeys of resilience and local organisation, not end goals or destinations. Time spent wandering along the paths of individual action, down the tunnels of corporate responsibility, or along the motorways of state power are journeys we will have to retrace when the waters reach our waists, and they are already lapping at our feet.

### Counterplan – States – 1NC

#### Text: the fifty states and all relevant sub-entities should increase prohibitions on anticompetitive business practices by the private sector in accordance with socialism.

### Prohibit PIC – 1NC

#### The United States should only allow the continuation of non-socialist business practices under antitrust law when the president determines it is necessary to prevent a 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.

### FTC Disad – 1NC

#### FTC’s increasing enforcement in privacy now – it’s focused on algorithmic bias

James V. Fazio 21. Special counsel in the Intellectual Property Practice Group at Sheppard, Mullin, Richter & Hampton LLP, with Liisa M. Thomas, 3/11. “What Is FTC’s Course Under Biden?” https://www.natlawreview.com/article/what-ftc-s-course-under-biden

The new acting FTC chair, Rebecca Kelly Slaughter, recently signaled that the FTC may increase enforcement and penalties in the privacy and data security realm. Slaughter pointed to several areas of focus for the FTC this year, which companies will want to keep in mind: Notifying Consumers About FTC Allegations: Slaughter referred favorably to two recent cases: (1) the Everalbum biometric settlement from earlier this year (which we wrote about at the time); and (2) the Flo Health settlement over alleged deceptive data sharing practices (which we also wrote about at the time). In drawing on these two cases, Slaughter indicated that in future cases the FTC intends to include as part of any settlement a requirement to notify customers of any FTC allegations. This, she said, would allow consumers to “vote with their feet” and help them decide whether to recommend their services to others. FTC Intent to Plead All Relevant Violations: According to Slaughter, another lesson the FTC is taking from the Flo case is to include in the cases it brings all potentially applicable violations of all relevant privacy-related laws. In the Flo case, Slaughter said the FTC should have pleaded a violation of the Health Breach Notification Rule, which requires that vendors of personal health records notify consumers of data breaches. Focus on Ed Tech and COPPA: Given the explosive growth of education technology during COVID-19, the FTC is conducting an industry sweep of the industry. Related to this, the FTC is reviewing its Children’s Online Privacy Protection Act Rule. This goes beyond the refresh the agency did of their FAQs earlier in the pandemic (which we wrote about at the time). For now, Slaughter reminds companies that parental consent is needed before collecting information online from children under the age of 13. Examination of Health Apps: The FTC will take a closer look at health apps, including telehealth and contact tracing apps, as more and more consumers are relying on such apps to manage their health during the pandemic. Overlap Between Competition and Privacy: Slaughter also indicated that it is worth looking at situations where there may be not only privacy concerns, but antitrust as well. Because the FTC has a dual mission (consumer protection and competition) she notes that it has a “structural advantage” over other regulators in that it can look at these issues, especially since -she states- “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 consumer data.” Racial Equality and AI/Biometrics/Geotracking: Slaughter noted that COVID-19 is exacerbating racial inequities. She pointed to the unequal access to technology, as well as algorithmic discrimination (the idea that discrimination offline becomes embedded into algorithmic system logic). The FTC intends to focus on algorithmic discrimination, as well as on the discrimination potentially embedded into facial recognition technologies. (This mirrors concerns that gave rise to the recent Portland facial recognition law, which we recently wrote about). Finally, Slaughter commented on the use of location data to identify characteristics of Black Lives Matter protesters, and said she is concerned about the misuse of location data to track Americans engaged in constitutionally protected speech. Putting it Into Practice: Companies that operate health apps, that are in the education technology space, or that use algorithms or facial recognition tools will want to keep in mind that these are areas of focus for the FTC. And for everyone, keep in mind that the FTC has indicated it will beef up privacy law penalties and will ask for more notification to injured consumers.

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

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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 and extinction

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

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

### Topicality – 1nc

#### 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).

#### Prohibit means forbid by authority

Merriam-Webster No Date <https://www.merriam-webster.com/dictionary/prohibition> and <https://www.merriam-webster.com/dictionary/prohibiting>

Definition of prohibition 1: the act of prohibiting by authority

Definition of prohibit transitive verb 1: to forbid by authority : ENJOIN

#### Only per se illegality prohibits a practice---rules of reason prohibit anticompetitive effects for individual acts, or instances of ‘practice.’

John Paul Stevens 90, Justice, Supreme Court of the United States, “FTC v. Superior Court Trial Lawyers Ass'n,” 493 U.S. 411, Lexis

LEdHN[3C] [3C]LEdHN[14] [14]Equally important is the second error implicit in respondents' claim to immunity from the per se rules. In its opinion, the Court of Appeals assumed that the antitrust laws permit, but do not require, the condemnation of price fixing and boycotts without proof of market power. 15 The opinion further assumed that the per se rule prohibiting such activity "is only a rule of 'administrative convenience and efficiency,' not a statutory command." 272 U.S. App. D. C., at 295, 856 F. 2d, at 249.This statement contains two errors. HN10 [\*\*\*\*42] The per se [\*433] rules are, of course, the product of judicial interpretations of the Sherman Act, but the rules nevertheless have the same force and effect as any other statutory commands. Moreover, while the per se rule against price fixing and boycotts is indeed justified in part by "administrative convenience," the Court of Appeals erred in describing the prohibition as justified only by such concerns. The per se rules also reflect a long-standing judgment that the prohibited practices by their nature have "a substantial potential for impact on competition." Jefferson Parish Hospital District No. 2 v. Hyde, 466 U.S. 2, 16 (1984).

[\*\*\*\*43] LEdHN[15] [15]As we explained in Professional Engineers, HN11 the rule of reason in antitrust law generates

"two complementary categories of antitrust analysis. In the first category are agreements whose nature and necessary effect are so plainly anticompetitive that no elaborate study of the industry is needed to establish their illegality -- they are 'illegal per se.' In the second category are agreements whose competitive effect can only be evaluated by analyzing the facts peculiar to the business, the history of the restraint, and the reasons why it was imposed." 435 U.S., at 692.

[\*\*\*873] "Once experience with a particular kind of restraint enables the Court to predict with confidence that the rule of reason will condemn it, it has applied a conclusive presumption that the restraint is unreasonable." Arizona v. Maricopa County Medical Society, 457 U.S. 332, 344 (1982).

[\*\*781] LEdHN[16] [16] [\*\*\*\*44] The per se rules in antitrust law serve purposes analogous to per se restrictions upon, for example, stunt flying in congested areas or speeding. Laws prohibiting stunt flying or setting speed limits are justified by the State's interest in protecting human life and property. Perhaps most violations of such rules actually cause no harm. No doubt many experienced drivers and pilots can operate much more safely, even at prohibited speeds, than the average citizen.

[\*434] If the especially skilled drivers and pilots were to paint messages on their cars, or attach streamers to their planes, their conduct would have an expressive component. High speeds and unusual maneuvers would help to draw attention to their messages. Yet the laws may nonetheless be enforced against these skilled persons without proof that their conduct was actually harmful or dangerous.

In part, the justification for these per se rules is rooted in administrative convenience. They are also supported, however, by the observation that every speeder and every stunt pilot poses some threat to the community. An unpredictable event may overwhelm the skills of the best driver or pilot, even if the [\*\*\*\*45] proposed course of action was entirely prudent when initiated. A bad driver going slowly may be more dangerous that a good driver going quickly, but a good driver who obeys the law is safer still.

#### Prefer it:

#### 1) GROUND---key to link uniqueness and a unidirectional topic. Fringe standards dodge topic links, AND they can pick a broader but more permissive standard, making the topic bidirectional.

#### 2) LIMITS---too many possible standards, each requiring distinct answers, makes the topic unmanagbly large.

## Crisis

### 1nc – turn

#### The plan’s reform paradigmatically presumes “competition” is desirable and “anticompetitive” is not---that makes labor coordination impossible

Sanjukta Paul 20, assistant Professor of Law at Wayne State Law School, “Antitrust As Allocator of Coordination Rights,” UCLA Law Review, Vol. 67, No. 2, 2020, https://papers.ssrn.com/sol3/Papers.cfm?abstract\_id=3337861

INTRODUCTION

The central function of antitrust law is to allocate economic coordination rights. This means that private decisions to engage in economic coordination are always subject to public approval, which antitrust law grants either expressly or tacitly. Currently, its methods for accomplishing this function have the effect of anointing control and concentrated power as the preferred form of economic coordination, and to frown upon forms of economic coordination in which power and decisionmaking are more broadly dispersed. Antitrust law’s current methods for allocating coordination rights include what I call its firm exemption, as well as its preference for vertical over horizontal coordination beyond firm boundaries. Antitrust’s methods of allocating coordination rights are ultimately indigenous, and cannot be explained away by external referents: neither by other areas of law, nor by putatively neutral conclusions of social science. They are also historically contingent, and have shifted over time.

Practically speaking, the reigning antitrust paradigm authorizes large, powerful firms as the primary mechanisms of economic and market coordination, while largely undermining others: from workers’ organizations to small business cooperation to democratic regulation of markets. While deploying the legal concept of competition to undermine disfavored forms of economic coordination, antitrust law also quietly underwrites certain major exceptions to principles of competition, notably, the business firm itself. In surfacing the firm exemption, this Article also isolates the underlying, largely unexamined decision criteria for allocating coordination rights that it employes.

The current paradigm for thinking and decisionmaking within antitrust law has a professed commitment to implementing the insights of neoclassical economic theory in legal decisionmaking.1 According to that framework, the aggregate of individual market transactions, rather than direct coordination, will result in an optimal allocation of society’s resources. But this process of market allocation, which the law is supposed to facilitate but not displace, itself has no existence independent of prior legal allocations of economic coordination rights. Those coordination rights are shaped by numerous areas of law—from property to corporate law to labor law to antitrust, among others. This Article focuses on antitrust law, where this function is rarely acknowledged. Although the law and economics paradigm has enormous institutional sticking power in current antitrust law, the basic purposes and methods of antitrust law are also up for debate today in a way that they have not been in decades. Recent contributions to the antitrust revival have emphasized the law’s traditional concerns with corporate power and fairness, which were largely written out of antitrust law in the Chicago School revolution. 2 Dissenting voices asserted these as legitimate antitrust concerns even prior to the current challenge. 3 Mirroring the reformist call to put some limits upon the broad coordination rights of the powerful, a growing chorus of scholarship has emphasized the need to expand the coordination rights of small players to some extent or another, beginning with the question of workers and microenterprises caught between labor and antitrust regulation.4

However, proposals to reform antitrust, or to reconceptualize it, have thus far generally stopped short of questioning the basic premise that its primary function is to promote competition. At least officially, if increasingly uneasily, competition is still king. To be sure, many posit that antitrust performs this stated function badly, or does not perform it at all in certain markets.5 Even when reintroducing values such as fairness and deconcentrating power, for the most part the reform camp has characterized those values as flowing from—or at least coextensive with—promoting or protecting competition. Thus, the political debate over antitrust has been characterized by all sides claiming the idea of competition and defining what it means to promote competition in different ways.

In the current moment of paradigm instability,6 this Article aims to serve a clarifying role. Defenders of Chicago School antitrust tend to view reformers’ concerns—for example, fairness or deconcentrating corporate power—are extraneous to the fundamental function of antitrust law. That view, however, relies upon the idea that the function of antitrust law is to promote competition and that the law does so by following the independent guidance of economics. But neither of these things is true. Antitrust law decides where competition will be required and where coordination will be permitted. And in accomplishing that task, its most fundamental judgments are not ultimately derived from a neutral external referent, such as economic theory. Meanwhile, as the opposition to antitrust’s targeting of small players’ economic cooperation builds, some have begun to respond that this opposition evinces an inconsistency within the antitrust reform program, which otherwise generally favors increased antitrust enforcement. But, again, this objection only makes sense if one assumes that antitrust’s purpose is to promote competition, full stop. By showing that antitrust in fact already allocates coordination rights, I also show that a conscious reallocation would not constitute a special exemption from a general principle. Instead, it would simply be a different allocation of coordination rights, requiring justification no more and no less than the current one. By reframing antitrust law as this Article does, we can clarify what we are actually debating: what criteria should antitrust law use to allocate economic coordination rights? What forms of economic coordination should it permit or even promote, and what forms of economic coordination should it discourage or even prohibit?

#### Turns the case---bars coordination a-priori when it is the only tool for resistance to capital.

Sanjukta Paul 20, assistant Professor of Law at Wayne State Law School, “Antitrust As Allocator of Coordination Rights,” UCLA Law Review, Vol. 67, No. 2, 2020, https://papers.ssrn.com/sol3/Papers.cfm?abstract\_id=3337861

To discredit substantive normative benchmarks such as fairness, dispersal of power, and a commitment to small enterprise, Chicago School antitrust also helped to shift antitrust’s very idea of competition— from a dynamic social and economic process of business rivalry17 to the ideal state contemplated by neoclassical economic theory. The Chicago School Antitrust Project, as it was known, built upon an earlier, conscious decision by its founding members to substitute this idealized competitive order for the classical laissez-faire framework, associated with the Lochner era federal judiciary, in order to advance the same, fundamentally hierarchical political and economic order.18 It then applied that conceptual framework to antitrust law. Thereafter, as one commentator put it, “[l]awyers for corporate interests and industrial organization economists of the Chicago School mounted an organized effort that succeeded in persuading the federal courts to adopt a far narrower view of antitrust that has as its single objective the avoidance of economically inefficient transactions, referred to by economists as ‘allocative efficiency.’”19 Fairness has no role in this conceptual framework.

As a logical matter, these earlier normative benchmarks—fairness, dispersal of power, flourishing of small enterprise—would pose a challenge to the allocation of coordination rights that antitrust later erected. Most obviously, the concern for the existence and flourishing of small enterprise supports the inclusion of many more persons in the privilege and the responsibility of economic coordination. It also itself furnishes an argument in favor of reasonable horizontal coordination beyond firm boundaries, insofar as such coordination contributes to the survival and flourishing of small enterprise. 20 The well-established antitrust concern with fairness, also, grounds an argument in favor of a more equitable allocation of coordination rights. Thus, removing these normative benchmarks from antitrust analysis undermined any existing tendencies to allocate coordinate rights in a way that balances power.

2. The Norm Against Horizontal Interfirm Coordination

Both the shift in the concept of competition itself, and the clearing of normative benchmarks other than the ideal competitive order, strengthened the antitrust norm against horizontal coordination beyond firm boundaries. Although the conception of competition as a dynamic, instantiated social process has room for reasonable coordination, the conception of competition as an ideal state—a competitive market—has no space for coordination between separate actors in the same market. Both by entrenching the conception of competition as an ideal state and by working to clear other normative benchmarks for antitrust analysis, Chicago School antitrust thus strengthened the norm against horizontal coordination beyond firm boundaries. Besides the transformation that took place inside the confines of antitrust doctrine itself, many elements of the New Deal order more broadly had an enduringly strong procoordination bent, even if overt public price coordination did not survive the first phase of the New Deal as uniform national policy.21 These elements too were similarly attacked and undermined by other arms of Chicago School policy thinking.

As Laura Phillips Sawyer has argued, New Deal era public market coordination, with its roots in trade associations of small enterprises, had an enduring legacy within the modern administrative state. 22 And of course, New Deal labor regulation enacted a system of collective bargaining that functioned as a market coordination mechanism not only in labor markets but often also more broadly.23 And the other key policy projects of the Chicago School movement, besides antitrust, specifically focused on attacking labor union power and eventually, public coordination of markets.24 The competitive order supplied the normative keystone here: both worker collective bargaining and public coordination of markets distort the ideal market outcomes, on this view, which in turn results in the misallocation of resources, harming overall welfare. Indeed, the intellectual arm of the midcentury attack on labor unions was formulated around the notion of labor monopoly as a distortion of ideal prices—wages—beginning with a few early formulations in the 1940s and growing into a developed “literature . . . that analyzed [unions] in terms of monopoly power . . . . [and] appeared as the counterpart in economics of the concurrent political assault on American unions and those in business or in government that supported them.”25 The consolidation of the antitrust norm against horizontal coordination beyond firm boundaries then was both a legal microcosm of these broader policy arguments, and was likely rendered all the more potent as a result of their eventual success—given that both public and labor union coordination had once helped to balance the influence of large, powerful firms.

Midcentury antitrust, on the other hand, seemed to contain some pragmatic understanding that coordination is a part of economic life, and that coordination should be targeted where it is socially and economically harmful, not simply because it is coordination. Horizontal price coordination beyond firm boundaries was not consistently prosecuted, despite the official doctrine that it was per se illegal. Nor was it even consistently held to be illegal, once prosecuted. Director and Levi again made just this point: “[D]espite the repetition of the slogan that price fixing is illegal per se, the cases as yet do not hold, save possibly for resale price control, that price-fixing agreements without power to affect the market price are illegal.”26

The Chicago School did not invent antitrust law’s relative disfavor of horizontal interfirm coordination,27 and indeed, some thinkers associated with the group even questioned it, together with their criticisms of other aspects of antitrust enforcement. Director and Levi went so far as to say, regarding trade associations of small firms, that the “counterpart of efficient scale in the size problem is the improvement of the market where collusion is concerned.”28 But the Chicago School also asserted the ideal competitive order as the sole normative benchmark for antitrust analysis, thus purging other values from antitrust decisionmaking; those values might all have counseled toleration of some coordination among smaller players, despite decreasing competition. Moreover, even if some Chicago School thinkers had questioned enforcement against horizontal coordination, this certainly was not a primary priority; the relaxation of enforcement when it came to corporate mergers, monopolization, and vertical restraints, was the priority. And if one of the underlying political priorities of the Chicago School was to secure the power of concentrated capital,29 then pricefixing was the most obvious concession.

To be sure, horizontal interfirm coordination is a tool that is also used by powerful firms, and not only by smaller players. While it is more likely to occur in oligopolistic markets containing powerful firms than in decentralized ones containing smaller players, horizontal coordination is also the only coordination tool available to smaller, independent players in the market—at least if they want to maintain their status as independent, smaller players—while investment banks and venture capitalists can, through the firms they control, pursue horizontal consolidation and vertical control of smaller players in their orbits as alternate strategies for securing a foothold or for stabilizing their markets. For example, Uber and Lyft enjoy a virtual duopoly in horizontal terms, while also relying upon antitrust’s tolerance of their vertical control over drivers to maintain their positions.30 Meanwhile, drivers are barred under antitrust law’s ban on horizontal interfirm coordination from cooperating among each other to improve their positions or even building competing platforms.31 Price-fixing may not be exclusively the weapon of the weak, but it is among the only weapons that the weak have.

In any event, the norm against horizontal coordination beyond firm boundaries asserted itself increasingly strongly as the Chicago School became increasingly influential, eventually culminating in Bork’s express invocation of cartels as the foil for efficient corporate mergers and vertical restraints.32 Indeed, George Priest has argued that Bork’s success in influencing antitrust law, relative to other Chicago School thinkers, had precisely to do with his willingness to emphasize the merits of prosecuting horizontal price-fixing in order to achieve other goals, namely the relaxation of enforcement as to vertical restraints and corporate mergers. 33 Judge-made law followed suit, gradually hardening the norm against interfirm coordination itself,34 and increasingly invoking cartel conduct as a contrast case to other, permitted conduct, often involving a dominant party.35 The rule flowered fully in FTC v. Superior Court Trial Lawyers Association, the Supreme Court’s fullthroated endorsement of the FTC’s prosecution of collective action in pursuit of reasonable rates by a group of low-paid panel attorneys.36 In that opinion, Justice Stevens embraced Chicago School analysis—citing Bork, among others—to condemn horizontal coordination among small players as a distortion of ideal market outcomes.37 Commitment to this rule is nearly universal.38 The logic of perfect competition has thus been selectively deployed to justify an absolute norm against interfirm coordination while grounding a more permissive attitude to corporate consolidation and vertical restraints.39 Indeed, the fact that the rule against horizontal coordination was one of the very few meaningful remaining tools of antitrust enforcement likely further caused it to be strengthened—simply as a result of institutional inertia and quite apart from any conscious policy or political project.

### 1nc – defense

#### No spillover---they don’t make all policies socialist---just antitrust---no reason they lead to whole government upheaval

#### No war --- imperialism and nationalism has been around forever --- never escalated

#### Imperialism doesn’t cause conflict

Tony Addison 10. United Nations University-World Institute for Development Economics Research, Helsinki. “Human Security Report 2009/2010: The Causes of Peace and the Shrinking Costs of War.” New York: Oxford University Press. 2010. Pp. 106-108.

It is therefore refreshing to come across a report that has something new to say in a way that is well organised and that draws upon rigorous research. Coming out of a project of the Human Security Research Group at the School for International Studies, Simon Fraser University, The Human security report 2009/2010 is such a report. Its message is tailored for policy-makers and practitioners in humanitarian organisations and aid agencies, NGOs, the UN system and militaries engaged in peace building – but it is also of great service to scholars who are concerned with development and conflict issues but who do not normally engage with quantitative approaches. The report’s main finding is that **the world is a more secure place than it was 20 years ago.** Readers might find this difficult to believe, and anybody living in Afghanistan, the DRC or Somalia will draw little comfort from it. But the data seem to be robust in showing that **war- related deaths have sharply decreased.** Some of the reasons behind this maybe the large **jump in diplomatic interventions** and UN peacekeeping missions documented in the report. One of the contributions of the report is that it provides a great deal of quantitative information, and contains an authoritative overview of the quantitative revolution that has occurred over the last decade or so. This was sparked by the path-breaking work of the economists Paul Collier and Anke Hoeffler of Oxford University (one of whose main conclusions was that economic growth tends to reduce the probability of conflict occurring). This is not to forget the many political scientists who have crunched the data as well. The report makes a good case for the importance of such approaches. However, the authors, while supportive of quantitative research, are not starry-eyed. They admit that quantitative techniques are unable to forecast the onset of conflict. Multivariate statistical analysis can supposedly unpack the causes of war, but at the highly aggregative level of cross-country analysis this is not well-suited given the very large number of causal factors, both economic and social. My view is that quantitative methods are now yielding diminishing returns in the area of cross-country conflict research, and it remains to be seen how many new ‘big’ conclusions we can expect from interrogating existing data afresh using quantitative methods, or from new quantitative data. In this regard, quantitative studies of conflict are following a path somewhat familiar to that in other areas. For example, cross-country econometric studies of economic growth now yield fewer new startling insights, and instead confirm broader, earlier pictures of economic growth. Similarly, future conflict research may yield more insight at the country-case study level if both quantitative and qualitative techniques are used, and if we aim to understand motives and responses at the community and household levels. A second contribution of the report is the interrogation of current estimates. For example, the analysis in chapter 7 (pp. 123–131) on the death toll in the DRC, one of Africa’s longest running conflicts, throws cold water on the conclusion by researchers at the International Rescue Committee (IRC) that the war killed some 5.4 million people between 1998 and 2007. The Human security report rightly commends the IRC for its humanitarian work in the DRC, but the authors conclude that its estimate of the death toll is seriously wrong. While a necessary corrective, this is no cause for comfort. Far too many Congolese have perished, and earlier action, for example, on the international arms trade might have saved more. In the meantime, while international action (conflict intervention, emergency humanitarian aid) is often too slow, the numbers do matter. There is a strong incentive for passionate campaigners to **inflate casualty estimates, not least to mobilise help.** But this runs the risk of discrediting reports and, as the Human security report notes, as was the case with inflated death figures for Darfur, ultimately plays into the hands of regimes (p. 126).

### 1nc – nationalism

#### Cultural shifts and immigration explain nationalism and populism---not capitalism

Yotam Margalit 19, 12-20-2019, Professor, Department of Political Science, Tel Aviv University, "Economic causes of populism: Important, marginally important, or important on the margin," Vox CEPR Policy Portal, https://voxeu.org/article/economic-causes-populism/

What, then, explains the populist appeal? Out of space limit, I will note only that structural, long-term social changes strike me as central to understanding the resentment underlying much of its appeal. By this account, structural changes – such as increased access to higher education, urbanisation, and growing ethnic diversity – have led to significant progressive cultural shifts. These changes, and the perceived displacement of traditional social values, have caused a sense of resentment among segments of the population in the West, particularly among white men, older people, conservatives, and those with less formal qualifications (see Inglehart and Norris 2019 for an extensive exposition of this view). Increased exposure to foreign influences that comes with globalisation and, even more so, the effects of waves of immigration have exacerbated the sense of a cultural and demographic threat. With gradual generational change, these formerly predominant majorities have increasingly felt their social standing erode, buying into the populist nostalgia for a ‘golden age’ when there was cultural homogeneity and traditional values and a strong national identity prevailed. They have also grown receptive to populist charges against a disconnected elite that has turned its back on them and the values they hold dear.

There’s an obvious, and understandable, reluctance to accept such ‘soft’ explanations. Cultural explanations of populism can be harder to measure or identify causally. Yet that of course doesn’t mean that a cultural explanation is incorrect. One should be careful not to equate quantifiability with importance.

Note, though, that the cultural account does not dismiss the role of economic factors. In addition to the electoral impact of the causes noted earlier (e.g. trade, automation), hard economic times also tend to undermine the perceived competence of the economic and political elites, and thus help fuel popular distrust in them. It is therefore likely that the financial crisis contributed to the populist wave, as some have suggested (Algan et al. 2017, Mian et al. 2014). But given the weak empirical association between measures of economic insecurity and support for populism, we should view the crisis as more of a trigger than a root cause of widespread populist support.

#### No impact to populism---institutional checks

Nicola Mai & Peder Beck-Friis 19, 2-13-2019, Nicola Mai is an executive vice president in the London office and a sovereign credit analyst in the portfolio management group; Dr. Peder Beck-Friis is a vice president and portfolio manager in the London office, "EU Elections: Populism’s Threat May Be Overstated," Pacific Investment Management Company LLC, https://www.pimco.com/en-us/insights/viewpoints/eu-elections-populisms-threat-may-be-overstated/

It is unlikely that the eurosceptic parties will form a united anti-establishment front. The eurosceptic parties are heterogeneous, ranging from extreme left to extreme right, and they have diverging views on how Europe should be reformed. We think the probability that these parties coalesce into one political group is low.

Support for eurosceptic parties should remain well below 50%. This is important because even if these parties manage to form a united front, they will face the opposition of moderate parties, which will likely coalesce against them in parliamentary votes and obstruct radical proposals that could involve the dismantling or weakening of the European infrastructure.

The key decision-making process in the EU remains inter-governmental. All key European decisions need the approval of the European Parliament as well as the Council, with the most important decisions requiring unanimity of the Council. It is true that the parliament could block key initiatives set out by the Commission. But that would require the support of moderate parties, given the minority representation of the eurosceptic parties. Finally, in emergency situations, the Council has the ability to make decisions on a purely inter-governmental basis, bypassing the need to change EU law.

Nominations of key EU positions remain ultimately in the hands of the Council. Even in the unlikely event that a populist coalition emerges as the largest group in the parliament, it does not necessarily follow that the European Council will propose a populist candidate for president of the Commission. The Spitzenkandidat process is only a convention; the European Council could in principle nominate any candidate, and importantly, the nominee will still need to be approved by the parliament as a whole.

## Innovation

### 1nc – doesn’t solve innovation

#### empirically fails.

Allison Schrager 20. Economist, senior fellow at the Manhattan Institute, and co-founder of LifeCycle Finance Partners, LLC, a risk advisory firm. “Why Socialism Won’t Work”. Foreign Policy. 1-15-2020. https://foreignpolicy.com/2020/01/15/socialism-wont-work-capitalism-still-best/

Some leftist economists like Mariana Mazzucato argue that governments might be able to step in and become laboratories for innovation. But that would be a historical anomaly; socialist-leaning governments have typically been less innovative than others. After all, bureaucrats and worker-corporate boards have little incentive to upset the status quo or compete to build a better widget. And even when government programs have spurred innovation—as in the case of the internet—it took the private sector to recognize the value and create a market.

And that brings us to a third reason to believe in markets: productivity. Some economists, such as Robert Gordon, have looked to today’s economic problems and suggested that productivity growth—the engine that fueled so much of the progress of the last several decades—is over. In this telling, the resources, products, and systems that underpin the world’s economy are all optimized, and little further progress is possible.

But that is hard to square with reality. Innovation helps economies do more with fewer resources—increasingly critical to addressing climate change, for example—which is a form of productivity growth. And likewise, many of the products and technologies people rely on every day did not exist a few years ago. These goods make inaccessible services more available and are changing the nature of work, often for the better. Such gains are made possible by capitalist systems that encourage invention and growing the pie, not by socialist systems that are more concerned with how the existing pie is cut. It is far too soon, in other words, to write off productivity.

### 1nc – warming

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

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

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

**No Grey Goo---1NC**

**No impact to grey goo**

Jeremy **Shere 16**, a science writer who has written and produced for some of public radio's top nationally syndicated science programs, including Sound Medicine, Earth & Sky, and A Moment of Science. His work has appeared in Talking Points Memo, Reuters, Matter Network, The Jerusalem Report, Bloom, and Reform Judaism, among others. He is the author of Renewable: The World-Changing Power of Alternative Energy. Shere teaches journalism and magazine writing at the School of Journalism at Indiana University in Bloomington, “Grey Goo Attack”, 4/2/2016, http://indianapublicmedia.org/amomentofscience/grey-goo-attack-2/

Attack of the Killer Robots Nanotechnology scientists dream of some day creating robots the size of molecules, or even turning molecules into machines that could roam the human body and perform all sorts of useful tasks. But some nanotechnology theorists and science fiction aficionados imagine a more ominous possibility. What if one of these tiny robots were given the ability to self-replicate? All it would take is a single malfunction and the robots would consume everything in the galaxy as they multiply out of control until all that was left was a shapeless, robotic mass called “grey goo.” Worst Case Scenario Now, before you go heading for the hills with a year’s supply of water and a survival guide, understand that the death-by-robot scenario is just that—a scenario, and a pretty fanciful one to boot. First, we’re nowhere near the point of being able to create a self-replicating nano-machine. But even if such machines do one day exist, they would have a hard time taking over the universe for one simple reason: **fuel**. Even microscopic machines need an energy source. Inorganic matter such as rocks and minerals wouldn’t do the trick because they just **don’t contain stuff that the machines could break down and use for power.** But what if a mad scientist created a robot that fed on organic materials such as sunlight and living things? **Not to worry**. Natural life forms have had around four billion years of training to compete for resources; the killer robots probably **wouldn’t stand much of a chance** against such streamlined competitors. Plus, if the robots were made from organic materials, they might be **preyed on by bacteria or other predators.**

**No Nanoweapons---1NC**

#### physics

Easterbrook 3 --- Gregg Easterbrook (Senior Fellow --- New Republic), July 2003, “We’re All Gonna Die!”, Wired Magazine, http://www.wired.com/wired/archive/11.07/doomsday.html?pg=1&topic=&topic\_set=)

5. Runaway nanobots! Eric Drexler, the father of nanotechnology, calls it "gray goo": the state of things in the wake of microscopic machines capable of breaking down matter and reassembling it into copies of themselves. Nanobots could swarm over Earth like intelligent locusts, Drexler fears, then buzz out into the cosmos devouring everything they encountered. Michael Crichton's latest novel, Prey, describes a last-ditch attempt by scientists to destroy such contraptions before they take over the world. Set aside the fact that, for all the nanobot speculation you've seen (including in Wired), these creatures do not, technically speaking, exist. Suppose they did. As the visionary scientist Freeman Dyson pointed out in his New York Review of Books critique of Prey, not only wouldn't nanobots be able to swarm after helpless victims as they do in the novel, they'd barely be able to move at all. Laws of physics dictate that the smaller something is, the greater its drag when moving through water or air. "The top speed of a swimmer or flyer is proportional to its length," Dyson notes. "A generous upper limit to the speed of a nanorobot flying through air or swimming through water would be a tenth of an inch per second, barely fast enough to chase a snail."

#### Nanoweapons are hype.

Matthew Hull, 2017. Associate Director for Entrepreneurship and Business Engagement with Virginia Tech’s National Center for Earth and Environmental Nanotechnology; PhD, civil and environmental engineering, Virginia Tech. “National Security and the Nano Factor.” Homeland Defense & Security Information Analysis Journal 20: 16-21. <https://www.hdiac.org/system/files/HDIAC%20Journal_Special%20Nanotechnology%20Issue_HDS_National%20Security%20and%20Nanotechnology_0.pdf>.

Practical Nano Security Scenarios As best we can tell, current to near-term nano security scenarios are much more limited and manageable than those that can be imagined based on the trajectories of nano- as well as other emerging and converging technologies. But it is a waiting game, and the gap between science fiction and reality has shrunk rapidly over the last decade. The tangible progress in molecular machines noted earlier is proof enough of that. For the most part though, current embodiments of nanoscale materials appear more like building blocks for increasingly sophisticated material and devices of the future, and less like the “grey goo” they were once feared to be. [16] Nevertheless, present day nano security concerns do exist, and we consider three of these below: Nano-enhanced delivery of chemical and biological agents: Chemical and biological agent attacks remain a very real threat to global and national security. The potential for nanoscale agents to be deployed to enhance the efficacy of such attacks is one practical and near-term concern. As noted earlier, researchers have already demonstrated that nanoscale particles can act as ubiquitous carriers of toxic chemicals. A NATO report on the security implications of nanotechnology noted that: “The potential for [nanotechnology] innovations in chemical and biological weapons is particularly disquieting, as NT can considerably enhance the delivery mechanisms of agents or toxic substances. The ability of nanoparticles to penetrate the human body and its cells could make biological and chemical warfare much more feasible, easier to manage and to direct against specific groups or individuals. Dr. Sean Howard, in his work on NT security implications, has even called the threat of chemical and biological warfare a ‘real nano goo.’” [17] Limited nano detection/forensic capabilities: A major security concern and unmet need lies in our limited ability to determine forensically, whether and to what extent a particular nano threat may have been deployed. Additionally, there exists a clear lack of field deployable and scalable tools capable of detecting and monitoring nanoscale threats beyond laboratories and clean-rooms. Scientific and engineering-based approaches can be taken to address these gaps. For now, capabilities suitable for enhanced detection/ mitigation of nanoscale tracking devices or nano-enabled “Trojan Horse” delivery threats, for example, remain limited. Complacency amidst a silent arms race: The number of state-sponsored nanotechnology initiatives globally signifies a clear arms race to assume a dominant position in nano-enabled science and technology. While not as visible as the nuclear threat, this race is every bit as important to national and global security. A major threat to U.S. national security on this front is the potential to become complacent and to prematurely reduce federal investments into nano and convergent technologies. The United States has established itself as a global leader in nanoscale science and engineering research, scholarship and commercialization. Nevertheless, failure to maintain strategic, long-term investments in these areas, particularly rapidly evolving infrastructure and human capital, could severely impact U.S. innovation in nano-enabled industries and many other emerging technology fields that are simultaneously enhanced by progress in nanotechnology. Attrition of U.S. intellectual and infrastructural capabilities across nanotechnology-related programs would weaken U.S. defense and security interests in the future, when strategic nanoscale science and engineering investments are expected to yield their greatest payoffs. Off Buttons and Erasers: Integrating Security Features into Nano-enabled Technologies A critical security feature of any technology is the ability to turn it off, undo it, deactivate it or otherwise separate the harm it might cause from those it might harm. Even the humble pencil has evolved to include an eraser for undoing its mistakes. But, mankind has endured a host of challenges that arise when new technologies yield unintended consequences – the persistence of consumer plastic goods has left debris scattered across the Earth’s oceans; the use of nuclear weapons and runaway reactor cores have rendered cities uninhabitable for thousands of years; and the use of CFCs in coolant systems migrated unabated to the stratosphere where they’ve depleted the earth’s ozone layer. The recent Galaxy Note 7 battery fire controversy coupled with growing use of lithium ion batteries in mobile devices underscores the importance of technology that can be turned off. At present, it is unclear how persistent nanostructures and the unique behaviors that may accompany them will be in biological and environmental systems, and that should be alarming. An unprecedented dialogue around responsible nanotechnology has yielded progress, but feasible safeguards have been limited at best. Researchers have called for more green chemistry/nanotechnology approaches to help address some of these issues, [18] but those are likely to be effective only in situations where they clearly do not compromise performance of nano-enabled materials and devices. Nano and National Security: Key Considerations for the Future Looking ahead, nanoscale science and engineering will continue to impact security both nationally and globally in significant and far-reaching ways. The following list summarizes some key opportunities for the nano defense and security community: Translate nano properties to human scale devices and systems. Much of the hype surrounding nanotechnology has been muted by a lack of real-world examples demonstrating how unique nanoscale material properties can be translated into materials and devices with performance capabilities that are vastly enhanced relative to their bulk counterparts. Perfect nanoscale power systems. Realization of some of the most exciting security and defense applications of nanotechnology requires innovative strategies to power and mobilize nano devices against ambient molecular forces that are far greater at the nanoscale than they are at the human scale. To nanomachines, molecules of air, water and biological fluids appear as impenetrable walls of infinite thickness.

### No Bio Weaponry/Bio Terror---1NC/2AC

#### No Bioweapon threat---empirical consensus, technical challenges, and no scenario for extinction.

Marc-Michael **Blum 20**. Dr. Blum is working the in the field of analysis, decontamination, countermeasures and mitigation of chemical warfare agents with more than 15 years’ experience. "Corona and Bioterrorism: How Serious Is the Threat?" War on the Rocks. 6-22-2020. <https://warontherocks.com/2020/06/corona-and-bioterrorism-how-serious-is-the-threat/>

The novel coronavirus pandemic has put the threat of bioterrorism back in the spotlight. White supremacist chat rooms are [teeming with talk](https://www.businessinsider.com/coronavirus-white-supremacists-discussed-using-covid-19-as-bioweapon-2020-3?r=DE&IR=T) about “biological warfare.” ISIL even called the virus “[one of Allah’s soldiers](https://www.wsj.com/articles/what-jihadists-are-saying-about-the-coronavirus-11586112043)” because of its devastating effect on Western countries. According to a recent [memo](https://www.independent.co.uk/news/world/americas/coronavirus-terrorist-white-supremacy-fbi-bioterrorism-a9417296.html) by the U.S. Department of Homeland Security, terrorists are “[making] bioterrorism a popular topic among themselves.” Both the United Nations and the Council of Europe have warned of bioterrorist attacks. How serious is the threat? There is a long history of terrorists being fascinated by biological weapons, but it is also one of failures. For the vast majority, the **technical challenges** associated with weaponizing biological agents have **proven insurmountable**. The only reason this could change is if terrorists were to receive support from a state. Rather than panic about terrorists engaging in biological warfare, governments should be vigilant, secure their own facilities, and focus on strengthening international diplomacy. A **History of Failures** Biological warfare, which uses organisms and pathogens to cause disease, is [nearly **as old as war** itself](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1200679/). The first known use of biological agents as a weapon dates back to 600 B.C., when an ancient Greek leader poisoned his enemies’ water supply. Throughout the Middle Ages, especially during the time of the Black Death, it was common to hurl infected corpses into besieged cities. And during the two world wars, all major powers maintained biological weapons programs (although only Japan used them in combat). Among terrorists, however, the use of biological weapons has **been rarer**, although groups from nearly all ideological persuasions [have contemplated it](https://mitpress.mit.edu/books/toxic-terror). Recent examples include a plot to contaminate Chicago’s water supply in the 1970s; food poisoning by a religious cult in Oregon in the 1980s; and the stockpiling of ricin by members of the Minnesota Patriot Council during the 1990s. **No one died** in **any** of these instances. The same is true for the biological warfare programs of al-Qaeda and the Islamic State group. Both groups have sought to [buy, steal, or develop biological agents](https://www.jstor.org/stable/26369585?seq=1#metadata_info_tab_contents). For al-Qaeda, this seems to have been a priority in the 1990s, when its program was overseen by (then) deputy leader Ayman al-Zawahiri, a trained physician. With the Islamic State, evidence dates back to 2014, when Iraqi forces discovered thousands of files related to biological warfare on a detainee’s laptop. Yet **none of these efforts succeeded**. The only al-Qaeda plot in which bioterrorism featured prominently — the so-called “ricin plot” in England in 2002 — was interrupted at such an early stage that [none of the toxin](http://news.bbc.co.uk/2/hi/uk_news/4433499.stm) had actually been produced. The Islamic State’s most serious attempt, in 2017, involved a small amount of ricin, whose [**only fatality** was **the hamster**](https://www.dw.com/en/cologne-ricin-plotters-bought-a-hamster-to-test-biological-weapon/a-44804164) on which it was tested. Of the **tens of thousands** of people that jihadists have murdered, not a **single one** has died from biological agents. It may be no accident that the most lethal bioterrorist attack in recent decades was perpetrated by a scientist and government employee. In late 2001, the offices of several U.S. senators and news organizations received so-called “anthrax letters,” which killed five people and injured 17. Following years of investigation, the FBI identified the sender as [Bruce Ivins,](https://www.npr.org/templates/story/story.php?storyId=93194941&t=1591560313301) a PhD microbiologist and senior researcher at the U.S. Army’s Medical Research Institute of Infectious Diseases. Unlike the others, he was no amateur or hoaxer, but a trained expert with years of experience and full access to the world’s largest repository of lethal biological agents. **Technical Challenges** Ivins’ case helps to explain why so many would-be bioterrorists have failed. At a **technical level**, launching a sophisticated, large-scale bioterrorist attack involves a toxin or a pathogen — generally a bacterium or a virus — which needs to be **isolated** and **disseminated**. But this is more **difficult** than it seems. As well as advanced training in biology or chemistry, isolating the agent **requires significant experience**. It also has to be done in a **safe**, **contained** environment, to stop it from spreading within the terrorist group. Contrary to what [al-Qaeda said in one of its online magazines,](https://www.telegraph.co.uk/news/worldnews/7865978/Al-Qaeda-newspaper-Make-a-bomb-in-the-kitchen-of-your-mom.html) you **can’t** just make a **(biological) weapon** “in the **kitchen** of your mom!” In addition, there is the **challenge of dissemination**. Unless the agent is super-contagious, a powerful biological attack relies on a large number of initial infections in **perfect conditions**. In the case of the bacterium anthrax, for example, only spores of a **particular size** are likely to be effective in certain kinds of **weather**. State-sponsored programs often needed years of testing and experimentation to understand how their weapons could be used. Though not impossible, it is **unlikely** that terrorist groups possess the resources, stable environment, and patience to do likewise. **Doomsday Scenarios** Even if terrorists somehow succeeded, it is **nearly inconceivable** that the resulting “weapon” would be as powerful as the recent coronavirus, SARS-CoV-2. One of its uniquely devastating features has been that people are infectious while experiencing no symptoms. As it spread across the globe, there was no treatment, no vaccine, an incomplete understanding of its pathological modes of action, and no easy, cheap and widely available testing. It was the viral equivalent of a “zero-day exploit” — a cyber-attack that happens before any patch is available. None of the viruses on the U.S. Centers for Disease Control and Prevention’s list of the [**most dangerous biological agents**](https://emergency.cdc.gov/agent/agentlist-category.asp) could be easily “weaponized” or would have the same, **devastating effects** as SARS-CoV-2. Pathogenic viruses such as smallpox, Ebola, Marburg, and Lassa are extremely hard to find, isolate, and spread. Botulinum and ricin are dangerous toxins, but **not contagious**, while [Tularemia](https://www.cdc.gov/tularemia/index.html) cannot be transmitted from human to human. The plague is, of course, capable of causing pandemics, but most countries are nowadays [well prepared for this particular virus,](https://www.who.int/csr/resources/publications/plague/CSR_ISR_2000_1/en/index3.html) and will be able to limit — and cope with — localized outbreaks. This leaves only anthrax, a soil bacterium which is relatively easy to obtain. Even so, isolating a **highly pathogenic strain** is difficult. More importantly, anthrax is **not contagious**, and while its spores are durable and affected areas can be hard to de-contaminate, it is **unable to spread** on its own. Regarding SARS-CoV-2, it is important to distinguish between the possibility that the virus occurred naturally and escaped from a laboratory, and the idea that it was engineered for maximum infectiousness and deliberately released. The first remains a possibility, although other explanations are equally — if not more — plausible, while the second has been debunked by a [comprehensive examination](https://www.nature.com/articles/s41591-020-0820-9) in the journal Nature Medicine, which concluded that SARS-CoV-2 was “not a laboratory construct or a purposefully manipulated virus.” The chances that terrorists would be capable of engineering a virus such as SARS-CoV-2 **without access** to a state’s resources are **virtually zero.** If anything, the possibility of a lab escape — however remote — highlights the importance of [biosafety.](https://warontherocks.com/2020/06/a-guide-to-getting-serious-about-bio-lab-safety/) While governments have paid much attention to laboratories with the highest biosafety level (level 4), work on bat-born coronaviruses is regularly performed at lower levels (level 3, and even level 2), and should instead be subject to similar safety requirements. In sum, small-scale attacks using anthrax or other agents may be possible, but the risk of a highly advanced, weaponized pathogen that spreads among large populations — a **terrorist-initiated biological doomsday** — is **very low.** The only exception, of course, is if terrorists received support from a state, acted as its proxies, or were able to draw on its resources — as in Ivins’ case.

# 2NC – Fullertown R5

## Antitrust PIC

#### “do both” is antitrust duplication – the disputes collapse resources, effectiveness, and signaling

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

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

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

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

#### External laws don’t “expand the scope” even if they constrain the law.

Francisco Costa-Cabral and Orla Lynskey 17. Francisco Costa-Cabral, Emile Noël Fellow, NYU School of Law. Orla Lynskey, Assistant Professor, LSE Law Department. “Family ties: the intersection between data protection and competition in EU Law.” Common Market Law Review, 54 (1). pp. 11-50. ISSN 0165-0750. https://core.ac.uk/download/pdf/77615074.pdf

Secondly, data protection law can impose external limits on the enforcement of competition law, as a result of its status as a fundamental right. The right to data protection could, for instance, preclude the Commission from accepting commitments or remedies from undertakings that would interfere with that right. In such circumstances, data protection acts as an external constraint on competition law: it does not fit within the logic of competition, or align with its objectives. To date, the impact of the right to data protection on competition law has only been explored in relation to the rights of individuals who are subject to competition investigations.16 The Court of Justice of the EU (the Court) has nevertheless confirmed that the EU Charter constrains the actions of EU Institutions when they adopt legally binding measures. 17 This paper argues that such limitations also apply to the Commission when enforcing competition law. Again, this external constraint does not expand the material scope of competition law to incorporate public policy objectives: in this situation, data protection would not trigger the application of competition law but merely preclude or alter its application.

#### functional severance is bad – moots lit base and allows teams to shift goalposts through plan writing – both fry ground – here’s…

DOJ ND. “Business Resources”. https://www.justice.gov/atr/business-resources

The antitrust laws are enforced by both the Antitrust Division and the FTC’s Bureau of Competition. All criminal antitrust enforcement is handled by the Antitrust Division.

#### alternatives not subsets

Stephen G. Breyer 87. SCOTUS Justice since 1994. California Law Review Volume 75. Issue 3. Article 15. “Antitrust, Deregulation, and the Newly Liberated Marketplace”.

On this view, antitrust is not another form of regulation. Antitrustis an alternative to regulation and, where feasible, a better alternative.3To be more specific, the classicist first looks to the marketplace to protectthe consumer; he relies upon the antitrust laws to sustain market compe-tition. He turns to regulation only where free markets policed by anti-trust laws will not work-where he finds significant market "defects"that antitrust laws cannot cure. Only then is it worth gearing up thecumbersome, highly imperfect bureaucratic apparatus of classical regula-tion. Regulation is viewed as a substitute for competition, to be usedonly as a weapon of last resort-as a heroic cure reserved for a seriousdisease.

#### Legal code – antitrust requires Title 15 of US Code.

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

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

labor.

#### jurisdiction: the plan expands the doj and ftc role

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

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

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

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

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

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

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

## Anarchocommunism

#### Their theory structurally results in totalitarian rule because power corrupts –– anarhocommunism effectively overthrows capitalism just as well, so there’s only a risk to their strategy

Price, 13 – Wayne Price is a longtime anti-authoritarian political activist, in recent years he has helped educate some members of a new generation of radicals through his articles, lectures, and books. He is currently a member of Bronx Climate Justice North, a grassroots climate justice group based in the north Bronx, and the Metropolitan Anarchist Coordinating Council in New York City. is the author of three books: The Abolition of the State: Anarchist and Marxist Perspectives (AuthorHouse, 2007); Anarchism and Socialism: Reformism or Revolution? (Thoughtcrime Ink, 2010); and The Value of Radical Theory: An Anarchist Introduction to Marx’s Critique of Political Economy (AK Press, 2013). He regularly contributes to a number of websites. (“The Marxist Paradox: An Anarchist Critique”, December 2013, Anarkismo, available online at: <https://theanarchistlibrary.org/library/wayne-price-the-marxist-paradox-an-anarchist-critique> , accessed: Mar. 2021)//FI

Review of Ronald D. Tabor, The Tyranny of Theory: A Contribution to the Anarchist Critique of Marxism (2013). 349 pages. This is a review of Ronald D. Tabor, The Tyranny of Theory: A Contribution to the Anarchist Critique of Marxism (2013). Marxism, like anarchism, came out of movements for democracy, socialism, and working class liberation. Its goals were for a free, cooperative, classless, stateless, and nonoppressive society. Yet Marxism ended up establishing totalitarian, mass murdering, state capitalist, regimes. This is the paradox of Marxism. Why did this happen? An attempt to analyze this is made in this new book by Ron Tabor, a former Marxist and now an anarchist. wayne discusses Ron’s ideas. There is a paradox to Marxism, a central contradiction. Like anarchism, it originated in the 19th century movements for democracy, socialism, and working class liberation. Its stated goals were the end of capitalism, of classes, of the state, and of all other oppressions. Hundreds of millions of workers, peasants, and others have mobilized under its program, aiming for a better world. But what was the result? The first Marxist movement resulted in the social-democratic parties of Europe and elsewhere. These ended up supporting capitalism and opposing revolutions. They supported the existing state, bourgeois democracy, and Western imperialism and its wars. Currently they have abandoned all pretense of advocating a new social system. Lenin, Trotsky, and others sought to return to revolutionary Marxism. Their activities resulted in “Stalinism”: a series of monstrous, state capitalist, tyrannies, which killed millions of workers and peasants (and thousands of Communists). Currently these have collapsed into traditional capitalism. How did Marxism start off so well and end so badly? No doubt there have been “objective forces,” as the capitalist system pressures and distorts even the most liberatory doctrine. But isn’t this to be expected under capitalism? Which aspects of Marxism made it most vulnerable to these pressures? What was there in the original Marxism of Marx and Engels which lent itself to these terrible results? Ron Tabor is a good theorist to examine this vital question. For most of his adult life he was a Marxist. He was the leader of the unorthodox-Trotskyist Revolutionary Socialist League (1973—1989). Unlike most ex-Marxists, he has not turned to the right (to liberalism or neoconservatism) but to the left, becoming an anarchist. (Note: I was also a member of the RSL and knew Ron for many years. Personally, I went from anarchist-pacifism to unorthodox Trotskyism to revolutionary anarchism. Sometimes I refer to myself as a “Marxist-informed anarchist.”) Conclusions Ron’s conclusion is “Marxism, as I now see it, is a totalitarian doctrine and every attempt to implement the Marxian program, no matter how well-intentioned, will lead to the creation of authoritarian and state-dominated, if not totalitarian, societies” (pp. 9—10). Marxism’s basic totalitarianism, he claims, is especially rooted in its program to use the state to establish socialism, and in its Hegelian-derived philosophy.“Totalitarian” is a somewhat controversial term. What I think Ron means by it is a capitalist system, such as Nazi Germany or Stalinist Russia, in which the state is ruled by a single party with a set ideology, which seeks to (totally) dominate every aspect of society. It is unlike previous monarchies or police states which had let people alone if they did not challenge the government. Essentially I am in agreement with Ron’s argument, at least some of which I will attempt to summarize in this review (despite Ron’s clear style, this is a big and dense book, but I will do my best). However, I feel his argument has two limitations. The first comes early on when he points out that some Marxists try to defend their doctrine by arguing that there are valuable aspects of Marxism, such as “the class analysis of society, the analysis of capitalism,…the notions of ‘fetishism’ and ‘reification’…” (p. 20). Ron argues that even if parts of Marxism are true, this does not validate Marxism as a whole, as a total world view which encompasses all aspects of social and natural existence. “The apparent validity of many of these ideas does not mean that Marxism itself is correct, or is not at bottom totalitarian” (p. 20). This is true (that is, I agree with it). But he does not go on to state the obverse, which is also true: to say that Marxism as a whole world-view is incorrect and totalitarian does not mean that “many of these ideas” are not valid in themselves (that is, useful in practice for anarchists and others). In particular, I believe that Marx’s critique of political economy can be very useful for anarchists (and wrote a book saying so; price 2013). Actually, Ron repeatedly comes close to admitting this in sections of the book (as I will show), but he does not say it clearly; his focus is on discrediting Marxism. As a comparison, revolutionary anarchists reject liberalism as a total political philosophy. From John Stewart Mill to John Dewey, liberalism has advocated gradually working within the established system, never challenging the state or capitalism, in effect rationalizing an exploitative society. Anarchists strongly reject this. But liberalism has also advocated freedom of speech and association, political democracy, equality of races and genders, and other rights and freedoms. These, we anarchists have always agreed with. The failure of liberalism as a total program does not cause us to reject the good parts of its program (as many Marxists have, sneering at “bourgeois democratic rights”). Neither do the virtues of these positive ideas lead us to accept liberalism as a whole. A second, related, problem is that Ron does not recognize that there is a radically democratic side to Marxism, as expressed in its original goals of a classless, stateless, society. Otherwise, Ron and I would never have been attracted to Marxism in the first place. If this were not true, there would be no “paradox” to Marxism. After all, Ron would not bother to write a big book demonstrating that Nazism, say, was really totalitarian! The Nazis openly, proudly, announced it. From William Morris to Rosa Luxemburg and onwards, there has been a distinct minority (but only a minority) which interpreted Marxism in a way which was libertarian, democratic, humanistic, and working class. This included the council communists, the “Johnson-Forrest Tendency,” the early Socialisme ou Barbarie, autonomous Marxists, and “Left Communists.” I do not believe that this tendency is Marxistically “correct” while the authoritarian social democrats and Marxist-Leninists are “wrong”. Yet it is empirical reality that some people have regarded themselves as Marxists while holding a politics very close to anarchism. As an anarchist, I would argue that the libertarian and the authoritarian Marxists each base themselves in real, if contradictory, aspects of Marxism. The State, the Commune, and the Dictatorship Marx agreed with the anarchists that the state was essentially a repressive institution which served a ruling class, and oppressed the rest of society. A cooperative, free and equal, society would have abandoned the state altogether. From there they differ. Marx held that the working class and its allies would seize the state, or would abolish the existing state and create its own state. The state would repress the capitalists and their supporters. The state of the workers would take over the economy, building on the concentration, centralization, and statification of capitalism. It would nationalize all or most of the economy into a centralized system (centralization implies a few at the center and most people at the periphery). Over time, this centralized state would supposedly cease to be a “state.” It would become a noncoercive, benevolent, institution, doing “the administration of things, not people” (as if things could be administered without dominating people). It is not surprising that such a program, when put into practice, has repeatedly resulted in totalitarianism. As Ron says, if a revolutionary party puts all its efforts into building a new state, while expecting that state to eventually dissolve automatically (without anyone working at dissolving it), then what will result will be…a state. Instead, anarchists proposed the federation of self-managed industries, cooperatives, and communes.Kropotkin warned in 1910, “…To hand over to the state all the main sources of economic life…as also the management of all the main branches of industry…would mean to create a new instrument of tyranny. State capitalism would only increase the power of bureaucracy and capitalism” (1975; pp 109—110). Ron comments on Marx’s writings about the uprising of the Paris Commune in 1871. Marx endorsed the Commune’s radically democratic structure as a forerunner of the communist revolution. Engels called it an example of the “dictatorship of the proletariat.” This is frequently cited as a libertarian-democratic aspect of Marx’s Marxism. Like other anarchists, Ron downplays the significance of the Commune for Marxism. “Marx slides over the contradiction between his and Engels commitment to centralization and the Commune’s commitment to decentralization….Marx and Engels’ attempt to amalgamate the Commune with their idea of the dictatorship of the proletariat is questionable, at best” (pp. 73—74). Unlike Ron and many other anarchists, I do not doubt Marx’s sincerity in his praise of the very democratic Paris Commune, or the Marxists who base their politics on it. But I think that there are limitations to Marx’s interpretation. I would add to Ron’s criticism, that Marx praised it only as an extremely democratic version of representative democracy (election and recall of officials by neighborhood sections; workers’ wages for officials; etc.). At no time (ever) did Marx or Engels raise the value of face-to-face, local, direct democracy (in the sections or in the worker-managed industries). Anarchists are not necessarily against the election of representatives or delegates, but insist that this be limited and be rooted in a thriving direct democracy at the local level. Further, no sooner was the Commune crushed, then Marx redoubled his efforts to get the First International to promote workers’ electoral parties throughout Europe, to run in elections and try to take over existing states. This seems to me to be the opposite of the revolutionary-libertarian meaning of the Paris Commune. Several times Marx and Engels said that it was possible for current states (of England, the US, or France) to be peacefully and legally taken over by the workers through elections (although they sometimes modified this by saying that the bourgeoisie would probably respond with a violent attempt at counterrevolution). Like anarchists, libertarian Marxists generally reject electoral strategies. Ron attacks Marx and Engels use of the term “dictatorship of the proletariat” as advocacy of “a dictatorial state” (p. 286). Here I must disagree with Ron. Marx lived at a time when it was not uncommon to refer to the “dictatorship” of a parliament, or of “the people” or “the Democracy.” The term did not necessarily mean the tyranny of one person or of a party. Hal Draper (1986) has checked each of the 12 times Marx or Engels used the term, and he concluded that they meant essentially “the rule of the working class,” neither more nor less. They did not mean any specific (despotic) form of state. In fact Marx raised the idea of the “dictatorship” (rule) of a whole class precisely in opposition to the Blanquists’ goal of a dictatorship by their minority revolutionary party. However, as time went on, the original term changed its meaning (even though Engels had specifically tied the term to the radically-democratic Paris Commune). If not a one-party dictatorship, Marx had advocated a centralized state. As Ron points out, “…a centralized state run directly and democratically by the entirety or even by the majority of the working class, is a contradiction in terms and impossible to achieve” (p. 308). Virtually all the Marxists after Engels interpreted “dictatorship of the proletariat” to mean repressive rule. This was especially true after the Russian Revolution, when the phrase became a justification for the Bolsheviks’ police state. There was only the significant exception of Rosa Luxemburg, who still used the old, democratic, class meaning (Draper 1987). In brief, Ron is right to say that Marx’s program of taking state power and statifying the economy points toward totalitarianism. Yet I think there remain some genuine democratic and libertarian aspects of Marxism. (Anarchists are not against the idea of the workers and their allies “taking power” in the sense of setting up a non-state federation of workplace councils, neighborhood assemblies, and popular militias. These would get rid of the state and capitalism, and would organize a new society. What anarchists oppose is the creation of a new socially-alienated, bureaucratic-military, state. Many libertarian Marxists agree with this approach.)

#### additional link to the vanguard party but I think we have enough

Anarchy.be, ND – [\*\*edited for gendered language, marked in brackets] These two important anarchist archives, Anarchief (Ghent, B), and AAA (Anarchist Archives Appelscha, NL), mainly contain books, brochures and magazines, in addition to catalogs of anarchist publications / publishers, posters and archival documents in the stricter sense of the word ( minutes of meetings, correspondence, loose-leaf pamphlets, postcards ...). (“H.5.9 What are vanguard parties effective at?”, ND, Anarchy.be, available online at: <http://www.anarchy.be/faq/secH5.html#sech59> , accessed: Mar. 2021)//FI

As we discussed the last section, vanguard parties are not efficient as agents of revolutionary change. So, it may be asked, what are vanguard parties effective at? If they are harmful to revolutionary struggle, what are they good at? The answer to this is simple. No anarchist would deny that vanguard parties are extremely efficient and effective at certain things, most notably reproducing hierarchy and bourgeois values into so-called "revolutionary" organisations and movements. As Murray Bookchin argues, the party "is efficient in only one respect -- in moulding society in its own hierarchical image if the revolution is successful. It recreates bureaucracy, centralisation and the state. It fosters the very social conditions which justify this kind of society. Hence, instead of 'withering away,' the state controlled by the 'glorious party' preserves the very conditions which 'necessitate' the existence of a state -- and a party to 'guard' it." [Post-Scarcity Anarchism, pp. 197-8] Thus, by being structured along hierarchical lines that reflect the very system that it professes to oppose, the vanguard party very "effectively" reproduces that system within both the current radical social movements and any revolutionary society that may be created. This means that once in power, it shapes society in its own image. Ironically, this tendency towards conservatism and bureaucracy was noted by Trotsky: "As often happens, a sharp cleavage developed between the classes in motion and the interests of the party machines. Even the Bolshevik Party cadres, who enjoyed the benefit of exceptional revolutionary training, were definitely inclined to disregard the masses and to identify their own special interests and the interests of the machine on the very day after the monarchy was overthrown. What, then, could be expected of these cadres when they became an all-powerful state bureaucracy?" [Stalin, vol. 1, p. 298] In such circumstances, it is unsurprising that urging party power and identifying it with working class power would have less than revolutionary results. Discussing the Bolsheviks in 1905 Trotsky points out this tendency existed from the start: "The habits peculiar to a political machine were already forming in the underground. The young revolutionary bureaucrat was already emerging as a type. The conditions of conspiracy, true enough, offered rather merge scope for such formalities of democracy as electiveness, accountability and control. Yet, undoubtedly the committeemen narrowed these limitations considerably more than necessity demanded and were far more intransigent and severe with the revolutionary workingmen than with themselves, preferring to domineer even on occasions that called for lending an attentive eat to the voice of the masses." [Op. Cit., p. 101] He quotes Krupskaya on these party bureaucrats, the "committeemen." Krupskaya argues that "as a rule" they "did not recognise any party democracy" and "did not want any innovations. The 'committeeman' did not desire, and did not know how to, adapt himself to rapidly changing conditions." [quoted by Trotsky, Op. Cit., p. 101] This conservatism played havoc in the party during 1917, incidentally. It would be no exaggeration to argue that the Russian revolution occurred in spite of, rather than because of, Bolshevik organisational principles (see next section). These principles, however, came into their own once the party had seized power, ensuring the consolidation of bureaucratic rule by an elite. That a vanguard party helps to produces a bureaucratic regime once in power should not come as a surprise. If the party, to use Trotsky's expression, exhibits a "caste tendency of the committee[people]~~men~~" can we be surprised if once in power it reproduces such a tendency in the state it is now the master of? [Op. Cit., p. 102] And this "tendency" can be seen today in the multitude of Trotskyist sects that exist.

#### [McCarraher]

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

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

#### **Anarchist communes can resist top-down organization and capitalism through guerilla action – but the AFF crushes them.**

Dalessandro, 20 – Francesco Dalessandro, writer for The Fifth Estate (“The Forgotten Anarchist Commune in Manchuria”, The Fifth Estate, Fall 2020, available online at: <https://theanarchistlibrary.org/library/francesco-dalessandro-the-forgotten-anarchist-commune-in-manchuria> , accessed: Mar. 2021)//FI

During World War II the famous Hollywood filmmaker Frank Capra was commissioned by the U.S. Military to make a seven-part documentary film series titled “Why We Fight.” Its purpose was to counter Nazi propaganda films and justify U.S. involvement in the war to soldiers and civilians. The first film in the series, “Prelude to War,” locates the origin of the conflict in the Japanese invasion and conquest of Manchuria in 1929 through 1932. But there were less known equally significant goings on in Manchuria that the film does not present. These have also been left out of most books and articles covering the history of the area. In those years in Manchuria, the Japanese, Korean, Chinese and Soviet armies (the last with more or less undercover intervention), faced each other. All of them fought against the Army of the North, the military force of the Manchurian Anarchist Commune that was established in the late 1920s in the north of Manchuria. The Manchurian Commune was a revolutionary experiment as important as the Magonist Revolution of Baja California of 1911, the Makhnovist insurgency in Ukraine in 1918, and the Spanish Revolution of 1936. Yet, the important part anarchists played in that great social experiment is all too often ignored or downplayed. For centuries, Manchuria was a refuge for immigrants and exiles from Korea, Russia, China, Japan, Vietnam, and the Philippines. In 1910, the Japanese government began its annexation of Korea. Many Koreans fled to Manchuria, among them, a large number of anarchists who were very active in the exile communities. By the mid-1920s, Korean exiles established three autonomous self-governing districts—the Jeongen, Chanren, and Shinmin districts—all free from the Japanese presence and from the Chinese warlords and local Manchurian feudal lords. They developed independently of governments or warlords for several years due to a combination of factors including the engagement of the local population, the weakness of the Chinese state, the distance of the Japanese empire, and the ruggedness of the mountain terrain. The districts formed a self-defense military force, the Korean Independence Army, HG, (the Army of the North) to fight for independence from Japan and to protect the areas that had been liberated against their enemies. The HG was led by General Kim Jaojin (or Kim Jwa-Jin). Kim was among those who abhorred and fiercely resisted Japanese colonization of Korea. In 1920, he joined the Korean Independence Army (MA), a guerrilla force where he demonstrated great leadership in fighting the Japanese troops. At the same time, he was attracted to anarchism by his relative Kim Jong-Jin. In 1925, Korean anarchists proposed that the guerrilla fighters led by Kim Jwa-jin, Kim Hyok and No Ho Choi Jung-so and others, form an independent self-governing New Popular Society in the Shinmin district of Manchuria. The guerrillas accepted the proposal and began working to implement it. From the beginning, many anarchists were part of the project including Kim Jo-ann and Cheoung Shin. The project quickly gained the support of large numbers of local peasants and workers because of its foundation on self-organization. Among anarchists, Kim Jao-jin became known as the Korean Makhno because, like the Ukrainian anarchist fighter, he combined military skills with dedication to creating independent, self-governing producer and consumer cooperatives and self-defense associations based on the principles of individual freedom and social equality for workers and peasants. The peasants and workers were invited and helped to establish their own systems of self management and economic cooperation and the necessary organizational structures. They created a commune for what they hoped would be a sustainable libertarian revolution, emphasizing autonomy in the context of cooperation within and between those with various productive capacities. The commune aimed to implement cooperative activities such as improving the operation and management of farms, collective buying and selling, and establishing mutual aid societies and other organizations people needed. In addition, cultural and educational activities were promoted through the establishment of primary and secondary schools to encourage individual and social development of necessary manual skills and intellectual knowledge. In 1929, the Shinmin District was renamed the Association of the Korean People in Manchuria (KPAM). Grassroots discussions and decisions occurred in village meetings that sent delegates to district-wide and confederal conferences. There were eight specialized departments for the zone: self-defense, agriculture, education, finance, propaganda, youth, public health and general affairs. The delegates at all levels were ordinary peasants and workers whose official salaries were similar to those of other workers. They did not acquire any new privilege while taking their turns serving in the administrative departments. Ha Ki-Rak, a Korean anarchist historian, reports that the HMY-M ( the Korean Anarcho-Communist Federation ) considered these structures as reinforcing anarchist ideals: “Each assembly decides action plans to discuss the budget of the population and approves the balance-sheet following the principle: from each according to his/her capacity and to each according to his/her needs.” The Commune was able to expand to neighboring districts such as the Heilongjiang (Black Dragon River) and came to include a triangular area bounded by the Amur River to the East, the valley of the river Sungchangho to the West, and the road to Harbin-Hunchun to the South. It encompassed 13,500 square miles and was home to some 2,000,000 people. However, by the beginning of the 1930s, the situation of the Commune began to erode. The Japanese government sent 35,000 imperial troops into Manchuria and installed a puppet government, the Manchukuo in 1931. At the same time, the Korean Communist Party, directed from Moscow, began infiltrating the Commune and systematically assassinating its anarchist leaders. Kim Jwa-jin was murdered in January 1930. Together, the Japanese Army, the North Korean Communist Army, and the Communist Party infiltrators, along with some Chinese troops surrounded the Commune from the outside and inside and eventually destroyed it. Most surviving anarchists went into hiding, but continued to engage in guerrilla warfare during World War II. After the war ended in 1945, anarchists experienced repression in both North and South Korea. Nevertheless, the traditions of anarchism are once again inspiring radicals on the peninsula. Although some books and articles dealing with this important revolutionary episode have been published during the last decade or so, much more historical research about it is necessary because it constitutes an essential part of anarchist history of struggles for liberation and of radical movements in the 20th century. Knowing about such history can help us imagine new ways of resisting the elites trying to carve the world and our minds into their spheres of influence.

#### Central management triggers proliferation of misinformation that, in agriculture, triggers recurring famines that kill millions

Meng, et. al 15 – Xin Meng FASSA is a Chinese economist and professor at the Research School of Economics, College of Business and Economics, Australian National University. Nancy Qian was an associate professor at Yale at time of writing, presently works as the James J. O'Connor Professor of Managerial Economics and Decision Sciences at Northwestern’s Kellogg School of Management. Pierre Yared is the MUTB Professor of International Business and the Vice Dean for Executive Education at Columbia Business School. His research, which has been published in leading academic journals, focuses on macroeconomic policy, political economy, and growth. (“The Institutional Causes of China’s Great Famine, 1959–1961”, Review of Economic Studies, January 15, available online at: <https://www0.gsb.columbia.edu/faculty/pyared/papers/famines.pdf> , accessed: Mar. 2021)//FI

During the 20th century, millions have perished from famine, and over 60% of total famine mortality has occurred in centrally planned economies. The most deadly famine in history was the Chinese Great Famine, which in just a few years, killed up to 45 million individuals. This article proposes that an inflexible and progressive government procurement policy is necessary for explaining the famine. Other explanations for the famine cannot be easily reconciled with the patterns of rural inequality in famine that we document, and the presence of rural inequality is necessary to generate such a massive famine given high average rural food availability. Our results show that the inflexible and progressive procurement policy contributed to 32–43% of total famine mortality. This means that our mechanism is quantitatively important. At the same time, it leaves much room for the contribution of other factors for famine mortality, such as the political factors that have been previously emphasized by famine scholars. Another way of interpreting our results is to say that absent these other factors, famine mortality could have been 57–68% lower. There are several important points to keep in mind for understanding the role of inflexibility in causing the famine. The inability to aggregate information about true production would not have only caused the the government to over-procure, but it also delayed its ability to respond to famine by sending replenishments back to the affected regions. Given the data limitations, we are unable to distinguish the effect of over-procurement from the effect of delayed replenishments. Both effects are captured in our reduced form analysis and contribute to our back-of-the-envelope calculations of the quantitative contribution of inflexible procurement. Our results do not mean that inflexible procurement must lead to famine. In the Chinese context, inflexible procurement caused a famine because the government miscalculated grain projections while aiming to procure an extremely large proportion of surplus production.After the famine, perhaps with the realization that some degree of government miscalculation is inevitable, the government lowered the procurement rate. As long as the government was committed to its inflexible procurement regime, lowering aggregate procurement goals was the only policy instrument available for avoiding another famine. Thus, our theory of the cause of the famine has different policy implications from the theories highlighted in previous studies, which have mostly focused on the zealous pursuit of misguided GLF policies. If one believes that the main contributor was bad GLF policies and political radicalism during the late 1950s, then China would have no more famines once GLF policies were abandoned. In contrast, if one believes that inflexibility was an important contributor, then the Chinese government would have had to take additional measures, or risk another famine (albeit one of smaller magnitude if political radicalism has subsided) the next time there was an unanticipated production shock. The fact that the government permanently reduced procurement rates after GLF policies were abandoned suggests that post-famine Chinese policymakers may have understood the risks inherent to an inflexible system. It is important to note that the context of our study has many specific institutional features, and at the same time recognize that the inflexibility we describe stems from the fundamental problem of mistrust—farmers, who must give all surplus production to the government, do not have the correct incentives to truthfully report production and local bureaucrats may under- or over-report production depending on whether they curry the favour of their neighbours or the officials in the upper levels of government. The problem we highlight is, therefore, a generic problem for any regime where the farmer is not the residual claimant of his production. The most essential ingredients for our mechanism—the commitment to central planning, the incentives for regional bureaucrats and peasants to misreport production and to shirk, the inability to quickly aggregate, and respond to new information—are common to several other centrally planned economies of the 20th century. For example, we believe that our study provides potentially generalizable insights for understanding the causes of the Soviet Famine during 1932–1933, which killed up to 6.5 million people in just one year (Davies and Wheatcroft, 2004). There is a consensus that high government procurement from rural areas caused the famine. Like the Chinese case, the most conservative estimates of rural retention in the most severely stricken Soviet state, the Ukraine, show that average rural food availability after procurement was deducted was approximately 170 kg/person during the worst year of the famine (Conquest, 1987). This provides a diet of approximately 1,671 calories per day. While it is not a rich diet, it is much more than the level needed to avoid the high famine mortality rates experienced by the Ukraine. Also, as in the case of China, the data suggest similar spatial patterns in mortality rates—they are higher in more productive regions.72 These provocative similarities suggest that the role of the inflexible procurement policy in other historical famines like the Soviet Famine is a worthy topic of future research. Similarly, it is also important to develop a more generalized framework for understanding the conditions under which rigid food distribution mechanisms in centrally planned economies contribute to famine. The evidence offered in this study takes a first step in this agenda.

#### Their theory structurally results in totalitarian rule because power corrupts –– anarchocommunism effectively overthrows capitalism just as well, so there’s only a risk to their strategy

Price, 13 – Wayne Price is a longtime anti-authoritarian political activist, in recent years he has helped educate some members of a new generation of radicals through his articles, lectures, and books. He is currently a member of Bronx Climate Justice North, a grassroots climate justice group based in the north Bronx, and the Metropolitan Anarchist Coordinating Council in New York City. is the author of three books: The Abolition of the State: Anarchist and Marxist Perspectives (AuthorHouse, 2007); Anarchism and Socialism: Reformism or Revolution? (Thoughtcrime Ink, 2010); and The Value of Radical Theory: An Anarchist Introduction to Marx’s Critique of Political Economy (AK Press, 2013). He regularly contributes to a number of websites. (“The Marxist Paradox: An Anarchist Critique”, December 2013, Anarkismo, available online at: <https://theanarchistlibrary.org/library/wayne-price-the-marxist-paradox-an-anarchist-critique> , accessed: Mar. 2021)//FI

Review of Ronald D. Tabor, The Tyranny of Theory: A Contribution to the Anarchist Critique of Marxism (2013). 349 pages. This is a review of Ronald D. Tabor, The Tyranny of Theory: A Contribution to the Anarchist Critique of Marxism (2013). Marxism, like anarchism, came out of movements for democracy, socialism, and working class liberation. Its goals were for a free, cooperative, classless, stateless, and nonoppressive society. Yet Marxism ended up establishing totalitarian, mass murdering, state capitalist, regimes. This is the paradox of Marxism. Why did this happen? An attempt to analyze this is made in this new book by Ron Tabor, a former Marxist and now an anarchist. wayne discusses Ron’s ideas. There is a paradox to Marxism, a central contradiction. Like anarchism, it originated in the 19th century movements for democracy, socialism, and working class liberation. Its stated goals were the end of capitalism, of classes, of the state, and of all other oppressions. Hundreds of millions of workers, peasants, and others have mobilized under its program, aiming for a better world. But what was the result? The first Marxist movement resulted in the social-democratic parties of Europe and elsewhere. These ended up supporting capitalism and opposing revolutions. They supported the existing state, bourgeois democracy, and Western imperialism and its wars. Currently they have abandoned all pretense of advocating a new social system. Lenin, Trotsky, and others sought to return to revolutionary Marxism. Their activities resulted in “Stalinism”: a series of monstrous, state capitalist, tyrannies, which killed millions of workers and peasants (and thousands of Communists). Currently these have collapsed into traditional capitalism. How did Marxism start off so well and end so badly? No doubt there have been “objective forces,” as the capitalist system pressures and distorts even the most liberatory doctrine. But isn’t this to be expected under capitalism? Which aspects of Marxism made it most vulnerable to these pressures? What was there in the original Marxism of Marx and Engels which lent itself to these terrible results? Ron Tabor is a good theorist to examine this vital question. For most of his adult life he was a Marxist. He was the leader of the unorthodox-Trotskyist Revolutionary Socialist League (1973—1989). Unlike most ex-Marxists, he has not turned to the right (to liberalism or neoconservatism) but to the left, becoming an anarchist. (Note: I was also a member of the RSL and knew Ron for many years. Personally, I went from anarchist-pacifism to unorthodox Trotskyism to revolutionary anarchism. Sometimes I refer to myself as a “Marxist-informed anarchist.”) Conclusions Ron’s conclusion is “Marxism, as I now see it, is a totalitarian doctrine and every attempt to implement the Marxian program, no matter how well-intentioned, will lead to the creation of authoritarian and state-dominated, if not totalitarian, societies” (pp. 9—10). Marxism’s basic totalitarianism, he claims, is especially rooted in its program to use the state to establish socialism, and in its Hegelian-derived philosophy.“Totalitarian” is a somewhat controversial term. What I think Ron means by it is a capitalist system, such as Nazi Germany or Stalinist Russia, in which the state is ruled by a single party with a set ideology, which seeks to (totally) dominate every aspect of society. It is unlike previous monarchies or police states which had let people alone if they did not challenge the government. Essentially I am in agreement with Ron’s argument, at least some of which I will attempt to summarize in this review (despite Ron’s clear style, this is a big and dense book, but I will do my best). However, I feel his argument has two limitations. The first comes early on when he points out that some Marxists try to defend their doctrine by arguing that there are valuable aspects of Marxism, such as “the class analysis of society, the analysis of capitalism,…the notions of ‘fetishism’ and ‘reification’…” (p. 20). Ron argues that even if parts of Marxism are true, this does not validate Marxism as a whole, as a total world view which encompasses all aspects of social and natural existence. “The apparent validity of many of these ideas does not mean that Marxism itself is correct, or is not at bottom totalitarian” (p. 20). This is true (that is, I agree with it). But he does not go on to state the obverse, which is also true: to say that Marxism as a whole world-view is incorrect and totalitarian does not mean that “many of these ideas” are not valid in themselves (that is, useful in practice for anarchists and others). In particular, I believe that Marx’s critique of political economy can be very useful for anarchists (and wrote a book saying so; price 2013). Actually, Ron repeatedly comes close to admitting this in sections of the book (as I will show), but he does not say it clearly; his focus is on discrediting Marxism. As a comparison, revolutionary anarchists reject liberalism as a total political philosophy. From John Stewart Mill to John Dewey, liberalism has advocated gradually working within the established system, never challenging the state or capitalism, in effect rationalizing an exploitative society. Anarchists strongly reject this. But liberalism has also advocated freedom of speech and association, political democracy, equality of races and genders, and other rights and freedoms. These, we anarchists have always agreed with. The failure of liberalism as a total program does not cause us to reject the good parts of its program (as many Marxists have, sneering at “bourgeois democratic rights”). Neither do the virtues of these positive ideas lead us to accept liberalism as a whole. A second, related, problem is that Ron does not recognize that there is a radically democratic side to Marxism, as expressed in its original goals of a classless, stateless, society. Otherwise, Ron and I would never have been attracted to Marxism in the first place. If this were not true, there would be no “paradox” to Marxism. After all, Ron would not bother to write a big book demonstrating that Nazism, say, was really totalitarian! The Nazis openly, proudly, announced it. From William Morris to Rosa Luxemburg and onwards, there has been a distinct minority (but only a minority) which interpreted Marxism in a way which was libertarian, democratic, humanistic, and working class. This included the council communists, the “Johnson-Forrest Tendency,” the early Socialisme ou Barbarie, autonomous Marxists, and “Left Communists.” I do not believe that this tendency is Marxistically “correct” while the authoritarian social democrats and Marxist-Leninists are “wrong”. Yet it is empirical reality that some people have regarded themselves as Marxists while holding a politics very close to anarchism. As an anarchist, I would argue that the libertarian and the authoritarian Marxists each base themselves in real, if contradictory, aspects of Marxism. The State, the Commune, and the Dictatorship Marx agreed with the anarchists that the state was essentially a repressive institution which served a ruling class, and oppressed the rest of society. A cooperative, free and equal, society would have abandoned the state altogether. From there they differ. Marx held that the working class and its allies would seize the state, or would abolish the existing state and create its own state. The state would repress the capitalists and their supporters. The state of the workers would take over the economy, building on the concentration, centralization, and statification of capitalism. It would nationalize all or most of the economy into a centralized system (centralization implies a few at the center and most people at the periphery). Over time, this centralized state would supposedly cease to be a “state.” It would become a noncoercive, benevolent, institution, doing “the administration of things, not people” (as if things could be administered without dominating people). It is not surprising that such a program, when put into practice, has repeatedly resulted in totalitarianism. As Ron says, if a revolutionary party puts all its efforts into building a new state, while expecting that state to eventually dissolve automatically (without anyone working at dissolving it), then what will result will be…a state. Instead, anarchists proposed the federation of self-managed industries, cooperatives, and communes.Kropotkin warned in 1910, “…To hand over to the state all the main sources of economic life…as also the management of all the main branches of industry…would mean to create a new instrument of tyranny. State capitalism would only increase the power of bureaucracy and capitalism” (1975; pp 109—110). Ron comments on Marx’s writings about the uprising of the Paris Commune in 1871. Marx endorsed the Commune’s radically democratic structure as a forerunner of the communist revolution. Engels called it an example of the “dictatorship of the proletariat.” This is frequently cited as a libertarian-democratic aspect of Marx’s Marxism. Like other anarchists, Ron downplays the significance of the Commune for Marxism. “Marx slides over the contradiction between his and Engels commitment to centralization and the Commune’s commitment to decentralization….Marx and Engels’ attempt to amalgamate the Commune with their idea of the dictatorship of the proletariat is questionable, at best” (pp. 73—74). Unlike Ron and many other anarchists, I do not doubt Marx’s sincerity in his praise of the very democratic Paris Commune, or the Marxists who base their politics on it. But I think that there are limitations to Marx’s interpretation. I would add to Ron’s criticism, that Marx praised it only as an extremely democratic version of representative democracy (election and recall of officials by neighborhood sections; workers’ wages for officials; etc.). At no time (ever) did Marx or Engels raise the value of face-to-face, local, direct democracy (in the sections or in the worker-managed industries). Anarchists are not necessarily against the election of representatives or delegates, but insist that this be limited and be rooted in a thriving direct democracy at the local level. Further, no sooner was the Commune crushed, then Marx redoubled his efforts to get the First International to promote workers’ electoral parties throughout Europe, to run in elections and try to take over existing states. This seems to me to be the opposite of the revolutionary-libertarian meaning of the Paris Commune. Several times Marx and Engels said that it was possible for current states (of England, the US, or France) to be peacefully and legally taken over by the workers through elections (although they sometimes modified this by saying that the bourgeoisie would probably respond with a violent attempt at counterrevolution). Like anarchists, libertarian Marxists generally reject electoral strategies. Ron attacks Marx and Engels use of the term “dictatorship of the proletariat” as advocacy of “a dictatorial state” (p. 286). Here I must disagree with Ron. Marx lived at a time when it was not uncommon to refer to the “dictatorship” of a parliament, or of “the people” or “the Democracy.” The term did not necessarily mean the tyranny of one person or of a party. Hal Draper (1986) has checked each of the 12 times Marx or Engels used the term, and he concluded that they meant essentially “the rule of the working class,” neither more nor less. They did not mean any specific (despotic) form of state. In fact Marx raised the idea of the “dictatorship” (rule) of a whole class precisely in opposition to the Blanquists’ goal of a dictatorship by their minority revolutionary party. However, as time went on, the original term changed its meaning (even though Engels had specifically tied the term to the radically-democratic Paris Commune). If not a one-party dictatorship, Marx had advocated a centralized state. As Ron points out, “…a centralized state run directly and democratically by the entirety or even by the majority of the working class, is a contradiction in terms and impossible to achieve” (p. 308). Virtually all the Marxists after Engels interpreted “dictatorship of the proletariat” to mean repressive rule. This was especially true after the Russian Revolution, when the phrase became a justification for the Bolsheviks’ police state. There was only the significant exception of Rosa Luxemburg, who still used the old, democratic, class meaning (Draper 1987). In brief, Ron is right to say that Marx’s program of taking state power and statifying the economy points toward totalitarianism. Yet I think there remain some genuine democratic and libertarian aspects of Marxism. (Anarchists are not against the idea of the workers and their allies “taking power” in the sense of setting up a non-state federation of workplace councils, neighborhood assemblies, and popular militias. These would get rid of the state and capitalism, and would organize a new society. What anarchists oppose is the creation of a new socially-alienated, bureaucratic-military, state. Many libertarian Marxists agree with this approach.)

## Case

#### The regulations counterplan has a second net benefit – the 1AC’s premise that business firms are illegal because they are anticompetitive presumes that acting anticompetitively is per se bad and coordination is per se anticompetitive. We are impact turning their framing of coordination. Our thesis is that worker coordination is good even though it can be labeled anticompetitive. Vote negative to ban the domination of firms because of its immoral positioning of power, rather than economic premises that competition is good and maintaining markets is necessary, that’s Paul. That acts as an independent link to the K – it proves that the AFF’s top-down market strategies will always prosecute anarchocommunists, which circumvents a risk of AFF solvency because it re-creates Stalinism.

#### Two links:

#### 1 – Anticompetition – 1NC Paul evidence says “However, proposals to reform antitrust, or to reconceptualize it, have thus far generally stopped short of questioning the basic premise that its primary function is to promote competition. At least officially, if increasingly uneasily, competition is still king. To be sure, many posit that antitrust performs this stated function badly, or does not perform it at all in certain markets.5 Even when reintroducing values such as fairness and deconcentrating power, for the most part the reform camp has characterized those values as flowing from—or at least coextensive with—promoting or protecting competition. Thus, the political debate over antitrust has been characterized by all sides claiming the idea of competition”. The fact that the 1AC keeps the concept around, even if combined with others, means it can’t be a radical break.

Sanjukta Paul 20. Wayne State University Law School. “Recovering the Moral Economy Foundations of the Sherman Act”. (DRAFT), 131 YALE L.J. \_\_ (FORTHCOMING)Yale Law Journal, (Volume 131). Accessed: 9/26/2021. https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3564452

The legislative history of the Sherman Act, particularly when read in light of its common law background and popular genesis, supports the conclusion that legislators acted on the economic vision of the antimonopoly movement. Specifically, it supports the core prescription to maintain dispersed economic coordination rights. This prescription in turn implies containing domination (for instance, on the part of the trusts); accommodating democratic coordination (for instance, among workers and small producers); and maintaining norms of fair competition, as the common law did. This conclusion emerges relatively naturally once one dispenses with—or at least softens—the imputation of a self-regulating market ideal to legislators: from a moral-economy perspective, there is no inconsistency between accommodating some forms of economic coordination while prohibiting or containing others, so long as coherent normative criteria govern the choices between. While I do not deny that the notion of a selfregulating market was also present in the air that legislators breathed, or claim that it is wholly irrelevant to understanding some of their statements, I offer this account as a corrective to prevalent interpretations that foreground it.

Interpretations of the Sherman Act’s legislative history in recent decades have often revolved around Robert Bork’s highly influential reading of the genesis of the Sherman Act as aiming at (what he called) “consumer welfare.” 124 As Christopher Leslie put it, a “clear consensus exists among economic historians and legal scholars that Bork misconstrued the legislative history of the Sherman Act.”125 In a significant intervention, Robert H. Lande argued that legislators were after neither productive nor allocative efficiency, but aimed to protect true consumer welfare (rather than Bork’s misleading interpretation of the concept)—that is, to prevent consumers from paying supracompetitive prices (and secondarily, to prevent small sellers from receiving infracompetitive prices).126 Lande’s challenge to Bork, together with some others, preserved ideal competitive markets as the basic normative benchmark for antitrust.127 Other challenges to Bork’s reading were based in an interest group analysis of the legislative origins of the statute, attacking Bork’s argument from the premise that a coherent logic cannot be found in the legislative history.128 Some commentators, notably Christopher Grandy, have pointed out that the legislative debates, including in their reference to the common law, showed “an independent concern for fair competition” and for small producers rather than consumers, casting doubt on the consumer welfare theory. 129

The interpretation offered here challenges Bork’s on a different basis, and suggests a more basic divergence from it. Congress did not aim primarily at consumer welfare, nor productive efficiency, nor even competitive markets in an abstract sense. 130 It sought to disperse economic coordination rights—a goal that implies accommodating some forms of economic coordination while containing others. As in the earlier discussion of common law precedents, I take up in particular the issue of democratic coordination. The claim that Congress sought to condemn ‘cartels’ was pivotal to Bork’s conclusion that the Sherman Act was a consumer welfare prescription;131 and the claim that Congress in fact wanted to accommodate democratic coordination among small players is equally important to the argument that Congress aimed to disperse economic coordination rights. While of course legislators held a variety of personal views on various issues implicated, I approach the legislative record as if the legislative enterprise can at least potentially admit of a shared, coherent logic.132 In this case, it turns out that legislators were not especially divided on the underlying policy questions that they agreed legislation was needed to address, although they debated and deliberated over the best tactical choices to achieve these aims.

#### 2 – Starting points – moral economy questions fairness not anticompetitivenss – the aff believes properly competitive markets work.

Sanjukta Paul 20. Wayne State University Law School. “Recovering the Moral Economy Foundations of the Sherman Act”. (DRAFT), 131 YALE L.J. \_\_ (FORTHCOMING)Yale Law Journal, (Volume 131). Accessed: 9/26/2021. https://papers.ssrn.com/sol3/papers.cfm?abstract\_id=3564452

A major strand of the common-law antecedents of antitrust law was rooted in the perspective of “moral economy.” 26 The moral-economy perspective is one in which the social coordination of markets is taken as a given, and the relevant normative question about particular instances of economic coordination is not whether they are anticompetitive in the abstract, but whether they are fair or unfair. Elsewhere I have argued that even antitrust law today functions in essentially this way, although its normative reasoning is often suppressed in favor of asking simply whether conduct is anticompetitive or not.27 In the restraint of trade case-law, which formed an important antecedent for the Sherman Act, 28 such normative reasoning about acceptable and unacceptable market conduct is more frequently on the surface. Indeed, as discussed herein, many of antitrust law’s common-law precedents were animated by notions of fairness: they set out positive rules of fair dealing, often assumed fair or just price as an underlying normative benchmark, and sought to define fair competition as an overall legal goal. 29

The more usual approach is to read the common law tradition through the elite tradition of classical economics or classical political economy (which certainly informed it as well, particularly in the nineteenth century), rather than through the popular vision signified by moral economy.30 Reorienting our understanding of antitrust’s common-law precedents in this way is significant because it turns us away from the notion of a self-regulating market as a normative benchmark for law, thus also foregrounding questions of fairness as primary and unavoidable. Moreover, the concrete moral economy tradition in which these precedents were embedded was the very same one that led to Thompson’s coinage of the term “moral economy,” itself grounded in a popular movement. While the common law itself was heterogenous, the fact that antitrust has roots in this soil of moral economy is both significant and largely neglected.

# 1NR – Fullertown R5

#### 1---**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.

#### Actualizing scrutiny to bias is key

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

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

#### FTC enforcement key to check algorithmic bias

Heather Landi 21 – senior editor at Fierce Healthcare, 4/22/21. “FTC issues warning that using biased AI could violate consumer protection laws.” https://www.fiercehealthcare.com/tech/ftc-issues-warning-using-biased-ai-could-violate-consumer-protection-laws

The Federal Trade Commission issued a warning to businesses and health systems this week that the use of discriminatory algorithms could violate consumer protection laws.

It could signal that the agency plans to take a hard look at bias in artificial intelligence technologies.

"Hold yourself accountable—or be ready for the FTC to do it for you," Elisa Jillson, an attorney in FTC’s privacy and identity protection division, wrote in an official blog post.

The FTC Act prohibits unfair or deceptive practices. That would include the sale or use of—for example—racially biased algorithms, Jillson wrote.

Using biased AI technology also could potentially violate the Fair Credit Reporting Act, which comes into play in certain circumstances where an algorithm is used to deny people employment, housing, credit, insurance, or other benefits and also the Equal Credit Opportunity Act, according to the FTC. The ECOA makes it illegal for a company to use a biased algorithm that results in credit discrimination on the basis of race, color, religion, national origin, sex, marital status, age, or because a person receives public assistance.

"Under the FTC Act, your statements to business customers and consumers alike must be truthful, non-deceptive, and backed up by evidence," Jillson wrote in the blog post. "In a rush to embrace new technology, be careful not to overpromise what your algorithm can deliver. For example, let’s say an AI developer tells clients that its product will provide “100% unbiased hiring decisions,” but the algorithm was built with data that lacked racial or gender diversity. The result may be deception, discrimination—and an FTC law enforcement action."

Jillson cited the example of using AI for COVID-19 prediction models to help health systems combat the virus through efficient allocation of ICU beds, ventilators, and other resources. But a recent study in the Journal of the American Medical Informatics Association suggests that if those models use data that reflect existing racial bias in healthcare delivery, AI that was meant to benefit all patients may worsen healthcare disparities for people of color, according to Jillson.

One study that has been widely cited found that a commonly used healthcare algorithm that helps determine which patients need additional attention was found to have a significant racial bias, favoring white patients over blacks ones who were sicker and had more chronic health conditions. The algorithm used health costs to predict and rank which patients would benefit most from extra care that could help them stay on their medications or keep them out of the hospital. But researchers said that using health costs as a proxy for health needs is biased because black patients, facing disproportionate levels of poverty, often spend less on health care than whites.

The authors of the study, which was published in the journal Science, estimated that this racial bias reduces the number of black patients identified for extra care by more than half.

Citing that study, Jillson wrote that businesses need to test their algorithms—both before you use it and periodically after that—to make sure that it doesn’t discriminate on the basis of race, gender, or other protected class.

In a tweet, University of Washington School of Law professor Ryan Calo called the FTC's strong language a "shot across the bow."

The blog post signals "a shift in the way the FTC thinks about enforcing the FTC Act in the context of emerging technology. The concreteness of the examples coupled with repeated references to statutory authority is uncommon," Calo wrote.

The FTC outlined a number of recommendations for businesses and health systems to address bias in AI technology including being more transparent about the data being used and using independent researchers to evaluate the algorithms.

"As your company develops and uses AI, think about ways to embrace transparency and independence — for example, by using transparency frameworks and independent standards, by conducting and publishing the results of independent audits, and by opening your data or source code to outside inspection," Jillson wrote.

If an AI model causes more harm than good—that is, in FTC parlance, if it causes or is likely to cause substantial injury to consumers that is not reasonably avoidable by consumers and not outweighed by countervailing benefits to consumers or to competition—the FTC can challenge the use of that model as unfair, she wrote.

The stern warnings about selling and using discriminatory AI technology and overpromising on their capabilities suggest the FTC might be eyeing stricter enforcement.

#### They keep the AI industry in line

Ryan Calo 21. Professor of Law, University of Washington, 4/27/21. “FTC warns the AI industry: Don’t discriminate, or else.” https://theconversation.com/ftc-warns-the-ai-industry-dont-discriminate-or-else-159622

The U.S. Federal Trade Commission just fired a shot across the bow of the artificial intelligence industry. On April 19, 2021, a staff attorney at the agency, which serves as the nation’s leading consumer protection authority, wrote a blog post about biased AI algorithms that included a blunt warning: “Keep in mind that if you don’t hold yourself accountable, the FTC may do it for you.”

The post, titled “Aiming for truth, fairness, and equity in your company’s use of AI,” was notable for its tough and specific rhetoric about discriminatory AI. The author observed that the commission’s authority to prohibit unfair and deceptive practices “would include the sale or use of – for example – racially biased algorithms” and that industry exaggerations regarding the capability of AI to make fair or unbiased hiring decisions could result in “deception, discrimination – and an FTC law enforcement action.”

Bias seems to pervade the AI industry. Companies large and small are selling demonstrably biased systems, and their customers are in turn applying them in ways that disproportionately affect the vulnerable and marginalized. Examples of areas where they are being abused include health care, criminal justice and hiring.

Whatever they say or do, companies seem unable or unwilling to rid their data sets and models of the racial, gender and other biases that suffuse society. Industry efforts to address fairness and equity have come under fire as inadequate or poorly supported by leadership, sometimes collapsing entirely.

As a researcher who studies law and technology and a longtime observer of the FTC, I took particular note of the not-so-veiled threat of agency action. Agencies routinely use formal and informal policy statements to put regulated entities on notice that they are paying attention to a particular industry or issue. But such a direct threat of agency action – get your act together, or else – is relatively rare for the commission.

What the FTC can do – but hasn’t done

The FTC’s approach on discriminatory AI stands in stark contrast to, for instance, the early days of internet privacy. In the 1990s, the agency embraced a more hands-off, self-regulatory paradigm, becoming more assertive only after years of privacy and security lapses.

How much should industry or the public read into a blog post by one government attorney? In my experience, FTC staff generally don’t go rogue. If anything, that a staff attorney apparently felt empowered to use such strong rhetoric on behalf of the commission confirms a broader basis of support within the agency for policing AI.

Can a federal agency, or anyone, define what makes AI fair or equitable? Not easily. But that’s not the FTC’s charge. The agency only has to determine whether the AI industry’s business practices are unfair or deceptive – a standard the agency has almost a century of experience enforcing – or otherwise in violation of laws that Congress has asked the agency to enforce.

#### 1. FTC covers all core antitrust law

Emilia R. Rubin 19. J.D. Candidate, University of California, Hastings College of the Law. “The Heavy Burden of a Lighter Touch Framework The Inadequacy of Antitrust Laws as a Substitute for Net Neutrality.” Summer 2019. Hastings Science and Technology Journal 10.2, 229-261.

The FCC additionally justified repealing the 2015 Order by relying on the ability of both the FTC and private citizens to bring antitrust actions challenging any anticompetitive conduct in the internet sector.115 The FTC enforces three laws with respect to antitrust law: the Sherman Act, the FTC Act, and the Clayton Act. These are the three core federal antitrust laws in effect today. The Sherman Act outlaws “every contract, combination, or conspiracy in restraint of trade,” and any “monopolization, attempted monopolization, or conspiracy or combination to monopolize.” The standard for assessing business conduct under the Sherman Act is a two-pronged approach: (1) per se illegality if the conduct is considered “so harmful to competition that they are almost always illegal;” and (2) rule of reason analysis if the conduct does not fall into an established anticompetitive category articulated under law.116

#### 2. They’re tasked with enforcing antitrust laws

Katie Canales 20. Tech reporter at Business Insider, 12/9/20. “Facebook was just hit with 2 big antitrust lawsuits. Here's what 'antitrust' means and how 'trust-busting' laws attempt to keep the biggest firms in US history from growing too powerful.” https://www.businessinsider.com/what-is-antitrust-laws-big-tech-hearing-2020-7

There are three core federal US antitrust laws you should care about: the Sherman Act of 1890, the Clayton Act of 1914, and the Federal Trade Commission Act of 1914. The last would lead to the creation of the Federal Trade Commission, which is the main government entity tasked with enforcing antitrust laws today.

#### 3. They have authority over competition policy

Marianela Lopez-Galdos 21. Global Competition Counsel at the Computer & Communications Industry Association, 7/28/21. “Policy Decisions of Antitrust Institutions Series: The Future of the FTC and Its Perils.” https://www.project-disco.org/competition/072821-policy-decisions-of-antitrust-institutions-series-the-future-of-the-ftc-and-its-perils/

Let’s get started by understanding why the FTC’s antitrust policy rerouting has raised a lot of questions. The FTC is one of the two federal agencies that has authority over competition, and consumer protection matters. Throughout its enforcement, advocacy and regulatory activities, the FTC has endorsed competition policy that has inured to the benefit of consumers in the U.S. economy.

#### 4. The FTC enforces laws against anti-competitive practices

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

The FTC is an almost unique regulator in Washington.

Congress deliberately kept the commission’s remit broad, so it would be able to respond to anti-competitive practices across different industries. The agency was to do everything from reviewing mergers, to investigating anti-competitive behaviour, to writing consumer protection rules. The idea, said those who drafted the law that set it up, was not to break up monopolies, but stop them forming in the first place.

#### 5. FTC enforces antitrust law

Terrell McSweeney 17 – former FTC commissioner, “ARTICLE: FTC 2.0: Keeping Pace With Online Platforms,” 32 Berkeley Tech. L.J. 1027. Nexis.

The FTC is, first and foremost, an enforcement agency. Primarily it shapes law and policy by bringing cases against companies that violate the FTC Act or any of the approximately seventy other laws it enforces or administers. 5 But the agency is also charged with shaping policy by studying trends and changes in the marketplace. It does that by issuing reports, holding workshops, and conducting studies to inform its enforcement. 6

[\*1030] Congress established the FTC in 1914. 7 At that time of rapid economic growth and concern about the limited reach of the existing antitrust laws, 8 people worried about the power of enormous, integrated companies that controlled all major networks and commerce and were owned by a very few, very powerful elite. 9 Accordingly, Section 5 of the FTC Act gave the agency broad latitude to address "unfair methods of competition." 10 This mandate was intended to allow the FTC to keep pace with the American marketplace. 11 The prescient founders of the FTC even appear to have addressed issues alive today in the regulation of online platforms, such as the relationship between the allocation of power in the marketplace and access to data. For example, Louis Brandeis noted, "there is one respect in which the great industry has an important advantage. That is in the [\*1031] collection, the getting of knowledge, the collection of data in regard to trade, that knowledge for which great concerns extend their bases of inquiry all over the world." 12 Brandeis argued the FTC could serve to help small businesses gain access to the same information to compete in new markets. 13

The FTC has generally been busy with its mandate, protecting consumers from deceptive marketing, abusive debt collection, illegal telemarketing, frauds, scams, and other harmful financial practices. As consumers have moved consumption from a brick-and-mortar world to a digital one, the FTC has followed along. There, naturally, it encountered online platforms.

A. Antitrust Enforcement and Platform Regulation

The FTC has a unique dual mission among federal agencies to protect both consumers and competition. As a competition enforcer, the FTC seeks to contribute to the public understanding of platform markets and the unique consumer benefits and competitive risks associated with platforms. 21 The agency has a long history of advocating against overly restrictive regulatory barriers that prevent new entrants. 22 Frequently this [\*1033] takes the form of advocating on behalf of platforms, like ride-sharing platforms, and urging local regulators to tailor regulations to legitimate safety and consumer protection issues without impeding entry and competition from new services. 23

#### b---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.

#### 1. FTC is cash-strapped---the plan destroys other enforcement priorities

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

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

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

#### 2. Limited resources force tradeoffs in enforcement decisions

Asker et al 21. Nathaniel L. Asker, partner in the Antitrust Department at Fried Frank Antitrust & Competition Law Alert, serves on the Antitrust & Trade Regulation Committee of the Association of the Bar of the City of New York and is a member of the Antitrust Sections of the American Bar Association and the New York State Bar Association; with Bernard (Barry) A. Nigro and Aleksandr B. Livshits. “Managing Antitrust Risk in the Biden Administration.” Fried Frank Antitrust & Competition Law Alert, January 5, 2021. https://www.friedfrank.com/siteFiles/Publications/FFAntitrustAggressiveAntitrustEnforcement01052021.pdf

Further, despite a record number of litigated cases, the budget at the antitrust agencies is insufficient to match the rhetoric of more enforcement. The DOJ had 25% fewer full-time employees in 2019 than it had 10 years earlier9 and the FTC recently imposed a hiring freeze. With limited resources, the agencies are forced to make important tradeoffs in deciding what matters to challenge, settle, or walk away from. Indeed, Commissioner Wilson reportedly voted against bringing a lawsuit to block CoStar’s acquisition of RentPath, in part, because of limited FTC resources.10 Although the agencies will receive a modest budget increase for the current fiscal year,11 it is far short of what some think is needed.12 As antitrust enforcement has become a bipartisan issue, a significant increase in the antitrust agencies’ budgets in the future is likely.

#### 3. It directly undermines privacy enforcement

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

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

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

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

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

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

#### 4. Companies will drag out cases and drain FTC resources

Michael Kades 21 – the director for markets and competition policy at the Washington Center for Equitable Growth, 7/28/21. “Competitive Edge: Congress needs to restore the Federal Trade Commission’s authority to seek monetary remedies when companies break the law.” https://equitablegrowth.org/competitive-edge-congress-needs-to-restore-the-federal-trade-commissions-authority-to-seek-monetary-remedies-when-companies-break-the-law/

The impact reaches even further. Without the threat of a disgorgement award, companies are more likely to drag out litigation and tax the FTC’s limited resources. Because the commission will spend more resources on egregious cases to reach weaker results, it will have fewer resources to challenge anticompetitive conduct in other areas and, for example, could affect enforcement in merger cases or in the high-tech industry.

#### a---It’s our brink argument---the FTC’s managing its caseload, but only barely---the aff is a bolt from the blue that forces tradeoff with privacy

Leah Nylen 9/29/21. POLITICO's antitrust reporter. “Lina Khan’s big tech crackdown is drawing blowback. It may succeed anyway.” https://www.politico.com/news/2021/09/29/lina-khan-war-monopolies-514581

Despite all the friction, Khan’s admirers say the agency is finally back on the right track.

“The FTC is pushing as hard as they can right now, which is what we have needed for so long,” said Charlotte Slaiman, competition policy director for the advocacy group Public Knowledge, during POLITICO’s Tech Summit this month. She added: “I expect great things from the FTC.”

#### b---Current enforcement is streamlined to enable focus on algorithmic bias

Brian Fung 12/17/21. Technology reporter who covers the intersection of business and policy @ CNN. “FTC considers drafting new regulations on data and algorithms to protect consumer privacy and civil rights.” https://www.cnn.com/2021/12/17/tech/ftc-algorithm-regulation/index.html

The Federal Trade Commission says it's considering drafting new rules for US businesses that would more strongly regulate how they can use data and algorithms, in the latest move to clamp down on technology companies run amok.

The effort could lead to "market-wide requirements" targeting "harms that can result from commercial surveillance and other data practices," agency chair Lina Khan announced in a letter to Sen. Richard Blumenthal dated Dec. 14, and shared by the senator's office Friday.

For years, regulators presumed that consumers could protect themselves from predatory practices by revoking their consent to being tracked. But it has become increasingly obvious that that so-called "notice-and-consent" approach has "serious shortcomings," wrote Khan, a vocal tech industry critic who has led the charge on reining in giants like Amazon, Apple, Google and Facebook (now Meta). In particular, she said, many Americans feel they have no choice but to have their data harvested and used in ways they disagree with, simply to participate in modern life.

The announcement of a potential rule making is a shot across the bow not just of Silicon Valley, which pioneered the use of data to drive business decisions, but of the growing number of companies and industries that have turned data mining into lucrative revenue streams — ranging from entertainment to insurance to retail.

Khan's letter follows a September request by nine Senate Democrats for an agency rule making that would set guardrails on the use of consumer data.

#### c---FTC actions so far are only table-setting

Ashley Gold 12/20/21. Tech and policy reporter at Axios. “Six months with Lina Khan's FTC.” https://www.axios.com/lina-khan-ftc-six-months-4a5c4ba6-cef1-4a1f-b1dc-a528b2b41471.html

Why it matters: As Biden's first year ends, many are watching Khan's FTC to see whether it really can fundamentally change how the U.S. regulates big companies and how tech should treat consumers.

Entering the role, the 32-year-old, known for her scholarship in antitrust and competition policy, targeted what she sees as monopolistic behavior in Big Tech and beyond. Under her, the agency re-filed its case accusing Facebook of buying up competitors to maintain dominance.

It sued to block a $40 billion semiconductor chip merger between Nvidia and Arm, arguing it would stifle competing next-generation technologies.

It launched an investigative study into supply change disruptions, targeting retailers like Walmart and Amazon.

It reached a settlement agreement with an ad platform that allegedly violated the Children's Online Privacy Act.

The big picture: Khan's tenure so far has seen more table-setting for future actions than major high-profile antitrust cases.

#### d---There are no major cases

Jacob Carpenter 12/3/21. Writer for Fortune. “Lina Khan targets low-hanging fruit for first big antitrust move.” https://fortune.com/2021/12/03/nvidia-arm-lina-khan-antitrust/

But Khan, perhaps smartly, isn’t exactly taking a big swing here.

From the moment that Nvidia announced its planned acquisition in September 2020, analysts and competitors have been skeptical the deal would go through. In subsequent months, some of the U.S.’ most prominent tech companies cried foul about the merger, including Google parent Alphabet, Microsoft, and Qualcomm, Bloomberg reported early this year.

Khan also has momentum at her back, with European Union and United Kingdom regulators already lining up an antitrust case. A top UK official teed up Thursday’s announcement by telling Bloomberg last month that “there is a lot of collaboration” on each side of the Atlantic with regard to Nvidia and Arm.

In addition, the FTC’s case has bipartisan support, with the organization’s two Republican commissioners joining their two Democratic counterparts in support of the case.

The true test of Kahn’s mettle lies farther down the road, as the FTC ponders whether to throw its weight behind challenges to acquisitions with more divided support and more complicated facts.

#### A. Reports from the FTC

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.”

#### B. Expressed plans

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. Statements from Kahn

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.

#### 1. Even if it happens, it doesn’t prevent tradeoffs

Cristiano Lima 9/16/21. Business reporter and author of The Washington Post's Technology 202 newsletter. “Why Democrats are rallying around creating a new FTC privacy bureau to police Big Tech.” https://www.washingtonpost.com/politics/2021/09/16/why-democrats-are-rallying-around-creating-new-ftc-privacy-bureau-police-big-tech/?outputType=amp

At the session, lawmakers lamented that, beyond lacking will, the FTC has lacked the resources and staffing to effectively oversee the conduct of the tech sector’s trillion-dollar behemoths. That’s long been a knock on the FTC’s track record policing the tech sector, from both Democrats and Republicans.

While the proposed funding boost may not even the odds entirely, Democrats are largely aligned behind the idea that any added firepower for regulators is a positive step.

#### 2. Staff are constrained and trade off

Alison Jones & William E. Kovacic 20. Professor at King’s College London, and Global Competition Professor of Law and Policy at The George Washington University Law School. “Antitrust’s Implementation Blind Side: Challenges to Major Expansion of U.S. Competition Policy,” The Antitrust Bulletin, vol. 65, no. 2, SAGE Publications Inc, 06/01/2020, pp. 227–255

B. Augmenting the Human Capital of the Enforcement Agencies

Measures to expand federal antitrust intervention dramatically—through the prosecution of lawsuits or the promulgation of trade regulation rules—will face arduous opposition from the affected businesses. Assuming that litigation will provide the main method in the coming few years to attack positions of single-firm or collective dominance, the targets of big antitrust cases will marshal the best talent that private law firms, economic consultancies, and academic bodies can offer to oppose the government in court. The defense will benefit from doctrinal principles that generally are sympathetic to dominant firms (again, we assume that legislation to change the doctrinal status quo will not be immediately forthcoming). Beyond a certain point, the addition of new, high stakes cases to the litigation portfolio of public antitrust agencies will create a serious gap between the teams assembled for the prosecution and defense, respectively. Although therefore the public agencies can match the private sector punch for the punch when prosecuting several major de-monopolization cases, when the volume of such cases rises from several to many, the government agencies may have to rely on personnel with considerably less experience to develop and prosecute difficult antitrust cases, seeking powerful remedies upon global giants.

An enhanced litigation program will therefore go only as far as the talent of the agencies will carry it. We propose three steps to build and retain the human capital—attorneys, economists, technologists, and administrative managers133—to undertake a more ambitious litigation program. The first is to use antitrust as a prototype for a program to raise civil service salaries. The second two steps consist of cautions about the dangers of (a) denigrating the skills and accomplishments of existing agency personnel and (b) attempting to shut the revolving door through which professionals move between the public and private sectors. We discuss all three of these steps below.

1. Resources and compensation

To accomplish the desired expansion of enforcement, we see a need for more resources.134 Nonetheless, budget increases that simply allow the enforcement agencies to hire additional staff, while useful, are not enough. We would use more resources to boost compensation for agency employees. This means taking the antitrust agencies out of the existing civil service pay scale. The need is not simply to hire more people. It is to attract a larger number of elite personnel who are equal to the tasks that the ambitious reform agenda will impose. We do not see how the public agencies can recruit and retain necessary personnel without a significant increase in the salaries paid to case handlers and to senior managers. It surprises us that none of the proposals for bold reform mention compensation for civil servants.

#### 1. It’s streamlined now to preserve resources

Noah Brumfield 10/29/21. Allen & Overy LLP partner based in Washington, D.C. and Silicon Valley. “Antitrust in focus - October 2021.” https://www.jdsupra.com/legalnews/antitrust-in-focus-october-2021-5946092/

The U.S. Federal Trade Commission (FTC) has recently announced a string of important changes to its merger control policies and practice. Some, such as the use of “warning letters” we reported in last month’s edition, are in response to an expected “record-setting year” of merger filings which the FTC claims are straining U.S. agency resources. Others suggest that the FTC intends to take a more aggressive approach to merger control enforcement under the Biden administration.

This month, merging parties should be aware of two key developments.

Expanded information requests for in-depth reviews

The FTC has identified a number of changes which, according to its announcement, will streamline its in-depth (“second request”) merger review process while also ensuring more rigorous analysis. Some changes are intended to align FTC practices with those of the Department of Justice (DOJ). Others are more significant, and fit with new Chair Lina Khan’s push to expand the framework for assessing transactions beyond traditional merger control standards. For merging parties, it is likely that the measures will make complying with in-depth FTC merger reviews more difficult, unpredictable, and time-consuming.

#### 2. They won’t pass

Christopher Holding et al. 21 Christopher, Paul Jin, Andrew Lacy, Arman Goodwin; July 15; Experts at JD Supra, a daily source of legal intelligence on all topics business and personal, distributing news, commentary, and analysis from leading lawyers; JD Supra, “Biden Executive Order Calls for Heightened Antitrust Scrutiny,” <https://www.jdsupra.com/legalnews/biden-executive-order-calls-for-7783960/>

Key Implications

Revised horizontal and vertical merger guidelines are expected, which will likely implement a much more aggressive approach to deals. Note, however, that agency merger guidelines are not binding on courts and merger challenges under more aggressive theories may be met with skeptical courts;

Anticipate delays in HSR review especially for deals in industries singled out by the Order (e.g., tech, pharma, healthcare, among others), even if competitive overlaps are minimal;

Deals not subject to HSR filing requirements, even when purchase prices are relatively low, should be reviewed by antitrust specialists to assess risk, especially in the sectors identified in the Order;

#### Legislation won’t pass

Jacob Silverman 21. Staff writer and Author, The New Republic. “Biden Wants to Tame Big Tech with a Thousand Paper Cuts,” July 9. <https://newrepublic.com/article/162940/biden-executive-order-big-tech-monopoly>

On Friday, the White House [announced](https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/09/fact-sheet-executive-order-on-promoting-competition-in-the-american-economy/) a potentially important, if modest, effort to further tamp down the power of the technology industry. This time the instrument is an executive order—the kind of wide-ranging declaration that often gets called “sweeping” or “major,” though its efficacy may take years to gauge—that covers everything from competition in the economy to drug prices to reforming a tech sector that is defined by a handful of seemingly unstoppable titans. Offering a mix of general recommendations, requests for action from other government agencies, and new administration policies, the Executive Order on Promoting Competition in the American Economy may be just what our overconsolidated economic system needs. But in tackling the power of a tech sector that has not only wrested control of the economy but remade it in its own data-hungry image, the Biden administration is still throwing pebbles at its enemy’s parapets. The tech industry has had 20 years to establish a stranglehold over our personal data, attention, and consumer choice. To tackle these problems, we need more, much more.

Despite promising to take on the power of Big Tech, President Joe Biden and his administration have so far taken a cautiously incrementalist approach. He’s [appointed tough industry critics](https://www.nytimes.com/2021/06/15/technology/lina-khan-ftc.html) like Lina Khan to be commissioner of the Federal Trade Commission, but he has yet to name a head of the Justice Department’s antitrust division, a key role for any future enforcement action. In Congress, Democrats have introduced six smallish antitrust bills, but their path out of the House is [murky](https://www.cnbc.com/2021/06/24/-big-tech-antitrust-debate-odd-alliances-form-and-party-fractures-show.html), as ongoing disputes between [Republicans](https://www.cnbc.com/2021/07/07/house-republicans-lay-out-tech-antitrust-agenda.html) and Democrats over how to fight this legislative battle mean that the final bills could look much different than they did in committee—if they make it to a floor vote at all. (It doesn’t help that some Silicon Valley–adjacent Democratic politicians, like Representative Ted Lieu and Representative Ro Khanna, have been less than supportive of the bills.)

As federal and congressional leadership lag, states have forged ahead, with dozens of attorneys general coming together in lawsuits like one, filed this week, accusing Google of [anti-competitive practices](https://www.vox.com/recode/2021/7/7/22567656/google-play-store-states-antitrust-suit-letitia-james-utah-new-york-north-carolina). Other ongoing antitrust suits include one [against Amazon](https://www.washingtonpost.com/technology/2021/05/25/dc-ag-antitrust/) over pricing issues; another lawsuit (this one with DOJ participation) [against Google](https://www.justice.gov/opa/pr/justice-department-sues-monopolist-google-violating-antitrust-laws); and two others against Facebook that a judge recently threw out. In this proliferating legal war against Big Tech—premised on a lack of competition and companies’ abusing their monopoly status—any of these cases could yield billion-dollar fines for one of the tech giants. But fines are easily paid. Whether these suits can lead to meaningful reform, to breaking up companies and redirecting business practices away from the current dominant model of user surveillance and bulk data collection—that is far less clear. As with proposed legislation in the House, bipartisan legal efforts may be sundered on the altar of competing partisan priorities, with Republicans focusing on [alleged censorship](https://newrepublic.com/article/162299/josh-hawley-gops-fake-war-big-tech) and Democrats more focused on [economic competition and user rights](https://newrepublic.com/article/160646/biden-antitrust-blueprint-monopoly-busting).

With the stage set for legislative gridlock, drawn-out lawsuits, and [bickering](https://www.politico.com/news/2021/07/06/ftc-staffers-public-appearances-498386) over the FTC’s legitimacy, a small opening has emerged for the Biden administration to take meaningful action on its own. And there are some measures in the executive order worth celebrating. One section aims to improve internet service by eliminating early termination fees and providing transparent pricing to help drive competition. Another proviso calls for gadget users—from farmers working on tractors to people tinkering with their own cell phones—to have what’s often [referred to](https://www.theverge.com/2021/7/9/22569869/biden-executive-order-right-to-repair-isps-net-neutrality) as “the right to repair,” a right that tech companies have suppressed by discouraging DIY or third-party work on broken items. (Forcing customers to take their doddering laptop to Apple’s Genius Bar helps the company maintain control over its products and ensures that repairs, and the money they generate, stay in-house.) Other relevant orders call for the restoration of net neutrality and applying more scrutiny to corporate mergers, which may prevent a tech giant from swallowing up the next WhatsApp or Slack, formerly insurgent chat/social media platforms that were absorbed by Facebook and Salesforce.

In the last year, tech companies have shifted their rhetoric, [claiming](https://newrepublic.com/article/162509/facebook-big-tech-nick-clegg-regulation-policy) that they are in favor of regulation—just on their terms. To that end, they’ve deployed armies of lobbyists to woo elected officials, making companies like Google and Facebook some of the most profligate spenders on K Street. With the potential for major legislative action still up in the air—a divided Senate doesn’t augur well, unless tech-critical Republicans like Senator Josh Hawley line up behind the Democratic legislative agenda, which seems unlikely—executive action may be the most promising way forward. Call it death by a thousand regulations. It’s also—as the executive order’s many prompts for action by the Federal Communications Commission, the FTC, and DOJ show—a plea for the government to do its damn job.

Even sympathetic observers may survey this latest initiative with some well-earned cynicism. [Regulatory capture](https://newrepublic.com/article/149438/big-pharma-captured-one-percent), in which regulatory agencies become beholden to the companies and industries they oversee, is a well-known feature of the land, and the families of leading politicians like Representative Nancy Pelosi periodically trade stocks based on what appears to be insider information. And as demonstrated by the measure to treat all internet traffic equally by restoring net neutrality (something that the Trump administration [did away with](https://newrepublic.com/article/146305/loses-war-net-neutrality)), the Biden administration is still playing catchup, fighting many of yesterday’s battles. For instance, the order “calls on the leading antitrust agencies, [the DOJ and FTC], to enforce the antitrust laws vigorously and recognizes that the law allows them to challenge prior bad mergers that past Administrations did not previously challenge.”

While divesting WhatsApp and Instagram from Facebook are worthwhile efforts, there’s also a sense that would-be tech reformers are struggling to deal with the mistakes and oversights of a previous generation of politicians (i.e., pushing for the enforcement of existing laws is yet another call for the government to do its job). Even the order’s directive that the FTC “establish rules on surveillance and the accumulation of data” seems incredibly belated. We are 20-odd years into a surveillance economy, in which consumers have become the main source to be mined for value. The resulting inequities are vast, as the tech giants have had decades to strengthen their positions. It will take far more than an executive order to undo all this, much less to ensure a more equitable future. The question is: Does the Biden administration understand this grim state of play, or is this the best we’re going to get?

#### Which means no major action

Joshua D. Wright 21. Executive Director of the Global Antitrust Institute at the Antonin Scalia Law School, former commissioner of the U.S. Federal Trade Commission from 2013 to 2015, interviewed by James Pethokoukis, senior fellow at AEI, “Will US antitrust law break up Big Tech? My long-read Q&A with Joshua D. Wright,” 2/9/21, <https://www.aei.org/economics/will-us-antitrust-law-break-up-big-tech-my-long-read-qa-with-joshua-d-wright/>

[Italics denote questions from Pethokoukis]

*Do you think that, if we have this conversation in four years, we will have seen any major action against any of the largest technology companies that involves them selling off a significant business?*

That’s a great question. I bet the under, and here’s why. The US antitrust doctrine is what it is right now, and we still have meaningful judicial review. And on the left and the right, you see all of the attention paid to legislative change — they’re not going to win in the court. The DOJ will bring its case against Google, the FTC has a Facebook case where they might be able to convince a court to spin off WhatsApp or Instagram. I’m skeptical that those are good cases, but neither of them are the big-breakup, affect-the-business-model case that proponents of a new antitrust are looking for. For what it’s worth, my money is that the government loses both of those cases, but those cases exist. But overall, I think that the hope for the antitrust reformers lies, not in the courts, but in Congress.

Maybe I’ve been in DC too long, but I always bet the under if someone tells me that the revolution is coming from Congress. I don’t think we’re going to see legislation that undoes the consumer welfare standard. I do think that you’ll see some antitrust legislation. You’ll get bigger budgets for the agencies, and maybe you’ll get tinkering around the margins with the presumption here or presumption there. But I don’t think that you’re going to see a regulatory antitrust revolution via Congress.

I think it’s going to have to be done through the courts, and I’m skeptical. My silver lining of hope when watching some of these discussions happen is that you’ve got to win in the Article III courts, and that means you’ve got to have proof, not just political grievances. I don’t think they’ve got that.